

MINUTES
Approved by the Committee
Campaign Finance Reform Legislative Work Group
Wednesday, October 18, 2017
9:00 A.M.
Room EW 42
Boise, Idaho

Co-chair Representative Fred Wood called the meeting to order at 9:01 a.m. A silent roll call was taken. Work group members in attendance were:

Co-chair Senator Patti Anne Lodge and Co-chair Representative Fred Wood; Senators Marv Hagedorn, Mark Harris, and Michelle Stennett; Representatives John Vander Woude, Thomas Loertscher, Sage Dixon, and Mathew Erpelding. Senator Todd Lakey attended via conference phone. Legislative Services Office staff present were: Kristin Ford, Maggie Smith, and Tetiana Powell.

Other attendees: Fred Birnbaum - Idaho Freedom Foundation; Corey Cook - Boise State; Lance Giles - Eiguren Ellis; Phil McGrane - Ada County Clerk's Office; John Eaton, Alex LaBeau - Idaho Association of Commerce & Industry; Elizabeth Criner - Veritas Advisors; Ryan Fitzgerald - Northwest Credit Union Association; Sharon Hawkins - Idaho Association of Commerce & Industry; Pat Sullivan - Idaho Legislative Advisers. Lawrence Denney - Idaho Secretary of State, Tim Hurst - Idaho Secretary of State's Office.

NOTE: presentations and handouts provided by the presenters/speakers are posted to the Idaho Legislature website: <https://legislature.idaho.gov/sessioninfo/2017/interim/>; and copies of those items are in the Legislative Services Office located in the State Capitol.

Co-chair Wood addressed the agenda for the work group meeting and called for the approval of the August 28, 2017 minutes. **Co-chair Lodge made a motion to approve the August 28, 2017 minutes with removing the word "at" on page four, fourth paragraph, second sentence. Sen. Hagedorn seconded the motion. The motion passed unanimously.**

Presentation

Secretary of State Lawrence Denney, addressed the committee and started his presentation on the progress report on software vendor research. In the FY 19 budget, the Secretary of State's office requested \$1.2 million one-time and \$90 thousand ongoing for the election system upgrade. Sec. Denney noted that after the upgrades are in place, no additional funding should be needed.

Sen. Stennett asked how long it is going to take to train staff on a new software system. Sec. Denney responded that by the time the system is in place, the staff is going to be well trained. The staff is involved with the developing process and weekly progress reports.

Rep. Vander Woude asked how long it will take to implement the system. Sec. Denney said that the system is going to be available on July 1st, 2018, and will take one year to fully implement.

Rep. Vander Woude expressed concern about the retention of employees who are seasoned and have experience at what they are doing. Sec. Denney acknowledged that turnover is possible, but he expects that the new system will reduce training time.

Co-chair Wood wanted to make absolutely sure that the Secretary of State's office requested enough funds for a robust and all-around user-friendly system. Sec. Denney believes that the amount his office is asking will be sufficient.

Co-chair Wood asked if it would benefit the Secretary of State's office if the committee requests an emergency appropriation when the governor signs the bill. Sec. Denney noted that this has happened in the past; however, he does not think that this would be necessary.

At the end of the presentation Sec. Denney commented that an emergency clause may be necessary due to the upcoming primary, and a delay may be needed to get the software in place.

Rep. Vander Woude asked if it will be necessary for the wording to be changed in the legislation because of the use of the new system. Sec. Denney said that slight changes may be needed.

Presentation on drafts 27 and 28

Kristin Ford, Research Analyst, Legislative Services Office, gave the explanation of two separate drafts she had been working on using information from the past Campaign Finance meetings. She spoke about:

- Simplifications of new rules and categories
- Electioneering communications
- Simplification/separation of candidate PACs
- Simplification of campaign finance categories
- Elimination of campaign contribution limits/disclosure
- Modernizing references to current technology (email, social media etc.)

Ms. Ford continued the presentation with a discussion about individual drafts.

Draft 28

Ms. Ford decided it would be necessary to discard the draft and start fresh, due to all the changes. Ms. Ford spoke about the various changes in the definitions.

Rep. Erpelding inquired if updates are needed to certain definitions, considering the lobbying in all levels of government. Ms. Ford noted Rep. Erpelding's concern.

Sen. Stennett questioned the concept of removing limits on campaign contributions, and whether the committee agreed on the language change. Ms. Ford explained that this was just one approach.

Ms. Ford commented on:

- Campaign accounts
- Political committee treasurers
- Prohibited and permitted uses of funds
- Contributor transparency requirements
- Amounts in the existing code that have not been changed since the 1974 original version
- Political committee transparency
- When a political committee accepts money from another political committee, the donor committee must register with the Secretary of State's office
- Simplification of campaign contribution timeline
- Filing office location
- Report simplification
- Communication personnel information/details
- Electioneering communication authority and candidate authorization
- Retiring debt for a political committee of a candidate
- Independent expenditures
- No proposed changes to lobbying statutes
- Violations and fines
- Increase of fine amounts

Rep. Erpelding asked how a new definition on independent expenditures still creates an environment where PACs and campaigns are not permitted to coordinate with each other. Ms. Ford responded that it all becomes a matter of disclosure as opposed to trying to get around limits. Rep. Erpelding asked about the line where two political committees cannot exchange more than \$1,000 across committees and, by definition, that would-be candidates, committees and entities all together could not exchange more than \$1,000. Ms. Ford said that the \$1,000 limit is not a limit. It is a trigger of when they need to register with the Secretary of State's office.

Draft 27

Ms. Ford spoke about the language and the changes in definitions in Draft 27. She covered:

- Reelection campaigns of candidates
- Local elections
- Recall elections
- Electioneering communication
- Independent expenditures
- Expenditures by nonbusiness entities
- Tax status and organizational purpose
- Adding local offices to the public office
- Social media
- Appointment of political treasurer to a candidate
- The political account and ability to transfer funds
- Contribution limits
- Contributor transparency requirement
- Requirement to register with the Secretary of State's office for political committees
- Reporting periods
- Post-election reports

Sen. Hagedorn asked how to determine the top ten donors if more than ten will donate the same amount. Ms. Ford responded that she would take that scenario into consideration. Tim Hurst brought up other states as an example of where it is up to the candidate to pick out the top ten donors.

Co-chair Wood asked for unanimous consent to add Draft 26 by Representative Loertscher to the agenda. With no objection the draft was added to the agenda.

Remarks on Drafts by Secretary of State Lawrence Denney

Sec. Denney suggested showing sections that had been eliminated to have an idea of what has been changed. He pointed out the sections that needed to have an emergency clause and those that need to wait until the software program is in place, such as monthly reporting and local filing with the Secretary of State. Sec. Denney commented on the retiring debt section. He suggested leaving it in the code, but with the consideration of contribution limits.

Committee discussion

Sen. Stennett wanted to consider the local government entities that would not have the ability to comply with the reporting. Sec. Denney responded by mentioning last year's legislation on the online reporting requirement, which had a disclaimer that if the entity cannot comply, they can ask for a special waiver. He clarified that the Secretary of State's office is going to be a data collection center for local entities, but not the enforcer.

Co-chair Wood asked if there was feedback from the local entities on the idea of reporting to the Secretary of State's office. Sec. Denney responded that there was an overall positive feedback.

Rep. Erpelding referenced the changes made in Draft 28 and asked for an explanation of what violations are left to enforce. Mr. Hurst said that the reporting is what will be enforced.

Rep. Erpelding expressed concern about the new reporting violation fine. Mr. Hurst explained that there will be fines for errors in reporting. The Secretary of State's office will be fining those who failed to report.

The committee also discussed a need for contribution limits, electronic means of sharing contribution data, differences in Draft 27 and 28 concerning candidates, PACs and limits, and the fund transfer between different campaigns.

Sen. Hagedorn expressed that one account for different campaigns would simplify the reporting and make it more transparent.

Co-chair Wood put the work group at ease at 10:33 a.m.

Co-chair Wood resumed the meeting at 10:47 a.m. and opened the floor to testimony.

John Eaton and Alex LaBeau, Idaho Association of Commerce and Industry, testified before the committee with reference to the drafts discussed earlier. Mr. Eaton's testimony included:

- The need for a robust software system
- New requirements for disclosure
- Recommendation on clarification of who is processing the reporting requirements for the local jurisdictions
- Monthly reporting for PACs
- Recommendation to move the report date from the 10th of the month to the 15th, due to the credit card statements
- Fixing the 48-hour window right at the time of the election
- Recommendation on consistent language in drafted sections regarding the 30 days before primary and 60 days before general elections
- Recommendation on consistent fines
- Individuals and PACs should be subject to the same fines

The committee members, and Mr. Eaton and Mr. LaBeau, also discussed the definition of lobbying, obligation on expenditures, and the need for constant reporting each time the money comes in and becomes public.

Fred Birnbaum, Idaho Freedom Foundation, addressed the committee and started his testimony with a discussion on basic principles, such as the right to support the causes a person believes in, without fear of government or public reprisal, intimidation or harassment, and the desire to know who is using donations to influence elections. Mr. Birnbaum addressed the issue of how government databases have been used to silence debates, to attack contributors for their beliefs and how social media has been used for threats of retaliation. He pointed out definitions in draft 28 where these issues might occur. In regards to draft 27, Mr. Birnbaum said that some clarity was needed in definitions of electioneering communications and independent expenditures.

Phil McGrane, Ada County Clerk's Office, testified before the committee. Mr. McGrane noted that he is a strong proponent of changing how the local reporting is done. He supports the way local reporting is addressed in drafts 27 and 28, but clarification is needed to eliminate the conflicts with existing laws.

Mr. McGrane addressed:

- The issue of PACs registering with each individual local jurisdiction where the reporting requirements are different. He pointed out that having just one place for the reporting would simplify data access and improve the quality of the reporting
- Sections in Title 50 that need to be repealed
- The issue of managing the enforcement
- Reporting at the state level and policing at the county level

Sen. Hagedorn asked how entities that hold elections, such as school districts, water and sewer, irrigation districts and library districts are associated with county clerks. Mr. McGrane said that the county clerks run and administer the elections, but most of these entities are not required to do campaign finance reporting. This is going to change with the \$500 raised money reporting requirement.

Sen. Stennett questioned Mr. McGrane about whether the new software system will be equally accessible to all local entities. He responded that he is confident that most people are going to be able to comply with filing requirements. In the instances where it is not possible, the county clerk's offices could take that responsibility; also there are computers available in every courthouse. Mr. McGrane said that the committee is going to have to set a clear list of parameters for the software developers, to make the system usable.

Sen. Stennett expressed concern about local entities policing their own people in very small communities. Mr. McGrane pointed to the system existing now where prosecutors who have conflicts of interest will ask a neighboring prosecutor to take over the case or they may reach out to the Attorney General.

Mr. McGrane continued his testimony. He talked about:

- Moving the current section from Title 67 to new Title 74
- Necessity of having more than one political account
- A new structure for the Campaign Finance statutes
- Definition of Secretary of State's and County Clerk's office obligations
- Allowing early reports

Co-chair Wood called a recess of the work group for lunch at 11:59 a.m.

Co-chair Wood reconvened the meeting at 1:32 p.m. and asked Rep. Loertscher to present draft 26.

Rep. Loertscher presented draft 26 concerning financial disclosure. He spoke about:

- Definition of financial disclosure
- That the disclosure should apply to all elected officials in the state:
 - Constitutional officers
 - City officers
 - County officers
 - All candidates
- Implementation language in the draft
- Monetary penalties
- A form for the reports

Sen. Stennett asked for the definition of an adult residing in a house who was not blood-related on the report form. Rep. Loertscher said that it would apply to a dependent.

Committee Discussion:

The topics discussed were as follows:

- With respect to draft 26:
 - The definition of real property
 - Clarification of potential conflicts concerning mutual funds, IRA's, stocks and bonds. State vs. out-of-state issues
- With respect to draft 27:
 - Using draft 27 as the starting point, and the clarification of existing, added and struck language in the drafts. The need to highlight what was changed and what was left the same
 - The wording of "reasonable" should be more clearly defined concerning donations and expenditures
 - The alignment of candidate debt reporting dates of the winning and losing candidates
 - Detailed separation of sections in statutes
 - The continuation of campaign contribution limits
 - The use of technology to make known specific changes in statutes, and the creation of new changes, made in the form of brochures, booklets and handouts
 - The combination of primary and general campaign contribution limits, and the potential ethical conflicts of the combination of multiple campaign accounts
 - The limits for retirement of debt
 - The possible equalization of debt when contributions equal the debt and why candidates have or haven't paid said debt
 - The monthly disclosure of any active accounts
 - Various code establishment dates
 - Addressing establishment of local government lobbying provisions
 - Specific language of reporting requirements
 - Delegation of enforcements
 - The gravity of civil fines on individuals vs. other-than-individuals; and the range of fine limits on individuals vs. other entities (\$0 - \$25,000)
 - Disclosure of major contributors
 - Wording and filing of the completion/investigation of time and the filing of complaints
 - Issues concerning the timing of filing of electioneering campaign communications and the First Amendment
 - Federal/legal issues of conflicting expenditures of \$1,000 or more and other legal conflict issues

Co-chair Wood thanked the committee and the presenters for their work and set the date for the next meeting to be November 27th.

The work group adjourned at 2:58 p.m.