

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: SB1054 (5th Edition)

SHORT TITLE: Judicial Campaign Reform Act

SPONSOR(S): Sen. Gulley

	FISCAL IMPACT				
	Yes (X)	No ()	No Estimate Available ()		
	<u>FY 2002-03</u>	<u>FY 2003-04</u>	<u>FY 2004-05</u>	<u>FY 2005-06</u>	<u>FY 2006-07</u>
REVENUE					
NC Public Campaign Financing Fund					
Transfer from Candidates'					
Financing Fund	\$360,323				
Privilege License/Voluntary Contribution			Up to \$576,250 annually but see assumptions and methodology		
42.4 % Taxpayer Designation	\$0	\$2,150,767	\$2,150,767	\$2,150,767	\$2,150,767
OR					
8.00 % Taxpayer Designation	\$0	\$405,805	\$405,805	\$405,805	\$405,805
General Fund					
42.4 % Taxpayer Designation	\$0	(\$2,150,767)	(\$2,150,767)	(\$2,150,767)	(\$2,150,767)
OR					
8.00 % Taxpayer Designation	\$0	(\$405,805)	(\$405,805)	(\$405,805)	(\$405,805)
EXPENDITURES					
NC Public Campaign Financing Fund					
Public Financing		\$680,000	\$0	\$1,912,800	\$0
State Bd. of Elections	\$37,200NR	\$0	\$0	\$0	\$0
	\$56,619	\$806,619	\$806,619	\$806,619	\$806,619
POSITIONS:		1	1	1	1
Candidates' Financing Fund					
Department of Revenue	\$178,600	\$0	\$0	\$0	\$0

FY 2007-08

REVENUES

NC Public Campaign Financing Fund

Transfer from Candidates'

Financing Fund **\$0**

Privilege License/Voluntary Contribution Up to \$576,250 annually
but see assumptions and methodology

42.4% Taxpayer Designation
\$2,150,767

OR

8.00 % Taxpayer Designation
\$405,805

General Fund

42.4 % Taxpayer Designation
(\$2,150,767)

OR

8.00 % Taxpayer Designation
(\$405,805)

EXPENDITURES

NC Public Campaign Financing Fund

Public Financing **\$2,189,200**

State Bd. of Elections **\$806,619**

POSITIONS: 1

**PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: State Board of Elections,
Department of Revenue**

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

BILL SUMMARY¹:

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 voluntary contribution requested from lawyers who pay a privilege license fee and a \$1 designation on the State income tax form (unless the taxpayer objects). This bill also requires the State Board of Elections to publish and distribute a judicial voters' guide to every residence before the primary and before the general election.

¹ Adapted from Committee Counsel Summary
SB1054 (5th Edition)

ASSUMPTIONS AND METHODOLOGY:

NC Public Campaign Financing Fund

This bill establishes the NC Public Campaign Financing 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 NC Public Campaign Financing Fund:

- In a contested primary, rescue funds to match opposition spending that exceeds about \$67,000 -- up to a total of about \$135,000 in rescue funds. 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 175% of the position's salary for Supreme Court candidates ($\$115,336 * 1.75 = \$201,800$) and 125% of the position's salary for Court of Appeals candidates ($\$110,530 * 1.25 = 138,200$ 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 the base distribution per candidate and the number of seats for the Supreme Court and the Court of Appeals that are up for election in 2004, 2006, and 2008, the amount needed to fund publicly financed campaigns for the appellate judiciary for each of those election years is noted in the table below, assuming 100% participation.

SUMMARY OF FUNDS REQUIRED FOR DISTRIBUTION TO CANDIDATES CERTIFIED TO PARTICIPATE IN PUBLICLY FINANCED CAMPAIGNS

	Base	2004			2006			2008		
		Seats	Cand.	Funding	Seats	Cand.	Funding	Seats	Cand.	Funding
Supreme Court	\$201,800	1	2	\$403,600	2	4	\$807,200	2	4	\$807,200
Court of Appeals	\$138,200	1	2	\$276,400	4	8	\$1,105,600	5	10	\$1,382,000
Total for Appellate Judiciary				\$680,000			\$1,912,800			\$2,189,200

Please note that in the above calculations, 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 less than 100 % of the candidates opt for public funding, the money anticipated for their campaigns, as indicated in the table above, would be available for rescue funds.

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 Public Campaign Financing 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 first report is due before October 1, 2003 and subsequent reports are due every two years thereafter.

The bill specifies that the source of funding will be unspent NC Public Campaign Financing Fund grants; monies transferred from the NC Candidates' Financing Fund, tax return designations of \$1 from each taxpayer who does not oppose making the designation, and voluntary donations. The bill also requires that a \$50 voluntary contribution for the Fund be requested from attorneys who pay the \$50 privilege license.

This bill abolishes the Candidates' Financing Fund that was established by G.S. § 105-269.6. Currently, that fund has a balance of \$538,923. The bill authorizes the Department of Revenue (DOR) to draw up to \$178,600 from the Candidates' Financing Fund to cover its nonrecurring cost associated with this bill. The bill also directs DOR to immediately transfer the remaining balance, estimated to be \$360,323, to the new NC Public Campaign Financing Fund.

The bill provides that each taxpayer will be deemed to make a \$1 designation to the Fund unless they indicate that they object to making the designation. Currently, taxpayers may designate \$1 of their liability for the NC Political Parties Fund; however, in tax year 2000 only 399,566 or 8 % of the 5,072,563 individual taxpayers (including single and joint filers) chose to make the designation. Data indicates that 57.6% of the tax returns were prepared by paid preparers. It is reasonable to believe that a paid preparer will require the taxpayer to specify whether they object to the \$1 designation and indicate accordingly on the return. Based on the low number (8%) of individual 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 required to make a designation (57.6%) are likely to indicate that they are against making a designation. The remaining 42.4% who are self-preparers may not object to the designation, thereby indicating their desire to designate. If only 42.4% of the 5,072,563 individual taxpayers make the designation, \$2,150,767 of the tax liability will be designated for the NC Public Campaign Financing Fund ($5,072,563 * .424 * \$1 = \$2,150,767$). However, because of the low number of taxpayers who currently affirmatively decide to designate \$1 for the Political Parties Fund 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 42.4 % will fail to object. 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 8% would choose to make the designation (i.e., would not object). If such were the case, the tax liability designated for the NC Public Campaign Financing Fund would be approximately \$405,805 ($5,072,563 * .08 * \$1 = \$405,805$). We believe the number of taxpayers who would designate \$1 of their tax liability to the Fund is between 42.4% and 8%. 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 be requested to pay an additional \$50 to fund the NC Public Campaign Financing Fund. Based on July 1, 2002 renewals and license applications, 11,525 attorneys pay the \$50 privilege license fee. The NC Bar Association believes that a high percentage of the attorneys will make the \$50 voluntary contribution. 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 make the \$50 contribution, the total revenue to the NC Public Campaign Financing Fund from this source would be \$576,250 annually. Fees for privilege license renewals are collected near the end of each fiscal year, i.e. 90% are collected in May and June, and the balance (10%) in July of the subsequent fiscal year. Therefore, the first opportunity for contribution would occur in FY 04-05, specifically, in July 2004 when the balance or 10% of renewals fees (from FY 03-04) will be collected and, again, in May and June 2005 when 90% of renewal fees for FY 04-05 are collected.

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

A summary of the required funding for candidates and the estimated revenue is noted in the tables below. Based on these estimates, it appears that revenue from taxpayer designations would be sufficient to cover the cost of the elections for the Appellant Judiciary if 42.4% of the taxpayers make the designations. Cumulative revenue collections over the five-year period beginning with fiscal year 2003-2004 would be slightly less than the funding needed for the 2004, 2006, and 2008 elections even if only 8% of the taxpayers make the designation, assuming that 100% of the attorneys elected to make the \$50 voluntary contribution.

Analysis of Revenue and Required Funding for Candidates by Fiscal Year Based on 42.4%

Election	Fiscal Year	Transfer from Candidates' FF	Designation		Total Revenue	Required Funding
			Taxpayer Designation	Privilege License *		
2004	2003-04	\$360,323	\$2,150,767	\$0	\$2,511,090	\$680,000
	2004-05	\$0	\$2,150,767	\$576,250	\$2,727,017	\$0
2006	2005-06	\$0	\$2,150,767	\$576,250	\$2,727,017	\$1,912,800
	2006-07	\$0	\$2,150,767	\$576,250	\$2,727,017	\$0
2008	2007-08	\$0	\$2,150,767	\$576,250	\$2,727,017	\$2,189,200
Total		\$360,323	\$10,753,834	\$2,305,000	\$13,419,158	\$4,782,000

* Assumes 100% election by attorneys (11,525) to pay \$50 increase in privilege tax.

Analysis of Revenue and Required Funding for Candidates by Fiscal Year Based on 8%

Election	Fiscal Year	Transfer from Candidates' FF	Designation		Total Revenue	Required Funding
			Taxpayer Designation	Privilege License *		
2004	2003-04	\$360,323	\$405,805	\$0	\$ 766,128	\$680,000
	2004-05	\$0	\$405,805	\$576,250	\$982,055	\$0
2006	2005-06	\$0	\$405,805	\$576,250	\$982,055	\$1,912,800
	2006-07	\$0	\$405,805	\$576,250	\$982,055	\$0
2008	2007-08	\$0	\$405,805	\$576,250	\$982,055	\$2,189,200
Total		\$360,323	\$2,029,025	\$2,881,250	\$4,694,348	\$4,782,000

* Assumes 100% election by attorneys (11,525) 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 the base level based on salary increases.

Also, Fiscal Research estimates that between 8% and 42.4% 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

The bill provides that the administrative and enforcement cost of the Board related to the NC Public Campaign Financing Fund is to be a cost of the Fund. It also provides that the cost of the Department of Revenue is come from the Candidates' Financing Fund before it is abolished.

State Board of Elections:

This bill requires the State Board of Elections (SBE or Board) to administer the Judicial Campaign Reform Act (Act). The Board estimates that administration of the Act will require changes to their campaign reporting system to facilitate capture of income and expenditures by type as well as by election (i.e., primary vs. general). For example, the bill requires participating candidates to obtain qualifying contributions and it would limit the expenditure of participating candidates. The current system would have to be modified to capture the income and expenditure data. The estimated cost for modifying the system is \$31,200 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 \$43,219 and the benefits total \$8,400 for a total of \$51,619. The nonrecurring operating cost is estimated to be \$6,000 for office furniture and equipment and computer equipment.

The bill establishes a 5-member Advisory Council for the NC Public Campaign Financing Fund 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 Public Campaign Financing 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 bill also requires the State Board of Elections to publish and distribute a voters' guide to each residence in the state before both the primary and general elections. 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 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 for each election can be published and distributed to each household for no more than \$750,000 for a total of not more than \$1.5 million every two years for the primary and general election guides. (The state of Washington publishes and distributes approximately 3 million copies of its 48-page guide for approximately \$740,000.)

In addition to the administrative cost discussed above, the Board may incur cost to hear any complaints that present themselves as a result of implementation of this bill. The Board estimates that, for each hearing held during a regularly scheduled meeting, it would incur \$650 (excluding the cost of staff-time) in 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. Fiscal Research believes the number of additional complaints will be minimal and therefore, has not included the cost of hearings in the fiscal impact.

The total cost to the State Board of Elections for administering the Judicial Campaign Reform Act is estimated to be \$37,200 nonrecurring for modifying the campaign reporting system (\$31,200) and start-up cost for additional accounting personnel (\$6,000) and \$56,619 recurring for the salary and benefits for the accounting personnel (\$51,619) and for the 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 Public Campaign Financing Fund by August 1, 2003 and to report to the Joint Legislative Commission on Governmental Operations by October 1, 2003. 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. Additionally, every even calendar year, the Board will incur approximately \$1.5 million for publishing and distributing a judicial voters' guide before both the primary and general elections. Because the primary election usually occurs in the fiscal year that ends on June 30th of the even year and the general election occurs in the subsequent fiscal year that begins on July 1st of that even year, the cost of the voter's guide will be spread over two fiscal years. Thus, each fiscal year, the Board is expected to incur approximately \$750,000 to publish the voters' guide. Please note also, that though our estimate is the same for each guide, the cost for the voters' guide for the general election is likely to be less than the cost of the guide for the primary because there will be fewer candidates for the general election.

Department of Revenue:

To comply with the directives of the legislation would require non-recurring funding to implement changes in several areas. An estimated \$178,600 is needed to make modifications to the Integrated Tax Administration System (ITAS) and to revise the individual income tax forms -- D400EZ and D400. 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 non-recurring cost of these computer changes is \$137,600, which assumes contract programmer payments of \$80/hour and includes all costs for requirements, design, development, testing, and changes to notices. The form will have a line for the tax and a line for the contribution. If a return is filed indicating a contribution but the payment covers only the tax, the Department will apply the payment to tax and will not notify the taxpayer of any deficiency.

Also 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. The last revision is the deletion of the Campaign Financing Fund check-off that will require \$5,000 of processing changes.

Finally in regards to the new check-off for the NC Public Campaign Financing 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. 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.

SOURCES OF DATA: State Board of Elections, Department of Revenue

TECHNICAL CONSIDERATIONS:

FISCAL RESEARCH DIVISION: (919) 733-4910

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DATE: August 29, 2002



Signed Copy Located in the NCGA Principal Clerk's Offices