

HOUSE BILL REPORT

ESHB 1434

As Passed House

June 11, 1991

Title: An act relating to campaign financing.

Brief Description: Providing limitations on campaign contributions, voluntary limitations on campaign spending, and partial public financing of campaigns.

Sponsor(s): By House Committee on State Government (originally sponsored by Representatives Hine, Miller, Anderson, McLean, R. King, R. Meyers, Scott, R. Fisher, Cooper, Appelwick, Rasmussen, Dorn, Valle, R. Johnson, Prentice, Cantwell, Cole, Jones, Pruitt, Fraser, Winsley, Sheldon, H. Myers, Riley, Orr, Roland, O'Brien, Ogden, Braddock, Phillips, Nelson, G. Fisher, Wineberry, Haugen, Spanel, Leonard, Sprenkle and Dellwo).

Brief History:

Reported by House Committee on:
State Government, February 27, 1991, DPS;
House Second Reading, March 12, 1991;
Passed House, March 13, 1991, 80-18;
Passed House, June 11, 1991, 65-26.

**HOUSE COMMITTEE ON
STATE GOVERNMENT**

Majority Report: *That Substitute House Bill No. 1434 be substituted therefor, and the substitute bill do pass.* Signed by 7 members: Representatives Anderson, Chair; Pruitt, Vice Chair; McLean, Ranking Minority Member; R. Fisher; Grant; O'Brien; and Sheldon.

Minority Report: *Do not pass.* Signed by 3 members: Representatives Bowman, Assistant Ranking Minority Member; Chandler; and Moyer.

Staff: Kenneth Hirst (786-7105).

Background: In 1972, the voters approved Initiative Measure No. 276 regarding public disclosure. One section of the initiative established mandatory expenditure limits on campaigns for elective office. In 1974, the state's Supreme Court found that section to be unconstitutional.

A series of federal court cases has identified a number of constitutional limitations on the regulation of campaign financing. Certain constitutionally permissible restrictions on such financing have also been identified in those decisions. In those cases, the courts found the following to be permissible: (1) limitations on contributions by individuals or organizations to candidates for federal office; (2) limitations on contributions by individuals or organizations to political action committees; (3) limitations on contributions by political action committees to candidates for federal office; (4) limitations on total contributions by individuals in a calendar year to candidates for federal office; (5) public financing for presidential elections; and (6) federal public disclosure requirements.

Found to be impermissible were ceilings on candidate expenditures or on "independent expenditures" (that is, campaign expenditures not subject to the control of a candidate). Upheld, however, were ceilings on candidate expenditures which become effective only as part of a public financing agreement under which a candidate agrees to abide by the limits in exchange for public financing. Also found to be impermissible were any ceilings on contributions or expenditures in ballot proposition campaigns.

Summary of Bill: A system is established for limiting campaign expenditures and for providing matching funds for the election campaigns of candidates for state executive and legislative offices. The matching monies are available to candidates who agree to abide by specified expenditure limits and other restrictions in exchange for the matching funds. This system is administered by a six-member State Election Board.

Restrictions are established on the size of the contributions that may be given to a candidate for state executive or legislative office. These restrictions are enforced by the Public Disclosure Commission.

I. CAMPAIGN EXPENDITURE LIMITS & MATCHING FUNDS

Expenditure Limits; Threshold Amounts. The expenditure limits are expressed as base amounts for each office. The base amounts of the expenditure limits are:

- 1) Candidates for governor: \$2.2 million;
- 2) Candidates for other state executive office: \$800,000;
and
- 3) Candidates for state legislative office: \$55,000.

These limits apply to the aggregate of all campaign expenditures made by a candidate during the election cycle for the office sought. Transfers made by a candidate to another candidate for state office count as expenditures toward the limit for the contributing candidate. Vehicle mileage and fuel costs incurred by a candidate for his or her own campaign activities do not count toward any expenditure limits.

To be eligible to receive matching funds, a candidate must file an agreement with the Election Board which binds the candidate to the expenditure limit. The agreement must be filed by the third business day after a candidate receives contributions, less loan repayments, during the election cycle of the following "threshold" amount: \$25,000 for candidates for Governor; \$7,500 for other state executive office; and \$2,500 for state legislative office.

Increases for Independent Expenditures. If, during the 12 months preceding the election, certain independent expenditures are made in opposition to a candidate or for another candidate for the office sought by the candidate, the expenditure limit for the candidate (not the other candidate) is increased by an amount equal to the amount of the independent expenditures. For a candidate for state executive office, this increase applies only if the independent expenditures total, in the aggregate, more than five percent of the base amount for the office. For a candidate for state legislative office, the independent expenditures must total more than 10 percent of the base amount for the office. A person making such independent expenditures must file special reports with the Election Board if the expenditures equal, in the aggregate, \$500 or more.

Limit Waived. A candidate for an office is not subject to an expenditure limit if, during the election cycle, any other candidate for the office: (1) violates the expenditure limit for the office; or (2) receives contributions in excess of the "threshold" amount for the office, but that other candidate has not filed an expenditure agreement with the Election Board in a timely manner.

Matching Monies. A State Election Campaign Account is established. The Election Board is authorized to make payments of matching monies from the Account to eligible candidates. The maximum amount that a candidate may receive from the Account is:

- 1) Candidates for governor: \$220,000;

- 2) Candidates for other state executive office: \$80,000;
and
- 3) Candidates for state legislative office: \$25,000.

A candidate may not receive matching monies from the Account for a campaign for an office unless at least one other candidate for that office: (1) violates the expenditure limit for the office; or (2) has not filed, in a timely manner, an agreement with the Board limiting expenditures and has received more than twice the "threshold" amount in contributions from sources other than candidates for state office.

Matching Formula. Subject to these maximum amounts, an eligible candidate is entitled to payments from the Account equal to four dollars for each dollar in "qualifying" contributions received by the candidate for the election campaign. If the candidate's expenditure limit is increased as a result of independent expenditures, the candidate is entitled to payments from the Account equal to those independent expenditures. The maximum amount that the candidate may receive from the Account is also increased by an amount equal to those expenditures.

To receive matching monies, a candidate must have received "qualifying" contributions, less loan repayments, totalling at least the "threshold" amount for the office.

"Qualifying" Contribution Restrictions. For a contribution received by a candidate to qualify as being one which may be counted toward this amount or to qualify to be matched by public monies from the Account, the contribution: must be a gift of money made by a written instrument identifying the individual making the contribution; must be contributed directly to the candidate or the candidate's authorized committee (certain joint fund-raising activities are exempted from this); must be raised during the election cycle; and must be from an individual who has a residence or business in this state or is employed in this state. The contribution must not have come from a candidate for any office. A limit is established on the total amount of the contributions to a candidate from one individual that may be matched or may be counted toward the minimum threshold amount. The limit is \$500 to a candidate for Governor, \$250 to a candidate for any other state executive office, and \$100 to a candidate for state legislative office.

Other Restrictions. A candidate who receives a payment from the Account may not, during the election cycle, spend or receive as loans for his or her own campaign personal funds or the funds contributed by a member of the candidate's

immediate family which in the aggregate are more than: \$30,000 for the office of Governor; \$10,000 for other state executive office; or \$3,000 for state legislative office. A candidate who submits an expenditure limitation agreement must also agree to comply with the Fair Campaign Practices Code.

Campaign Seal; Candidates' Pamphlet. A candidate who enters and abides by an expenditure limitation agreement may display a "good campaign practices" seal in the candidate's political advertising and communications. The Secretary of State must add notices in the state's official Candidates' Pamphlet identifying such candidates. The Secretary must also prominently display the "good campaign practices" seal next to the statements of such candidates in the pamphlet.

Administration - Election Board. The matching fund program is administered by the State Election Board, which is created. The Board is composed of six members appointed by the Governor. Positions one through four on the Board are filled by appointing one person from each of four lists of nominees submitted by the leaders of the four caucuses of the Legislature. The other two members of the Board are appointed by the Governor to represent the public interest generally.

The Board or its Executive Director must respond to applications for matching funds within two business days. Decisions regarding such applications are not subject to the provisions of the Administrative Procedures Act. In an appeal regarding a response to such an application, the decision of the superior court is final. The Board must report to the Governor and the Legislature regarding the matching fund program after each election. With the exception of its Executive Director, the Board gets its staff support from the Public Disclosure Commission.

The Board may accept contributions or gifts from any entity on behalf of the State Election Campaign Account. It may solicit such contributions or gifts from any entity it does not directly regulate. The money value of such a contribution or gift must be promptly deposited in the Account.

Fees. The fee for filing as a candidate for state legislative or executive office is increased to 1.5 percent of the salary of the office sought from 1.0 percent and the monies from the additional 0.5 percent must be deposited in the State Election Campaign Account. The Public Disclosure Commission must adopt a schedule of fees which applies, with certain exceptions, to filing reports, statements, and registrations with the Commission. The total amount to be

generated by these fees is to be identified in the operating budget each biennium.

II. CAMPAIGN CONTRIBUTION LIMITATIONS

Limitations are established on the aggregate size of the campaign contributions that may be made by a person or entity to a candidate for state executive or legislative office. The limits are:

- 1) To a candidate for state executive office: \$10,000 from a political party or caucus of the state Legislature, \$7,500 from a multi-candidate political committee, and \$5,000 from any other entity; and
- 2) To a candidate for state legislator: \$5,000 from a political party or caucus of the state Legislature, \$3,000 from a multi-candidate political committee, and \$1,000 from any other entity.

These limits also apply to contributions to an official holding such an office who is the object of a recall campaign and to contributions to a political committee expecting to make expenditures supporting the recall of such an elected official.

For an election campaign, the limits apply during the two- or four-year election cycle for the office. For a recall campaign, the limits apply from the date of the filing of recall charges and until 30 days after the recall election. Special rules are established for contributions which are earmarked or otherwise directed through an intermediary to a candidate.

Contributions During or Near Legislative Sessions. No state legislator may, during the course of a Regular Session or during the 15 days before or after a Regular Session, accept a campaign contribution for a state legislative office from any person. This restriction does not apply to a legislator during a recall campaign against the legislator.

Entities Controlled By Others. Contributions by an entity which is controlled by another person are considered to have been made by the other person. This provision does not apply to the relationship between spouses or between certain units of political parties. Special rules apply to contributions made by minors.

III. OTHER PROVISIONS

Special Elections. Although the restrictions on contributions and the expenditure limitation/matching program apply to campaigns for special elections to fill vacancies, the expenditures and contributions made for the special elections are not counted toward any of the limitations which apply to other elections.

Late Contributions; Independent Expenditures. Contributions received up to one year after an election are considered to be contributions for the election cycle ending with that election if they are used to pay any debt or obligation incurred to influence the outcome of that election. Independent expenditures are considered to be expenditures by a candidate if they were encouraged by the candidate or made with the candidate's approval or the person making the expenditures collaborated with the candidate.

Adjustments for Inflation and Population Growth. The Election Board must adjust the "threshold" amounts and base amounts established for the expenditure limitation program and the contribution limits each odd-numbered year to reflect changes in economic conditions as reflected by an inflationary index. The Board may also adjust the base amounts applicable to a particular legislative office to reflect certain excessive growth in the population of the legislative district of the office as compared to other legislative districts.

Legislative Gifts and Communications. A member of the Legislature must report to the Public Disclosure Commission the receipt of a gift which has a value of more than \$50. This reporting requirement does not apply to gifts which are not related to the legislator's public office. The House of Representatives and Senate must limit by rule the total amount of legislative expenditures which may be made for a legislator for mailings or other types of mass communications.

Penalties. Civil penalties are established for violations of various provisions concerning the expenditure limitation and matching fund program and for violations of the contribution limitations.

Fiscal Note: Available.

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

Testimony For: (1) It is time to change the rules for financing campaigns. The bill creates a system that is creative and responsible and will work. (2) Real reform in financing campaigns requires that expenditures, not just

contributions, be limited. The bill provides reasonable limits to both. (3) If only contributions are limited, Political Action Committee's (PAC's) simply proliferate to get around the limits. (4) The bill is needed to combat the public's impression that legislators are bought and sold. If campaign financing reform must be imposed on the Legislature from the outside, this impression will worsen. (5) The matching monies needed to make the expenditure limits constitutional would be supplied by fees on candidates and lobbyists. (6) If everyone complies with the expenditure limits established in the bill, no matching monies will be necessary. (7) The bill will help close the rift between the public and its elected officials. (8) The nature of the political campaigns for Seattle's elective offices was changed for the better by its campaign spending limits.

Testimony Against: (1) The contribution and expenditure limits provided by the bill are too high. Other legislation being considered this session more closely ties officials to their constituents. (2) The bill is oppressive to minor political parties. It provides a system that is akin to restraint of trade. The system will lock in the representatives of the prevailing order. (3) Providing matching monies at a four to one match is excessive. (4) Out-of-state contributions should not be matched and legislative caucuses should not be treated like political parties. (5) PAC's are a means by which a large number of people can pool their resources for a common objective. Contributions by PAC's should not be limited. (6) The power of incumbency and the influence of special interests are retained under this bill. (7) The fees established in the bill will not generate enough money to provided the needed matching funds.

Witnesses: Representatives Lorraine Hine and Louise Miller (in favor); Graham Johnson, Public Disclosure Commission (provided campaign data); Cynthia Sullivan, King County Councilmember (in favor); Richard Shepard, WA State Libertarian Party (opposed); Norman Turrill and Chuck Sauvage, Common Cause and CURES, (favored HB 1640 over this bill); Margaret Bernard, League of Women Voters of Washington (in favor); Robert Richie, Citizens for Proportional Representation (in favor of bill as a first step); Gary Wright and Caroline Logue, Washington Association of Realtors (opposed); Michelle Radosevich, Trial Lawyers Association (in favor); Charles Hodde, Washington State Grange; Mark Brown, Washington Federation of State Employees (in favor); Buz Moore (would support with lower contribution limits); and Carroll Twiss, Washington State Democratic Central Committee.