

HB 4130

2010 MAR 24 PM 4:54  
CLERK OF THE HOUSE  
SECRETARY OF STATE

**WEST VIRGINIA LEGISLATURE**  
SECOND REGULAR SESSION, 2010



**ENROLLED**

**COMMITTEE SUBSTITUTE  
FOR  
House Bill No. 4130**

(By Mr. Speaker, Mr. Thompson, and Delegate Armstead)  
[By Request of the Executive]



Passed March 13, 2010

In Effect Ninety Days From Passage

# ENROLLED

COMMITTEE SUBSTITUTE

FOR

## H. B. 4130

2010 MAR 24 PM 4: 54

OFFICE OF THE CLERK  
WEST VIRGINIA  
SECRETARY OF STATE

(BY MR. SPEAKER, MR. THOMPSON, AND DELEGATE ARMSTEAD)  
[BY REQUEST OF THE EXECUTIVE]

[Passed March 13, 2010; in effect ninety days from passage.]

AN ACT to amend and reenact §3-1A-1, §3-1A-4 and §3-1A-5 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new article, designated §3-12-1, §3-12-2, §3-12-3, §3-12-4, §3-12-5, §3-12-6, §3-12-7, §3-12-8, §3-12-9, §3-12-10, §3-12-11, §3-12-12, §3-12-13, §3-12-14, §3-12-15, §3-12-16 and §3-12-17, all relating to creating the West Virginia Supreme Court of Appeals Public Campaign Financing Pilot Program; giving additional duties and per diem pay to the State Election Commission; authorizing the State Election Commission to use video, telephone and Internet conferencing; providing alternative public campaign financing option for candidates for the West Virginia Supreme Court of Appeals in 2012; setting forth short title and certain legislative findings and declarations; defining terms; specifying that the provisions of the act are applicable to candidates for the West Virginia Supreme Court of Appeals in the 2012 primary and general elections; establishing the Supreme Court of Appeals Public Campaign Financing Fund and sources of revenue for the fund; authorizing transfer from the Purchasing Card

Administration Fund to the fund for three years; requiring an applicant for public campaign financing to complete a declaration of intent and setting forth the manner in which an application for funding may be made; setting forth eligibility criteria for qualifying candidates; allowing participating candidates to raise funds from private sources and spend exploratory contributions; requiring candidates seeking public campaign funds to collect a required number of qualifying contributions; requiring candidates to provide detailed receipts to contributors and to the State Election Commission for exploratory and qualifying contributions; requiring participating candidates to comply with all provisions of the act; requiring the State Election Commission to certify eligible candidates and setting forth the procedure for certification; providing for challenges to certification; providing for revocation of certification; providing for withdrawal from program; providing for distribution of funds from the Public Campaign Financing Fund to qualified candidates for funding election campaigns; specifying the amount of funds available for each candidate and when the funds become available; setting forth restrictions on participating candidates' contributions and spending; prohibiting participating candidates from accepting private contributions other than as specifically set forth in the act; providing for repayment of funds under certain circumstances; prohibiting the use of personal funds for certain purposes; permitting qualified candidates to raise funds from private sources when there is insufficient money in the Public Campaign Financing Fund to make a complete distribution to all qualified candidates; requiring certain disclosures; requiring candidates to keep records and report to the State Election Commission; providing for additional funds when independent expenditures or opponent expenditures exceed certain limits; setting forth certain duties of the State Election Commission and the Secretary of State; authorizing emergency and legislative rules; authorizing the creation of a voters' guide; providing for the deposit of certain revenue into the fund;

requiring repayment of excessive expenditures by candidates; providing both civil and criminal penalties for violations of the act; and expiring the act in 2013.

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

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

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

**§3-1A-1. Election commission continued; composition; chairperson; per diem; traveling expense.**

1 The "State Election Commission," heretofore created, is  
2 continued and is composed of the Secretary of State, and four  
3 persons appointed by the Governor, by and with the advice  
4 and consent of the Senate. The commission shall from this  
5 membership elect a chairman for a term of two years. Each  
6 member of the commission shall be reimbursed for all  
7 reasonable and necessary expenses actually paid the per diem  
8 and expense reimbursement established for the Legislature in  
9 section seven, article two-a, chapter four of this code in the  
10 performance of his or her duties as a member of the  
11 commission.

**§3-1A-4. Office and meetings of commission.**

1 (a) The office and place of meeting of the commission is  
2 the office of the Secretary of State in the State Capitol. The  
3 commission may also conduct meetings via video, telephone  
4 or Internet conferencing.

5 (b) The commission shall hold such meetings as may be  
6 called by the chairman, the Governor or the Secretary of  
7 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  
3 as provided in section seven, article four of this chapter.

4 (b) The commission also shall serve as a body advisory  
5 to the Secretary of State, and, as such, shall have the  
6 following 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  
11 elections, and for this purpose to have access at reasonable  
12 times to 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  
15 in 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  
22 Financing Pilot Program, established in article twelve of this  
23 chapter;

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

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

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

44 (d) The commission shall propose for promulgation  
45 emergency and legislative rules, in accordance with the  
46 provisions of article three, chapter twenty-nine-a of this code,  
47 as may be necessary to standardize and make effective the  
48 administration of the provisions of article eight of this  
49 chapter, and may propose for promulgation other rules, in  
50 accordance with the provisions of article three, chapter  
51 twenty-nine-a of this code, relating to the conduct and  
52 administration of elections as the commission determines to  
53 be advisable.

54 (e) Meetings of the commission conducted for the  
55 purpose of confirming the initial eligibility of individual

56 candidates to receive public campaign financing under the  
57 West Virginia Supreme Court of Appeals Public Campaign  
58 Financing Fund; the authorization of supplemental  
59 distributions from the fund; and the candidate's ability to  
60 receive supplemental distributions pursuant to the provisions  
61 of chapter twelve of this article are expressly exempted from  
62 the public notice and public meeting requirements of article  
63 nine-a, chapter six of this code.

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

**§3-12-1. Short title.**

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

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

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

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

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

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

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

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

25 (9) An alternative public campaign financing option for  
26 candidates running for a seat on the Supreme Court of  
27 Appeals will ensure the fairness of democratic elections in  
28 this state, protect the Constitutional rights of voters and  
29 candidates from the detrimental effects of increasingly large  
30 amounts of money being raised and spent to influence the  
31 outcome of elections, protect the impartiality and integrity of  
32 the judiciary, and strengthen public confidence in the  
33 judiciary; and

34 (10) Funding the “West Virginia Supreme Court of  
35 Appeals Public Campaign Financing Pilot Program” from a  
36 wide range of revenue sources furthers important state  
37 interests in protecting the integrity of judicial elections and  
38 serves to protect the public interest.

**§3-12-3. Definitions.**



1 As used in this article, the following terms and phrases  
2 have 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  
6 possibilities of seeking a particular office or to support or aid  
7 his or her nomination or election to an office in an election  
8 cycle. If a candidate directs or influences the activities of  
9 more than one active committee in a current campaign, those  
10 committees shall be considered one committee for the  
11 purpose of contribution limits.

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

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

30 (4) "Exploratory contribution" means a contribution of no  
31 more than \$1,000 made by an individual adult, including a  
32 participating candidate and members of his or her immediate

33 family, during the exploratory period. Exploratory contributions  
34 may not exceed \$20,000 in the aggregate.

35 (5) “Exploratory period” means the period during which  
36 a 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  
44 by himself or herself, or any two or more individuals acting  
45 together or cooperating in a financial way to aid or take part  
46 in the nomination or election of any candidate for public  
47 office, or to aid or promote the success or defeat of any  
48 political party at any election.

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

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

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

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

59 (B) That is not made in concert or cooperation with or at  
60 the request or suggestion of such candidate, his or her agents,  
61 the candidate’s authorized political committee or a political  
62 party committee or its agents.

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

68 (10) “Immediate family” or “immediate family members”  
69 means the spouse, parents, step-parents, siblings and children  
70 of the participating candidate.

71 (11) “Nonparticipating candidate” means a candidate who  
72 is:

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

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

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

78 (12) “Participating candidate” means a candidate who is  
79 seeking election to the Supreme Court of Appeals and is  
80 attempting to be certified in accordance with section ten of  
81 this article to receive public campaign financing from the  
82 fund.

83 (13) “Person” means an individual, partnership,  
84 committee, association and any other organization or group  
85 of individuals.

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

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

98 (16) “Qualifying period” means the period during which  
99 participating candidates may raise and spend qualifying  
100 contributions in order to qualify to receive public campaign  
101 financing.

102 (A) For candidates seeking nomination on the primary  
103 election ballot, the qualifying period begins on September 1  
104 preceding the election year and ends on the last Saturday in  
105 January of the election year.

106 (B) For candidates, other than those nominated during the  
107 primary election, seeking to be placed on the general election  
108 ballot, the qualifying period begins on June 1 of the election  
109 year 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  
3 office of Justice of the West Virginia Supreme Court of  
4 Appeals for the 2012 primary and general elections.  
5 Candidates electing the alternative public campaign financing  
6 option shall comply with all other applicable election and  
7 campaign laws and rules.

**§3-12-5. Supreme Court of Appeals Public Campaign Financing Fund.**

1 There is established within the State Treasury a special  
2 revenue fund to be known as the “Supreme Court of Appeals

3 Public Campaign Financing Fund” for the dual purpose of  
4 providing public financing for the election campaigns of  
5 certified candidates under the provisions of this article and of  
6 paying the administrative and enforcement costs of the  
7 Secretary of State and State Election Commission related to  
8 this article. All moneys collected under the provisions of this  
9 article shall be deposited in the fund, which shall be  
10 administered by the State Election Commission. Funds may  
11 also be accepted from any gift, grant, bequest, endowment  
12 fund or donation which may be received by the State Election  
13 Commission from any person, firm, foundation or  
14 corporation. Any balance, including accrued interest or other  
15 earnings in the fund at the end of any fiscal year do not revert  
16 to the General Revenue Fund, but shall remain in the fund.  
17 Expenditures may be made from the fund only for the  
18 purposes set forth in this article and in accordance with the  
19 provisions of article three, chapter twelve of this code and  
20 upon fulfillment of the provisions of article two, chapter  
21 eleven-b of this code.

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

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

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

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

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

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

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

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

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

18 (8) Interest income;

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

25 (10) Money appropriated to the fund.

**§3-12-7. Declaration of intent.**

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

16 and subject to the limits and provisions of section eight of  
17 this article.

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

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

18 (b) Each exploratory contribution shall be acknowledged  
19 by a written receipt. Receipts for exploratory contributions  
20 of \$250 or more during an election cycle shall include the  
21 contributor's name, residence and mailing address, business  
22 affiliation and occupation. Receipts for exploratory  
23 contributions of less than \$250 shall include the contributor's  
24 name and the amount of the contribution, and otherwise  
25 comport with the disclosure and reporting requirements of  
26 section five-a, article eight of this chapter.

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

29 (d) At the beginning of each month a participating or  
30 certified candidate or his or her financial agent shall report all  
31 exploratory contributions, expenditures and obligations along  
32 with all receipts for contributions received during the prior  
33 month to the Secretary of State. Such reports shall be filed  
34 electronically: *Provided*, That a committee may apply for an  
35 exemption in case of hardship pursuant to subsection (c) of  
36 section five-b, article eight of this chapter. If the candidate  
37 decides not to run for office all unspent or unobligated  
38 exploratory contributions shall be sent to the State Election  
39 Commission for deposit in the fund. If the candidate decides  
40 to run for office as a nonparticipating candidate the unspent  
41 or unobligated exploratory contributions shall be used in  
42 accordance with articles eight and twelve of this chapter.

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

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

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



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

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

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

28 (B) The contribution was made without coercion;

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

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

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

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

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

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

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

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

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

6 (b) Upon receipt of a notice from the Secretary of State  
7 that a participating candidate has received the required  
8 number and amount of qualifying contributions, the State

9 Election Commission shall determine whether the candidate  
10 or candidate's committee:

11 (1) Has signed and filed a declaration of intent as  
12 required by 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  
19 this chapter, to appear on the primary or general election  
20 ballot; and

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

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

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

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

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

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

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

79 (i) The determination of any issue before the State  
80 Election Commission is the final administrative determination.  
81 Any meetings conducted by the State Elections Commission  
82 to certify a candidate's initial eligibility to receive funds  
83 under this article, or their eligibility to receive supplemental  
84 funds or rescue funds under section eleven of this article shall  
85 not be subject the public notice and open meeting  
86 requirements of article nine-a, chapter six of this Code, but  
87 the Commission shall concurrently provide public notice of  
88 any decision and determination it makes which impacts the  
89 candidate's eligibility to receive initial funds or supplemental  
90 funds pursuant to the provisions of this article. Any person  
91 adversely affected by a decision of the State Election  
92 Commission under the provisions of this article may appeal  
93 that decision to the circuit court of Kanawha County.

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

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

1 (a) The State Election Commission, acting in concert  
2 with the State Auditor's office and the State Treasurer's  
3 office, shall have a check issued within two business days  
4 after the date on which the candidate is certified, to make  
5 payments from the fund for the 2012 primary election  
6 campaign period available to a certified candidate.

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

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

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

21 (1) In a contested general election, a certified candidate  
22 may receive from the fund an amount not to exceed  
23 \$350,000.

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

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

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

42 (e) If the commission determines from any reports filed  
43 pursuant to this chapter or by other reliable and verifiable  
44 information obtained through investigation that a  
45 nonparticipating candidate's campaign expenditures or  
46 obligations, in the aggregate, have exceeded by twenty  
47 percent the initial funding available under this section any  
48 certified candidate running for the same office, the commission  
49 shall authorize the release of additional funds in the amount  
50 of the reported excess to any opposing certified candidate for  
51 the same office.

52 (f) If the State Election Commission determines from any  
53 reports filed pursuant to this chapter or by other reliable and  
54 verifiable information obtained through investigation that  
55 independent expenditures on behalf of a nonparticipating  
56 candidate, either alone or in combination with the  
57 nonparticipating candidate's campaign expenditures or  
58 obligations, have exceeded by twenty percent the initial  
59 funding available under this section to any certified candidate

60 running for the same office, the commission shall authorize  
61 the release of additional funds in the amount of the reported  
62 excess to any certified candidate who is an opponent for the  
63 same office.

64 (g) If the commission determines from any reports filed  
65 pursuant to this chapter or by other reliable and verifiable  
66 information obtained through investigation that independent  
67 expenditures on behalf of a certified candidate, in  
68 combination with the certified candidate's campaign  
69 expenditures or obligations, exceed by twenty percent the  
70 initial funding available under this section to any certified  
71 candidate running for the same office, the State Election  
72 Commission shall authorize the release of additional funds in  
73 the amount of the reported excess to any other certified  
74 candidate who is an opponent for the same office.

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

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

### **§3-12-12. Restrictions on contributions and expenditures.**

1 (a) A certified candidate or his or her committee may not  
2 accept loans or contributions from any private source,  
3 including the personal funds of the candidate and the  
4 candidate's immediate family, during the primary or general  
5 election campaign periods except as permitted by this article.



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

15 (c) A participating or certified candidate may expend  
16 exploratory and qualifying contributions and funds received  
17 from the fund only for lawful election expenses as provided  
18 in section nine, article eight of this chapter. Moneys  
19 distributed to a certified candidate from the fund may be  
20 expended only during the primary and general election  
21 campaign period for which funds were dispersed. Money  
22 from the fund may not be used:

23 (1) In violation of the law;

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

26 (3) To help any other candidate.

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

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

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

35 (e) Funds remaining unspent or unobligated after the  
36 close of the primary election campaign period may be  
37 retained by the candidate for use during the general election  
38 campaign period but shall be deducted from the amount the  
39 candidate is eligible to receive under subsection (b), section  
40 eleven of this article.

41 (f) A certified candidate or his or her committee shall  
42 return to the fund any unspent or unobligated public  
43 campaign financing funds no later than five business days  
44 after the general election.

45 (g) A contribution from one person may not be made in  
46 the name of another person.

47 (h) A participating or certified candidate or his or her  
48 committee receiving qualifying contributions or exploratory  
49 contributions from a person not listed on the receipt required  
50 by sections eight and nine of this article is liable to the State  
51 Election Commission for the entire amount of that  
52 contribution and any applicable penalties.

53 (i) A certified candidate accepting any benefits under the  
54 provisions of this article shall continue to comply with all of  
55 its provisions throughout the primary election campaign  
56 period and general election campaign period.

57 (j) A participating or certified candidate or his or her  
58 financial agent shall provide the Secretary of State with all  
59 requested campaign records, including all records of  
60 exploratory and qualifying contributions received and  
61 campaign expenditures and obligations, and shall fully  
62 cooperate with any audit of campaign finances requested or  
63 authorized by the State Election Commission.

**§3-12-13. Reporting requirements.**

1 (a) Participating candidates, certified candidates and  
2 nonparticipating candidates shall comply with the provisions  
3 of this section in addition to any other reporting required by  
4 the provisions of this chapter.

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

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

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

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

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

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

39 (1) On the first Saturday in March or within six days  
40 thereafter, listing the nonparticipating candidate's  
41 expenditures and obligations prior to March 1, if the  
42 nonparticipating candidate's campaign expenditures or  
43 obligations, in the aggregate, exceed the initial funding  
44 available under section eleven of this article to any certified  
45 candidate for the same office.

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

60 (3) On the first Saturday in July or within six days  
61 thereafter, listing the nonparticipating candidate's  
62 expenditures and obligations prior to July 1 subsequent to the  
63 primary election, if the nonparticipating candidate's  
64 expenditures or obligations, in the aggregate, exceed the  
65 initial funding available under section eleven of this article to  
66 any certified candidate running for the same office.

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

81 (5) During the last fifteen days before the primary or  
82 general elections in 2012, the nonparticipating candidate or  
83 his or her financial agent shall report to the State Election  
84 Commission within twenty-four hours thereof every  
85 additional expenditure or obligation, in the aggregate, that  
86 exceeds the initial funding available under section eleven of  
87 this article to any certified candidate running for the same  
88 office.

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

96 (g) During the last fifteen days before the primary or  
97 general election in 2012, any person, organization or entity  
98 making independent expenditures advocating the election or  
99 defeat of any candidate, including the election or defeat of a

100 certified candidate or the nomination or election of any  
101 candidate who is opposed by a certified candidate, shall  
102 continue to file reports as required pursuant to subsection (b),  
103 section two, article eight of 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  
5 other documents required by this article;

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

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

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

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

23 (6) Cause an audit of the fund to be conducted by  
24 independent certified public accountants ninety days after a  
25 general election. The State Election Commission shall  
26 cooperate with the audit, provide all necessary documentation  
27 and financial records to the auditor and maintain a record of  
28 all information supplied by the audit;

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

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

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

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

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

47 (3) Prepare and publish instructions setting forth methods  
48 of bookkeeping and preservation of records to facilitate  
49 compliance with this article and to explain the duties of  
50 candidates and others participating in elections under the  
51 provisions of this article;

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

57 (5) Enforce the provisions of this article to ensure that  
58 moneys from the fund are placed in candidate campaign  
59 accounts and spent as specified in this article;

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

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

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

79 (c) To fulfill their responsibilities under this article, the  
80 State Election Commission and the Secretary of State may  
81 subpoena witnesses, compel their attendance and testimony,  
82 administer oaths and affirmations, take evidence and require,



83 by subpoena, the production of any books, papers, records or  
84 other items material to the performance of their duties or the  
85 exercise of their powers.

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

91 **§3-12-15. Criminal penalties.**

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

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

**§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  
4 provisions of this article or spends or obligates to spend more  
5 than the amount of public financing money he or she is  
6 eligible to receive from the fund pursuant to section eleven of  
7 this article, the State Election Commission may order the  
8 candidate to pay to the State Election Commission an amount  
9 equal to the amount of the contribution, expenditure or  
10 obligation.

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

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

29 (d) In addition to any other penalties imposed by law, the  
30 State Election Commission may impose a civil penalty for a  
31 violation by or on behalf of any candidate of any reporting  
32 requirement imposed by this article in the amount of \$100 a  
33 day. The penalty shall be doubled if the amount not reported  
34 for a specific election exceeds ten percent of the initial  
35 amount of public financing available to a certified candidate

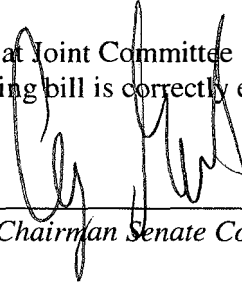
36 in a primary or general election pursuant to section eleven of  
37 this article.

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

**§3-12-17. Expiration of article.**

The provisions of this article shall have no force or effect on or after July 1, 2013. Any moneys remaining in the fund on July 1, 2013, shall be transferred to the General Revenue Fund.


That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

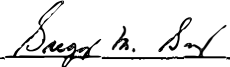
  
\_\_\_\_\_  
Chairman Senate Committee

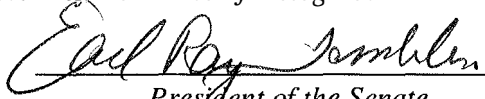
  
\_\_\_\_\_  
Chairman House Committee

Originating in the House.

In effect ninety days from passage.

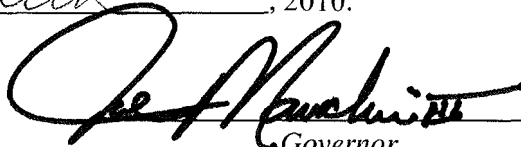
  
\_\_\_\_\_  
Clerk of the Senate

  
\_\_\_\_\_  
Clerk of the House of Delegates

  
\_\_\_\_\_  
President of the Senate

  
\_\_\_\_\_  
Speaker of the House of Delegates

The within is approved this the 23rd  
day of March, 2010.

  
\_\_\_\_\_  
Governor

PRESENTED TO THE  
GOVERNOR

MAR 18 2010

Time 3:10p