

HB 4130

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CLERK OF THE HOUSE
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE
SECOND REGULAR SESSION, 2010



ENROLLED

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

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



Passed March 13, 2010

In Effect Ninety Days From Passage

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

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

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

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

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

Be it enacted by the Legislature of West Virginia:

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

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

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

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

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

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

5 (b) The commission shall hold such meetings as may be
6 called by the chairman, the Governor or the Secretary of
7 State.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§3-12-1. Short title.

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

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

1 The Legislature finds and declares the following:

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

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

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

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

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

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

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

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

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

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

§3-12-3. Definitions.

1 As used in this article, the following terms and phrases
2 have the following meanings:

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

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

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

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

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

35 (5) “Exploratory period” means the period during which
36 a participating candidate may raise and spend exploratory
37 contributions to examine his or her chances of election and to
38 qualify for public campaign financing under this article. The
39 exploratory period begins on January 1 the year before the
40 primary in which the candidate may run for Justice of the
41 Supreme Court of Appeals and ends on the last Saturday in
42 January of the election year.

43 (6) “Financial agent” means any individual acting for and
44 by himself or herself, or any two or more individuals acting
45 together or cooperating in a financial way to aid or take part
46 in the nomination or election of any candidate for public
47 office, or to aid or promote the success or defeat of any
48 political party at any election.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 This article establishes an alternative public campaign
2 financing option available to candidates for election to the
3 office of Justice of the West Virginia Supreme Court of
4 Appeals for the 2012 primary and general elections.
5 Candidates electing the alternative public campaign financing
6 option shall comply with all other applicable election and
7 campaign laws and rules.

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

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

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

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

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

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

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

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

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

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

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

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

18 (8) Interest income;

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

25 (10) Money appropriated to the fund.

§3-12-7. Declaration of intent.

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

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

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

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

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

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

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

§3-12-9. Qualifying contributions.

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

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

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

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

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

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

28 (B) The contribution was made without coercion;

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

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

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

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

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

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

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

§3-12-10. Certification of candidates.

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

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

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

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

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

16 (3) Has complied with the contribution restrictions of this
17 article;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23 (1) In violation of the law;

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

26 (3) To help any other candidate.

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

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

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

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

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

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

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

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

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

§3-12-13. Reporting requirements.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

91 **§3-12-15. Criminal penalties.**

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

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

§3-12-16. Civil penalties.

1 (a) If a participating or certified candidate or his or her
2 committee or financial agent unintentionally accepts

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

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

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

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

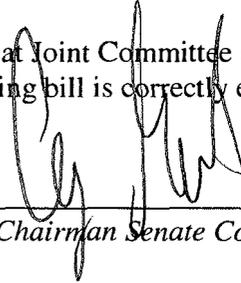
36 in a primary or general election pursuant to section eleven of
37 this article.

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

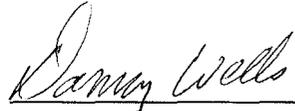
§3-12-17. Expiration of article.

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

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



Chairman Senate Committee



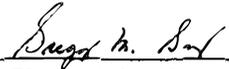
Chairman House Committee

Originating in the House.

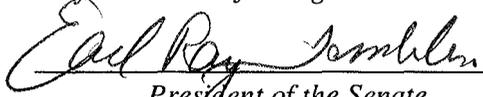
In effect ninety days from passage.



Clerk of the Senate



Clerk of the House of Delegates

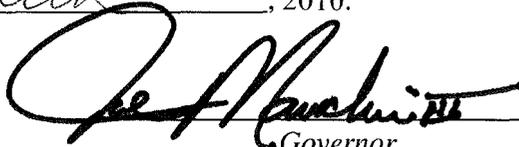


President of the Senate



Speaker of the House of Delegates

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



Governor

PRESENTED TO THE
GOVERNOR

MAR 18 2010

Time 3:10p