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**State Government & Tribal  
Affairs Committee**

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**HB 1186**

**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 Summary of Bill**

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

**Hearing Date:** 2/7/07

**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 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 office, and for judicial office.

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;

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*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.*

- 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 Supreme Court and Court of Appeals offices.

### **Summary of Bill:**

A public finance program is established for candidates for Supreme Court and Court of Appeals. The program is enforced 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:

- accept contributions only from individuals;
- expend only \$1,000 of the candidates 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 120 days before the first day that a candidate may file for office and ending at 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 250 qualifying contributions and a candidate for Court of Appeals Judge must obtain at least 100 qualifying contribution. A qualifying contribution must be in the amount of exactly \$10 and must be:

- made by a resident 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 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 resident 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 individuals residing 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 Debates

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

Nonparticipating candidate shall be invited to participate.

### Revocation

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

### Campaign Funding

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

- For the office of Justice of the Supreme Court, an amount equal to 50 times the filing fee (\$70,697) if contested, or an amount equal to the minimum number of qualifying contributions (\$2,500) if uncontested.
- For the office of Court of Appeals Judge, an amount equal to 10 times the filing fee (\$13,459) if contested, or an amount equal to the minimum number of qualifying contributions (\$1,000) if uncontested.

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

- For the office of Justice of the Supreme Court, an amount equal to 100 times the filing fee (\$141,394) if contested, or the dollar amount equal to the minimum number of qualifying contributions (\$2,500) if uncontested.
- For the office of Court of Appeals Judge, an amount equal to 20 times the filing fee (\$26,918) if contested, or the dollar amount equal to the minimum number of qualifying contributions (\$1,000) if uncontested.

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 may receive up to two times the amount authorized for each election in fair fight funds, or a lesser amount if full funding for fair fight funds is not available.

#### 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.

#### Contribution Limits on Independent Expenditures

Political committees that make independent expenditures or electioneering communications in support of or opposition to a candidate for Supreme Court or Court of Appeals may not accept contributions in excess of \$1,000 in the aggregate from any one person in a calendar year. No person may contribute more than \$1,000 in the aggregate in a calendar year to a political committee or \$5,000 in the aggregate to all political committees making independent expenditures or electioneering communications in support of or opposition to a candidate for Supreme Court or Court of Appeals. Political committees must segregate funds for purposes of independent expenditures or electioneering communications in support of or opposition to a candidate for Supreme Court or Court of Appeals.

#### Prohibition on the Use of Corporate or Labor Organization General Treasury Funds

The general treasury funds of a corporation, limited liability partnership, association, or labor organization may not be used for the purpose of influencing an election for Supreme Court justice or Court of Appeals judge.

#### 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.

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

**Appropriation:** None.

**Fiscal Note:** Preliminary fiscal note available.

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