STATE OF NEW YORK

8174

IN SENATE

April 13, 2018

Introduced by Sen. KAVANAGH -- 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 matching financing; and to amend the state finance law, in relation to the New York state campaign finance fund and the abandoned property fund

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

Section 1. The article heading of article 14 of the election law is amended to read as follows:

CAMPAIGN RECEIPTS AND EXPENDITURES**; MATCHING FINANCING**

§ 2. Sections 14-100 through 14-132 of article 14 of the election law are designated title I and a new title heading is added to read as follows:

CAMPAIGN RECEIPTS AND EXPENDITURES

§ 3. Article 14 of the election law is amended by adding a new title II to read as follows:

TITLE II

MATCHING FINANCING

Section 14-200. Definitions.
14-201. Reporting requirements.
14-202. Contribution limits.
14-203. Proof of compliance.
14-204. Eligibility.
14-205. Limits on matching financing.
14-206. Payment of matching funds.
14-207. Use of matching funds; qualified campaign expenditures.
14-208. Powers and duties of board.
14-209. Audits and repayments.
14-210. Enforcement and penalties for violations and other proceedings.
14-211. Reports.
14-212. Debates for candidates for district attorney or justice of the supreme court.
14-213. Severability.

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

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§ 14-200. Definitions. For the purposes of this title, the following terms shall have the following meanings:

1. The term "authorized committee" shall mean the single committee designated by a candidate pursuant to section 14-201 of this title to receive contributions and make expenditures in support of the candidate's campaign.

2. The term "board" shall mean the state board of elections.

3. The term "contribution" shall have the same meaning as appears in subdivision nine of section 14-100 of this article.

4. The term "contributor" shall mean any person or entity that makes a contribution.

5. The term "covered election" shall mean any primary or general election for nomination for election, or election, to the office of district attorney or justice of the supreme court.

6. The term "election cycle" shall mean: (a) for a district attorney, the four year period starting after the day after the last general election for candidates for statewide office; (b) for a justice of the supreme court, the fourteen year period starting the day after the last general election for candidates for statewide office.

7. The term "expenditure" shall mean any gift, subscription, advance, payment, or deposit of money or anything of value, or a contract to make any gift, subscription, payment, or deposit of money or anything of value, made in connection with the nomination for election, or election, of any candidate. Expenditures made by contract are deemed made when such funds are obligated.

8. The term "fund" shall mean the New York state campaign finance fund.

9. The term "immediate family" shall mean a spouse, domestic partner, child, sibling or parent.

10. The term "intermediary" shall mean an individual, corporation, partnership, political committee, employee organization or other entity which bundles, causes to be delivered or otherwise delivers any contribution from another person or entity to a candidate or authorized committee, other than in the regular course of business as a postal, delivery or messenger service. Provided, however, that an "intermediary" shall not include spouses, domestic partners, parents, children or siblings of the person making such contribution or a staff member or volunteer of the campaign identified in writing to the state board of elections. Here "causes to be delivered" shall include providing postage, envelopes or other shipping materials for the use of delivering the contribution to the ultimate recipient.

11. The term "item with significant intrinsic and enduring value" shall mean any item, including tickets to an event, that are valued at twenty-five dollars or more.

12. (a) The term "matchable contribution" shall mean a contribution, contributions or a portion of a contribution or contributions for any covered elections held in the same election cycle, made by a natural person who is a resident in the state of New York to a participating candidate, that has been reported in full to the board in accordance with sections 14-102 and 14-104 of this article by the candidate's authorized committee and has been contributed on or before the day of the applicable election. Any contribution, contributions, or a portion of a contribution determined to be invalid for matching funds by the board may not be treated as a matchable contribution for any purpose.

(b) The following contributions are not matchable:

(i) loans;

(ii) in-kind contributions of property, goods, or services;
(iii) contributions in the form of the purchase price paid for an item with significant intrinsic and enduring value;
(iv) transfers from a party or constituted committee;
(v) anonymous contributions or contributions whose source is not itemized as required by section 14-201 of this title;
(vi) contributions gathered during a previous election cycle;
(vii) illegal contributions;
(viii) contributions from persons under eighteen;
(ix) contributions from vendors for campaigns; and
(x) contributions from lobbyists registered pursuant to subdivision (a) of section one-c of the legislative law.
13. The term "nonparticipating candidate" shall mean a candidate for a covered election who fails to file a written certification in the form of an affidavit under section 14-204 of this title by the applicable deadline.
14. The term "participating candidate" shall mean any candidate for nomination for election, or election, to the office of district attorney or justice of the supreme court who files a written certification in the form of an affidavit pursuant to section 14-204 of this title.
15. The term "post-election period" shall mean the six months following the election for a district attorney or a supreme court justice when such candidate is subject to an audit.
16. The term "qualified campaign expenditure" shall mean an expenditure for which public matching funds may be used.
17. The term "threshold for eligibility" shall mean the amount of matchable contributions that a candidate's authorized committee must receive in total in order for such candidate to qualify for voluntary public financing under this title.
18. The term "transfer" shall mean any exchange of funds between a party or constituted committee and a candidate or any of his or her authorized committees.
§ 14-201. Reporting requirements. 1. Only one authorized committee per participating candidate for district attorney or justice of the supreme court. Before receiving any contribution or making any expenditure for a covered election, each candidate shall notify the board as to the existence of his or her authorized committee that has been approved by such candidate. Each candidate shall have one and only one authorized committee per elective office sought. Each authorized committee shall have a treasurer and is subject to the restrictions found in section 14-112 of this article.
2. Disclosure reports. (a) Detailed reporting. Each authorized and political committee shall report to the board every contribution and loan received and every expenditure made in the time and manner prescribed by sections 14-102, 14-104 and 14-108 of this article. For contributors who make contributions of one hundred dollars or more, each authorized and political committee shall report to the board the occupation, and business address of each contributor, lender, and intermediary. The receipt of any contribution or loan in excess of one thousand dollars shall be disclosed within forty-eight hours of receipt, and shall be reported in the same manner as any other contribution or loan on the next applicable statement. The board shall revise, prepare and post forms on its webpage that facilitate compliance with the requirements of this section.
(b) Board review. The board shall review each disclosure report filed and shall inform authorized and political committees of relevant ques-

tions it has concerning: (i) compliance with requirements of this title and of the rules issued by the board; and (ii) qualification for receiving public matching funds pursuant to this title. In the course of this review, the board shall give authorized and political committees an opportunity to respond to and correct potential violations and give candidates an opportunity to address questions the unit has concerning their matchable contribution claims or other issues concerning eligibility for receiving public matching funds pursuant to this title. Nothing in this paragraph shall preclude the board from subsequently reviewing such disclosure reports and taking any action otherwise authorized under this title.

(c) Itemization. Contributions that are not itemized in reports filed with the board shall not be matchable.

(d) Option to file more frequently. Participating candidates may file reports of contributions as frequently as once a week on Friday so that their matching funds may be paid at the earliest allowable date.

§ 14-202. Contribution limits. Recipients of funds pursuant to this title shall be subject to the following contribution limits:

1. In the election for district attorney or justice of the supreme court, or for nomination to such office, no contributor may make a contribution to any candidate or political committee participating in the state's public campaign financing system as defined in this title, and no such candidate or political committee may accept any contribution from any contributor, which is in the aggregate amount greater than: (a) in the case of any nomination to a district attorney or a justice of the supreme court, the product of the total number of enrolled voters in the jurisdiction in which such participating candidate is seeking office, excluding voters in inactive status, multiplied by $.005, but such amount shall be not more than six thousand dollars and (b) in the case of any election to such public office, six thousand dollars; provided however, that the maximum amount which may be so contributed or accepted, in the aggregate, from any candidate's child, parent, grandparent, brother and sister, and the spouse of any such persons, shall not exceed in the case of any nomination to public office an amount equivalent to the product of the number of enrolled voters in the jurisdiction in which such participating candidate is seeking office, excluding voters in inactive status, multiplied by $.025, and in the case of any election for a public office, an amount equivalent to the product of the number of registered voters in the state excluding voters in inactive status, multiplied by $.025.

2. In the event that a candidate for district attorney or justice of the supreme court has received a contribution which exceeds the limitations of this subdivision prior to becoming a participating candidate in the state's matching campaign financing system, the candidate shall either (a) deposit any amount in excess of the contribution limit set forth in this subdivision, into a segregated account where it shall not be withdrawn for campaign expenditures for any district attorney or justice of the supreme court election; or (b) return any amount in excess of the contribution limit set forth in this section, by bank check or certified check made out to the contributor.

§ 14-203. Proof of compliance. Authorized and political committees shall maintain such records of receipts and expenditures for a covered election as required by the board. Authorized and political committees shall obtain and furnish to the board any information it may request relating to financial transactions or contributions and furnish such documentation and other proof of compliance with this title as may be

requested. In compliance with section 14-108 of this article, authorized and political committees shall maintain copies of such records for a period of five years.

§ 14-204. Eligibility. 1. Terms and conditions. To be eligible for voluntary public financing under this title, a candidate must:

(a) be a candidate in a covered election;

(b) meet all the requirements of law to have his or her name on the ballot;

(c) in the case of a covered general election, be opposed by another candidate on the ballot who is not a write-in candidate;

(d) submit a certification in the form of an affidavit, in such form as may be prescribed by the board, that sets forth his or her acceptance of and agreement to comply with the terms and conditions for the provision of such funds in each covered election and such certification shall be submitted before the election pursuant to a schedule promulgated by the board;

(e) be certified as a participating candidate by the board;

(f) not make expenditures from or use his or her personal funds or property or the personal funds or property jointly held with his or her spouse, or unemancipated children in connection with his or her nomination election or election to a covered office except as a contribution to his or her authorized committee in an amount that exceeds three times the applicable contribution limit from an individual contributor to candidates for the office that he or she is seeking;

(g) meet the threshold for eligibility set forth in subdivision two of this section; and

(h) continue to abide by all requirements during the post-election period.

2. Threshold for eligibility. (a) The threshold for eligibility for matching funding for participating candidates for district attorney or justice of the supreme court shall be not less than ten thousand dollars in matchable contributions including at least seven hundred fifty matchable contributions comprised of sums between ten and seventy-five dollars per contributor, from residents of New York state.

(b) Any participating candidate meeting the threshold for eligibility in a primary election for the foregoing office shall be deemed to have met the threshold for eligibility for such office in the general election held in the same calendar year.

§ 14-205. Limits on matching financing. The following limitations apply to the total amounts of matching funds that may be provided to a participating candidate's authorized committee for an election cycle:

1. In any primary election, receipt of matching funds by participating candidates for district attorney or justice of the supreme court and by each participating committee shall not exceed the sum of two hundred fifty thousand dollars.

2. In any general election, receipt of matching funds by a participating candidate's authorized committee shall not exceed one million dollars.

3. No participating candidate for nomination for an office who is not opposed by a candidate on the ballot in a primary election shall be entitled to payment of matching funds, except that, where there is a contest in such primary election for the nomination of at least one of the two political parties with the highest and second highest number of enrolled members for such office, a participating candidate who is unopposed in the primary election may receive matching funds before the primary election, for expenses incurred on or before the date of such

primary election, in an amount equal to up to half the sum set forth in subdivision one of this section.

§ 14-206. Payment of matching funds. 1. Determination of eligibility. No matching funds shall be paid to an authorized committee unless the board determines that the participating candidate has met the eligibility requirements of this title. Payment shall not exceed the amounts specified in subdivision two of this section, and shall be made only in accordance with the provisions of this title. Such payment may be made only to the participating candidate's authorized committee. No matching funds shall be used except as reimbursement or payment for qualified campaign expenditures actually and lawfully incurred or to repay loans used to pay qualified campaign expenditures.

2. Calculation of payment. If the threshold for eligibility is met, the participating candidate's authorized committee shall receive payment for qualified campaign expenditures of six dollars of matching funds for each one dollar of matchable contributions, for the first one hundred seventy-five dollars of eligible private funds per contributor, obtained and reported to the board in accordance with the provisions of this title. The maximum payment of matching funds shall be limited to the amounts set forth in section 14-205 of this title for the covered election.

3. Timing of payment. The board shall make any payment of matching funds to participating candidates as soon as is practicable. But in all cases, the board shall verify eligibility for matching funds within four days of receiving a campaign contribution report filed in compliance with section 14-104 of this article. Within two days of determining that a candidate for a covered office is eligible for matching funds, the board shall pay the applicable matching funds owed to the candidate. However, the board shall not make any payments of public money earlier than the earliest dates for making such payments as provided by this title. If any of such payments would require payment on a weekend or federal holiday, payment shall be made on the next business day.

4. Electronic funds transfer. The board shall promulgate rules to facilitate electronic funds transfers directly from the fund into an authorized committee's bank account.

§ 14-207. Use of matching funds; qualified campaign expenditures. 1. Matching funds provided under the provisions of this title may be used only by an authorized committee for expenditures to further the participating candidate's nomination for election or election, including paying for debts incurred within one year prior to an election to further the participating candidate's nomination for election or election.

2. Such matching funds may not be used for:

(a) an expenditure in violation of any law;

(b) an expenditure in excess of the fair market value of services, materials, facilities or other things of value received in exchange;

(c) an expense incurred after the candidate has been finally disqualified from the ballot;

(d) an expense incurred after the only remaining opponent of the candidate has been finally disqualified from the general or special election ballot;

(e) an expenditure made by cash payment;

(f) a contribution or loan or transfer made to or expenditure to support another candidate or political committee or party, committee or constituted committee;

(g) an expenditure to exclusively support or oppose a candidate for an office other than that which the participating candidate seeks;

(h) gifts, except brochures, buttons, signs and other printed campaign material;

(i) legal fees to defend against a formal criminal charge;

(j) payments to immediate family members of the participating candidate; or

(k) any expenditure made to challenge the validity of any petition of designation or nomination or any certificate of nomination, acceptance, authorization, declination or substitution.

§ 14-208. Powers and duties of board. 1. Advisory opinions. The board shall render advisory opinions with respect to questions arising under this title upon the written request of a candidate, an officer of a political committee or member of the public, or upon its own initiative. The board shall promulgate rules regarding reasonable times to respond to such requests. The board shall make public the questions of interpretation for which advisory opinions will be considered by the board and its advisory opinions, including by publication on its webpage with identifying information redacted as the board determines to be appropriate.

2. Public information and candidate education. The board shall develop a program for informing candidates and the public as to the purpose and effect of the provisions of this title, including by means of a webpage. The board shall prepare in plain language and make available educational materials, including compliance manuals and summaries and explanations of the purposes and provisions of this title. The board shall prepare or have prepared and make available materials, including, to the extent feasible, computer software, to facilitate the task of compliance with the disclosure and record-keeping requirements of this title.

3. Rules and regulations. The board shall have the authority to promulgate such rules and regulations and provide such forms as it deems necessary for the administration of this title.

4. Enforcement. The board shall work with the enforcement unit to enforce this section.

§ 14-209. Audits and repayments. 1. Audits. The board shall audit and examine all matters relating to the proper administration of this title and shall complete such audit no later than six months after the election in question. Every candidate who receives matching funds under this title shall be audited by the board. The cost of complying with a post-election audit shall be borne by the candidate's authorized committee using matching funds, private funds or any combination of such funds. Candidates who run in both a primary and general election must maintain a reserve of three percent of the matching funds received to comply with the post-election audit. The board shall issue to each campaign audited a final audit report that details its findings.

2. Repayments. (a) If the board determines that any portion of the payment made to a candidate's authorized committee from the fund was in excess of the aggregate amount of payments that such candidate was eligible to receive pursuant to this title, it shall notify such committee and such committee shall pay to the board an amount equal to the amount of excess payments. Provided, however, that if the erroneous payment was the result of an error by the board, then the erroneous payment will be deducted from any future payment, if any, and if no payment is to be made then neither the candidate nor the committee shall be liable to repay the excess amount to the board. The candidate, the

treasurer and the candidate's authorized committee are jointly and severally liable for any repayments to the board.

(b) If the board determines that any portion of the payment made to a candidate's authorized committee from the fund was used for purposes other than qualified campaign expenditures, it shall notify such committee of the amount so disqualified and such committee shall pay to the board an amount equal to such disqualified amount. The candidate, the treasurer and the candidate's authorized committee are jointly and severally liable for any repayments to the board.

(c) If the total of payments from the fund received by a participating candidate and his or her authorized committee exceed the total campaign expenditures of such candidate and authorized committee for the district attorney or justice of supreme court election, such candidate and committee shall use such excess funds to reimburse the fund for payments received by such authorized committee from the fund during such calendar. Participating candidates shall pay to the board unspent public campaign funds from an election not later than twenty-seven days after all liabilities for the election have been paid and in any event, not later than the day on which the board issues its final audit report for the participating candidate's authorized committee; provided, however, that all unspent public campaign funds for a participating candidate shall be immediately due and payable to the board upon a determination by the board that the participant has knowingly delayed the post-election audit. A participating candidate may make post-election expenditures with public funds only for routine activities involving nominal cost associated with winding up a campaign and responding to the post-election audit except for liabilities incurred before the election. Nothing in this title shall be construed to prevent a candidate or his or her authorized committee from using campaign contributions received from private contributors for otherwise lawful expenditures.

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

§ 14-210. Enforcement and penalties for violations and other proceedings. 1. Civil penalties. Knowing violations of any provision of this title or rule promulgated pursuant to this title shall be subject to a civil penalty in an amount not in excess of ten thousand dollars.

2. Notice of violation and opportunity to be heard. The board shall:

(a) determine whether a violation of any provision of this title or rule promulgated hereunder has been committed;

(b) give written notice and the opportunity to be heard in accordance with the state administrative procedure act before an independent hearing officer to each person or entity it has reason to believe has committed a violation; and

(c) if appropriate, assess penalties for violations, following such notice and opportunity to contest.

3. Criminal conduct. Any person who knowingly and willfully furnishes or submits false statements or information to the board in connection with its administration of this title, shall be guilty of a misdemeanor

in addition to any other penalty as may be imposed under this chapter or pursuant to any other law. The board shall seek to recover any matching funds obtained as a result of such criminal conduct.

4. Proceedings as to matching financing. (a) The determination of eligibility pursuant to this title and any question or issue relating to payments for campaign expenditures pursuant to this title may be contested in a proceeding instituted in the supreme court, Albany county, by any aggrieved candidate.

(b) A proceeding with respect to such a determination of eligibility or payment for qualified campaign expenditures pursuant to this chapter shall be instituted within fourteen days after such determination was made. The board shall be made a party to any such proceeding.

(c) Upon the board's failure to receive the amount due from a participating candidate or such candidate's authorized committee after the issuance of written notice of such amount due, as required by this title, the board is authorized to institute a special proceeding or civil action in supreme court, Albany county, to obtain a judgment for any amounts determined to be payable to the board as a result of an examination and audit made pursuant to this title or to obtain such amounts directly from the candidate or authorized committee after a hearing at the state board of elections.

(d) The board is authorized to institute a special proceeding or civil action in supreme court, Albany county, to obtain a judgment for civil penalties determined to be payable to the board pursuant to this title or to impose such penalty directly after a hearing at the state board of elections.

§ 14-211. Reports. The board shall submit a report to the governor, the temporary president of the senate, and the speaker of the assembly. Such report shall include:

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

2. the amount of contributions and loans received, and expenditures made, on behalf of these candidates;

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

4. analysis of the effect of this title on political campaigns, including its effect on the sources and amounts of private financing, the level of campaign expenditures, voter participation, the number of candidates, the candidates' ability to campaign effectively for public office, and the diversity of candidates seeking and elected to office; and

5. recommendations for amendments to this title, including changes in contribution limits, thresholds for eligibility, and any other features of the system.

§ 14-212. Debates for candidates for district attorney or justice of the supreme court. The board shall promulgate regulations to facilitate debates among participating candidates who seek election for the office of district attorney or justice of the supreme court. Participating candidates are required to participate in one debate before each election for which the candidate receives matching funds, unless the participating candidate is running unopposed. Nonparticipating candidates may participate in such debates.

§ 14-213. Severability. If any clause, sentence, subdivision, paragraph, section or part of this title be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair

or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, subdivision, paragraph, section or part thereof directly involved in the controversy in which such judgment shall have been rendered.

§ 4. The state finance law is amended by adding a new section 92-t to read as follows:

§ 92-t. New York state campaign finance fund. 1. There is hereby established in the joint custody of the state comptroller and the commissioner of taxation and finance a fund to be known as the New York state campaign finance fund.

2. Such fund shall consist of all revenues received from the abandoned property fund pursuant to section ninety-five of this article.

3. Moneys of the fund, following appropriation by the legislature, may be expended for the purposes of making payments to candidates pursuant to title II of article fourteen of the election law. Moneys shall be paid out of the fund upon audit and warrant by the state comptroller on vouchers certified or approved by the state board of elections, or its duly designated representative, in the manner prescribed by law, not more than four working days after such voucher is audited and approved by the state comptroller.

4. No matching funds shall be paid to any participating candidates in a primary election any earlier than thirty days after designating petitions, independent nominating petitions, or certificates of nomination have been filed and not less than forty-five days before such election.

5. No matching funds shall be paid to any participating candidates in a general election any earlier than the day after the day of the primary election held to nominate candidates for such election.

6. No matching funds shall be paid to any participating candidate who has been disqualified or whose designating petitions have been declared invalid by the appropriate board of elections or a court of competent jurisdiction until and unless such finding is reversed by a higher court in a final judgment. No payment from the fund in the possession of such a candidate or such candidate's participating committee on the date of such disqualification or invalidation may thereafter be expended for any purpose except the payment of liabilities incurred before such date. All such moneys shall be repaid to the fund.

§ 5. Section 95 of the state finance law is amended by adding a new subdivision 5 to read as follows:

5. (a) As often as necessary, the co-chairs of the state board of elections shall certify the amount such co-chairs have determined necessary to fund estimated payments from the fund established by section ninety-two-t of this article for the primary or general election.

(b) Notwithstanding any provision of this section authorizing the transfer of any moneys in the abandoned property fund to the general fund, the comptroller, after reserving amounts sufficient to pay claims against the abandoned property fund, shall, based upon a certification of the board of elections pursuant to paragraph (a) of this subdivision, and at the direction of the director of the budget, transfer the requested amount from remaining available monies in the abandoned property fund to the campaign finance fund established by section ninety-two-t of this article.

§ 6. Severability. If any clause, sentence, subdivision, paragraph, section or part of title II of article 14 of the election law, as added by section three of this act be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or

invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, subdivision, paragraph, section or part thereof directly involved in the controversy in which such judgment shall have been rendered.

§ 7. This act shall take effect immediately.