

HOUSE BILL REPORT

HB 1919

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

Title: An act relating to recommendations by the public disclosure commission.

Brief Description: Concerning recommendations by the public disclosure commission.

Sponsors: Representatives Valdez, Thai, Ramel and Pollet; by request of Public Disclosure Commission.

Brief History:

Committee Activity:

State Government & Tribal Relations: 1/19/22, 1/31/22 [DPS].

Brief Summary of Substitute Bill

- Modifies the duties of the Public Disclosure Commission.
- Adjusts several reporting schedules and rules pertaining to the filing of statements of organization, contribution and expenditure reports, and special reports for political advertising and last-minute campaign contributions.
- Modifies the information required in financial affairs statements (F-1 statement) and expands the entities required to file a F-1 statement.
- Requires new disclaimers and disclosures for certain political advertising.

HOUSE COMMITTEE ON STATE GOVERNMENT & TRIBAL RELATIONS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 7 members: Representatives Valdez, Chair; Lekanoff, Vice Chair; Volz, Ranking Minority Member; Walsh, Assistant Ranking Minority Member; Dolan, Graham and Gregerson.

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.

Staff: Desiree Omli (786-7105).

Background:

The Public Disclosure Commission.

Washington's campaign finance and disclosure law was first enacted by voter initiative in 1972. The law regulates campaign contributions and certain election-related expenditures and requires the disclosure of campaign financing, lobbyist activity, and the financial affairs of elected officials, candidates, and executive state officers.

The Public Disclosure Commission (PDC) enforces campaign finance and disclosure laws and has the authority to develop procedures, adopt rules, investigate complaints, and impose civil penalties for violations. The PDC is empowered to provide access to information about the financing of political campaigns, lobbyist expenditures, 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.

Several specific duties of the PDC include:

- preparing and publishing a manual setting forth recommended uniform methods of bookkeeping and reporting for use by people required to file campaign finance reports;
- conducting audits and field investigations to provide a statistically valid finding regarding the degree of compliance with filing requirements;
- publishing an annual report to the Governor about the effectiveness of campaign finance and disclosure laws and the enforcement of these laws by other law enforcement authorities; and
- adopting rules around maintaining and disclosing reports required to be filed with a county auditor or elections official.

Reporting Requirements.

There are various reporting requirements specified in campaign finance laws. Examples include the reporting requirements below. The PDC may suspend or modify any reporting requirements if it finds that literal application works a manifestly unreasonable hardship in a particular case.

Statements of organization. A political committee organized within the last three weeks prior to the election and an incidental committee that meets, within the last three weeks prior to the election, the statutory requirements to file a statement of organization, must do so within three business days or, for a political committee, when it first has the expectation of receiving contributions or making expenditures.

Reporting of Contributions or Expenditures. Political committees, incidental committees, candidates, and persons making independent expenditures must periodically report to the PDC their contribution and expenditure activities, as applicable, for each election. An

incidental committee is a nonprofit organization not otherwise reporting as a political committee that makes political contributions or expenditures in political campaigns. An independent expenditure is any expenditure made in support of or in opposition to any candidate or ballot proposition that is not otherwise required to be reported to the PDC.

Reporting of contributions or expenditures by political committees, incidental committees, candidates and persons who make an independent expenditure must occur at various intervals. Common to the reporting requirements for all these committees or individuals is the requirement to report contributions or expenditures to the PDC 21 days and seven days before an election, which shall include all contributions and expenditures as of the end of the business day before the date of the report.

During the 10 days immediately before an election that a continuing political committee, political committee, or candidate received any contributions or made any expenditures, the treasurer of the committee must ensure the books of account are current within one business day. The books of account must be open for public inspection during business hours on any day from the tenth business day before an election through the day before the election.

Political advertising. The sponsor of a political advertisement must file a special report with the PDC within 24 hours of, or on the first working day after, the date the advertisement is first presented to the public if, among other things, the advertisement is presented to the public within 21 days of an election.

Contributions during a special reporting period. Treasurers must file with the PDC a special report when a contribution or aggregate contributions total more than \$1,000 and is from a single entity and received during the special reporting period. A political committee must file a special report when it makes a contribution or aggregate of contributions to a single entity totaling \$1,000 or more during a special reporting period. A "special reporting period" means:

- the period beginning on the day after the last report of expenditures and contributions is required to be filed before a primary and ending on the day before the primary; and
- the period beginning 21 days before a general election.

A special report required for these contributions must be filed within 48 hours of the time, or on the first working day after, the contribution or qualifying aggregate contribution is received.

Political Advertisements.

Record keeping. Each commercial advertiser who accepted or provided political advertising or electioneering communications during the election must maintain current books of account and related materials specifying certain information such as the names and addresses of persons from who it accepted the advertising or electioneering communication, the nature and extent of services rendered, and the total cost and manner of payment for the services. A commercial advertiser is a person that sells the service of communicating

messages or producing material for broadcast or distribution to the general public used for the purpose of appealing, directly or indirectly, for votes or for financial or other support in any election campaign.

Political advertisement disclaimers. Political advertisements must include certain disclaimers. Political advertisements on the radio or television must include the sponsor's name, and written ads must include the sponsor's name and address. It is illegal for the sponsor to use an assumed name. Additional disclaimer requirements apply when the advertisement is an independent expenditure or an electioneering communication sponsored by a person or entity other than a political party: they must include the statement "No candidate authorized this advertisement. It is paid for by [the sponsor's name and address]." Finally, if the sponsor is a political committee, the advertisement must include a statement disclosing the committee's top five contributors and the top three contributors to any of the top five contributors that are also political committees. Detailed requirements for visual and audio presentation are provided.

Contribution Limits.

Pre-election limits. A person may not make, and a candidate or political committee may not accept from any one person, reportable contributions in the aggregate exceeding \$50,000 for any campaign for statewide office or exceeding \$5,000 for any other campaign within 21 days of a general election.

Exemptions. The campaign finance laws set various contribution limits. There are certain exemptions to the limits set. For example, an expenditure or contribution earmarked for the following is exempt: voter registration, absentee ballot information, get-out-the-vote campaigns, precinct judges or inspectors, sample ballots, or ballot counting, all within promotion of or political advertising for individual candidates.

Statements of Financial Affairs.

Every elected official and executive state officer must file with the PDC a statement of financial affairs, known as an F-1 statement, for the preceding calendar year between January 1 and April 15. "Executive state officer" is defined to include the director of many state agencies, councils, and commissions. It also includes every professional staff member of the Office of the Governor and of the Legislature.

The F-1 statement requires disclosure of financial and personal information relating to the filer and the filer's immediate family. Subject to certain monetary thresholds, required items for disclosure include:

- occupation, name of employer, and business address;
- bank accounts, savings accounts, and insurance policies that exceed \$20,000 and other intangible personal property holdings that exceed \$2,000;
- real estate property holdings, sales, or purchases in Washington in the amount of \$2,000 or more;
- debts with a value of \$2,000 or more;

- every public or private office, directorship, and position held as a trustee, with exceptions;
- persons for whom any legislation, rule, rate, or standards has been prepared for compensation, with exceptions;
- any entity from whom compensation has been received that totals \$2,000 or more;
- the name and address of each governmental entity, or business or commercial entity, with which the filer held any office, directorship, general partnership interest, or ownership interest of at least 10 percent, as well as:
 - the value of the compensation that the filer's entity received from any governmental entity in which the filer seeks or holds any office or position; and
 - the name of each governmental unit or business or commercial entity from which the filer's entity received compensation that totals \$10,000 or more, with exceptions; and
- acceptance of food and beverage in excess of \$50, and gifts.

Public Disclosure Transparency Account.

Penalties collected from all PDC enforcement actions and settlements are deposited in the Public Disclosure Transparency Account in the State Treasury. Public Disclosure Transparency Account funds may be spent only after they are appropriated by the Legislature, and they may not supplant General Fund appropriations to the PDC. Public Disclosure Transparency Account funds may be spent only for the PDC's duties under the Fair Campaign Practices Act.

Summary of Substitute Bill:

The Public Disclosure Commission-Duties.

Certain PDC duties are modified as follows:

1. The PDC may provide recommended uniform methods of record-keeping and reporting for people required to file campaign finance reports, without having to publish a manual.
2. The PDC's duty to conduct audits and field investigations to provide a statistically valid finding regarding the degree of compliance with filing requirements is qualified; such activity is required only as staff capacity permits without impacting the timeliness of addressing alleged violations.
3. The annual report to the Governor is no longer required to address the enforcement activities of other law enforcement authorities, but instead must discuss the work of the PDC.
4. The PDC is no longer required to adopt rules related to the keeping and disclosing of reports required to be filed with a county auditor or elections official.
5. A new duty is added requiring the PDC to maintain a website to facilitate public access to information in reports that are filed with the PDC and to send electronic communications to the PDC.

Reporting Requirements.

Various campaign reporting schedules or rules are adjusted, including more frequent reporting and expansions of the periods during which certain entities are subject to the reporting requirements, as detailed below.

Statements of organization. The period before an election during which a political committee or incidental committee is required to file a statement of organization within three business days is extended. A political committee organized within the period beginning the first day of the month before an election and an incidental committee that meets, within the period beginning the first day of the month before an election, the statutory requirements to file a statement of organization, must do so within three business days or, for a political committee, when it first has the expectation of receiving contributions or making expenditures.

Reporting of contributions or expenditures. The requirement that political committees, incidental committees, candidates, and persons who make a qualifying independent expenditure report contributions or expenditures 21 days and seven days before an election is modified to instead require reporting on the twenty-seventh day, twentieth day, and sixth day before the election. The report must include all contributions and expenditures received as of the end of two calendar days preceding the date of the report, rather than one business day before the date of the report.

The period during which books of accounts for a continuing political committee, political committee, or candidate are required to be current within one business day and the period during which the books of account must be open for public inspection are both extended and begin 14 days, rather than 10 days, immediately preceding an election, except that for committees which have been relieved from reporting obligations by rule adopted by the PDC, the period begins 18 days immediately preceding an election.

Political advertising. The period during which political advertising is subject to special reporting requirements is extended. A special report is required if, among other things, the advertisement is presented to the public within 60 days of an election, rather than within 21 days of an election.

Contributions during a special reporting period. The threshold amounts for reporting contributions close in time to an election are changed, and the reporting deadline is modified. Treasurers and political committees must file with the PDC a special report when a contribution or aggregate contribution received, or a contribution or aggregate contribution made, respectively, total more than the contribution for a state office other than legislative office, rather than \$1,000, during the period beginning on the last full month before an election and concluding the day before the election.

Ballot proposition reporting. Reporting requirements for expenditures related to a ballot proposition apply when the proposition is filed with the appropriate election officer or

initially circulated for signatures, whichever is first.

Political Advertisements.

Record keeping. New record keeping requirements are imposed on any person who purchases political advertising or electioneering communication from a commercial advertiser. Such person must disclose upon request from the commercial advertiser:

- that the purchase includes political advertising or electioneering communication;
- the name of the sponsor if different than the person making the purchase; and
- any other information that the commercial advertiser is required to maintain by law for inspection.

The failure to provide the above information upon request is a violation of the campaign finance laws. Such failure, however, does not relieve a commercial advertiser of any requirements under the campaign finance laws.

Political advertisement disclaimers. Two new disclaimers are created for election-related advertising. Advertising related to an election that directly or indirectly encourages people to vote for a person who is not a candidate for that office as of that date must include the disclaimer: "This ad encourages you to vote for a person who is not a candidate for this office as of [the date the advertisement is first presented to the public]." For purposes of this disclaimer, a person is a candidate as soon as he or she seeks nomination or election to public office, although after the filing period has passed, a person is a candidate only if he or she has filed a declaration of candidacy.

Advertising related to an election that directly or indirectly conveys that a person has an endorsement for an office in an election, when in truth the person does not have that endorsement for that office in that election, must include a disclaimer: "As of [the date the advertisement is first presented to the public], this person does not actually have the endorsement of [list individuals or entities] for this office in this election."

The bill specifies the size, color contrast, and placement of visual disclaimers, and audio disclaimers must be clearly spoken.

Contribution Limits.

Pre-election limits. The period during which a person is subject to pre-election contribution limits is extended to prohibit such activity within 30 days, rather than 21 days, of a general election.

Exemptions. An exemption is added to the contribution limits set by statute. A contribution to a political committee having the expectation of making expenditures in support of the recall of a state elected official, county elected official, port district commissioner, city council member, mayor, school board member, or public hospital district commissioner in certain districts is exempt if the political committee:

- does not coordinate with, solicit a contribution from, or accept a contribution from a

known or potential candidate for such office, any affiliated committee in support or opposition to any such candidate, or any person with the appointing authority for such office; and

- submits with any report of contributions and expenditures required to be filed under campaign finance laws a sworn declaration attesting that it has not and will not coordinate with, solicit a contribution from, or accept a contribution from a known or potential candidate for such office, any affiliated committee in support or opposition to any such candidate, or any person with the appointing authority for such office.

Statements of Financial Affairs.

The definition of "executive state officer" is expanded to include the members of the Washington State Charter School Commission and each director of a charter school board.

The information required in F-1 statements is rearranged into categories and expanded to include:

- government benefits and pension or retirement income, which must now be reported as income;
- real estate property outside of Washington;
- items accepted that the filer was authorized to accept by law; and
- any compensation received by the filer or immediate family members for out-of-state lobbying, and any compensation received by a business or commercial entity where the filer held any office, directorship, or ownership interest of at least 10 percent for in-state or out-of-state lobbying.

Monetary thresholds to trigger specific reporting requirements are increased.

A filer who holds any office, directorship, or ownership interest of at least 10 percent in a business or commercial entity is no longer required to report the name of each governmental unit or business or commercial entity which provided compensation of a certain amount to the filer's business or commercial entity. As such, the statutory declaration of a manifestly unreasonable hardship allowing the suspension or modification of this reporting requirement is removed.

The PDC must establish in detail by rule the information that must be reported in the F-1 statements for each category and must provide an electronic filing application.

Authority to report an amount of stock by number of shares instead of by market value is removed. Provisions attributing to the filer items of value given to a filer's immediate family member are removed.

Public Disclosure Transparency Account.

Money in the account may be used only for the development and implementation of projects designated by the PDC for the purpose of improving the usability, transparency, and accessibility of systems and information regarding campaign finance, lobbying activities,

and the financial affairs of public officials and candidates.

The PDC must approve and update the list of designated projects and include a description, purpose, and projected cost of each project as part of the PDC's regular review of its technology and related business projects strategic priorities plan.

Money in the account may not be used for ongoing operating or enforcement expenses. Money in the account may be spent without appropriation, and only as authorized by the PDC.

Substitute Bill Compared to Original Bill:

The period before an election during which books of accounts must be current within one business day, is reduced from 18 days to 14 days, except for a committee that has been relieved by rule from reporting obligations.

The period before an election during which books of accounts must be open to inspection is reduced from 18 days to 14 days, except for a committee that has been relieved by rule from reporting obligations. Saturdays, Sundays, and legal holidays are excluded from days which books of accounts must be open to inspection.

The weekly reporting of contributions, expenditures, and independent expenditures is removed. Instead reports are due on the twenty-seventh day, the twentieth day, and the sixth day before an election.

Reports of contributions and expenditures must be of contributions and expenditures received and made through two calendar days before the date of the report.

The threshold for when a special report of a contribution close in time to the election must be reported is changed from more than \$2,000 to more than the contribution limit to a candidate for state office other than legislative office.

Removes the requirement that requires a special report for a last-minute contribution to be filed within one day of receiving or making a qualifying contribution, and instead restores current law that requires such reporting to occur within 48 hours of a qualifying contribution.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date of Substitute Bill: The bill takes effect on January 2, 2023, except for section 11, relating to reporting requirements for persons who purchase political advertising

or electioneering communication from a commercial advertiser, which contains an emergency clause and takes effect on June 1, 2022.

Staff Summary of Public Testimony:

(In support) This policy modernizes outdated laws such as sending reports to county auditors when they are already available on the PDC website. It also recognizes the voting period for mail-in voting by updating the reporting deadlines ensure voters have timely access to campaign finance information based on when the ballots are available. Improvements are made to the filer system which enables candidates to compete equitably. In addition, information technology projects are complex and the expenditures from the account created in the bill are appropriately designated for system improvements as authorized by the PDC.

Small nonprofits were originally concerned with restrictions on sponsors of grassroots lobbying and this version does not include such restrictions which is helpful to these entities. Grassroots restrictions would have had a chilling effect on nonprofit participation in the policy process.

There is a loophole in the law that allows certain organizations including nonprofits to receive funds from large interest groups without having to disclose to the public who is paying for their campaign. This loophole is not in alignment with the intent of the campaign finance laws. The grassroots provisions should be included in this policy, or the committee should find another solution to address the loophole.

(Opposed) Getting volunteer treasurers is almost impossible and the extra burdens that are required in this policy in the final weeks of the campaign make it more difficult on campaigns. All donor information is already being reported on a weekly basis, but to require a weekly report of the spending is hard on campaigns with treasurers who are trying to keep up with the rules. These obstacles would make it so that a campaign could not exist without a paid treasurer.

(Other) During the last few years, there have been 70 pages of changes to campaign finance laws and 57 rule changes. This means additional hours are spent by treasurers learning new complex laws and tracking down donors for new information required in reporting requirements. Treasurers from both ends of the political spectrum oppose the change in reporting requirements which would require weekly C-4 reporting in the month leading up to an election. This significantly increases a treasurer's workload without significant benefit to the public. There's no evidence to suggest that the 21 and seven-day reporting requirements are insufficient. There is already a shortage of qualified treasurers; this bill will result in even fewer of them in the state.

Persons Testifying: (In support) Representative Javier Valdez, prime sponsor; Daniel Parkhurst and Anna Kelsey, Washington Nonprofits; Cindy Madigan, League of Women

Voters Washington; Bracken Killpack, Washington State Dental Association; and Peter Frey Lavalley, Fred Jarrett, and Sean Flynn, Public Disclosure Commission.

(Opposed) Sue Metcalf; and Tim Eyman.

(Other) Jason Bennett; Jason Michaud; and Conner Edwards.

Persons Signed In To Testify But Not Testifying: None.