

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1497 Session of
2007

INTRODUCED BY VITALI, LEVDANSKY, BRENNAN, CARROLL, FREEMAN,
JOSEPHS, KORTZ, LEACH, MANDERINO, M. O'BRIEN, WALKO AND
TANGRETTI, JUNE 7, 2007

REFERRED TO COMMITTEE ON STATE GOVERNMENT, JUNE 7, 2007

AN ACT

1 Amending the act of June 3, 1937 (P.L.1333, No.320), entitled
2 "An act concerning elections, including general, municipal,
3 special and primary elections, the nomination of candidates,
4 primary and election expenses and election contests; creating
5 and defining membership of county boards of elections;
6 imposing duties upon the Secretary of the Commonwealth,
7 courts, county boards of elections, county commissioners;
8 imposing penalties for violation of the act, and codifying,
9 revising and consolidating the laws relating thereto; and
10 repealing certain acts and parts of acts relating to
11 elections," providing for public financing for candidates for
12 the office of Governor and Lieutenant Governor; establishing
13 the Pennsylvania Fair Campaign Fund; and providing
14 qualifications for funding, for payments, for use of funds,
15 for authorized expenditures, for limitation on contributions,
16 for return of funds and for penalties.

17 The General Assembly of the Commonwealth of Pennsylvania
18 hereby enacts as follows:

19 Section 1. The act of June 3, 1937 (P.L.1333, No.320), known
20 as the Pennsylvania Election Code, is amended by adding an
21 article to read:

22 ARTICLE XVI-A

23 Pennsylvania Gubernatorial Public Financing

24 Section 1601-A. Short title.

This article shall be known and may be cited as the
Pennsylvania Gubernatorial Public Financing Act.

Section 1602-A. Definitions.

The following words and phrases when used in this article
shall have the meanings given to them in this section unless the
context clearly indicates otherwise:

"Candidate." Any of the following:

(1) an individual seeking nomination or election to the
office of Governor or Lieutenant Governor who has filed a
nomination petition or nomination paper;

(2) an individual who receives contributions or makes
expenditures in connection with seeking nomination or
election to the office of Governor or Lieutenant Governor; or

(3) an individual on behalf of whom a registration
statement must be filed in accordance with section 1624.

"Commission." The State Ethics Commission.

"Contribution." A contribution as defined by section 1621.

"Expenditure." An expenditure as defined by section 1621.

"Fund." The Pennsylvania Fair Campaign Fund established in
section 1605-A.

"Independent expenditure." An expenditure by a person made
for the purpose of influencing an election without cooperation
or consultation with any candidate or any political committee
authorized by that candidate and which is not made in concert
with or at the request or suggestion of any candidate or
political committee or agent thereof.

"Major political party." A political party whose candidate
for Governor received either the highest or second highest
number of votes in the preceding gubernatorial election.

Section 1603-A. Application and administration of article.

1 (a) General rule.--The provisions of this article shall be
2 applicable to candidates for the offices of Governor and
3 Lieutenant Governor.

4 (b) Single candidacy.--For the purposes of this article
5 insofar as it relates to funding of nominated candidates in the
6 general election, a political party's or political body's
7 nominated candidates for Governor and Lieutenant Governor shall
8 be considered as one candidacy, and the provisions specifically
9 applicable to the Governor shall be applicable to the combined
10 candidacy.

11 (c) Administration.--The provisions of this article shall be
12 administered by the State Ethics Commission. The commission may
13 adopt rules and regulations as may be required to implement the
14 provisions of this article and to carry out its purpose.

15 Section 1604-A. Campaign committee required.

16 Each candidate for Governor or Lieutenant Governor shall form
17 a campaign committee through which all campaign contributions
18 shall be received and all campaign expenditures shall be
19 disbursed.

20 Section 1605-A. Pennsylvania Fair Campaign Fund established.

21 There is hereby established a special restricted receipts
22 fund in the State Treasury to be known as the Pennsylvania Fair
23 Campaign Fund. Payments shall be made into this fund pursuant to
24 section 1606-A, and disbursements shall be made from the fund
25 only upon the warrant of the commission and a warrant of the
26 State Treasurer. As much of the moneys in the fund as are
27 necessary to make payments to candidates as provided in this
28 article are appropriated from the Pennsylvania Fair Campaign
29 Fund on a continuing basis for the purpose of such payments.

30 Section 1606-A. Funding the Pennsylvania Fair Campaign.

1 (a) General rule.--Beginning with tax years commencing
2 January 1, 2008, and thereafter, each individual subject to the
3 tax imposed by Article III of the act of March 4, 1971 (P.L.6,
4 No.2), known as the Tax Reform Code of 1971, whose tax liability
5 for the year is \$5 or more may designate \$5 of his personal
6 income taxes to be paid into the fund. In the case of married
7 taxpayers filing a joint return, each spouse may designate \$5 to
8 be paid into the fund if their tax liability is \$10 or more. All
9 of these designated tax revenues shall be paid into the fund.
10 The check-off and instructions shall be prominently displayed on
11 the first page of the return form. The instructions shall
12 readily indicate that these designations neither increase nor
13 decrease an individual's tax liability.

14 (b) Funding.--The General Assembly shall appropriate money
15 to the Fair Campaign Fund sufficient to fully fund all
16 requirements of this article including the administrative,
17 investigative and enforcement responsibilities of the State
18 Ethics Commission. Upon notice by the commission, the General
19 Assembly shall appropriate to the commission out of the General
20 Fund such additional sums as may be required to carry out the
21 purposes of this article if the sums first appropriated become
22 inadequate.

23 Section 1607-A. Certification of moneys in fund.

24 By June 30 of each year, the State Treasurer shall certify to
25 the commission the current balance available in the fund.

26 Section 1608-A. Qualification for funding.

27 (a) General rule.--Any candidate for the offices of Governor
28 and Lieutenant Governor may apply for funding under this article
29 if the candidate meets the contributory thresholds established
30 in subsection (b) and otherwise conforms to the requirements of

this article. No candidate shall be obligated to apply for funding under this article and if any candidate elects not to apply, the provisions of this article pertaining to limits on expenditures or the use of his personal funds shall be inapplicable to the person and his candidacy. Any candidate electing to receive funding under this article shall declare his intention to do so and specify the office for which he is a candidate. No candidate for the office of Governor, nominated at a primary election, may elect to receive funding under this article for a general election unless the candidate elected to receive funding under this article for the primary election. Any candidate who for any reason has his name withdrawn from the ballot, after receipt of funds under this article, shall return to the fund all unspent money received from the fund.

(b) Thresholds.--

(1) In order to qualify for funding in a general election, a candidate for Governor must receive subsequent to the date of that candidate's primary election but prior to the date of the candidate's general election \$450,000 in qualifying contributions.

(2) In order to qualify for funding in a primary election, a candidate must receive, prior to the date of the primary election but after becoming a candidate, the following amounts:

<u>Office</u>	<u>Qualifying Contributions Required</u>
<u>(i) Governor</u>	<u>\$225,000</u>
<u>(ii) Lieutenant Governor</u>	<u>100,000</u>

(3) For purposes of this section, the term "qualifying contribution" includes any contribution which has all of the following characteristics:

1 (i) Made by an individual resident of Pennsylvania.

2 (ii) Made by a written instrument which indicates
3 the contributor's full name and mailing address and is
4 not intended to be returned to the contributor or
5 transferred to another political committee or candidate.

6 (4) If a contributor receives goods or services of value
7 in return for his contribution, the qualifying contribution
8 shall be calculated as the original contribution, minus the
9 fair market value of the goods or services received.

10 (c) Evidence of qualifying contributions.--Each candidate
11 who elects to apply for funding under this article shall provide
12 evidence that the candidate has raised the qualifying
13 contributions required by this section which evidence shall be
14 verified and certified as correct by the auditors of the State
15 Ethics Commission.

16 (d) Audit.--The commission shall conduct a complete audit of
17 all candidates receiving funds under this article. Such audits
18 shall be conducted the year following the election for which
19 funds were distributed. The Secretary of the Commonwealth shall
20 provide the commission at no cost all reports of contributions
21 and expenditures filed pursuant to Article XVI by candidates for
22 Governor and Lieutenant Governor, their political committees and
23 all other political committees who have contributed to such
24 candidates.

25 (e) Procedure.--The auditors shall conduct their audit in
26 accord with sound accounting principles and shall make findings
27 of any possible violations of this article. All audited
28 candidates and their committees shall furnish any records to the
29 accountants which the accountants deem necessary for the
30 completion of their work.

1 (f) Public report.--The commission shall make public the
2 report of the auditors and shall provide a copy to the Attorney
3 General for the institution of such criminal proceedings as he
4 or she shall deem necessary.

5 Section 1609-A. Funding formula.

6 (a) General rule.--Every candidate who qualifies for funding
7 for an election pursuant to section 1608-A shall receive
8 matching payments from the fund in the amount of \$2 for each
9 dollar of qualifying contribution.

10 (b) Purpose.--The \$2 for each dollar of qualifying
11 contributions provided by this section shall be provided both
12 for qualifying contributions raised which exceed the threshold
13 amounts specified in section 1608-A and for those qualifying
14 contributions which are attributable to meeting the threshold
15 amounts necessary to qualify for funding under this article.

16 (c) Eligibility.--

17 (1) Only those qualifying contributions made during the
18 period between the date of becoming a candidate and the date
19 of the primary election shall be eligible for matching
20 payments from the fund for the primary election.

21 (2) Only those qualifying contributions made during the
22 period between the primary election and the general election
23 of the year in which that candidate runs for office shall be
24 eligible for matching payments from the fund for the general
25 election.

26 (d) Reporting requirements.--Matching funds shall not be
27 provided for any qualifying contributions unless the reporting
28 requirements required by the commission are satisfied.

29 Section 1610-A. Limitations on funding.

30 (a) General rule.--Every candidate who qualifies for and

1 receives funding pursuant to the formula established by this
2 article shall be entitled to receive no more than the maximum
3 amount specified in subsection (b) for the office the candidate
4 is seeking.

5 (b) Maximum funding.--

6 (1) The maximum amount of funding available for each
7 candidate for Governor at a general election under this
8 article shall be \$9,000,000.

9 (2) The maximum amount of funding available for the
10 primary election for each candidate under this article shall
11 be as follows:

<u>Office</u>	<u>Maximum Pennsylvania Fair</u>
	<u>Campaign Funding</u>

<u>(i) Governor</u>	<u>\$5,500,000</u>
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<u>(ii) Lieutenant Governor</u>	<u>2,000,000</u>
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16 If a major party candidate for Governor chooses not to
17 participate in the funding program under this article, the
18 maximum amount of public funding for the primary and general
19 elections to which the nonparticipating candidate would have
20 been entitled under this section shall be divided equally among
21 the participating candidates for Governor.

22 Section 1611-A. Time of payments.

23 A candidate for Governor and Lieutenant Governor in the case
24 of a primary election may begin to receive public funding
25 payments after he or she has received the qualifying
26 contribution amounts required by section 1608-A(b)(2) in the
27 case of a primary election and section 1608-A(b)(1) in the case
28 of a general election. The commission shall make payments
29 authorized by this article at least every two weeks. However,
30 except for the final payment, no payment shall be due or paid if

1 the payment does not equal at least \$5,000.

2 Section 1612-A. Use of funds by candidates.

3 (a) General rule.--Funds distributed to candidates pursuant
4 to this article may be used only for the election for which they
5 are distributed and only for the purposes set forth in this
6 article except that no fund moneys may be used:

7 (1) To transfer to other candidates or to committees of
8 other candidates or to political committees.

9 (2) To pay for expenditures incurred as follows:

10 (i) after the date of the primary election in the
11 case of an unsuccessful primary candidate; or

12 (ii) after the date of the general election in the
13 case of all other candidates.

14 (b) Single bank account.--Funds distributed to a candidate
15 pursuant to this article shall be placed in a single bank
16 account. Expenditures from this account shall be made only for
17 campaign expenses listed in subsection (a).

18 Section 1613-A. Expenditures.

19 (a) General rule.--Expenditures made by a candidate for
20 Governor, for all purposes and from all sources, including but
21 not limited to amounts of funds distributed under this article,
22 proceeds of loans, gifts, contributions from any source or
23 personal funds, subsequent to the date of the primary election
24 but prior to the date of the general election, may not exceed
25 \$13,500,000.

26 (b) Maximum expenditures.--Expenditures made by a candidate
27 prior to the date of the primary election may not exceed the
28 following unless otherwise provided:

29	<u>Office</u>	<u>Total Expenditure Limits</u>
30	<u>(1) Governor</u>	<u>\$9,000,000</u>

1 (2) Lieutenant Governor 3,000,000

2 (c) Applicability.--The expenditure limits of this section
3 apply only to candidates who receive public funding pursuant to
4 this article, except that a candidate who accepts public funding
5 but whose political party opponent in a general election elects
6 not to apply for the public funding shall not be bound by the
7 expenditure limits of this section.

8 (d) Nonparticipating candidates.--Notwithstanding any other
9 provision of this article, a candidate who accepts public
10 funding pursuant to the formula established, but whose major
11 political party opponents in a primary election elect to not
12 apply for the public funding, shall not be bound by the
13 expenditure limits specified in this section.

14 Section 1614-A. Annual report.

15 The commission shall report annually to the Governor and the
16 General Assembly on the operations of funding as provided by
17 this article. This report shall include, but not be limited to,
18 the revenues and expenditures in the fund, the amounts
19 distributed to candidates, the results of any audits performed
20 on candidates in compliance with this article and any
21 prosecutions brought for violations of this article.

22 Section 1615-A. Return of excess funds.

23 (a) Primary election.--All unexpended campaign funds in a
24 candidate's and his authorized committees' possession 60 days
25 after a primary election shall be returned to the State board
26 for deposit in the fund, up to the amount of the funds which
27 were distributed to the candidate under this article for the
28 primary election.

29 (b) General election.--All unexpended campaign funds in a
30 candidate's and his authorized committees' possession 60 days

1 after a general election shall be returned to the State board
2 for deposit in the fund, up to the amount of the funds which
3 were distributed to the candidate under this article for the
4 general election.

5 Section 1616-A. Limitations on certain contributions.

6 (a) General rule.--The provisions of this section apply to
7 any contribution made for the purpose of influencing any
8 election to the office of Governor or Lieutenant Governor
9 regardless of whether the candidate for that office has applied
10 for or received funding under this article.

11 (b) Aggregate contributions.--Aggregate contributions,
12 including in-kind contributions, from any person or political
13 committee to any candidate for Governor or Lieutenant Governor,
14 his authorized committee or agent shall not exceed \$5,000 for
15 the candidate's primary election and \$5,000 for the candidate's
16 general election. Furthermore, for each election, no candidate,
17 his authorized committee or agent shall accept or receive more
18 than \$5,000 for the candidate's primary election and \$5,000 for
19 the candidate's general election in aggregate contributions,
20 including in-kind contributions, from any person.

21 (c) Gifts.--A gift, subscription, loan, advance or deposit
22 of money or anything of value to a candidate shall be considered
23 a contribution both by the original source of the contribution
24 and by any intermediary or conduit if the intermediary or
25 conduit:

26 (1) exercises any direction over the making of the
27 contribution; or

28 (2) solicits the contribution or arranges for the
29 contribution made and directly or indirectly makes the
30 candidate aware of such intermediary or conduit's role in

1 soliciting or arranging the contribution for the candidate.

2 (d) Exceptions.--For purposes of subsection (c), a
3 contribution shall not be considered to be a contribution by an
4 intermediary or conduit to the candidate if:

5 (1) the intermediary or conduit has been retained by the
6 candidate's committee for the purpose of fundraising and is
7 reimbursed for expenses incurred in soliciting contributions;

8 (2) in the case of an individual, the candidate has
9 expressly authorized the intermediary or conduit to engage in
10 fundraising, or the individual occupies a significant
11 position within the candidate's campaign organization; or

12 (3) in the case of a political committee, the
13 intermediary or conduit is the authorized committee of the
14 candidate.

15 (e) Personal funds.--No candidate for Governor or Lieutenant
16 Governor who accepts public funding in accordance with this
17 article may contribute from personal funds more than an
18 aggregate of \$35,000 in connection with his or her primary and
19 general election campaigns.

20 Section 1617-A. Interactive gubernatorial primary and general
21 election debates; participation by
22 candidates.

23 (a) General rule.--In any year in which a primary election
24 is to be held to nominate candidates for the offices of Governor
25 and Lieutenant Governor, there shall be held among the several
26 candidates for each nomination a series of interactive primary
27 debates. All candidates who have filed nomination petitions in
28 accordance with this act for these offices and have applied or
29 intend to apply to receive money for election campaign expenses
30 from the fund shall participate in the debates. Any other

1 candidate, who would have otherwise qualified for public funding
2 under section 1608-A(b)(2) 20 days before the date of the
3 debate, may participate, provided that the other candidate
4 notifies the commission of the candidate's intent to participate
5 no later than 20 days before the date of the debate. In any year
6 in which no candidate or only one candidate for a nomination is
7 required or elects to participate, no primary debate shall be
8 required to be held under this subsection.

9 (b) Debates.--In any year in which a general election is to
10 be held for the offices of Governor and Lieutenant Governor,
11 there shall be held a series of interactive debates in which all
12 candidates who have received nominations for these offices at
13 the primary or through the filing of nomination papers in
14 accordance with this act and have applied or intend to apply to
15 receive money for election campaign expenses from the fund shall
16 participate. Any other candidate, who would have otherwise
17 qualified for public funding under section 1608-A(b)(1) 20 days
18 before the date of the debate, may participate, provided that
19 the other candidate notifies the commission of the candidate's
20 intent to participate no later than 20 days before the date of
21 the debate.

22 Section 1618-A. Time and contents; sponsors.

23 (a) Primary election.--There shall be two gubernatorial and
24 two lieutenant gubernatorial primary debates. Each of the
25 debates shall be at least one hour in duration. The first debate
26 shall occur not earlier than the date on which the names of
27 candidates to appear on the primary ballot are certified by the
28 Secretary of the Commonwealth in accordance with section 916 and
29 the second debate shall occur not later than the Tuesday
30 preceding the primary election.

1 (b) General election.--There shall be three gubernatorial
2 and three lieutenant gubernatorial debates. Each of the debates
3 shall be at least one hour. The first debate shall occur not
4 earlier than 50 days before the date of the general election,
5 and the second debate shall occur not later than the Tuesday
6 preceding the election.

7 (c) Sponsors.--Private organizations which are not
8 affiliated with any political party or with any holder of or
9 candidate for public office and which have not endorsed any
10 candidate in the pending primary or general election for the
11 office of Governor shall be eligible to sponsor one or more
12 interactive gubernatorial primary debates or interactive
13 gubernatorial election debates under subsection (a) or (b),
14 respectively.

15 (d) Applications.--The commission shall accept applications
16 from eligible private organizations to sponsor one or more of
17 the interactive debates. Applications to sponsor debates under
18 subsection (a) shall be submitted to the commission no later
19 than March 15 of any year in which a primary election is to be
20 held to nominate candidates for the office of Governor and
21 Lieutenant Governor, and applications to sponsor debates under
22 subsection (b) shall be submitted to the commission no later
23 than July 1 of any year in which a general election is to be
24 held to fill the office of Governor.

25 (e) Selection.--Where the number of eligible applicants to
26 sponsor primary debates or election debates exceed the number
27 prescribed under subsections (a) and (b), respectively, the
28 commission shall select the private organizations from among the
29 applicants within 30 days of the last day for submitting those
30 applications, as provided under this subsection. To the maximum

1 extent practicable and feasible, the commission shall select a
2 different private organization to sponsor each of the
3 interactive gubernatorial debates, but shall not be precluded
4 from selecting the same private organization to sponsor more
5 than one debate.

6 (f) Responsibilities.--The private organizations selected by
7 the commission shall be responsible for selecting the date, time
8 and location of the debates, subject to the limitations set
9 forth in this section. The rules for conducting each debate
10 shall be solely the responsibility of the private organizations
11 so selected, but shall not be made final without consultation
12 with both the chairman of the State committee of each political
13 party in the case of primary debates, and with a representative
14 designated by each of the participating candidates in the case
15 of general election debates.

16 Section 1619-A. Failure of candidate to participate in debates;
17 complaint; hearing; determination; penalties.

18 (a) Powers and duties.--The commission shall have the power
19 and duty, upon receipt of a complaint against a candidate for
20 nomination for election or for election for the office of
21 Governor or Lieutenant Governor who is required to participate
22 in primary debates or election debates, respectively, to hold a
23 hearing to determine whether that candidate has failed to
24 participate in debates. If, at the conclusion of a hearing under
25 this section, the commission determines by majority vote that a
26 candidate required to participate under this act has failed to
27 do so, the chairman shall immediately inform the candidate in
28 writing of that determination, identifying in that writing the
29 date and circumstances of the failure. If, after having found
30 that a candidate required to participate in a primary or

election debate has failed to do so, the commission further finds that the failure occurred under circumstances which were beyond the control of the candidate and were of such a nature that a reasonable person, taking into account the purposes of this act and the relevant facts of the case, would find the failure justifiable or excusable, then the candidate shall not be subject to any penalty or liability for failing to participate. The candidate charged with failure to participate shall have the burden of showing justification or excuse.

(b) Liability.--The campaign of any candidate or former candidate who shall have been required to participate in a primary debate or election debate under this article, but who has been found to have failed to do so without reasonable justification or excuse, shall be liable for return of moneys previously received for use by the candidate to pay primary election campaign expenses or general election campaign expenses, respectively. The commission shall determine the total amount of moneys for election campaign expenses in that year by the commission to the candidate under this article, as appropriate, and shall notify the campaign treasurer of the candidate of the liability as of the date of the notice, for the repayment of those moneys plus interest on the unpaid amount of that liability from that date at the rate of 1% for each month or fractional a part of a month during which that amount remains unpaid.

Section 1620-A. Penalties.

The following shall apply:

(1) A person who violates the provisions of this article and who, as a result, obtains funds under this article to which he is not entitled commits a misdemeanor of the first

1 degree and shall, upon conviction, be subject to a fine not
2 to exceed the greater of \$10,000, or three times the amount
3 of funds wrongfully obtained or to imprisonment for up to
4 five years, or both.

5 (2) A person who violates section 1612-A or 1613-A
6 commits a misdemeanor of the first degree and shall, upon
7 conviction, be subject to a fine not to exceed the greater of
8 \$10,000, or three times the amount of funds that were
9 wrongfully used or expended or to imprisonment for up to five
10 years, or both.

11 (3) Except as provided in subsections (a) and (b), a
12 person who violates any provision of this article commits a
13 misdemeanor of the third degree and shall, upon conviction,
14 be subject to a fine of not more than \$1,000, or to
15 imprisonment for up to one year, or both.

16 (4) All fines and penalties assessed pursuant to this
17 article shall be deposited in the Pennsylvania Fair Campaign
18 Fund.

19 Section 1621-A. Severability.

20 The provisions of this article are severable. If any
21 provision of this article or its application to any person or
22 circumstance is held invalid, the invalidity shall not affect
23 other provisions or applications of this article which can be
24 given effect without the invalid provision or application.

25 Section 1622-A. Applicability.

26 Funding from the Pennsylvania Fair Campaign Fund shall be
27 provided to candidates for Statewide office beginning with the
28 primary election of 2008 and in each gubernatorial primary and
29 election thereafter.

30 Section 2. The dollar figures contained in this act shall be

1 adjusted annually at a rate equal to the average percentage
2 change in the All-Urban Consumer Price Index for the Pittsburgh,
3 Philadelphia and Scranton standard metropolitan statistical
4 areas as published by the Bureau of Labor Statistics of the
5 United States Department of Labor, or any successor agency,
6 occurring in the prior calendar year. The base year shall be
7 2007. The average shall be calculated and certified annually by
8 the commission by adding the percentage increase in each of the
9 three areas and dividing by three. The calculation and resulting
10 new dollar figures shall be published in March in the
11 Pennsylvania Bulletin. The checkoff referred to in section 1606-
12 A of the Pennsylvania Election Code shall be rounded to the
13 nearest dollar.

14 Section 3. This act shall take effect immediately.