

MINUTES
Approved by the Committee
Campaign Finance Reform Interim Committee
Monday, August 20, 2018
9:30 A.M.
Room EW41
Boise, Idaho

Co-chair Lodge called the meeting to order at 9:45 a.m.; a silent roll call was taken. Committee members in attendance: Co-chair Senator Patti Anne Lodge and Co-chair Representative Fred Wood; Senators Mary Souza and Mark Harris; and Representatives John Vander Woude, Thomas Loertscher, Sage Dixon, Mathew Erpelding, and Megan Blanksma. Absent and excused: Senators Jeff Agenbroad and Michelle Stennett. Legislative Services Office (LSO) staff present were: Kristin Ford, Maggie Smith, and Ana Lara.

Other attendees: Betsy Russell - Idaho Press; Fred Birnbaum - Idaho Freedom Foundation; Lynn Tominaga - Idaho Ground Water Association; Brody Aston - Westerberg Associates; and Carlie Foster - Lobby Idaho.

Note: presentations and handouts provided by the presenters/speakers are posted on the Idaho Legislature website: www.legislature.idaho.gov; and copies of those items are on file at the Legislative Services offices located in the State Capitol.

Introductory remarks

The co-chairs welcomed the committee members and the public to the meeting. Co-chair Lodge stated that the committee would discuss draft legislation and hoped the committee could come to a consensus in updating the campaign finance laws.

State and local government officials' comments

Chief Deputy Attorney General Brian Kane's comments

Mr. Kane directed the committee to draft [DRKMF018](#) page 2, lines 30-31 and recommended inserting "paid e-mail" within the definition of "electioneering communication" to completely capture the committee's intent with the draft. Co-chair Wood asked Mr. Kane to recommend and provide language to Ms. Ford that he would feel comfortable defending in court.

Mr. Kane referred to the committee's previously stated concerns regarding disclosure timelines under the definition of electioneering communication. He explained that the Legislature's request for disclosure is more defensible than a prohibition on a statement. He stated that there is more leeway in defending a disclosure requirement than prohibiting a statement from being made. After reviewing the drafts, it was Mr. Kane's understanding that the committee was leaning toward expanding the disclosure requirements. In order to expand the disclosure requirements, but not make it too onerous for both participants and regulators, he suggested opening the disclosure period as of the last day of the filing period for the primaries. In other words, the Legislature would essentially declare that electioneering season begins on the last day of primary filings, and the period would not close again until the general election is complete.

Discussion

Senator Souza requested clarification regarding his statements on further disclosure from certain groups. Mr. Kane responded that electioneering communication is a broad category. He explained that groups that perform electioneering communication may be required to file annual reports, etc. depending where they fall under the regulatory framework.

Co-chair Wood recommended that Ms. Ford work with Mr. Kane to develop the best defensible verbiage for the proposed time frame for reporting electioneering communication.

Secretary of State Lawrence Denney's comments

Secretary Denney thanked the committee for including the office of the Secretary of State (SOS) in the discussions, particularly because the office would be tasked with enforcing any changes. He informed the committee that the SOS would contract with a vendor for the system upgrades. He stated that the new system would have the capability to provide a username and password for every candidate. He emphasized the importance of including local elections for reporting purposes. He stated his preference, as a candidate, for monthly reporting during the election cycle. He opined that the burden would not increase for candidates once they became more familiar with the electronic filing process. He opined further, stating that if someone expends money to influence the outcome of an election, then it should be reported.

Discussion

Representative Vander Woude asked when the new system would be available to examine. Secretary Denney offered to schedule a demonstration of the system for the committee members. He explained that there wouldn't be very many changes to the current system; the new system would extend services to the local level.

Representative Dixon asked if the software would be distributed to the counties. Secretary Denney responded that while the software would reside with the SOS, the counties would have access to the program to perform their filings. Once the filings are completed, the SOS will report the information to the counties.

Representative Loertscher stated that there did not appear to be any improvement to the SOS' enforcement capability, only an increase of fines. He suggested that instead of giving the SOS discretion in assessing fines, the language should be changed to make the fines mandatory. Secretary Denney concurred and explained that SOS did not have staff dedicated to investigation of complaints. When SOS finds a potential violation, it is referred to the Office of the Attorney General. He added that the low dollar amount for fines did not provide a strong motivation for prosecutors. Representative Loertscher asked whether it would be appropriate to increase the fine for late filings. Secretary Denney voiced his preference for the draft legislation that would eliminate a candidate's name from the ballot in the event of a late filing.

Representative Blanksma referred to draft [DRRCB011](#) and stated that it focused solely on enforcement and removed the discretion for assessing fines. Co-chair Wood suggested possibly increasing the late filing fee as well. Co-chair Lodge asked if it would be beneficial to assess the fine beginning on the first day that the filing is late. Secretary Denney responded in the affirmative.

Representative Vander Woude inquired how many candidates and lobbyists filed late in the last cycle. Secretary Denney wasn't sure, but estimated that about 20 people filed late.

Chief Deputy Tim Hurst for the SOS referred to Section 67-6625A, Idaho Code, and noted that the statute does not allow for the assessment of late filing fees if the report is filed within five days after receiving written notice of the filing requirement from the SOS. He emphasized that this section would need to be modified if the committee wished to assess fees immediately after the filing period deadline. Senator Souza expressed her support for the fines to be assessed after the reporting deadline and after the appropriate parties have been notified. She did not support the disqualification of candidates for filing their reports late. Representative Blanksma commented that financial institutions assess fines immediately after a payment is overdue and do not provide their consumers with a five-day grace period before fines are collected.

Co-chair Lodge asked about the disposition of fines collected by the SOS. Secretary Denney responded that the fines are deposited into the general fund.

Co-chair Wood referred to draft DRRCB011 and asked Ms. Ford if including the word "or" on line 13 was problematic. He also suggested increasing the fine amount for late filings from \$50 to \$250.

Representative Vander Woude noted that lobbyists were not included in the language regarding late report filings. Ms. Ford stated that everyone, including lobbyists, was subject to this chapter. She suggested including "lobbyists" in the draft. Secretary Denney commented that lobbyists are included in the section regarding violations, but was unsure whether lobbyists were included in the late filings section. Secretary Denney suggested changing draft language in [line 10] to clarify that a person would be liable to "the state of Idaho" and not to the SOS. Ms. Ford referred to precedent regarding the language for liability to the SOS. She suggested including language to clarify that fees would be deposited into the general fund.

Senator Harris asked if the collection of late filing fees has been successful. Secretary Denney responded in the affirmative.

Co-chair Lodge asked when the majority of the report filings are submitted aside from the due date. Secretary Denney responded that the vast majority of report filings are submitted on the due date. Co-chair Wood stated that, in the event the committee chose to increase the fine amount for late report filings, the stiff fine amount would work as a deterrent. He emphasized that it was not their intent to impose fines, but to ensure that reports are filed on time.

Representative Dixon asked if the state of Utah had removed candidate names from any ballots for late filings. Chief Deputy Hurst responded that two names were removed from the primary elections this year. Representative Dixon asked if the number had decreased since this statute was put in place. Mr. Hurst responded that he was unsure.

Chief Deputy Phil McGrane Comments

Mr. McGrane, chief deputy for the Ada County Clerk's Office, reminded the committee that the goal was to create greater confidence in government and promote openness and transparency and avoid secrecy as stated in statute. He commented that the drafts were odd pieces of legislation in that there are no natural advocacy groups promoting it because it predominantly regulates candidates, lobbyists, and legislators. He explained that it was a unique area of law in that it applies only to a select few and does not impact a variety of groups in communities. He emphasized the need to increase support for the legislation, especially since few committee members sit on the State Affairs committees. He reminded the committee that while they had been studying this subject for some time, most of their colleagues were not as familiar with the topic.

Mr. McGrane stated that the committee's priority should be making the process easy to comply with. He believed that the vendor selected for the new system upgrade in the SOS would be very amenable to modifying the software to complement the filing process. He stated that the second component is enforcement. He explained that although fines are being paid, they are not being assessed in a consistent manner. He reminded the committee that all candidates are informed of campaign finance laws when they file for office and opined that it was reasonable to assess a fine after the filing deadline. He stated that the third component is transparency. He directed the committee to draft [DRKMF012](#), page 3, line 18 and explained that the searchable items listed are items that candidates currently include in their report, but are not easily searchable at this time. He emphasized that it would not be difficult to create a database to search the information. He suggested that more frequent reporting during the current time frame between the primary election and the general election could be beneficial. He reminded the committee that under the current statute no one would know about the activity carried out during the summer until mid-October and opined that frequent reporting would be beneficial.

Discussion

Senator Souza relayed a suggestion for the SOS to create an app that people could use to log their expenditures and donations in real time. This information would then be transferred to their report,

and when the deadline for filing the report was near, the candidate would only need to review the information and verify it with their treasurer. Mr. McGrane stated that having seen the software he wasn't sure that the new system would include an app, but would pass this suggestion to the vendor. He stated that there had been discussions regarding the potential for people to enter expenditures and donations in the portal early on, but not necessarily filing the report until the deadline. He suggested that the potential requirement of filing monthly would make filing easier because people wouldn't have as much activity to report at once.

Representative Dixon asked if the new system upgrade would increase the burden on county clerks to the extent that they may need to hire additional staff. Mr. McGrane suggested that it would result in a shift of work; a certain portion of work would shift from county clerks to the SOS. He explained that county clerks would no longer need to collect filings or track and review reports; this work would become automated with the new system. However, he said, new work would fill the void. He explained that what they were currently proposing was for county clerks to be responsible for all the local taxing districts that are required to comply. He suggested that the work being automated and the new work created would balance each other and opined that no new additional staff would need to be hired.

Representative Vander Woude expressed concern that the Legislature had not seen the program and yet the committee was discussing draft legislation with the assumption that the new system would work well and be easy to use. Mr. McGrane responded that it was a reasonable request to see the software. He explained that the contract hadn't been signed yet and the program had not been fully developed yet. He suggested that during the time leading up to the legislative session, some of the program could be demonstrated and requirements and expectations from the Legislature could be set.

Co-chair Lodge asked when they might expect the program to be fully operational. Secretary Denney estimated that the program would be fully operational in 12 to 15 months.

The committee recessed for break at 11:01 a.m.

The committee reconvened at 11:15 a.m.

Co-chair Lodge asked the committee to review the drafts in numerical order. She reminded the committee that draft [DRKMF008](#) was the draft modeled after the Utah model that would remove the candidate's name if their report was filed late. Co-chair Wood noted the committee's discussion on the concept, and while he personally favored the Utah model, he believed the rest of the committee did not. He asked that the committee withdraw this draft.

The committee proceeded to examine draft [DRKMF009](#). Co-chair Wood noted that draft [DRRCB011](#) dealt with the same section of Idaho Code and moved that the committee dispense with this draft and take up draft DRRCB011 instead.

The committee proceeded to discuss draft [DRRCB011](#). Representative Blanksma expressed her preference for this draft and suggested it provided the SOS with the ability to enforce fees. She reminded the committee members of the suggestion to add "for deposit into the general fund" on line 10. Senator Harris noted that the committee had discussed including "and/or" on line 13 of the draft. He inquired whether the committee would entertain increasing the fine incrementally after the first five days of the filing deadline, for example.

Co-chair Lodge reminded the committee that they had discussed adding lobbyists to the draft. Representative Erpelding requested clarification on how this draft would apply directly to lobbyists. Mr. McGrane responded that this section already applied to lobbyists in terms of where it's structured within campaign finance laws. He explained that the current chapter title includes lobbyists. Senator Souza asked whether language needed to be added or modified on line 13, specifically the word "candidate." Mr. Hurst informed the committee that the SOS does indeed fine lobbyists for late filings and the section did apply to lobbyists. After some discussion, the

committee requested Ms. Ford to include candidate, treasurer, political committee, chairman of political committee, lobbyists, and secretaries on line 13. Ms. Ford suggested stating instead "any person required to file under this chapter and his treasurer if any," but added that she would include whatever language the committee preferred. The committee also asked Ms. Ford to have Mr. Kane review the verbiage.

In an effort to make it clear that the late filing fee begins immediately after the deadline, the committee requested including the language "a fine has been assessed and will continue to accrue" on line 15. **Senator Souza made a motion to accept draft DRRCB011 with the changes. Senator Harris seconded the motion. The motion passed by voice vote.**

Co-chair Lodge directed the committee to draft [DRKMF012](#). Representative Blanksma suggested striking section five from the draft so as not to conflict with the language in draft DRRCB011. Mr. McGrane stated that new language would be needed in this section at some point to extend oversight to the county clerks. Mr. McGrane suggested adding another revision to draft DRRCB011 by inserting "or county clerk" on line 12. After some discussion, **Representative Erpelding made a motion to strike section 5 from draft DRKMF012 and revise DRRCB011 to include "or county clerk" to line 12. Senator Harris made a motion to accept draft DRKMF012 with the amendment. Senator Souza seconded the motion.**

Representative Vander Woude referenced page 3, lines 37-39 and asked why violations would be referred to the prosecutor if county clerks would be tasked with conducting the investigations. Mr. Hurst explained that because a county clerk does not have the authority to prosecute, the clerk must then refer the matter to the county prosecutor.

The motion passed by voice vote.

The committee recessed for a lunch break at 12:00 p.m.

The committee reconvened from lunch at 1:19 p.m.

The committee proceeded to review the definitions in draft [DRKMF018](#). Representative Vander Woude asked whether a person who is considered a candidate while in office would be required to disclose all activity while in office. Ms. Ford referred to page 1, line 25 and explained that while the incumbent would be considered a candidate, the reporting period for an incumbent would be the same as other candidates. Senator Souza found the concept that an incumbent is automatically presumed to be a candidate problematic. She opined that an incumbent should be considered a candidate once the incumbent has either filed paperwork for office or declares candidacy. Co-chair Wood reminded the committee that the definition of a candidate was not new language. Mr. Hurst stated that the draft's definition for candidate was currently in Idaho Code and explained that the addition to the current definition provides a specific end date for when an incumbent ceases to be a candidate.

Co-chair Wood reminded the committee of Mr. Kane's suggestions:

- Inserting "paid e-mail" within the definition of "electioneering communication" to completely capture the committee's intent with the draft; and
- Opening the disclosure period for an electioneering communication from the last day of the filing period for the primaries until the end of the general election.

Senator Souza inquired about the extent of disclosure requirements proposed under draft DRKMF018. Ms. Ford responded that the requirements could be found on page 5, lines 31-48 and on page 6, lines 1-2. Senator Souza asked if endorsing a person on social media would be considered an electioneering communication. Mr. Hurst responded it would be considered an electioneering communication only if it was a paid advertisement. Ms. Ford reminded the committee that the draft's definition of electioneering communication included the word "paid" for clarification. Mr. Hurst also clarified that expenditures of less than \$100 were not considered electioneering

communication. Representative Vander Woude asked if the \$100 threshold was cumulative. Mr. Hurst responded in the affirmative, but acknowledged that it did not state so.

Senator Souza referred to the [handout](#) from the Institute For Free Speech and suggested the committee should consider Wisconsin's definition of political committee. Representative Erpelding referenced the definition of political committee on page 5 of the draft and opined that, with the exception of the threshold, it was very similar to the definition provided by the Institute for Free Speech. Co-chair Wood questioned whether Wisconsin had a different definition for political committee versus political action committee. Co-chair Lodge noted the high cost of running for office in other states in comparison to Idaho. She opined that the \$500 threshold was a reasonable amount for Idaho. Co-chair Wood asked whether the SOS had encountered any issues regarding the definition of political committee. Mr. Hurst responded in the negative and suggested that Idaho's definition of political committee was more inclusive. He opined that the Institute for Free Speech wished to protect their right to speech, but not necessarily protect disclosures.

Co-chair Lodge directed the committee to page 3, line 48 of the draft. Representative Vander Woude asked how someone could make private expenditures on an initiative. Mr. Hurst responded that initiatives have political committees and there are no limits on political committees or measures. He clarified that candidates cannot coordinate with political committees in an effort to circumvent limits.

Co-chair Wood made a motion to accept draft DRKMF018 with the following two changes:

- **Insert "paid e-mail" within the definition of "electioneering communication"; and**
- **Open the disclosure period for an electioneering communication from the last day of the filing period for the primaries until the end of the general election.**

He noted that Mr. Kane would provide a recommendation for the definition of "social media."

Representative Erpelding seconded the motion. The motion passed by voice vote.

Senator Harris referred to draft [DRKMF014](#), page 2, line 31 and asked why the date had been changed from the sixteenth day to the thirtieth day. Secretary Denney responded that if the Legislature required monthly reporting, there would be no need to go past 30 days.

Senator Souza inquired about line 42 on page 2. Ms. Ford explained that this section pertained to any hardship waiver granted by the SOS.

Co-chair Lodge inquired about the midnight filing deadline for reports. Mr. Hurst explained that a filing deadline of midnight works best considering that the report filing would be submitted online. Co-chair Lodge referred to page 3, lines 30-32 and asked if it would be more consistent to require that the report be filed by the tenth day of the month. Mr. McGrane agreed that the tenth would be more consistent. Co-chair Lodge asked that the filing deadline be changed to the tenth day.

Representative Vander Woude referred to page 3, lines 26-29 and asked if semi-annual reporting was in reference to candidates who had lost their race but had an unencumbered balance. Mr. McGrane responded in the affirmative and explained that until the balance is distributed they need to report with some frequency so the funds can be monitored.

Senator Souza inquired about section (d) on page 3, specifically whether all individuals with a report of an unexpended balance would be required to file reports semi-annually. Mr. McGrane explained that this reporting requirement would only increase reporting in the off-year of elections to semi-annually.

Co-chair Wood made a motion to accept draft DRKMF014 with the requested revision to change "twentieth" to "tenth" on page 3, line 31. Senator Harris seconded the motion. Representative Loertscher was recorded as voting nay. The motion passed by voice vote.

Co-chair Lodge directed the committee to draft [DRKMF013](#). Co-chair Wood stated that this draft dealt with changes to the definitions. He noted the similarities between drafts DRKMF018 and

DRKMF013 and explained that the changes to the definitions in Section 67-6602 referenced in the discussion regarding DRKMF018 would need to be incorporated in draft KMF013 as well.

Representative Blanksma suggested combining drafts DRKMF012 and DRKMF013 to keep the issues of local reporting together. After some discussion, Ms. Ford offered to combine some of the drafts according to subject areas (local races, independent expenditures, electioneering communication, penalties, etc.) and also provide the committee with separate drafts as well.

Senator Souza asked why the office of precinct committeeman was not included in the definition of "public office." Mr. Hurst responded that the office of precinct committeeman was considered a party office.

Representative Vander Woude asked if a political committee could consist of one member. Co-chair Lodge responded in the affirmative.

Representative Loertscher referred to Section 67-6607 and expressed concern that the section differed among drafts. Ms. Ford explained that draft DRKMF013 was drafted as a stand-alone bill in the event the committee decided not to pursue monthly reporting. She offered to incorporate all the changes requested by the committee into one comprehensive draft and to also draft some stand-alone bills in a manner that ensures the drafts do not conflict with each other in the event the committee chooses to pursue only a select few drafts.

Senator Souza referred to page 7, line 30 and asked if the language was a change from the current language found in statute. Ms. Ford responded that there was a slight change from the current language. She explained that some of the language was rearranged. For example, the same provisions regarding judicial office were struck from another area and included in this section. She clarified that the only substantial addition to the language was the inclusion of the local government office.

Senator Souza made a motion to accept draft DRKMF013. Co-chair Wood seconded the motion. The motion passed by voice vote.

Co-chair Lodge directed the committee to draft [DRKMF015](#). Co-chair Wood asked Ms. Ford what changes were incorporated in Section 67-6602 of the draft that had not already been reviewed by the committee. Ms. Ford responded that drafts DRKMF015 and DRKMF017 were alternates to draft DRKMF018 and the committee had approved draft DRKMF018. She clarified that the only differences between the drafts were the lengths of time for electioneering communications.

Public Comments

Co-chair Lodge opened the meeting to public comments. She called upon Mr. Fred Birnbaum, representing the Idaho Freedom Foundation, to provide public comments to the committee. Mr. Birnbaum stated his comments would be confined to draft DRKMF018. He opined that the electioneering communication reporting time frame in draft DRKMF018 was an extensive time frame. He suggested that the time frame proposed in the draft would take Idaho's reporting of electioneering communications further than any other state in the union. He stated that in his research he found that most states use the 30-day pre-primary and 60-day pre-general time frames. He was unaware of the use of an eight-month time frame in another state and suggested it was unprecedented. He explained that Idaho's current reporting time frames were based on federal guidelines. He suggested that it could be difficult at times to discern what constitutes an electioneering communication. He referred to the draft's definition of an electioneering communication and opined that the threshold of \$100 was extremely low. He referred to page 2, line 47 of the draft and suggested that the scope was very broad due to a small number of exceptions. He opined that the target found within the definition of an electioneering communication was very broad ("voters or potential voters") and compared it to federal law that suggests that the target is based on the relevant audience.

Mr. Birnbaum offered to create a matrix for the committee of all 50 states that would include the time frame, scope, targeted audience, and dollar threshold in an attempt to show any state that is as restrictive in regards to reporting of electioneering communications.

Discussion

Co-chair Lodge referred to Mr. Birnbaum's comments regarding donor privacy and asked Mr. Birnbaum to provide the context for those comments. Mr. Birnbaum referred to draft DRKMF018, page 5, lines 34-37. He explained that if any organization receives contributions from an individual of \$100 or more and the organization spends \$100 or more, then it would be required that the name of the donor be revealed. Co-chair Lodge inquired if this was not already a current requirement in statute. Mr. Birnbaum responded yes, but explained that the current reporting time frames were narrower and suggested that the change would increase the number of donor names and addresses reported.

Senator Souza stated that while the committee's goal is transparency, it is also important to respect the privacy of citizens who are not public officials. She emphasized that there was a fine line between protecting the privacy of individual citizens and providing transparency with regards to election activities. She appreciated Mr. Birnbaum's offer of a matrix to compare Idaho's definition of electioneering communications to other states.

Committee Discussion

Co-chair Lodge called for the approval of the July 17, 2018, minutes. **Co-chair Wood made a motion to approve the July 17, 2018, minutes. Representative Dixon seconded the motion. The motion passed by voice vote.**

Co-chair Wood asked Ms. Ford to coordinate Mr. Kane's presence at the following meeting and to ensure he is ready to speak on any issues or concerns regarding the disclosure periods proposed by the committee.

Co-chair Lodge asked for copies of drafts DRKMF265 and DRKMF270 at the following meeting. Ms. Ford responded that copies of the drafts would be provided at the following meeting with new draft numbers for the 2019 legislative session.

The committee adjourned at 2:56 p.m.