**South Carolina General Assembly**

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**H. 4498**

**STATUS INFORMATION**

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Summary: SC Judicial Independence Act

**HISTORY OF LEGISLATIVE ACTIONS**

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12/13/2017 House Referred to Committee on **Judiciary**

1/9/2018 House Introduced and read first time ([House Journal‑page 133](file:///h:\hj\20180109.docx))

1/9/2018 House Referred to Committee on **Judiciary** ([House Journal‑page 133](file:///h:\hj\20180109.docx))

2/1/2018 House Member(s) request name added as sponsor: Brawley

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**VERSIONS OF THIS BILL**

[12/13/2017](file:///p:\pprever\2017-18\4498_20171213.docx)

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING CHAPTER 16 TO TITLE 8 SO AS TO ENACT THE “SOUTH CAROLINA JUDICIAL INDEPENDENCE ACT”, TO PROVIDE A PROCEDURE BY WHICH CANDIDATES FOR THE OFFICE OF STATE ATTORNEY GENERAL WHO AGREE TO LIMITATIONS ON CONTRIBUTIONS TO RECEIVE A PREDETERMINED AMOUNT OF PUBLIC FUNDS FOR CAMPAIGNS AND TO REQUIRE ELECTRONIC DISCLOSURES OF ALL CAMPAIGN CONTRIBUTIONS TO CANDIDATES FOR STATE ATTORNEY GENERAL.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. (A) The General Assembly finds that the current system of privately financed campaigns for election to the office of Attorney General undermines public trust in the independence and equal justice incumbent on the office in the following ways, as it:

(1) violates the democratic principle of “one person, one vote” and diminishes the meaning of the right to vote by allowing large contributions to pose the appearance of a deleterious influence on the judicial process;

(2) violates the rights of all citizens to equal and meaningful access to the judicial process;

(3) diminishes the free‑speech rights of nonwealthy voters and candidates whose voices are drowned out by those who can afford to monopolize the arena of paid political communications;

(4) undermines the First Amendment right of voters and candidates to be heard in the electoral process, undermines the First Amendment right of voters to hear all candidates’ speeches, and undermines the core First Amendment value of open and robust debate in the electoral process;

(5) fuels the public perception of corruption and undermines public confidence in the democratic process and democratic institutions;

(6) diminishes the Attorney General’s accountability to his constituents by compelling him to be disproportionately accountable to the major contributors who finance his election campaigns;

(7) creates a danger of actual corruption by encouraging candidates for Attorney General to take money from private interests that are directly affected by governmental actions;

(8) costs taxpayers millions of dollars for decisions made by the Attorney General to commit state resources to litigation that is in the interest of private donors;

(9) drives up the cost of election campaigns, making it difficult for qualified candidates without access to large contributors or personal fortunes to mount competitive campaigns;

(10) disadvantages challengers, because large campaign contributors tend to give their money to incumbents, thus causing elections to be less competitive;

(11) inhibits communication with the electorate by candidates without access to large sums of campaign money; and

(12) burdens candidates with the incessant rigors of fundraising and thus decreases the time available to carry out their public responsibilities.

(B) The General Assembly finds that providing a voluntary publicly financed system for all primary, general, and run‑off elections for state Attorney General would enhance democracy, jurisprudence and public trust in this State. It would:

(1) help eliminate the deleterious influence of large contributions on the political process, remove access to wealth as a major determinant of a citizen’s influence within the political process, and restore meaning to the principle of “one person, one vote”;

(2) help restore the rights of all citizens to equal and meaningful participation in the democratic process;

(3) restore the free‑speech rights of nonwealthy candidates and voters by providing candidates with equal resources with which to communicate with the voters;

(4) help restore the First Amendment right of voters and candidates to be heard in the political process, restore the First Amendment right of voters to hear all candidates’ speeches, and restore the core First Amendment value of open and robust debate in the political process;

(5) diminish the public perception of corruption and strengthen public confidence in the democratic process and democratic institutions;

(6) increase the accountability of elected officials to the constituents who elect them;

(7) eliminate the danger of actual corruption caused by the private financing of the election campaigns of public officials, thus restoring public confidence in the fairness of the electoral and legislative processes;

(8) save taxpayers millions of dollars now wasted due to litigation and amicus filings on partisan issues favored by donors;

(9) halt and reverse the escalating cost of elections;

(10) create a more level playing field for the incumbent and challengers, create genuine opportunities for qualified residents of this State to run for office, and encourage more competitive elections;

(11) facilitate communication with the electorate by candidates, regardless of their access to large sums of campaign money; and

(12) free candidates from the incessant rigors of raising money, and allow the officeholder more time to carry out his official duties.

(C) The General Assembly further finds and declares that the unique factual circumstances in this State require that the provisions of this act be enacted to promote the compelling state interests listed in subsection (B) of this section.

SECTION 2. This act may be known as the “South Carolina Judicial Independence Act”.

SECTION 3. Title 8 of the 1976 Code is amended by adding:

“CHAPTER 16

South Carolina Judicial Independence Act

Section 8‑16‑10. As used in this chapter:

(1) ‘Allowable contribution’ means a qualifying contribution, or a seed money contribution, or a limited in‑kind contribution to a participating candidate from that candidate’s political party as specified in Section 8‑16‑250.

(2) ‘Coordination’, as used in Sections 8‑16‑200 and 8‑16‑210, means a payment made for a communication or anything of value that is for the purpose of influencing the outcome of a state election and that is made:

(a) by a person in cooperation, consultation, or concert with, at the request or suggestion of, or pursuant to a particular understanding with a candidate, a candidate’s authorized committee, or an agent acting on behalf of a candidate or authorized committee;

(b) by a person for the dissemination, distribution, or republication, in whole or in part, of a broadcast or a written, graphic, or other form of campaign material prepared by a candidate, a candidate’s authorized committee, or an agent of a candidate or authorized committee;

(c) based on specific information about the candidate’s plans, projects, or needs provided to the person making the payment by the candidate or the candidate’s agent who provides the information with a view toward having the payment made;

(d) by a person if, in the same election cycle in which the payment is made, the person making the payment is serving or has served as a member, employee, fundraiser, or agent of the candidate’s authorized committee in an executive or policymaking position;

(e) by a person if the person making the payment has served in a formal policy or advisory position with the candidate’s campaign or has participated in strategic or policymaking discussions with the candidate’s campaign relating to the candidate’s pursuit of nomination for election, or election to a state office, in the same election cycle as the election cycle in which the payment is made; and

(f) by a person if the person making the payment retains the professional services of an individual or person who, in a nonministerial capacity, has provided or is providing campaign‑related services in the same election cycle to a candidate who is pursuing the same nomination or election as any of the candidates to whom the communication refers. The term ‘professional services’ includes services in support of a candidate’s pursuit of nomination for election, or election to state office such as polling, media advice, direct mail, fundraising, or campaign research.

(3) ‘Commission’ means the State Ethics Commission.

(4) ‘Excess expenditure amount’ means the amount of money spent or obligated to be spent by a nonparticipating candidate in excess of the publicly financed amount available to a participating candidate running for the same office.

(5) ‘Exploratory period’ means the period beginning the day following the previous general election for that office and ending on the last day of the qualifying period. This is the period during which candidates who wish to become eligible for publicly financed funding for the next elections are permitted to raise and spend a limited amount of private seed money, in contributions of up to one hundred dollars for each individual, for the purpose of testing the waters and fulfilling the publicly financed eligibility requirements. The exploratory period begins before, but extends to the end of, the qualifying period.

(6) ‘General election campaign period’ means the period beginning the day after the primary election and ending on the day of the general election.

(7) ‘Independent candidate’ means a candidate who does not represent a political party that has been granted ballot status and holds a primary election to choose its nominee for the general election.

(8)(a) ‘Independent expenditure’ means an expenditure made by a person or group other than a candidate or candidate’s authorized committee that:

(i) advocates the election or defeat of a candidate; and

(ii) is made without the participation or cooperation of and without coordination with a candidate or candidate committee.

(b) ‘Independent expenditure’ does not include a:

(i) news story, commentary, or editorial by a broadcasting station, newspaper, magazine, or other publication, provided the entity is not owned by or affiliated with a candidate or candidate’s committee; or

(ii) newsletter or other communication whose circulation is limited to an organization’s members, employees, shareholders, other affiliated individuals, and those who request or purchase the internal publication.

(9) ‘Mailings’ are mass mailings of two hundred or more identical or nearly identical pieces of mail sent by candidates or elected officials to the voters, residents, or postal box holders within the jurisdiction candidates are seeking to represent. These mailings, consisting of substantially identical letters, newsletters, pamphlets, brochures, or other written material are distinct from and exempt from this definition:

(a) mailings made in direct response to communications from persons or groups to whom the matter is mailed;

(b) mailings to federal, state, or local government officials; and

(c) news releases to the communications media.

(10) ‘Nonparticipating candidate’ means a candidate who is on the ballot but has chosen not to apply for publicly financed campaign funding, or a candidate who is on the ballot and has applied but has not satisfied the requirements for receiving publicly financed funding.

(11) ‘Participating candidate’ means a candidate who qualifies for publicly financed campaign funding. A participating candidate is eligible to receive publicly financed funding during primary, general, and run‑off election campaign periods.

(12) ‘Party candidate’ means a candidate who represents a political party that has been granted ballot status and holds a primary election to choose its nominee for the general election.

(13) ‘Person’ means an individual, proprietorship, firm, partnership, joint venture, syndicate, business trust, company, corporation, limited liability company, association, committee, and any other organization or group of persons acting in concert.

(14) ‘Primary election campaign period’ means the period beginning ninety days before the primary election and ending on the day of the primary election.

(15) ‘Qualifying contribution’ means either a contribution of five dollars that is received during the designated qualifying period by a candidate seeking to become eligible for publicly financed campaign funding or a signed affidavit of indigence, to be made available to candidates by the commission, stating that the signer is unable to afford a five‑dollar contribution. Contributors, including persons who sign affidavits of indigence, must be legal adult residents of the State. A five‑dollar qualifying contribution must be made in cash, or by personal check or money order, made out to the candidate’s campaign committee. All qualifying contribution monies must be submitted by the candidate’s campaign committee to the election committee for deposit in the public financing fund.

(16) ‘Qualifying period’ means the period during which a candidate is permitted to collect qualifying contributions in order to qualify for publicly financed funding. It begins ninety days before the beginning of the primary election campaign period and ends thirty days before the day of the primary election.

(17) ‘Run‑off election campaign period’ means the period beginning the day after the primary or general election that resulted in the need for a run‑off election, and ending on the day of the run‑off election.

(18) ‘Seed money contribution’ means a contribution of no more than one hundred dollars made by an individual adult during the exploratory period.

(19) ‘Soft money’ means money raised by political parties or independent agencies that is unregulated by state law as to source and size of contributions. Soft money may not be used to advocate the election or defeat of particular candidates.

Section 8‑16‑20. (A) A candidate qualifies as a participating candidate for the primary election campaign period if he:

(1) files a declaration with the commission that he has complied and will comply with all of the requirements of this chapter, including the requirement that during the exploratory period and the qualifying period the candidate shall not accept or spend private contributions from a source other than seed money contributions and publicly financed qualifying contributions, unless the provisions of Section 8‑16‑40 apply; and

(2) meets the following qualifying contribution requirements before the close of the qualifying period:

(a) a candidate shall collect at least 3,500 qualifying contributions:

(b) each qualifying contribution must be acknowledged by a receipt to the contributor, with a copy submitted to the commission by the candidate. The receipt must include the contributor’s signature, printed name, home address, and telephone number, and the name of the candidate on whose behalf the contribution is made. In addition, the receipt must indicate whether the qualifying contribution is in the form of five dollars, and by the contributor’s signature the receipt must indicate that the contributor understands that the purpose of the qualifying contribution is to help the candidate qualify for publicly financed campaign funding and that the contribution is made without coercion or reimbursement, and that the contribution does not obligate the donor to vote for the candidate;

(c) a contribution submitted as a qualifying contribution that does not include a signed and fully completed receipt may not be counted as a qualifying contribution;

(d) all five‑dollar qualifying contributions, whether in the form of cash, checks, or money orders made out to the candidate’s campaign account, must be deposited by the candidate in his campaign account; and

(e) all qualifying contribution receipts must be sent to the commission for deposit in the public financing fund and must be accompanied by a check from the candidate’s campaign account for the total amount of qualifying contribution monies received. This submission must be accompanied by a signed statement from the candidate indicating that all of the information on the qualifying contribution receipt is complete and accurate to the best of the candidate’s knowledge and that the amount of the enclosed check is equal to the sum of all the five‑dollar qualifying contributions the candidate has received.

(B) A party candidate qualifies as a participating candidate for the general election campaign period if:

(1) he met all of the applicable requirements and filed a declaration with the commission that he has fulfilled and will fulfill all of the requirements of a participating candidate as stated in this chapter; and

(2) as a participating candidate during the primary election campaign period, he had the highest number of votes of the candidates contesting the primary election from his respective party which won him the party’s nomination.

Section 8‑16‑30. (A) An independent candidate qualifies as a participating candidate for the primary election campaign period if he:

(1) files a declaration with the commission that he has complied and will comply with all of the requirements of this legislation, including the requirement that during the exploratory period and the qualifying period the candidate shall not accept or spend private contributions from a source other than seed money contributions and publicly financed qualifying contributions unless the provisions of Section 8‑16‑40 apply; and

(2) meets the following qualifying contribution requirements before the close of the qualifying period:

(a) an independent candidate shall collect the same number of qualifying contributions as a party candidate shall collect for the same office; and

(b) each qualifying contribution must be:

(i) acknowledged by a receipt to the contributor, with a copy submitted to the commission by the candidate. The receipt must indicate, by the contributor’s signature, that the contributor understands that the purpose of the contribution is to help the candidate qualify for publicly financed campaign funding. The receipt must include the contributor’s signature, printed name, home address, and telephone number, and the name of the candidate on whose behalf the contribution is made; and

(ii) submitted, with a signed and completed receipt, to the commission according to a schedule and procedure to be determined by the commission. A contribution submitted as a qualifying contribution that does not include a signed and fully completed receipt may not be counted as a qualifying contribution.

(B) An independent candidate qualifies as a participating candidate for the general election campaign period if:

(1) before the primary election he has met all of the applicable requirements of this legislation and filed a declaration with the commission that he has fulfilled and will fulfill all of the requirements of a participating candidate as stated in this legislation; and

(2) during the primary election campaign period, he has fulfilled all the requirements of a participating candidate as stated in this legislation.

Section 8‑16‑40. During the first election cycle that occurs after the effective date of this chapter, a candidate may be certified as a participating candidate, notwithstanding the acceptance of contributions or making of expenditures from private funds before the date of enactment that would, absent this section, disqualify the candidate as a participating candidate provided that any private funds accepted but not expended before the effective date of this chapter must be:

(1) returned to the contributor;

(2) held in a special campaign account and used only for retiring a debt from a previous campaign; or

(3) submitted to the commission for deposit in the public financing fund.

Section 8‑16‑50. A participating candidate who accepts benefits during the primary election campaign period shall comply with all the requirements of this legislation through the general election campaign period whether he continues to accept benefits or not.

Section 8‑16‑60. (A) During the primary, general, and run‑off election campaign periods, a participating candidate who has voluntarily agreed to participate in, and has become eligible for, publicly financed benefits, shall not accept private contributions from a source other than the candidate’s political party as specified in Section 8‑16‑250.

(B) During the primary, general, and run‑off election campaign periods, a participating candidate who has voluntarily agreed to participate in, and has become eligible for, public financing benefits, shall not solicit or receive political contributions for another candidate or for a political party or other political committee.

(C) A person shall not make a contribution in the name of another person. A participating candidate who receives a qualifying contribution or a seed money contribution that is not from the person listed on the receipt required by Section 8‑16‑20(A)(2) and Section 8‑16‑100(C) is liable to pay the commission the entire amount of the inaccurately identified contribution, in addition to any penalties.

(D) During the primary, general, and run‑off election campaign periods, a participating candidate shall pay for all of his campaign expenditures, except petty cash expenditures, by means of a ‘publicly financed debit card’ issued by the commission, as authorized by Section 8‑16‑240.

(E) An eligible candidate shall furnish complete campaign records, including all records of seed money contributions and qualifying contributions, to the commission at regular filing times, or on request by the commission. A candidate shall cooperate with an audit or examination by the commission.

Section 8‑16‑70. (A) During an election cycle, each participating candidate shall conduct all campaign financial activities through a single campaign account.

(B) A participating candidate may maintain a campaign account other than the campaign account described in subsection (A) if the other campaign account is for the purpose of retiring a campaign debt that was incurred during a previous election campaign in which the candidate was not a participating candidate.

(C) Contributions for the purposes of retiring a previous campaign debt that are deposited in the kind of ‘other campaign account’ described in subsection (B) may not be considered contributions to the candidate’s current campaign.

(D) A participating candidate shall file reports of financial activity related to the current election cycle separately from reports of financial activity related to previous election cycles.

Section 8‑16‑80. (A) A participating candidate shall use his public financing funds only for direct campaign purposes. Expenditures for direct campaign purposes include, but are not limited to:

(1) written materials, pins, bumper stickers, handbills, brochures, posters, yard signs, newsletters, and tabloids;

(2) travel expenses including mileage reimbursement and lodging when out of town;

(3) communication expenses, advertising, purchase of media space and time, direct mail services, postage, telephone banks and calling services, and long distance charges;

(4) headquarters expenses, including lease and utility expenses;

(5) expenses of volunteers, food for staff and volunteers, and staff salaries and other compensation;

(6) office supplies;

(7) accounting, reporting, clerical, campaign advisory, and other consulting services; and

(8) public relations expenses.

(B) A participating candidate may not use public financing funds for:

(1) costs of legal defense in a campaign law enforcement proceeding pursuant to the provisions of this chapter;

(2) indirect campaign purposes including, but not limited to:

(a) the candidate’s personal support or compensation to the candidate or the candidate’s family;

(b) the candidate’s personal appearance;

(c) capital assets having a value in excess of five hundred dollars and useful life extending beyond the end of the current election period determined in accordance with generally accepted accounting principles;

(d) a contribution or loan to the campaign committee of another candidate or to a party committee or other political committee;

(e) an independent expenditure;

(f) a gift in excess of twenty‑five dollars for each person; and

(g) a payment or transfer for which compensating value is not received.

(C) Upon written request from a participating candidate, the commission shall determine whether a planned campaign expenditure or fundraising activity is a permissible expenditure of public financing funds pursuant to the provisions of this chapter. To make a request, a candidate shall submit a description of the planned expenditure or activity to the commission. The commission shall inform the candidate whether an enforcement action is necessary if the candidate carries out the planned expenditure or activity. The commission shall ensure that the candidate may rely on a ‘no action’ letter. A ‘no action’ letter applies only to the candidate who requested it.

Section 8‑16‑90. (A) Personal funds contributed as seed money by a candidate seeking to become eligible as a participating candidate or adult members of his family may not exceed the maximum of one hundred dollars for each contributor.

(B) Personal funds may not be used to meet the qualifying contribution requirement except for one five‑dollar contribution from the candidate himself and one five‑dollar contribution from the candidate’s spouse, provided that the candidate and his spouse are registered voters who reside in the candidate’s electoral district.

Section 8‑16‑100. (A) The only private contributions a candidate seeking to become eligible for publicly financed funding shall accept, other than qualifying contributions and limited in‑kind contributions from the candidate’s political party as specified in Section 8‑16‑250, are seed money contributions contributed by individual adults before the end of the qualifying period.

(B) A seed money contribution may not exceed one hundred dollars for each donor, and the aggregate amount of seed money contributions accepted by a candidate seeking to become eligible for publicly financed funding may not exceed thirty‑five thousand dollars for candidates running for Attorney General .

(C) A receipt for seed money contributions under twenty‑five dollars must only include the contributor’s signature, printed name, and address. A receipt for seed money contributions of twenty‑five dollars or more must include the contributor’s signature, printed name, street address and zip code, telephone number, occupation, and name of employer. A contribution may not be accepted if the required disclosure information is not received.

(D) Seed money must be spent only during the exploratory and qualifying periods. Seed money may not be spent during the primary, general, or run‑off election campaign periods.

(E) Within forty‑eight hours after the close of the qualifying period, a candidate seeking to become eligible for publicly financed funding shall:

(1) fully disclose all seed money contributions and expenditures to the commission using the electronic filing method required by this chapter; and

(2) turn over to the commission for deposit in the public financing fund any seed money he has raised during the exploratory period that exceeds the aggregate seed money limit.

Section 8‑16‑110. All broadcast and print advertisements placed by a participating candidate or his committees must include a clear written or spoken statement indicating that the candidate has approved of the contents of the advertisement.

Section 8‑16‑120. (A) No more than ten days after a candidate applies for publicly financed benefits, the commission shall certify that the candidate is or is not eligible. Eligibility is revoked if the candidate violates the requirements of this chapter, in which case all public financing funds must be repaid.

(B) The candidate’s request for certification must be signed by the candidate and his campaign treasurer under penalty of perjury.

(C) The commission’s determination is final except that it is subject to examination and audit by an outside agency and to a prompt judicial review.

Section 8‑16‑130. (A) A candidate who qualifies for publicly financed funding for primary and general elections shall receive:

(1) publicly financed funding from the commission for each election, the amount of which is specified in Section 8‑16‑150. This funding may be used to finance any and all campaign expenses during the particular campaign period for which it was allocated;

(2) additional publicly financed funding to match any excess expenditure amount spent by a nonparticipating candidate pursuant to Section 8‑16‑180(D); and

(3) additional publicly financed funding to match an independent expenditure made in opposition to his candidacy or in support of his opponents’ candidacies pursuant to Section 8‑16‑210, provided that the dollar value of the independent expenditure, combined with the amount raised or received thus far by an opposing candidate who benefits from the independent expenditure, exceeds the original publicly financed funding amount received by the participating candidate.

(B) The maximum aggregate amount of additional funding a participating candidate shall receive to match independent expenditures and excess expenditures of a nonparticipating candidate must be two hundred percent of the original amount of publicly financed funding allocated to a participating candidate for a particular primary, general, or run‑off election campaign period.

Section 8‑16‑140. (A) An eligible party candidate shall receive his publicly financed funding for the primary election campaign period on the date on which the commission certifies the candidate as a participating candidate. This certification must take place no later than ten days after the candidate has submitted the required number of qualifying contribution receipts, a check for the total amount of qualifying contributions collected, and a declaration stating that he has complied with all other requirements for eligibility as a participating candidate, but no earlier than the beginning of the primary election campaign period.

(B) An eligible party candidate shall receive his publicly financed funding for the general election campaign period within forty‑eight hours after certification of the primary election results. An eligible party candidate shall receive his publicly financed funding for a run‑off election campaign period within forty‑eight hours after certification of the general election results.

(C) An eligible independent candidate shall receive his publicly financed funding for the primary election campaign period on the date on which the commission certifies the candidate as a participating candidate. This certification must take place no later than five days after the candidate has submitted the required number of qualifying contribution receipts, a check for the total amount of qualifying contributions collected, and a declaration stating that he has complied with all other requirements for eligibility as a participating candidate, but no earlier than the beginning of the primary election campaign period.

(D) An eligible independent candidate shall receive his publicly financed funding for the general election campaign period within forty‑eight hours after certification of the primary election results. An eligible independent candidate shall receive his publicly financed funding for a run‑off election campaign period within forty‑eight hours after certification of the general election results.

Section 8‑16‑150. (A) The amount of publicly financed funding for an eligible party candidate in a contested primary election is forty percent of the average amount spent to win the respective seat in the past two general elections for candidates running for the office of Attorney General.

(B) The publicly financed funding amount for an eligible party candidate in an uncontested primary election is twenty‑five percent of the amount provided in a contested primary election.

(C) In a contested general election, if an eligible party candidate or all of the candidates of his party combined received at least twenty percent of the total number of votes cast for all candidates seeking that office in the just‑held primary election or in the previous general election, the candidate shall receive the full amount of publicly financed funding for the general election, which is sixty percent of the average amount spent to win the respective seat in the past two general elections for the Attorney General.

(D) In a contested general election, if an eligible party candidate or all of the candidates of his party combined received at least five percent but less than twenty percent of the total number of votes cast for all candidates seeking that office in the just‑held primary election or in the previous general election, the candidate shall receive a portion of the full amount of publicly financed funding based on the ratio that their vote percentage is to twenty percent. If an eligible party candidate or all of the candidates of his party combined received less than five percent of the total number of votes cast for all candidates seeking that office in the just‑held primary election or in the previous general election, the candidate shall receive no publicly financed funding.

(E) The publicly financed funding amount for an eligible party candidate in an uncontested general election is ten percent of the amount provided in a contested general election for the same office.

(F) The publicly financed funding amount for an eligible party candidate in a run‑off election is twenty‑five percent of the amount provided in the preceding primary or general election that resulted in the need for a run‑off election.

(G) The publicly financed funding amount for an eligible independent candidate in:

(1) a primary election is twenty‑five percent of the amount received by a party candidate in a contested primary election; and

(2) the general election is the same as the full amount received by a party candidate in the general election.

(H) After the first election cycle as provided by the South Carolina Judicial Independence Act, the commission shall modify all publicly financed funding amounts based on the rate of inflation as measured by increases in the Consumer Price Index.

Section 8‑16‑160. (A) The publicly financed funding received by a participating candidate must be used only for the purpose of defraying that candidate’s campaign‑related expenses during the particular election campaign period for which the publicly financed funding was allotted.

(B) Payments may not be used:

(1) in violation of the law; and

(2) to make any personal, family, or business expenditures or loans, or to repay any personal, family, or business loans or debts.

Section 8‑16‑170. (A) During an election cycle, each nonparticipating candidate shall conduct all campaign financial activities through a single campaign account.

(B) A nonparticipating candidate may maintain a campaign account other than the campaign account in subsection (A) if the other campaign account is for the purpose of retiring a campaign debt that was incurred during a previous election campaign in which the candidate was not a participating candidate.

(C) Contributions for the purposes of retiring a previous campaign debt that are deposited in the kind of ‘other campaign account’ described in subsection (B) are considered ‘contributions’ to the candidate’s current campaign.

Section 8‑16‑180. (A) If a nonparticipating candidate’s total expenditures or obligations to make expenditures exceed the amount of publicly financed funding allocated to his publicly financed opponent or opponents, he shall declare every excess expenditure amount which, in the aggregate, is more than one thousand dollars to the commission within forty‑eight hours.

(B) During the last twenty days before the end of the relevant campaign period, a nonparticipating candidate shall declare to the commission each excess expenditure amount over five hundred dollars within twenty‑four hours of when the expenditure is made or obligated to be made.

(C) The commission may make its own determination as to whether excess expenditures have been made by a nonparticipating candidate.

(D) Upon receiving an excess expenditure declaration or determining that an excess expenditure has been made, the commission immediately shall release additional publicly financed funding to the opposing participating candidates equal to the excess expenditure amount the nonparticipating candidate has spent or has obligated to spend, subject to the limit provided in Section 8‑16‑130.

Section 8‑16‑190. All broadcast and print advertisements placed by nonparticipating candidates or their committees must include a clear written or spoken statement indicating that the candidate has approved of the contents of the advertisement.

Section 8‑16‑200. (A) An expenditure that ‘advocates the election or defeat of a candidate’ includes all costs of designing, producing, or disseminating a communication that contains phrases such as ‘vote for’, ‘reelect’, ‘support’, ‘cast your ballot for’, ‘(name of candidate) for (name of office)’, ‘(name of candidate) in (year)’, ‘vote against’, ‘defeat’, ‘reject’, or contains campaign slogans or individual words that in context can have no reasonable meaning other than to recommend the election or defeat of one or more clearly identified candidates, such as posters, bumper stickers, advertisements that use a candidate’s name in a promotional manner, such as ‘Nixon’s the One’, ‘Carter ‘76’, ‘Reagan/Bush’, or ‘Mondale’.

(B) A cost incurred in designing, producing, or disseminating a communication is presumed to ‘advocate the election or defeat of a candidate’ if the communication names or depicts one or more clearly identified candidates, is disseminated during the forty‑five calendar days before a primary election or during the sixty calendar days before a general election, and the costs exceed one thousand dollars.

(C) In a proceeding to enforce compliance with requirements pertaining to expenditures, an individual or entity presumed to have made an expenditure advocating the election or defeat of a candidate pursuant to the provisions of subsection (B) shall have an opportunity to rebut the presumption, and the commission bears the burden of proof.

(D) An individual or entity intending to disseminate a communication during the forty‑five calendar days before a primary election or during the sixty calendar days before a general election that names or depicts one or more clearly identified candidates and costs in excess of one thousand dollars may submit the communication to the commission in advance of its dissemination, with a request for an advisory opinion as to whether the commission is likely to consider the communication an independent expenditure. The commission shall issue the advisory opinion within three days of receiving the request.

Section 8‑16‑210. (A) Subject to the exception in subsection (C), a person who makes or obligates to make an independent expenditure during a primary, general, or run‑off election campaign period which, in the aggregate, exceeds one thousand dollars shall report each expenditure within seven days to the commission.

(B) The report to the commission must include a signed statement by the person making the independent expenditure identifying the candidate or candidates whom the independent expenditure is intended to help elect or defeat and affirming that the expenditure is totally independent and involves no cooperation or coordination with a candidate or a political party.

(1) An individual or organization may file a complaint with the commission if he or the organization believes that the statement is false. The commission shall make a prompt determination about the complaint.

(2) An individual or organization that fails to file the required report to the commission or provides materially false information in that report may be fined up to three times the amount of the independent expenditure. The criminal penalties contained in Section 8‑16‑310 do not apply to any violations of this section.

(C) A person who makes or obligates to make an independent expenditure during the last twenty days before the end of the relevant campaign period which, in the aggregate, exceeds five hundred dollars shall report each expenditure within twenty‑four hours to the commission.

(D) Upon receiving a report that an independent expenditure has been made or obligated to be made, the commission immediately shall release additional publicly financed funding, equal in amount to the cost of the independent expenditure, to all participating candidates whom the independent expenditure is intended to oppose or defeat, as provided in subsections (B) and (C).

(1) The dollar value of the independent expenditure, combined with the amount raised or received thus far by an opposing candidate who benefits from the independent expenditure, exceeds the original publicly financed funding amount received by the participating candidate.

(2) The maximum aggregate amount of additional funding a participating candidate shall receive to match independent expenditures and the excess expenditures of a nonparticipating candidate is no more than two hundred percent of the participating candidate’s initial publicly financed funding allocation for the relevant office.

Section 8‑16‑220. (A) A special, dedicated, nonlapsing, public financing fund is established by the General Assembly for the purpose of:

(1) providing public financing for the election campaign of a certified participating candidate during primary, general, and run‑off campaign periods; and

(2) paying for the administrative and enforcement costs of the commission related to this chapter.

Section 8‑16‑230. (A) The General Assembly shall appropriate funds that, when added to the revenue outlined in subsection (B) are sufficient to fully carry out the provisions of this chapter. These appropriated funds must be deposited in the public financing fund as maintained by the State Ethics Commission.

(B) Other sources of revenue to be deposited in the fund must include:

(1) the qualifying contributions required of a candidate seeking to become certified as a participating candidate according to the provisions of Section 8‑16‑20 and the candidate’s excess qualifying contributions;

(2) the excess seed money contributions of a candidate seeking to become certified as a participating candidate, as defined in Section 8‑16‑100;

(3) unspent funds distributed to a participating candidate who does not remain a candidate until the primary, general, or run‑off election for which they were distributed, or those funds that remain unspent by a participating candidate following the date of the primary, general, or run‑off election for which they were distributed;

(4) fines levied by the commission against candidates for violation of election laws;

(5) voluntary donations made directly to the public financing fund;

(6) funds appropriated by the General Assembly;

(7) any interest generated by the fund; and

(8) any other sources of revenue determined as necessary by the General Assembly.

Section 8‑16‑240. (A) Upon determination that a candidate has met all the requirements for becoming a participating candidate as provided for in this chapter, the commission shall issue to the candidate a card, known as the ‘publicly financed debit card’, and a ‘line of debit’ entitling the candidates and members of the candidate’s staff to draw public financing funds from a commission account to pay for all campaign costs and expenses up to the amount of publicly financed funding the candidate has received.

(B) Neither a participating candidate nor another person on behalf of a participating candidate shall pay campaign costs by cash, check, money order, loan, or by any other financial means besides the publicly financed debit card.

(C) Cash amounts of one hundred dollars or less for each day may be drawn on the publicly financed debit card and used to pay expenses of no more than twenty‑five dollars each. Records of all these expenditures must be maintained and reported to the commission.

Section 8‑16‑250. (A) A participating candidate may accept monetary or in‑kind contributions from political parties provided that the aggregate amount of the contributions from all political party committees combined does not exceed the equivalent of five percent of the original publicly financed financing allotment for that office for that election.

(B) An expenditure by a political party that is made to or on behalf of the party’s candidates during primary, general, and run‑off campaign periods must be reported to the commission by the party committee making the expenditure.

(C) Nothing in this chapter prevents political party funds from being used for:

(1) general operating expenses of the party;

(2) conventions;

(3) nominating and endorsing candidates;

(4) identifying, researching, and developing the party’s positions on issues;

(5) party platform activities;

(6) noncandidate‑specific voter registration;

(7) noncandidate‑specific get‑out‑the‑vote drives;

(8) travel expenses for noncandidate party leaders and staff; and

(9) other noncandidate‑specific party building activities.

Section 8‑16‑260. (A) After each primary, general, and run‑off election, the commission may conduct random audits and investigations to ensure compliance with this chapter.

(B) The subjects of audits and investigations must be selected on the basis of impartial criteria established by a vote of at least a majority of the commission.

(C) The commission may investigate anonymous complaints. A complainant may receive ‘whistle blower’ protection.

(D) The commission has the authority to seek injunctions if:

(1) there is a substantial likelihood that a violation of this chapter is occurring or is about to occur;

(2) the failure to act expeditiously results in irreparable harm to a party affected by the potential violation;

(3) expeditious action may not cause undue harm or prejudice to the interests of others; and

(4) the public interest is best served by the issuance of an injunction.

(E) The commission may levy fines for violations of this chapter. Fines paid must be deposited in the public financing fund.

(F) The commission shall refer criminal violations to the appropriate Judicial District Solicitor for prosecution.

(G) The commission shall meet as often as is necessary, including daily, if necessary, during the final twenty days before an election, in order to resolve outstanding issues relating to the issuance of additional funding to a participating candidate and any other matters that may affect the outcome of an election.

Section 8‑16‑270. (A) A citizen who believes a candidate has violated the law may pursue a civil action in a court of relevant jurisdiction, provided that:

(1) he previously has filed a complaint regarding the same alleged violation with the Ethics Commission; and

(2) the Ethics Commission has failed to make a determination within thirty days of the filing of the complaint.

(B) A party that wins a civil action charging a violation of this chapter is entitled to receive reasonable attorney’s fees and court costs from the defendant party or parties.

(C) If a court in which a civil action has been filed pursuant to the provisions of subsection (A) finds that the complaint in that action was made frivolously or without cause, the court may require the complainant to pay the costs of the Ethics Commission, the court, and the defendant parties.

(D) Ethics Commission actions may be reviewed by the state court that has appropriate jurisdiction. A petition for review must be filed within sixty days after the Ethics Commission action.

Section 8‑16‑280. The Ethics Commission shall report to the General Assembly after each election cycle. The report must include a detailed summary of all seed money contributions, qualifying contributions and benefits received, and expenditures made by all participating candidates. The report also must include a summary and evaluation of the commission’s activities and recommendations relating to the implementation, administration, and enforcement of this chapter.

Section 8‑16‑290. Consistent with the provisions of this chapter and other applicable law, the Ethics Commission may adopt, amend, and rescind regulations and procedures necessary to carry out the purposes and provisions of this chapter.

Section 8‑16‑300. (A) If a participating candidate spends or obligates to spend more than the publicly financed funding the candidate is given, and if it is determined not to be an amount that had or could have been expected to have a significant impact on the outcome of the election, then the candidate shall repay to the public financing fund an amount equal to the excess.

(B) If a participating candidate spends or obligates to spend more than the publicly financed funding the candidate is given, and if it is determined to be an amount that had or could have been expected to have a significant impact on the outcome of the election, then the candidate shall repay to the public financing fund an amount equal to ten times the value of the excess.

Section 8‑16‑310. (A) It is a violation of this chapter for a candidate to knowingly accept more benefits than those to which he is entitled, spend more than the amount of publicly financed funding he has received, or misuse these benefits or publicly financed funding if it is determined that the violation was:

(1) intentional and involved an amount that had or could have been expected to have a significant impact on the outcome of the election, the candidate may be fined up to twenty‑five thousand dollars or imprisoned for up to five years, or both; and

(2) intentional and involved an amount that had or could have been expected to have a significant impact on the outcome of the election, and if, in the judgment of the commission, the violation is believed to have contributed to the violator winning the election, the commission may nullify the election and a new election must be called.

(B) It is a violation to knowingly provide false information to the Ethics Commission, and to conceal or withhold information from the commission. The penalty is a fine of up to five thousand dollars for each violation or imprisonment for five years, or both.”

SECTION 4. If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, or word of this act is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the remaining portions of this act, the General Assembly hereby declaring that it would have passed this act, and each and every section, subsection, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

SECTION 5. This act takes effect upon approval by the Governor and is effective upon ratification of an amendment adding Section 13 to Article II of the Constitution of this State authorizing the General Assembly to establish a procedure by which candidates for elective office may use public monies to fund their campaigns.

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