

SENATE BILL REPORT

E2SSB 5912

As of Third Reading

Title: An act relating to public funding for supreme court campaigns.

Brief Description: Concerning public funding for supreme court campaigns.

Sponsors: Senate Committee on Ways & Means (originally sponsored by Senators Oemig, McDermott, Kline, Kastama, Pridemore, Kilmer, Jarrett, Kohl-Welles and Haugen).

Brief History:

Committee Activity: Government Operations & Elections: 2/02/10, 2/04/10 [DPS-WM, DNP].

Ways & Means: 2/08/10, 2/09/10 [DP2S, DNP].

SENATE COMMITTEE ON GOVERNMENT OPERATIONS & ELECTIONS

Majority Report: That Substitute Senate Bill No. 5912 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Fairley, Chair; Oemig, Vice Chair; McDermott and Pridemore.

Minority Report: Do not pass.

Signed by Senators Benton and Swecker.

Staff: Sharon Swanson (786-7447)

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: That Second Substitute Senate Bill No. 5912 be substituted therefor, and the second substitute bill do pass.

Signed by Senators Prentice, Chair; Fraser, Vice Chair, Capital Budget Chair; Tom, Vice Chair, Operating Budget; Fairley, Hobbs, Keiser, Kline, Kohl-Welles, McDermott, Murray, Oemig, Pridemore, Regala and Rockefeller.

Minority Report: Do not pass.

Signed by Senators Zarelli, Ranking Minority Member; Brandland, Carrell, Hewitt, Honeyford, Parlette, Pflug and Schoesler.

Staff: Steve Jones (786-7440)

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Background: The Fair Campaign Practices Act was enacted following passage of Initiative 134 in 1992. The initiative imposed campaign contribution limits on elections for statewide and legislative offices, further regulated independent expenditures, restricted the use of public funds for political purposes, and required public officials to report gifts received in excess of \$50. In 2006 contribution limits were expanded to include elections for certain county and special purpose district offices, and for judicial offices.

A series of court decisions have identified a number of constitutional limitations on the regulation of campaign financing. Certain constitutionally permissible restrictions on such financing have also been identified in those decisions. In those cases, the courts found the following to be permissible:

- limitations on contributions by individuals or organizations to candidates;
- limitations on contributions by individuals or organizations to political action committees;
- limitations on contributions by political action committees to candidates;
- limitations on total contributions by individuals in a calendar year to candidates and political committees;
- prohibition of the use of corporation and labor organization general treasury funds to support or oppose the nomination or election of a candidate through contributions to political action committees, independent expenditures, or electioneering communications;
- public financing of campaigns; and
- reporting and disclosure of independent expenditures and electioneering communications.

Found to be impermissible were ceilings on candidate expenditures or on independent expenditures. Upheld, however, were ceilings on a candidate's expenditures, which become effective only as part of a public financing agreement under which a candidate agrees to abide by the limits in exchange for public financing.

Arizona, Maine, and Connecticut have enacted public financing programs for statewide and legislative offices. North Carolina has enacted a public financing program for Supreme Court and Court of Appeals offices.

Summary of Bill: The Judicial Elections Reform Act (Act) is created to introduce a voluntary pilot project to provide an alternative source of financing for candidates for the Washington Supreme Court.

The Judicial Reform Act Fund (Fund) is created in the custody of the State Treasurer. Only the Public Disclosure Commission (PDC) can authorize expenditures from the fund.

Program Requirements. The program is voluntary. Candidates who wish to participate in the program must agree to the following:

- only accept contributions from individuals, and only as qualifying contributions;
- during the qualifying period accept a limited amount from the candidate's personal funds;
- collect at least 500 qualifying contributions that, in the aggregate, total at least 25 times the filing fee for the office of supreme court justice;

- file required reports;
- expend only self-contributed funds or funds received from the Fund; and
- sign a joint statement with the treasurer of the publicly financed candidate's authorized committee, under oath, promising to comply with the provisions of the Act.

Qualifying Contributions. To qualify for participation in the Act, a candidate must obtain at least 500 qualifying contributions that, in the aggregate, total at least 25 times the filing fee for the office. A qualifying contribution must be made by a registered voter of the state and must be received during the qualifying period. The individual contributor must not be given anything of value in exchange for the contribution. The amount of the contribution must be at least \$10 and not more than 25 percent of the contribution limit set in statute, and must be made by check, money order, or credit card. Up to 25 percent of the minimum dollar amount of qualifying contributions may be used to pay for expenses related to raising qualifying contributions.

Certification Procedure. A candidate who wishes to participate must submit an application with the PDC, declaring his or her intent to participate in the program. The application must be submitted either before or during the qualifying period. The candidate must submit a report itemizing the qualifying contributions received including the name, address, telephone number, and county of residence for each person who made a contribution, along with the date the contribution was received. The PDC must review the application and determine if a candidate meets the requirements within seven calendar days. If an application is denied, the PDC must provide written reasons for the denial. A candidate who is denied certification may reapply one time within 14 days of denial. A candidate who is certified as a public financed candidate may use that designation in campaign materials and will be so designated in the state voters' pamphlet.

Revocation. A publicly financed candidate may revoke a decision to participate in the program no later than June 30 of the year of the election. Within 30 days of revocation, all money received from the Fund must be repaid with interest. If a candidate revokes after June 30, the candidate must return all money received from the Fund and pay a fine of \$1,000 per day for each day beyond the allowed revocation period and the day the candidate revokes.

Campaign Funding. Within five business days after a publicly financed candidate's name is approved to appear on the primary ballot, the PDC must authorize distribution of funds for the primary election. The amount of funding for the primary election must be set by rule by the PDC based on the number of participating candidates filing for office. Within five business days after a publicly financed candidate's name is approved to appear on the general election ballot, the PDC must authorize an amount equal to 125 times the filing fee. Publicly financed candidates in uncontested elections must receive four times the filing fee plus qualifying contributions. A publicly financed candidate must return, within ten calendar days, funds distributed that are unspent and uncommitted as of the date that the candidate ceases to be a candidate, or as of the date of the election, whichever occurs first.

Public Disclosure Commission. The PDC must:

- prescribe forms for statements, notices, and other documents as required;

- prepare and publish instructions to facilitate compliance with the Judicial Election Reform Act Fund;
- adopt necessary rules; and
- enforce the provisions of the Act, ensure that the money that is transferred from the Fund into the account of the authorized candidate or committee is spent appropriately.

The program may not be implemented until \$1 million is in the judicial election reform act fund.

Penalties. The civil penalty for a violation of a contribution or expenditure limit may result in a fine of ten times the amount by which the expenditures or contributions exceed the applicable limit. If the violation occurs within five days of an election, the civil penalty is 20 times the amount by which the expenditures or contributions exceed the applicable amount. A violation of any reporting violation by a publicly financed candidate is subject to a fine of \$100 per day not to exceed twice the amount not reported in a timely manner. The civil penalty for late revocation will result in a fine of \$1,000 per day for each day beyond the allowed revocation period.

Rescue Funds. A publicly funded candidate may receive funds equal to the difference between the total amount received by the nonparticipating candidate for each election and the amount received by the publicly funded candidate for each election. The total amount a publicly funded candidate may receive in rescue funds is 500 times the filing fee for the office. Self-contributed funds do not trigger rescue funds.

Independent expenditures and electioneering communications opposing a publicly financed candidate or supporting one or more nonparticipating opponents of a publicly financed candidate will be considered as contributions to each opposing candidate and the commission must authorize rescue funds to the publicly funded candidate.

All civil penalties collected must be deposited into the judicial election reform act fund.

Campaign contribution is defined as any cash or equivalent paid to a political committee.

A \$3 surcharge on certain county clerk filing fees is imposed to finance the program.

Appropriation: None.

Fiscal Note: Requested on January 29, 2010.

[OFM requested ten-year cost projection pursuant to I-960.]

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Proposed Substitute As Heard in Committee (Government Operations & Elections): PRO: Fair elections are the foundation of democracy. We need to minimize the impact of out-of-state money in our elections in Washington State. We need locally controlled and locally funded elections. The judicial

branch is very interested in the idea of public funding for judicial campaigns but has not yet come to a formal opinion on the issue. The spending for electing supreme court justices has increased greatly in recent years. The money comes from a few sources with decided points of view. This aims to remove any chance of bankable judicial votes. Judges should be able to opt out of corporate funding if they want to. This just gives an option to judges who wish to participate. We don't want to become like West Virginia. This bill preserves and protects faith in the judicial and election systems by removing political action committee money and corporate sponsorship of judicial campaigns. Over time, public funding of campaigns will reduce the cost of elections. This will keep the appearance of judicial bias away from our courts. There are justices of the supreme court who are in favor of this bill.

Persons Testifying (Government Operations & Elections): PRO: Chris Stearns, Thurston Public Utilities District Commissioner; Marcee Stone, 34th District Democrats; Tyler Havron, Washington Clean Thurston County; John King, Washington Public Campaigns; Larry Shannon, Washington State Association for Justice; Katy Sheehan, League of Women Voters; Mellani McAleenan, Board for Judicial Administration; Becky Bogard, Washington State Association of Broadcasting.

Staff Summary of Public Testimony on Recommended First Substitute (Ways & Means): PRO: Public confidence in the impartiality of our elected judges is essential to the integrity of the judicial system. Spending on supreme court campaigns in many states has increased substantially, and a small number of donors is dominating the campaigns. This bill allows candidates with broad public support to compete with sponsored candidates. A balanced approach for both types of candidates will promote public participation in the judicial election process. A \$3 surcharge on county clerk filing fees is a reasonable method to finance this program.

Persons Testifying (Ways & Means): PRO: John King, Washington Public Campaigns; Katy Sheehan, League of Women Voters.