

Draft 5

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CONSULTATION DRAFT

AN ACT TO AMEND THE ELECTION EXPENSES ACT

BILL NO.

2021

BE IT ENACTED by the Lieutenant Governor and the Legislative Assembly of the Province of Prince Edward Island as follows:

1. **Section 1 of the *Election Expenses Act* R.S.P.E.I. 1988, Cap. E-2.01, is amended by the addition of the following after clause (g):**
 - (g.1) **“financial institution”** means a financial institution as defined under section 2 of the *Bank Act (Canada)* that has offices in the province;
- 2.(1) **Subsection 11(3) of the Act is amended by the deletion of the words “No one” and the substitution of the words “Subject to subsection (3.1), no one”.**
- (2) **Section 11 of the Act is amended by the addition of the following after subsection (3):**
 - Anonymous contributions limited**
 - (3.1) No one shall make an anonymous monetary contribution, as defined in subclause 1(d)(i), of more than \$25.
 - Some contributions not to be solicited or accepted**
 - (3.2) No registered party or registered candidate and no person acting on behalf of a registered party or registered candidate shall solicit or accept an anonymous contribution if the registered party, registered candidate, or person knows or ought to know that the anonymous contribution would result in the contributor’s aggregate contributions exceeding the limit established under section 12.1.

Recording anonymous contributions at events

- (3.3) If anonymous contributions of \$25 or less per person are collected in response to a general solicitation at a meeting or fundraising event related to the affairs of a registered party or a registered candidate, the person authorized to accept those contributions shall record the following:
- (a) a description of the function at which the contributions were collected;
 - (b) the date of the function;
 - (c) the approximate number of people at the function; and
 - (d) the total amount of the anonymous contributions received.

3. Section 12 of the Act is repealed and the following substituted:

12. Contribution to be returned, etc.

If a registered party or registered candidate receives an anonymous contribution, including an anonymous monetary contribution, of more than \$25, the official agent for that registered party or registered candidate shall

- (a) if the contributor cannot be identified, turn the contribution over to the Minister of Finance as soon as practicable to be paid into the Operating Fund; or
- (b) if the contributor can be identified,
 - (i) issue a receipt for the contribution in accordance with section 11; or
 - (ii) return the contribution to the contributor.

4. The Act is amended by the addition of the following after section 16:

16.1 Loans

- (1) For the purposes of this Act, a loan provided under this section is not a contribution.

Prohibition

- (2) Except as permitted under this section, no person or entity shall
- (a) make a loan to a registered party;
 - (b) make a loan to a registered candidate, or a potential candidate; or
 - (c) guarantee a loan referred to in clause (a) or (b).

Ineligible borrowers

- (3) Except if the loan is permitted under this section, no official agent of a registered party shall borrow money on behalf of the party, and no official agent of a registered candidate or a potential candidate shall borrow money for the purposes of the candidate's campaign.

Exception for financial institutions

- (4) Only a financial institution may make a loan referred to in clause (2)(a).

Interest rate

- (5) No financial institution that makes a loan under this section shall make the loan at a rate of interest below the applicable market rate charged by the financial institution for an equivalent amount at or about the time and in the market area where the loan is provided.

Guarantees

- (6) An individual who is ordinarily resident in the province may guarantee a loan made under this section, but the amounts guaranteed by the individual, not including any amount for which the individual has ceased to be liable, shall not at any time exceed the individual's relevant contribution limit set out in section 12.1.

Payment on borrower's behalf is a contribution

- (7) Where a payment on a loan to a registered party is made by a person other than the registered party, the payment is a contribution to the registered party and attributed to the person who made the payment.

Loan write-offs deducted from expense reimbursements

- (8) If a financial institution waives the right to recover a loan to a registered party, the amount to which the waiver applies shall be a balance owing by the registered party to the office of the Chief Electoral Officer, which shall be repaid in accordance with subsection (9).

Balance owing to be deducted

- (9) Where a registered party has a balance owing to the office of the Chief Electoral Officer under subsection (8), the amount owing by a registered party shall be deducted from either
- (a) the reimbursements owing to candidates of that party under section 22;
 - (b) the amount of the allowance, if any, payable to the registered party's official agent or to the candidate's official agent under section 23; or
 - (c) payments made voluntarily by the registered party to the office of the Chief Electoral Officer for the purpose of reducing the balance owing under subsection (8);
- until such time as the balance owing has been paid in full.

Monies to be paid into Operating Fund

- (10) Any monies paid to the office of the Chief Electoral Officer under clause (9)(c) shall be paid into the Operating Fund.

Loan agreement

- (11) A registered party shall not accept a loan unless there is a loan agreement in writing setting out
- (a) the amount of the loan;
 - (b) the term of the loan;
 - (c) the name and address of the lender;
 - (d) the name and address of any guarantor; and
 - (e) the details of any assignment of reimbursement made.

Loan agreements to be filed

- (12) Any loan agreement made pursuant to subsection (11) shall be filed with the Chief Electoral Officer within fourteen days of being made.

Amended loan agreements

- (13) Where a financial institution and a registered party amend the terms of a loan agreement, the registered party shall file the amended loan agreement with the Chief Electoral Officer within fourteen days of the amendments being made.

Publication by Chief Electoral Officer

- (14) As soon as reasonably practicable after receiving a loan agreement or an amended loan agreement, the Chief Electoral Officer shall issue a public notice that identifies the borrower and includes the information required under subsection (11).

5. **Subsection 18(1) of the Act is amended by the deletion of the words “\$6.00” and the substitution of the words “\$1.75”.**

6. **Sections 20 and 21 of the Act are repealed and the following substituted:**

20. Annual filing of audited financial information

- (1) The official agent of every registered party shall, on or before May 31 in each year, file with the Chief Electoral Officer an audited financial report for the preceding calendar year in a form determined by the Chief Electoral Officer containing
- (a) a record of contributions, setting out all the information required to be recorded under subsection 16(1);
 - (b) a statement of contributions received by the registered party but returned in whole or in part to the contributors or otherwise dealt with in accordance with this Act;
 - (c) a statement of the registered party’s assets and liabilities and any surplus or deficit in accordance with generally accepted accounting principles;
 - (d) a statement of the registered party’s revenues and expenses in accordance with generally accepted accounting principles;
 - (e) a statement of the terms and conditions of each loan held by the registered party under section 16.1 during the preceding calendar year, including the amount of the loan, the interest rate, the lender’s name and address, the dates and amounts of repayments of principal and payments of interest, the repayment schedule, and, if there is a guarantor, the guarantor’s name and address and the amount guaranteed;
 - (f) a statement of amounts transferred in accordance with subsection 11(6);
 - (g) the auditor’s report thereon as required by subsection 19(4); and
 - (h) any additional information that the Chief Electoral Officer determines necessary for the purposes of this Act.

Annual filing respecting anonymous contributions

- (2) The official agent of every registered party shall, on or before May 31 in each year, file with the Chief Electoral Officer a record of meetings and events at which anonymous contributions were received in accordance with subsection 11(3.3) for the preceding calendar year, setting out all the information required to be recorded under subsection 11(3.3)

21. Election expenses report

- (1) The official agent of every registered party and registered candidate shall, within one hundred and twenty days after the day fixed for the election, file with the Chief Electoral Officer
- (a) a financial report of election expenses in a form approved by the Chief Electoral Officer, accompanied by the invoices, receipts and other vouchers and an affidavit of the official agent verifying the report and stating that no payment not permitted by this Act was made with his or her knowledge and consent and that to the best of his

- or her knowledge and belief every expense incurred is entered in the report of the registered party or candidate for which the official agent acts, and
- (b) the auditor's report thereon as required by subsection 19(4).

Failure of candidate not elected to file

- (2) Where the official agent of a registered candidate fails to file a financial report and the auditor's report thereon as required by subsection 21(1), the candidate, in addition to any other penalty, is ineligible to stand as a candidate at any election up to and including the next general election unless prior thereto he or she or the official agent has filed such financial report and the auditor's report thereon with the Chief Electoral Officer.

21.1 Publishing of reports

The Chief Electoral Officer shall publish reports received under sections 20 and 21 on the Elections PEI website.

7. The Act is amended by the addition of the following after section 26:

26.1 Offences and penalty for receiving a prohibited loan

- (1) Every registered party, registered candidate, or potential candidate that receives a loan in contravention of section 16.1 is guilty of an offence and on summary conviction is liable to
- (a) a penalty equal to the amount of the loan; and
- (b) in the case of
- (i) a registered party, to a fine of not less than \$5,000 and not more than \$10,000,
- (ii) a registered candidate or a potential candidate, to a fine of not less than \$2,000 and not more than \$5,000.

Contravening loan is null and void

- (2) On the summary conviction of a registered party, registered candidate, or potential candidate under subsection (1) the contravening loan is null and void.
- 8. The moneys required for the purpose of this Act shall be paid out of moneys appropriated for that purpose by the Legislature.**

EXPLANATORY NOTES

SECTION 1 amends the definition section of the *Election Expenses Act*, to add a definition of “financial institution”.

SECTION 2 amends section 11 of the Act to allow anonymous contributions of under \$25 to be made. It also adds new subsections to prohibit parties and candidates from accepting anonymous contributions that would knowingly allow a person to exceed the contribution limits established under the Act and to provide for how anonymous contributions collected at events must be recorded.

SECTION 3 repeals section 12 of the Act and substitutes a new section 12 in respect of handling anonymous contributions, to specify that if a party or candidate receives an anonymous contribution the official agent for that party or candidate shall either issue a receipt for the contribution in accordance with section 11, return the contribution to the contributor, or turn over the contribution to the Minister of Finance to be paid into the Operating Fund.

SECTION 4 adds a new section 16.1 to the Act, respecting loans to parties and candidates. Subsection (1) clarifies that a loan provided under this section is not a contribution. Subsections (2), (3), and (4) provide for who may make and receive loans. Loans may not be made at a rate of interest below the market rate. Individuals may guarantee loans, subject to the contribution limits under the Act, and a payment made by a person on a loan to a party is a contribution. Subsections (8), (9) and (10) provide for the amount of any loan write-offs to be deducted from reimbursements or allowances payable to a party. Loan agreements must be made in writing and be filed with the Chief Electoral Officer, who shall issue public notice of them.

SECTION 5 amends subsection 18(1) of the Act by reducing the limitation on election expenses of a party from \$6 per elector to \$1.75 per elector.

SECTION 6 repeals sections 20 and 21 of the Act and substitutes new sections 20, 21, and 21.1 respecting the annual filing of audited financial statements and election expense reports. The new section 21.1 provides for the publishing of the reports filed under sections 20 and 21.

SECTION 7 adds a new section 26.1 to the Act to add an offence respecting loans received in contravention of the Act. It provides for a penalty in the amount of a contravening loan in addition to a fine, and that where there is a conviction, the contravening loan is rendered null and void.

SECTION 8 provides that the moneys needed for the purpose of the Act shall be paid out of moneys appropriated for that purpose by the Legislature.