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**SUBSTITUTE SENATE BILL 5226**

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**State of Washington**

**60th Legislature**

**2007 Regular Session**

**By** Senate Committee on Government Operations & Elections (originally sponsored by Senators Oemig, Fairley, Rockefeller, Kohl-Welles and Kline; by request of Governor Gregoire)

READ FIRST TIME 02/05/07.

1       AN ACT Relating to funding of judicial election campaign expenses;  
2 amending RCW 42.52.180, 42.17.020, 42.17.128, 42.17.130, and 42.17.640;  
3 adding new sections to chapter 42.17 RCW; creating new sections;  
4 prescribing penalties; and providing an expiration date.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6       NEW SECTION. **Sec. 1.** INTENT. This act, the judicial independence  
7 act, introduces a voluntary pilot campaign funding system for appellate  
8 judicial positions that is intended to reduce the impact of special  
9 interests in judicial campaigns.

10       NEW SECTION. **Sec. 2.** This act may be known and cited as the  
11 judicial independence act.

12       NEW SECTION. **Sec. 3.** EXPLORATORY FUNDS. (1) A potential  
13 candidate for the supreme court or the court of appeals who is  
14 interested in participating in the judicial independence act program  
15 and receiving public financing for his or her election campaign may  
16 raise exploratory funds during the exploratory period beginning one

1 hundred twenty days before the date when filing for the office is first  
2 permitted and ending at the close of the regular filing period for the  
3 office.

4 (2) Exploratory fund contributions may not exceed one hundred  
5 dollars per donor.

6 (3) The total amount of exploratory funds is limited to twenty  
7 thousand dollars for candidates for the supreme court and ten thousand  
8 dollars for candidates for the court of appeals.

9 (4) A candidate interested in participating in the judicial  
10 independence act program and receiving public financing for his or her  
11 election campaign may only accept exploratory funds from individuals.  
12 A candidate may not accept any funds from political committees, unions,  
13 corporations, business entities, or other organizations during the  
14 period that exploratory funds are being raised.

15 (5) A candidate may contribute up to five thousand dollars in  
16 exploratory funds from his or her personal funds, and immediate family  
17 members may contribute up to an aggregate total of five thousand  
18 dollars in exploratory funds without violating this section.

19 (6) The commission shall adopt rules concerning reporting and  
20 auditing of contributions under this section.

21 NEW SECTION. **Sec. 4.** QUALIFYING CONTRIBUTIONS. (1) In order to  
22 qualify for participation in the judicial independence act program  
23 candidates must raise qualifying contributions in the following  
24 amounts:

25 (a) For candidates for the supreme court: At least ten thousand  
26 dollars and not more than fifty thousand dollars;

27 (b) For candidates for the court of appeals: At least two thousand  
28 dollars and not more than ten thousand dollars.

29 (2) A qualifying contribution must:

30 (a) Be in an amount of at least ten dollars and not more than one  
31 hundred dollars;

32 (b) Be from an individual registered to vote in the state of  
33 Washington. No qualifying contributions may be from political  
34 committees, unions, corporations, business entities, or other  
35 organizations;

36 (c) Be identified as a qualifying contribution;

1 (d) Be in the form of a check or paid with a credit or debit card  
2 that matches the name and address of the registered voter who is  
3 contributing to the candidate.

4 (3) For candidates for the supreme court, qualifying contributions  
5 must come from at least five hundred contributors, and for candidates  
6 for the court of appeals, qualifying contributions must come from at  
7 least one hundred contributors.

8 (4) The commission shall determine whether or not sufficient  
9 qualifying contributions have been received to qualify for  
10 participation in the judicial independence act program.

11 (5) Potential candidates must raise qualifying contributions in the  
12 period beginning one hundred twenty days before the date when filing  
13 for the office is first permitted and ending sixty days prior to the  
14 primary election.

15 (6) The commission shall adopt rules concerning reporting and  
16 auditing of contributions under this section.

17 NEW SECTION. **Sec. 5.** JUDICIAL INDEPENDENCE ACT PLEDGE. (1) A  
18 participating candidate may choose to sign the judicial independence  
19 act pledge.

20 (2) The judicial independence act pledge reads as follows:

21 "I (name of participating candidate) agree to:

22 1. Identify in all campaign communications that I am a judicial  
23 independence act candidate;

24 2. Not use judicial independence act funds for disparaging or  
25 disrespectful communications;

26 3. Publicly request that no independent expenditures be made  
27 favoring my campaign or opposing any other candidates in the race;

28 4. Participate in at least one public judicial forum; and

29 5. If I withdraw from the program, identify in all campaign  
30 communications that I have so withdrawn."

31 (3) Signing the judicial independence act is voluntary. Not  
32 signing the pledge will in no way impact a candidate's eligibility to  
33 participate in the program.

34 (4) Nothing in this section prevents a nonparticipating candidate  
35 from agreeing to abide by the judicial independence act pledge.

1           NEW SECTION.   **Sec. 6.**   PARTICIPATION IN THE JUDICIAL INDEPENDENCE

2   ACT.   (1) The commission shall determine whether or not a candidate is  
3   qualified to participate in the judicial independence act program and  
4   receive public financing for his or her election campaign.

5           (2) In order for a candidate to qualify to participate in the  
6   judicial independence act program and receive public financing for his  
7   or her election campaign, the commission must determine that the  
8   candidate received only exploratory funds under section 3 of this act  
9   and qualifying contributions under section 4 of this act, and did not  
10   receive any other contributions.

11           (3) Once a candidate has qualified to participate in the judicial  
12   independence act program, that candidate may not raise or receive any  
13   additional funds, other than funds authorized by this act.

14           NEW SECTION.   **Sec. 7.**   PUBLIC FINANCING.   (1)(a) Participating

15   supreme court candidates in a contested primary shall receive a primary  
16   disbursement of sixty times the candidate filing fee.

17           (b) Participating court of appeals candidates do not receive a  
18   primary disbursement, except that a participating court of appeals  
19   candidate in a contested primary or general election with only two  
20   candidates in the primary shall receive a primary disbursement of eight  
21   times the candidate filing fee.

22           (2)(a) Participating supreme court candidates in a contested  
23   general election shall receive a general election disbursement of sixty  
24   times the candidate filing fee.

25           (b) Participating court of appeals candidates in a contested  
26   general election shall receive a general election disbursement of eight  
27   times the candidate filing fee.

28           (3)(a) Participating candidates in contested elections may be  
29   eligible for matching funds.

30           (b) In a contested primary, if the opponent of a participating  
31   candidate expends in excess of the participating candidate's maximum  
32   allowable expenditures, the participating candidate is eligible for  
33   matching funds in the amount of that excess expenditure.

34           (c) In a contested general election, if the opponent of a  
35   participating candidate expends in excess of the participating  
36   candidate's maximum allowable expenditures, the participating candidate

1 is eligible for matching funds in the amount of that excess  
2 expenditure.

3 (d) A participating candidate's maximum allowable expenditures are  
4 the sum of the maximum the candidate is authorized to raise in  
5 exploratory and qualifying contributions, plus any public funds for  
6 which the candidate is eligible.

7 (4) The total available for matching funds for the primary and  
8 general election is as follows:

9 (a) Supreme court: Four hundred eighty times the candidate filing  
10 fee; and

11 (b) Court of appeals: Forty times the candidate filing fee.

12 (5) Participating candidates may determine when to access available  
13 matching fees, either for the primary or the general election. If a  
14 participating candidate is eligible for matching funds in a contested  
15 primary, chooses not to use them, and then moves forward to an  
16 uncontested general election, that candidate can no longer access those  
17 matching funds.

18 (6) Independent expenditures or electioneering communications that  
19 support an opponent to a participating candidate or oppose a  
20 participating candidate may be counted as expenditures by the opponent  
21 for the purpose of determining whether a participant is eligible for  
22 matching funds. The commission shall review independent expenditures  
23 or electioneering communications at the request of the participating  
24 candidate to determine if matching funds should be released.

25 (7)(a) In addition to reporting as otherwise required by this  
26 chapter or Title 390 WAC, a nonparticipating candidate who has a  
27 publicly financed opponent shall report total expenditures to the  
28 commission electronically within twenty-four hours of the date his or  
29 her total amount of expenditures first exceeds eighty percent of the  
30 maximum amount permitted for publicly financed candidates under  
31 sections 3 and 4 of this act and subsection (1) or (2) of this section.  
32 Thereafter, a nonparticipating candidate shall report total  
33 expenditures to the commission electronically within twenty-four hours  
34 of the date his or her expenditures equal five thousand dollars or more  
35 since the initial or previous report of total expenditures was filed.

36 (b) For purposes of calculating matching funds under this act,  
37 independent expenditures or electioneering communications with a fair  
38 market value of one thousand dollars or more that support a candidate

1 or oppose a participating candidate must be reported by the sponsor or  
2 person making the expenditure. This report must be filed with the  
3 commission electronically within twenty-four hours of the date the  
4 advertising or activity is first ordered. All other reporting  
5 provisions for independent expenditures and electioneering  
6 communications in this chapter are applicable.

7 (c) The commission may adopt rules implementing the provisions of  
8 this section, including rules that determine whether filing under this  
9 section satisfies the filing requirements under other provisions of  
10 this chapter.

11 NEW SECTION. **Sec. 8.** PENALTIES. (1) A participating candidate  
12 who receives contributions or makes expenditures outside of the  
13 limitations of the judicial independence act program, or uses  
14 exploratory funds, qualifying contributions, or any funds disbursed  
15 under the program for expenditures not directly related to the  
16 candidate's campaign, may be subject to a civil penalty of no more than  
17 twenty thousand dollars for each violation.

18 (2) Any person who or entity that violates any reporting  
19 requirements listed in this section resulting in the delay of  
20 distribution of matching funds may be subject to a civil penalty of no  
21 more than one hundred thousand dollars for each violation.

22 (3) All civil penalties collected under this section shall be  
23 deposited in the judicial independence act account.

24 NEW SECTION. **Sec. 9.** PUBLIC DISCLOSURE COMMISSION. (1) The  
25 public disclosure commission shall administer the program under  
26 sections 3 through 13 of this act. Participating candidates shall  
27 report all contributions and expenditures according to rules set by the  
28 commission.

29 (2) The commission shall administer an administrative appeals  
30 process for all candidates who disagree with determinations on  
31 qualifying contributions, matching funds disbursements, or civil  
32 penalties levied. The commission shall determine whether a candidate  
33 certifies as a participating candidate no more than seven calendar days  
34 after a candidate requests certification.

35 (3) The commission shall authorize the disbursement of funds to  
36 candidates within three calendar days after certifying a candidate as

1 a participating candidate, for primary disbursements, and within three  
2 calendar days after a primary election for those participating  
3 candidates who advance to a contested general election. The commission  
4 shall authorize the disbursement of matching funds no later than five  
5 calendar days after a candidate is deemed eligible to receive matching  
6 funds and requests disbursement.

7 NEW SECTION. **Sec. 10.** EXPEDITED ADMINISTRATIVE REVIEW. (1) The  
8 commission shall develop an expedited administrative review process  
9 that is not subject to the adjudicative proceedings of chapter 34.05  
10 RCW. However, commission findings are subject to judicial review under  
11 RCW 34.05.570 (4).

12 (2) The following individuals may seek expedited administrative  
13 review of commission decisions:

14 (a) Candidates and potential candidates whom the commission finds  
15 ineligible to participate in the program;

16 (b) Participating candidates who are denied matching funds;

17 (c) Opponents of a participating candidate who disagree with a  
18 decision by the commission to grant matching funds to a participating  
19 candidate.

20 (3) In an expedited administrative review process, the commission  
21 shall issue a final decision in no more than five calendar days after  
22 review is requested.

23 (4) The commission may develop rules to implement this section,  
24 including rules to allow the commission to meet telephonically for the  
25 limited purpose of completing the expedited review.

26 (5) Any petition for judicial review of a final decision in an  
27 expedited administrative review must be filed within five calendar days  
28 of the final decision. In any judicial review, the court shall not  
29 grant a stay or temporary relief unless it finds the conditions  
30 specified in RCW 34.05.550(3)(a), (b), and (c).

31 NEW SECTION. **Sec. 11.** USES OF PUBLIC FUNDS. Exploratory funds,  
32 qualifying contributions, and any disbursements under the judicial  
33 independence act program to a participating candidate may only be used  
34 for purposes directly related to a candidate's campaign. Such moneys  
35 may not be used to pay fines or civil penalties, for costs or legal

1 fees related to representation before the commission, or for defense of  
2 an enforcement action under this chapter or for any purpose not  
3 directly related to the campaign.

4 NEW SECTION. **Sec. 12.** RETURN OF FUNDS. (1) If a candidate  
5 attempts to qualify for the program but does not meet the threshold for  
6 qualification, the candidate must return all qualifying contributions  
7 to the individual donors within thirty calendar days of receiving  
8 notice of nonqualification.

9 (2) If a candidate qualifies for the program but later withdraws  
10 from the program, or if the candidate is found to be ineligible by the  
11 commission after qualification, the candidate must return all  
12 qualifying contributions to the individual donors within seven calendar  
13 days of withdrawal or ineligibility, and must repay all publicly  
14 disbursed funds to the judicial independence act account within 7  
15 calendar days of withdrawal or ineligibility.

16 (3) Participating candidates must return all unused funds to the  
17 judicial independence act account within thirty calendar days after the  
18 general election.

19 NEW SECTION. **Sec. 13.** JUDICIAL INDEPENDENCE ACT ACCOUNT. (1) The  
20 judicial independence act account is created in the state treasury.  
21 All receipts required to be deposited into the account under this act  
22 must be deposited into the account. Expenditures from the account may  
23 be used only for funds authorized to be disbursed by the commission  
24 under this section and sections 3 through 12 of this act and which are  
25 disbursed by the state treasurer under this section and sections 3  
26 through 12 of this act. The account is subject to the allotment  
27 procedures under chapter 43.88 RCW, but an appropriation is not  
28 required for expenditures.

29 (2)(a) In the event a participating candidate receives the maximum  
30 amount of matching funds under this section and sections 3 through 12  
31 of this act, and the amount spent by and on behalf of the participating  
32 candidate is less than the amounts spent: (i) By a nonparticipating  
33 candidate; (ii) in support of an opposing candidate; and (iii) in  
34 opposition to the participating candidate, such participating  
35 candidates may receive additional excess funds in the judicial  
36 independence act account if funds are available. To determine whether



1 a participating candidate may receive matching funds including  
2 additional excess funds, the commission shall not consider funds spent  
3 by participating candidates.

4 (b) In the event a participating candidate receives the maximum  
5 amount of matching funds under this section and sections 3 through 12  
6 of this act, and the funds from the judicial independence act account  
7 have been fully distributed, the contribution limitations contained in  
8 this section and sections 3 through 12 of this act no longer apply.

9 **Sec. 14.** RCW 42.52.180 and 1995 c 397 s 30 are each amended to  
10 read as follows:

11 (1) No state officer or state employee may use or authorize the use  
12 of facilities of an agency, directly or indirectly, for the purpose of  
13 assisting a campaign for election of a person to an office or for the  
14 promotion of or opposition to a ballot proposition. Knowing  
15 acquiescence by a person with authority to direct, control, or  
16 influence the actions of the state officer or state employee using  
17 public resources in violation of this section constitutes a violation  
18 of this section. Facilities of an agency include, but are not limited  
19 to, use of stationery, postage, machines, and equipment, use of state  
20 employees of the agency during working hours, vehicles, office space,  
21 publications of the agency, and clientele lists of persons served by  
22 the agency.

23 (2) This section shall not apply to the following activities:

24 (a) Action taken at an open public meeting by members of an elected  
25 legislative body to express a collective decision, or to actually vote  
26 upon a motion, proposal, resolution, order, or ordinance, or to support  
27 or oppose a ballot proposition as long as (i) required notice of the  
28 meeting includes the title and number of the ballot proposition, and  
29 (ii) members of the legislative body or members of the public are  
30 afforded an approximately equal opportunity for the expression of an  
31 opposing view;

32 (b) A statement by an elected official in support of or in  
33 opposition to any ballot proposition at an open press conference or in  
34 response to a specific inquiry. For the purposes of this subsection,  
35 it is not a violation of this section for an elected official to  
36 respond to an inquiry regarding a ballot proposition, to make  
37 incidental remarks concerning a ballot proposition in an official

1 communication, or otherwise comment on a ballot proposition without an  
2 actual, measurable expenditure of public funds. The ethics boards  
3 shall adopt by rule a definition of measurable expenditure;

4 (c) Activities that are part of the normal and regular conduct of  
5 the office or agency; (~~and~~)

6 (d) De minimis use of public facilities by statewide elected  
7 officials and legislators incidental to the preparation or delivery of  
8 permissible communications, including written and verbal communications  
9 initiated by them of their views on ballot propositions that  
10 foreseeably may affect a matter that falls within their constitutional  
11 or statutory responsibilities; and

12 (e) Activities that are undertaken by a public agency in  
13 implementation of sections 3 through 13 of this act.

14 (3) As to state officers and employees, this section operates to  
15 the exclusion of RCW 42.17.130.

16 **Sec. 15.** RCW 42.17.020 and 2005 c 445 s 6 are each amended to read  
17 as follows:

18 The definitions in this section apply throughout this chapter  
19 unless the context clearly requires otherwise.

20 (1) "Actual malice" means to act with knowledge of falsity or with  
21 reckless disregard as to truth or falsity.

22 (2) "Agency" includes all state agencies and all local agencies.  
23 "State agency" includes every state office, department, division,  
24 bureau, board, commission, or other state agency. "Local agency"  
25 includes every county, city, town, municipal corporation, quasi-  
26 municipal corporation, or special purpose district, or any office,  
27 department, division, bureau, board, commission, or agency thereof, or  
28 other local public agency.

29 (3) "Authorized committee" means the political committee authorized  
30 by a candidate, or by the public official against whom recall charges  
31 have been filed, to accept contributions or make expenditures on behalf  
32 of the candidate or public official.

33 (4) "Ballot proposition" means any "measure" as defined by RCW  
34 29A.04.091, or any initiative, recall, or referendum proposition  
35 proposed to be submitted to the voters of the state or any municipal  
36 corporation, political subdivision, or other voting constituency from

1 and after the time when the proposition has been initially filed with  
2 the appropriate election officer of that constituency prior to its  
3 circulation for signatures.

4 (5) "Benefit" means a commercial, proprietary, financial, economic,  
5 or monetary advantage, or the avoidance of a commercial, proprietary,  
6 financial, economic, or monetary disadvantage.

7 (6) "Bona fide political party" means:

8 (a) An organization that has filed a valid certificate of  
9 nomination with the secretary of state under chapter 29A.20 RCW;

10 (b) The governing body of the state organization of a major  
11 political party, as defined in RCW 29A.04.086, that is the body  
12 authorized by the charter or bylaws of the party to exercise authority  
13 on behalf of the state party; or

14 (c) The county central committee or legislative district committee  
15 of a major political party. There may be only one legislative district  
16 committee for each party in each legislative district.

17 (7) "Depository" means a bank designated by a candidate or  
18 political committee pursuant to RCW 42.17.050.

19 (8) "Treasurer" and "deputy treasurer" mean the individuals  
20 appointed by a candidate or political committee, pursuant to RCW  
21 42.17.050, to perform the duties specified in that section.

22 (9) "Candidate" means any individual who seeks nomination for  
23 election or election to public office. An individual seeks nomination  
24 or election when he or she first:

25 (a) Receives contributions or makes expenditures or reserves space  
26 or facilities with intent to promote his or her candidacy for office;

27 (b) Announces publicly or files for office;

28 (c) Purchases commercial advertising space or broadcast time to  
29 promote his or her candidacy; or

30 (d) Gives his or her consent to another person to take on behalf of  
31 the individual any of the actions in (a) or (c) of this subsection.

32 (10) "Caucus political committee" means a political committee  
33 organized and maintained by the members of a major political party in  
34 the state senate or state house of representatives.

35 (11) "Commercial advertiser" means any person who sells the service  
36 of communicating messages or producing printed material for broadcast  
37 or distribution to the general public or segments of the general public

1 whether through the use of newspapers, magazines, television and radio  
2 stations, billboard companies, direct mail advertising companies,  
3 printing companies, or otherwise.

4 (12) "Commission" means the agency established under RCW 42.17.350.

5 (13) "Compensation" unless the context requires a narrower meaning,  
6 includes payment in any form for real or personal property or services  
7 of any kind: PROVIDED, That for the purpose of compliance with RCW  
8 42.17.241, the term "compensation" shall not include per diem  
9 allowances or other payments made by a governmental entity to reimburse  
10 a public official for expenses incurred while the official is engaged  
11 in the official business of the governmental entity.

12 (14) "Continuing political committee" means a political committee  
13 that is an organization of continuing existence not established in  
14 anticipation of any particular election campaign.

15 (15)(a) "Contribution" includes:

16 (i) A loan, gift, deposit, subscription, forgiveness of  
17 indebtedness, donation, advance, pledge, payment, transfer of funds  
18 between political committees, or anything of value, including personal  
19 and professional services for less than full consideration;

20 (ii) An expenditure made by a person in cooperation, consultation,  
21 or concert with, or at the request or suggestion of, a candidate, a  
22 political committee, or their agents;

23 (iii) The financing by a person of the dissemination, distribution,  
24 or republication, in whole or in part, of broadcast, written, graphic,  
25 or other form of political advertising or electioneering communication  
26 prepared by a candidate, a political committee, or its authorized  
27 agent;

28 (iv) Sums paid for tickets to fund-raising events such as dinners  
29 and parties, except for the actual cost of the consumables furnished at  
30 the event.

31 (b) "Contribution" does not include:

32 (i) Standard interest on money deposited in a political committee's  
33 account;

34 (ii) Ordinary home hospitality;

35 (iii) A contribution received by a candidate or political committee  
36 that is returned to the contributor within five business days of the  
37 date on which it is received by the candidate or political committee;

1 (iv) A news item, feature, commentary, or editorial in a regularly  
2 scheduled news medium that is of primary interest to the general  
3 public, that is in a news medium controlled by a person whose business  
4 is that news medium, and that is not controlled by a candidate or a  
5 political committee;

6 (v) An internal political communication primarily limited to the  
7 members of or contributors to a political party organization or  
8 political committee, or to the officers, management staff, or  
9 stockholders of a corporation or similar enterprise, or to the members  
10 of a labor organization or other membership organization;

11 (vi) The rendering of personal services of the sort commonly  
12 performed by volunteer campaign workers, or incidental expenses  
13 personally incurred by volunteer campaign workers not in excess of  
14 fifty dollars personally paid for by the worker. "Volunteer services,"  
15 for the purposes of this section, means services or labor for which the  
16 individual is not compensated by any person;

17 (vii) Messages in the form of reader boards, banners, or yard or  
18 window signs displayed on a person's own property or property occupied  
19 by a person. However, a facility used for such political advertising  
20 for which a rental charge is normally made must be reported as an in-  
21 kind contribution and counts towards any applicable contribution limit  
22 of the person providing the facility;

23 (viii) Legal or accounting services rendered to or on behalf of:

24 (A) A political party or caucus political committee if the person  
25 paying for the services is the regular employer of the person rendering  
26 such services; or

27 (B) A candidate or an authorized committee if the person paying for  
28 the services is the regular employer of the individual rendering the  
29 services and if the services are solely for the purpose of ensuring  
30 compliance with state election or public disclosure laws.

31 (c) Contributions other than money or its equivalent are deemed to  
32 have a monetary value equivalent to the fair market value of the  
33 contribution. Services or property or rights furnished at less than  
34 their fair market value for the purpose of assisting any candidate or  
35 political committee are deemed a contribution. Such a contribution  
36 must be reported as an in-kind contribution at its fair market value  
37 and counts towards any applicable contribution limit of the provider.

1 (16) "Elected official" means any person elected at a general or  
2 special election to any public office, and any person appointed to fill  
3 a vacancy in any such office.

4 (17) "Election" includes any primary, general, or special election  
5 for public office and any election in which a ballot proposition is  
6 submitted to the voters: PROVIDED, That an election in which the  
7 qualifications for voting include other than those requirements set  
8 forth in Article VI, section 1 (Amendment 63) of the Constitution of  
9 the state of Washington shall not be considered an election for  
10 purposes of this chapter.

11 (18) "Election campaign" means any campaign in support of or in  
12 opposition to a candidate for election to public office and any  
13 campaign in support of, or in opposition to, a ballot proposition.

14 (19) "Election cycle" means the period beginning on the first day  
15 of December after the date of the last previous general election for  
16 the office that the candidate seeks and ending on November 30th after  
17 the next election for the office. In the case of a special election to  
18 fill a vacancy in an office, "election cycle" means the period  
19 beginning on the day the vacancy occurs and ending on November 30th  
20 after the special election.

21 (20) "Electioneering communication" means any broadcast, cable, or  
22 satellite television or radio transmission, United States postal  
23 service mailing, billboard, newspaper, or periodical that:

24 (a) Clearly identifies a candidate for a state, local, or judicial  
25 office either by specifically naming the candidate, or identifying the  
26 candidate without using the candidate's name;

27 (b) Is broadcast, transmitted, mailed, erected, distributed, or  
28 otherwise published within sixty days before any election for that  
29 office in the jurisdiction in which the candidate is seeking election;  
30 and

31 (c) Either alone, or in combination with one or more communications  
32 identifying the candidate by the same sponsor during the sixty days  
33 before an election, has a fair market value of five thousand dollars or  
34 more.

35 (21) "Electioneering communication" does not include:

36 (a) Usual and customary advertising of a business owned by a  
37 candidate, even if the candidate is mentioned in the advertising when

1 the candidate has been regularly mentioned in that advertising  
2 appearing at least twelve months preceding his or her becoming a  
3 candidate;

4 (b) Advertising for candidate debates or forums when the  
5 advertising is paid for by or on behalf of the debate or forum sponsor,  
6 so long as two or more candidates for the same position have been  
7 invited to participate in the debate or forum;

8 (c) A news item, feature, commentary, or editorial in a regularly  
9 scheduled news medium that is:

10 (i) Of primary interest to the general public;

11 (ii) In a news medium controlled by a person whose business is that  
12 news medium; and

13 (iii) Not a medium controlled by a candidate or a political  
14 committee;

15 (d) Slate cards and sample ballots;

16 (e) Advertising for books, films, dissertations, or similar works  
17 (i) written by a candidate when the candidate entered into a contract  
18 for such publications or media at least twelve months before becoming  
19 a candidate, or (ii) written about a candidate;

20 (f) Public service announcements;

21 (g) A mailed internal political communication primarily limited to  
22 the members of or contributors to a political party organization or  
23 political committee, or to the officers, management staff, or  
24 stockholders of a corporation or similar enterprise, or to the members  
25 of a labor organization or other membership organization;

26 (h) An expenditure by or contribution to the authorized committee  
27 of a candidate for state, local, or judicial office; or

28 (i) Any other communication exempted by the commission through rule  
29 consistent with the intent of this chapter.

30 (22) "Expenditure" includes a payment, contribution, subscription,  
31 distribution, loan, advance, deposit, or gift of money or anything of  
32 value, and includes a contract, promise, or agreement, whether or not  
33 legally enforceable, to make an expenditure. The term "expenditure"  
34 also includes a promise to pay, a payment, or a transfer of anything of  
35 value in exchange for goods, services, property, facilities, or  
36 anything of value for the purpose of assisting, benefiting, or honoring  
37 any public official or candidate, or assisting in furthering or  
38 opposing any election campaign. For the purposes of this chapter,

1 agreements to make expenditures, contracts, and promises to pay may be  
2 reported as estimated obligations until actual payment is made. The  
3 term "expenditure" shall not include the partial or complete repayment  
4 by a candidate or political committee of the principal of a loan, the  
5 receipt of which loan has been properly reported.

6 (23) "Final report" means the report described as a final report in  
7 RCW 42.17.080(2).

8 (24) "General election" for the purposes of RCW 42.17.640 means the  
9 election that results in the election of a person to a state office.  
10 It does not include a primary.

11 (25) "Gift," is as defined in RCW 42.52.010.

12 (26) "Immediate family" includes the spouse, dependent children,  
13 and other dependent relatives, if living in the household. For the  
14 purposes of RCW 42.17.640 through 42.17.790 and sections 3 through 13  
15 of this act, "immediate family" means an individual's spouse, and  
16 child, stepchild, grandchild, parent, stepparent, grandparent, brother,  
17 half brother, sister, or half sister of the individual and the spouse  
18 of any such person and a child, stepchild, grandchild, parent,  
19 stepparent, grandparent, brother, half brother, sister, or half sister  
20 of the individual's spouse and the spouse of any such person.

21 (27) "Incumbent" means a person who is in present possession of an  
22 elected office.

23 (28) "Independent expenditure" means an expenditure that has each  
24 of the following elements:

25 (a) It is made in support of or in opposition to a candidate for  
26 office by a person who is not (i) a candidate for that office, (ii) an  
27 authorized committee of that candidate for that office, (iii) a person  
28 who has received the candidate's encouragement or approval to make the  
29 expenditure, if the expenditure pays in whole or in part for political  
30 advertising supporting that candidate or promoting the defeat of any  
31 other candidate or candidates for that office, or (iv) a person with  
32 whom the candidate has collaborated for the purpose of making the  
33 expenditure, if the expenditure pays in whole or in part for political  
34 advertising supporting that candidate or promoting the defeat of any  
35 other candidate or candidates for that office;

36 (b) The expenditure pays in whole or in part for political  
37 advertising that either specifically names the candidate supported or



1 opposed, or clearly and beyond any doubt identifies the candidate  
2 without using the candidate's name; and

3 (c) The expenditure, alone or in conjunction with another  
4 expenditure or other expenditures of the same person in support of or  
5 opposition to that candidate, has a value of five hundred dollars or  
6 more. A series of expenditures, each of which is under five hundred  
7 dollars, constitutes one independent expenditure if their cumulative  
8 value is five hundred dollars or more.

9 (29)(a) "Intermediary" means an individual who transmits a  
10 contribution to a candidate or committee from another person unless the  
11 contribution is from the individual's employer, immediate family as  
12 defined for purposes of RCW 42.17.640 through 42.17.790 and sections 3  
13 through 13 of this act, or an association to which the individual  
14 belongs.

15 (b) A treasurer or a candidate is not an intermediary for purposes  
16 of the committee that the treasurer or candidate serves.

17 (c) A professional fund-raiser is not an intermediary if the fund-  
18 raiser is compensated for fund-raising services at the usual and  
19 customary rate.

20 (d) A volunteer hosting a fund-raising event at the individual's  
21 home is not an intermediary for purposes of that event.

22 (30) "Legislation" means bills, resolutions, motions, amendments,  
23 nominations, and other matters pending or proposed in either house of  
24 the state legislature, and includes any other matter that may be the  
25 subject of action by either house or any committee of the legislature  
26 and all bills and resolutions that, having passed both houses, are  
27 pending approval by the governor.

28 (31) "Lobby" and "lobbying" each mean attempting to influence the  
29 passage or defeat of any legislation by the legislature of the state of  
30 Washington, or the adoption or rejection of any rule, standard, rate,  
31 or other legislative enactment of any state agency under the state  
32 Administrative Procedure Act, chapter 34.05 RCW. Neither "lobby" nor  
33 "lobbying" includes an association's or other organization's act of  
34 communicating with the members of that association or organization.

35 (32) "Lobbyist" includes any person who lobbies either in his or  
36 her own or another's behalf.

37 (33) "Lobbyist's employer" means the person or persons by whom a

1 lobbyist is employed and all persons by whom he or she is compensated  
2 for acting as a lobbyist.

3 (34) "Participate" means that, with respect to a particular  
4 election, an entity:

5 (a) Makes either a monetary or in-kind contribution to a candidate;

6 (b) Makes an independent expenditure or electioneering  
7 communication in support of or opposition to a candidate;

8 (c) Endorses a candidate prior to contributions being made by a  
9 subsidiary corporation or local unit with respect to that candidate or  
10 that candidate's opponent;

11 (d) Makes a recommendation regarding whether a candidate should be  
12 supported or opposed prior to a contribution being made by a subsidiary  
13 corporation or local unit with respect to that candidate or that  
14 candidate's opponent; or

15 (e) Directly or indirectly collaborates or consults with a  
16 subsidiary corporation or local unit on matters relating to the support  
17 of or opposition to a candidate, including, but not limited to, the  
18 amount of a contribution, when a contribution should be given, and what  
19 assistance, services or independent expenditures, or electioneering  
20 communications, if any, will be made or should be made in support of or  
21 opposition to a candidate.

22 (35) "Person" includes an individual, partnership, joint venture,  
23 public or private corporation, association, federal, state, or local  
24 governmental entity or agency however constituted, candidate,  
25 committee, political committee, political party, executive committee  
26 thereof, or any other organization or group of persons, however  
27 organized.

28 (36) "Person in interest" means the person who is the subject of a  
29 record or any representative designated by that person, except that if  
30 that person is under a legal disability, the term "person in interest"  
31 means and includes the parent or duly appointed legal representative.

32 (37) "Political advertising" includes any advertising displays,  
33 newspaper ads, billboards, signs, brochures, articles, tabloids,  
34 flyers, letters, radio or television presentations, or other means of  
35 mass communication, used for the purpose of appealing, directly or  
36 indirectly, for votes or for financial or other support or opposition  
37 in any election campaign.

1 (38) "Political committee" means any person (except a candidate or  
2 an individual dealing with his or her own funds or property) having the  
3 expectation of receiving contributions or making expenditures in  
4 support of, or opposition to, any candidate or any ballot proposition.

5 (39) "Primary" for the purposes of RCW 42.17.640 means the  
6 procedure for nominating a candidate to state office under chapter  
7 29A.52 RCW or any other primary for an election that uses, in large  
8 measure, the procedures established in chapter 29A.52 RCW.

9 (40) "Public office" means any federal, state, judicial, county,  
10 city, town, school district, port district, special district, or other  
11 state political subdivision elective office.

12 (41) "Public record" includes any writing containing information  
13 relating to the conduct of government or the performance of any  
14 governmental or proprietary function prepared, owned, used, or retained  
15 by any state or local agency regardless of physical form or  
16 characteristics. For the office of the secretary of the senate and the  
17 office of the chief clerk of the house of representatives, public  
18 records means legislative records as defined in RCW 40.14.100 and also  
19 means the following: All budget and financial records; personnel  
20 leave, travel, and payroll records; records of legislative sessions;  
21 reports submitted to the legislature; and any other record designated  
22 a public record by any official action of the senate or the house of  
23 representatives.

24 (42) "Recall campaign" means the period of time beginning on the  
25 date of the filing of recall charges under RCW 29A.56.120 and ending  
26 thirty days after the recall election.

27 (43) "Sponsor of an electioneering communications, independent  
28 expenditures, or political advertising" means the person paying for the  
29 electioneering communication, independent expenditure, or political  
30 advertising. If a person acts as an agent for another or is reimbursed  
31 by another for the payment, the original source of the payment is the  
32 sponsor.

33 (44) "State legislative office" means the office of a member of the  
34 state house of representatives or the office of a member of the state  
35 senate.

36 (45) "State office" means state legislative office or the office of  
37 governor, lieutenant governor, secretary of state, attorney general,

1 commissioner of public lands, insurance commissioner, superintendent of  
2 public instruction, state auditor, or state treasurer.

3 (46) "State official" means a person who holds a state office.

4 (47) "Surplus funds" mean, in the case of a political committee or  
5 candidate, the balance of contributions that remain in the possession  
6 or control of that committee or candidate subsequent to the election  
7 for which the contributions were received, and that are in excess of  
8 the amount necessary to pay remaining debts incurred by the committee  
9 or candidate prior to that election. In the case of a continuing  
10 political committee, "surplus funds" mean those contributions remaining  
11 in the possession or control of the committee that are in excess of the  
12 amount necessary to pay all remaining debts when it makes its final  
13 report under RCW 42.17.065.

14 (48) "Writing" means handwriting, typewriting, printing,  
15 photostating, photographing, and every other means of recording any  
16 form of communication or representation, including, but not limited to,  
17 letters, words, pictures, sounds, or symbols, or combination thereof,  
18 and all papers, maps, magnetic or paper tapes, photographic films and  
19 prints, motion picture, film and video recordings, magnetic or punched  
20 cards, discs, drums, diskettes, sound recordings, and other documents  
21 including existing data compilations from which information may be  
22 obtained or translated.

23 As used in this chapter, the singular shall take the plural and any  
24 gender, the other, as the context requires.

25 **Sec. 16.** RCW 42.17.128 and 1993 c 2 s 24 are each amended to read  
26 as follows:

27 Except as provided in sections 3 through 13 of this act, public  
28 funds, whether derived through taxes, fees, penalties, or any other  
29 sources, shall not be used to finance political campaigns for state or  
30 local office.

31 **Sec. 17.** RCW 42.17.130 and 2006 c 215 s 2 are each amended to read  
32 as follows:

33 Except as provided in sections 3 through 13 of this act, no  
34 elective official nor any employee of his (~~(or her))~~ or her office  
35 nor any person appointed to or employed by any public office or agency  
36 may use or authorize the use of any of the facilities of a public

1 office or agency, directly or indirectly, for the purpose of assisting  
2 a campaign for election of any person to any office or for the  
3 promotion of or opposition to any ballot proposition. Facilities of a  
4 public office or agency include, but are not limited to, use of  
5 stationery, postage, machines, and equipment, use of employees of the  
6 office or agency during working hours, vehicles, office space,  
7 publications of the office or agency, and clientele lists of persons  
8 served by the office or agency. However, this does not apply to the  
9 following activities:

10 (1) Action taken at an open public meeting by members of an elected  
11 legislative body or by an elected board, council, or commission of a  
12 special purpose district including, but not limited to, fire districts,  
13 public hospital districts, library districts, park districts, port  
14 districts, public utility districts, school districts, sewer districts,  
15 and water districts, to express a collective decision, or to actually  
16 vote upon a motion, proposal, resolution, order, or ordinance, or to  
17 support or oppose a ballot proposition so long as (a) any required  
18 notice of the meeting includes the title and number of the ballot  
19 proposition, and (b) members of the legislative body, members of the  
20 board, council, or commission of the special purpose district, or  
21 members of the public are afforded an approximately equal opportunity  
22 for the expression of an opposing view;

23 (2) A statement by an elected official in support of or in  
24 opposition to any ballot proposition at an open press conference or in  
25 response to a specific inquiry;

26 (3) Activities which are part of the normal and regular conduct of  
27 the office or agency.

28 **Sec. 18.** RCW 42.17.640 and 2006 c 348 s 1 are each amended to read  
29 as follows:

30 (1) The contribution limits in this section apply to:

31 (a) Candidates for state legislative office;

32 (b) Candidates for state office other than state legislative  
33 office;

34 (c) Candidates for county office in a county that has over two  
35 hundred thousand registered voters;

36 (d) Candidates for special purpose district office if that district

1 is authorized to provide freight and passenger transfer and terminal  
2 facilities and that district has over two hundred thousand registered  
3 voters;

4 (e) Persons holding an office in (a) through (d) of this subsection  
5 against whom recall charges have been filed or to a political committee  
6 having the expectation of making expenditures in support of the recall  
7 of a person holding the office;

8 (f) Caucus political committees;

9 (g) Bona fide political parties.

10 (2) No person, other than a bona fide political party or a caucus  
11 political committee, may make contributions to a candidate for a state  
12 legislative office or county office that in the aggregate exceed seven  
13 hundred dollars or to a candidate for a public office in a special  
14 purpose district or a state office other than a state legislative  
15 office that in the aggregate exceed one thousand four hundred dollars  
16 for each election in which the candidate is on the ballot or appears as  
17 a write-in candidate. Contributions to candidates subject to the  
18 limits in this section made with respect to a primary may not be made  
19 after the date of the primary. However, contributions to a candidate  
20 or a candidate's authorized committee may be made with respect to a  
21 primary until thirty days after the primary, subject to the following  
22 limitations: (a) The candidate lost the primary; (b) the candidate's  
23 authorized committee has insufficient funds to pay debts outstanding as  
24 of the date of the primary; and (c) the contributions may only be  
25 raised and spent to satisfy the outstanding debt. Contributions to  
26 candidates subject to the limits in this section made with respect to  
27 a general election may not be made after the final day of the  
28 applicable election cycle.

29 (3) No person, other than a bona fide political party or a caucus  
30 political committee, may make contributions to a state official, a  
31 county official, or a public official in a special purpose district  
32 against whom recall charges have been filed, or to a political  
33 committee having the expectation of making expenditures in support of  
34 the recall of the state official, county official, or public official  
35 in a special purpose district during a recall campaign that in the  
36 aggregate exceed seven hundred dollars if for a state legislative  
37 office or county office or one thousand four hundred dollars if for a

1 special purpose district office or a state office other than a state  
2 legislative office.

3 (4)(a) Notwithstanding subsection (2) of this section, no bona fide  
4 political party or caucus political committee may make contributions to  
5 a candidate during an election cycle that in the aggregate exceed (i)  
6 seventy cents multiplied by the number of eligible registered voters in  
7 the jurisdiction from which the candidate is elected if the contributor  
8 is a caucus political committee or the governing body of a state  
9 organization, or (ii) thirty-five cents multiplied by the number of  
10 registered voters in the jurisdiction from which the candidate is  
11 elected if the contributor is a county central committee or a  
12 legislative district committee.

13 (b) No candidate may accept contributions from a county central  
14 committee or a legislative district committee during an election cycle  
15 that when combined with contributions from other county central  
16 committees or legislative district committees would in the aggregate  
17 exceed thirty-five cents times the number of registered voters in the  
18 jurisdiction from which the candidate is elected.

19 (5)(a) Notwithstanding subsection (3) of this section, no bona fide  
20 political party or caucus political committee may make contributions to  
21 a state official, county official, or a public official in a special  
22 purpose district against whom recall charges have been filed, or to a  
23 political committee having the expectation of making expenditures in  
24 support of the state official, county official, or a public official in  
25 a special purpose district during a recall campaign that in the  
26 aggregate exceed (i) seventy cents multiplied by the number of eligible  
27 registered voters in the jurisdiction entitled to recall the state  
28 official if the contributor is a caucus political committee or the  
29 governing body of a state organization, or (ii) thirty-five cents  
30 multiplied by the number of registered voters in the jurisdiction from  
31 which the candidate is elected if the contributor is a county central  
32 committee or a legislative district committee.

33 (b) No official holding an office specified in subsection (1) of  
34 this section against whom recall charges have been filed, no authorized  
35 committee of the official, and no political committee having the  
36 expectation of making expenditures in support of the recall of the  
37 official may accept contributions from a county central committee or a  
38 legislative district committee during an election cycle that when

1 combined with contributions from other county central committees or  
2 legislative district committees would in the aggregate exceed thirty-  
3 five cents multiplied by the number of registered voters in the  
4 jurisdiction from which the candidate is elected.

5 (6) For purposes of determining contribution limits under  
6 subsections (4) and (5) of this section, the number of eligible  
7 registered voters in a jurisdiction is the number at the time of the  
8 most recent general election in the jurisdiction.

9 (7) Notwithstanding subsections (2) through (5) of this section, no  
10 person other than an individual, bona fide political party, or caucus  
11 political committee may make contributions reportable under this  
12 chapter to a caucus political committee that in the aggregate exceed  
13 seven hundred dollars in a calendar year or to a bona fide political  
14 party that in the aggregate exceed three thousand five hundred dollars  
15 in a calendar year. This subsection does not apply to loans made in  
16 the ordinary course of business.

17 (8) For the purposes of RCW 42.17.640 through 42.17.790, a  
18 contribution to the authorized political committee of a candidate or of  
19 an official specified in subsection (1) of this section against whom  
20 recall charges have been filed is considered to be a contribution to  
21 the candidate or official.

22 (9) A contribution received within the twelve-month period after a  
23 recall election concerning an office specified in subsection (1) of  
24 this section is considered to be a contribution during that recall  
25 campaign if the contribution is used to pay a debt or obligation  
26 incurred to influence the outcome of that recall campaign.

27 (10) The contributions allowed by subsection (3) of this section  
28 are in addition to those allowed by subsection (2) of this section, and  
29 the contributions allowed by subsection (5) of this section are in  
30 addition to those allowed by subsection (4) of this section.

31 (11) RCW 42.17.640 through 42.17.790 apply to a special election  
32 conducted to fill a vacancy in an office specified in subsection (1) of  
33 this section. However, the contributions made to a candidate or  
34 received by a candidate for a primary or special election conducted to  
35 fill such a vacancy shall not be counted toward any of the limitations  
36 that apply to the candidate or to contributions made to the candidate  
37 for any other primary or election.



1 (12) Notwithstanding the other subsections of this section, no  
2 corporation or business entity not doing business in Washington state,  
3 no labor union with fewer than ten members who reside in Washington  
4 state, and no political committee that has not received contributions  
5 of ten dollars or more from at least ten persons registered to vote in  
6 Washington state during the preceding one hundred eighty days may make  
7 contributions reportable under this chapter to a candidate, to a state  
8 official against whom recall charges have been filed, or to a political  
9 committee having the expectation of making expenditures in support of  
10 the recall of the official. This subsection does not apply to loans  
11 made in the ordinary course of business.

12 (13) Notwithstanding the other subsections of this section, no  
13 county central committee or legislative district committee may make  
14 contributions reportable under this chapter to a candidate specified in  
15 subsection (1) of this section, or an official specified in subsection  
16 (1) of this section against whom recall charges have been filed, or  
17 political committee having the expectation of making expenditures in  
18 support of the recall of an official specified in subsection (1) of  
19 this section if the county central committee or legislative district  
20 committee is outside of the jurisdiction entitled to elect the  
21 candidate or recall the official.

22 (14) No person may accept contributions that exceed the  
23 contribution limitations provided in this section.

24 (15) The following contributions are exempt from the contribution  
25 limits of this section:

26 (a) An expenditure or contribution earmarked for voter  
27 registration, for absentee ballot information, for precinct caucuses,  
28 for get-out-the-vote campaigns, for precinct judges or inspectors, for  
29 sample ballots, or for ballot counting, all without promotion of or  
30 political advertising for individual candidates; (~~or~~)

31 (b) An expenditure by a political committee for its own internal  
32 organization or fund raising without direct association with individual  
33 candidates; or

34 (c) A contribution made by an immediate family member in compliance  
35 with section 3 or 4 of this act.

36 NEW SECTION. Sec. 19. Sections 3 through 13 of this act are each  
37 added to chapter 42.17 RCW.

1        NEW SECTION.    **Sec. 20.**    Captions used in this act are not part of  
2 the law.

3        NEW SECTION.    **Sec. 21.**    If any provision of this act or its  
4 application to any person or circumstance is held invalid, the  
5 remainder of the act or the application of the provision to other  
6 persons or circumstances is not affected.

7        NEW SECTION.    **Sec. 22.**    This act expires January 1, 2013.    By  
8 January 1, 2012, the governor shall report to the legislature on the  
9 effectiveness of the judicial independence act and make recommendations  
10 on whether or not the judicial independence act shall continue.

11        NEW SECTION.    **Sec. 23.**    If specific funding for the purposes of  
12 this act, referencing this act by bill or chapter number, is not  
13 provided by June 30, 2007, in the omnibus appropriations act, this act  
14 is null and void.

--- END ---