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**State Government, Elections &  
Information Technology Committee**

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**HB 2938**

**Brief Description:** Concerning campaign finance law enforcement and reporting.

**Sponsors:** Representatives Hudgins, Dolan, Kagi, Wylie, Ormsby and Pollet.

**Brief Summary of Bill**

- Raises the Public Disclosure Commission's (PDC) penalty limit from \$10,000 to \$50,000.
- Changes the procedures for filing a citizen's action to enforce the state campaign finance and disclosure laws, including a prerequisite to file a complaint with the Public Disclosure Commission.
- Changes the penalties awarded in campaign finance and disclosure cases, including defendants paying costs in successful citizen's actions, increasing penalties awarded to a defendant's costs for claims filed to harass, and restricting the state from recovering investigative costs for nonintentional violation penalties under \$50,000.
- Requires the State Auditor to audit the reporting activities of political committees.
- Removes the reporting dates 21 days before the election and 10 days after the election for: political committees, candidates, and for independent expenditures, and removes the reporting date 7 days before the election for independent expenditures
- Creates an account for the administration of state campaign finance and disclosure law, and requires all penalties from enforcement actions under such law to be deposited in the account.
- Increase the reporting threshold for campaign debt from \$250 to \$500.
- Includes a \$500,000 General Fund appropriation to the PDC.

**Hearing Date:** 1/31/18

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*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:** Sean Flynn (786-7124).

## **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Washington's campaign finance and disclosure law was originally enacted by voter initiative in 1972.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 require all political committees and candidates that receive contributions and make expenditures 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.

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.

*PDC 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 Bill:**

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

#### Enforcement Procedures.

*PDC Authority.* The PDC's enforcement procedures are specified for handling complaints filed. Upon receiving a complaint, the PDC may dismiss or otherwise resolve the complaint, initiate an investigation, or refer the matter to the AG.

The limitation on penalties the PDC may issue is raised from \$10,000 to \$50,000, or any higher amount as stipulated by the parties. The PDC may create a penalty schedule based on repeat offenses, and may suspend any penalty contingent on future compliance.

*Attorney General and Local Prosecutor Authority.* The AG and local prosecutor are directed to use their enforcement authority in a consistent manner that provide guidance in complying with the law.

*Citizen's Action.* The citizen's action procedures are changed. A citizen's action is permitted for monetary violations only if the alleged violations are over \$25,000. The threshold does not apply to nonmonetary violations.

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 60 days of receiving the complaint, then the person may not go forward in the process. Such action includes dismissing the complaint or otherwise resolving the matter, initiating an investigation, or reasonably taking timely action within the normal course of enforcement.

If the PDC does not take any such action within 60 days, only then may the person move on to notify the AG and local prosecutor of the complaint. The AG and local prosecutor have 60 days to respond to the notice, either by commencing an action or determining that the violation amounts to a remediable violation.

If no such action is taken, then the person may provide additional notice of intent to file a citizen's action. If the AG or local prosecutor have not commenced an action within 10 days, then the person may file a citizen's action. The court must dismiss a citizen's action within 15 days after filing, if the AG or local prosecutor determines that the complaint amounts to a remediable violation.

*Remediable Violation.* A remediable violation includes three categories, where the violation:

1. occurred more than 30 days before an election that involved expenditures within contribution limits, or otherwise under \$1,000, and where the person took corrective action within two days of receiving notice or within 25 days after the report was due;
2. involved a candidate who raised less than \$200,000, lost the election, and whose political committee has dissolved, and where such person entered an agreement with the PDC to resolve the violation; or
3. involved a fine that would be less than the estimated cost of the investigation.

*Penalties.* A prevailing plaintiff who brings a citizen's action is entitled to reimbursement for costs and attorney's fees from the defendant, instead of the state. The court must consider the severity of the violation in determining such costs.

For a citizen's action brought without reasonable cause, the court may triple a defendant's costs and attorney's fees if the action was filed for the purpose of harassment. The state may not recover any investigative costs for non-intentional violations that involve a fine under \$50,000.

The PDC or a court may review an order it issued up to two year before the effective date of this act, and determine whether any order or penalty should be modified or vacated based on the new citizen's action procedures.

#### Reporting Requirements.

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. The reporting deadline is eliminated for the tenth day after the election. The monthly reports required for contributions and expenditures over \$200 is changed from the tenth to the fifth day of the month.

The reporting periods for independent expenditures are reduced to include only the initial report, the seventh day before the election, and the fifth day of each month after an additional independent expenditure is made. An email address is a sufficient address for the independent expenditure report.

The threshold amount of debt a candidate or political committee is required to report is raised from \$250 to \$500, and the required reporting of outstanding debt over \$50 is eliminated. Reoccurring expenditures paid on time are not reportable as debt.

The PDC may make rules regarding inspection of campaign accounting books in consideration of technological resources and best practices.

### Miscellaneous Provisions.

*Reporting Audit.* The State Auditor (Auditor) must conduct audits of the performance of political committees in complying with campaign finance reporting requirements. The audits must include a random sample political committees or candidates selected by the PDC, that raise over \$100,000 in an election cycle. The PDC selection must include political committees on differing sides of an election, and may prioritize those committees with the most contributions, donors, or out-of-state contributions, in an election.

The Auditor must enter into an interagency agreement with the PDC to conduct the audits. The agreement must include an audit schedule, based on year, workload, funding, manner to be conducted, and procedures to refer violations to the PDC. The Auditor's findings must be reported to the PDC as well as the relevant legislative standing committees.

The PDC rulemaking authority is removed for prescribing requirements for quarterly reporting on the costs incurred by state and local agencies in publishing legislative information, including publications and materials prepared to influence legislation.

*Delegated Authority.* The action by the PDC, the executive director or his or her staff, to resolve complaints or correct technical violations constitutes state action for purposes of the campaign finance and disclosure law.

*Funding and Account Created.* The Public Disclosure Transparency Account (Account) is created to receive penalties collected from all enforcement actions. 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.

**Appropriation:** The sum of \$500,000 is made from the General Fund to the PDC.

**Fiscal Note:** Requested on January 29, 2018.

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