WEST VIRGINIA LEGISLATURE
SECOND REGULAR SESSION, 2010

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ENROLLED

COMMITTEE SUBSTITUTE
FOR
House Bill No. 4130

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

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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.

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

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

(a) The office and place of meeting of the commission is the office of the Secretary of State in the State Capitol. The commission may also conduct meetings via video, telephone or Internet conferencing.
(b) The commission shall hold such meetings as may be called by the chairman, the Governor or the Secretary of State.

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

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

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

1. To recommend policies and practices pertaining to the registration of voters and the conduct of elections generally;

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

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

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

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

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

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

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

(e) Meetings of the commission conducted for the 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;
(4) In 2000, candidates running for a seat on the Supreme Court of Appeals raised a total of $1.4 million;

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

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

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

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

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

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

§3-12-3. Definitions.
As used in this article, the following terms and phrases have the following meanings:

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

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

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

(4) "Exploratory contribution" means a contribution of no more than $1,000 made by an individual adult, including a supporting candidate and members of his or her immediate
family, during the exploratory period. Exploratory contributions may not exceed $20,000 in the aggregate.

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

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

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

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

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

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

(B) That is not made in concert or cooperation with or at the request or suggestion of such candidate, his or her agents, the candidate's authorized political committee or a political party committee or its agents.
Supporting or opposing the election of a clearly identified candidate includes supporting or opposing the candidates of a political party. An expenditure which does not meet the criteria for an independent expenditure is considered a contribution.

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

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

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

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

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

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

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

(14) “Primary election campaign period” means the period beginning on the first day of the primary election filing period, as determined under section seven, article five of this chapter, and ending on the day of the subsequent primary election.
(15) “Qualifying contribution” means a contribution received from a West Virginia registered voter of not less than $1 nor more than $100 in the form of cash, check or money order, made payable to a participating candidate or the candidate’s committee, or in the form of an electronic payment or debit or credit card payment, received during the qualifying period.

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

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

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

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

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

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

There is established within the State Treasury a special revenue fund to be known as the “Supreme Court of Appeals
Public Campaign Financing Fund” for the dual purpose of providing public financing for the election campaigns of certified candidates under the provisions of this article and of paying the administrative and enforcement costs of the Secretary of State and State Election Commission related to this article. All moneys collected under the provisions of this article shall be deposited in the fund, which shall be administered by the State Election Commission. Funds may also be accepted from any gift, grant, bequest, endowment fund or donation which may be received by the State Election Commission from any person, firm, foundation or corporation. Any balance, including accrued interest or other earnings in the fund at the end of any fiscal year do not revert to the General Revenue Fund, but shall remain in the fund. Expenditures may be made from the fund only for the purposes set forth in this article and in accordance with the provisions of article three, chapter twelve of this code and upon fulfillment of the provisions of article two, chapter eleven-b of this code.

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

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

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

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

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

(4) If a certified candidate loses, all remaining unspent or unobligated moneys after the primary election;
(5) Civil penalties levied by the State Election Commission against candidates for violations of this article;

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

(7) Voluntary donations made directly to the fund;

(8) Interest income;

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

(10) Money appropriated to the fund.

§3-12-7. Declaration of intent.

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

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

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

(c) An exploratory contribution from one person may not be made in the name of another person.
(d) At the beginning of each month a participating or certified candidate or his or her financial agent shall report all exploratory contributions, expenditures and obligations along with all receipts for contributions received during the prior month to the Secretary of State. Such reports shall be filed electronically: Provided, That a committee may apply for an exemption in case of hardship pursuant to subsection (c) of section five-b, article eight of this chapter. If the candidate decides not to run for office all unspent or unobligated exploratory contributions shall be sent to the State Election Commission for deposit in the fund. If the candidate decides to run for office as a nonparticipating candidate the unspent or unobligated exploratory contributions shall be used in accordance with articles eight and twelve of this chapter.

§3-12-9. Qualifying contributions.

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

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

(1) The printed name of the participating candidate on whose behalf the contribution is made and the signature of the person who collected the contribution for the candidate or his or her candidate’s committee;
(2) For qualifying contributions of $25 or more, the contributor's signature, printed name, street address, zip code, telephone number, occupation and name of employer; and for qualifying contributions of less than $25, the contributor's signature, printed name, street address and zip code;

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

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

(B) The contribution was made without coercion;

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

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

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

(d) A participating candidate and each member of the candidate's immediate family who is a registered voter in this state may each make one qualifying contribution. A participating candidate may not use any other personal funds to satisfy the qualifying contributions requirements.
(e) A participating candidate may not reimburse, give or promise anything of value in exchange for a qualifying contribution.

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

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

§3-12-10. Certification of candidates.

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

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

1. Has signed and filed a declaration of intent as required by section seven of this article;
2. Has obtained the required number and amount of qualifying contributions as required by section nine of this article;
3. Has complied with the contribution restrictions of this article;
4. Is eligible, as provided in section nine, article five of this chapter, to appear on the primary or general election ballot; and
5. Has met all other requirements of this article.

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

(d) The State Election Commission shall determine whether to certify a participating candidate as eligible to receive public campaign financing no later than three business days after the candidate or the candidate's committee makes his or her final report of qualifying contributions or, if a challenge is filed under subsection (g) of this section, no later than six business days after the candidate or the candidate's committee makes his or her final report of qualifying contributions. A certified candidate shall comply with the provisions of this article through the general election campaign period.
(e) No later than two business days after the State Election Commission certifies that a participating candidate is eligible to receive public campaign financing under the provisions of this section, the State Election Commission, acting in concert with the State Auditor’s office and the State Treasurer’s office, shall cause a check to be issued to the candidate’s campaign depository account an amount equal to the initial public campaign financing benefit for which the candidate qualifies under section eleven of this article, minus the candidate’s qualifying contributions, and shall notify all other candidates for the same office of its determination.

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

(g) Any person may challenge the validity of any contribution listed by a participating candidate by filing a written challenge with the State Election Commission setting forth any reason why the contribution should not be accepted as a qualifying contribution. If a contribution is challenged under this subsection, the State Election Commission shall decide the validity of the challenge no later than the end of the next business day after the day that the challenge is filed, unless the State Election Commission determines that the candidate whose contribution is challenged has both a sufficient qualifying number and amount of qualifying contributions to be certified as a candidate under this section without considering the challenge. Within five business days of a challenge, the candidate or candidate’s committee who listed any contribution that is the subject of a challenge may file a report with the State Election Commission of an additional contribution collected pursuant to section nine of this article for consideration as a qualifying contribution.
(h) A candidate’s certification and receipt of public campaign financing may be revoked by the State Election Commission, if the candidate violates any of the provisions of this article. A certified candidate who violates the provisions of this article shall repay all moneys received from the fund to the State Election Commission.

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

(j) A candidate may withdraw from being a certified candidate and become a nonparticipating candidate at any time with the approval of the State Election Commission. Any candidate seeking to withdraw shall file a written request with the State Election Commission, which shall consider requests on a case-by-case basis. No certified candidate may withdraw until he or she has repaid all moneys received from the fund: Provided, That the State Election Commission may, in exceptional circumstances, waive the repayment requirement. The State Election Commission may assess a penalty not to exceed $10,000 against any candidate who withdraws without approval.
§3-12-11. Schedule and amount of Supreme Court of Appeals Public Campaign Financing Fund payments; additional funds.

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

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

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

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

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

(2) In an uncontested general election, a certified candidate shall receive $35,000 from the public campaign financing fund.
(c) The State Election Commission shall authorize the distribution of initial campaign financing moneys to certified candidates in equal amounts. The commission shall propose a legislative rule on distribution of funds.

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

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

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

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

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

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

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

(a) A certified candidate or his or her committee may not
accept loans or contributions from any private source,
including the personal funds of the candidate and the
candidate’s immediate family, during the primary or general
election campaign periods except as permitted by this article.
(b) After filing the declaration of intent and during the qualifying period, a participating candidate may not spend or obligate more than he or she has collected in exploratory and qualifying contributions. After the qualifying period and through the general election campaign period, a certified candidate may spend or obligate any unspent exploratory or qualifying contributions and the moneys he or she receives from the fund under the provisions of section eleven of this article.

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

1. In violation of the law;
2. To repay any personal, family or business loans, expenditures or debts; or
3. To help any other candidate.

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

1. The date on which the candidate ceases to be certified; or
2. The date on which the individual loses the primary election or otherwise ceases to be a candidate.
(e) Funds remaining unspent or unobligated after the close of the primary election campaign period may be retained by the candidate for use during the general election campaign period but shall be deducted from the amount the candidate is eligible to receive under subsection (b), section eleven of this article.

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

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

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

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

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

§3-12-13. Reporting requirements.
(a) Participating candidates, certified candidates and nonparticipating candidates shall comply with the provisions of this section in addition to any other reporting required by the provisions of this chapter.

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

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

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

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

(d) A certified candidate or his or her financial agent shall file periodic financial statements in accordance with section five, article eight of this chapter, detailing all funds received, expended or obligated during the specified periods. The reports shall be on forms approved by the Secretary of State.
(e) In addition to any other reporting required by this chapter, a nonparticipating candidate or his or her financial agent shall report to the Secretary of State on approved forms an itemized summary of his or her campaign expenditures or obligations, according to the following provisions and guidelines:

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

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

(3) On the first Saturday in July or within six days thereafter, listing the nonparticipating candidate’s expenditures and obligations prior to July 1 subsequent to the primary election, if the nonparticipating candidate’s expenditures or obligations, in the aggregate, exceed the initial funding available under section eleven of this article to any certified candidate running for the same office.
(4) On the first Saturday in October, listing any expenditures or obligations, in the aggregate, that exceed the initial funding available under section eleven of this article to any certified candidate running for the same office and which have taken place subsequent to those reported on the financial statement required to be filed by a candidate for public office pursuant to subdivision (4), subsection (b), section five, article eight of this chapter. Thereafter, any additional expenditures or obligations, in the aggregate, that exceed the initial funding available under section eleven of this article to any certified candidate running for the same office made prior to the fifteenth day before the general election shall be reported to the State Election Commission within forty-eight hours.

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

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

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

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

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

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

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

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

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

(5) Monitor reports filed pursuant to this article and the
financial records of candidates to ensure that qualified
candidates receive matching funds promptly and to ensure
that moneys required by this article to be paid to the fund are
deposited in the fund;
(6) Cause an audit of the fund to be conducted by independent certified public accountants ninety days after a general election. The State Election Commission shall cooperate with the audit, provide all necessary documentation and financial records to the auditor and maintain a record of all information supplied by the audit;

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

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

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

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

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

(3) Prepare and publish instructions setting forth methods of bookkeeping and preservation of records to facilitate compliance with this article and to explain the duties of candidates and others participating in elections under the provisions of this article;
(4) Propose emergency and legislative rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code as may be necessary for the proper administration of the provisions of this article;

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

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

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

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

(c) To fulfill their responsibilities under this article, the State Election Commission and the Secretary of State may subpoena witnesses, compel their attendance and testimony, 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
contributions from a private source in violation of the provisions of this article or spends or obligates to spend more than the amount of public financing money he or she is eligible to receive from the fund pursuant to section eleven of this article, the State Election Commission may order the candidate to pay to the State Election Commission an amount equal to the amount of the contribution, expenditure or obligation.

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

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

(d) In addition to any other penalties imposed by law, the State Election Commission may impose a civil penalty for a violation by or on behalf of any candidate of any reporting requirement imposed by this article in the amount of $100 a day. The penalty shall be doubled if the amount not reported for a specific election exceeds ten percent of the initial 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 3:10 p.m.