
SENATE BILL 5912

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By Senators Oemig, McDermott, Kline, Kastama, Pridemore, Kilmer, Jarrett, Kohl-Welles, and Haugen

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1 AN ACT Relating to public funding for supreme court campaigns;
2 amending RCW 42.17.390; adding new sections to chapter 42.17 RCW;
3 creating new sections; and prescribing penalties.

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

5 NEW SECTION. **Sec. 1.** INTENT. The intent of this act is to
6 protect the fairness of elections for the highest court in Washington
7 state - the supreme court. Doing so will foster the public's trust in
8 the integrity and independence of the court in the face of increasingly
9 large sums of money raised and spent by special interest groups. That
10 flood of money threatens the impartiality, independence, and
11 credibility of our judiciary. To maintain public confidence in the
12 judiciary, we must prevent not only corruption, but the appearance of
13 corruption, for the judiciary is the one branch of government that must
14 be uniquely impartial, independent, and unbiased in order to best serve
15 the residents of Washington. It would be destructive for our democracy
16 to allow the court to become influenced by large amounts of money, and
17 for our citizens to think that judicial decisions are influenced by
18 those large amounts of money. This act is necessary to ensure that our

1 highest courts continue to be unbiased and insulated from special
2 interests.

3 Therefore, this act, the judicial election reform act, introduces
4 a voluntary pilot project to provide an alternative source of financing
5 candidates for the Washington supreme court who demonstrate public
6 support and voluntarily accept strict fundraising and spending limits.

7 NEW SECTION. **Sec. 2.** DEFINITIONS. The definitions in this
8 section apply throughout sections 1 through 20 of this act unless the
9 context clearly requires otherwise.

10 (1) "Contested election" means an election in which there are two
11 or more candidates running for the same office whose names will appear
12 on the ballot.

13 (2) "Nonparticipating candidate" means a candidate for supreme
14 court justice who is on the ballot but has chosen not to apply for
15 public funds from the judicial election reform act fund or a candidate
16 who is on the ballot and has applied but has not been certified to
17 receive public funds from the judicial election reform act fund.

18 (3) "Publicly financed candidate" means a candidate who becomes
19 certified to receive public campaign funds under section 6 of this act.

20 (4) "Qualifying contribution" means a contribution of at least ten
21 dollars, but no more than twenty-five percent of the maximum
22 contribution limit allowed under RCW 42.17.645, made by a registered
23 voter of the state, and is received during the qualifying period.

24 (5) "Qualifying period" means the period beginning February 1st of
25 the election year and ending one week after the close of the regular
26 filing period for the office.

27 (6) "Uncontested election" means an election in which a candidate
28 running for a specified office has no opponent on the ballot.

29 NEW SECTION. **Sec. 3.** JUDICIAL ELECTION REFORM ACT FUND. (1) The
30 judicial election reform act fund is created in the custody of the
31 state treasurer. All receipts under sections 4 through 19 of this act
32 required to be deposited into the fund must be deposited into the fund.
33 Expenditures from the fund may be used only for the purposes of the
34 judicial election reform act, sections 1 through 20 of this act. Only
35 the commission may authorize expenditures from the fund. The fund is

1 subject to allotment procedures under chapter 43.88 RCW, but an
2 appropriation is not required for expenditures.

3 (2) When the funds in the account have been fully distributed, the
4 commission and treasurer shall cease making any public funds
5 disbursements under sections 1 through 20 of this act. No candidates
6 may receive any disbursements of funds beyond those authorized under
7 sections 1 through 20 of this act, nor may any candidates receive any
8 further disbursements of funds under sections 1 through 20 of this act
9 when the appropriation has been exhausted. The commission may adopt
10 rules to address distribution of remaining funds in the account for
11 pending requests.

12 NEW SECTION. **Sec. 4.** VOLUNTARY LIMITATIONS ON CONTRIBUTIONS FOR
13 JUDICIAL CAMPAIGNS. A publicly financed candidate and a publicly
14 financed candidate's authorized committee shall:

15 (1) Only accept contributions from individuals, and only as
16 qualifying contributions under section 5 of this act;

17 (2) During the qualifying period for the purpose of raising
18 qualifying contributions, accept no more than two times the maximum
19 contribution limit under RCW 42.17.645 of the candidate's personal
20 funds;

21 (3) Collect at least five hundred qualifying contributions that, in
22 the aggregate total at least fifty times the filing fee for the office
23 of supreme court justice in accordance with section 5 of this act;

24 (4) File the required reports regarding qualifying and expenditures
25 to the commission;

26 (5) Expend only funds received from the judicial election reform
27 act fund after being certified as a publicly funded candidate;

28 (6) Sign a joint statement with the treasurer of the publicly
29 financed candidate's authorized committee, under oath, promising to
30 comply with the provisions of this chapter; and

31 (7) Comply with the provisions of this chapter to the extent
32 required for publicly funded candidates as prescribed by the
33 commission.

34 NEW SECTION. **Sec. 5.** APPLICATION FOR CERTIFICATION. A candidate
35 who wishes to receive public campaign funds must:

1 (1) File an application with the commission declaring his or her
2 intent to participate in the program as a candidate for the supreme
3 court. The application must be filed before or during the qualifying
4 period. In the application, the candidate shall affirm that only one
5 political committee, identified with its treasurer, shall handle all
6 contributions, expenditures, and obligations for the publicly financed
7 candidate and that the candidate will comply with the provisions set
8 forth in sections 1 through 20 of this act and rules adopted by the
9 commission; and

10 (2) Obtain at least five hundred qualifying contributions that, in
11 the aggregate total at least twenty-five times the filing fee for the
12 office by the end of the qualifying period. No payment, gift, or
13 anything of value may be given in exchange for a qualifying
14 contribution. A qualifying contribution must be:

15 (a) Made by a registered voter of the state;

16 (b) Made by a person who is not given anything of value in exchange
17 for the qualifying contribution;

18 (c) In an amount of at least ten dollars but not more than twenty-
19 five percent of the contribution limit allowed for a single election
20 under RCW 42.17.645;

21 (d) Received during the qualifying period by the candidate or on
22 behalf of the candidate; and

23 (e) Made by check, money order, or credit card.

24 NEW SECTION. **Sec. 6.** CERTIFICATION AS A PUBLICLY FINANCED
25 CANDIDATE. (1) Upon receipt of an application, the commission shall
26 determine whether or not the candidate has complied with the following
27 requirements:

28 (a) Signed and filed an application to participate;

29 (b) Submitted a report itemizing the qualifying contributions
30 received. The report must include the name, home address, telephone
31 number, and county of residence for each person who made a contribution
32 and the date the contribution was received, and any other information
33 required by the commission;

34 (c) Submitted a check or money order equal to the total qualifying
35 contributions, less money expended for the purpose of raising
36 qualifying contributions in accordance with section 7 of this act,

1 received by the candidate made out to the judicial election reform act
2 fund; and

3 (d) Submitted affidavits signed by persons collecting qualifying
4 contributions stating that, to the best of his or her knowledge, the
5 contribution was made by a registered voter of the state.

6 (2) Once the requirements in subsection (1) of this section are
7 met, the commission must verify that pursuant to section 5 of this act,
8 a sufficient number of qualifying contributions were made by registered
9 voters of the state at the time the contribution was made.

10 (3) The commission must determine if a candidate meets the
11 requirements for public financing within seven calendar days of the
12 filing of an application. If the requirements of subsection (2) of
13 this section are met, the commission must certify the candidate for
14 public financing. If the commission denies certification, it must
15 provide written reasons why certification is denied. Any candidate who
16 is denied certification may reapply one time by submitting the required
17 information or the number of qualifying contributions needed to
18 complete the certification within fourteen calendar days of the date of
19 the commission's decision.

20 (4) A candidate who is certified as a publicly financed candidate
21 may use that designation in campaign materials and will be so
22 designated in the state voters' pamphlet.

23 NEW SECTION. **Sec. 7.** QUALIFYING CONTRIBUTIONS. A publicly
24 financed candidate may expend money received as qualifying
25 contributions, as well as the candidate's personal funds, to pay for
26 expenses related to raising qualifying contributions. The amount of
27 qualifying contributions used for this purpose may not exceed twenty-
28 five percent of the minimum dollar amount of qualifying contributions
29 required under section 5 of this act. Expenditures made for the
30 purpose of this section must be reported as required under RCW
31 42.17.080 and 42.17.090 or as determined by the commission by rule.

32 NEW SECTION. **Sec. 8.** CONTROLS ON A PUBLICLY FINANCED CANDIDATE'S
33 AUTHORIZED COMMITTEE. A publicly financed candidate and the publicly
34 financed candidate's authorized committee shall file the reports
35 required pursuant to this chapter as determined by the commission.

1 NEW SECTION. **Sec. 9.** USES OF PUBLIC FUNDS. (1) Money in the
2 account of a publicly financed candidate's authorized committee may
3 only be used for purposes directly related to the candidate's campaign.

4 (2) Money in the account of a publicly financed candidate's
5 authorized committee may not be used to pay fines or civil penalties,
6 for costs or legal fees related to representation before the
7 commission, or for defense of an enforcement action under this chapter.
8 Nothing in this chapter prevents a publicly financed candidate from
9 having a legal defense fund.

10 NEW SECTION. **Sec. 10.** RETURN OF FUNDS. (1) If a candidate
11 attempts to qualify for public funding but does not meet the threshold
12 for qualification, withdraws from the program before certification, is
13 denied certification under section 6 of this act, or revokes
14 participation under section 11 of this act, the candidate must pay to
15 the fund the total dollar amount of qualifying contributions received
16 during the qualifying period.

17 (2) Publicly financed candidates must return all unused funds to
18 the judicial election reform act fund within thirty calendar days of
19 the date they are no longer a candidate.

20 NEW SECTION. **Sec. 11.** REVOCATION. (1) A publicly financed
21 candidate may revoke in writing to the commission a decision to
22 participate in the public financing program no later than June 30th in
23 the year of the election. After a timely revocation, that candidate
24 may accept and expend money outside the provisions of this act. Within
25 thirty days after revocation, a candidate must return to the commission
26 all money received from the judicial election reform act fund.

27 (2) A publicly financed candidate who revokes a decision to
28 participate in the public financing program after the time period
29 established in subsection (1) of this section must return all money
30 received from the judicial election reform act fund and pay a fine of
31 one thousand dollars per day for each day beyond the allowed revocation
32 period and the day the candidate revokes.

33 NEW SECTION. **Sec. 12.** CAMPAIGN FUNDING. (1)(a) Within five
34 business days after a publicly financed candidate's name is approved to
35 appear on the primary ballot by the appropriate elections officer, the

1 commission shall authorize the state treasurer to distribute to the
2 account of the authorized committee of each certified publicly financed
3 candidate an amount set, by rule, based on the number of participating
4 candidates filing for office. No candidate may receive an amount
5 greater than one hundred times the filing fee as established in RCW
6 29A.24.091 for the primary.

7 (b) Within five business days after a publicly financed candidate's
8 name is approved to appear on the general election ballot, the
9 commission shall authorize the state treasurer to distribute funds to
10 the account of the authorized committee of each certified publicly
11 financed candidate in an amount equal to one hundred twenty-five times
12 the filing fee for the office as established in RCW 29A.24.091.

13 (c) Participating candidates in uncontested elections shall receive
14 four times the filing fee as established in RCW 29A.24.091.

15 (2) A publicly financed candidate shall return within ten calendar
16 days to the judicial election reform act fund any amount distributed
17 for an election that is unspent and uncommitted as of the date the
18 candidate ceases to be a candidate or as of the date of the election,
19 whichever occurs first.

20 (3) The commission shall authorize and the state treasurer shall
21 distribute funds to publicly financed candidates in a manner that
22 ensures accountability and safeguards the integrity of the fund.

23 NEW SECTION. **Sec. 13.** RESCUE FUNDS. (1) When a report is filed
24 under this chapter or other evidence comes to the attention of the
25 commission indicating that a nonparticipating candidate has raised more
26 money than his or her publicly financed opponent has received in public
27 funding, the commission shall notify the publicly financed candidate of
28 his or her eligibility for rescue funds.

29 (a) A publicly financed candidate may receive rescue funds equal to
30 the difference between the total amount received by the
31 nonparticipating candidate for each election and the amount received by
32 the publicly financed candidate for each election. If there are
33 multiple nonparticipating candidates who have raised more money than
34 the publicly financed candidate has received, the publicly financed
35 candidate is eligible for rescue funds based on the difference between
36 the total amount raised by the nonparticipating candidate who has

1 received the most money and the amount received by the publicly
2 financed candidate.

3 (b) The total amount a publicly financed candidate may receive in
4 rescue funds is five hundred times the filing fee for the office. If
5 rescue funds are triggered under this section, up to seventy-five
6 percent of the funds are available to a publicly financed candidate for
7 the primary election. If a publicly financed candidate is opposed by
8 only one candidate, all of the authorized rescue funds may be used for
9 the primary. A publicly financed candidate may determine when to
10 access available rescue funds.

11 (2)(a) Independent expenditures and electioneering communications
12 opposing a publicly financed candidate or supporting one or more
13 nonparticipating opponents of a publicly financed candidate shall be
14 considered as contributions to each opposing candidate and the
15 commission shall authorize rescue funds pursuant to subsection (1) of
16 this section to the publicly financed candidate.

17 (b) Independent expenditures and electioneering communications
18 supporting a publicly financed candidate shall be considered, for every
19 opposing publicly financed candidate, as though the independent
20 expenditures or electioneering communications were a contribution to a
21 nonparticipating opponent and the commission shall authorize rescue
22 funds pursuant to subsection (1) of this section to each opposing
23 publicly financed candidate.

24 (c) For purposes of this section, expenditures made by a
25 nonparticipating candidate and independent expenditures and
26 electioneering communications are deemed to have been made the day the
27 independent expenditure or electioneering communication is contracted
28 for, agreed to, or otherwise obligated.

29 (3) If adequate funding is not available to fully equalize funding
30 for publicly financed candidates under this section, the commission may
31 authorize a lesser amount.

32 NEW SECTION. **Sec. 14.** REPORTING PLANNED EXPENDITURES. Within
33 twenty-one days of an election, a nonparticipating candidate who has a
34 publicly financed opponent must provide to the commission a report
35 containing the expenditures planned by the nonparticipating candidate
36 for the twenty-one days before the election and the associated costs of
37 those expenditures. If the nonparticipating candidate does not report

1 planned expenditures, the commission shall authorize twice the amount
2 of an expenditure not reported in rescue funds to the publicly financed
3 opponent.

4 NEW SECTION. **Sec. 15.** REPORTS. (1)(a) Any nonparticipating
5 candidate who has a publicly financed opponent shall report total
6 contributions received to the commission electronically within twenty-
7 four hours after the total amount of contributions received exceeds
8 eighty percent of the amount authorized for publicly financed
9 candidates under section 12 of this act.

10 (b) Any person making independent expenditures or electioneering
11 communications in excess of three thousand dollars in support of or
12 opposition to a publicly financed candidate, or in support of a
13 candidate opposing a publicly financed candidate, shall file a report
14 with the commission within twenty-four hours of the date the
15 independent expenditure or electioneering communication is contracted
16 for, agreed to, or otherwise obligated. The report shall include the
17 following information:

18 (i) The name and address of the sponsor;

19 (ii) The source of funds for the independent expenditure or
20 electioneering communication;

21 (iii) Any other source information required by the commission by
22 rule;

23 (iv) The name and address of the person to whom the independent
24 expenditure or electioneering communication expenditure was made;

25 (v) A detailed description of the expenditure;

26 (vi) The date the expenditure was contracted for, agreed to, or
27 otherwise obligated;

28 (vii) The amount of the expenditure; and

29 (viii) Any other information the commission may require.

30 (c) The commission may adopt rules implementing the provisions of
31 this section, including rules that determine (i) whether filing under
32 this section satisfies the filing requirements under other provisions
33 of this chapter, and (ii) when the reporting requirements of this
34 section are no longer warranted because a publicly financed candidate
35 has received the maximum amount of rescue funds permitted by this
36 section.

1 (2) Publicly financed candidates shall report in accordance with
2 rules adopted by the commission. A publicly financed candidate who
3 revokes his or her participation in the program, who ceases to be a
4 candidate, or who loses an election shall file a final report with the
5 commission and return any unspent disbursements received from the
6 judicial election reform act fund. In developing reporting
7 requirements for publicly financed candidates, the commission shall use
8 existing campaign reporting procedures when determined practicable by
9 the commission.

10 (3) Any person who fails to report a contribution or expenditure as
11 required by this section is subject to a civil penalty equal to the
12 contribution or expenditure not reported.

13 (4) The commission shall ensure prompt public access to the reports
14 received under this section.

15 NEW SECTION. **Sec. 16.** CIVIL PROCEEDING TO ENJOIN VIOLATION. (1)
16 Whenever it appears that a nonparticipating candidate who has a
17 publicly financed opponent or any person is making an independent
18 expenditure or an electioneering communication in the form of a radio
19 or television presentation that constitutes a violation of the
20 reporting provisions of section 15 of this act, the commission shall
21 initiate a civil proceeding in superior court to enjoin such violation,
22 and may petition the court to issue an order to the broadcasting
23 station for the discontinuance of the radio or television presentation
24 that is in violation of section 15 of this act.

25 (2) An action under this section shall be brought in the county in
26 which the violation is alleged to have taken place, and shall be
27 commenced by the filing of a verified complaint, or shall be
28 accompanied by an affidavit.

29 (3) If it is shown to the satisfaction of the court, either by
30 verified complaint or affidavit, that the nonparticipating candidate or
31 other person is engaged in or about to engage in any act that
32 constitutes a violation of section 15 of this act, the court may issue
33 a temporary restraining order to abate and prevent the continuance or
34 recurrence of the act.

35 (4) The court may issue a permanent injunction to restrain, abate,
36 or prevent the continuance or recurrence of the violation of section 15
37 of this act. The court may grant declaratory relief, mandatory orders,

1 or any other relief deemed necessary to accomplish the purposes of the
2 injunction. The court may retain jurisdiction of the case for the
3 purpose of enforcing its orders.

4 NEW SECTION. **Sec. 17.** DISQUALIFICATION FROM PROGRAM. If the
5 commission finds that a publicly financed candidate or the publicly
6 financed candidate's committee is accepting or expending money outside
7 the provisions of sections 1 through 20 of this act, the candidate
8 shall be disqualified from the program, shall be subject to a civil
9 penalty under RCW 42.17.390, and shall return all money received from
10 the judicial election reform act fund.

11 NEW SECTION. **Sec. 18.** IMPLEMENTATION AND ENFORCEMENT DUTIES. The
12 commission shall:

13 (1) Prescribe forms for reports, statements, notices, and other
14 documents as required by sections 1 through 20 of this act;

15 (2) Prepare and publish instructions to facilitate compliance with
16 sections 1 through 20 of this act and explaining the duties of persons
17 and committees under sections 1 through 20 of this act;

18 (3) Adopt rules to carry out the policies of sections 1 through 20
19 of this act. These rules are not subject to the time restrictions of
20 RCW 42.17.370(1); and

21 (4) Enforce the provisions of sections 1 through 20 of this act,
22 ensure that money transferred from the judicial election reform act
23 fund into the account of an authorized committee of a publicly financed
24 candidate is spent as specified, and monitor reports filed and
25 financial records of candidates as needed to ensure that rescue funds
26 are promptly authorized to opposing qualified candidates under section
27 13 of this act.

28 NEW SECTION. **Sec. 19.** EXPEDITED ADMINISTRATIVE REVIEW. (1) The
29 commission shall develop an expedited administrative review process
30 that is not subject to the adjudicative proceedings of chapter 34.05
31 RCW. However, commission findings are subject to judicial review under
32 RCW 34.05.570(4).

33 (2) The following individuals may seek expedited administrative
34 review of commission decisions:

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

3 (b) Publicly financed candidates who are denied rescue funds; and

4 (c) Opponents of a publicly financed candidate who disagree with a
5 decision by the commission to grant rescue funds to a publicly financed
6 candidate.

7 (3) In an expedited administrative review process, the commission
8 shall issue a final decision no more than five calendar days after
9 review is requested.

10 (4) The commission may adopt rules to implement this section.

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

16 NEW SECTION. **Sec. 20.** The commission shall not offer the program
17 in sections 1 through 19 of this act until an appropriation of three
18 million dollars is made for the program.

19 **Sec. 21.** RCW 42.17.390 and 2006 c 315 s 2 are each amended to read
20 as follows:

21 One or more of the following civil remedies and sanctions may be
22 imposed by court order in addition to any other remedies provided by
23 law:

24 (1) If the court finds that the violation of any provision of this
25 chapter by any candidate or political committee probably affected the
26 outcome of any election, the result of said election may be held void
27 and a special election held within sixty days of such finding. Any
28 action to void an election shall be commenced within one year of the
29 date of the election in question. It is intended that this remedy be
30 imposed freely in all appropriate cases to protect the right of the
31 electorate to an informed and knowledgeable vote.

32 (2) If any lobbyist or sponsor of any grass roots lobbying campaign
33 violates any of the provisions of this chapter, his or her registration
34 may be revoked or suspended and he or she may be enjoined from
35 receiving compensation or making expenditures for lobbying: PROVIDED,

1 HOWEVER, That imposition of such sanction shall not excuse said
2 lobbyist from filing statements and reports required by this chapter.

3 (3) Any person who violates any of the provisions of this chapter
4 may be subject to a civil penalty of not more than ten thousand dollars
5 for each such violation. However, a person or entity who violates RCW
6 42.17.640 and 42.17.645 may be subject to a civil penalty of ten
7 thousand dollars or three times the amount of the contribution
8 illegally made or accepted, whichever is greater.

9 (4) Any person who fails to file a properly completed statement or
10 report within the time required by this chapter may be subject to a
11 civil penalty of ten dollars per day for each day each such delinquency
12 continues.

13 (5) Any person who fails to report a contribution or expenditure as
14 required by this chapter may be subject to a civil penalty equivalent
15 to the amount not reported as required.

16 (6) The court may enjoin any person to prevent the doing of any act
17 herein prohibited, or to compel the performance of any act required
18 herein.

19 (7)(a) The civil penalty for a violation of a contribution or
20 expenditure limit established under section 4 of this act by or on
21 behalf of a publicly financed candidate is ten times the amount by
22 which the expenditures or contributions exceed the applicable limit.
23 If the violation occurs within five days of an election, the civil
24 penalty is twenty times the amount by which the expenditures or
25 contributions exceed the applicable limit. A publicly financed
26 candidate found to have knowingly committed a violation of the
27 expenditure or contribution limits under section 4 of this act shall
28 pay the applicable fines, surrender all money in the candidate's
29 authorized committee account to the judicial election reform act fund,
30 and will cease to be a publicly financed candidate.

31 (b) In addition to any other penalties imposed by law, the civil
32 penalty for a violation by or on behalf of a publicly financed
33 candidate of a reporting requirement imposed by this chapter is one
34 hundred dollars per day. A civil penalty imposed under this subsection
35 (7)(b) may not exceed twice the amount of expenditures or contributions
36 not reported in a timely manner. The candidate and the candidate's
37 authorized committee are jointly and severally responsible for a civil
38 penalty imposed under this subsection.

1 (c) The civil penalty for a violation of the revocation requirement
2 imposed by sections 1 through 20 of this act is one thousand dollars
3 per day for each day past the period allowed for a timely revocation.

4 (d) The civil penalty for a violation of the reporting provisions
5 in section 15 of this act shall be equal to the amount not reported.

6 (e) All civil penalties collected under this subsection must be
7 deposited into the judicial election reform act fund.

8 NEW SECTION. Sec. 22. Sections 1 through 20 of this act may be
9 known and cited as the judicial election reform act.

10 NEW SECTION. Sec. 23. Sections 1 through 20 and 26 of this act
11 are each added to chapter 42.17 RCW.

12 NEW SECTION. Sec. 24. Captions used in this act are not part of
13 the law.

14 NEW SECTION. Sec. 25. If any provision of this act or its
15 application to any person or circumstance is held invalid, the
16 remainder of the act or the application of the provision to other
17 persons or circumstances is not affected.

18 NEW SECTION. Sec. 26. The public disclosure commission shall
19 report to the governor and to the appropriate committees of the
20 legislature in January of even-numbered years on the effectiveness of
21 the judicial election reform act, sections 1 through 20 of this act,
22 once the program is offered.

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