

SENATE BILL REPORT

SB 5112

As of January 21, 2019

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: Senators Hunt, Zeiger, Kuderer, Wellman and Keiser; by request of Public Disclosure Commission.

Brief History:

Committee Activity: State Government, Tribal Relations & Elections: 1/18/19.

Brief Summary of Bill

- Modifies provisions relating to Public Disclosure Commission commissioners' term length and ability to engage in lobbying activity.
- Modifies provisions relating to reporting modifications for personal financial affairs statements of public officials.
- Modifies the definitions of commercial advertiser and independent expenditure.
- Precludes a citizen's action claim where the Attorney General publishes a decision as to whether it will commence legal action on the underlying complaint.

SENATE COMMITTEE ON STATE GOVERNMENT, TRIBAL RELATIONS & ELECTIONS

Staff: Samuel Brown (786-7470)

Background: The Public Disclosure Commission. The Public Disclosure Commission (PDC) was created by the passage of Initiative 276 in 1972. The PDC is empowered to provide timely public access to information about the financing of political campaigns, lobbyist expenditures, and the financial affairs of public officials and candidates, and to ensure compliance with contribution limits and other campaign finance restrictions.

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.

The PDC is composed of five commissioners, appointed for single five-year terms by the Governor and subject to Senate confirmation. No more than three commissioners may be members of the same political party. During their terms, commissioners are prohibited from holding or campaigning for office, serving as political party or committee officers, soliciting or making campaign contributions, participating in election campaigns, or lobbying, except on matters directly related to campaign finance law.

Reporting Requirements. All political committees and candidates that receive contributions and make expenditures must file a statement of organization with the PDC and 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 7 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 special reporting period 7 days before a primary and 21 days before a general 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.

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.

Incidental Committees. In 2018, the Legislature passed SSB 5991, which required incidental committees, defined as nonprofit organizations that incidentally make contributions or expenditures in political campaigns of at least \$25,000 in a calendar year for an election campaign and receive a contribution of at least \$10,000, to file certain reports with the PDC. Incidental committees must disclose at regular intervals the ten largest contributions received of at least \$10,000 in aggregate from a single source during the calendar year, including any contributions tied for tenth largest.

Personal Financial Affairs Reporting. 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 1st and April 15th. New appointees or elected officials must file the F-1 statement within 14 days 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 the following:

- the filer and filer's immediate family members' occupation, name of employer, and business address;
- compensation for preparing, promoting, or opposing legislation or agency rules, rates, or standards;
- real property holdings;
- bank accounts, insurance policies, stocks, mutual funds, and other intangible personal property holdings;
- any ownership interests of 10 percent or greater in private entities, and, if applicable, compensation;
- any gifts of food or beverage in excess of \$50; and

- any other information deemed necessary by the PDC.

The PDC may grant a reporting modification and waive completion of any part of the F-1 reporting requirement where the requirement imposes extreme hardship on the filer and the modification would not frustrate the PDC's purposes of increased disclosure and access. The waiver, which lasts for one year, may only be granted after a hearing on the request.

Commercial Advertisers and Books of Account. Commercial advertisers provide the service of communicating messages to the public through any of a number of media. Any commercial advertiser which accepts or provides political advertising or electioneering communications 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.

PDC Enforcement Authority. The PDC may initiate its own investigations of violations of campaign finance and disclosure statutes 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 or turn over an investigation to the Attorney General (AG), who may seek higher penalties in court.

Citizen's Action. In 2018, the Legislature passed ESHB 2938, modifying procedures for initiating citizen's action claims of alleged campaign finance violations. To file a citizen's action, a person first must file a complaint with the PDC. If, within 90 days, the PDC dismisses or otherwise resolves the complaint after a preliminary review or initiates an investigation and holds any appropriate hearings, then the person may not go forward in the process. 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 ten 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.

Penalties. Penalties awarded in a citizen's action are transferred 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 and may require a person who files a citizen's action to pay the defendant's costs and attorney's fees if 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. ESHB 2938 created a public disclosure transparency account for the deposit of awards from campaign finance enforcement actions, to be used for implementation and administration of the campaign finance and disclosure law.

Summary of Bill: Numerous changes are made to campaign finance statutes.

PDC Commissioners. 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 outside the state and not subject to PDC jurisdiction if the activity does not create the appearance of a conflict of interest and does not involve any affiliation with the PDC.

Reporting Requirements. An independent expenditure must be reported to the PDC if the aggregate value of similar expenditures from the same source exceeds \$1,000. 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.

Incidental Committees. Incidental committees must make or expect to make expenditures in political campaigns of at least \$25,000 in a calendar year to trigger reporting requirements, rather than expenditures or contributions of at least \$25,000.

Personal Financial Affairs Reporting. The PDC may grant an F-1 reporting modification for the length of an elected official's term of office or, in the case of an appointed official, for up to three years, where no material change in the circumstances forming the basis for the hardship exemption is anticipated. A request for modification may be granted by a single presiding officer, subject to full commission review. Information in requests for modification is exempt from public disclosure requirements to the extent it presents a concern to the filer. Modification requests, if granted, may be applied retroactively to previous filings.

Judges, sheriffs, prosecutors, and their immediate family members may substitute the city or town and type of residence for the full address of any residences required to be reported on the F-1.

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 1st and 15th of the following year.

Commercial Advertisers and Books of Account. Entities that sell advertisements or produce material for broadcast to the public via paid Internet or digital communications, or any other means of mass communications used for appealing for votes or support in an election campaign, are explicitly included in the definition of commercial advertiser. A commercial advertiser's books of account must be open for inspection for five years after the election to which the books refer.

Citizen's Action Procedures. A citizen's action claim is precluded if, within 45 days of receiving a referral of a complaint, the AG publishes a decision as to whether it will commence legal action on the underlying complaint.

Penalties. Any costs awarded by the court to a person who successfully brings a citizen's action must be paid 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.

Other Provisions. Candidates for office in jurisdictions with between 1001 and 2000 registered voters are exempt from PDC reporting requirements. Actual cost may be used to substitute for fair market value in reporting the value of an item. Gender-neutral terms are added. The PDC may require filers to provide additional electronic contact information.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: The bill contains several effective dates. Please refer to the bill.

Staff Summary of Public Testimony: PRO: This will increase transparency and remove duplicative processes. All parties involved in last year's legislation agreed some technical fixes were needed. The changes to the F-1 report process will make it easier for filers. Changes to commissioner activity regulations will make it easier to recruit commissioners and maintain a quorum.

CON: The citizen's action provisions were largely eviscerated last session, and this makes it virtually impossible for a citizen to require enforcement where agencies choose not to act for political reasons. We have concerns about language limiting when nonprofit organizations can provide commentary on ballot measures. Court oversight is necessary when a government agency chooses not to pursue a complaint.

OTHER: A number of our digital platforms are choosing not to accept political advertising in Washington because they are concerned they will not be able to fully comply with regulations. Extending commissioner terms is a concern. Turnover was designed for a reason. Requiring nonprofits to report monthly even when not participating in campaigns is a concern. Nonprofits should be allowed to comment on ballot measures. We also have concerns about expanding the AG's authority.

Persons Testifying: PRO: Senator Sam Hunt, Prime Sponsor; Peter Frye Lavalley, PDC.

CON: Arthur West, citizen; Maxford Nelsen, Freedom Foundation.

OTHER: Rose Feliciano, Internet Association; Jan Himebaugh, Building Industry Association of Washington.

Persons Signed In To Testify But Not Testifying: No one.