

1 COMMITTEE SUBSTITUTE

2 FOR

3 **H. B. 2805**

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

6 (Originating in the Committee on Finance)

7 [March 29, 2013]

8
9
10 A BILL to repeal §3-12-17 of the Code of West Virginia, 1931, as
11 amended; to amend and reenact §3-1A-5 of said code; and to
12 amend and reenact §3-12-1, §3-12-2, §3-12-3, §3-12-4, §3-12-6,
13 §3-12-7, §3-12-9, §3-12-10, §3-12-11, §3-12-13, §3-12-14 and
14 §3-12-16 of said code, all relating to making the West
15 Virginia Supreme Court of Appeals Public Campaign Financing
16 Pilot Program a permanent program; removing provisions
17 permitting receipt of supplemental or rescue public campaign
18 financing funds; providing certain findings; limiting
19 collections by, and contributions to, a participating
20 candidate in certain circumstances; requiring all
21 contributions to candidates participating in the program be
22 collected by the candidate's financial agent; providing for
23 the transfer of additional moneys to the program's fund;
24 allowing the program's funds to be invested, with retained
25 earnings; increasing the amounts of financing certified
26 candidates may receive in contested elections; removing

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

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

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6 be repealed; that §3-1A-5 of said code be amended and reenacted;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

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

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

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

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

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

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

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

1 procedures;

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

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

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

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

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

26 (d) The commission shall propose for promulgation emergency

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

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

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

20 **§3-12-1. Short title.**

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

25 **§3-12-2. Legislative findings and declarations.**

1 The Legislature finds and declares the following:

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

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

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

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

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

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

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

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

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

25 ~~(9)~~ (10) As demonstrated by the 2012 West Virginia Supreme
26 Court of Appeals Public Campaign Financing Pilot Program, an

1 alternative public campaign financing option for candidates running
2 for a seat on the Supreme Court of Appeals will ensure the fairness
3 of democratic elections in this state, protect the Constitutional
4 rights of voters and candidates from the detrimental effects of
5 increasingly large amounts of money being raised and spent to
6 influence the outcome of elections, protect the impartiality and
7 integrity of the judiciary, and strengthen public confidence in the
8 judiciary; and

9 ~~(10)~~ (11) Funding the "West Virginia Supreme Court of Appeals
10 Public Campaign Financing ~~Pilot~~ Program" from a wide range of
11 revenue sources furthers important state interests in protecting
12 the integrity of judicial elections and serves to protect the
13 public interest.

14 **§3-12-3. Definitions.**

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

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

25 (2) "Certified candidate" means an individual seeking election
26 to the West Virginia Supreme Court of Appeals who has been

1 certified in accordance with section ten of this article as having
2 met all of the requirements for receiving public campaign financing
3 from the fund.

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

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

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

1 Appeals and ends on the last Saturday in January of the election
2 year.

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

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

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

14 ~~(9) "Independent expenditure" means an expenditure by a~~
15 ~~person:~~

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

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

22 ~~Supporting or opposing the election of a clearly identified~~
23 ~~candidate includes supporting or opposing the candidates of a~~
24 ~~political party. An expenditure which does not meet the criteria~~
25 ~~for an independent expenditure is considered a contribution.~~

26 ~~(10)~~ (9) "Immediate family" or "immediate family members"

1 means the spouse, parents, step-parents, siblings and children of
2 the participating candidate.

3 ~~(11)~~ (10) "Nonparticipating candidate" means a candidate who
4 is:

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

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

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

10 ~~(12)~~ (11) "Participating candidate" means a candidate who is
11 seeking election to the Supreme Court of Appeals and is attempting
12 to be certified in accordance with section ten of this article to
13 receive public campaign financing from the fund.

14 ~~(13)~~ (12) "Person" means an individual, partnership,
15 committee, association and any other organization or group of
16 individuals.

17 ~~(14)~~ (13) "Primary election campaign period" means the period
18 beginning on the first day of the primary election filing period,
19 as determined under section seven, article five of this chapter,
20 and ending on the day of the subsequent primary election.

21 ~~(15)~~ (14) "Qualifying contribution" means a contribution
22 received from a West Virginia registered voter of not less than \$1
23 nor more than \$100 in the form of cash, check or money order, made
24 payable to a participating candidate or the candidate's committee,
25 or in the form of an electronic payment or debit or credit card
26 payment, received during the qualifying period.

1 ~~(16)~~ (15) "Qualifying period" means the period during which
2 participating candidates may raise and spend qualifying
3 contributions in order to qualify to receive public campaign
4 financing.

5 (A) For candidates seeking nomination on the primary election
6 ballot, the qualifying period begins on September 1 preceding the
7 election year and ends on the last Saturday in January of the
8 election year.

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

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

14 This article establishes an alternative public campaign
15 financing option available to candidates for election to the office
16 of Justice of the West Virginia Supreme Court of Appeals. ~~for the~~
17 ~~2012 primary and general elections.~~ Candidates electing the
18 alternative public campaign financing option shall comply with all
19 other applicable election and campaign laws and rules.

20 **§3-12-6. Sources of revenue for the fund.**

21 Revenue from the following sources shall be deposited in the
22 fund:

23 (1) All exploratory and qualifying contributions in excess of
24 the established maximums;

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

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

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

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

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

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

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

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

18 (10) On or before July 1, 2015, the state Auditor shall
19 authorize the transfer of the amount of \$400,000 from the
20 Purchasing Card Administration Fund established in section ten-d,
21 article three, chapter twelve of this code to the fund created by
22 this article; and,

23 ~~(10)~~ (11) Money appropriated to the fund.

24 **§3-12-7. Declaration of intent.**

25 A candidate desiring to receive campaign financing from the
26 fund shall first file a declaration of intent before the end of the

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

16 **§3-12-9. Qualifying contributions.**

17 (a) A participating candidate or his or her candidate's
18 committee may not accept more than one qualifying contribution from
19 a single individual. A qualifying contribution may not be less
20 than \$1 nor more than \$100. To be considered as a proper
21 qualifying contribution, the qualifying contribution must be made
22 by a registered West Virginia voter. A participating candidate
23 shall collect qualifying contributions which in the aggregate are
24 not less than \$35,000 nor more than \$50,000. Qualifying
25 contributions in excess of \$50,000 shall be sent to the State
26 Election Commission for deposit in the fund.

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

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

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

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

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

16 (B) The contribution was made without coercion;

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

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

24 (c) During the qualifying period, a participating candidate or
25 his or her candidate's committee must obtain at least five hundred
26 qualifying contributions from registered West Virginia voters. A

1 minimum of ten percent of the total number of qualifying
2 contributions received by the candidate must be from each of the
3 state's congressional districts.

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

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

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

26 (g) All qualifying contributions collected and all

1 expenditures by a participating candidate or his or her committee
2 shall be reported to the Secretary of State no later than two
3 business days after the close of the qualifying period.

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

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

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

11 **§3-12-10. Certification of candidates.**

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

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

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

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

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

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

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

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

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

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

1 benefit for which the candidate qualifies under section eleven of
2 this article, minus the candidate's qualifying contributions, and
3 shall notify all other candidates for the same office of its
4 determination.

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

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

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

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

21 (j) A candidate may withdraw from being a certified candidate
22 and become a nonparticipating candidate at any time with the
23 approval of the State Election Commission. Any candidate seeking
24 to withdraw shall file a written request with the State Election
25 Commission, which shall consider requests on a case-by-case basis.
26 No certified candidate may withdraw until he or she has repaid all

1 moneys received from the fund: *Provided*, That the State Election
2 Commission may, in exceptional circumstances, waive the repayment
3 requirement. The State Election Commission may assess a penalty
4 not to exceed \$10,000 against any candidate who withdraws without
5 approval.

6 **§3-12-11. Schedule and amount of Supreme Court of Appeals Public**
7 **Campaign Financing Fund payments.**

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

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

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

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

26 (1) In a contested general election, a certified candidate ~~may~~

1 shall receive from the fund an amount not to exceed ~~\$350,000~~
2 \$525,000.

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

5 (c) The State Election Commission shall authorize the
6 distribution of ~~initial~~ campaign financing moneys to certified
7 candidates in equal amounts. The commission shall propose a
8 legislative rule on distribution of funds.

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

19 ~~(e) If the commission determines from any reports filed~~
20 ~~pursuant to this chapter or by other reliable and verifiable~~
21 ~~information obtained through investigation that a nonparticipating~~
22 ~~candidate's campaign expenditures or obligations, in the aggregate,~~
23 ~~have exceeded by twenty percent the initial funding available under~~
24 ~~this section any certified candidate running for the same office,~~
25 ~~the commission shall authorize the release of additional funds in~~
26 ~~the amount of the reported excess to any opposing certified~~

1 ~~candidate for the same office.~~

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

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

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

26 ~~(i) In the event the commission determines that additional~~

1 ~~funds beyond the initial distribution are to be released to a~~
2 ~~participating candidate pursuant to the provisions of the section,~~
3 ~~the commission, acting in concert with the State Auditor's office~~
4 ~~and the State Treasurer's office, shall cause a check for any such~~
5 ~~funds to be issued to the candidate's campaign depository within~~
6 ~~two business days.~~

7 **§3-12-13. Reporting requirements.**

8 (a) Participating candidates and certified candidates ~~and~~
9 ~~nonparticipating candidates~~ shall comply with the provisions of
10 this section in addition to any other reporting required by the
11 ~~provisions of this chapter.~~

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

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

26 (1) All exploratory contributions received and funds expended

1 or obligated during the exploratory period together with copies of
2 any receipts not previously submitted for exploratory
3 contributions; and

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

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

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

17 ~~(1) On the first Saturday in March or within six days~~
18 ~~thereafter, listing the nonparticipating candidate's expenditures~~
19 ~~and obligations prior to March 1, if the nonparticipating~~
20 ~~candidate's campaign expenditures or obligations, in the aggregate,~~
21 ~~exceed the initial funding available under section eleven of this~~
22 ~~article to any certified candidate for the same office.~~

23 ~~(2) On the first Saturday in April, listing any expenditures~~
24 ~~or obligations, in the aggregate, that exceed the initial funding~~
25 ~~available under section eleven of this article to any certified~~
26 ~~candidate running for the same office and which have taken place~~

1 ~~subsequent to those reported on the financial statement required to~~
2 ~~be filed by a candidate for public office pursuant to subdivision~~
3 ~~(1), subsection (b), section five, article eight of this chapter.~~
4 ~~Thereafter, any additional expenditures or obligations, in the~~
5 ~~aggregate, that exceed the initial funding available under section~~
6 ~~eleven of this article to any certified candidate running for the~~
7 ~~same office made prior to the fifteenth day before the primary~~
8 ~~election shall be reported to the Secretary of State within~~
9 ~~forty-eight hours.~~

10 ~~(3) On the first Saturday in July or within six days~~
11 ~~thereafter, listing the nonparticipating candidate's expenditures~~
12 ~~and obligations prior to July 1 subsequent to the primary election,~~
13 ~~if the nonparticipating candidate's expenditures or obligations, in~~
14 ~~the aggregate, exceed the initial funding available under section~~
15 ~~eleven of this article to any certified candidate running for the~~
16 ~~same office.~~

17 ~~(4) On the first Saturday in October, listing any expenditures~~
18 ~~or obligations, in the aggregate, that exceed the initial funding~~
19 ~~available under section eleven of this article to any certified~~
20 ~~candidate running for the same office and which have taken place~~
21 ~~subsequent to those reported on the financial statement required to~~
22 ~~be filed by a candidate for public office pursuant to subdivision~~
23 ~~(4), subsection (b), section five, article eight of this chapter.~~
24 ~~Thereafter, any additional expenditures or obligations, in the~~
25 ~~aggregate, that exceed the initial funding available under section~~
26 ~~eleven of this article to any certified candidate running for the~~

1 ~~same office made prior to the fifteenth day before the general~~
2 ~~election shall be reported to the State Election Commission within~~
3 ~~forty-eight hours.~~

4 ~~(5) During the last fifteen days before the primary or general~~
5 ~~elections in 2012, the nonparticipating candidate or his or her~~
6 ~~financial agent shall report to the State Election Commission~~
7 ~~within twenty-four hours thereof every additional expenditure or~~
8 ~~obligation, in the aggregate, that exceeds the initial funding~~
9 ~~available under section eleven of this article to any certified~~
10 ~~candidate running for the same office.~~

11 ~~(f) Any person, organization or entity making independent~~
12 ~~expenditures advocating the election or defeat of a certified~~
13 ~~candidate or the nomination or election of any candidate who is~~
14 ~~opposed by a certified candidate in excess of \$1,000, in the~~
15 ~~aggregate, shall report these expenditures to the State Election~~
16 ~~Commission on approved forms within forty-eight hours of the~~
17 ~~expenditure.~~

18 ~~(g) During the last fifteen days before the primary or general~~
19 ~~election in 2012, any person, organization or entity making~~
20 ~~independent expenditures advocating the election or defeat of any~~
21 ~~candidate, including the election or defeat of a certified~~
22 ~~candidate or the nomination or election of any candidate who is~~
23 ~~opposed by a certified candidate, shall continue to file reports as~~
24 ~~required pursuant to subsection (b), section two, article eight of~~
25 ~~this chapter.~~

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 ~~the provisions of~~ article three,
13 chapter twenty-nine-a of this code, as may be necessary for the
14 proper administration of ~~the provisions of~~ this article;

15 (4) Enforce ~~the provisions of~~ this article to ensure that
16 moneys from the fund are placed in candidate campaign accounts and
17 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 candidates
20 receive ~~matching~~ funds promptly and to ensure that moneys required
21 by this 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; ~~and~~

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 ~~the provisions of~~ this
2 article;

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

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

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

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

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

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

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

11 **§3-12-16. Civil penalties.**

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

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

1 Commission an amount equal to ten times the amount of the
2 contribution, expenditure or obligation. The candidate shall pay
3 the civil penalty authorized under this subsection within seven
4 days of receipt of written notice from the State Election
5 Commission of the imposition of the penalty.

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

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

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