

**Senate Bill No. 413**

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

[Introduced March 1, 2013; referred to the Committee on the  
Judiciary; and then to the Committee on Finance.]

**FISCAL  
NOTE**

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

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

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

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8 be repealed; that §3-1A-5 of said code be amended and reenacted;  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

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

13 **§3-1A-5. Powers and duties of commission; legislative rules.**

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

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

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

22 (2) To review the work of the office of Secretary of State  
23 pertaining to the duties of that office with respect to elections,

1 and for this purpose to have access at reasonable times to  
2 pertinent records, books, papers and documents;

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

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

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

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

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

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

1 from the public notice and public meeting requirements of article  
2 nine-a, chapter six of this code.

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

5 **§3-12-1. Short title.**

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

10 **§3-12-2. Legislative findings and declarations.**

11 The Legislature finds and declares the following:

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

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

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

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

22 (5) In 2004, candidates running for a seat on the Supreme

1 Court of Appeals raised a total of \$2.8 million;

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

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

6 ~~(7)~~ (8) As spending by candidates and independent parties  
7 increases, so does the perception that contributors and interested  
8 third parties hold too much influence over the judicial process;

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

13 ~~(9)~~ (10) As demonstrated by the 2012 Pilot Program, an  
14 alternative public campaign financing option for candidates running  
15 for a seat on the Supreme Court of Appeals will ensure the fairness  
16 of democratic elections in this state, protect the constitutional  
17 rights of voters and candidates from the detrimental effects of  
18 increasingly large amounts of money being raised and spent to  
19 influence the outcome of elections, protect the impartiality and  
20 integrity of the judiciary, and strengthen public confidence in the  
21 judiciary; and

22 ~~(10)~~ (11) Funding the "West Virginia Supreme Court of Appeals  
23 Public Campaign Financing Pilot Program" from a wide range of

1 revenue sources furthers important state interests in protecting  
2 the integrity of judicial elections and serves to protect the  
3 public interest.

4 **§3-12-3. Definitions.**

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

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

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

20 (3) "Contribution" means a gift subscription, assessment,  
21 payment for services, dues, advance, donation, pledge, contract,  
22 agreement, forbearance or promise of money or other tangible thing  
23 of value, whether conditional or legally enforceable, or a transfer

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

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

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

22 (6) "Financial agent" means any individual acting for and by  
23 himself or herself, or any two or more individuals acting together



1 or cooperating in a financial way to aid or take part in the  
2 nomination or election of any candidate for public office, or to  
3 aid or promote the success or defeat of any political party at any  
4 election.

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

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

10 ~~(9) "Independent expenditure" means an expenditure by a~~  
11 ~~person:~~

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

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

18 ~~Supporting or opposing the election of a clearly identified~~  
19 ~~candidate includes supporting or opposing the candidates of a~~  
20 ~~political party. An expenditure which does not meet the criteria~~  
21 ~~for an independent expenditure is considered a contribution.~~

22 ~~(10)~~ (9) "Immediate family" or "immediate family members"  
23 means the spouse, parents, step-parents, siblings and children of

1 the participating candidate.

2 ~~(11)~~ (10) "Nonparticipating candidate" means a candidate who  
3 is:

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

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

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

9 ~~(12)~~ (11) "Participating candidate" means a candidate who is  
10 seeking election to the Supreme Court of Appeals and is attempting  
11 to be certified in accordance with section ten of this article to  
12 receive public campaign financing from the fund.

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

16 ~~(14)~~ (13) "Primary election campaign period" means the period  
17 beginning on the first day of the primary election filing period,  
18 as determined under section seven, article five of this chapter,  
19 and ending on the day of the subsequent primary election.

20 ~~(15)~~ (14) "Qualifying contribution" means a contribution  
21 received from a West Virginia registered voter of not less than \$1  
22 nor more than \$100 in the form of cash, check or money order, made  
23 payable to a participating candidate or the candidate's committee,

1 or in the form of an electronic payment or debit or credit card  
2 payment, received during the qualifying period.

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

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

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

15 **§3-12-4. Alternative public campaign financing option.**

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

22 **§3-12-6. Sources of revenue for the fund.**

23 Revenue from the following sources shall be deposited in the

1 fund:

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

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

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

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

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

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

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

16 (8) Interest income;

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

22 and

23 (10) Money appropriated to the fund.

1 **§3-12-7. Declaration of intent.**

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

19 **§3-12-9. Qualifying contributions.**

20 (a) A participating candidate or his or her candidate's  
21 committee may not accept more than one qualifying contribution from  
22 a single individual. A qualifying contribution may not be less  
23 than \$1 nor more than \$100. To be considered as a proper

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

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

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

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

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

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

22 (B) The contribution was made without coercion;

23 (C) The contributor has not been reimbursed, received or

1 promised anything of value for making the contribution; and

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

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

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

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

21       (f) At the beginning of each month, a participating or  
22 certified candidate or his or her financial agent or committee  
23 shall report all qualifying contributions, expenditures and

1 obligations along with all receipts for contributions received  
2 during the prior month to the Secretary of State. Such reports  
3 shall be filed electronically: *Provided*, That a committee may  
4 apply for an exemption in case of hardship pursuant to subsection  
5 (c) of section five-b, article eight of this chapter. If the  
6 candidate decides not to run for office, all unspent or unobligated  
7 qualifying contributions shall be sent to the State Election  
8 Commission for deposit in the fund. If the candidate decides to  
9 run for office as a nonparticipating candidate, the unspent or  
10 unobligated qualifying contributions shall be used in accordance  
11 with articles eight and twelve of this chapter.

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

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

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

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

23 **§3-12-10. Certification of candidates.**



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

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

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

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

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

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

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

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

1 approved by the State Election Commission.

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

12 (e) No later than two business days after the State Election  
13 Commission certifies that a participating candidate is eligible to  
14 receive public campaign financing under ~~the provisions of~~ this  
15 section, the State Election Commission, acting in concert with the  
16 State Auditor's office and the State Treasurer's office, shall  
17 cause a check to be issued to the candidate's campaign depository  
18 account an amount equal to the ~~initial~~ public campaign financing  
19 benefit for which the candidate qualifies under section eleven of  
20 this article, minus the candidate's qualifying contributions, and  
21 shall notify all other candidates for the same office of its  
22 determination.

23 (f) If the candidate desires to receive public financing

1 benefits by electronic transfer, the candidate shall include in his  
2 or her application sufficient information and authorization for the  
3 State Treasurer to transfer payments to his or her campaign  
4 depository account.

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

22       (h) A candidate's certification and receipt of public campaign  
23 financing may be revoked by the State Election Commission, if the

1 candidate violates ~~any of the provisions of~~ this article. A  
2 certified candidate who violates ~~the provisions of~~ this article  
3 shall repay all moneys received from the fund to the State Election  
4 Commission.

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

19 (j) A candidate may withdraw from being a certified candidate  
20 and become a nonparticipating candidate at any time with the  
21 approval of the State Election Commission. Any candidate seeking  
22 to withdraw shall file a written request with the State Election  
23 Commission, which shall consider requests on a case-by-case basis.

1 No certified candidate may withdraw until he or she has repaid all  
2 moneys received from the fund: *Provided*, That the State Election  
3 Commission may, in exceptional circumstances, waive the repayment  
4 requirement. The State Election Commission may assess a penalty  
5 not to exceed \$10,000 against any candidate who withdraws without  
6 approval.

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

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

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

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

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

1 the State Treasurer's office, shall cause a check to be issued to  
2 make ~~initial~~ payments from the fund for the 2012 general election  
3 campaign period available to a certified candidate.

4 (1) In a contested general election, a certified candidate ~~may~~  
5 shall receive from the fund an amount not to exceed ~~\$350,000~~  
6 \$525,000.

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

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

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

23 ~~(e) If the commission determines from any reports filed~~

~~1 pursuant to this chapter or by other reliable and verifiable  
2 information obtained through investigation that a nonparticipating  
3 candidate's campaign expenditures or obligations, in the aggregate,  
4 have exceeded by twenty percent the initial funding available under  
5 this section any certified candidate running for the same office,  
6 the commission shall authorize the release of additional funds in  
7 the amount of the reported excess to any opposing certified  
8 candidate for the same office.~~

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

~~20 (g) If the commission determines from any reports filed  
21 pursuant to this chapter or by other reliable and verifiable  
22 information obtained through investigation that independent  
23 expenditures on behalf of a certified candidate, in combination~~

1 ~~with the certified candidate's campaign expenditures or~~  
2 ~~obligations, exceed by twenty percent the initial funding available~~  
3 ~~under this section to any certified candidate running for the same~~  
4 ~~office, the State Election Commission shall authorize the release~~  
5 ~~of additional funds in the amount of the reported excess to any~~  
6 ~~other certified candidate who is an opponent for the same office.~~

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

10 ~~(i) In the event the commission determines that additional~~  
11 ~~funds beyond the initial distribution are to be released to a~~  
12 ~~participating candidate pursuant to the provisions of the section,~~  
13 ~~the commission, acting in concert with the State Auditor's office~~  
14 ~~and the State Treasurer's office, shall cause a check for any such~~  
15 ~~funds to be issued to the candidate's campaign depository within~~  
16 ~~two business days.~~

17 **§3-12-13. Reporting requirements.**

18 (a) Participating candidates and certified candidates ~~and~~  
19 ~~nonparticipating candidates~~ shall comply with the provisions of  
20 this section in addition to any other reporting required by the  
21 ~~provisions of this chapter.~~

22 (b) During the exploratory and qualifying periods, a  
23 participating candidate or his or her financial agent shall submit,



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

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

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

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

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

1 shall be on forms approved by the Secretary of State.

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

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

13 ~~(2) On the first Saturday in April, listing any expenditures~~  
14 ~~or obligations, in the aggregate, that exceed the initial funding~~  
15 ~~available under section eleven of this article to any certified~~  
16 ~~candidate running for the same office and which have taken place~~  
17 ~~subsequent to those reported on the financial statement required to~~  
18 ~~be filed by a candidate for public office pursuant to subdivision~~  
19 ~~(1), subsection (b), section five, article eight of this chapter.~~  
20 ~~Thereafter, any additional expenditures or obligations, in the~~  
21 ~~aggregate, that exceed the initial funding available under section~~  
22 ~~eleven of this article to any certified candidate running for the~~  
23 ~~same office made prior to the fifteenth day before the primary~~

1 ~~election shall be reported to the Secretary of State within~~  
2 ~~forty-eight hours.~~

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

10 ~~(4) On the first Saturday in October, listing any expenditures~~  
11 ~~or obligations, in the aggregate, that exceed the initial funding~~  
12 ~~available under section eleven of this article to any certified~~  
13 ~~candidate running for the same office and which have taken place~~  
14 ~~subsequent to those reported on the financial statement required to~~  
15 ~~be filed by a candidate for public office pursuant to subdivision~~  
16 ~~(4), subsection (b), section five, article eight of this chapter.~~  
17 ~~Thereafter, any additional expenditures or obligations, in the~~  
18 ~~aggregate, that exceed the initial funding available under section~~  
19 ~~eleven of this article to any certified candidate running for the~~  
20 ~~same office made prior to the fifteenth day before the general~~  
21 ~~election shall be reported to the State Election Commission within~~  
22 ~~forty-eight hours.~~

23 ~~(5) During the last fifteen days before the primary or general~~

~~1 elections in 2012, the nonparticipating candidate or his or her  
2 financial agent shall report to the State Election Commission  
3 within twenty-four hours thereof every additional expenditure or  
4 obligation, in the aggregate, that exceeds the initial funding  
5 available under section eleven of this article to any certified  
6 candidate running for the same office.~~

~~7 (f) Any person, organization or entity making independent  
8 expenditures advocating the election or defeat of a certified  
9 candidate or the nomination or election of any candidate who is  
10 opposed by a certified candidate in excess of \$1,000, in the  
11 aggregate, shall report these expenditures to the State Election  
12 Commission on approved forms within forty-eight hours of the  
13 expenditure.~~

~~14 (g) During the last fifteen days before the primary or general  
15 election in 2012, any person, organization or entity making  
16 independent expenditures advocating the election or defeat of any  
17 candidate, including the election or defeat of a certified  
18 candidate or the nomination or election of any candidate who is  
19 opposed by a certified candidate, shall continue to file reports as  
20 required pursuant to subsection (b), section two, article eight of  
21 this chapter.~~

~~22 §3-12-14. Duties of the State Election Commission; Secretary of  
23 State.~~

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

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

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

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

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

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

21 (6) Cause an audit of the fund to be conducted by independent  
22 certified public accountants ninety days after a general election.  
23 The State Election Commission shall cooperate with the audit,

1 provide all necessary documentation and financial records to the  
2 auditor and maintain a record of all information supplied by the  
3 audit;

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

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

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

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

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

22 (3) Prepare and publish instructions setting forth methods of  
23 bookkeeping and preservation of records to facilitate compliance

1 with this article and to explain the duties of candidates and  
2 others participating in elections under ~~the provisions of~~ this  
3 article;

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

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

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

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

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

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

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

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

15 **§3-12-16. Civil penalties.**

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



1 expenditure or obligation.

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

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

19       (d) In addition to any other penalties imposed by law, the  
20 State Election Commission may impose a civil penalty for a  
21 violation by or on behalf of any candidate of any reporting  
22 requirement imposed by this article in the amount of \$100 a day.  
23 ~~The penalty shall be doubled if the amount not reported for a~~

1 ~~specific election exceeds ten percent of the initial amount of~~  
2 ~~public financing available to a certified candidate in a primary or~~  
3 ~~general election pursuant to section eleven of this article.~~

4 (e) All penalties collected by the State Election Commission  
5 pursuant to this section shall be deposited into the fund. The  
6 candidate and the candidate's campaign account are jointly and  
7 severally responsible for the payment of any penalty imposed  
8 pursuant to this section.

NOTE: The purpose of this bill is to remove language that violates the United States Constitution. The bill makes the West Virginia Supreme Court of Appeals Public Campaign Financing Pilot Program a permanent program. The bill adjusts 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.

The bill repeals §3-12-17.

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