

SENATE BILL REPORT

SB 5899

As Reported By Senate Committee On:
State & Local Government, March 3, 1999

Title: An act relating to penalties for violation of the public disclosure act.

Brief Description: Adjusting penalties under the public disclosure act.

Sponsors: Senators Patterson, Bauer, Franklin, Rasmussen, B. Sheldon, Haugen, Kohl-Welles, McAuliffe, Fraser, Prentice, Thibaudeau and Spanel.

Brief History:

Committee Activity: State & Local Government: 2/24/99, 3/3/99 [DPS].

SENATE COMMITTEE ON STATE & LOCAL GOVERNMENT

Majority Report: That Substitute Senate Bill No. 5899 be substituted therefor, and the substitute bill do pass.

Signed by Senators Patterson, Chair; Gardner, Vice Chair; Hale, Haugen, Horn, Kline and McCaslin.

Staff: Diane Smith (786-7410)

Background: One of the primary purposes of the public disclosure law is to provide citizens with the means for becoming informed about the financing of political campaigns. The law requires that records be kept and reports filed with the Public Disclosure Commission (PDC) of all contributions and expenditures.

Contributions to a candidate or a candidate's campaign are subject to the contributor's limit and must be reported by the candidate's committee.

Independent expenditures are not a type of expenditure that candidates or their committees make. They are a constitutionally protected form of speech and, unlike contributions, are not subject to limit. As long as an expenditure does not constitute a contribution, the person making it is free to spend as much as he or she likes. Because independent expenditures are not limited and contributions are limited, the distinction between them is important.

An independent expenditure is an expenditure made in support of or in opposition to any candidate or ballot proposition. However, an expenditure made in support of a candidate is a contribution if the expenditure is made by the candidate personally, by the candidate's committee, by a person who the candidate has encouraged or approved to make the expenditure or by a person with whom the candidate has collaborated for the purpose of making the expenditure.

Violation of the public disclosure or campaign financing laws can subject the violator to the imposition of civil remedies and sanctions. Whether a violation has occurred can be determined either by a court or by the Public Disclosure Commission.

If a court makes the determination that a violation by a candidate or political committee probably affected the outcome of an election, the election may be held void. The registration of a lobbyist or a sponsor of any grass roots lobbying campaign may be revoked for violation of these laws. A civil penalty up to \$10,000 may be assessed for each violation, except that a violation of the limitations on campaign contributions may be subject to a civil penalty of \$10,000 or three times the amount of the contribution illegally made or accepted, whichever is greater. Failure properly to file subjects a person to a civil penalty of \$10 per day. Failure to report a contribution subjects a person to a civil penalty equal to the amount he or she failed to report. The court may also enjoin any person to prevent the doing of any prohibited act or to compel the performance of any required act.

If the commission chooses to decide whether an actual violation occurred, it holds an administrative hearing and issues an order. The order may be a cease and desist order. In the alternative, the commission may impose any of the remedies a court can impose with two exceptions. The commission cannot hold an election void and the dollar amount of a penalty the commission can assess is limited to a maximum of \$1,000 for each violation up to a maximum of \$2,500 as the aggregate penalty when multiple violations are involved in a single complaint or hearing.

The commission's orders are subject to judicial review. The commission may also petition a court for an order enforcing the commission's order.

Summary of Substitute Bill: The court must presume that a material and substantial violation of the public disclosure or campaign finance laws has affected the outcome of the election. The court must declare the election void unless there is a preponderance of evidence to the contrary.

The civil penalties that may be imposed by a court are increased. The penalty for violating the public disclosure or campaign finance law is \$40,000; for violating the limitation on campaign contributions is \$20,000 and the contribution must be returned.

Civil penalties that may be imposed by the commission are increased to \$2,000 for one violation and \$5,000 for multiple violations.

The following groups are all prohibited from soliciting or accepting contributions or making expenditures until they comply with an order from a court or from the commission made under this act: candidates; political committees and political committees with a majority of the same officers; officers of a political committee as well as the committee itself and any other political committee of which the person is an officer; lobbyists; and sponsors of grassroots lobbying campaigns.

The court or commission may require that civil penalties assessed for intentional violations must be paid from personal funds.

Substitute Bill Compared to Original Bill: The Legislature's authority to hold void an election is removed. The standard of proof by which the presumption that a material and substantial violation of the PDC act affected the outcome of an election is changed to a preponderance of the evidence. No change is made to the \$10 per day statutory civil penalty for failing properly to file.

The intent of the original bill is restated as to independent expenditures.

Appropriation: None.

Fiscal Note: Not requested.

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

Testimony For: The enforcement powers of the PDC should be strengthened. Inadequate penalties mean more referrals to superior court for enforcement and consequent increased costs. The Ethics Board can impose a \$5,000 penalty.

Testimony Against: None.

Testified: PRO: Melissa Warheit, PDC; Ronda Cahill, PDC; Chuck Sauvage, Common Cause; Cherie Davidson, League of Women Voters of WA.