

1 COMMITTEE SUBSTITUTE

2 FOR

3 **Senate Bill No. 413**

4 (By Senators Laird, Kessler (Mr. President), Beach, Cann,
5 Cookman, Edgell, Facemire, Jenkins, McCabe, Miller, Snyder,
6 Tucker, Wells, Unger, Stollings, Prezioso and Plymale)

7 _____
8 [Originating in the Committee on the Judiciary;
9 reported March 27, 2013.]

**FISCAL
NOTE**

10 _____
11
12 A BILL to amend and reenact §3-1A-5 of the Code of West Virginia,
13 1931, as amended; and to amend and reenact §3-12-1, §3-12-2,
14 §3-12-3, §3-12-4, §3-12-6, §3-12-7, §3-12-9, §3-12-10,
15 §3-12-11, §3-12-13, §3-12-14, §3-12-16 and §3-12-17 of said
16 code, all relating to extending the West Virginia Supreme
17 Court of Appeals Public Campaign Financing Pilot Program
18 through the 2016 election; providing additional funding;
19 modifying definitions; deleting a definition; providing that
20 a candidate may not collect exploratory contributions after
21 filing a declaration of intent; limiting the amounts an
22 individual may contribute during certain periods; requiring
23 all contributions to candidates participating in the program
24 be collected by the candidate's financial agent; increasing

1 the amounts of financing certified candidates may receive in
2 contested elections; permitting certain moneys to be
3 transferred and invested in certain circumstances; removing
4 provisions that permit the release of additional funds in
5 certain circumstances; removing certain reporting
6 requirements; and removing a provision permitting the doubling
7 of civil penalties.

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

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

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

15 **§3-1A-5. Powers and duties of commission; legislative rules.**

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

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

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

24 (2) To review the work of the office of Secretary of State

1 pertaining to the duties of that office with respect to elections,
2 and for this purpose to have access at reasonable times to
3 pertinent records, books, papers and documents;

4 (3) To consider and study the election practices of other
5 jurisdictions, with a view to determining the techniques used in
6 eliminating fraud in elections and in simplifying election
7 procedures;

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

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

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

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

20 (c) It is the commission's further duty to prepare and
21 distribute in its name, within available appropriations and upon
22 the recommendation of the Secretary of State, nonpartisan
23 educational material to inform voters of the importance of voting,
24 to encourage voters to vote, to inform voters of election laws and

1 procedures, and to inform voters of the effect of any public
2 question, Constitutional amendment or bond issue that is to be
3 voted upon by all the voters of the state and that has been
4 authorized to be placed upon the ballot by the Legislature, and
5 manuals to assist county commissions, ballot commissioners, circuit
6 and county clerks and other election officials in the proper
7 performance of their duties in the conduct of elections.

8 (d) The commission shall propose for promulgation emergency
9 and legislative rules, in accordance with ~~the provisions of~~ article
10 three, chapter twenty-nine-a of this code, as may be necessary to
11 standardize and make effective the administration of ~~the provisions~~
12 ~~of~~ article eight of this chapter, and may propose for promulgation
13 other rules, in accordance with ~~the provisions of~~ article three,
14 chapter twenty-nine-a of this code, relating to the conduct and
15 administration of elections as the commission determines to be
16 advisable.

17 (e) Meetings of the commission conducted for the purpose of
18 confirming the initial eligibility of individual candidates to
19 receive public campaign financing under the West Virginia Supreme
20 Court of Appeals Public Campaign Financing Fund; ~~the authorization~~
21 ~~of supplemental distributions from the fund;~~ and the candidate's
22 ability to receive supplemental distributions pursuant to ~~the~~
23 ~~provisions of~~ chapter twelve of this article are expressly exempted
24 from the public notice and public meeting requirements of article

1 nine-a, chapter six of this code.

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

4 **§3-12-1. Short title.**

5 This article is known as the "West Virginia Supreme Court of
6 Appeals Public Campaign Financing Pilot Program." The pilot
7 program begins with the exploratory period for the 2012 primary
8 election and continues through the ~~2012~~ 2016 general election.

9 **§3-12-2. Legislative findings and declarations.**

10 The Legislature finds and declares the following:

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

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

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

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

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

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

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

3 ~~(7)~~ (8) As spending by candidates and independent parties
4 increases, so does the perception that contributors and interested
5 third parties hold too much influence over the judicial process;

6 ~~(8)~~ (9) The detrimental effects of spending large amounts by
7 candidates and independent parties are especially problematic in
8 judicial elections because impartiality is uniquely important to
9 the integrity and credibility of courts;

10 ~~(9)~~ (10) An alternative public campaign financing option for
11 candidates running for a seat on the Supreme Court of Appeals will
12 ensure the fairness of democratic elections in this state, protect
13 the constitutional rights of voters and candidates from the
14 detrimental effects of increasingly large amounts of money being
15 raised and spent to influence the outcome of elections, protect the
16 impartiality and integrity of the judiciary, and strengthen public
17 confidence in the judiciary; and

18 ~~(10)~~ (11) Funding the "West Virginia Supreme Court of Appeals
19 Public Campaign Financing Pilot Program" from a wide range of
20 revenue sources furthers important state interests in protecting
21 the integrity of judicial elections and serves to protect the
22 public interest.

23 **§3-12-3. Definitions.**

24 As used in this article, the following terms and phrases have

1 the following meanings:

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

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

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

1 contribution is to be considered at fair market value for reporting
2 requirements and contribution limitations.

3 (4) "Exploratory contribution" means a contribution of no more
4 than \$1,000 made by an individual adult, including a participating
5 candidate and members of his or her immediate family, during the
6 exploratory period but prior to filing the declaration of intent.

7 Exploratory contributions may not exceed \$20,000 in the aggregate.

8 (5) "Exploratory period" means the period during which a
9 participating candidate may raise and spend exploratory
10 contributions to examine his or her chances of election and to
11 qualify for public campaign financing under this article. The
12 exploratory period begins on January 1 the year before the primary
13 in which the candidate may run for Justice of the Supreme Court of
14 Appeals and ends on the last Saturday in January of the election
15 year.

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

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

24 (8) "General election campaign period" means the period

1 beginning the day after the primary election and ending on the day
2 of the general election.

3 ~~(9) "Independent expenditure" means an expenditure by a~~
4 ~~person:~~

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

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

11 ~~Supporting or opposing the election of a clearly identified~~
12 ~~candidate includes supporting or opposing the candidates of a~~
13 ~~political party. An expenditure which does not meet the criteria~~
14 ~~for an independent expenditure is considered a contribution.~~

15 ~~(10)~~ (9) "Immediate family" or "immediate family members"
16 means the spouse, parents, step-parents, siblings and children of
17 the participating candidate.

18 ~~(11)~~ (10) "Nonparticipating candidate" means a candidate who
19 is:

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

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

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

1 ~~(12)~~ (11) "Participating candidate" means a candidate who is
2 seeking election to the Supreme Court of Appeals and is attempting
3 to be certified in accordance with section ten of this article to
4 receive public campaign financing from the fund.

5 ~~(13)~~ (12) "Person" means an individual, partnership,
6 committee, association and any other organization or group of
7 individuals.

8 ~~(14)~~ (13) "Primary election campaign period" means the period
9 beginning on the first day of the primary election filing period,
10 as determined under section seven, article five of this chapter,
11 and ending on the day of the subsequent primary election.

12 ~~(15)~~ (14) "Qualifying contribution" means a contribution
13 received from a West Virginia registered voter of not less than \$1
14 nor more than \$100 in the form of cash, check or money order, made
15 payable to a participating candidate or the candidate's committee,
16 or in the form of an electronic payment or debit or credit card
17 payment, received during the qualifying period.

18 ~~(16)~~ (15) "Qualifying period" means the period during which
19 participating candidates may raise and spend qualifying
20 contributions in order to qualify to receive public campaign
21 financing.

22 (A) For candidates seeking nomination on the primary election
23 ballot, the qualifying period begins on September 1 preceding the
24 election year and ends on the last Saturday in January of the

1 election year.

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

6 **§3-12-4. Alternative public campaign financing option.**

7 This article establishes an alternative public campaign
8 financing option available to candidates for election to the office
9 of Justice of the West Virginia Supreme Court of Appeals for the
10 2012 and 2016 primary and general elections. Candidates electing
11 the alternative public campaign financing option shall comply with
12 all other applicable election and campaign laws and rules.

13 **§3-12-6. Sources of revenue for the fund.**

14 Revenue from the following sources shall be deposited in the
15 fund:

16 (1) All exploratory and qualifying contributions in excess of
17 the established maximums;

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

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

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

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

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

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

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

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

13 (10) On or before July 1, 2015, the state Auditor shall
14 authorize the transfer of the amount of \$400,000.00 from the
15 Purchasing Card Administration Fund established in section ten-d,
16 article three, chapter twelve of this code to the fund created by
17 this article; and,

18 ~~(10)~~ (11) Money appropriated to the fund.

19 **§3-12-7. Declaration of intent.**

20 A candidate desiring to receive campaign financing from the
21 fund shall first file a declaration of intent before the end of the
22 qualifying period and prior to collecting any qualifying
23 contributions. The declaration shall be on a form prescribed by
24 the State Election Commission and shall contain a statement that

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

13 **§3-12-9. Qualifying contributions.**

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

24 (b) Each qualifying contribution shall be acknowledged by a

1 written receipt that includes:

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

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

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

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

15 (B) The contribution was made without coercion;

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

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

23 (c) During the qualifying period, a participating candidate or
24 his or her candidate's committee must obtain at least five hundred

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

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

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

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

1 unobligated qualifying contributions shall be used in accordance
2 with articles eight and twelve of this chapter.

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

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

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

11 (3) All contributions to candidates participating in the West
12 Virginia Supreme Court of Appeals Public Campaign Financing Pilot
13 Program shall be collected by the candidates's designated financial
14 agent.

15 **§3-12-10. Certification of candidates.**

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

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

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

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

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

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

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

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

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

1 the general 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 ~~the provisions of this~~
5 section, the State Election Commission, acting in concert with the
6 State Auditor's office and the State Treasurer's office, shall
7 cause a check to be issued to the candidate's campaign depository
8 account an amount equal to the ~~initial~~ public campaign financing
9 benefit for which the candidate qualifies under section eleven of
10 this article, minus the candidate's qualifying contributions, and
11 shall notify all other candidates for the same office of its
12 determination.

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

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

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

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

17 (i) The determination of any issue before the State Election
18 Commission is the final administrative determination. Any meetings
19 conducted by the State Elections Commission to certify a
20 candidate's ~~initial~~ eligibility to receive funds under this article
21 ~~or their eligibility to receive supplemental funds or rescue funds~~
22 ~~under section eleven of this article~~ shall not be subject the
23 public notice and open meeting requirements of article nine-a,
24 chapter six of this code, but the commission shall concurrently

1 provide public notice of any decision and determination it makes
2 which impacts the candidate's eligibility to receive ~~initial funds~~
3 ~~or supplemental~~ funds pursuant to ~~the provisions of~~ this article.
4 Any person adversely affected by a decision of the State Election
5 Commission under ~~the provisions of~~ this article may appeal that
6 decision to the circuit court of Kanawha County.

7 (j) A candidate may withdraw from being a certified candidate
8 and become a nonparticipating candidate at any time with the
9 approval of the State Election Commission. Any candidate seeking
10 to withdraw shall file a written request with the State Election
11 Commission, which shall consider requests on a case-by-case basis.
12 No certified candidate may withdraw until he or she has repaid all
13 moneys received from the fund: *Provided, That* the State Election
14 Commission may, in exceptional circumstances, waive the repayment
15 requirement. The State Election Commission may assess a penalty
16 not to exceed \$10,000 against any candidate who withdraws without
17 approval.

18 **§3-12-11. Schedule and amount of Supreme Court of Appeals Public**
19 **Campaign Financing Fund payments.**

20 (a) The State Election Commission, acting in concert with the
21 State Auditor's office and the State Treasurer's office, shall have
22 a check issued within two business days after the date on which the
23 candidate is certified, to make payments from the fund for the 2012
24 and 2016 primary election campaign periods available to a certified

1 candidate.

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

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

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

14 (1) In a contested general election, a certified candidate ~~may~~
15 shall receive from the fund an amount not to exceed ~~\$350,000~~
16 \$525,000.

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

19 (c) The State Election Commission shall authorize the
20 distribution of ~~initial~~ campaign financing moneys to certified
21 candidates in equal amounts. The commission shall propose a
22 legislative rule on distribution of funds.

23 (d) The State Election Commission may not authorize or direct
24 the distribution of moneys to certified candidates in excess of the

1 total amount of money deposited in the fund pursuant to section six
2 of this article. If the commission determines that the money in
3 the fund is insufficient to totally fund all certified candidates,
4 the commission shall authorize the distribution of the remaining
5 money proportionally, according to each candidate's eligibility for
6 funding. Each candidate may raise additional money in the same
7 manner as a nonparticipating candidate for the same office up to
8 the unfunded amount of the candidate's eligible funding.

9 ~~(e) If the commission determines from any reports filed~~
10 ~~pursuant to this chapter or by other reliable and verifiable~~
11 ~~information obtained through investigation that a nonparticipating~~
12 ~~candidate's campaign expenditures or obligations, in the aggregate,~~
13 ~~have exceeded by twenty percent the initial funding available under~~
14 ~~this section any certified candidate running for the same office,~~
15 ~~the commission shall authorize the release of additional funds in~~
16 ~~the amount of the reported excess to any opposing certified~~
17 ~~candidate for the same office.~~

18 ~~(f) If the State Election Commission determines from any~~
19 ~~reports filed pursuant to this chapter or by other reliable and~~
20 ~~verifiable information obtained through investigation that~~
21 ~~independent expenditures on behalf of a nonparticipating candidate,~~
22 ~~either alone or in combination with the nonparticipating~~
23 ~~candidate's campaign expenditures or obligations, have exceeded by~~
24 ~~twenty percent the initial funding available under this section to~~

1 ~~any certified candidate running for the same office, the commission~~
2 ~~shall authorize the release of additional funds in the amount of~~
3 ~~the reported excess to any certified candidate who is an opponent~~
4 ~~for the same office.~~

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

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

18 ~~(i) In the event the commission determines that additional~~
19 ~~funds beyond the initial distribution are to be released to a~~
20 ~~participating candidate pursuant to the provisions of the section,~~
21 ~~the commission, acting in concert with the State Auditor's office~~
22 ~~and the State Treasurer's office, shall cause a check for any such~~
23 ~~funds to be issued to the candidate's campaign depository within~~
24 ~~two business days.~~

1 **§3-12-13. Reporting requirements.**

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

6 (b) During the exploratory and qualifying periods, a
7 participating candidate or his or her financial agent shall submit,
8 on the first of each month, a report of all exploratory and
9 qualifying contributions along with their receipts and an
10 accounting of all expenditures and obligations received during the
11 immediately preceding month. The reports shall be on forms or in
12 a format prescribed by the Secretary of State. Such reports shall
13 be filed electronically: *Provided*, That a committee may apply for
14 an exemption, in case of hardship, pursuant to subsection (c) of
15 section five-b, article 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 expended
21 or obligated during the exploratory period together with copies of
22 any receipts not previously submitted for exploratory
23 contributions; and

24 (2) All qualifying contributions received and funds expended

1 or obligated during the qualifying period together with copies of
2 any receipts not previously submitted for qualifying contributions.

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

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

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

19 ~~(2) On the first Saturday in April, listing any expenditures~~
20 ~~or obligations, in the aggregate, that exceed the initial funding~~
21 ~~available under section eleven of this article to any certified~~
22 ~~candidate running for the same office and which have taken place~~
23 ~~subsequent to those reported on the financial statement required to~~
24 ~~be filed by a candidate for public office pursuant to subdivision~~

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

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

15 ~~(4) On the first Saturday in October, listing any expenditures~~
16 ~~or obligations, in the aggregate, that exceed the initial funding~~
17 ~~available under section eleven of this article to any certified~~
18 ~~candidate running for the same office and which have taken place~~
19 ~~subsequent to those reported on the financial statement required to~~
20 ~~be filed by a candidate for public office pursuant to subdivision~~

21 ~~(4), subsection (b), section five, article eight of this chapter.~~
22 ~~Thereafter, any additional expenditures or obligations, in the~~
23 ~~aggregate, that exceed the initial funding available under section~~
24 ~~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~~

1 ~~this chapter.~~

2 **§3-12-14. Duties of the State Election Commission; Secretary of**
3 **State.**

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

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

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

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

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

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

24 (6) Cause an audit of the fund to be conducted by independent

1 certified public accountants ninety days after a general election
2 where a justice or justices of the West Virginia Supreme Court of
3 Appeals are elected. The State Election Commission shall cooperate
4 with the audit, provide all necessary documentation and financial
5 records to the auditor and maintain a record of all information
6 supplied by the audit;

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

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

18 (9) When it is determined to be in the best interest of
19 increasing the amount of money in the fund and after consultation
20 with the State Treasurer, the State Auditor and the West Virginia
21 Investment Management Board, transfer as appropriate a portion of
22 moneys maintained in the fund to the West Virginia Investment
23 Management Board for their supervised investment.

24 (b) In addition to his or her other duties, the Secretary of

1 State shall carry out the duties of this article and complete the
2 following as applicable:

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

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

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

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

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

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

23 (7) Ensure public access to the campaign finance reports
24 required pursuant to this article, and whenever possible, use

1 electronic means for the reporting, storing and display of the
2 information; and

3 (8) Prepare a voters' guide for the general public listing the
4 names of each candidate seeking election to the Supreme Court of
5 Appeals. Both certified and nonparticipating candidates shall be
6 invited by the State Election Commission to submit a statement, not
7 to exceed five hundred words in length, for inclusion in the guide.
8 The guide shall identify the candidates that are certified
9 candidates and the candidates that are nonparticipating candidates.
10 Copies of the guide shall be posted on the website of the Secretary
11 of State, as soon as may be practical.

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

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

22 **§3-12-16. Civil penalties.**

23 (a) If a participating or certified candidate or his or her
24 committee or financial agent unintentionally accepts contributions

1 from a private source in violation ~~of the provisions~~ of this
2 article or spends or obligates to spend more than the amount of
3 public financing money he or she is eligible to receive from the
4 fund pursuant to section eleven of this article, the State Election
5 Commission may order the candidate to pay to the State Election
6 Commission an amount equal to the amount of the contribution,
7 expenditure or obligation.

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

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

1 (d) In addition to any other penalties imposed by law, the
2 State Election Commission may impose a civil penalty for a
3 violation by or on behalf of any candidate of any reporting
4 requirement imposed by this article in the amount of \$100 a day.
5 ~~The penalty shall be doubled if the amount not reported for a~~
6 ~~specific election exceeds ten percent of the initial amount of~~
7 ~~public financing available to a certified candidate in a primary or~~
8 ~~general election pursuant to section eleven of this article.~~

9 (e) All penalties collected by the State Election Commission
10 pursuant to this section shall be deposited into the fund. The
11 candidate and the candidate's campaign account are jointly and
12 severally responsible for the payment of any penalty imposed
13 pursuant to this section.

14 **§3-12-17. Expiration of article.**

15 The provisions of this article shall have no force or effect
16 on or after July 1, 2018. ~~2013~~. Any moneys remaining in the fund
17 on July 1, 2018, ~~2013~~, shall be transferred to the General Revenue
18 Fund.

NOTE: The purpose of this bill is to remove language that violates the United States Constitution. The bill extends the West Virginia Supreme Court of Appeals Public Campaign Financing Pilot Program through the 2016 election. The bill increases payments that certified candidates are eligible to receive from the West Virginia Supreme Court of Appeals Public Campaign Financing Program. The bill eliminates additional reporting periods for nonparticipating candidates. The bill clarifies who is entitled to receive

contributions.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.