STATE OF NEW YORK

10462

IN ASSEMBLY

May 25, 2022

Introduced by COMMITTEE ON RULES -- (at request of M. of A. Walker) -- read once and referred to the Committee on Election Law

AN ACT to amend the election law and the state finance law, in relation to making technical corrections regarding the public financing of elections; and to repeal certain provisions of part ZZZ of chapter 58 of the laws of 2020 amending the state finance law relating to establishing the New York state campaign finance fund, in relation thereto

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

Section 1. Subdivisions 1, 11, and 19 of section 14-200-a of the election law, as added by section 4 of part ZZZ of chapter 58 of the laws of 2020, are amended to read as follows:

1. "authorized committee" means the single political committee designated by a candidate pursuant to [~~these recommendations~~] this title to receive contributions and make expenditures in support of the candidate's campaign for such election.

11. (a) "matchable contribution" means a contribution not less than five dollars and not more than an aggregate of two hundred fifty dollars[~~, for a candidate for public office to be voted on by the voters of the entire state or for nomination to any such office, a contribution 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, and for a candidate for election to the state assembly or state senate or for nomination to any such office, a contribution for any covered elections held in the same election cycle, made by a natural person who is also a resident of such state assembly or state senate district from which such candidate is seeking nomination or election,~~] per unique contributor, made to a participating candidate for any covered election held in the same election cycle, that has been reported in full to the PCFB 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 primary, general, runoff, or special election, and: (i) is for a candidate for public office to be voted on by the voters of the entire state or for

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

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nomination to any such office, and has been made by a natural person who is a resident in the state of New York; or (ii) is for a candidate for election to the state assembly or state senate or for nomination to any such office, and has been made by a natural person who is also a resident of such state assembly or state senate district for which such candidate is seeking nomination or election. Any contribution, contributions, or a portion of a contribution determined to be invalid for matching funds by the PCFB 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;

(vi) contributions whose source is not itemized as required by [~~these recommendations~~] this title;

(vii) contributions gathered during a previous election cycle;

(viii) illegal contributions;

(ix) contributions from minors;

(x) contributions from vendors for campaigns hired by the candidate for such election cycle;

(xi) contributions from lobbyists registered pursuant to subdivision (a) of section one-c of the legislative law; and

(xii) any portion of a contribution when the aggregate contributions within the election cycle are in excess of two hundred fifty dollars from any one contributor to such participating candidate for nomination or election.

19. "surplus" means those funds where the total sum of contributions received and public [~~matchable~~] matching funds received by a participating candidate and his or her authorized committee exceeds the total campaign expenditures of such candidate and authorized committee for all covered elections held in the same calendar year or for a special election to fill a vacancy.

§ 2. Subparagraphs (iii), (iv), and (v) of paragraph (i) of subdivision 1 and subdivision 2 of section 14-203 of the election law, as added by section 4 of part ZZZ of chapter 58 of the laws of 2020, are amended to read as follows:

(iii) Nothing in this section shall be interpreted to require a candidate who retains funds raised during any previous election cycle to forfeit such funds. Funds raised during a previous election cycle may be retained and used by the candidate for the candidate's campaign in the next election cycle but funds shall not qualify for satisfying the threshold for participating in the public campaign finance program established in this title nor shall they be eligible to be matched. [~~The PCFB shall adopt regulations to ensure that contributions that would satisfy the applicable contribution limits authorized in this title shall be transferred into the appropriate campaign account.~~] Only contributions that would satisfy the applicable contribution limits authorized by this title shall be transferred into the appropriate campaign account. The PCFB shall adopt regulations to ensure compliance with this subparagraph.

(iv) Contributions received and expenditures made by the candidate or an authorized committee of the candidate prior to the effective date of this title shall not constitute a violation of this title. Unexpended

contributions shall be treated the same as [~~campaign surpluses~~] **funds raised during a previous election cycle** under subparagraph (iii) of this paragraph. Nothing in this recommendation shall be construed to limit, in any way, any candidate or public official from expending any portion of pre-existing campaign funds for any lawful purpose other than those related to his or her campaign.

(v) A candidate who has raised matchable contributions but, in the case of a covered primary, general or special election, is not opposed by another candidate on the ballot who is not a write-in candidate, or who chooses not to accept [~~matchable~~] **matching** funds, may retain such contributions and apply them in accord with this title to the candidate's next campaign, should there be one, in the next election cycle.

2. Threshold for eligibility. (a) The threshold for eligibility for public funding for participating candidates shall be in the case of:

(i) governor, not less than five hundred thousand dollars in contributions [~~including at least five thousand matchable contributions shall be counted toward this qualifying threshold~~] **from residents of the state of New York, including matchable contributions from at least five thousand unique contributors**;

(ii) lieutenant governor, attorney general and comptroller, not less than one hundred thousand dollars in contributions [~~including at least one thousand matchable contributions shall be counted toward this qualifying threshold~~] **from residents of the state of New York, including matchable contributions from at least one thousand unique contributors**;

(iii) state senator, except as otherwise provided in paragraph (c) of this subdivision, not less than twelve thousand dollars in contributions [~~including at least one hundred fifty matchable contributions shall be counted toward this qualifying threshold~~] **from residents of the district in which the seat is to be filled, including matchable contributions from at least one hundred fifty unique contributors**; and

(iv) member of the assembly, except as otherwise provided in paragraph (c) of this subdivision, not less than six thousand dollars in contributions [~~including at least seventy-five matchable contributions shall be counted toward this qualifying threshold~~] **from residents of the district in which the seat is to be filled, including matchable contributions from at least seventy-five unique contributors**.

(b) However, solely for purposes of achieving the monetary thresholds in paragraph (a) of this subdivision, the first two hundred fifty dollars of any contribution of more than two hundred fifty dollars to a candidate or a candidate's committee which would otherwise be matchable except that it comes from a contributor who has contributed more than two hundred fifty dollars to such candidate or candidate's committee, is deemed to be a matchable contribution and shall count toward satisfying such monetary threshold but shall not otherwise be considered a matchable contribution.

(c) With respect to the minimum dollar threshold for participating candidates for state senate and state assembly, in such districts where [~~average median income ("AMI") is below the AMI as determined by the United States Census Bureau three years before such election for which public funds are sought~~] **the average of the district's median income as determined by the bureau of the census of the United States department of commerce for the three years prior to such election is below the median income for the state according to the most recent census data available**, such minimum dollar threshold for eligibility shall be reduced by one-third. The PCFB shall make public which districts are

subject to such reduction no later than two years before the first primary election for which funding is sought.

(d) Any participating candidate meeting the threshold for eligibility in a primary election for one of the foregoing offices shall be [~~applied~~] **deemed** to satisfy the threshold for eligibility for such office in any other subsequent election held in the same calendar year. Any participating candidate who is nominated in a primary election and has participated in the public financing program set forth in this title[~~, must~~] **shall also** participate **in the public financing program** in the general election for such office.

§ 3. Subdivisions 2 and 4 of section 14-205 of the election law, as added by section 4 of part ZZZ of chapter 58 of the laws of 2020, are amended to read as follows:

2. Calculation of payment. (a) In any election for a public office to be voted on by the voters of the entire state or for nomination to any such office, if the threshold for eligibility is met, the participating candidate's authorized committee shall receive payment for qualified campaign expenditures of six dollars of public matching funds for each one dollar of matchable contributions, obtained and reported to the PCFB in accordance with the provisions of this title. The maximum payment of public matching funds shall be limited to the amounts set forth in [~~this~~] section **14-204 of this title** for the covered election.

(b) In any election for state senate or state assembly or for nomination to any such office, if the threshold for eligibility is met, the participating candidate's authorized committee shall receive payment for qualified campaign expenditures for matchable contributions of eligible private funds per contributor, obtained, and reported to the PCFB herein, of: twelve dollars of public matching funds for each of the first fifty dollars of matchable contributions; nine dollars of public matching funds for each of the next one hundred dollars of public matchable contributions; and eight dollars for [~~the~~] each of the next one hundred dollars of public matchable contributions. The maximum payment of public matching funds shall be limited to the amounts set forth in this section for the covered election.

4. Notwithstanding any provision of this section to the contrary, the amount of public funds payable to a participating candidate on the ballot in any covered election shall not exceed one-quarter of the maximum public funds payment otherwise applicable [~~and no participating candidate shall be eligible to receive a disbursement of public funds prior to two weeks after the last day to file designating petitions for a primary election~~] unless the participating candidate is opposed by a competitive candidate. The PCFB shall, by regulation, set forth objective standards to determine whether a candidate is competitive and the procedures for qualifying for the payment of public funds.

§ 4. Subdivisions 1 and 2 of section 14-207 of the election law, as added by section 4 of part ZZZ of chapter 58 of the laws of 2020, are amended to read as follows:

1. There shall be a public campaign finance board within the state board of elections that shall be comprised of the following commissioners: the four state board of elections commissioners and three additional commissioners, one jointly appointed by the legislative leaders of one major political party in each house of the legislature, one jointly appointed by the legislative leaders of the other major political party in each house of the legislature, and one of whom shall be appointed by the governor. Each commissioner must be a New York state resident and registered voter, and may not currently be, or within the

previous five years have been, an officer of a political party or political committee as defined in the election law, or a registered lobbyist. The chair of the PCFB shall be designated by the PCFB from among the three additional commissioners. Each of the three additional commissioners shall receive a per diem of three hundred fifty dollars for work actually performed not to exceed twenty-five thousand dollars in any one calendar year. They shall be considered public officers for purposes of sections seventy-three-a and seventy-four of the public officers law. The three commissioners so appointed pursuant to this recommendation will be appointed for a term of five years to commence on July first, two thousand twenty and may be removed by his or her appointing authority solely for substantial neglect of duty, gross misconduct in office, **or** inability to discharge the power or duties of office, after written notice and opportunity to be heard. During the period of his or her term as a commissioner appointed hereunder, each such commissioner is barred from making, or soliciting from other persons, any contributions to candidates for election to the offices of governor, lieutenant governor, attorney general, comptroller, member of the assembly, or state senator. Any vacancy occurring on the PCFB shall be filled within thirty days of its occurrence in the same manner as the member whose vacancy is being filled was appointed. A person appointed to fill a vacancy occurring other than by expiration of a term of office shall be appointed for the unexpired term of the member he or she succeeds. Four members of the PCFB shall constitute a quorum, and the PCFB shall have the power to act by majority vote of the total number of members of the commission without vacancy. All members of the PCFB shall be appointed no later than the first day of July, two thousand twenty and the PCFB shall promulgate such regulations as are needed no later than the first day of July, two thousand twenty-one.

2. The PCFB and state board of elections may utilize existing state board of elections staff and hire such other staff as are necessary to carry out its duties. It may expand its staffing, as needed, to provide additional candidate liaisons to assist candidates in complying with the terms of this public campaign finance system as provided for in [~~these recommendations~~] **this title**, as well as auditors, trainers, attorneys, technical staff and other such staff as the PCFB determines is necessary to administer this system. Annually, on or before the first of every year, the PCFB shall submit to the governor and the division of the budget a request for appropriations for the next state fiscal year to fully support the administration of the public campaign finance program established in this title.

§ 5. Paragraph (a) of subdivision 2 and subdivision 3 of section 14-208 of the election law, as added by section 4 of part ZZZ of chapter 58 of the laws of 2020, are amended to read as follows:

(a) If the PCFB 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 PCFB an amount equal to the amount of excess payments. Such committee shall first utilize [~~the surplus~~] **any excess payments of the public matching funds** for repayment of such sums and then such other funds as it may have. Provided, however, that if the erroneous payment was the result of an error by the PCFB, then the erroneous payment will be deducted from any future payment, if any, and if no future payment is to be made then neither the candidate nor the committee shall be liable to repay the excess amount to the PCFB. The

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

3. Rules and regulations. (a) The PCFB 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 PCFB shall institute procedures which will make possible payment by the fund within [~~four business days after receipt of the required forms and verifications~~] **the time limits provided in section 14-205 of this title**.

(b) All rules and regulations promulgated pursuant to this [~~recommendation~~] **title** shall be promulgated pursuant to the state administrative procedure act. The PCFB's determinations pursuant to such regulations and [~~these recommendations~~] **this title** shall be deemed final.

§ 6. Subdivision 1 of section 14-209 of the election law, as added by section 4 of part ZZZ of chapter 58 of the laws of 2020, is amended to read as follows:

1. Civil penalties. Violations of any provisions regarding public campaign financing stated in this title or regulation promulgated pursuant to this title shall be subject to a civil penalty in an amount not in excess of fifteen thousand dollars and such other lesser fines as the PCFB may promulgate in regulation. **Such regulations shall include a schedule of fines for alleged failures to file, late reports and noticed deficiencies, including fines that the PCFB may assess directly on violators.** Candidates may contest alleged [~~failures to file, late reports and reports with noticed deficiencies and have an opportunity to~~] **infractions and may** be heard by the PCFB **in accordance with subdivision two of this section**. [~~The PCFB shall promulgate a regulation setting forth a schedule of fines for such infractions including those that it may assess directly on violators.~~] The PCFB shall investigate referrals and complaints. After investigation, it may recommend dismissal, settlement, civil action, or referral to law enforcement. The PCFB may assess penalties and it is authorized to commence a civil action in court to enforce all penalties and recover money due.

§ 7. Section 14-212 of the election law, as added by section 4 of part ZZZ of chapter 58 of the laws of 2020, is amended to read as follows:

§ 14-212. Severability. **1. If any clause, sentence, paragraph, subdivision, section or part of this article shall be determined 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 particular clause, sentence, paragraph, subdivision, section or part thereof directly found invalid in the judgment rendered. It is hereby declared to be the intent of the legislature that this article would have been enacted even if such invalid provisions had not been included herein.**

2. If any clause, sentence, or other portion of paragraph (c) of subdivision two of section 14-203 of this title be adjudged by any court of competent jurisdiction to be invalid, then subparagraphs (iii) and (iv) of paragraph (a) of subdivision two of section 14-203 of this title shall read as follows:

(iii) state senator, except as otherwise provided in paragraph (c) of this subdivision, not less than ten thousand dollars in [~~matchable contributions including at least one hundred and fifty matchable~~

~~contributions in an amount greater than five dollars and no greater than the limits in this chapter, of which the first two hundred fifty dollars shall be counted toward this qualifying threshold~~] **contributions from residents of the district in which the seat is to be filled, including matchable contributions from at least one hundred fifty unique contributors**; and

(iv) member of the assembly, except as otherwise provided in paragraph (c) of this subdivision, not less than five thousand dollars in [~~matchable~~] contributions [~~including at least seventy-five matchable contributions in an amount greater than five dollars and no greater than the limits in this chapter, of which the first two hundred fifty dollars shall be counted toward this qualifying threshold~~] **from residents of the district in which the seat is to be filled, including matchable contributions from at least seventy-five unique contributors**.

§ 8. Subdivision 6 of section 92-t of the state finance law, as added by section 5 of part ZZZ of chapter 58 of the laws of 2020, is amended to read as follows:

6. No public funds shall be paid to any participating candidates in a primary election any earlier than [~~thirty days after designating petitions or certificates of nomination have been filed~~] **one hundred twenty days before the primary election** and not later than thirty days after such primary election.

§ 9. Paragraphs a, b, c and d of subdivision 1 of section 14-114 of the election law, paragraphs a, b and c as amended and paragraph d as added by section 3 of part ZZZ of chapter 58 of the laws of 2020, are amended to read as follows:

a. In any election for a public office to be voted on by the voters of the entire state, or for nomination to any such office, no contributor may make a contribution to any candidate or political committee, **not** participating in the state's public campaign financing system pursuant to title two of this article and no such candidate or political committee may accept any contribution from any contributor, which is in the aggregate amount greater than eighteen thousand dollars divided equally among the primary and general election in an election cycle; 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 candidate's party in the state, 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.

b. In any other election for party position or for election to a public office or for nomination for any such office, no contributor may make a contribution to any candidate or political committee **not** participating in the state's public campaign financing system pursuant to title two of this article and no such candidate or political committee may accept any contribution from any contributor, which is in the aggregate amount greater than election for party position, or for nomination to public office, the product of the total number of enrolled voters in the candidate's party in the district in which he is a candidate, excluding voters in inactive status, multiplied by $.05, and [~~(ii)~~] in the case of any election for a public office, the product of the total number of registered voters in the district, excluding voters in inactive status, multiplied by $.05, however in the case of a nomination

within the city of New York for the office of mayor, public advocate or comptroller, such amount shall be not less than four thousand dollars nor more than twelve thousand dollars as increased or decreased by the cost of living adjustment described in paragraph c of this subdivision; in the case of an election within the city of New York for the office of mayor, public advocate or comptroller, twenty-five thousand dollars as increased or decreased by the cost of living adjustment described in paragraph c of this subdivision; in the case of a nomination or election for state senator, ten thousand dollars, divided equally among the primary and general election in an election cycle; in the case of an election or nomination for a member of the assembly, six thousand dollars, divided equally among the primary and general election in an election cycle; 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 election for party position or nomination for public office an amount equivalent to the number of enrolled voters in the candidate's party in the district in which he is a candidate, excluding voters in inactive status, multiplied by $.25 and in the case of any election to public office, an amount equivalent to the number of registered voters in the district, excluding voters in inactive status, multiplied by $.25; or twelve hundred fifty dollars, whichever is greater, or in the case of a nomination or election of a state senator, twenty thousand dollars, whichever is greater, or in the case of a nomination or election of a member of the assembly twelve thousand five hundred dollars, whichever is greater, but in no event shall any such maximum exceed one hundred thousand dollars.

c. In any election for a public office to be voted on by the voters of the entire state, or for nomination to any such office, no contributor may make a contribution to any candidate or political committee in connection with a candidate who is [~~not~~] a participating candidate as defined in subdivision fourteen of section 14-200-a of this article, and no such candidate or political committee may accept any contribution from any contributor, which is in the aggregate amount greater than eighteen thousand dollars, divided equally among the primary and general election in an election cycle[~~; 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 candidate's party in the state, 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~~].

d. In any nomination or election of a candidate who is [~~not~~] a participating candidate for state senator, ten thousand dollars, divided equally among the primary and general election in an election cycle; in the case of an election or nomination for a member of the assembly, six thousand dollars, divided equally among the primary and general election in an election cycle.

§ 10. Section 11 of part ZZZ of chapter 58 of the laws of 2020 amending the state finance law relating to establishing the New York state campaign finance fund, is REPEALED.

§ 11. This act shall take effect immediately; provided, however, that sections one, two, three, four, five, six, and seven of this act shall

take effect on the same date and in the same manner as section 4 of part ZZZ of chapter 58 of the laws of 2020, takes effect and section nine of this act shall take effect on the same date and in the same manner as section 3 of part ZZZ of chapter 58 of the laws of 2020, takes effect.