

HOUSE BILL REPORT

SHB 1195

As Amended by the Senate

Title: An act relating to the efficient administration of campaign finance and public disclosure reporting and enforcement.

Brief Description: Concerning the efficient administration of campaign finance and public disclosure reporting and enforcement.

Sponsors: House Committee on State Government & Tribal Relations (originally sponsored by Representatives Hudgins, Walsh, Dolan, Wylie and Pollet; by request of Public Disclosure Commission).

Brief History:

Committee Activity:

State Government & Tribal Relations: 1/22/19, 2/22/19 [DPS].

Floor Activity:

Passed House: 3/7/19, 95-2.

Senate Amended.

Passed Senate: 4/15/19, 34-14.

House Refused to Concur.

Senate Receded.

Senate Amended.

Passed Senate: 4/25/19, 34-14.

Brief Summary of Substitute Bill

- Modifies provisions relating to Public Disclosure Commission commissioners' term length and ability to engage in lobbying activity.
- Modifies provisions relating the financial affairs statements.
- Modifies provisions relating to requests for a suspension or modification of reporting requirements, including related disclosure of documents prepared for modification hearings.
- Modifies the definitions of commercial advertiser and independent expenditure.
- Authorizes the Attorney General to act on a citizen's notice to file an action, and makes changes to the prerequisites for a citizen's action claim.

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.

HOUSE COMMITTEE ON STATE GOVERNMENT & TRIBAL RELATIONS

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

Minority Report: Do not pass. Signed by 2 members: Representatives Goehner, Assistant Ranking Minority Member; Mosbrucker.

Minority Report: Without recommendation. Signed by 1 member: Representative Smith.

Staff: Desiree Omli (786-7105).

Background:

The Public Disclosure Commission.

Washington's campaign finance and disclosure law was originally enacted by voter initiative in 1972.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, candidates, and executive state officers.

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. The PDC is empowered to provide access to information about the financing of political campaigns, lobbyist expenditures, and the financial affairs of public officials and candidates.

The PDC is composed of five commissioners, appointed for single five-year terms by the Governor with consent of the Senate. Except on matters directly related to campaign finance law, commissioners are prohibited during their terms from holding or campaigning for office, serving as an officer of any political party or political committee, permitting his or her name to be used in support or opposition to a candidate or proposition, soliciting or making campaign contributions, participating in election campaigns, or lobbying.

Reporting Requirements.

Reporting Thresholds. The PDC must, at the beginning of each even-numbered year, change the monetary reporting thresholds based on inflation. The PDC must revise, at least once every five years, but no more than every two years, the monetary reporting thresholds and assigned code values.

Political Committees and Candidates. All political committees and candidates are required to file a statement of organization with the PDC. An initial report is due the same day the statement of organization is filed. A political committee and candidate must also periodically report to the PDC on their contribution and expenditure activities for each election in which a candidate or political committee is participating. Reports are due 21 days and seven days before the election, on the tenth day one month after the election, and monthly if the committee spends or receives more than \$200.

Incidental Committees. An incidental committee is a nonprofit organization not otherwise reporting as a political committee, that makes political contributions or expenditures in political campaigns. An incidental committee must file a statement of organization with the PDC within two weeks after expecting to make *contributions or expenditures* of at least \$25,000 in a calendar year to any election campaign or political committee. Subsequent reports are due 21 days and seven days before the election in which it is participating, and on the tenth day one month after the election. When the incidental committee is not otherwise required to report, the incidental committee must report to the PDC on the tenth day of the month when the source of the top 10 largest payments of \$10,000 or greater that it received that year from a single source changes, as well as when any political expenditures exceed \$200 in the period since its last report.

Independent Expenditures. Independent expenditures, which are expenditures made independently of a candidate or that candidate's authorized committee, for political advertising are also separately reportable to the PDC if the aggregate value of expenditures from the same person is at least one-half the contribution limit from an individual in that campaign.

Personal Financial Affairs Reporting. Every elected official and executive state officer must file with the PDC a statement of financial affairs, known as an F-1 statement, for the preceding calendar year between January 1 and April 15. New appointees or elected officials must file the F-1 statement within two weeks of the appointment or of taking office. The F-1 statement requires disclosure of financial and personal information relating to the filer and the filer's immediate family.

Required items for disclosure include certain information on the filer and filer's immediate family members including, but not limited to:

- occupation, name of employer, and business address;
- bank accounts, savings accounts, certain insurance policies and other intangible personal property holdings, and real estate property holdings;
- debt to each creditor, to whom \$2,000 or more was owed;
- every public or private office, directorship, and position held as a trustee; and
- any gifts of food or beverage in excess of \$50.

In certain instances, such financial matters must be reported only if the value exceeds a specified amount. The dollar value of personal finances may be reported by range of value, rather than specific dollar amounts. The current reporting ranges include: less than \$4,000; between \$4,000 and \$20,000; between \$20,000 and \$40,000; between \$40,000 and \$100,000; and \$100,000 or more.

Modification of Reporting Requirements. The PDC may suspend or modify any of the reporting requirements upon request where the majority of the commissioners find that literal application causes a manifestly unreasonable hardship in a particular case and the suspension or modification will not frustrate the purpose of the PDC provisions. Initial requests for modifications may not be heard in a brief adjudicative proceeding. However, renewals for reporting modifications may be heard in a brief adjudicative proceeding, unless the initial request was granted more than three years prior or if the applicant is holding a different position.

Commercial Advertiser and Books of Accounts.

Commercial advertisers sell the service of communicating messages to the public through a variety of media. Any commercial advertiser that accepts or provides political advertising or electioneering communications during the election campaign must maintain books of account, which must specify:

- sponsor names and addresses;
- the exact nature and extent of services rendered; and
- the total cost and manner of payment for services.

This information must be delivered to the PDC on request, and be open for public inspection during regular business hours during the campaign, and for at least three years after the election.

Enforcement Authority.

The PDC Authority. The PDC may initiate its own investigations of violations of campaign finance and disclosure statutes or investigate complaints filed by any person. The PDC may conduct audits and field investigations as it deems appropriate, and issue subpoenas.

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 a violation has occurred, conduct hearings, and issue and enforce an appropriate order, in accordance with the administrative procedure process; or
- refer the matter to the Attorney General (AG).

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

Attorney General Authority. 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 whether to commence an action, which constitutes state action. The AG is directed to use enforcement authority in a consistent manner that provides guidance in complying with the law.

Citizen's Action. A person may file a citizen's action by first filing a complaint with the PDC. If the PDC takes certain action to dismiss or resolve a complaint, initiate an investigation and hold a hearing within 90 days of receiving the complaint, or refer the complaint to the AG, then the person may not go forward in the process. If the PDC refers the matter to the AG within 90 days of receiving the complaint, a citizen's action may only proceed if the AG does not commence an action within 45 days of receiving the referral. Before commencing a citizen's action, a person must notify the AG and the PDC that he or she will file a citizen's action if the AG or the PDC does not commence action within 10 days. 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 received an acknowledgment of dissolution.

Penalties awarded in a citizen's action are transferred to the state, and the state reimburses a successful plaintiff for legal costs and attorney fees incurred.

Other.

With exceptions, the PDC reporting requirements do not apply to candidates, elected officials, and agencies in political subdivisions with fewer than 1,000 registered voters as of the date of the most recent general election in that jurisdiction.

Each candidate and each political committee must designate and file with the commission and the appropriate county elections officer certain information regarding the depository for each county in which the campaign is conducted and the candidate's or political committee's accounts are maintained.

A person may not make a contribution of more than \$80, other than an in-kind contribution, except by a written instrument.

Summary of Substitute Bill:

The Public Disclosure Commission.

The term of a PDC commissioner may be extended until a successor is appointed, for up to 12 additional months. Commissioners may engage in lobbying activity that: is outside the state and not otherwise subject to the PDC's jurisdiction; does not create the appearance of a conflict of interest with the duties of the PDC; and does not involve any affiliation with the PDC.

Reporting Requirements.

Electronic Reporting. Reports to the PDC must be filed electronically where the PDC has provided an electronic filing option unless an exception is made for a filer who lacks the technological ability to file electronically. Committees must provide the committee treasurer's electronic contact information to the commission, and any change to the electronic contact information within 10 days of the change. The PDC must attempt to make available on its website public records submitted to or generated by the PDC, except that the PDC is prohibited from posting the statements of financial affairs filed by a professional staff member of the Legislature.

Incidental Committees. Incidental committees must only make or expect to make expenditures in political campaigns of at least \$25,000 in a calendar year to trigger the reporting requirements for filing a statement of organization. The information in reports that an incidental committee must disclose and certify as correct is narrowed to only information relating to the top 10 largest source of payments and the payment if the payment from any single source is in the amount of \$10,000 or greater, and information relating to expenditures in excess of \$50.

Independent Expenditure. An independent expenditure must be reported to the PDC for expenditures from the same source in the amount of \$1,000 or more.

Financial Affairs Reporting. Filers who leave office may file an F-1 statement for that calendar year within 60 days of leaving office. New filers who take office in December may file an F-1 for that year between January 1 and 15 of the following year.

The content of an F-1 is modified. Information for every public or private office, directorship, and position held as a trustee does not need to be reported if service on a governmental board, commission, association, or functional equivalent is part of an elected officials or executive state officer's official duties.

The dollar value of the reporting ranges on statements of financial affairs is changed and may be reported as follows:

- code A is less than \$30,000;
- code B is at least \$30,000 but less than \$60,000;
- code C is at least \$60,000 but less than \$100,000;
- code D is at least \$100,000 but less than \$200,000;
- code E is at least \$200,000 but less than \$500,000;
- code F is at least \$500,000 but less than \$750,000;
- code G is at least \$750,000 but less than \$1,000,000; and
- code H is \$1,000,000 or more.

For disclosure of real property, judges, sheriffs, prosecutors, and their immediate family members may substitute the city or town and type of residence in lieu of the full address of any residences required to be reported on the F-1.

The PDC may suspend or modify reporting requirements for the length of an elected official's term of office or, in the case of an executive state officer, for up to three years. If a material change in the applicant's circumstance or relevant information occurs, the request for modification must be made at least one month prior to the next filing deadline.

Modification of Reporting Requirements. A request for modification may be granted by the Commission, the Commission Chair acting as presiding officer, or another Commissioner appointed by the Chair to serve as presiding officer. All requests for reporting modifications may be heard in a brief adjudicative proceeding. If the filer requested a modification because of a concern for personal safety, the information submitted regarding that safety concern cannot be made public prior to, or at, the modification hearing. Any information must remain exempt from disclosure to the extent it is determined at the hearing that disclosure of the information would present a personal safety risk to a reasonable person. Modification requests, if granted, may be applied retroactively to previous filings and are also exempt from public disclosure.

Commercial Advertiser and Books of Account.

The definition of a commercial advertiser is expanded to include entities that sell advertisement or produce material for broadcast to the public through brochures, fliers, paid internet or digital communications, or any other means of mass communications used for appeals for votes or for financial or other support in any election campaign. A commercial advertiser's books of account must be open for inspection for five years after the election to which the books refer.

Enforcement Authority.

The PDC's Authority. The process for the PDC's subpoena authority is specified. Before the issuance of a subpoena, the PDC may apply for and obtain a superior court order approving and authorizing a subpoena. The application for a subpoena must specify the documents,

record, evidence, or testimony; and include a declaration under oath that an investigation is being conducted for a lawful purpose within the PDC's authority. A subpoena may be sought and approved without notice to any person.

The Attorney General's Authority and Citizen Action. Before a person files a citizen's action, the person who has filed a complaint with the commission must, if the commission does not take action within 90 days, notify the AG in writing and the PDC simultaneously. The AGO may bring a civil action upon receipt of a notice that the PDC has not taken action within the 90 days. If the AG does not commence an action within 45 days of receiving a written notice that the PDC has not taken action within the 90 days, the person who filed the complaint may initiate a citizen's action in accordance with the law.

The AG may also bring a civil action upon receipt of a notice of intent to commence a citizen's action. A citizen's action claim is precluded if, within the statutory 10 days of receiving a notice of a citizen's action, the PDC or the AG takes action.

Any costs awarded by the court to a person who successfully brings a citizen's action must be paid directly by the defendant. Receipts from sanctions, other remedies, or judgments paid to the state as part of campaign finance enforcement actions must be deposited into the Public Disclosure Transparency Account (Account). Any fees and costs awarded pursuant to a citizen's action may not be deposited into the Account or reimbursed from the Account or otherwise by the state. Payment and collection of any such fees and costs are the responsibility of the person commencing the action and the defendant.

Other.

The threshold is modified for when the PDC reporting requirements do not apply to candidates, elected officials, and agencies, to those in political subdivisions with fewer than 2,000 registered voters.

Each candidate and each political committee must designate and file information regarding depositories with only the commission.

A person may make a contribution of more than \$100 without doing so by written instrument.

EFFECT OF SENATE AMENDMENT(S):

The Senate amendment removes language related to a citizen's action that requires any attorneys' fees and costs awarded to the prevailing party by the court to be paid by the defendant, and reinstates current law specifying that the prevailing party is entitled to reimbursement by the state for costs and attorneys' fees.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill contains an emergency clause and takes effect immediately, except for sections 35 and 36, relating to the time for filing a financial affairs statement and the

contents of a financial affairs statement, which contain an emergency clause and take effect on January 1, 2020.

Staff Summary of Public Testimony:

(In support) This bill is requested by the Public Disclosure Commission (PDC) and was developed through a public process. There was legislation that passed last year which fixed an old statute, and this bill builds on the work of that legislation. Last year, the bill changed many times before it passed off the floor after a lot of input was received. This year's process is the beginning of collecting that input and working across the aisle through a public process for any necessary changes. There are concerns about workability, but this is the beginning of a discussion of how these laws can best work. This bill is intended to and does advance priorities in transparency and efficiency in operations for the PDC.

(Opposed) The change made to the citizen action process is concerning. The bill makes it nearly impossible to bring a citizen's action because it prohibits a citizen's action if the Attorney General (AG) makes any decision about the complaint. If the PDC does not take action, or if the PDC or the AG makes an incorrect determination, a citizen should be able to appeal. The appropriate way to find a balance would be to prohibit a citizen's action for remediable violations only.

(Other) There is concern about extending a commissioner's term for an additional year. There are term limits for a reason, and allowing a person to remain for an additional period of time without reappointment encourages delay in filing the position. There is also concern with the new monthly reporting requirements for incidental committees and removing language that would allow nonprofits to provide analysis and commentary for ballot measures. The authorization for a presiding officer to determine requests for modifications of reporting requirements is also a concern because "presiding officer" is not defined. There also needs to be more transparency around the materials relating to modification hearings. In addition, a person should have to apply for a modification in order to report other information in lieu of their residential address on the financial affairs statements, rather than grant this modification automatically in the bill. The mandate on electronic filing is cumbersome. Digital platforms are choosing to not accept local and state advertisements from the state because they are not certain that they can comply with the laws as written. Suggestions to address this were provided, but not incorporated last year.

Persons Testifying: (In support) Representative Hudgins, prime sponsor; and Peter Frye Lavalley, Public Disclosure Commission.

(Opposed) Maxford Nelsen, Freedom Foundation; and Arthur West.

(Other) Jan Himebaugh, Building Industry Association of Washington; Rowland Thompson, Allied Daily Newspapers of Washington; Bob Cooper; and Rose Feliciano, Internet Association.

Persons Signed In To Testify But Not Testifying: None.