

**NORTH CAROLINA GENERAL ASSEMBLY**

**LEGISLATIVE FISCAL NOTE**

**BILL NUMBER:** SB 1054 (2<sup>nd</sup> Edition)

**SHORT TITLE:** Judicial Campaign Reform Act

**SPONSOR(S):** Sen. Gulley

	<b>FISCAL IMPACT</b>				
	<b>Yes ( X )</b>	<b>No ( )</b>	<b>No Estimate Available ( )</b>		
	<b><u>FY 2001-02</u></b>	<b><u>FY 2002-03</u></b>	<b><u>FY 2003-04</u></b>	<b><u>FY 2004-05</u></b>	<b><u>FY 2005-06</u></b>
<b>REVENUE</b>					
<b>Fair Elections Fund</b>					
Transfer from Candidates' Financing Fund	<b>\$440,459</b>				
Attorney Privilege Tax Increase			Up to \$544,700 annually but see assumptions and methodology		
43.4 % Taxpayer Designation	<b>\$0</b>	<b>\$0</b>	<b>\$2,163,059</b>	<b>\$2,163,059</b>	<b>\$2,163,059</b>
<b>OR</b>					
7.64 % Taxpayer Designation	<b>\$0</b>	<b>\$0</b>	<b>\$380,778</b>	<b>\$380,778</b>	<b>\$380,778</b>
<b>General Fund</b>					
43.4 % Taxpayer Designation To Fair Elections Fund			<b>(\$2,163,059)</b>	<b>(\$2,163,059)</b>	<b>(\$2,163,059)</b>
<b>OR</b>					
7.64% Taxpayer Designation	<b>\$0</b>	<b>\$0</b>	<b>(\$380,778)</b>	<b>(\$380,778)</b>	<b>(\$380,778)</b>
<b>EXPENDITURES</b>					
<b>Fair Elections Fund</b>					
Public Financing			<b>\$2,080,500</b>		<b>\$2,080,500</b>
<b>General Fund</b>					
State Bd of Elections		<b>\$18,000NR</b>			
		<b>56,518</b>	<b>\$63,518</b>	<b>\$813,518</b>	<b>\$63,618</b>
<b>POSITIONS:</b>		<b>1</b>	<b>1</b>	<b>1</b>	<b>1</b>
Department of Revenue	<b>\$181,000</b>				
	<b>\$10,738</b>	<b>\$10,738</b>	<b>\$10,738</b>	<b>\$10,738</b>	<b>\$10,738</b>

**FY 2006-07    FY 2007-08**

**REVENUES**

**Fair Elections Fund**

Transfer from Candidates'

Financing Fund	\$0	\$0
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Attorney Privilege Tax Increase		Up to \$544,700 annually but see assumptions and methodology
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43.4% Taxpayer Designation		
	\$2,163,059	\$2,163,059

**OR**

7.64 % Taxpayer Designation		
	\$380,778	\$380,778

**General Fund**

43.3 % Taxpayer Designation to F/E Fund		
	(\$2,163,059)	(\$2,163,059)

**OR**

7.64 % Taxpayer Designation to F/E Fund		
	(\$380,778)	(\$380,778)

**EXPENDITURES**

**Fair Elections Fund**

Public Financing Distributions		
	\$0	\$2,080,500

**General Fund**

State Bd. of Elections	\$813,618	\$63,618
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<b>POSITIONS:</b>	<b>1</b>	<b>1</b>
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**PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED:** State Board of Elections,  
Department of Revenue

**EFFECTIVE DATE:** 2004 Elections for Supreme Court, Court of Appeals

**BILL SUMMARY<sup>1</sup>:**

*Beginning in 2004, the bill would provide what is intended to be full public financing for candidates in the general election for Court of Appeals and Supreme Court who accept fundraising and spending limits. The chief funding mechanisms would be a \$50 increase in the privilege license fee for lawyers (unless the lawyer says no) and a \$1 designation on the*

<sup>1</sup> Adapted from Committee Counsel Summary

*State income tax form (unless the taxpayer says no). This bill also requires the State Board of Elections to publish and distribute a judicial voters' guide to every registered voter.*

**ASSUMPTIONS AND METHODOLOGY:**

***NC Democracy Fund.***

This bill establishes the NC Fair Elections Fund (Fund) from which candidates for the Supreme Court and the Court of Appeals may choose to have their campaigns financed. If the State Board of Elections certifies a candidate to participate in public financing, the candidate can receive from the Fair Election Fund:

- In a contested primary, rescue funds to match opposition spending that exceeds about \$50,000 -- up to a total of about \$100,000 in rescue funds. (Slightly higher for Supreme Court, slightly lower for Court of Appeals.) A candidate in a second primary may receive the same amount of rescue funds for the second primary campaign.
- In the general election, an initial amount of 150% of the position's salary for Supreme Court candidates ( $\$115,336 * 1.50 = \$173,000$ ) and 100% of the position's salary for Court of Appeals candidates ( $\$110,530 * 1.00 = 110,500$  rounded to the nearest hundred).
- In the general election, rescue funds to match opposition spending that exceeds the initial award, up to twice that amount.

Based on information provided by the State Board of Elections (SBE) and Democracy South, the amount needed to fund publicly financed campaigns for the appellate judiciary in each election year is \$2,080,500 assuming 100% participation. See the table below :

<b>SUMMARY OF FUNDS NEEDED UNDER DIFFERENT SCENARIOS FOR VOTER OWNED ELECTIONS ACT</b>					
	Base \$\$ For A VOE Act Candidate	<i>Scenario 1</i>		<i>Scenario 2</i>	
		Assume That 100% of Candidates Currently Running Qualify		125% Candidates Qualify, Or 25% Extra Funds	
		# Cand.	Funding Needed	# Cand.	Funding Needed
Supreme Court Contested General	\$173,000	5	\$865,000	6	\$1,081,250
Court Appeals Contested General	\$110,500	11	\$1,215,500	14	\$1,519,375
<b>2-Year Total for Appellate Judiciary</b>			<b>\$2,080,500</b>		<b>\$2,600,625</b>
SUMMARY TOTALS			<i>Scenario 1-100%</i>		<i>Scenario 2- 25%</i>
<i>Funds Needed for 2004 Elections</i>					
Appellate Judiciary Candidates			\$2,080,500		\$2,600,625

Assuming only 75% of the candidates participate in publicly financed campaigns, the total required would be \$1,560,375.

Democracy South used the following assumptions <sup>2</sup> in its calculation of the estimates:

<sup>2</sup> Bulleted assumptions taken from May 29, 2001 memo prepared by Democracy South.

- Data on number of candidates come from the State Board of Elections.
- The base-level for the Appellate Judiciary is 150 times the filing fee for the Supreme Court seats and 100 times the filing fee for the Court of Appeals. The filing fee is 1% of the salaries for the seats.
- Totals are given for three scenarios. The first anticipates 100% participation in the public funding program of all candidates expected to run for office. The second assumes that 25% more candidates will decide to run and will qualify for public funding, which puts the total cost at 125% of the first scenario. The third anticipates that 75% of the candidates will run and all will qualify for public funding, which puts the total cost at 75% of the first scenario.
- No assumptions were made about how much additional public funding would be required if privately funded candidates exceeded spending limits and triggered the release of matching or “rescue” funds to publicly funded candidates. However, it should be noted that if fewer candidates opt for public funding, the money anticipated for their campaigns in the scenarios above would be available for rescue funds. For example, if 33% of the candidates in a typical election year are privately funded, then 33% of the funds anticipated in Scenario #1 could be tapped for rescue money to help the publicly funded candidates without exceeding the program’s estimated total cost.
- The total costs are based on the Voter-Owned Elections Act being implemented for the next election for candidates for the Appellate Judiciary. However, the implementation of the bill is phased in over several years, any increases in the salaries of the Appellate Judiciary will alter the estimated costs.
- The *annual* cost of the program is calculated as one-fourth of what it would cost over a four-year period. The four-year cost includes the expense associated with *two* elections for Appellate Judiciary candidates.

The Fiscal Research Division believes the formula is consistent with the requirements of the bill and the estimates for the amount needed for the NC Fair Elections Fund appear reasonable. The bill requires the SBE to advise the Joint Legislative Commission on Governmental Operations of the funds received and the expected needs of the Fund during the next election cycle.

The bill specifies that the source of funding will be unspent NC Fair Elections Fund grants, monies transferred from the NC Candidates Financing Fund, tax return designations of \$1 from each taxpayer that does not oppose making the designation, and voluntary donations. The bill also increases the privilege license fee for attorneys from \$50 to \$100 with the \$50 increase going into the NC Fair Elections Fund. Those attorneys who pay the privilege license fee may decline to pay the \$50 increase.

This bill abolishes the Candidates Financing Fund. However, currently, that fund has a balance of \$440,458.67 that would be transferred to the new NC Fair Elections Fund.

The bill provides that each taxpayer will be deemed to make a \$1 designation to the Fund unless they indicate that they are against making the designation. Currently, taxpayers may designate \$1 of their liability for the NC Political Parties Fund; however, in 1999 only 7.64% chose to make the designation. Data indicates that 56.6% of the tax returns were prepared by paid preparers. It is reasonable to believe that a paid preparer will ask if the taxpayer would like to make a designation and indicate accordingly on the return (i.e., “for,” “against,” or “no opinion”). Based on the low number (7.64%) of taxpayers who have affirmatively designated a portion of their tax liability for the Political Parties Fund, the Fiscal Research Division (FRD) believes that those who are asked (56.6%) are likely to indicate that they are against making a designation, leaving the 43.4% self-preparers who may indicate “for” or “no opinion,” thereby indicating their desire to designate. If only 43.4% of the 4,984,008 taxpayers (including single and joint filers) make the designation, \$2,163,059 of the tax liability will be designated for the Fair Elections Fund ( $4,984,008 * .434 * \$1 = \$2,163,059$ ). Because of the low number of taxpayers who currently affirmatively decide to designate \$1 and considering the expanded use of tax preparation software that will prompt self-preparers to respond to the designation questions, FRD believes that even fewer than 43.4 % will indicate “for” or “no opinion.” If FRD assumes that the affect of having a “reverse check-off” designation would not be significantly different than the current affirmative check-off designation because of the use of paid preparers and tax preparation software, it is possible that only 7.64% would choose to make the designation. If such were the case, the tax liability designated for the Fair Elections Fund would be approximately \$380,778 ( $4,984,008 * .0764 * \$1 = \$380,778$ ). We believe the number of taxpayers who would designate \$1 of their tax liability to the Fund is between 43.4% and 7.64%. Because we have no basis of estimating that number, we have included a range of estimated revenue.

The bill provides that each attorney who is required by N.C. G.S. § 105-41 to obtain a \$50 privilege license will also pay an additional \$50 to fund the NC Fair Elections Fund, unless that attorney makes a written statement by July 1, of the year the fee is due declining to pay that portion of the license tax. Currently, there are 10,894 attorneys who pay the \$50 privilege license fee. The NC Bar Association believes that a high percentage of the attorneys will pay the additional \$50. However, neither the NC Bar Association nor the Fiscal Research Division has a reasonable estimate of what that percentage is. If 100% of the attorneys who pay the privilege license fee choose to pay the additional \$50, the total revenue to the NC Fair Elections Fund would be \$544,700 annually.

Fiscal Research has no basis for estimating the amounts, if any, that will come from unspent grants from the NC Fair Elections Fund and voluntary donations.

Based on these estimates for revenue and expenditures, it appears that revenue from taxpayer designations would be sufficient to cover the cost of the elections for the Appellant Judiciary if 43.4% of the taxpayers make the designations. However, if only 7.64% of the taxpayers make the designation, there would only be sufficient revenue over the period beginning with fiscal year 2003-2004 through fiscal year 2007-2008 to cover the elections for 2004, 2006, and 2008 if 100% of the attorneys elected to pay the additional \$50 increase in privilege license.

<b>Analysis of Funding Needs and Revenue by Fiscal Year on 43.4% Designation</b>					
<b>Election</b>	<b>Fiscal Year</b>	<b>Needed Funding</b>	<b>Transfer from Candidate FF</b>	<b>Taxpayer Designation</b>	<b>Privilege License *</b>

2004	2003-04	\$2,080,500	\$440,459	\$2,163,059	\$544,700
	2004-05	\$0	\$0	\$2,163,059	\$544,700
2006	2005-06	\$2,080,500	\$0	\$2,163,059	\$544,700
	2006-07	\$0	\$0	\$2,163,059	\$544,700
2008	2007-08	\$2,080,500	\$0	\$2,163,059	\$544,700
Total		\$6,241,500	\$440,459	\$10,815,295	\$2,723,500

\* Assumes 100% election by attorneys (10,894) to pay \$50 increase in privilege tax.

<b>Analysis of Funding Needs and Revenue by Fiscal Year Based on 7.60% Designation</b>					
<b>Election</b>	<b>Fiscal Year</b>	<b>Needed Funding</b>	<b>Transfer from Candidate FF</b>	<b>Taxpayer Designation</b>	<b>Privilege License *</b>
2004	2003-04	\$2,080,500	\$440,459	\$380,778	\$544,700
	2004-05	\$0	\$0	\$380,778	\$544,700
2006	2005-06	\$2,080,500	\$0	\$380,778	\$544,700
	2006-07	\$0	\$0	\$380,778	\$544,700
2008	2007-08	\$2,080,500	\$0	\$380,778	\$544,700
Total		\$6,241,500	\$440,459	\$1,903,890	\$2,723,500

\* Assumes 100% election by attorneys (10,894) to pay \$50 increase in privilege tax.

Please note that the estimates assume the number of taxpayers would remain constant and there would be no change in base level based on salary increase.

Also, Fiscal Research estimates that between 7.64% and 43.4% of taxpayers would designate \$1 of their tax liability to the Fund. Any funds that would be designated for the Fund would normally go to the General Fund. Thus, any amount designated for the Fund would decrease General Fund availability.

## ***Administration of the Legislation***

### **State Board of Elections:**

This bill requires the State Board of Elections (SBE or Board) to administer the Voter Owned Elections Act (Act). The Board estimates that administration of the Act will require changes to their campaign reporting system to facilitate capture of expenditures by type as well as by election (i.e., primary vs. general). For example, calculated in the formula for determining the amount of funds to be distributed to each participating candidate are contested primary expenditures and contested general expenditures all exclusive of any expenditures for repayment of loans, refunds, or contributions to other candidates, political committees, referendum committees, or political parties. The current system does not capture expenditure data in this manner and would have to be modified to do so. The estimated cost for modifying the system is \$12,000 nonrecurring.

The Board also estimates that they will need to hire a full-time accounting employee at a grade 77 (Accountant III) to manage the fund. The minimum salary for a grade 77 position is \$42,594 and the benefits total \$8,926 for a total of \$51,518. The nonrecurring operating cost is estimated to be \$6,000 for office furniture and equipment and computer equipment.

The bill establishes a 5-member Voter-Owned Elections Advisory Council that would be responsible for advising the Board on the rules and opinions it adopts for the enforcement and administration of this Act and the funding needs of the NC Fair Elections Fund. The Board estimates that the expenditures of the Council will include the per diem and travel cost incurred to attend meetings scheduled to accomplish its statutory responsibilities. The members will receive the legislative per diem pursuant to G.S. 120-3.1, which is currently \$104 plus mileage at 29 cents per mile. Assuming the Council meets quarterly for 2 days each meeting, the estimated cost is approximately \$5,000 (\$104/day \* 2 days for each meeting \* 5 members \* 4 meetings/year) including an estimate for mileage.

The Board estimates that 10 additional complaints or cases will present themselves in a 2-year state election cycle as a result of implementation of this bill. The Board believes that 5 of the cases could be scheduled for hearing during a regularly scheduled Board meeting and would not require any additional travel cost. A special meeting would be required to hear each of the remaining 5 cases and would require additional travel cost. They also estimate that each meeting would cost \$1,650 in addition to the travel and per diem paid to the Board members. The cost covers administrative expenses for scheduling, sending certified or special delivery of notices or subpoenas, preparing the correspondence and case file, and the cost of a court reporter. The cost also includes the cost of staff-time (four staff devoting ½ day for each meeting) involved with the meeting. The cost is detailed in the table below.

<i><b>SBE Estimate of Enforcement Cost</b></i>			
	<b>Number of Mtgs/Hearings</b>	<b>Cost Per Meeting/Hearing</b>	<b>Total</b>
Travel	5	\$1,500	\$7,500
Court Reporter	10	\$150	\$1,500
Administrative Exp.	10	\$500	\$5,000
<b>Total Non-Personnel</b>			<b>\$14,000</b>
Staff Time	10	\$1,000	\$10,000
<b>Total Cost</b>			<b>\$24,000</b>

The Fiscal Research Division believes this estimate is reasonable. However, we have adjusted their \$24,000 estimate for the 2-year state election cycle to \$14,000. The annualized cost would be \$7,000 per year. Our adjustment is to exclude the cost of the staff time. We recognize that staff time will be involved that would otherwise be devoted to other existing responsibilities. However, we do not believe that implementation of this bill would require additional staff resources.

The bill also requires the State Board of Elections to publish and distribute a voters' guide to each registered voter. The guide may be distributed as a newspaper supplement or through the mail. Currently, there are approximately 5.2 million registered voters in the state. And, per the 2000 Census, there are 3.1 million households in the state. The Board estimates that it will cost them between \$750,000 and \$1,500,000 to produce and distribute the guide. This would include

cost for printing which is estimated to be \$734,980 for 3 million copies of a 24-page guide (assuming the guide is sent to each household) as well as the cost for postage and for temporary help to prepare the guides for mailing or contracting with a mailing house. Because the estimate lacked sufficient detail, the Fiscal Research Division cannot determine the reasonableness of their estimate. However, based on information on the costs to other states to publish the guide, the Fiscal Research Division estimates that the guide can be published and distributed to each household for \$750,000. (The state of Washington publishes and distributes approximately 3 million copies of its 48-page guide for approximately \$740,000.)

The total cost to the State Board of Elections for administering the Voter-Owned Elections Act is estimated to be \$18,000 nonrecurring for modifying the campaign reporting system (\$12,000) and start-up cost for additional accounting personnel (\$6,000) and \$63,618 recurring for the salary and benefits for the accounting personnel (\$51,518), hearings of the State Board to hear additional complaints/violations (\$7,000), and meetings of the Advisory Council (\$5,000). Though the bill is effective for the 2004 election of the Appellate Judiciary races, the Board is expected to determine the needs of the NC Fair Elections Fund by October 1, 2003 and to report to the Joint Legislative Commission on Governmental Operations. The Fiscal Research Division estimates that the Board would begin to prepare for the 2004 election immediately and thus, estimates that they would incur these expenditures beginning in Fiscal Year 2002-2003, except that we do not expect any expenditures for hearings on any additional violations to be incurred until Fiscal Year 2003-2004. Additionally, every even calendar year, the Board will incur approximately \$750,000 for publishing and distributing a judicial voters' guide.

**Department of Revenue:**

To comply with the directives of the legislation would require a one-time appropriation of \$181,000, which is needed to make modifications to the Integrated Tax Administration System (ITAS) and to revise the individual income tax forms -- D400EZ and D400. If it is the intention that attorneys notify the department of the decision to pay the additional \$50.00, then a half-time position will be required to this responsibility could be assigned to a temporary position at a cost of \$10,738 per year.

There are legal concerns posed by the department in terms of the option in Section 3 to pay the additional \$50.00. These are noted under the "Technical Considerations" portion of the fiscal note.

On the processing side, the department will have to make significant changes to the privilege license tax module for ITAS to be able to process a voluntary payment and split money into separate pots. The estimated cost of these computer changes is \$140,000. This includes changes to notices, forms processing, and the computer code itself. To administer this, the department would put an extra line on the form for a subtraction of \$50 from \$100 if they declined the contribution. Completing a circle and subtracting the amount would indicate denial. If the department is expected to receive letters in advance of the form indicating a denial, Processing Assistant position at salary grade 59 would be needed for some part of the year to deal with these letters and to make the needed entries in ITAS.

In regards to the new check-off for the North Carolina Fair Elections Fund, there are several considerations. First, this concept is contrary to the other contributions and check-offs. Those



require a decision to participate. This contribution requires a decision to not participate. Second, the proposed law micromanages the tax form and requires two verbatim sentences to be repeated on the form. The last item that was mandated on the form (highlighting of information in a contrasting color) could not be carried out because forms come from software packages and from websites where the department has no control over the color. Over 70% of the forms come from software packages now. Taxpayers that use these packages do not read the form and fill it out. They answer questions posed by the computer. Printing the sentence on the form is therefore a waste of space for more than 70% of the forms.

The additions to the forms required by this legislation will impact the department's forms processing. To be able to capture the information, account for it, and report it accurately, the department estimates a cost of \$36,000. A review of the tax forms indicates there is not enough space on the D400EZ or the computer generated versions of the D400 to put another block as large as the Political Parties Financing Fund block (which this would require because of the separate listings of choices for each spouse). If this were required, it would be necessary to develop three-page forms for these returns. This would result in a significant cost increase as the result of processing three pages as opposed to two for several million tax returns. At this time there is not estimate for this revision to the tax forms. The department assumes there are enough vacant ELF (electronic filing) fields to incorporate these changes.

Finally, to delete the Campaign Financing Fund check-off will require \$5,000 of processing changes.

#### **TECHNICAL CONSIDERATIONS:**

##### **Department of Revenue:**

The department indicates the proposal raises a host of legal and processing issues related to the implications of Section 3, specifically G.S. 105-41(a)(1), which provides for a voluntary \$50.00 payment from attorneys subject to the privilege license tax. The issues on the legal side include whether this is a tax or a voluntary check-off, whether nonpayment when no denial is indicated is subject to the usual penalties and interest, what happens to those who begin practice during the middle of the year (and therefore owe tax on November 1, for example), whether the election (if it is one) is irrevocable, whether someone can decline after July 1, and what constitutes a written statement.

**FISCAL RESEARCH DIVISION 733-4910**  
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