

HOUSE BILL REPORT

ESSB 5021

As Reported by House Committee On:
State Government & Tribal Affairs

Title: An act relating to enhancing election campaign disclosure requirements to promote greater transparency for the public.

Brief Description: Enhancing election campaign disclosure requirements to promote greater transparency for the public.

Sponsors: Senate Committee on Government Operations, Tribal Relations & Elections (originally sponsored by Senators Pridemore, Kline, Kohl-Welles, Keiser, Prentice, Tom, Chase, White, Nelson, Haugen and McAuliffe).

Brief History:

Committee Activity:

State Government & Tribal Affairs: 3/16/11, 3/21/11 [DPA].

Brief Summary of Engrossed Substitute Bill
(As Amended by House)

- Lowers the dollar threshold of what constitutes an electioneering communication from \$5,000 to \$1,000.
- Adds definitions for "sponsor" and "sponsored committee."
- Adds restrictions on the naming of political committees.
- Restricts contributions from one political committee to another political committee.
- Adds criminal penalties.
- Increases the maximum fine that may be assessed by the Public Disclosure Commission.

HOUSE COMMITTEE ON STATE GOVERNMENT & TRIBAL AFFAIRS

Majority Report: Do pass as amended. Signed by 7 members: Representatives Hunt, Chair; Appleton, Vice Chair; Darneille, Dunshee, Hurst, McCoy and Miloscia.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Minority Report: Do not pass. Signed by 4 members: Representatives Taylor, Ranking Minority Member; Overstreet, Assistant Ranking Minority Member; Alexander and Condotta.

Staff: Marsha Reilly (786-7135).

Background:

Public Disclosure Commission.

In 1972 the voters passed Initiative 276, which required the disclosure of campaign finances, lobbyist activities, financial affairs of elective officers and candidates, and access to public records. The initiative created the Public Disclosure Commission (PDC), a five-member, bipartisan citizen commission, to enforce the provisions of the campaign finance disclosure law. The PDC has the authority to develop procedures, adopt rules, investigate complaints, and enforce the laws relating to campaign disclosure and contributions, including the imposing of civil penalties.

Electioneering Communications.

An electioneering communication is any broadcast, cable, or satellite television or radio transmission, postal service mailing, billboard, newspaper, or periodical that identifies a candidate, appears within 60 days before an election, and has a fair market value of \$5,000 or more, either alone or in combination with other communications regarding the same candidate by the same sponsor.

Political Committee Filing and Reporting.

Every political committee is required to file a statement of organization with the PDC within two weeks of its organization, or within two weeks after the date the committee expects to either receive contributions or make expenditures in any election campaign, whichever is earlier. Generally, political committees must submit monthly reports to the PDC detailing expenditures made or contributions received, as long as total contributions received or expenditures made exceed \$200. Committees that expended \$10,000 in the preceding year or expect to expend \$10,000 or more in the current year are required to file reports electronically.

Penalties.

The courts may impose several civil remedies or sanctions for violation of the contribution and disclosure laws. The maximum penalty that may be imposed by a court is \$10,000 for each violation. A party who violates the maximum campaign contribution limits may be subject to a penalty of either \$10,000 or three times the amount of the illegal contribution, whichever is greater. If a court finds that a violation probably affected the outcome of an election, the court may declare the election void and a special election must be held within 60 days. In the case of a violation by a lobbyist, the court may revoke or suspend a lobbyist's registration and may prohibit the person from receiving compensation or making expenditures for lobbying. A court can issue a penalty of \$10 a day for each day that a

statement or report is not filed beyond the proper deadline. Failure to report a contribution or expenditure may result in a penalty equivalent to the amount of contribution or expenditure not reported. A court may use injunctive relief or may compel any action necessary to enforce compliance with the disclosure requirements.

If the PDC handles a violation administratively, it may order the respondent to cease and desist from the violating activity and may impose a civil penalty of up to \$1,700 for an individual violation, and an aggregate penalty of up to \$4,200 for multiple violations included in a single complaint or hearing. If the respondent does not comply with the order or petition for review, the PDC may seek enforcement through a court.

Summary of Amended Bill:

The fair market value of an electioneering communication is lowered from \$5,000 to \$1,000.

The term "sponsor" for purposes of a political committee is defined as any person, except a candidate committee, to whom any of the following applies:

- the committee receives 80 percent or more of its contributions either from the person or from the person's members, officers, employees, or shareholders; or
- the person collects contributions for the committee by use of payroll deductions or dues from its members, officers, or employees.

A "sponsored committee" is defined as a committee, other than a controlled committee, that has one or more sponsors.

No two political committees may have the same name, and the name of a sponsored committee must include the name of the person who is the sponsor of the committee. If more than one person meets the definition of sponsor, only one name must be included in the name of the committee. A person may sponsor only one political committee for the same elected office or ballot measure for an election cycle.

Candidate or political committees that expend \$5,000 or more in the preceding year, or expect to expend \$5,000 in the current year, must file contribution and expenditure reports electronically.

Political committees may only make an expenditure to another political committee if the contributing committee has received 10 contributions of \$10 or more from at least 10 registered voters in the state.

The PDC may refer violations committed with actual malice for prosecution. A person who violates with actual malice a provision of the chapter is guilty of a misdemeanor; a person who, within a five-year period, with actual malice, violates three or more provisions of this chapter is guilty of a gross misdemeanor; and a person who, with actual malice, procures or offers any false or forged document to be filed, registered, or recorded with the PDC under the chapter provisions is guilty of a class C felony.

The penalty amount that the PDC may assess is increased to \$10,000. The PDC may waive a fine for a first-time violation. A second violation of the same rule by the same person or individual, regardless if the person or individual committed the violation for a different political committee, shall result in a fine. Succeeding violations of the same rule shall result in successively increased fines.

Amended Bill Compared to Engrossed Substitute Bill:

The striking amendment removes those portions of the definition of "sponsor" for purposes of a political committee that refer to administrative services and soliciting contributions; changes "expenditure" to "contribution" for purposes of making a contribution from one political committee to another; corrects citations for criminal penalties and changes the standard from "intentional" to "actual malice;" allows the PDC to refer certain violations for criminal prosecution; requires the PDC to fine second-time violations by the same person and increase fines for successive violations; and changes the effective date to January 1, 2012.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Amended Bill: The bill takes effect January 1, 2012.

Staff Summary of Public Testimony:

(In support) As part of the Capitol Classroom Project, students from around the state select a bill to follow throughout the legislative session. Students at Evergreen High School have chosen this bill to follow and support the bill's disclosure provisions. The PDC supports the bill and believes the provisions will build public confidence by allowing people to find out who supports political committees. The consequences for violating the laws would be elevated above just the cost of doing business. Washington has consistently ranked first in the nation with its disclosure laws. Passing the bill will increase the public's ability to follow the money. People are distrustful of the process because of a lack of transparency in how campaigns are funded. The bill enhances transparency by adding the provisions regarding the naming of political committees; however, the "three-ten" provision is not serious reform. Elections are always improved by greater transparency and accountability.

(In support with comments) While disclosure is strongly supported, there needs to be some clarity with some of the provisions. The threshold for criminal activity needs to be clear so that no one can make accusations right before an election due to a violation. Continuing campaign committees involved in independent expenditures need clarification on how to file with the PDC. The money trail should be simple to follow. The definition of "minor party" has consequences for minor parties. Minor parties do not have access to the ballot and this needs to be addressed.

(Commented) Criminal penalties and criminalizing the PDC is a concern. It is already a criminal offense to file false documents. Right now, the PDC has the authority to levy fines

and to refer matters to the Attorney General. Individual prosecuting attorneys may also, on their own initiative, file charges. The criminal penalty provisions need to be clear on who has the authority to bring a criminal prosecution and what offenses qualify for criminal liability. The threat of criminal prosecution may result in reduced cooperation with the PDC. As it is, someone could bring charges on any provision in the campaign and disclosure laws. It is important to have clear instructions about what a continuing political committee may or may not do.

(Opposed) None.

Persons Testifying: (In support) Vicki Christopherson, Capitol Classroom; Doug Ellis, Public Disclosure Commission; and Steve Breaux, Washington Public Interest Research Group.

(In support with comments) Steve Gano; and Janet Jordan, Green Party and 3rd Party Coalition.

(Commented) Mark Lamb, The North Creek Law Firm.

Persons Signed In To Testify But Not Testifying: None.