

HOUSE BILL REPORT

HB 2938

As Reported by House Committee On:
State Government, Elections & Information Technology

Title: An act relating to campaign finance law enforcement and reporting.

Brief Description: Concerning campaign finance law enforcement and reporting.

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

Brief History:

Committee Activity:

State Government, Elections & Information Technology: 1/31/18, 2/2/18 [DPS].

Brief Summary of Substitute Bill

- Includes legislative intent to have citizen's complaints supplement the authority of the Public Disclosure Commission (PDC).
- Includes a \$500,000 General Fund appropriation to the PDC for the 2017-19 biennium.

HOUSE COMMITTEE ON STATE GOVERNMENT, ELECTIONS & INFORMATION TECHNOLOGY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 6 members: Representatives Hudgins, Chair; Dolan, Vice Chair; Kraft, Assistant Ranking Minority Member; Appleton, Gregerson and Pellicciotti.

Minority Report: Without recommendation. Signed by 2 members: Representatives McDonald, Ranking Minority Member; Irwin.

Staff: Sean Flynn (786-7124).

Background:

Campaign Finance and Disclosure Law.

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.

Washington's campaign finance and disclosure law was originally enacted by voter initiative in 1972.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 requires 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.

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 turn over an investigation to the AG.

The PDC may delegate authority to its Executive Director (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 to 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 Substitute Bill:

The Legislature intends for the PDC to retain its authority to enforce the state campaign finance and disclosure laws, and for the AG and citizen's action process to supplement such authority. A \$500,000 appropriation is made to the PDC for the purpose of administering the state campaign finance and disclosure law.

Substitute Bill Compared to Original Bill:

The substitute bill removes all substantive provisions and retains the intent language and appropriation.

Appropriation: The sum of \$500,000 is made from the General Fund to the Public Disclosure Commission.

Fiscal Note: Available.

Effective Date of Substitute 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) The state campaign finance laws are almost impossible to follow and that creates barriers to transparency. This bill is a good first step to initiate reform and redeem the purpose of the original initiative.

The citizen's action process was not originally intended to circumvent the role of the PDC, but to resolve issues and make information available in an efficient manner. The PDC was created as an independent authority, outside of partisan politics. The citizen's action process was intended to be a check on cases where the PDC is not fulfilling its duties. The current law allows a person to file a citizen's action even when the PDC is investigating the same issue, and may be seeking an agreed resolution. This process undermines the PDC's efforts to resolve technical violations or otherwise expedite remedies. The law currently encourages more litigation and increases costs for the public, which frustrates the work of the PDC to provide more transparency.

(Opposed) The citizen's action process provides checks and balances for the public to protect important government functions in the highly politicized area of campaign financing. Under federal law, this kind of procedure provides oversight of various federal agency functions. However, this bill goes beyond the good idea to limit actions for technical violations, and further restricts a citizen's ability to bring enforcement actions on important issues. Avoiding prosecution of remediable violations is a good idea, but should not include determining whether to enforce a violation due to investigation costs. Providing a right of first refusal for the PDC to consider a violation is good, but the bar is set too low and prohibits a citizen's action each time the PDC simply begins an investigation. Such restriction is against the original intent of the people's initiative.

Restricting citizen's rights goes against the four decades of the public's intent in the initiative as well as long-held democratic principles. The State Auditor, elected to a partisan office, should not be able to audit political opponents.

The campaign finance and disclosure law is broken, yet no one really took interest until it was weaponized for political purposes. It is not helpful to reach back to wipe out violations and penalties that have already been imposed.

(Other) The State Auditor is supportive of legislative direction to audit agency functions. However, the funding source for this kind of performance audit and its function are unclear.

Persons Testifying: (In support) Representative Hudgins, prime sponsor; Bailey Stober and Lori Sotelo, King County Democratic Party; and Anne Levinson, Public Disclosure Commission.

(Opposed) Michael Webb, Office of the Attorney General; Arthur West, Washington League for Increased Transparency and Ethics; Maxford Nelsen, Freedom Foundation; Glen Morgan; and Jan Himebaugh, Building Industry Association of Washington.

(Other) Scott Nelson, Office of the State Auditor.

Persons Signed In To Testify But Not Testifying: None.