

STATE OF NEW YORK

7593

IN SENATE

January 29, 2018

Introduced by Sen. STEWART-COUSINS -- read twice and ordered printed,
and when printed to be committed to the Committee on Elections

AN ACT to amend the election law, in relation to enacting the "fair elections act"; to amend the election law, the state finance law and the tax law, in relation to providing for optional partial public financing of certain election campaigns in this state; and to amend the general business law, in relation to additional surcharges

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Short title. This act shall be known and may be cited as
2 the "fair elections act".

3 § 2. Legislative findings and declarations. The legislature declares
4 that is in the public interest to create and ensure a truly democratic
5 political system in which citizens, irrespective of their income,
6 status, or financial connections, are enabled and encouraged to compete
7 for public office. Therefore, the legislature finds it necessary to
8 establish a system of public financing for all qualified candidates for
9 state elective offices and constitutional convention delegates. The
10 legislature further finds that a new system of public financing would be
11 best administered by a new "fair elections board" empowered with effective
12 oversight and enforcement capabilities dedicated to working with
13 and assisting candidates excel in the public financing system.

14 § 3. Section 3-102 of the election law is amended by adding two new
15 subdivisions 3-a and 16-b to read as follows:

16 3-a. notwithstanding subdivision three of this section, the fair
17 elections board enforcement counsel, established pursuant to subdivision
18 six of section 14-216 of this chapter, as it may deem necessary, after
19 the fair elections board has considered the matter or matters in ques-
20 tion shall conduct any investigation necessary to enforce the provisions
21 of title two of article fourteen of this chapter on behalf of the board
22 of elections. Such investigations shall be kept confidential until
23 brought to the fair elections board for review and consideration.

24 16-b. hear and consider the recommendations of the fair elections
25 board enforcement counsel regarding the enforcement of violations of

EXPLANATION--Matter in italics (underscored) is new; matter in brackets
[-] is old law to be omitted.

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1 title two of article fourteen of this chapter, as it may deem necessary,
2 after the fair elections board has considered the matter or matters in
3 question;

4 § 4. Subdivision 1 of section 3-104 of the election law is amended by
5 adding a new paragraph (a-1) to read as follows:

6 (a-1) There shall also be a unit known as the fair elections enforce-
7 ment unit established within the fair elections board. The head of such
8 unit shall be the enforcement counsel. Such unit shall have sole
9 authority within the state board of elections to investigate alleged
10 violations and complaints arising under title two of article fourteen of
11 this chapter.

12 § 5. Section 3-104 of the election law is amended by adding twelve new
13 subdivisions 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19 and 20 to read as
14 follows:

15 9. If the fair election board enforcement counsel determines that a
16 violation of title two of article fourteen of this chapter has occurred
17 which could warrant a civil penalty, the enforcement counsel shall, upon
18 his or her discretion, seek to resolve the matter extra-judicially or
19 commence a special proceeding in the supreme court pursuant to section
20 16-114 of this chapter.

21 10. Upon receipt of a complaint and supporting information alleging
22 any other violation of title two of article fourteen of this chapter,
23 the fair elections board enforcement counsel shall analyze the complaint
24 to determine if an investigation should be undertaken. The fair
25 elections board enforcement counsel shall, if necessary, request addi-
26 tional information from the complainant to assist such counsel in making
27 this determination. Such analysis shall be confidential and include the
28 following: first, whether the allegations, if true, would constitute a
29 violation of article fourteen of this chapter and, second, whether the
30 allegations are supported by credible evidence.

31 11. If the fair elections board enforcement counsel determines that
32 the allegations, if true, would not constitute a violation of title two
33 of article fourteen of this chapter or that the allegations are not
34 supported by credible evidence, he or she shall issue a letter to the
35 complainant dismissing the complaint.

36 12. If the fair elections board enforcement counsel determines that
37 the allegations, if true, would constitute a violation of title two of
38 article fourteen of this chapter and that the allegations appear to be
39 supported by credible evidence, he or she shall notify the fair
40 elections board of (a) his or her intent to resolve the matter extra-ju-
41 dicially due to the de minimus nature of the violation; or (b) his or
42 her intent to commence an investigation, no later than the fair
43 elections board's next regularly scheduled meeting. Notification shall
44 summarize the relevant facts and the applicable law and shall, to the
45 extent possible, protect from public disclosure the identity of the
46 complainant and the individual subject to the complaint. In determining
47 whether a violation is de minimus in nature the enforcement counsel
48 shall consider the following factors: (a) whether any unforeseen
49 extraordinary circumstances, such as a natural disaster, contributed to
50 the violation alleged in the complaint; (b) whether the participating
51 candidate or such candidate's campaign treasurer exercised due diligence
52 to abide by the applicable rules; (c) whether the participating candi-
53 date or such candidate's campaign treasurer has used such candidate's or
54 treasurer's personal funds to remedy any alleged violations or reimburse
55 the candidate's committee for any alleged improper expenditures; (d)
56 whether the participating candidate or such candidate's campaign treas-

1 urer agrees to pay any penalties assessed by the board in relation to
2 any potential excess expenditure; and (e) whether the subject of the
3 complaint has made a good faith effort to correct any alleged violation.

4 13. If, upon considering the fair elections board enforcement coun-
5 sel's notice of intent to commence an investigation, the fair elections
6 board believes that the allegations, if true, would not constitute a
7 violation of article fourteen of this chapter, or the allegations are
8 not supported by credible evidence or, that on balance, the equities
9 favor a dismissal of the complaint, the board shall publicly direct that
10 an investigation not be undertaken no later than sixty days after the
11 receipt of notification from the fair elections board enforcement coun-
12 sel of his or her intent to commence an investigation. In determining
13 whether the equities favor a dismissal of the complaint, the fair
14 elections board shall consider the following factors: (a) whether the
15 complaint alleges a de minimus violation of article fourteen of this
16 chapter; (b) whether the subject of the complaint has made a good faith
17 effort to correct the violation; and (c) whether the subject of the
18 complaint has a history of similar violations. Determinations of the
19 fair elections board to dismiss a complaint and not proceed with a
20 formal investigation shall be voted upon as provided in subdivision
21 twelve of section 14-216 of this chapter at an open meeting pursuant to
22 article seven of the public officers law, and shall be made on a fair
23 and equitable basis and without regard to the status of the subject of
24 the complaint.

25 14. Absent a timely determination by the fair elections board that an
26 investigation shall not be undertaken, the fair elections board enforce-
27 ment counsel shall commence an investigation on a timely basis. If the
28 fair elections board enforcement counsel determines that additional
29 investigative powers, as provided for in subdivisions four, five and six
30 of section 3-102 of this title, are needed to complete the counsel's
31 investigation, he or she shall request, upon approval of the fair
32 elections board, such additional powers from the state board of
33 elections. Such powers shall be granted by the board in public, as
34 provided in subdivision four of section 3-100 of this title, only when
35 the board finds that further investigation is warranted and justified.

36 15. At the conclusion of its investigation, the fair elections board
37 enforcement counsel shall provide the fair elections board with a writ-
38 ten recommendation as to: (a) whether substantial reason exists to
39 believe a violation of title two of article fourteen of this chapter has
40 occurred and, if so, the nature of the violation and any applicable
41 penalty, as defined in section 14-126, 14-220 or 14-222 of this chapter,
42 based on the nature of the violation; (b) whether the matter should be
43 resolved extra-judicially; (c) whether a special proceeding should be
44 commenced in the supreme court to recover a civil penalty; and (d)
45 whether a referral should be made to a district attorney or the attorney
46 general pursuant to subdivision seventeen of this section because
47 reasonable cause exists to believe a violation warranting criminal pros-
48 ecution has taken place.

49 16. The fair elections board shall accept, modify or reject the
50 enforcement counsel's recommendation no later than sixty days after
51 receipt of such recommendation. In making its determination, the board
52 shall again consider: (a) whether the complaint alleges a de minimus
53 violation of article fourteen of this chapter; (b) whether the subject
54 of the complaint has made a good faith effort to correct the violation;
55 and (c) whether the subject of the complaint has a history of similar
56 violations. All such determinations shall be voted upon as provided in

1 subdivision twelve of section 14-216 of this chapter at an open meeting
2 pursuant to article seven of the public officers law, and shall be made
3 on a fair and equitable basis, without regard to the status of the
4 subject of the complaint.

5 17. (a) If the fair elections board determines, as provided in subdi-
6 vision sixteen of this section, that substantial reason exists to
7 believe that a person, acting as or on behalf of a candidate or poli-
8 tical committee under circumstances evincing an intent to violate such
9 law, has unlawfully accepted a contribution in excess of a contribution
10 limitation established in title two of article fourteen of this chapter,
11 which could warrant a civil penalty as provided for in subdivision three
12 of section 14-126 or subdivision two of section 14-222 of this chapter,
13 the board shall direct the commencement of a special proceeding in the
14 supreme court.

15 (b) If the fair elections board determines, as provided in subdivision
16 sixteen of this section that reasonable cause exists to believe a
17 violation of title two of article fourteen of this chapter warranting
18 criminal prosecution has taken place, the board shall refer the matter
19 to a district attorney and shall make available to such district attor-
20 ney all papers, documents, testimony and findings relevant to its inves-
21 tigation. Where reasonable cause exists to believe that a candidate for
22 the office of attorney general has violated title two of article four-
23 teen of this chapter, the board shall refer the matter to the district
24 attorney of the appropriate county.

25 (c) If the fair elections board determines, as provided in subdivision
26 sixteen of this section that reasonable cause exists to believe a
27 violation of title two of article fourteen of this chapter, warranting
28 criminal prosecution has taken place, the board shall, except as
29 provided in paragraph (b) of this subdivision, refer the matter to the
30 attorney general and shall make available to the same all papers, docu-
31 ments, testimony and findings relevant to its investigation.

32 18. Upon notification that a special proceeding has been commenced by
33 a party other than the fair elections board, pursuant to section 16-114
34 of this chapter, the fair elections board shall direct the fair
35 elections board enforcement counsel to investigate the alleged
36 violations unless otherwise directed by the court.

37 19. The fair elections board enforcement counsel shall prepare a
38 report, to be included in the annual report to the governor and legisla-
39 ture, summarizing the activities of the unit during the previous year.
40 Such report shall include: (i) the number of complaints received; (ii)
41 the number of complaints that were found to need investigation and the
42 nature of each complaint; and (iii) the number of matters that have been
43 resolved. The report shall not contain any information for which
44 disclosure is not permitted.

45 20. The fair elections board may promulgate rules and regulations
46 consistent with law to effectuate the provisions of this section.

47 § 6. The state of New York shall appropriate during each fiscal year
48 to the New York state fair elections board enforcement unit, not less
49 than thirty-five percent of the appropriation available from the general
50 fund for the state board of elections to pay for the expenses of such
51 enforcement unit. Notwithstanding section fifty-one of the state
52 finance law, such funding shall not be decreased by interchange with any
53 other appropriation.

54 § 7. The election law is amended by adding a new section 3-111 to read
55 as follows:

1 § 3-111. Personal use of campaign funds. Upon written request from any
2 person who is subject to the requirements of section 14-130 of this
3 chapter, the fair elections board shall render formal and advisory opin-
4 ions on the requirements of said provision. An opinion rendered by the
5 board, until and unless amended or revoked, shall be binding on the
6 board in any subsequent proceeding concerning the person who requested
7 the opinion and who acted in good faith and reliance on such opinion,
8 unless material facts were omitted or misstated by the person in the
9 request for an opinion. Such opinion may also be relied upon by such
10 person, and may be introduced and shall be defense in any criminal or
11 civil action. Such request shall be confidential, but the board shall
12 publish such opinions provided that the name of the requesting person
13 and other identifying details shall not be included in the publication.

14 § 8. Section 14-100 of the election law is amended by adding a new
15 subdivision 17 to read as follows:

16 17. "intermediary" means an individual, corporation, partnership,
17 political committee, labor organization, or other entity which, other
18 than in the regular course of business as a postal, delivery, or messen-
19 ger service, delivers any contribution from another person or entity to
20 a candidate or an authorized committee.

21 "Intermediary" shall not include spouses, parents, children, or
22 siblings of the person making such contribution.

23 § 9. Subdivision 1 of section 14-102 of the election law, as amended
24 by chapter 8 and as redesignated by chapter 9 of the laws of 1978, is
25 amended to read as follows:

26 1. The treasurer of every political committee which, or any officer,
27 member or agent of any such committee who, in connection with any
28 election, receives or expends any money or other valuable thing or
29 incurs any liability to pay money or its equivalent shall file state-
30 ments sworn, or subscribed and bearing a form notice that false state-
31 ments made therein are punishable as a class A misdemeanor pursuant to
32 section 210.45 of the penal law, at the times prescribed by this ~~[arti-~~
33 ~~cle]~~ title setting forth all the receipts, contributions to and the
34 expenditures by and liabilities of the committee, and of its officers,
35 members and agents in its behalf. Such statements shall include the
36 dollar amount of any receipt, contribution or transfer, or the fair
37 market value of any receipt, contribution or transfer, which is other
38 than of money, the name and address of the transferor, contributor,
39 intermediary, or person from whom received, and if the transferor,
40 contributor, intermediary, or person is a political committee; the name
41 of and the political unit represented by the committee, the date of its
42 receipt, the dollar amount of every expenditure, the name and address of
43 the person to whom it was made or the name of and the political unit
44 represented by the committee to which it was made and the date thereof,
45 and shall state clearly the purpose of such expenditure. An intermediary
46 need not be reported for a contribution that was collected from a
47 contributor in connection with a party or other candidate-related event
48 held at the residence of the person delivering the contribution, unless
49 the expenses of such event at such residence for such candidate exceed
50 five hundred dollars or the aggregate contributions received from that
51 contributor at such event exceed five hundred dollars. Any statement
52 reporting a loan shall have attached to it a copy of the evidence of
53 indebtedness. Expenditures in sums under fifty dollars need not be
54 specifically accounted for by separate items in said statements, and
55 receipts and contributions aggregating not more than ninety-nine
56 dollars, from any one contributor need not be specifically accounted for

1 by separate items in said statements, provided however, that such
2 expenditures, receipts and contributions shall be subject to the other
3 provisions of section 14-118 of this ~~[article]~~ title.

4 § 10. Section 14-110 of the election law, as amended by chapter 46 of
5 the laws of 1984, is amended to read as follows:

6 § 14-110. Place for filing statements. The places for filing the
7 statements required by this article shall be determined by rule or regu-
8 lation of the state board of elections; provided, however, that the
9 statements of a candidate for election to the office of governor, lieu-
10 tenant governor, attorney general, comptroller, member of the legisla-
11 ture, delegate to a constitutional convention, justice of the supreme
12 court or for nomination for any such office at a primary election and of
13 any committee aiding or taking part in the designation, nomination,
14 election or defeat of candidates for one or more of such offices or
15 promoting the success or defeat of a question to be voted on by the
16 voters of the entire state shall be filed with the state board of
17 elections and in such other places as the state board of elections may,
18 by rule or regulation provide. Upon filing, the state board of
19 elections shall make all statements filed therewith readily available
20 and accessible to the fair elections board.

21 § 11. Section 14-112 of the election law, as amended by section 8 of
22 part A of chapter 286 of the laws of 2016, is amended to read as
23 follows:

24 § 14-112. Political committee authorization statement. Any political
25 committee aiding or taking part in the election or nomination of any
26 candidate, other than a political action committee, shall file, in the
27 office in which the statements of such committee are to be filed pursu-
28 ant to this ~~[article]~~ title, either a sworn verified statement by the
29 treasurer of such committee that the candidate has authorized the poli-
30 tical committee to aid or take part in his election or that the candi-
31 date has not authorized the committee to aid or take part in his
32 election.

33 § 12. Section 14-116 of the election law, subdivision 1 as redesign-
34 nated by chapter 9 of the laws of 1978 and subdivision 2 as amended by
35 chapter 260 of the laws of 1981, is amended to read as follows:

36 § 14-116. Political contributions by certain organizations. 1. No
37 corporation, limited liability company or joint-stock association doing
38 business in this state, except ~~[a corporation or association]~~ an entity
39 organized or maintained for political purposes only, shall directly or
40 indirectly pay or use or offer, consent or agree to pay or use any money
41 or property for or in aid of any political party, committee or organiza-
42 tion, or for, or in aid of, any corporation, limited liability company,
43 joint-stock or other association organized or maintained for political
44 purposes, or for, or in aid of, any candidate for political office or
45 for nomination for such office, or for any political purpose whatever,
46 or for the reimbursement or indemnification of any person for moneys or
47 property so used. Any officer, director, stock-holder, attorney or agent
48 of any corporation, limited liability company or joint-stock association
49 which violates any of the provisions of this section, who participates
50 in, aids, abets or advises or consents to any such violations, and any
51 person who solicits or knowingly receives any money or property in
52 violation of this section, shall be guilty of a misdemeanor.

53 2. Notwithstanding the provisions of subdivision one of this section,
54 any corporation or an organization financially supported in whole or in
55 part, by such corporation, and any limited liability company may make
56 expenditures, including contributions, not otherwise prohibited by law,

1 for political purposes, in an amount not to exceed five thousand dollars
2 in the aggregate in any calendar year; provided that no public utility
3 shall use revenues received from the rendition of public service within
4 the state for contributions for political purposes unless such cost is
5 charged to the shareholders of such a public service corporation.

6 § 13. Subdivision 3 of section 14-124 of the election law, as amended
7 by section 1 of part B of chapter 286 of the laws of 2016, is amended to
8 read as follows:

9 3. The contribution and receipt limits of this article shall not apply
10 to monies received and expenditures made by a party committee or consti-
11 tuted committee to maintain a permanent headquarters and staff and carry
12 on ordinary activities which are not for the express purpose of promot-
13 ing the candidacy of specific candidates; provided that such monies
14 described in this subdivision shall be deposited in a segregated
15 account. Provided that the funds described in this subdivision shall be
16 prohibited from being transferred. Provided further, that expenditures
17 made by a party committee or constituted committee for a political
18 communication in accordance with the provisions of this subdivision
19 shall not include the name, likeness or voice of any candidate or
20 elected official.

21 § 13-a. Sections 14-100 through 14-132 of article 14 of the election
22 law are designated title 1 and a new title heading is added to read as
23 follows:

24 CAMPAIGN RECEIPTS AND EXPENDITURES

25 § 14. The election law is amended by adding a new section 14-134 to
26 read as follows:

27 § 14-134. Use of contributions in violation of federal postal regu-
28 lations prohibited. No party or constituted committee which has been
29 designated as a not-for-profit organization by the United States Inter-
30 nal Revenue Service shall make expenditures, of direct or indirect
31 contributions or transfers received by such committee, in violation of
32 United States Postal Service regulations.

33 § 14-a. The article heading of article 14 of the election law is
34 amended to read as follows:

35 CAMPAIGN RECEIPTS AND EXPENDITURES; MATCHING FINANCING

36 § 15. Article 14 of the election law is amended by adding a new title
37 2 to read as follows:

38 TITLE II

39 PUBLIC FINANCING

40 Section 14-200. Applicability of title.

41 14-202. Definitions.

42 14-204. Reporting requirements.

43 14-206. Eligibility.

44 14-208. Qualified campaign expenditures.

45 14-210. Optional public financing.

46 14-212. Contribution and receipt limitations.

47 14-214. Limitations on the receipt of public funds.

48 14-216. Fair elections board; general powers and duties.

49 14-218. Examinations and audits.

50 14-220. Civil enforcement.

51 14-222. Criminal penalties.

52 14-224. Reports.

53 14-226. Debates.

54 14-228. Distributions from fair elections fund.

1 § 14-200. Applicability of title. This title shall only apply to those
2 candidates who elect to participate in the optional public financing
3 system.

4 § 14-202. Definitions. As used in this title, unless another meaning
5 is clearly indicated:

6 1. The term "board" or "fair elections board" means the board created
7 by section 14-216 of this title to administer the fair elections fund.

8 2. The term "eligible candidate" shall mean a candidate for nomination
9 or election to any of the offices of governor, lieutenant governor,
10 comptroller, attorney general, member of the state legislature, at-large
11 delegate to a constitutional convention or district delegate to a
12 constitutional convention.

13 3. The term "participating committee" shall mean a single authorized
14 political committee which a candidate certifies is the committee that
15 will solely be used to participate in the public financing system estab-
16 lished by this title after January first of the year in which the prima-
17 ry, general or special election is held for the public office sought. A
18 multi-candidate committee may not be a participating committee.

19 4. The term "participating candidate" shall mean a candidate who is
20 eligible to participate in the optional public financing system estab-
21 lished by this title, has met the threshold for eligibility and has
22 elected to participate in the public financing system.

23 5. The term "nonparticipating candidate" shall mean a candidate for
24 any office eligible for optional public financing under this title for a
25 covered election who fails to file a statement in the form of an affida-
26 vit pursuant to section 14-210 of this title.

27 6. The term "matchable contributions" shall mean that portion of the
28 aggregate contributions made (a) in the case of a primary or general
29 election, after January first of the year in which the primary or gener-
30 al election is held for the public office sought or (b) in the case of a
31 special election, within six months of such election by natural persons
32 resident in the state of New York to a candidate for nomination or
33 election to any of the offices covered by the provisions of this title
34 which do not exceed two hundred fifty dollars, which have been reported
35 in full by the candidate's participating committee to the fair elections
36 board, including the contributor's full name and residential address. A
37 loan may not be treated as a matchable contribution. The following
38 contributions are not matchable:

39 (a) in-kind contributions of property, goods, or services;

40 (b) contributions in the form of the purchase price paid for an item
41 with significant intrinsic and enduring value;

42 (c) contributions in the form of the purchase price paid for or other-
43 wise induced by a chance to participate in a raffle, lottery, or similar
44 drawing for valuable prizes;

45 (d) money order contributions from any one contributor that are, in
46 the aggregate, greater than one hundred dollars;

47 (e) contributions from individuals under the age of eighteen years;

48 (f) contributions from individual vendors to whom the participating
49 candidate or his or her principal committee makes an expenditure, in
50 furtherance of the nomination for election or election covered by the
51 candidate's certification, unless such expenditure is reimbursing an
52 advance.

53 (g) All contributions received between the day after the general
54 election in which the participating candidate is seeking office and the
55 thirty-first day of December of the year before the year in which the
56 next general election is to be held, inclusively.

1 7. The term "qualified campaign expenditure" shall mean an expenditure
2 for which public funds may be used.

3 8. The term "fund" shall mean the New York state fair elections fund
4 created by section ninety-two-y of the state finance law.

5 9. The term "threshold for eligibility" shall mean the amount of total
6 matchable contributions that the participating committee of an otherwise
7 eligible candidate must receive, as required by section 14-206 of this
8 title, in order to qualify for optional public financing pursuant to
9 this title.

10 10. The term "contribution" shall have the same meaning as in subdivi-
11 sion nine of section 14-100 of this article.

12 11. The term "election cycle" shall mean the two year period starting
13 the day after the last general election for candidates for the state
14 legislature and shall mean the four year period starting after the day
15 after the last general election for candidates for statewide office.

16 § 14-204. Reporting requirements. 1. Every participating candidate
17 shall not designate more than one authorized committee. Before receiving
18 any contribution or making any expenditure for a covered election, each
19 participating candidate shall notify the fair elections board as to the
20 existence of his or her authorized committee that has been designated
21 and approved by such candidate. Each such authorized committee shall,
22 before opening a committee bank account, receiving any contribution or
23 making any expenditure for a covered election:

24 (a) designate a treasurer; and

25 (b) obtain a tax identification number from the internal revenue
26 service.

27 2. Disclosure. (a) Every participating candidate shall file financial
28 disclosure reports with the state board of elections as required by
29 title one of this article. Copies of such reports shall also be submit-
30 ted to the fair elections board created pursuant to this article at the
31 same time such reports are filed with the state board of elections.

32 (b) The fair elections board shall review each disclosure report filed
33 with the state board of elections pursuant to title one of this article
34 and shall inform participating candidates and political committees
35 including the authorized committee, of relevant questions the fair
36 elections board has concerning: (i) compliance with requirements of this
37 title and of the rules issued by the fair elections board; and (ii)
38 qualification for receiving public matching funds pursuant to this
39 title. In the course of such review, the fair elections board shall give
40 candidates and political committees including the authorized committee,
41 an opportunity to respond to and correct potential violations and give
42 candidates an opportunity to address questions the board has concerning
43 their matchable contribution claims or other issues concerning eligibil-
44 ity for receiving public matching funds pursuant to this title. Nothing
45 in this paragraph shall preclude the board from subsequently reviewing
46 such a disclosure report and taking any action otherwise authorized by
47 this title.

48 (c) Only itemized contributions contained in reports filed with the
49 fair elections board shall be eligible for matching funds pursuant to
50 this title.

51 § 14-206. Eligibility. 1. To be eligible for optional public financing
52 under this title, a candidate for nomination or election must:

53 (a) Meet all the requirements of this chapter and other provisions of
54 law to have his or her name on the ballot;

55 (b) Be a candidate for statewide office, the state legislature or
56 delegate to a constitutional convention at a primary, general or special

1 election and meet the threshold for eligibility set forth in subdivision
2 two of this section;

3 (c) Elect to participate in the public financing system established by
4 this title not later than seven days after the last day to file desig-
5 nating petitions for the office such candidate is seeking or, in the
6 case of a special election, not later than the last day to file nominat-
7 ing certificates for such office;

8 (d) Agree to obtain and furnish to the fair elections board any
9 evidence it may reasonably request relating to his or her campaign
10 expenditures or contributions and furnish such other proof of compliance
11 with this title as may be requested by the board;

12 (e) Have a single authorized political committee which he or she
13 certifies as the participating committee for the purposes of this title;

14 (f) Agree to identify accurately in all campaign materials the person
15 or entity that paid for such campaign material; and

16 (g) For any candidate electing to participate in the optional public
17 financing system in the year in which such optional public financing
18 system is first effective, for the covered office being sought by such
19 candidate, and, in each subsequent year, those candidates who did not
20 elect to participate in the optional public financing system in the year
21 immediately preceding the current year, agree not to expend for campaign
22 purposes any portion of any pre-existing funds raised for any public
23 office or party position prior to the date of electing to participate in
24 the public financing system as set forth in paragraph (c) of this subdi-
25 vision. Nothing in this paragraph shall be construed to limit, in any
26 way, any candidate or public official from expending any portion of
27 pre-existing campaign funds for any lawful purpose other than those
28 related to his or her campaign.

29 (h) Agree not to accept contributions in excess of the limits set
30 forth in section 14-212 of this title from the time he or she elects to
31 participate in the optional public financing system, as set forth by
32 paragraph (c) of this section, through the thirty-first day of December
33 of the year before the year in which the next general election is to be
34 held.

35 2. The threshold for eligibility for public funding for candidates in
36 a primary, general or special election for the following offices shall
37 be:

38 (a) Governor in a primary or general election. Not less than six
39 hundred fifty thousand dollars from at least six thousand five hundred
40 matchable contributions made up of sums of up to two hundred fifty
41 dollars per individual contributor who resides in New York state.

42 (b) Lieutenant governor in a primary election and comptroller or
43 attorney general in a primary or general election. Not less than two
44 hundred thousand dollars from at least two thousand matchable contrib-
45 utions made up of sums of up to two hundred fifty dollars per individual
46 contributor who resides in New York state.

47 (c) Members of the state senate in a primary, general or special
48 election. Not less than twenty thousand dollars from at least two
49 hundred matchable contributions made up of sums of up to two hundred
50 fifty dollars per individual contributor who resides in New York state
51 including at least ten thousand dollars from at least one hundred indi-
52 vidual contributors who reside in the senate district or reside in any
53 portion of any county which constitutes any measure of the district in
54 which the seat is to be filled.

55 (d) Members of the assembly in a primary, general or special election.
56 Not less than ten thousand dollars from at least one hundred matchable

1 contributions made up of sums of up to two hundred fifty dollars per
2 individual contributor who resides in New York state including at least
3 five thousand dollars from at least fifty individuals who reside in the
4 assembly district or reside in any portion of any county which consti-
5 tutes any measure of the district in which the seat is to be filled.

6 (e) At-large delegate to a constitutional convention in a primary or
7 general election. Not less than twenty thousand dollars from at least
8 two hundred matchable contributions made up of sums of up to two hundred
9 fifty dollars per individual contributor who resides in New York state.

10 (f) District delegate to a constitutional convention in a primary or
11 general election. Not less than five thousand dollars from at least
12 fifty matchable contributions made up of sums of up to two hundred fifty
13 dollars per individual contributor who resides in the district or in the
14 constituent county or resides in any portion of any county which consti-
15 tutes any measure of the district in which the seat is to be filled.

16 3. In order to be eligible to receive public funds in a primary
17 election a candidate must agree, that in the event such candidate is a
18 candidate for such office in the general election in such year, that
19 such candidate will be bound by the provisions of this title, including,
20 but not limited to, the public funds receipt limits of this title.

21 4. Candidates who are contested in a primary election and who do not
22 seek public funds shall not be eligible for public funds for the general
23 election in that year. The provisions of this subdivision shall not
24 apply to candidates for the office of lieutenant governor.

25 5. Candidates who are unopposed in a general or special election shall
26 not be eligible to receive public funds.

27 6. No candidate for election to an office in a primary, general or
28 special election who has elected to participate in the public financing
29 system shall be deemed opposed and receive public funds unless there is
30 at least one other candidate, as defined by subdivision seven of section
31 14-100 of this article for such office in such election.

32 § 14-208. Qualified campaign expenditures. 1. Public funds provided
33 under the provisions of this title may only be used for expenditures by
34 the participating committee authorized by the candidate to make expendi-
35 tures on such candidate's behalf, to further the candidate's nomination
36 or election after January first of the year in which the primary or
37 general election is held for the office sought, for services, materials,
38 facilities or other things of value used during that election cycle or,
39 in the case of a special election, for expenditures during the period
40 commencing three months before and ending one month after such special
41 election.

42 2. Such public funds may not be used for:

43 (a) An expenditure in violation of any law of the United States or of
44 this state;

45 (b) Payments or anything of value given or made to the candidate, a
46 relative of the candidate, or to a business entity in which any such
47 person has a ten percent or greater ownership interest or of which any
48 such person is an officer, director or employee in excess of the fair
49 market value of such services, materials, facilities or other things of
50 value received in exchange;

51 (c) Payment in excess of the fair market value of services, materials,
52 facilities or other things of value received in exchange;

53 (d) Any expenditure made after the participating candidate, or the
54 only remaining opponent of such candidate, has been disqualified or had
55 such candidate's petitions declared invalid by a board of elections or a

1 court of competent jurisdiction until and unless such finding is
2 reversed by a higher authority.

3 (e) Any expenditure made to challenge the validity of any petition of
4 designation or nomination or any certificate of nomination, acceptance,
5 authorization, declination or substitution;

6 (f) Expenditure for noncampaign related food, drink or entertainment;

7 (g) Gifts, except brochures, buttons, signs, or other printed campaign
8 materials; and

9 (h) Contributions or transfers to a political committee.

10 § 14-210. Optional public financing. 1. Participating candidates for
11 nomination or election in primary, general and special elections may
12 obtain payment to a participating committee from public funds for quali-
13 fied campaign expenditures. No such public funds shall be paid to a
14 participating committee until the candidate has qualified to appear on
15 the ballot and filed a sworn statement with the fair elections board
16 electing to participate in the optional public financing system and
17 agreeing to abide by the requirements of this title. Payments shall not
18 exceed the amounts specified in this title, and shall be made only in
19 accordance with the provisions of this title. Such payments may only be
20 made to a participating candidate's participating committee. No public
21 funds shall be used except as reimbursement or payment for qualified
22 campaign expenditures actually and lawfully incurred or to repay loans
23 used to pay qualified campaign expenditures.

24 2. The participating committee of each participating candidate shall
25 be entitled to six dollars in public funds for each one dollar of match-
26 able contributions obtained and reported to the fair elections board in
27 accordance with the provisions of this title, provided, however, such
28 public funds shall only be used for qualified campaign expenditures.

29 3. (a) No participating candidate for nomination for an office who is
30 unopposed in a primary election shall be entitled to payment from the
31 fund for qualified campaign expenditures.

32 (b) Where there is a contest in such primary for the nomination of at
33 least one other party for such office, the participating committee of an
34 unopposed participating candidate for nomination may raise and spend an
35 amount equal to one-half the public funds receipt limit for such office,
36 as fixed by this title for candidates who have elected to accept public
37 funds, with contributions of up to two thousand dollars per contributor.
38 Such payment can only be expended for property, services or facilities
39 used on or before the date of such primary election.

40 4. The fair elections board shall promptly examine all reports of
41 contributions to determine whether, on their face, they meet the
42 requirements for matchable contributions, and shall keep a record of
43 such contributions.

44 5. The fair elections board shall promulgate regulations for the
45 certification of the amount of funds payable by the comptroller, from
46 the fund established pursuant to section ninety-two-y of the state
47 finance law, to a participating candidate that has qualified to receive
48 such payment. These regulations shall include the promulgation and
49 distribution of forms on which contributions and expenditures are to be
50 reported, the periods during which such reports must be filed and the
51 verification required. The board shall institute procedures which will
52 make possible payment by the fund within two business days after receipt
53 of the required forms and verifications.

54 § 14-212. Contribution and receipt limitations. 1. In any primary,
55 special or general election for any statewide office, state legislative
56 office or constitutional convention delegate no contributor may make a

1 contribution to any participating candidate or such candidate's partic-
2 ipating committee, and no participating candidate or participating
3 committee may accept any contribution from any contributor which, in the
4 aggregate amount, is greater than two thousand dollars.

5 2. (a) Notwithstanding the public funds receipt limit for such office
6 as fixed by this title for candidates who have elected to accept public
7 funds, a participating candidate for governor or lieutenant governor in
8 a primary or general election or such candidate's participating commit-
9 tee may accept from a state constituted committee which has nominated
10 such candidate services in an amount which, in the aggregate, does not
11 exceed two million five hundred thousand dollars; provided, however,
12 that twenty-five percent of such amount may be accepted in the form of a
13 transfer.

14 (b) Notwithstanding the public funds receipt limit for such office as
15 fixed by this title for candidates who have elected to accept public
16 funds, a participating candidate for attorney general or comptroller in
17 a primary or general election or such candidate's participating commit-
18 tee may accept from a state constituted committee which has nominated
19 such candidate services in an amount which, in the aggregate, does not
20 exceed one million dollars; provided, however, that twenty-five percent
21 of such amount may be accepted in the form of a transfer.

22 (c) Notwithstanding the public funds receipt limit for such office as
23 fixed by this title for candidates who have elected to accept public
24 funds, a participating candidate for state senator in a primary, general
25 or special election or such candidate's participating committee may
26 accept from a state constituted committee which has nominated such
27 candidate services in an amount which, in the aggregate, does not
28 exceed one hundred thousand dollars; provided, however, that twenty-five
29 percent of such amount may be accepted in the form of a transfer.

30 (d) Notwithstanding the public funds receipt limit for such office as
31 fixed by this title for candidates who have elected to accept public
32 funds, a participating candidate for member of the assembly in a prima-
33 ry, general or special election or such candidate's participating
34 committee may accept from a state constituted committee which has nomi-
35 nated such candidate services in an amount which, in the aggregate, does
36 not exceed fifty thousand dollars; provided, however, that twenty-five
37 percent of such amount may be accepted in the form of a transfer.

38 (e) Notwithstanding the public funds receipt limit for such office as
39 fixed by this title for candidates who have elected to accept public
40 funds, a participating candidate for delegate at-large to a constitu-
41 tional convention in a general election or such candidate's participat-
42 ing committee may accept from a state constituted committee which has
43 nominated such candidate services in an amount which, in the aggregate,
44 does not exceed fifty thousand dollars; provided, however, that twenty-
45 five percent of such amount may be accepted in the form of a transfer.

46 (f) Notwithstanding the public funds receipt limit for such office as
47 fixed by this title for candidates who have elected to accept public
48 funds, a participating candidate for district delegate to a constitu-
49 tional convention in a general election or such candidate's participat-
50 ing committee may accept from a state constituted committee which has
51 nominated such candidate services in an amount which, in the aggregate,
52 does not exceed ten thousand dollars; provided, however, that twenty-
53 five percent of such amount may be accepted in the form of a transfer.

54 (g) For purposes of this subdivision, the term state constituted
55 committee includes any of its subcommittees.

1 3. Notwithstanding any public funds receipt limit in this subdivision,
2 each county committee of any party which nominates a candidate for
3 statewide office or state legislative office, including within the term
4 county committee any of its subcommittees, may expend in support of such
5 party's candidates for statewide office or state legislative office who
6 has agreed to accept public financing, an amount which shall not exceed
7 the sum of two cents for each voter registered in such county as deter-
8 mined by the records of the appropriate board of elections as of the
9 preceding general election.

10 4. In computing the aggregate amount expended for purposes of this
11 section, expenditures made by a state constituted committee or a county
12 committee in support of more than one candidate shall be allocated among
13 such candidates supported by the committee in accordance with formulas
14 promulgated by the fair elections board or, in the absence of such offi-
15 cial formulas, in accordance with a formula based upon reasonable stand-
16 ards. The statements filed by such constituted committee in accordance
17 with this chapter shall set forth, in addition to the other information
18 required, the total amount expended by the party committee on behalf of
19 all such candidates and the amount allocated to each candidate by dollar
20 amount and percentage. Expenditures by a party for activities which do
21 not support or oppose the election of any candidate or candidates by
22 name or by clear inference shall not be regarded as expenditures on
23 behalf of or in opposition to a candidate.

24 5. A participating candidate for a public office for which public
25 funds are available pursuant to this title shall not accept any contrib-
26 utions any earlier than one day after the previous general election for
27 the office which such candidate is seeking, or any later than the day of
28 the general election for the office sought, except that a participating
29 candidate or participating committee which has a deficit on the day of
30 the general election may, after such date, accept contributions which do
31 not exceed the amount of such deficit and the expenses incurred in rais-
32 ing such contributions or the expenditure limit for such office as fixed
33 by this title for candidates who have elected to accept public funds.

34 6. Except for the limitations specifically set forth in this section,
35 participating candidates shall be subject to the provisions of this
36 article.

37 § 14-214. Limitations on the receipt of public funds. The following
38 limitations apply to the total amount of public funds that may be
39 provided to a participating candidate's authorized committee for an
40 election cycle:

41 1. In any primary election, receipt of public funds by participating
42 candidates and by their participating committees shall not exceed:

43 (i) for governor, the sum of nine million dollars;
44 (ii) for lieutenant governor, comptroller or attorney general, the sum
45 of six million dollars;

46 (iii) for senator, the sum of three hundred fifty thousand dollars;

47 (iv) for member of the assembly, the sum of one hundred fifty thousand
48 dollars;

49 (v) for at-large delegate to a constitutional convention, the sum of
50 one hundred seventy-five thousand dollars;

51 (vi) for district delegates to a constitutional convention, the sum of
52 fifty thousand dollars;

53 2. In any general or special election, receipt of public funds by
54 participating candidates for the following offices and by their partic-
55 ipating committees shall not exceed the following amounts:

56 Candidates for election to the office of:

<u>Governor and lieutenant governor (combined)</u>	<u>\$12,000,000</u>
<u>Attorney general</u>	<u>\$8,000,000</u>
<u>Comptroller</u>	<u>\$8,000,000</u>
<u>Member of senate</u>	<u>\$400,000</u>
<u>Member of assembly</u>	<u>\$200,000</u>
<u>Delegate at-large to a constitutional convention</u>	<u>\$350,000</u>
<u>District delegate to a constitutional convention</u>	<u>\$75,000</u>

3. Participating candidates for office who are unopposed in the primary election may receive public funds before the primary election, for services, materials or facilities used on or before the date of such primary election, an amount equal to half the sum such candidates would be entitled to receive if their nomination was contested in such primary election provided there is a primary contest for the nomination of at least one other party for such office.

4. Nothing in this section shall be construed to limit the amount of private funds a participating candidate may receive subject to the contribution limits contained in section 14-212 of this title.

5. At the beginning of each second calendar year, commencing in two thousand nineteen, the fair elections board shall determine the percentage of the difference between the most recent available monthly consumer price index for all urban consumers published by the United States bureau of labor statistics and such consumer price index published for the same month four years previously. The amount of each public funds receipt limitation fixed in this section shall be adjusted by the amount of such percentage difference to the closest one hundred dollars by the state board which, not later than the first day of February in each such year, shall issue a regulation publishing the amount of each such contribution limit. Each public fund receipt limit as so adjusted shall be the public funds receipt limit in effect for any election held before the next such adjustment.

§ 14-216. Fair elections board; general powers and duties. 1. There shall be a board within the state board of elections known as the "fair elections board" composed of five members, of which one member shall be appointed by the governor and one member shall be appointed by each legislative leader of the senate and assembly. No member of the fair elections board shall hold elective office, nor shall any member be a lobbyist as defined in subdivision (a) of section one-c of the legislative law. The chair shall be responsible for managing the fair elections board. The members shall each serve for a term of four years.

2. The members of the fair elections board shall designate the chairman of the fair elections board from among the members thereof, who shall serve as chairman at the pleasure of the members of the fair elections board. The chairman or any three members of the fair elections board may call a meeting.

3. Each member's term shall commence on January first, two thousand nineteen. In case of a vacancy in the office of a member, a member shall be appointed according to the original manner of appointment. Each member shall be a resident of the state of New York and registered to vote therein. Each member shall agree not to make and shall not make contributions to any candidate or authorized committee for nomination for election. No member shall serve as an officer of a political party or committee or be a candidate or participate in any capacity in a campaign by a candidate for nomination for election. An officer or employee of the state or any state agency shall not be eligible to be a member of the fair elections board.

1 4. The members of the fair elections board shall be entitled to
2 receive payment for actual and necessary expenses incurred in the
3 performance of their duties as members of such board.

4 5. A member of the fair elections board may be removed for cause by
5 the appointing authority upon notice and an opportunity for a hearing.

6 6. The fair elections board shall appoint a counsel, a deputy coun-
7 sel, who shall be a member of a different major political party than the
8 counsel, a special counsel, a deputy special counsel, who shall be a
9 member of a different major political party than the special counsel, a
10 director of public information, a deputy director of public information,
11 who shall be a member of a different major political party than the
12 director of public information. The fair elections board may utilize
13 existing staff of the state board of elections as may be necessary, and
14 make necessary expenditures subject to appropriation, provided however
15 that the counsel, in consultation with the fair elections board, shall
16 have the authority to hire at least four new fair elections board staff
17 members. Such fair elections board staff members shall be dedicated to
18 training and assisting participating candidates in complying with the
19 requirements of optional public financing as provided for under this
20 title. The fair elections board shall retain an independent auditor to
21 perform ongoing audits of each covered election by contract entered into
22 pursuant to section one hundred sixty-three of the state finance law.

23 7. The counsel and the special counsel shall each serve a term of four
24 years and may only be removed for cause. Any time after the effective
25 date of this section, the members, or in the case of a vacancy on the
26 fair elections board, the members, of each of the same major political
27 party as the incumbent counsel, deputy counsel, shall appoint such coun-
28 sels, and deputies. Any vacancy in the office of counsel, deputy coun-
29 sel, special counsel, special deputy counsel, director of public infor-
30 mation and deputy director of public information shall be filled by the
31 members of the fair elections board or in the case of a vacancy on the
32 board, the members of the same major political party as the vacating
33 incumbent for the remaining period of the term of such vacating incum-
34 bent.

35 8. The fair elections board shall:

36 (a)(i) render advisory opinions with respect to questions arising
37 under this article upon the written request of a candidate, an officer
38 of a political committee or member of the public, or upon its own initi-
39 ative; (ii) promulgate rules regarding reasonable times to respond to
40 such requests; and (iii) make public the questions of interpretation for
41 which advisory opinions will be considered by the fair elections board
42 and its advisory opinions, including by publication on its website;

43 (b) develop a program for informing and training candidates and the
44 public as to the purpose and effect of the provisions of this title,
45 including by means of a website;

46 (c) have the authority to promulgate such rules and regulations and
47 prescribe such forms as the fair elections board deems necessary for the
48 administration of this title; and

49 (d) in conjunction with the state board of elections develop an inter-
50 active, searchable computer database that shall contain all information
51 necessary for the proper administration of this title including informa-
52 tion on contributions to and expenditures by candidates and their
53 authorized committees and distributions of moneys from the fund and
54 shall be accessible to the public on the state board of elections'
55 website.

9. Consistent with the provisions of the civil service law and subdivision seventeen of section seventy-three of the public officers law, and notwithstanding the provisions of any other law to the contrary, all positions on the staff of the fair elections board shall be classified in the exempt class of the civil service and such positions shall be filled, to the extent possible, with an equal number of persons from each of the two political parties for which the highest and the next highest number of votes were cast for the office of state comptroller at the last preceding general election for such office.

10. The fair elections board's administration of the fund shall be governed by the provisions of this title and section ninety-two-y of the state finance law.

11. The fair elections board and its proceedings shall be governed by the state administrative procedure act and subject to articles six and seven of the public officers law.

12. For the purposes of meetings, three commissioners shall constitute a quorum. The affirmative vote of three commissioners shall be required for any action of the fair elections board.

13. The fair elections board may take such other actions as are necessary and proper to carry out the purposes of this title.

§ 14-218. Examinations and audits. 1. The fair elections board may conduct a thorough examination and pre-election audit of the contributions and qualified campaign expenses of the participating committee of every participating candidate who received payments pursuant to section 14-210 of this title. Such audits shall be conducted as frequently as the fair elections board deems necessary to ensure compliance with this title. The fair elections board shall notify, in writing, any candidate's authorized committee prior to the commencement of such pre-election audit. No pre-election audit shall commence in the absence of the notice requirement of this subdivision. Every candidate who receives public matching funds under this title shall also be audited by the fair elections board post-election. The cost of complying with a post-election audit shall be borne by the candidate's authorized committee. A candidate who has received public matching funds under this title must maintain a reserve of at least one percent of the total amount of matching funds received by such candidate in his or her campaign account to comply with the post-election audit. A candidate who runs in both a primary and a general election, must maintain a reserve of one percent of the total amount of public matching funds received by such candidate for both his or her primary and general election. A candidate may use public matching funds, private funds or a combination of public and private funds to comply with a post-election audit. The fair elections board shall issue to each campaign audited the final post-election audit report that details its findings and shall provide such audit to the governor and legislative leaders and make such audit report available on the state board of elections' website. Final post-election audit reports shall be completed no later than twelve months after the date of the election or elections for which the candidate received public funds. This audit deadline shall not apply in cases involving potential campaign-related fraud, knowing and willful violations of this article or criminal activity.

2. (a) If the fair elections board determines that any portion of the payment made to a participating committee from the fund was in excess of the aggregate amount of payments to which such eligible candidate was entitled pursuant to section 14-210 of this title, it shall notify such committee of the excess amount and such committee shall pay to the fair

1 elections board an amount equal to the amount of excess payments;
2 provided, however, that if the erroneous payment was due to an error
3 made by the fair elections board, then the erroneous payment will be
4 offset against any future payment, if any. The participating committee
5 shall be liable for any repayments due to the fair elections board for
6 deposit by such board into the New York state campaign fund.

7 (b) If the board determines that any amount of payment made to a
8 participating committee from the fund was used for purposes other than
9 to defray qualified campaign expenses, it shall notify such participat-
10 ing committee of the amount disqualified and such participating commit-
11 tee shall pay to the fair elections board an amount equal to such
12 disqualified amount. Such monies shall be deposited into the New York
13 state fair elections fund created pursuant to section ninety-two-y of
14 the state finance law. The candidate's authorized committee shall be
15 liable for any repayments due to the fair elections board.

16 (c) If the total of contributions and payments from the fund received
17 by any participating candidate and such candidate's participating
18 committee, exceeds the public funding receipt limitation of such candi-
19 date and committee, such candidate and committee shall use such excess
20 funds to reimburse the fund for payments received by such committee from
21 the fund not later than ten days after all permissible liabilities have
22 been paid and in any event, not later than twenty days after the date on
23 which the fair elections board issues its final audit report for the
24 participating candidate's committee; provided, however, that all unspent
25 matching funds for a participating candidate shall be immediately due
26 and payable to the fair elections board for deposit into the New York
27 state fair elections fund upon its determination that the participant
28 willfully delayed the post-election audit process. A participating
29 candidate may make post-election expenditures only for routine activ-
30 ities involving nominal costs associated with ending a campaign and
31 responding to the post-election audit. Nothing in this section shall be
32 construed to prohibit the post-election expenditure of public funds for
33 debts incurred during the campaign for which public funds were eligible
34 to be used.

35 3. If a court of competent jurisdiction disqualifies a candidate whose
36 participating committee has received public funds on the grounds that
37 such candidate committed fraudulent acts in order to obtain a place on
38 the ballot and such decision is not reversed by a higher court, such
39 candidate and such candidate's participating committee shall pay to the
40 fair elections board an amount equal to the total of public funds
41 received by such participating committee.

42 4. The board must provide written notice of all payments due from a
43 participating candidate or such candidate's committee to the board and
44 provide an opportunity for the candidate or committee to rebut, in whole
45 or in part, the alleged amount due. Upon a final written determination
46 by the board, the amount due shall be paid to the board within thirty
47 days of such determination.

48 5. All payments received by the board pursuant to this section shall
49 be deposited in the New York state fair elections fund established by
50 section ninety-two-y of the state finance law.

51 6. Any advice provided by the staff or members of the fair elections
52 board to a participating or non-participating candidate in connection
53 with any action under this article, when relied upon in good faith,
54 shall be presumptive evidence that such candidate or his or her commit-
55 tee did not knowingly and willfully violate the provisions of this arti-
56 cle.

1 § 14-220. Civil enforcement. 1. Any person or authorized committee who
2 knowingly and wilfully fails to make a filing required by the provisions
3 of this title shall be subject to a civil penalty not to exceed the
4 amount of five thousand dollars.

5 2. Any person or authorized committee who knowingly and intentionally
6 violates any other provision of this title or any rule promulgated here-
7 under shall be subject to a civil penalty not to exceed the amount of
8 ten thousand dollars.

9 3. Fines authorized under this section will be imposed by the fair
10 elections board after a hearing at which the subject person or author-
11 ized committee shall be given an opportunity to be heard. Such hearing
12 shall be held in such manner and upon such notice as may be prescribed
13 by the rules of the fair elections board. For purposes of conducting
14 such hearings, the fair elections board shall be deemed to be an agency
15 within the meaning of article three of the state administrative proce-
16 dure act and shall adopt rules governing the conduct of adjudicatory
17 proceedings and appeals taken pursuant to a proceeding commenced under
18 article seventy-eight of the civil practice law and rules relating to
19 the assessment of the civil penalties herein authorized.

20 4. The fair elections board shall publish on the state board of
21 elections' website the final order adjudicating any matter brought
22 pursuant to this section.

23 5. All payments received by the fair elections board pursuant to this
24 section shall be deposited in the New York state fair elections fund
25 established by section ninety-two-y of the state finance law.

26 § 14-222. Criminal penalties. 1. Any person who knowingly and willful-
27 ly fails to make a filing required by the provisions of this title with-
28 in ten days after the date provided for such, or anyone that knowingly
29 and willfully violates any other provision of this title shall be guilty
30 of a misdemeanor and, in addition to such other penalties as may be
31 provided by law, shall be subject to a fine not to exceed the amount of
32 ten thousand dollars.

33 2. Any person who knowingly and willfully contributes, accepts or aids
34 or participates in the contribution or acceptance of a contribution in
35 an amount exceeding an applicable maximum specified in this article
36 shall be guilty of a misdemeanor and shall be subject to a fine not to
37 exceed the amount of ten thousand dollars.

38 3. Any person who knowingly and willfully makes a false statement or
39 knowingly omits a material fact to the fair elections board or an audi-
40 tor designated by the fair elections board during any audit conducted
41 pursuant to section 14-218 of this title shall be guilty of a class E
42 felony.

43 4. In addition to any other sentence lawfully imposed upon a finding
44 of guilt in a criminal prosecution commenced pursuant to the provisions
45 of this section, the court may order a defendant to repay to the fair
46 elections board any public matching funds obtained as a result of any
47 criminal conduct.

48 5. All such prosecutions for criminal acts under this title shall be
49 prosecuted by the attorney general of the state of New York.

50 6. Any and all fines imposed pursuant to this section shall be made
51 payable to the fair elections board for deposit into the New York state
52 fair elections fund.

53 § 14-224. Reports. The fair elections board shall submit a report to
54 the governor and legislative leaders on or before February first, two
55 thousand nineteen, and every four years thereafter, which shall include:

1 1. a list of the participating and nonparticipating candidates in
2 covered elections and the votes received by each candidate in those
3 elections;

4 2. the amount of contributions and loans received, and expenditures
5 made, on behalf of participating and nonparticipating candidates;

6 3. the amount of public matching funds each participating candidate
7 received, spent, and repaid pursuant to this article;

8 4. analysis of the effect of this title on the election campaigns for
9 all offices covered under section 14-206 of this title, including its
10 effect on the sources and amounts of private financing, the level of
11 campaign expenditures, voter participation, the number of candidates,
12 the candidates' abilities to campaign effectively for public office, and
13 the diversity of candidates seeking and elected to office;

14 5. recommendations for changes or amendments to this title, including
15 charges in contribution limits, thresholds for eligibility and limits on
16 total matching funds as well as instituting a program of full public
17 campaign financing for election for all statewide offices; and

18 6. any other information that the fair elections board deems relevant.

19 § 14-226. Debates. The fair elections board shall promulgate regu-
20 lations to facilitate debates among participating candidates. Partic-
21 ipating candidates are required to participate in at least one debate
22 before the primary election and in at least one debate before the gener-
23 al election for which the candidate receives public funds, unless the
24 participating candidate is running unopposed. A nonparticipating candi-
25 date may be a party to such debates.

26 § 14-228. Distributions from fair elections fund. 1. This section
27 governs the fair elections board's distribution of funds from the fair
28 elections fund created by section ninety-two-y of the state finance law,
29 except as otherwise provided in this title.

30 2. No moneys shall be paid to participating candidates in a primary
31 election any earlier than two weeks after the last day to file designat-
32 ing petitions for such primary election.

33 3. No moneys shall be paid to participating candidates in a general
34 election any earlier than a week after the primary election held to
35 nominate candidates for such election.

36 4. No moneys shall be paid to any participating candidate who has been
37 disqualified by the fair elections board or whose designating petitions
38 have been declared invalid by the state board of elections or a court of
39 competent jurisdiction until and unless such finding is reversed by an
40 appellate court.

41 5. No payment from the fund in the possession of such a candidate or
42 such a candidate's authorized committee on the date of such disquali-
43 fication or invalidation may thereafter be expended for any purpose
44 except the payment of liabilities incurred before that date. All excess
45 public moneys paid to a disqualified candidate shall be returned to the
46 fund not less than thirty days after the general election for those
47 participating candidates who received public moneys for the general
48 election, and otherwise, not less than thirty days after the primary
49 election for those participating candidates who received public moneys
50 solely for the primary election.

51 6. (a) Participating candidates shall pay to the fair elections board
52 unspent public campaign funds from an election not later than thirty
53 days after all liabilities for the election have been paid and, in any
54 event, not less than twenty days after the date upon which the fair
55 elections board issues its final audit report for the participating
56 candidate's committee; provided, however, that all unspent public

1 campaign funds for a participating candidate shall be immediately due
2 and payable to the fair elections board upon its determination that the
3 participating candidate has, without just cause, delayed the post-elec-
4 tion audit process. Unspent campaign funds determinations made by the
5 fair elections board shall be based on the participating candidate
6 committee's receipts and expenditures. The fair elections board may also
7 consider any other relevant information revealed in the course of its
8 audits or investigations or the investigations by any other agency.

9 (b)(i) A participating candidate may not use receipts for any purpose
10 other than disbursements in the preceding election until all unspent
11 public campaign funds have been repaid. A participating candidate shall
12 have the burden of demonstrating that a post-election expenditure is for
13 the preceding election.

14 (ii) Before repaying unspent public campaign funds, a participating
15 candidate may make post-election expenditures only for routine activ-
16 ities involving nominal costs associated with winding up a campaign and
17 responding to the post-election audit. Such expenditures may include:
18 payment of utility bills and rent; reasonable staff salaries and
19 consultant fees for responding to a post-election audit; reasonable
20 moving expenses related to closing a campaign office; a holiday card
21 mailing to contributors, campaign volunteers, and staff members; thank
22 you notes for contributors, campaign volunteers, and staff members;
23 payment of taxes and other reasonable expenses for compliance with
24 applicable tax laws; and interest expenses. Routine post-election
25 expenditures that may be paid for with unspent campaign funds do not
26 include such items as post-election mailings other than as specifically
27 provided for in this subparagraph; making contributions; making bonus
28 payments or gifts to staff members or volunteers; or holding any post-e-
29 lection day event, including, but not limited to, any meal or any party.
30 Unspent campaign funds may not be used for transition or inauguration
31 activities.

32 7. All monies received by the fair elections board pursuant to this
33 section shall be deposited into the New York state fair elections fund
34 pursuant to section ninety-two-y of the state finance law.

35 8. Any candidate who accepts a contribution or contributions in excess
36 of the limits set forth in section 14-212 of this title, prior to elect-
37 ing to participate in the optional public financing system, as set forth
38 by paragraph (c) of subdivision one of section 14-206 of this title,
39 shall have his or her total public matching fund grant reduced by such
40 excess amount. Such amount shall be deducted beginning from the first
41 allowable disbursement from the fund until such excess amount is
42 reached, at which point the public fund disbursement shall be provided
43 to the candidate consistent with the provisions of this section.

44 § 16. The election law is amended by adding a new section 16-103 to
45 read as follows:

46 § 16-103. Proceedings as to public financing. 1. The determination of
47 eligibility pursuant to section 14-206 of this chapter and any question
48 or issue relating to payments for qualified campaign expenditures pursu-
49 ant to section 14-210 of this chapter may be contested in a proceeding
50 instituted in the Supreme Court, Albany county, by any aggrieved candi-
51 date.

52 2. A proceeding with respect to such a determination of eligibility or
53 payment for qualified campaign expenditures pursuant to section 14-210
54 of this chapter shall be instituted within seven days after such deter-
55 mination was made. The fair elections board shall be made a party to any
56 such proceeding.

1 3. Upon the fair elections board's failure to receive the amount due
2 from a participating candidate or such candidate's committee after the
3 issuance of written notice of such amount due, as required by subdivi-
4 sion four of section 14-218 of this chapter, such board is authorized to
5 institute a special proceeding or civil action in Supreme Court, Albany
6 county, to obtain a judgment for any amounts determined to be payable to
7 the fair elections board.

8 4. The fair elections board is authorized to institute a special
9 proceeding or civil action in Supreme Court, Albany county, to obtain a
10 judgment for civil penalties determined to be payable to the fair
11 elections board pursuant to section 14-218 of this chapter.

12 § 17. The election law is amended by adding a new section 4-115 to
13 read as follows:

14 § 4-115. Notice to the state board of elections of candidates for the
15 legislature. 1. Each board of elections with which petitions are filed
16 for member of the state legislature shall, not later than one week after
17 the last day to file such petitions, send notice to the state board of
18 elections of such information about each such petition as the state
19 board shall require.

20 2. Each such county board of elections shall, not later than the day
21 after the last day to file a petition or certificate of nomination for a
22 general or special election or a certificate of acceptance, declination
23 or substitution for a general, primary or special election for any such
24 office, send to the state board of elections such information about each
25 such petition or certificate as the state board shall require.

26 3. If any such county board of elections should disqualify any such
27 candidate or rule the petition or certificate designating or nominating
28 any such candidate invalid, it shall forthwith notify the state board of
29 elections of such decision.

30 4. If any such county board of elections shall be notified of a deci-
31 sion of a court of competent jurisdiction disqualifying any such candi-
32 date or declaring any such petition invalid or reversing any such deci-
33 sion by such board of elections or another court, such board of
34 elections shall forthwith notify the state board of elections of such
35 decision.

36 5. The state board of elections may prescribe forms for the notices
37 required by this section and shall prescribe the manner in which such
38 notices shall be given.

39 § 18. The general business law is amended by adding a new section
40 359-gg to read as follows:

41 § 359-gg. Additional surcharge. In addition to any penalty authorized
42 by section three hundred fifty-nine-g of this article or any damages or
43 other compensation recoverable including, but not limited to, any
44 settlement authorized by section sixty-three or sixty-three-c of the
45 executive law, there shall be assessed thereon an additional surcharge
46 in the amount of ten percent of the total amount of such penalty,
47 damages or settlement. Such surcharge shall be deposited in the New York
48 state fair elections fund established by section ninety-two-y of the
49 state finance law.

50 § 19. The state finance law is amended by adding a new section 92-y to
51 read as follows:

52 § 92-y. New York state fair elections fund. 1. There is hereby estab-
53 lished in the custody of the commissioner of taxation and finance a
54 special fund to be known as the New York state fair elections fund.

55 2. Such fund shall consist of all revenues received from the surcharge
56 imposed pursuant to section three hundred fifty-nine-gg of the general

1 business law, revenues received from fair elections fund check-off
2 pursuant to section six hundred thirty-d of the tax law and all other
3 moneys credited or transferred thereto from any other fund or source
4 pursuant to law. Nothing contained in this section shall prevent the
5 state from receiving grants, gifts, bequests or voluntary contributions
6 for the purposes of the fund as defined in this section and depositing
7 them into the fund according to law. Monies in the fund shall be kept
8 separate from and not commingled with other funds held in the custody of
9 the commissioner of taxation and finance.

10 3. Moneys of the fund, following appropriation by the legislature, may
11 be expended for the purposes of making payments to candidates pursuant
12 to title two of article fourteen of the election law. Moneys shall be
13 paid out of the fund by the commissioner of taxation and finance on
14 vouchers certified or approved by the fair elections board established
15 pursuant to title two of article fourteen of the election law, or the
16 duly designated representative of such board, in the manner prescribed
17 by law, not more than one working day after a voucher duly certified,
18 approved and executed by such board or its representative in the form
19 prescribed by the commissioner of taxation and finance is received by
20 the commissioner of taxation and finance.

21 4. Notwithstanding any provision of law to the contrary, if, in any
22 state fiscal year, the state fair elections fund lacks the amount of
23 money to pay all claims vouchered by eligible candidates and certified
24 or approved by the fair elections board, any such deficiency shall be
25 paid, upon audit and warrant of the state comptroller, from funds depos-
26 ited in the general fund of the state not more than one working day
27 after such voucher is received by the state comptroller.

28 5. Commencing in two thousand nineteen, if the surplus in the fund on
29 April first of the year after an election cycle exceeds twenty-five
30 percent of the disbursements from the fund over the previous four years,
31 the excess shall revert to the general fund of the state.

32 6. No public funds shall be paid to any participating candidates in a
33 primary election any earlier than the day that such candidate is certi-
34 fied as being on the ballot for such primary election.

35 7. No public funds shall be paid to any participating candidates in a
36 general election any earlier than the day after the day of the primary
37 election held to nominate candidates for such election.

38 8. No public funds shall be paid to any participating candidate who
39 has been disqualified or whose designating petitions have been declared
40 invalid by the appropriate board of elections or a court of competent
41 jurisdiction until and unless such finding is reversed by a higher
42 authority. No payment from the fund in the possession of such a candi-
43 date or such candidate's participating committee on the date of such
44 disqualification or invalidation may thereafter be expended for any
45 purpose except the payment of liabilities incurred before such date. All
46 such moneys shall be repaid to the fund.

47 § 20. The tax law is amended by adding a new section 630-f to read as
48 follows:

49 § 630-f. Contribution to New York state fair elections fund. Effec-
50 tive for any taxable year commencing on or after January first, two
51 thousand eighteen, an individual in any taxable year may elect to
52 contribute to the New York state fair elections fund. Such contribution
53 shall be in the amount of five dollars and shall not reduce the amount
54 of state tax owed by such individual. The commissioner shall include
55 space on the personal income tax return to enable a taxpayer to make
56 such contribution. Notwithstanding any other provision of law all reven-

1 ues collected pursuant to this section shall be credited to the New York
2 state fair elections fund and used only for those purposes enumerated in
3 section ninety-two-y of the state finance law.

4 § 21. Severability. If any clause, sentence, subdivision, paragraph,
5 section or part of title 2 of article 14 of the election law, as added
6 by section fifteen of this act be adjudged by any court of competent
7 jurisdiction to be invalid, such judgment shall not affect, impair or
8 invalidate the remainder thereof, but shall be confined in its operation
9 to the clause, sentence, subdivision, paragraph, section or part thereof
10 directly involved in the controversy in which such judgment shall have
11 been rendered.

12 § 22. This act shall take effect immediately; provided, however,
13 candidates for state legislature will be eligible to participate in the
14 public financing system beginning with the 2020 election and all state
15 candidates and constitutional convention delegates will be eligible to
16 participate in the public financing system beginning with the 2022
17 election.