

HOUSE BILL REPORT

SSB 6152

As Reported by House Committee On:
State Government & Tribal Relations

Title: An act relating to certification concerning the level of foreign national ownership and control of entities that participate in Washington state elections.

Brief Description: Concerning the level of foreign national ownership and control of entities that participate in Washington state elections.

Sponsors: Senate Committee on State Government, Tribal Relations & Elections (originally sponsored by Senators Salomon, Billig, Hunt, Nguyen, McCoy, Lovelett, Kuderer, Rolfes, Lias, Van De Wege, Das and Wilson, C.).

Brief History:

Committee Activity:

State Government & Tribal Relations: 2/21/20, 2/27/20 [DPA].

Brief Summary of Substitute Bill
(As Amended by Committee)

- Prohibits foreign nationals from making campaign contributions and expenditures and from sponsoring electioneering communications and political advertising.
- Requires candidates and political committees to include in their campaign contribution and expenditure reports a statement that they have received a certification from each contributor that foreign nationals were not involved in any way in the financing or decision-making regarding the contribution.
- Requires sponsors of electioneering communications, political advertising, and independent expenditures to certify in their reports that foreign nationals were not involved in any way in the financing or decision-making regarding the communication, advertising, or expenditure.

HOUSE COMMITTEE ON STATE GOVERNMENT & TRIBAL RELATIONS

Majority Report: Do pass as amended. Signed by 6 members: Representatives Gregerson, Chair; Pellicciotti, Vice Chair; Appleton, Dolan, Hudgins and Smith.

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.

Minority Report: Do not pass. Signed by 3 members: Representatives Walsh, Ranking Minority Member; Goehner, Assistant Ranking Minority Member; Mosbrucker.

Staff: Jason Zolle (786-7124).

Background:

State Campaign Finance Regulation in General.

In 1972 the people passed Initiative Measure No. 276 to create a framework for public disclosure in several aspects of state government, including the financing of political campaigns. This law created the Public Disclosure Commission (PDC) to oversee newly enacted campaign finance laws. Current law requires candidates and political committees to disclose certain information about the contributions they receive and expenditures they make.

For purposes of these requirements, a political committee is an individual (except for a candidate) or group of people, however organized, that expects to receive contributions or make expenditures in support of or in opposition to a candidate or ballot proposition.

Contributions and Expenditure Reports.

Political committees, candidates, and incidental committees must file periodic reports with the PDC that detail all contributions received and expenditures made as a committee. Required information includes the name and address of each person who has made one or more contributions during the reporting period, subject to exceptions for small pledges or contributions and certain payments to incidental committees. The reports must also include information about expenditures of more than \$50.

Special Reports.

The 21 days preceding a general election and the days leading up to a primary election after the last contributions and expenditures report is due are considered special reporting periods. During these periods, a candidate or political committee must file a special report with the PDC when it receives a contribution or aggregate of contributions from a single person or entity that totals \$1,000 or more. A special report must also be filed when a political committee makes a contribution or aggregate of contributions to a single entity that totals \$1,000 or more.

Out-of-State Political Committees.

Political committees based outside of Washington that are organized for the purpose of supporting or opposing campaigns in another state are required to file a statement with the PDC when they make an expenditure supporting or opposing a Washington candidate or political committee. That statement must include:

- the name and address of each Washington resident or corporation that has contributed more than \$25 in the calendar year; and
- the name, address, and employer of each person or corporation outside of Washington that has contributed more than \$2,680 in the calendar year.

Independent Expenditure Reports.

When a person or entity makes an independent expenditure over \$50 in support of or in opposition to a candidate or ballot proposition, and that expenditure does not need to be

reported in a contributions and expenditures report discussed above, the person or entity must file a report with the PDC detailing the expenditure.

Political Advertising Reports.

Sponsors of advertising that appeals for votes or support in an election campaign and has a fair market value or actual cost of \$1,000 or more must file a special report with the PDC within 24 hours after the advertisement is first presented to the public (or on the next business day). The report must include information about the sponsor and the expenditure.

Electioneering Communication Reports.

An electioneering communication is a communication made within the 60 days before an election that clearly identifies a candidate for office and has a fair market value or cost of \$1,000 or more. Payments for, or promises to pay for, electioneering communications must be reported to the PDC within 24 hours after the communication is broadcast or published (or on the next business day).

Federal Restrictions on Campaign Contributions from Foreign Nationals.

Under federal law, foreign nationals are prohibited from directly or indirectly contributing or donating money in connection with a federal, state, or local election or to a committee of a political party. It is unlawful for a person to solicit, accept, or receive such a contribution or donation. Foreign nationals also may not make an expenditure, independent expenditure, or disbursement for an electioneering communication.

"Foreign national" is defined as:

- an individual who is not a citizen or lawful permanent resident of the United States (U.S.);
- a government or political party of a foreign government; and
- any entity or combination of persons organized under the laws of, or having its principal place of business in, a foreign country.

In *Bluman v. Federal Election Commission* (2011), a three-judge panel of the U.S. District Court for the District of Columbia held that these restrictions do not violate the U.S. Constitution. The court stated that "foreign citizens do not have a constitutional right to participate in, and thus may be excluded from, activities of democratic self-government." The Supreme Court summarily affirmed the District Court's decision without writing an opinion, which means that the Supreme Court agreed with the lower court's result dismissing the lawsuit but expressed no opinion about the reasoning by which the decision was reached.

In *United States v. Singh* (2019), the U.S. Court of Appeals for the Ninth Circuit (which has jurisdiction over Washington) concluded that it was bound by the result in the *Bluman* case.

Summary of Amended Bill:

Foreign nationals are prohibited from making campaign contributions and expenditures and from sponsoring electioneering communications and political advertising.

Each contributions and expenditures report filed with the PDC by a candidate or political committee must include a statement that the candidate or committee has received a certification from each contributor that foreign nationals were not involved in any way in the financing or decision-making regarding the contribution. Candidates and committees must retain these certifications for at least five years after the applicable election. Copies of the certifications must be provided to the PDC upon request.

Sponsors of electioneering communications, political advertising, and independent expenditures must certify in their PDC reports that foreign nationals were not involved in any way in the financing or decision-making regarding the communication, advertising, or expenditure.

"Foreign national" is defined as:

- an individual who is not a citizen or lawful permanent resident of the U.S.;
- a government or political party of a foreign government; and
- any entity or combination of persons organized under the laws of, or having its principal place of business in, a foreign country.

Amended Bill Compared to Substitute Bill:

The amended bill prohibits contributions, expenditures, political advertising, and electioneering communications that are made or sponsored by foreign nationals, financed in any part by foreign nationals, or that involve foreign nationals making decisions in any way.

The certification is changed to state that no election activity is financed in any part by a foreign national and that foreign nationals are not involved in making decisions regarding the election activity in any way. The certification requirements are expanded to include special reports, political advertising reports, and electioneering communication reports.

Rather than having candidates and committees provide the contributors' certifications to the PDC, the amended bill requires candidates and committees to state in their PDC reports that they have received certifications from contributors, and to maintain those certifications for five years subject to PDC inspection.

Language requiring certifications for contributions to incidental committees is removed (incidental committees do not receive contributions as that term is defined in the chapter).

Appropriation: None.

Fiscal Note: Available.

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

Staff Summary of Public Testimony:

(In support) Foreign nationals are prohibited from contributing to a campaign under federal law, and that should translate to other entities too. If an entity is majority foreign owned, it should not be able to contribute either. This is a loophole in state law and federal law. Although there are federal prohibitions, there is no state level enforcement mechanism or certification requirement. This bill was born of the *Citizens United* decision, which said that the government can't stop a U.S. citizen who wants to spend its money through a corporation. The corollary of that is that a foreign national should not be able to filter money through a corporation. This bill was carefully drafted to avoid legal challenges. It is largely consistent with federal law that already exists.

(Opposed) None.

Persons Testifying: Senator Salomon, prime sponsor; Representative Pellicciotti; and Kathy Sakahara, League of Women Voters of Washington.

Persons Signed In To Testify But Not Testifying: None.