

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2193 Session of 2012

INTRODUCED BY B. BOYLE, BOYD, K. BOYLE, JOSEPHS, KORTZ,
M. O'BRIEN AND PASHINSKI, FEBRUARY 13, 2012

REFERRED TO COMMITTEE ON STATE GOVERNMENT, FEBRUARY 13, 2012

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," further providing for contributions or
 12 expenditures by national banks, corporations or
 13 unincorporated associations; providing limited campaign
 14 funding of Statewide judicial elections; establishing the
 15 Pennsylvania Fair Campaign Fund; limiting certain
 16 contributions; providing for powers and duties of the
 17 Secretary of the Commonwealth and the Department of State;
 18 and imposing penalties.

19 The General Assembly of the Commonwealth of Pennsylvania
 20 hereby enacts as follows:

21 Section 1. Section 1633 heading and (a) of the act of June
 22 3, 1937, known as the Pennsylvania Election Code, amended
 23 November 26, 1978 (P.L. 1313, No.318), are amended to read:

24 Section 1633. Contributions or Expenditures by National
 25 Banks, Corporations, Partnerships, or Unincorporated
 26 Associations.--(a) It is unlawful for any National or State

1 bank, any partnership or any corporation, incorporated under the
2 laws of this or any other state or any foreign country, or any
3 unincorporated association, except those corporations formed
4 primarily for political purposes or as a political committee, to
5 make a contribution or expenditure in connection with the
6 election of any candidate or for any political purpose whatever
7 except in connection with any question to be voted on by the
8 electors of this Commonwealth. Furthermore, it shall be unlawful
9 for any candidate, political committee, or other person to
10 knowingly accept or receive any contribution prohibited by this
11 section, or for any officer or any director of any corporation,
12 bank, partnership or any unincorporated association to consent
13 to any contribution or expenditure by the corporation, bank,
14 partnership or unincorporated association, as the case may be,
15 prohibited by this section.

16 Section 2. The act is amended by adding an article to read:

17 ARTICLE XVI-A

18 PENNSYLVANIA FAIR CAMPAIGN FUNDING

19 Section 1601-A. Legislative intent.

20 This article is intended to protect against corruption or the
21 appearance of corruption.

22 Section 1602-A. Definitions.

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

26 "Department." The Department of State of the Commonwealth.

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

29 "Secretary." The Secretary of the Commonwealth.

30 Section 1603-A. Application of article.

1 The provisions of this article shall be applicable to
2 candidates for the following State-wide offices:

3 (1) Supreme Court Justice.

4 (2) Superior Court Judge.

5 (3) Commonwealth Court Judge.

6 Section 1604-A. Administration.

7 The provisions of this article shall be administered by the
8 secretary. The secretary may adopt such rules and regulations as
9 may be necessary for the implementation of this article.

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

11 There is hereby established a special restricted receipts
12 fund in the State Treasury to be known as the Pennsylvania Fair
13 Campaign Fund. Payments shall be made into the fund pursuant to
14 section 1606-A, and disbursements shall be made from the fund
15 only upon the warrant of the Secretary of the Commonwealth and a
16 warrant of the State Treasurer. As much of the moneys in the
17 fund as are necessary to make payments to candidates as provided
18 in this article are appropriated from the fund to the Department
19 of State for the purpose of such payments.

20 Section 1606-A. Allocation of certain tax proceeds to fund.

21 (a) Designation.--Beginning with tax years commencing
22 January 1, 2010, and thereafter, each individual subject to the
23 tax imposed by Article III of the act of March 4, 1971 (P.L.6,
24 No.2), known as the Tax Reform Code of 1971, may designate that
25 \$3 be added to the taxpayer's personal income tax liability and
26 be paid into the fund. In the case of married taxpayers filing a
27 joint return, each spouse may designate that \$3 be added to that
28 spouse's personal income tax liability and be paid into the
29 fund. A taxpayer who designates a payment under this section
30 shall add the required amount to the payment due the

1 Commonwealth or subtract the required amount from the refund due
2 the taxpayer, as appropriate. All such designated tax revenues
3 shall be paid into the fund. The check-off and instructions
4 shall be prominently displayed on the first page of the return
5 form. The instructions shall readily indicate that any such
6 designations neither increase or decrease an individual's tax
7 liability.

8 (b) Attorneys.--An attorney licensed to practice law in this
9 Commonwealth shall make a contribution to the fund of up to \$50
10 when applying for or renewing a license to practice law. The
11 license form shall provide a check-off for the attorney to
12 designate the donation. The Court Administrator shall deposit
13 all contributions into the fund.

14 (c) Additional funds.--In the event that revenues generated
15 under subsections (a) and (b) are insufficient to fully fund the
16 fund, the General Assembly shall allocate sufficient additional
17 moneys from the General Fund to meet the fund's needs.

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

19 By June 30 of each year, the State Treasurer shall certify to
20 the secretary the current balance available in the fund.

21 Section 1608-A. Qualification for Pennsylvania Fair Campaign
22 funding.

23 (a) Qualifications.--

24 (1) Any candidate for Statewide judicial office as
25 described in section 1603-A may apply for Pennsylvania Fair
26 Campaign funding under this article if the candidate meets
27 the contributory thresholds established in subsection (b) and
28 otherwise conforms to the requirements of this article. No
29 candidate shall be obligated to apply for funding under this
30 article, and if any candidate elects not to apply, only the

1 provisions of this article pertaining to limits on
2 contributions, as set forth in section 1614-A(a), shall be
3 applicable to such person and that person's candidacy. Any
4 candidate electing to receive Pennsylvania Fair Campaign
5 funding must declare the candidate's intention to do so and
6 specify the State office for which he is a candidate. A
7 candidate electing to receive Pennsylvania Fair Campaign
8 funding must declare the candidate's intention to do so upon
9 forming a political action committee.

10 (2) This declaration shall be filed on a form designed
11 and provided by the department and submitted with the
12 candidate's submission of the candidates' nominating petition
13 to the department. Any and all committees authorized to
14 receive contributions or make expenditures for the candidate
15 who has so declared must abide by the provisions of this
16 article, unless otherwise specified in this article. Any
17 candidate who for any reason has the candidate's name
18 withdrawn from the ballot for a Statewide judicial election,
19 after receipt of Pennsylvania Fair Campaign funds, shall
20 return all moneys received to the fund as well as offering
21 back qualifying contributions for that Statewide judicial
22 office.

23 (b) Qualifying contributions.--

24 (1) In order to qualify for Pennsylvania Fair Campaign
25 funding in the general election, a candidate must receive
26 subsequent to the date of the primary election but prior to
27 the date of the general election qualifying contributions of
28 the following amounts:

29 Qualifying
30 Contributions

<u>Office</u>	<u>Required</u>
<u>(i) Supreme Court Justices</u>	<u>\$45,000</u>
<u>(ii) Superior Court Judges</u>	<u>\$45,000</u>
<u>(iii) Commonwealth Court Judges</u>	<u>\$45,000</u>

(2) A candidate must receive contributions from at least 350 contributors in amounts of at least \$10.

(3) In order to qualify for Pennsylvania Fair Campaign funding in the primary election, a candidate must receive prior to the date of the primary election, but subsequent to the immediately preceding general election, one-half of the amount specified in paragraph (1) for the appropriate office. The threshold number of contributors shall be one-half the number designated in paragraph (2).

(4) (i) The term "qualifying contribution" shall include any contribution, as defined in section 1621(b), which has all of the following characteristics:

(A) Made by an individual resident of Pennsylvania or by a political action committee, as defined in section 1621(1), whose address is in Pennsylvania.

(B) Made by a written instrument which indicates the contributor's full name and mailing residence and is not intended to be returned to the contributor or transferred to another political committee or candidate.

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

1 (iii) Any contribution which exceeds \$500 in the
2 aggregate shall be deemed only a \$500 qualifying
3 contribution for the purposes of this section and for the
4 matching payment provisions of section 1609-A.

5 (c) Auditor.--The secretary shall select an auditor pursuant
6 to the provisions of section 1635(a). Each candidate who elects
7 to apply for Pennsylvania Fair Campaign funding shall provide
8 evidence that the candidate has raised the qualifying
9 contributions required by this section, which evidence shall be
10 verified and certified as correct to the secretary by the
11 auditor selected under this subsection.

12 Section 1609-A. Pennsylvania Fair Campaign funding formula.

13 (a) Matching payments.--Every candidate who qualifies for
14 Pennsylvania Fair Campaign funding for either the primary or the
15 general election pursuant to section 1608-A shall receive
16 matching payments from the fund in the amount of \$2.50 for each
17 dollar of qualifying contribution as defined in section 1608-
18 A(b)(3).

19 (b) Calculation.--The \$2.50 matching payment for each dollar
20 of qualifying contributions provided by this section shall be
21 provided only for qualifying contributions raised which exceed
22 the threshold amounts specified in section 1608-A(b) and not to
23 those qualifying contributions which are attributable to meeting
24 such threshold amounts necessary to qualify for Pennsylvania
25 Fair Campaign funding.

26 (c) Time frames.--

27 (1) Only those contributions made during the period
28 between a declaration of candidacy and the primary election
29 shall be eligible for matching payments from the fund for the
30 primary election.

1 (2) Only those contributions made during the period
2 between the primary election and the general election shall
3 be eligible for matching payments from the fund for the
4 general election.

5 Section 1610-A. Limitations on Pennsylvania Fair Campaign
6 funding.

7 (a) Limit.--Every candidate who qualifies for and receives
8 Pennsylvania Fair Campaign funding pursuant to the formula
9 established in section 1609-A shall be entitled to receive no
10 more than the maximum amount specified in subsection (b) for the
11 office the candidate is seeking.

12 (b) General election.--

13 (1) The maximum amount of Pennsylvania Fair Campaign
14 funding available for the general election for each candidate
15 under this article shall be as follows:

	<u>Maximum</u>
	<u>Pennsylvania Fair</u>
<u>Office</u>	<u>Campaign Funding</u>
19 <u>(i) Supreme Court Justices</u>	<u>\$200,000</u>
20 <u>(ii) Superior Court Judges</u>	<u>\$200,000</u>
21 <u>(iii) Commonwealth Court</u>	<u>\$200,000</u>
22 <u>Judges</u>	

23 (2) The maximum amount of Pennsylvania Fair Campaign
24 funding available for the primary election for each candidate
25 under this article shall be one-half of the appropriate
26 figure in paragraph (1).

27 (3) If a participating candidate is identified in
28 negative advertisements by an entity other than a candidate
29 for the same office, the participating candidate may qualify
30 for additional moneys from the fund up to an amount equal to

1 50% of the maximum provided in paragraphs (1) and (2). The
2 secretary shall determine the appropriate supplemental amount
3 to be distributed by identifying the amount spent by the
4 noncandidate advertising campaign and dividing the amount by
5 two.

6 (c) Prohibitions.--Notwithstanding any other provisions of
7 this article, no Pennsylvania Fair Campaign funding shall be
8 provided to the following:

9 (1) Candidates in the general election who have been
10 nominated by both major political parties.

11 (2) Candidates in the primary election who are unopposed
12 for the nomination with the exception of those candidates who
13 are running in a judicial retention election.

14 (d) Definition.--As used in this section, "major political
15 party" shall mean a political party whose candidate for Governor
16 received either the highest or second highest number of votes in
17 the preceding gubernatorial election.

18 Section 1611-A. Time of payments.

19 (a) General rule.--Beginning 120 days prior to the relevant
20 primary or general election, the secretary shall make payments
21 authorized by this article at least every two weeks. However,
22 except for the final payment, no payment shall be due or paid if
23 the payment does not equal at least \$5,000 in amount.

24 (b) Insufficient funds.--If in the secretary's opinion
25 insufficient funds exist in the fund to provide the anticipated
26 full funding to eligible candidates in a given primary or
27 general election, the secretary shall distribute the available
28 funds to qualified candidates on a pro rata basis. In
29 determining whether sufficient funds are available, the
30 secretary shall not take into consideration the needs of any

1 subsequent primary or general elections but shall base the
2 decision solely on the immediate primary or election at hand.
3 Section 1612-A. Use of Pennsylvania Fair Campaign funds by
4 candidates.

5 (a) Use.--Pennsylvania Fair Campaign funds distributed to
6 candidates pursuant to this article may be used only for the
7 election for which they are distributed and only for direct
8 expenses incurred exclusively for influencing the outcome of the
9 election.

10 (b) Prohibitions.--No fund moneys may be used:

11 (1) To transfer to other candidates or to candidate
12 political committees, political action committees or
13 multicandidate committees.

14 (2) To pay for expenditures incurred after the date of
15 the general election.

16 (3) For anything not directly or tangibly related to the
17 participating candidate's campaign.

18 (c) Single account.--Pennsylvania Fair Campaign funds
19 distributed to a candidate pursuant to this article shall be
20 placed in a single bank account. Expenditures from this account
21 shall be made only for campaign expenses listed in subsection
22 (a).

23 Section 1613-A. Expenditures.

24 (a) Prior to general election.--Expenditures made by a
25 candidate who accepts Pennsylvania Fair Campaign funding and the
26 candidate's authorized committees, for all purposes and from all
27 sources, including, but not limited to, amounts of Pennsylvania
28 Fair Campaign funds distributed under this article, proceeds of
29 loans, gifts, contributions from any source or personal funds,
30 subsequent to the date of the primary election, but prior to the

1 date of the general election, may not exceed \$325,000.

2 (b) Prior to primary election.--Expenditures made by a
3 candidate and the candidate's authorized committees, subsequent
4 to January 1 but prior to the date of the primary election, may
5 not exceed one-half of the amount specified in subsection (a).

6 (c) Exception.--Notwithstanding any other provision of this
7 article, a candidate who accepts public funding pursuant to the
8 formula established in section 1609-A, but whose major political
9 party opponent elects not to apply for such public funding,
10 shall not be bound by the expenditure limits specified in this
11 section.

12 Section 1614-A. Limitations on certain contributions.

13 (a) Limits.--No candidate for a Statewide judicial office
14 shall accept contributions for any primary, general or special
15 election which exceed those specified limits as follows:

16 (1) Individual, up to \$1,000 in the aggregate.

17 (2) Political action committees and candidate's
18 political committees as defined in section 1621(1), as
19 follows:

20 (i) those with ten or fewer donors up to the amount
21 established in paragraph (1) for an individual;

22 (ii) those with 11 to 50 donors up to double the
23 amount established in paragraph (1) for an individual;

24 (iii) those with 51 to 100 donors up to triple the
25 amount established in paragraph (1) for an individual;

26 (iv) those with 101 to 1000 donors up to quadruple
27 the amount established in paragraph (1) for an
28 individual; and

29 (v) those with 1001 or more donors up to quintuple
30 the amount established in paragraph (1) for an

1 individual.

2 (3) For the purposes of this section, a "donor" is any
3 one individual or any one political committee, regardless of
4 the number of times the individual or committee has made
5 donations.

6 (4) Political party committees may contribute to any
7 judicial candidate an amount up to ten times that permitted
8 for the largest political action committee.

9 (b) Personal funds.--Any candidate for a Statewide judicial
10 office who accepts Pennsylvania Fair Campaign funding may not
11 spend in aggregate more than \$25,000 of the candidate's own and
12 the candidate's spouse's personal funds for each primary,
13 general or special election. If the candidate does not accept
14 Pennsylvania Fair Campaign funding, this limit shall not apply.

15 (c) Aggregate contributions.--Aggregate contributions during
16 the year of the election by a political party committee or
17 candidate's political committee to candidates receiving
18 Pennsylvania Fair Campaign funds shall not exceed the sum of
19 contributions from individuals to the committee, provided that
20 whenever contributions in the aggregate during the year of the
21 election from an individual exceed \$1,000 only \$1,000 shall be
22 included in that sum.

23 (d) Prohibition.--No person shall make or offer, and no
24 candidate or political committee affiliated with a candidate
25 shall accept, any contribution after 5 p.m. on the day prior to
26 the general election. This prohibition shall remain in effect
27 until the year in which the judicial candidate next seeks
28 retention.

29 Section 1615-A. Inflation indexing of certain limitations.

30 The dollar figures contained in sections 1608-A, 1610-A and

1 1613-A may be adjusted not more than once annually during March
2 at a rate equal to the average percentage change in the All-
3 Urban Consumer Price Index for the Pittsburgh, Philadelphia and
4 Scranton standard metropolitan statistical areas as published by
5 the Bureau of Labor Statistics of the United States Department
6 of Labor, or any successor agency, occurring in the prior
7 calendar year. The base year shall be 2010. The average shall be
8 calculated and certified by the secretary annually by adding the
9 percentage increase in each of the three areas and dividing by
10 three. The calculation and any resulting new figures shall be
11 published in the Pennsylvania Bulletin during March.

12 Section 1616-A. Annual report.

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

21 Section 1617-A. Return of excess funds.

22 All unexpended campaign funds in a candidate's and his
23 authorized committees' possession 60 days after the election
24 shall be returned to the secretary for deposit in the
25 Pennsylvania Fair Campaign Fund, up to the amount of the funds
26 which were distributed to the candidate under this article.

27 Section 1618-A. Penalties.

28 (a) Wrongful obtaining of funds.--A person who violates the
29 provisions of this article and who, as a result, obtains
30 Pennsylvania Fair Campaign funds to which the person is not

1 entitled commits a misdemeanor of the first degree and shall,
2 upon conviction, be sentenced to pay a fine of not more than
3 \$10,000 or three times the amount of funds wrongfully obtained
4 or to imprisonment for not more than five years, or both, and
5 forfeiture of office.

6 (b) Wrongful use or expenditure.--A person who violates
7 section 1612-A or 1613-A commits a misdemeanor of the first
8 degree, and shall, upon conviction, be sentenced to pay a fine
9 of not more than \$10,000 or three times the amount of funds that
10 were wrongfully used or expended or to imprisonment for not more
11 than five years, or both, and forfeiture of office.

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

18 Section 3. The addition of Article XVI-A of the act shall
19 apply to returns of taxpayers for calendar years commencing
20 January 1, 2012, and thereafter. Pennsylvania Fair Campaign
21 funding shall be first provided for candidates for Statewide
22 judicial office in the general election of November 2013 and in
23 each primary, municipal and general election thereafter.

24 Section 4. This act shall take effect immediately.