

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 175 Session of 2013

INTRODUCED BY B. BOYLE, O'BRIEN, FREEMAN, COHEN, K. BOYLE AND MAHONEY, JANUARY 22, 2013

REFERRED TO COMMITTEE ON STATE GOVERNMENT, JANUARY 22, 2013

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, 2013, 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 -

30 -

Qualifying  
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.

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 1,000 donors up to quadruple  
27 the amount established in paragraph (1) for an  
28 individual; and

29 (v) those with 1,001 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 2011. 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, 2013, and thereafter. Pennsylvania Fair Campaign  
21 funding shall be first provided for candidates for Statewide  
22 judicial office in the general election of November 2014 and in  
23 each primary, municipal and general election thereafter.

24 Section 4. This act shall take effect immediately.