

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

NO. 12-0899

STATE OF WEST VIRGINIA ex rel. ALLEN H. LOUGHRY II, candidate for the Supreme Court of Appeals of West Virginia,

Petitioner,

v.

NATALIE E. TENNANT, in her official capacity as West Virginia Secretary of State; NATALIE E. TENNANT, GARY A. COLLIAS, WILLIAM N. RENZELLI, and ROBERT RUPP, in their official capacities as members of the West Virginia State Election Commission; GLEN B. GAINER III, in his official capacity as West Virginia State Auditor; and JOHN PERDUE, in his official capacity as West Virginia State Treasurer,

Respondents.

APPENDIX FOR RESPONDENTS SECRETARY OF STATE AND THE STATE ELECTION COMMISSION

**DARRELL V. McGRAW, JR.
ATTORNEY GENERAL**

**SILAS B. TAYLOR
MANAGING DEPUTY ATTORNEY GENERAL
State Capitol, Room 26-E
Charleston, West Virginia 25305
State Bar No. 7370
Telephone: (304) 558-2021
E-mail: silasbtaylor1@gmail.com
*Counsel for Respondents Secretary of State
and the West Virginia State Election Commission***

TABLE OF CONTENTS

(*Examples of Unsuccessful Bills to Implement Public Campaign Financing in West Virginia.)

H.B. 4260 (2002)*	1
H.B. 2486 (2005)*	8
S.B. 124 (2006)*	18
S.B. 241 (2009)*	26
Senate Concurrent Resolution No. 69 (2008)	34
Minutes of Subcommittee C of Joint Standing Committee on the Judiciary (09/07/08)	35
Letter from the League of Women Voters to the Chair of the Joint Standing Committee on the Judiciary (05/20/08)	37
News article, <i>Charleston Gazette</i> (09/08/08)	38
Agenda, Judiciary Subcommittee C (12/07/08)	40
Minutes of Subcommittee C of Joint Standing Committee on the Judiciary (12/07/08), including PowerPoint presentation -- "Issues in Judicial Selection" by Allan N. Karlin	41
Agenda, Judiciary Subcommittee C (1/12/09)	63
S.B. 311 (2009)	65

Introduced Version

H. B. 4260

(By Delegates Fleischauer, Pino, Schadler and Webb)

[Introduced February 2, 2002, referred to the
Committee on the Judiciary.]

A BILL to amend the code of West Virginia, 1931, as 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, §3-12-17, and §3-12-18, relating generally to providing public funding of election campaigns for certain offices; setting forth as short title and certain legislative findings and declarations; defining terms; specifying that the provisions of the act are applicable to candidates for the offices of governor, supreme court justice, circuit court judge, and candidates for seats in the Legislature; establishing a public campaign financing fund and sources of revenue for the fund; requiring an applicant for public campaign funding to complete a declaration of intent and setting forth the manner in which application for funding may be made; setting forth eligibility criteria for qualifying party and independent candidates; allowing participating candidates to raise from private sources and spend seed money contributions; requiring candidates seeking public campaign funds to collect a required number of 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 that qualified candidates shall receive funding for election campaigns from the public campaign financing fund; specifying the amount of funds available for each office and when such 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; prohibiting the use of personal funds for certain purposes; requiring certain disclosures; requiring candidates to keep records and report to the state election commission; providing for matching public campaign funds when an opponent spends in excess of the participating candidate's spending limits; setting forth certain duties of the state election commission; 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 setting forth an effective date.

Be it enacted by the Legislature of West Virginia:

That the code of West Virginia, 1931, as amended, 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, §3-12-17, and §3-12-18, to read as follows:

ARTICLE 12. WEST VIRGINIA PUBLIC CAMPAIGN FINANCING ACT.**§3-12-1. Short title.**

This article shall be known as the "West Virginia Public Campaign Financing Act".

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

The Legislature hereby finds and declares that current election finance laws:

- (a) Can place elected officials in the position of spending their time raising funds instead of representing the public;
- (b) Cost the taxpayers millions of dollars in the form of subsidies and special privileges granted to large campaign contributors;
- (c) Allow elected officials to accept large campaign contributions from private interests when they may have statutory or regulatory power over those interests;
- (d) Give incumbents an unfair advantage over challengers;
- (e) Hinder reasonable communication with potential voters by qualified candidates not supported by large private campaign contributions;
- (f) Effectively suppress the voices and influence of the majority of West Virginia citizens in favor of a small number of wealthy special interests;
- (g) Undermine public confidence in the integrity of public officials; and
- (h) Drive up the cost of campaigning for office and discourage otherwise qualified candidates who lack personal wealth or access to special interest funding.

Therefore, the creation of a public campaign financing system is essential to improve the integrity of elections in this state

0001

by diminishing the influence of special interest contributions, encouraging more citizens to participate in the political process; remove funding as a source of campaign attention and candidate attack; promote freedom of speech and direct the focus of political campaigns to issues of substance.

§3-12-3. Definitions.

Unless the context clearly requires a different meaning, as herein used:

- (a) "Candidate" means an individual who has filed a pre-candidacy statement pursuant to the provisions of section five-e, article eight of this chapter, has qualified to have his or her name listed on the ballot of any election, or who has declared his or her intention to seek nomination or election through a petition or write-in procedure for the offices of governor, supreme court justice, circuit judge, state senator or delegate which is to be filled at an election.
- (b) "Commission" means the state election commission created pursuant to the provisions of article one-a of this chapter.
- (c) "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 or not conditional or legally enforceable, or a transfer of money or services or other tangible thing of value to a person, made by a person or entity other than a candidate or his or her committee 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 or services or property provided to an elected official by the state or a political subdivision to defray the costs of meeting or communicating with constituents while the official is performing the duties of his or her office .
- (d) "Excess expenditure" means an amount of money spent or obligated to be spent to influence the nomination or election of a nonparticipating candidate or the defeat of a participating candidate in excess of the public campaign financing funds available to a participating candidate running for the same office pursuant to this article.
- (e) "Fund" means the Public Campaign Financing Fund created by this article.
- (f) "General election campaign period" means the period beginning the day after the primary election and ending on the day of the general election in that election year.
- (g) "Independent candidate" means a candidate on the ballot who does not represent a political party.
- (h) "Independent expenditure" means an expenditure made by a person or entity other than a candidate or his or her committee for a communication which expressly advocates the nomination, election or defeat of a clearly identified candidate but which is made independently of a candidate's campaign and which has not been made with the cooperation or consent of, or in consultation with, or at the request or suggestion of, the candidate or any of his or her agents or authorized committees. An expenditure which does not meet the criteria for independence established in this subsection is considered a contribution.
- (i) "Nonparticipating candidate" means a candidate who is on the ballot but has chosen not to apply for public campaign financing or has failed to satisfy the requirements for receiving public campaign financing.
- (j) "Participating candidate" means a candidate who is attempting to qualify or who has been certified as having qualified for public campaign financing during a campaign period.
- (k) "Party candidate" means a candidate who represents a political party that has been granted ballot status.
- (l) "Primary election campaign period" means the period beginning on the first day of the primary election filing period and ending on the day of the subsequent primary election.
- (m) "Private contribution" means a contribution from any nonpublic source except:
 - (1) Payments by a membership organization for the cost of communicating to its members;
 - (2) Payments by a membership organization for the purpose of facilitating the making of qualifying contributions;
 - (3) Volunteer activity, including the payment of incidental expenses by volunteers; and
 - (4) Voter registration and get-out-the-vote activities conducted by nonpartisan individuals and organizations or which are not intended to influence the election or defeat of a particular candidate.
- (n) "Qualifying contribution" means a contribution of five dollars in the form of a check or money order, made payable to a candidate or the candidate's committee, received during the qualifying period, and which is
 - (1) made by a registered voter and resident of the district in which the candidate is seeking office;
 - (2) acknowledged by a written receipt; and
 - (3) gathered by the candidate or on behalf of the candidate by an unpaid volunteer with the candidate's knowledge and consent.
- (o) "Qualifying period" means the period during which candidates are permitted to collect qualifying contributions in order to qualify to receive public campaign financing.
 - (1) For party candidates for legislative office and for circuit judge, the qualifying period begins on the first day of November immediately preceding the election year and ends on the first day of March of the election year.
 - (2) For party candidates for governor and supreme court justice, the qualifying period begins on the first day of September of the year immediately preceding the election year and ends on the first day of March of the election year.
 - (3) For independent candidates and party candidates for legislative offices and circuit court judge seeking to be placed on the general election ballot pursuant to the provisions of section twenty-three and twenty-four, article five of this chapter, the qualifying period begins on the first day of May of the election year and ends on the first day of September of the election year.
 - (4) For independent candidates and party candidates for governor and supreme court justice seeking to be placed on the general election ballot pursuant to the provisions of section twenty-three and twenty-four, article five of this chapter, the qualifying period begins on the first day of March of the election year and ends on the first day of September of the election year.
- (p) "Seed money contribution" means a contribution of no more than one hundred dollars made by an individual adult during the seed money period.
- (q) "Seed money period" means the period during which a candidate seeking campaign financing from the fund is permitted to raise and spend seed money contributions in order to explore his or her chances of election and to qualify for

0002

public campaign financing under this article. The seed money period begins on the day after the most recent general election and ends on the last day of the qualifying period in the next election year in which a candidate is running for the office.

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

This article establishes an alternative campaign financing option available to candidates for election to the offices of governor, supreme court justice, circuit judge, state senator and delegate. The provisions of this article shall be applicable to candidates for governor, supreme court justice and circuit court judge beginning with the primary and general elections to be held in the year two thousand eight, to candidates for state senator beginning with the primary and general elections to be held in the year two thousand ten, and to candidates for seats in the house of delegates beginning with the primary and general elections to be held in the year two thousand fourteen. Candidates electing the alternative campaign financing option provided under this article must also comply with all other applicable election and campaign laws and regulations.

§3-12-5. Public campaign financing fund, nature and purposes of the fund.

There is hereby established a special account in the state treasury to be known as the "Public Campaign Financing Fund" for the purpose of providing public financing for the election campaigns of certified participating candidates running for the offices set out in section four of this article and paying the administrative and enforcement costs of the 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 commission. Expenditures from the fund shall be for the purposes set forth in this article and, except for voluntary contributions made directly to the fund, are not authorized from collection, but are to be made only in accordance with appropriation by the Legislature and in accordance with the provisions of article three, chapter twelve of this code and upon the fulfillment of the provisions of article two, chapter five-a of this code: *Provided*, That for the fiscal year ending the thirtieth day of June, two thousand six, expenditures are authorized from collections rather than pursuant to appropriation by the Legislature.

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

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

- (a) All qualifying contributions collected by participating candidates or their committees;
- (b) Unspent or uncommitted seed money contributions;
- (c) Refunds from participating candidates who fail to comply with the provisions of this article;
- (d) Refunds of unspent moneys allotted to qualified candidates and remaining unspent on the date of the primary or general election for which the money was distributed;
- (e) Civil penalties levied by the commission against candidates for violations of this article;
- (f) Voluntary donations made directly to the fund.
- (g) Interest income.
- (h) Revenue from a tax checkoff program, to be developed by the tax commissioner, allowing a resident of the state to designate on his or her income tax return up to three dollars of taxes for deposit into the fund. If a husband and wife file a joint return, each spouse may designate up to three dollars for deposit into the fund. All amounts so designated shall be appropriated from the general fund and credited to the public campaign financing fund.
- (i) Voluntary donations from a tax check-off program, to be developed by the tax commissioner whereby each state taxpayer may voluntarily contribute a portion of the taxpayer's state income tax refund to the fund by so designating the contribution on the state personal income tax return form. Taxpayers not having a tax refund due, or who wish to make a contribution in excess of any tax refund amount may make a contribution to the fund by so designating the contribution on the state personal income tax return form and remitting the contribution with the tax return. The tax commissioner shall determine by the first day of July of each year the total amount designated pursuant to this subsection and shall report that amount to the state treasurer, who shall credit that amount to the fund. All amounts so designated shall be appropriated from the general fund and credited to the public campaign financing fund.

§3-12-7. Declaration of intent; application for funds by successful, independent and minor party candidates after primary election.

A candidate desiring to receive campaign financing from the fund must first file a declaration of intent to seek certification as a participating candidate for a stated office with the commission before the end of the qualifying period and before collection of any qualifying contributions. The declaration shall be on a form prescribed by the 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 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.

§3-12-8. Seed money.

- (a) A candidate or his or her committee desiring to qualify for campaign financing from the fund may not accept seed money in contributions exceeding, in the aggregate:
 - (1) Fifty thousand dollars for a candidate for governor;
 - (2) Twelve thousand five hundred for a candidate for supreme court justice;
 - (3) Two thousand five hundred dollars for a candidate for state senate or circuit court judge;
 - (4) One thousand dollars for a candidate for house of delegates.
- (b) A participating candidate or his or her committee may not accept seed money contributions from any individual, including the candidate and his immediate family members, in excess of one hundred dollars.
- (c) Every seed money contribution must be acknowledged by a written receipt. Receipts for seed money contributions of twenty-five dollars or more shall include the contributor's signature, printed name, street address and zip code, telephone number, occupation, and name of employer. Receipts for seed money contributions of less than twenty-five dollars may contain only the contributor's signature, printed name, and address. Contributions which are not acknowledged by a proper receipt do not qualify as seed money contributions.
- (d) A contribution from one person may not be made in the name of another person.
- (e) A participating candidate or his or her committee shall forward all unspent or uncommitted seed money remaining at the

end of the seed money period to the commission for deposit in the fund.

§3-12-9. Qualifying contributions.

(a) No participating candidate or his or her committee may accept more than one qualifying contribution from a single individual.

(b) Every qualifying contribution must be acknowledged by a written receipt which includes:

(1) the printed name of the 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 committee;

(2) the contributor's signature and printed name, home address, and telephone number;

(3) a statement near the contributor's signature that

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

(B) the contribution was made without coercion;

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

(D) the individual soliciting the contribution on behalf of the candidate has not been reimbursed or received anything of value for such services.

One copy of the receipt is to be given to the contributor, one copy is to be retained by the candidate and one copy is to be sent by the candidate to the commission. 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 committee must obtain at least the following number of qualifying contributions for the office he or she is seeking:

(1) For governor - a total of two thousand five hundred contributions from registered voters in at least twenty different counties in this state;

(2) For supreme court justice - a total of six hundred ten contributions from registered voters in at least five different counties;

(3) For circuit court judge - two hundred;

(4) For state senate (eight and seventeenth districts) - three hundred and fifty;

(5) For state senate (all other districts) - two hundred

(6) For house of delegates (seven-member district) - two hundred and twenty-five;

(7) For house of delegates (six-member district) - two hundred;

(8) For house of delegates (five-member district) - one hundred seventy-five;

(9) For house of delegates (four-member district) - one hundred fifty;

(10) For house of delegates (three-member district) - one hundred twenty-five;

(11) For house of delegates (two-member district) - one hundred;

(12) For house of delegates (one-member district) - seventy-five.

(d) A participating candidate and each member of the candidate's immediate family who is a registered voter and resident of the district in which the candidate is seeking office may make one qualifying contribution. The candidate may not use any other personal funds to satisfy the qualifying contributions requirements.

(e) A candidate may not give reimbursement or any thing of value in exchange for a qualifying contribution;

(f) All qualifying contributions collected by a participating candidate or his or her committee must be deposited in the fund by the end of the qualifying period.

§3-12-10. Certification of candidates.

(a) Upon receipt of notice that a participating candidate has received the required number of qualifying contributions, the commission shall determine whether the candidate has complied with all of the following requirements:

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

(2) Obtained, either personally or through his or her committee, the required number of qualifying contributions as required by section nine of this article;

(3) Submitted a report itemizing the appropriate number of qualifying contributions as required by section thirteen of this article; and

(4) Met all other requirements of this article.

(b) A candidate who, personally or through his or her committee, has accepted contributions or expended funds from private donations before the effective date of this article with regard to the general and primary elections to be conducted in two thousand and six may nevertheless be certified as a participating candidate under this article if the candidate or committee returns to the contributor, submits to the commission for deposit in the fund or donates to charity funds accepted but not expended or obligated before the effective date of this article.

(c) Upon receipt of the necessary forms and information from a candidate, the commission shall select at random a sample of five percent of the number of non-duplicative names on the report of qualifying contributions and forward facsimiles of the receipts for those contributions to the county clerk of the county in which the contributor resides. Within ten days, the county clerk shall provide a report to the commission specifying any receipts that the clerk is unable to verify as matching a person who was registered to vote in that county on the date on which the receipt was signed. Upon receipt of the clerk's report, the commission shall multiply the number of receipts not disqualified by twenty.

(1) If the result is greater than one hundred and ten percent of the number of qualifying contributions needed, the commission shall, within five working days, certify that a candidate who meets the criteria set forth in subsection (a) of this section is a participating candidate eligible to receive campaign financing from the fund.

(2) If the result is less than ninety per cent of the number of qualifying contributions required, the commission shall within five working days deny the application for funds.

(3) If the result is between ninety per cent and one hundred and ten percent of the number of qualifying contributions required, the commission shall forward all of the candidate's qualifying contribution receipts to the county clerk for verification that each contributor is a registered voter in the appropriate county or district.

In no event may a candidate be certified earlier than the beginning of the primary election campaign period.

(d) A candidate's right to receive public campaign financing may be revoked by the commission if the candidate violates any of the provisions of this article. A candidate who has received financing under this article and has been found to have violated the provisions of this article shall repay all sums received from the fund to the commission.

(e) The determination of any issue before the commission is the final administrative determination. Any person adversely affected by a decision of the commission under the provisions of this article may appeal that decision to the circuit court of Kanawha County.

§3-12-11. Schedule and amount of public campaign financing fund payments.

(a) The commission shall make public campaign financing funds for the primary election campaign period available to a participating candidate representing a political party within forty-eight hours after the date on which the candidate is certified as a participating candidate.

(1) In a contested primary election, a certified participating candidate representing a political party may receive campaign financing from the fund as follows:

(A) Governor - one million dollars;

(B) Supreme court justice - two hundred fifty thousand dollars;

(C) Circuit court judge - twenty thousand dollars;

(D) State senate (eighth and seventeenth districts) - thirty-five thousand dollars;

(E) State senate (all other districts) - twenty thousand dollars;

(F) House of delegates (seven-member district) - twenty-two thousand five hundred dollars;

(G) House of delegates (six-member district) - twenty thousand dollars;

(H) House of delegates (five-member district) - seventeen thousand five hundred dollars;

(I) House of delegates (four-member district) - fifteen thousand dollars;

(J) House of delegates (three-member district) - twelve thousand five hundred dollars;

(K) House of delegates (two-member district) - ten thousand dollars;

(L) House of delegates (single-member district) - seven thousand five hundred dollars.

(2) In an uncontested primary election, a certified party candidate may receive campaign financing from the fund equal to no more than twenty-five percent of the amount allowed for that office for a contested primary election for that office.

(b) The commission shall make public campaign financing funds for the general election campaign period available to a certified participating candidate within forty-eight hours after the primary election results are certified. The commission may require any candidate to provide proof of his or her eligibility to appear on the general election ballot.

(1) In a contested general election, a certified participating candidate, including an independent or minor party candidate who appears on the ballot pursuant to sections twenty-three and twenty-four, article five of this chapter, may receive from the fund the same amount of campaign financing available for a contested primary election under subdivision one of the previous subsection.

(2) In an uncontested general election, a certified participating candidate, including an independent or minor party candidate who appears on the ballot pursuant to sections twenty-three and twenty-four, article five of this chapter, may receive from the fund campaign financing equal to ten percent of the amount provided in a contested general election for the same office.

(c) After the first cycle of public campaign financing, the commission shall recalculate the allowable campaign financing funding amounts based on the national monetary rate of inflation and the cost-of-living (COLA) index as calculated by the federal government and shall advise the Legislature of the results in the report required to be made under section fifteen of this article.

(d) The commission may not distribute revenues to certified candidates in excess of the total amount of money deposited in the fund pursuant to section six of this article.

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

(a) A participating candidate or his or her committee may not accept 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) Notwithstanding any other provision of this article to the contrary, if, at any time during an election period, the commission determines that the revenues in the fund are insufficient to complete the distribution of funds required under this section, the commission may permit a certified participating candidate or his or her committee to accept and expend contributions, aggregating no more than five hundred dollars per contributor for gubernatorial candidates and two hundred and fifty dollars per contributor for legislative candidates, from private sources up to the amount that would have been distributed to the candidate under section eleven of this article had there been adequate money in the fund. The commission shall by legislative rule provide a fair and equitable manner of distributing those moneys that are in the fund at the time among the certified participating candidates.

(c) After filing the declaration of intent and through the qualifying period, a participating candidate may spend or obligate no more than he or she has collected in seed money contributions. After the qualifying period and through the general election campaign period, a participating candidate may spend or obligate only the funds he or she receives from the fund or raises pursuant to subsection (b) of this section.

(d) A participating candidate may expend seed money and campaign financing from the fund only for campaign-related activities as provided in section nine, article eight, chapter three of this code. Moneys distributed to a participating candidate from the fund may be expended only during the campaign period for which funds were dispersed. Payments 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.

(e) A participating candidate or his or her committee must return to the fund any unspent and uncommitted public

0005

campaign financing funds within forty-eight hours after

- (1) the date of the election;
 - (2) the date on which the candidate ceases to be certified; or
 - (3) the date on which the individual ceases to be a candidate.
- (f) A contribution from one person may not be made in the name of another person.
- (g) A participating candidate or his or her committee receiving qualifying contributions or seed money contributions from a person not listed on the receipt required by sections eight and nine of this article is liable to the commission for the entire amount of that contribution and any applicable penalties.
- (h) A participating candidate accepting any benefits under the provisions of this article shall continue to comply with all of its provisions throughout the primary and general elections.
- (i) A participating candidate or his or her financial agent shall provide the commission with all requested campaign records, including all records of seed money and qualifying contributions received and campaign expenditures and obligations, and shall fully cooperate with any audit of campaign finances requested or authorized by the commission.

§3-12-13. Reporting requirements.

- (a) Within forty-eight hours after the close of the seed money period, a participating candidate or his or her financial agent shall report to the commission on approved forms an itemized summary of all seed money contributions received and funds expended or obligated during the seed money period, together with copies of all receipts for seed money contributions.
- (b) Within forty-eight hours after the close of the qualifying period, a participating candidate or his or her financial agent shall report to the commission on approved forms an itemized summary of all contributions received and funds expended or obligated during the qualifying period.
- (c) Within five days after the primary election a participating candidate or his or her financial agent shall report to the commission on approved forms an itemized summary of all contributions received and funds expended or obligated prior to the primary election.
- (d) Within five days after the general election a participating candidate or his or her financial agent shall report to the commission on approved forms an itemized summary of all contributions received and funds expended or obligated between the primary election and the general election.
- (e) A nonparticipating candidate or his or her financial agent shall report to the commission on approved forms whenever his or her campaign expenditures or obligations, exceed by one thousand dollars the maximum funding available under this article to any certified participating candidate running for the same office. The report shall be filed with the commission within forty-eight hours of the expenditure which triggered the reporting requirement under this subsection. Thereafter, the nonparticipating candidate or his or her financial agent shall report to the commission within forty-eight hours any additional campaign expenditures or obligations aggregating more than one thousand dollars. During the last twenty days before the primary or general election, the nonparticipating candidate or his or her financial agent shall report to the commission within twenty-four hours thereof every excess campaign expenditure or obligation of five hundred dollars or more.
- (f) Any person, organization or entity making independent expenditures advocating the defeat of a participating candidate or the nomination or election of any candidate who is opposed by a participating candidate in excess of one thousand dollars in the aggregate shall report such expenditures to the commission on approved forms within forty-eight hours of the expenditure. The commission shall establish by legislative rule a reporting form which shall state the name of the person or entity making the independent expenditures, the names of and office for which the candidates are seeking election, whether expenditure advocated the nomination, election or defeat of a particular candidate, and the name of any candidate who stands to benefit from the independent expenditures.

§3-12-14. Matching funds.

- (a) If the commission determines that a non-participating candidate's campaign expenditures or obligations have exceeded by one thousand dollars the maximum funding available under this article to any certified participating candidate running for the same office, the commission shall release additional campaign financing funds to an opposing participating candidate for the same office equal to the amount of the excess expenditures.
- (b) If the commission determines that independent expenditures on behalf of a non-participating candidate, either alone or in combination with the non-participating candidate's campaign expenditures or obligations, have exceeded by one thousand dollars the maximum funding available under this article to any certified participating candidate running for the same office, the commission shall immediately release additional campaign financing funds to a participating candidate who is an opponent for the same office equal to the amount of the excess expenditures.
- (c) If the commission determines that independent expenditures on behalf of a participating candidate, in combination with the participating candidate's campaign expenditures or obligations, exceed by one thousand dollars the maximum funding available under this article to any certified participating candidate running for the same office, the commission shall immediately release additional campaign financing funds to any other participating candidate who is an opponent for the same office equal to the amount of the excess expenditures.
- (d) Matching funds paid out to a participating candidate under this section are limited to two times the maximum amount of public campaign financing initially available to a participating candidate for the same office pursuant to section eleven of this article.

§3-12-15. Duties of the commission.

In addition to its other duties, the commission shall:

- (a) Encourage voter education regarding gubernatorial and legislative candidates;
- (b) Prescribe forms for reports, statements, notices and other documents required by this article;
- (c) Prepare and publish information about this article and provide it to potential candidates and the citizens of this state;
- (d) Prepare and publish instructions setting forth methods of bookkeeping and preservation of records to facilitate compliance with this article and explaining the duties of candidates and others participating in elections under the provisions of this article;
- (e) Make an annual report to the Legislature accounting for moneys in the fund, describing the commission's activities, and listing any recommendations for changes of law, administration, or funding amounts;
- (f) Propose 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;
- (g) Enforce the provisions of this article to ensure that moneys from the fund are placed in candidate campaign accounts or otherwise spent as specified in this article;
- (h) Monitor reports filed pursuant to this article and the financial records of candidates to ensure that qualified candidates receive equalization moneys promptly and to ensure that moneys required by this article to be paid to the fund are deposited in the fund.
- (i) Cause an audit of the fund to be conducted by independent certified public accountants ninety days after a general election. The 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.

To fulfill its responsibilities under this article, the commission may subpoena witnesses, compel their attendance and testimony, administer oaths and affirmations, take evidence and require by subpoena the production of any books, papers, records, or other items material to the performance of the commission's duties or the exercise of its powers. The commission may also propose and adopt procedural rules to carry out the purposes and provisions of this article and to govern procedures of the commission.

§3-12-16. Criminal penalties.

- (a) A participating candidate who, either personally or through his or her committee, knowingly accepts contributions or benefits in excess of those allowed under this article, spends or obligates funds in excess of the public campaign financing funding to which they are entitled, or uses such benefits or funding for a purpose other than those permitted under this article is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than fifty dollars nor more than five hundred dollars, or confined in the county or regional jail for up to thirty days, or both fined and imprisoned.
- (b) A participating candidate who, either personally or through his or her committee or financial agent, provides false information to or conceals or withholds information from the commission is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than one thousand dollars nor more than ten thousand dollars, or confined in the county or regional jail for up to one year, or both fined and imprisoned.

§3-12-17. Civil penalties.

- (a) If a participating candidate or his or her 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 commission may order the candidate to pay to the commission an amount equal to the amount of the private contribution or excess expenditure or obligation.
- (b) If a participating 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 commission shall order the candidate to pay to the commission an amount equal to ten times the amount of the private contribution accepted or of the excess spent or obligated. The candidate shall pay the civil penalty authorized under this subsection within seven days of receipt of written notice from the commission of the imposition of the penalty.
- (c) If a participating candidate fails to pay any moneys required to be paid to the commission or returned to the fund under this article, the commission may order the candidate to pay an amount equal to three times the amount that should have been paid to the commission or returned to the fund.
- (d) In addition to any other penalties imposed by law, the 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 one hundred dollars per day for candidates for the Legislature and circuit court judge and three hundred dollars per day for candidates for governor and supreme court justice. The penalty shall be doubled if the amount not reported for a specific election exceeds ten percent of the amount of public financing available to a candidate in a primary or general election pursuant to sections eleven and fourteen of this article.
- (e) All penalties collected by the commission pursuant to this section shall be deposited into the fund. The candidate and the candidate's campaign account are jointly and severally responsible for the payment of any penalty imposed pursuant to this section.

§3-12-18. Effective date.

The provisions of this article are effective the first day of January, two thousand five.

NOTE: The purpose of this bill is to create a system for public funding of election campaigns for candidates who agree to and do abide by restrictions on campaign contributions from private sources and campaign spending.

This article is new; therefore, strike-throughs and underscoring have been omitted.

0007

Bill Status - 2005 Regular Session

House Bill 2486

Legislative Session: 2005(RS)

LAST ACTION: *H Recommitted to Judiciary on 3rd reading with right to amend 02/24/05*

SUMMARY: Creating a system for public funding of election campaigns

LEAD SPONSOR: Ennis

SPONSORS: Doyle, Lane, Caputo, Amores, Miley

BILL TEXT:

[Bill Definitions ?](#)

BILL DRAFTING BILLS ?

Introduced Version - [html](#) | [wpd](#)

Committee Substitute - [html](#) | [wpd](#)

CODE AFFECTED:

- § 3 - 12 - 1 *(New Code)*
- § 3 - 12 - 2 *(New Code)*
- § 3 - 12 - 3 *(New Code)*
- § 3 - 12 - 4 *(New Code)*
- § 3 - 12 - 5 *(New Code)*
- § 3 - 12 - 6 *(New Code)*
- § 3 - 12 - 7 *(New Code)*
- § 3 - 12 - 8 *(New Code)*
- § 3 - 12 - 9 *(New Code)*
- § 3 - 12 - 10 *(New Code)*
- § 3 - 12 - 11 *(New Code)*
- § 3 - 12 - 12 *(New Code)*
- § 3 - 12 - 13 *(New Code)*
- § 3 - 12 - 14 *(New Code)*
- § 3 - 12 - 15 *(New Code)*
- § 3 - 12 - 16 *(New Code)*
- § 3 - 12 - 17 *(New Code)*
- § 3 - 12 - 18 *(New Code)*
- § 3 - 12 - 19 *(New Code)*
- § 3 - 12 - 20 *(New Code)*
- § 3 - 12 - 21 *(New Code)*

FISCAL NOTES: Secretary of State

SIMILAR TO: SB 247, SB 91

SUBJECT(S): Elections

ACTIONS:

	Description	Date	Journal Page
H	Recommitted to Judiciary on 3rd reading with right to amend	02/24/05	
H	Read 2nd time	02/24/05	302
H	On 2nd reading, House Calendar	02/24/05	
H	Read 1st time	02/23/05	278
H	On 1st reading, House Calendar	02/23/05	
H	By substitute, do pass	02/22/05	253

0008

H	To House Judiciary	02/17/05	204
H	Introduced in House	02/17/05	203
H	To Judiciary	02/17/05	
H	Filed for introduction	02/17/05	

0009

H. B. 2486

(By Delegates Ennis, Doyle, Lane, Caputo, Amores and Milley)

[Introduced, February 17, 2005 ; referred to the
Committee on the the Judiciary.]

A BILL to amend the code of West Virginia, 1931, as 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, §3-12-17, §3-12-18, §3-12-19, §3-12-20, and §3-12-21, relating generally to providing a pilot project for the public funding of election campaigns for two senate districts and three single member delegate districts; setting forth as short title and certain legislative findings and declarations; defining terms; specifying that the provisions of the act are applicable to candidates for seats in the Legislature , specifically two senate districts and three single member delegate districts; establishing a public campaign financing fund and sources of revenue for the fund; requiring an applicant for public campaign funding to complete a declaration of intent and setting forth the manner in which application for funding may be made; setting forth eligibility criteria for qualifying party and independent candidates; allowing participating candidates to raise from private sources and spend seed money contributions; requiring candidates seeking public campaign funds to collect a required number of 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 that qualified candidates shall receive funding for election campaigns from the public campaign financing fund; specifying the amount of funds available for each office and when such 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; prohibiting the use of personal funds for certain purposes; requiring certain disclosures; setting forth provisions in the event of insufficient public funds; requiring candidates to keep records and report to the State Election Commission; providing for matching public campaign funds when an opponent spends in excess of the participating candidate's spending limits; setting forth certain duties of the State Election Commission; 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; establishing the West Virginia Citizens' Publicly Financed Elections Commission and setting forth it's duties; and setting forth an effective date and termination of the pilot project.

Be it enacted by the Legislature of West Virginia:

That the code of West Virginia, 1931, as amended, 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, §3-12-17, §3-12-18, §3-12-19, §3-12-20, and §3-12-21, to read as follows:

ARTICLE 12. WEST VIRGINIA PUBLIC CAMPAIGN FINANCING PILOT PROJECT.

§3-12-1. Short title.

This article shall be known as the "West Virginia Public Campaign Financing Pilot Project Act".

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

The Legislature hereby finds and declares that current election finance laws:

- (1) Can place elected officials in the position of spending their time raising funds instead of representing the public;
- (2) Cost the taxpayers millions of dollars in the form of subsidies and special privileges granted to large campaign contributors;
- (3) Allow elected officials to accept large campaign contributions from private interests when they may have statutory or regulatory power over those interests;
- (4) Give incumbents an unfair advantage over challengers;
- (5) Hinder reasonable communication with potential voters by qualified candidates not supported by large private campaign contributions;
- (6) Effectively suppress the voices and influence of the majority of West Virginia citizens in favor of a small number of wealthy special interests;
- (7) Undermine public confidence in the integrity of public officials;

(8) Drive up the cost of campaigning for office and discourage otherwise qualified candidates who lack personal wealth or access to special interest funding; and

(9) Currently, the States of Maine and Arizona, have instituted public campaign funding programs that provide qualified candidates with full funding. Programs in both states have been successful and have seen increasing candidate participation by both Republicans and Democrats.

Therefore, the creation of a public campaign financing system will make great strides in improving the integrity of elections in this state by diminishing the influence of special interest contributions and encouraging more citizens to participate in the political process.

§3-12-3. Definitions.

Unless the context clearly requires a different meaning, as herein used:

- (1) "Certified Candidate" means an individual seeking election to the West Virginia State Senate or the House of Delegates who chooses to seek such office pursuant to the provisions of the "West Virginia Public Campaign Financing Pilot Project" and is certified as a West Virginia Public Campaign Financing Pilot Project candidate pursuant to section eleven of this article.
- (2) "Clearly identified" means that-
- (A) the name or nickname of the candidate involved appears;
 - (B) a photograph or drawing of the candidate appears; or
 - (C) the identity of the candidate is apparent by an unambiguous reference to the person or the person's status as a candidate.
- (3) "Commission" means the State Election Commission created pursuant to the provisions of article one-a of this chapter.
- (4) "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 or not 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.
- (A) An offer or tender of a contribution is not a contribution if expressly and unconditionally rejected or returned.
 - (B) A contribution does not include volunteer personal services provided without compensation or services or property provided to an elected official by the state or a political subdivision to defray the costs of meeting or communicating with constituents while the official is performing the duties of his or her office.
- (5) "Excess expenditure" means an amount of money spent or obligated to be spent to influence the nomination or election of a nonparticipating candidate or the defeat of a participating candidate in excess of the public campaign financing funds available to a participating candidate running for the same office pursuant to this article.
- (6) "Fund" means the Public Campaign Financing Fund created by section five of this article.
- (7) "General election campaign period" means the period beginning the day after the primary election and ending on the day of the general election in that election year.
- (8) "Independent candidate" means a candidate on the ballot who does not represent a political party.
- (9) "Independent expenditure" means an expenditure made by a person or entity other than a candidate or his or her committee for a communication which expressly advocates the nomination, election or defeat of a clearly identified candidate but which is made independently of a candidate's campaign and which has not been made with the cooperation or consent of, or in consultation with, or at the request or suggestion of, the candidate or any of his or her agents or authorized committees. An expenditure which does not meet the criteria for independence established in this subsection is considered a contribution.
- (10) "Nonparticipating candidate" means:
- (A) a candidate seeking election to the State Senate or House of Delegates from a district selected to participate in the pilot project pursuant to section seven of this article;
 - (B) is not certified as a West Virginia Public Campaign Financing Pilot Project candidate pursuant to section eleven of this article; and
 - (C) has an opponent who is a participating candidate.
- (11) "Party candidate" means a candidate who represents a political party that has been granted ballot status.
- (12) "Participating candidate" means a candidate seeking election to the Senate or House of Delegates from a district selected to participate in the pilot project who chooses to seek such office pursuant to the provisions of this article and is certified as a West Virginia Public Campaign Financing candidate pursuant to section ten of this article.
- (13) "Primary election campaign period" means the period beginning on the first day of the primary election filing period and ending on the day of the subsequent primary election.
- (14) "Private contribution" means a contribution from any nonpublic source except:
- (A) Payments by a membership organization for the cost of communicating to its members;
 - (B) Payments by a membership organization for the purpose of facilitating the making of qualifying contributions;
 - (C) Volunteer activity, including the payment of incidental expenses by volunteers; and
 - (D) Voter registration and get-out-the-vote activities conducted by nonpartisan individuals and organizations or which are not intended to influence the election or defeat of a particular candidate.
- (15) "Qualifying contribution" means a contribution of five dollars in the form of a check or money order, made payable to a candidate or the candidate's committee, received during the qualifying period, and which is
- (A) made by a registered voter and resident of the district in which the candidate is seeking office;
 - (B) acknowledged by a written receipt; and
 - (C) gathered by the candidate or on behalf of the candidate by an unpaid volunteer with the candidate's knowledge and consent.
- (16) "Qualifying period" means the period during which candidates are permitted to collect qualifying contributions in order to qualify to receive public campaign financing.
- (A) For party candidates for the State Senate or House of Delegates, the qualifying period begins on the first day of

February of the election year and ends on the fifteenth day of April of the election year.

(B) For independent candidates and party candidates for the State Senate or House of Delegates seeking to be placed on the general election ballot pursuant to the provisions of section twenty-three and twenty-four, article five of this chapter, the qualifying period begins on the first day of May of the election year and ends on the first day of September of the election year.

(17) "Seed money contribution" means a contribution of no more than one hundred dollars made by an individual adult during the seed money period.

(18) "Seed money period" means the period during which a candidate seeking campaign financing from the fund is permitted to raise and spend seed money contributions in order to explore his or her chances of election and to qualify for public campaign financing under this article. The seed money period begins on the day after the most recent general election and ends on the last day of the qualifying period in the next election year in which a candidate is running for the office.

(19) "WVCPFEC" means the West Virginia Citizens' Publicly Financed Elections Commission.

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

This article establishes a pilot project for the public

financing of selected campaigns for candidates seeking election to the State Senate from two legislative districts and candidates seeking election to the House of Delegates from three legislative districts in the year two thousand six. The pilot project shall be open to certified candidates for those offices nominated directly by petition. Candidates participating in this pilot project shall comply with all other applicable election and campaign laws and regulations.

§3-12-5. Public campaign financing fund, nature and purposes of the fund.

There is hereby established a special account in the state treasury to be known as the "Public Campaign Financing Fund" for the purpose of providing public financing for the election campaigns of certified participating candidates pursuant to this article and paying the administrative and enforcement costs of the 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 Commission.

Expenditures from the fund shall be for the purposes set forth in this article and, except for voluntary contributions made directly to the fund, are not authorized from collection, but are to be made only in accordance with appropriation by the Legislature and in accordance with the provisions of article three, chapter twelve of this code and upon the fulfillment of the provisions of article two, chapter five-a of this code: *Provided*, That for the fiscal year ending the thirtieth day of June, two thousand six, expenditures are authorized from collections rather than pursuant to appropriation by the Legislature.

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

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

- (1) All qualifying contributions collected by participating candidates or their committees;
- (2) Unspent or uncommitted seed money contributions;
- (3) Refunds from participating candidates who fail to comply with the provisions of this article;
- (4) Refunds of unspent moneys allotted to qualified candidates and remaining unspent on the date of the primary or general election for which the money was distributed;
- (5) Civil penalties levied by the Commission against candidates for violations of this article;
- (6) Voluntary donations made directly to the fund;
- (7) Interest income; and
- (8) Money appropriated to the fund.

§3-12-7. Selection of participating districts

(a) The legislative districts participating in the West Virginia Public Campaign Financing Pilot Project shall include two senatorial districts and three single member delegate districts. The participating districts shall be selected by the Commission on or before the first day of February, two thousand six, and immediately thereafter published in the state register.

(b) Participating legislative districts shall be selected first, from any senate or single member delegate districts in which the incumbent representing the district notifies the Commission of his or her intent to volunteer their seat for participation in the pilot project. If the selection of additional districts is necessary, the Commission shall select for participation any senate or single member delegate district represented by an incumbent state senator or delegate who elects not file for reelection to their current office: *Provided*, That in the event the number of districts with open seats exceeds the number of districts provided by this section for participation in the pilot project, the participating districts shall be designated by lot in such a manner as the Commission considers appropriate.

§3-12-8. Declaration of intent; application for funds by successful, independent and minor party candidates after primary election.

(a) Upon selection of the legislative districts to participate in the pilot project pursuant to section seven of this article, each candidate desiring to participate in the West Virginia Public Campaign Financing Pilot Project shall:

- (1) sign and file a declaration of intent to seek certification as a participating candidate and to comply with the requirements of this article and it shall be filed with the Commission before the end of the qualifying period and before collection of any qualifying contributions. The declaration shall be on a form prescribed by the Commission.
 - (2) submit a declaration of intent prior to accepting qualifying contributions under section ten of this article. Contributions made prior to the filing of the declaration of intent are not qualifying contributions; and
 - (3) (A) suspend, for the time the person is attempting to qualify as a participating or certified candidate, all access the candidate or any member of the candidate committee has to the funds of the candidate committee of that candidate, including those that the candidate has as part of a joint candidates committee, which have been raised prior to selection, except as provided in subsection (b); and
(B) certify on a form to be developed by the Commission that he or she will not seek to use such funds in any way that would assist the candidate once certified as a West Virginia Public Campaign Financing Pilot Project candidate.
- (b) A participating candidate may use funds raised and reported to the Commission pursuant to section five-e, article eight

of this chapter prior to becoming such a candidate as the seed money required of a participating candidate, but only to the extent that such money can be attributable to contributions of one hundred dollars or less from individuals.

§3-12-9. Seed money.

(a) A candidate or his or her committee desiring to qualify for campaign financing from the fund may not accept seed money in contributions exceeding, in the aggregate:

- (1) Two thousand five hundred dollars for a candidate for State Senate; and
- (2) One thousand dollars for a candidate for House of Delegates.

(b) Every seed money contribution must be acknowledged by a written receipt. Receipts for seed money contributions of twenty-five dollars or more shall include the contributor's signature, printed name, street address and zip code, telephone number, occupation, and name of employer. Receipts for seed money contributions of less than twenty-five dollars may contain only the contributor's signature, printed name, and address. Contributions which are not acknowledged by a proper receipt do not qualify as seed money contributions.

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

(d) A participating candidate or his or her committee shall forward all unspent or uncommitted seed money remaining at the end of the seed money period to the Commission for deposit in the fund.

§3-12-10. Qualifying contributions.

(a) No candidate attempting to qualify for campaign financing from the fund or his or her committee may accept more than one qualifying contribution from a single individual.

(b) Every qualifying contribution must be acknowledged by a written receipt which includes:

- (1) the printed name of the 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 committee;
- (2) the contributor's signature and printed name, home address, and telephone number;
- (3) a statement near the contributor's signature that:

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

(B) the contribution was made without coercion;

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

(D) the individual soliciting the contribution on behalf of the candidate has not been reimbursed or received anything of value for such services.

One copy of the receipt is to be given to the contributor, one copy is to be retained by the candidate and one copy is to be sent by the candidate to the Commission. 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 candidate attempting to qualify as a participating candidate or his or her committee must obtain at least the following number of qualifying contributions for the office he or she is seeking:

- (1) For state senate in the eighth or seventeenth districts - three hundred and fifty;
- (2) For state senate in all other districts - two hundred; and
- (3) For house of delegates in a single member district - seventy-five.

(d) A candidate attempting qualify as a participating candidate and each member of the candidate's immediate family who is a registered voter and resident of the district in which the candidate is seeking office may make one qualifying contribution. The candidate may not use any other personal funds to satisfy the qualifying contributions requirements.

(e) A candidate may not give reimbursement or anything of value in exchange for a qualifying contribution.

(f) All qualifying contributions collected by a participating candidate or his or her committee must be deposited in the fund by the end of the qualifying period.

§3-12-11. Certification of candidates.

(a) Before a candidate for the offices of State Senate and House of Delegates may be certified as an participating candidate and receive a public financing benefit, the candidate shall apply to the Commission for a public financing benefit 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 that a candidate who desires to qualify as a participating candidate has received the required number of qualifying contributions, the Commission shall determine whether the candidate has complied with all of the following requirements:

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

(2) obtained, either personally or through his or her committee, the required number of qualifying contributions as required by section ten of this article;

(3) not accepted other contributions, except for seed money contributions, and otherwise complied with the contribution restrictions of this article;

(4) in the case of independent or minor party candidates, a certificate of nomination pursuant to sections twenty-three and twenty-four, article five of this chapter ; and

(5) met all other requirements of this article.

(c) The Commission shall process applications for public financing benefits in the order they are received and shall verify a candidate's compliance with the requirements of subsection (b) by such verification and sampling techniques as the Commission considers appropriate.

(d) The Commission shall determine a candidate's eligibility to receive a public financing benefit no later than three business days after the candidate makes his or her final submission of qualifying contributions or, if a challenge is filed under subsection (g), no later than six business days after the candidate makes his or her final submission of qualifying contributions. Upon certification, a candidate shall transfer to the fund any unspent seed money contributions. A certified candidate shall comply with the provisions of this article after the candidate has been certified through the period of the general election.

(e) If the Commission determines that a candidate is eligible to receive a public financing benefit pursuant to subsection (c), the Commission shall immediately issue a check for or transfer to the candidate's campaign depository account an amount equal to the initial public financing benefit for which the candidate qualifies and shall notify all other candidates for the same office as the qualified candidate 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 candidate by filing a written challenge with the Commission setting forth any reason why the contribution should not be accepted as a qualifying contribution. Within five business days after the end of the qualifying period, the candidate who listed any contribution that is the subject of a challenge may file with the Commission an additional contribution within the total limitation prescribed under section ten of this article for consideration as a qualifying contribution. If a contribution is challenged under this subsection, the 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 Commission determines that the candidate whose contribution is challenged has sufficient qualifying contributions to be certified as an eligible candidate under this section without considering the challenge.

(h) A candidate's right to receive public campaign financing may be revoked by the Commission if the candidate violates any of the provisions of this article. A candidate who has received financing under this article and has been found to have violated the provisions of this article shall repay all sums received from the fund to the Commission.

(i) The determination of any issue before the Commission is the final administrative determination. Any person adversely affected by a decision of the Commission under the provisions of this article may appeal that decision to the Circuit Court of Kanawha County.

§3-12-12. Schedule and amount of public campaign financing fund payments.

(a) The Commission shall make public campaign financing funds for the primary election campaign period available to a participating candidate representing a political party within forty-eight hours after the date on which the candidate is certified as a participating candidate.

(1) In a contested primary election, a certified participating candidate representing a political party may receive campaign financing from the fund as follows:

(A) State senate (eighth and seventeenth districts) - thirty-five thousand dollars;

(B) State senate (all other districts) - twenty thousand dollars;

(C) House of Delegates (single-member district) - seven thousand five hundred dollars.

(2) In an uncontested primary election, a certified party candidate may receive campaign financing from the fund equal to no more than twenty-five percent of the amount allowed for that office for a contested primary election for that office.

(b) The Commission shall make public campaign financing funds for the general election campaign period available to a certified participating candidate within forty-eight hours after the primary election results are certified. The Commission may require any candidate to provide proof of his or her eligibility to appear on the general election ballot.

(1) In a contested general election, a certified participating candidate, including an independent or minor party candidate who appears on the ballot pursuant to sections twenty-three and twenty-four, article five of this chapter, may receive from the fund the same amount of campaign financing available for a contested primary election under subdivision (1) of subsection (a) of this section.

(2) In an uncontested general election, a certified participating candidate, including an independent or minor party candidate who appears on the ballot pursuant to sections twenty-three and twenty-four, article five of this chapter, may receive from the fund campaign financing equal to ten percent of the amount provided in a contested general election for the same office.

(c) The Commission may not distribute revenues to certified candidates in excess of the total amount of money deposited in the fund pursuant to section six of this article.

§3-12-13. Restrictions on contributions and expenditures.

(a) A participating candidate or his or her committee may not accept 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 through the qualifying period, a participating candidate may spend or obligate no more than he or she has collected in seed money contributions. After the qualifying period and through the general election campaign period, a participating candidate may spend or obligate only the funds he or she receives from the fund or raises pursuant to section twelve of this article.

(c) A participating candidate may expend seed money and campaign financing from the fund only for campaign-related activities as provided in section nine, article eight, chapter three of this code. Moneys distributed to a participating candidate from the fund may be expended only during the campaign period for which funds were dispersed. Payments 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 participating candidate or his or her committee must return to the fund any unspent and uncommitted public campaign financing funds within forty-eight hours after

(1) the date of the general election;

(2) the date on which the candidate ceases to be certified; or

(3) the date on which the individual ceases to be a candidate.

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

(f) A participating candidate or his or her committee receiving qualifying contributions or seed money contributions from a person not listed on the receipt required by sections nine and ten of this article is liable to the Commission for the entire

amount of that contribution and any applicable penalties.

(e) A participating candidate accepting any benefits under the provisions of this article shall continue to comply with all of its provisions throughout the primary and general elections.

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

§3-12-14. Insufficient public funds.

Notwithstanding any other provision of this article to the contrary, if, at any time during an election period, the Commission determines that the revenues in the fund are insufficient to complete the distribution of funds required under sections twelve or sixteen of this article, the Commission may permit a certified participating candidate or his or her committee to accept and expend contributions, aggregating no more one thousand dollars per contributor, from private sources up to the amount that would have been distributed to the candidate under section twelve or sixteen of this article had there been adequate money in the fund. The Commission shall provide a fair and equitable manner of distributing those moneys that are in the fund at the time among the certified participating candidates.

§3-12-15. Reporting requirements.

(a) Within forty-eight hours after the close of the seed money period, a participating candidate or his or her financial agent shall report to the Commission on approved forms an itemized summary of all seed money contributions received and funds expended or obligated during the seed money period, together with copies of all receipts for seed money contributions.

(b) Within forty-eight hours after the close of the qualifying period, a participating candidate or his or her financial agent shall report to the Commission on approved forms an itemized summary of all contributions received and funds expended or obligated during the qualifying period.

(c) Within five days after the primary election a participating candidate or his or her financial agent shall report to the Commission on approved forms an itemized summary of all contributions received and funds expended or obligated prior to the primary election.

(d) Within five days after the general election a participating candidate or his or her financial agent shall report to the Commission on approved forms an itemized summary of all contributions received and funds expended or obligated between the primary election and the general election.

(e) A nonparticipating candidate or his or her financial agent shall report to the Commission on approved forms whenever his or her campaign expenditures or obligations, exceed by one thousand dollars the maximum funding available under section twelve of this article to any certified participating candidate running for the same office. The report shall be filed with the Commission within forty-eight hours of the expenditure which triggered the reporting requirement under this subsection. Thereafter, the nonparticipating candidate or his or her financial agent shall report to the Commission within forty-eight hours any additional campaign expenditures or obligations aggregating more than one thousand dollars. During the last twenty days before the primary or general election, the nonparticipating candidate or his or her financial agent shall report to the Commission within twenty-four hours thereof every excess campaign expenditure or obligation of five hundred dollars or more.

(f) Any person, organization or entity making independent expenditures advocating the defeat of a participating candidate or the nomination or election of any candidate who is opposed by a participating candidate in excess of one thousand dollars in the aggregate shall report such expenditures to the Commission on approved forms within forty-eight hours of the expenditure. The Commission shall establish by legislative rule a reporting form which shall state the name of the person or entity making the independent expenditures, the names of and office for which the candidates are seeking election, whether expenditure advocated the nomination, election or defeat of a particular candidate, and the name of any candidate who stands to benefit from the independent expenditures.

§3-12-16. Matching funds.

(a) If the Commission determines that a non-participating candidate's campaign expenditures or obligations have exceeded by one thousand dollars the maximum funding available under this article to any certified participating candidate running for the same office, the Commission shall release additional campaign financing funds to the participating candidate in an amount equal to the excess expenditures.

(b) If the Commission determines that independent expenditures on behalf of a non-participating candidate, either alone or in combination with the non-participating candidate's campaign expenditures or obligations, have exceeded by one thousand dollars the maximum funding available under this article to any certified participating candidate running for the same office, the Commission shall immediately release additional campaign financing funds to the participating candidate in an amount equal to the excess independent expenditures.

(c) If the Commission determines that independent expenditures on behalf of a participating candidate, in combination with the participating candidate's campaign expenditures or obligations, exceed by one thousand dollars the maximum funding available under this article to any certified participating candidate running for the same office, the Commission shall immediately release additional campaign financing funds to any other participating candidate who is an opponent for the same office in an amount equal to the excess expenditures.

(d) Matching funds paid out to a participating candidate under this section are limited to two times the maximum amount of public campaign financing initially available to a participating candidate for the same office pursuant to section twelve of this article.

§3-12-17. Duties of the Commission.

(a) In addition to its other duties, the Commission shall:

0015

- (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 the 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 explaining the duties of candidates and others participating in elections under the provisions of this article;
 - (4) Make a report to the Legislature accounting for moneys in the fund, describing the Commission's activities, and listing any recommendations for changes of law, administration, or funding amounts;
 - (5) Enforce the provisions of this article to ensure that moneys from the fund are placed in candidate campaign accounts or otherwise 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 equalization moneys promptly and to ensure that moneys required by this article to be paid to the fund are deposited in the fund.
 - (7) Cause an audit of the fund to be conducted by independent certified public accountants ninety days after a general election. The 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.
 - (8) Insure public access to the campaign finance reports required pursuant to this article and, wherever possible, shall use electronic means for the reporting, storing and display of such information; and
 - (9) Prepare a voter's guide for the general public for each of the elections in which certified candidates are seeking office in two thousand six. The guide shall list the names of each candidate seeking office at that election and both certified candidates and nonparticipating candidates shall be invited by the Commission to submit a statement, not to exceed 500 words in length for inclusion in the guide. It shall identify the candidates that are certified candidates and the candidates that are nonparticipating candidates. Copies of the guide shall be posted on the web site of the Commission as soon as may be practicable.
- (b) To fulfill its responsibilities under this article, the Commission may subpoena witnesses, compel their attendance and testimony, administer oaths and affirmations, take evidence and require by subpoena the production of any books, papers, records, or other items material to the performance of the Commission's duties or the exercise of its powers. The Commission may also propose and adopt procedural rules to carry out the purposes and provisions of this article and to govern procedures of the Commission.

§3-12-18. Criminal penalties.

- (a) A participating candidate who, either personally or through his or her committee, knowingly accepts contributions or benefits in excess of those allowed under this article, spends or obligates funds in excess of the public campaign financing funding to which they are entitled, or uses such benefits or funding for a purpose other than those permitted under this article is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than fifty dollars nor more than five hundred dollars, or confined in the county or regional jail for up to thirty days, or both fined and imprisoned.
- (b) A participating candidate who, either personally or through his or her committee or financial agent, provides false information to or conceals or withholds information from the Commission is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than one thousand dollars nor more than ten thousand dollars, or confined in the county or regional jail for up to one year, or both fined and imprisoned.

§3-12-19. Civil penalties.

- (a) If a participating candidate or his or her committee of 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 twelve of this article, the Commission may order the candidate to pay to the Commission an amount equal to the amount of the private contribution or excess expenditure or obligation.
- (b) If a participating 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 Commission shall order the candidate to pay to the Commission an amount equal to ten times the amount of the private contribution accepted or of the excess spent or obligated. The candidate shall pay the civil penalty authorized under this subsection within seven days of receipt of written notice from the Commission of the imposition of the penalty.
- (c) If a participating candidate fails to pay any moneys required to be paid to the Commission or returned to the fund under this article, the Commission may order the candidate to pay an amount equal to three times the amount that should have been paid to the Commission or returned to the fund.
- (d) In addition to any other penalties imposed by law, the 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 one hundred dollars per day. The penalty shall be doubled if the amount not reported for a specific election exceeds ten percent of the amount of public financing available to a candidate in a primary or general election pursuant to sections eleven and fourteen of this article.
- (e) All penalties collected by the Commission pursuant to this section shall be deposited into the fund. The candidate and the candidate's campaign account are jointly and severally responsible for the payment of any penalty imposed pursuant to this section.

§3-12-20. West Virginia Citizens' Publicly Financed Elections Commission.

- (a) There is established a Commission, to be known as the West Virginia Citizens' Publicly Financed Elections Commission, to consist of seven members. The Governor shall appoint one person who is a member of the public, and the Senate President and the Speaker of the House of Delegates shall each appoint one person, each of whom are members of the public. No more than two of the public members shall be members of the same political party. The Senate President shall appoint one member of the Senate, who shall be a member of the same political party as the Senate President. The Senate Minority Leader shall appoint one member of the Senate, who shall be a member of the same political party as the

Senate Minority Leader. The Speaker of the House of Delegates shall appoint one member of the House of Delegates, who shall be a member of the same political party as the Speaker. The Minority Leader of the House of Delegates shall appoint one member of the House of Delegates who shall be a member of the same political party as the House of Delegates Minority Leader. A vacancy in the membership of the WVCPFEC shall be filled in the same manner in which the original appointment was made.

(b) The members of the WVCPFEC shall be appointed no later than the thirtieth day of January, two thousand six and shall hold their initial organizational meeting no later than the first day of March, two thousand six. The members shall elect one of the members to serve as chair and the chair may appoint a secretary, who need not be a member of the WVCPFEC. The members of the WVCPFEC shall serve without compensation, but shall be eligible for reimbursement for necessary and reasonable expenses incurred in the performance of their official duties within the limits of funds appropriated or otherwise made available to the WVCPFEC.

(c) The WVCPFEC shall meet at the call of the chair. The WVCPFEC shall elicit testimony from the public at such times and places as the chair shall designate and shall hold at least one public hearing following the two thousand six general election. A meeting of the WVCPFEC shall be called at the request of four of the WVCPFEC's members and four members of the WVCPFEC shall constitute a quorum at any meeting thereof.

(d) It shall be the duty of the WVCPFEC to:

(1) examine the experience, both positive and negative, of the West Virginia Public Campaign Financing Pilot Project with respect to the two thousand six election;

(2) review and recommend criteria for selecting districts to participate in the pilot project in two thousand eight and provide information to candidates in those districts seeking nomination for election;

(3) examine the feasibility of establishing the West Virginia Public Campaign Financing Pilot Project as the public financing system for candidates for all state senate and delegate districts in this State; and

(4) consider such other matters relating to the issue of publicly financed elections and campaign finance as the members of the WVCPFEC may deem appropriate.

(e) The WVCPFEC shall be entitled to call to its assistance and avail itself of the services of the Commission, as it may require and as may be available for its purposes; and to employ stenographic and clerical assistance.

(f) The WVCPFEC shall issue a final report to the Legislature on its findings and recommendations relative to the pilot project with respect to the two thousand six general election, including, but not limited to, any suggestions for changes in the project for the two thousand eight primary and general elections, no later than the ninetieth day following the day of the two thousand six general election and the final report may contain such legislation as prepared by the WVCPFEC and recommended thereby for enactment.

§3-12-21. Effective Date and Termination of Pilot Project.

The provisions of this article are effective the first day of July, two thousand five. The provisions of this article shall terminate on the first day of April, two thousand seven, unless sooner terminated, continued or reestablished.

NOTE: The purpose of this bill is to create a system for public funding of election campaigns for candidates who agree to and do abide by restrictions on campaign contributions from private sources and campaign spending.

This article is new; therefore, strike-throughs and underscoring have been omitted.

Introduced Version

Senate Bill No. 124

(By Senators White, Foster, Hunter, Kessler,
Sprouse, McCabe, Jenkins, Dempsey, Unger and Sharpe)

[Introduced January 11, 2006; referred to the Committee
on the Judiciary; and then to the Committee on Finance.]

A BILL to amend the Code of West Virginia, 1931, as 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, §3-12-17, §3-12-18 and §3-12-19, all relating generally to providing an alternative public funding option of election campaigns for candidates for the state Senate and House of Delegates; 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 offices of state Senate and House of Delegates; establishing a public campaign financing fund and sources of revenue for the fund; requiring an additional penalty assessment be imposed against violators of administrative orders, rules and regulations of state governmental agencies, boards and commissions; requiring an applicant for public campaign funding 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 party and independent candidates; allowing participating candidates to raise from private sources and spend seed money contributions; requiring candidates seeking public campaign funds to collect a required number of 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 that qualified candidates shall receive funding for election campaigns from the Public Campaign Financing Fund; specifying the amount of funds available for each office 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; prohibiting the use of personal funds for certain purposes; requiring certain disclosures; requiring candidates to keep records and report to the State Election Commission; providing for matching public campaign funds when an opponent spends in excess of the initial funding available to a certified candidate and for independent expenditures on behalf of a nonparticipating or certified opponent; setting forth certain duties of the State Election Commission; 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 setting forth an effective date.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, 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, §3-12-17, §3-12-18 and §3-12-19, all to read as follows: **ARTICLE 12. WEST VIRGINIA PUBLIC CAMPAIGN FINANCING ACT.**

§3-12-1. Short title.

This article shall be known as the "West Virginia Public Campaign Financing Act".

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

The Legislature hereby finds and declares that current election finance laws:

- (a) May allow individuals and committees who contribute large amounts of money to have an undue influence on the political process;
- (b) May diminish the free speech rights of those candidates and voters who are not wealthy because the political process is influenced by individuals and committees who can afford to spend large amounts of money on political communications;
- (c) May erode public confidence in the democratic process and democratic institutions, leaving much of the electorate questioning whether their elected officials are accountable mostly to the major contributors who finance their campaigns;
- (d) May allow elected officials to accept large campaign contributions from private interests when they may have statutory or regulatory power over those interests.

In contrast, the creation of a public campaign financing system provides qualified candidates for the offices of state Senate and House of Delegates with resources with which to communicate with voters, reverses the escalating cost of elections and frees those candidates from the chore of raising money, thus allowing them more time to conduct their official duties and communicate with their constituents and the creation of a public campaign financing system should improve the integrity of elections in this state by diminishing the influence of special interest contributions, encouraging more citizens to participate in the political process; remove funding as a source of campaign attention and candidate attack; promote freedom of speech and direct the focus of political campaigns to issues of substance.

§3-12-3. Definitions.

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

- (1) "Certified candidate" means an individual seeking nomination or election to the West Virginia state Senate or the House of Delegates who has been certified in accordance with section eleven of this article as having met all the requirements for receiving public campaign financing from the fund.
- (2) "Clearly identified" means that the name, nickname, photograph, drawing or other depiction of the candidate appears or the identity of the candidate is apparent by an unambiguous reference including, for instance, "your Senator" or "the incumbent", or through an unambiguous reference to his or her status as a candidate including, for instance, "the Democratic candidate for state Senate" or "the Republican candidate for the House of Delegates."
- (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 or not 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.
 - (A) An offer or tender of a contribution is not a contribution if expressly and unconditionally rejected or returned.
 - (B) A contribution does not include volunteer personal services provided without compensation or services or property provided to an elected official by the state or a political subdivision to defray the costs of meeting or communicating with constituents while the official is performing the duties of his or her office.
- (4) "Excess expenditure" means an amount of money spent or obligated to be spent to influence the nomination or election of a nonparticipating candidate or the defeat of a certified candidate for the same office in excess of the public campaign funds available to the certified candidate under section twelve of this article.
- (5) "Financial agent" means any person acting for and by himself or herself, or any two or more natural persons acting together or cooperating in a financial way to aid or take part in the nomination or election of any political candidate for public office, or to aid or promote the success or defeat of any political party at any election.
- (6) "Fund" means the Public Campaign Financing Fund created by section five of this article.
- (7) "General election campaign period" means the period beginning the day after the primary election and ending on the day of the general election in that election year.
- (8) "Independent expenditure" means an expenditure or obligation made by a person other than a candidate or candidate's committee in support of or opposition to the nomination or election of one or more clearly identified candidates and without consultation or coordination with or at the request or suggestion of the candidate whose nomination or election the expenditure supports or opposes or the candidate's agent. Supporting or opposing the nomination or election of a clearly identified candidate includes supporting or opposing the candidates of a clearly identified political party. An expenditure which does not meet the criteria for an independent expenditure established in this subsection is considered a contribution.
- (9) "Membership organization" means a group that grants bona fide rights and privileges, including the right to vote, to elect officers or directors, and the ability to hold office, to its members, and which uses a majority of its membership dues for purposes other than political purposes. "Membership organization" does not include organizations that grant membership upon receiving a contribution.
- (10) "Nonparticipating candidate" means a candidate who is:
 - (A) Seeking election to the state Senate or House of Delegates;
 - (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.
- (11) "Participating candidate" means a candidate seeking election to the state Senate or House of Delegates and who is attempting to be certified in accordance with section eleven of this article to receive public campaign financing from the fund.
- (12) "Person" means an individual, partnership, committee, association, and any other organization or group of individuals.
- (13) "Primary election campaign period" means the period beginning on the first day of the primary election filing period and ending on the day of the subsequent primary election.
- (14) "Private contribution" means a contribution from any source other than the fund except:
 - (A) Payments by a membership organization for the cost of communicating to its members;
 - (B) Payments by a membership organization for the purpose of facilitating the making of qualifying contributions;
 - (C) Volunteer activity, including the payment of incidental expenses by volunteers; and
 - (D) Voter registration and get-out-the-vote activities conducted by nonpartisan individuals and organizations or which are not intended to influence the election or defeat a particular candidate.
- (15) "Qualifying contribution" means a contribution of five dollars in the form of a check or money order, made payable to a participating candidate or the candidate's committee, received during the qualifying period, and which is:
 - (A) Made by a registered voter and resident of the district in which the participating candidate is seeking office;
 - (B) Acknowledged by a written receipt; and
 - (C) Gathered by the participating candidate or on behalf of the candidate by an unpaid volunteer with the candidate's knowledge and consent.
- (16) "Qualifying period" means the period during which participating candidates are permitted to collect 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 the first day of

November preceding the election year and ends on the first day of March 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 the first day of June of the election year and ends on the first day of October of the election year.

(17) "Seed money contribution" means a contribution of no more than one hundred dollars made by an individual adult, including a participating candidate and members of his or her immediate family, during the seed money period.

(18) "Seed money period" means the period during which a participating candidate is permitted to raise and spend seed money contributions to explore his or her chances of election and to qualify for public campaign financing under this article. The seed money period begins on the day after the most recent general election and ends on the last day of the qualifying period in the next election year in which a candidate is running for office.

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

This article establishes an alternative public financing option available to candidates for election to the offices of state Senate and House of Delegates. The provisions of this article are applicable to candidates for state Senate and candidates for the House of Delegates from single member districts beginning with the primary and general elections to be held in the year two thousand ten. The provisions of this article are applicable to candidates for the House of Delegates from all other districts beginning with the primary and general elections to be held in the year two thousand twelve. Candidates electing the alternative campaign financing option must comply with all other applicable election and campaign laws and regulations.

§3-12-5. Public Campaign Financing Fund, nature and purposes of the fund.

There is hereby established a special account in the State Treasury to be known as the "Public Campaign Financing Fund" for the dual purposes 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 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. Expenditures may be made from the fund only for the purposes set forth in this article.

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

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

- (a) All qualifying contributions collected by participating candidates or their committees.
- (b) Unspent or unobligated seed money contributions.
- (c) Money returned by participating candidates who fail to comply with the provisions of this article.
- (d) Unspent or unobligated moneys allotted to qualified candidates and remaining unspent or unobligated on the date of the primary or general election for which the money was distributed.
- (e) Civil penalties levied by the State Election Commission against candidates for violations of this article.
- (f) Voluntary donations made directly to the fund.
- (g) Interest income.
- (h) Revenue from a tax checkoff program, to be developed by the Tax Commissioner, allowing a resident of the state to designate on his or her income tax return up to three dollars of taxes for deposit into the fund. If a husband and wife file a joint return, each spouse may designate up to three dollars for deposit into the fund. All amounts so designated shall be appropriated from the General Fund and credited to the Public Campaign Financing Fund. (i) Surcharges imposed on administrative, civil or criminal fines and criminal penalties pursuant to section seven of this article.
- (j) Money appropriated to the fund.

§3-12-7. Additional penalty assessment imposed against violators of administrative orders, rules and regulations of state governmental agencies, boards and commissions.

On and after the first day of July, two thousand six, in addition to all other criminal or administrative fines or penalties which may be imposed by law, there is hereby imposed an additional penalty assessment levied and collected in an amount equal to ten percent of every administrative or criminal fine or penalty which has been assessed against any person, partnership, corporation or limited liability company for the violation of any rule, regulation or order promulgated by any state board, agency or commission, or for any violation of any state law that is enforced by any state board, agency or commission whenever the total amount of the collective criminal or administrative fines or penalties assessed equal or exceed one thousand dollars. The additional penalties and assessments imposed in accordance with this section shall be collected by the state board, agency or commission and forwarded to the State Treasurer for deposit into the Public Campaign Financing Fund.

§3-12-8. Declaration of intent.

A candidate desiring to receive campaign financing from the fund must first file a declaration of intent to seek certification as a participating candidate for state Senate or House of Delegates 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.

§3-12-9. Seed money.

- (a) A participating candidate or his or her committee may not accept seed money in contributions exceeding, in the aggregate:
 - (1) Five thousand dollars for a candidate for state Senate; and

(2) Two thousand dollars for a candidate for House of Delegates.

(b) Every seed money contribution must be acknowledged by a written receipt. Receipts for seed money contributions of twenty-five dollars or more shall include the contributor's signature, printed name, street address and zip code, telephone number, occupation and name of employer. Receipts for seed money contributions of less than twenty-five dollars shall contain, at a minimum, the contributor's signature, printed name and address. Contributions which are not acknowledged by a proper receipt do not qualify as seed money contributions.

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

(d) Upon certification or at the end of the seed money period, whichever comes first, a participating or certified candidate or his or her committee shall forward all unspent or unobligated seed money to the State Election Commission for deposit in the fund. **§3-12-10. Qualifying contributions.**

(a) No participating candidate or his or her committee may accept more than one qualifying contribution from a single individual.

(b) Every qualifying contribution must be acknowledged by a written receipt which 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 committee;

(2) The contributor's signature and printed name, home address and telephone number;

(3) A statement near 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 or received anything of value for making the contribution; and

(D) The individual soliciting the contribution on behalf of the participating candidate has not been reimbursed or received anything of value for the services.

(4) One copy of the receipt is to be given to the contributor, one copy is to be retained by the candidate and one copy is to be sent by the candidate to the State Election Commission. 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 committee must obtain at least the following number of qualifying contributions for the office he or she is seeking:

(1) For state Senate (eighth and seventeenth districts) - four hundred;

(2) For state Senate (all other districts) - two hundred fifty;

(3) For House of Delegates (seven-member district) - two hundred fifty;

(4) For House of Delegates (six-member district) - two hundred twenty-five;

(5) For House of Delegates (five-member district) - two hundred;

(6) For House of Delegates (four-member district) - one hundred seventy-five;

(7) For House of Delegates (three-member district) - one hundred fifty;

(8) For House of Delegates (two-member district) - one hundred twenty-five; and

(9) For House of Delegates (one-member district) - one hundred.

(d) A participating candidate and each member of the candidate's immediate family who is a registered voter and resident of the district in which the candidate is seeking office may 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 give reimbursement or anything of value in exchange for a qualifying contribution.

(f) All qualifying contributions collected by a participating candidate or his or her committee must be deposited in the fund no later than forty-eight hours after the close of the qualifying period.

§3-12-11. Certification of candidates.

(a) In order 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 that a participating candidate has received the required number of qualifying contributions, the State Election Commission shall determine whether the candidate:

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

(2) Has obtained, either personally or through his or her committee, the required number of qualifying contributions as required by section ten of this article;

(3) Has not accepted other contributions, except for seed money contributions, and otherwise complied with the contribution restrictions of this article;

(4) Is eligible to appear on the primary or general election ballot; and

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

(c) A candidate who, personally or through his or her committee, has accepted contributions or expended funds from private donations with regard to the elections to be held in two thousand ten and two thousand twelve may nevertheless be certified under this article if the candidate or his or her committee returns to the contributor, submits to the State Election Commission for deposit into the fund or donates to charity funds accepted but not expended or obligated before the effective date of this article.

(d) 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) by the verification and sampling techniques approved by the State Election Commission.

(e) The State Election Commission shall determine a participating candidate's eligibility to receive public campaign financing no later than three business days after the candidate makes his or her final submission of qualifying contributions or, if a challenge is filed under subsection (h) of this section, no later than six business days after the candidate makes his or her final submission of qualifying contributions. Upon certification, a candidate shall transfer to the fund any unspent

seed money contributions. A certified candidate shall comply with the provisions of this article through the general election campaign period.

(f) If the State Election Commission determines that a participating candidate is eligible to receive public campaign financing under the provisions of subsection (b), the State Election Commission shall within forty-eight hours issue a check for or transfer to the candidate's campaign depository account an amount equal to the initial public financing benefit for which the candidate qualifies under section twelve of this article and shall notify all other candidates for the same office of its determination.

(g) 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.

(h) 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. Within five business days of a challenge, the candidate who listed any contribution that is the subject of a challenge may file with the State Election Commission an additional contribution collected pursuant to section ten of this article for consideration 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 sufficient qualifying contributions to be certified as a candidate under this section without considering the challenge.

(i) A candidate's right to receive 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 has been found to have violated the provisions of this article shall repay all moneys received from the fund to the State Election Commission.

(j) The determination of any issue before the State Election Commission is the final administrative determination. 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.

(k) A candidate may withdraw from being a certified candidate and become a nonparticipating candidate at anytime 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 be permitted to 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 against any candidate who withdraws without approval.

§3-12-12. Schedule and amount of Public Campaign Financing Fund payments.

(a) The State Election Commission shall make public campaign financing funds for the primary election campaign period available to a certified candidate within forty-eight hours after the date on which the candidate is certified.

(1) In a contested primary election, a certified candidate may receive initial campaign financing from the fund as follows:

- (A) State Senate (eighth and seventeenth districts) - thirty-five thousand dollars;
- (B) For state Senate (all other districts) - twenty thousand dollars;
- (C) For House of Delegates (seven-member district) - twenty-two thousand five hundred dollars;
- (D) For House of Delegates (six-member district) - twenty thousand dollars;
- (E) For House of Delegates (five-member district) - seventeen thousand five hundred dollars;
- (F) For House of Delegates (four-member district) - fifteen thousand dollars;
- (G) For House of Delegates (three-member district) - twelve thousand five hundred dollars;
- (H) For House of Delegates (two-member district) - ten thousand dollars; and
- (I) House of Delegates (one-member district) - seven thousand five hundred dollars.

(2) In an uncontested primary election, a certified candidate may receive campaign financing from the fund equal to twenty-five percent of the amount available in a contested primary election for the same office.

(b) The State Election Commission shall make public campaign financing funds for the general election campaign period available to a certified candidate within forty-eight hours after the primary election results are certified by the Secretary of State.

(1) In a contested general election, a certified candidate may receive from the fund the same amount of campaign financing available for a contested primary election under subdivision (1), subsection (a) of this section.

(2) In an uncontested general election, a certified candidate may receive from the fund campaign financing equal to ten percent of the amount available in a contested general election for the same office.

(c) The State Election Commission may not distribute revenues to certified candidates in excess of the total amount of money deposited in the fund pursuant to section six of this article.

§3-12-13. Restrictions on contributions and expenditures.

(a) A certified candidate or his or her committee may not accept 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 through the qualifying period, a participating candidate may spend or obligate no more than he or she has collected in seed money contributions. After the qualifying period and through the general election campaign period, a certified candidate may spend or obligate only the funds he or she receives from the fund under the provisions of section twelve or section fifteen of this article.

(c) A participating or certified candidate may expend seed money and campaign financing from the fund only for campaign-related activities as provided in section nine, article eight, chapter three of this code. Moneys distributed to a certified candidate from the fund may be expended only during the 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) Notwithstanding any other provision of this article to the contrary, if at anytime during an election period, the State Election Commission determines that the revenues in the fund are insufficient to complete the distribution of funds required under this article, the State Election Commission may permit a certified candidate or his or her committee to accept and expend contributions, aggregating no more than one thousand dollars per contributor, from private sources up to the amount that would have been distributed to the candidate under section twelve or fifteen of this article had there been adequate money in the fund. The State Election Commission shall propose rules for legislative approval as provided by the provisions of section sixteen of this article to provide a fair procedure for the equitable distribution of those moneys that are in the fund and available for distribution among the certified candidates at the time the revenues in the fund are insufficient for complete distribution of funds as anticipated under the provisions of this article.
- (e) A certified candidate or his or her committee must return to the fund any unspent and uncommitted public campaign financing funds within forty-eight hours after:
 - (1) The date of the primary or general election;
 - (2) The date on which the candidate ceases to be certified; or
 - (3) The date on which the individual ceases to be a candidate.
- (f) A contribution from one person may not be made in the name of another person.
- (g) A participating or certified candidate or his or her committee receiving qualifying contributions or seed money contributions from a person not listed on the receipt required by sections nine and ten of this article is liable to the State Election Commission for the entire amount of that contribution and any applicable penalties.
- (h) A certified candidate accepting any benefits under the provisions of this article shall continue to comply with all of its provisions throughout the primary and general elections.
- (i) A participating or certified candidate or his or her financial agent shall provide the State Election Commission with all requested campaign records, including all records of seed money 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.

§3-12-14. Reporting requirements.

- (a) No later than forty-eight hours after the close of the qualifying period, a participating candidate or his or her financial agent shall report to the State Election Commission on approved forms an itemized summary of:
 - (1) All seed money contributions received and funds expended or obligated during the seed money period, together with copies of all receipts for seed money contributions.
 - (2) All qualifying contributions received during the qualifying period, together with copies of all receipts for qualifying contributions.
- (b) Within five days after the primary election and within five days of the general election a certified candidate or his or her financial agent shall report to the State Election Commission on approved forms an itemized summary of all funds received and funds expended or obligated prior to the election.
- (c) In addition to the financial statements required to be filed by a candidate for public office pursuant to section five, article eight of this chapter, a nonparticipating candidate or his or her financial agent shall report to the State Election Commission on approved forms an itemized summary of his or her campaign expenditure or obligations, according to the following provisions and guidelines:
 - (1) On the first Saturday in March or within six days thereafter listing the nonparticipating candidates expenditures and obligations prior to the first day of March, if, the nonparticipating candidate's campaign expenditures or obligations, in the aggregate, exceed by twenty percent the initial funding available to any certified candidate for the same office under section twelve of this article.
 - (2) Beginning on the first Saturday in April, listing any additional excess expenditures or obligations, in the aggregate, that exceed by twenty percent the initial funding available to any certified participating candidate running for the same office under section twelve of this article 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 excess expenditures or obligations, in the aggregate, that exceed by twenty percent the initial funding available to any certified candidate running for the same office under section twelve of this article made prior to the tenth day before the primary election shall be reported to the State Election Commission within forty-eight hours.
 - (3) On the first Saturday in July or within six days thereafter listing the nonparticipating candidates expenditures and obligations prior to the first day of July, subsequent to the primary election, if, the nonparticipating candidate's expenditures or obligations, in the aggregate, exceed by twenty percent the initial funding available to any certified candidate running for the same office under section twelve of this article.
 - (4) Beginning on the first Saturday in October, listing any additional excess expenditures or obligations, in the aggregate, that exceed by twenty percent the initial funding available to any certified candidate running for the same office under section twelve of this article 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 excess expenditures or obligations, in the aggregate, that exceed by twenty percent the initial funding available to any certified candidate running for the same office under section twelve of this article made prior to the tenth day before the general election shall be reported to the State Election Commission within forty-eight hours.
 - (5) During the last ten days before the primary or general election, the nonparticipating candidate or his or her financial agent shall report to the State Election Commission within twenty-four hours thereof every additional excess campaign expenditure or obligation, in the aggregate, that exceeds by twenty percent the initial funding available to any certified

candidate running for the same office under section twelve of this article.

(d) 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 one thousand dollars in the aggregate shall report these expenditures to the State Election Commission on approved forms within forty-eight hours of the expenditure. The reporting form shall state the name of the person or entity making the independent expenditures, the names of and office for which the candidates are seeking election, whether expenditure advocated the nomination, election or defeat of a particular candidate, and the name of any candidate who stands to benefit from the independent expenditures.

(e) During the last ten days before the primary or general election 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. **§3-12-15. Matching funds.** (a) If the State Election Commission determines from reports filed by a nonparticipating candidate pursuant to section five, article eight of this chapter or pursuant to subsection (c), section fourteen of this article that a nonparticipating candidate's campaign excess expenditures or obligations, in the aggregate, have exceeded by twenty percent the initial funding available under section twelve of this article to any certified candidate running for the same office, the State Election Commission shall immediately release additional campaign financing funds to any opposing certified candidate for the same office equal to the amount of the excess expenditures.

(b) If the State Election Commission determines from reports filed pursuant to subsection (d), section fourteen of this article or pursuant to subsection (b), section two, article eight of this chapter 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 section twelve of this article to any certified candidate running for the same office, the State Election Commission shall immediately release additional campaign financing funds to any certified candidate who is an opponent for the same office equal to the amount of the excess expenditures.

(c) If the State Election Commission determines from reports filed pursuant to subsection (d), section fourteen of this article or pursuant to subsection (b), section two, article eight of this chapter 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 section twelve of this article to any certified candidate running for the same office, the State Election Commission shall immediately release additional campaign financing funds to any other certified candidate who is an opponent for the same office equal to the amount of the excess expenditures.

(d) Matching funds paid out to a certified candidate under this section are limited to two times the initial amount of public campaign financing available to a certified candidate for the same office pursuant to section twelve of this article.

§3-12-16. Duties of the State Election Commission.

(a) In addition to its other duties, the State Election Commission shall:

(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 the 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 explaining the duties of candidates and others participating in elections under the provisions of this article;

(4) 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;

(5) Propose 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;

(6) 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;

(7) 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.

(8) 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.

(9) 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

(10) Prepare a voters' guide for the general public listing the names of each candidate of each candidate seeking elected office. 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.

(b) To fulfill its responsibilities under this article, the State Election Commission may subpoena witnesses, compel their attendance and testimony, administer oaths and affirmations, take evidence and require by subpoena the production of any books, papers, records, or other items material to the performance of the State Election Commission's duties or the exercise of its powers. The State Election Commission may also propose and adopt procedural rules to carry out the purposes and provisions of this article and to govern procedures of the State Election Commission.

§3-12-17. Criminal penalties.

(a) A participating or certified candidate who, either personally or through his or her committee, knowingly accepts contributions or benefits in excess of those allowed under this article, spends or obligates funds in excess of the public campaign financing funding to which they are entitled, or uses the benefits or funding for a purpose other than those

permitted under this article is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than fifty dollars nor more than five hundred dollars, or confined in jail for up to thirty days, or both fined and imprisoned.

(b) A participating or certified candidate who, either personally or through his or her committee or financial agent, provides false information to or conceals or withholds information from the State Election Commission is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than one thousand dollars nor more than ten thousand dollars, or confined in jail for up to one year, or both fined and imprisoned.

§3-12-18. Civil penalties.

(a) If a participating or certified candidate or his or her 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 twelve or fifteen 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 private contribution or excess 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 private contribution or excess 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 one hundred dollars per 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 in a primary or general election pursuant to section twelve of this article.

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

§3-12-19. Effective date.

The provisions of this article are effective the first day of July, two thousand six.

NOTE: The purpose of this bill is to create a system for public funding of election campaigns for candidates for the State Senate and House of Delegates who agree to and do abide by restrictions on campaign contributions from private sources and limits on campaign spending.

This article is new; therefore, strike-throughs and underscoring have been omitted.

0025

- (3) May erode public confidence in the democratic process and democratic institutions, leaving much of the electorate questioning whether their elected officials are accountable mostly to the major contributors who finance their campaigns;
- (4) May allow elected officials to accept large campaign contributions from private interests when they may have statutory or regulatory power over those interests.

(b) In contrast, the creation of a public campaign financing system provides qualified candidates for the offices of the State Senate and House of Delegates with resources with which to communicate with voters, reverses the escalating cost of elections and frees those candidates from the chore of raising money, thus allowing them more time to conduct their official duties and communicate with their constituents and the creation of a public campaign financing system should improve the integrity of elections in this state by diminishing the influence of special interest contributions, thus encouraging more citizens to participate in the political process; remove funding as a source of campaign attention and candidate attack; promote freedom of speech and direct the focus of political campaigns to issues of substance.

§3-12-3. Definitions.

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

- (1) "Certified candidate" means an individual seeking nomination or election to the State Senate or the House of Delegates who has been certified in accordance with section eleven of this article as having met all the requirements for receiving public campaign financing from the fund.
- (2) "Clearly identified" means that the name, nickname, photograph, drawing or other depiction of the candidate appears or the identity of the candidate is apparent by an unambiguous reference including, for instance, "your Senator" or "the incumbent", or through an unambiguous reference to his or her status as a candidate including, for instance, "the Democratic candidate for State Senate" or "the Republican candidate for the House of Delegates."
- (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 or not 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.
- (A) An offer or tender of a contribution is not a contribution if expressly and unconditionally rejected or returned.
- (B) A contribution does not include volunteer personal services provided without compensation or services or property provided to an elected official by the state or a political subdivision to defray the costs of meeting or communicating with constituents while the official is performing the duties of his or her office.
- (4) "Excess expenditure" means an amount of money spent or obligated to be spent to influence the nomination or election of a nonparticipating candidate or the defeat of a certified candidate for the same office in excess of the public campaign funds available to the certified candidate under section twelve of this article.
- (5) "Financial agent" means any person acting for and by himself or herself, or any two or more natural persons acting together or cooperating in a financial way to aid or take part in the nomination or election of any political candidate for public office, or to aid or promote the success or defeat of any political party at any election.
- (6) "Fund" means the Public Campaign Financing Fund created by section five of this article.
- (7) "General election campaign period" means the period beginning the day after the primary election and ending on the day of the general election in that election year.
- (8) "Independent expenditure" means an expenditure or obligation made by a person other than a candidate or candidate's committee in support of or opposition to the nomination or election of one or more clearly identified candidates and without consultation or coordination with or at the request or suggestion of the candidate whose nomination or election the expenditure supports or opposes or the candidate's agent. Supporting or opposing the nomination or election of a clearly identified candidate includes supporting or opposing the candidates of a clearly identified political party. An expenditure which does not meet the criteria for an independent expenditure established in this subsection is considered a contribution.
- (9) "Membership organization" means a group that grants bona fide rights and privileges, including the right to vote, to elect officers or directors, and the ability to hold office, to its members, and which uses a majority of its membership dues for purposes other than political purposes. "Membership organization" does not include organizations that grant membership upon receiving a contribution.
- (10) "Nonparticipating candidate" means a candidate who is:
- (A) Seeking election to the State Senate or House of Delegates;
- (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.
- (11) "Participating candidate" means a candidate seeking election to the State Senate or House of Delegates and who is attempting to be certified in accordance with section eleven of this article to receive public campaign financing from the fund.
- (12) "Person" means an individual, partnership, committee, association, and any other organization or group of individuals.
- (13) "Primary election campaign period" means the period beginning on the first day of the primary election filing period and ending on the day of the subsequent primary election.
- (14) "Private contribution" means a contribution from any source other than the fund except:
- (A) Payments by a membership organization for the cost of communicating to its members;
- (B) Payments by a membership organization for the purpose of facilitating the making of qualifying contributions;
- (C) Volunteer activity, including the payment of incidental expenses by volunteers; and
- (D) Voter registration and get-out-the-vote activities conducted by nonpartisan individuals and organizations or which are not intended to influence the election or defeat a particular candidate.
- (15) "Qualifying contribution" means a contribution of \$5.00 in the form of a check or money order, made payable to a participating candidate or the candidate's committee, received during the qualifying period, and which is:
- (A) Made by a registered voter and resident of the district in which the participating candidate is seeking office;
- (B) Acknowledged by a written receipt; and
- (C) Gathered by the participating candidate or on behalf of the candidate by an unpaid volunteer with the candidate's

knowledge and consent.

(16) "Qualifying period" means the period during which participating candidates are permitted to collect 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 November 1 preceding the election year and ends on March 1 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.

(17) "Seed money contribution" means a contribution of no more than \$100 made by an individual adult, including a participating candidate and members of his or her immediate family, during the seed money period.

(18) "Seed money period" means the period during which a participating candidate is permitted to raise and spend seed money contributions to explore his or her chances of election and to qualify for public campaign financing under this article. The seed money period begins on the day after the most recent general election and ends on the last day of the qualifying period in the next election year in which a candidate is running for office.

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

This article establishes an alternative public financing option available to candidates for election to the offices of State Senate and House of Delegates. The provisions of this article are applicable to candidates for State Senate and candidates for the House of Delegates from single member districts beginning with the primary and general elections to be held in the year 2010. The provisions of this article are applicable to candidates for the House of Delegates from all other districts beginning with the primary and general elections to be held in the year 2012. Candidates electing the alternative campaign financing option must comply with all other applicable election and campaign laws and regulations.

§3-12-5. Public Campaign Financing Fund, nature and purposes of the fund.

There is hereby established a special account in the State Treasury to be known as the "Public Campaign Financing Fund" for the dual purposes 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 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. Expenditures may be made from the fund only for the purposes set forth in this article.

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

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

(1) All qualifying contributions collected by participating candidates or their committees.

(2) Unspent or unobligated seed money contributions.

(3) Money returned by participating candidates who fail to comply with the provisions of this article.

(4) Unspent or unobligated moneys allotted to qualified candidates and remaining unspent or unobligated on the date of the primary or general election for which the money was distributed.

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

(6) Voluntary donations made directly to the fund.

(7) Interest income.

(8) Revenue from a tax checkoff program, to be developed by the Tax Commissioner, allowing a resident of the state to designate on his or her income tax return up to \$3 of taxes for deposit into the fund. If a husband and wife file a joint return, each spouse may designate up to \$3 for deposit into the fund. All amounts so designated shall be appropriated from the General Fund and credited to the Public Campaign Financing Fund. (9) Surcharges imposed on administrative, civil or criminal fines and criminal penalties pursuant to section seven of this article.

(10) Money appropriated to the fund.

§3-12-7. Additional penalty assessment imposed against violators of administrative orders, rules of state governmental agencies, boards and commissions.

On and after July 1, 2009, in addition to all other criminal or administrative fines or penalties which may be imposed by law, there is hereby imposed an additional penalty assessment levied and collected in an amount equal to ten percent of every administrative or criminal fine or penalty which has been assessed against any person, partnership, corporation or limited liability company for the violation of any rule, regulation or order promulgated by any state board, agency or commission, or for any violation of any state law that is enforced by any state board, agency or commission whenever the total amount of the collective criminal or administrative fines or penalties assessed equal or exceed \$1,000. The additional penalties and assessments imposed in accordance with this section shall be collected by the state board, agency or commission and forwarded to the State Treasurer for deposit into the Public Campaign Financing Fund.

§3-12-8. Declaration of intent.

A candidate desiring to receive campaign financing from the fund must first file a declaration of intent to seek certification as a participating candidate for State Senate or House of Delegates 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.

§3-12-9. Seed money.

(a) A participating candidate or his or her committee may not accept seed money in contributions exceeding, in the aggregate:

- (1) \$5,000 for a candidate for State Senate; and
- (2) \$2,000 for a candidate for House of Delegates.
- (b) Every seed money contribution must be acknowledged by a written receipt. Receipts for seed money contributions of \$25 or more shall include the contributor's signature, printed name, street address and zip code, telephone number, occupation and name of employer. Receipts for seed money contributions of less than \$25 shall contain, at a minimum, the contributor's signature, printed name and address. Contributions which are not acknowledged by a proper receipt do not qualify as seed money contributions.
- (c) A contribution from one person may not be made in the name of another person.
- (d) Upon certification or at the end of the seed money period, whichever comes first, a participating or certified candidate or his or her committee shall forward all unspent or unobligated seed money to the State Election Commission for deposit in the fund.

§3-12-10. Qualifying contributions.

- (a) No participating candidate or his or her committee may accept more than one qualifying contribution from a single individual.
- (b) Every qualifying contribution must be acknowledged by a written receipt which 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 committee;
 - (2) The contributor's signature and printed name, home address and telephone number;
 - (3) A statement near 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 or received anything of value for making the contribution; and
 - (D) The individual soliciting the contribution on behalf of the participating candidate has not been reimbursed or received anything of value for the services.
 - (4) One copy of the receipt is to be given to the contributor, one copy is to be retained by the candidate and one copy is to be sent by the candidate to the State Election Commission. 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 committee must obtain at least the following number of qualifying contributions for the office he or she is seeking:
 - (1) For State Senate (8th and 17th districts) - 400;
 - (2) For State Senate (all other districts) - 250;
 - (3) For House of Delegates (seven-member district) - 250;
 - (4) For House of Delegates (six-member district) - 225;
 - (5) For House of Delegates (five-member district) - 200;
 - (6) For House of Delegates (four-member district) - 175;
 - (7) For House of Delegates (three-member district) - 150;
 - (8) For House of Delegates (two-member district) - 125; and
 - (9) For House of Delegates (one-member district) - 100.
- (d) A participating candidate and each member of the candidate's immediate family who is a registered voter and resident of the district in which the candidate is seeking office may 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 give reimbursement or anything of value in exchange for a qualifying contribution.
- (f) All qualifying contributions collected by a participating candidate or his or her committee must be deposited in the fund no later than 48 hours after the close of the qualifying period.

§3-12-11. Certification of candidates.

- (a) In order 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 that a participating candidate has received the required number of qualifying contributions, the State Election Commission shall determine whether the candidate:
 - (1) Has signed and filed a declaration of intent as required by section eight of this article;
 - (2) Has obtained, either personally or through his or her committee, the required number of qualifying contributions as required by section ten of this article;
 - (3) Has not accepted other contributions, except for seed money contributions, and otherwise complied with the contribution restrictions of this article;
 - (4) Is eligible to appear on the primary or general election ballot; and
 - (5) Has met all other requirements of this article.
- (c) A candidate who, personally or through his or her committee, has accepted contributions or expended funds from private donations with regard to the elections to be held in 2010 and 2012 may nevertheless be certified under this article if the candidate or his or her committee returns to the contributor, submits to the State Election Commission for deposit into the fund or donates to charity funds accepted but not expended or obligated before the effective date of this article.
- (d) 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) by the verification and sampling techniques approved by the State Election Commission.
- (e) The State Election Commission shall determine a participating candidate's eligibility to receive public campaign financing no later than three business days after the candidate makes his or her final submission of qualifying contributions or, if a challenge is filed under subsection (h) of this section, no later than six business days after the candidate makes his

or her final submission of qualifying contributions. Upon certification, a candidate shall transfer to the fund any unspent seed money contributions. A certified candidate shall comply with the provisions of this article through the general election campaign period.

(f) If the State Election Commission determines that a participating candidate is eligible to receive public campaign financing under the provisions of subsection (b), the State Election Commission shall within forty-eight hours issue a check for or transfer to the candidate's campaign depository account an amount equal to the initial public financing benefit for which the candidate qualifies under section twelve of this article and shall notify all other candidates for the same office of its determination.

(g) 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.

(h) 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. Within five business days of a challenge, the candidate who listed any contribution that is the subject of a challenge may file with the State Election Commission an additional contribution collected pursuant to section ten of this article for consideration 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 sufficient qualifying contributions to be certified as a candidate under this section without considering the challenge.

(i) A candidate's right to receive 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 has been found to have violated the provisions of this article shall repay all moneys received from the fund to the State Election Commission.

(j) The determination of any issue before the State Election Commission is the final administrative determination. 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.

(k) A candidate may withdraw from being a certified candidate and become a nonparticipating candidate at anytime 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 be permitted to 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 against any candidate who withdraws without approval.

§3-12-12. Schedule and amount of Public Campaign Financing Fund payments.

(a) The State Election Commission shall make public campaign financing funds for the primary election campaign period available to a certified candidate within forty-eight hours after the date on which the candidate is certified.

(1) In a contested primary election, a certified candidate may receive initial campaign financing from the fund as follows:

- (A) State Senate (eighth and seventh districts) - \$35,000;
- (B) For State Senate (all other districts) - \$20,000;
- (C) For House of Delegates (seven-member district) - \$22,500;
- (D) For House of Delegates (six-member district) - \$20,000;
- (E) For House of Delegates (five-member district) - \$17,500;
- (F) For House of Delegates (four-member district) - \$15,000;
- (G) For House of Delegates (three-member district) - \$12,500;
- (H) For House of Delegates (two-member district) - \$10,000; and
- (I) House of Delegates (one-member district) - \$7,500.

(2) In an uncontested primary election, a certified candidate may receive campaign financing from the fund equal to twenty-five percent of the amount available in a contested primary election for the same office.

(b) The State Election Commission shall make public campaign financing funds for the general election campaign period available to a certified candidate within forty-eight hours after the primary election results are certified by the Secretary of State.

(1) In a contested general election, a certified candidate may receive from the fund the same amount of campaign financing available for a contested primary election under subdivision (1), subsection (a) of this section.

(2) In an uncontested general election, a certified candidate may receive from the fund campaign financing equal to ten percent of the amount available in a contested general election for the same office.

(c) The State Election Commission may not distribute revenues to certified candidates in excess of the total amount of money deposited in the fund pursuant to section six of this article.

§3-12-13. Restrictions on contributions and expenditures.

(a) A certified candidate or his or her committee may not accept 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 through the qualifying period, a participating candidate may spend or obligate no more than he or she has collected in seed money contributions. After the qualifying period and through the general election campaign period, a certified candidate may spend or obligate only the funds he or she receives from the fund under the provisions of section twelve or section fifteen of this article.

(c) A participating or certified candidate may expend seed money and campaign financing from the fund only for campaign-related activities as provided in section nine, article eight, chapter three of this code. Moneys distributed to a certified

candidate from the fund may be expended only during the 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) Notwithstanding any other provision of this article to the contrary, if at anytime during an election period, the State Election Commission determines that the revenues in the fund are insufficient to complete the distribution of funds required under this article, the State Election Commission may permit a certified candidate or his or her committee to accept and expend contributions, aggregating no more than \$1,000 per contributor, from private sources up to the amount that would have been distributed to the candidate under section twelve or fifteen of this article had there been adequate money in the fund. The State Election Commission shall propose rules for legislative approval as provided by the provisions of section sixteen of this article to provide a fair procedure for the equitable distribution of those moneys that are in the fund and available for distribution among the certified candidates at the time the revenues in the fund are insufficient for complete distribution of funds as anticipated under the provisions of this article.
- (e) A certified candidate or his or her committee must return to the fund any unspent and uncommitted public campaign financing funds within forty-eight hours after:
 - (1) The date of the primary or general election;
 - (2) The date on which the candidate ceases to be certified; or
 - (3) The date on which the individual ceases to be a candidate.
- (f) A contribution from one person may not be made in the name of another person.
- (g) A participating or certified candidate or his or her committee receiving qualifying contributions or seed money contributions from a person not listed on the receipt required by sections nine and ten of this article is liable to the State Election Commission for the entire amount of that contribution and any applicable penalties.
- (h) A certified candidate accepting any benefits under the provisions of this article shall continue to comply with all of its provisions throughout the primary and general elections.
- (i) A participating or certified candidate or his or her financial agent shall provide the State Election Commission with all requested campaign records, including all records of seed money 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.

§3-12-14. Reporting requirements.

- (a) No later than forty-eight hours after the close of the qualifying period, a participating candidate or his or her financial agent shall report to the State Election Commission on approved forms an itemized summary of:
 - (1) All seed money contributions received and funds expended or obligated during the seed money period, together with copies of all receipts for seed money contributions.
 - (2) All qualifying contributions received during the qualifying period, together with copies of all receipts for qualifying contributions.
- (b) Within five days after the primary election and within five days of the general election a certified candidate or his or her financial agent shall report to the State Election Commission on approved forms an itemized summary of all funds received and funds expended or obligated prior to the election.
- (c) In addition to the financial statements required to be filed by a candidate for public office pursuant to section five, article eight of this chapter, a nonparticipating candidate or his or her financial agent shall report to the State Election Commission on approved forms an itemized summary of his or her campaign expenditure or obligations, according to the following provisions and guidelines:
 - (1) On the first Saturday in March or within six days thereafter listing the nonparticipating candidates expenditures and obligations prior to March 1, if, the nonparticipating candidate's campaign expenditures or obligations, in the aggregate, exceed by twenty percent the initial funding available to any certified candidate for the same office under section twelve of this article.
 - (2) Beginning on the first Saturday in April, listing any additional excess expenditures or obligations, in the aggregate, that exceed by twenty percent the initial funding available to any certified participating candidate running for the same office under section twelve of this article 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 excess expenditures or obligations, in the aggregate, that exceed by twenty percent the initial funding available to any certified candidate running for the same office under section twelve of this article made prior to the tenth day before the primary election shall be reported to the State Election Commission within forty-eight hours.
 - (3) On the first Saturday in July or within six days thereafter listing the nonparticipating candidates expenditures and obligations prior to July 1, subsequent to the primary election, if, the nonparticipating candidate's expenditures or obligations, in the aggregate, exceed by twenty percent the initial funding available to any certified candidate running for the same office under section twelve of this article.
 - (4) Beginning on the first Saturday in October, listing any additional excess expenditures or obligations, in the aggregate, that exceed by twenty percent the initial funding available to any certified candidate running for the same office under section twelve of this article 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 excess expenditures or obligations, in the aggregate, that exceed by twenty percent the initial funding available to any certified candidate running for the same office under section twelve of this article made prior to the tenth day before the general election shall be reported to the State Election Commission within forty-eight hours.
 - (5) During the last ten days before the primary or general election, the nonparticipating candidate or his or her financial agent shall report to the State Election Commission within twenty- four hours thereof every additional excess campaign

0031

expenditure or obligation, in the aggregate, that exceeds by twenty percent the initial funding available to any certified candidate running for the same office under section twelve of this article.

(d) 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. The reporting form shall state the name of the person or entity making the independent expenditures, the names of and office for which the candidates are seeking election, whether expenditure advocated the nomination, election or defeat of a particular candidate, and the name of any candidate who stands to benefit from the independent expenditures.

(e) During the last ten days before the primary or general election 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. **§3-12-15. Matching funds.**

(a) If the State Election Commission determines from reports filed by a nonparticipating candidate pursuant to section five, article eight of this chapter or pursuant to subsection (c), section fourteen of this article that a nonparticipating candidate's campaign excess expenditures or obligations, in the aggregate, have exceeded by twenty percent the initial funding available under section twelve of this article to any certified candidate running for the same office, the State Election Commission shall immediately release additional campaign financing funds to any opposing certified candidate for the same office equal to the amount of the excess expenditures.

(b) If the State Election Commission determines from reports filed pursuant to subsection (d), section fourteen of this article or pursuant to subsection (b), section two, article eight of this chapter 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 section twelve of this article to any certified candidate running for the same office, the State Election Commission shall immediately release additional campaign financing funds to any certified candidate who is an opponent for the same office equal to the amount of the excess expenditures.

(c) If the State Election Commission determines from reports filed pursuant to subsection (d), section fourteen of this article or pursuant to subsection (b), section two, article eight of this chapter 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 section twelve of this article to any certified candidate running for the same office, the State Election Commission shall immediately release additional campaign financing funds to any other certified candidate who is an opponent for the same office equal to the amount of the excess expenditures.

(d) Matching funds paid out to a certified candidate under this section are limited to two times the initial amount of public campaign financing available to a certified candidate for the same office pursuant to section twelve of this article.

§3-12-16. Duties of the State Election Commission.

(a) In addition to its other duties, the State Election Commission shall:

- (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 the 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 explaining the duties of candidates and others participating in elections under the provisions of this article;
- (4) 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;
- (5) Propose 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;
- (6) 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;
- (7) 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.
- (8) 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.
- (9) 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
- (10) Prepare a voters' guide for the general public listing the names of each candidate of each candidate seeking elected office. 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.

(b) To fulfill its responsibilities under this article, the State Election Commission may subpoena witnesses, compel their attendance and testimony, administer oaths and affirmations, take evidence and require by subpoena the production of any books, papers, records, or other items material to the performance of the State Election Commission's duties or the exercise of its powers. The State Election Commission may also propose and adopt procedural rules to carry out the purposes and provisions of this article and to govern procedures of the State Election Commission.

§3-12-17. Criminal penalties.

(a) A participating or certified candidate who, either personally or through his or her committee, knowingly accepts contributions or benefits in excess of those allowed under this article, spends or obligates funds in excess of the public

campaign financing funding to which they are entitled, or uses the benefits or funding for a purpose other than those permitted under this article is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$50 nor more than \$500, or confined in jail for up to thirty days, or both fined and imprisoned.

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

§3-12-18. Civil penalties.

(a) If a participating or certified candidate or his or her 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 twelve or fifteen 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 private contribution or excess 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 private contribution or excess 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 per 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 in a primary or general election pursuant to section twelve of this article.

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

§3-12-19. Effective date.

The provisions of this article are effective July 1, 2009.

NOTE: The purpose of this bill is to create a system for public funding of election campaigns for candidates for the State Senate and House of Delegates who agree to and do abide by restrictions on campaign contributions from private sources and limits on campaign spending.

This article is new; therefore, strike-throughs and underscoring have been omitted.

Introduced Version - Originating in Committee

SENATE CONCURRENT RESOLUTION NO. 69

(By Senators Kessler, Oliverio, Chafin, Foster, Green,

Hunter, Jenkins, Minard, Stollings, Wells, White, Barnes, Caruth, Deem, Hall, McKenzie and Yoder)

[Originating in the Committee on the Judiciary]

Requesting the Joint Committee on Government and Finance study judicial selection methods and public financing of judicial elections.

Whereas, Judges in West Virginia are selected by partisan political elections; and

Whereas, In recent years, significant sums have been spent by sources located both within and without West Virginia to influence the elections of judges; and

Whereas, The influx of campaign money in judicial races damages the concept of an independent judiciary and gives rise to the perception that justice is for sale, undermining public confidence not only in the judiciary, but also in all of state government; and

Whereas, It is imperative that the public perception of the integrity of judicial decisions and of the judiciary in general be restored; and

Whereas, Other states provide for the selection of judges by various methods, including partisan election of judges, non-partisan election of judges, appointment by the Executive, appointment by the Executive with the approval of the Legislature appointment by a judicial selection panel; and

Whereas, At least one state has enacted provisions for public funding of judicial elections and other states are considering similar measures; and

Whereas, Each method of judicial selection has its advantages and disadvantages; therefore, be it

Resolved by the Legislature of West Virginia:

That the Joint Committee on Government and Finance is hereby requested to study judicial selection methods and public financing of judicial elections; and, be it

Further Resolved, That the Joint Committee on Government and Finance report to the regular session of the Legislature, 2009, on its findings, conclusions and recommendations, together with drafts of any legislation necessary to effectuate its recommendations; and, be it

Further Resolved, That the expenses necessary to conduct this study, to prepare a report and to draft necessary legislation be paid from legislative appropriations to the Joint Committee on Government and Finance.

SUBCOMMITTEE C
JOINT STANDING COMMITTEE ON THE JUDICIARY

Sunday, September 7, 2008
2:00 p.m. - 4:00 p.m.

Bridgeport Conference Center
Bridgeport, WV

Senate

Foster, Chair	Present
Jenkins, Vice-Chair	Present
Green	Present
Hunter	
Wells	Present
Deem	Present
Hall	
McKenzie	Present
Kessler, <i>ex officio</i>	

House

Moore, Chair	Present
Brown	Present
Hrutkay	Present
Kessler	Present
Pino	Present
Stemple	
Overington	Present
Schadler	
Webster, <i>ex officio</i>	Present

Subcommittee C of the Joint Standing Committee on the Judiciary, met in Ballroom BD at 2:00 p.m. on Sunday, September 7, 2008. The meeting was called to order by Chairman Moore and silent roll call was taken, as reflected above. Staff in attendance included: Rita Pauley, Senate Counsel; Jake Nichols, Senate Clerk; Brian Skinner, House Counsel; and Mark White, House Clerk. Senator Foster moved to accept the minutes of July and August 2008. The motion was accepted.

The Committee engaged in a panel discussion regarding SCR 69 - Requesting Joint Committee on Government and Finance study judicial elections. Robert M. Bastress, J.D., L.L.M., Professor of Law, West Virginia University College of Law, moderated the panel which specifically discussed the methods of judicial selection and the benefits and drawbacks of each. Members of the panel included Chris W. Bonneau, Ph.D., Associate Professor of Political Science and Interim Director of Undergraduate Studies, University of Pittsburgh; Richard A. Brisbin, Ph.D., Associate Professor of Political Science, West Virginia University; Wanda G. Bryant, Judge, Court of Appeals of North Carolina; Aman L. McLeod, Ph.D., J.D., Assistant Professor of Political Science, Rutgers University; and Alex Tabarrok, Bartley J. Madden Chair in Economics at the Mercatus Center Department of Economics, George Mason University and Director of Research, The Independent Institute, Oakland, California. Richard Brisbin distributed a handout entitled "Four Questions About Judicial Selection". A copy of the handout is attached. Additionally, a letter from United States Supreme Court Justice Sandra Day O'Connor was distributed to the panel and

Committee Members. A copy of this letter is attached.

Upon motion by Delegate Hrutkay, the meeting was adjourned.

Barbara J. Smith
1207 Larchwood Road
Charleston, West Virginia 25314
304-342-1755

May 20, 2008

The Honorable Carrie Webster
Room 418M, Building 1
State Capitol Complex
Charleston, WV 25305

RE: Senate Concurrent Resolution No. 69

Dear Chairwoman Webster:

The Joint Standing Committee on the Judiciary is requested to study judicial selection methods and public financing of judicial elections.

Enclosed are two copies of the 1995 "Judicial Selection, options for West Virginia" study by The League of Women Voters of West Virginia.

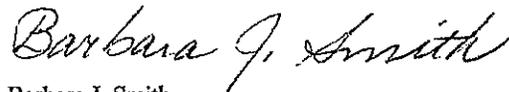
This document outlines the pros and cons of various judicial selection methods.

The League of Women Voters hopes this document will prove useful during the legislative deliberations.

Please contact me or Kathy Stoltz, President, should you need additional information. Ms. Stoltz can be reached:

Ms. Kathleen S. Stoltz, President, LWV of West Virginia
25 Lynwood Drive, Vienna, WV 26105
Phone: 304-898-6308
E-mail: ksstoltz@suddenlink.net

Sincerely,



Barbara J. Smith

Enclosure

0037

News

September 8, 2008

W.Va. lawmakers eye new ways to pick judges

By The Associated Press

BRIDGEPORT - West Virginia may be hard-pressed to remove politics and the appearance of conflicts of interest from the ranks of its judiciary.

That's the view from a panel of legal experts assembled by the Legislature as it studies whether to stick with electing judges and justices along party lines.

West Virginia University political science professor Richard Brisbin offered an overview of the various methods tried by the states. Some states have adopted nonpartisan elections, while others rely on the governor, legislators or special commissions to nominate or appoint their judiciary.

But each has its politics, Brisbin said. Appointment systems, for instance, appear to favor candidates with political connections and insider status, he said. Polling, meanwhile, continues to show public support for elections, Brisbin noted.

The joint interim subcommittee assigned the topic also heard that some studies show that states end up with the same kind of judges regardless of which system they adopt.

"Judicial selection methods do not seem to play a great role," said Chris Bonneau, a political science professor from the University of Pittsburgh. "All the information we have is that the characteristics do not vary very much among the different selection methods."

But another panelist cited his research suggests a link between partisan judicial elections and the size of certain jury awards and settlements.

Alex Tabarrok, an economics professor at George Mason University, helped review more than 75,000 damage awards from across the country. The 2002 study found that for cases involving in-state plaintiffs and out-of-state defendants, the awards were 42 percent higher in states with partisan elections versus those with nonpartisan elections.

Tabarrok, who oversees one free market-oriented think tank at George Mason and directs research at another in California, cited the control judges have over evidence, witnesses and other elements of civil cases. But Bonneau said that research also has yet to demonstrate that judges are influenced by the donors who help elect them, in states with that method.

"We have anecdotes, but we don't have any empirical evidence that a judge is voting the way he or she is in a case because of campaign contributions, he said. "There is no actual evidence that judges are being bought."

Political science professor Aman McLeod of Rutgers University said the signs of influence may be subtle, and hard to detect.

"Judges are not just machines, that you just put money in them and they vote your way," McLeod said. "Some people say it is a factor, other people say there isn't enough evidence to show that."

Conflicts of interests suggested by campaign cash have become an issue in West Virginia. The U.S. Supreme Court has been asked to review an April ruling by the state's Supreme Court that erased a \$76 million judgment against Massey Energy Co. Harman Mining and its president, who had won that judgment at trial, cite the more than \$3 million spent by Massey's chief executive, Don Blankenship, to elect Justice Brent Benjamin to the state high court in 2004.

Benjamin helped form the 3-2 majority that reversed the Harman verdict. He had rebuffed repeated requests for his recusal in the case, and has cited multimillion-dollar cases in which he sided against Massey. But the American Bar Association, Public Citizen and other groups have joined in urging the U.S. Supreme Court to accept the appeal. The New York Times echoed those calls in an editorial Sunday.

Sunday's interim meeting also heard from Judge Wanda Bryant, of the North Carolina Court of Appeals. She touted her state's route of removing party labels from all judicial races and offering public financing to appeals court candidates.

The latter removed the pressure of "dialing for dollars," Bryant said, if the candidate had raised at least \$10 apiece from at least 350 state voters during the primary. She added that many such donors choose the minimum.

"These aren't people who are trying to influence you as a judge," she said. "They believe you are qualified to serve on the bench, and want you to continue there."



Judiciary Subcommittee C - Agenda

Sunday, December 7, 2008, 1:00 pm - 3:00 pm

Location: Senate Judiciary - 208W

1. Call to Order
2. Roll Call
3. Approval of Minutes
4. Topic: Judicial Elections
 - a. Senator John C. Yoder, Judge-elect, 23rd Judicial Circuit; Former Special Assistant to the Chief Justice of the United States 1981-1983; Former Supreme Court Fellow, Supreme Court of the United States 1980-1981; Former District Court Judge, 9th Judicial District, Kansas, 1976-1980; Attorney.
 - b. Thomas J. Hurney, President, Defense Trial Counsel; Member, West Virginia Bar Association Judicial Selection and Reform Committee.
 - c. Allen Karlin, President, West Virginia Association for Justice; Former Chairman, Lawyer Disciplinary Board; Member, West Virginia Bar Association Judicial Selection and Reform Committee.
5. Other Business
6. Adjournment

*agenda subject to change

0040

SUBCOMMITTEE C
JOINT STANDING COMMITTEE ON THE JUDICIARY

Sunday, December 7, 2008

1:00 p.m. - 3:00 p.m.

Senate Judiciary

Committee Room

Senate

Foster, Chair	Present
Jenkins, Vice-Chair	Present
Green	
Hunter	Present
Wells	Present
Deem	
Hall	Present
McKenzie	
Kessler, <i>ex officio</i>	Present

House

Moore, Chair	Present
Brown	Present
Hrutkay	Present
Kessler	Present
Pino	Present
Stemple	
Overington	Present
Schadler	
Webster, <i>ex officio</i>	Present

Subcommittee C of the Joint Standing Committee on the Judiciary, met in the Senate Judiciary Committee Room at 1:00 p.m. on Monday, December 7, 2008. The meeting was called to order by Senator Foster and silent roll call was taken, as reflected above. Staff in attendance included: Rita Pauley, Senate Counsel; Brian Skinner, House Counsel; Jake Nichols, Senate Clerk; and Mark White, House Clerk. Delegate Moore moved to approve the minutes of the October 2008 and November 2008 Committee meetings. The motion was adopted.

Senator John C. Yoder, Judge-elect to the 23rd Judicial Circuit, addressed the Committee regarding Judicial Elections. Senator Yoder specifically addressed the differing methods of selecting a judge including partisan elections, merit selection methods and retention elections. Senator Yoder then answered questions from Committee Members.

Allen Karlin, Attorney and President of the West Virginia Association for Justice, and Thomas J. Hurney, Attorney and President of the Defense Trial Counsel, both addressed the Committee regarding judicial selection and reform and answered questions from Committee Members. Mr. Karlin and Mr. Hurney both are members of the West Virginia Bar Association Judicial Selection and Reform Committee.

Upon motion by Senator Wells, the meeting was adjourned.

Issues in Judicial Selection

**Allan N. Karlin
Allan N. Karlin & Associates
174 Chancery Row
Morgantown, WV 26505
304-296-8266
www.wvjustice.com**

Judicial Selection and Reform Committee

- **Chair – John Fisher**
- **West Virginia Bar Association**
- **West Virginia State Bar**
- **Defense Trial Counsel of West Virginia**
- **Mountain State Bar**
- **West Virginia Association for Justice**
- **College of Law**

Issues

- **Judicial Selection**
 - Election vs. appointive
 - The role of money and its impact upon the electoral process, including third party organizations
 - The tone of judicial elections
 - Standards for electoral conduct
 - Campaign Advertising Committees
 - Public Financing
 - Voter Guides

- Intermediate appellate courts
 - Courts of general jurisdiction
 - Appellate courts of limited jurisdiction
 - Workers compensation
 - Criminal appeals
 - Automatic rights of appeal
 - Constitutional issues

- Recusal
 - *Caperton v. A.T. Massey Coal Company, Inc.*

Money

- **Total all candidates: \$3.1 Million.**
- **Chamber of Commerce: Nearly \$1 Million.**

Limits on Campaign Speech by Judicial Candidates

- *Republican Party v. White*, 536 U.S. 765 (U.S. 2002)
 - “One piece of campaign literature stated that ‘the Minnesota Supreme Court has issued decisions which are marked by their disregard for the Legislature and a lack of common sense.’”
 - “criticize a decision excluding from evidence confessions by criminal defendants that were not tape-recorded, asking “should we conclude that because the Supreme Court does not trust police, it allows confessed criminals to go free?”
 - “criticized a decision striking down a state law restricting welfare benefits, asserting that “it’s the Legislature which should set our spending policies.”
 - “criticized a decision requiring public financing of abortions for poor women as “unprecedented” and a “pro-abortion stance.”

The Problems

- **The expenditure by candidates and third party organizations.**
- **The tone of elections.**
- **The appearance of impropriety when a justice/judge sits on a case of a substantial contributor.**

Mississippi Nonpartisan Judicial Elections



**Down, dirty judicial races: Elections
reshape Supreme Court.**

What happened in Mississippi's 2008 judicial elections
happened all over the country.

State elections for Supreme Court justices ended 2008 much as they
began, *punctuated by runaway spending, partisan pressure, angry accusations
and costly, secretly-funded ads by third-party special interests* that often
drowned out the candidates.

Four incumbent Mississippi Supreme Court justices sought re-election.
Three were defeated.

The Clarion-Ledger, 11/16/08.

PROTECT
OUR BUREAU JUDGES

Wisconsin Nonpartisan Judicial Elections

"Louis Butler, the first black Supreme Court Justice in Wisconsin, is the first incumbent to lose a seat on the bench in more than 40 years. Butler's loss may be attributed, in part, to a nasty television advertising campaign that featured an ad so racially offensive that editorial boards across the state called for Mike Gableman (Butler's successful opponent) to take it off the air."

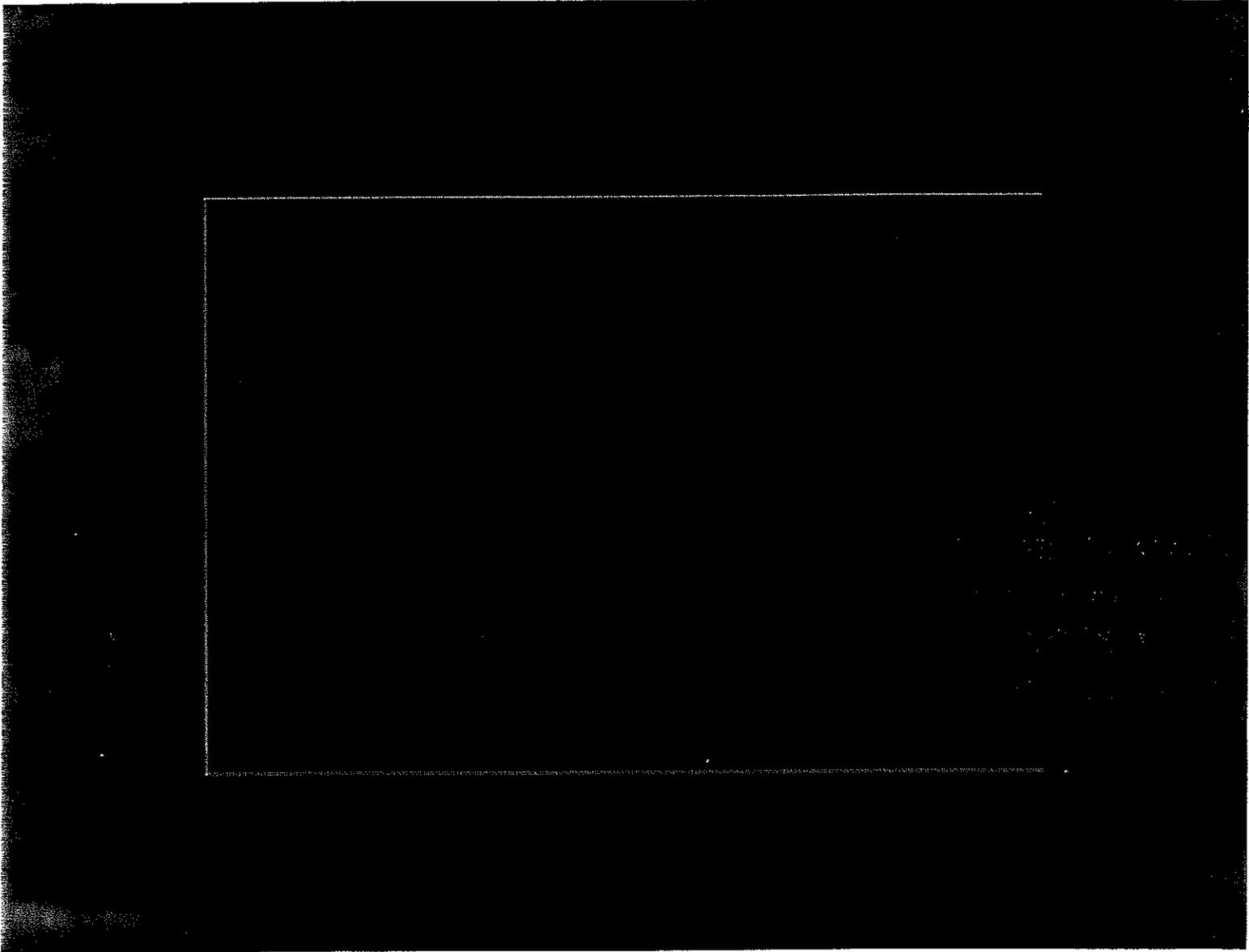
"Wisconsin Supreme Court Election Raises New Questions about Judicial Ethics Reform" Brennan Center for Justice, April 2, 2008.

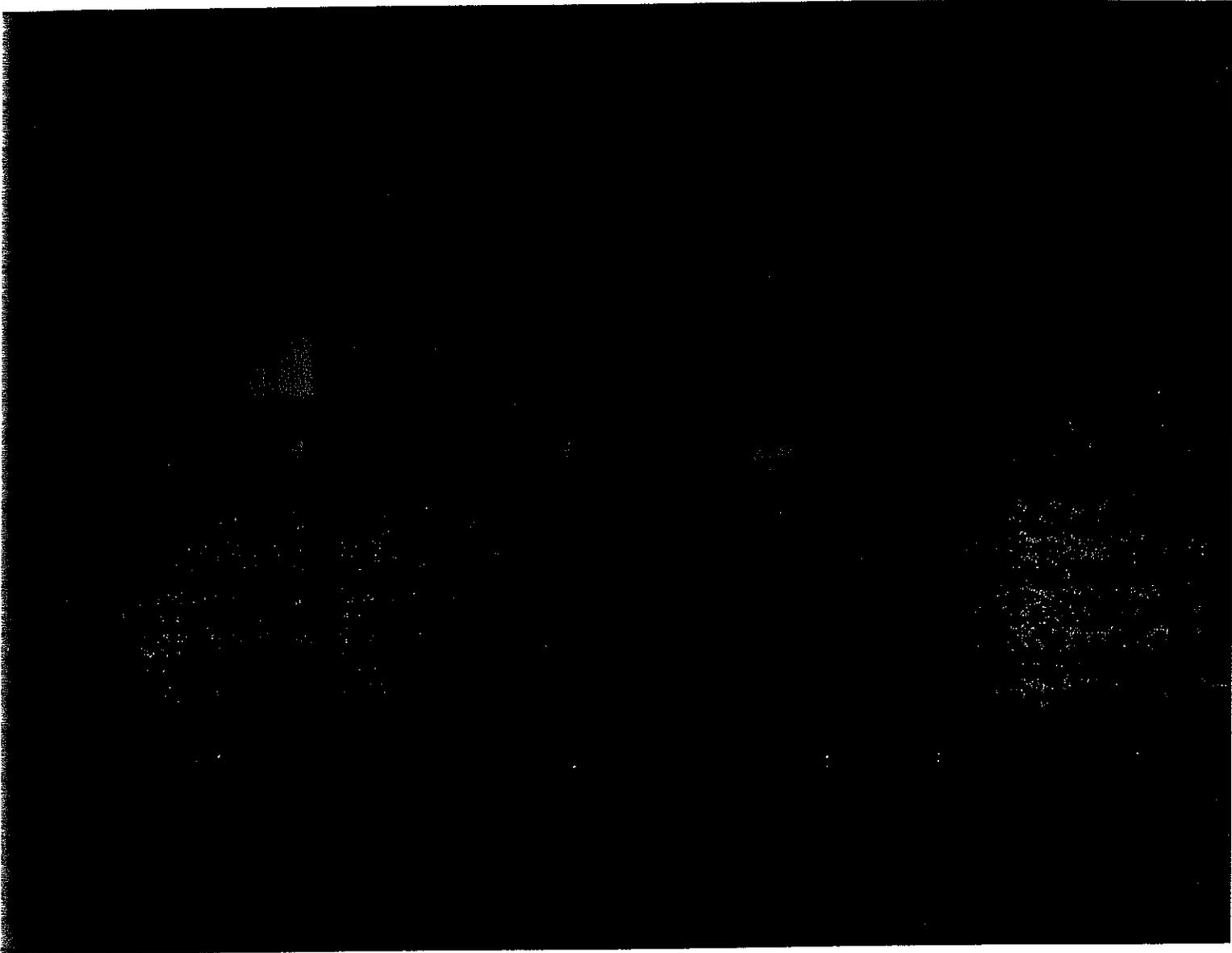
"Mike McCabe, executive director of Wisconsin Democracy Campaign, said the purportedly nonpartisan judicial campaigns are becoming increasingly political and run by political operatives. And he said the candidates become mere "bystanders" in the race as special interest groups outspend the candidates four-to-one. Special interest groups bought 90 percent of the television advertisements in April's Supreme Court election, McCabe noted."

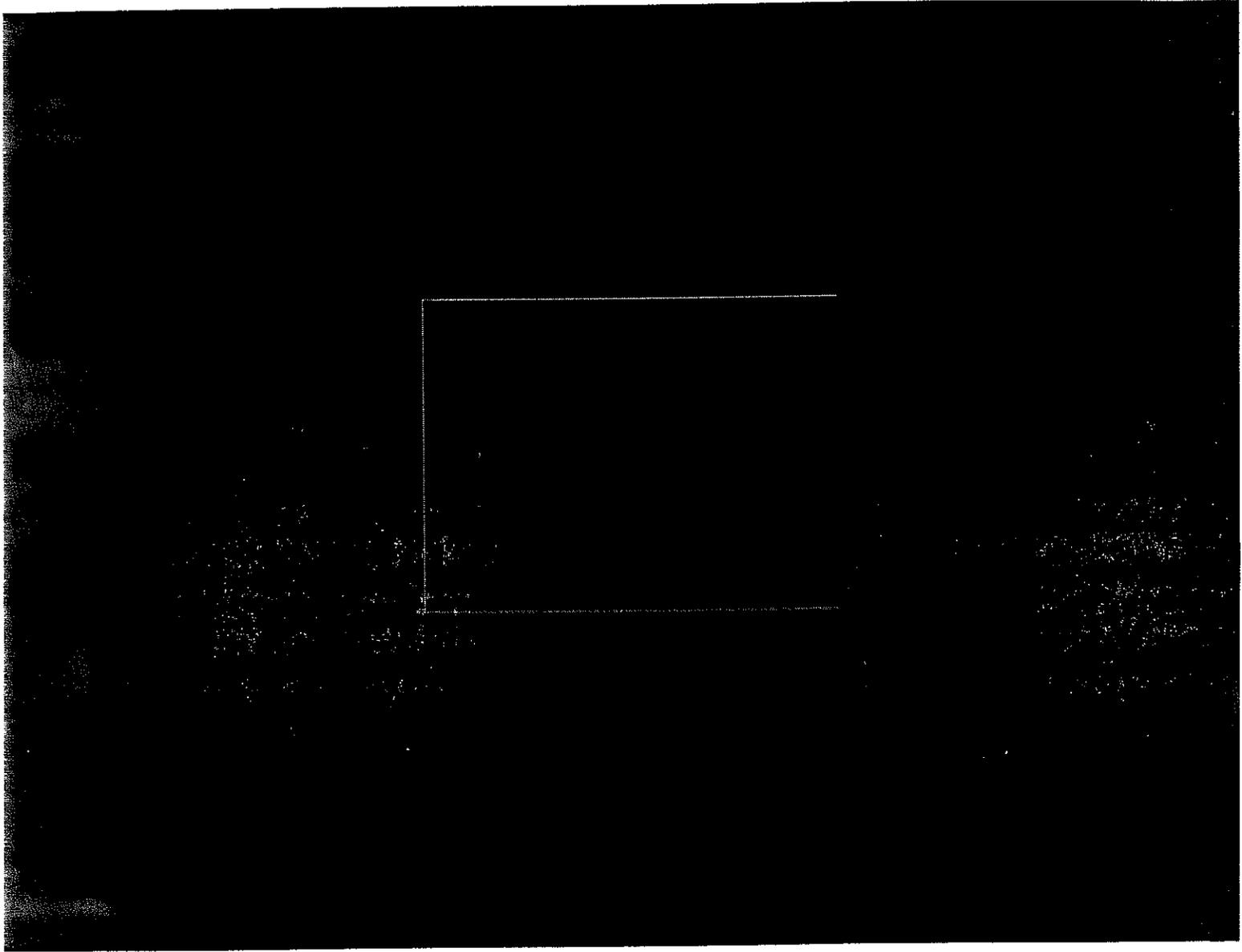
The Capital Times, 11/19/08

"What's remarkable about this race is how dominant the outside groups have been," said J.R. Ross, editor at WisPolitics.com. "They've outspent the candidates themselves 10-to-1 on TV ads. They're essentially drowning out the messages of Butler and Gableman."

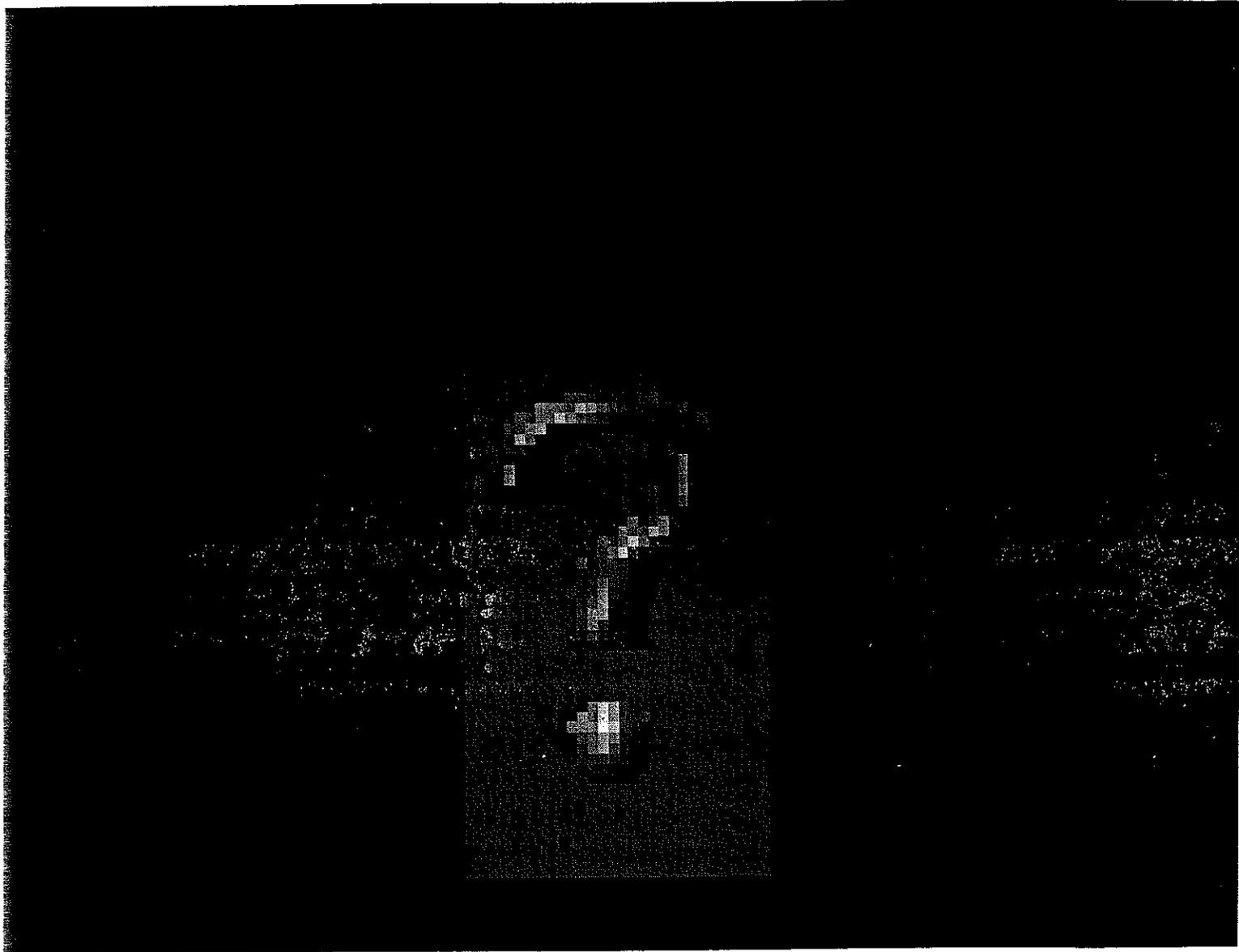
CNN, 3/31/08



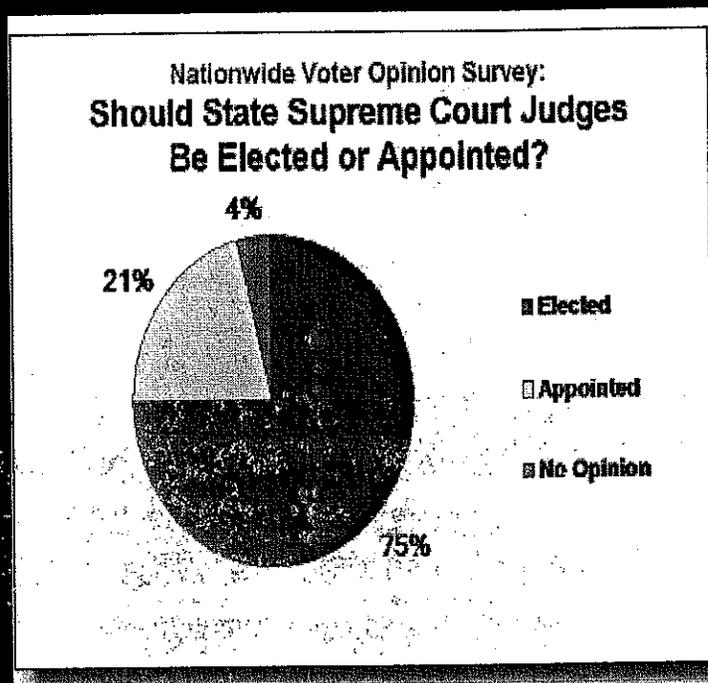




0054



Election or Appointment



*Voter Opinion on the Election or
Appointment of State Supreme Court
Justices, Ayres, McHenry &
Associates, July 2008.*

Public Funding of Judicial Campaigns

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001

AN ACT TO Establish a nonpartisan METHOD OF ELECTING SUPREME COURT JUSTICES AND COURT OF APPEALS JUDGES beginning in 2004; to set \$1,000 contribution limits (\$2,000 from family members) for judicial campaigns beginning in 2004; TO ESTABLISH A PUBLIC CAMPAIGN FINANCING FUND THAT PROVIDES appellate judicial CANDIDATES who agree to contribution and expenditure restrictions WITH AN ALTERNATIVE MEANS OF FINANCING THEIR CAMPAIGNS beginning in 2004; to safeguard candidates who opt to use that system by prohibiting certain contributions to their opponents during the twenty-one days before an election and by providing rescue money when they face large expenditures by opponents or large independent expenditures; to provide a judicial voter guide to be financed by the fund; to provide that the fund shall be administered by the State board of elections assisted by an advisory council; and to provide that the fund shall be financed by methods including a Positive S3 check-off on the North Carolina income tax and a \$50 contribution by attorneys when they pay their privilege license tax.

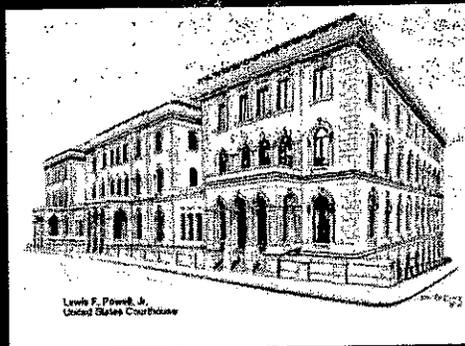
"One study, conducted by Democracy North Carolina, saw the percent of money that came from litigation-related interests or attorneys drop from 73% in the 2002 election to 14% in 2004 after the program was implemented."

"Now, in its third cycle, judicial public financing has had widespread participation by candidates from across the ideological spectrum and across a variety of backgrounds. Nine of 11 of the winning candidates participated in the 2004 and 2006 cycles, and in the 2008 cycle, 14 of 16 candidates have opted in."

N.C. Voters for Clean Elections, May 1, 2008.

***N.C. Right to Life Comm. Fund v. Leake* (4th Cir. N.C. May 1, 2008)**

“The concern for promoting and protecting the impartiality and independence of the judiciary is not a new one; it dates back at least to our nation's founding, when Alexander Hamilton wrote that “the complete independence of the courts of justice is peculiarly essential” to our form of government. The Federalist No. 78, at 426 (E.H. Scott ed., 1898). We conclude that the provisions challenged today, which embody North Carolina's effort to protect this vital interest in an independent judiciary, are within the limits placed on the state by the First Amendment.”



**Effective Judicial Campaign
Conduct Committees:
A How-To Handbook**



*National Ad Hoc Advisory
Committee on Judicial
Campaign Conduct*

Page 5

**1. Judicial Campaign Conduct
Committees**

An Overview

Judicial campaign conduct committees are composed of lawyers and often non-lawyers. The committees have four goals:

- Educate judges and judicial candidates about ethical campaign conduct
- Encourage and support appropriate campaign conduct, and work to deter inappropriate conduct
- Publicly criticize inappropriate campaign conduct that cannot be otherwise resolved
- Protect the public interest in having a fair and impartial judiciary

The very existence of the committee may in some instances deter campaign misconduct.



Judicial Campaign Watch

Wisconsin
Judicial Campaign
Integrity Committee

FOR IMMEDIATE RELEASE
December 6, 2007

For more information contact:
Thomas Solberg, State Bar of Wisconsin
(800) 444-9404, ext. 6025
tsolberg@wisbar.org

Citizen committee will promote sound standards for 2008 state Supreme Court election campaign

Wisconsin voters will gain new tools to help them make informed choices in the April 2008 state Supreme Court election under an initiative announced by State Bar of Wisconsin President Tom Basting. At a State Capitol press conference today, Basting introduced a bi-partisan "Wisconsin Judicial Campaign Integrity Committee" that will both educate voters about the unique role of judges and monitor campaign-related activities of candidates and their supporters.

The seven-member committee includes:

- Former Appellate Court Judge and Legislator David G. Devinger (Vice-Chair),
- Former Governor Anthony Earl,
- Former gubernatorial aide Bill Kraus,
- Professor Joe Heim,
- Community activist Carol Toussaint,
- Former State Senator Timothy F. Cullen, and
- Professor David DeYoung.

P.O. Box 7158
Madison, WI 53707-7158
(608) 250-6004

Chair
Thomas J. Basting, Sr.

Members
Timothy F. Cullen
David B. Deisinger
David L. DeYoung
Anthony S. Earl
Joseph P. Heim
William M. Kraus
Carol T. Toussaint

WV Judicial Election Campaign Advertising Commission

Chair: Derrick Lefler
David A. Barnette
Claudia G. West Bentley
Michael E. Caryl
Anita Rose Casey
Tamara J. DeFazio
John W. Fisher II
Charles M. Love III
Bernard E. Layne III
J. Franklin Long
Dr. James A White

Fact Checking



Other Issues

- Voter Guides designed to give voters basic information on the candidates.
- Disclosure requirements.
 - *Center for Individual Freedom v. Ireland.*

N.C. COURT OF APPEALS

KRISTIN RUTH

Place of residence: New Hill, North Carolina

Education: Kansas State University, Bachelor of Science, 1978; Western Carolina School of Law, Carolina University, Juris Doctor, 1980

Occupation: Judge, District Court (Watauga County)

Employer: State of North Carolina

Date assumed to the office: 1990

Legal/Judicial Experience: District Court Judge, 1977-1980; District Judge, 1980-Present

Professional Experience: An attorney on civil support enforcement. State Patrol. North Carolina State Bar, 1980-1986. Association, Law Office of the State Bar, 1987-1990. Law Clerk, Administrative Law Judge, 1985-1986. Member, Governor's Commission on Responsible Parenthood (2000). Board of Directors, Carolina State Bar (2000-2001). Executive Member, Child Justice's Commission on Professionalism (2000-2001). Member, Federal Task Force on Child Support, Office of Equal Justice Award, NC Child Support Council (2000). American Business Woman of the Year (2002). Judge of the Year, Federal Office of Child Support Enforcement (2004)

PERSONAL STATEMENT (by candidate): You serve as a trial judge have inspired me for the noblest bench, because I can draw on my discipline and understanding of how appellate decisions are applied to cover rights every day.

With listening to thousands of difficult cases each year, my goal has been to help everyone make sense of the legal complexities in each decision. As a result of my work and efforts in the child support court and family court, I have been recognized by my peers by receiving Judge of the Year and Justice of Excellence Awards.

I believe I will fit, respect and follow the law as written and thereby uphold the rule of law. Being professional and treating each person in my courtroom with respect is of utmost importance. I will continue to strive and reach out to young people while facing my profession and the judiciary. I would greatly appreciate your support.

www.kristinruth.com

ENDORSEMENTS: NC Farm Bureau Family Association, Assoc. of Deaf and Blind, Home Builders Assoc., Quebeck and Conservatives



JOHN M. TYSON

Place of residence: Curlewland County, NC

Education: University of Virginia School of Law, LL.M., Juris Doctor, 2004; Duke University, M.B.A., 1988; Campbell University, Juris Doctor with Honors, 1979; UNC-Wilmington, B.A. English & Education, 1974

Occupation: Judge, North Carolina Court of Appeals

Employer: NC Justice Branch

Date assumed to the office: 2005

Legal/Judicial Experience: Judge, NC Court of Appeals, 2005-present; Adj. Professor of Law, Campbell University, 1987-present; NC Property Tax Commissioner, 1987-1991; Board Certified Specialist, Real Property Law NC State Bar, 2001; Private law practice, Tyson & Associates, 1983-2001; Real Estate Bro. and Counsel, Raven Drug & Family Dollar, 1985-1987; NC Protective Order Officer, 1975-1978; Public School Teacher, 1972-1973

PERSONAL STATEMENT (by candidate): I offer 30 years experience, as a judge, lawyer, attorney, law enforcement and entry officer, and public school teacher. My varied career history and reputation. Since 2001, I have ruled on over 2,500 appeals, written over 500 opinions, with 98.5% affirmed and upheld, keeping the families safe, secure, and protecting Justice for all.

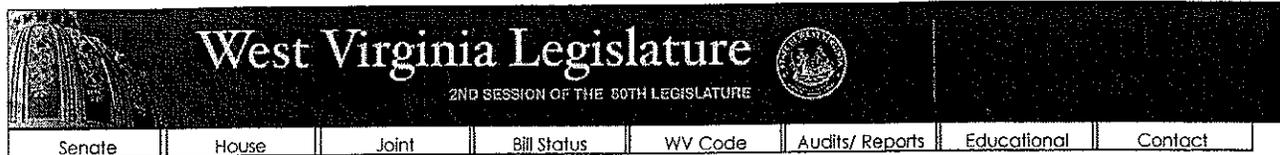
I support the mission of North Carolina's Justice Branch: "To protect and preserve the rights and liberties of all the People, as guaranteed by the Constitution and law . . . by providing a fair, independent and accessible forum for the just, timely and economical resolution of their legal disputes."

I am devoted to my family and the law. My wife, Kitty, and I have been married 30 years and have 4 children.

Please Re-elect Judge John M. Tyson. www.johnmtyson.com

ENDORSEMENTS: NC Farm Bureau Family Association, Assoc. of Deaf and Blind, Home Builders Assoc., Quebeck and Conservatives





Judiciary Subcommittee C - Agenda

Monday, January 12, 2009, 1:00 pm - 3:00 pm

Location: House Judiciary - 410M

1. Call to Order
2. Roll Call
3. Approval of Minutes
4. Topic: Judicial Elections
 - a. David Rottman, National Center for State Courts
 - b. Judge O.C. Spaulding, President of the West Virginia Judicial Association
 - c. Judge Ronald Anderson, President of the family Law Judges Association
 - d. Magistrate Riley Barb, President of the Magistrates Association
5. Brian Skinner - Presentation of draft legislation relating to the West Virginia Drug Offender Accountability and Treatment Act
6. Other Business
7. Adjournment

*agenda subject to change

0063

Bill Status - 2009 Regular Session

Senate Bill 311

Legislative Session: 2009(RS)

LAST ACTION: S On second reading to Finance 03/27/09

SUMMARY: Creating 2012 Supreme Court of Appeals Public Campaign Financing Pilot Program

LEAD SPONSOR: [Kessler](#)

SPONSORS: [Unger](#), [Foster](#), [Snyder](#), [McCabe](#), [White](#)

BILL TEXT:
[Bill Definitions](#) 2

BILL DRAFTING BILLS 2
[Introduced Version](#) - html | wpd
[Committee Substitute \(1\)](#) - html | wpd

CODE AFFECTED:

- § 3 - 1 A- 1 (Amended Code)
- § 3 - 1 A- 4 (Amended Code)
- § 3 - 1 A- 5 (Amended Code)
- § 3 - 12 - 1 (New Code)
- § 3 - 12 - 2 (New Code)
- § 3 - 12 - 3 (New Code)
- § 3 - 12 - 4 (New Code)
- § 3 - 12 - 5 (New Code)
- § 3 - 12 - 6 (New Code)
- § 3 - 12 - 7 (New Code)
- § 3 - 12 - 8 (New Code)
- § 3 - 12 - 9 (New Code)
- § 3 - 12 - 10 (New Code)
- § 3 - 12 - 11 (New Code)
- § 3 - 12 - 12 (New Code)
- § 3 - 12 - 13 (New Code)
- § 3 - 12 - 14 (New Code)
- § 3 - 12 - 15 (New Code)
- § 3 - 12 - 16 (New Code)

FISCAL NOTES: State Tax Department

SIMILAR TO: HB 3309

SUBJECT(S): Acts
 Courts -- Supreme Court

ACTIONS:

	Description	Date	Journal Page
S	On second reading to Finance	03/27/09	17
S	Read 1st time	03/27/09	17
S	On 1st reading	03/27/09	
S	Immediate consideration	03/27/09	17
S	Committee substitute reported, but first to Finance	03/27/09	15-17
S	To Judiciary	02/20/09	6
S	To Judiciary then Finance	02/20/09	6

S	Introduced in Senate	02/20/09	5-6
S	To Judiciary then Finance	02/20/09	
S	Filed for introduction	02/20/09	

0065

Introduced Version

Senate Bill No. 311

(By Senators Kessler, Unger, Foster, Snyder, McCabe and White)

[Introduced February 20, 2009; referred to the Committee on the Judiciary; and then to the Committee on Finance.]

A BILL to amend the Code of West Virginia, 1931, as 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, §3-12-17 and §3-12-18, all relating to creating the 2012 West Virginia Supreme Court of Appeals Public Campaign Financing Pilot Program; providing alternative campaign financing option for candidates for the West Virginia Supreme Court of Appeals in 2012 through public funds; 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 general and primary elections; establishing a 2012 Public Campaign Financing Fund and sources of revenue for the fund; authorizing transfer of \$1 million a year from the Treasurer's Unclaimed Property Trust Fund to the fund for four years; requiring an additional penalty assessment be imposed against violators of administrative orders, rules of state governmental agencies, boards and commissions; requiring an applicant for public campaign funding 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 party and independent candidates; allowing participating candidates to raise from private sources and spend seed money 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 seed money 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 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; 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 matching public campaign funds when an opponent spends in excess of the initial funding available and for independent expenditures on behalf of a nonparticipating or certified opponent; setting forth certain duties of the State Election Commission; 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 setting forth an effective date.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, 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, §3-12-17 and §3-12-18, all to read as follows:

ARTICLE 12. 2012 WEST VIRGINIA SUPREME COURT PUBLIC CAMPAIGN FINANCING PILOT PROGRAM.**§3-12-1. Short title.**

This article shall be known as the "2012 West Virginia Supreme Court of Appeals Public Campaign Financing Pilot Program".

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

- (a) The Legislature hereby finds and declares that current election finance laws relating to the state's highest court:
- (1) May allow individuals and committees who contribute large amounts of money to have an undue influence on the

judicial process;

- (2) May diminish the free speech rights of those candidates and voters who are not wealthy because the political process is influenced by individuals and committees who can afford to spend large amounts of money on political communications;
 - (3) May erode public confidence in the democratic process as it relates to the Supreme Court of Appeals;
 - (4) May allow Justices to accept large campaign contributions from private interests who may have cases before the court.
- (b) The creation of a pilot public campaign financing program will provide for the supreme court seats open in the primary and general elections to be held in 2012, provide qualified candidates for the State Supreme Court with resources with which to communicate with voters, reverse the escalating cost of supreme court elections and free those candidates from the chore of raising money.

§3-12-3. Definitions.

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

- (1) "Certified candidate" means an individual seeking nomination or election to the West Virginia Supreme Court of Appeals who has been certified in accordance with section eleven of this article as having met all the requirements for receiving public campaign financing from the fund.
- (2) "Clearly identified" means that the name, nickname, photograph, drawing or other depiction of the candidate appears or the identity of the candidate is apparent by an unambiguous reference including, for instance, "your senator" or "the incumbent", or through an unambiguous reference to his or her status as a candidate including, for instance, "the democratic candidate for State Supreme Court of Appeals."
- (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 or not 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.
 - (A) An offer or tender of a contribution is not a contribution if expressly and unconditionally rejected or returned.
 - (B) A contribution does not include volunteer personal services provided without compensation or services or property provided to an elected official by the state or a political subdivision to defray the costs of meeting or communicating with constituents while the official is performing the duties of his or her office.
- (4) "Excess expenditure" means an amount of money spent or obligated to be spent to influence the nomination or election of a nonparticipating candidate or the defeat of a certified candidate for the same office in excess of the public campaign funds available to the certified candidate under section twelve of this article.
- (5) "Financial agent" means any person acting for and by himself or herself, or any two or more natural persons acting together or cooperating in a financial way to aid or take part in the nomination or election of any political candidate for a position on the Supreme Court of Appeals, or to aid or promote the success or defeat of any candidate for a position of the Supreme Court of Appeals in the 2012 primary and general elections.
- (6) "Fund" means the 2012 Supreme Court of Appeals Public Campaign Financing Fund created by section five of this article.
- (7) "General election campaign period" means the period beginning the day after the primary election of 2012 and ending on the day of the general election in 2012.
- (8) "Independent expenditure" means an expenditure or obligation made by a person other than a candidate or candidate's committee in support of or opposition to the nomination or election of one or more clearly identified candidates and without consultation or coordination with or at the request or suggestion of the candidate whose nomination or election the expenditure supports or opposes or the candidate's agent. Supporting or opposing the nomination or election of a clearly identified candidate includes supporting or opposing the candidates of a clearly identified political party. An expenditure which does not meet the criteria for an independent expenditure established in this subsection is considered a contribution.
- (9) "Membership organization" means a group that grants bona fide rights and privileges, including the right to vote, to elect officers or directors, and the ability to hold office, to its members, and which uses a majority of its membership dues for purposes other than political purposes. "Membership organization" does not include organizations that grant membership upon receiving a contribution.
- (10) "Nonparticipating candidate" means a candidate who is:
 - (A) Seeking election to the State Senate or House of Delegates;
 - (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.
- (11) "Participating candidate" means a candidate seeking election to the State Senate or House of Delegates and who is attempting to be certified in accordance with section eleven of this article to receive public campaign financing from the fund.
- (12) "Person" means an individual, partnership, committee, association, and any other organization or group of individuals.
- (13) "Primary election campaign period" means the period beginning on the first day of the primary election filing period and ending on the day of the subsequent primary election.
- (14) "Private contribution" means a contribution from any source other than the fund except:
 - (A) Payments by a membership organization for the cost of communicating to its members;
 - (B) Payments by a membership organization for the purpose of facilitating the making of qualifying contributions;
 - (C) Volunteer activity, including the payment of incidental expenses by volunteers; and
 - (D) Voter registration and get-out-the-vote activities conducted by nonpartisan individuals and organizations or which are not intended to influence the election or defeat a particular candidate.
- (15) "Qualifying contribution" means a contribution of \$5 in the form of a check or money order, made payable to a participating candidate or the candidate's committee, received during the qualifying period, and which is:
 - (A) Made by a registered voter and resident of the district in which the participating candidate is seeking office;
 - (B) Acknowledged by a written receipt; and
 - (C) Gathered by the participating candidate or on behalf of the candidate by an unpaid volunteer with the candidate's

0067

knowledge and consent.

(16) "Qualifying period" means the period during which participating candidates are permitted to collect 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 November 1 preceding the election year and ends on March 1 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.

(17) "Seed money contribution" means a contribution of no more than \$100 made by an individual adult, including a participating candidate and members of his or her immediate family, during the seed money period.

(18) "Seed money period" means the period during which a participating candidate is permitted to raise and spend seed money contributions to explore his or her chances of election and to qualify for public campaign financing under this article. The seed money period begins on the day after the most recent general election and ends on the last day of the qualifying period in the next election year in which a candidate is running for office.

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

This article establishes an alternative public 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 campaign financing option must comply with all other applicable election and campaign laws and regulations.

§3-12-5. Public Campaign Financing Fund, nature and purposes of the fund.

There is hereby established a special account in the State Treasury to be known as the "2012 Supreme Court of Appeals Public Campaign Financing Fund" for the dual purposes 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 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. Expenditures may be made from the fund only for the purposes set forth in this article.

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

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

- (a) All qualifying contributions collected by participating candidates or their committees.
- (b) Unspent or unobligated seed money contributions.
- (c) Money returned by participating candidates who fail to comply with the provisions of this article.
- (d) Unspent or unobligated moneys allotted to qualified candidates and remaining unspent or unobligated on the date of the primary or general election for which the money was distributed.
- (e) Civil penalties levied by the State Election Commission against candidates for violations of this article.
- (f) Voluntary donations made directly to the fund.
- (g) Interest income.
- (h) Revenue from a tax checkoff program, to be developed by the Tax Commissioner, allowing a resident of the state to designate on his or her income tax return up to \$1,000 of taxes for deposit into the fund. If a husband and wife file a joint return, each spouse may designate up to \$1,000 for deposit into the fund. All amounts so designated shall be appropriated from the General Fund and credited to the 2012 Supreme Court of Appeals Public Campaign Financing Fund. (i) On or before July 1, 2009, and for three successive years thereafter, the unclaimed property administrator of the state treasurer's office shall transfer the amount of \$1 million from the Unclaimed Property Trust Fund to the fund created by this article.
- (j) Money appropriated to the fund.

§3-12-7. Declaration of intent.

A candidate desiring to receive campaign financing from the fund must first file a declaration of intent to seek certification as a participating candidate for West Virginia Supreme Court of Appeals 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.

§3-12-8. Seed money.

- (a) A participating candidate or his or her committee may not accept seed money in contributions exceeding, in the aggregate:
- (b) Every seed money contribution must be acknowledged by a written receipt. Receipts for seed money contributions of \$25 or more shall include the contributor's signature, printed name, street address and zip code, telephone number, occupation and name of employer. Receipts for seed money contributions of less than \$25 shall contain, at a minimum, the contributor's signature, printed name and address. Contributions which are not acknowledged by a proper receipt do not qualify as seed money contributions.
- (c) A contribution from one person may not be made in the name of another person.
- (d) Upon certification or at the end of the seed money period, whichever comes first, a participating or certified candidate or his or her committee shall forward all unspent or unobligated seed money to the State Election Commission for deposit in the fund.

§3-12-9. Qualifying contributions.

- (a) A participating candidate or his or her committee may not accept more than one qualifying contribution from a single individual.
- (b) Every qualifying contribution must be acknowledged by a written receipt which includes:
 - (1) The printed name of the participating candidate on whose behalf the contribution is made and the signature of the

0068

- person who collected the contribution for the candidate or his or her committee;
- (2) The contributor's signature and printed name, home address and telephone number;
- (3) A statement near 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 or received anything of value for making the contribution; and
- (D) The individual soliciting the contribution on behalf of the participating candidate has not been reimbursed or received anything of value for the services.
- (4) One copy of the receipt is to be given to the contributor, one copy is to be retained by the candidate and one copy is to be sent by the candidate to the State Election Commission. 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 committee must obtain at least four hundred qualifying contributions for the office he or she is seeking:
- (d) A participating candidate and each member of the candidate's immediate family who is a registered voter in this state may 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 give reimbursement or anything of value in exchange for a qualifying contribution.
- (f) All qualifying contributions collected by a participating candidate or his or her committee must be deposited in the fund no later than forty-eight hours after the close of the qualifying period.

§3-12-10. Certification of candidates.

- (a) In order 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 that a participating candidate has received the required number of qualifying contributions, the State Election Commission shall determine whether the candidate:
- (1) Has signed and filed a declaration of intent as required by section eight of this article;
- (2) Has obtained, either personally or through his or her committee, the required number of qualifying contributions as required by section ten of this article;
- (3) Has not accepted other contributions, except for seed money contributions, and otherwise complied with the contribution restrictions of this article;
- (4) Is eligible to appear on the primary or general election ballot; and
- (5) Has met all other requirements of this article.
- (c) A candidate who, personally or through his or her committee, has accepted contributions or expended funds from private donations with regard to the elections to be held in 2010 and 2012 may nevertheless be certified under this article if the candidate or his or her committee returns to the contributor, submits to the State Election Commission for deposit into the fund or donates to charity funds accepted but not expended or obligated before the effective date of this article.
- (d) 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) by the verification and sampling techniques approved by the State Election Commission.
- (e) The State Election Commission shall determine a participating candidate's eligibility to receive public campaign financing no later than three business days after the candidate makes his or her final submission of qualifying contributions or, if a challenge is filed under subsection (h) of this section, no later than six business days after the candidate makes his or her final submission of qualifying contributions. Upon certification, a candidate shall transfer to the fund any unspent seed money contributions. A certified candidate shall comply with the provisions of this article through the general election campaign period.
- (f) If the State Election Commission determines that a participating candidate is eligible to receive public campaign financing under the provisions of subsection (b), the State Election Commission shall within forty-eight hours issue a check for or transfer to the candidate's campaign depository account an amount equal to the initial public financing benefit for which the candidate qualifies under section twelve of this article and shall notify all other candidates for the same office of its determination.
- (g) 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.
- (h) 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. Within five business days of a challenge, the candidate who listed any contribution that is the subject of a challenge may file with the State Election Commission an additional contribution collected pursuant to section ten of this article for consideration 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 sufficient qualifying contributions to be certified as a candidate under this section without considering the challenge.
- (i) A candidate's right to receive 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 has been found to have violated the provisions of this article shall repay all moneys received from the fund to the State Election Commission.
- (j) The determination of any issue before the State Election Commission is the final administrative determination. 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.

0069

(k) A candidate may withdraw from being a certified candidate and become a nonparticipating candidate at anytime 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 be permitted to 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 2012 Supreme Court of Appeals Public Campaign Financing Fund payments.

(a) The State Election Commission shall make 2012 Supreme Court of Appeals public campaign financing fund payments for the primary election campaign period available to a certified candidate within forty-eight hours after the date on which the candidate is certified.

(1) In a contested primary election, a certified candidate may receive initial campaign financing from the fund in an amount not to exceed \$50,000.

(2) In an uncontested primary election, a certified candidate may receive campaign financing from the fund equal to twenty-five percent of the amount available in a contested primary election for the same office.

(b) The State Election Commission shall make 2012 Supreme Court public campaign financing fund payments for the general election campaign period available to a certified candidate within forty-eight hours after the primary election results are certified by the Secretary of State.

(1) In a contested general election, a certified candidate may receive from the fund the same amount of campaign financing available for a contested primary election under subdivision (1), subsection (a) of this section.

(2) In an uncontested general election, a certified candidate may receive from the fund campaign financing equal to ten percent of the amount available in a contested general election for the same office.

(c) The State Election Commission may not distribute revenues to certified candidates in excess of the total amount of money deposited in the fund pursuant to section six of this article.

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

(a) A certified candidate or his or her committee may not accept 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 through the qualifying period, a participating candidate may spend or obligate no more than he or she has collected in seed money contributions. After the qualifying period and through the general election campaign period, a certified candidate may spend or obligate only the funds he or she receives from the fund under the provisions of section twelve or section fifteen of this article.

(c) A participating or certified candidate may expend seed money and campaign financing from the fund only for campaign-related activities as provided in section nine, article eight, chapter three of this code. Moneys distributed to a certified candidate from the fund may be expended only during the 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) Notwithstanding any other provision of this article to the contrary, if at anytime during an election period, the State Election Commission determines that the revenues in the fund are insufficient to complete the distribution of funds required under this article, the State Election Commission may permit a certified candidate or his or her committee to accept and expend contributions, aggregating no more than \$1,000 a contributor, from private sources up to the amount that would have been distributed to the candidate under section twelve or fifteen of this article had there been adequate money in the fund. The State Election Commission shall propose rules for legislative approval as provided by the provisions of section sixteen of this article to provide a fair procedure for the equitable distribution of those moneys that are in the fund and available for distribution among the certified candidates at the time the revenues in the fund are insufficient for complete distribution of funds as anticipated under the provisions of this article.

(e) A certified candidate or his or her committee must return to the fund any unspent and uncommitted public campaign financing funds within forty-eight hours after:

(1) The date of the primary or general election;

(2) The date on which the candidate ceases to be certified; or

(3) The date on which the individual ceases to be a candidate.

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

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

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

(i) A participating or certified candidate or his or her financial agent shall provide the State Election Commission with all requested campaign records, including all records of seed money 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) No later than forty-eight hours after the close of the qualifying period, a participating candidate or his or her financial

agent shall report to the State Election Commission on approved forms an itemized summary of:

(1) All seed money contributions received and funds expended or obligated during the seed money period, together with copies of all receipts for seed money contributions.

(2) All qualifying contributions received during the qualifying period, together with copies of all receipts for qualifying contributions.

(b) Within five days after the primary election and within five days of the general election a certified candidate or his or her financial agent shall report to the State Election Commission on approved forms an itemized summary of all funds received and funds expended or obligated prior to the election.

(c) In addition to the financial statements required to be filed by a candidate for public office pursuant to section five, article eight of this chapter, a nonparticipating candidate or his or her financial agent shall report to the State Election Commission on approved forms an itemized summary of his or her campaign expenditure or obligations, according to the following provisions and guidelines:

(1) On the first Saturday in March, 2012 or within six days thereafter listing the nonparticipating candidates expenditures and obligations prior to March 1, 2012, if, the nonparticipating candidate's campaign expenditures or obligations, in the aggregate, exceed by twenty percent the initial funding available to any certified candidate for the same office under section twelve of this article.

(2) Beginning on the first Saturday in April, 2012, listing any additional excess expenditures or obligations, in the aggregate, that exceed by twenty percent the initial funding available to any certified participating candidate running for the same office under section twelve of this article 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 excess expenditures or obligations, in the aggregate, that exceed by twenty percent the initial funding available to any certified candidate running for the same office under section twelve of this article made prior to the tenth day before the primary election shall be reported to the State Election Commission within forty-eight hours.

(3) On the first Saturday in July, 2012, or within six days thereafter listing the nonparticipating candidates expenditures and obligations prior to July 1, 2012, subsequent to the primary election, if, the nonparticipating candidate's expenditures or obligations, in the aggregate, exceed by twenty percent the initial funding available to any certified candidate running for the same office under section twelve of this article.

(4) Beginning on the first Saturday in October, 2012, listing any additional excess expenditures or obligations, in the aggregate, that exceed by twenty percent the initial funding available to any certified candidate running for the same office under section twelve of this article 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 excess expenditures or obligations, in the aggregate, that exceed by twenty percent the initial funding available to any certified candidate running for the same office under section twelve of this article made prior to the tenth day before the general election shall be reported to the State Election Commission within forty-eight hours.

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

(d) 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. The reporting form shall state the name of the person or entity making the independent expenditures, the names of and office for which the candidates are seeking election, whether expenditure advocated the nomination, election or defeat of a particular candidate, and the name of any candidate who stands to benefit from the independent expenditures.

(e) During the last ten days before the primary or general election, 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. Matching funds.**(a) If the State Election Commission determines from reports filed by a nonparticipating candidate pursuant to section five, article eight of this chapter or pursuant to subsection (c), section fourteen of this article that a nonparticipating candidate's campaign excess expenditures or obligations, in the aggregate, have exceeded by twenty percent the initial funding available under section twelve of this article to any certified candidate running for the same office, the State Election Commission shall immediately release additional campaign financing funds to any opposing certified candidate for the same office equal to the amount of the excess expenditures.

(b) If the State Election Commission determines from reports filed pursuant to subsection (d), section fourteen of this article or pursuant to subsection (b), section two, article eight of this chapter 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 section twelve of this article to any certified candidate running for the same office, the State Election Commission shall immediately release additional campaign financing funds to any certified candidate who is an opponent for the same office equal to the amount of the excess expenditures.

(c) If the State Election Commission determines from reports filed pursuant to subsection (d), section fourteen of this article or pursuant to subsection (b), section two, article eight of this chapter 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 section twelve of this article to any certified candidate running for the same

0071

office, the State Election Commission shall immediately release additional campaign financing funds to any other certified candidate who is an opponent for the same office equal to the amount of the excess expenditures.

(d) Matching funds paid out to a certified candidate under this section are limited to two times the initial amount of public campaign financing available to a certified candidate for the same office pursuant to section twelve of this article.

§3-12-15. Duties of the State Election Commission.

(a) In addition to its other duties, the State Election Commission shall:

- (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 the 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 explaining the duties of candidates and others participating in elections under the provisions of this article;
- (4) 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;
- (5) Propose 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;
- (6) 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;
- (7) 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.
- (8) 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.
- (9) 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
- (10) Prepare a voters' guide for the general public listing the names of each candidate of each candidate seeking elected office. 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 web site of the Secretary of State as soon as may be practical.

(b) To fulfill its responsibilities under this article, the State Election Commission may subpoena witnesses, compel their attendance and testimony, administer oaths and affirmations, take evidence and require by subpoena the production of any books, papers, records, or other items material to the performance of the State Election Commission's duties or the exercise of its powers. The State Election Commission may also propose and adopt procedural rules to carry out the purposes and provisions of this article and to govern procedures of the State Election Commission.

§3-12-16. Criminal penalties.

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

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

§3-12-17. Civil penalties.

- (a) If a participating or certified candidate or his or her 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 twelve or fifteen 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 private contribution or excess 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 private contribution or excess 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 in a primary or general election pursuant to section twelve of this article.
- (e) All penalties collected by the State Election Commission pursuant to this section shall be deposited into the fund. The candidate and the candidate's campaign account are jointly and severally responsible for the payment of any penalty imposed pursuant to this section.

§3-12-18. Effective date.

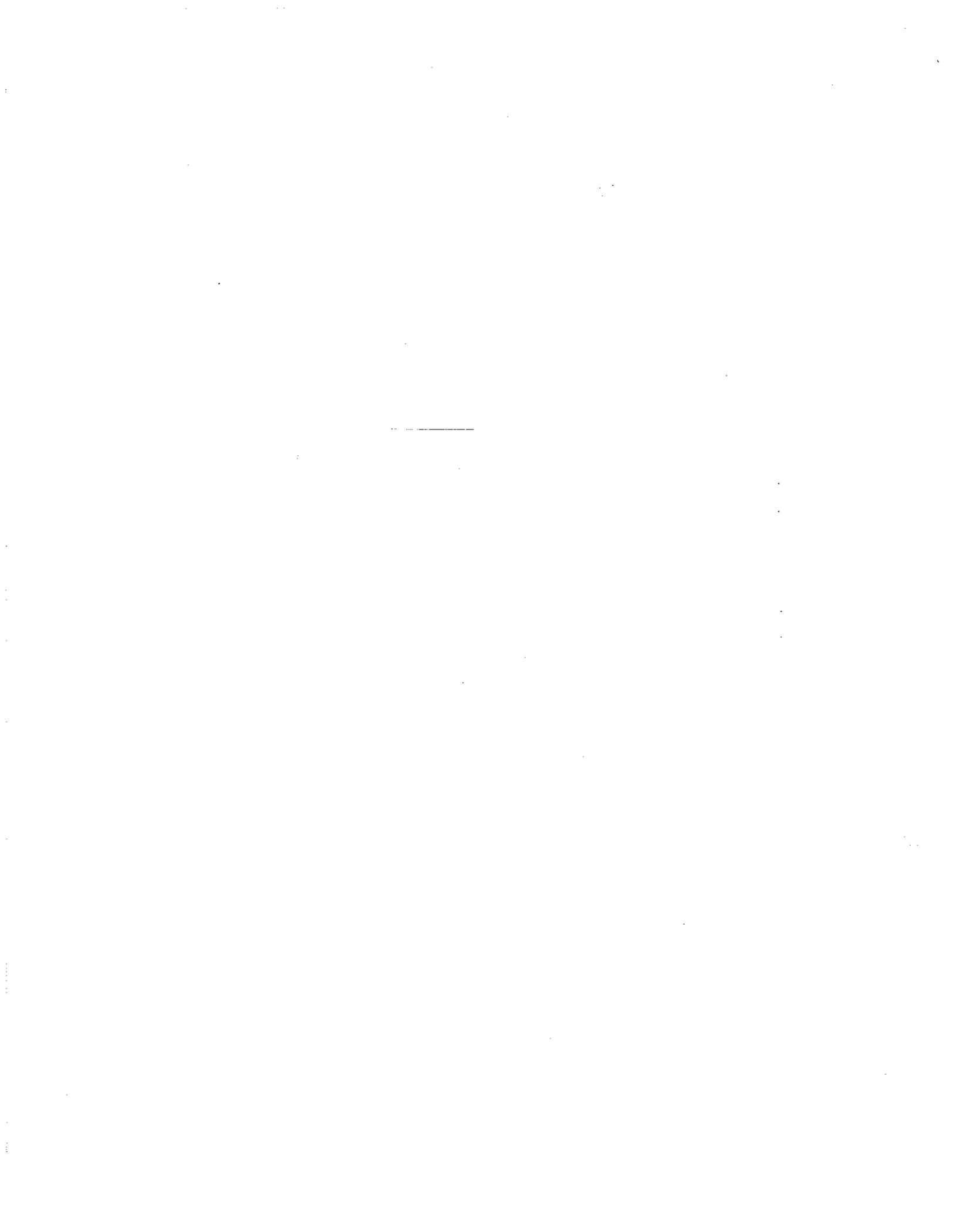
0072

The provisions of this article are effective July 1, 2009.

NOTE: The purpose of this bill is to create a pilot system for public funding of 2012 election campaigns for candidates for the State Supreme Court who agree to and do abide by restrictions on campaign contributions from private sources and limits on campaign spending.

This article is new; therefore, strike-throughs and underscoring have been omitted.

0073



CERTIFICATE OF SERVICE

I, Silas B. Taylor, counsel for the Respondents Secretary of State and the State Election Commission, do hereby certify that true copies of the "*Appendix for Respondents Secretary of State and the State Election Commission*" were served on all parties by depositing said copies in the United States mail, with first-class postage prepaid, on this 9th day of August, 2012, addressed as follows:

To: Marc E. Williams
 Randall L. Saunders
 Jenna E. Hess
 Nelson Mullins Riley & Scarborough, LLP
 949 Third Avenue, Suite 200
 Huntington, WV 25701
 marc.williams@nelsonmullins.com

J. Adams Skaggs, Esq.
Matthew Mendendez, Esq.
Brennan Center for Justice
 at NYU School of Law
161 Avenue of the Americas, 12th Floor
New York, New York 10013

Anthony Majestro, Esq.
Powell & Majestro, PLLC
405 Capitol Street, Suite P-1200
Charleston, WV 25301
cmajestro@powellmajestro.com

Diana Stout, Esq.
Office of the State Treasurer
State Capitol, Room E-145
Charleston, West Virginia 25305

Lisa Hopkins, Esq.
Office of the State Auditor
State Capitol, Room W-100
Charleston, West Virginia 25305



SILAS B. TAYLOR

