



GOVERNOR'S OFFICE OF
BUDGET AND PROGRAM PLANNING

Fiscal Note 2009 Biennium

Bill # SB0202

Title: Public financing of supreme court campaigns

Primary Sponsor: Laslovich, Jesse

Status: As Introduced

- | | | |
|-----------------------------------------------------------|-------------------------------------------------------------------|----------------------------------------------------------|
| <input type="checkbox"/> Significant Local Gov Impact | <input checked="" type="checkbox"/> Needs to be included in HB 2 | <input checked="" type="checkbox"/> Technical Concerns |
| <input type="checkbox"/> Included in the Executive Budget | <input checked="" type="checkbox"/> Significant Long-Term Impacts | <input type="checkbox"/> Dedicated Revenue Form Attached |

FISCAL SUMMARY

	<u>FY 2008 Difference</u>	<u>FY 2009 Difference</u>	<u>FY 2010 Difference</u>	<u>FY 2011 Difference</u>
Expenditures:				
State Special Revenue	\$196,474	\$421,414	\$196,474	\$421,414
Revenue:				
State Special Revenue	\$7,500	\$0	\$7,500	\$0
Net Impact-Special Fund Balance:	<u>(\$185,235)</u>	<u>(\$422,251)</u>	<u>(\$180,491)</u>	<u>(\$423,194)</u>

Description of Fiscal Impact:

This legislation creates public financing for Supreme Court candidates. The act establishes significant additional duties and responsibilities for the commissioner's office, and if enacted into law, would most likely have a significant fiscal impact on the office. Costs reflected above show the minimum impact of the legislation. Certain costs are undeterminable – see assumptions #11, 14, and 15.

FISCAL ANALYSIS

Assumptions:

Commissioner of Political Practices (COPP)

- Section 10 provides for judicial review for contested decisions by the commissioner regarding candidate eligibility for public campaign funding. Petitions initiating judicial review must be filed in the district court of the county where the petitioner resides.
- Section 12 provides a person, other than the commissioner, who believes a candidate has violated provisions of this bill, with the right to judicial action in the district court in the county in which the person bringing the action resides, to enforce the provisions of this bill.

3. Section 12 also provides a person who is aggrieved by a violation of the provisions of this bill to bring an action in the First Judicial District, Lewis and Clark, to have the provisions enforced.
4. This legislation may increase District Court caseloads but the Judicial Branch is unable to estimate the impact on judicial workload or the fiscal impact. The cumulative impact of such legislation may over a period of time require additional judicial resources since the court dockets are already full throughout the state.
5. Passage of SB 202 would require COPP to adopt rules implementing section 1 through 24. The total estimated cost for legal expenses in FY 2008 is \$12,420.
6. The COPP would have contracted services expenses to have proposed rule formatted per ARM regulations. It is estimated that the contract would be 80 hours at a cost of \$10 per hour resulting in a cost of \$800 in FY 2008.
7. The total estimated yearly fiscal cost for continuing legal services to enforce sections 1 through 24 is \$3,600. It is important to emphasize that this figure does not include estimates for other anticipated legal expenses, such as defending judicial review actions challenging the commissioner's decisions under section 10(5) and seeking injunctions in district court under section 20(4).
8. There were three Supreme Court candidates in the 2006 election cycle. Assuming that 50 percent of the candidates would participate in the Supreme Court election campaign fund, 2 Supreme Court candidate would participate in 2008 (1 associate justice candidate would participate for fiscal note purposes)
9. Candidates who wish to participate in the Supreme Court election campaign fund would be required to meet qualifying conditions. Assuming that 50 percent of the Supreme Court candidates in 2008 would participate, over 500 receipts of qualifying contributions would have to be submitted to the Commissioner for approval along with a declaration indicating each candidate has complied and will comply with the requirements 1 through 24.
10. The commissioner shall issue to a participating candidate a line of credit evidenced by a public money debit card. Expenditures charged to debit cards would be paid from the Supreme Court election campaign fund. Clerical and accounting support for administration of the fund and the debit card system would require an additional half-time Administrative Support position at a cost of \$17,814 per fiscal year.
11. Public money debit cards issued to qualifying candidates would draw funds from the Supreme Court election campaign fund. The mechanism for the fund and debit card system would have a fiscal impact, however, the actual cost and fiscal impact of the accounting mechanism is undeterminable.
12. A Supreme Court election campaign fund would be created. The fund would consist of the following revenues: (1) qualifying contributions paid by candidates seeking certification as a participating candidates and any qualifying contributions collected by a candidate in excess of the number necessary for certification as a participating candidate (\$7,500 in FY 2008 if 50 percent of Supreme Court candidates participate), (2) fines levied by the commissioner against candidates for violations of sections 1 through 24 (the amount of revenue from fines is undeterminable), (3) interest or other income generated from the fund, and (5) other sources of revenue determined necessary by the Legislature.
13. The commissioner would be required to pay participating candidates set amounts from the Supreme Court election campaign fund. If 50 percent of the Supreme Court candidates in 2008 participate and assuming they were contested, the commissioner would pay \$160,000 in FY 2008 (primary election cycle) and \$400,000 in FY 2009 (general election cycle) from the fund to participating candidates.
14. The commissioner would be required to pay additional funding to participating candidate that matches independent expenditures or excess campaign contributions or nonparticipating candidates up to 200 percent of the total amount of public money funding paid by the commissioner to a participating candidate in that election. The amount of this additional funding that would be paid from the fund is undeterminable.
15. The commissioner would be required to pay, upon determination that an issue advertisement could reasonably be interpreted as having the effect of promoting the defeat of a participating candidate or the election of that participating candidate's opponent, to pay to that predicating candidate additional public

money funding equal in amount to the cost of the issues advertisement. The amount of this funding is undeterminable.

16. The commissioner may conduct random audits to ensure compliance with sections 1 through 24. Inasmuch as public monies would be provided to Supreme Court candidates, verification that expenditures by those candidates met statutory provisions would be valuable to ensure public trust. Assuming the commissioner would audit 50 percent of the participating candidate's expenditures, 1 audit would be conducted. The commissioner would require contracted services to perform random audits and investigations. Assuming each audit would take 5 days, estimated hours would be 40 hours at a cost of \$46 per hour resulting in a cost of \$1,840 in FY 2008.

	<u>FY 2008 Difference</u>	<u>FY 2009 Difference</u>	<u>FY 2010 Difference</u>	<u>FY 2011 Difference</u>
<u>Fiscal Impact:</u>				
Commissioner of Political Practices				
FTE	0.50	0.50	0.50	0.50
<u>Expenditures:</u>				
Personal Services	\$17,814	\$17,814	\$17,814	\$17,814
Operating Expenses	\$18,660	\$3,600	\$18,660	\$3,600
Equipment	\$0	\$0	\$0	\$0
Payments from fund to candid.	\$160,000	\$400,000	\$160,000	\$400,000
TOTAL Expenditures	\$196,474	\$421,414	\$196,474	\$421,414
<u>Funding of Expenditures:</u>				
State Special Revenue (02)	\$190,235	\$422,251	\$185,491	\$423,194
<u>Revenues:</u>				
State Special Revenue (02)	\$7,500	\$0	\$7,500	\$0
<u>Net Impact to Fund Balance (Revenue minus Funding of Expenditures):</u>				
State Special Revenue (02)	(\$185,235)	(\$422,251)	(\$177,991)	(\$423,194)

Long-Range Impacts:

1. It is impossible to predict how many candidates will run for Supreme Court races. It is impossible to predict how many of those who will run will participate in the Supreme Court election campaign fund. There could be significant increases in the expenditures from the Supreme Court election campaign in election years with higher numbers of candidates who participate in the fund.

Technical Notes:

1. Section 8, subsection (4): This section does not specify the extent or nature of the commissioner's responsibilities to conduct "an audit or other investigation."
2. Section 16, subsection (2): This section requires the commissioner to make a subjective determination that an "issue advertisement" can "reasonable be interpreted as having an effect of promoting defeat of a participating candidate or the election of that participating candidate's opponent." There is no guidance in

the statute regarding how the commissioner is to make this determination; the section requires the commissioner to develop appropriate rules for the implementation of this section.

3. Section 22, subsection (2)(b): This section requires the commissioner to adopt rules that include “a schedule of fines and a procedure for levying fines against persons who violate [sections 1 through 24] or the rules of the commissioner.” Delegation of such authority to establish a schedule of fines appears to be an over-broad grant of discretion.
4. Section 23, subsections (1) and (2): There are not guidelines or standards regarding how the commissioner would be expected to make a determination that “the additional amount spent or obligated is not an amount that had or could have reasonably been expected to have a significant impact of the election of that participating candidate.”
5. **Section 27 voids this act if there is not included in HB 2 an appropriation for at least \$300,000 to implement the provisions of this act.**

Sponsor's Initials

Date

Budget Director's Initials

Date