

H. B. 2732

(By Delegates Doyle, Brown, Hatfield, Marshall,
Ellem, Moore, Fleischauer and D. Poling)

[Introduced January 21, 2011; referred to the
Committee on the Judiciary.]

**FISCAL
NOTE**

A BILL to amend the Code of West Virginia, 1931, as amended, by
adding thereto a new article, designated §3-13-1, §3-13-2, §3-
13-3, §3-13-4, §3-13-5, §3-13-6, §3-13-7, §3-13-8, §3-13-9,
§3-13-10, §3-13-11, §3-13-12, §3-13-13, §3-13-14, §3-13-15,
§3-13-16, §3-13-17, §3-13-18 and §3-13-19, all relating to
creating the West Virginia Public Campaign Financing Act;
providing alterative campaign financing option for candidates
for the State Senate and House of Delegates through public
funds; setting forth short title and certain legislative
findings and declarations; defining terms; specifying that the
provisions of the act are applicable to candidates for the
offices of State Senate and House of Delegates beginning in
2010; establishing a Public Campaign Financing Fund and
sources of revenue for the fund; requiring an additional
penalty assessment be imposed against violators of
administrative orders, rules of state governmental agencies,

1 boards and commissions; requiring an applicant for public
2 campaign funding to complete a declaration of intent and
3 setting forth the manner in which an application for funding
4 may be made; setting forth eligibility criteria for qualifying
5 party and independent candidates; allowing participating
6 candidates to raise from private sources and spend seed money
7 contributions; requiring candidates seeking public campaign
8 funds to collect a required number of qualifying
9 contributions; requiring candidates to provide detailed
10 receipts to contributors and to the State Election Commission
11 for seed money and qualifying contributions; requiring
12 participating candidates to comply with all provisions of the
13 act; requiring the State Election Commission to certify
14 eligible candidates and setting forth the procedure for
15 certification; providing for distribution of funds from the
16 Public Campaign Financing Fund to qualified candidates for
17 funding election campaigns; specifying the amount of funds
18 available for each candidate and when the funds become
19 available; setting forth restrictions on participating
20 candidates' contributions and spending; prohibiting
21 participating candidates from accepting private contributions
22 other than as specifically set forth in the act; prohibiting
23 the use of personal funds for certain purposes; permitting
24 qualified candidates to raise funds from private sources when

1 there is insufficient money in the Public Campaign Financing
 2 Fund to make a complete distribution to all qualified
 3 candidates; requiring certain disclosures; requiring
 4 candidates to keep records and report to the State Election
 5 Commission; providing for matching public campaign funds when
 6 an opponent spends in excess of the initial funding available
 7 and for independent expenditures on behalf of a
 8 nonparticipating or certified opponent; setting forth certain
 9 duties of the State Election Commission; providing for the
 10 deposit of certain revenue into the fund; requiring repayment
 11 of excessive expenditures by candidates; providing both civil
 12 and criminal penalties for violations of the act; and setting
 13 forth an effective date.

14 *Be it enacted by the Legislature of West Virginia:*

15 That the Code of West Virginia, 1931, as amended, be amended
 16 by adding thereto a new article, designated §3-13-1, §3-13-2, §3-
 17 13-3, §3-13-4, §3-13-5, §3-13-6, §3-13-7, §3-13-8, §3-13-9, §3-13-
 18 10, §3-13-11, §3-13-12, §3-13-13, §3-13-14, §3-13-15, §3-13-16, §3-
 19 13-17, §3-13-18 and §3-13-19, all to read as follows:

20 **ARTICLE 13. WEST VIRGINIA PUBLIC CAMPAIGN FINANCING ACT.**

21 **§3-13-1. Short title.**

22 This article shall be known as the "West Virginia Public
 23 Campaign Financing Act".

24 **§3-13-2. Legislative findings and declarations.**

1 The Legislature hereby finds and declares that current
2 election finance laws:

3 (a) May allow individuals and committees who contribute large
4 amounts of money to have an undue influence on the political
5 process;

6 (b) May diminish the free speech rights of those candidates
7 and voters who are not wealthy because the political process is
8 influenced by individuals and committees who can afford to spend
9 large amounts of money on political communications;

10 (c) May erode public confidence in the democratic process and
11 democratic institutions, leaving much of the electorate questioning
12 whether their elected officials are accountable mostly to the major
13 contributors who finance their campaigns;

14 (d) May allow elected officials to accept large campaign
15 contributions from private interests when they may have statutory
16 or regulatory power over those interests.

17 In contrast, the creation of a public campaign financing
18 system provides qualified candidates for the offices of State
19 Senate and House of Delegates with resources with which to
20 communicate with voters, reverses the escalating cost of elections
21 and frees those candidates from the chore of raising money, thus
22 allowing them more time to conduct their official duties and
23 communicate with their constituents and the creation of a public
24 campaign financing system should improve the integrity of elections

1 in this state by diminishing the influence of special interest
2 contributions, encouraging more citizens to participate in the
3 political process; remove funding as a source of campaign attention
4 and candidate attack; promote freedom of speech and direct the
5 focus of political campaigns to issues of substance.

6 **§3-13-3. Definitions.**

7 As used in this article, the following terms and phrases have
8 the following meanings:

9 (1) "Certified candidate" means an individual seeking
10 nomination or election to the West Virginia State Senate or the
11 House of Delegates who has been certified in accordance with
12 section eleven of this article as having met all the requirements
13 for receiving public campaign financing from the fund.

14 (2) "Clearly identified" means that the name, nickname,
15 photograph, drawing or other depiction of the candidate appears or
16 the identity of the candidate is apparent by an unambiguous
17 reference including, for instance, "your Senator" or "the
18 incumbent", or through an unambiguous reference to his or her
19 status as a candidate including, for instance, "the Democratic
20 candidate for State Senate" or "the Republican candidate for the
21 House of Delegates."

22 (3) "Contribution" means a gift subscription, assessment,
23 payment for services, dues, advance, donation, pledge, contract,
24 agreement, forbearance or promise of money or other tangible thing

1 of value, whether or not conditional or legally enforceable, or a
2 transfer of money or other tangible thing of value to a person,
3 made for the purpose of influencing the nomination, election or
4 defeat of a candidate.

5 (A) An offer or tender of a contribution is not a contribution
6 if expressly and unconditionally rejected or returned.

7 (B) A contribution does not include volunteer personal
8 services provided without compensation or services or property
9 provided to an elected official by the state or a political
10 subdivision to defray the costs of meeting or communicating with
11 constituents while the official is performing the duties of his or
12 her office.

13 (4) "Excess expenditure" means an amount of money spent or
14 obligated to be spent to influence the nomination or election of a
15 nonparticipating candidate or the defeat of a certified candidate
16 for the same office in excess of the public campaign funds
17 available to the certified candidate under section twelve of this
18 article.

19 (5) "Financial agent" means any person acting for and by
20 himself or herself, or any two or more natural persons acting
21 together or cooperating in a financial way to aid or take part in
22 the nomination or election of any political candidate for public
23 office, or to aid or promote the success or defeat of any political
24 party at any election.

1 (6) "Fund" means the Public Campaign Financing Fund created by
2 section five of this article.

3 (7) "General election campaign period" means the period
4 beginning the day after the primary election and ending on the day
5 of the general election in that election year.

6 (8) "Independent expenditure" means an expenditure or
7 obligation made by a person other than a candidate or candidate's
8 committee in support of or opposition to the nomination or election
9 of one or more clearly identified candidates and without
10 consultation or coordination with or at the request or suggestion
11 of the candidate whose nomination or election the expenditure
12 supports or opposes or the candidate's agent. Supporting or
13 opposing the nomination or election of a clearly identified
14 candidate includes supporting or opposing the candidates of a
15 clearly identified political party. An expenditure which does not
16 meet the criteria for an independent expenditure established in
17 this subsection is considered a contribution.

18 (9) "Membership organization" means a group that grants bona
19 fide rights and privileges, including the right to vote, to elect
20 officers or directors, and the ability to hold office, to its
21 members, and which uses a majority of its membership dues for
22 purposes other than political purposes. "Membership organization"
23 does not include organizations that grant membership upon receiving
24 a contribution.

1 (10) "Nonparticipating candidate" means a candidate who is:

2 (A) Seeking election to the State Senate or House of
3 Delegates;

4 (B) Is neither certified nor attempting to be certified to
5 receive public campaign financing from the fund; and

6 (C) Has an opponent who is a participating or certified
7 candidate.

8 (11) "Participating candidate" means a candidate seeking
9 election to the State Senate or House of Delegates and who is
10 attempting to be certified in accordance with section eleven of this
11 article to receive public campaign financing from the fund.

12 (12) "Person" means an individual, partnership, committee,
13 association, and any other organization or group of individuals.

14 (13) "Primary election campaign period" means the period
15 beginning on the first day of the primary election filing period and
16 ending on the day of the subsequent primary election.

17 (14) "Private contribution" means a contribution from any
18 source other than the fund except:

19 (A) Payments by a membership organization for the cost of
20 communicating to its members;

21 (B) Payments by a membership organization for the purpose of
22 facilitating the making of qualifying contributions;

23 (C) Volunteer activity, including the payment of incidental
24 expenses by volunteers; and

1 (D) Voter registration and get-out-the-vote activities
2 conducted by nonpartisan individuals and organizations or which are
3 not intended to influence the election or defeat a particular
4 candidate.

5 (15) "Qualifying contribution" means a contribution of \$5 in
6 the form of a check or money order, made payable to a participating
7 candidate or the candidate's committee, received during the
8 qualifying period, and which is:

9 (A) Made by a registered voter and resident of the district in
10 which the participating candidate is seeking office;

11 (B) Acknowledged by a written receipt; and

12 (C) Gathered by the participating candidate or on behalf of the
13 candidate by an unpaid volunteer with the candidate's knowledge and
14 consent.

15 (16) "Qualifying period" means the period during which
16 participating candidates are permitted to collect qualifying
17 contributions in order to qualify to receive public campaign
18 financing.

19 (A) For candidates seeking nomination on the primary election
20 ballot, the qualifying period begins on November 1, preceding the
21 election year and ends on March 1, of the election year.

22 (B) For candidates, other than those nominated during the
23 primary election, seeking to be placed on the general election
24 ballot, the qualifying period begins on June 1 of the election year

1 and ends on October 1 of the election year.

2 (17) "Seed money contribution" means a contribution of no more
3 than \$100 made by an individual adult, including a participating
4 candidate and members of his or her immediate family, during the
5 seed money period.

6 (18) "Seed money period" means the period during which a
7 participating candidate is permitted to raise and spend seed money
8 contributions to explore his or her chances of election and to
9 qualify for public campaign financing under this article. The seed
10 money period begins on the day after the most recent general
11 election and ends on the last day of the qualifying period in the
12 next election year in which a candidate is running for office.

13 **§3-13-4. Alternative campaign financing option.**

14 This article establishes an alternative public financing option
15 available to candidates for election to the offices of State Senate
16 and House of Delegates. The provisions of this article are
17 applicable to candidates for State Senate and candidates for the
18 House of Delegates from single member districts beginning with the
19 primary and general elections to be held in the year 2012. The
20 provisions of this article are applicable to candidates for the
21 House of Delegates from all other districts beginning with the
22 primary and general elections to be held in the year 2014.
23 Candidates electing the alternative campaign financing option must
24 comply with all other applicable election and campaign laws and

1 regulations.

2 **§3-13-5. Public Campaign Financing Fund, nature and purposes of**
3 **the fund.**

4 There is hereby established a special account in the State
5 Treasury to be known as the "Public Campaign Financing Fund" for the
6 dual purposes of providing public financing for the election
7 campaigns of certified candidates under the provisions of this
8 article and of paying the administrative and enforcement costs of
9 the State Election Commission related to this article. All moneys
10 collected under the provisions of this article shall be deposited
11 in the fund, which shall be administered by the State Election
12 Commission. Expenditures may be made from the fund only for the
13 purposes set forth in this article.

14 **§3-13-6. Sources of revenue for the fund.**

15 Revenue from the following sources shall be deposited in the
16 fund:

17 (a) All qualifying contributions collected by participating
18 candidates or their committees.

19 (b) Unspent or unobligated seed money contributions.

20 (c) Money returned by participating candidates who fail to
21 comply with the provisions of this article.

22 (d) Unspent or unobligated moneys allotted to qualified
23 candidates and remaining unspent or unobligated on the date of the
24 primary or general election for which the money was distributed.

1 (e) Civil penalties levied by the State Election Commission
2 against candidates for violations of this article.

3 (f) Voluntary donations made directly to the fund.

4 (g) Interest income.

5 (h) Revenue from a tax checkoff program, to be developed by the
6 Tax Commissioner, allowing a resident of the state to designate on
7 his or her income tax return up to \$3 of taxes for deposit into the
8 fund. If a husband and wife file a joint return, each spouse may
9 designate up to \$3 for deposit into the fund. All amounts so
10 designated shall be appropriated from the General Fund and credited
11 to the Public Campaign Financing Fund.

12 (i) Surcharges imposed on administrative, civil or criminal
13 finances and criminal penalties pursuant to section seven of this
14 article.

15 (j) Money appropriated to the fund.

16 **§3-13-7. Additional penalty assessment imposed against violators**
17 **of administrative orders, rules of state governmental**
18 **agencies, boards and commissions.**

19 On and after July 1, 2011, in addition to all other criminal
20 or administrative fines or penalties which may be imposed by law,
21 there is hereby imposed an additional penalty assessment levied and
22 collected in an amount equal to ten percent of every administrative
23 or criminal fine or penalty which has been assessed against any
24 person, partnership, corporation or limited liability company for

1 the violation of any rule, regulation or order promulgated by any
2 state board, agency or commission, or for any violation of any state
3 law that is enforced by any state board, agency or commission
4 whenever the total amount of the collective criminal or
5 administrative fines or penalties assessed equal or exceed \$1,000.
6 The additional penalties and assessments imposed in accordance with
7 this section shall be collected by the state board, agency or
8 commission and forwarded to the State Treasurer for deposit into the
9 Public Campaign Financing Fund.

10 **§3-13-8. Declaration of intent.**

11 A candidate desiring to receive campaign financing from the
12 fund must first file a declaration of intent to seek certification
13 as a participating candidate for State Senate or House of Delegates
14 before the end of the qualifying period and prior to collecting any
15 qualifying contributions. The declaration shall be on a form
16 prescribed by the State Election Commission and shall contain a
17 statement that the candidate is qualified to be placed on the
18 ballot, and, if elected, to hold the office sought and has complied
19 with and will continue to comply with all requirements of this
20 article, including contribution and expenditure restrictions.
21 Contributions made prior to the filing of the declaration of intent
22 are not qualifying contributions.

23 **§3-13-9. Seed money.**

24 (a) A participating candidate or his or her committee may not

1 accept seed money in contributions exceeding, in the aggregate:

2 (1) Five thousand dollars for a candidate for State Senate; and

3 (2) Two thousand dollars for a candidate for House of
4 Delegates.

5 (b) Every seed money contribution must be acknowledged by a
6 written receipt. Receipts for seed money contributions of \$25 or
7 more shall include the contributor's signature, printed name, street
8 address and zip code, telephone number, occupation and name of
9 employer. Receipts for seed money contributions of less than \$25
10 shall contain, at a minimum, the contributor's signature, printed
11 name and address. Contributions which are not acknowledged by a
12 proper receipt do not qualify as seed money contributions.

13 (c) A contribution from one person may not be made in the name
14 of another person.

15 (d) Upon certification or at the end of the seed money period,
16 whichever comes first, a participating or certified candidate or his
17 or her committee shall forward all unspent or unobligated seed money
18 to the State Election Commission for deposit in the fund.

19 **§3-13-10. Qualifying contributions.**

20 (a) No participating candidate or his or her committee may
21 accept more than one qualifying contribution from a single
22 individual.

23 (b) Every qualifying contribution must be acknowledged by a
24 written receipt which includes:

1 (1) The printed name of the participating candidate on whose
2 behalf the contribution is made and the signature of the person who
3 collected the contribution for the candidate or his or her
4 committee;

5 (2) The contributor's signature and printed name, home address
6 and telephone number;

7 (3) A statement near the contributor's signature that:

8 (A) The contributor understands the purpose of the contribution
9 is to assist the participating candidate in obtaining public
10 campaign financing;

11 (B) The contribution was made without coercion;

12 (C) The contributor has not been reimbursed or received
13 anything of value for making the contribution; and

14 (D) The individual soliciting the contribution on behalf of the
15 participating candidate has not been reimbursed or received anything
16 of value for the services.

17 (4) One copy of the receipt is to be given to the contributor,
18 one copy is to be retained by the candidate and one copy is to be
19 sent by the candidate to the State Election Commission. A
20 contribution which is not acknowledged by a written receipt in the
21 form required by this subsection is not a qualifying contribution.

22 (c) During the qualifying period, a participating candidate or
23 his or her committee must obtain at least the following number of
24 qualifying contributions for the office he or she is seeking:

1 (1) For State Senate (eighth and seventeenth districts) - 400;

2 (2) For State Senate (all other districts) - 250;

3 (3) For House of Delegates (seven-member district) - 250;

4 (4) For House of Delegates (six-member district) - 225;

5 (5) For House of Delegates (five-member district) - 200;

6 (6) For House of Delegates (four-member district) - 175;

7 (7) For House of Delegates (three-member district) - 150;

8 (8) For House of Delegates (two-member district) - 125; and

9 (9) For House of Delegates (one-member district) -100.

10 (d) A participating candidate and each member of the
11 candidate's immediate family who is a registered voter and resident
12 of the district in which the candidate is seeking office may make
13 one qualifying contribution. A participating candidate may not use
14 any other personal funds to satisfy the qualifying contributions
15 requirements.

16 (e) A participating candidate may not give reimbursement or
17 anything of value in exchange for a qualifying contribution.

18 (f) All qualifying contributions collected by a participating
19 candidate or his or her committee must be deposited in the fund no
20 later than forty-eight hours after the close of the qualifying
21 period.

22 **§3-13-11. Certification of candidates.**

23 (a) In order to be certified, a participating candidate shall
24 apply to the State Election Commission for public campaign financing

1 from the fund and file a sworn statement that he or she has complied
2 and will comply with all requirements of this article throughout the
3 applicable campaign.

4 (b) Upon receipt of a notice that a participating candidate has
5 received the required number of qualifying contributions, the State
6 Election Commission shall determine whether the candidate:

7 (1) Has signed and filed a declaration of intent as required
8 by section eight of this article;

9 (2) Has obtained, either personally or through his or her
10 committee, the required number of qualifying contributions as
11 required by section ten of this article;

12 (3) Has not accepted other contributions, except for seed money
13 contributions, and otherwise complied with the contribution
14 restrictions of this article;

15 (4) Is eligible to appear on the primary or general election
16 ballot; and

17 (5) Has met all other requirements of this article.

18 (c) A candidate who, personally or through his or her
19 committee, has accepted contributions or expended funds from private
20 donations with regard to the elections to be held in 2012 and 2014
21 may nevertheless be certified under this article if the candidate
22 or his or her committee returns to the contributor, submits to the
23 State Election Commission for deposit into the fund or donates to
24 charity funds accepted but not expended or obligated before the

1 effective date of this article.

2 (d) The State Election Commission shall process applications
3 in the order they are received and shall verify a participating
4 candidate's compliance with the requirements of subsection (b) by
5 the verification and sampling techniques approved by the State
6 Election Commission.

7 (e) The State Election Commission shall determine a
8 participating candidate's eligibility to receive public campaign
9 financing no later than three business days after the candidate
10 makes his or her final submission of qualifying contributions or,
11 if a challenge is filed under subsection (h) of this section, no
12 later than six business days after the candidate makes his or her
13 final submission of qualifying contributions. Upon certification,
14 a candidate shall transfer to the fund any unspent seed money
15 contributions. A certified candidate shall comply with the
16 provisions of this article through the general election campaign
17 period.

18 (f) If the State Election Commission determines that a
19 participating candidate is eligible to receive public campaign
20 financing under the provisions of subsection (b), the State Election
21 Commission shall within forty-eight hours issue a check for or
22 transfer to the candidate's campaign depository account an amount
23 equal to the initial public financing benefit for which the
24 candidate qualifies under section twelve of this article and shall

1 notify all other candidates for the same office of its
2 determination.

3 (g) If the candidate desires to receive public financing
4 benefits by electronic transfer, the candidate shall include in his
5 or her application sufficient information and authorization for the
6 State Treasurer to transfer payments to his or her campaign
7 depository account.

8 (h) Any person may challenge the validity of any contribution
9 listed by a participating candidate by filing a written challenge
10 with the State Election Commission setting forth any reason why the
11 contribution should not be accepted as a qualifying contribution.
12 Within five business days of a challenge, the candidate who listed
13 any contribution that is the subject of a challenge may file with
14 the State Election Commission an additional contribution collected
15 pursuant to section ten of this article for consideration as a
16 qualifying contribution. If a contribution is challenged under this
17 subsection, the State Election Commission shall decide the validity
18 of the challenge no later than the end of the next business day
19 after the day that the challenge is filed, unless the State Election
20 Commission determines that the candidate whose contribution is
21 challenged has sufficient qualifying contributions to be certified
22 as a candidate under this section without considering the challenge.

23 (i) A candidate's right to receive public campaign financing
24 may be revoked by the State Election Commission if the candidate

1 violates any of the provisions of this article. A certified
2 candidate who has been found to have violated the provisions of this
3 article shall repay all moneys received from the fund to the State
4 Election Commission.

5 (j) The determination of any issue before the State Election
6 Commission is the final administrative determination. Any person
7 adversely affected by a decision of the State Election Commission
8 under the provisions of this article may appeal that decision to the
9 circuit court of Kanawha County.

10 (k) A candidate may withdraw from being a certified candidate
11 and become a nonparticipating candidate at anytime with the approval
12 of the State Election Commission. Any candidate seeking to withdraw
13 shall file a written request with the State Election Commission,
14 which shall consider requests on a case by case basis. No certified
15 candidate may be permitted to withdraw until he or she has repaid
16 all moneys received from the fund: *Provided, That the State*
17 Election Commission may, in exceptional circumstances, waive the
18 repayment requirement. The State Election Commission may assess a
19 penalty against any candidate who withdraws without approval.

20 **§3-13-12. Schedule and amount of Public Campaign Financing Fund**
21 **payments.**

22 (a) The State Election Commission shall make public campaign
23 financing funds for the primary election campaign period available
24 to a certified candidate within forty-eight hours after the date on

1 which the candidate is certified.

2 (1) In a contested primary election, a certified candidate may
3 receive initial campaign financing from the fund as follows:

4 (A) State Senate (eighth and seventeenth districts) - \$35,000;

5 (B) For State Senate (all other districts) - \$20,000;

6 (C) For House of Delegates (seven-member district) - \$22,500;

7 (D) For House of Delegates (six-member district) - \$20,000;

8 (E) For House of Delegates (five-member district) - \$17,500;

9 (F) For House of Delegates (four-member district) - \$15,000;

10 (G) For House of Delegates (three-member district) - \$12,500;

11 (H) For House of Delegates (two-member district) - \$10,000; and

12 (I) House of Delegates (one-member district) - \$7,500.

13 (2) In an uncontested primary election, a certified candidate
14 may receive campaign financing from the fund equal to twenty-five
15 percent of the amount available in a contested primary election for
16 the same office.

17 (b) The State Election Commission shall make public campaign
18 financing funds for the general election campaign period available
19 to a certified candidate within forty-eight hours after the primary
20 election results are certified by the Secretary of State.

21 (1) In a contested general election, a certified candidate may
22 receive from the fund the same amount of campaign financing
23 available for a contested primary election under subdivision (1),
24 subsection (a) of this section.

1 (2) In an uncontested general election, a certified candidate
2 may receive from the fund campaign financing equal to ten percent
3 of the amount available in a contested general election for the same
4 office.

5 (c) The State Election Commission may not distribute revenues
6 to certified candidates in excess of the total amount of money
7 deposited in the fund pursuant to section six of this article.

8 **§3-13-13. Restrictions on contributions and expenditures.**

9 (a) A certified candidate or his or her committee may not
10 accept contributions from any private source, including the personal
11 funds of the candidate and the candidate's immediate family, during
12 the primary or general election campaign periods except as permitted
13 by this article.

14 (b) After filing the declaration of intent and through the
15 qualifying period, a participating candidate may spend or obligate
16 no more than he or she has collected in seed money contributions.
17 After the qualifying period and through the general election
18 campaign period, a certified candidate may spend or obligate only
19 the funds he or she receives from the fund under the provisions of
20 section twelve or section fifteen of this article.

21 (c) A participating or certified candidate may expend seed
22 money and campaign financing from the fund only for campaign-related
23 activities as provided in section nine, article
24 eight, chapter three of this code. Moneys distributed to a

1 certified candidate from the fund may be expended only during the
2 campaign period for which funds were dispersed. Money from the fund
3 may not be used:

4 (1) In violation of the law;

5 (2) To repay any personal, family or business loans,
6 expenditures, or debts; or

7 (3) To help any other candidate.

8 (d) Notwithstanding any other provision of this article to the
9 contrary, if at anytime during an election period, the State
10 Election Commission determines that the revenues in the fund are
11 insufficient to complete the distribution of funds required under
12 this article, the State Election Commission may permit a certified
13 candidate or his or her committee to accept and expend
14 contributions, aggregating no more than \$1,000 per contributor, from
15 private sources up to the amount that would have been distributed
16 to the candidate under section twelve or fifteen of this article had
17 there been adequate money in the fund. The State Election
18 Commission shall propose rules for legislative approval as provided
19 by the provisions of section sixteen of this article to provide a
20 fair procedure for the equitable distribution of those moneys that
21 are in the fund and available for distribution among the certified
22 candidates at the time the revenues in the fund are insufficient for
23 complete distribution of funds as anticipated under the provisions
24 of this article.

1 (e) A certified candidate or his or her committee must return
2 to the fund any unspent and uncommitted public campaign financing
3 funds within forty-eight hours after:

4 (1) The date of the primary or general election;

5 (2) The date on which the candidate ceases to be certified; or

6 (3) The date on which the individual ceases to be a candidate.

7 (f) A contribution from one person may not be made in the name
8 of another person.

9 (g) A participating or certified candidate or his or her
10 committee receiving qualifying contributions or seed money
11 contributions from a person not listed on the receipt required by
12 sections nine and ten of this article is liable to the State
13 Election Commission for the entire amount of that contribution and
14 any applicable penalties.

15 (h) A certified candidate accepting any benefits under the
16 provisions of this article shall continue to comply with all of its
17 provisions throughout the primary and general elections.

18 (i) A participating or certified candidate or his or her
19 financial agent shall provide the State Election Commission with all
20 requested campaign records, including all records of seed money and
21 qualifying contributions received and campaign expenditures and
22 obligations, and shall fully cooperate with any audit of campaign
23 finances requested or authorized by the State Election Commission.

24 **§3-13-14. Reporting requirements.**

1 (a) No later than forty-eight hours after the close of the
2 qualifying period, a participating candidate or his or her financial
3 agent shall report to the State Election Commission on approved
4 forms an itemized summary of:

5 (1) All seed money contributions received and funds expended
6 or obligated during the seed money period, together with copies of
7 all receipts for seed money contributions.

8 (2) All qualifying contributions received during the qualifying
9 period, together with copies of all receipts for qualifying
10 contributions.

11 (b) Within five days after the primary election and within five
12 days of the general election a certified candidate or his or her
13 financial agent shall report to the State Election Commission on
14 approved forms an itemized summary of all funds received and funds
15 expended or obligated prior to the election.

16 (c) In addition to the financial statements required to be
17 filed by a candidate for public office pursuant to section five,
18 article eight of this chapter, a nonparticipating candidate or his
19 or her financial agent shall report to the State Election Commission
20 on approved forms an itemized summary of his or her campaign
21 expenditure or obligations, according to the following provisions
22 and guidelines:

23 (1) On the first Saturday in March or within six days
24 thereafter listing the nonparticipating candidates expenditures and

1 obligations prior to March 1, if, the nonparticipating candidate's
2 campaign expenditures or obligations, in the aggregate, exceed by
3 twenty percent the initial funding available to any certified
4 candidate for the same office under section twelve of this article.

5 (2) Beginning on April 1, listing any additional excess
6 expenditures or obligations, in the aggregate, that exceed by twenty
7 percent the initial funding available to any certified participating
8 candidate running for the same office under section twelve of this
9 article which have taken place subsequent to those reported on the
10 financial statement required to be filed by a candidate for public
11 office pursuant to subdivision (1), subsection (b), section five,
12 article eight of this chapter. Thereafter, any additional excess
13 expenditures or obligations, in the aggregate, that exceed by twenty
14 percent the initial funding available to any certified candidate
15 running for the same office under section twelve of this article
16 made prior to the tenth day before the primary election shall be
17 reported to the State Election Commission within forty-eight hours.

18 (3) On the first Saturday in July or within six days thereafter
19 listing the nonparticipating candidates expenditures and obligations
20 prior to July 1, subsequent to the primary election, if, the
21 nonparticipating candidate's expenditures or obligations, in the
22 aggregate, exceed by twenty percent the initial funding available
23 to any certified candidate running for the same office under section
24 twelve of this article.

1 (4) Beginning on the first Saturday in October, listing any
2 additional excess expenditures or obligations, in the aggregate,
3 that exceed by twenty percent the initial funding available to any
4 certified candidate running for the same office under section twelve
5 of this article which have taken place subsequent to those reported
6 on the financial statement required to be filed by a candidate for
7 public office pursuant to subdivision (4), subsection (b), section
8 five, article eight of this chapter. Thereafter, any additional
9 excess expenditures or obligations, in the aggregate, that exceed
10 by twenty percent the initial funding available to any certified
11 candidate running for the same office under section twelve of this
12 article made prior to the tenth day before the general election
13 shall be reported to the State Election Commission within forty-
14 eight hours.

15 (5) During the last ten days before the primary or general
16 election, the nonparticipating candidate or his or her financial
17 agent shall report to the State Election Commission within twenty-
18 four hours thereof every additional excess campaign expenditure or
19 obligation, in the aggregate, that exceeds by twenty percent the
20 initial funding available to any certified candidate running for the
21 same office under section twelve of this article.

22 (d) Any person, organization or entity making independent
23 expenditures advocating the election or defeat of a certified
24 candidate or the nomination or election of any candidate who is

1 opposed by a certified candidate in excess of \$1,000 in the
2 aggregate shall report these expenditures to the State Election
3 Commission on approved forms within forty-eight hours of the
4 expenditure. The reporting form shall state the name of the person
5 or entity making the independent expenditures, the names of and
6 office for which the candidates are seeking election, whether
7 expenditure advocated the nomination, election or defeat of a
8 particular candidate, and the name of any candidate who stands to
9 benefit from the independent expenditures.

10 (e) During the last ten days before the primary or general
11 election any person, organization or entity making independent
12 expenditures advocating the election or defeat of any candidate,
13 including the election or defeat of a certified candidate or the
14 nomination or election of any candidate who is opposed by a
15 certified candidate, shall continue to file reports as required
16 pursuant to subsection (b), section two, article eight of this chapter.

17 **§3-13-15. Matching funds.**

18 (a) If the State Election Commission determines from reports
19 filed by a nonparticipating candidate pursuant to section five,
20 article eight of this chapter or pursuant to subsection (c), section
21 fourteen of this article that a nonparticipating candidate's
22 campaign excess expenditures or obligations, in the aggregate, have
23 exceeded by twenty percent the initial funding available under
24 section twelve of this article to any certified candidate running

1 for the same office, the State Election Commission shall immediately
2 release additional campaign financing funds to any opposing
3 certified candidate for the same office equal to the amount of the
4 excess expenditures.

5 (b) If the State Election Commission determines from reports
6 filed pursuant to subsection (d), section fourteen of this article
7 or pursuant to subsection (b), section two, article eight of this
8 chapter that independent expenditures on behalf of a
9 nonparticipating candidate, either alone or in combination with the
10 nonparticipating candidate's campaign expenditures or obligations,
11 have exceeded by twenty percent the initial funding available under
12 section twelve of this article to any certified candidate running
13 for the same office, the State Election Commission shall immediately
14 release additional campaign financing funds to any certified
15 candidate who is an opponent for the same office equal to the amount
16 of the excess expenditures.

17 (c) If the State Election Commission determines from reports
18 filed pursuant to subsection (d), section fourteen of this article
19 or pursuant to subsection (b), section two, article eight of this
20 chapter that independent expenditures on behalf of a certified
21 candidate, in combination with the certified candidate's campaign
22 expenditures or obligations, exceed by twenty percent the initial
23 funding available under section twelve of this article to any
24 certified candidate running for the same office, the State Election
25 Commission shall immediately release additional campaign financing

1 funds to any other certified candidate who is an opponent for the
2 same office equal to the amount of the excess expenditures.

3 (d) Matching funds paid out to a certified candidate under this
4 section are limited to two times the initial amount of public
5 campaign financing available to a certified candidate for the same
6 office pursuant to section twelve of this article.

7 **§3-13-16. Duties of the State Election Commission.**

8 (a) In addition to its other duties, the State Election
9 Commission shall:

10 (1) Prescribe forms for reports, statements, notices and other
11 documents required by this article;

12 (2) Prepare and publish information about this article and
13 provide it to potential candidates and the citizens of this state;

14 (3) Prepare and publish instructions setting forth methods of
15 bookkeeping and preservation of records to facilitate compliance
16 with this article and explaining the duties of candidates and others
17 participating in elections under the provisions of this article;

18 (4) Make an annual report to the Legislature accounting for
19 moneys in the fund, describing the State Election Commission's
20 activities, and listing any recommendations for changes of law,
21 administration or funding amounts;

22 (5) Propose rules for legislative approval in accordance with
23 the provisions of article three, chapter twenty-nine-a of this code
24 as may be necessary for the proper administration of the provisions
25 of this article;

1 (6) Enforce the provisions of this article to ensure that
2 moneys from the fund are placed in candidate campaign accounts and
3 spent as specified in this article;

4 (7) Monitor reports filed pursuant to this article and the
5 financial records of candidates to ensure that qualified candidates
6 receive matching funds promptly and to ensure that moneys required
7 by this article to be paid to the fund are deposited in the fund.

8 (8) Cause an audit of the fund to be conducted by independent
9 certified public accountants ninety days after a general election.
10 The State Election Commission shall cooperate with the audit,
11 provide all necessary documentation and financial records to the
12 Auditor and maintain a record of all information supplied by the
13 audit.

14 (9) Ensure public access to the campaign finance reports
15 required pursuant to this article, and whenever possible, use
16 electronic means for the reporting, storing and display of the
17 information; and

18 (10) Prepare a voters' guide for the general public listing the
19 names of each candidate of each candidate seeking elected office.
20 Both certified and nonparticipating candidates shall be invited by
21 the State Election Commission to submit a statement, not to exceed
22 five hundred words in length for inclusion in the guide. The guide
23 shall identify the candidates that are certified candidates and the
24 candidates that are nonparticipating candidates. Copies of the
25 guide shall be posted on the website of the Secretary of State as

1 soon as may be practical.

2 (b) To fulfill its responsibilities under this article, the
3 State Election Commission may subpoena witnesses, compel their
4 attendance and testimony, administer oaths and affirmations, take
5 evidence and require by subpoena the production of any books,
6 papers, records, or other items material to the performance of the
7 State Election Commission's duties or the exercise of its powers.
8 The State Election Commission may also propose and adopt procedural
9 rules to carry out the purposes and provisions of this article and
10 to govern procedures of the State Election Commission.

11 **§3-13-17. Criminal penalties.**

12 (a) A participating or certified candidate who, either
13 personally or through his or her committee, knowingly accepts
14 contributions or benefits in excess of those allowed under this
15 article, spends or obligates funds in excess of the public campaign
16 financing funding to which they are entitled, or uses the benefits
17 or funding for a purpose other than those permitted under this
18 article is guilty of a misdemeanor and, upon conviction thereof,
19 shall be fined not less than \$50 nor more than \$500, or confined in
20 jail for up to thirty days, or both fined and confined.

21 (b) A participating or certified candidate who, either
22 personally or through his or her committee or financial agent,
23 provides false information to or conceals or withholds information
24 from the State Election Commission is guilty of a misdemeanor and,
25 upon conviction thereof, shall be fined not less than \$1,000 nor

1 more than \$10,000, or confined in jail for up to one year, or both
2 fined and confined.

3 **§3-13-18. Civil penalties.**

4 (a) If a participating or certified candidate or his or her
5 committee or financial agent unintentionally accepts contributions
6 from a private source in violation of the provisions of this article
7 or spends or obligates to spend more than the amount of public
8 financing money he or she is eligible to receive from the fund
9 pursuant to section twelve or fifteen of this article, the State
10 Election Commission may order the candidate to pay to the State
11 Election Commission an amount equal to the amount of the private
12 contribution or excess expenditure or obligation.

13 (b) If a participating or certified candidate or his or her
14 committee or financial agent intentionally accepts contributions
15 from a private source in violation of this article or spends or
16 obligates more than the amount of public campaign financing he or
17 she is eligible to receive from the fund, the State Election
18 Commission shall order the candidate to pay to the State Election
19 Commission an amount equal to ten times the amount of the private
20 contribution or excess expenditure or obligation. The candidate
21 shall pay the civil penalty authorized under this subsection within
22 seven days of receipt of written notice from the State Election
23 Commission of the imposition of the penalty.

24 (c) If a participating or certified candidate fails to pay any
25 moneys required to be paid to the State Election Commission or

1 returned to the fund under this article, the State Election
2 Commission may order the candidate to pay an amount equal to three
3 times the amount that should have been paid to the State Election
4 Commission or returned to the fund.

5 (d) In addition to any other penalties imposed by law, the
6 State Election Commission may impose a civil penalty for a violation
7 by or on behalf of any candidate of any reporting requirement
8 imposed by this article in the amount of \$100 per day. The penalty
9 shall be doubled if the amount not reported for a specific election
10 exceeds ten percent of the initial amount of public financing
11 available to a certified candidate in a primary or general election
12 pursuant to section twelve of this article.

13 (e) All penalties collected by the State Election Commission
14 pursuant to this section shall be deposited into the fund. The
15 candidate and the candidate's campaign account are jointly and
16 severally responsible for the payment of any penalty imposed
17 pursuant to this section.

18 **§3-13-19. Effective date.**

19 The provisions of this article are effective July 1, 2011.

NOTE: The purpose of this bill is to create a system for public funding of election campaigns for candidates for the State Senate and House of Delegates who agree to and do abide by restrictions on campaign contributions from private sources and limits on campaign spending.

This article is new; therefore, it has been completely underscored.