

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 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 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 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 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 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.