

MINUTES
SENATE STATE AFFAIRS COMMITTEE

DATE: Friday, February 22, 2019

TIME: 8:00 A.M.

PLACE: Room WW55

MEMBERS PRESENT: Chairwoman Lodge, Vice Chairman Harris, Senators Hill, Winder, Vick, Anthon, Souza, and Stennett

ABSENT/ EXCUSED: Senator Buckner-Webb

NOTE: The sign-in sheet, testimonies and other related materials will be retained with the minutes in the Committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

CONVENED: **Chairwoman Lodge** called the Senate State Affairs Committee (Committee) to order at 8:04 a.m.

VOTE ON GUBERNATORIAL RE-APPOINTMENT: **The Gubernatorial re-appointment** of Janet Gallimore as State Historical Preservation Officer.

MOTION: **Senator Stennett** moved to send the Gubernatorial re-appointment of Janet Gallimore as State Historical Preservation Officer to the floor with the recommendation that she be confirmed by the Senate. **Vice Chairman Harris** seconded the motion. The motion carried by **voice vote**.

RS 26868C1 **RELATING TO LOBBYING** to modify Sunshine Law definitions and procedures pertaining to lobbyists and lobbyists reporting.

Chad Houck, Deputy Secretary of State, explained that **RS 26868C1** clarifies the types of relationships between lobbyists and their employers or clients, and provides a process for filing and notification of electronic reports to employers or clients. The legislation was prepared with the assistance of a lobbyist panel appointed by the president of the lobbyist association. The panel consisted of Pam Eaton, representing the trade association lobbyists; Jason Ronk, representing the designated corporate lobbyists; and Jason Kreizenbeck, representing the contract lobbyists.

Senator Souza asked Mr. Houck to explain what the changes are and why they were brought forward. **Mr. Houck** described the bill and definitions therein. The objectives are to create correlations between a contractor and a client, a contractor and an employee, and what a lobbyist registration statement shall include. In addition, this bill provides that the employer or client will not have to sign the report; the lobbyist will be the only signature needed. Fines can be incurred if statements are not timely.

MOTION: **Senator Hill** moved to send **RS 26868C1** to print. **Senator Anthon** seconded the motion. The motion carried by **voice vote**.

RS 26921 **STATING FINDINGS OF THE LEGISLATURE** to reject a portion of a rule relating to the Division of Purchasing.

Vice Chairman Harris explained this resolution rejects IDAPA 38.05.01, Rules of the Division of Purchasing, Section 114., Subsection 02.b adopted as a pending rule under **Docket Number 38-0501-1801**.

MOTION: **Vice Chairman Harris** moved to send **RS 26921** to print. **Senator Souza** seconded the motion.

Chairwoman Lodge reminded the Committee that the Department of Administration requested that this section be rejected.

The motion carried by **voice vote**.

S 1076 **RELATING TO LIQUOR STORES CONTINUED** to authorize sample tasting of liquor in certain instances.

Kate Haas, Kestrel West, on behalf of the Distilled Spirits Council, noted that this is a continuation of the discussion from the last meeting regarding **S 1076** that would allow sampling in liquor stores. The bill was held to clarify the authority in existing statute and rules to enable the creation of rules around this bill and to determine if amendments would be necessary. **Ms. Haas** stated Dennis Stevenson, Administrative Rules Coordinator, assisted in identifying the information in Idaho Code § 23-206(b) that gives explicit rulemaking authority under the powers and duties of the Director of the Idaho State Liquor Division and the Idaho Liquor Board. This gives the Director rulemaking authority. **Ms. Haas** said she and Director Jeff Anderson had conversations confirming that they both are solidly committed to rule making after the session ends. They are also committed to delay any sampling until the rules are in place. During the conversations with Director Anderson, they agreed to address some of the concerns that arose during Wednesday's meeting with regard to the smaller, more accessible contract stores where it may not be appropriate to have a sampling. That issue could possibly be addressed in rule to prevent samplings in those environments.

MOTION: **Senator Souza** moved to send **S 1076** to the floor with a **do pass** recommendation. **Senator Anthon** seconded the motion. The motion carried by **voice vote**. **Senator Hill** and **Senator Harris** requested that they be recorded as voting nay.

PASSED THE GAVEL: Chairwoman Lodge passed the gavel to Vice Chairman Harris.

S 1114 **RELATING TO CAMPAIGN FINANCE** to increase transparency in campaign finance for statewide, legislative, and local elections.

Chairwoman Lodge explained that **S 1114** is about electioneering and finance in a campaign and how the public wants transparency and sunshine in these areas. She went through the bill and explained the changes starting with the definition of a candidate. The definition of election was updated because it now includes state, local, general, special, recall, and primary elections. Information from all those elections will go into the Secretary of State's (SOS) database. Electioneering Communication is a concern covered in this bill; meaning "any paid communication to members of the public". The key words are "public" and "paid"; those words include voters or potential voters for public office or a ballot measure. **Chairwoman Lodge** read from the bill on page 2, lines 33-46, for clarification. She went on to explain in detail what the term "independent expenditure" means and how it applied to campaign finance. This portion of the bill points out the differences between what an expenditure is and what it is not. **Chairwoman Lodge** continued discussions on conduct, local government office, measures, social media, and statement due dates. The bill clarifies exactly what donations must be reported. There was also some clean up language. **Chairwoman Lodge** stated that the whole idea of the Campaign Finance Committee (Finance Committee) was to make campaign financing more transparent, make it easier for people to use, find information, and make it easier for the SOS to collect the data.

DISCUSSION:

Senator Souza recalled that she was hesitant to endorse the time period expansion from the filing date for the candidates through the general election for the election communication section. The language in this section that says "unambiguously refers" is referring to a specific candidate or measure for the extended time period, which takes up three quarters of the year. Substituting the same wording on page 4 under the independent expenditures "expressly advocating the election passage or defeat of a clearly identified candidate or measure" rather than "unambiguously refers" could make it clearer.

Chairwoman Lodge stated she would be willing to take that suggestion to the Finance Committee. She has asked for an extension for the Campaign Finance Committee for next year.

One challenge to be overcome is the difference between what a Political Action Committee (PAC) does and what lobbying is done by a 501(c)(3) or a 501(c)(4) and their ability to lobby and not report anything, including membership. It is not relevant to know who their members are, but it is necessary to have transparency about where the money is coming from.

Senator Vick referred to page 1, line 25, and the definition of a candidate and social media. He asked if someone could announce their candidacy through social media. **Senator Lodge** responded that until they file, they are not a bonafide candidate.

Representative Fred Wood, District 27, responded to Senator Vick's question. This bill is principally clean-up language. A declaration for candidacy is "I have made a decision that I am going to run in the next election to replace a certain Senator." Anything less specific is not a declaration of candidacy. Any of the verbiage here can be argued.

Senator Vick referred to section (d) and quoted "made an expenditure contracted for service or reserved space". This statement made sense before the advent of websites. **Senator Vick** asked if this type of issue was discussed in the Finance Committee. **Representative Wood** responded that he didn't recall any specific conversation concerning renting space. The relevant issue is intent. After renting this space, actively making plans, taking action, and/or spreading the word to be a candidate could reasonably be viewed as intent to use the space as a candidate.

Brian Kane, Idaho State Attorney General's Office, came forward to answer the question. The plain language of the definition of candidate is "an individual who seeks nomination, election, or re-election to public office and who has taken any of the following actions." If one reserves a specific web presence but is not actively seeking a nomination, election, or re-election at that point, then these provisions wouldn't be triggered. It requires the conjunctive; one has to do both; seek the nomination and take the steps.

Senator Hill questioned the difference between the language in subsection (2) that has been stricken, "announces publicly or files for office," and replaced by subsection (a) and (b), "announced the individual's candidacy publicly, filed for public office." He queried if the difference between what has been struck and what has been added might cause some concern. **Mr. Kane** referred to the last explanation where one must actively seek the office and then take one of those affirmative steps. If the first part of a statement is a bare statement without the second part of seeking the office, the other parts do not come into play. Putting the two together becomes the act that applies. To raise money, a C1 must be filed with the Secretary of State at that point. This bill clarifies the former definition by creating both the active seeking of office plus one of the steps necessary to demonstrate active seeking of office; it becomes a combination.

Senator Souza asked Mr. Kane to comment on a question she asked Chairwoman Lodge about "unambiguously refers." **Mr. Kane** stated that the phrase is language that is replicated across the nation and has been examined by the U.S. Supreme Court and additional circuit courts. It is a term that narrows the application of electioneering communication because in order to qualify as an electioneering communication, it must unambiguously refer to either a candidate or a measure. There are some that say these amendments will stifle the ability of folks to discuss government affairs; it doesn't stifle those discussions. It does require an examination of whether it falls under the reporting system. With a general discussion of a certain measure, there is no prohibition or limitation. The unambiguous language is specifically designed to narrow the scope of the application of these provisions. **Senator Souza** asked if Mr. Kane is saying that "unambiguously refers" is more narrower in its definition than what is used in the independent expenditure definition. **Mr. Kane** said he couldn't say one or the other is clearer. **Senator Souza** extended her question to include mentioning any comment related or not, would they be referred to as a candidate; would that only be clear to those in the legal profession, not the general public. **Mr. Kane** quantified the thresholds for this to apply, it is only going to apply to a statement that crosses the expenditure threshold, which is \$1000. He also explained the time element.

Senator Stennett outlined a scenario regarding 501c3s that get membership money for being able to advocate for or inform. If they are talking about a topic or issue, is it required that they also must report their membership. **Mr. Kane** said it depends on the requirements. If a donation is to be reported, it must \$250 and within the reporting period. **Senator Stennett** stated that if a \$250 membership is given to educate and inform the public within the reporting period, it is required to be reported and could stifle the ability to inform and educate the public. She asked if that affected the first amendment and the ability to talk freely about what is happening in government. **Mr. Kane** stated his belief that these amendments to the statute are defensible based on existing case law. What is being asked is more of a philosophical debate.

Senator Vick asked if a letter campaign was initiated, would donors have to be reported. **Mr. Kane** said that it must be a paid communication. No one gets paid for a simple letter writing campaign. If they do get paid, it must exceed the \$1,000 threshold. **Senator Vick** asked for confirmation that both the activity and donations must be in the reportable period for it to be reported. **Mr. Kane** said there are two reporting requirements; there is the requirement the expenditure as a whole be reported. However, if it is individual donors, they only have to be disclosed if they cross the \$250 threshold during the reporting period.

Senator Hill stated the focus should be on what this bill does. The current language under Idaho Code § 67-6628, Electioneering Communications, says "Any person who conducts or transmits any electioneering communication . . . on a form provided by the Secretary of State." The changes in this bill says it now has to be over \$1,000 where the old bill didn't. The reporting goes to \$250 instead of \$50. Both instances lower the standard. **Senator Hill** said the definition of electioneering communication tightens this bill and says it must be paid. It also greatly broadens the time period, that is a concern for some. **Mr. Kane** agreed with Senator Hill's analysis. The reporting period has been broadened as has the election season.

Senator Souza referred to page 7, line 11 that says "during the calendar year" and was not sure what that was referring to. Would it be better to change that phrase to "during the reporting period"? **Mr. Kane** stated that is a determination for the Finance Committee to make.

Senator Winder read lines 13-18, page 3, and asked Mr. Kane to explain what it means and if it deals with the issues that are being discussed. **Mr. Kane** stated this is referring to a senator regarding a piece of legislation. That removes most of the concerns related by the Committee.

TESTIMONY:

Alex LeBeau identified himself as President of the Idaho Association of Commerce and Industry, Treasurer of the Idaho Prosperity Fund, and the former Treasurer of the Realtors Political Action Committee. He has been involved in campaigns most of the actions involved in these laws.

The distinguishing fact of this bill is whether or not one is simply informing someone else; there is a difference between informing and attempting to influence. The purpose is to promote public confidence and openness in government, and promote transparency by those giving financial support when promoting or opposing legislation. The bill also adds, in addition to those seeking election, those that are seeking re-election. Not only is communication being tightened, the area of "paid" is tightened and has to be within time frames. **Mr. LeBeau** continued to explain in depth about the coordination of campaigns, and what constitutes an independent expenditure. He commented about collusion and the type of exclusions included in the legislation.

Senator Stennett asked if organizations like PACs have attempted to influence rather than inform and if he was comfortable with the \$250 reporting level and time period. **Mr. LeBeau** replied that his associates try to influence and they do all the disclosures appropriately and reports all money.

TESTIMONY:

Jason Risch, Attorney with Risch Pisca, legal council to the Idaho Association of Realtors, stated he provides political consulting on campaign finance to candidates of both political parties. **Mr. Risch** described how the Supreme Court heard cases on this issue and how they came up with their most recent decisions that allowed this type of statute to stand.

Senator Souza asked if the extension of the time period would provide the potential for problems with some 501(c)(3) groups. **Mr. Risch** answered it would not extensively affect those groups.

Kathy Griesmyer, Policy Director for American Civil Liberties Union (ACLU), spoke of concerns about this legislation (attachment 1). She said they believe the proposed language is too broad and will have unintended consequences in how traditional 501(c)(3) nonprofit organizations do their work. The primary concern has to do with the proposed expanded timeframe. She used ACLU as an example and explained some of their policies. She questioned the word "paid" since what "paid" means can be ambiguous and explained why. **Ms. Griesmyer** also discussed issues regarding fundraising, communication, and disclosure under the electioneering communications definition and offered some recommendations that would be appropriate.

Fred Birnbaum, Idaho Freedom Foundation, spoke in opposition to this bill and offered some recommendations. His concern was the electioneering communications (EC) changes. He reviewed some information from a report he had obtained regarding EC regulations by state. He said if **S 1114** passed, only South Dakota would have a broader EC statute than Idaho regarding the timeframe. **Mr. Birnbaum** commented in detail about why the timeframe and related dates, communication, and donations for EC is problematic.

Kerry Uhlenkot, Legislative Coordinator for Right to Life of Idaho (RTL), asked the Committee to vote no or amend **S 1114**. RTL and its affiliates have a long history of opposing campaign finance because of its attack on First Amendment rights. It also curbs grassroots lobbying. Another issue of importance is that non-profits and charities should not be required to report

the names and addresses of their supporters to a government agency. **Ms. Uhlenkot** provided details on how this requirement would affect non-profits.

Senator Winder asked if there was a way to clarify the difference between RTL's normal activities and electioneering. **Ms. Uhlenkot** responded that they are a 501(c)(4) with an internal 501(c)(3). They have a website and Facebook. She inquired if, for example, accommodation was given to a senator for his support of a pro-life bill, that would that be considered electioneering; it is a concern.

Amy Little, President and CEO of the Idaho Nonprofit Center (Center), stated she represents over 6500 nonprofits across the state. The Center is a 501(c)(3) organization with a mission to educate, advocate, and collaborate in support of stronger nonprofits. **Ms. Little** stated they are in agreement with the ACLU and other nonprofits. The Center has not taken an official position at this time. She is here to express some concerns with the way this legislation is currently written. She outlined several issues and gave examples for clarity. She also noted they have a donor Bill of Rights that ensures gifts to their organization from donors who wish to remain private will remain private.

Ron Nate, Senior Fellow and founding member of the Madison Liberty Institute, a 501(c)(3) nonprofit in Rexburg, Idaho, spoke in opposition to **S 1114**. **Mr. Nate** stated his concerns were partly with the intent of the bill and with the unintended secondary effects, particularly with the electioneering sections on pages 2 and 7. For an electioneering communication to be defined as such, it needs to be paid publicly and unambiguously refer to an election, candidate, or measure. As **Ms. Griesmeyer** pointed out, the definition of "paid" is very unclear. Expense needs to be clarified; any communication effort involves expense. He also provided several examples of what could happen if donor names were released. **Mr. Nate** said the intentions may be good, but the secondary effects are problematic; he recommends the bill be amended in ways that **Ms. Griesmeyer** suggested.

**WRITTEN
TESTIMONY:**

Tyler Martinez, Attorney, Institute for Free Speech, submitted written testimony stating constitutional and practical concerns (attachment 2).

MOTION:

Senator Anthon moved that **S 1114** be held in Committee. **Senator Souza** seconded the motion.

DISCUSSION:

Senator Winder asked Senator Anthon to state his intention in holding this bill.

Senator Anthon clarified that he had no intention of killing this bill; he is in favor of these types of reforms. The intent was to hold the bill at the discretion of the Chair.

Senator Winder asked Mr. Kane to report back to the Committee whether or not certain points pertaining to the law were already covered in current law. **Senator Winder** stated that more education is needed for both the proponents and opponents to the bill to ensure there is a clear understanding of it. He will support the motion with the intent that the bill move forward, but with a better understanding of what is contained in the bill.

Senator Vick said it was helpful to have this hearing and have the sponsor read through and explain the bill. He will support the motion.

Senator Stennett explained that she was on the Finance Committee and there were a lot of changes to the bill. Although there was a herculean effort to get a perfect product, at the end there still could be some changes. She is in support of the efforts this bill embodies. The coalition of diversity in today's discussion is a true indicator that, if a few word changes are made, this will be a very good product.

Senator Souza stated her support of this motion for similar reasons that Senator Stennett voiced. She explained that, while on the Finance Committee, she questioned the expanded window of time, and she has tried to find a way to mitigate some of the negatives that imparts. A possible amendment may make this bill a reality by the end of the session. She is willing to work on it a bit more.

VOICE VOTE:

The motion to hold **S 1114** in Committee carried by **voice vote**

ADJOURNED:

Vice Chairman Harris stated the remaining agenda items will be rescheduled and adjourned the meeting at 10:10 a.m.

Senator Lodge, Chair

Twyla Melton, Secretary