

SENATE BILL REPORT

ESSB 5034

As Passed Senate, March 16, 2005

Title: An act relating to disclosure of and restrictions on campaign funding.

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 History:

Committee Activity: Government Operations & Elections: 1/13/05, 1/31/05 [DPS, DNP, w/o Rec].

Passed Senate: 3/16/05, 48-0.

SENATE COMMITTEE ON GOVERNMENT OPERATIONS & ELECTIONS

Majority Report: That Substitute Senate Bill No. 5034 be substituted therefor, and the substitute bill do pass.

Signed by Senators Kastama, Chair; Berkey, Vice Chair; Fairley, Haugen, Kline and Pridemore.

Minority Report: Do not pass.

Signed by Senator Mulliken.

Minority Report: Without recommendation.

Signed by Senator Roach.

Staff: Diane Smith (786-7410)

Background: Political advertising paid for by an independent expenditure is subject to special reporting requirements that are enforced by the Public Disclosure Commission (PDC). Political advertisements support or oppose a candidate. The sponsor of a political advertisement that is made public within 21 days of the election must report the fair market value of the advertisement within 24 hours of its presentation to the public.

When an advertisement is an "issue ad" it 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.

Independent expenditures are those made by an entity or person, other than the candidate, that are independent of the candidate's request or control but which are intended to benefit the candidate's prospects for election or to reduce the prospects of the opposing candidate. Independent expenditures must be reported, but the value of them is not considered to be a contribution to the candidate's campaign, which is otherwise subject to limits.

These limits on campaign contributions, however, do not apply in certain circumstances. These circumstances are expenditures or contributions for voter registration, absentee ballot information, for precinct caucuses, for get-out-the-vote campaigns, for precinct judges or inspectors, for sample ballots, or for ballot counting, all without promotion of or political advertising for individual candidates, and expenditures by a political committee for its own internal organization or fund raising without direct association with individual candidates.

The distinction between independent expenditures, which are not subject to limitations, and contributions that are subject to limitation, has been the subject of state and United States Supreme Court decisions. The courts have drawn a bright line distinction that is not present in Washington statutes. The term "electioneering communication" is determined objectively by being an advertisement that is made public within 60 days of the election, clearly identifies the candidate and has a fair market value of \$5,000 or more.

Summary of Bill: Electioneering communications are those made within 60 days of the election, clearly identify the candidate and have a fair market value of \$5,000 or more.

The specifics about the payment for electioneering communications must be reported electronically to the PDC within 24 hours of the electioneering communication being made public.

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.

Committee/Commission/Task Force Created: No.

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

Testimony For: This bill allows voters to follow the money in campaigns and reaffirms that exempt money that parties receive can only be spent for nine statutory purposes and still retain its exemption.

Testimony Against: The people's right to contribute anonymously to candidates, a part of the right of free speech, is abridged by this bill.

Who Testified: Vicki Rippie, Public Disclosure Commission; Mike Connelly, Public Disclosure Commission; Robert Stern, Center for Governmental Studies.

CON: Jennifer Shaw, American Civil Liberties Union of Washington.

House Amendment(s): Two sections are added, both of which take effect July 1, 2005. One section clarifies the meaning of "affiliate" in the underlying statute for purposes of treating a corporation's subsidiary's or union's local's contribution together with, or separately from, the contribution of its parent entity. If the parent of a subsidiary of a corporation or the national office of a local union is participating in an election campaign, the subsidiary and local must share the contribution limit with its parent or national office, respectively.

The other section defines, "participate."

The PDC is given rule making authority to implement these sections. Any rules adopted may take effect between June 30 of a general election year and the day of the election, unlike all other PDC rules pertaining to campaign finance, political advertising, or related forms.

Passed House: 56-40.