
State Government Operations &
Accountability Committee

ESSB 5034

Brief Description: Making restrictions on campaign funding.

Sponsors: Senate Committee on Government Operations & Elections (originally sponsored by Senator Kastama; by request of Public Disclosure Commission).

Brief Summary of Engrossed Substitute Bill

- Provides for disclosure of electioneering communications to the Public Disclosure Commission.

Hearing Date: 3/25/05

Staff: Marsha Reilly (786-7135).

Background:

Washington campaign finance laws enacted in 1994 were partially invalidated by *Washington State Republican Party v. Washington State Public Disclosure Commission*. The court held that there may be no limitation on soft money and only broadcast advertisements explicitly naming the candidate or the candidate's opponent could be regulated.

Washington State Republican Party confirmed that contribution limitations and reporting requirements were constitutionally acceptable. However, limitations on contributions and expenditures made for the purpose of issue advocacy were not acceptable. The court determined that advertisements, even those that directly reference a candidate for political office, may not be limited in any way unless those advertisements specifically instruct the voter to support or reject a candidate.

Issue advocacy does not oppose or support a candidate. It explains an issue which may be an issue in contention in a political campaign. These are not regulated or limited. However, when the issue ad exhorts the audience to the action of voting or not voting for a particular candidate, or attacks a candidate's character, it then becomes *express advocacy*. This causes the issue ad to revert to a political ad.

In 2003, the United States Supreme Court in *Federal Election Commission v. McConnell* upheld most of the Bipartisan Campaign Reform Act of 2002 (BCRA), commonly known as the McCain-Feingold law. Specifically, *McConnell* upheld the BCRA electioneering communication

provisions. The Court held that issue ads broadcast during the 30-day and 60-day periods preceding federal primary and general elections are the "functional equivalent" of express advocacy.

State law requires that independent expenditures of \$1,000 or more for political advertising made within 21 days of an election must be reported to the Public Disclosure Commission (PDC) within 24 hours of or on the first working day after the date the political advertising was presented to the public. At a minimum, the report must include:

- the name and address of the person making the expenditure;
- the name and address of the person to whom the expenditure was made;
- a detailed description of the expenditure;
- the date the expenditure was made and the date the political advertising was first presented to the public;
- the amount of the expenditure; and
- the name of the candidate and office sought or the ballot proposition supported or opposed.

Summary of Bill:

Electioneering communication is defined as any broadcast, cable, or satellite television or radio transmission, postal service mailing, billboard, newspaper, or periodical that clearly identifies a candidate, is made within 60 days of an election, and has a fair market value of \$5,000 or more.

Electioneering communications must be reported electronically to the PDC within 24 hours of it being made public and must include:

- the name and address of the sponsor;
- the source of funds for the communication and whether it is made with general treasury funds or through special solicitations;
- the name and address of the person to whom an electioneering communication expenditure was made;
- a detailed description of each expenditure of more than \$100;
- the date the expenditure was made and the date the communication was first broadcast;
- the amount of the expenditure;
- the name of each candidate clearly identified in the communication as well as the office being sought and the amount attributable to each candidate; and
- any other information the commission may require or exempt by rule.

Electioneering communications made at the candidate's request are contributions and are subject to the contribution limitations. Unless exempted from contribution limits, all contributions accrue toward those limits.

Independent expenditures or electioneering communications transmitted through television or other medium utilizing a visual image or through a medium not utilizing a visual image must include a statement that is clearly spoken or appearing in clearly visible print, indicating 1) that no candidate authorized the advertisement, and 2) who paid for the advertisement. If the advertisement is paid for by a "nonindividual" other than a party organization (political action committee), it must also include the names of the top five contributors who contributed more than \$700.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: The bill takes effect on January 1, 2006.