

MINUTES
Approved by the Committee
Campaign Finance Reform Legislative Work Group
Monday, August 28, 2017
9:00 A.M.
Room EW 42
Boise, Idaho

Co-chair Sen. Patti Anne Lodge called the meeting to order at 9:07 a.m. An oral roll call was taken. Work group members in attendance were: Co-chair Senator Patti Anne Lodge and Co-chair Representative Fred Wood; Senators Todd Lakey, Marv Hagedorn, Mark Harris, and Michelle Stennett; Representatives John Vander Woude, Thomas Loertscher, Sage Dixon, and Mathew Erpelding. Legislative Services Office staff present were: Kristin Ford, Maggie Smith, and Tetiana Kanashuk.

Other attendees: Betsy Russell - The Spokesman-Review; Carlie Foster - Lobby Idaho; John Eaton - Idaho Association of Commerce & Industry; Elizabeth Criner - Veritas Advisors; Suzanne Budge - SBS Associates; Brent Olmstead - College of Agricultural & Life Sciences; Sharon Hawkins - Idaho Association of Commerce & Industry; Kate Thorpe - Conservation Voters for Idaho; Ryan Fitzgerald - Northwest Credit Union Association; Greg Hill, Vanessa Fry - Idaho Policy Institute; John Foster - Kestrel West; Russell Westerberg, Brody Aston - Westerberg & Associates; Jerry Deckard - Capitol West; Françoise Cleveland - American Association of Retired Persons - Idaho; Jason Kreizenbeck - Lobby Idaho; Jess Harrison - Idaho School Board Association; Alex LaBeau - Idaho Association of Commerce & Industry; Phil McGrane - Ada County Clerk's Office; Lawrence Denney, Tim Hurst - Idaho Secretary of State.

Co-chair Lodge called for the approval of the July 12, 2017 minutes. **Rep. Wood made a motion to approve the July 12, 2017 minutes. Sen. Stennett seconded the motion. The motion passed unanimously.**

Presentations:

Elizabeth Criner, Idaho Legislative Advisors, presented ideas and concepts on improvements to the Sunshine Law in Idaho, approved by their full executive committee:

- Online Reporting and access to information.
 - Easily accessible and improved online system, where individuals who are not a part of the process could navigate more efficiently.
- Disclosures
 - Disclosures by lobbyists should be performed throughout the whole year with monthly or quarterly reports. More regular reporting will allow public to keep track of lobbying activity during the interim.
 - Clarification on who is required to register and make disclosures; for example: government entities who work with legislators; professional lobbyists, who advise nonprofit organizations for free.
 - Clarification on when the reporting should start and at what point of time a candidate's expenditures need to be disclosed.
 - Clear language on the disclosure of advances and expenditures. Any event expenditure that is done to ingratiate oneself with the covered elected official needs to be disclosed.
- Fining
 - Consistent fines for both individuals and groups.

- Provide training for elected officials and lobbyists on what is appropriate and what people can be fined for.

Alex LaBeau, Idaho Association of Commerce & Industry, noted that as a treasurer of Idaho Prosperity Fund and former treasurer of the Realtors PAC, two of the most active business political action committees in Idaho, he deals with the issue of disclosure.

From the 1974 law until now a lot of things have changed from a campaign standpoint. Campaigning no longer has a season and current processes and laws need to be updated. The money that comes to the system has expended dramatically at all levels. The Legislature has to consider that there are opportunities for local elections that can add a tremendous amount of liability to taxpayers. Twin Falls had an election about their sewage service and a lot of money was involved from a variety of different sources, including the Realtors PAC; money that goes to school board elections is another example where money never gets disclosed. Private vendors can provide an easier way to disclose all the reports, to make the process more transparent and make it simple for the public to have access to such information. Mr. LaBeau offered to research private vendors for the purpose of planning an appropriation during this upcoming session for the Secretary of State to purchase an already existing system or make major improvements on the system that currently is being used.

Mr. LaBeau also pointed out that there is a need to redefine the definition of expenditures and disclosable events. Regardless of federal tax status, you still have to be subject to Idaho disclosure law. There is a need to update the definition of electioneering communications, including e-mail and social media. Clarification is needed with regard to the 48-hour cut off for independent expenditures. Electioneering can happen on any day of the week and sometimes one does not know what occurred until well after the election. An update of the system will help people disclose on time. This is a loophole that needs to close. Also, the fines for violations need to be updated. There are inconsistencies between individuals and groups.

Sen. Lakey asked for a comment on dark money from Mr. LaBeau.

Mr. LaBeau stated that he and his group work very hard to disclose what they are doing and would like to see what others are doing as well. He recommends eliminating loopholes and he and his group are willing to help the committee with that item.

Sen. Lakey asked if the disclosure of officers and board of directors would be applicable. Mr. LaBeau said that is important, but should be addressed carefully. The original intent of the 1974 law is to be able to track the flow or route of money in politics in Idaho.

Sen. Stennett asked Mr. LaBeau to clarify his point on having a private contractor vendor system to assist the Secretary of State's office so that the Legislature would have to look for money out of the general fund for campaign reporting. Mr. LaBeau confirmed that is correct and one of the best ways to go about this is to see what some of the other states are doing. Many companies are providing platforms for disclosure in other states.

Sen. Stennett asked if Mr. LaBeau has a sense of what the public in other states think of a private company overseeing something that is a public forum. Mr. LaBeau clarified that he is not suggesting that the private sector should be overseeing this. The Secretary of State must have complete control and authority. The private sector's sole purpose would be to provide the platform for full disclosure.

With regard to the complexities of communications before and after elections, Sen. Hagedorn asked Mr. LaBeau how he would recommend the committee handle the reporting of expenditures prior to election day or even on election day. Mr. LaBeau said that members of his group are conflicted on this topic. He said in his personal opinion, he has no problem with next day reporting. Technology has made it easy to report within 48 hours.

Sen. Hagedorn addressed city and local election campaigns. He asked if there should be separate fines or requirements for how small entities handle their communications reporting. Mr. LaBeau

suggested that the infrastructure is not built yet and it should be established before technical regulatory details can be addressed.

Rep. Erpelding expressed concern about cases where there have been documented coordination between an independent expenditure and a campaign but because, a volunteer is not a paid employee of the campaign, he can not coordinate. He finds this abhorrent. He asked that we hold people accountable for breaking Sunshine Laws. Mr. LaBeau expressed that active coordination between an independent expenditure campaign and a candidate would be a very big problem. This act is already illegal. It is in the purview of the legislature to decide what is or is not campaign coordination.

Co-chair Lodge thanked Mrs. Criner and Mr. LaBeau for their presentation.

Secretary of State Presentation:

Idaho Secretary of State Lawrence Denney addressed the committee. He is looking into the reporting software that other states use and changing it to fit the laws of Idaho. Sec. Denney explained some of the complexities of the software and how his office has been working on this. There will be two modules, one for lobbyists and one for the Sunshine reports. The cost is \$300,000.00 each, plus an annual maintenance fee of about \$30,000.00 for each module. The ability to use this software will be a big help for the state. These modules will not be ready for this year's election.

The Secretary of State's office took some of the recommendations of the last meeting, such as taking last year's single piece of legislation and breaking it up into parts.

- Draft 11: A way of policing dark money from outside the state by not allowing committees to accept contributions of \$1,000.00 or more from an out-of-state person or PAC unless they comply with the Sunshine Laws of Idaho.

Sen. Lakey questioned how a PAC would know if another PAC is complying with the law.

Rep. Loertscher expressed concern on the wording of the \$1,000.00 fine and asked whether it is cumulative per election cycle. Sec. Denney agreed that it would be better if the draft said per "election cycle".

Rep. Vander Woude noticed that the fines go to the school fund. If it is going to cost \$30,000.00 to run the program, why would the fines not go back to running the program? Sec. Denney noted that is up to the committee to decide where the money goes.

Rep. Vander Woude asked if the Secretary of State's office is going to provide candidates a list of PACs that are acceptable to the state in order for candidates to stay within the laws. Sec. Denney noted that if they are giving more than \$1,000.00 they will be required to register with the state. If a candidate accepts \$1,000.00 or more from an entity not listed by the state then they will be susceptible to a fine.

Sen. Stennett asked whether any donation less than \$1,000.00 triggered a fine. Sec. Denney confirmed that PAC donating less than \$1,000.00 would not trigger this section.

Rep. Wood asked for clarification on whether this restriction concerns just transfers between PACs or also between PACs and individuals.

- Draft 12: An attempt to identify who is in charge of a PAC. No contribution shall be received or expenditure made on behalf of a political committee until the political committee's treasurer has filed a report with the Secretary of State identifying the committee's board of directors and any other person who participates in the decision making of the committee.

Sen. Lakey expressed concern about the language used to define a decision maker.

Rep. Wood addressed candidate committees and how this solves some issues with Draft 11. And to also exempt a candidate committee from receiving money from that out-of-state PAC in terms of liability that some of the committee members have raised.

Rep. Erpelding asked if there is a requirement for a PAC to have a board of directors. How would the Secretary of State require a board to disclose their directors if there is no statutory requirement for there to be a board of directors. Sec. Denney noted that if the committee has better language to identify who the decision makers are, his office is happy to change the language and his office would like to hear suggestions.

Rep Erpelding said it may be necessary to have a discussion on the types of requirements a PAC must have. If PACs are not required to have a board of directors, this provision may not be enforceable. Sec. Denney noted that, in his experience, the treasurers are not the ones making the decisions on how the money is being spent. His office is open to suggestions.

Sen. Lakey would like to see language that references someone with decision making authority to authorize the expenditure of funds. This would narrow down who is a decision maker for those entities that do not have a board.

Co-chair Lodge would like to see slight changes in the language to simplify the draft, with respect to separating out the requirements for candidates and political committees.

- Draft 13: In order to efficiently track money throughout a campaign, Draft 13 is an attempt to have one single campaign account that would follow a candidate regardless of the position candidate holds or for which position the candidate is running.

Rep. Erpelding asked if a Representative deciding to run for Senate with an account holding more than \$2000.00 would be able to transfer the money to the Senate account. Sec. Denney confirmed that such transfers would be allowed.

Co-chair Lodge pointed out that on more than one occasion, the Secretary of State's office had made the mistake of assuming that some of her out-of-pocket personal campaign donations to other candidates had come from her campaign committee. She asked if the Secretary's of State office will have a way of knowing where donation money comes from. Sec. Denney replied by saying that answer is in the software and reconciliation of his office. With today's technology, we can do almost anything, but everything needs an appropriation.

Sen. Lakey reminded Sec. Denney that some legislators hold other nonpartisan, local offices and he wanted to make sure the language allows for them to have accounts.

Tim Hurst, Chief Deputy Secretary of State, responded to the question from Co-chair Lodge. His office makes those calls to ask about questionable donations because sometimes the recipient's and donator's method of reporting the donation does not match.

Sen. Hagedorn asked about the language in line 18 and if there are any offices filled by political committees. Mr. Hurst informed the committee that the definition of a political committee includes a candidate. If a person is running for office, that person is a political committee.

Sen. Hagedorn would like to have the difference between a candidate committee and a political committee sorted out and defined.

Rep. Vander Woude asked if this would preclude a candidate from having a PAC separate from a campaign. Mr. Hurst said that would depend on the definition of a PAC.

- Draft 14: contains several elements but one change is the exemption of candidates running for local offices; they are now required to report once they have reached the \$500.00 limit. This includes those running for school board.

Sen. Lakey wanted to make sure this covers not just candidates for office, but also covers bond measures or the establishment of special districts and those spending more than \$500.00. Sec. Denney confirmed this includes ballot measures.

Sen. Stennett asked for the definition of immediate with regards to page 7 where it says one must "immediately file". Sec. Denney said that, once one reaches the threshold, they must immediately file within a reasonable amount of time. If not the same day, then as soon as possible.

Sen. Stennett is concerned that if there are fines for not filing immediately, then there should be a hard timeline on where and when those fines fall.

Sen. Hagedorn pointed out that a political committee is required to report after \$500.00 and county, district or regional committees of political parties would not have to report until reaching a \$5,000.00 limit. Sen. Hagedorn asked if the limit should be set at \$500.00 for each.

Mr. Hurst said the reason for the \$5000.00 limit is to allow small gatherings from both parties for lunch or to celebrate. These parties do not usually raise money for candidates.

Rep. Loertscher pointed out that Draft 13 deals with I.C. 67-6604 and on page 5, it appears again and the two don't agree; it may be wiser to leave 13 and take section 3 out of the bill. The changes made on page 5 and 6 are not the same as included in Draft 13.

Kristin Ford, Senior Legislative Research Analyst, informed the committee the section does appear in both drafts but they are not in conflict. It may be easier to have individual drafts or have just the one draft, but there are no conflicts.

They agreed there is a difference in the language.

- Draft 15: To revise definitions, clarify the timing of an expenditure and to make technical corrections.

Co-chair Lodge suggested that the time money is obligated is the appropriate time to report.

Sec. Denney is not sure what the appropriate time may be and it is up for discussion. Often a PAC is billed after the fact.

Rep. Erpelding asked for clarification if expenditures are cumulative, since small social media expenditures would not show up on a report.

Mr. Hurst reminded the committee that the Secretary of State's office does not regulate how much one spends on a campaign. The reason contributions are cumulative is because of the limits. A candidate can spend as much as he or she wants. Social media makes it difficult to determine how much one spends on a campaign. The Sunshine Law may have to be expanded to include how much a candidate spends.

- Draft 16: Requires monthly reporting during an election cycle.

Rep. Loertscher pointed out the difficulty for a candidate to keep up with reports when working as his own treasurer.

Sen. Hagedorn asked about the software packages and if they do some of the self-auditing functions that the Secretary of State's office does not do now. Sec. Denney is looking forward to the many opportunities for efficiency the technology brings.

Co-chair Lodge put the work group at ease at 10:38 a.m.

Co-chair Lodge resumed the meeting at 11:03 a.m and made a unanimous consent request to add Phil McGrane's presentation on Campaign Finance to the agenda.

Sen. Stennett made a motion to add Phil McGrane's presentation on Campaign Finance to the agenda. Sen. Lakey seconded the motion. The motion passed unanimously.

Presentation:

Phil McGrane, Ada County Clerk's Office, addressed the committee and started with his background in philosophy and ethics and how it related to campaigns and elections. He spoke about how this campaign finance committee provides a unique opportunity for the state to go back and

reevaluate Idaho's campaign finance laws. Greater trust is created between the people and the state when elections are transparent. Technology has revolutionized the ability to keep elections transparent. Mr. McGrane pointed out that the Sunshine Laws were the first step in transparency and he questioned if the current structure is the proper way to handle things. He would like the committee to consider replacing the current process because of complexities and difficulties, and to create a new, far simpler law that is easier to comply with. When laws are easier to comply with, they also become easier to enforce.

Mr. McGrane presented campaign finance data via overhead screen. Mr. McGrane opened webpages that showed 2016 Idaho State Legislature Campaign Donations, Expenditures and PAC Donations. The pages hold a tremendous amount of data that is detailed in various interactive graphs and charts so the data can be visualized. Mr. McGrane would like the public to be able to access campaign finance data in this way.

Co-chair Wood asked Mr. McGrane how easy it will be for political candidates to input data into this type of system. Mr. McGrane reminded the committee that the answer is in the software. The software needs to provide a quick and easy way to report a candidate's finances. The system also needs to be built with the ability to adapt for future expansion of the Sunshine Laws.

Sen. Hagedorn asked how data input was handled by Mr. McGrane and his people. Mr. McGrane informed the committee that the information and data presented came directly from the Secretary of State's Office.

Sen. Stennett asked what platform or software company Mr. McGrane would recommend. Mr. McGrane did not have a recommendation on a specific vendor. Looking at what other states have used is a good place to start. Applications on smartphones would be an ideal tool to input finance data.

Mr. McGrane provided an example of how a county election recall is a problem that is personally affecting his daily work. It is a contentious and difficult issue and issues like this can be dealt with in the future with a system that involves all of Idaho's political candidates and elections.

Co-chair Lodge asked if Mr. McGrane has an idea of the cost a system like this would be to implement. Mr. McGrane thinks the cost would be relatively low. One of the two most expensive components would be the initial procurement of software and ongoing maintenance of the system. The other largest cost would be the staffing resources needed for the Secretary of State's Office.

Co-chair Lodge called a recess of the work group for lunch at 11:53 a.m.

Co-chair Lodge reconvened the meeting at 1:38 p.m and opened the committee for discussion.

Discussion:

Co-chair Wood thanked the presenters for their time and expertise. He briefly summarized over the various topics that were discussed in the meeting. He expressed a high priority in finding a vendor with a robust and simple reporting system.

Sen. Hagedorn reminded the committee that they are not dealing with a blank check. He would advise against creating a system in-house as this often ends up costing more. Sen. Hagedorn recommends looking at vendors that provide a flexible package with the ability to be modified in the future.

Rep. Loertscher pointed out that the visualization that was presented was nice, however it was all after the fact and not in real time. The ability to have the information available in real time will likely be more costly. The complexity of the reporting laws is a hindrance to those who are thinking of running for office. The more complex the legislature makes the laws, the smaller pool of qualified candidates exists. Rep. Loertscher would like to eventually see a complete re-write of the Sunshine Laws.

Rep. Erpelding clarified that the program that Mr. McGrane presented may be made real time by incorporating the online submissions to the Secretary of State's Office into the program. With very little work, technology allows for the system to be real time. Rep Erpelding passionately expressed the need to strengthen the laws. If one is willing to violate ethics laws, \$275.00 is essentially the cost of business to be an unethical politician. There needs to be greater consequences to violating the laws.

Sen. Stennett asked if the committee is going to review the suggestions on proposed drafts and if the committee is going to have those suggestions added and then have the committee review them by the next meeting. Co-chair Lodge responded that the suggestions will be handed to Kristin Ford. She will work with the Secretary of State's Office. There needs to be time to gather the ideas and they need to be compiled for the next meeting.

Sen. Harris commented on how this process should be step by step. He expressed that the system should be kept simple.

Sen. Hagedorn asked Sec. Denney if there is a process for follow up on issues for violating the law. Sec. Denney informed the committee that when he gets a complaint he turns it over to his staff who will do a preliminary investigation and then turn it over to the Attorney General. The Attorney General informs the Secretary of State's Office whether or not there is a case and/or if they can prove the case.

Sen. Hagedorn asked Sec. Denney if that process is identified in code. Sec. Denney was not aware of the process being identified anywhere.

Mr. Hurst informed the committee that the process is very vague. Although certain things are documented, there needs to be more clarification on what things are actual violations. The Secretary of State's Office will conduct investigations, but they have no authority to enforce the laws. They turn their investigations over to law enforcement. The definitions need to be tightened up in order to enforce the law.

Sec. Denney mentioned that another problem is getting the Attorney General to prosecute where they end up having a \$250.00 fine if the AG wins. It may not be worth the hours spent on an investigation when fines are so minimal.

Rep. Erpelding voiced the problem where someone had listed themselves as the volunteer coordinator for a campaign who was not actually paid by the campaign. Because he is not an employee of the campaign, it's ok for him to coordinate between an independent group and the campaign. If there is no way to hold people accountable for ethical violations, then all of this will end up as a pretty website with some bar graphs.

Sec. Denney would like to look at how much this new program will cost. An RFI may be necessary. It would take some time for responses. When one does an RFP and you already have the appropriation for that, the RFP's come in very close to what the appropriation is.

Sen. Stennett asked Sec. Denney what language needed to be changed and defined for clarification to penalize for violations. Sec. Denney agreed with Rep. Loertscher's statement on how there may need to be a complete rewrite of Sunshine Law, because of all the exceptions.

Co-chair Wood would like to see the drafts and have discussion on the changes. Sec. Denney agreed that his office will start to look at some of the changes.

Rep. Vander Woude asked how to classify social media and e-mails due to the cost being so small. Sec. Denney does not have a solution on how to quantify social media.

Sen. Hagedorn reminded the committee that costs can easily be identified for advertising on social media: if something has a receipt, then one must report it.

Rep. Loertscher spoke about conflict of interest forms that all legislators in Utah are required to fill out. Utah went from paper to online reporting. These disclosures let the people know what legislators do for a living and how that may affect the way they legislate.

Co-chair Lodge thanked the committee for their discussion and set the date for the next meeting for October 18th.

The work group adjourned at 2:22 p.m.