

**State of Rhode Island and Providence Plantations
Rhode Island Board of Elections**

Public Notice of Proposed Rule-Making

Pursuant to the provisions of Title 17 of the General Laws of Rhode Island, and in accordance with the Administrative Procedures Act Chapter 42-35 of the General Laws, the Rhode Island Board of Elections hereby gives notice of its intent to **repeal** the following; **Public Financing of Campaigns for Candidates for General Offices (regulations pursuant to §§ 17-25-18 through 17-25-29) (ERLID # 4379)**

The Rule and Regulation is being repealed due to the enactment of Rhode Island General Laws 17-25-19, 17-25-20, 17-25-22, 17-25-23, and 17-25-30 effective July of 2011, which renders the rule and regulation obsolete.

The proposed Rule and Regulation to be repealed is available for public inspection online at www.elections.ri.gov, in person at the Rhode Island Board of Elections, 50 Branch Ave. Providence, R.I. 02904, requested by email at GMcBurney@elections.ri.gov or by calling Gregory McBurney at 401-222-1914.

In the development of the proposed repeal consideration was given to: (1) alternative approaches; (2) overlap or duplication with other statutory and regulatory provisions; and (3) significant economic impact on small business. No alternative approach, duplication, or overlap was identified based upon available information.

All interested parties are invited to submit written or oral comments concerning the proposed repeal by **1/11/2012** to Robert Kando, Rhode Island Board of Elections, 50 Branch Ave. Providence, R.I. 02904, 401-222-2345, Feedback@elections.ri.gov. A public hearing to consider the proposed repeal shall be held on **1/11/2012 at 3:30 P.M.** at 50 Branch Ave. Providence, R.I. 02904 at which time and place all persons interested will be heard. The room is accessible to the disabled and interpreter services for the hearing impaired will be provided if requested 48 hours prior to the hearing. Requests for this service can be made in writing or by calling 401-222-2345.

PUBLIC FINANCING OF CAMPAIGNS
FOR CANDIDATES FOR GENERAL OFFICES
(Regulations pursuant to §§17-25-18 through 17-25-29)

The following regulations have been adopted by the State Board of Elections under authority of §§ 17-25-5 and 17-25-28 of the Rhode Island General Laws. The regulations are set forth under the heading of the section of the General Laws to which they principally apply. However, the regulations as set forth shall apply not only to the section under which it is set forth but to any other section of Chapter 17-25 to which it may be applicable.

17-25-19: Under the provisions of §17-25-19, each candidate for general office who desires to be eligible for matching public funds shall, at the time he or she becomes a candidate for general office as defined in §17-25-3(a), but no later than 4:00 p.m. on the last day for filing declarations of candidacy for general office with the Secretary of State, sign, and file as hereinafter provided a statement under oath on a form provided by the Board of Elections pledging to comply with the limitations on campaign contributions and expenditures and with all of the terms and conditions of the statutes, and regulations adopted pursuant thereto, relating to the public funding of election campaigns. Any candidate who fails to file said statement in the form and within the time set forth above shall be ineligible to receive public funding. Said form shall be filed with the Campaign Finance Division of the Rhode Island State Board of Elections whose address is 50 Branch Avenue, Providence, Rhode Island 02904. Once a candidate files the statement under oath required under §17-25-19, thereby declaring his or her intent to become eligible for public matching funds, such candidate may not withdraw from the public funding program, notwithstanding his or her failure to thereafter request payment of such public funding.

17-25-20: With respect to the provisions of §17-25-20, only the first One Thousand (\$1,000) Dollars contributed by a candidate for governor to his or her own campaign within an election cycle [as defined in §17-25-3(k)] and only the first Five Hundred (\$500) Dollars contributed by a candidate for other general offices to his or her own campaign within an election cycle [as defined in §17-25-3(k)] shall be eligible for matching public funds; provided, however, that the entire amount contributed by a candidate to his or her own campaign shall count towards the dollar limits provided for in

§17-25-20(2). Contributions made by a candidate to his or her own campaign shall be deemed to be funds received by such candidate as provided by §17-25-20(2).

With respect to an independent candidate, such candidate may qualify under the provisions of §17-25-20(6)(a) only by raising 20% of the total amount eligible to be matched for election to the office sought through qualified private contributions, i.e., through private contributions not exceeding One Thousand (\$1000) Dollars from each contributor within the same election cycle for the office of governor, and through private contributions not exceeding Five Hundred (\$500) Dollars from each contributor within the same election cycle for the other general offices. For this purpose, said independent candidate may contribute to his or her own campaign, but only the first One Thousand (\$1000) Dollars (for governor) and the first Five Hundred (\$500) Dollars (for other general offices) of any such contribution shall be eligible to be used for the purpose of determining compliance with the provisions of §17-25-20(6)(a). Independent candidates must also satisfy the provisions of §17-25-20(6)(b).

Independent candidates are subject to the same limitations as party candidates, i.e. for the office of governor – that only the first One Thousand (\$1000) Dollars of contributions from a single private source, including contributions made by a candidate to his or her own campaign, shall be eligible for matching public funds, and for the other general offices – that only the first Five Hundred (\$500) Dollars of contributions from a single private source, including contributions made by a candidate to his or her own campaign, shall be eligible for matching public funds.

Only funds received in one and the same election cycle shall be used to determine eligibility under §17-25-20.

Only contributions of money shall be eligible for matching public funds and not any other kind of contribution as defined in §17-25-3(b). However, all contributions [as defined in §17-25-3(b)] shall be taken into account for the purpose of determining receipt or expenditure of funds under §17-25-20(2).

Expenditures qualifying for exclusion under §17-25-20(4) shall nevertheless be reported to the Board in all reports required of candidates under Chapter 17-25, but shall be separately identified in such reports as qualifying for exclusion from the expenditure limitations.

Interest or other income earned on the deposit or investment of campaign funds shall not be eligible for matching public funds and shall not be included as funds received by the candidate under §17-25-20(2), but the expenditures of such interest or other income shall be counted in determining total expenditures under §17-25-20(2). Also, such interest or other income shall be subject to the provisions of §17-25-25.

17-25-21: Although the statute provides that any additional amount received in contributions for purposes of a Primary Election must be expended prior to the Primary, it is not necessary that payment of such expenses occur before the Primary so long as it

can be clearly shown that such expenses were incurred prior to the Primary. The additional amount permitted to be raised and spent by a candidate in a primary election shall be the lesser of one-third (1/3) of the maximum allowable expenditure amount for the office sought or the sum of the amounts spent in the primary by all of said candidate's primary opponents.

Any candidate for general office who is being challenged for nomination in a party primary, including those who have elected not to avail themselves of the public funding provided under §§17-25-18 through and including 17-25-29, shall, on a form provided by the Board of Elections, file with said Board a summary of contributions received and expenditures incurred (whether or not yet paid) from the beginning of the election cycle through and including the day preceding the date of filing of said report. The initial report (and all supplemental reports as hereinafter provided) shall also indicate the amount of such contributions received which is eligible for matching public funds and the amount of such expenditures qualifying for exclusion under §17-25-20(4).

The initial report shall be filed on the 50th day preceding the primary. Supplemental reports shall be filed on the 40th, 30th, 21st and 14th days preceding the primary. Thereafter, such supplemental reports shall be filed daily through and including the date of the primary, except for Saturdays, Sundays and legal holidays; e.g. the report for the 9th day preceding the primary shall be due by 1:00 P.M. on the 8th day preceding the primary, with the last supplemental report being due by 1:00 P.M. on the day of the primary election. Supplemental reports shall include the period from the last previous report to and including the day preceding the date of filing of each such supplemental report and shall report any changes since the previous report, or if there are no changes, stating such fact.

The purpose of this report is twofold. It will enable the Board to monitor and enforce the receipt and expenditure limitations and other requirements of §§17-25-18 through 17-25-29. Secondly it will provide information to all other candidates for the same office being challenged in said party primary so as to enable them to avail themselves of the provisions of §17-25-21 allowing a candidate to raise and expend, for purposes of the primary election, an additional amount of private funds equal to the sum of the amounts spent by all of his or her primary opponents in said primary but not more than one-third (1/3) of the maximum allowable expenditure amount for the office sought. For this latter purpose, said reports shall separately identify as "Expected Contributions", any contributions which the candidate has not yet received but for which he or she has received pledges or commitments, including any loans not yet received but which the candidate reasonably expects to receive either from the candidate himself or herself or from a third party; and shall also separately identify as "Anticipated Expenditures" any expenditures anticipated to be incurred (though not yet paid or even formally contracted for) such as, but not limited to, the reservation of television or radio time or print media space.

The intent and thrust of this regulation is to prevent a candidate who is being challenged in a primary from deferring either contributions or expenditures until a point in time

when it will be difficult or impossible for his or her opponent or opponents to raise and expend before the primary an additional sum of money as permitted by §17-25-21.

All contributions and expenditures shall be reported regardless of the amount, notwithstanding any other provision of Chapter 17-25. All expenditures incurred prior to the primary by a candidate being challenged in such primary shall be deemed to have been incurred in connection with such primary election.

Candidates who are not being challenged in a primary need not file the reports required by this regulation but shall be required to file the reports required by the regulations under §17-25-24 when they have exceeded the contribution or expenditure limits of §17-25-20(2).

Candidates who are being challenged in a party primary and who exceed the contribution or expenditure limits of §17-25-20(2) before such primary shall no longer be required to report under this regulation but shall immediately become subject to the reporting requirements of the regulations under §17-25-24. Candidates who are being challenged in a party primary but who do not exceed the contributions or expenditures limits of §17-25-20(2) until after the primary are not required to comply with the reporting requirements of the regulations under §17-25-24 until such time as such contribution or expenditure limits have been exceeded.

Except as herein provided, all reports required under this regulation shall be in addition to all other reports required under Chapter 17-25.

17-25-22: The form to be used for reporting to the Board under this regulation shall be the same form to be used for reporting under the §17-25-24 regulations. The summary reports required under this regulation need not be signed by the candidate so long as they are signed by his or her campaign treasurer or a deputy campaign treasurer whose names are on file with the Board. However, the candidate shall be responsible for the contents of such reports even though not a signatory thereto.

Together with each request for payment of public funds, the candidate must submit to the Board of Elections proof of receipt of qualifying private contributions and such supporting documentation as the Board may require. The Board shall require candidates to submit copies of checks received from contributors (including the candidate to his or her own campaign) accompanied by and made part of an affidavit signed by the candidate on a form provided by the Board of Elections.

In the event that any contributions to a candidate is made in cash, the candidate, in such affidavit, shall certify under oath that contributions were received on the dates and in the amounts indicated in and from persons whose names and addresses shall be included in such affidavit.

Each affidavit shall also be accompanied by copies of deposit slips and matching deposit receipts, and also by bank statements, or comparable statements, issued by the depository

or custodian of such funds showing the amounts on deposit or the investment of the funds received. Said supporting documentation, although submitted as above required, shall not be deemed to be in compliance with these Regulations unless deposit slips and deposit receipts are matched and submitted in chronological order.

To the extent that bank statements, or comparable statements, for a particular timeframe are not available for submission to the Board with a request for payment, because such statement has not yet been issued by the depository or custodian of the funds, then the candidate shall be required to furnish such statement as soon as the same has been issued by such depository or custodian.

Each request by a candidate for payment of public funds shall be on a form provided by the Board of Elections, signed by the candidate, and also accompanied by a special report (also signed by the candidate) of campaign contributions and expenditures, received or incurred by the candidate, from the first day of the elections cycle to the date preceding the date of such request, which special report shall indicate the names and addresses of each contributor (including the candidate to his or her own campaign), the amount or amounts and dates of each such contribution made by each such contributor, the amount of each contribution eligible for matching public funds; and which shall also indicate the dates and amounts of each expenditure incurred (whether or not yet paid), the name and address of the person or entity to whom incurred, the purpose of each such expenditure and whether such expenditure was incurred for the Primary Election or the General Election. Such Special Report shall be made on a form provided by the State Board of Elections. All expenses reported to the State Board of Elections by candidates shall be reported on the accrual basis, i.e. when incurred regardless of when paid. Contributions, however, shall be reported on the cash basis, i.e. when received. Any expenditure incurred within an election cycle shall be reported as an expenditure within the election cycle during which it was incurred, even though it was incurred in connection with a succeeding election cycle. Similarly, contributions shall be reported as such within the election cycle during which such contribution was received, even though said contribution or some portion thereof is intended for use or is used to pay an expenditure incurred in a succeeding election cycle.

Such special report is designed to enable the Board of Elections to determine compliance by the candidate with the receipt and expenditure limitations of §17-25-20(2) and will enable the Board to enforce the provisions of §17-25-20(5).

All candidates for general office shall file a final special report (in addition to all other reports required by Chapter 17-25 of the General Laws) showing the total amount of contributions and expenditures received and expended from the first day of the election cycle to December 31 of the year of the election, such report to contain the same information as required above for such special reports and said special report shall be due not later than January 31 of the succeeding year. Such final special report need not be signed by the candidate so long as it is signed by his or her campaign treasurer or deputy campaign treasurer whose names are on file with the Board. However, the candidate shall be responsible for the contents of such report even though not a signatory thereto.

All requests for funds must be submitted to the Board after the date of the Primary and not later than November 20 of the last year of each election cycle. Requests submitted after November 20 shall be denied unless accompanied by an affidavit setting forth facts showing that such request was not timely submitted because of circumstances beyond the control of the candidate.

17-25-24: All candidates for general office, including those who have elected not to avail themselves of the public funding provided under §§17-25-18 through and including 17-25-29, shall, immediately report to the Board of Elections when such candidate has exceeded either the contribution or the expenditure limits of §17-25-20(2), such report to be filed with the Board not later than 4:00 P.M. of the next business day following the day when such contribution or expenditure limits have been exceeded. A copy of such initial report shall be mailed on the same date as the filing date, by certified or registered mail, return receipt requested, by the candidate filing the same, to every other candidate for the same office at the address shown on the declaration of candidacy. A stamped receipt of mailing or other appropriate evidence shall be retained by the candidate mailing such report as evidence of mailing. Said initial report may also be hand delivered to the other candidate or his campaign treasurer or deputy campaign treasurer but the only acceptable evidence of such delivery shall be a receipt signed by the candidate or campaign treasurer or deputy campaign treasurer.

Said initial report shall be filed on the aforementioned form provided by the Board of Elections which shall include a summary of contributions received and expenditures incurred (whether or not yet paid) from the beginning of the election cycle through and including the day preceding the date of filing of said initial report. Said initial report (and all supplemental reports as hereinafter provided) shall also indicate the amount of such contributions received which is eligible for matching public funds and the amount of such expenditures qualifying for exclusion under §17-25-20(4).

Following the initial report, said candidate shall file a supplemental report with the Board seven (7) days following the filing date of said initial report and every seventh day thereafter, reporting on any changes from the previous report through and including the day preceding the due date of each such report, or if there are no changes, stating such fact. Provided, however, that during the fourteen (14) days immediately preceding the date of the election, such reports shall be filed on a daily basis except for Saturdays, Sundays and legal holidays.

The purpose of this regulation is twofold. It will enable the Board to monitor and enforce the receipt and expenditure limitations and other requirements of §§17-25-18 through 17-25-29. Secondly, it will provide notification to all other candidates for the same office so as to enable them to avail themselves of the provisions of §17-25-24. For this latter purpose, reports shall separately identify as "Expected Contributions" any contributions which the candidate has not yet received but for which he or she has received pledges or commitments, including any loans not yet received but which the candidate reasonably expects to receive either from the candidate himself or herself or from a third party; and

shall also separately identify as "Anticipated Expenditures" any expenditures anticipated to be incurred (though not yet paid or even formally contracted for) such as, but not limited to, the reservation of television or radio time or print media space.

The intent and thrust of this regulation is to prevent a candidate from deferring either contributions or expenditures until a point in time when it will be difficult or impossible for an opponent to raise and expend before the election an additional sum of money as permitted by §17-25-24.

All contributions and expenditures shall be reported regardless of the amount, notwithstanding any other provisions of Chapter 17-25.

Except as herein or in the regulations under §17-25-21 otherwise provided, all reports required under this regulation shall be in addition to all other reports required under Chapter 17-25.

The form to be used for reporting to the Board under this regulation shall be the same form to be used for reporting under the §17-25-21 regulations. The summary reports required under this regulation need not be signed by the candidate so long as they are signed by his or her campaign treasurer or a deputy campaign treasurer whose names are on file with the Board. However, the candidate shall be responsible for the contents of such reports even though not a signatory thereto.

17-25-28: The Board may audit all of the campaign records of any candidate for general office whether or not said candidate is participating in the public funding program. For such purposes, candidates and their campaigns are directed to retain complete records until the close of the third full year following the end of each election cycle. Among the records to be kept and maintained are the following:

With respect to RECEIPTS: copies of all checks, money orders or like instruments representing contributions received, and copies of deposit slips. Also to be kept and maintained are all deposit receipts, and bank statements or comparable statements issued by the depository or custodian of campaign funds.

With respect to EXPENDITURES: cancelled checks, receipts or invoices for expenditures incurred and/or paid, receipts for cash expenditures, bank statements or comparable statements, credit or charge card statements, payroll records including tax reports, if any, and W-2 or 1099 forms.

In all hearings and proceedings before the State Board of Elections relating to public funding of campaigns of candidates for general office, all testimony shall be under oath. All parties shall have the right to call and examine witnesses, to introduce exhibits, to cross-examine witnesses who testify, to submit evidence, and to be represented by counsel. All witnesses shall be entitled to be represented by counsel. The rules of evidence as applicable in the Superior Court of the State of Rhode Island shall apply to all such proceedings under §17-25-28.

Investigations conducted by the Board of Elections to determine violations of the provisions of §§17-25-18 through 17-25-29 and §17-25-10.1 shall be conducted as provided in those sections and in accordance with the opinion of the Office of the Attorney General encompassed in the appended letters dated respectively August 30, 1988 and October 3, 1988.

By Order of
Rhode Island State Board of Elections

Joseph R. DiStefano, Chairman

ADOPTED AT A MEETING OF THE BOARD OF ELECTIONS HELD ON
JANUARY 26, 1993.

ATTEST: Janet L. Armstrong, Secretary

REPEAL

August 30, 1988

Honorable James E. O'Neil
Attorney General
72 Pine Street
Providence, Rhode Island 02903

Dear Attorney General O'Neil:

Enclosed please find a copy of legislation enacted by the Rhode Island General Assembly during its January, 1988 Session, numbered 88-H9145 substitute A, "An Act Relating to Campaign Financing – Matching Public Funds."

Your attention is particularly directed to Section 17-25-28 under which the Board of Elections is empowered to conduct investigations and/or hearings relative to alleged violations of Sections 17-25-18 through 17-25-27. The section seems to indicate that the Board may initiate preliminary investigations into alleged violations of this section. All Board proceedings and records relative to such preliminary investigations shall be confidential. It also appears to indicate that if the preliminary investigation fails to indicate reasonable cause for belief that a violation has occurred, the Board shall immediately terminate the investigation and notify the complainant, if any, and the person who had been the subject of the investigation. However, at this point the statute becomes somewhat murky because, in committee the legislature struck the sentence which required that all Board records and proceedings from such an investigation shall remain confidential.

It is our opinion that the statute requires both proceedings and records to remain confidential in those instances where the Board has no reasonable cause to believe that a violation has occurred. We ask your opinion in this regard. In our view, making the records and proceedings public after a finding that no violation has occurred would appear to contravene the intent of the General Assembly notwithstanding the fact that the words "All board records and proceedings from such an investigation shall remain confidential." were stricken by the General Assembly in committee.

The statute goes on to say that if the preliminary investigation indicates reasonable cause to believe that a violation has occurred, the Board may initiate a full investigation. In our view, once the proceedings shift from a preliminary investigation to a full investigation, the proceedings are no longer confidential.

However, after the end of the full investigation, the Board is required to meet in executive session (which we interpret to mean confidential session) for the purpose of reviewing the evidence before it and publish a written report of its findings and conclusion following the completion of its deliberations. In our view the executive session referred to in the statute refers to the Board's deliberations which are to be confidential provided that the written report of the Board's findings and conclusion must be public.

We ask you for your opinion relative to the conclusions that we have reached under this section of the statute because of our concern for the provisions of the open meetings law. Please note that the above provisions of the statute do not become effective until January 1, 1989.

We next direct your attention to Section 17-25-10.1 which became effective on July 1, 1988 limiting contributions (with certain exceptions) to \$2,000 within a calendar year.

You will note that section 17-25-28 relating to confidential investigations does not appear to apply to a violation of Section 17-25-10.1 nor does Section 17-25-28 give the Board the power to investigate alleged violations of Section 17-25-10.1. The Board's powers in that regard must be found in other sections of Chapter 17-25.

Under Section 17-25-5 (which was not part of the 1988 Act but part of Chapter 17-25 before the 1988 amendment), the Board has the power to perform such duties as are necessary to implement Chapter 17-25 including under subparagraph (7) thereof the power to conduct confidential investigations and/or closed hearings relative to alleged violations of the Chapter.

In our view, Section 17-25-5(7) empowers the Board to conduct preliminary and confidential investigations to ascertain whether Section 17-25-10.1 has been violated. If no violation is found to exist, all records and papers shall be kept confidential, unless such confidentiality is waived in writing by the person complained of.

Again we are concerned as to the nature of the proceedings, i.e. confidential or public, because of our concern for the requirements of the open meetings law.

Would you please review Chapter 17-25 of the General Laws as amended in 1988 and advised us as to whether you concur with our understanding of the Chapter so that we might avoid any misunderstanding in the future.

Inasmuch as Section 17-25-10.1 is already effective, we ask for a prompt response to this request.

Sincerely yours,
Joseph R. DiStefano
Chairman

JRD;jla

Enc.

cc: Board members

October 3, 1988

Joseph R. DiStefano, Chairman
Rhode Island Board of Elections
50 Branch Avenue
Providence, R. I. 02904

Dear Mr. DiStefano:

I write in response to your letter of August 30, 1988 asking for confirmation of your interpretation of the confidentiality provisions of RI Gen. Laws §17-25-1 et seq. I concur entirely with your interpretation as outlined in your letter to me of 30 August 1988.

Very truly yours,

James E. O'Neil
Attorney General

JEO/NTL/cac

REPEAL