

1 **H. B. 2805**

2
3 (By Delegates Manchin, Miley, Ellem, Lane, Fleischauer,
4 Manypenny, Guthrie, Caputo, Reynolds, White and Skinner)

5
6 [Introduced March 4, 2013; referred to the
7 Committee on the Judiciary then Finance.]

8 **FISCAL**
9 **NOTE**

10 A BILL to repeal §3-12-17 of the Code of West Virginia, 1931, as
11 amended; to amend and reenact §3-1A-5 of said code; and to
12 amend and reenact §3-12-1, §3-12-2, §3-12-3, §3-12-4, §3-12-6,
13 §3-12-7, §3-12-9, §3-12-10, §3-12-11, §3-12-13, §3-12-14 and
14 §3-12-16 of said code, all relating to making the West
15 Virginia Supreme Court of Appeals Public Campaign Financing
16 Pilot Program a permanent program; providing an additional
17 finding; modifying an existing definition; deleting a
18 definition; providing that a candidate may not collect
19 exploratory contributions after filing a declaration of
20 intent; limiting the amounts an individual may contribute
21 during certain periods; requiring all contributions to
22 candidates participating in the program be collected by the
23 candidate's financial agent; increasing the amounts of
24 financing certified candidates may receive in contested
25 elections; removing provisions that permit the release of

1 additional funds in certain circumstances; removing certain
2 reporting requirements; and removing a provision permitting
3 the doubling of civil penalties.

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

5 That §3-12-17 of the Code of West Virginia, 1931, as amended,
6 be repealed; that §3-1A-5 of said code be amended and reenacted;
7 and that §3-12-1, §3-12-2, §3-12-3, §3-12-4, §3-12-6, §3-12-7,
8 §3-12-9, §3-12-10, §3-12-11, §3-12-13, §3-12-14 and §3-12-16 of
9 said code be amended and reenacted, all to read as follows:

10 **ARTICLE 1A. STATE ELECTION COMMISSION AND SECRETARY OF STATE.**

11 **§3-1A-5. Powers and duties of commission; legislative rules.**

12 (a) The commission has the power and duty to approve or
13 disapprove applications for approval of any voting machine as
14 provided in section seven, article four of this chapter.

15 (b) The commission also shall serve as a body advisory to the
16 Secretary of State, and, as such, shall have the following powers
17 and duties:

18 (1) To recommend policies and practices pertaining to the
19 registration of voters and the conduct of elections generally;

20 (2) To review the work of the office of Secretary of State
21 pertaining to the duties of that office with respect to elections,
22 and for this purpose to have access at reasonable times to
23 pertinent records, books, papers and documents;

24 (3) To consider and study the election practices of other

1 jurisdictions, with a view to determining the techniques used in
2 eliminating fraud in elections and in simplifying election
3 procedures;

4 (4) To advise or make recommendations to the Governor relative
5 to election practices and policy in the state;

6 (5) To advise the Secretary of State on carrying out the
7 duties to which he or she is assigned pursuant to the West Virginia
8 Supreme Court of Appeals Public Campaign Financing ~~Pilot~~ Program,
9 established in article twelve of this chapter;

10 (6) To carry out the duties assigned to the commission by the
11 West Virginia Supreme Court of Appeals Public Campaign Financing
12 ~~Pilot~~ Program, established in article twelve of this chapter; and

13 (7) To keep minutes of the transactions of each meeting of the
14 commission, which shall be public records and filed with the
15 Secretary of State.

16 (c) It is the commission's further duty to prepare and
17 distribute in its name, within available appropriations and upon
18 the recommendation of the Secretary of State, nonpartisan
19 educational material to inform voters of the importance of voting,
20 to encourage voters to vote, to inform voters of election laws and
21 procedures, and to inform voters of the effect of any public
22 question, Constitutional amendment or bond issue that is to be
23 voted upon by all the voters of the state and that has been
24 authorized to be placed upon the ballot by the Legislature, and

1 manuals to assist county commissions, ballot commissioners, circuit
2 and county clerks and other election officials in the proper
3 performance of their duties in the conduct of elections.

4 (d) The commission shall propose for promulgation emergency
5 and legislative rules, in accordance with ~~the provisions of~~ article
6 three, chapter twenty-nine-a of this code, as may be necessary to
7 standardize and make effective the administration of ~~the provisions~~
8 ~~of~~ article eight of this chapter, and may propose for promulgation
9 other rules, in accordance with ~~the provisions of~~ article three,
10 chapter twenty-nine-a of this code, relating to the conduct and
11 administration of elections as the commission determines to be
12 advisable.

13 (e) Meetings of the commission conducted for the purpose of
14 confirming the initial eligibility of individual candidates to
15 receive public campaign financing under the West Virginia Supreme
16 Court of Appeals Public Campaign Financing Fund; ~~the authorization~~
17 ~~of supplemental distributions from the fund;~~ and the candidate's
18 ability to receive supplemental distributions pursuant to ~~the~~
19 ~~provisions of~~ chapter twelve of this article are expressly exempted
20 from the public notice and public meeting requirements of article
21 nine-a, chapter six of this code.

22 **ARTICLE 12. WEST VIRGINIA SUPREME COURT OF APPEALS PUBLIC**
23 **CAMPAIGN FINANCING PROGRAM.**

24 **§3-12-1. Short title.**

1 This article is known as the "West Virginia Supreme Court of
2 Appeals Public Campaign Financing ~~Pilot~~ Program." ~~The pilot~~
3 ~~program begins with the exploratory period for the 2012 primary~~
4 ~~election and continues through the 2012 general election.~~

5 **§3-12-2. Legislative findings and declarations.**

6 The Legislature finds and declares the following:

7 (1) Current campaign finance laws permit candidates to spend
8 unlimited amounts of money raised from private sources;

9 (2) Current campaign finance laws permit certain independent
10 parties to raise and spend unlimited amounts of money to influence
11 the outcome of elections;

12 (3) Over the last decade, fundraising and campaign
13 expenditures in elections for a seat on the Supreme Court of
14 Appeals have dramatically increased in West Virginia;

15 (4) In 2000, candidates running for a seat on the Supreme
16 Court of Appeals raised a total of \$1.4 million;

17 (5) In 2004, candidates running for a seat on the Supreme
18 Court of Appeals raised a total of \$2.8 million;

19 (6) In 2008, candidates running for a seat on the Supreme
20 Court of Appeals raised a total of \$3.3 million;

21 (7) in 2012, candidates running for a seat on the Supreme
22 Court of Appeals raised a total of \$3.7 million.

23 ~~(7)~~ (8) As spending by candidates and independent parties
24 increases, so does the perception that contributors and interested

1 third parties hold too much influence over the judicial process;

2 ~~(8)~~ (9) The detrimental effects of spending large amounts by
3 candidates and independent parties are especially problematic in
4 judicial elections because impartiality is uniquely important to
5 the integrity and credibility of courts;

6 ~~(9)~~ (10) As demonstrated by the 2012 Pilot Program, an
7 alternative public campaign financing option for candidates running
8 for a seat on the Supreme Court of Appeals will ensure the fairness
9 of democratic elections in this state, protect the Constitutional
10 rights of voters and candidates from the detrimental effects of
11 increasingly large amounts of money being raised and spent to
12 influence the outcome of elections, protect the impartiality and
13 integrity of the judiciary, and strengthen public confidence in the
14 judiciary; and

15 ~~(10)~~ (11) Funding the "West Virginia Supreme Court of Appeals
16 Public Campaign Financing Pilot Program" from a wide range of
17 revenue sources furthers important state interests in protecting
18 the integrity of judicial elections and serves to protect the
19 public interest.

20 **§3-12-3. Definitions.**

21 As used in this article, the following terms and phrases have
22 the following meanings:

23 (1) "Candidate's committee" means a political committee
24 established with the approval of or in cooperation with a candidate

1 or a prospective candidate to explore the possibilities of seeking
2 a particular office or to support or aid his or her nomination or
3 election to an office in an election cycle. If a candidate directs
4 or influences the activities of more than one active committee in
5 a current campaign, those committees shall be considered one
6 committee for the purpose of contribution limits.

7 (2) "Certified candidate" means an individual seeking election
8 to the West Virginia Supreme Court of Appeals who has been
9 certified in accordance with section ten of this article as having
10 met all of the requirements for receiving public campaign financing
11 from the fund.

12 (3) "Contribution" means a gift subscription, assessment,
13 payment for services, dues, advance, donation, pledge, contract,
14 agreement, forbearance or promise of money or other tangible thing
15 of value, whether conditional or legally enforceable, or a transfer
16 of money or other tangible thing of value to a person, made for the
17 purpose of influencing the nomination, election or defeat of a
18 candidate. An offer or tender of a contribution is not a
19 contribution if expressly and unconditionally rejected or returned.
20 A contribution does not include volunteer personal services
21 provided without compensation: *Provided*, That a nonmonetary
22 contribution is to be considered at fair market value for reporting
23 requirements and contribution limitations.

24 (4) "Exploratory contribution" means a contribution of no more

1 than \$1,000 made by an individual adult, including a participating
2 candidate and members of his or her immediate family, during the
3 exploratory period but prior to filing the declaration of intent.

4 Exploratory contributions may not exceed \$20,000 in the aggregate.

5 (5) "Exploratory period" means the period during which a
6 participating candidate may raise and spend exploratory
7 contributions to examine his or her chances of election and to
8 qualify for public campaign financing under this article. The
9 exploratory period begins on January 1 the year before the primary
10 in which the candidate may run for Justice of the Supreme Court of
11 Appeals and ends on the last Saturday in January of the election
12 year.

13 (6) "Financial agent" means any individual acting for and by
14 himself or herself, or any two or more individuals acting together
15 or cooperating in a financial way to aid or take part in the
16 nomination or election of any candidate for public office, or to
17 aid or promote the success or defeat of any political party at any
18 election.

19 (7) "Fund" means the Supreme Court of Appeals Public Campaign
20 Financing Fund created by section five of this article.

21 (8) "General election campaign period" means the period
22 beginning the day after the primary election and ending on the day
23 of the general election.

24 ~~(9) "Independent expenditure" means an expenditure by a~~

1 person:

2 ~~(A) Expressly advocating the election or defeat of a clearly~~
3 ~~identified candidate; and~~

4 ~~(B) That is not made in concert or cooperation with or at the~~
5 ~~request or suggestion of such candidate, his or her agents, the~~
6 ~~candidate's authorized political committee or a political party~~
7 ~~committee or its agents.~~

8 ~~Supporting or opposing the election of a clearly identified~~
9 ~~candidate includes supporting or opposing the candidates of a~~
10 ~~political party. An expenditure which does not meet the criteria~~
11 ~~for an independent expenditure is considered a contribution.~~

12 ~~(10)~~ (9) "Immediate family" or "immediate family members"
13 means the spouse, parents, step-parents, siblings and children of
14 the participating candidate.

15 ~~(11)~~ (10) "Nonparticipating candidate" means a candidate who
16 is:

17 (A) Seeking election to the Supreme Court of Appeals;

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

20 (C) Has an opponent who is a participating or certified
21 candidate.

22 ~~(12)~~ (11) "Participating candidate" means a candidate who is
23 seeking election to the Supreme Court of Appeals and is attempting
24 to be certified in accordance with section ten of this article to

1 receive public campaign financing from the fund.

2 ~~(13)~~ (12) "Person" means an individual, partnership,
3 committee, association and any other organization or group of
4 individuals.

5 ~~(14)~~ (13) "Primary election campaign period" means the period
6 beginning on the first day of the primary election filing period,
7 as determined under section seven, article five of this chapter,
8 and ending on the day of the subsequent primary election.

9 ~~(15)~~ (14) "Qualifying contribution" means a contribution
10 received from a West Virginia registered voter of not less than \$1
11 nor more than \$100 in the form of cash, check or money order, made
12 payable to a participating candidate or the candidate's committee,
13 or in the form of an electronic payment or debit or credit card
14 payment, received during the qualifying period.

15 ~~(16)~~ (15) "Qualifying period" means the period during which
16 participating candidates may raise and spend 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 September 1 preceding the
21 election year and ends on the last Saturday in January of the
22 election year.

23 (B) For candidates, other than those nominated during the
24 primary election, seeking to be placed on the general election

1 ballot, the qualifying period begins on June 1 of the election year
2 and ends on October 1 of the election year.

3 **§3-12-4. Alternative public campaign financing option.**

4 This article establishes an alternative public campaign
5 financing option available to candidates for election to the office
6 of Justice of the West Virginia Supreme Court of Appeals. ~~for the~~
7 ~~2012 primary and general elections.~~ Candidates electing the
8 alternative public campaign financing option shall comply with all
9 other applicable election and campaign laws and rules.

10 **§3-12-6. Sources of revenue for the fund.**

11 Revenue from the following sources shall be deposited in the
12 fund:

13 (1) All exploratory and qualifying contributions in excess of
14 the established maximums;

15 (2) Money returned by participating or certified candidates
16 who fail to comply with ~~the provisions of~~ this article;

17 (3) Unspent or unobligated moneys allotted to certified
18 candidates and remaining unspent or unobligated on the date of the
19 general election for which the money was distributed;

20 (4) If a certified candidate loses, all remaining unspent or
21 unobligated moneys after the primary election;

22 (5) Civil penalties levied by the State Election Commission
23 against candidates for violations of this article;

24 (6) Civil penalties levied by the Secretary of State pursuant

1 to section seven, article eight of this chapter;

2 (7) Voluntary donations made directly to the fund;

3 (8) Interest income;

4 (9) On or before July 1 ~~2010, and for two successive years~~

5 ~~thereafter,~~ of each year, the State Auditor shall authorize the

6 transfer of the amount of \$1 million from the Purchasing Card

7 Administration Fund established in section ten-d, article three,

8 chapter twelve of this code to the fund created by this article;

9 and

10 (10) Money appropriated to the fund.

11 **§3-12-7. Declaration of intent.**

12 A candidate desiring to receive campaign financing from the

13 fund shall first file a declaration of intent before the end of the

14 qualifying period and prior to collecting any qualifying

15 contributions. The declaration shall be on a form prescribed by

16 the State Election Commission and shall contain a statement that

17 the candidate is qualified to be placed on the ballot, and, if

18 elected, to hold the office sought and has complied with and will

19 continue to comply with all requirements of this article, including

20 contribution and expenditure restrictions. A candidate may not

21 collect exploratory contributions after filing the declarations of

22 intent. Contributions made prior to the filing of the declaration

23 of intent are not qualifying contributions. Any contributions

24 received by a candidate during any precandidacy period which

1 preceded the exploratory period which remain unexpended at the time
2 of the declaration of intent shall be considered exploratory funds
3 and subject to the limits and provisions of section eight of this
4 article.

5 **§3-12-9. Qualifying contributions.**

6 (a) A participating candidate or his or her candidate's
7 committee may not accept more than one qualifying contribution from
8 a single individual. A qualifying contribution may not be less
9 than \$1 nor more than \$100. To be considered as a proper
10 qualifying contribution, the qualifying contribution must be made
11 by a registered West Virginia voter. A participating candidate
12 shall collect qualifying contributions which in the aggregate are
13 not less than \$35,000 nor more than \$50,000. Qualifying
14 contributions in excess of \$50,000 shall be sent to the State
15 Election Commission for deposit in the fund.

16 (b) Each qualifying contribution shall be acknowledged by a
17 written receipt that includes:

18 (1) The printed name of the participating candidate on whose
19 behalf the contribution is made and the signature of the person who
20 collected the contribution for the candidate or his or her
21 candidate's committee;

22 (2) For qualifying contributions of \$25 or more, the
23 contributor's signature, printed name, street address, zip code,
24 telephone number, occupation and name of employer; and for

1 qualifying contributions of less than \$25, the contributor's
2 signature, printed name, street address and zip code;

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

4 (A) The contributor understands the purpose of the
5 contribution is to assist the participating candidate in obtaining
6 public campaign financing;

7 (B) The contribution was made without coercion;

8 (C) The contributor has not been reimbursed, received or
9 promised anything of value for making the contribution; and

10 (4) One copy of the receipt shall be given to the contributor,
11 one copy shall be retained by the candidate and one copy shall be
12 sent by the candidate to the Secretary of State. A contribution
13 which is not acknowledged by a written receipt in the form required
14 by this subsection is not a qualifying contribution.

15 (c) During the qualifying period, a participating candidate or
16 his or her candidate's committee must obtain at least five hundred
17 qualifying contributions from registered West Virginia voters. A
18 minimum of ten percent of the total number of qualifying
19 contributions received by the candidate must be from each of the
20 state's congressional districts.

21 (d) A participating candidate and each member of the
22 candidate's immediate family who is a registered voter in this
23 state may each make one qualifying contribution. A participating
24 candidate may not use any other personal funds to satisfy the

1 qualifying contributions requirements.

2 (e) A participating candidate may not reimburse, give or
3 promise anything of value in exchange for a qualifying
4 contribution.

5 (f) At the beginning of each month, a participating or
6 certified candidate or his or her financial agent or committee
7 shall report all qualifying contributions, expenditures and
8 obligations along with all receipts for contributions received
9 during the prior month to the Secretary of State. Such reports
10 shall be filed electronically: *Provided*, That a committee may
11 apply for an exemption in case of hardship pursuant to subsection
12 (c) of section five-b, article eight of this chapter. If the
13 candidate decides not to run for office, all unspent or unobligated
14 qualifying contributions shall be sent to the State Election
15 Commission for deposit in the fund. If the candidate decides to
16 run for office as a nonparticipating candidate, the unspent or
17 unobligated qualifying contributions shall be used in accordance
18 with articles eight and twelve of this chapter.

19 (g) All qualifying contributions collected and all
20 expenditures by a participating candidate or his or her committee
21 shall be reported to the Secretary of State no later than two
22 business days after the close of the qualifying period.

23 (h) (1) individuals are limited to not more than one \$100
24 contribution during the qualifying period.

1 (2) An individual may not contribute more than \$1,000 in the
2 aggregate in exploratory and qualifying contributions.

3 (3) All contributions to candidates participating in the West
4 Virginia Supreme Court of Appeals Public Campaign Financing Program
5 shall be collected by the candidates's designated financial agent.

6 **§3-12-10. Certification of candidates.**

7 (a) To be certified, a participating candidate shall apply to
8 the State Election Commission for public campaign financing from
9 the fund and file a sworn statement that he or she has complied and
10 will comply with all requirements of this article throughout the
11 applicable campaign.

12 (b) Upon receipt of a notice from the Secretary of State that
13 a participating candidate has received the required number and
14 amount of qualifying contributions, the State Election Commission
15 shall determine whether the candidate or candidate's committee:

16 (1) Has signed and filed a declaration of intent as required
17 by section seven of this article;

18 (2) Has obtained the required number and amount of qualifying
19 contributions as required by section nine of this article;

20 (3) Has complied with the contribution restrictions of this
21 article;

22 (4) Is eligible, as provided in section nine, article five of
23 this chapter, to appear on the primary or general election ballot;
24 and

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

2 (c) 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) of
5 this section by using the verification and sampling techniques
6 approved by the State Election Commission.

7 (d) The State Election Commission shall determine whether to
8 certify a participating candidate as eligible to receive public
9 campaign financing no later than three business days after the
10 candidate or the candidate's committee makes his or her final
11 report of qualifying contributions or, if a challenge is filed
12 under subsection (g) of this section, no later than six business
13 days after the candidate or the candidate's committee makes his or
14 her final report of qualifying contributions. A certified
15 candidate shall comply with ~~the provisions of~~ this article through
16 the general election campaign period.

17 (e) No later than two business days after the State Election
18 Commission certifies that a participating candidate is eligible to
19 receive public campaign financing under ~~the provisions of~~ this
20 section, the State Election Commission, acting in concert with the
21 State Auditor's office and the State Treasurer's office, shall
22 cause a check to be issued to the candidate's campaign depository
23 account an amount equal to the ~~initial~~ public campaign financing
24 benefit for which the candidate qualifies under section eleven of

1 this article, minus the candidate's qualifying contributions, and
2 shall notify all other candidates for the same office of its
3 determination.

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

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

1 consideration as a qualifying contribution.

2 (h) A candidate's certification and receipt of public campaign
3 financing may be revoked by the State Election Commission, if the
4 candidate violates ~~any of the provisions of~~ this article. A
5 certified candidate who violates ~~the provisions of~~ this article
6 shall repay all moneys received from the fund to the State Election
7 Commission.

8 (i) The determination of any issue before the State Election
9 Commission is the final administrative determination. Any meetings
10 conducted by the State Elections Commission to certify a
11 candidate's ~~initial~~ eligibility to receive funds under this article
12 ~~or their eligibility to receive supplemental funds or rescue funds~~
13 ~~under section eleven of this article~~ shall not be subject the
14 public notice and open meeting requirements of article nine-a,
15 chapter six of this code, but the Commission shall concurrently
16 provide public notice of any decision and determination it makes
17 which impacts the candidate's eligibility to receive ~~initial funds~~
18 ~~or supplemental~~ funds pursuant to ~~the provisions of~~ this article.
19 Any person adversely affected by a decision of the State Election
20 Commission under ~~the provisions of~~ this article may appeal that
21 decision to the circuit court of Kanawha County.

22 (j) A candidate may withdraw from being a certified candidate
23 and become a nonparticipating candidate at any time with the
24 approval of the State Election Commission. Any candidate seeking

1 to withdraw shall file a written request with the State Election
2 Commission, which shall consider requests on a case-by-case basis.
3 No certified candidate may withdraw until he or she has repaid all
4 moneys received from the fund: *Provided*, That the State Election
5 Commission may, in exceptional circumstances, waive the repayment
6 requirement. The State Election Commission may assess a penalty
7 not to exceed \$10,000 against any candidate who withdraws without
8 approval.

9 **§3-12-11. Schedule and amount of Supreme Court of Appeals Public**
10 **Campaign Financing Fund payments.**

11 (a) The State Election Commission, acting in concert with the
12 State Auditor's office and the State Treasurer's office, shall have
13 a check issued within two business days after the date on which the
14 candidate is certified, to make payments from the fund for the 2012
15 primary election campaign period available to a certified
16 candidate.

17 (1) In a contested primary election, a certified candidate
18 shall receive ~~\$200,000~~ \$300,000 in ~~initial~~ campaign financing from
19 the fund, minus the certified candidate's qualifying contributions.

20 (2) In an uncontested primary election, a certified candidate
21 shall receive \$50,000 from the public campaign financing fund,
22 minus the certified candidate's qualifying contributions.

23 (b) Within two business days after the primary election
24 results are certified by the Secretary of State, the State Election

1 Commission, acting in concert with the State Auditor's office and
2 the State Treasurer's office, shall cause a check to be issued to
3 make ~~initial~~ payments from the fund for the ~~2012~~ general election
4 campaign period available to a certified candidate.

5 (1) In a contested general election, a certified candidate ~~may~~
6 shall receive from the fund an amount not to exceed ~~\$350,000~~
7 \$525,000.

8 (2) In an uncontested general election, a certified candidate
9 shall receive \$35,000 from the public campaign financing fund.

10 (c) The State Election Commission shall authorize the
11 distribution of ~~initial~~ campaign financing moneys to certified
12 candidates in equal amounts. The commission shall propose a
13 legislative rule on distribution of funds.

14 (d) The State Election Commission may not authorize or direct
15 the distribution of moneys to certified candidates in excess of the
16 total amount of money deposited in the fund pursuant to section six
17 of this article. If the commission determines that the money in
18 the fund is insufficient to totally fund all certified candidates,
19 the commission shall authorize the distribution of the remaining
20 money proportionally, according to each candidate's eligibility for
21 funding. Each candidate may raise additional money in the same
22 manner as a nonparticipating candidate for the same office up to
23 the unfunded amount of the candidate's eligible funding.

24 ~~(e) If the commission determines from any reports filed~~

~~1 pursuant to this chapter or by other reliable and verifiable
2 information obtained through investigation that a nonparticipating
3 candidate's campaign expenditures or obligations, in the aggregate,
4 have exceeded by twenty percent the initial funding available under
5 this section any certified candidate running for the same office,
6 the commission shall authorize the release of additional funds in
7 the amount of the reported excess to any opposing certified
8 candidate for the same office.~~

~~9 (f) If the State Election Commission determines from any
10 reports filed pursuant to this chapter or by other reliable and
11 verifiable information obtained through investigation that
12 independent expenditures on behalf of a nonparticipating candidate,
13 either alone or in combination with the nonparticipating
14 candidate's campaign expenditures or obligations, have exceeded by
15 twenty percent the initial funding available under this section to
16 any certified candidate running for the same office, the commission
17 shall authorize the release of additional funds in the amount of
18 the reported excess to any certified candidate who is an opponent
19 for the same office.~~

~~20 (g) If the commission determines from any reports filed
21 pursuant to this chapter or by other reliable and verifiable
22 information obtained through investigation that independent
23 expenditures on behalf of a certified candidate, in combination
24 with the certified candidate's campaign expenditures or~~

1 ~~obligations, exceed by twenty percent the initial funding available~~
2 ~~under this section to any certified candidate running for the same~~
3 ~~office, the State Election Commission shall authorize the release~~
4 ~~of additional funds in the amount of the reported excess to any~~
5 ~~other certified candidate who is an opponent for the same office.~~

6 ~~(h) Additional funds released under this section to a~~
7 ~~certified candidate may not exceed \$400,000 in a primary election~~
8 ~~and \$700,000 in a general election.~~

9 ~~(i) In the event the commission determines that additional~~
10 ~~funds beyond the initial distribution are to be released to a~~
11 ~~participating candidate pursuant to the provisions of the section,~~
12 ~~the commission, acting in concert with the State Auditor's office~~
13 ~~and the State Treasurer's office, shall cause a check for any such~~
14 ~~funds to be issued to the candidate's campaign depository within~~
15 ~~two business days.~~

16 **§3-12-13. Reporting requirements.**

17 (a) Participating candidates and certified candidates ~~and~~
18 ~~nonparticipating candidates~~ shall comply with the provisions of
19 this section in addition to any other reporting required by ~~the~~
20 ~~provisions of this chapter.~~

21 (b) During the exploratory and qualifying periods, a
22 participating candidate or his or her financial agent shall submit,
23 on the first of each month, a report of all exploratory and
24 qualifying contributions along with their receipts and an

1 accounting of all expenditures and obligations received during the
2 immediately preceding month. The reports shall be on forms or in
3 a format prescribed by the Secretary of State. Such reports shall
4 be filed electronically: *Provided*, That a committee may apply for
5 an exemption, in case of hardship, pursuant to subsection (c) of
6 section five-b, article eight of this chapter.

7 (c) No later than two business days after the close of the
8 qualifying period, a participating candidate or his or her
9 financial agent shall report to the Secretary of State on
10 appropriate forms a summary of:

11 (1) All exploratory contributions received and funds expended
12 or obligated during the exploratory period together with copies of
13 any receipts not previously submitted for exploratory
14 contributions; and

15 (2) All qualifying contributions received and funds expended
16 or obligated during the qualifying period together with copies of
17 any receipts not previously submitted for qualifying contributions.

18 (d) A certified candidate or his or her financial agent shall
19 file periodic financial statements in accordance with section five,
20 article eight of this chapter, detailing all funds received,
21 expended or obligated during the specified periods. The reports
22 shall be on forms approved by the Secretary of State.

23 ~~(e) In addition to any other reporting required by this~~
24 ~~chapter, a nonparticipating candidate or his or her financial agent~~

1 shall report to the Secretary of State on approved forms an
2 itemized summary of his or her campaign expenditures or
3 obligations, according to the following provisions and guidelines:

4 ~~(1) On the first Saturday in March or within six days~~
5 ~~thereafter, listing the nonparticipating candidate's expenditures~~
6 ~~and obligations prior to March 1, if the nonparticipating~~
7 ~~candidate's campaign expenditures or obligations, in the aggregate,~~
8 ~~exceed the initial funding available under section eleven of this~~
9 ~~article to any certified candidate for the same office.~~

10 ~~(2) On the first Saturday in April, listing any expenditures~~
11 ~~or obligations, in the aggregate, that exceed the initial funding~~
12 ~~available under section eleven of this article to any certified~~
13 ~~candidate running for the same office and which have taken place~~
14 ~~subsequent to those reported on the financial statement required to~~
15 ~~be filed by a candidate for public office pursuant to subdivision~~
16 ~~(1), subsection (b), section five, article eight of this chapter.~~
17 ~~Thereafter, any additional expenditures or obligations, in the~~
18 ~~aggregate, that exceed the initial funding available under section~~
19 ~~eleven of this article to any certified candidate running for the~~
20 ~~same office made prior to the fifteenth day before the primary~~
21 ~~election shall be reported to the Secretary of State within~~
22 ~~forty-eight hours.~~

23 ~~(3) On the first Saturday in July or within six days~~
24 ~~thereafter, listing the nonparticipating candidate's expenditures~~

1 ~~and obligations prior to July 1 subsequent to the primary election,~~
2 ~~if the nonparticipating candidate's expenditures or obligations, in~~
3 ~~the aggregate, exceed the initial funding available under section~~
4 ~~eleven of this article to any certified candidate running for the~~
5 ~~same office.~~

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

19 ~~(5) During the last fifteen days before the primary or general~~
20 ~~elections in 2012, the nonparticipating candidate or his or her~~
21 ~~financial agent shall report to the State Election Commission~~
22 ~~within twenty four hours thereof every additional expenditure or~~
23 ~~obligation, in the aggregate, that exceeds the initial funding~~
24 ~~available under section eleven of this article to any certified~~

1 ~~candidate running for the same office.~~

2 ~~(f) Any person, organization or entity making independent~~
3 ~~expenditures advocating the election or defeat of a certified~~
4 ~~candidate or the nomination or election of any candidate who is~~
5 ~~opposed by a certified candidate in excess of \$1,000, in the~~
6 ~~aggregate, shall report these expenditures to the State Election~~
7 ~~Commission on approved forms within forty eight hours of the~~
8 ~~expenditure.~~

9 ~~(g) During the last fifteen days before the primary or general~~
10 ~~election in 2012, any person, organization or entity making~~
11 ~~independent expenditures advocating the election or defeat of any~~
12 ~~candidate, including the election or defeat of a certified~~
13 ~~candidate or the nomination or election of any candidate who is~~
14 ~~opposed by a certified candidate, shall continue to file reports as~~
15 ~~required pursuant to subsection (b), section two, article eight of~~
16 ~~this chapter.~~

17 **§3-12-14. Duties of the State Election Commission; Secretary of**
18 **State.**

19 (a) In addition to its other duties, the State Election
20 Commission shall carry out the duties of this article and complete
21 the following as applicable:

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

24 (2) Make an annual report to the Legislature accounting for

1 moneys in the fund, describing the State Election Commission's
2 activities and listing any recommendations for changes of law,
3 administration or funding amounts;

4 (3) Propose emergency and legislative rules for legislative
5 approval, in accordance with ~~the provisions of~~ article three,
6 chapter twenty-nine-a of this code, as may be necessary for the
7 proper administration of ~~the provisions of~~ this article;

8 (4) Enforce ~~the provisions of~~ this article to ensure that
9 moneys from the fund are placed in candidate campaign accounts and
10 spent as specified in this article;

11 (5) Monitor reports filed pursuant to this article and the
12 financial records of candidates to ensure that qualified candidates
13 receive ~~matching~~ funds promptly and to ensure that moneys required
14 by this article to be paid to the fund are deposited in the fund;

15 (6) Cause an audit of the fund to be conducted by independent
16 certified public accountants ninety days after a general election.
17 The State Election Commission shall cooperate with the audit,
18 provide all necessary documentation and financial records to the
19 auditor and maintain a record of all information supplied by the
20 audit;

21 (7) In consultation with the State Treasurer and the State
22 Auditor, develop a rapid, reliable method of conveying funds to
23 certified candidates. In all cases, the commission shall
24 distribute funds to certified candidates in a manner that is

1 expeditious, ensures accountability and safeguards the integrity of
2 the fund; and

3 (8) Regularly monitor the receipts, disbursements, obligations
4 and balance in the fund to determine whether the fund will have
5 sufficient moneys to meet its obligations and sufficient moneys
6 available for disbursement during the primary and general election
7 campaign period.

8 (b) In addition to his or her other duties, the Secretary of
9 State shall carry out the duties of this article and complete the
10 following as applicable:

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

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

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

20 (4) Propose emergency and legislative rules for legislative
21 approval in accordance with ~~the provisions of~~ article three,
22 chapter twenty-nine-a of this code as may be necessary for the
23 proper administration of ~~the provisions of~~ this article;

24 (5) Enforce ~~the provisions of~~ this article to ensure that

1 moneys from the fund are placed in candidate campaign accounts and
2 spent as specified in this article;

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

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

11 (8) Prepare a voters' guide for the general public listing the
12 names of each candidate seeking election to the Supreme Court of
13 Appeals. Both certified and nonparticipating candidates shall be
14 invited by the State Election Commission to submit a statement, not
15 to exceed five hundred words in length, for inclusion in the guide.
16 The guide shall identify the candidates that are certified
17 candidates and the candidates that are nonparticipating candidates.
18 Copies of the guide shall be posted on the website of the Secretary
19 of State, as soon as may be practical.

20 (c) To fulfill their responsibilities under this article, the
21 State Election Commission and the Secretary of State may subpoena
22 witnesses, compel their attendance and testimony, administer oaths
23 and affirmations, take evidence and require, by subpoena, the
24 production of any books, papers, records or other items material to

1 the performance of their duties or the exercise of their powers.

2 (d) The State Election Commission may also propose and adopt
3 procedural rules to carry out the purposes and provisions of this
4 article and to govern procedures of the State Election Commission
5 as it relates to the requirements of this article.

6 **§3-12-16. Civil penalties.**

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

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

1 days of receipt of written notice from the State Election
2 Commission of the imposition of the penalty.

3 (c) If a participating or certified candidate fails to pay any
4 moneys required to be paid to the State Election Commission or
5 returned to the fund under this article, the State Election
6 Commission may order the candidate to pay an amount equal to three
7 times the amount that should have been paid to the State Election
8 Commission or returned to the fund.

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

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

NOTE: The purpose of this bill is to remove language that
violates the United States Constitution. The bill makes the West

Virginia Supreme Court of Appeals Public Campaign Financing Pilot Program a permanent program. The bill adjusts payments that certified candidates are eligible to receive from the West Virginia Supreme Court of Appeals Public Campaign Financing Program. The bill eliminates additional reporting periods for non-participating candidates. The bill clarifies who is entitled to receive contributions.

The bill repeals §3-12-17.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.