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**SUBSTITUTE SENATE BILL 5912**

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**State of Washington**

**61st Legislature**

**2010 Regular Session**

**By** Senate Government Operations & Elections (originally sponsored by Senators Oemig, McDermott, Kline, Kastama, Pridemore, Kilmer, Jarrett, Kohl-Welles, and Haugen)

READ FIRST TIME 02/05/10.

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.   (1) 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 is destructive for our democracy to  
16 allow the court to become influenced by large amounts of money, and for  
17 our citizens to think that judicial decisions are influenced by those  
18 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 (2) Therefore, this act, the judicial election reform act,  
4 introduces a voluntary pilot project to provide an alternative source  
5 of financing candidates for the Washington supreme court who  
6 demonstrate public support and voluntarily accept strict fundraising  
7 and spending limits.

8 (3) The provisions of this act must be broadly interpreted to carry  
9 out the purpose and intent of this act.

10 NEW SECTION. **Sec. 2.** DEFINITIONS. In addition to the definitions  
11 in RCW 42.17.020, the definitions in this section apply throughout  
12 sections 1 through 16, 18, and 19 of this act unless the context  
13 clearly requires otherwise.

14 (1) "Campaign contribution" means any cash or cash equivalent paid,  
15 or the value of an item paid, to a political committee.

16 (2) "Contested election" means an election in which there are two  
17 or more candidates running for the same office whose names will appear  
18 on the ballot.

19 (3) "Nonparticipating candidate" means a candidate for supreme  
20 court justice who is on the ballot but has chosen not to apply for  
21 public funds from the judicial election reform act fund or a candidate  
22 who is on the ballot and has applied but has not been certified to  
23 receive public funds from the judicial election reform act fund.

24 (4) "Publicly financed candidate" means a candidate who becomes  
25 certified to receive public campaign funds under section 6 of this act.

26 (5) "Qualifying contribution" means a contribution in an amount of  
27 at least ten dollars, but no more than twenty-five percent of the  
28 maximum contribution limit allowed under RCW 42.17.645, made by a  
29 registered voter of the state, and is received during the qualifying  
30 period.

31 (6) "Qualifying period" means the period beginning February 1st of  
32 the election year and ending one week after the close of the regular  
33 filing period for the office.

34 (7) "Uncontested election" means an election in which a candidate  
35 running for a specified office has no opponent on the ballot.

1        NEW SECTION.    **Sec. 3.**    JUDICIAL ELECTION REFORM ACT FUND.    (1) The  
2    judicial election reform act fund is created in the custody of the  
3    state treasurer. All receipts under sections 4 through 15 and 19 of  
4    this act required to be deposited into the fund must be deposited into  
5    the fund. Expenditures from the fund may be used only for the purposes  
6    of the judicial election reform act, sections 1 through 16 and 18 of  
7    this act. Only the commission may authorize expenditures from the  
8    fund. The fund is subject to allotment procedures under chapter 43.88  
9    RCW, but an appropriation is not required for expenditures.

10        (2) When the funds in the account have been fully distributed, the  
11    commission and treasurer must cease making any public funds  
12    disbursements under sections 1 through 16 and 18 of this act. No  
13    candidate may receive any disbursement of funds beyond those authorized  
14    under sections 1 through 16 and 18 of this act, nor may any candidate  
15    receive any further disbursements of funds under sections 1 through 16  
16    and 18 of this act when the appropriation has been exhausted. The  
17    commission may adopt rules to address distribution of remaining funds  
18    in the account for pending requests.

19        NEW SECTION.    **Sec. 4.**    VOLUNTARY LIMITATIONS ON CONTRIBUTIONS FOR  
20    JUDICIAL CAMPAIGNS. A publicly financed candidate and a publicly  
21    financed candidate's authorized committee must:

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

24        (2) During the qualifying period for the purpose of raising  
25    qualifying contributions, accept no more than two times the  
26    contribution limit under RCW 42.17.645 of the candidate's personal  
27    funds;

28        (3) Collect at least five hundred qualifying contributions that, in  
29    the aggregate total at least twenty-five times the filing fee for the  
30    office of supreme court justice in accordance with section 5 of this  
31    act;

32        (4) File the required reports regarding qualifying and expenditures  
33    to the commission;

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

36        (6) Sign a joint statement with the treasurer of the publicly

1 financed candidate's authorized committee, under oath, promising to  
2 comply with the provisions of this chapter; and

3 (7) Comply with the provisions of this chapter to the extent  
4 required for publicly funded candidates as prescribed by the  
5 commission.

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

8 (1) File an application with the commission declaring his or her  
9 intent to participate in the program as a candidate for the supreme  
10 court. The application must be filed before or during the qualifying  
11 period. In the application, the candidate must affirm that only one  
12 political committee, identified with its treasurer, must handle all  
13 contributions, expenditures, and obligations for the publicly financed  
14 candidate and that the candidate will comply with the provisions set  
15 forth in sections 1 through 16 and 18 of this act and rules adopted by  
16 the commission; and

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

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

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

25 (c) In an amount of at least ten dollars but not more than twenty-  
26 five percent of the contribution limit allowed under RCW 42.17.645;

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

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

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

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

35 (b) Submitted a report itemizing the qualifying contributions  
36 received. The report must include the name, home address, telephone

1 number, and county of residence for each person who made a contribution  
2 and the date the contribution was received, and any other information  
3 required by the commission;

4 (c) Submitted a check or money order equal to the total qualifying  
5 contributions, less money expended for the purpose of raising  
6 qualifying contributions received by the candidate in accordance with  
7 section 7 of this act, made out to the judicial election reform act  
8 fund;

9 (d) Submitted affidavits signed by persons collecting qualifying  
10 contributions stating that they have verified that the contribution was  
11 made by a registered voter of the state; and

12 (e) The civil penalty for persons submitting a false affidavit  
13 under (d) of this subsection is twice the amount of the contribution  
14 for which the affidavit was submitted.

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

19 (3) The commission must determine if a candidate meets the  
20 requirements for public financing within seven calendar days of the  
21 filing of an application. If the requirements of subsection (2) of  
22 this section are met, the commission must certify the candidate for  
23 public financing. If the commission denies certification, it must  
24 provide written reasons why certification is denied. Any candidate who  
25 is denied certification may reapply one time by submitting the required  
26 information or the number of qualifying contributions needed to  
27 complete the certification within fourteen calendar days of the date of  
28 the commission's decision.

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

32 NEW SECTION. **Sec. 7.** QUALIFYING CONTRIBUTIONS. A publicly  
33 financed candidate may expend money received as qualifying  
34 contributions, as well as the candidate's personal funds, to pay for  
35 expenses related to raising qualifying contributions. The amount of  
36 qualifying contributions used for this purpose may not exceed twenty-  
37 five percent of the minimum dollar amount of qualifying contributions

1 required under section 5 of this act. Expenditures made for the  
2 purpose of this section must be reported as required under RCW  
3 42.17.080 and 42.17.090 or as determined by the commission by rule.

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

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

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

17 (3) Money in the account of a publicly financed candidate's  
18 authorized committee may not be used to pay salaries or expenses of  
19 family members of the candidate. For the purposes of this section,  
20 "family members" includes parents, stepparents, grandparents, uncles,  
21 aunts, cousins, siblings, children, stepchildren, grandchildren, and  
22 nieces and nephews.

23 NEW SECTION. **Sec. 10.** RETURN OF FUNDS. (1) If a candidate  
24 attempts to qualify for public funding but does not meet the threshold  
25 for qualification, withdraws from the program before certification, is  
26 denied certification under section 6 of this act, or revokes  
27 participation under section 11 of this act, the candidate must pay to  
28 the fund the total dollar amount of qualifying contributions received  
29 during the qualifying period, plus interest less money expended for the  
30 purpose of raising qualifying contributions in accordance with section  
31 7 of this act.

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

1        NEW SECTION.    **Sec. 11.**    REVOCATION.    (1) A publicly financed  
2 candidate may revoke in writing to the commission a decision to  
3 participate in the public financing program no later than June 30th in  
4 the year of the election. After a timely revocation, that candidate  
5 may accept and expend money outside the provisions of this act. Within  
6 thirty days after revocation, a candidate must return to the commission  
7 all money received from the judicial election reform act fund plus  
8 interest.

9        (2) A publicly financed candidate who revokes a decision to  
10 participate in the public financing program after the time period  
11 established in subsection (1) of this section must return all money  
12 received from the judicial election reform act fund plus interest and  
13 pay a fine of one thousand dollars per day for each day beyond the  
14 allowed revocation period and the day the candidate revokes.

15        (3) A publicly financed candidate who revokes public financing  
16 under this section is disqualified from the program for the following  
17 seven-year period. The seven-year period will commence when notice of  
18 revocation in subsection (1) of this section is submitted.

19        NEW SECTION.    **Sec. 12.**    CAMPAIGN FUNDING.    (1)(a) Within five  
20 business days after a publicly financed candidate's name is approved to  
21 appear on the primary ballot by the appropriate elections officer, the  
22 commission shall authorize the state treasurer to distribute to the  
23 account of the authorized committee of each certified publicly financed  
24 candidate an amount set, by rule, based on the number of participating  
25 candidates filing for office. No candidate may receive an amount  
26 greater than fifty times the filing fee as established in RCW  
27 29A.24.091 for the primary.

28        (b) Within five business days after a publicly financed candidate's  
29 name is approved to appear on the general election ballot, the  
30 commission must authorize the state treasurer to distribute funds to  
31 the account of the authorized committee of each certified publicly  
32 financed candidate in an amount equal to fifty times the filing fee for  
33 the office as established in RCW 29A.24.091.

34        (c) Participating candidates in uncontested elections must receive  
35 four times the filing fee as established in RCW 29A.24.091.

36        (d) A publicly financed candidate may not expend more than one

1 hundred ten times the current expenditures of any nonparticipating  
2 candidate as reported to the commission.

3 (2) A publicly financed candidate must return within ten calendar  
4 days to the judicial election reform act fund any amount distributed  
5 for an election that is unspent and uncommitted as of the date the  
6 candidate ceases to be a candidate or as of the date of the election,  
7 whichever occurs first.

8 (3) The commission must authorize and the state treasurer must  
9 distribute funds to publicly financed candidates in a manner that  
10 ensures accountability and safeguards the integrity of the fund.

11 NEW SECTION. **Sec. 13.** DISQUALIFICATION FROM PROGRAM. If the  
12 commission finds that a publicly financed candidate or the publicly  
13 financed candidate's committee is accepting or expending money outside  
14 the provisions of sections 1 through 16 and 18 of this act, the  
15 candidate shall be permanently disqualified from the program, is  
16 subject to a civil penalty under RCW 42.17.390, and must return all  
17 money received from the judicial election reform act fund plus  
18 interest.

19 NEW SECTION. **Sec. 14.** IMPLEMENTATION AND ENFORCEMENT DUTIES. The  
20 commission shall:

21 (1) Prescribe forms for reports, statements, notices, and other  
22 documents as required by sections 1 through 16 and 18 of this act;

23 (2) Prepare and publish instructions to facilitate compliance with  
24 sections 1 through 16 and 18 of this act and explaining the duties of  
25 persons and committees under sections 1 through 16 and 18 of this act;

26 (3) Adopt rules to carry out the policies of sections 1 through 16  
27 and 18 of this act. These rules are not subject to the time  
28 restrictions of RCW 42.17.370(1); and

29 (4) Enforce the provisions of sections 1 through 16 and 18 of this  
30 act, and ensure that money transferred from the judicial election  
31 reform act fund into the account of an authorized committee of a  
32 publicly financed candidate is spent as specified.

33 NEW SECTION. **Sec. 15.** EXPEDITED ADMINISTRATIVE REVIEW. (1) The  
34 commission shall develop an expedited administrative review process

1 that is not subject to the adjudicative proceedings of chapter 34.05  
2 RCW. However, commission findings are subject to judicial review under  
3 RCW 34.05.570(4).

4 (2) The following individuals may seek expedited administrative  
5 review of commission decisions:

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

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

9 (c) Opponents of a publicly financed candidate who disagree with a  
10 decision by the commission to grant rescue funds to a publicly financed  
11 candidate.

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

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

16 (5) Any petition for judicial review of a final decision in an  
17 expedited administrative review must be filed within five calendar days  
18 of the final decision. In any judicial review, the court may not grant  
19 a stay or temporary relief unless it finds the conditions specified in  
20 RCW 34.05.550(3) (a), (b), and (c).

21 NEW SECTION. **Sec. 16.** The commission may not offer the program in  
22 sections 1 through 15 of this act until a permanent funding source is  
23 determined and one million dollars is in the judicial election reform  
24 act fund.

25 **Sec. 17.** RCW 42.17.390 and 2006 c 315 s 2 are each amended to read  
26 as follows:

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

30 (1) If the court finds that the violation of any provision of this  
31 chapter by any candidate or political committee probably affected the  
32 outcome of any election, the result of said election may be held void  
33 and a special election held within sixty days of such finding. Any  
34 action to void an election shall be commenced within one year of the  
35 date of the election in question. It is intended that this remedy be

1 imposed freely in all appropriate cases to protect the right of the  
2 electorate to an informed and knowledgeable vote.

3 (2) If any lobbyist or sponsor of any grass roots lobbying campaign  
4 violates any of the provisions of this chapter, his or her registration  
5 may be revoked or suspended and he or she may be enjoined from  
6 receiving compensation or making expenditures for lobbying(~~(+~~  
7 ~~PROVIDED, HOWEVER, That~~)). However, imposition of such sanction  
8 (~~shall~~) does not excuse (~~said~~) the lobbyist from filing statements  
9 and reports required by this chapter.

10 (3) Any person who violates any of the provisions of this chapter  
11 may be subject to a civil penalty of not more than ten thousand dollars  
12 for each such violation. However, a person or entity who violates RCW  
13 42.17.640 and 42.17.645 may be subject to a civil penalty of ten  
14 thousand dollars or three times the amount of the contribution  
15 illegally made or accepted, whichever is greater.

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

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

23 (6) The court may enjoin any person to prevent the doing of any act  
24 herein prohibited, or to compel the performance of any act required  
25 herein.

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

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

9       (c) The civil penalty for a violation of the revocation requirement  
10 imposed by sections 1 through 16 and 18 of this act is one thousand  
11 dollars per day for each day past the period allowed for a timely  
12 revocation.

13       (d) All civil penalties collected under this subsection must be  
14 deposited into the judicial election reform act fund.

15       NEW SECTION. Sec. 18. The commission may solicit and accept  
16 gifts, grants, conveyances, bequests, and devises of real or personal  
17 property, or both, in trust or otherwise, and sell, lease, exchange,  
18 invest, or expend these donations or the proceeds, rents, profits, and  
19 income from the donations except as limited by the donor's terms.  
20 Moneys received under this section must be deposited into the judicial  
21 election reform act fund established in section 3 of this act and may  
22 only be used for the purposes of sections 1 through 16 of this act.

23       NEW SECTION. Sec. 19. (1) Every person making a campaign  
24 contribution within this state to another person is subject to a fee  
25 equal to twenty percent of the total amount of the campaign  
26 contribution.

27       (2) The commission must collect any fee charged under this section.

28       (3) This section does not apply to any campaign contribution made  
29 in the amount of one hundred dollars or less.

30       (4) The commission must adopt rules to implement this section,  
31 including the frequency and time of collection of the fee charged in  
32 this section.

33       (5) This section applies to all campaign contributions made in the  
34 state after July 1, 2010.

35       (6) All fee proceeds collected under this section must be remitted

1 by the commission to the state treasurer for deposit in the judicial  
2 election reform act fund created in section 3 of this act.

3 NEW SECTION. **Sec. 20.** Sections 1 through 16, 18, and 19 of this  
4 act may be known and cited as the judicial election reform act.

5 NEW SECTION. **Sec. 21.** Sections 1 through 16, 18, 19, and 23 of  
6 this act are each added to chapter 42.17 RCW.

7 NEW SECTION. **Sec. 22.** If any provision of this act or its  
8 application to any person or circumstance is held invalid, the  
9 remainder of the act is null and void.

10 NEW SECTION. **Sec. 23.** The public disclosure commission must  
11 report to the governor and to the appropriate committees of the  
12 legislature in January of even-numbered years on the effectiveness of  
13 the judicial election reform act once the program is offered.

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