

HOUSE BILL REPORT

HB 1093

As Reported by House Committee On:
Government Operations & Elections

Title: An act relating to state agencies' lobbying activities.

Brief Description: Regarding state agency lobbying activities.

Sponsors: Representatives Shea, Overstreet and Taylor.

Brief History:

Committee Activity:

Government Operations & Elections: 1/24/13, 2/7/13 [DPS].

Brief Summary of Substitute Bill

- Imposes personal liability, in the form of a civil penalty of \$100 per statement, on a state agency director who knowingly fails to file lobbying disclosure statements, in addition to any other civil remedy or sanction imposed on the agency.
- Establishes a civil penalty on any state agency official, officer, or employee who is responsible for or knowingly directs or expends public funds in violation of lobbying restrictions, and specifies that this penalty must be at least equivalent to the amount of public funds expended in the violation.

HOUSE COMMITTEE ON GOVERNMENT OPERATIONS & ELECTIONS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 9 members: Representatives Hunt, Chair; Bergquist, Vice Chair; Buys, Ranking Minority Member; Taylor, Assistant Ranking Minority Member; Alexander, Fitzgibbon, Kristiansen, Manweller and Orwall.

Minority Report: Do not pass. Signed by 1 member: Representative Carlyle.

Staff: Jasmine Vasavada (786-7301).

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.

Background:

Public officers and agency employees communicate requests for legislative action or appropriations to each other and to government leaders, including legislators. Such communications, when related to an agency's performance of its mission and programs, are sometimes deemed necessary for the efficient conduct of public business.

Government to Government Lobbying.

State campaign disclosure and contribution law defines "lobbying" as the attempt to influence the passage or defeat of any legislation by the Washington Legislature, or to influence the adoption or rejection of any rule, standard, rate, or other legislative enactment of any state agency. Specifically exempted from this definition of lobbying is an association's or other organization's act of communicating with the members of that association or organization. Agencies are authorized to expend public funds for lobbying activities, but such activity is limited to providing information or communicating on matters pertaining to official agency business, or advocating the official position or interests of the agency. This lobbying activity may be performed by an agency's leaders or employees, or through a contract for lobbying services.

Reporting to the Public Disclosure Commission.

When a state agency, county, city, town, municipal corporation, quasi-municipal corporation, or special purpose district expends public funds for lobbying, it is required to file quarterly statements with the Public Disclosure Commission (PDC). These statements must generally be filed quarterly and include the agency name, the name and salary of all who lobbied for the agency, the nature of the lobbying, and the proportionate amount of time spent on lobbying. The quarterly statements also must include a listing of expenditures incurred for lobbying. In lieu of such reporting, the elected officials, officer, or employees who lobby on behalf of a local agency may register and report in the same manner as other lobbyists (for example, those who lobby for businesses, groups, associations, or other organizations.)

For purposes of the PDC reporting requirement, "lobbying" does not include certain state agency activities, to the extent that they include:

- certain requests for appropriations made through the state budgeting, accounting, and reporting system;
- reports and recommendations made in response to legislative requests for an agency study, recommendation, or report on a particular subject;
- official reports submitted to the Legislature annually or biennially, as required by law;
- certain communications between or within state or local agencies;
- preparation or adoption of policy positions;
- telephone conversations or preparation of written correspondence;
- in-person lobbying by agency employees or officers, on behalf of the agency, for up to four days during any three-month period; and
- in-person lobbying by agency elected officials, on behalf of the agency or in connection with the official's powers, duties, or compensation.

Penalties for Violating Lobbying and Reporting Laws.

A court is authorized to impose civil remedies and sanctions for violation of the lobbying disclosures and limitations stated above. These include civil penalties of not more than

\$10,000 for each violation, and a civil penalty of \$10 per day for each day that a person fails to file a properly completed statement or report. A court may also issue an order to prevent a person from violating these requirements. Finally, the PDC may refer certain intentional violations of the statutes for criminal prosecution.

Summary of Substitute Bill:

Personal liability, in the form of a civil penalty of \$100 per statement, is imposed on a state agency director who knowingly fails to file quarterly lobbying disclosure statements. This personal liability is in addition to any other civil remedy or sanction imposed on the agency.

Any state agency official, officer, or employee who is responsible for directing or expending, or knowingly directs or expends, public funds in violation of agency lobbying restrictions is liable for a civil penalty. This civil penalty must be at least equivalent to the amount of public funds expended in the violation.

Substitute Bill Compared to Original Bill:

The substitute bill deletes the provisions that would have imposed further limitations on who may lobby on behalf of a state agency and the type of lobbying activity an agency may engage in, and that would have prohibited membership in an organization that engages in lobbying activities.

The substitute bill retains the provision imposing personal liability on a state agency director who knowingly fails to file lobbying disclosure statements, but clarifies that this penalty is in addition to any other civil remedy or sanction imposed on the agency.

The substitute bill retains the provision establishing a civil penalty for knowingly directing or expending public funds in violation of restrictions in current law, but specifies that this penalty must be at least equivalent to the amount of public funds expended in the violation.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date of Substitute Bill: The bill takes effect January 1, 2014.

Staff Summary of Public Testimony:

(In support) Tax dollars should not be used to lobby for more tax dollars, but agencies are allowed to lobby. This bill would close loopholes to prohibit agency employees from lobbying and would prevent agencies from hiring contract lobbyists. In the past, an agency hired a lobbyist to advocate preserving its program, despite the fact that the program was wasteful. Also, government agencies have failed to disclose millions of dollars in lobbying

expenditures. The Public Disclosure Commission has found that an agency failed to file the required statements for years. Lack of transparency and documentation when an agency uses taxpayer resources to lobby is of great concern. Agency employees, unlike elected officials, lack direct accountability to the public. There are other states that prohibit agencies from using public funds to retain a lobbyist, and such a policy saves taxpayer money and helps ensure wasteful and nonessential agency services are cut.

(With concerns) A larger agency may have thousands of employees distributed across the state, handling hundreds of thousands of claims each year. The agency director and deputy director need to be available to manage the day-to-day affairs of the agency. Agencies often need to advocate for legislation to ensure that state programs receiving federal funds conform to federal requirements. If such legislation does not pass, there are steep financial consequences for the state. A legislative liaison who is an agency employee can work to inform legislators about these kinds of issues. Also, agencies pay membership dues in associations that help represent the state's interests in Congress. Very few contract lobbyists work for state agencies.

(Opposed) None.

Persons Testifying: (In support) Representative Shea, prime sponsor; Glen Morgan, Freedom Foundation; and Sharon Hanek.

(With concerns) Tammy Fellin, Employment Security Department.

Persons Signed In To Testify But Not Testifying: None.