

HOUSE BILL REPORT

SHB 2772

As Passed House:
February 18, 2020

Title: An act relating to the administration of election campaign activities and reporting statements of financial affairs.

Brief Description: Concerning the administration of election campaign activities and reporting statements of financial affairs.

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

Brief History:

Committee Activity:

State Government & Tribal Relations: 1/24/20, 1/28/20 [DPS].

Floor Activity:

Passed House: 2/18/20, 97-1.

Brief Summary of Substitute Bill

- Modifies information required to be included in the statement of financial affairs (F-1 statements) filed by elected officials, executive state officers, and candidates.
- Requires disclaimers in election-related advertisements that encourage people to vote for a person who is not a candidate for that office or that falsely convey that a person has an endorsement for an office in an election.
- Prohibits the Public Disclosure Commission (PDC) from posting online any F-1 statements for professional staff members of the Legislature.
- Modifies miscellaneous PDC duties.

HOUSE COMMITTEE ON STATE GOVERNMENT & TRIBAL RELATIONS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 9 members: Representatives Gregerson, Chair; Pellicciotti, Vice Chair; Walsh, Ranking Minority Member; Goehner, Assistant Ranking Minority Member; Appleton, Dolan, Hudgins, Mosbrucker and Smith.

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.

Staff: Jason Zolle (786-7124).

Background:

The Public Disclosure Commission.

Washington's campaign finance and disclosure law was first enacted by voter initiative in 1972. The law regulates campaign contributions and certain election-related expenditures and requires the disclosure of campaign financing, lobbyist activity, and the financial affairs of elected officials, candidates, and executive state officers.

The Public Disclosure Commission (PDC) enforces campaign finance and disclosure laws and has the 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.

Reporting Requirements.

Political committees and candidates must periodically report to the PDC their contribution and expenditure activities for each election. An incidental committee is a nonprofit organization not otherwise reporting as a political committee that makes political contributions or expenditures in political campaigns. Incidental committees must also regularly disclose with the PDC their top 10 largest sources of payments received of at least \$10,000 in aggregate from a single source during the calendar year, as well as any political expenditures that exceed \$200 in the period since its last report.

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.

These reporting requirements apply to expenditures related to ballot propositions in addition to candidates. A ballot proposition is defined as a proposition or question submitted to the voters, or an initiative, recall, or referendum proposition proposed to be submitted to the voters, after it has been filed with an election officer and before its circulation for signatures.

Statements of Financial Affairs.

Every elected official and executive state officer must file a statement of financial affairs, known as an F-1 statement, for the preceding calendar year with the PDC between January 1 and April 15. "Executive state officer" is defined to include the director of many state agencies, councils, and commissions. It also includes every professional staff member off the Office of the Governor and of the Legislature.

New appointees or elected officials must file the F-1 statement within two weeks to cover the previous 12 months. Candidates must file the F-1 statement within two weeks of becoming a candidate, and the statement must also cover the previous 12 months. However, a statement of a candidate or appointee filed during the period from January 1 to April 15 must cover the period from January 1 of the preceding calendar year to the time of candidacy or appointment

if the filing of the statement would relieve the individual of a prior obligation to file a statement covering the entire preceding calendar year.

The F-1 statement requires disclosure of financial and personal information relating to the filer and the filer's immediate family. Subject to certain monetary thresholds, required items for disclosure include certain information on the filer and filer's immediate family members' including:

- 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 in Washington;
- debts;
- every public or private office, directorship, and position held as a trustee; and
- acceptance of food, beverage, and gifts.

For current elected officials and executive state officers, the F-1 statement must be filed electronically. For officials and officers that are not in office as of January 1 but served for a portion of the previous year, the F-1 statement may be filed electronically.

In 2019 the Legislature passed House Bill 1195, which in relevant part specified that the F-1 statements are public records but prohibited the PDC from posting any F-1 statements online. The Governor vetoed this section, however.

Political Advertisement Disclaimers.

Political advertisements must include certain disclaimers. Political advertisements on the radio or television must include the sponsor's name, and written ads must include the sponsor's name and address. It is illegal for the sponsor to use an assumed name. Additional disclaimer requirements apply when the advertisement is an independent expenditure or an electioneering communication sponsored by a person or entity other than a political party: they must include the statement "No candidate authorized this advertisement. It is paid for by [the sponsor's name and address]." Finally, if the sponsor is a political committee, the advertisement must include a statement disclosing the committee's top five contributors and the top three contributors to any of the top five contributors that are also political committees. Detailed requirements for visual and audio presentation are provided.

False Statements in Political Advertisements.

Washington campaign laws also prohibit political advertising that contains certain false statements made when the speaker knows they are false or acts with reckless disregard of their truth or falsity. These statements are:

- false statements of material fact about a candidate for public office;
- false representations that a candidate is the incumbent for the office sought; and
- claims that falsely state or imply the support or endorsement of any person or organization.

To be prohibited, the false statement must also:

- expose a living person to hatred, contempt, ridicule, or obloquy;
- deprive a person of the benefit of public confidence or social intercourse; or
- injure a person, corporation, or association in his, her, or its business or occupation.

Funding.

Penalties collected from all PDC enforcement actions and settlements are deposited in the Public Disclosure Transparency Account in the state treasury. Public Disclosure Transparency Account funds may be spent only after they are appropriated by the Legislature, and they may not supplant General Fund appropriations to the PDC. Public Disclosure Transparency Account funds may be spent only for the PDC's duties under chapter 42.17A RCW.

Other Duties.

The PDC must:

- prepare and publish a manual setting forth recommended uniform methods of bookkeeping and reporting for use by people required to file campaign finance reports;
- conduct audits and field investigations to provide a statistically valid finding regarding the degree of compliance with filing requirements;
- publish an annual report to the Governor about the effectiveness of campaign finance and disclosure laws and the laws' enforcement by other law enforcement authorities;
- adopt rules related to the keeping and disclosing of reports required to be filed with a county auditor or elections official (at this time, no such filings exist); and
- maintain a toll-free phone number for the public and political committees of the state.

Summary of Substitute Bill:

Statements of Financial Affairs.

The information required in F-1 statements is modified and expanded to include:

- government benefits and pension or retirement income, which must now be reported as income;
- income earned or provided from assets held by the filer or immediate family member;
- real property outside of Washington;
- items accepted that the filer was authorized to accept by law; and
- any compensation received by the filer or immediate family members for in-state or out-of-state lobbying.

An F-1 statement no longer needs to report persons for whom any legislation, rule, rate, or standard has been prepared, promoted, or opposed for current or deferred compensation.

Monetary thresholds to trigger specific reporting requirements are increased.

Filing requirements for candidates who were already required to report for the previous year are clarified: a candidate who already has an existing obligation to file a statement for the preceding year must still report for that period.

While F-1 statements filed by professional staff members of the Legislature remain subject to public disclosure upon request, the PDC may not post their F-1 statements online. This prohibition applies to legislative staff members' F-1 statements filed both before and after the effective date of this section.

All F-1 statements must be filed electronically, including for officials and officers that are not in office as of January 1 but served for a portion of the previous year.

Political Advertisement Disclaimer.

Two new disclaimers are created for election-related advertising.

Advertising related to an election that directly or indirectly encourages people to vote for a person who is not a candidate for that office as of that date must include a disclaimer: "This ad encourages you to vote for a person who is not a candidate for this office as of [the date the advertisement is first presented to the public]." For purposes of this disclaimer, a person is a candidate as soon as he or she seeks nomination or election to public office, although after the filing period has passed, a person is a candidate only if he or she has filed a declaration of candidacy.

Advertising related to an election that directly or indirectly conveys that a person has an endorsement for an office in an election, when in truth the person does not have that endorsement for that office in that election, must include a disclaimer: "As of [the date the advertisement is first presented to the public], this person does not actually have the endorsement of [list individuals or entities] for this office in this election."

The bill specifies the size, color contrast, and placement of visual disclaimers, and audio disclaimers must be clearly spoken.

Ballot Proposition Reporting.

Reporting requirements for expenditures related to a ballot proposition apply when the proposition is filed with the appropriate election officer or initially circulated for signatures, whichever is first. The definition of ballot proposition is simplified.

Other Duties.

Miscellaneous PDC duties are modified as follows:

- The PDC may provide recommended uniform methods of recordkeeping and reporting for people required to file campaign finance reports, without having to publish a manual.
- The PDC's duty to conduct audits and field investigations to provide a statistically valid finding regarding the degree of compliance with filing requirements is qualified; such activity is required only as staff capacity permits without impacting the timeliness of addressing alleged violations.
- The annual report to the Governor must discuss the work of the PDC rather than the enforcement activities of other law enforcement authorities.
- The PDC no longer needs to adopt rules related to the keeping and disclosing of reports required to be filed with a county auditor or elections official.
- The PDC no longer needs to maintain a toll-free phone number for the public and political committees of the state.

Appropriation: None.

Fiscal Note: Available.

Effective Date: This bill takes effect 90 days after adjournment of the session in which the bill is passed, except for section 3, relating to the creation of two new advertisement disclaimers, which takes effect immediately.

Staff Summary of Public Testimony:

(In support) This bill was requested by the PDC to update the language around the disclosure laws. The House State Government and Tribal Relations Committee (Committee) works well with the agency to make the law effective and amenable. It is great to expand some of the F-1 statement reporting. The agency is committed to transparency, and this bill furthers that. Information in F-1 statements must be available to the public easily, quickly, and thoroughly. There are a number of other ideas floating around for this bill. The bill in the House of Representatives does not include a provision that permits PDC Commissioners to be involved in political activity outside their jurisdiction, but the Committee should think about that now and in the future. The agency is willing to sacrifice that request at this stage to move forward.

(Opposed) None.

Persons Testifying: Representative Walsh, prime sponsor; and Peter Lavalley, Public Disclosure Commission.

Persons Signed In To Testify But Not Testifying: None.