

SENATE BILL REPORT

SB 5010

As of February 9, 2011

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

Brief Description: Concerning public funding for supreme court campaigns.

Sponsors: Senators White, Kline, Kohl-Welles, Keiser, Tom, Murray, Chase, Nelson and Haugen.

Brief History:

Committee Activity: Government Operations, Tribal Relations & Elections: 1/18/11.

SENATE COMMITTEE ON GOVERNMENT OPERATIONS, TRIBAL RELATIONS & ELECTIONS

Staff: Diane Smith (786-7410)

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 offices, 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 offices, and for judicial offices.

A series of court decisions has 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 (PAC);
- limitations on contributions by PACs to candidates;
- limitations on total contributions by individuals in a calendar year to candidates and political committees;
- prohibition of the use of corporate and labor organization general treasury funds to support or oppose the nomination or election of a candidate through contributions to PACs, independent expenditures, or electioneering communications;
- public financing of campaigns; and

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- reporting and disclosure of independent expenditures and electioneering communications.

Found to be impermissible were ceilings on candidate expenditures, or on independent expenditures, as well as bans on political spending by corporations in candidate elections. 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, 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 Bill: The Judicial Elections Reform Act (Act) is created as an optional, alternative source of financing for candidates for the Washington Supreme Court. Candidates who participate may so state in their campaign materials. The fact that the candidate is certified as a publicly financed candidate must be designated in the state voters' pamphlet.

The publicly financed candidate agrees only to accept qualifying contributions from individuals; to accept no more than two times the contribution limit from the candidate's personal funds for purposes of raising qualifying contributions; to collect at least 500 qualifying contributions that in the aggregate total at least 25 times the filing fee for the office.

In addition, the publicly financed candidate agrees to expend only self-contributed funds and funds from the Judicial Reform Act Fund (Fund) after being certified; to sign a joint statement with the treasurer of the candidate's authorized committee, under oath, promising to comply with the provisions of the Act; to comply with all rules adopted by the Public Disclosure Commission (PDC) to implement the Act; and to file the required reports with PDC.

The qualifying contributions must come from at least 500 individuals and be in the amount of no less than \$10 and no more than 25 percent of the contribution limit, each. These contributions must be received during the qualifying period which is February 1 of the election year through one week after the close of the regular filing period for the office.

The Fund is created in the custody of the State Treasurer. Only PDC can authorize expenditures from the Fund.

There must be at least \$1 million in the Fund for PDC to have the authority to offer the program. The sources of funding include the following: a \$3 judicial integrity surcharge on fees and surcharges charged for filing various documents with the county clerk; all penalties assessed for violations of the Act; all qualifying contributions, less the costs of raising the qualifying contributions; all qualifying contributions received during the qualifying period, less fundraising expenses and self-contributed funds, from candidates who do not meet the qualifications and withdraw, or from candidates who revoke their participation in the public funding program; fines triggered by a participating candidate's revocation of his or her decision to participate after June 30 of the year of election; all unspent and uncommitted

monies distributed from the Fund, as of the date of election or when the candidate ceases to be a candidate, whichever occurs first, minus the candidate's self-contributed funds; and fines ordered by the courts for violation of the Act.

Once certified, the candidate receives from the Fund, for the primary, in an amount determined by PDC by rule, based on the number of participating candidates, up to 100 times the filing fee within five business days of approval by the appropriate elections officer of the publicly financed candidate's name to appear on the primary election ballot. For the general election, the publicly financed candidate receives 125 times the filing fee within five business days of approval by the appropriate elections officer of the publicly financed candidate's name to appear on the general election ballot.

A disparity in funding levels between a publicly financed candidate and a nonparticipating candidate is addressed by a rescue fund. As monies are available from the Fund and up to a maximum amount, the Fund will supply the difference between the two to the publicly financed candidate, less the nonparticipating candidate's own self-contributed funds. The maximum is 500 times the filing fee. Any funds self-contributed by a candidate do not trigger rescue funds and are not considered in the calculation for rescue funds.

There are two appeals processes for candidates who disagree with the decisions made by PDC. The first is an expedited administrative review process that PDC will develop. PDC must issue a final decision no more than five calendar days after review is requested. Any appeal of this decision must be filed within five calendar days of the final decision.

PDC findings are also subject to another appeals process. This is judicial review under the Administrative Procedure Act. The court may not grant a stay or temporary relief except in specified circumstances.

Provisions are made for return to the Fund of the total dollar amount of qualifying contributions received during the qualifying period, less money spent to raise the qualifying contributions and the candidate's own self-contributed funds. This must occur if the candidate attempts, but fails to meet the threshold for qualification; withdraws from the program before certification; is denied certification due to noncompliance with the certification requirements; or revokes his or her decision to participate in the public financing program.

Within 30 calendar days of a publicly financed candidate no longer being a candidate, all unused funds, less the candidate's own self-contributed funds, must be returned to the Fund.

Reporting requirements are established for the following: nonparticipating candidates with publicly financed opponents; anyone making independent expenditures or electioneering communications in excess of \$3,000 in support of or in opposition to a publicly funded candidate; and the publicly financed candidate him or herself.

PDC may solicit and accept gifts, grants, and other contributions to the Fund.

PDC has rulemaking authority and must report to the Governor and the Legislature every even-numbered year on the effectiveness of the Act, once the program is offered.

For purposes of the calculations required by the Act, personal funds contributed by a candidate to his or her own campaign must be treated as having been expended prior to the expenditure of any other funds.

Appropriation: None.

Fiscal Note: Available.

[OFM requested ten-year cost projection pursuant to I-960.]

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.