

HOUSE BILL REPORT

HB 1005

As Reported by House Committee On:
Government Operations & Elections
Appropriations

Title: An act relating to the public disclosure commission concerning responsibilities and funding.

Brief Description: Concerning responsibilities and funding of the public disclosure commission.

Sponsors: Representatives Moeller, Wylie, Reykdal, Appleton, Ryu, Morrell, McCoy, Seaquist, Moscoso, Hudgins, Ormsby and Pollet.

Brief History:

Committee Activity:

Government Operations & Elections: 1/22/13, 2/5/13, 2/12/13 [DPS];
Appropriations: 2/19/13, 2/28/13 [DP2S(w/o sub GOE)].

Brief Summary of Second Substitute Bill

- Creates an electronic filing (e-filing) database for lobbyist information and reports, with a fee schedule and account. Requires fee revenue to support the e-filing system, which must be self-supporting after the first fiscal year.
- Provides legislative authority to adjust assessment fees for the e-filing database.

HOUSE COMMITTEE ON GOVERNMENT OPERATIONS & ELECTIONS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 6 members: Representatives Hunt, Chair; Bergquist, Vice Chair; Carlyle, Fitzgibbon, Orwall and Van De Wege.

Minority Report: Do not pass. Signed by 5 members: Representatives Buys, Ranking Minority Member; Taylor, Assistant Ranking Minority Member; Alexander, Kristiansen and Manweller.

Staff: Marsha Reilly (786-7135).

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.

Background:

Campaign Finance Disclosure and Reporting.

The Public Disclosure Commission (PDC) was created and empowered by an initiative of the people to provide timely and meaningful 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.

In 1999 electronic filing was made available to candidates, public officials, and political committees for filing financial affairs reports, contribution reports, and expenditure reports. By 2002 electronic filing was mandatory. Electronic filing was made available to lobbyists and lobbyist employers for submitting their reports in 2002, although it is not mandatory. Electronic filing includes, but is not limited to, filing by diskette, modem, satellite, or over the Internet. Funding was made available to the PDC in the fiscal year 2008 budget for a feasibility study to determine the cost to design, develop, implement, and maintain an application to accommodate electronic filing by lobbyists, lobbyist employers, public agencies, and a database and query system compatible with current computer architecture, technology, and operating systems.

Ethics Enforcement.

In 1993 the Legislature created the Commission on Ethics in Government and Campaign Practices (Commission). The Commission issued a detailed report recommending enactment of new ethics rules governing state officials and state employees, as well as numerous changes to the Public Disclosure Act and to other laws dealing with political campaigns. The Commission recommended that: new or revised ethics rules be adopted; the new rules be consolidated into a single code of ethics; the new code apply to all state officials and employees of the executive, legislative, and judicial branches of state government; and each branch have its own ethics commission which would hear and determine complaints, impose sanctions, recommend disciplinary action, and issue advisory opinions.

In response to the Commission's recommendation, the Legislature enacted the Ethics in Public Service Act in 1994. The law: established new and revised ethics rules; consolidated ethics rules in a single Revised Code of Washington chapter; and applied the new chapter to all state officials and employees of the executive, legislative, and judicial branches of state government. New ethics boards in the executive and legislative branches were created and the authority of the Commission on Judicial Conduct was expanded. Each of these entities, as well as the Attorney General, have broad powers to enforce the ethics chapter.

The Executive Ethics Board (Board) is composed of five members, each appointed by the Governor. The members must include: one classified civil service employee; one state officer or state employee in an exempt position; one citizen selected from a list of three persons submitted by the Attorney General; one citizen selected from a list of names of three persons submitted by the State Auditor; and one citizen member selected by the Governor. Members serve a single five-year term. No more than three members may be identified with

the same political party. The members elect a chair who could be any member of the Board. The Attorney General provides staff to the Board.

The PDC is composed of five members appointed by the Governor, with the consent of the Senate. No more than three members may be identified with the same political party. Members of the PDC are prohibited from participating in political activities through holding office, supporting a candidate or proposition, making contributions to a candidate or proposition, participating in any election campaign, and lobbying. The PDC enforces campaign finance and disclosure laws, including lobbying activities, use of public resources for campaigns, and disclosure of personal financial affairs of state officers.

Summary of Substitute Bill:

Campaign Finance Disclosure and Reporting.

Agencies required to report lobbying expenditures must file all required reports to the PDC electronically over the Internet. Beginning January 1, 2014, all lobbyists and lobbyists' employers required to report lobbying activities must file the required reports electronically over the Internet.

Annual Fees: Beginning January 1, 2014, an annual fee must be paid to the PDC for data development costs and purchase and maintenance of computer hardware and software to maintain electronic filing of reports required by the PDC. The fees are as follows:

- \$200 for political committees required to file reports;
- \$200 for every lobbyist who has a total reportable accrued compensation of \$10,000 or more from the previous calendar year;
- \$200 for every lobbyist employer who has a total reportable accrued expenses and payments for lobbying of \$10,000 or more from the previous calendar year;
- \$150 for government entities that employ more than 50 full time equivalent employees;
- \$150 for local governments that employ a lobbyist;
- \$200 for every elected official required to file personal financial affairs statements and who receives a salary or compensation of \$10,000 or more for each calendar year for duties performed related to that office; and
- no person or individual must pay more than one fee in a calendar year.

Account Created: The Public Disclosure Electronic Filing Account (Account) is created in the custody of the State Treasurer. Receipts collected under the act must be deposited into the Account and may be used only for costs incurred as a result of the design, development, implementation, and maintenance of computer hardware and software to accommodate electronic filing and a database and query system compatible with current systems that result in readily available data to the public for review and analysis. Only the Executive Director of the PDC, or his or her designee, may authorize expenditures from the Account. The Account is subject to allotment procedures, but an appropriation is not required for expenditures.

Ethics Enforcement.

The Executive Ethics Board is eliminated and their responsibilities for enforcement and training of ethics laws are transferred to the PDC. The composition of the PDC is changed from five members to seven members under the same appointment procedures. No more than four members may be from the same political party. Commission members are no longer barred from making contributions to a candidate or to a ballot proposition, but must report such contributions to the PDC at the time the contribution is made and such contributions must be posted on the PDC's website.

Substitute Bill Compared to Original Bill:

An elected official's salary only, and not other compensation, is used to determine the \$10,000 threshold for the payment of a fee.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Substitute Bill: The bill contains an emergency clause and takes effect July 1, 2013, except for sections 2 through 4 relating to transfer of duties of the Executive Ethics Board to the PDC which take effect January 1, 2014.

Staff Summary of Public Testimony:

(In support) The bill assigns the duties of the ethics commissions to the PDC. The fees raise about \$1.2 million over the biennium. The PDC is an excellent commission. It is important that all contributions are reported, including those by lobbyists and lobbyist employers. The fees will help upgrade and maintain the electronic filing system that makes this information available to the public. Lobbying reports must be filed over the Internet, and personal financial affairs statements are for elected officials that receive a salary of \$10,000 or more. The merger of the ethics commissions with the PDC is a good step forward, and is appropriate. It will result in more efficiencies and a leaner government. The PDC was created because of an initiative by the people who wanted to ensure an open government. The more access that citizens and the press have is good. It is imperative to know who is paying for what, and this information will be readily available. For someone who has to use the system, it is difficult to file online if you are a contract lobbyist, and there are ways to make lobbyist filing more efficient. It will also be more usable for citizens interested in looking at lobbyist reporting. The PDC needs a pool of resources outside the State General Fund to run its website and update its software. The website and access to information is better than the federal system. The PDC website is aging and has problems that require more work and more money. Some of the problems will require minor fixes, and some require major fixes. The PDC has the expertise for oversight of ethics. There are remedies available in the law, and transparency provided by an independent review under the State Auditor. The bill has been perfected over the past few years. Thousands of people file reports, including

legislative staffers. The system used for campaigns is efficient, but the lobbyist system is "clunky." The public needs to have confidence in government and more access to information regarding lobbyist activities will help with that confidence. It is now difficult for the public to find out what lobbyists are doing. The \$200 fee basically is the cost of about two tanks of gas. Combining the ethics commissions with the PDC is a good move. Putting it under one roof would be helpful.

(Opposed) The Associated General Contractors has no problems with the values of transparency and ease of use of the PDC website. Philosophically, this bill is of public benefit and the base of people who pay fees could be broader by lowering the \$10,000 threshold for lobbying. The fees should be the same for everyone. The PDC system does need vast improvement. The interface for lobbyist filing does not work for everyone. Providing this information is a general function of government, and the fee-based system is a problem. This specific fee is a tax on the right to petition government. To put a fee on the ability to petition government is the wrong way to finance the system. In a fee-based system, the fee is normally attached to the person getting the information.

Persons Testifying: (In support) Representative Moeller, prime sponsor; Michael Temple, Washington State Association for Justice; Mike Moran; and Steve Gano, Gano and Associates.

(Opposed) Jerry Vanderwood, Associated General Contractors; and Bob Cooper.

Persons Signed In To Testify But Not Testifying: None.

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: The second substitute bill be substituted therefor and the second substitute bill do pass and do not pass the substitute bill by Committee on Government Operations & Elections. Signed by 18 members: Representatives Hunter, Chair; Ormsby, Vice Chair; Carlyle, Cody, Dunshee, Green, Haigh, Hudgins, Hunt, Jinkins, Kagi, Morrell, Pedersen, Pettigrew, Seaquist, Springer, Sullivan and Maxwell.

Minority Report: Do not pass. Signed by 13 members: Representatives Alexander, Ranking Minority Member; Chandler, Assistant Ranking Minority Member; Wilcox, Assistant Ranking Minority Member; Buys, Dahlquist, Fagan, Haler, Harris, Parker, Pike, Ross, Schmick and Taylor.

Staff: Danielle Cruver (786-7157).

Summary of Recommendation of Committee On Appropriations Compared to Recommendation of Committee On Government Operations & Elections:

The Legislature may increase or decrease the filing fee in order to accommodate the functions of the electronic filing (e-filing) program.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Second Substitute Bill: The bill contains an emergency clause and takes effect on July 1, 2013, except for sections 2 through 4 relating to transfer of duties of the Executive Ethics Board to the Public Disclosure Commission, which take effect January 1, 2014.

Staff Summary of Public Testimony:

(In support) Any degree of efficiency or economy in the enforcement of our ethics law is to be commended. The decisions from both the Executive Ethics Board (Board) and the Legislative Ethics Board can be done better by the Public Disclosure Commission (PDC). The maxim that foxes are ill suited to guard hen houses is well taken. The PDC has a degree of independence. Look at the original bill and eliminate the Legislative Ethics Board as well. The economy of putting all these boards in one place is something the public can understand and appreciate. The PDC is completely able to issue the type of determinations and deliver the ineffectual slaps on the wrist so necessary for the public confidence in the integrity of public officials as they recently did on January 18. This bill should be passed. The PDC computer system is woefully inadequate to do the job it is intended to do. It is critically important to have access to that data. If you have ever tried to explore the current information technology (IT) structure, it is a cumbersome system at best. It is time to upgrade. The system shuts down, it suits no one well, and it truly is a user fee. Anyone that is hired to represent the interests of other people are charging a fee to petition the government. It is a user fee whose time has come.

(Neutral) The PDC has not taken a position on this bill. First, the PDC appreciates the efforts to find the resources for the PDC to modernize the lobbyist e-filing system. Over half of reporting lobbyists file electronically. That number has increased gradually over the years. Lobbyists find the system cumbersome but it is easier for citizens to review lobbyist information. The e-filing fees would be dedicated initially to replacing the e-filing lobbyist application with a modern system and then to improve and sustain other IT systems and applications. It is important to note that use of this money is limited solely to designing, developing, and implementing the PDC's database services. It is not intended to offset the costs for absorbing the Board. The PDC has some reservations about the merger of the functions of the Board into the PDC; specifically, the costs associated with expanding the commission's jurisdiction, which are not insignificant for a commission of its size. The PDC has specific concerns regarding the ability to absorb those functions and agrees with the analysis of both the Attorney General's office and the Board that it would not necessarily be a cost savings to the state.

(Opposed) There is a myth going around that the PDC does ethics work. It has nothing to do with the Ethics in Public Service Act. They enforce campaign finance law complaints and the Board investigates complaints against state workers and public officials under the Ethics in Public Service Act. There is one overlap regarding campaigning or lobbying. Their workload revolves around conflicts of interest, special privileges, taking gifts, and contracts for running an outside business on state time, so they really have nothing to do with use of state resources for political issues. It is a myth that the bill cuts costs. The Board's current budget is a little over \$386,000 and three full-time equivalents (FTE). The PDC wants 4.5

FTE. The Board is funded under the Legal Services Revolving Fund and not the General Fund. The Board only investigates the executive branch and it is primarily state workers.

The right of the people to participate and peaceably assemble shall never be abridged. Putting a fee or a tax on the right to petition the government is inviting a costly lawsuit because the fee is not constitutional. This country was founded over grievances about petitioning government and the fee is not an appropriate financing mechanism for the PDC. This a general public function and should be financed by State General Fund revenues.

Persons Testifying: (In support) Arthur West; and Steve Gano, Gano and Associates.

(Neutral) Andrea Doyle, Public Disclosure Commission.

(Opposed) Melanie de Leon, Executive Ethics Board; and Bob Cooper.

Persons Signed In To Testify But Not Testifying: None.