

1                                   **Senate Bill No. 66**

2                                   (By Senator Barnes)

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4    [Introduced January 11, 2012; referred to the Committee on the  
5                    Judiciary; and then to the Committee on Finance.]

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10 A BILL to amend and reenact §3-8-12 of the Code of West Virginia,  
11        1931, as amended, relating to limitation of distributing,  
12        handing out or otherwise dispensing public moneys by elected  
13        officials within ninety days of elections.

14 *Be it enacted by the Legislature of West Virginia:*

15        That §3-8-12 of the Code of West Virginia, 1931, as amended,  
16 be amended and reenacted to read as follows:

17 **ARTICLE 8. REGULATION AND CONTROL OF ELECTIONS.**

18 **§3-8-12. Additional acts forbidden; circulation of written matter;**  
19                   **newspaper advertising; solicitation of contributions;**  
20                   **intimidation and coercion of employees; promise of**  
21                   **employment or other benefits; limitations on**  
22                   **contributions; public contractors; penalty.**

1           (a) A person may not publish, issue or circulate, or cause to  
2 be published, issued or circulated, ~~any~~ an anonymous letter,  
3 circular, placard, radio or television advertisement or other  
4 publication supporting or aiding the election or defeat of a  
5 clearly identified candidate.

6           (b) An owner, publisher, editor or employee of a newspaper or  
7 other periodical may not insert, either in its advertising or  
8 reading columns, any matter, paid for or to be paid for, which  
9 tends to influence the voting at ~~any~~ an election, unless directly  
10 designating it as a paid advertisement and stating the name of the  
11 person authorizing its publication and the candidate in whose  
12 behalf it is published.

13           (c) A person may not, in ~~any~~ a room or building occupied for  
14 the discharge of official duties by ~~any~~ an officer or employee of  
15 the state or a political subdivision of the state, solicit orally  
16 or by written communication delivered within the room or building,  
17 or in any other manner, ~~any~~ a contribution of money or other thing  
18 of value for ~~any~~ a party or political purpose, from ~~any~~ a  
19 postmaster or ~~any~~ an other officer or employee of the federal  
20 government, or officer or employee of the state, or a political  
21 subdivision of the state. An officer, agent, clerk or employee of  
22 the federal government, or of this state, or ~~any~~ a political  
23 subdivision of the state, who may have charge or control of ~~any~~ a

1 building, office or room, occupied for ~~any~~ an official purpose, may  
2 not knowingly permit ~~any~~ a person to enter ~~any~~ a building, office  
3 or room, occupied for ~~any~~ an official purpose for the purpose of  
4 soliciting or receiving ~~any~~ a political assessments from, or  
5 delivering or giving written solicitations for, or ~~any~~ a notice of,  
6 ~~any~~ political assessments to, ~~any~~ an officer or employee of the  
7 state, or a political subdivision of the state.

8 (d) Except as provided in section eight of this article, a  
9 person or firm entering into ~~any~~ a contract with the state or its  
10 subdivisions, or ~~any department or agency of the state, either~~  
11 departments or agencies for rendition of personal services or  
12 furnishing ~~any~~ material, supplies or equipment or selling any land  
13 or building to ~~the state, or its subdivisions, or any department or~~  
14 ~~agency of the state, if payment for the performance of the contract~~  
15 ~~or payment for the material, supplies, equipment, land or building~~  
16 ~~is to be made, in whole or in part, from public funds may not,~~  
17 ~~during the period of negotiation for or performance under the~~  
18 ~~contract or furnishing of materials, supplies, equipment, land or~~  
19 ~~buildings, may, during the period of negotiations,~~ directly or  
20 indirectly, make ~~any~~ a contribution to ~~any~~ a political party,  
21 committee or candidate for public office or to ~~any~~ a person for  
22 political ~~purposes or use; nor may any person or firm~~ purpose or  
23 solicit any contributions for any purpose during any period if

1 payment for the performance of the contract or for the material,  
2 supplies, equipment, land or buildings is made or is to be made, in  
3 whole or part, from public funds.

4 (e) A person may not, directly or indirectly, promise ~~any~~  
5 employment, position, work, compensation or other benefit provided  
6 for, or made possible, in whole or in part, by act of the  
7 Legislature, ~~to any person~~ as consideration, favor or reward for  
8 ~~any~~ political activity ~~for the~~ in support of or opposition to ~~any~~  
9 a candidate, or ~~any~~ a political party in ~~any~~ an election.

10 (f) Except as provided in section eight of this article, a  
11 person may not, directly or indirectly, make ~~any~~ a contribution in  
12 excess of the value of \$1,000 in connection with ~~any~~ a campaign for  
13 nomination or election to or on behalf of any statewide office, in  
14 connection with ~~any other~~ a campaign for nomination or election to  
15 or on behalf of any other elective office in the state or ~~any of~~  
16 its subdivisions, or in connection with or on behalf of ~~any~~ a  
17 person engaged in furthering, advancing, supporting or aiding the  
18 nomination or election of ~~any~~ a candidate for any of the offices.

19 (g) A political organization (as defined in Section 527(e)(1)  
20 of the Internal Revenue Code of 1986) may not solicit or accept  
21 contributions until it has notified the Secretary of State of its  
22 existence and of the purposes for which it was formed. During the  
23 two-year election cycle, a political organization (as defined in

1 Section 527(e)(1) of the Internal Revenue Code of 1986) may not  
2 accept contributions totaling more than \$1,000 from any one person  
3 prior to the primary election and contributions totaling more than  
4 \$1,000 from any one person after the primary and before the general  
5 election.

6 (h) It is unlawful for any person to create, establish or  
7 organize more than one political organization (as defined in  
8 Section 527(e)(1) of the Internal Revenue Code of 1986) with the  
9 intent to avoid or evade the contribution limitations contained in  
10 subsection (g) of this section.

11 (I) Notwithstanding the provisions of subsection (f) of this  
12 section to the contrary, a person may not, directly or indirectly,  
13 make contributions to a state party executive committee or state  
14 party legislative caucus committee which, in the aggregate, exceed  
15 the value of \$1,000 in any calendar year.

16 (j) The limitations on contributions contained in this section  
17 do not apply to transfers between and among a state party executive  
18 committee or a state party's legislative caucus political committee  
19 from national committees of the same political party. ~~Provided,~~  
20 ~~That transfers~~ Transfers permitted by this subsection may not  
21 exceed \$50,000 in the aggregate in any calendar year to ~~any~~ a state  
22 party executive committee or state party legislative caucus  
23 political committee ~~Provided, however, That the moneys transferred~~

1 and may only be used for voter registration and get-out-the-vote  
2 activities of the state committees.

3 (k) A person may not solicit ~~any contribution~~ contributions,  
4 other than contributions to a campaign for or against a county or  
5 local government ballot issue, from ~~any a~~ nonelective salaried  
6 employee of the state government or ~~of any of~~ its subdivisions:  
7 *Provided*, That in no event may any person acting in a supervisory  
8 role solicit a person who is a subordinate employee for ~~any a~~  
9 contribution. A person may not coerce or intimidate ~~any a~~  
10 nonelective salaried employee into making a contribution. A person  
11 may not coerce or intimidate ~~any a~~ nonsalaried employee of the  
12 state government or ~~any of~~ its subdivisions into engaging in ~~any a~~  
13 form of political activity. ~~The provisions of this subsection may~~  
14 ~~not be construed to~~ This subsection does not prevent ~~any an~~  
15 employee from making a contribution or from engaging in political  
16 activity voluntarily without coercion, intimidation or  
17 solicitation.

18 (l) A person may not solicit a contribution from ~~any other a~~  
19 person without informing the other person at the time of the  
20 solicitation of the amount of ~~any~~ commission, remuneration or other  
21 compensation that the solicitor or ~~any~~ other person will receive or  
22 expect to receive as a direct result of the contribution being  
23 successfully collected. ~~Nothing in this subsection may be~~

1 ~~construed to~~ This subsection does not apply to solicitations of  
2 contributions made by ~~any~~ a person serving as an unpaid volunteer.

3 (m) A person may not place ~~any~~ a letter, circular, flyer,  
4 advertisement, election paraphernalia, solicitation material or  
5 other printed or published item tending to influence voting at ~~any~~  
6 an election in a roadside receptacle unless it is: (1) Approved  
7 for placement into a roadside receptacle by the business or entity  
8 owning the receptacle; and (2) contains a written acknowledgment of  
9 the approval. This subdivision does not apply to ~~any~~ printed  
10 material ~~contained~~ in a newspaper or periodical published or  
11 distributed by the owner of the receptacle. The term "roadside  
12 receptacle" means ~~any~~ a container placed by a newspaper or  
13 periodical business or entity to facilitate home or personal  
14 delivery of a designated newspaper or periodical to its customers.

15 (n) No elected official or individual acting on behalf of an  
16 elected official may personally distribute, handout or otherwise  
17 dispense publicly any state or federal public moneys and  
18 appropriation grants, including state grants and economic  
19 development funds, to an individual, corporation, organization or  
20 entity within ninety days of an election in which the elected  
21 official is a candidate.

22 ~~(n) Any~~ (o) A person violating ~~any provision~~ of this section  
23 is guilty of a misdemeanor and, upon conviction thereof, shall be

1 fined not more than \$1,000, or confined in jail for not more than  
2 one year, or, both fined and confined.

3 ~~(o)~~ (p) The provisions of subsection (p) Subsection (k) of this  
4 section, permitting contributions to a campaign for or against a  
5 county or local government ballot issue, shall become operable on  
6 and after January 1, 2005.

7 ~~(p)~~ (q) The limitations on contributions established by  
8 subsection (g) of this section do not apply to contributions made  
9 for the purpose of supporting or opposing a ballot issue, including  
10 a Constitutional amendment.

NOTE: The purpose of this bill is to prohibit distribution, handing out or otherwise dispensing of public moneys by elected officials within ninety days of elections. The bill also makes stylistic changes.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.