

IN THE SENATE

SENATE BILL NO. 1114

BY STATE AFFAIRS COMMITTEE

AN ACT

1 RELATING TO CAMPAIGN FINANCE; AMENDING SECTION 67-6602, IDAHO CODE, TO RE-
2 VISE DEFINITIONS AND TO DEFINE TERMS; AMENDING SECTION 67-6611, IDAHO
3 CODE, TO REVISE THE FILING DEADLINES FOR REPORTING INDEPENDENT EXPEN-
4 DITURES AND TO REQUIRE CERTAIN DISCLOSURES; AMENDING SECTION 67-6628,
5 IDAHO CODE, TO REVISE THE FILING DEADLINES FOR REPORTING ELECTIONEERING
6 COMMUNICATIONS, TO REQUIRE CERTAIN DISCLOSURES, AND TO REQUIRE A LEGI-
7 BLE AUTHORITY LINE IN ELECTIONEERING COMMUNICATIONS; AMENDING SECTION
8 67-6606, IDAHO CODE, TO PROVIDE A CORRECT CODE REFERENCE; AND AMENDING
9 SECTION 67-6621, IDAHO CODE, TO PROVIDE A CORRECT CODE REFERENCE.
10

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

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

14 67-6602. DEFINITIONS. As used in this chapter, the following terms
15 have the following meanings:

16 ~~(a1) "Candidate" means an individual who has taken affirmative action~~
17 ~~to seek nomination or election to public office. An individual shall be~~
18 ~~deemed to have taken affirmative action to seek such nomination or election~~
19 ~~to public office when he first:~~

20 ~~(1) Receives contributions or makes expenditures or reserves space or~~
21 ~~facilities with intent to promote his candidacy for office; or~~
22 ~~(2) Announces publicly or files for office~~
23 seeks nomination, election, or reelection to public office and who has taken
24 any of the following actions:

25 (a) Announced the individual's candidacy publicly;
26 (b) Filed for public office;
27 (c) Received a contribution for the purpose of promoting the individ-
28 ual's candidacy for office; or
29 (d) Made an expenditure, contracted for services, or reserved space
30 with the intent of promoting the individual's candidacy for office.

31 ~~(3) For purposes of this chapter, an incumbent shall be presumed to be~~
32 ~~a candidate in the subsequent election for his or her office. Contri-~~
33 ~~butions received by an incumbent candidate shall not be in excess of the~~
34 ~~prescribed contribution limits for the subsequent election by which the~~
35 ~~incumbent candidate's name would first appear on the ballot. An incum-~~
36 ~~bent shall no longer be a candidate for his or her office after the dead-~~
37 ~~line for the filing of a declaration of candidacy to first appear on the~~
38 ~~ballot for that office has expired, until the incumbent has failed to~~
39 file a declaration of candidacy by the statutory deadline.

40 ~~(b2) "Compensation" includes any advance, conveyance, forgiveness of~~
41 ~~indebtedness, deposit, distribution, loan, payment, gift, pledge or trans-~~
42 ~~fer of money or anything of value, and any contract, agreement, promise or~~

1 other obligation, whether or not legally enforceable, to do any of the fore-
 2 going, for services rendered or to be rendered, but does not include reim-
 3 bursement of expenses if such reimbursement does not exceed the amount ac-
 4 tually expended for such expenses and is substantiated by an itemization of
 5 such expenses.

6 (e3) "Contribution" includes any advance, conveyance, forgiveness of
 7 indebtedness, deposit, distribution, loan, payment, gift, pledge, sub-
 8 scription or transfer of money or anything of value, and any contract, agree-
 9 ment, promise or other obligation, whether or not legally enforceable, to
 10 make a contribution, in support of or in opposition to any candidate, polit-
 11 ical committee or measure. Such term also includes personal funds or other
 12 property of a candidate or members of his household expended or transferred
 13 to cover expenditures incurred in support of such candidate but does not
 14 include personal funds used to pay the candidate filing fee. Such term also
 15 includes the rendering of personal and professional services for less than
 16 full consideration, but does not include ordinary home hospitality or the
 17 rendering of "part-time" personal services of the sort commonly performed
 18 by volunteer campaign workers or advisors or incidental expenses not in ex-
 19 cess of twenty-five dollars (\$25.00) personally paid for by any volunteer
 20 campaign worker. "Part-time" services, for the purposes of this definition,
 21 means services in addition to regular full-time employment, or, in the case
 22 of an unemployed person or persons engaged in part-time employment, services
 23 rendered without compensation or reimbursement of expenses from any source
 24 other than the candidate or political committee for whom such services are
 25 rendered. For the purposes of this act, contributions, other than money or
 26 its equivalent shall be deemed to have a money value equivalent to the fair
 27 market value of the contribution.

28 (d4) "Election" means any state or local general, special, recall, or
 29 primary election.

30 (e5) "Election campaign" means any campaign in support of or in opposi-
 31 tion to a candidate for election to public office and any campaign in support
 32 of, or in opposition to, a measure.

33 (f6) (1a) "Electioneering communication" means any paid communication
 34 to members of the public who are voters or potential voters for public
 35 office or a ballot measure, that takes place between 5:00 p.m. on the
 36 candidate filing deadline set forth in section 34-704, Idaho Code, and
 37 midnight on the date of the general election, and that unambiguously
 38 refers to a specific candidate or measure to be on the ballot. An elec-
 39 tioneering communication expenditure is made when any portion of the
 40 communication reaches members of the public who are voters or potential
 41 voters. An electioneering communication includes, but is not limited
 42 to, a message broadcast by television or radio, printed in a newspaper
 43 or on a billboard, directly mailed or delivered by hand to personal res-
 44 idences, or telephone calls made by telephone to personal residences or
 45 cellular numbers, sent by electronic mail or messaging, or otherwise
 46 distributed that: advertised on the internet or through social media

47 (i) Unambiguously refers to any candidate; and

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

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

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

(i) Any news articles, editorial endorsements, opinion or commentary, writings, or letter to the editor printed in a newspaper, magazine, or other periodical not owned or controlled by a candidate, political committee, or political party;

(ii) Any editorial endorsements or opinions aired by a broadcast facility not owned or controlled by a candidate, political committee, or political party;

(iii) Any communication by persons made in the regular course and scope of their business or any communication made by a membership organization solely to members of such organization and their families;

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

(v) A communication which constitutes an expenditure or an independent expenditure under this chapter.

(g7) "Executive official" means:

(1a) The governor, lieutenant governor, secretary of state, state controller, state treasurer, attorney general, superintendent of public instruction and any deputy or staff member of one (1) of those individuals who, within the course and scope of his or her employment, is directly involved in major policy influencing decisions for the office;

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

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

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

(5e) The membership and the executive or chief administrative officer of the Idaho public utilities commission, the Idaho industrial commission, and the Idaho state tax commission; and

(6f) The members of the governing board of the state insurance fund, and the members of the governing board and the executive or chief administrative officer of the Idaho housing and finance association, the Idaho energy resources authority, and the Idaho state building authority.

(h8) "Expenditure" includes any payment, contribution, subscription, distribution, loan, advance, deposit, or gift of money or anything of value, and includes a contract, promise, or agreement, whether or not legally enforceable, to make an expenditure. The term "expenditure" also includes a promise to pay, a payment or a transfer of anything of value in exchange for goods, services, property, facilities or anything of value for the purpose

1 of assisting, benefiting or honoring any public official or candidate, or
2 assisting in furthering or opposing any election campaign.

3 (i9) (a) "Independent expenditure" means any expenditure by a person
4 for a communication expressly advocating the election, passage or de-
5 feat of a clearly identified candidate or measure that is not made with
6 the coordination of a candidate or any agent, paid or unpaid, of the
7 candidate, or with the political committee supporting or opposing a
8 measure. The term "coordination" means with the cooperation or with the
9 prior consent of, or in consultation with, or at the consent of, or in
10 consultation with, or at the request of or a suggestion of, or in concert
11 with a candidate or any agent or authorized committee of the candidate
12 or political committee supporting or opposing a measure. As used in
13 this subsection, "expressly advocating" means any communication con-
14 taining a message advocating election, passage or defeat including,
15 but not limited to, the name of the candidate or measure, or expression
16 such as "vote for," "elect," "support," "cast your ballot for," "vote
17 against," "defeat" or "reject."

18 (b) An expenditure shall constitute an expenditure in coordination
19 with a candidate or political committee and shall not constitute an in-
20 dependent expenditure where:

21 (i) There is any arrangement, coordination, or direction with
22 respect to the expenditure between the candidate or candidate's
23 agent, or the political committee's agents and the person, in-
24 cluding any officer, director, employee, or agent of the person,
25 making the expenditure; or

26 (ii) The expenditure is based on information provided to the per-
27 son making the expenditure directly or indirectly by the candidate
28 or his agents, or by the agents of the political committee, about
29 the candidate or political committee's plans, projects, or needs,
30 provided that the candidate or his agent or the political commit-
31 tee's agent is aware that the other person has made or is planning
32 to make expenditures advocating the candidate's election or the
33 ballot measure's passage.

34 (c) The following conduct shall not, in and of itself, constitute coor-
35 ordination with a candidate or political committee and shall not nullify
36 the independent nature of the expenditure:

37 (i) Using information, material, or data that is publicly or
38 widely available to plan, make, or include in the expenditure,
39 as long as the same is not received through coordination with the
40 campaign or political committee;

41 (ii) Using, obtaining, or granting permission to use a photograph
42 or likeness of a candidate; or

43 (iii) Use of the same reporting entity, accountant, attorney,
44 bookkeeper, printing company, mail house, studio, or similar ven-
45 dor by the candidate or political committee and the persons making
46 the independent expenditure, as long as the services provided are
47 those typically provided on a commercial basis by the vendor.

48 (j10) "Lobby" and "lobbying" each means attempting through contacts
49 with, or causing others to make contact with, members of the legislature or
50 legislative committees or an executive official, to influence the approval,

1 modification or rejection of any legislation by the legislature of the state
 2 of Idaho or any committee thereof or by the governor or to develop or main-
 3 tain relationships with, promote goodwill with, or entertain members of the
 4 legislature or executive officials. "Lobby" and "lobbying" shall also mean
 5 communicating with an executive official for the purpose of influencing the
 6 consideration, amendment, adoption or rejection of any rule or rulemaking as
 7 defined in section 67-5201, Idaho Code, or any ratemaking decision, procure-
 8 ment, contract, bid or bid process, financial services agreement, or bond
 9 issue. Neither "lobby" nor "lobbying" includes an association's or other
 10 organization's act of communicating with the members of that association
 11 or organization; and provided that neither "lobby" nor "lobbying" includes
 12 communicating with an executive official for the purpose of carrying out
 13 ongoing negotiations following the award of a bid or a contract, communica-
 14 tions involving ongoing legal work and negotiations conducted by and with
 15 attorneys for executive agencies, interactions between parties in litiga-
 16 tion or other contested matters, or communications among and between members
 17 of the legislature and executive officials and their employees, or by state
 18 employees while acting in their official capacity or within the course and
 19 scope of their employment.

20 (~~11~~) "Lobbyist" includes any person who lobbies.

21 (~~12~~) "Lobbyist's employer" means the person or persons by whom a lob-
 22 byist is employed, directly or indirectly, and all persons by whom he is com-
 23 pensated for acting as a lobbyist.

24 (~~13~~) "Local government office" means any publicly elected office for
 25 any political subdivision of the state or special district that is not a leg-
 26 islative, judicial, statewide, or federal office.

27 (~~14~~) "Measure" means any proposal, ~~to be voted statewide,~~ submitted to
 28 the people for their approval or rejection at an election, including any ini-
 29 tiative, referendum, recall election ~~for statewide or legislative district~~
 30 ~~offices,~~ or revision of or amendment to the state constitution. An initia-
 31 tive or referendum proposal shall be deemed a measure when the attorney gen-
 32 eral, county prosecutor, or city attorney, as appropriate, reviews it and
 33 gives it a ballot title. A recall shall be deemed a measure upon approval of
 34 the recall petition as to form pursuant to section 34-1704, Idaho Code.

35 (~~15~~) "Nonbusiness entity" means any group of two (2) or more individu-
 36 als, corporation, association, firm, partnership, committee, club or other
 37 organization which:

38 (~~1a~~) Does not have as its principal purpose the conduct of business ac-
 39 tivities for profit; and

40 (~~2b~~) Received during the preceding or current calendar year contribu-
 41 tions, gifts or membership fees, which in the aggregate exceeded ten
 42 percent (10%) of its total receipts for such year.

43 (~~16~~) "Person" means an individual, corporation, association, firm,
 44 partnership, committee, political party, club or other organization or
 45 group of persons.

46 (~~17~~) "Political committee" means:

47 (~~1a~~) Any person specifically designated to support or oppose any candi-
 48 date or measure; or

49 (~~2b~~) Any person who receives contributions and makes expenditures in
 50 an amount exceeding five hundred dollars (\$500) in any calendar year

1 for the purpose of supporting or opposing one (1) or more candidates or
 2 measures. Any entity registered with the federal election commission
 3 shall not be considered a political committee for purposes of this chap-
 4 ter.

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

9 ~~(e18)~~ "Political treasurer" means an individual appointed by a candi-
 10 date or political committee as provided in section 67-6603, Idaho Code.

11 ~~(e19)~~ "Public office" means any state office or position, state sena-
 12 tor, state representative, and judge of the district court that is filled by
 13 election.

14 (20) "Social media" means forms of electronic communication, includ-
 15 ing websites, applications, or software for social networking or blogging,
 16 through which users create a personal profile and participate in online com-
 17 munities to share information, ideas, and other content.

18 SECTION 2. That Section 67-6611, Idaho Code, be, and the same is hereby
 19 amended to read as follows:

20 67-6611. INDEPENDENT EXPENDITURES. (1) Each person who makes indepen-
 21 dent expenditures in an aggregate amount exceeding one ~~hundred thousand dol-~~
 22 ~~lars (\$1001,000)~~ in support of or in opposition to any one (1) candidate, po-
 23 litical committee or measure, shall file a statement of the expenditure with
 24 the secretary of state.

25 (2) Statements shall be filed with the secretary of state, ~~not less than~~
 26 ~~seven (7) days prior to the primary and general election and thirty (30) days~~
 27 after the primary and general election by the tenth day of the month follow-
 28 ing the month during which an expenditure was made.

29 (3) The statement shall contain the following information:

30 (a) ~~The~~ name and address of any person to whom an expenditure in excess
 31 of fifty dollars (\$50.00) has been made by any such person in support of
 32 or in opposition to any such candidate or issue during the reporting pe-
 33 riod, together with the amount, date and purpose of each such expendi-
 34 ture; ~~and~~

35 (b) ~~The~~ total sum of all expenditures made in support of or in opposi-
 36 tion to any such candidate or measure; ~~and~~

37 (c) The identification of each person who, during the reporting period,
 38 made a donation to the person making the independent expenditure in the
 39 aggregate amount of two hundred fifty dollars (\$250) or more during the
 40 calendar year in which the expenditure was made, together with the date
 41 and amount of each donation.

42 (4) In addition to the requirements ~~set forth in subsections (1) and (2)-~~
 43 ~~of this section,~~ each person who makes independent expenditures in an aggre-
 44 gate amount of one thousand dollars (\$1,000) or more ~~after the sixteenth day~~
 45 ~~before, but more than forty-eight (48) hours before, any primary or general~~
 46 ~~election,~~ shall file a written statement of the expenditure with the secre-
 47 tary of state not more than forty-eight (48) hours from the time of such ex-
 48 penditure. The statement shall include the information required in subsec-
 49 tion (3) of this section.

1 SECTION 3. That Section 67-6628, Idaho Code, be, and the same is hereby
2 amended to read as follows:

3 67-6628. ELECTIONEERING COMMUNICATIONS -- STATEMENTS. (1) Any per-
4 son who ~~conducts or transmits any~~ incurs costs in an aggregate amount ex-
5 ceeding one thousand dollars (\$1,000) when making an electioneering commu-
6 nication shall be required to file a statement on a form provided by with
7 the secretary of state. Contents of the statement shall include the amount
8 spent on such communications, the name and address of the person, and the
9 names and addresses of any persons who ~~contribute~~ donate an aggregate amount
10 of two hundred fifty dollars (\$50.00250) or more to any person described in
11 reporting under this section during the calendar year in which the communi-
12 cation is made to date, together with the date and amount of each donation.
13 The statement shall be filed by the tenth day of the month following the month
14 during which the expenditure was made.

15 (2) ~~Any person that incurs costs in excess of one hundred dollars (\$100)~~
16 ~~when making an electioneering communication shall file a statement in accor-~~
17 ~~dance with the time limits established by section 67-6611 (2), Idaho Code.~~

18 ~~(3)~~ In addition to the requirements of subsection (2~~1~~) of this section,
19 any person that incurs costs in an aggregate amount of one thousand dollars
20 (\$1,000) or more when making an electioneering communication shall file a
21 statement as provided in subsection (1) of this section within forty-eight
22 (48) hours of incurring the costs for such communication.

23 (3) Every electioneering communication shall contain an authority line
24 that states the name of the person responsible for the communication.

25 (4) All information required by this section to be on an electioneering
26 communication shall appear in a font size and type that is plainly legible.

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

29 67-6606. EXPENDITURES BY NONBUSINESS ENTITY. (1) Any nonbusiness en-
30 tity, which is not a political committee as defined in section 67-6602~~(p)~~,
31 Idaho Code, making expenditures in or directed to voters in the state of
32 Idaho in an amount exceeding one thousand dollars (\$1,000) in any calendar
33 year for the purpose of supporting or opposing one (1) or more candidates or
34 measures shall file a statement with the secretary of state. The statement
35 shall include:

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

38 (b) The name and address of each person whose fees, dues, payments
39 or other consideration paid to such nonbusiness entity during either
40 of the prior two (2) calendar years has exceeded five hundred dollars
41 (\$500) or who has paid or has agreed to pay fees, dues, payments or other
42 consideration exceeding five hundred dollars (\$500) to such entity dur-
43 ing the current year.

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

1 SECTION 5. That Section 67-6621, Idaho Code, be, and the same is hereby
2 amended to read as follows:

3 67-6621. DUTIES OF LOBBYISTS. A person required to register as a lob-
4 byist under this act shall also have the following obligations, the viola-
5 tion of which shall constitute cause for revocation of his registration, and
6 may subject such person, and such person's employer, if such employer aids,
7 abets, ratifies or confirms any such act, to other civil liabilities, as pro-
8 vided by this act:

9 (1) Such persons shall obtain and preserve all accounts, bills,
10 receipts, books, papers, and documents necessary to substantiate the finan-
11 cial reports required to be made under this act for a period of at least three
12 (3) years from the date of the filing of the statement containing such items,
13 which accounts, bills, receipts, books, papers and documents shall be made
14 available for inspection by the secretary of state at any reasonable time
15 during such three (3) year period; provided, however, that if a lobbyist is
16 required under the terms of his employment contract to turn any records over
17 to his employer, responsibility for the preservation of such records under
18 this subsection shall rest with such employer.

19 (2) In addition, a person required to register as a lobbyist shall not:

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

21 (b) Knowingly deceive or attempt to deceive any legislator to any fact
22 pertaining to any pending or proposed legislation;

23 (c) Cause or influence the introduction of any bill or amendment
24 thereto for the purpose of thereafter being employed to secure its de-
25 feat;

26 (d) Knowingly represent an interest adverse to any of his employers
27 without first obtaining such employers' consent thereto after full dis-
28 closure to such employers of such adverse interest;

29 (e) Exercise any economic reprisal, extortion, or unlawful retalia-
30 tion upon any legislator by reason of such legislator's position with
31 respect to, or his vote upon, any pending or proposed legislation;

32 (f) Accept any employment as a lobbyist for a compensation dependent
33 in any manner upon the passage or defeat of any proposed or pending leg-
34 islation or upon any other contingency connected with the action of the
35 legislature or of either branch thereof or of any committee thereof.
36 This contingent fee prohibition shall also apply to lobbying activities
37 that pertain to communications with executive officials as described in
38 section 67-6602 (~~§~~7), Idaho Code.