

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 445

BY STATE AFFAIRS COMMITTEE

AN ACT

1 RELATING TO THE STATE SUNSHINE LAW; AMENDING SECTION 67-6602, IDAHO CODE,
2 TO REVISE THE DEFINITION OF "NONBUSINESS ENTITY" AND TO MAKE TECHNICAL
3 CORRECTIONS; AMENDING SECTION 67-6606, IDAHO CODE, TO REVISE EXPEN-
4 DITURE REQUIREMENTS BY NONBUSINESS ENTITIES; AND AMENDING SECTION
5 67-6621, IDAHO CODE, TO REVISE CERTAIN DUTIES OF LOBBYISTS AND TO MAKE A
6 TECHNICAL CORRECTION.
7

8 Be It Enacted by the Legislature of the State of Idaho:

9 SECTION 1. That Section 67-6602, Idaho Code, be, and the same is hereby
10 amended to read as follows:

11 67-6602. DEFINITIONS. As used in this chapter, the following terms
12 have the following meanings:

13 (a) "Candidate" means an individual who has taken affirmative action to
14 seek nomination or election to public office. An individual shall be deemed
15 to have taken affirmative action to seek such nomination or election to pub-
16 lic office when he first:

17 (1) Receives contributions or makes expenditures or reserves space or
18 facilities with intent to promote his candidacy for office; or

19 (2) Announces publicly or files for office.

20 (3) For purposes of this chapter, an incumbent shall be presumed to be
21 a candidate in the subsequent election for his or her office. Contri-
22 butions received by an incumbent candidate shall not be in excess of the
23 prescribed contribution limits for the subsequent election by which the
24 incumbent candidate's name would first appear on the ballot. An incum-
25 bent shall no longer be a candidate for his or her office after the dead-
26 line for the filing of a declaration of candidacy to first appear on the
27 ballot for that office has expired.

28 (b) "Compensation" includes any advance, conveyance, forgiveness of
29 indebtedness, deposit, distribution, loan, payment, gift, pledge or trans-
30 fer of money or anything of value, and any contract, agreement, promise or
31 other obligation, whether or not legally enforceable, to do any of the fore-
32 going, for services rendered or to be rendered, but does not include reim-
33 bursement of expenses if such reimbursement does not exceed the amount ac-
34 tually expended for such expenses and is substantiated by an itemization of
35 such expenses.

36 (c) "Contribution" includes any advance, conveyance, forgiveness of
37 indebtedness, deposit, distribution, loan, payment, gift, pledge, sub-
38 scription or transfer of money or anything of value, and any contract, agree-
39 ment, promise or other obligation, whether or not legally enforceable, to
40 make a contribution, in support of or in opposition to any candidate, polit-
41 ical committee or measure. Such term also includes personal funds or other
42 property of a candidate or members of his household expended or transferred

1 to cover expenditures incurred in support of such candidate but does not
2 include personal funds used to pay the candidate filing fee. Such term also
3 includes the rendering of personal and professional services for less than
4 full consideration, but does not include ordinary home hospitality or the
5 rendering of "part-time" personal services of the sort commonly performed
6 by volunteer campaign workers or advisors or incidental expenses not in ex-
7 cess of twenty-five dollars (\$25.00) personally paid for by any volunteer
8 campaign worker. "Part-time" services, for the purposes of this definition,
9 means services in addition to regular full-time employment, or, in the case
10 of an unemployed person or persons engaged in part-time employment, services
11 rendered without compensation or reimbursement of expenses from any source
12 other than the candidate or political committee for whom such services are
13 rendered. For the purposes of this act, contributions, other than money or
14 its equivalent shall be deemed to have a money value equivalent to the fair
15 market value of the contribution.

16 (d) "Election" means any general, special or primary election.

17 (e) "Election campaign" means any campaign in support of or in opposi-
18 tion to a candidate for election to public office and any campaign in support
19 of, or in opposition to, a measure.

20 (f) (1) "Electioneering communication" means any communication broad-
21 cast by television or radio, printed in a newspaper or on a billboard,
22 directly mailed or delivered by hand to personal residences, or tele-
23 phone calls made to personal residences, or otherwise distributed that:

24 (i) Unambiguously refers to any candidate; and

25 (ii) Is broadcasted, printed, mailed, delivered, made or dis-
26 tributed within thirty (30) days before a primary election or
27 sixty (60) days before a general election; and

28 (iii) Is broadcasted to, printed in a newspaper, distributed to,
29 mailed to or delivered by hand to, telephone calls made to, or
30 otherwise distributed to an audience that includes members of the
31 electorate for such public office.

32 (2) "Electioneering communication" does not include:

33 (i) Any news articles, editorial endorsements, opinion or com-
34 mentary, writings, or letter to the editor printed in a newspaper,
35 magazine, or other periodical not owned or controlled by a candi-
36 date or political party;

37 (ii) Any editorial endorsements or opinions aired by a broad-
38 cast facility not owned or controlled by a candidate or political
39 party;

40 (iii) Any communication by persons made in the regular course and
41 scope of their business or any communication made by a membership
42 organization solely to members of such organization and their fam-
43 ilies;

44 (iv) Any communication which refers to any candidate only as part
45 of the popular name of a bill or statute;

46 (v) A communication which constitutes an expenditure or an inde-
47 dependent expenditure under this chapter.

48 (g) "Executive official" means:

49 (1) The governor, lieutenant governor, secretary of state, state con-
50 troller, state treasurer, attorney general, superintendent of public

1 instruction and any deputy or staff member of one (1) of those individ-
2 uals who, within the course and scope of his or her employment, is di-
3 rectly involved in major policy influencing decisions for the office;

4 (2) A state department or agency director, deputy director, division
5 administrator or bureau chief as established and enumerated in sections
6 67-2402 and 67-2406, Idaho Code;

7 (3) The membership and the executive or chief administrative officer
8 of any board or commission that is authorized to make rules or conduct
9 rulemaking activities pursuant to section 67-5201, Idaho Code;

10 (4) The membership and the executive or chief administrative officer
11 of any board or commission that governs any of the state departments
12 enumerated in section 67-2402, Idaho Code, not including public school
13 districts;

14 (5) The membership and the executive or chief administrative officer
15 of the Idaho public utilities commission, the Idaho industrial commis-
16 sion, and the Idaho state tax commission; and

17 (6) The members of the governing board of the state insurance fund, and
18 the members of the governing board and the executive or chief adminis-
19 trative officer of the Idaho housing and finance association, the Idaho
20 energy resources authority, and the Idaho state building authority.

21 (h) "Expenditure" includes any payment, contribution, subscription,
22 distribution, loan, advance, deposit, or gift of money or anything of value,
23 and includes a contract, promise, or agreement, whether or not legally en-
24 forceable, to make an expenditure. The term "expenditure" also includes a
25 promise to pay, a payment or a transfer of anything of value in exchange for
26 goods, services, property, facilities or anything of value for the purpose
27 of assisting, benefiting or honoring any public official or candidate, or
28 assisting in furthering or opposing any election campaign.

29 (i) "Independent expenditure" means any expenditure by a person for
30 a communication expressly advocating the election, passage or defeat of a
31 clearly identified candidate or measure that is not made with the coopera-
32 tion or with the prior consent of, or in consultation with, or at the consent
33 of, or in consultation with, or at the request of a suggestion of, a candidate
34 or any agent or authorized committee of the candidate or political committee
35 supporting or opposing a measure. As used in this subsection, "expressly ad-
36 vocating" means any communication containing a message advocating election,
37 passage or defeat including, but not limited to, the name of the candidate
38 or measure, or expression such as "vote for," "elect," "support," "cast your
39 ballot for," "vote against," "defeat" or "reject."

40 (j) "Lobby" and "lobbying" each means attempting through contacts
41 with, or causing others to make contact with, members of the legislature or
42 legislative committees or an executive official, to influence the approval,
43 modification or rejection of any legislation by the legislature of the state
44 of Idaho or any committee thereof or by the governor or to develop or main-
45 tain relationships with, promote goodwill with, or entertain members of the
46 legislature or executive officials. "Lobby" and "lobbying" shall also mean
47 communicating with an executive official for the purpose of influencing the
48 consideration, amendment, adoption or rejection of any rule or rulemaking as
49 defined in section 67-5201, Idaho Code, or any ratemaking decision, procure-
50 ment, contract, bid or bid process, financial services agreement, or bond

1 issue. Neither "lobby" nor "lobbying" includes an association's or other
2 organization's act of communicating with the members of that association
3 or organization; and provided that neither "lobby" nor "lobbying" includes
4 communicating with an executive official for the purpose of carrying out
5 ongoing negotiations following the award of a bid or a contract, communica-
6 tions involving ongoing legal work and negotiations conducted by and with
7 attorneys for executive agencies, interactions between parties in litiga-
8 tion or other contested matters, or communications among and between members
9 of the legislature and executive officials and their employees, or by state
10 employees while acting in their official capacity or within the course and
11 scope of their employment.

12 (k) "Lobbyist" includes any person who lobbies.

13 (l) "Lobbyist's employer" means the person or persons by whom a lobby-
14 ist is employed, directly or indirectly, and all persons by whom he is com-
15 pensated for acting as a lobbyist.

16 (m) "Measure" means any proposal, to be voted statewide, submitted to
17 the people for their approval or rejection at an election, including any
18 initiative, referendum, recall election for statewide or legislative dis-
19 trict offices, or revision of or amendment to the state constitution. An
20 initiative or referendum proposal shall be deemed a measure when the attor-
21 ney general reviews it and gives it a ballot title. A recall shall be deemed
22 a measure upon approval of the recall petition as to form pursuant to section
23 34-1704, Idaho Code.

24 (n) "Nonbusiness entity" means any group {of two (2) or more individu-
25 als}, corporation, association, firm, partnership, committee, club or other
26 organization which:

27 (1) Does not have as its principal purpose the conduct of business ac-
28 tivities for profit; and

29 (2) Received during the preceding or current calendar year contribu-
30 tions, gifts or membership fees, which in the aggregate exceeded ten
31 percent (10%) of its total receipts for such year.

32 (o) "Person" means an individual, corporation, association, firm,
33 partnership, committee, political party, club or other organization or
34 group of persons.

35 (p) "Political committee" means:

36 (1) Any person specifically designated to support or oppose any candi-
37 date or measure; or

38 (2) Any person who receives contributions and makes expenditures in
39 an amount exceeding five hundred dollars (\$500) in any calendar year
40 for the purpose of supporting or opposing one (1) or more candidates or
41 measures. Any entity registered with the federal election commission
42 shall not be considered a political committee for purposes of this chap-
43 ter.

44 (3) A county, district or regional committee of a recognized politi-
45 cal party shall not be considered a political committee for the purposes
46 of this chapter unless such party committee has expenditures exceeding
47 five thousand dollars (\$5,000) in a calendar year.

48 (q) "Political treasurer" means an individual appointed by a candidate
49 or political committee as provided in section 67-6603, Idaho Code.

1 (r) "Public office" means any state office or position, state senator,
 2 state representative, and judge of the district court that is filled by elec-
 3 tion.

4 SECTION 2. That Section 67-6606, Idaho Code, be, and the same is hereby
 5 amended to read as follows:

6 67-6606. EXPENDITURES BY NONBUSINESS ENTITY. (1) Any nonbusiness
 7 entity, ~~domiciled~~ which is not a political committee as defined in section
 8 67-6602(p), Idaho Code, making expenditures in or directed to voters in the
 9 state of Idaho, which makes expenditures in an amount exceeding one thousand
 10 dollars (\$1,000) in any calendar year for the purpose of supporting or op-
 11 posing one (1) or more candidates or measures shall file a statement with the
 12 secretary of state. Any entity registered with the federal election commis-
 13 sion shall not be required to file a statement under the provisions of this
 14 section. The statement shall include:

15 (a) The name and address of the nonbusiness entity and the name and ad-
 16 dress of its principal officer or directors.

17 (b) The name and address of each person whose fees, dues, payments
 18 or other consideration paid to such nonbusiness entity during either
 19 of the prior two (2) calendar years has exceeded five hundred dollars
 20 (\$500) or who ~~is obligated to~~ has paid or has agreed to pay fees, dues,
 21 payments or other consideration exceeding five hundred dollars (\$500)
 22 to such entity during the current year.

23 (2) This statement shall be filed within thirty (30) days of when the
 24 one thousand dollar (\$1,000) threshold mentioned in subsection (1) of this
 25 section is exceeded.

26 SECTION 3. That Section 67-6621, Idaho Code, be, and the same is hereby
 27 amended to read as follows:

28 67-6621. DUTIES OF LOBBYISTS. A person required to register as a lob-
 29 byist under this act shall also have the following obligations, the viola-
 30 tion of which shall ~~constitute~~ constitute cause for revocation of his regis-
 31 tration, and may subject such person, and such person's employer, if such em-
 32 ployer aids, abets, ratifies or confirms any such act, to other civil liabil-
 33 ities, as provided by this act:

34 (a) Such persons shall obtain and preserve all accounts, bills,
 35 receipts, books, papers, and documents necessary to substantiate the finan-
 36 cial reports required to be made under this act for a period of at least three
 37 (3) years from the date of the filing of the statement containing such items,
 38 which accounts, bills, receipts, books, papers and documents shall be made
 39 available for inspection by the secretary of state at any reasonable time
 40 during such three (3) year period; provided, however, that if a lobbyist is
 41 required under the terms of his employment contract to turn any records over
 42 to his employer, responsibility for the preservation of such records under
 43 this subsection shall rest with such employer.

44 (b) In addition, a person required to register as a lobbyist shall not:

45 (1) Engage in any activity as a lobbyist before registering as such;

46 (2) Knowingly deceive or attempt to deceive any legislator to any fact
 47 pertaining to any pending or proposed legislation;

- 1 (3) Cause or influence the introduction of any bill or amendment
2 thereto for the purpose of thereafter being employed to secure its de-
3 feat;
- 4 (4) Knowingly represent an interest adverse to any of his employers
5 without first obtaining such employers' consent thereto after full dis-
6 closure to such employers of such adverse interest;
- 7 (5) Exercise any economic reprisal, extortion, or unlawful retalia-
8 tion upon any legislator by reason of such legislator's position with
9 respect to, or his vote upon, any pending or proposed legislation;
- 10 (6) Accept any employment as a lobbyist for a compensation dependent
11 in any manner upon the passage or defeat of any proposed or pending leg-
12 islation or upon any other contingency connected with the action of the
13 legislature or of either branch thereof or of any committee thereof.
14 This contingent fee prohibition shall also apply to lobbying activities
15 that pertain to communications with executive officials as described in
16 section 67-6602(g), Idaho Code.