

1 **ENROLLED**

2 COMMITTEE SUBSTITUTE

3 FOR

4 **H. B. 2805**

5 (By Delegates Manchin, Miley, Ellem, Lane, Fleischauer,
6 Manypenny, Guthrie, Caputo, Reynolds, White and Skinner)

7 [Passed April 13, 2013; in effect from passage.]

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11 AN ACT to repeal §3-12-17 of the Code of West Virginia, 1931, as
12 amended; to amend and reenact §3-1A-5 of said code; and to
13 amend and reenact §3-12-1, §3-12-2, §3-12-3, §3-12-4, §3-12-6,
14 §3-12-7, §3-12-9, §3-12-10, §3-12-11, §3-12-13, §3-12-14 and
15 §3-12-16 of said code, all relating to making the West
16 Virginia Supreme Court of Appeals Public Campaign Financing
17 Pilot Program a permanent program; removing provisions
18 permitting receipt of supplemental or rescue public campaign
19 financing funds; providing certain findings; limiting
20 collections by, and contributions to, a participating
21 candidate in certain circumstances; requiring all
22 contributions to candidates participating in the program be
23 collected by the candidate's financial agent; providing for
24 the transfer of additional moneys to the program's fund;
25 allowing the program's funds to be invested, with retained
26 earnings; increasing the amounts of financing certified

1 candidates may receive in contested elections; removing
2 certain reporting requirements; removing the doubling of civil
3 penalties in certain circumstances; and repealing the July 1,
4 2013, sunset provisions for the program and its fund.

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

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7 be repealed; that §3-1A-5 of said code be amended and reenacted;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

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

12 **§3-1A-5. Powers and duties of commission; legislative rules.**

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

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

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

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

25 (3) To consider and study the election practices of other
26 jurisdictions, with a view to determining the techniques used in

1 eliminating fraud in elections and in simplifying election
2 procedures;

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

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

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

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

15 (c) It is the commission's further duty to prepare and
16 distribute in its name, within available appropriations and upon
17 the recommendation of the Secretary of State, nonpartisan
18 educational material to inform voters of the importance of voting,
19 to encourage voters to vote, to inform voters of election laws and
20 procedures, and to inform voters of the effect of any public
21 question, Constitutional amendment or bond issue that is to be
22 voted upon by all the voters of the state and that has been
23 authorized to be placed upon the ballot by the Legislature, and
24 manuals to assist county commissions, ballot commissioners, circuit
25 and county clerks and other election officials in the proper
26 performance of their duties in the conduct of elections.

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

9 (e) Meetings of the commission conducted for the purpose of
10 confirming the eligibility of individual candidates to receive
11 public campaign financing under the West Virginia Supreme Court of
12 Appeals Public Campaign Financing Fund are expressly exempted from
13 the public notice and public meeting requirements of article
14 nine-a, chapter six of this code.

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

17 **§3-12-1. Short title.**

18 This article is known as the "West Virginia Supreme Court of
19 Appeals Public Campaign Financing Program."

20 **§3-12-2. Legislative findings and declarations.**

21 The Legislature finds and declares the following:

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

24 (2) Current campaign finance laws permit certain independent
25 parties to raise and spend unlimited amounts of money to influence

1 the outcome of elections;

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

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

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

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

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

13 (8) As spending by candidates and independent parties
14 increases, so does the perception that contributors and interested
15 third parties hold too much influence over the judicial process;

16 (9) The detrimental effects of spending large amounts by
17 candidates and independent parties are especially problematic in
18 judicial elections because impartiality is uniquely important to
19 the integrity and credibility of courts;

20 (10) As demonstrated by the 2012 West Virginia Supreme Court
21 of Appeals Public Campaign Financing Pilot Program, an alternative
22 public campaign financing option for candidates running for a seat
23 on the Supreme Court of Appeals will ensure the fairness of
24 democratic elections in this state, protect the Constitutional
25 rights of voters and candidates from the detrimental effects of
26 increasingly large amounts of money being raised and spent to

1 influence the outcome of elections, protect the impartiality and
2 integrity of the judiciary, and strengthen public confidence in the
3 judiciary; and

4 (11) Funding the "West Virginia Supreme Court of Appeals
5 Public Campaign Financing Program" from a wide range of revenue
6 sources furthers important state interests in protecting the
7 integrity of judicial elections and serves to protect the public
8 interest.

9 **§3-12-3. Definitions.**

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

12 (1) "Candidate's committee" means a political committee
13 established with the approval of or in cooperation with a candidate
14 or a prospective candidate to explore the possibilities of seeking
15 a particular office or to support or aid his or her nomination or
16 election to an office in an election cycle. If a candidate directs
17 or influences the activities of more than one active committee in
18 a current campaign, those committees shall be considered one
19 committee for the purpose of contribution limits.

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

25 (3) "Contribution" means a gift subscription, assessment,
26 payment for services, dues, advance, donation, pledge, contract,

1 agreement, forbearance or promise of money or other tangible thing
2 of value, whether conditional or legally enforceable, or a transfer
3 of money or other tangible thing of value to a person, made for the
4 purpose of influencing the nomination, election or defeat of a
5 candidate. An offer or tender of a contribution is not a
6 contribution if expressly and unconditionally rejected or returned.
7 A contribution does not include volunteer personal services
8 provided without compensation: *Provided*, That a nonmonetary
9 contribution is to be considered at fair market value for reporting
10 requirements and contribution limitations.

11 (4) "Exploratory contribution" means a contribution of no more
12 than \$1,000 made by an individual adult, including a participating
13 candidate and members of his or her immediate family, during the
14 exploratory period but prior to filing the declaration of intent.
15 Exploratory contributions may not exceed \$20,000 in the aggregate.

16 (5) "Exploratory period" means the period during which a
17 participating candidate may raise and spend exploratory
18 contributions to examine his or her chances of election and to
19 qualify for public campaign financing under this article. The
20 exploratory period begins on January 1 the year before the primary
21 in which the candidate may run for Justice of the Supreme Court of
22 Appeals and ends on the last Saturday in January of the election
23 year.

24 (6) "Financial agent" means any individual acting for and by
25 himself or herself, or any two or more individuals acting together
26 or cooperating in a financial way to aid or take part in the

1 nomination or election of any candidate for public office, or to
2 aid or promote the success or defeat of any political party at any
3 election.

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

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

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

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

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

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

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

19 (11) "Participating candidate" means a candidate who is
20 seeking election to the Supreme Court of Appeals and is attempting
21 to be certified in accordance with section ten of this article to
22 receive public campaign financing from the fund.

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

25 (13) "Primary election campaign period" means the period
26 beginning on the first day of the primary election filing period,

1 as determined under section seven, article five of this chapter,
2 and ending on the day of the subsequent primary election.

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

9 (15) "Qualifying period" means the period during which
10 participating candidates may raise and spend qualifying
11 contributions in order to qualify to receive public campaign
12 financing.

13 (A) For candidates seeking nomination on the primary election
14 ballot, the qualifying period begins on September 1 preceding the
15 election year and ends on the last Saturday in January of the
16 election year.

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

21 **§3-12-4. Alternative public campaign financing option.**

22 This article establishes an alternative public campaign
23 financing option available to candidates for election to the office
24 of Justice of the West Virginia Supreme Court of Appeals.
25 Candidates electing the alternative public campaign financing
26 option shall comply with all other applicable election and campaign

1 laws and rules.

2 **§3-12-6. Sources of revenue for the fund.**

3 Revenue from the following sources shall be deposited in the
4 fund:

5 (1) All exploratory and qualifying contributions in excess of
6 the established maximums;

7 (2) Money returned by participating or certified candidates
8 who fail to comply with this article;

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

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

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

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

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

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

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

26 (10) On or before July 1, 2015, the state Auditor shall

1 authorize the transfer of the amount of \$400,000 from the
2 Purchasing Card Administration Fund established in section ten-d,
3 article three, chapter twelve of this code to the fund created by
4 this article; and,

5 (11) Money appropriated to the fund.

6 **§3-12-7. Declaration of intent.**

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

24 **§3-12-9. Qualifying contributions.**

25 (a) A participating candidate or his or her candidate's
26 committee may not accept more than one qualifying contribution from

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

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

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

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

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

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

24 (B) The contribution was made without coercion;

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

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

6 (c) During the qualifying period, a participating candidate or
7 his or her candidate's committee must obtain at least five hundred
8 qualifying contributions from registered West Virginia voters. A
9 minimum of ten percent of the total number of qualifying
10 contributions received by the candidate must be from each of the
11 state's congressional districts.

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

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

20 (f) At the beginning of each month, a participating or
21 certified candidate or his or her financial agent or committee
22 shall report all qualifying contributions, expenditures and
23 obligations along with all receipts for contributions received
24 during the prior month to the Secretary of State. Such reports
25 shall be filed electronically: *Provided*, That a committee may
26 apply for an exemption in case of hardship pursuant to subsection

1 (c) of section five-b, article eight of this chapter. If the
2 candidate decides not to run for office, all unspent or unobligated
3 qualifying contributions shall be sent to the State Election
4 Commission for deposit in the fund. If the candidate decides to
5 run for office as a nonparticipating candidate, the unspent or
6 unobligated qualifying contributions shall be used in accordance
7 with articles eight and twelve of this chapter.

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

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

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

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

19 **§3-12-10. Certification of candidates.**

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

25 (b) Upon receipt of a notice from the Secretary of State that
26 a participating candidate has received the required number and

1 amount of qualifying contributions, the State Election Commission
2 shall determine whether the candidate or candidate's committee:

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

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

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

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

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

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

18 (d) The State Election Commission shall determine whether to
19 certify a participating candidate as eligible to receive public
20 campaign financing no later than three business days after the
21 candidate or the candidate's committee makes his or her final
22 report of qualifying contributions or, if a challenge is filed
23 under subsection (g) of this section, no later than six business
24 days after the candidate or the candidate's committee makes his or
25 her final report of qualifying contributions. A certified
26 candidate shall comply with this article through the general

1 election campaign period.

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

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

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

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

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

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

25 (j) A candidate may withdraw from being a certified candidate
26 and become a nonparticipating candidate at any time with the

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

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

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

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

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

24 (b) Within two business days after the primary election
25 results are certified by the Secretary of State, the State Election
26 Commission, acting in concert with the State Auditor's office and

1 the State Treasurer's office, shall cause a check to be issued to
2 make payments from the fund for the general election campaign
3 period available to a certified candidate.

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

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

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

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

22 **§3-12-13. Reporting requirements.**

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

26 (b) During the exploratory and qualifying periods, a

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

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

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

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

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

26 **§3-12-14. Duties of the State Election Commission; Secretary of**

1 **State.**

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

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

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

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

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

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

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

1 audit;

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

8 (8) Regularly monitor the receipts, disbursements, obligations
9 and balance in the fund to determine whether the fund will have
10 sufficient moneys to meet its obligations and sufficient moneys
11 available for disbursement during the primary and general election
12 campaign period; and

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

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

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

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

24 (3) Prepare and publish instructions setting forth methods of
25 bookkeeping and preservation of records to facilitate compliance
26 with this article and to explain the duties of candidates and

1 others participating in elections under this article;

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

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

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

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

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

26 (c) To fulfill their responsibilities under this article, the

1 State Election Commission and the Secretary of State may subpoena
2 witnesses, compel their attendance and testimony, administer oaths
3 and affirmations, take evidence and require, by subpoena, the
4 production of any books, papers, records or other items material to
5 the performance of their duties or the exercise of their powers.

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

10 **§3-12-16. Civil penalties.**

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

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

1 the civil penalty authorized under this subsection within seven
2 days of receipt of written notice from the State Election
3 Commission of the imposition of the penalty.

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

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

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