

H. B. 2858

(By Delegates Manchin, Longstreth, Caputo and Skinner)

[Introduced February 20, 2015; referred to the

Committee on the Judiciary then Finance.]

**FISCAL
NOTE**

A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §3-12A-1, §3-12A-2, §3-12A-3, §3-12A-4, §3-12A-5, §3-12A-6, §3-12A-7, §3-12A-8, §3-12A-9, §3-12A-10, §3-12A-11, §3-12A-12, §3-12A-13, §3-12A-14, §3-12A-15 and §3-12A-16, all relating to creating a public campaign financing program for circuit judges elections; providing criminal and civil penalties.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 12A. WEST VIRGINIA CIRCUIT JUDGES ELECTIONS PUBLIC CAMPAIGN FINANCING PROGRAM.

§3-12A-1. Short title.

1 This article is known as the "West Virginia Circuit Judges Elections Public Campaign
2 Financing Program."

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

4 The Legislature finds and declares the following:

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

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

9 (3) Over the last decade, fundraising and campaign expenditures in elections for judicial
10 offices has dramatically increased in West Virginia;

11 (4) As spending by candidates and independent parties increases, so does the perception that
12 contributors and interested third parties hold too much influence over the judicial process;

13 (5) The detrimental effects of spending large amounts by candidates and independent parties
14 are especially problematic in judicial elections because impartiality is uniquely important to the
15 integrity and credibility of courts.

16 **§3-12A-3. Definitions.**

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

18 (1) "Candidate" means an individual who:

19 (A) Has filed a certificate of announcement under section seven, article five of this chapter
20 to be elected as a circuit court judge;

21 (B) Has filed a declaration of candidacy under section twenty-three, article five of this
22 chapter;

1 (C) Has been named to fill a vacancy on a ballot; or

2 (D) Has declared a write-in candidacy or otherwise publicly declared his or her intention to
3 seek nomination or election for any state, district, county or municipal office or party office to be
4 filled at any election.

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

11 (3) "Certified candidate" means an individual seeking election to circuit judge who has been
12 certified in accordance with section ten of this article as having met all of the requirements for
13 receiving public campaign financing from the fund.

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

22 (5) "Exploratory contribution" means a maximum contribution made by an individual adult,

1 including a participating candidate and members of his or her immediate family, during the
2 exploratory period but prior to filing the declaration of intent for the office of circuit court judge up
3 to \$2,500;

4 (6) "Exploratory period" means the period during which a participating candidate may raise
5 and spend exploratory contributions to examine his or her chances of election and to qualify for
6 public campaign financing under this article. The exploratory period begins on June 1, the year
7 before the election in which the candidate may run for circuit court judge and ends on the last
8 Saturday in June of the election year.

9 (7) "Financial agent" means any individual acting for and by himself or herself, or any two
10 or more individuals acting together or cooperating in a financial way to aid or take part in the
11 nomination or election of any candidate for public office, or to aid or promote the success or defeat
12 of any political party at any election.

13 (8) "Fund" means the circuit court Judge Public Campaign Financing Fund created by section
14 five of this article.

15 (9) "Immediate family" or "immediate family members" means the spouse, parents, step-
16 parents, siblings and children of the participating candidate.

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

18 (A) Seeking election to circuit court judge;

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

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

22 (11) "Participating candidate" means a candidate who is seeking election to circuit court

1 judge and is attempting to be certified in accordance with section ten of this article to receive public
2 campaign financing from the fund.

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

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

9 (14) "Qualifying period" means the period during which participating candidates may raise
10 and spend qualifying contributions in order to qualify to receive public campaign financing. For
11 candidates for circuit court judge seeking to be placed on the election ballot, the qualifying period
12 begins on June 1, of the election year and ends on October 1, of the election year.

13 **§3-12A-4. Alternative public campaign financing option.**

14 This article establishes an alternative public campaign financing option available to
15 candidates for election to circuit court judge offices in West Virginia. Candidates electing the
16 alternative public campaign financing option shall comply with all other applicable election and
17 campaign laws and rules.

18 **§3-12A-5. Circuit Judges Campaign Financing Fund.**

19 There is established within the State Treasury a Special Revenue Fund to be known as the
20 "Circuit Court Judge Public Campaign Financing Fund" for the dual purpose of providing public
21 financing for the election campaigns of certified candidates under the provisions of this article and
22 of paying the administrative and enforcement costs of the Secretary of State and State Election

1 Commission related to this article. All moneys collected under the provisions of this article shall
2 be deposited in the fund, which shall be administered by the State Election Commission. Funds may
3 also be accepted from any gift, grant, bequest, endowment fund or donation which may be received
4 by the State Election Commission from any person, firm, foundation or corporation. Any balance,
5 including accrued interest or other earnings in the fund at the end of any fiscal year do not revert to
6 the General Revenue Fund, but remain in the fund. Expenditures may be made from the fund only
7 for the purposes set forth in this article and in accordance with the provisions of article three, chapter
8 twelve of this code and upon fulfillment of the provisions of article two, chapter eleven-b of this
9 code.

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

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

12 (1) All exploratory and qualifying contributions in excess of the established maximums.

13 (2) Money returned by participating or certified candidates who fail to comply with the
14 provisions of this article.

15 (3) Unspent or unobligated moneys allotted to certified candidates and remaining unspent
16 or unobligated on the date of the election for which the money was distributed.

17 (4) If a certified candidate loses, all remaining unspent or unobligated moneys after the
18 election.

19 (5) Civil penalties levied by the State Election Commission against candidates for violations
20 of this article.

21 (6) Civil penalties levied by the Secretary of State pursuant to section seven, article eight of
22 this chapter.

1 (7) Voluntary donations made directly to the fund.

2 (8) Interest income.

3 (9) Each West Virginia state personal income tax taxpayer may voluntarily contribute a
4 portion of the taxpayer's state income tax refund, up to \$6,000, for deposit into the fund through a
5 check-off designation on the state personal income tax return form. If a husband and wife file a joint
6 return, each spouse may designate up to \$6,000 for deposit into the fund. All amounts so designated
7 shall be deducted from the taxpayers' income tax refund and credited to the fund. The State Tax
8 Commissioner shall determine by July 1 of each year the total amount designated pursuant to this
9 subsection and shall report that amount to the State Treasurer, who shall credit that amount to the
10 fund.

11 (10) On or before July 1, 2015, and for two successive years thereafter, the unclaimed
12 property administrator of the State Treasurer's Office shall transfer the amount of \$1 million from
13 the Unclaimed Property Trust Fund to the fund created by this article.

14 (11) Money appropriated to the fund.

15 (12) Beginning in fiscal year 2015-2016, the West Virginia State Bar shall assess every
16 attorney licensed to practice law in West Virginia a fee for the fair administration of justice to be
17 deposited into the fund as follows:

18 (A) Attorneys licensed to practice law for three years or less, \$50;

19 (B) Attorneys licensed to practice law for more than three years, \$75; and

20 (C) Attorneys licensed to practice law on inactive status, \$65.

21 All fees obligated to the fund shall be collected by the West Virginia State Bar and
22 transmitted to the State Treasurer to be deposited in the fund.

1 (13) There is assessed a fair administration of justice fee of \$100 on each appeal and petition
2 filed in the Supreme Court of Appeals in a civil case, except domestic relations actions, instituted
3 on and after the effective date of this article. No fee may be charged on any appeal or petition filed
4 in forma pauperis.

5 The Clerk of the Supreme Court of Appeals shall collect the fee at the time any such appeal
6 or petition is filed and shall remit the fees collected each month to the State Treasurer to be deposited
7 in the fund.

8 (14) There is assessed a fair administration of justice fee of \$20 on each civil action filed in
9 circuit court, except class actions and domestic relations actions, instituted under the rules of civil
10 procedure, any statutory summary proceeding, any extraordinary remedy filed, and the docketing of
11 civil appeals to circuit court or any other action, cause, suit or proceeding instituted in circuit court
12 on and after the effective date of this article. No fee may be charged on any such action filed in
13 forma pauperis. The clerk of the circuit court shall collect the fee at the time any such action is filed
14 and shall remit the fees collected each month to the State Treasurer to be deposited in the fund.

15 (15) There is assessed a fair administration of justice fee of \$20 on each party in a class
16 action lawsuit filed in circuit court at the time the case is settled or judgment rendered. No fee may
17 be charged on any such action filed in forma pauperis. The fee shall be paid to the clerk of the
18 circuit court at the time of settlement or when judgment is rendered. Where judgement is rendered
19 the fee shall be collected from the nonprevailing party. The clerk shall remit the fees collected each
20 month to the State Treasurer to be deposited in the fund.

21 **§3-12A-7. Declaration of intent.**

22 A candidate desiring to receive campaign financing from the fund shall first file a declaration

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

11 **§3-12A-8. Exploratory period; contributions; expenditures.**

12 (a) A participating candidate or his or her committee may not accept, spend or obligate
13 exploratory contributions exceeding the amount established for pursuant to this section, in the
14 aggregate, during the exploratory period. At the time the participating candidate formally declares
15 his or her intent to qualify for public campaign financing, in accordance with section five of this
16 article, any unexpended or undedicated contributions received during any precandidacy period which
17 preceded the exploratory period shall be deemed to be exploratory contributions for that candidate.
18 The maximum individual exploratory contribution which may be accepted from any person including
19 immediate family members is \$1,000. A participating candidate may loan, contribute or obligate up
20 to \$1,000, of his or her own money for exploratory purposes. Any exploratory contributions received
21 by the participating candidate in excess of the amount as established by section three of this article
22 in the aggregate shall be sent to the Election Commission for deposit in the fund.

1 (b) Each exploratory contribution shall be acknowledged by a written receipt. Receipts for
2 exploratory contributions of \$250 or more during an election cycle shall include the contributor's
3 name, residence and mailing address, business affiliation and occupation. Receipts for exploratory
4 contributions of less than \$250 shall include the contributor's name and the amount of the
5 contribution, and otherwise comport with the disclosure and reporting requirements of section five-a,
6 article eight of this chapter.

7 (c) An exploratory contribution from one person may not be made in the name of another
8 person.

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

18 **§3-12A-9. Qualifying contributions.**

19 (a) A participating candidate or his or her candidate's committee may not accept more than
20 one qualifying contribution from a single individual. A qualifying contribution may not be less than
21 \$1 nor more than \$100. To be considered as a proper qualifying contribution, the qualifying
22 contribution must be made by a registered West Virginia voter. A participating candidate shall

1 collect qualifying contributions which meet the aggregate of, not less than \$2,500, nor more than
2 \$7,500.

3 Qualifying contributions in excess of the established maximums shall be sent to the State
4 Election Commission for deposit in the fund.

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

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

9 (2) For qualifying contributions of \$25 or more, the contributor's signature, printed name,
10 street address, zip code, telephone number, occupation and name of employer; and for qualifying
11 contributions of less than \$25, the contributor's signature, printed name, street address and zip code;

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

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

15 (B) The contribution was made without coercion;

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

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

22 (c) During the qualifying period, a participating candidate or his or her candidate's committee

1 must obtain at least five hundred qualifying contributions from registered West Virginia voters. A
2 minimum of ten percent of the total number of qualifying contributions received by the candidate
3 must be from each of the state's congressional districts.

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

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

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

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

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

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

3 (3) All contributions to candidates participating in the Circuit Judges Election Public
4 Campaign Financing Program shall be collected by the candidates's designated financial agent.

5 **§3-12A-10. Certification of candidates.**

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

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

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

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

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

16 (4) Is eligible, as provided in section nine, article five of this chapter, to appear on the
17 election ballot; and

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

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

1 (d) The State Election Commission shall determine whether to certify a participating
2 candidate as eligible to receive public campaign financing no later than three business days after the
3 candidate or the candidate's committee makes his or her final report of qualifying contributions or,
4 if a challenge is filed under subsection (g) of this section, no later than six business days after the
5 candidate or the candidate's committee makes his or her final report of qualifying contributions. A
6 certified candidate shall comply with this article through the election campaign period.

7 (e) No later than two business days after the State Election Commission certifies that a
8 participating candidate is eligible to receive public campaign financing under this section, the State
9 Election Commission, acting in concert with the State Auditor's Office and the State Treasurer's
10 office, shall cause a check to be issued to the candidate's campaign depository account an amount
11 equal to the public campaign financing benefit for which the candidate qualifies under section eleven
12 of this article, minus the candidate's qualifying contributions, and shall notify all other candidates
13 for the same office of its determination.

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

17 (g) Any person may challenge the validity of any contribution listed by a participating
18 candidate by filing a written challenge with the State Election Commission setting forth any reason
19 why the contribution should not be accepted as a qualifying contribution. If a contribution is
20 challenged under this subsection, the State Election Commission shall decide the validity of the
21 challenge no later than the end of the next business day after the day that the challenge is filed, unless
22 the State Election Commission determines that the candidate whose contribution is challenged has

1 both a sufficient qualifying number and amount of qualifying contributions to be certified as a
2 candidate under this section without considering the challenge. Within five business days of a
3 challenge, the candidate or candidate's committee who listed any contribution that is the subject of
4 a challenge may file a report with the State Election Commission of an additional contribution
5 collected pursuant to section nine of this article for consideration as a qualifying contribution.

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

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

17 (j) A candidate may withdraw from being a certified candidate and become a nonparticipating
18 candidate at any time with the approval of the State Election Commission. Any candidate seeking
19 to withdraw shall file a written request with the State Election Commission, which shall consider
20 requests on a case-by-case basis. No certified candidate may withdraw until he or she has repaid all
21 moneys received from the fund: *Provided*, That the State Election Commission may, in exceptional
22 circumstances, waive the repayment requirement. The State Election Commission may assess a

1 penalty not to exceed \$10,000 against any candidate who withdraws without approval.

2 **§3-12A-11. Schedule and amount of circuit court Judge Elections Public Campaign Financing**

3 **Fund payments.**

4 (a) The State Election Commission, acting in concert with the State Auditor's Office and the
5 State Treasurer's office, shall have a check issued within two business days after the date on which
6 the candidate is certified, to make payments from the fund for the campaign period available to a
7 certified candidate as follows:

8 A certified candidate for the office of circuit court judge shall receive from the fund:

9 (A) In a contested election, an amount not to exceed \$50,000.

10 (B) In an uncontested election, an amount not to exceed \$5,000.

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

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

21 **§3-12A-12. Restrictions on contributions and expenditures.**

22 (a) A certified candidate or his or her committee may not accept loans or contributions from

1 any private source, including the personal funds of the candidate and the candidate's immediate
2 family, during the election campaign periods except as permitted by this article.

3 (b) After filing the declaration of intent and during the qualifying period, a participating
4 candidate may not spend or obligate more than he or she has collected in exploratory and qualifying
5 contributions. After the qualifying period and through the election campaign period, a certified
6 candidate may spend or obligate any unspent exploratory or qualifying contributions and the moneys
7 he or she receives from the fund under the provisions of section eleven of this article.

8 (c) A participating or certified candidate may expend exploratory and qualifying
9 contributions and funds received from the fund only for lawful election expenses as provided in
10 section nine, article eight, of this chapter. Moneys distributed to a certified candidate from the fund
11 may be expended only during the election campaign period for which funds were dispersed. Money
12 from the fund may not be used:

13 (1) In violation of the law;

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

15 (3) To help any other candidate.

16 (d) A certified candidate or his or her committee shall return to the fund any unspent and
17 unobligated exploratory contributions, qualifying contributions or moneys received from the fund
18 within forty-eight hours after:

19 (1) The date on which the candidate ceases to be certified; or

20 (2) The date on which the individual loses the election or otherwise ceases to be a candidate.

21 (e) A certified candidate or his or her committee shall return to the fund any unspent or
22 unobligated public campaign financing funds no later than five business days after the election.

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

2 (g) A participating or certified candidate or his or her committee receiving qualifying
3 contributions or exploratory contributions from a person not listed on the receipt required by sections
4 eight and nine of this article is liable to the State Election Commission for the entire amount of that
5 contribution and any applicable penalties.

6 (h) A certified candidate accepting any benefits under the provisions of this article shall
7 continue to comply with all of its provisions throughout the election campaign period.

8 (i) A participating or certified candidate or his or her financial agent shall provide the
9 Secretary of State with all requested campaign records, including all records of exploratory and
10 qualifying contributions received and campaign expenditures and obligations, and shall fully
11 cooperate with any audit of campaign finances requested or authorized by the State Election
12 Commission.

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

14 (a) Participating candidates and certified candidates shall comply with this section in addition
15 to any other reporting required by this chapter.

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

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

4 (1) All exploratory contributions received and funds expended or obligated during the
5 exploratory period together with copies of any receipts not previously submitted for exploratory
6 contributions; and

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

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

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

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

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

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

22 (3) Propose emergency and legislative rules for legislative approval, in accordance with

1 article three, chapter twenty-nine-a of this code, as may be necessary for the proper administration
2 of this article;

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

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

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

12 (7) In consultation with the State Treasurer and the State Auditor, develop a rapid, reliable
13 method of conveying funds to certified candidates. In all cases, the commission shall distribute
14 funds to certified candidates in a manner that is expeditious, ensures accountability and safeguards
15 the integrity of the fund;

16 (8) Regularly monitor the receipts, disbursements, obligations and balance in the fund to
17 determine whether the fund will have sufficient moneys to meet its obligations and sufficient moneys
18 available for disbursement during the election campaign period; and

19 (9) Transfer a portion of moneys maintained in the fund to the West Virginia Investment
20 Management Board for their supervised investment, after consultation with the State Treasurer, the
21 State Auditor and the West Virginia Investment Management Board.

22 (b) In addition to his or her other duties, the Secretary of State shall carry out the duties of

1 this article and complete the following as applicable:

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

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

6 (3) Prepare and publish instructions setting forth methods of bookkeeping and preservation
7 of records to facilitate compliance with this article and to explain the duties of candidates and others
8 participating in elections under this article;

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

12 (5) Enforce this article to ensure that moneys from the fund are placed in candidate campaign
13 accounts and spent as specified in this article;

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

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

20 (8) Prepare a voters' guide for the public listing the names of each candidate seeking election
21 as a circuit court judge. Both certified and nonparticipating candidates shall be invited by the State
22 Election Commission to submit a statement, not to exceed five hundred words in length, for

1 inclusion in the guide. The guide shall identify the candidates that are certified candidates and the
2 candidates that are nonparticipating candidates. Copies of the guide shall be posted on the website
3 of the Secretary of State, as soon as may be practical.

4 (c) To fulfill their responsibilities under this article, the State Election Commission and the
5 Secretary of State may subpoena witnesses, compel their attendance and testimony, administer oaths
6 and affirmations, take evidence and require, by subpoena, the production of any books, papers,
7 records or other items material to the performance of their duties or the exercise of their powers.

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

11 **§3-12A-15. Criminal penalties.**

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

18 (b) A participating or certified candidate who, either personally or through his or her
19 committee or financial agent, provides false information to, or conceals or withholds information
20 from, the State Election Commission or the Secretary of State is guilty of a misdemeanor and, upon
21 conviction thereof, shall be fined not less than \$1,000, nor more than \$10,000, or confined in jail for
22 up to one year or both.

1 **§3-12A-16. Civil penalties.**

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

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

15 (c) If a participating or certified candidate fails to pay any moneys required to be paid to the
16 State Election Commission or returned to the fund under this article, the State Election Commission
17 may order the candidate to pay an amount equal to three times the amount that should have been paid
18 to the State Election Commission or returned to the fund.

19 (d) In addition to any other penalties imposed by law, the State Election Commission may
20 impose a civil penalty for a violation by or on behalf of any candidate of any reporting requirement
21 imposed by this article in the amount of \$100 a day.

22 (e) All penalties collected by the State Election Commission pursuant to this section shall

1 be deposited into the fund. The candidate and the candidate's campaign account are jointly and severally responsible for the payment of any penalty imposed pursuant to this section.

NOTE: The purpose of this bill is to create a public campaign financing program for circuit judges elections.

Article 12A is new; therefore, it has been completely underscored.