ELEC WHITE PAPER

Legislative Public Financing

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LEGISLATIVE PUBLIC FINANCING

The late Hubert H. Humphrey, Senator from Minnesota and Vice President of the United States, once described his feelings about financing elections. He said:

> *Campaign Financing is a curse. It's the most disgusting, demeaning, disenchanting, debilitating experience of a politician's life. It's stinky, it's lousy. I just can't tell you how much I hate it. I've had to break off in the middle of trying to make a decent, honorable campaign and go up to somebody's parlor or to a room and say, Gentlemen, and ladies, I'm desperate. You've got to help me....* [1]

Every public official or candidate may not share Vice President Humphrey's extremely negative feelings about the process of financing elections. However, one thing is certain - his underlying message about both the enormity of the task and the importance of fundraising in election campaigns is well documented.

The issue of campaign financing is one of increasing interest; and, in some quarters, of mounting concern. Certainly, one does not have to look far to find people who feel as strongly as the late Vice President about the "evils" of the campaign finance system.

For example, Harvey Fisher, from the Bergen Record, expressed it this way:

> *If you think door-to-door fundraising by the candidates themselves is the height of chutzpah, think about this. Last year, candidates for the 120 seats in the Legislature did better at raising campaign funds than at Passing laws. Much better. They raked in $15 million in establishing themselves as the undisputed champs of Trenton's money game.*[2]

Not everyone, however, believes that campaign financing is out of control. Indeed, there are some experts who would flatly disagree with those who believe that "campaign high finance" is such an unmitigated evil.

Foremost among these "non-detractors" is noted political scientist Dr. Herbert E. Alexander who wrote in the The Christian Science Monitor:

> *In the main, I do not agree with these criticisms. Publicly, to the contrary, I believe United States Election Campaigns are underfinanced, not overpriced. Despite all we hear about high costs, money remains a scarce resource in politics; many campaigns, especially those of challengers, cannot raise money needed for the essentials of campaigning. In 1984, Americans spent more on chewing gum than they did on elective politics. The professionalization of politics represents irresistible and irreversible escalations of costs. The real problem*

is not the costs but finding acceptable ways of raising money candidates believe they need.

I do not accept the view that all or most - or even many - campaign contributions represent attempts to gain special favors. Abuses do occur. But I believe that contributing money to election campaigns has to be understood as an important form of participation in a democracy.[3]

Thus, there are reasonable-minded people who tend to the view that money in politics is the "source of all evil" and others that believe that it is, or certainly can be, the "source of the public good." Yet, regardless of their difference of opinion on the value of this commodity in election campaigns, there is an area of convergence between these two positions. There is, as Dr. Alexander suggested, a need for candidates to find an acceptable way of raising the money they think they need.

It is upon this point that this analysis will concentrate, specifically with respect to whether or not legislative public financing is the answer to that important question of how to find an acceptable way of financing legislative elections in New Jersey.

Public Financing: The Rationale

Public Financing of election campaigns grew in popularity following Watergate in the early 1970's. Through that decade and into the 1980's, the popularity of this concept has remained steady.

Public funding is intended to equalize the money factor in campaigns between candidates for the same public office. It is also intended to eliminate any real or perceived corruption by reducing the political influence of large donors, including special interest groups.

Moreover, the philosophical underpinning of any system of publicly financed elections is to provide a source of funding for candidates that is other than just private. It is to enable greater numbers of qualified citizens, not merely those that are wealthy, to run for public office, and to encourage participation in the process of elections.

Currently, there are 20 states, plus the federal government, which have some form of public funding. On the federal level, public funding is available in Presidential primaries and general elections, and for the presidential nominating conventions of the National Party Committees. Throughout the states, public funding programs exist for statewide contests, and in three states, for legislative elections. In some of these states, the money goes directly to the candidates and in others it is funneled through the state political parties.

New Jersey has publicly-funded elections, but at this juncture, only for Governor. Supported by a tax check-off program, public financing in New Jersey stands out because of the generous amount of public dollars available to qualifying candidates and the historically strong support for the program from its tax paying public.[4] This program, for instance, stands in stark contrast to Hawaii's, which provides public funding for all candidates at all levels, but at only $50 per candidate. Obviously, the arrangement in New Jersey has made for a highly successful and effective program, whereas, the one in Hawaii is virtually meaningless.

The goals of the gubernatorial public financing program in New Jersey are "that candidates for election to the office of Governor may conduct their campaigns free from improper influence and ... that persons of limited financial means may seek election to the State's highest office."[5]

Thus far, the program in New Jersey has been extremely successful. It was first implemented in the general election of 1977 when both major party candidates participated. Since that time, sustained by two timely amendments to the law, the program has been available to candidates in both the primary and general elections. In total, counting the gubernatorial elections of 1989, fully 38 candidates will have availed themselves of public funding since the program's inception.

This tremendous record of participation, together with the support given to it by New Jersey taxpayers, points to the fact that public financing, at least on the gubernatorial level, has served the public in New Jersey well. It has significantly altered the way gubernatorial campaigns are funded by eliminating undue influence from the process and enabling more candidates to run for the State's highest office. This later development, at least conceptually, has provided the voters with a greater number of policy positions to choose from, a fact that has to be considered good for democracy.

Public funding of elections, with its limits on contributions and expenditures, has been upheld by the courts as an alternative to the traditional, private-only approach.

In Buckley v. Valeo, the United States Supreme Court, in 1976, held that the Federal Election Campaign Act is:

> *...a congressional effort, not to abridge, restrict, or censor speech, but rather to use public money to facilitate and enlarge public discussion and participation in the electoral process, goals vital to a self-governing people. Thus, [it] furthers, not abridges, pertinent First Amendment Rights.*[6]

That same decision also maintained that the basic provisions of public financing programs, including expenditure limits, are constitutional as long as a candidate has the option not to participate, and not to subject himself or herself to expenditure limits. The Court held that contribution limits, with or without public financing, are constitutionally valid but that expenditure limits, except where candidates voluntarily agree to them in order to receive public financing, constitute an abridgment of First Amendment Rights. To this point, the Court said:

> *... acceptance of public financing entails voluntary acceptance of an expenditure ceiling. Non-eligible candidates are not subject to that limitation.*[7]

The concept of public financing, therefore, is built upon a sound philosophical and legal foundation. In New Jersey, it has worked well on the gubernatorial level. Whether it is an appropriate vehicle for financing legislative elections in the Garden State, however, is a question that will be explored throughout this paper.

The Kinds of Public Funding Programs

Public funding programs come wrapped in many packages. Some are matching programs, some are grant programs, and some are a combination of both. In certain states, as mentioned above, the money is given directly to the candidates. In other jurisdictions, the money is channeled through the political parties to, in turn, be distributed to the candidates. In still others, the money is given to the parties with few or no strings attached.

They are always funded through a tax check-off, a tax add-on, or an appropriation from the Legislature.

While the majority of states make public funding available only in the general election, some jurisdictions, including the federal government in presidential elections, make funds available in both the primary and general elections. Finally, public funding programs exist for statewide offices, and in three states, for the Legislature.

The federal program, which was first effective in the 1976 presidential elections, is the most widely known, although in no state is it exactly duplicated. Interestingly, it contains features of both matching and grant programs. Moreover, it provides money to both candidates and political parties.

The Presidential Primary Public Funding Program is set-up differently than the general election program. The Presidential Primary Matching Fund Program matches contributions of $250 or less from individuals on a one-to-one basis. In order to qualify, a primary candidate must receive matchable contributions totaling $5,000 in each of at least 20 States. These contributions must derive from individuals who are residents of the state for which their contributions are submitted. The primary program also contains an overall expenditure limit and separate expenditure limits in each state, which are calculated through the use of a cents-per-voter formula. The public funds cap is equal to 50 percent of the total expenditure limitation. The expenditure limits are adjusted every four years for inflation.[8]

The public funding program for the presidential general election is set up differently. In it, eligible candidates of each major party are entitled to equal payments, which are adjusted by the Consumer Price Index every four years. In 1988, the amount distributed to each candidate approximated $40 million. This grant program subjects participating candidates to an expenditure limit which is equal to the public funds grant. Thus, for participating candidates, their general election campaign is funded entirely by public dollars.[9]

This Presidential funding program also contains something for the national parties. Under provisions of the federal election laws, the major parties each received $9.2 million in 1988 for their nominating conventions. The law also provides for entitlements to minor parties if they qualify by having received a certain percentage of the vote in the previous Presidential general election.[10]

In terms of public financing by the states, one of the best of the nine state programs providing money directly to candidates is New Jersey's Gubernatorial Public Financing Program. Providing only start-up money to qualifying candidates in 1981 and 1985, this matching program has recently become one of majority funding through public dollars.

New Jersey's program contains a qualifying threshold of $150,000, with the first $50,000 of that ineligible for match. It contains an expenditure limit in the primary of $2.2 million and in the general of $5 million. The program has a public funds cap of $1.35 million in the primary and $3.3 million in the general election. Contributions of up to $1,500, regardless of the source, are matched on a two-to-one basis. Finally, there are limits on the use of personal funds by the candidates and on spending in the gubernatorial context by the political party committees.

A major program breakthrough in New Jersey was the recent amendment to the law which permits the Commission to adjust the thresholds and limits every four years by a unique campaign cost inflation index it developed.[11]

Moreover, the new law now requires publicly funded candidates to participate in two debates in the primary election and two debates in the general election. This latter feature suggested by Assemblyman Byron Baer greatly facilitates the discussion of the issues by serious candidates for Governor and provides useful information to the voters.

New Jersey's program is a national model because of its success, because of the support it receives from the taxpayers, and because it pertains only to the gubernatorial elections, which consequently are guaranteed sufficient funding.

In addition to matching and grant programs that give money directly to candidates, ten states have programs that provide public dollars to their state political party committees. Some of these programs place restrictions on the use of this money, such as prohibiting it from being used in primary elections or requiring it to be given to specified general election candidates. Others permit the parties to use the money more flexibly.

Dr. Herbert E. Alexander and Michael Eberts, in Public Financing of State Elections: A Data Book on Tax-Assisted Funding of Political Parties and Candidates in Twenty States wrote:

> *The restrictions on political party use of public funds differ by state. In Idaho, the political parties are restricted to using the money for qualified election expenses and primary election use is prohibited. In Rhode Island, the parties may use the money for administrative costs. In North Carolina, the money goes from the parties to specified general election candidates only. In Iowa, the money may not be used for primary elections and the money cannot go to federal candidates if they receive a federal subsidy. In Utah and Kentucky, the money must be proportionately divided by state and county party central committees.*[12]

North Carolina is a good case study of a state that provides public funds to the political parties but requires these parties to, in turn, give the money to their general election candidates.

In North Carolina, money collected through a tax check-off program is distributed to the major political parties in proportion to their voter registration figures. To qualify as a political party, an organization must have received, at a minimum, ten percent of the vote in the last gubernatorial election. The only parties to have qualified for public funds are the Republican and Democratic parties.

There are certain rules that apply to a political party's use of the funds. The State Chairman, Treasurer, plus any member of the party who is the Governor, Lt. Governor, U.S. Senator, Congressman, Council of State, or any candidates for those offices, make up a committee that decides how the public funds are distributed to candidates.

Funds allocated to general election candidates may only be used for certain, specified purposes. For example, the public funds can be used to pay for broadcast and print media advertising, staff salaries, travel, and party headquarter administrative costs. They cannot be used in support of primary candidates, to underwrite party conventions, to promote public referenda, or to pay off primary debts.[13]

In addition to the above programmatic models, which deal with the funding of either candidates for executive branch offices or the political parties, two states stand out because of their legislative public funding programs. These two states, Wisconsin and Minnesota, are the only two jurisdictions that contain serious programs designed to provide sufficient public funding of candidates for the Legislature as an alternative to privately funded election campaigns.

Wisconsin and Minnesota have legislative public funding programs that are different from the ones highlighted above, and, as will be shown below, are equally as distinct from the programs envisioned in four bills thus far introduced in New Jersey.

Wisconsin's program involves only the general election, but it is the primary election that determines who will receive public funds and how much.

Only candidates who are nominated through the primary process and who receive at least six percent of the vote in the election are eligible. Funds raised prior to the primary election, minus special interest contributions, are matched on a one-to-one basis. A lump sum of up to $20,000 is given to eligible candidates within seven to ten days of the primary election. Legislative public financing in Wisconsin is supported by a tax check-off program.

Every two years, the House of Representatives and one-half of the Senate is elected. About 112 seats are contested each time Not every candidate receives public funds. In 1982, 224 candidates applied and 140 received public funds. The expenditure limit was $34,000.

To determine the eligibility of the candidates applying for public funds, two reports submitted prior to the primary election are reviewed by auditors of Wisconsin's State Elections Board, as are the applications for public funds.

The Wisconsin program has had a high participation rate, with 140 candidates for the Legislature receiving public funds in 1987.[14]

Minnesota's program is different from Wisconsin's, and as will be seen, from those proposed in New Jersey. It is a complex system with two separate funds established, one to distribute money for the primary and one for the general election.

The money derives from a tax check-off program and is distributed after the primary and after the general elections.

Primary candidates receive money from the major political party fund. This fund contains money checked-off by taxpayers as earmarked for one or the other major political party. Legislative candidates receive funding equal in amount to the proportion of money checked-off for one or the other of the political parties by taxpayers in the legislative candidate's district. The money in this fund is therefore not divided equally.

General election candidates, on the other hand, receive money from the general fund. This fund also derives from the tax check-off program. This money is distributed in equal amounts to general election candidates; the amount depending on how much money is in the fund.

To qualify for primary funding, a candidate must win the primary election and agree to limit spending to an expenditure limit that is tied to the Consumer Price Index. To qualify for the general election funds, candidates must have received ten percent of the vote in the general election and have adhered to spending limits. In Minnesota, candidates file reports three times per year: pre-primary, pre-general and annually.[15]

Thus, public funding programs can assume many forms. They can be matching or grant or both. They can provide money to candidates in both the primary and general elections, or in just the general election. They can give money directly to candidates or through the political parties. Finally, they can be in the context of campaigns for President, Governor, or other statewide executive offices, or in the context of legislative campaigns or citywide campaigns, as in New York City (see Appendix I). Yet, however they may vary, whatever form they may take, all publicly funded programs have one thing in common - the need for a stable and sufficient source of funding, the presence or absence of which spells the difference between being highly successful or mediocre.

Methods of Funding

Nineteen of the twenty states which have public funding programs, have programs that are tax-assisted. The two methods utilized by these jurisdictions to provide the tax-assisted financial support for their programs are the tax check-off and the tax add-on. While eighteen of the states and the Federal Government use one of these systems or the other, Iowa has both a tax check-off program and tax add-on program. Florida is the only state that has a funding method that varies from the tax check-off or tax add-on approaches. In Florida, a public funds trust fund was established by the State Legislature, with money being appropriated into it on a periodic basis.

A tax check-off program does not, in any way, add to the liability of the taxpayer. In this type of system, the taxpayer simply designates a small part of his state income tax bill for the public elections fund.

The tax add-on system, on the other hand, adds to a taxpayer's liability. In this system, money is added onto a participant's tax bill by the participant himself. In California, a taxpayer can add on as much as $25 to his or her tax bill. Both systems are voluntary.

Needless to say, the tax check-off system has been the more successful. This system is also the one utilized by the federal government to fund the Presidential program. According to statistics compiled by Dr. Herbert E. Alexander and Michael Eberts, taxpayer participation (1983 tax year) in state tax check-off programs averages about 20.9 percent. The federal tax check-off system witnessed a taxpayer check-off rate of 23 percent in 1985. These figures obviously compare well to those compiled by the six states which have tax add-on programs. These six states showed that taxpayer participation averaged 1.6 percent in 1984.[16]

New Jersey's gubernatorial public financing system is financed by a one dollar tax check-off program. Historically, the general public has given this program wide support. In fact, the check-off rate in New Jersey has averaged about 40 percent, a rate which ranks highest among the states.

The Legislature must appropriate money to be distributed from the Gubernatorial Elections Fund. Moreover, if the fund runs out of money during the course of a gubernatorial primary or general election, special language in the budget law authorizes the Legislature to provide a supplemental appropriation to bridge the funds gap. In the current gubernatorial election cycle, that provision has proven to be very important. Recent changes in the law which significantly raised the public funds caps for participating primary and general election candidates for Governor have already caused matching funds expenditures in the primary to exceed $8 million, necessitating an additional fiscal year 1989 allocation to the program. Overall, public funds expenditures for both the primary and general election may result in approximately $15 million dollars being distributed to candidates for Governor.

In any event, the Gubernatorial Elections Fund, as it has been following each gubernatorial election year, will be in deficit after the 1989 gubernatorial primary and general elections.

Moreover, unlike in the past, this year's gubernatorial elections, because of the above-mentioned change in the public funds caps, will create such a huge deficit in the fund as to render the one dollar check-off program incapable of replenishing the fund over the next four years.

Ever since the first publicly financed gubernatorial election in 1977, the fund has always been in deficit, with tax revenues resupplying it during the four-year interval between gubernatorial elections. This situation is so because the tax-assisted, check-off program did not begin until 1976. In a sense, the Legislature has always loaned money to the Gubernatorial Elections Fund. During the four tax years following each gubernatorial election, the check-off program has paid back the loan to the Legislature, making the fund solvent by the next round of gubernatorial elections.

Immediately preceding this year's gubernatorial primary elections, the fund had a positive balance. The amount in tax check-off revenues accumulated during the last four years was sufficient to repay the loan proffered for the 1985 gubernatorial public funding program, again leaving it up to the check-off program to replenish the fund between 1989 and 1992.

Given the changes in the law which have altered the program from one of providing start-up money for campaigns to one in which the private/public funds mix is tipped in favor of public funds, it will be virtually impossible for the fund to be in anything but a deficit from now on. The one dollar tax check-off program, which has served the program so well, will be inadequate to the task in the future. In order to maintain the viability of the gubernatorial program, it will be necessary for the Legislature to consider this problem seriously, perhaps giving thought to increasing the check-off to two dollars, or devising some other stable source of funding.

As this paper now turns to consider specifically the possibility of adding a Legislative public financing program to New Jersey's electoral process, it is important to keep this very important question in mind: how is it to be financed given the funding problems now inherent in the very successful gubernatorial program?

Legislative Public Financing in New Jersey

Recently, there has been an increased interest in New Jersey about Legislative public financing. This interest is the result of intensified spending by candidates for the Legislature over the course of the last few elections for Senate and Assembly. In 1987, general election candidates for the Legislature spent approximately $11.5 million on their campaigns.[17] In 1989, Assembly candidates alone may well spend nearly $8 million dollars.

To keep this spending under control, at least four legislators have introduced bills that would create Legislative public financing programs, and impose contribution limits. Two of the bills contain expenditure limits. Without public financing, or other state aid to candidates, the United States Supreme Court has said that there can be no expenditure limits.

Each one of these legislators have, in large measure, patterned their respective programs after the gubernatorial matching program.

Assemblyman William Schluter and State Senator John A. Lynch have introduced identical bills which extend public financing to Legislative primary and general elections.

In order to qualify for the program, a candidate must raise and spend $5,000 from individual contributors. In each election, the legislation imposes a $500 contribution limit, with only contributions of up to $200 from individuals being eligible for matching on a one-to-one basis.

The Lynch/Schluter approach contains a $10,000 public funds cap and has no expenditure limitation. Moreover, it places restrictions on political party committees which are similar schematically to those contained in the gubernatorial public financing law.

While this legislation includes no provision for adjusting thresholds and limits for inflation, the method of funding envisioned in it is an appropriation from the Legislature. Assuming that all candidates would participate and qualify for the maximum in public funds, the maximum amount in public funds distributed in an election for both Houses of the Legislature would be $6 million. An additional amount of money would have to be appropriated to the Election Law Enforcement Commission (ELEC) for administrative purposes, which includes staffing and computer needs.

Legislation by Senator Richard Van Wagner, again a matching program similar to the gubernatorial program, differs from the Lynch/Schluter approach in a number of respects, not the least of which is that it would extend only to Legislative general elections and not to primary elections.

The Van Wagner proposal contains a qualification threshold of $37,500. To meet this threshold, the funds must be both raised and spent. Unlike the

Lynch/Schluter approach, this proposal does not limit qualifying funds to only contributions from individuals.

Under Van Wagner, a contribution limit of $500 is applied to all candidates for the Legislature in the primary and general elections Contributions of up to the $500 limit are matched on a one-third-to-one basis, with contributions counting toward the qualification threshold also matched.

Senator Van Wagner's bill includes a public fund cap of $25,000, an expenditure limit of $100,000, and restrictions on State political party committees but none on county and municipal committees.

The funding method embodied in this measure is again one of Legislative appropriation. Containing no inflation adjustment mechanism, this program is estimated to cost $6.3 million per election cycle, assuming all candidates for Senate and Assembly participate and receive the maximum in public funds. Additional money would be required for ELEC to administer the program.

The final measure before the Legislature was introduced by Assemblyman Alan Karcher. This proposal applies only to general elections of the State Assembly and Senate. The Karcher bill requires participants to raise and spend $10,000 to qualify for the program. These funds are not matched.

A contribution limit of $1,000 applies to all candidates in primary and general elections. Matching is on a one-to-one basis. An expenditure limit is included which is based on twenty-five cents per voter in the preceding gubernatorial general election. Based on 1985 voter turnout, the expenditure limit in 1989 would be $50,133.

The Karcher proposal contains no adjustment for inflation; a public funds cap of one-half cents-per-voter, in the last gubernatorial election, which would make it about $10,000 in 1989; and a method of financing which is again based on an appropriation from the Legislature.

Similar to the gubernatorial program, this bill places restrictions on State and County political party committees. Assuming full participation by all candidates in a Senate/Assembly election year, as well as each one receiving the maximum in public funds, the program would cost about $2.5 million. ELEC again would need an appropriation to administer the program.

Certainly, public financing of legislative elections is an idea that has generated interest in New Jersey in recent times. Besides those legislators who explicitly support public financing as evidenced by their introduction of legislation to that effect, Governor Thomas H. Kean has also come out in favor of the concept.

In his 1989 Annual Message, Governor Kean said:

> *This election year, I also ask the Legislature to consider public financing of legislative elections .... The State*

Legislature has changed a great deal .... The job has become more full-time. Members spend more and more time raising money and less time dealing with substantive issues. Gone are the homemakers, small storeowners or community activists.

I believe New Jerseyans will be willing to make the investment in public financing of legislative races, in exchange for a return to the days of a truly citizens' Legislature. We are very close to the day when the only candidates for the State Legislature will be the wealthy, lawyers, or fulltime politicians. Public Service should not be a pasttime or vocation for the privileged few.[18]

The case for legislative public financing is compelling.

In addition to the appeal of enabling the non-privileged or the non-wealthy to run for the Legislature, public financing would help candidates spend less time fundraising and more time communicating with the voters. It would encourage more people to seek the offices of Senator or member of the Assembly, thus presenting the voters with a greater range of policy choices. Through a program that imposes contribution limits, and, in all likelihood, expenditure limits, it would go far toward eliminating the appearance, if not the reality, of undue influence by monied interests. Finally, it would help to equalize the money factor in Legislative campaigns, enhancing the prospects for competitive elections.

Legislative public financing would help to erase an impression of the modern day campaign process so vividly described by Jim Goodman, reporter for the Trenton Times, in an article published last December. Goodman wrote:

> *The combination of fat-cats and special-interest lobbyists who helped fuel the $16 million orgy of spending that paid for the vilest campaign in New Jersey history got little rest after Lautenberg, the Democratic incumbent, polished off Dawkins, the golden boy of sports, the army and Wall Street.*
> *The invitations - maybe summonses is a better way to describe them - were already in the mail....*[19]

Despite these persuasive arguments in favor of public financing, there are, nevertheless, arguments against the concept. Perhaps the argument most universally heard is that public funding, especially if it is expanded to include not just elections for Governor, but elections for Legislature as well, quite simply would be too expensive. A corollary of that argument is that the enactment of contribution limits would accomplish the same goal as public financing, minus the expense. Contribution limits, themselves, the argument goes, would eliminate the prospects for undue influence and potential corruption.

Also, Public financing programs, which usually contain expenditure limits, as well as restrictions on political party committee activity (unless the money is funnelled through the parties) would unwittingly further the trend toward candidate-centered, media intensive campaigns for the Legislature. This result would be the case because campaigns would probably have to keep within an expenditure limit, thus forcing them to spend money on mass media at the expense of more people-oriented endeavors. Moreover, the possible restrictions on political parties would further remove them, and their broadly represented interests, from any central role in legislative campaigns. This development could add to even greater independence on the part of legislators and less cohesion in the political process. Finally, public financing, according to those against it, would provide incumbents with even more protection against defeat than they already enjoy.

While the arguments against public financing are interesting, they are not convincing. Money, as evidenced by the legislative election of 1987, is more and more a pervasive force in campaigns for the New Jersey Legislature.

With this being the case, not only is the perception of undue influence by special interests and other large donors heightened, but perhaps even the reality. Moreover, with money being so important, more and more time must necessarily be spent by candidates for the Legislature raising it at the expense of participating in campaign activities that expose the candidate and his or her views to the voters.

In this modern era of expensive campaign finance in New Jersey Legislative elections, it is in the best interest of the electoral and democratic processes to enact a public financing program as an alternative to a campaign finance system that depends solely on contributions from private sources. Legislative public financing would provide a means for candidates to raise the money they need to conduct effective campaigns, and at the same time reduce the possibility of corruption. It would help to increase public trust in the electoral process and in government, increase voter participation, enable candidates of limited means to run for the Assembly or the Senate, and let candidates spend more time campaigning.

In sum, public financing would greatly increase the integrity of the campaign process as it applies to Legislative elections in New Jersey.

A viable program for New Jersey should contain a stable source of funding (an appropriation from the Legislature) for both candidate campaigns and ELEC administrative purposes and be modeled after the gubernatorial matching program, which has been highly successful. It should not be unduly expensive, yet it should accomplish the goal of providing a good mix of public/private money while reducing the possibility of corruption. Moreover, it should contain an inflationary adjuster, and very importantly, it should accomplish the very practicable objective of allowing candidates to raise adequate sums of money to enable them to run effective campaigns. Indeed, this enormously significant and practical consideration has been highlighted by William Crotty and John S. Jackson in Presidential Primaries and Nominations when they said:

> *The cost of running for the nomination remains an issue of great national importance and debate. Money, the ability to raise it, the timing of its availability, and the sources from which it will come, continues to be a significant factor in the ability of a candidate to compete successfully for the nomination.*[20]

An alternative to a wholly matching program is a system that would combine elements of both matching and grant programs.

Such a proposal would be a close relative of the federal program for Presidential elections. It would provide for a matching program in the primary, with a qualification threshold, contribution limit, expenditure limit, and public funds cap.

Under this scheme, the primary election would also serve to qualify candidates for public funding in the general election. In other words, upon winning the nomination to run for Senate or Assembly, the candidate would automatically qualify for a grant in the general election and would receive it if he or she opted to participate and be subjected to an expenditure limit. This grant program would allow for additional funds to be raised privately, but would subject that fundraising to a contribution limit.

Participating candidates would receive equal grants, a provision that would further the goal of every candidate having a fair opportunity to successfully compete in the Legislative election. Such a program could also provide a means for viable independent candidates to qualify for a grant in the general election.

Like the four Legislative proposals that have been introduced, this program could be fashioned to enable candidates to receive adequate public funding without excessive public expense.

Though public financing of Legislative campaigns is recommended, it must be kept in mind that without a stable source of funding any program would be inconsequential. Therefore, given the fact that the check-off program, because of the recent changes in the law, may well not continue to replenish the Gubernatorial Elections Fund, any Legislative public funding program cannot be established that depends for its funding on this tax-assisted source. The only viable method of funding such a program is through direct appropriation from the Legislature. In light of current budgetary restraints, it is doubly important for those who would enact a Legislative public funding program to be conscious of this fact.

Legislative public financing in New Jersey would be a big step in the right direction. Yet, with the enactment of such a program must come the recognition that, along with an expenditure of money for candidates, there must be an expenditure of funds for the sole purpose of administering Legislative public financing.

An estimated $700,000 would be required by ELEC to start-up any of the programs discussed above. In ensuing years, annual, ongoing costs would approximate $500,000, which is comparable to the current expenses for gubernatorial public financing.

Initial costs of start-up would include $150,000 to upgrade the computer hardware and to develop new software. The remaining $550,000 would include a salary appropriation for 15 new staff members plus money for administrative support.

The $500,000 annual cost would include $375,000 for salaries and $125,000 for administrative support.

Unlike the gubernatorial program, most of the new staff would have to be hired on a permanent basis. Assembly elections are held every two years and Senate elections every four years, except at the beginning of the decade, when Senate elections are held two years apart. Not only would there be a spillover of work for staff relative to the previous election, but also it would be inefficient to rehire and retrain new staff members every other year.

There is no question but that there would be a cost attached to the implementation of a Legislative public financing program. Yet, the spending contemplated is a small price to pay for enhancing the integrity of the electoral process in New Jersey. It is an investment in the preservation of democracy.

NOTES

1. Herbert Asher, Presidential Elections and American Politics, rev. ed. (Homewood, Ill.: Dorsey, 1980), p.279.

2. Harvey Fisher, "Legislators purr for fat cats," Bergen Record, October 7, 1988.

3. Herbert E. Alexander, "American Politics: Not overpriced but underfinanced," The Christian Science Monitor, November 23, 1988.

4. Frederick M. Herrmann, "Public Funding Lesson: Taxpayer-Financed Gubernatorial Elections Work in New Jersey," Campaigns and Elections (Vol. 8, No. 2, 1987), pp.53-54.

5. N.J.S.A. 19:44A-27 Declaration of policy.

6. Buckley v. Valeo, 4244 U.S.1, (1976), 93.

7. Ibid., p.96.

8. 11CFR Section 9031.1 et seq.

9. Ibid., Section 9001.1 et seq.

10. Ibid., Section 9008.1 et seq.

11. New Jersey Election Law Enforcement Commission, Gubernatorial Cost Analysis Report, June 1988, p.23.

12. Herbert E. Alexander and Mike Eberts, Public Financing of State Elections: A Data Book on Tax-Assisted Funding of Political Parties and Candidates in Twenty States (Los Angeles: Citizens' Research Foundation, University of Southern California, 1986), p.7.

13. Ibid., pp.133-135.

14. Discussion with Kevin J. Kennedy of the Wisconsin State Election Board, June 8, 1988.

15. Discussion with Mary Ann McCoy of the Minnesota Ethical Practices Board, June 8, 1988.

16. Alexander and Eberts, Public Financing, p.7.

17. New Jersey Election Law Enforcement Commission data on the 1987 Legislative general election.

18. Governor's Annual Message, January 10, 1989, p.159.

19. Jim Goodman, "Loose law invites PAC abuse," Trenton Times, December 11, 1988.

20. *William Crotty and John S. Jackson, Presidential Primaries and Nominations (CQ Press: Division of Congressional Quarterly Inc., 1985), p.185.*

APPENDIX I

This appendix outlines the provisions of the New York City public financing program for election to City Council. It should be pointed out, however, that this program, which becomes effective for the first time in 1989, also includes public financing for Mayor, President of the City Council, Comptroller, and Borough President, as well as for City Council.

The City Council model is utilized because it represents the one election that is most comparable to the Legislative elections in New Jersey. The City of New York has a population of approximately 7.5 million and a City Council comprised of 35 members.* New Jersey has a population of about 7.6 million and a Legislature comprised of 120 members.

The New York City program exists for primary, primary run-off, and general elections. It is funded through the Campaign Finance Fund, which receives an appropriation from the New York City Expense Budget. Private donations can also be made to the fund.

Administered by the New York City Campaign Finance Board, the major provisions of the program for City Council elections are as follows:

Elections	Primary, primary run-off, general
Contribution limit	$2,000 A. applies to primary, primary run-off, and general
Qualification threshold	A. to qualify a candidate must have received at least 50 contributions of $10 or more from residents of the district and a minimum amount of $7,500. No more than $500 of a contribution will be counted toward threshold and it must be from an individual B the amount counted toward qualifying is not matched
Matching or Grant program	Matching
Matching ratio	A. if a participating candidate in the primary or general election is opposed by a participating candidate then the matching ratio is 1:1 B. if a participating candidate in the primary or general election is opposed by a non-participating candidate who raises or spends half the expenditure limit then the matching ratio is 2:1 C. Run-off candidates are entitled to a grant based on the amount received in the primary. D. no more than $500 of a contribution is eligible for match and it must be from an individual.

	E. a candidate is not eligible to receive matching funds if unopposed in either the primary or general elections
Expenditure limit	A. the expenditure limits are $60,000 for the primary and general elections and $30,000 for the primary run-off B. if a participating candidate is opposed by a non-participating candidate who raises or spends half the expenditure limit then the expenditure limit is lifted for the participating candidate
Public funds cap	A. the public funds caps are equal to one-half of the expenditure limits B. if the expenditure limit is lifted, the public funds cap remains at one-half of what the expenditure limit would have been
Financing method	A. appropriation from the New York City Expense Budget through the Campaign Finance Fund and any voluntary contributions
Inflation adjustment	Consumer Price Index**

* As the result of the recent United States Supreme Court decision which determined that the City's Board of Estimate is unconstitutional, it is speculated that the number of City Council seats will increase.

** Information for this Appendix was obtained from <u>A Guide to the New York City Campaign Finance Program</u>, New York City Campaign Finance Board, New York, New York, December 16, 1988, and from discussions with Carole Campolo, Deputy Executive Director of the Board, on March 29, 1989.

Appendix II

Possible Legislative Public

Financing Program

	Primary	General
Contribution limit	$ 1,500	$ 1,500
Qualification threshold	$ 22,500	$ 22,500
Matching ratio	1:1	1:1
Public funds cap*	$ 25,000	$ 50,000
Expenditure limit	$ 75,000	$150,000
Estimated cost	$8,750,000	$12,500,000

NOTE: The proposed expenditure limits are based upon spending in the 1987 Legislative races. ELEC believes that a new Legislative public financing program should be part of a total revision of the campaign financing system as outlined in ELEC's 1988 Annual Report. For example, it makes little sense to set a contribution limit if a special interest is not restricted from giving unlimited dollars to a Legislator's officeholder PAC. Moreover, the Commission believes that contributions to Legislative candidates from the State political party committees should not be subject to the contribution or expenditure limits. ELEC also feels that if the State institutes across the board contribution limits for all political committees that political parties should have a higher limit and that a one hundred percent tax credit be given for donations by individuals to the parties. Strengthening our parties is essential for the welfare of American Democracy. The contribution and expenditure limits should be designed to impede the undue influence of the special interests not the desirable influence of the political parties.**

* No public funds should be given to unopposed candidates.

** Hedrick Smith, The Power Game (New York: Random House, 1988), p.78 and Brooks Jackson, Honest Graft (New York: Knopf, 1988), pp.301-302.

Although the Commission supports the concept of legislative public financing, nothing contained herein is to be construed as an official expression of support for any particular program or method of creating one. ELEC is releasing this White Paper based on extensive research in the hope of advancing constructive debate in this area.