

SUMMARY

West Virginia Public Campaign Financing Act

The purpose of this bill is to create an alternative public financing option for candidates seeking election to the West Virginia Legislature. The system is voluntary and candidates who participate agree to abide by contribution and spending limits. Public funds would be made available to candidates for the state Senate beginning with the elections to be held in 2010, and to candidates for House of Delegates beginning in 2012.

A special account will be established within the State Treasury to be known as the “Public Campaign Financing Fund.” The Fund will be created from a variety of sources, including:

- ◆ Qualifying and unspent or unobligated seed money contributions collected by participation candidates or their committees;
- ◆ Unspent funds allocated to certified candidates;
- ◆ Civil penalties levied by the Election Commission for violations of the Act;
- ◆ Voluntary donations made directly to the fund
- ◆ Revenue from a tax check-off program
- ◆ Funds from designated special revenue accounts;
- ◆ Legislative appropriations

Qualification Process

1. A candidate must file a **Declaration of Intent**, notifying the Election Commission of his or her intent to seek public financing and promising to abide by the provisions of the Act. The Declaration of Intent also contains a statement that the candidate is qualified to be placed on the ballot and to hold office if elected.
2. From the day after the most recent general election until March 1 of the election year (October 1 for independent and minor party candidates) a participating candidate is permitted to receive “**seed money contributions**” of up to \$100 to explore his or her chances of elections and to qualify for public campaign financing. The aggregate amount of seed money a candidate can raise is \$5,000 for candidates for state Senate and \$2,000 for candidates for House of Delegates.
3. The “**qualifying period**” for becoming eligible for public funding begins on November 1 of the year preceding the election for major party candidates, and on June 1 of the election year for independent or minor party candidates.

4. During the qualifying period, participating candidates must collect a set number of **“qualifying contributions,”** \$5 individual contributions in the form of a check or money order payable to the candidate or his or her committee. Qualifying contributions must come from registered voters in the candidate’s district.
5. The number of qualifying contributions a candidate must collect depends on the office and district in which the candidate is running:
 - ◆ Senate candidates in the 8th and 17th districts – 400
 - ◆ Senate candidates in all other districts – 250
 - ◆ House of Delegates candidates in a 7 member district – 250
 - ◆ House of Delegates candidates in a 6 member district – 225
 - ◆ House of Delegates candidates in a 5 member district – 200
 - ◆ House of Delegates candidates in a 4 member district – 175
 - ◆ House of Delegates candidates in a 3 member district – 150
 - ◆ House of Delegates candidates in a 2 member district – 125
 - ◆ House of Delegates candidates in a single member district – 100

Candidates are required to keep detailed receipts of all seed money and qualifying contributions.

6. After collecting the required number of qualifying contributions, the candidate must submit to the Election Commission all contributions collected (which are deposited into the Fund), the receipts and list itemizing each contributions.
7. After receiving the candidates submission the Election Commission will then determine whether the candidate has complied with all of the following requirements:
 - ◆ Signed and filed a Declaration of Intent;
 - ◆ Obtained, either personally or through his or her committee, the required number of qualifying contributions;
 - ◆ Not accepted other contributions, except for seed money contributions, and otherwise complied with the contribution restrictions;
 - ◆ Is eligible to appear on the primary or general election ballot; and

- ◆ Met all other requirements of the Act.
8. The Election Commission will process applications for public financing funds within 3 business days or 6 days in the event of a challenge to a qualifying contribution. Applications will be processed in the order they are received and shall verify a candidate's compliance with the above-described requirements using verification and sampling techniques the Commission considers appropriate.
 9. Any person may challenge the validity of any contribution listed by a candidate by filing a written challenge with the Elections Commission setting forth any reason why the contributions should not be accepted as a qualifying contribution. If a contribution is challenged, 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 even without considering the challenge. The Act also contains a mechanism for the submission of additional qualifying contributions, as needed.
 10. If the Election Commission certifies a candidate, the Commission will issue a check for or transfer to the candidate in an amount equal to the initial public financing benefit for which the candidate qualifies. Other candidates for the same office as the qualified candidate will also be notified of the Commission's determination. After being certified, a candidate must transfer to the Fund all unspent or unobligated seed money contributions. Private donations a certified candidate raised for previous campaigns or accepted prior to the beginning of the qualifying period for the election in which the candidate is seeking office must be returned to the contributor, submitted to the Commission for deposit into the Fund or donated to charity.
 11. A candidate's right to receive public campaign financing may be revoked by the Elections Commission if the candidate violates any provisions of the Act. A candidate who has received financing under the Act and has been found to have violated the provisions of the Act must repay all sums of money received from the Fund. The Act also contains a mechanism that allows candidates to withdraw from being a certified candidate with approval of the Commission, although no candidate may be permitted to withdraw until he or she has repaid all moneys received from the Fund. In exceptional circumstances, however, the Commission may waive the repayment requirement.
 12. In exchange for receiving public financing, a participating or certified candidate agrees:
 - ◆ Not to accept any campaign contributions from private sources other than seed money and qualifying contributions;

- ◆ Not to use personal funds to finance his or her campaign, (although a candidate seeking certification and each member of the candidate's immediate family who is a registered voter of the district where the candidate is seeking office may make one qualifying contribution.)
- ◆ After certification, not to spend any more money than he or she receives from the Fund.

Availability and Amount of Public Campaign Financing Funds

Public campaign funds will be made available to candidates for the primary election within 48 hours after certification. For candidates on the primary election ballot funds will be made available for the general election within 48 hours after certification of the primary election results. Independent and minor party candidates will receive money for the general election within 48 hours of certification.

The amount of funding to which a certified candidate is entitled varies according to the office the candidate is seeking. In a contested election a certified candidate may receive initial campaign financing from the Fund as follows:

- ◆ Senate seats in the 8th or 17th districts - \$35,000
- ◆ Senate seats in all other districts - \$20,000
- ◆ House seats in a 7 member district - \$22,500
- ◆ House seats in a 6 member district - \$20,000
- ◆ House seats in a 5 member district - \$17,500
- ◆ House seats in a 4 member district - \$15,000
- ◆ House seats in a 3 member district - \$12,500
- ◆ House seats in a 2 member district - \$10,000
- ◆ House seats in a single member district - \$7,500

In an uncontested primary election a certified candidate may receive no more than 25% of the amount allowed for that office in a contested election. In an uncontested general election a certified candidate may receive no more than 10% of the amount allowed for that office in a contested election.

Certified candidates are eligible for matching funds (up to 200% of the initial campaign financing) if they are outspent by a non-participating opponent or independent expenditures.

Reporting Requirements

Participating or Certified Candidates

Within 48 hours after the close of the qualifying period, a participating candidate must provide the Election Commission with an itemized summary of:

- ◆ All seed money contributions received and funds expended and obligated during the seed money period, and copies of all receipts for seed money contributions.
- ◆ All qualifying contributions received during the qualifying period, and copies of all receipts for qualifying contributions.

Within 5 days after the primary of general election a certified candidate must report to the election commission an itemized summary of all contributions received and funds expended or obligated prior to the election.

Non-Participating Candidates

In addition to financial statements required to be filed by a candidate for public office pursuant to § 3-8-5, non-participating candidates who are opposed by a participating candidate are required to file additional reports with the Election Commission detailing their campaign expenditures and obligations according to the following provisions and guidelines:

- ◆ The first Saturday of March or within six days, if the non-participating candidate's expenditures or obligations prior to March 1 exceed by 20% the funding available to a certified candidate under the Act.
- ◆ Beginning the first Saturday in April, a non-participating candidate must report to the Election Commission within 48 hours any additional expenditures or obligations aggregating more than 20% the funding available to a certified candidate that have taken place since the candidate filed their pre-primary report.
- ◆ The first Saturday in July or within six days, if the non-participating candidate's expenditures or obligations since the primary election exceed by 20% the funding available to a certified candidate under the Act.
- ◆ Beginning the first Saturday in October, a non-participating candidate must report to the Commission within 48 hours any additional expenditures or obligations aggregating more than 20% the funding available to a certified candidate that have taken place since the candidate filed their first general report.
- ◆ During the last ten days before the primary or general election, non-participating candidates must report to the Commission within 24 hours every excess expenditure or obligation that exceeds by twenty percent the funding available to a certified candidate.

These reports and those required to be filed pursuant to § 3-8-5 would be used by the Commission to determine the release of matching funds to a certified candidate.

Independent Expenditures

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 such expenditures to the Commission within 48 hours of the expenditure. During the last ten days before the primary or general election, those making independent expenditures shall report any expenditures in excess of \$1,000 in the aggregate to the Commission within 24 hours, as required by § 3-8-2. These reports will be used by the Commission to determine the release of matching funds to a certified candidate or candidates.

Insufficient Funds

In the event the Election Commission determines the Fund has insufficient funds to pay all certified candidates the full amount of funding to which the candidates are entitled under the Act, the Commission may authorize the candidates to raise funds from private sources (in individual contributions of up to \$1,000) up to the amount of public campaign financing the candidate would otherwise be entitled to.

Duties of the Election Commission

The election commission is given a variety of duties associated with Public Campaign Financing Act, such as:

- ◆ Prescribing forms for reports, statements, notices and other documents.
- ◆ Preparing and publishing information about the Act and providing it to potential candidates and the public.
- ◆ Preparing and publishing instructions setting forth methods of bookkeeping and preservation of records to facilitate compliance with the Act, and explaining the duties of candidates and others participating in elections under the Act.
- ◆ Reporting to the Legislature on moneys in the Fund, describing the Commission's activities, and listing any recommendations for changes of law, administration or funding amounts.
- ◆ Monitoring reports and enforcing the provisions of the Act.
- ◆ Insuring public access to campaign finance reports and preparing a voters' guide for the general public. Copies of the guide shall be posted on the website of the Secretary of State.

Penalties for Violations of the Act

The bill contains criminal penalties for violations of the Act:

- ◆ Knowingly accepting contributions or making expenditures in excess of those allowed under the Act or using money from the Fund improperly is a misdemeanor punishable by a fine of \$50 to \$500 and/or imprisonment for up to 30 days.
- ◆ Providing false information or concealing or withholding information from the Election Commission is a misdemeanor punishable by a fine of not less than \$1,000 and/or imprisonment for up to 1 year.

And civil penalties:

- ◆ Unintentionally accepting contributions in violation of the Act or spending more than allocated from the Fund is subject to a penalty equal to the amount of the improper contributions or expenditures.
- ◆ Knowingly accepting contributions in violation of the Act or spending more than allocated from the Fund is subject to a penalty equal to 10 times the improper contributions or expenditures.
- ◆ Failure to make required payments to the Fund may result in a penalty equal to 3 times the amount that should have been paid to the Fund.
- ◆ Violating a reporting requirement results in a penalty of \$100 per day.