

COMMITTEE SUBSTITUTE

FOR

H. B. 2805

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FLEISCHAUER, MANYPENNY, GUTHRIE, CAPUTO,
REYNOLDS, WHITE AND SKINNER)

(Originating in the Committee on Finance)

[March 29, 2013]

A BILL to repeal §3-12-17 of the Code of West Virginia, 1931, as amended; to amend and reenact §3-1A-5 of said code; and to amend and reenact §3-12-1, §3-12-2, §3-12-3, §3-12-4, §3-12-6, §3-12-7, §3-12-9, §3-12-10, §3-12-11, §3-12-13, §3-12-14 and §3-12-16 of said code, all relating to making the West Virginia Supreme Court of Appeals Public Campaign Financing Pilot Program a permanent program; removing provisions permitting receipt of supplemental or rescue public campaign financing funds; providing certain findings; limiting collections by, and contributions to, a participating candidate in certain circumstances;

requiring all contributions to candidates participating in the program be collected by the candidate's financial agent; providing for the transfer of additional moneys to the program's fund; allowing the program's funds to be invested, with retained earnings; increasing the amounts of financing certified candidates may receive in contested elections; removing certain reporting requirements; removing the doubling of civil penalties in certain circumstances; and repealing the July 1, 2013, sunset provisions for the program and its fund.

Be it enacted by the Legislature of West Virginia:

That §3-12-17 of the Code of West Virginia, 1931, as amended, be repealed; that §3-1A-5 of said code be amended and reenacted; and that §3-12-1, §3-12-2, §3-12-3, §3-12-4, §3-12-6, §3-12-7, §3-12-9, §3-12-10, §3-12-11, §3-12-13,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

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

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

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

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

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

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

13 (3) To consider and study the election practices of other
14 jurisdictions, with a view to determining the techniques used in
15 eliminating fraud in elections and in simplifying election
16 procedures;

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

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

23 (6) To carry out the duties assigned to the commission by the
24 West Virginia Supreme Court of Appeals Public Campaign

25 Financing Pilot Program, established in article twelve of this
26 chapter; and

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

30 (c) It is the commission's further duty to prepare and
31 distribute in its name, within available appropriations and upon
32 the recommendation of the Secretary of State, nonpartisan
33 educational material to inform voters of the importance of
34 voting, to encourage voters to vote, to inform voters of election
35 laws and procedures, and to inform voters of the effect of any
36 public question, Constitutional amendment or bond issue that is
37 to be voted upon by all the voters of the state and that has been
38 authorized to be placed upon the ballot by the Legislature, and
39 manuals to assist county commissions, ballot commissioners,
40 circuit and county clerks and other election officials in the
41 proper performance of their duties in the conduct of elections.

42 (d) The commission shall propose for promulgation
43 emergency and legislative rules, in accordance with ~~the~~
44 ~~provisions of~~ article three, chapter twenty-nine-a of this code, as

45 may be necessary to standardize and make effective the
46 administration of ~~the provisions of~~ article eight of this chapter,
47 and may propose for promulgation other rules, in accordance
48 with ~~the provisions of~~ article three, chapter twenty-nine-a of this
49 code, relating to the conduct and administration of elections as
50 the commission determines to be advisable.

51 (e) Meetings of the commission conducted for the purpose
52 of confirming the ~~initial~~ eligibility of individual candidates to
53 receive public campaign financing under the West Virginia
54 Supreme Court of Appeals Public Campaign Financing Fund; ~~the~~
55 ~~authorization of supplemental distributions from the fund; and~~
56 ~~the candidate's ability to receive supplemental distributions~~
57 ~~pursuant to the provisions of chapter twelve of this article are~~
58 expressly exempted from the public notice and public meeting
59 requirements of article nine-a, chapter six of this code.

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

§3-12-1. Short title.

1 This article is known as the “West Virginia Supreme Court
2 of Appeals Public Campaign Financing ~~Pilot~~ Program”. ~~The~~
3 ~~pilot program begins with the exploratory period for the 2012~~

4 ~~primary election and continues through the 2012 general~~
5 ~~election.~~

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

1 The Legislature finds and declares the following:

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

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

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

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

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

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

16 (7) In 2012, candidates running for a seat on the Supreme
17 Court of Appeals raised a total of \$3.7 million.

18 ~~(7)~~ (8) As spending by candidates and independent parties
19 increases, so does the perception that contributors and interested
20 third parties hold too much influence over the judicial process;

21 ~~(8)~~ (9) The detrimental effects of spending large amounts by
22 candidates and independent parties are especially problematic in
23 judicial elections because impartiality is uniquely important to
24 the integrity and credibility of courts;

25 ~~(9)~~ (10) As demonstrated by the 2012 West Virginia
26 Supreme Court of Appeals Public Campaign Financing Pilot
27 Program, an alternative public campaign financing option for
28 candidates running for a seat on the Supreme Court of Appeals
29 will ensure the fairness of democratic elections in this state,
30 protect the Constitutional rights of voters and candidates from
31 the detrimental effects of increasingly large amounts of money
32 being raised and spent to influence the outcome of elections,
33 protect the impartiality and integrity of the judiciary, and
34 strengthen public confidence in the judiciary; and

35 ~~(10)~~ (11) Funding the “West Virginia Supreme Court of
36 Appeals Public Campaign Financing ~~Pilot~~ Program” from a wide
37 range of revenue sources furthers important state interests in

38 protecting the integrity of judicial elections and serves to protect
39 the public interest.

§3-12-3. Definitions.

1 As used in this article, the following terms and phrases have
2 the following meanings:

3 (1) “Candidate’s committee” means a political committee
4 established with the approval of or in cooperation with a
5 candidate or a prospective candidate to explore the possibilities
6 of seeking a particular office or to support or aid his or her
7 nomination or election to an office in an election cycle. If a
8 candidate directs or influences the activities of more than one
9 active committee in a current campaign, those committees shall
10 be considered one committee for the purpose of contribution
11 limits.

12 (2) “Certified candidate” means an individual seeking
13 election to the West Virginia Supreme Court of Appeals who has
14 been certified in accordance with section ten of this article as
15 having met all of the requirements for receiving public campaign
16 financing from the fund.

17 (3) “Contribution” means a gift subscription, assessment,
18 payment for services, dues, advance, donation, pledge, contract,

19 agreement, forbearance or promise of money or other tangible
20 thing of value, whether conditional or legally enforceable, or a
21 transfer of money or other tangible thing of value to a person,
22 made for the purpose of influencing the nomination, election or
23 defeat of a candidate. An offer or tender of a contribution is not
24 a contribution if expressly and unconditionally rejected or
25 returned. A contribution does not include volunteer personal
26 services provided without compensation: *Provided*, That a
27 nonmonetary contribution is to be considered at fair market
28 value for reporting requirements and contribution limitations.

29 (4) “Exploratory contribution” means a contribution of no
30 more than \$1,000 made by an individual adult, including a
31 participating candidate and members of his or her immediate
32 family, during the exploratory period but prior to filing the
33 declaration of intent. Exploratory contributions may not exceed
34 \$20,000 in the aggregate.

35 (5) “Exploratory period” means the period during which a
36 participating candidate may raise and spend exploratory
37 contributions to examine his or her chances of election and to
38 qualify for public campaign financing under this article. The

39 exploratory period begins on January 1 the year before the
40 primary in which the candidate may run for Justice of the
41 Supreme Court of Appeals and ends on the last Saturday in
42 January of the election year.

43 (6) “Financial agent” means any individual acting for and by
44 himself or herself, or any two or more individuals acting together
45 or cooperating in a financial way to aid or take part in the
46 nomination or election of any candidate for public office, or to
47 aid or promote the success or defeat of any political party at any
48 election.

49 (7) “Fund” means the Supreme Court of Appeals Public
50 Campaign Financing Fund created by section five of this article.

51 (8) “General election campaign period” means the period
52 beginning the day after the primary election and ending on the
53 day of the general election.

54 ~~(9) “Independent expenditure” means an expenditure by a~~
55 ~~person:~~

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

58 ~~(B) That is not made in concert or cooperation with or at the~~
59 ~~request or suggestion of such candidate, his or her agents, the~~

60 ~~candidate's authorized political committee or a political party~~
61 ~~committee or its agents.~~

62 ~~Supporting or opposing the election of a clearly identified~~
63 ~~candidate includes supporting or opposing the candidates of a~~
64 ~~political party. An expenditure which does not meet the criteria~~
65 ~~for an independent expenditure is considered a contribution.~~

66 ~~(10)~~ (9) "Immediate family" or "immediate family
67 members" means the spouse, parents, step-parents, siblings and
68 children of the participating candidate.

69 ~~(11)~~ (10) "Nonparticipating candidate" means a candidate
70 who is:

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

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

74 (C) Has an opponent who is a participating or certified
75 candidate.

76 ~~(12)~~ (11) "Participating candidate" means a candidate who
77 is seeking election to the Supreme Court of Appeals and is
78 attempting to be certified in accordance with section ten of this
79 article to receive public campaign financing from the fund.

80 ~~(13)~~ (12) “Person” means an individual, partnership,
81 committee, association and any other organization or group of
82 individuals.

83 ~~(14)~~ (13) “Primary election campaign period” means the
84 period beginning on the first day of the primary election filing
85 period, as determined under section seven, article five of this
86 chapter, and ending on the day of the subsequent primary
87 election.

88 ~~(15)~~ (14) “Qualifying contribution” means a contribution
89 received from a West Virginia registered voter of not less than
90 \$1 nor more than \$100 in the form of cash, check or money
91 order, made payable to a participating candidate or the
92 candidate’s committee, or in the form of an electronic payment
93 or debit or credit card payment, received during the qualifying
94 period.

95 ~~(16)~~ (15) “Qualifying period” means the period during which
96 participating candidates may raise and spend qualifying
97 contributions in order to qualify to receive public campaign
98 financing.

99 (A) For candidates seeking nomination on the primary
100 election ballot, the qualifying period begins on September 1

101 preceding the election year and ends on the last Saturday in
102 January of the election year.

103 (B) For candidates, other than those nominated during the
104 primary election, seeking to be placed on the general election
105 ballot, the qualifying period begins on June 1 of the election year
106 and ends on October 1 of the election year.

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

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

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

1 Revenue from the following sources shall be deposited in the
2 fund:

3 (1) All exploratory and qualifying contributions in excess of
4 the established maximums;

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

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

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

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

14 (6) Civil penalties levied by the Secretary of State pursuant
15 to section seven, article eight of this chapter;

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

17 (8) Any interest income or other return earned on the
18 money's investment;

19 (9) On or before July 1, 2010, and for two successive years
20 thereafter, the State Auditor shall authorize the transfer of the
21 amount of \$1 million from the Purchasing Card Administration
22 Fund established in section ten-d, article three, chapter twelve of
23 this code to the fund created by this article; ~~and~~

24 (10) On or before July 1, 2015, the state Auditor shall
25 authorize the transfer of the amount of \$400,000 from the
26 Purchasing Card Administration Fund established in section

27 ten-d, article three, chapter twelve of this code to the fund
28 created by this article; and,
29 ~~(10)~~(11) Money appropriated to the fund.

§3-12-7. Declaration of intent.

1 A candidate desiring to receive campaign financing from the
2 fund shall first file a declaration of intent before the end of the
3 qualifying period and prior to collecting any qualifying
4 contributions. The declaration shall be on a form prescribed by
5 the State Election Commission and shall contain a statement that
6 the candidate is qualified to be placed on the ballot, and, if
7 elected, to hold the office sought and has complied with and will
8 continue to comply with all requirements of this article,
9 including contribution and expenditure restrictions. A candidate
10 may not collect exploratory contributions after filing the
11 declaration of intent. Contributions made prior to the filing of
12 the declaration of intent are not qualifying contributions. Any
13 contributions received by a candidate during any precandidacy
14 period which preceded the exploratory period which remain
15 unexpended at the time of the declaration of intent shall be
16 considered exploratory funds and subject to the limits and
17 provisions of section eight of this article.

§3-12-9. Qualifying contributions.

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

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

13 (1) The printed name of the participating candidate on whose
14 behalf the contribution is made and the signature of the person
15 who collected the contribution for the candidate or his or her
16 candidate's committee;

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

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

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

23 (A) The contributor understands the purpose of the
24 contribution is to assist the participating candidate in obtaining
25 public campaign financing;

26 (B) The contribution was made without coercion;

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

29 (4) One copy of the receipt shall be given to the contributor,
30 one copy shall be retained by the candidate and one copy shall
31 be sent by the candidate to the Secretary of State. A contribution
32 which is not acknowledged by a written receipt in the form
33 required by this subsection is not a qualifying contribution.

34 (c) During the qualifying period, a participating candidate or
35 his or her candidate's committee must obtain at least five
36 hundred qualifying contributions from registered West Virginia
37 voters. A minimum of ten percent of the total number of
38 qualifying contributions received by the candidate must be from
39 each of the state's congressional districts.

40 (d) A participating candidate and each member of the
41 candidate's immediate family who is a registered voter in this
42 state may each make one qualifying contribution. A participating
43 candidate may not use any other personal funds to satisfy the
44 qualifying contributions requirements.

45 (e) A participating candidate may not reimburse, give or
46 promise anything of value in exchange for a qualifying
47 contribution.

48 (f) At the beginning of each month, a participating or
49 certified candidate or his or her financial agent or committee
50 shall report all qualifying contributions, expenditures and
51 obligations along with all receipts for contributions received
52 during the prior month to the Secretary of State. Such reports
53 shall be filed electronically: *Provided*, That a committee may
54 apply for an exemption in case of hardship pursuant to
55 subsection (c) of section five-b, article eight of this chapter. If
56 the candidate decides not to run for office, all unspent or
57 unobligated qualifying contributions shall be sent to the State
58 Election Commission for deposit in the fund. If the candidate
59 decides to run for office as a nonparticipating candidate, the

60 unspent or unobligated qualifying contributions shall be used in
61 accordance with articles eight and twelve of this chapter.

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

66 (h) (1) Individuals are limited to not more than one \$100
67 contribution during the qualifying period.

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

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

§3-12-10. Certification of candidates.

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

6 (b) Upon receipt of a notice from the Secretary of State that
7 a participating candidate has received the required number and
8 amount of qualifying contributions, the State Election
9 Commission shall determine whether the candidate or
10 candidate's committee:

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

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

16 (3) Has complied with the contribution restrictions of this
17 article;

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

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

21 (c) The State Election Commission shall process
22 applications in the order they are received and shall verify a
23 participating candidate's compliance with the requirements of
24 subsection (b) of this section by using the verification and
25 sampling techniques approved by the State Election
26 Commission.

27 (d) The State Election Commission shall determine whether
28 to certify a participating candidate as eligible to receive public
29 campaign financing no later than three business days after the
30 candidate or the candidate's committee makes his or her final
31 report of qualifying contributions or, if a challenge is filed under
32 subsection (g) of this section, no later than six business days
33 after the candidate or the candidate's committee makes his or her
34 final report of qualifying contributions. A certified candidate
35 shall comply with ~~the provisions of~~ this article through the
36 general election campaign period.

37 (e) No later than two business days after the State Election
38 Commission certifies that a participating candidate is eligible to
39 receive public campaign financing under ~~the provisions of~~ this
40 section, the State Election Commission, acting in concert with
41 the State Auditor's office and the State Treasurer's office, shall
42 cause a check to be issued to the candidate's campaign
43 depository account an amount equal to the ~~initial~~ public
44 campaign financing benefit for which the candidate qualifies
45 under section eleven of this article, minus the candidate's
46 qualifying contributions, and shall notify all other candidates for
47 the same office of its determination.

48 (f) If the candidate desires to receive public financing
49 benefits by electronic transfer, the candidate shall include in his
50 or her application sufficient information and authorization for
51 the State Treasurer to transfer payments to his or her campaign
52 depository account.

53 (g) Any person may challenge the validity of any
54 contribution listed by a participating candidate by filing a written
55 challenge with the State Election Commission setting forth any
56 reason why the contribution should not be accepted as a
57 qualifying contribution. If a contribution is challenged under this
58 subsection, the State Election Commission shall decide the
59 validity of the challenge no later than the end of the next
60 business day after the day that the challenge is filed, unless the
61 State Election Commission determines that the candidate whose
62 contribution is challenged has both a sufficient qualifying
63 number and amount of qualifying contributions to be certified as
64 a candidate under this section without considering the challenge.
65 Within five business days of a challenge, the candidate or
66 candidate's committee who listed any contribution that is the
67 subject of a challenge may file a report with the State Election

68 Commission of an additional contribution collected pursuant to
69 section nine of this article for consideration as a qualifying
70 contribution.

71 (h) A candidate's certification and receipt of public
72 campaign financing may be revoked by the State Election
73 Commission, if the candidate violates ~~any of the provisions of~~
74 this article. A certified candidate who violates ~~the provisions of~~
75 this article shall repay all moneys received from the fund to the
76 State Election Commission.

77 (i) The determination of any issue before the State Election
78 Commission is the final administrative determination. Any
79 meetings conducted by the State Elections Commission to certify
80 a candidate's ~~initial~~ eligibility to receive funds under this article
81 ~~or their eligibility to receive supplemental funds or rescue funds~~
82 ~~under section eleven of this article~~ shall not be subject the public
83 notice and open meeting requirements of article nine-a, chapter
84 six of this code, but the commission shall concurrently provide
85 public notice of any decision and determination it makes which
86 impacts the candidate's eligibility to receive ~~initial funds or~~
87 ~~supplemental~~ funds pursuant to ~~the provisions of~~ this article.

88 Any person adversely affected by a decision of the State Election
89 Commission under ~~the provisions of~~ this article may appeal that
90 decision to the circuit court of Kanawha County.

91 (j) A candidate may withdraw from being a certified
92 candidate and become a nonparticipating candidate at any time
93 with the approval of the State Election Commission. Any
94 candidate seeking to withdraw shall file a written request with
95 the State Election Commission, which shall consider requests on
96 a case-by-case basis. No certified candidate may withdraw until
97 he or she has repaid all moneys received from the fund:
98 *Provided, That* the State Election Commission may, in
99 exceptional circumstances, waive the repayment requirement.
100 The State Election Commission may assess a penalty not to
101 exceed \$10,000 against any candidate who withdraws without
102 approval.

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

1 (a) The State Election Commission, acting in concert with
2 the State Auditor's office and the State Treasurer's office, shall
3 have a check issued within two business days after the date on
4 which the candidate is certified, to make payments from the fund

5 for the 2012 primary election campaign period available to a
6 certified candidate.

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

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

14 (b) Within two business days after the primary election
15 results are certified by the Secretary of State, the State Election
16 Commission, acting in concert with the State Auditor's office
17 and the State Treasurer's office, shall cause a check to be issued
18 to make ~~initial~~ payments from the fund for the ~~2012~~ general
19 election campaign period available to a certified candidate.

20 (1) In a contested general election, a certified candidate ~~may~~
21 shall receive from the fund an amount not to exceed ~~\$350,000~~
22 \$525,000.

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

25 (c) The State Election Commission shall authorize the
26 distribution of ~~initial~~ campaign financing moneys to certified
27 candidates in equal amounts. The commission shall propose a
28 legislative rule on distribution of funds.

29 (d) The State Election Commission may not authorize or
30 direct the distribution of moneys to certified candidates in excess
31 of the total amount of money deposited in the fund pursuant to
32 section six of this article. If the commission determines that the
33 money in the fund is insufficient to totally fund all certified
34 candidates, the commission shall authorize the distribution of the
35 remaining money proportionally, according to each candidate's
36 eligibility for funding. Each candidate may raise additional
37 money in the same manner as a nonparticipating candidate for
38 the same office up to the unfunded amount of the candidate's
39 eligible funding.

40 ~~(e) If the commission determines from any reports filed~~
41 ~~pursuant to this chapter or by other reliable and verifiable~~
42 ~~information obtained through investigation that a~~
43 ~~nonparticipating candidate's campaign expenditures or~~
44 ~~obligations, in the aggregate, have exceeded by twenty percent~~

45 ~~the initial funding available under this section any certified~~
46 ~~candidate running for the same office, the commission shall~~
47 ~~authorize the release of additional funds in the amount of the~~
48 ~~reported excess to any opposing certified candidate for the same~~
49 ~~office.~~

50 (f) ~~If the State Election Commission determines from any~~
51 ~~reports filed pursuant to this chapter or by other reliable and~~
52 ~~verifiable information obtained through investigation that~~
53 ~~independent expenditures on behalf of a nonparticipating~~
54 ~~candidate, either alone or in combination with the~~
55 ~~nonparticipating candidate's campaign expenditures or~~
56 ~~obligations, have exceeded by twenty percent the initial funding~~
57 ~~available under this section to any certified candidate running for~~
58 ~~the same office, the commission shall authorize the release of~~
59 ~~additional funds in the amount of the reported excess to any~~
60 ~~certified candidate who is an opponent for the same office.~~

61 (g) ~~If the commission determines from any reports filed~~
62 ~~pursuant to this chapter or by other reliable and verifiable~~
63 ~~information obtained through investigation that independent~~
64 ~~expenditures on behalf of a certified candidate, in combination~~

65 ~~with the certified candidate's campaign expenditures or~~
66 ~~obligations, exceed by twenty percent the initial funding~~
67 ~~available under this section to any certified candidate running for~~
68 ~~the same office, the State Election Commission shall authorize~~
69 ~~the release of additional funds in the amount of the reported~~
70 ~~excess to any other certified candidate who is an opponent for~~
71 ~~the same office.~~

72 (h) ~~Additional funds released under this section to a certified~~
73 ~~candidate may not exceed \$400,000 in a primary election and~~
74 ~~\$700,000 in a general election.~~

75 (i) ~~In the event the commission determines that additional~~
76 ~~funds beyond the initial distribution are to be released to a~~
77 ~~participating candidate pursuant to the provisions of the section,~~
78 ~~the commission, acting in concert with the State Auditor's office~~
79 ~~and the State Treasurer's office, shall cause a check for any such~~
80 ~~funds to be issued to the candidate's campaign depository within~~
81 ~~two business days.~~

§3-12-13. Reporting requirements.

1 (a) Participating candidates and certified candidates ~~and~~
2 ~~nonparticipating candidates~~ shall comply with the provisions of

3 this section in addition to any other reporting required by ~~the~~
4 ~~provisions of~~ this chapter.

5 (b) During the exploratory and qualifying periods, a
6 participating candidate or his or her financial agent shall submit,
7 on the first of each month, a report of all exploratory and
8 qualifying contributions along with their receipts and an
9 accounting of all expenditures and obligations received during
10 the immediately preceding month. The reports shall be on forms
11 or in a format prescribed by the Secretary of State. Such reports
12 shall be filed electronically: *Provided*, That a committee may
13 apply for an exemption, in case of hardship, pursuant to
14 subsection (c) of section five-b, article eight of this chapter.

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

19 (1) All exploratory contributions received and funds
20 expended or obligated during the exploratory period together
21 with copies of any receipts not previously submitted for
22 exploratory contributions; and

23 (2) All qualifying contributions received and funds expended
24 or obligated during the qualifying period together with copies of
25 any receipts not previously submitted for qualifying
26 contributions.

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

32 ~~(e) In addition to any other reporting required by this~~
33 ~~chapter, a nonparticipating candidate or his or her financial agent~~
34 ~~shall report to the Secretary of State on approved forms an~~
35 ~~itemized summary of his or her campaign expenditures or~~
36 ~~obligations, according to the following provisions and~~
37 ~~guidelines:~~

38 ~~(1) On the first Saturday in March or within six days~~
39 ~~thereafter, listing the nonparticipating candidate's expenditures~~
40 ~~and obligations prior to March 1, if the nonparticipating~~
41 ~~candidate's campaign expenditures or obligations, in the~~
42 ~~aggregate, exceed the initial funding available under section~~

43 ~~eleven of this article to any certified candidate for the same~~
44 ~~office.~~

45 (2) ~~On the first Saturday in April, listing any expenditures or~~
46 ~~obligations, in the aggregate, that exceed the initial funding~~
47 ~~available under section eleven of this article to any certified~~
48 ~~candidate running for the same office and which have taken~~
49 ~~place subsequent to those reported on the financial statement~~
50 ~~required to be filed by a candidate for public office pursuant to~~
51 ~~subdivision (1), subsection (b), section five, article eight of this~~
52 ~~chapter. Thereafter, any additional expenditures or obligations,~~
53 ~~in the aggregate, that exceed the initial funding available under~~
54 ~~section eleven of this article to any certified candidate running~~
55 ~~for the same office made prior to the fifteenth day before the~~
56 ~~primary election shall be reported to the Secretary of State~~
57 ~~within forty-eight hours.~~

58 (3) ~~On the first Saturday in July or within six days thereafter,~~
59 ~~listing the nonparticipating candidate's expenditures and~~
60 ~~obligations prior to July 1 subsequent to the primary election, if~~
61 ~~the nonparticipating candidate's expenditures or obligations, in~~
62 ~~the aggregate, exceed the initial funding available under section~~

63 ~~eleven of this article to any certified candidate running for the~~
64 ~~same office.~~

65 ~~(4) On the first Saturday in October, listing any expenditures~~
66 ~~or obligations, in the aggregate, that exceed the initial funding~~
67 ~~available under section eleven of this article to any certified~~
68 ~~candidate running for the same office and which have taken~~
69 ~~place subsequent to those reported on the financial statement~~
70 ~~required to be filed by a candidate for public office pursuant to~~
71 ~~subdivision (4), subsection (b), section five, article eight of this~~
72 ~~chapter. Thereafter, any additional expenditures or obligations,~~
73 ~~in the aggregate, that exceed the initial funding available under~~
74 ~~section eleven of this article to any certified candidate running~~
75 ~~for the same office made prior to the fifteenth day before the~~
76 ~~general election shall be reported to the State Election~~
77 ~~Commission within forty-eight hours.~~

78 ~~(5) During the last fifteen days before the primary or general~~
79 ~~elections in 2012, the nonparticipating candidate or his or her~~
80 ~~financial agent shall report to the State Election Commission~~
81 ~~within twenty-four hours thereof every additional expenditure or~~
82 ~~obligation, in the aggregate, that exceeds the initial funding~~

83 ~~available under section eleven of this article to any certified~~
84 ~~candidate running for the same office.~~

85 (f) ~~Any person, organization or entity making independent~~
86 ~~expenditures advocating the election or defeat of a certified~~
87 ~~candidate or the nomination or election of any candidate who is~~
88 ~~opposed by a certified candidate in excess of \$1,000, in the~~
89 ~~aggregate, shall report these expenditures to the State Election~~
90 ~~Commission on approved forms within forty-eight hours of the~~
91 ~~expenditure.~~

92 (g) ~~During the last fifteen days before the primary or general~~
93 ~~election in 2012, any person, organization or entity making~~
94 ~~independent expenditures advocating the election or defeat of~~
95 ~~any candidate, including the election or defeat of a certified~~
96 ~~candidate or the nomination or election of any candidate who is~~
97 ~~opposed by a certified candidate, shall continue to file reports as~~
98 ~~required pursuant to subsection (b), section two, article eight of~~
99 ~~this chapter.~~

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

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

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

6 (2) Make an annual report to the Legislature accounting for
7 moneys in the fund, describing the State Election Commission's
8 activities and listing any recommendations for changes of law,
9 administration or funding amounts;

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

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

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

22 (6) Cause an audit of the fund to be conducted by
23 independent certified public accountants ninety days after a

24 general election. The State Election Commission shall cooperate
25 with the audit, provide all necessary documentation and financial
26 records to the auditor and maintain a record of all information
27 supplied by the audit;

28 (7) In consultation with the State Treasurer and the State
29 Auditor, develop a rapid, reliable method of conveying funds to
30 certified candidates. In all cases, the commission shall distribute
31 funds to certified candidates in a manner that is expeditious,
32 ensures accountability and safeguards the integrity of the fund;
33 ~~and~~

34 (8) Regularly monitor the receipts, disbursements,
35 obligations and balance in the fund to determine whether the
36 fund will have sufficient moneys to meet its obligations and
37 sufficient moneys available for disbursement during the primary
38 and general election campaign period; and

39 (9) Transfer a portion of moneys maintained in the fund to
40 the West Virginia Investment Management Board for their
41 supervised investment, after consultation with the State
42 Treasurer, the State Auditor and the West Virginia Investment
43 Management Board.

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

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

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

51 (3) Prepare and publish instructions setting forth methods of
52 bookkeeping and preservation of records to facilitate compliance
53 with this article and to explain the duties of candidates and
54 others participating in elections under ~~the provisions of this~~
55 article;

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

60 (5) Enforce ~~the provisions of~~ this article to ensure that
61 moneys from the fund are placed in candidate campaign
62 accounts and spent as specified in this article;

63 (6) Monitor reports filed pursuant to this article and the
64 financial records of candidates to ensure that qualified

65 candidates receive ~~matching~~ funds promptly and to ensure that
66 moneys required by this article to be paid to the fund are
67 deposited in the fund;

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

72 (8) Prepare a voters' guide for the general public listing the
73 names of each candidate seeking election to the Supreme Court
74 of Appeals. Both certified and nonparticipating candidates shall
75 be invited by the State Election Commission to submit a
76 statement, not to exceed five hundred words in length, for
77 inclusion in the guide. The guide shall identify the candidates
78 that are certified candidates and the candidates that are
79 nonparticipating candidates. Copies of the guide shall be posted
80 on the website of the Secretary of State, as soon as may be
81 practical.

82 (c) To fulfill their responsibilities under this article, the State
83 Election Commission and the Secretary of State may subpoena
84 witnesses, compel their attendance and testimony, administer

85 oaths and affirmations, take evidence and require, by subpoena,
86 the production of any books, papers, records or other items
87 material to the performance of their duties or the exercise of
88 their powers.

89 (d) The State Election Commission may also propose and
90 adopt procedural rules to carry out the purposes and provisions
91 of this article and to govern procedures of the State Election
92 Commission as it relates to the requirements of this article.

§3-12-16. Civil penalties.

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

10 (b) If a participating or certified candidate or his or her
11 committee or financial agent intentionally accepts contributions

12 from a private source in violation of this article or spends or
13 obligates more than the amount of public campaign financing he
14 or she is eligible to receive from the fund, the State Election
15 Commission shall order the candidate to pay to the State
16 Election Commission an amount equal to ten times the amount
17 of the contribution, expenditure or obligation. The candidate
18 shall pay the civil penalty authorized under this subsection
19 within seven days of receipt of written notice from the State
20 Election Commission of the imposition of the penalty.

21 (c) If a participating or certified candidate fails to pay any
22 moneys required to be paid to the State Election Commission or
23 returned to the fund under this article, the State Election
24 Commission may order the candidate to pay an amount equal to
25 three times the amount that should have been paid to the State
26 Election Commission or returned to the fund.

27 (d) In addition to any other penalties imposed by law, the
28 State Election Commission may impose a civil penalty for a
29 violation by or on behalf of any candidate of any reporting
30 requirement imposed by this article in the amount of \$100 a day.
31 ~~The penalty shall be doubled if the amount not reported for a~~

32 ~~specific election exceeds ten percent of the initial amount of~~
33 ~~public financing available to a certified candidate in a primary~~
34 ~~or general election pursuant to section eleven of this article.~~

35 (e) All penalties collected by the State Election Commission
36 pursuant to this section shall be deposited into the fund. The
37 candidate and the candidate's campaign account are jointly and
38 severally responsible for the payment of any penalty imposed
39 pursuant to this section.