
State Government & Tribal Relations Committee

ESSB 5284

Brief Description: Concerning campaign finance disclosure.

Sponsors: Senate Committee on State Government & Elections (originally sponsored by Senators Nguyen, Billig, Frame, Hunt, Keiser, Kuderer, Shewmake and Wilson, C.; by request of Public Disclosure Commission).

Brief Summary of Engrossed Substitute Bill

- Repeals the prohibition on contributions and expenditures by foreign nationals, and the corresponding certification requirements, and replaces it with a prohibition on contributions and expenditures by foreign-influenced corporations.
- Requires corporations that make contributions and expenditures to certify with the Public Disclosure Commission that they are not foreign-influenced corporations.
- Requires candidates and political and incidental committees to file an additional contributions and expenditures report 34 days before a general election.
- Increases the threshold for contributions to trigger a special report from \$1,000 to be tied to the contribution limit for state officers, which is currently \$2,000, and increases the special reporting period for large contributions from 21 days before an election to the beginning of the last full month before an election.
- Requires purchasers of political advertising or electioneering communications to disclose to commercial advertisers that the purchase includes political advertising or electioneering communications, upon

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request of the commercial advertiser.

- Requires political and incidental committees formed after the first day of the last full month before an election, rather than the last three weeks, to file statements of organization within three business days of organization.

Hearing Date: 3/10/23

Staff: Jason Zolle (786-7124).

Background:

Public Disclosure Commission.

The Public Disclosure Commission (PDC) was created in 1972 by Initiative 276. The PDC regulates many financial aspects of political campaigns, including contributions to candidates and expenditures related to ballot measures, as well as political advertisements and electioneering communications.

Political and Incidental Committees.

Among the entities that the PDC regulates are political committees, which are groups, except for candidates, that have the expectation of receiving contributions or making expenditures in support of or in opposition to any candidate or ballot measure. The PDC also regulates incidental committees, which are nonprofit organizations that incidentally make contributions or expenditures in excess of \$25,000 and receive at least \$10,000 from a single source.

Political committees and incidental committees must file a statement of organization with the PDC that includes names, addresses, and contact information for certain people associated with the committee. For political committees, this statement is generally due within two weeks after organization or two weeks after the committee first expects to receive contributions or make expenditures, whichever is earlier. For incidental committees, the statement is generally due within two weeks after the committee first expects to make expenditures above \$25,000, and the committee is required to disclose any payment received. However, if a political committee is formed, or an incidental committee is first required to file, beginning in the last three weeks before an election, they must file a statement of organization within three business days.

Contributions and Expenditure Reports.

Candidates and political committees must file reports with the PDC detailing all contributions received and expenditures made as of the end of one business day before the report is filed. Incidental committees must also file such reports on the day they file a statement of organization. These reports are due 21 and 7 days immediately preceding an election, and the tenth day of the first full month after an election. This timeline applies to primaries and general and special elections. Sponsors of independent expenditures must also file expenditure reports

on those dates. Reports also must be filed each month a candidate or committee spends at least \$200.

Special Reports.

Special reports are also required for many types of election-related activity in the days immediately preceding an election. For example, the sponsor of political advertising must file a special report to the PDC within a working day of the ad's first presentation to the public. Special reports are also required when a candidate receives, or a political committee makes, contributions of \$1,000 or more from or to a single entity in the 21 days preceding a general election.

Commercial Advertisers.

Any person or entity who sells the service of communicating messages or producing material for the general public is considered a commercial advertiser and is subject to regulation by the PDC. A commercial advertiser who has accepted or provided political advertising or electioneering communications during an election campaign must maintain current books of account that are open for public inspection. The documents must specify information about the sponsors of political advertising or electioneering communications, including their identity and the cost of the services. A commercial advertiser must provide this information to the PDC upon request.

Restrictions on Campaign Contributions from Foreign Nationals.

Federal Restrictions.

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;
- 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.

State Restrictions.

Foreign nationals are prohibited from making campaign contributions and expenditures, and from sponsoring electioneering communications and political advertising in Washington. State law defines "foreign nationals" identically to the definition in federal law.

All candidates and political committees engaging in Washington elections, including out-of-state committees, must obtain from any partnership, association, corporation, or other group that makes a contribution to the candidate or committee a certification that foreign nationals were not involved in any way in the financing or decision making regarding the contribution. Candidates and committees are required to retain these certifications for at least three years after the

applicable election, and copies of the certifications must be provided to the PDC upon request. 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 partnership, association, corporation, or other group that made a contribution.

Summary of Bill:

Repeal and Replace of the Prohibitions Surrounding Foreigners.

The prohibition on contributions and expenditures by foreign nationals, and the corresponding certification requirements, are repealed. Reports with the PDC no longer must state that foreign nationals did not finance or were not involved in decision-making related to contributions and expenditures, or that a candidate or committee has received certifications to that effect from certain contributors.

Instead, a prohibition on contributions and expenditures by foreign-influenced corporations is established. A "foreign-influenced corporation" is a corporation in which either:

- a single foreign owner holds, owns, controls, or otherwise has direct or indirect beneficial ownership of 1% or more of the total ownership interests in the corporation;
- two or more foreign owners hold, own, control, or otherwise have direct or indirect beneficial ownership of 5% or more of the total ownership interests in the corporation; or
- a foreign owner participates directly or indirectly in the corporation's decision-making regarding political activities in the United States.

Candidates may not solicit or receive contributions from foreign-influenced corporations. A committee that receives such a contribution may dedicate it for elections outside the state or other lawful purposes.

Corporations must certify with the PDC that it is not a foreign-influenced corporation within seven business days after making a contribution or expenditure. The statement must be signed by the corporation's chief executive officer under penalty of perjury.

Changes to Public Disclosure Commission Reports.

Statements of Organization.

A political or incidental committee must file its statement of organization with the PDC within three business days if it is organized or first required to file within the period beginning the first day of the last full month before an election, rather than the three weeks before the election.

Contributions and Expenditures Reports.

Contributions and expenditures reports for candidates and political committees are due 20 and 6 days preceding any election, rather than 21 and 7, and an additional report is due 34 days before a general election. Those reports must include all contributions received and expenditures made through the end of two calendar days before the filing, rather than one business day. The same date changes are made to independent expenditure reports.

Special Reports.

The threshold contribution amount to trigger the requirement to file a special report is increased to more than the contribution limit to a candidate for state office other than legislative office, which is currently \$2,000, rather than \$1,000 or more. The special reporting period is modified to the beginning of the last full month preceding an election, rather than the 21 days preceding an election. Special reports are no longer required for political advertising if the advertising is otherwise required to be reported in a contributions and expenditures report.

Commercial Advertisers.

Any person who purchases political advertising or electioneering communications from a commercial advertiser must disclose, upon request from the commercial advertiser, that the purchase includes political advertising or electioneering communications, as well as any other information that the commercial advertiser is required by the PDC to maintain. A sponsor's failure to provide this information is a violation punishable by the PDC, but it does not relieve the commercial advertiser of its own responsibilities under the law.

Other minor technical changes are made.

Appropriation: None.

Fiscal Note: Available. New fiscal note requested on March 10, 2023.

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