

SENATE BILL REPORT

SB 5900

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

Title: An act relating to political advertising and independent expenditures in political campaigns.

Brief Description: Regulating political advertising and independent expenditures.

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

Brief History:

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

Brief Summary of Bill

- Independent expenditure committees are subject to last minute- contribution limitations and special reporting.
- Political advertising- is expanded to include mass telephone or electronic communications, which must include sponsor's name.
- PDC must assign brief descriptive phrases to describe interests represented by independent expenditure committees.

SENATE COMMITTEE ON STATE & LOCAL GOVERNMENT

Majority Report: That Substitute Senate Bill No. 5900 be substituted therefor, and the substitute bill do pass.

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

Minority Report: Do not pass substitute.

Signed by Senator Horn.

Staff: Eugene Green (786-7405)

Background: General Information. Initiative 276 was approved by the voters in 1972. Among other requirements, Initiative 276 requires various reports of campaign contributions and expenditures to be filed with the Public Disclosure Commission (PDC) and county election officers.

In general, an independent expenditure is an expenditure for political advertising that:

- costs at least \$575 (either alone or in conjunction with other ads by the same sponsor benefitting the same candidate);
- supports or opposes a clearly identified candidate for state or local office;
- is paid for by someone other than a candidate, a candidate's committee or agent; and
- is paid for by some individual or entity who undertakes the advertising without having received the benefitting candidate's encouragement or approval or without collaborating with this candidate or the candidate's agent.

Filing Statement of Organization. Every political committee, within two weeks after its organization or, within two weeks after the date when it first has the expectation of receiving contributions or making expenditures in any election campaign, whichever is earlier, must file a statement of organization with the PDC and with the elections officer of the county in which the candidate resides, or in the case of any other political committee (including an independent expenditure committee), the county in which the treasurer of the committee resides. However, a political committee organized within the last three weeks before an election must file within three business days after its organization or when it first has the expectation of receiving contributions or making expenditures. The statement of organization must include specified information, including, but not limited to: the name and address of the committee; the names, addresses and titles of its officers; and a statement whether the committee is a continuing one.

Reporting of Expenditures, Special Reports, and Independent Expenditures. Each candidate or political committee is required to file a report on its contributions received and expenditures made since filing the last report at the following intervals: (1) on day 21 and the seventh day immediately preceding the election; (2) on day ten of the first month after the election; and (3) on day ten of each month in which no other reports are required to be filed.

Candidates or political committees must prepare and deliver to the PDC a special report regarding any contribution or aggregate of contributions which exceeds \$575 and is received within 21 days preceding a general election. The special report must be delivered to the PDC within 48 hours or on the first working day after the reportable contribution is received by the candidate or treasurer.

Each person who makes an independent expenditure of \$100 or more during the same election campaign in support or opposition to a candidate or ballot proposition, who does not otherwise have to file a report as a candidate or political committee, must file a report of the independent expenditure at the following intervals: (1) on day 21 and the seventh day immediately preceding the election; (2) on day ten of the first month after the election; and (3) on day ten of each month in which no other reports are required to be filed.

"Last Minute" Contributions. During the 21 days before the general election, candidates for other than statewide office may not accept contributions exceeding \$5,000 from any eligible contributor (these limitations do not apply to contributions accepted from the state committee of a major political party or from a minor political party).

Political Advertising. All written political advertising and all radio and television political advertising, whether relating to candidates or ballot propositions, must include the sponsor's name. Telephone or electronic communications are not included under the definition of

"political advertising." Additionally, all political advertising undertaken as an independent expenditure by a person or entity other than a party organization must include a statement on the "Notice To Voters" that the advertisement is not authorized or approved by any candidate and the name, address, city, and state of who paid for the advertisement. If an advertisement undertaken as a political expenditure is undertaken by a committee other than a political organization, there must be a notation of the "Top Five Contributors," followed by a listing of the five persons or entities making the largest reportable contributions during the 12 month period before the date of the advertisement.

A person or entity other than a party organization making an independent expenditure by mailing 1,000 or more cumulative pieces of political advertising in a single calendar year must file an example of the mailed political advertising.

Summary of Substitute Bill: General Changes. The statutes defining "independent expenditure" are rearranged and placed within the definition of independent expenditure and some seemingly contradictory language is eliminated. Support of or opposition to a ballot proposition— is included within the definition of independent expenditure. "Independent expenditure committee" is defined as "a political committee established for the purpose of making independent expenditures."

Filing Statement of Organization Political Committees. Every political committee organized within the last three weeks before an election and having the expectation of receiving contributions or making expenditures for that campaign must file a statement of organization within three business days after its organization or when it first has the expectation of receiving contributions or making expenditures, whichever is earlier.

Filing Statement of Organization. Independent Expenditure Committees. An independent expenditure committee that is either organized or has the expectation of receiving contributions or making expenditures in an election campaign more than 30 days prior to an election must file a statement of organization within the time prescribed for political committees or within 30 days of the election, whichever is earlier. Every statement of organization, report or other filing required of an independent expenditure committee must be filed with the PDC and the elections officer of the county in which any candidate supported or opposed resides. However, if the candidate that is supported or opposed is running for a state elected office that is not statewide but represents all or part of more than one county, then the appropriate county elections officer is the elections officer from every county represented by that elected office.

Special Reports. Independent Expenditure Committees. A person making an independent expenditure within 21 days before a primary or general election must file special reports under the same conditions and to the same extent that a contributing political committee must file such report or reports (e.g., contribution or contributions in excess of \$575 must be delivered to the PDC within 48 hours or on first working day after receipt of contribution).

"Last Minute Contributions." Independent Expenditure Committees. During the 21 days before a primary or general election, no person may make independent expenditures in support of or in opposition to a specific candidate that in the aggregate exceed \$5,000.

Political Advertising. The definition of "political advertising" is increased in scope to include mass telephone or electronic communications. "Mass telephone or electronic communications" is defined as any recorded, scripted or written message that is made, conveyed, sent, delivered, or relayed by telephone wires, satellite hook-up, or the Internet, to 1,000 or more individuals. Messages that are nearly identical or closely related in content, and that are made, conveyed, sent, delivered, or relayed within seven days of each other, are considered to be identical and must be counted accordingly.

All mass telephone and electronic political advertising, whether relating to candidates or ballot propositions, must include the sponsor's name.

All written political advertising undertaken as an independent expenditure must also include under the statement of "Notice To Voters" that the advertisement is an independent expenditure of funds and the name, daytime address and telephone number of both the committee's president and treasurer. The employer of both the president and treasurer must be included if they are acting on behalf of the employer. If the advertisement is paid for by an independent expenditure committee, the notice must disclose the general nature of the interests represented by the committee, as determined by the PDC. In the listing under the "Top Five Contributors," the general nature of the interests, as determined by the PDC, represented by each person other than an individual making such a contribution must be disclosed immediately after the name of that person or entity (see Public Disclosure Commission below).

A person or entity other than a party organization making an independent expenditure by mailing 1,000 or more cumulative pieces of political advertising in a single calendar year must file a sample, rather than an example, of the mailed political advertising.

Public Disclosure Commission Assignment of Brief Descriptive Phrases. The PDC must assign a brief descriptive phrase indicating the general nature of interests represented by each independent expenditure committee. This phrase must be included immediately after the name of the committee in each advertisement relating to a candidate that the committee undertakes as an independent contribution.

For the "Top Five Contributors" for the committee making the advertisement, the PDC must assign a brief descriptive phrase indicating the general nature of the interests represented by each person or entity making a contribution to the independent expenditure committee.

Substitute Bill Compared to Original Bill: The definition of independent expenditure is changed to include support of or opposition to a ballot proposition.

Any independent expenditure made for a legislative race where the candidate represents more than one county must be reported to the elections officer in every county within that legislative district.

Concerning the Notice to Voters– for written political advertising relating to a candidate undertaken as an independent expenditure, the employer of the president and treasurer of the committee need not be listed unless they are acting on behalf of the employer.

The requirement that the statement of organization of every political committee must include the general nature of the interest or interests is eliminated.

Technical. There is a severability clause.

Appropriation: None.

Fiscal Note: Available.

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

Testimony For: Independent expenditures are a growing concern. The public would be served by quick reporting of independent expenditures made late in a campaign. The PDC also supports that enhanced definition of political advertising.

Testimony Against: The PDC has serious concerns about the constitutionality of prohibiting persons from making independent expenditures exceeding \$5,000 within 21 days prior to an election, and restricting any formation of independent expenditure committees during the 30 days before an election. Attorney General fees and attorney fees, if the state loses, could be quite substantial.

Testified: Melissa Warheit, PDC (pro/con); Brian Livingston, Civic Foundation (pro); Cherie Davidson, League of Women Voters of WA (pro/con).