

IN THE SENATE

SENATE BILL NO. 1244

BY WERK, BILYEU, BOCK, LEFAVOUR, SCHMIDT, STENNETT

AN ACT

RELATING TO CONTRIBUTIONS TO STATE ELECTED OFFICIALS; TO PROVIDE A SHORT TITLE; AMENDING CHAPTER 57, TITLE 67, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 67-5744A, IDAHO CODE, TO DEFINE TERMS AND TO PROVIDE PROHIBITIONS ON STATE CONTRACTORS OR PROSPECTIVE STATE CONTRACTORS, TO PROVIDE PROCEDURES, TO PROVIDE FOR NOTICE AND TO PROVIDE PROHIBITIONS ON STATE ELECTED OFFICIALS WITH EXCEPTIONS; AMENDING CHAPTER 57, TITLE 67, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 67-5744B, IDAHO CODE, TO PROVIDE FOR INFORMATION PROVIDED TO THE SECRETARY OF STATE AND TO PROVIDE FOR PENALTIES; AND AMENDING SECTION 67-6625, IDAHO CODE, TO PROVIDE A CORRECT STATUTORY REFERENCE.

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

SECTION 1. SHORT TITLE. This act shall be known as the "Pay to Play Act."

SECTION 2. That Chapter 57, Title 67, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 67-5744A, Idaho Code, and to read as follows:

67-5744A. DEFINITIONS. (1) As used in this section:

(a) "Political subdivision" has the same meaning as provided in section 44-2013, Idaho Code.

(b) "State agency" means any office, department, board, council, commission, institution or other agency in the executive or legislative branch of state government.

(c) "State contract" means an agreement or contract with the state or any state agency or other political subdivision, let through a procurement process or otherwise, having a value of fifty thousand dollars (\$50,000) or more, or a combination or series of such agreements or contracts having a value of one hundred thousand dollars (\$100,000) or more in a calendar year, for:

(i) The rendition of services;

(ii) The furnishing of any goods, material, supplies, equipment or any items of any kind;

(iii) The construction, alteration or repair of any public building or public work;

(iv) The acquisition, sale or lease of any land or building;

(v) A licensing arrangement; or

(vi) A grant, loan or loan guarantee.

"State contract" does not include any agreement or contract with the state, any state agency or other political subdivision that is exclusively federally funded, an education loan, a loan to an individual for other than commercial purposes or any agreement or contract between the

1 state or any state agency and the United States department of the navy or
2 the United States department of defense.

3 (d) "State contractor" means a person, business entity or nonprofit
4 organization that enters into a state contract. Such person, business
5 entity or nonprofit organization shall be deemed to be a state contrac-
6 tor until December 31st of the year in which such contract terminates.
7 "State contractor" does not include a municipality or any other polit-
8 ical subdivision of the state, including any entities or associations
9 duly created by the municipality or other political subdivision exclu-
10 sively amongst themselves to further any purpose authorized by statute
11 or ordinance, or an employee in the executive or legislative branch of
12 state government or a political subdivision, whether in the classified
13 or unclassified service and full-time or part-time, and only in such
14 person's capacity as a state or political subdivision employee.

15 (e) "Prospective state contractor" means a person, business entity or
16 nonprofit organization that submits a response to a state contract so-
17 licitation by the state, a state agency or a political subdivision, or
18 a proposal in response to a request for proposals by the state, a state
19 agency or a political subdivision, until the contract has been entered
20 into. "Prospective state contractor" does not include a municipality
21 or any other political subdivision of the state, including any entities
22 or associations duly created by the municipality or political subdivi-
23 sion exclusively amongst themselves to further any purpose authorized
24 by statute or charter, or an employee in the executive or legislative
25 branch of state government or a political subdivision, whether in the
26 classified or unclassified service and full-time or part-time, and only
27 in such person's capacity as a state or political subdivision employee.

28 (f) "Principal of a state contractor" or "principal of a prospective
29 state contractor" means:

30 (i) Any individual who is a member of the board of directors of, or
31 has an ownership interest of five percent (5%) or more in, a state
32 contractor or prospective state contractor, which is a business
33 entity, except for an individual who is a member of the board of di-
34 rectors of a nonprofit organization;

35 (ii) An individual who is employed by a state contractor or
36 prospective state contractor, which is a business entity, as pres-
37 ident, treasurer or executive vice president;

38 (iii) An individual who is the chief executive officer of a state
39 contractor or prospective state contractor, which is not a busi-
40 ness entity, or if a state contractor or prospective state con-
41 tractor has no such officer, then the officer who duly possesses
42 comparable powers and duties;

43 (iv) An officer or an employee of any state contractor or prospec-
44 tive state contractor who has managerial or discretionary respon-
45 sibilities with respect to a state contract;

46 (v) The spouse or a dependent child who is eighteen (18) years of
47 age or older of an individual described in this paragraph; or

48 (vi) A political committee established or controlled by an indi-
49 vidual described in this paragraph (f) or the business entity or

1 nonprofit organization that is the state contractor or prospec-
2 tive state contractor.

3 (g) "Dependent child" means a child residing in an individual's house-
4 hold who may legally be claimed as a dependent on the federal income tax
5 return of such individual.

6 (h) "Managerial or discretionary responsibilities with respect to a
7 state contract" means having direct, extensive and substantive respon-
8 sibilities with respect to the negotiation of the state contract and not
9 peripheral, clerical or ministerial responsibilities.

10 (i) "Rendition of services" means the provision of any service to a
11 state agency or quasi-public agency in exchange for a fee, remuneration
12 or compensation of any kind from the state or through an arrangement
13 with the state.

14 (j) "State contract solicitation" means a request by a state agency or
15 other political subdivision, in whatever form issued, including, but
16 not limited to, an invitation to bid, request for proposals, request
17 for information or request for quotes, inviting bids, quotes or other
18 types of submittals, through a competitive procurement process or an-
19 other process authorized by law waiving competitive procurement.

20 (k) "Subcontractor" means any person, business entity or nonprofit or-
21 ganization that contracts to perform part or all of the obligations of
22 a state contractor's state contract. Such person, business entity or
23 nonprofit organization shall be deemed to be a subcontractor until De-
24 cember 31st of the year in which the subcontract terminates. "Subcon-
25 tractor" does not include:

26 (i) A municipality or any other political subdivision of the
27 state, including any entities or associations duly created by the
28 municipality or political subdivision exclusively amongst them-
29 selves to further any purpose authorized by statute or charter; or

30 (ii) An employee in the executive or legislative branch of state
31 government or a political subdivision, whether in the classified
32 or unclassified service and full-time or part-time, and only in
33 such person's capacity as a state or political subdivision em-
34 ployee.

35 (l) "Principal of a subcontractor" means:

36 (i) Any individual who is a member of the board of directors of,
37 or has an ownership interest of five percent (5%) or more in, a sub-
38 contractor, which is a business entity, except for an individual
39 who is a member of the board of directors of a nonprofit organiza-
40 tion;

41 (ii) An individual who is employed by a subcontractor, which is a
42 business entity, as president, treasurer or executive vice presi-
43 dent;

44 (iii) An individual who is the chief executive officer of a sub-
45 contractor, which is not a business entity, or if a subcontractor
46 has no such officer, then the officer who duly possesses compara-
47 ble powers and duties;

48 (iv) An officer or an employee of any subcontractor who has man-
49 agerial or discretionary responsibilities with respect to a sub-
50 contract with a state contractor;

(v) The spouse or a dependent child who is eighteen (18) years of age or older of an individual described in this paragraph; or

(vi) A political committee established or controlled by an individual described in this paragraph or the business entity or non-profit organization that is the subcontractor.

(2) (a) No state contractor, prospective state contractor, principal of a state contractor or principal of a prospective state contractor, with regard to a state contract or a state contract solicitation with or from a state agency in the executive branch or a political subdivision, shall make a contribution to, or, on and after January 1, 2013, knowingly solicit contributions from the state contractor's or prospective state contractor's employees or from a subcontractor or principals of the subcontractor on behalf of:

(i) An exploratory committee or candidate committee established by a candidate for nomination or election to the office of governor, lieutenant governor, attorney general, state controller, secretary of state or state treasurer;

(ii) A political committee authorized to make contributions or expenditures to or for the benefit of such candidates; or

(iii) A political party committee.

(b) No state contractor, prospective state contractor, principal of a state contractor or principal of a prospective state contractor, with regard to a state contract or a state contract solicitation with or from the state legislature, shall make a contribution to, or, on and after January 1, 2013, knowingly solicit contributions from the state contractor's or prospective state contractor's employees or from a subcontractor or principals of the subcontractor on behalf of:

(i) An exploratory committee or candidate committee established by a candidate for nomination or election to the office of state senator or state representative;

(ii) A political committee authorized to make contributions or expenditures to or for the benefit of such candidate; or

(iii) A party committee.

(c) If a state contractor or principal of a state contractor makes or solicits a contribution as prohibited under paragraph (a) or (b) of this subsection, as determined by the secretary of state, the contracting state agency or other political subdivision, in the case of a state contract executed on or after January 1, 2013, shall void the existing contract with said contractor, and no state agency or other political subdivision shall award the state contractor a state contract or an extension or an amendment to a state contract for one (1) year after the election for which such contribution is made or solicited unless the secretary of state determines that mitigating circumstances exist concerning such violation. No violation of the prohibitions contained in paragraph (a) or (b) of this subsection shall be deemed to have occurred if, and only if, the improper contribution is returned to the principal by the later of thirty (30) days after receipt of such contribution by the recipient committee treasurer or the filing date that corresponds with the reporting period in which such contribution was made; and

1 (d) If a prospective state contractor or principal of a prospective
2 state contractor makes or solicits a contribution as prohibited under
3 paragraph (a) or (b) of this subsection, as determined by the secretary
4 of state, no state agency or other political subdivision shall award
5 the prospective state contractor the contract described in the state
6 contract solicitation or any other state contract for one (1) year after
7 the election for which such contribution is made or solicited unless
8 the secretary of state determines that mitigating circumstances exist
9 concerning such violation. The director of the Idaho department of
10 administration shall provide notification of the provisions of this
11 subsection and paragraphs (a) and (b) of this subsection on its website.

12 (e) The secretary of state shall make available to each state agency and
13 other political subdivisions a written notice advising state contrac-
14 tors and prospective state contractors of the contribution and solici-
15 tation prohibitions contained in paragraphs (a) and (b) of this subsec-
16 tion. Such notice shall:

17 (i) Direct each state contractor and prospective state contrac-
18 tor to inform each individual described in paragraph (f) of sub-
19 section (1) of this section, with regard to said state contrac-
20 tor or prospective state contractor, about the provisions of para-
21 graph (a) or (b) of this subsection, whichever is applicable, and
22 this paragraph (e);

23 (ii) Inform each state contractor and prospective state contrac-
24 tor of the civil and criminal penalties that could be imposed for
25 violations of such prohibitions if any such contribution is made
26 or solicited;

27 (iii) Inform each state contractor and prospective state contrac-
28 tor that, in the case of a state contractor, if any such contribu-
29 tion is made or solicited, the contract may be voided;

30 (iv) Inform each state contractor and prospective state contrac-
31 tor that, in the case of a prospective state contractor, if any
32 such contribution is made or solicited, the contract described in
33 the state contract solicitation shall not be awarded, unless the
34 secretary of state determines that mitigating circumstances exist
35 concerning such violation; and

36 (v) Inform each state contractor and prospective state contrac-
37 tor that the state will not award any other state contract to any-
38 one found in violation of such prohibitions for a period of one (1)
39 year after the election for which such contribution is made or so-
40 licited, unless the secretary of state determines that mitigating
41 circumstances exist concerning such violation. Each state agency
42 and other political subdivision shall distribute such notice to
43 the chief executive officer of its state contractors and prospec-
44 tive state contractors, or an authorized signatory to a state con-
45 tract, and shall obtain a written acknowledgment of the receipt of
46 such notice.

47 (3) (a) On and after January 1, 2013, neither the governor, lieutenant
48 governor, attorney general, state controller, secretary of state,
49 state treasurer, any candidate for any such office nor any agent of any
50 such official or candidate shall knowingly, willfully or intentionally

solicit contributions on behalf of an exploratory committee or candidate committee established by a candidate for nomination or election to any public office, a political committee or a party committee, from a person who he or she knows is prohibited from making contributions, including a principal of a state contractor or prospective state contractor with regard to a state contract solicitation with or from a state agency in the executive branch or other political subdivision.

(b) On and after January 1, 2013, neither a member of the Idaho legislature, any candidate for any such office nor any agent of any such official or candidate shall knowingly, willfully or intentionally solicit contributions on behalf of an exploratory committee or candidate committee established by a candidate for nomination or election to any public office, a political committee or a party committee, from a person who he or she knows is prohibited from making contributions, including a principal of a state contractor or prospective state contractor with regard to a state contract solicitation with or from the state legislature.

(c) Any person who violates the provisions of this subsection (3) shall be liable for a civil fine not to exceed two hundred fifty dollars (\$250).

(4) The provisions of this section shall not apply to the campaign of a principal of a state contractor or prospective state contractor or to a principal of a state contractor or prospective state contractor who is an elected public official.

(5) Each state contractor and prospective state contractor shall make reasonable efforts to comply with the provisions of this section. If the secretary of state determines that a state contractor or prospective state contractor has failed to make reasonable efforts to comply with this section, the secretary of state is hereby authorized to impose civil penalties against such state contractor or prospective state contractor. Such fine shall be in an amount as provided for in section 67-6625(a), Idaho Code.

SECTION 3. That Chapter 57, Title 67, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 67-5744B, Idaho Code, and to read as follows:

67-5744B. INFORMATION PROVIDED TO SECRETARY OF STATE. (1) Not later than thirty (30) days after January 1, 2013, each state agency and other political subdivisions shall prepare and forward to the secretary of state, on a form prescribed by the secretary of state, a list of the names of the state contractors and prospective state contractors with which such agency or political subdivision is a party to a contract, and state contract solicitations issued by the agency or political subdivision. Not less than once per month, each state agency and other political subdivision shall forward to the secretary of state, on a form prescribed by the secretary of state, any changes, additions or deletions to said lists not later than the fifteenth day of the month.

(2) Not later than sixty (60) days after January 1, 2013, the secretary of state shall:

(a) Compile a master list of state contractors and prospective state contractors for all state agencies and other political subdivisions,

1 based on the information received pursuant to subsection (1) of this
2 section; and

3 (b) Publish the master list on the secretary of state's internet web-
4 site and on the division of purchasing's internet website; and

5 (c) Provide copies of the master list to campaign treasurers upon re-
6 quest. The secretary of state shall update the master list every month.

7 SECTION 4. That Section 67-6625, Idaho Code, be, and the same is hereby
8 amended to read as follows:

9 67-6625. VIOLATIONS -- CIVIL FINE -- MISDEMEANOR PENALTY -- PROSE-
10 CUTION -- LIMITATION -- VENUE. (a) Any person who violates the provisions
11 of section 67-5744A, 67-6603 through 67-6614A, 67-6617, 67-6619, 67-6620,
12 67-6621(a), 67-6624, 67-6629 or 67-6630, Idaho Code, shall be liable for a
13 civil fine not to exceed two hundred fifty dollars (\$250) if an individual,
14 and not more than two thousand five hundred dollars (\$2,500) if a person
15 other than an individual. The burden of proof for such civil liability shall
16 be met by showing a preponderance of the evidence.

17 (b) Any person who violates section 67-6605 or 67-6621(b), Idaho
18 Code, and any person who knowingly and willfully violates section 67-6603
19 through 67-6614A, 67-6617, 67-6619, 67-6620, 67-6621(a), 67-6624, 67-6629
20 or 67-6630, Idaho Code, is guilty of a misdemeanor and, upon conviction, in
21 addition to the fines set forth in subsection (a) of this section, may be
22 imprisoned for not more than six (6) months or be both fined and imprisoned.

23 (c) The attorney general or the appropriate prosecuting attorney may
24 prosecute any violations of this act.

25 (d) Prosecution for violation of this act must be commenced within two
26 (2) years after the date on which the violation occurred.

27 (e) Venue for prosecution under the provisions of this chapter shall be
28 in the county of residence of the defendant if the defendant is a resident of
29 the state of Idaho, otherwise venue shall be in Ada county.