

HOUSE BILL REPORT

HB 1738

As Reported by House Committee On:
State Government & Tribal Affairs

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

Brief Description: Providing public funding for supreme court campaigns.

Sponsors: Representatives Liias, Goodman, Appleton, Carlyle, Probst, Nelson, Hasegawa, Orwall, Rolfes, Dickerson, Hunt, Pettigrew, Cody, Darneille, White, Chase, Kenney, Dunshee, Ormsby, Miloscia, Moeller, Roberts, Simpson, Sells, Flannigan, Eddy, McCoy, Wood, Kagi, Wallace, Williams and Green.

Brief History:

Committee Activity:

State Government & Tribal Affairs: 3/5/09 [DPS]; 2/2/10 [DPS].

Brief Summary of Substitute Bill

- Establishes a program for public financing for the office of Supreme Court Justice.

HOUSE COMMITTEE ON STATE GOVERNMENT & TRIBAL AFFAIRS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 5 members: Representatives Hunt, Chair; Appleton, Vice Chair; Flannigan, Hurst and Miloscia.

Minority Report: Do not pass. Signed by 3 members: Representatives Armstrong, Ranking Minority Member; Alexander and Taylor.

Staff: Marsha Reilly (786-7135).

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 office, further regulated independent expenditures, restricted the use of public funds for

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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 office.

A series of court decisions have identified a number of constitutional limitations on the regulation of campaign financing. Decisions have upheld ceilings on a candidate's expenditures only as part of a public financing agreement under which a candidate agrees to abide by the limits in exchange for public financing. However, recent district court actions have ruled that provisions in public financing programs granting matching funds are unconstitutional.

A number of states, including 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 Substitute Bill:

A public financing program (program) providing public campaign funding for candidates for Supreme Court Justice, cited as the Judicial Election Reform Act (Act), is established. The Public Disclosure Commission (PDC) enforces the program and is authorized to adopt rules regarding reporting requirements and auditing of qualifying contributions.

Program Requirements.

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

- accept contributions only from individuals;
- not expend more than two times the approved contribution limit for candidates for Supreme Court Justice in personal funds;
- collect at least 500 qualifying contributions that, in the aggregate, total at least 25 times the filing fee for the office;
- file required reports;
- expend only funds received from the Act fund; and
- comply with the provisions of the Act.

Qualifying Contributions.

Participating candidates must collect 500 qualifying contributions in any amount between \$10 and up to 25 percent of the contribution limit allowed for a single election. Qualifying contributions must be made by an individual, and not by any political committee, organization, union, business, etc., and must be made during the qualifying period. The qualifying period begins February 1 of an election year and ends one week after the close of the regular filing period for the office. 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.

To become certified for the program, a candidate must file an application to participate, submit a report itemizing the qualifying contributions received, and submit a check or money order equal to the total qualifying contributions, less the money used to pay for expenses, to the PDC. Affidavits attesting that the qualifying contributions were made by registered voters of the state and signed by persons collecting qualifying contributions also must be submitted. The PDC must determine a candidate's eligibility to participate in the program within seven days of receiving an application. If an application is denied, written reasons for the denial must be provided to the candidate. Any candidate denied certification may reapply one time within 14 days of denial by submitting the required information or the number of qualifying contributions needed to complete the certification. Candidates certified for the program may be designated as a publicly financed candidate in the state voters' pamphlet.

Public Financing.

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 and may be no more than 100 times the filing fee for the office (1 percent of the salary for the office, or \$164,200). 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 (\$205,250). Publicly financed candidates in uncontested elections shall receive four times the filing fee (\$6,568), plus the qualifying contributions raised by that candidate. A publicly financed candidate must return 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.

Revocation.

A publicly financed candidate may revoke a decision to participate in the program no later than June 30 in the year of the election. Within 30 days of revocation, all money received from the Act fund must be returned.

Rescue Funds.

A participating candidate is eligible for rescue funds in the event that a nonparticipating candidate raises more than was allotted to the participating candidate. Independent expenditures and electioneering communications made in support of a nonparticipating candidate or opposing a participating candidate are considered in determining eligibility for rescue funds. A participating candidate may determine when to access rescue funds. The total amount of rescue funds a participating candidate may receive is 500 times the filing fee for the office (\$821,000).

Participating candidates determine when to access matching funds. If the candidate chooses not to use matching funds in a contested primary election, he or she is not eligible to use those funds in an uncontested general election. The PDC must disburse matching funds within five calendar days of receiving a request.

Reporting Requirements.

Nonparticipating candidates must report to the PDC within 24 hours of raising contributions that total 80 percent of the amount authorized for participating candidates. Any person

making independent expenditures or electioneering communications in excess of \$3,000 in support of or opposition to a publicly financed candidate, or in support of a candidate opposing a publicly financed candidate, must submit a report detailing the expenditure to the PDC.

Disqualification and Penalties.

If the PDC finds that a publicly financed candidate or the candidate's committee is accepting or expending money outside the provisions of the Act, the candidate shall be disqualified from the program, be subject to a civil penalty, and return all money received from the Act fund. A violation of the qualification contribution or expenditure limit may result in a fine of 10 times the amount of the expenditure or contribution that exceeds the limit, or 20 times that amount if the violation is within five days of an election. A violation of any reporting required by a publicly financed candidate is subject to a fine of \$100 per day, or up to twice the amount not reported. The civil penalty for late revocation will result in a fine of \$1,000 per day for each day beyond the allowed revocation period.

Implementation and Enforcement.

The PDC must enforce the program, adopt rules to carry out the policy of the program, and prescribe forms for reports, statements, notices, and other documents required for the program. The PDC must develop an expedited administrative review process in which individuals may seek review of PDC decisions. The program may not be implemented until \$1 million is in the Act fund. Once the program is offered, the PDC is required to report to the Governor and to the appropriate committees of the Legislature in January of even-numbered years on the effectiveness of the Act.

Funding.

The Judicial Election Reform Act Fund (Fund) is created in the custody of the State Treasurer. The Fund is subject to allotment procedures, but an appropriation is not required for expenditures. A surcharge is added to court filings for district and superior courts and must be deposited into the Fund. The PDC is authorized to solicit and accept contributions to the Fund.

Substitute Bill Compared to Original Bill:

The substitute bill makes the following changes to the underlying bill:

- increases the amount of the candidate's personal funds from \$1,000 to no more than two times the contribution limit;
- stipulates that candidates who: (1) withdraw from the program before certification; (2) are denied certification; or (3) revoke participation, must pay to the fund the total dollar amount of qualifying contributions received during the qualifying period, less money expended for the purpose of raising qualifying contributions;
- removes the requirement that a nonparticipating candidate who has a publicly financed opponent report planned expenditures for the 21 days before the election;
- removes actions regarding civil proceedings in order to enjoin political advertising not reported;
- allows the PDC to offer the program when the Fund contains \$1 million;
- allows the PDC to solicit and accept contributions for the Fund; and

- adds a surcharge of \$3 to court filings for district and superior courts to fund the program.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Substitute Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) Washington Public Campaigns support the bill. States in which Supreme Court justices are elected have seen a recent trend of increased spending on those races. In the state of Washington, spending on races for three seats in 2006 was more than \$4.3 million. The bill will counter any movement toward bankable votes by allowing campaign messages to get out without relying on private contributions. The proposed \$3 surcharge on filing and other court fees is modest and reasonable.

The League of Women Voters supports the bill as it takes action to combat corruption and undue influence in elections, enables candidates to compete more equitably for office, and promotes citizen participation in the political process. A recent court opinion will aggravate the national trend of increasingly expensive judicial races. Impartiality and the appearance of impartiality are essential to the integrity of Washington's Supreme Court.

The Washington State Association for Justice supports the bill. Imagine the scenario in which a large corporation has a case coming before the court, and in the upcoming election spends huge amounts of money electing a favorable judge. This is not fiction, this actually happened in West Virginia. The U.S. Supreme Court recently addressed this case and said that the judge in that case had to recuse himself, but then reaffirmed the rights of corporations to contribute unfettered amounts of money into political campaigns. The amount of money provided under the bill is insufficient.

This is a nonpartisan approach to funding campaigns for judicial candidates. There is strong support from nonpartisan groups, bipartisan groups, and partisan groups. Funding campaigns for the court is very different than other races. Judges are expected not to have preconceived ideas, while legislators are to talk about their policy ideas. The goal of rescue funds is not for equal parity, but allows a candidate to get ideas out to the public.

(With concerns) The Board for Judicial Administration has not taken a position on the policy behind the bill, however it is opposed to using court filing fees for funding the program. Three dollars may not seem like a lot, but there have been fee increases in court fees over the past few years. Filing fees are an access to justice issue. The more expensive you make it for someone to go to court, the more difficult you make it for them to seek justice.

(Opposed) None.

Persons Testifying: (In support) Representative Liias, prime sponsor; John King, Washington Public Campaigns; Katy Sheehan, League of women Voters; and Larry Shannon, Washington State Association for Justice.

(With concerns) Mellani McAleenan, Board for Judicial Administration.

Persons Signed In To Testify But Not Testifying: Tyler Haron, Craig Salins, Chris Stearns, and Marcee Stone, Washington Public Campaigns; Blair Anundson, Washington Public Interest Research Group; and B. Bogard, Washington State Association of Broadcasters.