

HOUSE BILL REPORT

ESHB 2938

As Passed Legislature

Title: An act relating to campaign finance law enforcement and reporting.

Brief Description: Concerning campaign finance law.

Sponsors: House Committee on State Govt, Elections & IT (originally sponsored by Representatives Hudgins, Dolan, Kagi, Wylie, Ormsby and Pollet).

Brief History:

Committee Activity:

State Government, Elections & Information Technology: 1/31/18, 2/2/18 [DPS];
Appropriations: 2/5/18, 2/6/18 [DPS(SEIT)].

Floor Activity:

Passed House: 2/14/18, 94-4.

Senate Amended.

Passed Senate: 2/27/18, 48-0.

House Concurred.

Passed House: 3/3/18, 92-4.

Passed Legislature.

Brief Summary of Engrossed Substitute Bill

- Specifies that the Public Disclosure Commission (PDC) must take certain discretionary action on any complaint.
- Authorizes the PDC to delegate authority to the executive director to resolve remedial violations and technical corrections.
- Provides that the PDC has enforcement authority up to \$10,000 per violation.
- Limits the Attorney General's enforcement jurisdiction to matters referred from the PDC, and removes the authority of local prosecutors.
- Limits authorization of a citizen's action to matters where the PDC has not taken action on a complaint within 90 days, or the Attorney General has not commenced an action within 45 days of the PDC referral.
- Prevents a violation if an amended report correcting inaccuracies is filed within 21 days of the underlying report and outside of 30 days before an election.

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.

- Establishes a dissolution procedure for committees to file a 60 day notice and receive acknowledgment from the PDC upon dissolution.
- Increases the reporting threshold for campaign debt from \$250 to \$750, and provides that reportable debt is any bills, goods, or services unpaid within 10 days, or within 5 days during the period within 30 days of an election.
- Changes the special reporting threshold for large single contributions from \$1,000 to any single or aggregate contribution that is three times the contribution limit.
- Changes the reporting threshold for independent expenditures to one-half the contribution limit for political advertisements in candidate campaigns.
- Requires expenditures in ballot measure campaigns to be reportable as a contribution to the campaign, and may only be reported as an independent expenditure if there is no committee supporting or opposing the measure.
- Creates a new appropriated account for receipts of penalties collected from enforcement actions to be used by the PDC.
- Provides a \$250,000 appropriation to the PDC from the State General Fund for the 2017-2019 biennium.

HOUSE COMMITTEE ON STATE GOVERNMENT, ELECTIONS & INFORMATION TECHNOLOGY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 6 members: Representatives Hudgins, Chair; Dolan, Vice Chair; Kraft, Assistant Ranking Minority Member; Appleton, Gregerson and Pellicciotti.

Minority Report: Without recommendation. Signed by 2 members: Representatives McDonald, Ranking Minority Member; Irwin.

Staff: Sean Flynn (786-7124).

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: The substitute bill by Committee on State Government, Elections & Information Technology be substituted therefor and the substitute bill do pass. Signed by 24 members: Representatives Ormsby, Chair; Robinson, Vice Chair; Bergquist, Buys, Caldier, Cody, Fitzgibbon, Haler, Hansen, Harris, Hudgins, Jinkins, Kagi, Lytton, Pettigrew, Pollet, Sawyer, Schmick, Senn, Stanford, Sullivan, Tharinger, Volz and Wilcox.

Minority Report: Do not pass. Signed by 6 members: Representatives Chandler, Ranking Minority Member; Stokesbary, Assistant Ranking Minority Member; Condotta, Graves, Taylor and Vick.

Minority Report: Without recommendation. Signed by 2 members: Representatives MacEwen, Assistant Ranking Minority Member; Manweller.

Staff: Charlie Gavigan (786-7340).

Background:

Campaign Finance and Disclosure Law.

Washington's campaign finance and disclosure law was originally enacted by voter initiative in 1972. The law requires the disclosure of campaign finance and lobbyist activity, as well as the financial affairs of elective officers and candidates. The Public Disclosure Commission (PDC) enforces the provisions of the campaign finance disclosure law and has authority to develop procedures, adopt rules, investigate complaints, and impose civil penalties for violations.

Reporting Requirements.

The campaign finance and disclosure law requires all political committees and candidates to file a statement of organization with the PDC. The statement requires the disclosure of certain information, including the names and addresses of committee members, officers or leaders, and treasurer, as well as which candidates and ballot measures the committee supports or opposes.

Political committees must periodically report to the PDC on their contribution and expenditure activities. An initial report is due the same day the statement of organization is filed. Subsequent reports are due 21 days and seven days before the election, one month after the election, and each month the committee receives or spends at least \$200. Political committees and candidates also must submit a special report each time it receives a contribution of \$1,000 or more during the period immediately preceding an election. Political committees and candidates must include in their reports any debt or liability over \$250 dollars, as well as any debt over \$50 that is outstanding for over 30 days.

Political committees and candidates must keep books of account that are current within five business days of receipt of contribution or expenditure. Monetary contributions must be deposited by the candidates and political committee treasurer within five business days of receipt into an account established for that purpose. Books of account must be available for inspection by appointment at a designated location, between 8:00 a.m. and 5:00 p.m., on any weekday from the tenth day before an election through the day immediately after the election.

Independent expenditures are also separately reportable to the PDC. An independent expenditure includes any expenditure over \$100, in the aggregate, made to a political campaign that is otherwise not reported to the PDC. Independent expenditure reports are due on the same dates as reports for political committees and candidates.

Enforcement Procedures.

The PDC and the Attorney General (AG), along with local prosecutors, have separate and independent authority to initiate investigations and enforcement actions for violations of the state campaign finance and disclosure law. Private citizens also have the ability to pursue an

enforcement action by filing a complaint with the PDC or initiating a citizen's action on behalf of the state after notifying the AG or local prosecutor of an alleged violation.

Public Disclosure Commission Authority. The PDC may initiate its own investigations or investigate complaints filed by any person. Investigations can result in an adjudicative proceeding to determine a violation and issue appropriate penalties. The PDC may assess a penalty up to \$10,000. Alternatively, the PDC may turn over an investigation to the AG.

The PDC may delegate authority to its executive director, including investigatory powers, but only the PDC is authorized to determine a violation or assess penalties. The PDC has adopted rules authorizing the director to resolve minor and technical violations without a formal investigation or determination of a violation. The director may resolve a minor or technical violation without any formal investigation by issuing a warning or conditioning the resolution on future compliance. Formal investigations can result in the director bringing an issue to the PDC for an adjudicative proceeding to determine whether a violation occurred.

Attorney General and Local Prosecutor Authority. The AG and local prosecutors have authority to compel the production of evidence by any person in relation to an investigation and to prosecute alleged violations in court. The AG or local prosecutor also may refer the matter the PDC for an initial investigation or prosecution of its own.

Citizen's Action. Any person may initiate a legal action in court on behalf of the state to enforce an alleged violation of campaign finance and disclosure law under certain circumstances. First, such a citizen's action is authorized only after the person has notified the AG or local prosecutor of an alleged violation, and the AG or prosecutor has not commenced his or her own action within 45 days of receiving such notice. Second, if the AG or local prosecutor fails to commence an action within that initial timeframe, then the person must provide an additional 10 day notice of his or her intent to file a citizen's action. Finally, if the AG or local prosecutor still has not commenced an action after the second notice, the person may file a citizen's action.

Penalties. Penalties awarded in a citizen's action go to the state, but the state will reimburse a successful plaintiff for legal costs and attorney fees incurred. The court may require the state to pay the costs and attorney's fees if the defendant prevails. However, the court may require a person who files a citizen's action to pay the defendant's costs and attorney's fees if it finds the case was brought without reasonable cause. The court may award the state its own costs and attorney's fees, including investigation costs. The court may triple the award to the state, including costs, as punitive damages for intentional violations.

Summary of Engrossed Substitute Bill:

The reporting requirements and enforcement procedures under the campaign finance and disclosure law are changed.

Reporting Requirements.

Filings. The deadline for a candidate or political committee's initial report is changed from the date the campaign treasurer is designated to the next reporting deadline. At the time of

initial filing, each person must provide an official electronic mail (email) address to the PDC, and must provide any new email address within 10 days if the address is changed. The PDC may waive the email requirement in the case of hardship. The PDC must publish a calendar of significant reporting dates on its website.

If the PDC electronic filing system is inoperable on a reporting date, reports filed on the next day the system is operating are not considered late. The PDC must provide notice to all reporting entities when the system is back in operation.

Monetary contributions made online or by credit card are considered received for purposes of the five-day deposit requirement at the time the transferred is made from a merchant account to a political committee account. Contributions made outside the period restricting contributions during the legislative session, but subsequently transferred to a state official or legislator candidate' account within the restriction period is considered received outside of the restriction period.

Amended Reports. A committee may file an amendment report to correct any inaccuracies without constituting a violation of the campaign finance and disclosure law if the committee had reported all available information or made a good faith effort to do so, or if the it is reporting a refund. The amended report must be accurate, filed more than 30 days before an election, and the total amount of adjustment is within three times the contribution limit, or \$200, whichever is greater.

Accounting. Political committees and candidates must make books of account available for inspection by appointment at any agreed upon location, between 9:00 a.m. and 5:00 p.m., or by digital access in lieu of an appointment. The PDC may make rules regarding inspection of campaign accounting books in consideration of technological resources and best practices. Books of account is defined as a ledger for contributions, expenditures, and debt that a campaign or political committee must report, or details of political advertising or electioneering communications provided by a commercial advertiser.

Independent Expenditures. Exceptions are added to the definition of "independent expenditure," including ordinary home hospitality, communications with journalists or editorial staff designed to elicit a news item in a regularly scheduled news medium, and participation in the creation of a publicly funded voters pamphlet statement.

The reporting threshold for an independent expenditure is to one-half the contribution limit for expenditures of political advertisements in candidate campaigns. In addition, any expenditures made over the contribution limit for a statewide ballot measure, or one-half the contribution limit for a local ballot measure, must be reported as a contribution to a political committee supporting or opposing the measure, or as an independent expenditure if no such committee exists.

Special Reports. The reporting threshold for single source large contributions during a special reporting period is for contributions that exceed three times the contribution limits for an election. The permitted delivery of special reports by mailgram, telegram, or nightletter is removed.

Reportable Debt. The threshold amount of debt a candidate or political committee is required to report is raised from \$250 to \$750, and the required reporting of outstanding debt over \$50 is eliminated. Reportable debt includes any invoice submitted, goods received, or services rendered that have not been paid within 5 business days during the period within 30 days of an election, or within 10 business days for any other period. Reoccurring expenditures paid on time are not reportable as debt. In addition, an obligation already reported to pay for goods and services made by third party is not reportable debt.

Committee Dissolution. A political committee or continuing political committee must file a final report when it ceases to function and intends to dissolve, and it has no outstanding debt or obligations. The committee may dissolve 60 days after filing its final report if it has not engaged in any further reportable activities, no complaint or court action has been filed against it, and any penalties have been paid. The committee bank account may not be closed until the committee has dissolved. The PDC must issue an acknowledgment of dissolution, after which the committee has no further obligations under the campaign finance and disclosure law, except for any responsibility for violations discovered after the dissolution.

Enforcement Procedures.

Public Disclosure Commission Authority. The PDC's enforcement procedures are specified for handling complaints filed. The PDC may initiate or respond to a complaint, request a technical correction, or otherwise resolve matters in compliance with the authority provided in the act.

Upon receiving a complaint, the PDC may:

- dismiss or otherwise resolve the complaint as appropriate after conducting a preliminary review;
- initiate an investigation to determine if violation has occurred, conduct hearings, and issue an enforce an appropriate order, in accordance with the administrative procedure process; or
- refer the matter to the AG.

The PDC may delegate authority to the executive director to resolve remedial violations or technical corrections, so long as any resolution is approved by the PDC. The PDC must establish processes for stipulation agreements, subject to a schedule of penalties. Stipulations must be approved by the PDC in order to be considered resolved.

If the PDC initiates an investigation, an initial hearing must be held within 90 days of the complaint being filed.

The limitation on penalties the PDC may issue is \$10,000 per violation, or any higher amount as stipulated by the parties. The PDC may create a penalty schedule based on repeat offenses, and may waive first-time violations or suspend any penalty contingent on future compliance. The PDC may refer a matter to the AG when the PDC has determined that additional authority is necessary or the violation warrants a penalty beyond the PDC's maximum penalty authority..

A remediable violation is defined as a violation that

- occurred more than 30 days before an election and was resolved by agreement with the PDC, or occurred at any time and did not constitute a material violation;
- involved expenditures within contribution limits, or otherwise under \$1,000 if there was no contribution limit;
- did not materially affect the public interest; and
- either was corrected within five business days of receiving notice, or within 25 days after the report was due, and other filing deadlines were met within the preceding 12 month period; or involved a candidate who lost the election and did not raise over 100 times the contribution limit during the campaign.

A technical correction is defined as a minor or ministerial error in a required report that does not materially impact the public interest and needs correction for a report to be in full compliance.

Attorney General. The prosecution authority of local prosecutors is removed. The AG may bring a civil action only if a matter is referred from the PDC. Within 45 days of such referral, the AG must provide notice and a reasonably supported explanation whether to commence an action, which constitutes state action. The AG is directed to use enforcement authority in a consistent manner that provide guidance in complying with the law. Any action must be commenced within five years of the violation.

Citizen's Action. The citizen's action procedures are changed. In order to file a citizen's action, a person first must file a complaint with the PDC. If the PDC takes certain action within 90 days of receiving the complaint, then the person may not go forward in the process. Such action includes dismissing or otherwise resolving the complaint after a preliminary review, initiating an investigation and holding any appropriate hearings, or referring the matter to the AG. If the PDC refers the matter to the AG within 90 days, a citizen's action may only proceed if the AG does not commence an action within 45 days of receiving the referral.

Before commencing an action, a person must notify the AG and the PDC within 10 days of the AG's failure to commence an action. A citizen's action must be filed within two years after an alleged violation occurred, and may not be filed against a committee that has dissolved.

Funding.

The Public Disclosure Transparency Account (Account) is created to receive penalties collected from all enforcement actions and settlements. The Account is subject to legislative appropriation for implementation and administration of the campaign finance and disclosure law. Such funds may not be used to supplant general fund appropriations to the PDC. A court may award the PDC all reasonable costs and attorney's fees of investigation and trial.

Appropriation: The sum of \$250,000 is made from the State General Fund to the PDC.

Fiscal Note: Available.

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

Staff Summary of Public Testimony (State Government, Elections & Information Technology):

(In support) The state campaign finance laws are almost impossible to follow and that creates barriers to transparency. This bill is a good first step to initiate reform and redeem the purpose of the original initiative.

The citizen's action process was not originally intended to circumvent the role of the PDC, but to resolve issues and make information available in an efficient manner. The PDC was created as an independent authority, outside of partisan politics. The citizen's action process was intended to be a check on cases where the PDC is not fulfilling its duties. The current law allows a person to file a citizen's action even when the PDC is investigating the same issue, and may be seeking an agreed resolution. This process undermines the PDC's efforts to resolve technical violations or otherwise expedite remedies. The law currently encourages more litigation and increases costs for the public, which frustrates the work of the PDC to provide more transparency.

(Opposed) The citizen's action process provides checks and balances for the public to protect important government functions in the highly politicized area of campaign financing. Under federal law, this kind of procedure provides oversight of various federal agency functions. However, this bill goes beyond the good idea to limit actions for technical violations, and further restricts a citizen's ability to bring enforcement actions on important issues. Avoiding prosecution of remediable violations is a good idea, but should not include determining whether to enforce a violation due to investigation costs. Providing a right of first refusal for the PDC to consider a violation is good, but the bar is set too low and prohibits a citizen's action each time the PDC simply begins an investigation. Such restriction is against the original intent of the people's initiative.

Restricting citizen's rights goes against the four decades of the public's intent in the initiative as well as long-held democratic principles. The State Auditor, elected to a partisan office, should not be able to audit political opponents.

The campaign finance and disclosure law is broken, yet no one really took interest until it was weaponized for political purposes. It is not helpful to reach back to wipe out violations and penalties that have already been imposed.

(Other) The State Auditor is supportive of legislative direction to audit agency functions. However, the funding source for this kind of performance audit and its function are unclear.

Staff Summary of Public Testimony (Appropriations):

(In support) None.

(Opposed) None.

Persons Testifying (State Government, Elections & Information Technology): (In support) Representative Hudgins, prime sponsor; Bailey Stober and Lori Sotelo, King County Democratic Party; and Anne Levinson, Public Disclosure Commission.

(Opposed) Michael Webb, Office of the Attorney General; Arthur West, Washington League for Increased Transparency and Ethics; Maxford Nelsen, Freedom Foundation; Glen Morgan; and Jan Himebaugh, Building Industry Association of Washington.

(Other) Scott Nelson, Office of the State Auditor.

Persons Testifying (Appropriations): None.

Persons Signed In To Testify But Not Testifying (State Government, Elections & Information Technology): None.

Persons Signed In To Testify But Not Testifying (Appropriations): None.