

HOUSE BILL REPORT

HB 1186

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

Title: An act relating to judicial campaigns.

Brief Description: Modifying provisions on judicial campaigns.

Sponsors: Representatives Schual-Berke, Hunt, Dunshee, McDermott, Chase, Sommers, Kagi, Pettigrew, Darneille, Cody, Miloscia, Dickerson, Appleton, Green, Ormsby, Santos, Lantz, Kenney and Roberts.

Brief History:

Committee Activity:

State Government & Tribal Affairs: 2/7/07, 2/26/07 [DPS];
Appropriations: 3/3/07 [DPS(SGTA)].

Brief Summary of Substitute Bill

- Establishes a pilot program of public financing for offices of Supreme Court Justice and Court of Appeals Judge.

HOUSE COMMITTEE ON STATE GOVERNMENT & TRIBAL AFFAIRS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 6 members: Representatives Hunt, Chair; Appleton, Vice Chair; Green, McDermott, Miloscia and Ormsby.

Minority Report: Do not pass. Signed by 3 members: Representatives Chandler, Ranking Minority Member; Armstrong, Assistant Ranking Minority Member and Kretz.

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

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.

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," that is, campaign expenditures not subject to the control of a candidate. 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 and Maine have enacted public financing programs for statewide and legislative offices. More recently, North Carolina has enacted a public financing program for candidates for Supreme Court and Court of Appeals.

Summary of Substitute Bill:

A six-year pilot program for public financing is established for candidates for office in the Washington Supreme Court and Court of Appeals. The program is administered by the Public Disclosure Commission (PDC), and the PDC is authorized to adopt rules for this purpose.

To participate in the program, a candidate must agree to the following:

- accept contributions only from individuals;
- expend only \$1,000 of the candidate's personal money and only during the qualifying period;
- accept and expend seed money in accordance with the act;
- collect a minimum number of qualifying contributions;

- after certification, expend only funds received from the Judicial Election Reform Act fund (fund); and
- sign a joint statement with the candidate's committee treasurer promising to comply with the provisions of the act.

Qualifying Period

The "qualifying period" is defined as the period beginning February 1, and ending on the close of the regular filing period for the office sought.

Seed Money Contributions

A publicly financed candidate may accept seed money contributions of no more than \$100 and only from individuals. Seed money contributions are capped at \$25,000 for a candidate for Supreme Court Justice and \$10,000 for a candidate for Court of Appeals Judge. Seed money may be raised and spent only during the qualifying period and may only be used for the purpose of raising qualifying contributions. Seed money not spent at the end of the qualifying period must be paid to the fund.

Qualifying Contributions

Candidates participating in the program must obtain a certain number of qualifying contributions. A candidate for Supreme Court Justice must obtain at least 500 qualifying contributions and a candidate for Court of Appeals Judge must obtain at least 100 qualifying contributions. A qualifying contribution must be in the amount of exactly \$10 and must be:

- made by a registered voter of the appropriate electoral district;
- made by a person who is not given anything of value in exchange for the contribution;
- received during the qualifying period by or on behalf of the candidate; and
- made by check, money order, or credit card.

Certification

A candidate who wishes to receive public campaign funds must file an application with the Public Disclosure Commission (PDC) before the end of the qualifying period and affirm to the conditions for receiving public funding. The candidate must submit a report itemizing the qualifying contributions received, including the name, address, telephone number, and county of residence for each contributor; a check or money order equal to the total amount of qualifying contributions received; and affidavits signed by persons collecting qualifying contributions attesting that the contribution was made by a registered voter in the electoral district of the office the candidate is seeking.

The PDC must verify that a sample of the qualifying contributions made were made by registered voters in the appropriate electoral district. If the minimum number of qualifying contributions is confirmed, the candidate is certified to receive public funding. Any candidate who is denied certification may reapply one time within 14 days by submitting the required information or the number of qualifying contributions needed to complete the certification.

Public Forums

Publicly financed candidates in contested races must participate in one public forum during the primary election period and one public forum during the general election period.

Nonparticipating candidates may be invited to participate. The PDC shall seek sponsorship of the forums with a nonpartisan organization active in providing information to voters on candidates or encouraging informed participation in voting.

Return of Funds

Candidates who withdraw from the program or are disqualified from the program must return all money received from the fund. In addition, an attempt must be made to return qualifying contributions to the individual donors. With a donor's permission, or if a donor cannot be located for purposes of returning the contribution, qualifying contributions may be paid to or remain in the fund.

Revocation

A publicly financed candidate may revoke a decision to participate in the program within five calendar days of certification. Within 24 hours of revocation, the candidate must return all money received from the fund. A candidate who chooses to revoke after the established time period 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.

Campaign Funding

Within five business days of a publicly financed candidate's name being approved to appear on the primary or general election ballot in a contested race, the PDC shall distribute funds as follows:

- for the office of Supreme Court Justice, an amount equal to 50 times the filing fee for the primary and 100 times the filing fee for the general election; and
- for the office of Court of Appeals Judge, an amount equal to 20 times the filing fee for the primary and 20 times the filing fee for the general election.

If uncontested, the PDC shall distribute the following amounts:

- for the office of Supreme Court Justice, an amount equal to four times the filing fee; and
- for the office of Court of Appeals Judge, an amount equal to the filing fee.

Within 10 days of election certification, a publicly financed candidate must return any funds that are unspent and uncommitted as of the date of the election or at the time the individual ceases to be a candidate.

Fair Fight Funds

The PDC may authorize fair fight funds in the event that a publicly financed candidate is being outspent by a nonparticipating opponent. Independent expenditures and electioneering communications made by persons other than the nonparticipating opponent are considered for purposes of fair fight funds. A publicly funded candidate for Supreme Court Justice may receive up to 480 times the filing fee, and a candidate for Courts of Appeals judge may receive up to 80 times the filing fee in fair fight funds. These amounts are a total for both the primary and general elections, and the candidate may determine when to access fair fight funds.

Reporting Requirements

Nonparticipating opponents of a publicly financed candidate are required to report income, expenses, and obligations to the PDC electronically within 24 hours after the total amount

exceeds 80 percent of the amount authorized for the publicly financed candidate. Additional reporting also is required for persons making independent expenditures or electioneering communications in support of or opposition to either a publicly financed candidate or the publicly financed candidate's opponent.

Disqualification from Program

A publicly financed candidate may be disqualified from the program if it is found that he or she is accepting and expending money outside the limits of the program. In this instance, all money must be returned to the fund and the disqualified candidate is subject to a civil penalty.

Civil Penalties

A publicly financed candidate who violates the contribution or expenditure limits is subject to a penalty of 10 times the amount by which the expenditure or contribution exceeds the applicable limit, or 20 times that amount if the violation occurs within five days of an election. A publicly financed candidate found to have knowingly committed a violation of these limits must pay the applicable fines, turn over all money in the candidate's account to the fund, and shall cease to be a publicly funded candidate.

The civil penalty for a reporting violation is \$100 per day, but may not exceed twice the amount of the contribution or expenditure not reported. The civil penalty for a violation of the revocation requirements is \$1,000 per day for each day beyond the period allowed for a timely revocation.

Contributions received and expenditures made by nonparticipating candidates and persons making independent expenditures or electioneering communications in support of or opposition to a publicly financed candidate, or in support of a candidate opposing a publicly financed candidate that are made but not reported as required under the act are subject to a civil penalty of 10 times the amount of the contribution or expenditure not reported.

All civil penalties collected under the act must be deposited into the fund.

If funding to carry out this act is not provided in the omnibus appropriations act, this act is null and void.

Substitute Bill Compared to Original Bill:

The substitute bill increases the qualifying contributions for candidates for Supreme Court Justice from \$250 to \$500. Qualifying contributions must be made by a registered voter of the appropriate electoral district, rather than a resident. The amount that a candidate for Courts of Appeals Judge may receive for a contested primary is raised from 10 to 20 times the filing fee. For uncontested elections, a candidate for Supreme Court Justice receives public funding equal to four times the filing fee, and a candidate for Courts of Appeals Judge receives an amount equal to the filing fee.

The amounts that a publicly financed candidate may receive in fair fight funds is increased. Candidates for Supreme Court Justice may receive up to 480 times the filing fee and candidates for Courts of Appeals Judge may receive up to 80 times the filing fee. These

amounts are a total for both elections and the candidate may determine when to use fair fight funds.

The contribution limits on political committees making independent expenditures or electioneering communications in support of or opposition to a publicly funded candidate are removed. The prohibition on the use of general treasury funds of a corporation, limited liability partnership, association, or labor organization for the purpose of influencing an election for Supreme Court Justice or Court of Appeals Judge is removed.

A civil penalty is added for failure to report contributions received and expenditures made by nonparticipating candidates and persons making electioneering communications or independent expenditures in support of a candidate opposing a publicly financed candidate.

The acceptable uses of public funds received under the program are stipulated and the conditions under which funds must be returned are established. A civil penalty for late revocations is added.

The program is established as a pilot project and expires January 1, 2013.

A null and void clause is added.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Substitute Bill: The bill takes effect 90 days after adjournment of session in which bill is passed. However, the bill is null and void if not funded in the budget.

Staff Summary of Public Testimony:

(In support) The bill addresses the escalating war of money in these elections and the special interests that appear to try to buy votes. There is a need for a true, independent judiciary. This is a collaborative effort and a starting point. The League of Women Voters has participated in a national campaign on judiciary independence and is supportive of the bill. The Washington State Bar Association is supportive of the bill. The judiciary should be impartial, fair, and independent. External dollars spent on these races appear to impact the vote. There is also a need to educate the voting population on judicial candidates and the provisions in the bill for including judicial issues in the voter's pamphlet address this. The King County Bar Association and the American Judicatory Society support the bill. It's about the money. All candidates benefit from special interest money and most citizens believe that money influences judicial elections. Washington Public Campaigns supports the bill. Independent expenditures are of concern, and it is important to reduce special interests in elections. Public financing will do this. There needs to be ample funding and matching funds for the program to be successful.

(Neutral) The Secretary of State is neutral on the bill, but does support providing as much information as possible to voters and recommends that funding be provided for a primary

voters pamphlet. The Public Disclosure Commission is neutral on public financing. Independent expenditures were twice what candidates spent in judiciary campaigns. The Commission is supportive of the prohibition of general treasury funds and contribution limits for political action committees (PACs) making independent expenditures and urges that these provisions remain in the bill. The intent of Initiative 134 was to level the playing field. The contribution limits on PACs would result in a more broad-based participation, and the prohibition on the use of general treasury funds will likely result in fewer independent expenditures.

(Opposed) None.

Persons Testifying: (In support) Representative Schual-Berke, prime sponsor; Antonio Gianatta, Governor's Office; Barbara Seitle, League of Women Voters of Washington; Larry Bonar, John King and Chris Stearns, Washington Public Campaigns; Doug Lawrence, Washington State Bar Association; and John Ruhl, King County Bar.

(Neutral) Katie Blinn, Office of the Secretary of State Association; and Vicki Rippie and Jane Noland, Public Disclosure Commission.

Persons Signed In To Testify But Not Testifying: None.

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: The substitute bill by Committee on State Government & Tribal Affairs be substituted therefor and the substitute bill do pass. Signed by 21 members: Representatives Sommers, Chair; Dunshee, Vice Chair; Cody, Conway, Darneille, Ericks, Fromhold, Haigh, Hunt, Hunter, Kagi, Kenney, Kessler, Linville, McDermott, McIntire, Morrell, Pettigrew, Schual-Berke, Seaquist and P. Sullivan.

Minority Report: Do not pass. Signed by 13 members: Representatives Alexander, Ranking Minority Member; Bailey, Assistant Ranking Minority Member; Haler, Assistant Ranking Minority Member; Anderson, Buri, Chandler, Dunn, Grant, Hinkle, Kretz, McDonald, Priest and Walsh.

Staff: Kirk Schmidt (786-7118).

Summary of Recommendation of Committee On Appropriations Compared to Recommendation of Committee On State Government & Tribal Affairs:

No new changes were recommended.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Substitute Bill: The bill takes effect 90 days after adjournment of session in which bill is passed. However, the bill is null and void if not funded in the budget.

Staff Summary of Public Testimony:

(In support) This program is necessary to remove outside influence and maintain public trust. Similar programs in North Carolina and other states have shown the program works and the public strongly supports public judicial funding. In 2004, a Washington Post poll showed 67 percent of Washington residents supported public judicial funding even when the poll used a criticisms question.

(Opposed) None.

Persons Testifying: Representative Schual-Berke, prime sponsor; and Sarajane Siegfried, Washington Public Campaigns.

Persons Signed In To Testify But Not Testifying: None.