

# SENATE BILL REPORT

## ESSB 5021

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As Amended by House, April 9, 2011

**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:** Government Operations, Tribal Relations & Elections: 1/13/11, 2/15/11 [DPS-WM, w/oRec].

Ways & Means: 2/22/11, 2/24/11 [DPS(GO), DNP].

Passed Senate: 3/03/11, 46-0.

Passed House: 4/09/11, 97-0.

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### SENATE COMMITTEE ON GOVERNMENT OPERATIONS, TRIBAL RELATIONS & ELECTIONS

**Majority Report:** That Substitute Senate Bill No. 5021 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Pridemore, Chair; Prentice, Vice Chair; Swecker, Ranking Minority Member; Benton, Chase and Nelson.

**Minority Report:** That it be referred without recommendation.

Signed by Senator Roach.

**Staff:** Sharon Swanson (786-7447)

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### SENATE COMMITTEE ON WAYS & MEANS

**Majority Report:** That Substitute Senate Bill No. 5021 as recommended by Committee on Government Operations, Tribal Relations & Elections be substituted therefor, and the substitute bill do pass.

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*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.*

Signed by Senators Murray, Chair; Kilmer, Vice Chair, Capital Budget Chair; Zarelli, Ranking Minority Member; Parlette, Ranking Minority Member Capital; Baumgartner, Brown, Conway, Fraser, Hatfield, Hewitt, Kastama, Keiser, Kohl-Welles, Pflug, Pridemore, Regala, Rockefeller and Tom.

**Minority Report:** Do not pass.

Signed by Senators Honeyford and Schoesler.

**Staff:** Steve Jones (786-7440)

**Background:** Initiative 276, passed by the voters in 1972, established disclosure of campaign finances, lobbyist activities, financial affairs of elective offices and candidates, and access to public records. It also created the Public Disclosure Commission (PDC), a five-member, bi-partisan citizen commission, to enforce the provisions of the campaign finance disclosure law.

In 1992 the Fair Campaign Practices Act was enacted following passage of Initiative 134. Initiative 134 imposed campaign contribution limits on elections for statewide and legislative office, further regulated independent expenditures, restricted the use of public funds for political purposes, and required public officials to report gifts received in excess of \$50.

Provisions for reporting political advertising and electioneering communications were enacted by the Legislature in 2005 and amended in 2010.

**Summary of Engrossed Substitute Bill:** Reporting Requirements. The definition of "electioneering communication" is amended to reflect a lower reporting threshold of the fair market value of \$1,000.

The threshold amount triggering mandatory electronic filing for candidates and political committees is lowered to \$5,000.

Political Committees. *Naming Requirements.*

- A political committee name must include the name of the person or entity that is a sponsor of the committee.
- No two political committees may have the same name.

Criminal and Civil Penalties.

- A person who intentionally violates a provision of RCW 42.17 is guilty of a misdemeanor.
- A person who, within a five-year period, intentionally violates three or more provisions of RCW 42.17 is guilty of a gross misdemeanor.
- A person who intentionally procures or offers any false or forged document to be filed, registered, or recorded with the PDC is guilty of a class C felony.

The PDC may assess penalties in an amount not to exceed \$10,000.

Political committees may make an expenditure to another political committee only when the contributing political committee has received contributions of \$10 or more from at least ten persons registered to vote in Washington State.

The name of the sponsor of a political committee must be in the name of the political committee. If more than one person is the sponsor, the name of the committee must include the name of at least one sponsor but may include the name of additional sponsors.

A person may only sponsor one political committee for the same elected office or same ballot measure per election cycle.

**Appropriation:** None.

**Fiscal Note:** Available.

**Committee/Commission/Task Force Created:** No.

**Effective Date:** The bill contains several effective dates. Please refer to the bill.

**Staff Summary of Public Testimony on Original Bill (Government Operations, Tribal Relations & Elections):** PRO: There is a compelling need for the public to know how money is being spent. The major political parties should play by the same rules as everyone else; they should not be exempt under this bill. If the sole purpose behind a PAC is to support or oppose a candidate or issue then why shouldn't that PAC call themselves what they are? Citizens should not need training from Sherlock Holmes in order to discern who is funding the ads we all see during the election cycle. It should be transparent and easy to determine where the money is coming from. Recently, we have seen an explosion of money coming into our state to influence our elections. We often don't know and can't determine who is trying to influence our votes. Voters feel disenfranchised when they don't know who is supporting a candidate or an issue. There is no question that reform is needed. Timing needs to be improved. When an election is derailed because of funding questions or because a law has been broken, the conversation is no longer about the issues.

CON: If you are exempting your own parties, that shows that the proponents see the deficiencies and the onerous nature of the requirements this bill would create. If it's so good why would you exempt such a large part of political activity from it? Moxie Media is rightly being crucified for their behavior. This bill has a much larger impact on all of us, not just Moxie Media. This bill tells groups what they may or may not call themselves. This is a violation of the First Amendment. How can the government pass a law that can tell people what they can call themselves? Imagine having a PAC name that is 40 characters long. This bill gives prosecution power to bureaucrats at the PDC. The power to prosecute should stay with the attorney general. Lowering the dollar threshold for reporting requirements seems like over kill to us. Rarely does the Legislature pass a law that doesn't create more problems than it seeks to solve.

OTHER: The naming requirement is a problem. Several PACs have been around for years and are well known. The contributions between PACs can be addressed in a less onerous manner. The prohibition is perhaps broader than the problem you are intending to address.

The rebuttable presumption created in the bill is also broader than the problem you are attempting to get at. A blanket prohibition is always a concern. Often transfers of funds are made and there is nothing sinister or questionable behind it. With different language we could be supportive.

**Persons Testifying (Government Operations, Tribal Relations & Elections):** PRO: Steve Breaux, Washington Public Interest Work Group; Craig Salins, Washington Public Campaigns; Kim Abel, League of Women Voters; Nick Harper, Senator 38th District; Doug Ellis, Public Disclosure Commission.

CON: Tim Eyman, Voters Want More Choices.

OTHER: Kris Tefft, Association of Washington Business.

**Staff Summary of Public Testimony on Recommended Substitute (Ways & Means):**

PRO: This legislation received broad support in the policy committee. The benefits of this bill are well worth the fiscal costs. Election integrity is a very important objective. Avoiding shady election practices enhances voter confidence and promotes greater citizen involvement. Lower thresholds for electronic filing will make the PDC more efficient and will lower costs. Money will be further saved by imposing higher penalties on election violations, thereby providing a deterrence to further violations.

CON: This bill will only invite more litigation. One bad actor is not a sufficient reason to enact new restrictions on First Amendment activities. Regulating the names of political action committees is unworkable and unreasonable. Higher fines will only dampen public participation.

**Persons Testifying (Ways & Means):** PRO: Senator Pridemore, prime sponsor; Steve Breaux, Washington Public Interest Research Group; Vicki Christopherson, Capitol Classroom, Evergreen High School; Lonnie Johns-Brown, League of Women Voters.

CON: Tim Eyman, Voters Want More Choices.

**House Amendment(s):**

- Removes those portions of the definition of sponsor for purposes of a political committee that refer to administrative services and soliciting contributions.
- Changes expenditures to contribution for purposes of making a contribution from one political committee to another.
- Corrects citations for criminal penalties and changes the intent 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.
- Changes the effective date to January 1, 2012.