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## Government Operations & Elections Committee

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### HB 2222

**Brief Description:** Providing that legal services provided by a licensed attorney are not regulated campaign contributions or expenditures.

**Sponsors:** Representatives Manweller, Bergquist and Freeman.

<p style="text-align: center;"><b>Brief Summary of Bill</b></p> <ul style="list-style-type: none"><li>• Provides that legal services are not a contribution or an expenditure under campaign finance and disclosure laws.</li></ul>
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**Hearing Date:** 1/28/14

**Staff:** Marsha Reilly (786-7135).

**Background:**

The Fair Campaign Practices Act was enacted in 1992 following passage of Initiative 134. Among other things, Initiative 134 imposed campaign contribution limits on elections for statewide and legislative office. Since that time, contribution limits have been expanded to other candidates. Limits upon the amount that any one person or group may contribute to a candidate or political committee have been found to be only a marginal restriction upon the contributor's ability to engage in free communication. However, regulations that place spending limits on political campaigns have been found unconstitutional based on both free speech and free association principles.

Contributions.

A contribution, for purposes of campaign finance law, includes such things as a loan, gift, deposit, subscription, forgiveness of indebtedness, donation, advance, pledge, payment, transfer of funds between political committees, or anything of value, including personal and professional services for less than full consideration.

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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.*

A contribution does not include such things as interest on money deposited in a political committee's account, ordinary home hospitality, a contribution received and returned within five business days, or, under certain conditions, a news item, feature, commentary, or editorial. Legal services are not considered a contribution when provided to or on behalf of:

- a political party or caucus political committee for any purpose if the person paying for the services is the regular employer of the person rendering such services; or
- a candidate or an authorized committee if the person paying for the services is the regular employer of the individual rendering the services and if the services are solely for the purpose of ensuring compliance with state election or public disclosure laws.

If legal services for the above purposes are paid by a third party, and not the regular employer or the candidate, political party, or caucus political committee, those services are considered an in-kind contribution subject to contribution limits.

#### Expenditures.

An expenditure includes a payment, contribution, subscription, distribution, loan, advance, deposit, or gift of money or anything of value, and includes a contract, promise, or agreement, whether or not legally enforceable, to make an expenditure.

#### Legal Challenges.

In 2011 a complaint was filed in federal court by the Recall Dale Washam committee (RDW) challenging the constitutionality of statutes regarding campaign contributions in recall elections. The RDW reported legal services as an in-kind contribution, but the amount was over the contribution limit and, therefore, not permissible. The Court ruled that the recall committee was not a candidate committee and not subject to contribution limits. Following that litigation, the RDW filed a motion for reimbursement of attorneys' fees. In its motion, the RDW stated that it had received legal services and that expenditures for those services had been made by a third party. Because the RDW had not filed reports with the Public Disclosure Commission (PDC) disclosing the source of the contributions for those legal services provided to the political committee, and had not filed a final report, the PDC brought action to compel compliance with the law's disclosure requirements..

In 2013, in a related case, Institute for Justice v. State of Washington, the plaintiffs are making a First Amendment challenge to the law that treats pro bono legal services as an in-kind contribution and, therefore, subject to disclosure requirements and contribution limits. The case is pending.

#### **Summary of Bill:**

Legal services, including but not limited to direct representation, provided by or at the direction of a licensed attorney, whether by an attorney individually, or as part of a profit or nonprofit firm, to any person, that assists the person in securing or enforcing any right under the United States or Washington State Constitution, or under federal or state civil rights statutes is not a contribution nor is considered an expenditure for purposes of campaign finance and disclosure laws.

**Appropriation:** None.

**Fiscal Note:** Not requested.

**Effective Date:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.