

# SENATE BILL REPORT

## SSB 5991

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As Amended by House, February 28, 2018

**Title:** An act relating to increasing transparency of contributions by creating the Washington state DISCLOSE act of 2018.

**Brief Description:** Increasing transparency of contributions by creating the Washington state DISCLOSE act of 2018.

**Sponsors:** Senate Committee on State Government, Tribal Relations & Elections (originally sponsored by Senators Billig, Fain, Palumbo, Miloscia, Hunt, Mullet, Carlyle, Frockt, Rolfes, Ranker, Darneille, Conway, Hasegawa, Pedersen, Nelson, McCoy, Takko, Saldaña, Cleveland, Wellman, Kuderer, Liias, Hobbs, Chase, Van De Wege, Keiser and Dhingra).

**Brief History:**

**Committee Activity:** State Government, Tribal Relations & Elections: 1/10/18, 1/12/18 [DPS].

**Floor Activity:**

Passed Senate: 1/17/18, 32-17.

Passed House: 2/28/18, 53-45.

**Brief Summary of First Substitute Bill**

- Requires nonprofit organizations, not otherwise defined as political committees which participate in Washington political campaigns above certain monetary thresholds, to file organizational statements and periodic disclosure statements with the Public Disclosure Commission (PDC).

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### SENATE COMMITTEE ON STATE GOVERNMENT, TRIBAL RELATIONS & ELECTIONS

**Majority Report:** That Substitute Senate Bill No. 5991 be substituted therefor, and the substitute bill do pass.

Signed by Senators Hunt, Chair; Kuderer, Vice Chair; Miloscia, Ranking Member; Saldaña.

**Staff:** Samuel Brown (786-7470)

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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.*

**Background:** The Public Disclosure Commission. The 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, the financial affairs of public officials and candidates, and to ensure compliance with contribution limits and other campaign finance restrictions.

Political Committees. An organization is considered a political committee if one of its primary purposes is to affect governmental decision-making by supporting or opposing candidates or ballot measures. Within two weeks after the organization or the committee first has the expectation of receiving contributions or making expenditures, a political committee must file a statement of organization with PDC stating the following information:

- the committee's name and address, as well as those of any affiliated committees or persons, and their relationship or affiliation;
- the names, addresses, and titles of its officers or leaders;
- the name and address of the committee's treasurer and depository;
- whether the committee is a continuing political committee;
- the candidates, parties, and ballot measures supported or opposed by the committee;
- how the committee intends to dispose of surplus funds, if any, at dissolution;
- the address of the place and the hours during which the committee will make its account books and reports available for public inspection;
- the name, address, and title of each person who authorizes expenditures or makes decisions on behalf of the committee;
- the name, address, and title of each person who performs ministerial functions on behalf of both the committee and another committee or candidate; and
- other information that the PDC may prescribe by rule.

Political committees must file reports with the PDC detailing contributions of more than \$25 received and expenditures made at the following intervals:

- on the tenth day of the month if the candidate received a contribution or made an expenditure in the preceding calendar month and the total contributions received or total expenditures made since the last report exceed \$200;
- 21 days before the election;
- seven days before the election; and
- on the tenth day of the month following the election.

**Summary of First Substitute Bill:** Nonprofit organizations, not otherwise defined as political committees making contributions or expenditures in Washington election campaigns above specified thresholds, must file organizational statements with the PDC and disclose certain contributors, regardless of the organization's primary purpose.

Incidental Committees. Separate reporting standards are created for incidental committees, defined as nonprofit organizations that incidentally make expenditures in political campaigns above certain thresholds. To be an incidental committees, triggering the requirements to file a statement of organization with the PDC, an organization must expect to make payments or expenditures of at least \$10,000 in a calendar year for an election campaign and receive a contribution of at least \$10,000.

An incidental committee's statement of organization must include the following:

- the name and address of the committee, its officers or treasurer, and any affiliated persons or committees;
- the names of any candidates supported or opposed by the committee;
- any ballot measures supported or opposed by the committee; and
- any other information required by the PDC consistent with the purposes of campaign finance laws.

Reporting Requirements. Incidental committees must disclose specified contributions, defined below, to the PDC at the following intervals:

- at the time the committee files its statement of organization;
- 21 days before an election;
- seven days before an election; and
- by the tenth day of the first month after an election.

Specified contributions are 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, and all contributions of at least \$100,000 in aggregate from a single source, if any. An incidental committee must file a monthly contribution and expenditure report only if it has received a specified contribution which has not been previously disclosed or made at least \$200 worth of expenditures since its last report to the PDC. Incidental committees need only disclose expenditures made to support or oppose a campaign or another political or incidental committee.

Incidental committees are not required to keep books of account open for inspection. Payments to incidental committees are not subject to the ban on contributions of over \$50,000 to a political committee in the 21 days before an election.

Other Provisions. The PDC may modify reporting requirements for incidental committees in cases of hardship. The PDC must adopt rules for the dissolution of incidental committees. The PDC must implement the act within existing funds.

**Appropriation:** None.

**Fiscal Note:** Available.

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

**Effective Date:** The bill takes effect on January 1, 2019.

**Staff Summary of Public Testimony on Original Bill:** *The committee recommended a different version of the bill than what was heard.* PRO: This is about bringing dark money into the light. We have excellent campaign finance laws in the state, but there are still some loopholes, and this closes a major one. The public has a right to know about the sources of money that influence our elections. This is a moderate approach that doesn't require disclosure of every donor, just the ones making large contributions. Donors have a right to know their money is going to political campaigns. Increased transparency creates informed voters, reduces possibility of corruption, and increases accountability. People are growing increasingly cynical about politics and feel that because of money they have no voice or role.

Nonprofits are used by many to funnel money into elections, and this bill will help improve democracy.

CON: Concerns were raised about the bill's potential application to every nonprofit group in the state. The PDC process is opaque, often arbitrary, and most nonprofits would not like to be sucked into that. Free speech is not a loophole. Private giving to charities is not "dark money." People don't want to be subject to harassment because their name was on a state website as giving to a nonprofit. The current problem exists because of sham organizations created to exploit the system. Enforcement has not been robust; the right solution is better enforcement of existing law. Disclosure of membership lists will chill legitimate speech on matters of public concern. This bill will impact small local associations with part-time staff who don't typically engage in the political process, but do so under extraordinary circumstances. Clarification is needed on reporting of money not spent on the political process, the ban on large donations within 21 days of an election, and reporting thresholds should be raised.

OTHER: This bill will have the unintended consequence of encouraging the opportunity to file more complaints against more organizations and see what's going on around the state. If the goal is to improve campaign finance laws, one way might be to streamline the laws that exist now to make it easier for smaller organizations to comply.

**Persons Testifying:** PRO: Senator Andy Billig, Prime Sponsor; Kathy Sakahara, League of Women Voters; Cindy Black, Fix Democracy First.

CON: Paul Guppy, Washington Policy Center; Elisabeth Smith, ACLU of Washington; Jan Himebaugh, Building Industry Association of Washington; Robert Battles, Association of Washington Business.

OTHER: Glen Morgan, citizen.

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

**EFFECT OF HOUSE AMENDMENT(S):** Incidental Committees. Nonprofit organizations that only remit nonreportable payments in aggregated form are excluded from the definition of incidental committee.

Reporting Requirements. The campaign contribution and expenditure threshold that triggers reporting requirements for incidental committees is raised to \$25,000.

Aggregated payments are not reportable as a top ten payment, but any qualifying individual payment that is included in aggregated form is reportable. The separate reporting requirement for single source payments over \$100,000 that are not in an incidental committee's top ten payments received is removed.

Funds received from private foundations that are used for non-campaign-related purposes are not included when determining the top ten payments to an incidental committee.

Commentary or analysis by an incidental committee that does not specifically advocate for or against a ballot measure is not considered a contribution or a reportable expenditure.