

# FINAL BILL REPORT

## ESHB 2938

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### PARTIAL VETO C 304 L 18 Synopsis as Enacted

**Brief Description:** Concerning campaign finance law.

**Sponsors:** House Committee on State Govt, Elections & IT (originally sponsored by Representatives Hudgins, Dolan, Kagi, Wylie, Ormsby and Pollet).

**House Committee on State Government, Elections & Information Technology**  
**House Committee on Appropriations**  
**Senate Committee on State Government, Tribal Relations & Elections**  
**Senate Committee on Ways & Means**

#### **Background:**

##### Campaign Finance and Disclosure Law.

Washington's campaign finance and disclosure law originally was created 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 requires all political committees and candidates 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

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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.

Political committees and candidates must keep books of account that are current within five business days of receipt of contributions or expenditures. Monetary contributions must be deposited by the candidate or political committee treasurer within five business days of receipt into an account established for that purpose. Books of account must be available for inspection by appointment at a designated location, between 8:00 a.m. and 5:00 p.m., on any weekday from the tenth day before an election through the day immediately after the election.

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.

*Public Disclosure Commission 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 transfer 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:**

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

### Reporting Requirements.

*Filings.* The deadline for a candidate or political committee's initial report is changed from the date the campaign treasurer is designated to the date of the next reporting deadline. At the time of initial filing, each person must provide an official electronic mail (email) address to the PDC, and must provide any new email address within 10 days if the address is changed. The PDC may waive the email requirement in the case of hardship.

The PDC must publish a calendar of significant reporting dates on its website. If the PDC electronic filing system is inoperable on a reporting date, reports filed on the next day the system is operating are not considered late. The PDC must provide notice to all reporting entities when the system is back in operation.

Monetary contributions made online or by credit card are considered received for purposes of the five-day deposit requirement at the time the transfer is made from a merchant account to a political committee account. Contributions made outside the period restricting contributions during the legislative session, but subsequently transferred to a state official or legislator candidate' account within the restriction period, is considered received outside of the restriction period.

*Amended Reports.* A committee may file an amended report to correct any inaccuracies without constituting a violation of the campaign finance and disclosure law if the committee had reported all available information, or made a good faith effort to do so, or if it is reporting a refund. The amended report must be accurate, filed more than 30 days before an election, and the total amount of adjustment is within three times the contribution limit, or \$200, whichever is greater.

*Accounting.* Political committees and candidates must make books of account available for inspection by appointment at any agreed upon location, between 9:00 a.m. and 5:00 p.m., or by digital access in lieu of an appointment. The PDC may make rules regarding inspection of

campaign accounting books in consideration of technological resources and best practices. Books of account is defined as a ledger for contributions, expenditures, and debt that a campaign or political committee must report, or details of political advertising or electioneering communications provided by a commercial advertiser.

*Independent Expenditures.* Exceptions are added to the definition of "independent expenditure," including ordinary home hospitality, communications with journalists or editorial staff designed to elicit a news item in a regularly scheduled news medium, and participation in the creation of a publicly funded voters pamphlet statement.

The reporting threshold for an independent expenditure is changed to one-half the contribution limit for expenditures of political advertisements in candidate campaigns. In addition, any expenditures made over the contribution limit for a statewide ballot measure, or one-half the contribution limit for a local ballot measure, must be reported as a contribution to a political committee supporting or opposing the measure, or as an independent expenditure if no such committee exists.

*Special Reports.* The reporting threshold for single source large contributions during a special reporting period is changed to contributions that exceed three times the contribution limits for an election. The permitted delivery of special reports by mailgram, telegram, or nightletter is removed.

*Reportable Debt.* The threshold amount of debt a candidate or political committee is required to report is raised from \$250 to \$750, and the required reporting of outstanding debt over \$50 is eliminated. Reportable debt includes any invoice submitted, goods received, or services rendered that have not been paid within five business days during the period within 30 days of an election, or within 10 business days for any other period. Reoccurring expenditures paid on time are not reportable as debt. In addition, an obligation already reported to pay for goods and services made by a third party is not reportable debt.

*Committee Dissolution.* A political committee or continuing political committee must file a final report when it ceases to function and intends to dissolve, and it has no outstanding debt or obligations. The committee may dissolve 60 days after filing its final report if it has not engaged in any further reportable activities, no complaint or court action has been filed against it, and any penalties have been paid. The committee bank account may not be closed until the committee has dissolved. The PDC must issue an acknowledgment of dissolution, after which the committee has no further obligations under the campaign finance and disclosure law, except for any responsibility for violations discovered after the dissolution.

#### Enforcement Procedures.

*Public Disclosure Commission Authority.* The PDC's enforcement procedures are specified for handling complaints filed. The PDC may initiate or respond to a complaint, request a technical correction, or otherwise resolve matters in compliance with the authority provided in the act.

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 an enforce an appropriate order, in accordance with the administrative procedure process; or
- refer the matter to the AG.

The PDC may delegate authority to the executive director to resolve remedial violations or technical corrections, so long as any resolution is approved by the PDC. The PDC must establish procedures for stipulation agreements, subject to a schedule of penalties. Stipulations must be approved by the PDC in order to be considered resolved. If the PDC initiates an investigation, an initial hearing must be held within 90 days of the complaint being filed.

The limitation on penalties the PDC may issue is \$10,000 per violation, or any higher amount as stipulated by the parties. The PDC may create a penalty schedule based on repeat offenses, and may waive first time violations or suspend any penalty contingent on future compliance. The PDC may refer a matter to the AG when the PDC has determined that additional authority is necessary or the violation warrants a penalty beyond the PDC's maximum penalty authority..

A remediable violation is defined as a violation that:

- occurred more than 30 days before an election and was resolved by agreement with the PDC, or occurred at any time and did not constitute a material violation;
- involved expenditures within contribution limits, or otherwise under \$1,000 if there was no contribution limit;
- did not materially affect the public interest; and
- either was corrected within five business days of receiving notice, or within 25 days after the report was due, and other filing deadlines were met within the preceding 12 month period, or involved a candidate who lost the election and did not raise over 100 times the contribution limit during the campaign.

A technical correction is defined as a minor or ministerial error in a required report that does not materially impact the public interest and needs correction for a report to be in full compliance.

*Attorney General.* The prosecution authority of local prosecutors is removed. 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 and a reasonably supported explanation 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. Any action must be commenced within five years of the violation.

*Citizen's Action.* The citizen's action procedures are changed. 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 90 days of receiving the complaint, then the person may not go forward in the process. Such action includes dismissing or otherwise resolving the complaint after a preliminary review, initiating an investigation and holding any appropriate hearings, or referring the

matter to the AG. 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 10 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.

Funding.

The Public Disclosure Transparency Account (Account) is created to receive penalties collected from all enforcement actions and settlements. 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. A court may award the PDC all reasonable costs and attorney's fees of investigation and trial.

**Votes on Final Passage:**

House	94	4	
Senate	48	0	(Senate amended)
House	92	4	(House concurred)

**Effective:** June 7, 2018

**Partial Veto Summary:** The Governor's veto removes the sections amending the filing requirements for independent expenditures and large contributions.