

HOUSE BILL REPORT

ESSB 5207

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

Title: An act relating to campaign contributions by controlled entities.

Brief Description: Concerning campaign contributions by controlled entities.

Sponsors: Senate Committee on State Government & Elections (originally sponsored by Senators Billig, Valdez, Hunt, Kuderer and Nguyen).

Brief History:

Committee Activity:

State Government & Tribal Relations: 3/14/23, 3/22/23 [DPA].

Brief Summary of Engrossed Substitute Bill
(As Amended By Committee)

- Specifies that for purposes of political campaign contribution limits, contributions made by an entity are aggregated with the contributions made by each individual who owns or holds a majority interest in the entity.
- Specifies that the contributions of different entities are aggregated for purposes of campaign contribution limits when one entity is established, financed, maintained, or controlled by the other, or when the same individual owns or holds a majority interest in each entity.
- Provides that a limited liability company may make campaign contributions only if it has been in existence for at least a year and has filed a declaration that the company is a legitimate business and was not created for the sole purpose of making campaign contributions.

HOUSE COMMITTEE ON STATE GOVERNMENT & TRIBAL RELATIONS

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

Majority Report: Do pass as amended. Signed by 4 members: Representatives Ramos, Chair; Stearns, Vice Chair; Gregerson and Mena.

Minority Report: Do not pass. Signed by 3 members: Representatives Abbarno, Ranking Minority Member; Christian, Assistant Ranking Minority Member; Low.

Staff: Jason Zolle (786-7124).

Background:

State law limits the amount of money that individuals and groups, including corporations and political committees, may contribute to a candidate who is running for office. Those limits are set in statute and adjusted for inflation by the Public Disclosure Commission (PDC). Currently, the limits are set at \$2,000 per election for statewide executive, judicial, and port commissioner candidates, and \$1,000 per election for state legislative and local office candidates.

Contributions by one person or entity, including a political committee, may be aggregated for purposes of the campaign contribution limit in certain circumstances:

- A contribution by a political committee is attributed to a person or entity if the funds have all been contributed by one person or entity and that person or entity exercises exclusive control over the distribution of the funds.
- Two or more entities are treated as a single entity if one of them is a subsidiary, branch, or department of the other.
- Contributions made by a person or entity, including a political committee, that are financed, maintained, or controlled by a trade association, labor union, or collective bargaining organization, are attributed to that organization.

The PDC has enacted rules to clarify when two entities are treated as a single entity and share a contribution limit. Examples of affiliated entities include: a corporation and its subsidiary; a national union and a state body of the union; and a trade association and a local unit of the association. In addition, two or more entities are treated as a single entity if one is established, financed, maintained, or controlled by the other. The PDC uses a multifactor test to determine this, which includes consideration of the ownership of voting stock, the authority to participate in governance, overlapping membership, and the provision or funding of goods and services for less than full value.

Summary of Amended Bill:

Additional provisions are created to aggregate certain contributions for purposes of campaign contribution limits:

- The contribution of any entity is aggregated with the contributions made by each individual who owns or holds a majority interest in the entity.

- Two or more entities are treated as a single entity and share a contribution limit if one is established, financed, maintained, or controlled by the other.
- Two or more entities are treated as a single entity and share a contribution limit if the same individual owns or holds a majority interest in each entity.

Any limited liability company (LLC) that has registered with the Secretary of State, and is not classified as a corporation under federal tax codes, may make campaign contributions only if the company has: (1) been in existence for at least a year; and (2) electronically filed a declaration with the PDC stating that the LLC is a legitimate business with a legitimate business interest, and it was not created for the sole purpose of making contributions. The PDC must develop a method for filing this declaration and it must be made public on its website.

Amended Bill Compared to Engrossed Substitute Bill:

The amended bill specifies that two entities share a contribution limit if one of the entities, rather than each entity, is established, financed, maintained, or controlled by the other. It also provides that two entities share a contribution limit if the same individual owns or holds a majority interest in each.

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) Washington has one of the best campaign finance systems in the country, in large part thanks to two citizen-led initiatives and a number of bills throughout the years to tweak and improve them. This bill is a small but meaningful way to make the system better. A contribution limit is the cornerstone to a campaign finance system, but there is a loophole that allows some to contribute many times more than limits. If a person gives for themselves and for other organizations they own, they are essentially getting around the personal limit. There are currently some aggregation and attribution provisions, but nothing that looks to the actual owner. There is not yet evidence that people are creating shell LLCs to get around the recent bills to increase disclosures, but there was speculation at the time that people would start and this bill prevents that from happening. Currently nothing is preventing companies from being formed for the purpose of evading contribution limits and pushing dark money into campaigns.

(Opposed) None.

(Other) It might make more sense if the certifications regarding LLCs were filed with the Secretary of State rather than the PDC as part of the registration process; otherwise the PDC will have to create a new system to manage these certifications. There are questions about how this bill would be implemented by treasurers, who currently do not look into who controls an entity when they receive a contribution. It is unworkable to require treasurers to independently research the governance structure of a donor. It should not be their responsibility to do so either.

Persons Testifying: (In support) Senator Andy Billig, prime sponsor; Cindy Black, Fix Democracy First; and Cindy Madigan, League of Women Voters of Washington.

(Other) Conner Edwards; and Sean Flynn, Public Disclosure Commission.

Persons Signed In To Testify But Not Testifying: None.