
State Government & Tribal Relations Committee

HB 1195

Brief Description: Concerning the efficient administration of campaign finance and public disclosure reporting and enforcement.

Sponsors: Representatives Hudgins, Walsh, Dolan, Wylie and Pollet; by request of Public Disclosure Commission.

Brief Summary of Bill

- Modifies provisions relating to Public Disclosure Commission commissioners' term length and ability to engage in lobbying activity.
- Modifies provisions relating the financial affairs statements, including requests for modifications.
- Modifies the definitions of commercial advertiser and independent expenditure.
- Precludes a citizen's action claim where the Attorney General publishes a decision as to whether it will commence legal action on the underlying complaint.

Hearing Date: 1/22/19

Staff: Desiree Omli (786-7105).

Background:

The Public Disclosure Commission.

Washington's campaign finance and disclosure law was originally enacted by voter initiative in 1972.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, candidates, and executive state officers.

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

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impose civil penalties for violations. The PDC is empowered to provide access to information about the financing of political campaigns, lobbyist expenditure, and the financial affairs of public officials and candidates.

The PDC is composed of five commissioners, appointed for single five-year terms by the Governor with consent of the Senate. During their terms, commissioners are prohibited from holding or campaigning for office, serving as an officer of any political party or political committee, permitting his or her name to be used in support or opposition to a candidate or proposition, soliciting or making campaign contributions, participating in election campaigns, or lobbying, except on matters directly related to campaign finance law.

Reporting Requirements.

Political committees and candidates. All political committees and candidates are required to file a statement of organization with the PDC. A political committee and candidate must also periodically report to the PDC on their contribution and expenditure activities for each election in which a candidate, political committee, or incidental committee is participating. 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, or on the 10th day one month after the election, and monthly if the committee spends or receives more than \$200.

Incidental committees. An incidental committee is a nonprofit organization not otherwise reporting as a political committee, that makes political contributions or expenditures in political campaigns. An incidental committee must file a statement of organization with the PDC within two weeks after expecting to make *contributions or expenditures* of at least \$25,000 in a calendar year to any election campaign or political committee. Incidental committees must also regularly disclose with the PDC its top 10 largest of sources payments received of at least \$10,000 in aggregate from a single source during the calendar year, as well as any political expenditures that exceed \$200 in the period since its last report.

Independent Expenditures. Independent expenditures, which are expenditures made independently of a candidate or that candidate's authorized committee, for political advertising are also separately reportable to the PDC if the aggregate value of expenditures from the same person is at least one-half the contribution limit from an individual in that campaign.

Personal Financial Affairs Reporting. Every elected official and executive state officer must file a statement of financial affairs, known as an F-1 statement, for the preceding calendar year with the PDC between January 1 and April 15. New appointees or elected officials must file the F-1 statement within two weeks of the appointment or of taking office. The F-1 statement requires disclosure of financial and personal information relating to the filer and the filer's immediate family.

Required items for disclosure include certain information on the filer and filer's immediate family members' including, but not limited to:

- occupation, name of employer, and business address;
- bank accounts, savings accounts, certain insurance policies and other intangible personal property holdings, and real estate property holdings;
- debt to each creditor, to whom \$2,000 or more was owed;
- every public or private office, directorship, and position held as a trustee; and

- any gifts of food or beverage in excess of \$50.

Modification of Reporting Requirements. The PDC may suspend or modify any of the reporting requirements upon request where the majority of the commissioners find that literal application causes a manifestly unreasonable hardship in a particular case and the suspension or modification will not frustrate the purpose of the PDC provisions. Initial requests for modifications may not be heard in a brief adjudicative proceeding. However, renewals for reporting modifications may be heard in a brief adjudicative proceeding, unless the initial request was granted more than three years prior or if the applicant is holding a different position.

Commercial Advertiser and Books of Accounts.

Commercial advertisers sell the service of communicating messages to the public through a variety of media. Any commercial advertiser that accepts or provides political advertising or electioneering communications during the election campaign must maintain books of account, which must specify:

- sponsor names and addresses;
- the exact nature and extent of services rendered; and
- the total cost and manner of payment for services.

This information must be delivered to the PDC on request, and be open for public inspection during regular business hours during the campaign, and for at least three years after the election.

Enforcement Authority.

The PDC Authority. The PDC may initiate its own investigations of violations of campaign finance and disclosure statutes or investigate complaints filed by any person. The PDC may conduct audits and field investigations as it deems appropriate, and issue subpoenas.

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

If the PDC initiates an investigation, the initial hearing must occur within 90 days of the complaint being filed.

Attorney General Authority. 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. A person may file a citizen's action by filing a complaint with the PDC. If the PDC takes certain action to dismiss or resolve a complaint, initiate an investigation, or refer the complaint to the AG, within 90 days of receiving the complaint, then the person may not go forward in the process. 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 that he or she will file a citizen's action if the AG or the PDC does not commence action within 10. 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 received an acknowledgment of dissolution.

Penalties awarded in a citizen's action are transferred to the state, and the state reimburses a successful plaintiff for legal costs and attorney fees incurred.

Other.

With exceptions, the PDC reporting requirements do not apply to candidates, elected officials, and agencies in political subdivisions with fewer than 1,000 registered voters as of the date of the most recent general election in the jurisdiction.

Each candidate and each political committee must designate and file with the commission and the appropriate county elections officer certain information regarding the depository for each county in which the campaign is conducted and the candidate's or political committee's accounts are maintained.

A person may not make a contribution of more than \$80, other than an in-kind contribution, except by a written instrument.

Summary of Bill:

The Public Disclosure Commission.

The term of a PDC commissioner may be extended until a successor is appointed, for up to 12 additional months. Commissioners may engage in lobbying activity that: is outside the state and not otherwise subject to the PDC's jurisdiction, does not create the appearance of a conflict of interest with the duties of the PDC, and does not involve any affiliation with the PDC.

Reporting Requirements.

Electronic reporting. Reports to the PDC must be filed electronically where the PDC has provided an electronic filing option unless an exception is made for a filer who lacks the technological ability to file electronically. Committees must provide the committee treasurer's electronic contact information to the commission, and any change to the electronic contact information within 10 days of the change.

Incidental committees. Incidental committees must only make or expect to make *expenditures* in political campaigns of at least \$25,000 in a calendar year to trigger reporting requirements. The bill clarifies that the regular reporting periods on the 21st day, 7th day, and one month post-election also applies to incidental committees. The information in reports that an incidental committee must disclose and certify as correct is narrowed to only information relating to the top 10 largest source of payments and the payment is in the amount of \$10,000 or greater, any payment of more than \$10,000 from any single person, and information relating to expenditures in excess of \$50.

Independent expenditure. An independent expenditure must be reported to the PDC for expenditures from the same source in the amount of \$1,000 or more.

Financial Affairs Reporting. Filers who leave office may file an F-1 statement for that calendar year within 60 days of leaving office. New filers who take office in December may file an F-1 for that year between January 1 and 15 of the following year.

The contents of an F-1 is modified. Information for every public or private office, directorship, and position held as a trustee does not need to be reported if service on a governmental board, commission, association, or functional equivalent is part of an elected official or executive state officer's official duties.

For disclosure of real property, judges, sheriffs, prosecutors, and their immediate family members may substitute the city or town and type of residence for the full address of any residences required to be reported on the F-1.

The PDC may suspend or modify reporting requirements for the length of an elected official's term of office or, in the case of an executive state officer, for up to three years. If a material change in the applicant's circumstance or relevant information occurs, the request for modification must be made at least one month prior to the next filing deadline.

Modification of Reporting Requirements. A request for modification may be granted by a single presiding officer, subject to full commission review. All requests for reporting modifications may be heard in a brief adjudicative proceeding. Information in requests for modification is exempt from public disclosure requirements to the extent it presents a concern to any individual. Modification requests, if granted, may be applied retroactively to previous filings and are also exempt from public disclosure.

Commercial Advertiser and Books of Accounts.

The definition of a commercial advertiser is expanded to include entities that sell advertisement or produce material for broadcast to the public through brochures, fliers, paid internet or digital communications, or any other means of mass communications used for appeals for votes or for financial or other support in any election campaign. A commercial advertiser's books of account must be open for inspection for five years after the election to which the books refer.

Enforcement Authority.

The PDC's Authority. The process for the PDC's subpoena authority is specified. Before the issuance of a subpoena, the PDC may apply for an obtain a superior court order approving and authorizing a subpoena. The application for a subpoena must specify the documents, record, evidence, or testimony; and include a declaration under oath that an investigation is being conducted for a lawful purpose within the PDC's authority. A subpoena may be sought and approved without notice to any person.

The Attorney General's Authority and Citizen Action. The AGO may also bring a civil action upon receipt of a notice of intent to commence a citizen's action. A citizen's action claim is precluded if, within 45 days of receiving a referral of a complaint, the AG publishes a decision as to whether it will commence legal action on the underlying complaint.

Any costs awarded by the court to a person who successfully brings a citizen's action must be paid by the defendant. Receipts from sanctions, other remedies, or judgments paid to the state as

part of campaign finance enforcement actions must be deposited into the Public Disclosure Transparency Account (Account). Any fees and costs awarded pursuant to a citizen's action may not be deposited into the Account or reimbursed from the Account or otherwise by the state. Payment and collection of any such fees and costs are the responsibility of the person commencing the action and the defendant.

Other.

The threshold is modified for when the PDC reporting requirements do not apply to candidates, elected officials, and agencies, to those in political subdivisions with fewer than 2,000 registered voters.

Each candidate and each political committee must designate and file information regarding depositories with only the commission.

A person may make a contribution of more than \$100 without doing so by written instrument.

Appropriation: None.

Fiscal Note: Preliminary fiscal note available.

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