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No. 66439-5

SUPREME COURT
OF THE STATE OF WASHINGTON

ROBERT UTTER and FAITH IRELAND in the name of the STATE OF
WASHINGTON

Petitioners,

vs.

BUILDING INDUSTRY ASSOCIATION OF WASHINGTON,

Respondent.

2013 OCT 10 AM 8:49
STATE OF WASHINGTON
CLERK OF THE SUPREME COURT

PETITION FOR REVIEW

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FILED
OCT 30 2013
CLERK OF THE SUPREME COURT
STATE OF WASHINGTON

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I. INTRODUCTION

In a published opinion, Division One effectively annulled the “citizen action” provision of RCW 42.17A.765(4), which has been a centerpiece of our state’s campaign finance and disclosure laws for over three decades. Originally enacted by Citizen Initiative No. 276 in 1972, this statute allows a citizen to inform the Attorney General and prosecuting attorney that he or she has reason to believe that the campaign laws are being broken and then to file a “citizen action” to enforce the laws if the Attorney General and prosecutor have failed to commence their own action during the statutory notice period. The right of citizens to petition the judicial branch for redress of campaign finance grievances when political branches refuse to do so is essential to the enforceability of the Fair Campaign Practices Act, RCW Ch. 42.17A (the “Act”).

The Court of Appeals erroneously held that the Attorney General has “commenced an action” and thereby precluded a citizen suit whenever it takes “any of the actions authorized under RCW 42.17A.765,” including, in this case, “caus[ing] the [Public Disclosure Commission (“PDC”)] to investigate the allegations that BIAW was a political committee and then declin[ing] to file a lawsuit”. Opinion at ¶¶ 44, 47. Division One adopted this “investigatory preclusion” rule *sua sponte*,

without the benefit of briefing by any party. It was apparently unaware that “[t]he AG customarily refers complaints to the PDC for initial review and investigation,” *Evergreen Freedom Foundation v. National Education Association*, 119 Wn.App. 445, 447 n. 3 (Div. 2, 2003) (“*NEA*”). This Court should accept review under RAP 13.4(b)(4) because the practical effect of the investigatory preclusion rule is to preclude *all* citizen enforcement actions.

In adopting the investigatory preclusion rule, Division One relied primarily upon *Evergreen Freedom Foundation v. Washington Education Association*, 111 Wn.App. 586 (Div. 2, 2002) (“*WEA*”), which suggested in dicta that the commencement of a PDC investigation precludes a citizen suit. But only a year later, Division Two explicitly disavowed that interpretation and rejected the investigatory preclusion rule, holding that “*We did not intent to imply that the AG’s customary referral to the PDC for initial review and investigation precludes a citizen’s action,*” 119 Wn.App. at 452. This Court should also accept review under RAP 13.4(b)(2) to resolve this conflict.

II. IDENTITY OF PETITIONERS

Petitioners are retired Supreme Court Justices Robert Utter and Faith Ireland.

III. COURT OF APPEALS' PUBLISHED DECISION

On October 26th, 2012, Division One of the Court of Appeals issued an unpublished opinion that reversed the trial court's grant of summary judgment to the BIAW due to the existence of a genuine issue of material fact on the political committee claim. *Utter v. Building Industry Association of Washington*, Unpublished Opinion (Div. 1, filed September October 26, 2012 (App. 1-20)). Almost a year later, on reconsideration, Division One withdrew that opinion and issued a published opinion affirming the trial court's grant of summary judgment based upon the investigatory preclusion rule, which was reached *sua sponte* without briefing. *Utter v. Building Industry Association of Washington*, Published Opinion (Wn.App. Div. 1, filed September 16, 2013 (App. 21-35)).

IV. ISSUES PRESENTED FOR REVIEW

1. Are "citizen actions" to enforce Washington's campaign finance and disclosure laws under RCW 42.17A.765(4) precluded by the Attorney General's "customary referral" of a complaint to the Public Disclosure Commission for investigation when the State then fails to commence an enforcement action against the alleged violator?

2. Did BIAW make a contribution under the campaign finance laws where: (1) The Court of Appeals determined that BIAW had lawful possession of certain funds it received in its role as trustee; (2) BIAW's

Board of Directors authorized political contributions to be made from these funds; (3) the funds were transferred to a political committee pursuant to the Board's authorization; and (4) BIAW reported to the Public Disclosure Commission that it had made the contribution?

3. Was the BIAW required to register as a political committee within two weeks of beginning to solicit pledges from its affiliates for electoral activities, when the solicitations came from individuals identifying themselves as officers of "the BIAW," asked for political contributions to "the BIAW," and ultimately convinced a dozen affiliates to make written pledges to "the BIAW"?

4. With these facts in the record, did the trial court err in granting summary judgment based upon BIAW's mere assertion that all of the activities were carried out by its wholly-controlled affiliate – an assertion that was established to be false in *In re Washington Builders Benefit Trust*, 173 Wn.App. 34 (2013), *review denied*, 2013 Wash.LEXIS 521 (July 9, 2013) ("*In re WBBT*")?

5. Did the Court of Appeals err in holding that statutory "attribution rules" determine the contributor for contribution limit purposes, but not for reporting purposes, thereby rendering the single set of PDC reporting ineffective for both purposes?

V. STATEMENT OF THE CASE

On July 25, 2008, Justices Ireland and Utter filed a 45-day notice letter informing Attorney General Rob McKenna (“AG”) that they had reason to believe the BIAW was acting as a political committee and that they would file a lawsuit against the BIAW if he failed to do so. The Justices claim that BIAW became a political committee under the “contribution” and “expenditure” prongs of the political committee tests. (CP 14). The AG referred the allegations to the PDC for investigation the same day it received the Justices’ letter. (CP 62). The BIAW defended against the Justices’ allegations by claiming that all of the activities in question were carried out by the BIAW’s wholly-owned and wholly-controlled affiliate BIAW Members Services Corporation (“BIAW-MS”).

The PDC never informed Utter and Ireland about the course of its investigation, requested information from them, or allowed them to challenge the BIAW’s assertion that BIAW-MS (not BIAW) conducted all of the activities in question. (CP 76).

Conducting its investigation on a limited budget and timeline and without the benefit of an adversary proceeding, the PDC simply accepted BIAW’s factual assertions as true. (CP 69). The PDC found that “BIAW does not solicit or receive contributions to support or oppose ballot

measures or ballot propositions, and does not contribute to candidates or political committees,” (CP 69) recommending “no action” against the BIAW.

The AG declined to commence any enforcement action against the BIAW, and never addressed Utter and Ireland’s claims that the BIAW became a political committee by receiving pledges and making millions of dollars of political contributions. The AG took action against BIAW-MSA for a *different claim* than those asserted against BIAW.¹ (CP 108-114).

When the AG did not commence an enforcement action against the BIAW, the Justices brought this case.

BIAW moved for summary judgment, based upon the assertion by its executive that all of the activities in question were carried out by BIAW-MSA and not by BIAW. To rebut this assertion, the Justices presented documentary evidence showing that: (1) BIAW’s Board of Directors authorized BIAW to make contributions from a 10% “marketing assistance fee” (“MAF”); (2) that this MAF was the property of BIAW (not BIAW-MSA); (3) that the BIAW in fact contributed over six million dollars from these funds; and (4) BIAW then reported to the PDC that it

¹ In his complaint against BIAW-MSA, the AG accepted the BIAW’s assertion that the so-called “MAF” belonged to BIAW-MSA. (CP 111) (“Once the refunds are received from the Department, BIAW-MSA distributes them annually as follows: ... 10% to BIAW-MSA for administering the program”)

made these contributions. (CP 253-264, 276-278, 283-284, 308-330, 357, 365, 372-373, 385, 392, 414-415, 421, 468, 491, 497, 504, 559-560, 574, 634, 640).

The BIAW asked the trial court to disregard this reporting, arguing that contributions were made by BIAW-MSA from the MAF, which BIAW-MSA “earned” for administering an insurance rebate program. (CP 760). It argued that “[t]he undisputed evidence is that the marketing assistance fee (“MAF”) funds at issue were received by MSA (not BIAW) and were expended by MSA (not BIAW) ... That undisputed material fact disposes of the political committee claim because BIAW did not have ‘the expectation of receiving contributions or making expenditures’ under RCW 42.17.020(39).”² (CP 760).

On the “contributions prong,” the Justices pointed to documentary evidence showing that persons identifying themselves as officers “of BIAW” asked for contributions “to BIAW,” and that over a dozen organizations made written pledges “to BIAW.” (CP 340, 357, 365, 402, 406-411, 419-425, 428-435, 440-446, 449-452, 455, 462-464, 467, 491, 494, 499, 504, 507-514, 645). See also Published Opinion ¶¶ 3-4, 8.

² Utter and Ireland claimed that the BIAW became a political committee because “The BIAW contributed over \$6.4 million . . . BIAW carried out these political activities and reported them in the name of the BIAW, using BIAW assets, and with the authority of the BIAW Board of Directors; it cannot now disown these activities based upon uncorroborated and self serving testimony.” (CP 213).

The King County Superior Court accepted the assertion that BIAW had taken no political action and dismissed the case on summary judgment. (CP 833-836). Originally, the Court of Appeals issued an unpublished decision reversing and remanding. (App 1 to 22). Upon reconsideration, Division One replaced its unpublished opinion with a published opinion affirming the trial court's dismissal because the Justices' "citizen action" was precluded by the AG's referral of the 45-day letter to the PDC for investigation, and deciding other contested issues. The Court of Appeals reached the "investigation preclusion" issue *sua sponte*, without requesting or considering briefing on the topic.

The Court of Appeals accepted BIAW's factual assertions about the role of BIAW-MSA and its ownership of the MAF that funded the contributions. However, these assertions were expressly rejected by Division Two in *In re Washington Builders Benefit Trust*, 173 Wn.App. 34 (2013), *review denied*, 2013 Wash.LEXIS 521 (July 9, 2013) ("*In re WBBT*"), which confirmed that it was the BIAW (not BIAW-MSA) that received the MAF. *Id.* ¶ 79 ("The trustees transferred marketing assistance fees *to BIAW* and local associations") (emphasis added). It also confirmed that the MAF belonged to BIAW (not BIAW-MSA). *Id.* ¶¶ 71-72 (governing instrument "authorized the Trustees to transfer 10 percent of the employer beneficiaries' Department refunds *to BIAW* ... The

relevant provision of the enrollment agreements provided ‘The Member further authorizes the Trustees to transfer ten percent (10%) of the Participants’ Premium Returns applicable to the Coverage Period to local associations and 10% to *BIAW* for marketing and promotion of the Plan ... the flat 10 percent transfer of Department refunds to *BIAW* ... was not subject to any condition.’”) (emphasis added). *See id.* ¶¶ 15 and 16.

BIAW admits that all of the political contributions in question came from the MAF. (CP 23-224, 759). After receiving a greater than expected MAF, the *BIAW* Board of Directors voted to use the excess for these political expenditures. (CP 308-330, 371, 385, 392, 421-422, 683).

VI. ARGUMENT WHY REVIEW SHOULD BE GRANTED.

1. This Court should accept review under RAP 13.4(b)(4) because Division One’s published opinion abolishes the “citizen action” provision of Initiative 276.

The “citizen action” provision of Initiative 276 has been a centerpiece of our campaign finance and disclosure laws for over three decades. According to the PDC, it “has long been viewed as an important fail-safe for the public.”³ Division One’s published opinion effectively abolishes this critical feature of our campaign laws, holding that the AG has “commenced an action” and thereby precluded a citizen suit when it

³<http://www.pdc.wa.gov/archive/commissionmeetings/meetingshearings/pdfs/2012/Memo%20re%20possible%20agency%20request%20legislation%20for%202013.pdf>

takes “any of the actions authorized under RCW 42.17A.765.” Published Opinion ¶ 44. Thus, it concluded “The State took an action against BIAW under RCW 42.17A.765 when it caused the PDC to investigate the allegations that BIAW was a political committee and then declined to file a lawsuit”. *Id.* at ¶ 47.

This holding effectively abolishes the citizen action provision because “[t]he AG customarily refers complaints alleging Act violations to the PDC for initial review and investigation.” *NEA*, 119 Wn.App. 445, 447 n. 3. That is what happened here. The AG referred the notice letter to the PDC for investigation on the same day it was received. (CP 62).

The published opinion now precludes Superior Courts within Division One from entertaining a citizen action lawsuit if the AG has referred the 45-day letter for investigation, which happens 100% of the time. The Court of Appeals stated that a citizen action should only proceed where the AG refuses to investigate – an apparent bright line rule – and adopts no measure for distinguishing between investigations that preclude a citizen action and those that do not.⁴ Thus, citizens will have no power to enforce the campaign laws under RCW 42.17A.765(4) in our State’s

⁴ While the published opinion discusses hypothetical situations where the PDC “thoroughly investigates” a complaint, Par. 44, it did not and could not find that the PDC’s investigation in this case was thorough as to the factual assertions of the BIAW, which were subsequently proven to be false. Indeed, the PDC did *nothing* to verify the accuracy of the BIAW’s assertions. (CP 62-87).

most populous counties. This is a devastating blow to our campaign finance laws that demands review by this Court.

2. This Court should accept review under RAP 13.4(b)(2) to resolve a conflict between Divisions One and Two.

The Court should also accept review to resolve the direct conflict between the holding of this case and the holding of Division Two in *NEA*, 119 Wn.App. 445 (Div. 2, 2003). In *NEA*, Division Two specifically rejected the “investigation preclusion” concept and disavowed Division One’s reading of the *WEA* decision:

“In *WEA*, we intended simply to restate the statute’s clear intent, that the AG or prosecutor’s ‘commencement of an action’ within the prescribed time period precludes a citizen’s action (indeed, such commencement obviates the need for a citizen’s action). *We did not intend to imply that the AG’s customary referral to the PDC for initial review and investigation precludes a citizen’s action.*”

WEA, 119 Wn.App. at 452 (emphasis added).

Unless the Supreme Court intervenes, citizens will be barred from bringing a citizen action in Division One, even while the citizen action provision is alive and well in Division Two.

3. Review is necessary to effectuate the legislative intent of Initiative 276.

The right of citizens to enforce our campaign finance laws was first enacted in 1972 through passage of Initiative 276 with a 72% vote.⁵ Initiative 276's "citizen action" provision, recodified at RCW 42.17A.765(4), allows any citizen to invoke the judicial powers of the courts to adjudicate claims of campaign finance violations. The independence of the judiciary is a vital aspect of our democracy because the courts act free of the kind of political constraints and pressures that can be inflicted on the political branches of government, including the office of the AG. Citizens enacted the citizen action provision in recognition that the AG, as a partisan elected official, may be unable to enforce the law against his or her own party. Under Division One's reasoning, the AG's mere commencement of an investigation eliminates the right of citizens to obtain redress from the judiciary. Such a result is totally inconsistent with the policy, goals and language of Initiative 276 because it would remove the judiciary from any meaningful role in determining whether these laws were violated when the AG fails to enforce the law.

⁵ See, election results at the Washington Secretary of State website, <http://onlinelibrary.wiley.com/doi/10.1002/ncr.4100650904/abstract> (last visited October 8, 2013).

Contrary to Division One's belief, citizen actions were designed for the very instance where, as here, the executive branch fails to remedy wrongdoing. "[C]itizen suit sections were developed as the answer to the government's failure to enforce, *whether caused by lack of will or lack of resources*. Congress believed that citizen suits would provide a goad to government enforcement and if that goad did not work, would provide an alternative means of enforcement." JEFFREY G. MILLER, *CITIZEN SUITS: PRIVATE ENFORCEMENT OF FEDERAL POLLUTION CONTROL LAWS* 4 (1987) (emphasis added). *See, e.g., Gwaltney of Smithfield, Ltd. v. Chesapeake Bay Found., Inc.*, 484 U.S. 49, 62 (1987) (central purpose of citizens suits is to allow citizens to enforce the law "when the government cannot *or will not* command compliance." (emphasis added)). This Court has compared Initiative 276's citizen action to these comparable environmental citizen suit provisions. *See Fritz v. Gorton*, 83 Wn.2d 275, 312-313 (1974) (addressing section 40(4) of Initiative 276, the citizen suit provision of the FCPA, which was codified as RCW 42.17.400(4), and subsequently recodified as RCW 42.17A.765(4)).

The plain reading of the initiative and rules of statutory construction show that the AG "action" which precludes a citizen action means a legal action, not a mere investigation. That is the plain meaning when "action" is used in legislation. *See BLACK'S LAW DICTIONARY* 18

(6th ed. 1991) (“Term in its usual legal sense means a lawsuit brought in a court; a formal complaint within the jurisdiction of a court of law.”). Initiative 276 provided that a citizen must notify the AG that “a citizen’s action will be brought if the attorney general does not bring an action.” Initiative 276 § 40(4). It intended the precluding AG action, like the “citizen action,” to be a lawsuit. *See, State v. Jackson*, 137 Wn.2d 712, 729 (1999) (“the meaning of words may be indicated or controlled by those with which they are associated”). The initiative consistently uses “action” to mean lawsuit. *See* Initiative 276 § 41 (statute of limitations for “[a]ny action brought under the provisions of this act”) and § 5 (authorizing the court to award fees in “in any action brought under this Section). The term “action” must be liberally construed to expand enforceability, not extinguish it. *See, id.* § 1 (11) (liberal construction).

The initiative’s intent to strongly encourage citizen enforcement is shown by its “bounty hunter” provision, which allowed the citizen bringing the case to keep “one half of the judgment awarded” and seek reimbursement of fees and costs from the State of Washington, and by its generous six year statute of limitations. *Id.* §§ 40(4), (41). Division One’s Opinion is inconsistent with this legislative intent.

Here, the AG decided not to take action against the BIAW and took action against the BIAW-MSA on an entirely different claim.⁶ There is no basis for preclusion. This Court should review this issue, which is central to the democratic process. RAP 13.4(b)(4).

4. The factual basis for the published opinion conflicts with facts established in another published decision.

A primary allegation in this case is that the BIAW's \$6.6 million in contributions made it a political committee. The courts below absolved BIAW from legal responsibility for these donations based upon testimony that conflicts directly with the facts established by Division Two in *In re WBBT*. But this Court need not itself hold BIAW's testimony to be false to reverse and remand as there were sufficient facts in the record below – including key documents from the *In re WBBT* record – to create a genuine issue of material fact precluding summary judgment: (1) BIAW had possession of certain funds it received in its role as trustee;⁷ (2) BIAW's Board of Directors authorized political contributions to be made from these funds; (3) the funds were transferred to a political committee pursuant to

⁶ The AG took no action against any party for the primary claims against BIAW – the \$6.6 million in political contributions and the unreported pledges. It took action against BIAW-MSA only for its *receipt* of certain contributions.

⁷ This is in contrast to the equitable rights in these trust funds, which always belonged to the trust beneficiaries. *See In re WBBT*.

the Board's authorization; and (4) BIAW reported to the PDC that it had made the contribution. *See* (CP 253-264, 276-278, 283-284).

BIAW asserted below that the BIAW-MSA had lawful possession of the MAF and therefore the contributions were made by BIAW-MSA. The BIAW's mere denial that it received or made contributions – a claim rebutted by the evidence in the trial court record and subsequently proven to be false – was insufficient to support the grant of summary judgment. Having lost this issue in *In re WBBT*, BIAW is collaterally estopped from denying that the contributions were made out of BIAW funds.

The record in this case shows that persons identifying themselves as officers of “the BIAW” solicited pledges for “the BIAW,” and ultimately convinced a dozen affiliates to make written pledges to “the BIAW.” (CP 340, 357, 365, 402, 406-411, 419-425, 428-435, 440-446, 449-452, 455, 462-464, 467, 491, 494, 499, 504, 507-514, 645). Under RCW 42.17A.205(1), the BIAW was required to register as a political committee within two weeks of beginning to solicit these pledges.

Later, after this litigation commenced, BIAW asked the trial court to disregard the plain language of all the documents in the records referencing pledges “to BIAW,” suggesting that all of the people and organizations understood that the pledges were really being made “to BIAW-MSA” and that is how the court should read these documents.

Once again, the BIAW's factual defense is inconsistent with the undisputed facts established as a matter of law by Division Two in *In re WBBT*. Far from "everyone knowing" the distinction between BIAW and BIAW-MSA, as BIAW claimed, *In re WBBT* established that the two organizations were completely interlocking and that not even the two organizations' executive committee understood the distinction between BIAW and BIAW-MSA. *In re WBBT* ¶¶ 13, 14, 60, 61.

While the BIAW can try to use its self-serving testimony to minimize the impact of the unambiguous documents in the trial court record, the trial court could not resolve these factual disputes on summary judgment. This matter must be remanded.

5. The Court should accept review to reject the Court of Appeals' erroneous holding as to the application of the "attribution rules."

As briefed on reconsideration, "attribution rules" provide an alternative basis for holding BIAW legally responsible for the millions of dollars of contributions from the MAF that it reported as its own in PDC filings. Even if BIAW-MSA had made the contributions – a claim precluded by *In re WBBT* -- RCW 42.17A.455(2) would make BIAW the contributor if it financed, maintained or controlled the contribution. The same is true under RCW 42.17A.460 if BIAW made the contribution through a conduit but earmarked the contribution for a particular purpose.

Not only did the BIAW voluntarily take legal responsibility for the contributions in its PDC filings, it admits: “. . . BIAW has taken some of the Actions herein through its affiliate BIAW Member Services Corporation (“BIAW-MS”), a Washington for-profit corporation, but in such actions the *BIAW was merely a conduit for the actions of BIAW.*” Answer to First Am. Compl, fn 3 (emphasis added) (CP 732-756). *See*, WAC 390-17-015 (“conduit” for purposes of RCW 42.17A means a person “who receives or spends earmarked contributions”). It was on such basis that BIAW reported the contributions as its own and it cannot avoid that responsibility now.

Division One erroneously held that these attribution rules apply to identify the contributor for purposes of contribution limits, but not for determining if that contributor is a political committee. Opinion at ¶¶ 34-36. The court disregarded the plain language of RCW 42.17A.455, which states that the attribution rules apply “for the purposes of this chapter,” which chapter includes the political committee reporting requirements. *Id.*

This holding severely undermines our campaign finance reporting regime. The Act’s definitions of “political committee” and “contribution” and its reporting requirements apply throughout chapter RCW 42.17A. Under the published opinion, an entity might make a contribution for one purpose but not for another purpose. However, there is only a single set of

PDC reports. If a PDC report stating a contribution could mean either a contribution for reporting or a contribution for contribution limits – and these two are different – then PDC forms and reporting would be useless for applying either set of rules.

The Court of Appeals justified its bifurcation of RCW 42.17A because its content originated in two citizen initiatives and based upon its erroneous analysis that Initiative 276 was about reporting and Initiative 134 was about contribution limits. Opinion at ¶¶ 33-35.

In fact, Initiative 134 overlaid Initiative 276 to create a single system of contribution reporting, and those reports are the basis for applying contribution limits. For example, Initiative 134 generally used existing definitions from I-276. Initiative 134 § 3. Notably, Initiative 134 adopted a more precise definition of “contribution.” Initiative 134 § 3(5). Rather than creating a bifurcated system of contribution reporting (like the published opinion would), the new definition replaced the old in RCW 42.17A.020. Since then, it has been applied consistently throughout RCW 42.17A -- for both reporting requirements and contribution limits. By using a standard definition of contribution, the contribution limits become based upon reportable contributions and thereby enforceable.

Moreover, Initiative 134 addressed both reporting and contribution limits. Part V of Initiative 134 required public disclosure of the top five

contributors and other disclosures relating to independent expenditure campaigns. Initiative 134 § 22-23. Once again, these requirements would be unenforceable and doubly cumbersome if the published opinion is allowed to stand and everyone is required to keep two sets of books – separately tracking contributions for reporting and for campaign contribution limits. On the other hand, an organization that is responsible for a contribution under the attribution rule does not automatically become a political committee, since it would still have to meet the primary purpose test. Moreover, organizations can take simple steps to avoid the attribution rules if they wish to avoid legal responsibility, such as by setting up separate decision making structures. But a corporation should be responsible for a contribution that it funds and controls, even if it makes the contribution through a “conduit.”

The reliability of PDC reporting is at issue. This enforcement action was primarily based upon BIAW’s PDC reporting (App. 61 - 112). Citizens should be able to rely upon the accuracy of such reports, which becomes impossible if the filer can later defend an action by claiming that its own filings should be disregarded as inaccurate.

VII. Conclusion

This Court should grant review and reverse the Court of Appeals.

Respectfully submitted this 15th day of October, 2013.

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CERTIFICATE OF SERVICE

I certify under penalty of perjury under the laws of the state of Washington that on October 15, 2013, I caused plaintiffs' Petition for Review to be served in the above-captioned matter upon the parties herein via messenger:

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Stated under oath this 15th day of October 2013.



Appendices

Appendix 1-20: Unpublished Opinion

Appendix 21-35: Published Opinion

Appendix 36-48: 1972 Official Voters' Pamphlet

Appendix 49-60: 1992 Voters' Pamphlet

Appendix 61-112: PDC Reporting

IN THE COURT OF APPEALS FOR THE STATE OF WASHINGTON

ROBERT UTTER and FAITH IRELAND,)
in the name of the STATE OF)
WASHINGTON,)
)
Appellants,)
)
v.)
)
BUILDING INDUSTRY ASSOCIATION)
OF WASHINGTON,)
)
Respondent.)

No. 66439-5-1
Consolidated w/66737-8-1

DIVISION ONE

UNPUBLISHED OPINION

FILED: October 29, 2012

2012 OCT 29 AM 11:10
STATE OF WASHINGTON
COURT OF APPEALS

SPEARMAN, A.C.J. — Under the Fair Campaign Practices Act (FCPA), chapter 42.17A RCW, political committees are subject to certain registration and reporting requirements.¹ An organization is considered a political committee “by either (1) expecting to receive or receiving contributions, or (2) expecting to make or making expenditures to further electoral political goals.” Evergreen Freedom Found. v. Washington Educ. Ass’n, 111 Wn. App. 586, 599, 49 P.3d 894 (2002) (EFF). These alternative means are the contribution prong and expenditure prong, respectively. Id. at 598. In 2008, Robert Utter and Faith Ireland brought a citizen's action against the Building Industry Association of Washington (BIAW), asserting that it met the definition of a political committee under the contribution

¹ While the parties' briefs refer to the former statutes, all references in our opinion are to the recodified statutes as they appear in chapter 42.17A RCW.

prong and the expenditure prong through its support for Dino Rossi's 2008 gubernatorial campaign. Therefore, Utter and Ireland claimed, BIAW violated the FCPA by failing to register and report as a political committee. On summary judgment, the trial court found there was no genuine issue of material fact in dispute and dismissed Utter and Ireland's lawsuit with prejudice. It denied BIAW's request for attorney's fees under RCW 42.17A.765(4)(b). Utter and Ireland appeal from summary judgment and BIAW cross-appeals the denial of attorney's fees. Concluding the evidence showed a genuine issue of material fact as to whether BIAW was a political committee under the expenditure prong, we reverse and remand. We affirm the trial court's denial of attorney's fees to BIAW and do not award fees on appeal.

FACTS

BIAW is a non-profit affiliate of the National Association of Home Builders (NAHB) whose mission is to promote the common interests of Washington's building industry. It has approximately 13,500 members, primarily home builders. Members first join and pay dues to one of BIAW's fifteen local associations throughout the state, then automatically become members of BIAW and NAHB. Among other activities, BIAW does advocacy work in all branches of government, helps local associations recruit new members, runs an educational program, and organizes conferences. BIAW's sources of revenue include membership dues, income from interest and investments, health insurance fees, and fees from educational programs.

In 1993, BIAW created a wholly owned, for-profit subsidiary, BIAW Member Services Corporation (BIAW-MS), to provide certain services to BIAW members. BIAW-MS's primary function is to administer a worker's compensation insurance retrospective rating program ("retro program") pursuant to Department of Labor and Industries' rules.² BIAW-MS generates revenue from the retro program from an up-front enrollment fee and from a back-end, incentive fee of 10 per cent of any refund earned by the program in a given year, referred to as a Marketing Assistance Fee (MAF). BIAW-MS also runs other programs such as health insurance, life insurance, and educational seminars. It contributes a portion of its revenues to independent expenditures and to Political Action Committees (PACs), such as ChangePAC. BIAW and BIAW-MS share the same leadership and staff, with staff salaries allocated between the entities based on the type of work performed. BIAW-MS itself does not have any members.

By spring 2007, one of BIAW's main efforts was supporting Rossi's 2008 gubernatorial campaign. As part of this effort, BIAW senior officers requested the local associations to pledge excess MAF funds from their retro programs to support the campaign. Senior officers drafted a "Rossi-lution" that stated:

WHEREAS BIAW is committing 100% of excess retro dollars to the 2008 gubernatorial election,

WHEREAS, participation of local associations is necessary for success,

² MS was created to "reduce the risk of tax liability for BIAW . . . for administering a for-profit retro program." Retro programs allow members to pool their worker's compensation risks and provide a chance for the pool to earn a refund of a portion of its premiums, when the group's combined claims are less than its premiums. See Washington Administrative Code (WAC) 296-17-90455.

NOW THEREFORE BE IT RESOLVED THAT

The following local associations pledge that all Retro Marketing Assistance funds received in 2007, beyond the amount budgeted for the year, will be sent to the BIAW and placed in the BIAW 2008 gubernatorial election account, to be used for efforts in the 2008 gubernatorial race.

Eleven of the fifteen local associations agreed to participate in this effort, which ultimately raised \$584,527.53.

On July 25, 2008 and September 9, 2008, in accordance with RCW 42.17A.765(4), Utter and Ireland sent a notice of intent to the Washington State Attorney General (AG), stating that they would file a lawsuit against BIAW for violations of the FCPA if the State did not. They claimed BIAW was legally responsible for violations of the FCPA, even though the independent expenditures in question were handled through the accounts of BIAW-MSC.

The AG referred Utter and Ireland's allegations to the Public Disclosure Commission (PDC), which completed an investigation and issued a report. The PDC determined that BIAW-MSC requested permission from the local associations to withhold a portion of the MAF funds and handled those portions of the withheld funds. On August 20, 2008, BIAW-MSC contributed from its general treasury fund \$584,527.53—the amount raised from the MAF funds—to ChangePAC and provided ChangePAC a list of the 11 local associations and the amount contributed by each association. The next day, ChangePAC reported the receipt of the contributions as coming from the local associations.

The PDC report concluded:

While [PDC] staff maintains the entire BIAW-MSC general fund would not be considered a political committee, the solicitation, receipt, and retention of local association Retro program refunds by

BIAW-MSA in the amount of \$584,527.53 qualifies that discrete portion of BIAW-MSA funds as a political committee pursuant to [RCW 42.17A.005(37)].

Based on the report, the PDC advised the AG that BIAW-MSA committed "multiple apparent violations of [RCW 42.17A] by failing to register as a political committee and report the contributions it solicited, received and retained from its local associations in 2007, and by failing to report expenditures to ChangePAC in 2008 with the contributions received." The report concluded that BIAW was not a political committee under RCW 42.17A.005(37). It found that during 2006 to June 2008, BIAW did not solicit or receive contributions to support or oppose candidates or ballot propositions, contribute to candidates or political committees, or use its general treasury for other campaign-related expenditures. Accordingly, the report did not recommend action against BIAW.

On September 19, 2008, the AG filed a lawsuit against BIAW-MSA in superior court, alleging that BIAW-MSA was required to register as a political committee with respect to the MAF funds and to file PDC reports. The AG alleged that BIAW-MSA conducted an illegal fundraising campaign and violated RCW 42.17A.435 by concealing its solicitation and receipt of \$584,527.53 in campaign contributions toward 2008 electoral activities. BIAW-MSA and the AG settled the lawsuit. As part of the settlement, BIAW-MSA agreed to file a political committee registration form and campaign finance disclosure reports with the PDC.

The AG did not file a lawsuit against BIAW. Utter and Ireland filed a lawsuit against BIAW on October 6, 2008 and filed an amended complaint on

October 13. They claimed BIAW itself qualified as a political committee and was therefore required to register and report.³ They asserted that although the transfers and expenditures at issue were processed through BIAW-MSC accounts, the evidence showed that BIAW “orchestrated the entire violation, made all decisions, and the parties making the illegal donations believed they were donating to the BIAW.” They argued that the funds belonged to BIAW and/or its members and that BIAW-MSC was a “mere conduit” for them.

The BIAW filed a motion for summary judgment. The trial court granted BIAW's motion for summary judgment, finding there was no genuine issue of material fact in dispute and BIAW was entitled to judgment as a matter of law. This appeal followed.

DISCUSSION

Utter and Ireland argue that the evidence creates a genuine issue of material fact that BIAW was a political committee under the contribution prong and the expenditure prong. BIAW responds that the entire activity forming the basis of Utter and Ireland's claims was conducted by BIAW-MSC.⁴ We agree with Utter

³ Utter and Ireland also claimed that BIAW exceeded the campaign contribution limits under RCW 42.17A.405 and improperly coordinated with Dino Rossi. They voluntarily dismissed that claim and it is not at issue on appeal.

⁴ Alternatively, BIAW argues that this court should affirm on the ground that, under RCW 42.17.400(4), the AG's lawsuit precludes Utter's and Ireland's claims. That statute provides generally that a citizen's action may be brought only where a party has provided proper notice of the intention to bring suit to the AG and the county prosecutor's office and where, after the statutorily required waiting period, the AG and county prosecutor have “failed to commence an action[.]” When BIAW raised this issue below, Utter and Ireland responded that the issue had already been resolved against the BIAW in earlier motions and the trial court did not address the issue in its order on summary judgment. On appeal, BIAW again raises the issue briefly and Utter and Ireland do not respond. Given this posture, the issue is inadequately briefed and we decline to reach it. We likewise decline to address BIAW's constitutional claims. The parties may raise these issues on remand.

and Ireland that the evidence creates an issue of fact under the expenditure prong. Specifically, we conclude there are triable issues of fact whether: (1) BIAW made expenditures in support of electoral goals or, alternatively, controlled BIAW-MSA's contributions under RCW 42.17A.455(2) and (2) electoral activity was one of BIAW's primary purposes during the 2008 election cycle. Accordingly, we reverse and remand. We deny BIAW's cross-appeal regarding attorney's fees.

Summary Judgment

We review summary judgment decisions de novo, engaging in the same inquiry as the trial court. Michak v. Transnation Title Ins. Co., 148 Wn.2d 788, 794-95, 64 P.3d 22 (2003). Summary judgment is proper if the pleadings, depositions, answers, and admissions, together with the affidavits, show that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. CR 56(c). "When ruling on a summary judgment motion, the court is to view all facts and reasonable inferences therefrom most favorably toward the nonmoving party." Lybbert v. Grant County, State of Wash., 141 Wn.2d 29, 34, 1 P.3d 1124 (2000) (citing Weyerhaeuser Co. v. Aetna Cas. & Sur. Co., 123 Wn.2d 891, 897, 874 P.2d 142 (1994)).

Under RCW 42.17A.005(37), "political committee" includes any organization that has "the expectation of receiving contributions or making expenditures in support of, or opposition to, any candidate or any ballot proposition." This definition contains two alternative prongs under which an entity is considered a political committee: (1) the contribution prong and (2) the expenditure prong. EFF, 111 Wn. App. at 599. We consider each in turn.

Contribution prong

Under the contribution prong, an organization is considered a political committee if it expects to receive or receives contributions toward electoral goals. EFF, 111 Wn. App. at 599. Utter and Ireland contend contemporaneous documents show that BIAW solicited and received pledges, in the form of MAF funds, from the local associations. For example, the "Rossi-lution" signed by heads of the local associations refers to "BIAW" throughout. Documents from the local associations refer to "BIAW" in discussing the local associations' participation in the MAF fundraising effort and their decisions to pledge funds. Other documents show that throughout the fundraising effort, senior officers represented themselves as "BIAW senior officers" and BIAW president Daimon Doyle signed correspondence seeking pledges as "BIAW President." Utter and Ireland contend that BIAW was required to register within two weeks of having the expectation of receiving the pledges for MAF funds from the local associations and was required to report the pledges when received.

BIAW does not dispute that pledges are treated as contributions under the FCPA; rather, it disputes that it was the entity that expected to receive the contributions at issue. It contends that BIAW-MSA received the withheld MAF funds from the local associations and BIAW-MSA donated to ChangePAC. It points out that the MAF funds are generated from a BIAW-MSA program and are revenue to BIAW-MSA, not BIAW. As for the use of "BIAW" in the contemporaneous documents, BIAW contends that while BIAW and BIAW-MSA are legally separate entities with different functions, both are referred to internally

as "BIAW." It explains that when its board of directors or any officers direct actions by "BIAW," BIAW and/or BIAW-MSA staff ensures that the appropriate entity—whether BIAW or BIAW-MSA—actually carries them out to comply with regulatory and tax obligations.

We conclude the evidence does not create a genuine issue of material fact as to the contribution prong. The issue is whether BIAW or BIAW-MSA expected to receive and ultimately did receive the MAF funds from the local associations. The evidence shows that BIAW-MSA administered the retro program from which the funds were generated and was formed in part to run the program; BIAW-MSA actually received the fees from the local associations and then contributed them to ChangePAC; and these transactions were made through BIAW-MSA's accounts. BIAW submitted evidence that "BIAW" was used generically to refer to BIAW-MSA, BIAW, or both. The documents to which Utter and Ireland point fail to create an issue of fact.

Expenditure prong

Next, we consider whether the evidence created a genuine issue of material fact that the expenditure prong was met. Under this prong, an organization is considered a political committee by expecting to make or making expenditures to further electoral political goals. EFF, 111 Wn. App. at 599. An additional requirement under this prong is that an organization must have as its primary purpose, or one of its primary purposes, to affect, directly or indirectly, governmental decision making by supporting or opposing candidates or ballot

propositions. State v. (1972) Dan J. Evans Campaign Comm., 86 Wn.2d 503, 509, 546 P.2d 75 (1976).

Utter and Ireland contend the evidence shows that BIAW expected to make or made electoral expenditures. Alternatively, even if those expenditures are attributed to BIAW-MSC, Utter and Ireland argue that BIAW “financed” or “controlled” BIAW-MSC’s expenditures and that BIAW-MSC’s expenditures should therefore be considered made by BIAW under RCW 42.17A.455(2). Finally, they contend electoral activity was one of BIAW’s primary purposes during the 2008 election cycle. We consider these issues in turn.

a. Whether BIAW made electoral expenditures

First, Utter and Ireland contend the following evidence shows that BIAW made \$233,648.89 in independent expenditures and over \$6.4 million in electoral expenditures to other political committees during the 2008 election cycle:

- PDC “Cash Receipts Monetary Contributions” report dated October 13, 2008 stating that “Building Industry Association o” [sic] made an aggregate total contribution of \$6,169,175 to ChangePAC.
- PDC reporting form for “Electioneering Communications” dated October 14, 2008 stating that “Building Industry Assn of WA” made “total C-6 expenses” of \$233,648.99 in relation to Rossi.
- BIAW reported making in-kind contributions of staff time to ChangePAC and It’s Time for a Change.

BIAW responds that the expenditures reflected in these PDC documents are BIAW-MSC expenditures. It contends there was not enough room on the forms for the full name “Building Industry Association of Washington Member Services Corporation” and that the PDC discouraged the use of acronyms. BIAW contends the PDC recognized this issue in its investigation when it wrote, regarding BIAW-MSC’s expenditures from 2006 to 2008:

BIAW-MSC pays for staff members who provide support for reportable independent expenditures, electioneering communications, and contributions to political committees. In these instances, PDC reports show BIAW as the entity providing the support. PDC reports should identify BIAW-MSC as providing the support.

BIAW points to its income statements and BIAW-MSC's income statements to show that BIAW-MSC made the expenditures. It also points to the statement by its executive vice president, Tom McCabe, in a declaration that "BIAW does not contribute to any political candidates or political action committees. Nor does it make political expenditures." It notes that, as a non-profit entity, it must report to the IRS both revenue and expenses on its Form 990, and contends there are no electoral expenditures noted on the 2008 form.

We agree with BIAW that the evidence fails to create an issue of material fact that BIAW-MSC made the expenditures shown in the PDC reports. This issue involves the identity of the entity—BIAW or BIAW-MSC—that made the expenditures in question. Along with the other evidence to which BIAW points, the contents of its 2008 Form 990 are inconsistent with BIAW having been the entity that made the expenditures reflected in PDC reports.

However, we conclude that BIAW's 2008 Form 990 itself creates an issue of fact that BIAW made electoral expenditures. Part IV, Line 3 of the form asks, "Did the organization engage in direct or indirect political campaign activities on behalf of or in opposition to candidates for public office? If "Yes," complete Schedule C, Part 1." BIAW answered "Yes" and attached Schedule C. On form Schedule C, which contains the heading "Political Campaign and Lobbying Activities," next to the entry for "Political expenditures," BIAW responded,

“\$165,214.” While political expenditures do not necessarily equate to electoral expenditures, BIAW, as the moving party, fails to show that none of the \$165,214 noted on Form 990 was spent on electoral activity.

b. Whether BIAW “controlled” BIAW-MSA’s expenditures

Alternatively, Utter and Ireland contend, the evidence creates an issue of material fact that BIAW “controlled” BIAW-MSA’s expenditures as defined in RCW 42.17A.455(2).⁵ We agree. The statute provides, in pertinent part, “All contributions made by a person or political committee whose contribution or expenditure activity is financed, maintained, or controlled by a trade association . . . are considered made by the trade association” RCW 42.17A.455(2).⁶

The preliminary issue we must decide is whether RCW 42.17A.455(2) applies in this context so that any electoral expenditures made by BIAW-MSA

⁵ In addition, Utter and Ireland contend that RCW 42.17A.460 makes BIAW responsible even if it carried out the contribution through BIAW-MSA. We decline to consider this argument because Utter and Ireland make only a passing reference to the statute and do not explain why the evidence showed the statute was met.

⁶ The full text of the statute provides:
For purposes of this chapter:

(1) A contribution by a political committee with funds that have all been contributed by one person who exercises exclusive control over the distribution of the funds of the political committee is a contribution by the controlling person.

(2) Two or more entities are treated as a single entity if one of the two or more entities is a subsidiary, branch, or department of a corporation that is participating in an election campaign or making contributions, or a local unit or branch of a trade association, labor union, or collective bargaining association that is participating in an election campaign or making contributions. All contributions made by a person or political committee whose contribution or expenditure activity is financed, maintained, or controlled by a trade association, labor union, collective bargaining organization, or the local unit of a trade association, labor union, or collective bargaining organization are considered made by the trade association, labor union, collective bargaining organization, or local unit of a trade association, labor union, or collective bargaining organization.

(3) The commission shall adopt rules to carry out this section and is not subject to the time restrictions of RCW 42.17A.110(1).

are considered made by BIAW, for the purpose of determining whether BIAW is a political committee, if BIAW “financed, maintained, or controlled” BIAW-MSA’s contribution or expenditure activity. BIAW contends the statute means only that campaign contributions from a corporation and its controlled entities are aggregated in determining whether a campaign contribution cap has been reached. Resp. Brief 31-32. It cites Edelman v. State ex rel. Pub. Disclosure Comm’n, 152 Wn.2d 584, 590, 99 P.3d 386 (2004) in support, pointing to the Edelman court’s statement that “[RCW 42.17A.455(2)] specifies a relationship between entities in which those entities are considered a single entity for purposes of campaign contribution limits.” BIAW contends that if Utter and Ireland’s interpretation were correct, every entity that controls a political committee would be required to report as a political committee.

Based on the statute’s plain language, we disagree and conclude that it applies to the situation before us. RCW 42.17A.455(2) begins “[f]or purposes of this chapter” (emphasis added). The provision at issue is found in chapter 42A.17 RCW, as is RCW 42.17A.005(37), which defines “political committee.” When interpreting a statute, we first look to its plain language. State v. Gonzalez, 168 Wn.2d 256, 271, 226 P.3d 131 (cert. denied, 131 S. Ct. 318, 178 L.Ed.2d 207(2010)) (citing State v. Armendariz, 160 Wn.2d 106, 110, 156 P.3d 201 (2007)). If the plain language is subject to one interpretation only, our inquiry ends. Id. Here, the meaning of the language “[f]or purposes of this chapter” is clear and subject to one interpretation only. Had the legislature intended the statute to apply only for the purposes of determining whether campaign

contribution limitations are reached, it could have easily said so. Furthermore, while Edelman addresses the statute's application to contribution limits, it does not limit the statute's application to that context, nor does it contravene the statute's plain language. Finally, BIAW is incorrect in arguing that every entity that controls a political committee would be required to report if we interpret RCW 42.17A.455(2) to apply in determining whether an entity is a political committee. Such entities must still be shown to have electoral activity as a primary purpose. Dan J. Evans Campaign Comm., 86 Wn.2d at 509. We conclude that RCW 42.17A.455(2) applies here so that if BIAW-MSA's contribution or expenditure activity was financed, maintained, or controlled by BIAW, those contributions are considered made by BIAW.

The next inquiry, therefore, is whether the evidence created an issue of fact that BIAW financed, controlled, or maintained BIAW-MSA's expenditure activity. We conclude that it did. Numerous meeting minutes for BIAW's executive committee and BIAW's board of directors show that those leadership bodies discussed and made decisions regarding how to support Rossi's campaign, including decisions relating to expenditure activity that was formally carried out by BIAW-MSA.⁷

⁷ For example, June 16, 2006 meeting minutes for BIAW's executive committee show that BIAW treasurer Brad Spears reported that "BIAW's ten percent ROII [Return on Industrial Insurance] return is going to be approximately \$925,000 in excess of what was budgeted." He reported that BIAW's budget committee recommended using part of those excess funds toward the expenditure of a "[s]hort-term investment account for use in the 08' Governor's race." Minutes from a meeting that same day of BIAW's board of directors show that the board, by motion, accepted this recommendation.

c. Whether electoral activities were one of BIAW's primary purposes

Finally, we must determine whether there was a genuine issue of material fact that electoral activities were one of BIAW's primary purposes. The following non-exclusive factors are considered: (1) the organization's stated goals and mission; (2) whether the organization's conduct furthers its stated goals and missions; (3) whether the stated goals and mission would be substantially achieved by a favorable outcome in the election; and (4) whether the organization uses non-electoral means to achieve its stated goals. EFF, 111 Wn. App. at 600. "[I]f the organization has merely restated its primary political purpose in broad nonpolitical terms, the organization's purpose will likely be achieved in an upcoming election. But if electoral political activity is merely one means the organization uses to achieve its legitimate broad nonpolitical goals, electoral political activity cannot be said to be one of the organization's primary purposes." EFF, 111 Wn. App. at 600.

We conclude that while BIAW's mission statement⁸ does not support a finding that electoral activity is one of BIAW's primary purposes as a general matter, the evidence in the record, viewed in the light most favorable to Utter and

⁸ BIAW's mission statement reads:

The Building Industry Association of Washington is the voice of the housing industry in the state of Washington. The association is dedicated to ensuring and enhancing the vitality of the building industry for the benefit of its members and the housing needs of its citizens.

To accomplish this purpose, the association's primary focus is to educate, influence and affect the legislative, regulatory, judicial and executive agencies of Washington's government. The Building Industry Association of Washington will offer its membership those services which can best be provided on a state wide basis and will disseminate information concerning the building industry to all associated members and the public.

Ireland, nonetheless creates an issue of fact as to whether BIAW's conduct during the 2008 election cycle furthered its stated goals and missions, whether BIAW's stated goals and mission would be substantially achieved by Rossi winning the election, and whether BIAW used non-electoral means to achieve its stated goals during that time. There is evidence from which it may be inferred that supporting Rossi's campaign was a top priority for BIAW leading up to the 2008 election and that BIAW made significant efforts toward that end. This evidence includes the following:

- June 29, 2007 meeting minutes for BIAW's Board of Directors show that BIAW president Daimon Doyle announced that he was encouraged by the support from the local associations to contribute to BIAW's 2008 governor fund and that so far over \$550,000 had been raised. Rossi was a guest speaker at this meeting and thanked BIAW members for their support.
- In a letter to BIAW members asking them to contribute at least 10 percent of their refunds from the retro program to the 2008 gubernatorial race, Doyle wrote:

The next Governor will, in my opinion, make the most significant impact on the long-term success of our industry and our businesses. He or she will be the driving force for a change in our state's business climate—either for better or worse in 2008 and beyond. He or she will appoint the Directors of the Departments of Ecology and Labor & Industries—both agencies that have direct (and potentially very negative) impacts on our industry and our individual businesses. He or she will set the tone in all areas of a government that is pervasive in our lives. No single individual in this state has a greater influence on our future than the Governor. Getting the right person in office is critical.

...
If every member were to contribute just 10% of their refund, we would begin the 2008 Governor's race with a war chest in excess of \$3.7 million! Combined with substantial funds that have already been committed by BIAW and its local associations, I believe that we can make a tremendous impact on an election that was so close it took two re-counts to complete last time.

- In a March 9, 2007 email to other BIAW leaders, Doyle wrote, “In light of recent attacks on our entire industry by the legislature, we have never been more in need of a pro-housing Governor than now”
- In a March 22, 2007 email, Doyle wrote:

Our State government has become very anti-business and in many respects anti-builder. This year is just one example of how our industry can be majorly affected by the legislation passed in Olympia. Add to that, our opponents—those who want tighter environmental restrictions and have pledged to dismantle the Retro program—are huge supporters of the current incumbents. With one vote shy of a 2/3 majority in both the House and Senate, it would take huge sums of money and many years of effort to win back even one of those two bodies. However, the change of just one individual, the Governor, would have a profound effect on this state. Regardless of what the legislature votes out, the Governor has the veto pen. . . . We must get a pro-housing Governor in office and 2008 will be our best opportunity.
- In January 2008, newly elected BIAW president Brad Spears announced, “One of my priority goals as the 2008 President of the Building Industry Association of Washington is to replace anti-small business and anti-affordable housing Governor Gregoire with her pro-small business and affordable housing challenger Dino Rossi.”
- February 27, 2008 meeting minutes for BIAW’s Board of Directors show that Spears announced that BIAW’s number one priority this campaign season would be to help Rossi get elected. Spears reported that the General Membership luncheon, which was well attended, featured Rossi as the guest speaker and that Rossi had delivered a “great speech.” Id. Four recent polls showed that if the election were held today, Rossi would win. Spears had met with leaders across the state and nation who shared their respect for BIAW due to its successes and efforts. Spears also reported that candidates came to BIAW because they knew BIAW had the resources, will, and tools in place to get the job done. Id.
- In promoting the main benefits of BIAW membership, BIAW cited its “Political Program”: “BIAW’s experienced team of lobbyists and members . . . work to elect ‘business friendly’ candidates”

Based on our conclusion that the evidence created a genuine issue of material fact that BIAW was a political committee under the expenditure prong, we reverse and remand.⁹

Cross-Appeal of Attorney's Fees

BIAW sought attorney's fees from Utter and BIAW for bringing a citizen's action "without reasonable cause" under RCW 42.17A.765(4)(b). It also sought an award of fees against the State, claiming fees were due under RCW 42.17A.765(5) for the State's failure to intervene in the action. Given our disposition of this appeal, we reject BIAW's cross-appeal concerning fees, and deny its request for attorney fees on appeal under RAP 18.9 and RCW 4.84.185.

Reversed and remanded.

Spearna, A.C.J.

WE CONCUR:

Cox, J.

⁹ The point raised by the dissent that the legislature and/or the PDC should revisit the FCPA is well taken. But the issue before this court, as the dissent concedes, is the narrow question of whether there is sufficient evidence to create an issue of fact as to whether BIAW had electoral activity as one of its primary purposes during the 2008 election period. The evidence on this issue, as set out above, is more than sufficient.

No. 66439-5-I and consolidated case No. 66737-8-I,
Utter and Ireland v. Building Industry Association of Washington

GROSSE, J. (dissenting) — I dissent. On these facts, in order for the Building Industry Association of Washington (BIAW) to be required to report as a political committee it must be shown to have electoral activity as one of its primary purposes. Applying the rationale articulated by this court in State ex rel. Evergreen Freedom Foundation v. Washington Education Association (WEA), 111 Wn. App. 586, 49 P.3d 894 (2002) (EFF), there simply is insufficient evidence in this record to support such a finding or findings. Thus, the trial court was correct in ruling adversely to this appellant on summary judgment. However, this case illustrates that the act and the gloss of State v. Evans Campaign Committee, 86 Wn.2d 503, 546 P.2d 75 (1976) are anything but clear in their direction, to the point that each case of this nature has to be determined on its specific facts and circumstances. Hence, I cannot quarrel with much of the rationale of the majority opinion, only its conclusion.

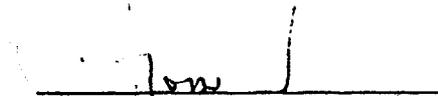
This case and EFF further illustrate that the lofty goal of the Fair Campaign Practices Act, that the public should be able to know the identity of the real participants in any election, has become a mere tool for collateral electioneering. Here, the BIAW's involvement was abundantly clear, if not at the outset, then certainly after the investigation by the Public Disclosure Commission (PDC) and the subsequent legal proceedings brought by the Attorney General. The same was true a decade ago in EFF, a case different only in attempting to pluck a different goose. Nothing is accomplished in either case by adding a civil

No. 66439-5-1 and consolidated case No. 66737-8-1/2

suit to the mix, except whatever political advantage might follow from the fact of the filing of the suit. On these facts a successful suit would only result in the burdensome and largely irrelevant requirement of detailed reports by entities such as the BIAW and the WEA, already reporting through identifiable sub-entities.

Frankly, this should be fixed. The statute charges the PDC with adopting rules to effectuate its purposes. Surely, that duty encompasses the secondary duty of adopting regulations clarifying obligations of participants in the political dialogue to attempt to avoid largely irrelevant litigation.

I would affirm the trial court in all respects.

A handwritten signature in black ink, appearing to be "J. M. ...", is written above a horizontal line.

Utter ex rel. State v. Bldg. Indus. Ass'n of Wash.

Court of Appeals of Washington, Division One
September 16, 2013, Filed
No. 66439-5-I Consolidated w/No. 66737-8-I

Reporter: 2013 Wash. App. LEXIS 2189; 2013 WL 5228505

ROBERT UTTER ET AL., IN THE NAME OF THE STATE OF WASHINGTON, APPELLANTS, v. BUILDING INDUSTRY ASSOCIATION OF WASHINGTON, RESPONDENT.

Prior History: [*1] Superior Court County: King. Superior Court Cause No: 08-2-34270-1 SEA. Date filed in Superior Court: December 1, 2010. Superior Court Judge Signing: Hon. Michael Heavey. *Utter v. Bldg. Indus. Ass'n of Wash., 171 Wn. App. 1018, 2012 Wash. App. LEXIS 2566 (2012)* *Utter v. Bldg. Indus. Ass'n of Wash., 2012 Wash. App. LEXIS 2544 (Wash. Ct. App., Oct. 29, 2012)*

Case Summary

Procedural Posture

Appellant citizens sought review of a summary judgment in the King Superior Court, Washington, dismissing their citizen's action against respondent non-profit association for violations of the Fair Campaign Practices Act (FCPA), Wash. Rev. Code ch. 42.17A.

Overview

Appellate court held that *Wash. Rev. Code § 42.17A.455* did not apply so that a subsidiary's electoral expenditures, which were financed, maintained, or controlled by the association, were attributed to the association, for purposes of determining whether the association was a political committee subject to registration and reporting requirements under *Wash. Rev. Code § 42.17A.005(37)* of the FCPA. However, there was a genuine issue of material fact as to whether the association was a political committee under *§ 42.17A.005(37)* because the evidence showed that supporting a gubernatorial campaign was a top priority for the association and that the association made significant efforts toward that end. Further, the citizens' claim was barred

by *Wash. Rev. Code § 42.17A.765(4)* because the Attorney General caused their allegations to be investigated, determined that the association was not a political committee, and did not file a lawsuit. Finally, the trial court did not abuse its discretion in denying the association's fee request under *Wash. Rev. Code § 42.17A.765(4)(b)* and *(5)* because the citizens' action was not without a reasonable basis and the State was not a party to the action.

Outcome

The court affirmed the judgment.

Counsel: Eric D. "Knoll" Lowney (of *Smith & Lowney PLLC*) and Michael E. Withey (of *Law Offices of Michael Withey*), for appellants.

Harry J.F. Korrell III, Robert J. Maguire, and Matthew D. Clark (of *Davis Wright Tremaine LLP*), for respondent.

Judges: Written by: Acting Chief Judge Spearman. Concurred by: Judge Cox, Judge Grosse.

Opinion by: SPEARMAN

Opinion

¶1 SPEARMAN, A.C.J. — *HNI* Under the Fair Campaign Practices Act (FCPA), chapter 42.17A RCW, political committees are subject to certain registration and reporting requirements.¹ An organization is considered a political committee "by either (1) expecting to receive or receiving contributions, or (2) expecting to make or making expenditures to further electoral political goals." *Evergreen Freedom Found. v. Washington Educ. Ass'n*, 111 Wn. App. 586, 599, 49 P.3d 894 (2002) (*EFF*). These alternative means are the contribution prong and the expenditure prong, respectively. *Id.* at 598. In 2008, Robert Utter and Faith Ireland brought a citizen's action against the Building Industry Associa-

¹ While the parties' briefs refer to the former statutes, all references in our opinion are to the recodified statutes as they appear in chapter 42.17A RCW.

tion of Washington (BIAW), asserting that it met the definition [*2] of a political committee under the contribution prong and the expenditure prong through its support for Dino Rossi's 2008 gubernatorial campaign. Therefore, Utter and Ireland claimed, BIAW violated the FCPA by failing to register and report as a political committee. Before filing their lawsuit against BIAW, Utter and Ireland sent a notice of intent to the Washington State Attorney General's office (AG), stating that they would file a lawsuit against BIAW and BIAW-MSA for violations of the FCPA if the State did not. The AG referred the allegations to the Public Disclosure Commission (PDC) for investigation. Based on the PDC's conclusions, the AG filed a lawsuit against BIAW-MSA but did not file a lawsuit against BIAW.

¶2 On BIAW's motion for summary judgment, the trial court found there was no genuine issue of material fact in dispute and dismissed Utter and Ireland's lawsuit. It denied BIAW's request for attorney's fees. Utter and Ireland appeal from summary judgment and BIAW cross-appeals the denial of attorney's fees. We conclude that [*3] while the evidence creates an issue of material fact that BIAW was a political committee under the expenditure prong, Utter and Ireland's claim is barred by *RCW 42.17A.765(4)*, where the AG caused their allegations to be investigated, determined BIAW was not a political committee, and did not file a lawsuit. Accordingly, we affirm. We also affirm the trial court's denial of attorney's fees to BIAW and do not award fees on appeal.

FACTS

¶3 BIAW is a non-profit affiliate of the National Association of Home Builders (NAHB), whose mission is to promote the common interests of Washington's building industry. It has approximately 13,500 members, primarily home builders. Members first join and pay dues to one of BIAW's fifteen local associations throughout the state, then automatically become members of BIAW and NAHB. Among other activities, BIAW does advocacy work in all branches of government, helps local associations recruit new members, runs an educational program, and organizes conferences. BIAW's sources of revenue include membership

dues, income from interest and investments, health insurance fees, and fees from educational programs.

¶4 In 1993, BIAW created a wholly owned, for-profit subsidiary, [*4] BIAW Member Services Corporation (BIAW-MSA), to provide certain services to BIAW members. BIAW-MSA's primary function is to administer a worker's compensation insurance retrospective rating program ("retro program") pursuant to Department of Labor and Industries' rules.² BIAW-MSA generates revenue from the retro program from an up-front enrollment fee and from a back-end, incentive fee of 10 per cent of any refund earned by the program in a given year, referred to as a Marketing Assistance Fee (MAF). BIAW-MSA also runs other programs such as health insurance, life insurance, and educational seminars. It contributes a portion of its revenues to independent expenditures and to political action committees (PACs), such as ChangePAC. BIAW and BIAW-MSA share the same leadership and staff, with staff salaries allocated between the entities based on the type of work performed. BIAW-MSA itself does not have any members.

¶5 By spring 2007, one of BIAW's main efforts was supporting Rossi's 2008 gubernatorial campaign. As part of this effort, BIAW senior officers requested the local associations to pledge excess MAF funds from their retro programs to support the campaign. Senior officers drafted a "Rossi-lution" that stated:

WHEREAS BIAW is committing 100% of excess retro dollars to the 2008 gubernatorial election,

WHEREAS, participation of local associations is necessary for success,

NOW THEREFORE BE IT RESOLVED THAT

The following local associations pledge that all Retro Marketing Assistance funds received in 2007, beyond the amount budgeted for the year, will be sent to the BIAW and placed in the BIAW 2008 gubernatorial election account, to be used for efforts in the 2008 gubernatorial race.

² MSA was created to "reduce the risk of tax liability for BIAW ... for administering a for-profit retro program." Retro programs allow members to pool their worker's compensation risks and provide a chance for the pool to earn a refund of a portion of its premiums, when the [*5] group's combined claims are less than its premiums. See Washington Administrative Code (WAC) 296-17-90455.

Eleven of the fifteen local associations agreed to participate in this effort, which ultimately raised \$584,527.53.

¶6 On July 25, 2008 and September 9, 2008, in accordance with RCW 42.17A.765(4), Utter and Ireland sent notices of intent to the Washington State Attorney General (AG), stating that they would file a lawsuit [*6] against BIAW and BIAW-MSA for violations of the FCPA if the State did not. They claimed BIAW was legally responsible for violations of the FCPA, even though the independent expenditures in question were handled through the accounts of BIAW-MSA.

¶7 The AG referred Utter and Ireland's allegations to the Public Disclosure Commission (PDC), which completed an investigation and issued a report. The PDC determined that BIAW-MSA requested permission from the local associations to withhold a portion of the MAF funds and handled those portions of the withheld funds. On August 20, 2008, BIAW-MSA contributed from its general treasury fund \$584,527.53—the amount raised from the MAF funds—to ChangePAC and provided ChangePAC a list of the 11 local associations and the amount contributed by each association. The next day, ChangePAC reported the receipt of the contributions as coming from the local associations.

¶8 The PDC report concluded:

While [PDC] staff maintains the entire BIAW-MSA general fund would not be considered a political committee, the solicitation, receipt, and retention of local association Retro program refunds by BIAW-MSA in the amount of \$584,527.53 qualifies that discrete portion of BIAW-MSA [*7] funds as a political committee pursuant to [RCW 42.17A.005(37)].

Based on the report, the PDC advised the AG that BIAW-MSA committed “multiple apparent violations of [RCW 42.17A] by failing to register as a political committee and report the contributions it solicited, received and retained from its local associations in 2007, and by failing to report expenditures to ChangePAC in 2008 with the contributions received.” The report concluded that BIAW

was not a political committee under RCW 42.17A.005(37). It found that during 2006 to June 2008, BIAW did not solicit or receive contributions to support or oppose candidates or ballot propositions, contribute to candidates or political committees, or use its general treasury for other campaign-related expenditures. Accordingly, the report did not recommend action against BIAW.

¶9 On September 19, 2008, the AG filed a lawsuit against BIAW-MSA in superior court, alleging that BIAW-MSA was required to register as a political committee with respect to the MAF funds and to file PDC reports. The AG alleged that BIAW-MSA conducted an illegal fundraising campaign and violated RCW 42.17A.435 by concealing its solicitation and receipt of \$584,527.53 in [*8] campaign contributions toward 2008 electoral activities. BIAW-MSA and the AG settled the lawsuit. As part of the settlement, BIAW-MSA agreed to file a political committee registration form and campaign finance disclosure reports with the PDC.

¶10 The AG did not file a lawsuit against BIAW. Utter and Ireland filed a lawsuit against BIAW on October 6, 2008 and filed an amended complaint on October 13. They claimed BIAW itself qualified as a political committee and was therefore required to register and report.³ They asserted that although the transfers and expenditures at issue were processed through BIAW-MSA accounts, the evidence showed that BIAW “orchestrated the entire violation, made all decisions, and the parties making the illegal donations believed they were donating to the BIAW.” They argued that the funds belonged to BIAW and/or its members and that BIAW-MSA was a “mere conduit” for them.

¶11 The BIAW filed a motion for summary judgment. The trial court granted BIAW's [*9] motion, finding there was no genuine issue of material fact in dispute and BIAW was entitled to judgment as a matter of law. Utter and Ireland appeal.

DISCUSSION

¶12 Utter and Ireland contend the evidence creates a genuine issue of material fact that BIAW was a political committee under the contribution prong and the expenditure prong. BIAW responds that the entire activity forming the basis of Utter and Ire-

³ Utter and Ireland also claimed that BIAW exceeded the campaign contribution limits under RCW 42.17A.405 and improperly coordinated with Dino Rossi. They voluntarily dismissed that claim and it is not at issue on appeal.

land's claims was conducted by BIAW-MSC. We agree with Utter and Ireland that the evidence creates an issue of fact under the expenditure prong. However, we conclude the AG's actions preclude Utter and Ireland's citizen action.⁴

Summary Judgment

¶13 **HN2** We review summary judgment decisions de novo, engaging in the same inquiry as the trial court. *Michak v. Transnation Title Ins. Co.*, 148 Wn.2d 788, 794-95, 64 P.3d 22 (2003). Summary judgment is proper if the pleadings, depositions, answers, and admissions, together with the affidavits, show that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *CR 56(c)*. "When ruling on a summary judgment motion, the court is to view all facts and reasonable [*10] inferences therefrom most favorably toward the nonmoving party." *Lybert v. Grant County, State of Wash.*, 141 Wn.2d 29, 34, 1 P.3d 1124 (2000) (citing *Weyerhaeuser Co. v. Aetna Cas. & Sur. Co.*, 123 Wn.2d 891, 897, 874 P.2d 142 (1994)).

WA[1] [1] ¶14 **HN3** Under *RCW 42.17A.005(37)*, "political committee" includes any organization that has "the expectation of receiving contributions or making expenditures in support of, or opposition to, any candidate or any ballot proposition." This definition contains two alternative prongs under which an entity is considered a political committee: (1) the contribution prong and (2) the expenditure prong. *EFF*, 111 Wn. App. at 599.

Contribution prong

WA[2] [2] ¶15 **HN4** Under the contribution prong, an organization is considered a political committee if it expects to receive or receives contributions toward electoral goals. *EFF*, 111 Wn. App. at 599. Utter and Ireland contend contemporaneous documents show that BIAW solicited and received pledges, in the form of MAF funds, from the local associations. For example, the "Rossi-lution" signed by heads of the local associations refers to "BIAW" throughout. Documents from the local associations refer to "BIAW" in discussing the local associations' [*11] participation in the MAF fundraising effort and their decisions to pledge funds. Other documents show that throughout the fundraising effort, senior officers represented themselves as

"BIAW senior officers" and BIAW president Daimon Doyle signed correspondence seeking pledges as "BIAW President." Utter and Ireland contend that BIAW was required to register within two weeks of having the expectation of receiving the pledges for MAF funds from the local associations and was required to report the pledges when received.

¶16 BIAW does not dispute that pledges are treated as contributions under the FCPA; rather, it disputes that it was the entity that expected to receive the contributions at issue. It contends that BIAW-MSC received the withheld MAF funds from the local associations and BIAW-MSC donated to ChangePAC. It points out that the MAF funds are generated from a BIAW-MSC program and are revenue to BIAW-MSC, not BIAW. As for the use of "BIAW" in the contemporaneous documents, BIAW contends that while BIAW and BIAW-MSC are legally separate entities with different functions, both are referred to internally as "BIAW." It explains that when its board of directors or any officers direct actions [*12] by "BIAW," BIAW and/or BIAW-MSC staff ensures that the appropriate entity — whether BIAW or BIAW-MSC — actually carries them out to comply with regulatory and tax obligations.

¶17 We conclude the evidence does not create a genuine issue of material fact as to the contribution prong. The issue is whether BIAW or BIAW-MSC expected to receive and ultimately did receive the MAF funds from the local associations. The evidence shows that BIAW-MSC administered the retro program from which the funds were generated and was formed in part to run the program; BIAW-MSC actually received the fees from the local associations and then contributed them to ChangePAC; and these transactions were made through BIAW-MSC's accounts. BIAW submitted evidence that "BIAW" was used generically to refer to BIAW-MSC, BIAW, or both. The documents to which Utter and Ireland point fail to create an issue of fact.

Expenditure prong

WA[3] [3] ¶18 **HN5** Under the expenditure prong, an organization is considered a political committee by expecting to make or making expenditures to further electoral political goals. *EFF*, 111 Wn. App.

⁴ We decline to address BIAW's constitutional claims.

at 599. An additional requirement under this prong is that an organization must have as its primary purpose, or one [*13] of its primary purposes, to affect, directly or indirectly, governmental decision making by supporting or opposing candidates or ballot propositions. *State v. (1972) Dan J. Evans Campaign Comm.*, 86 Wn.2d 503, 509, 546 P.2d 75 (1976).

¶19 Utter and Ireland contend the evidence shows that BIAW made or expected to make electoral expenditures. Alternatively, even if those expenditures are attributed to BIAW-MSA, Utter and Ireland argue, BIAW “financed” or “controlled” BIAW-MSA’s expenditures and BIAW-MSA’s expenditures should therefore be considered made by BIAW under *RCW 42.17A.455(2)*. Finally, they contend electoral activity was one of BIAW’s primary purposes during the 2008 election cycle. We consider these issues in turn.

a. *Whether BIAW made electoral expenditures*

¶20 First, Utter and Ireland contend the following evidence shows that BIAW made \$233,648.89 in independent expenditures and over \$6.4 million in electoral expenditures to other political committees during the 2008 election cycle:

- PDC “Cash Receipts Monetary Contributions” report dated October 13, 2008 stating that “Building Industry Association o” [sic] made an aggregate total contribution of \$6,169,175 to ChangePAC.
- PDC reporting [*14] form for “Electioneering Communications” dated October 14, 2008 stating that “Building Industry Assn of WA” made “total C-6 expenses” of \$233,648.99 in relation to Rossi.
- BIAW reported making in-kind contributions of staff time to ChangePAC and It’s Time for a Change.

¶21 BIAW responds that the expenditures reflected in these PDC documents are BIAW-MSA expen-

ditures. It contends there was not enough room on the forms for the full name “Building Industry Association of Washington Member Services Corporation” and that the PDC discouraged the use of acronyms. BIAW contends the PDC recognized this issue in its investigation when it wrote, regarding BIAW-MSA’s expenditures from 2006 to 2008:

BIAW-MSA pays for staff members who provide support for reportable independent expenditures, electioneering communications, and contributions to political committees. In these instances, PDC reports show BIAW as the entity providing the support. PDC reports should identify BIAW-MSA as providing the support.

BIAW points to its income statements and BIAW-MSA’s income statements to show that BIAW-MSA made the expenditures. It also points to the statement by its executive vice president, Tom McCabe, in a declaration [*15] that “BIAW does not contribute to any political candidates or political action committees. Nor does it make political expenditures.” It notes that, as a non-profit entity, it must report to the IRS both revenue and expenses on its Form 990, and contends there are no electoral expenditures noted on the 2008 form.

¶22 We agree with BIAW that the evidence fails to create an issue of material fact that BIAW-MSA made the expenditures shown in the PDC reports. This issue involves the identity of the entity — BIAW or BIAW-MSA—that made the expenditures in question. Along with the other evidence to which BIAW points, the contents of its 2008 Form 990 are inconsistent with BIAW having been the entity that made the expenditures reflected in PDC reports.

¶23 However, we conclude that BIAW’s 2008 Form 990 itself creates an issue of fact that BIAW made electoral expenditures.⁵ Part IV, Line 3 of the form asks, “Did the organization engage in di-

⁵ BIAW submits to this court an amended and corrected Form 990, contending that it shows that BIAW did not spend any funds on electoral activities. The amended Form 990 shows that BIAW’s answer to Part IV, Line 3 (asking, “Did the organization engage in direct or indirect political campaign activities on behalf of or in opposition to candidates for public office?”) was “no.” Exhibit A to Declaration of Art Castle. In a Supplemental Information to Form 990 submitted to the IRS, BIAW explained,

The organization is amending the 2008 Form 990 to correctly answer Form 990, Part IV, Line 3. The organization only incurs lobbying expenditures, no political expenditures or activities, and, therefore, should have answered this ques-

rect or indirect political campaign activities on behalf of or in opposition to candidates for public office? If “Yes,” complete Schedule C, Part 1.”

BIAW answered “Yes” and attached Schedule C. On form Schedule C, which contains the heading “Political Campaign and [*16] Lobbying Activities,” next to the entry for “Political expenditures,” BIAW responded, “\$165,214.” While political expenditures do not necessarily equate to electoral expenditures, BIAW, as the moving party, fails to show that none of the \$165,214 noted on Form 990 was spent on electoral activity.

b. Whether BIAW “controlled” BIAW-MS’s expenditures

¶24 Utter and Ireland also contend that even if there is no evidence that BIAW made electoral expenditures, the evidence creates an issue of material fact that BIAW “controlled” BIAW-MS’s expenditures as defined in RCW 42.17A.455(2).⁶ They contend that if BIAW controlled BIAW-MS’s expenditures, BIAW-MS’s expenditures are considered made by BIAW.

¶25 The preliminary issue we must decide is whether RCW 42.17A.455(2) applies in this context, so that any electoral expenditures made by BIAW-MS are considered made by BIAW — for the purpose of determining whether BIAW is a political committee — if BIAW “financed, maintained, or controlled” BIAW-MS’s contribution or expenditure activity. RCW 42.17A.455 provides:

HN6 For purposes of this chapter:

tion ‘no’. As a result, Schedule C, Part I-A is no longer completed. Schedule C, Part III-B remains the same to properly disclose lobbying expenditures and nondeductible dues [*17] information.

BIAW requests this court to consider and rely upon the corrected Form 990, citing RAP 9.11, which provides:

‘The appellate court may direct that additional evidence on the merits of the case be taken before the decision of a case on review if: (1) additional proof of facts is needed to fairly resolve the issues on review, (2) the additional evidence would probably change the decision being reviewed, (3) it is equitable to excuse a party’s failure to present the evidence to the trial court, (4) the remedy available to a party through postjudgment motions in the trial court is inadequate or unnecessarily expensive, (5) the appellate court remedy of granting a new trial is inadequate or unnecessarily expensive, and (6) it would be inequitable to decide the case solely on the evidence already taken in the trial court.’

RAP 9.11. Ordinarily, under the rule, the appellate court will “direct the trial court to take additional evidence and find the facts based on that evidence.” *Id.*

We decline to direct additional evidence to be taken under RAP 9.11. BIAW does not explain why the requirements of the rule are met here. If this matter were remanded, the trial court could consider the [*18] evidence at its own discretion.

⁶ In addition, Utter and Ireland contend that RCW 42.17A.460 makes BIAW responsible even if it carried out the contribution through BIAW-MS. We decline to consider this argument because Utter and Ireland make only a passing reference to the statute and do not explain why the evidence showed the statute applies.

(1) A contribution by a political committee with funds that have all [*19] been contributed by one person who exercises exclusive control over the distribution of the funds of the political committee is a contribution by the controlling person.

(2) Two or more entities are treated as a single entity if one of the two or more entities is a subsidiary, branch, or department of a corporation that is participating in an election campaign or making contributions, or a local unit or branch of a trade association, labor union, or collective bargaining association that is participating in an election campaign or making contributions. *All contributions made by a person or political committee whose contribution or expenditure activity is financed, maintained, or controlled by a trade association, labor union, collective bargaining organization, or the local unit of a trade association, labor union, or collective bargaining organization are considered made by the trade association, labor union, collective bargaining organization, or local unit of a trade association, labor union, or collective bargaining organization.*

(3) The commission shall adopt rules to carry out this section and is not subject to the time restrictions of RCW 42.17A.110(1).

RCW 42.17A.455 (emphases [*20] added).

WA[4-6] [4-6] ¶26 Utter and Ireland argue that under the plain language “[f]or purposes of this chapter,” RCW 42.17A.455 applies to all other provisions of chapter 42.17A RCW, including RCW 42.17A.005(37), which defines “political committee.” BIAW contends that under RCW 42.17A.455, campaign contributions from a corporation and its controlled entities are aggregated only in determining whether a campaign contribution cap has been reached, not in determining whether an entity is a political committee under RCW 42.17A.005(37). It cites Edelman v. State ex rel. Pub. Disclosure Comm’n, 152 Wn.2d 584, 590, 99 P.3d 386 (2004) in support, pointing to the court’s statement that “[RCW 42.17A.455] specifies a relationship between entities in which those entities are considered a single entity for purposes of campaign contribution limits.”

¶27 HN7 When interpreting a statute, we first look to its plain language. State v. Gonzalez, 168 Wn.2d 256, 271, 226 P.3d 13, cert. denied, 131 S. Ct. 318, 178 L. Ed.2d 207 (2010) (citing State v. Armentariz, 160 Wn.2d 106, 110, 156 P.3d 201 (2007)). If the plain language is subject to one interpretation only, our inquiry ends. *Id.* However, even the language “for purposes of this [*21] chapter” may not be determinative, as illustrated by a case cited by BIAW, Am. Legion Post #149 v. Wash. State Dep’t of Health, 164 Wn.2d 570, 192 P.3d 306 (2008).

¶28 In 1985, the state legislature had adopted the clear indoor air act, which limited smoking in some public places. Am. Legion Post # 149, 164 Wn.2d at 581 (citing LAWS OF 1985, ch. 236). The act exempted “private facilities” and “private enclosed workplace[s], within a public place, from the smoking ban. *Id.* (citing former RCW 70.160.020(2) (1985), amended by LAWS OF 2006, ch. 2 § 2; RCW 70.160.060). In 2006, Washington voters enacted Initiative Measure 901, which expanded the prohibition on smoking in public places by amending the definition of a “public place” to include facilities such as schools, bars, bowling alleys, and casinos. *Id.* at 581-82 (citing LAWS of 2006, ch. 2). Initiative 901 also prohibited smoking in “any place of employment.” *Id.* at 582 (citing RCW 70.160.030, 020(3)). Chapter 70.160 RCW is now entitled the smoking in public places act. (the Act). *Id.* at 581-82.

¶29 American Legion Post #149, a private, non-profit fraternal organization, owned and operated a

private facility open to members and guests. The [*22] organization employed several workers to run the facility. *Id.* at 582-83. At issue was whether the Act prohibited smoking in the Post’s facility. *Id.* at 581. The Act prohibits smoking “in a public place or in any place of employment.” RCW 70.160.030. “Public place” is defined as “that portion of any building or vehicle used by and open to the public, regardless of whether the building or vehicle is owned in whole or in part by private persons or entities, the state of Washington, or other public entity.” RCW 70.160.020(2). The final sentence of the definition of a “[p]ublic place” provides, “This chapter is not intended to restrict smoking in private facilities which are occasionally open to the public except upon the occasions when the facility is open to the public.” RCW 70.160.020(2). A “[p]lace of employment” is defined as “any area under the control of a public or private employer which employees are required to pass through during the course of employment ...” RCW 70.160.020(3).

¶30 The Post argued that smoking was not prohibited in its facility, pointing to RCW 70.160.020(2). Am. Legion Post #149, 164 Wn.2d at 587. It contended that “chapter” referred to the entire Act, [*23] chapter 70.160 RCW, and that if voters had wanted the exception to apply only to the definition of a “public place,” the initiative should have modified that sentence. *Id.* at 587-88.

¶31 The court first explained,

HN8 ‘[I]n determining the meaning of a statute enacted through the initiative process, the court’s purpose is to ascertain the collective intent of the voters who, acting in their legislative capacity, enacted the measure. ...’ Where the language of an initiative enactment is ‘plain, unambiguous, and well understood according to its natural and ordinary sense and meaning, the enactment is not subject to judicial interpretation. ...’ In construing the meaning of an initiative, the language of the enactment is to be read as the average informed lay voter would read it.

Am. Legion Post #149, 164 Wn.2d at 585 (internal quotation marks and citations omitted). Furthermore, the court noted,

An initiative must be read in light of its various provisions, rather than in a

piecemeal approach, and in relation to the surrounding statutory scheme. A court must, when possible, give effect to every word, clause and sentence of a statute. The goal is to avoid interpreting statutes to create conflicts [*24] between different provisions so that we achieve a harmonious statutory scheme. If there is an apparent conflict between two provisions, the more specific and more recently enacted statute is preferred. Only if the language is ambiguous may the court examine extrinsic sources such as a voter's pamphlet.

Id. at 585-86 (internal quotation marks and citations omitted).

¶32 The court held that the Post's interpretation of *RCW 70.160.020(2)* was inconsistent with the surrounding statutory scheme, voters' intent in enacting Initiative 901 to protect employees from smoking regardless of whether they worked in a public place, and relevant principles of statutory construction. *Id.* at 588. The exception for private facilities was part of the definition of a "public place" and was not repeated under the definition of a "place of employment." *Id.* The court concluded that "the exception for private facilities is an exception to the definition of a 'public place' and does not apply to the prohibition against smoking in 'any place of employment.'" *Id.* at 591. Thus, the language "this chapter" did not refer to the entire act, chapter 70.160 RCW.

¶33 *Am. Legion Post #149* supports the proposition that *HN9* the language [*25] "for purposes of this chapter" does not necessarily mean a provision will apply to every other provision in the chapter at issue. It also leads us to conclude we may look at the context and purpose of a statute and the surrounding statutory scheme. Here, as BIAW and amici⁷ note, *RCW 42.17A.005* and *RCW 42.17A.455* were enacted through different initiatives. Washington's campaign finance reporting and disclosure rules, including the definition of "political committee" contained in *RCW 42.17A.005(37)*, were enacted by voters in 1972 with the passage of Initiative Measure No. 276. Twenty years later, *RCW 42.17A.455* was adopted when voters approved Ini-

tiative 134, *State of Washington Voters Pamphlet, General Election 8, 11* (Nov. 3, 1992) to the legislature.

¶34 We conclude that *HN10* voters' intent in enacting the relevant portion of I-134 (codified as *RCW 42.17A.455*) was to attribute contributions for the purpose of determining whether campaign contribution limits had been reached. I-134 focused on capping campaign contributions, as reflected by its short title and ballot title:

Official Ballot Title: Shall campaign contributions be limited; public funding of state and local campaigns be prohibited; and campaign related activities be restricted.

Short Title: AN ACT Relating to the regulation of political contributions and campaign expenditures

Initiative Measure No. 134 (I-134) contained the following codified statement of intent:

By limiting campaign contributions, the people intend to:

- (a) Ensure that individuals and interest groups have fair and equal opportunity to influence elective and governmental processes;
- (b) Reduce the influence of large organizational contributors; and
- (c) Restore public trust in governmental institutions and the electoral process.

RCW 42.17A.400(2). The Washington Supreme Court observed that *HN11* this legislation "sought to accomplish the initiative's purpose by establishing campaign [*27] contribution limits." *Edelman, 152 Wn.2d* at 587. There is no indication in the language of the initiative informing voters that Part III, Section 6 (codified as *RCW 42.17A.455*) would expand the obligations of entities required to register and report as political committees.

¶35 The text and structure of the initiative also support the proposition that the language following

⁷ Washington State Labor Council, SEIU Healthcare 775NW, UFCW 21, Washington State Education Association, SEIU Healthcare 1199NW, and SEIU Local 925. Amici each finance, maintain, or control a political action committee that makes candidate contributions, contributions to political committees, and/or independent expenditures in support of, or in opposition to, various candidates and ballot propositions. Amici Brief 1. None of the amici are [*26] registered as a political committee.

“for purposes of this chapter” in RCW 42.17A.455 is aimed at determining whether campaign contribution limits have been reached. What was codified as RCW 42.17A.455 was Section 6 of Part III (entitled “Contributions”) of I-134. The first section of Part III—Section 4—limits the amount that can be contributed to candidates. Section 5 addresses attribution of contributions by family members, Section 6 addresses attribution of contributions by controlled entities, and Section 7 provides that “earmarked” contributions made through a third party are attributed to the original contributor. None of these sections states that it is directed solely to determining whether contribution limits in Section 4 have been met, although that is the evident purpose of the sections in Part III.

¶36 Finally, limiting RCW 42.17A.455 to the campaign [*28] contribution context is consistent with the definition of political committee itself. **HNI2** Under the plain language of the definition of “political committee” in RCW 42.17A.005(37), the organization must itself make expenditures to be considered a political committee. See RCW 42.17A.005(37). (“‘Political committee’ means any person (except a candidate or an individual dealing with his or her own funds or property) having the expectation of receiving contributions or making expenditures in support of, or opposition to, any candidate or any ballot proposition.”). But if RCW 42.17A.455 is applied in the context of defining a political committee, a trade association, labor union, collective bargaining organization (or the local unit of any such entity) can be a political committee even if it does *not* itself make any political expenditures, so long as it finances, maintains, or controls the contribution or expenditure activity of a political committee. We conclude that **HNI3** RCW 42.17A.455 does not apply so that BIAW-MS C’s electoral expenditures are attributed to BIAW, for the purpose of determining whether BIAW is a politi-

cal committee, if BIAW financed, maintained, or controlled BIAW-MS C’s contribution [*29] or expenditure activity.

c. Whether electoral activities were one of BIAW’s primary purposes

WA[7] [7] ¶37 Finally, we must determine whether there was a genuine issue of material fact that electoral activities were one of BIAW’s primary purposes. **HNI4** The following non-exclusive factors are considered: (1) the organization’s stated goals and mission; (2) whether the organization’s conduct furthers its stated goals and missions; (3) whether the stated goals and mission would be substantially achieved by a favorable outcome in the election; and (4) whether the organization uses non-electoral means to achieve its stated goals. EFF, 111 Wn. App. at 600. “[I]f the organization has merely restated its primary political purpose in broad nonpolitical terms, the organization’s purpose will likely be achieved in an upcoming election. But if electoral political activity is merely one means the organization uses to achieve its legitimate broad nonpolitical goals, electoral political activity cannot be said to be one of the organization’s primary purposes.” EFF, 111 Wn. App. at 600.

¶38 We conclude that while BIAW’s mission statement⁸ does not support a finding that electoral activity is one of BIAW’s primary purposes [*30] as a general matter, the evidence in the record, viewed in the light most favorable to Utter and Ireland, nonetheless creates an issue of fact as to whether BIAW’s conduct during the 2008 election cycle furthered its stated goals and missions, whether BIAW’s stated goals and mission would be substantially achieved by Rossi winning the election, and whether BIAW used non-electoral means to achieve its stated goals during that time. There is evidence from which it may be inferred that supporting Rossi’s campaign was a top priority for BIAW

⁸ BIAW’s mission statement reads:

The Building Industry Association of Washington is the voice of the housing industry in the state of Washington. The association is dedicated to ensuring and enhancing the vitality of the building industry for the benefit of its members and the housing needs [*34] of its citizens.

To accomplish this purpose, the association’s primary focus is to educate, influence and affect the legislative, regulatory, judicial and executive agencies of Washington’s government. The Building Industry Association of Washington will offer its membership those services which can best be provided on a state wide basis and will disseminate information concerning the building industry to all associated members and the public.

leading up to the 2008 election and that BIAW made significant efforts toward that end. This evidence includes the following:

- June 29, 2007 meeting minutes for BIAW's Board of Directors show that BIAW president Daimon Doyle announced that he was encouraged by the support from the local associations to contribute to BIAW's 2008 governor fund and that so far over \$550,000 had been raised. Rossi was a guest speaker at this meeting and thanked BIAW members for their support.
- In a letter to BIAW members asking them to contribute at least 10 percent of their refunds from the retro program to the 2008 gubernatorial race, Doyle wrote:

The next Governor will, [*31] in my opinion, make the most significant impact on the long-term success of our industry and our businesses. He or she will be the driving force for a change in our state's business climate—either for better or worse in 2008 and beyond. He or she will appoint the Directors of the Departments of Ecology and Labor & Industries—both agencies that have direct (and potentially very negative) impacts on our industry and our individual businesses. He or she will set the tone in all areas of a government that is pervasive in our lives. No single individual in this state has a greater influence on our future than the Governor. Getting the right person in office is critical.

...

If every member were to contribute just 10% of their refund, we would begin the 2008 Governor's race with a war chest in excess of \$3.7 million! Combined with substantial funds that have already been committed by BIAW and

its local associations, I believe that we can make a tremendous impact on an election that was so close it took two recounts to complete last time.

- In a March 9, 2007 email to other BIAW leaders, Doyle wrote, "In light of recent attacks on our entire industry by the legislature, we have never been [*32] more in need of a pro-housing Governor than now"
- In a March 22, 2007 email, Doyle wrote:

Our State government has become very anti-business and in many respects anti-builder. This year is just one example of how our industry can be majorly affected by the legislation passed in Olympia. Add to that, our opponents—those who want tighter environmental restrictions and have pledged to dismantle the Retro program—are huge supporters of the current incumbents. With one vote shy of a 2/3 majority in both the House and Senate, it would take huge sums of money and many years of effort to win back even one of those two bodies. However, the change of just one individual, the Governor, would have a profound effect on this state. Regardless of what the legislature votes out, the Governor has the veto pen. ... We must get a pro-housing Governor in office and 2008 will be our best opportunity.

- In January 2008, newly elected BIAW president Brad Spears announced, "One of my priority goals as the 2008 President of the Building Industry Association of Washington is to replace anti-small business and anti-affordable housing Governor Gregoire with her pro-small business and affordable housing [*33] challenger Dino Rossi."
- February 27, 2008 meeting minutes for BIAW's Board of Directors show that

Spears announced that BIAW's number one priority this campaign season would be to help Rossi get elected. Spears reported that the General Membership luncheon, which was well attended, featured Rossi as the guest speaker and that Rossi had delivered a "great speech."

Id. Four recent polls showed that if the election were held today, Rossi would win. Spears had met with leaders across the state and nation who shared their respect for BIAW due to its successes and efforts. Spears also reported that candidates came to BIAW because they knew BIAW had the resources, will, and tools in place to get the job done.
Id.

• In promoting the main benefits of BIAW membership, BIAW cited its "Political Program": "BIAW's experienced team of lobbyists and members ... work to elect 'business friendly' candidates ..."

¶39 We conclude that the evidence created a genuine issue of material fact that BIAW made electoral expenditures and that electoral activities were one of its primary purposes during the 2008 election.

Preclusive Effect of Attorney General's Actions

¶40 BIAW contends that Utter and Ireland's lawsuit was precluded under RCW 42.17A.765(4).⁹ Though not for the reasons asserted by BIAW, we agree and affirm the trial court's dismissal of Utter and Ireland's claims on summary judgment.

WA/8] [8] ¶41 RCW 42.17A.765(4) provides:

HN15 (4) A person who has notified the attorney general and the prosecuting attorney in the county in which the violation occurred in writing that there is reason to believe that [*35] some provision of this chapter is being or has been violated may himself or herself bring in the name of the state any of the actions (hereinafter referred to as a citizen's action) authorized under this chapter.

(a) This citizen action may be brought only if:

(i) The attorney general and the prosecuting attorney have failed to commence an action hereunder within forty-five days after the notice;

(ii) The person has thereafter further notified the attorney general and prosecuting attorney that the person will commence a citizen's action within ten days upon their failure to do so;

(iii) The attorney general and the prosecuting attorney have in fact failed to bring such action within ten days of receipt of said second notice; and

(iv) The citizen's action is filed within two years after the date when the alleged violation occurred.

RCW 42.17A.765(4). Thus, **HN16** a citizen's action may be brought in the name of the State if the State has failed to commence an action. *See also Vance v. Offices of Thurston County Comm'rs*, 117 Wn. App. 660, 670, 71 P.3d 680 (2003) (a plaintiff can bring a citizen's action under former RCW 42.17.400 only if "authorities fail to act after receiving notice of possible [*36] violations."); *Crisman v. Pierce County Fire Protection Dist. No. 21*, 115 Wn. App. 16, 22, 60 P.3d 652 (2002) (citizen enforcement action may be brought "only after notice to and failure by the attorney general and the prosecuting attorney to act."). A "citizen's action" refers to "any of the actions ... authorized under this chapter." RCW 42.17A.765(4). The statute permits the following actions:

HN17 (1) The attorney general and the prosecuting authorities of political subdivisions of this state may bring civil actions in the name of the state for any appropriate civil remedy, including but not limited to the special remedies provided in RCW 42.17A.750.

⁹ The trial court did not reach this argument in BIAW's motion for summary judgment.

(2) The attorney general and the prosecuting authorities of political subdivisions of this state may investigate or cause to be investigated the activities of any person who there is reason to believe is or has been acting in violation of this chapter, and may require any such person or any other person reasonably believed to have information concerning the activities of such person to appear at a time and place designated in the county in which such person resides or is found, to give such information under oath and to produce all accounts, [*37] bills, receipts, books, paper and documents which may be relevant or material to any investigation authorized under this chapter.

(3) When the attorney general or the prosecuting authority of any political subdivision of this state requires the attendance of any person to obtain such information or produce the accounts, bills, receipts, books, papers, and documents that may be relevant or material to any investigation authorized under this chapter, he or she shall issue an order setting forth the time when and the place where attendance is required and shall cause the same to be delivered to or sent by registered mail to the person at least fourteen days before the date fixed for attendance. The order shall have the same force and effect as a subpoena, shall be effective statewide, and, upon application of the attorney general or the prosecuting authority, obedience to the order may be enforced by any superior court judge in the county where the person receiving it resides or is found, in the same manner as though the order were a subpoena. The court, after hearing, for good cause, and upon application of any person aggrieved by the order, shall have the right to alter, amend, revise, [*38] suspend, or postpone all or any part of its provisions. In any case where the order is not enforced by the court according to its terms, the reasons for the court's actions shall be clearly stated in writing, and the action shall be subject to review by the appellate courts by certiorari or other appropriate proceeding.

RCW 42.17A.765 (1-3).

¶42 The issue before us is what constitutes “action” by the State. Utter and Ireland contend that because the AG’s lawsuit named only BIAW-MSA, not BIAW, Utter and Ireland were free to file a lawsuit against BIAW. BIAW contends that under the statute’s plain language, so long as the State files a lawsuit (which it did here, against BIAW-MSA) based on any allegations in a citizen’s notice letter, the citizen may not bring an action.

¶43 There are few cases addressing when a citizen’s action under RCW 42.17A.765 may be brought. In one such case, *EFF*, the Evergreen Freedom Foundation filed an administrative complaint against the Washington Education Association (WEA) with the AG, alleging various violations of the Public Disclosure Act, former chapter 42.17 RCW, in WEA’s efforts opposing two statewide initiatives in the 1996 general election. *Id.* at 592, 594. [*39] We noted that EFF was “free to file a citizen’s lawsuit on the issues that either the [PDC] or the AG did not act on.” *Id.* at 594. We concluded that where the PDC acted on certain allegations against WEA by filing an administrative action based on those allegations, those specific allegations could not be included in EFF’s citizen’s action. What we did not have occasion to decide in *EFF* is whether the AG or the PDC “fail[s] to commence an action” under RCW 42.17A.765(4) when it takes action under RCW 42.17A.765(2) or (3) but declines to bring a civil action under subsection (1).

¶44 Where a “citizen’s action” refers to any of the actions authorized under chapter 42.17A RCW, we think it logical that an “action” by the AG or the PDC also refers to any of the actions authorized under RCW 42.17A.765. Thus, we conclude that *HN18* if the State takes an action under RCW 42.17A.765—such as completing an investigation and obtaining information under subsection (2)—within the 45-day period under subsection (4)(a)(i) or the ten-day period under subsection (4)(a)(iii), a citizen’s action may not be brought. To hold otherwise would mean that even where the State has thoroughly investigated an allegation and [*40] determined it to be without merit, a citizen action could still be filed in the State’s name. In other words, as we observed in *EFF*, “every watchdog group would be able to demand that the PDC find the watchdog’s allegations meritorious or the watchdog could sue in superior court.” *Id.* at 609.

¶45 Here, on July 25, 2008, Utter and Ireland sent a 45-day notice letter to the State in which they alleged that BIAW and BIAW-MSA qualified as po-

litical committees under both the contribution and expenditure prongs. The same day, the AG forwarded the letter to the PDC for it to investigate Utter and Ireland's allegations. Utter and Ireland sent a ten-day notice letter on September 9, 2008. By September 11, the PDC had completed an investigation and issued a "Report of Investigation" regarding its findings and conclusions. On September 19, the AG filed suit against BIAW-MSA. Utter and Ireland filed their lawsuit against BIAW on October 6.

¶46 As to the allegations against BIAW under the contribution prong, the PDC determined that the contributions in question had actually been received by BIAW-MSA. See CP at 66. The PDC concluded that the evidence supported the allegation that BIAW-MSA committed "multiple [*41] apparent violations of RCW 42.17 by failing to register as a political committee and report the contributions it solicited, received and retained from its local associations in 2007, and by failing to report expenditures to ChangePAC in 2008 with the contributions received." CP at 59. Regarding the allegations against BIAW under the expenditure prong, the PDC noted that it had reviewed BIAW's revenues and expenditures for 2006, 2007, and the first six months of 2008. The PDC concluded that BIAW "does not solicit or receive contributions to support or oppose candidates or ballot propositions, and does not contribute to candidates or political committees."¹⁰ CP at 69. Based on the results of PDC's investigation and report, the AG filed a lawsuit against BIAW-MSA in Thurston County but decided not to file a lawsuit against BIAW.

¶47 The State took an action against BIAW under RCW 42.17A.765 when it caused the PDC to investigate the allegations that BIAW was a political committee and then declined to file a lawsuit based on the PDC's conclusion that BIAW did not receive contributions or make expenditures to further electoral political goals and was not a political committee. **HN19** While a citizen's action should be permitted where the State refuses to investigate or determine the merit of a citizen's complaint, to permit a citizen to bring a lawsuit where the State

has investigated the allegations or caused them to be investigated, determined them to lack merit, and decided it will not bring an action is inconsistent with the notion that the citizen's action is brought "in the name of the state."

Cross-Appeal of Attorney's Fees

¶48 BIAW sought attorney's fees from Utter and BIAW [*43] for bringing a citizen's action "without reasonable cause" under RCW 42.17A.765(4)(b). It also sought an award of fees against the State, claiming fees were due under RCW 42.17A.765(5) for the State's failure to intervene in the action.

WA[9] [9] ¶49 **HN20** A trial court's denial of a motion for attorney's fees is reviewed for abuse of discretion. Highland School Dist. No. 203 v. Racy, 149 Wn. App. 307, 312, 202 P.3d 1024 (2009). "Discretion is abused when it is exercised on untenable grounds or for untenable reasons." *Id.* (citing State ex rel. Carroll v. Junker, 79 Wn.2d 12, 26, 482 P.2d 775 (1971)).

WA[10,11] [10, 11] ¶50 First, BIAW sought fees from Utter and Ireland under RCW 42.17A.765(4)(b), which provides:

HN21 If the person who brings the citizen's action prevails, the judgment awarded shall escheat to the state, but he or she shall be entitled to be reimbursed by the state of Washington for costs and attorneys' fees he or she has incurred. In the case of a citizen's action that is dismissed and that the court also finds was brought without reasonable cause, the court may order the person commencing the action to pay all costs of trial and reasonable attorneys' fees incurred by the defendant.

HN22 The purpose of this provision is [*44] "to prevent frivolous and harassing lawsuits." EFF, 111 Wn. App. at 615 (internal citation omitted). "Frivolous" lawsuits and actions "without reasonable cause" have been defined as those that "cannot be supported

¹⁰ We recognize that the PDC's conclusion that BIAW did not make any expenditures to further electoral political goals appears to conflict with our determination that the evidence (BIAW's tax Form 990) creates an issue of fact as to whether BIAW was a political committee under the expenditure prong. We note, however, that it is still unclear whether any of the "political [*42] expenditures" in BIAW's Form 990 constituted electoral expenditures; as we noted, BIAW simply has not provided the evidence to clarify what this money was spent on. The PDC may have determined that none of the political expenditures constituted electoral expenditures, or it may not have relied on the Form 990 that is in the record before this court.

by any rational argument on the law or facts.” *Bill of Rights Legal Foundation v. Evergreen State College*, 44 Wn. App. 690, 696-97, 723 P.2d 483 (1986) (applying *RCW 4.84.185*, providing for attorney’s fees in actions that are “frivolous and advanced without reasonable cause”). “[A]llegations that, upon careful examination, prove legally insufficient to require a trial are not, for that reason alone, frivolous.” *Id.* (quoting *Hughes v. Rowe*, 449 U.S. 5, 101 S. Ct. 173, 178, 66 L. Ed. 2d 163 (1980)).

¶51 We conclude the trial court did not abuse its discretion in denying BIAW’s fee request. BIAW cites the following evidence that Utter and Ireland’s lawsuit was brought without reasonable cause: (1) their claims were precluded by the AG’s action against MSC; (2) the evidence indicated that the actions at issue were those of MSC; (3) the PDC and AG determined their claims lacked merit and declined to pursue claims against BIAW; (4) the urgency of the suit was manufactured to disrupt [*45] the campaign of and generate negative publicity regarding Rossi; (5) Utter and Ireland were motivated by a desire to punish BIAW for political speech they did not like; and (6) their litigation tactics unreasonably increased the cost of litigation.

WA[12] [12] ¶52 These reasons do not demonstrate an abuse of discretion by the trial court. The first involves a disputed legal issue that the trial court did not resolve given the basis of its decision. The second reason continues to be disputed by the parties on appeal. The third does not show that the lawsuit was without a reasonable basis because it is apparent that Utter and Ireland disagree with the conclusions of the PDC and the AG. As for the fourth and fifth reasons, Utter and Ireland’s motives and concerns in filing suit, do not factor into whether they had reasonable cause to bring the lawsuit or whether it was frivolous. Nor does the standard take into consideration a plaintiff’s litigation tactics.

¶53 BIAW also claims the trial court abused its discretion in denying its request for attorney’s fees from the State under *RCW 42.17A.765(5)*, which provides:

HN23 In any action brought under this section, the court may award to the state all costs of investigation [*46] and

trial, including reasonable attorneys’ fees to be fixed by the court. If the violation is found to have been intentional, the amount of the judgment, which shall for this purpose include the costs, may be trebled as punitive damages. If damages or trebled damages are awarded in such an action brought against a lobbyist, the judgment may be awarded against the lobbyist, and the lobbyist’s employer or employers joined as defendants, jointly, severally, or both. If the defendant prevails, he or she shall be awarded all costs of trial, and may be awarded reasonable attorneys’ fees to be fixed by the court to be paid by the state of Washington.

HN24 An award of fees pursuant to *RCW 42.17A.765(5)* is discretionary. *San Juan County v. No New Gas Tax*, 160 Wn.2d 141, 165, 157 P.3d 831 (2007).

¶54 BIAW contends fees were due to it because the AG failed to intervene despite concluding that Utter and Ireland’s claims were barred. Utter and Ireland point out the State was never given notice of BIAW’s motion for attorneys’ fees, let alone given an opportunity to appear and contest such motion.

WA[13] [13] ¶55 We agree with Utter and Ireland. The State was not a party to this action, and BIAW cites no authority to support [*47] the proposition that the State must pay costs and fees in a case where it does not intervene and the defendant prevails. Furthermore, it is speculative to suggest the trial court would have dismissed this case in the event that the State had intervened.

¶56 Furthermore, we deny BIAW’s request for attorney fees on appeal under *RAP 18.9* and *RCW 4.84.185*. We do not agree that Utter and Ireland’s appeal is frivolous.

¶57 Affirmed.

GROSSE and COX, JJ., concur.

References

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Official Voters Pamphlet

Published by A. Ludlow Kramer, Secretary of State
General Election - Tuesday, November 7, 1972



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SECTION 4. That all Washington State retailers holding a Class E license to sell beer at retail or those Washington State retailers holding a Class F license to sell wine at retail, excepting those Class E and Class F license holders who are allowed to sell beer or wine for on-premises consumption, will be allowed to sell intoxicating liquor at retail if they comply with the licensing requirement of Section 3 hereof, and further that the legislature of the State of Washington is hereby empowered to establish licensing requirements for retail stores which will sell as their primary business beer, wine and liquor at retail.

SECTION 5. That Washington State is prohibited from the reselling of any liquor, either at retail or wholesale.

SECTION 6. That the provisions of this initiative shall become effective July 1, 1973.

SECTION 7. That the Washington State Legislature may pass such laws or resolutions implementing this initiative as may be desirable or necessary to effectuate its purpose.

EXPLANATORY COMMENT

Initiative Measure No. 261 filed in the office of the Secretary of State as of January 11, 1972.

Sponsor filed 122,241 supporting signatures as of January 11, 1972.

Signatures found sufficient. Measure then certified to the November 7, 1972 state general election for approval or rejection by the voters.

COMPLETE TEXT OF

Initiative Measure 276

Ballot Title as issued by the Attorney General:

Disclosure—Campaign Finances—Lobbying—Records

AN ACT relating to campaign financing, activities of lobbyists, access to public records, and financial affairs of elective officers and candidates; requiring disclosure of sources of campaign contributions, objects of campaign expenditures, and amounts thereof; limiting campaign expenditures; regulating the activities of lobbyists and requiring reports of their expenditures; restricting use of public funds to influence legislative decisions; governing access to public records; specifying the manner in which public agencies will maintain such records; requiring disclosure of elective officials' and candidates' financial interests and activities; establishing a public disclosure commission to administer the act; and providing civil penalties.

BE IT ENACTED, by the people
of the State of Washington:

SECTION 1. Declaration of Policy. It is hereby declared by the sovereign people to be the public policy of the State of Washington:

(1) That political campaign and lobbying contributions and expenditures be fully disclosed to the public and that secrecy is to be avoided.

(2) That the people have the right to expect from their elected representatives at all levels of government the utmost of integrity, honesty and fairness in their dealings.

(3) That the people shall be assured that the private financial dealings of their public officials, and of candidates for those offices, present no conflict of interest between the public trust and private interests.

(4) That our representative form of government is founded on a belief that those entrusted with the offices of government have nothing to fear from full public disclosure of their financial and business holdings, provided those officials deal honestly and fairly with the people.

(5) That public confidence in government at all levels is essential and must be promoted by all possible means.

(6) That public confidence in government at all levels can best be sustained by assuring the people of the impartiality and honesty of the officials in all public transactions and decisions.

(7) That the concept of attempting to increase financial participation of individual contributors in political campaigns is encouraged by the passage of the Revenue Act of 1971 by the Congress of the United States, and in consequence thereof, it is desirable to have implementing legislation at the state level.

(8) That the concepts of disclosure and limitation of election campaign financing are established by the passage of the Federal Election Campaign Act of 1971 by the Congress of the United States, and in consequence thereof it is desirable to have implementing legislation at the state level.

(9) That small contributions by individual contributors are to be encouraged, and that not requiring the reporting of small contributions may tend to encourage such contributions.

(10) That the public's right to know of the financing of political campaigns and lobbying and the financial affairs of elected officials and candidates far outweighs any right that these matters remain secret and private.

(11) That, mindful of the right of individuals to privacy and of the desirability of the efficient administration of government, full access to information concerning the conduct of government on every level must be assured as a fundamental and necessary precondition to the sound governance of a free society.

The provisions of this act shall be liberally construed to promote complete disclosure of all information respecting the financing of political campaigns and lobbying, and the financial affairs of elected officials and candidates, and full access to public records so as to assure continuing public confidence in fairness of elections and governmental processes, and so as to assure that the public interest will be fully protected.

SECTION 2. DEFINITIONS. (1) "Agency" includes all state agencies and all local agencies. "State agency" includes every state office, public official, department, division, bureau, board, commission or other state agency. "Local agency" includes every county, city, city and county, school district, municipal corporation, district, political subdivision, or any board, commission or agency thereof, or other local public agency.

(2) "Ballot proposition" means any "measure" as defined by R.C.W. 29.01.110, or any initiative, recall, or referendum proposition proposed to be submitted to the voters of any specific constituency which has been filed with the appropriate election officer of that constituency.

(3) "Campaign depository" means a bank designated by a candidate or political committee pursuant to section 5 of this act.

(4) "Campaign treasurer" and "deputy campaign treasurer" mean the individuals appointed by a candidate or political

committee, pursuant to section 5 of this act, to perform the duties specified in that section.

(5) "Candidate" means any individual who seeks election to public office. An individual shall be deemed to seek election when he first:

(a) Receives contributions or makes expenditures or reserves space or facilities with intent to promote his candidacy for office; or

(b) Announces publicly or files for office.

(6) "Commercial advertiser" means any person who sells the service of communicating messages or producing printed material for broadcast or distribution to the general public or segments of the general public whether through the use of newspapers, magazines, television and radio stations, billboard companies, direct mail advertising companies, printing companies, or otherwise.

(7) "Commission" means the agency established under section 35 of this act.

(8) "Contribution" includes a loan, gift, deposit, subscription, forgiveness of indebtedness, donation, advance, pledge, payment, transfer of funds between political committees, or transfer of anything of value, including personal and professional services, for less than full consideration, but does not include ordinary home hospitality and the rendering of "part time" personal services of the sort commonly performed by volunteer campaign workers or incidental expenses not in excess of twenty-five dollars personally paid for by any volunteer campaign worker. "Part time" services, for the purposes of this act, means services in addition to regular full time employment, or, in the case of an unemployed person, services not in excess of twenty hours per week, excluding weekends. For the purposes of this act, contributions other than money or its equivalents shall be deemed to have a money value equivalent to the fair market value of the contribution. Sums paid for tickets to fund-raising events such as dinners and parties are contributions; however, the amount of any such contribution may be reduced for the purpose of complying with the reporting requirements of this act, by the actual cost of consumables furnished in connection with the purchase of such tickets, and only the excess over actual cost of such consumables shall be deemed a contribution.

(9) "Elected official" means any person elected at a general or special election to any public office, and any person appointed to fill a vacancy in any such office.

(10) "Election" includes any primary, general or special election for public office and any election in which a ballot proposition is submitted to the voters.

(11) "Election campaign" means any campaign in support of or in opposition to a candidate for election to public office and any campaign in support of, or in opposition to, a ballot proposition.

(12) "Expenditure" includes a payment, contribution, subscription, distribution, loan, advance, deposit, or gift of money or anything of value, and includes a contract, promise, or agreement, whether or not legally enforceable, to make an expenditure. The term "expenditure" also includes a promise to pay, a payment or a transfer of anything of value in exchange for goods, services, property, facilities or anything of value for the purpose of assisting, benefiting or honoring any public official or candidate, or assisting in furthering or opposing any election campaign.

(13) "Final report" means the report described as a final report in section 8, subsection 2, of this act.

(14) "Immediate family" includes the spouse and children living in the household and other relatives living in the household.

(15) "Legislation" means bills, resolutions, motions, amendments, nominations, and other matters pending or proposed in either house of the state legislature, and includes any other matter which may be the subject of action by either house, or any committee of the legislature and all bills and

resolutions which having passed both houses, are pending approval by the Governor.

(16) "Lobby" and "lobbying" each mean attempting to influence the passage or defeat of any legislation by the legislature of the State of Washington, or the adoption or rejection of any rule, standard, rate or other legislative enactment of any state agency under the state Administrative Procedure Acts, chap. 34.04 R.C.W. and chap. 28 B.19 R.C.W.

(17) "Lobbyist" includes any person who shall lobby either in his own or another's behalf.

(18) "Lobbyist's employer" means the person or persons by whom a lobbyist is employed and all persons by whom he is compensated for acting as a lobbyist.

(19) "Person" includes an individual, partnership, joint venture, public or private corporation, association, federal, state or local governmental entity or agency however constituted, candidate, committee, political committee, political party, executive committee thereof, or any other organization or group of persons, however organized.

(20) "Person in interest" means the person who is the subject of a record or any representative designated by said person, except that if such person be under a legal disability, the term "person in interest" shall mean and include the parent or duly appointed legal representative.

(21) "Political advertising" includes any advertising displays, newspaper ads, billboards, signs, brochures, articles, tabloids, flyers, letters, radio or television presentations or other means of mass communication, used for the purpose of appealing, directly or indirectly, for votes or for financial or other support in any election campaign.

(22) "Political committee" means any person (except a candidate or an individual dealing with his own funds or property) having the expectation of receiving contributions or making expenditures in support of, or opposition to, any candidate or any ballot proposition.

(23) "Public office" means any federal, state, county, city, town, school district, port district, special district, or other state political subdivision elective office.

(24) "Public record" includes any writing containing information relating to the conduct of government or the performance of any governmental or proprietary function prepared, owned, used or retained by any state or local agency regardless of physical form or characteristics.

(25) "Writing" means handwriting, typewriting, printing, photostating, photographing, and every other means of recording any form of communication or representation, including letters, words, pictures, sounds; or symbols, or combination thereof, and all papers, maps, magnetic or paper tapes, photographic films and prints, magnetic or punched cards, discs, drums and other documents.

As used in this act, the singular shall take the plural and any gender, the other, as the context requires.

CHAPTER I. CAMPAIGN FINANCING

SECTION 3. Applicability. The provisions of this act relating to election campaigns shall apply in all election campaigns other than (a) for precinct committeeman; (b) for the President and Vice President of the United States; and (c) for an office the constituency of which does not encompass a whole county and which contains less than five thousand registered voters as of the date of the most recent general election in such district.

SECTION 4. Obligation of Political Committees to File Statement of Organization. (1) Every political committee, within ten days after its organization or, within ten days after the date when it first has the expectation of receiving contributions or making expenditures in any election campaign, whichever is earlier, shall file a statement of organization with the commission and with the county auditor of the county in which the candidate resides (or in the case of a political com-

mittee supporting or opposing a ballot proposition, the county in which the campaign treasurer resides). Each political committee in existence on the effective date of this act shall file a statement of organization with the commission within ninety days after such effective date.

(2) The statement of organization shall include but not be limited to:

(a) The name and address of the committee;

(b) The names and addresses of all related or affiliated committees or other persons, and the nature of the relationship or affiliation;

(c) The names, addresses, and titles of its officers; or if it has no officers, the names, addresses and titles of its responsible leaders;

(d) The name and address of its campaign treasurer and campaign depository;

(e) A statement whether the committee is a continuing one;

(f) The name, office sought, and party affiliation of each candidate whom the committee is supporting or opposing, and, if the committee is supporting the entire ticket of any party, the name of the party;

(g) The ballot proposition concerned, if any, and whether the committee is in favor of or opposed to such proposition;

(h) What distribution of surplus funds will be made in the event of dissolution; and

(i) Such other information as the commission may by regulation prescribe, in keeping with the policies and purposes of this act.

3. Any material change in information previously submitted in a statement of organization shall be reported to the commission and to the appropriate county auditor within the ten days following the change.

SECTION 5. Campaign Treasurer and Depositories. (1) Each candidate, at or before the time he announces publicly or files for office, and each political committee, at or before the time it files a statement of organization, shall designate and file with the commission the names and addresses of:

(a) One legally competent individual, who may be the candidate, to serve as a campaign treasurer; and

(b) One bank doing business in this state to serve as campaign depository.

(2) A candidate, a political committee or a campaign treasurer may appoint as many deputy campaign treasurers as is considered necessary and may designate not more than one additional campaign depository in each other county in which the campaign is conducted. The candidate or political committee shall file the names and addresses of the deputy campaign treasurers and additional campaign depositories with the commission.

(3) (a) A candidate or political committee may at any time remove a campaign treasurer or deputy campaign treasurer or change a designated campaign depository.

(b) In the event of the death, resignation, removal, or change of a campaign treasurer, deputy campaign treasurer or depository, the candidate or political committee shall designate and file with the commission the name and address of any successor.

(4) No campaign treasurer, deputy campaign treasurer, or campaign depository shall be deemed to be in compliance with the provisions of this act until his name and address is filed with the commission.

SECTION 6. Deposit of Contributions—Statement of Campaign Treasurer—Anonymous Contributions. (1) All monetary contributions received by a candidate or political committee shall be deposited by the campaign treasurer or deputy treasurer in a campaign depository in an account designated, "Campaign Fund of -----" (name of candidate or political committee).

(2) All deposits made by a campaign treasurer or deputy

campaign treasurer shall be accompanied by a statement containing the name of each person contributing the funds so deposited and the amount contributed by each person: PROVIDED, that contributions not exceeding five dollars from any one person may be deposited without identifying the contributor. The statement shall be in triplicate, upon a form prescribed by the commission, one copy to be retained by the campaign depository for its records, one copy to be filled by the campaign treasurer with the commission, and one copy to be retained by the campaign treasurer for his records. In the event of deposits made by a deputy campaign treasurer, the third copy shall be forwarded to the campaign treasurer to be retained by him for his records. Each statement shall be certified as correct by the campaign treasurer or deputy campaign treasurer making the deposit.

(3) (a) Accumulated anonymous contributions in excess of one dollar from any individual contributor, and

(b) Accumulated anonymous contributions in excess of one per cent of the total accumulated contributions received to date or three hundred dollars (whichever is less).

shall not be deposited, used or expended, but shall be returned to the donor, if his identity can be ascertained. If the donor cannot be ascertained, the contribution shall escheat to the state, and shall be paid to the state treasurer for deposit in the state general fund.

SECTION 7. Authorization of Expenditures and Restrictions Thereon. No expenditures shall be made or incurred by any candidate or political committee except on the authority of the campaign treasurer or the candidate, and a record of all such expenditures shall be maintained by the campaign treasurer.

SECTION 8. Candidates' and Treasurers' Duty to Report.

(1) On the day the campaign treasurer is designated, each candidate or political committee shall file with the commission and the county auditor of the county in which the candidate resides (or in the case of a political committee supporting or opposing a ballot proposition, the county in which the campaign treasurer resides), in addition to any statement of organization required under section 4, a report of all contributions received and expenditures made in the election campaign prior to that date: PROVIDED, that if the political committee is an organization of continuing existence not established in anticipation of any particular election the campaign treasurer shall report, at the times required by this act, and at such other times as are designated by the commission, all contributions received and expenditures made since the date of his or his predecessor's last report. In addition to any statement of organization required under section 4, the initial report of the campaign treasurer of such a political committee in existence at the time this act becomes effective need include only:

(a) The funds on hand at the time of the report, and

(b) Such other information as shall be required by the commission by regulation in conformance with the policies and purposes of this act.

(2) At the following intervals each campaign treasurer shall file with the commission and the county auditor of the county in which the candidate resides (or in the case of a political committee supporting or opposing a ballot proposition the county in which the campaign treasurer resides) a further report of the contributions received and expenditures made since the date of the last report:

(a) On the fifth and nineteenth days immediately preceding the date on which the election is held; and

(b) Within ten days after the date of a primary election, and within twenty-one days after the date of all other elections; and

(c) On the tenth day of each month preceding the election in which no other reports are required to be filed under this section.

The report filed under paragraph (b) above shall be the final report if there is no outstanding debt or obligation, and the campaign fund is closed, and the campaign is concluded in all respects, and if in the case of a political committee, the committee has ceased to function and has dissolved. If the candidate or political committee has any outstanding debt or obligation, additional reports shall be filed at least once every six months until the obligation or indebtedness is entirely satisfied at which time a final report shall be filed. A continuing political committee shall file reports as required by this act until it is dissolved, at which time a final report shall be filed. Upon submitting a final report, the duties of the campaign treasurer shall cease and there shall be no obligation to make any further reports.

(3) The campaign treasurer shall maintain books of account in accordance with generally accepted accounting principles reflecting all contributions and expenditures on a current basis within three business days of receipt or expenditure. During the eight days immediately preceding the date of the election the books of account shall be kept current within one business day and shall be open for public inspection during normal business hours at the principal campaign headquarters or, if there is no campaign headquarters, at the address of the campaign treasurer.

(4) All reports filed pursuant to this section shall be certified as correct by the candidate and the campaign treasurer.

(5) Copies of all reports filed pursuant to this section shall be readily available for public inspection at the principal campaign headquarters or, if there is no campaign headquarters, at the address of the campaign treasurer.

SECTION 9. Contents of Report. (1) Each report required under section 8 of this act shall disclose for the period beginning at the end of the period for the last report or, in the case of an initial report, at the time of the first contribution or expenditure, and ending not more than three days prior to the date the report is due:

(a) The funds on hand at the beginning of the period;

(b) The name and address of each person who has made one or more contributions during the period, together with the money value and date of such contributions and the aggregate value of all contributions received from each such person during the preceding twelve-month period: PROVIDED, that contributions not exceeding five dollars in aggregate from any one person during the election campaign may be reported as one lump sum so long as the campaign treasurer maintains a separate and private list of the names and amounts of each such contributor;

(c) Each loan, promissory note or security instrument to be used by or for the benefit of the candidate or political committee made by any person, together with the names and addresses of the lender and each person liable directly, indirectly or contingently and the date and amount of each such loan, promissory note or security instrument;

(d) The name and address of each political committee from which the reporting committee or candidate received, or to which that committee or candidate made, any transfer of funds, together with the amounts, dates and purpose of all such transfers;

(e) All other contributions not otherwise listed or exempted;

(f) The name and address of each person to whom an expenditure was made in the aggregate amount of twenty five dollars or more, and the amount, date and purpose of each such expenditure;

(g) The total sum of expenditures;

(h) The surplus or deficit of contributions over expenditures;

(i) The disposition made of any surplus of contributions over expenditures;

(j) Such other information as shall be required by the

commission by regulation in conformance with the policies and purposes of this act; and

(k) Funds received from a political committee not domiciled in Washington State and not otherwise required to report under this act (a "non-reporting committee"). Such funds shall be forfeited to the State of Washington unless the non-reporting committee has filed with the commission a statement disclosing: (i) its names and address; (ii) the purposes of the non-reporting committee; (iii) the names, addresses and titles of its officers or if it has no officers, the names, addresses and titles of its responsible leaders; (iv) a statement whether the non-reporting committee is a continuing one; (v) the name, office sought, and party affiliation of each candidate in the State of Washington whom the non-reporting committee is supporting, and, if such committee is supporting the entire ticket of any party, the name of the party; (vi) the ballot proposition supported or opposed in the State of Washington, if any, and whether such committee is in favor of or opposed to such proposition; (vii) the name and address of each person residing in the State of Washington or corporation which has a place of business in the State of Washington who has made one or more contributions to the non-reporting committee during the preceding twelve month period, together with the money value and date of such contributions; (viii) the name and address of each person in the State of Washington to whom an expenditure was made by the non-reporting committee on behalf of a candidate or political committee in the aggregate amount of twenty five dollars or more, the amount, date and purpose of such expenditure, and the total sum of such expenditures; (ix) such other information as the commission may by regulation prescribe, in keeping with the policies and purposes of this act.

(2) The campaign treasurer and the candidate shall certify the correctness of each report.

SECTION 10. Special Reports. In addition to the other reports required by this act:

(1) Any person who makes an expenditure in support of or in opposition to any candidate or proposition (except to the extent that a contribution is made directly to a candidate or political committee), in the aggregate amount of one hundred dollars or more during an election campaign, shall file with the commission a report signed by the contributor disclosing (a) the contributor's name and address, and (b) the date, nature, amount and recipient of such contribution or expenditure; and

(2) Any person who contributes in the aggregate amount of one hundred dollars or more during the preceding twelve month period to any political committee not domiciled in the State of Washington or not otherwise required to report under this act, if the person reasonably expects such political committee to make contributions in respect to any election covered by this act, shall file with the commission a report signed by the contributor disclosing (a) the contributor's name and address, and (b) the date, nature, amount and recipient of such contribution, and (c) any instructions given as to the use or disbursement of such contribution.

SECTION 11. Commercial Advertisers' Duty to Report. (1) Within fifteen days after an election each commercial advertiser who has accepted or provided political advertising during the election campaign shall file a report with the commission which shall be certified as correct and shall specify:

(a) The names and addresses of persons from whom it accepted political advertising;

(b) The exact nature and extent of the advertising services rendered;

(c) The consideration and the manner of paying that consideration for such services; and

(d) Such other facts as the commission may by regulation prescribe, in keeping with the policies and purposes of this act.

(2) No report shall be required from any commercial advertiser as to any single candidate or political committee when the total value of such political advertising does not exceed fifty dollars.

SECTION 12. Identification of Contributions and Communications. No contribution shall be made and no expenditure shall be incurred, directly or indirectly, in a fictitious name, anonymously, or by one person through an agent, relative or other person in such a manner as to conceal the identity of the source of the contribution.

SECTION 13. Forbids Use of Public Office Facilities in Campaigns. No elective official nor any employee of his office may use or authorize the use of any of the facilities of his public office, directly or indirectly, for the purpose of assisting his campaign for reelection to the office he holds, or for election to any other office, or for election of any other person to any office or for the promotion or opposition to any ballot proposition. Facilities of public office include, but are not limited to, use of stationery, postage, machines and equipment, use of employees of the office during working hours, vehicles, office space, publications of the office, and clientele lists of persons served by the office: PROVIDED, that this section shall not apply to those activities performed by the official or his office which are part of the normal and regular conduct of the office.

SECTION 14. Campaign Expenditure Limitations. (1) The total of expenditures made in any election campaign in connection with any public office shall not exceed the larger of the following amounts:

(a) Ten cents multiplied by the number of voters registered in the constituency at the last general election for the public office; or

(b) Five thousand dollars; or

(c) A sum equal to the public salary which will be paid to the occupant of the office which the candidate seeks, during the term for which the successful candidate will be elected: PROVIDED, that with respect to candidates for the office of governor and lieutenant governor of the State of Washington only, a sum equal to the public salary which will be paid the governor during the term sought, multiplied by two; and with respect to candidates for the state legislature only, a sum equal to the public salary which will be paid to a member of the state senate during his term.

(2) In any election campaign in connection with any statewide ballot proposition the total of expenditures made shall not exceed one hundred thousand dollars. The total of such expenditures in any election campaign in connection with any other ballot proposition shall not exceed ten cents multiplied by the number of voters registered in the constituency voting on such proposition.

CHAPTER II. LOBBYIST REPORTING

SECTION 15. Registration of Lobbyists. (1) Before doing any lobbying, or within thirty days after being employed as a lobbyist, whichever occurs first, a lobbyist shall register by filing with the commission a lobbyist registration statement, in such detail as the commission shall prescribe, showing:

(a) His name, permanent business address, and any temporary residential and business addresses in Thurston County during the legislative session;

(b) The name, address and occupation or business of the lobbyist's employer;

(c) The duration of his employment;

(d) His compensation for lobbying; how much he is to be paid for expenses, and what expenses are to be reimbursed; and a full and particular description of any agreement, arrangement or understanding according to which his compensation, or any portion thereof, is or will be contingent upon the success of any attempt to influence legislation.

(e) Whether the person from whom he receives said compensation employs him solely as a lobbyist or whether he is a regular employee performing services for his employer which include but are not limited to the influencing of legislation;

(f) The general subject or subjects of his legislative interest;

(g) A written authorization from each of the lobbyist's employers confirming such employment;

(h) The name and address of the person who will have custody of the accounts, bills, receipts, books, papers, and documents required to be kept under this act;

(i) If the lobbyist's employer is an entity (including, but not limited to, business and trade associations) whose members include, or which as a representative entity undertakes lobbying activities for, businesses, groups, associations or organizations, the name and address of each member of such entity or person represented by such entity whose fees, dues, payments or other consideration paid to such entity during either of the prior two years have exceeded five hundred dollars or who is obligated to or has agreed to pay fees, dues, payments or other consideration exceeding five hundred dollars to such entity during the current year.

(2) Any lobbyist who receives or is to receive compensation from more than one person for his services as a lobbyist shall file a separate notice of representation with respect to each such person; except that where a lobbyist whose fee for acting as such in respect to the same legislation or type of legislation or type of legislation is, or is to be, paid or contributed to by more than one person then such lobbyist may file a single statement, in which he shall detail the name, business address and occupation of each person so paying or contributing, and the amount of the respective payments or contributions made by each such person.

(3) Whenever a change, modification, or termination of the lobbyist's employment occurs, the lobbyist shall, within one week of such change, modification or termination, furnish full information regarding the same by filing with the commission an amended registration statement.

(4) Each lobbyist who has registered shall file a new registration statement, revised as appropriate, each January, and failure to do so shall terminate his registration.

SECTION 16. Exemption from Registration. The following persons and activities shall be exempt from registration and reporting under Sections 15, 17, 19, and 20 of this act:

(1) Persons who limit their lobbying activities to appearance before public sessions of committees of the legislature, or public hearings of state agencies.

(2) News or feature reporting activities and editorial comment by working members of the press, radio, or television and the publication or dissemination thereof by a newspaper, book publisher, regularly published periodical, radio station, or television station.

(3) Lobbying without compensation or other consideration: PROVIDED, such person makes no expenditure for or on behalf of any member of the legislature or elected official or public officer or employee of the State of Washington in connection with such lobbying. Any person exempt under this subsection (3) may at his option register and report under this act.

(4) The Governor.

(5) The Lieutenant Governor.

(6) Except as provided by Section 19(1), members of the legislature.

(7) Except as provided by Section 19(1), persons employed by the legislature for the purpose of aiding in the preparation and enactment of legislation.

(8) Except as provided by Section 19 elected state officers, state officers appointed by the Governor subject to confirmation by the Senate, and employees of any state agency.

SECTION 17. Reporting by Lobbyists. (1) Any lobbyist reg-

istered under section 15 of this act and any person who lobbies shall file with the commission periodic reports of his activities signed by both the lobbyist and the lobbyist's employers. The reports shall be made in the form and manner prescribed by the commission. They shall be due quarterly and shall be filed within thirty days after the end of the calendar quarter covered by the report. In addition to the quarterly reports, while the legislature is in session, any lobbyist who lobbies with respect to any legislation shall file interim weekly periodic reports for each week that the legislature is in session, which reports need be signed only by the lobbyist and which shall be filed on each Tuesday for the activities of the week ending on the preceding Saturday.

(2) Each such quarterly and weekly periodic report shall contain:

(a) The totals of all expenditures made or incurred by such lobbyist or on behalf of such lobbyist by the lobbyist's employer during the period covered by the report, which totals shall be segregated according to financial category, including food and refreshments; living accommodations; advertising; travel; telephone; contributions; office expenses, including rent and the salaries and wages paid for staff and secretarial assistance, or the proportionate amount thereof, paid or incurred for lobbying activities; and other expenses or services: PROVIDED HOWEVER, that unreimbursed personal living and travel expenses of a lobbyist not incurred directly or indirectly for any lobbying purpose need not be reported: and PROVIDED FURTHER, that the interim weekly reports of legislative lobbyists for the legislative session need show only the expenditures for food and refreshments; living accommodations; travel; contributions; and such other categories as the commission shall prescribe by rule. Each individual expenditure of more than fifteen dollars for entertainment shall be identified by date, place, amount, and the names of all persons in the group partaking in or of such entertainment including any portion thereof attributable to the lobbyist's participation therein but without allocating any portion of such expenditure to individual participants.

(b) In the case of a lobbyist employed by more than one employer, the proportionate amount of such expenditures in each category incurred on behalf of each of his employers.

(c) An itemized listing of each such expenditure in the nature of a contribution of money or of tangible or intangible personal property to any legislator, or for or on behalf of any legislator. All contributions made to, or for the benefit of, any legislator shall be identified by date, amount, and the name of the legislator receiving, or to be benefited by each such contribution.

(d) The subject matter of proposed legislation or rule-making; the proposed rules, standards, rates or other legislative enactments under chap. 34.04 R.C.W. and chap. 28B.19 R.C.W. (the state Administrative Procedure Acts) and the state agency considering the same; and the number of each senate or house bill, resolution, or other legislative activity which the lobbyist has been engaged in supporting or opposing during the reporting period; PROVIDED, that in the case of appropriations bills the lobbyist shall enumerate the specific section or sections which he supported or opposed.

SECTION 18. Reports by Employers of Registered Lobbyists. Every employer of a lobbyist registered under this act shall file with the commission on or before January 31st of each year a statement disclosing for the preceding twelve months the following information:

(1) The name of each elected official candidate, or any member of his immediate family to whom such employer has paid any compensation, the value of such compensation and the consideration given or performed in exchange for such compensation.

(2) The name of any corporation, partnership, joint venture, association, union or other entity of which any elected official candidate, or any member of his immediate family is a

member, officer, partner, director, associate or employee and to which the employer has paid compensation, the value of such compensation and the consideration given or performed in exchange for such compensation.

SECTION 19. Legislative Activities of State Agencies and Other Units of Government. (1) Every legislator and every committee of the Legislature shall file with the commission quarterly reports listing the names, addresses, and salaries of all persons employed by the person or committee making the filing for the purpose of aiding in the preparation and enactment of legislation during the preceding quarter. The reports shall be made in the form and the manner prescribed by the commission and shall be filed between the first and tenth days of each calendar quarter.

(2) Unless expressly authorized by law, no state funds shall be used directly or indirectly for lobbying: PROVIDED, this shall not prevent state officers or employees from communicating with a member of the legislature on the request of that member; or communicating to the legislature, through the proper official channels, requests for legislative action or appropriations which are deemed necessary for the efficient conduct of the public business or actually made in the proper performance of their official duties: PROVIDED FURTHER, that this subsection shall not apply to the legislative branch.

(3) Each state agency which expends state funds for lobbying pursuant to an express authorization by law or whose officers or employees communicate to members of the legislature on request of any member or communicate to the legislature requests for legislation or appropriations shall file with the commission quarterly statements providing the following information for the quarter just completed:

(a) The name of the agency filing the statement;

(b) The name, title, and job description and salary of each employee engaged in such legislative activity, a general description of the nature of his legislative activities, and the proportionate amount of his time spent on such activities.

(c) In the case of any communications to a member of the legislature in response to a request from the member, the name of the member making the request and the nature and subject of the request.

The statements shall be in the form and the manner prescribed by the commission and shall be filed within thirty days after the end of the quarter covered by the report.

(4) The provisions of this section shall not relieve any state officer or any employee of a state agency from complying with other provisions of this act, if such officer or employee is not otherwise exempted.

SECTION 20. Grass Roots Lobbying Campaigns. (1) Any person who has made expenditures, not reported under other sections of this act, exceeding five hundred dollars in the aggregate within any three month period or exceeding two hundred dollars in the aggregate within any one month period in presenting a program addressed to the public, a substantial portion of which is intended, designed, or calculated primarily to influence legislation shall be required to register and report, as provided in subsection (2), as a sponsor of a grass roots lobbying campaign.

(2) Within thirty days after becoming a sponsor of a grass roots lobbying campaign, the sponsor shall register by filing with the commission a registration statement, in such detail as the commission shall prescribe showing:

(a) The sponsor's name, address and business or occupation, and, if the sponsor is not an individual, the names, addresses and titles of the controlling persons responsible for managing the sponsor's affairs.

(b) The names, addresses, and business or occupation of all persons organizing and managing the campaign, or hired to assist the campaign, including any public relations or advertising firms participating in the campaign, and the terms of compensation for all such persons.

(c) The names and addresses of all persons contributing to the campaign, and the amount contributed by each contributor.

(d) The purpose of the campaign, including the specific legislation, rules, rates, standards or proposals which are the subject matter of the campaign.

(e) The totals of all expenditures made or incurred to date on behalf of the campaign, which totals shall be segregated according to financial category, including but not limited to the following: advertising, segregated by media and, in the case of large expenditures (as provided by rule of the commission), by outlet; contributions; entertainment, including food and refreshments; office expenses including rent and the salaries and wages paid for staff and secretarial assistance, or the proportionate amount thereof paid or incurred for lobbying campaign activities; consultants; and printing and mailing expenses.

(3) Every sponsor who has registered under this section shall file monthly reports with the commission, which shall be filed by the tenth day of the month for the activity during the preceding month. The reports shall update the information contained in the sponsor's registration statement and in prior reports and shall show contributions received and totals of expenditures made during the month, in the same manner as provided for in the registration statement.

(4) When the campaign has been terminated, the sponsor shall file a notice of termination with the final monthly report, which notice shall state the totals of all contributions and expenditures made on behalf of the campaign, in the same manner as provided for in the registration statement.

SECTION 21. Employment of Legislators, Attaches, or State Employees; Statement, Contents and Filing. If any person registered or required to be registered as a lobbyist under this act employs, or if any employer of any person registered or required to be registered as a lobbyist under this act, employs any member of the legislature, or any member of any state board or commission, or any employee of the legislature, or any fulltime state employee, if such new employee shall remain in the partial employ of the State or any agency thereof, then the new employer shall file a statement under oath with the commission setting out the nature of the employment, the name of the person to be paid thereunder, and the amount of pay or consideration to be paid thereunder. The statement shall be filed within fifteen days after the commencement of such employment.

SECTION 22. Employment of Unregistered Persons. It shall be a violation of this act for any person to employ for pay or any consideration, or pay or agree to pay any consideration to, a person to lobby who is not registered under this act except upon condition that such person register as a lobbyist as provided by this act, and such person does in fact so register as soon as practicable.

SECTION 23. Duties of Lobbyists. A person required to register as a lobbyist under this act shall also have the following obligations, the violation of which shall constitute cause for revocation of his registration, and may subject such person, and such person's employer, if such employer aids, abets, ratifies or confirms any such act, to other civil liabilities, as provided by this act:

(1) Such persons shall obtain and preserve all accounts, bills, receipts, books, papers, and documents necessary to substantiate the financial reports required to be made under this act for a period of at least six years from the date of the filing of the statement containing such items, which accounts, bills, receipts, books, papers and documents shall be made available for inspection by the commission at any time: **PROVIDED**, that if a lobbyist is required under the terms of his employment contract to turn any records over to his em-

ployer, responsibility for the preservation of such records under this subsection shall rest with such employer.

(2) In addition, a person required to register as a lobbyist shall not:

(a) Engage in any activity as a lobbyist before registering as such;

(b) Knowingly deceive or attempt to deceive any legislator as to any fact pertaining to any pending or proposed legislation;

(c) Cause or influence the introduction of any bill or amendment thereto for the purpose of thereafter being employed to secure its defeat;

(d) Knowingly represent an interest adverse to any of his employers without first obtaining such employer's written consent thereto after full disclosure to such employer of such adverse interest;

(e) Exercise any undue influence, extortion, or unlawful retaliation upon any legislator by reason of such legislator's position with respect to, or his vote upon, any pending or proposed legislation;

CHAPTER III. REPORTING OF ELECTED OFFICIALS FINANCIAL AFFAIRS

SECTION 24. Elected Officials Reports of Financial Affairs. (1) Every elected official (except President, Vice President and precinct committeemen) shall on or before January 31st of each year, and every candidate (except for the offices of President, Vice President and precinct committeeman) shall, within two weeks of becoming a candidate, file with the commission a written statement sworn as to its truth and accuracy stating for himself and his immediate family for the preceding twelve months:

(a) Occupation, name of employer, and business address; and

(b) Each direct financial interest in excess of five thousand dollars in a bank or savings account or cash surrender value of any insurance policy; each other direct financial interest in excess of five hundred dollars; and the name, address, nature of entity, nature and value of each such direct financial interest; and

(c) The name and address of each creditor to whom the value of five hundred dollars or more was owed; the original amount of each debt to each such creditor; the amount of each debt owed to each creditor as of the date of filing; the terms of repayment of each such debt; and the security given, if any, for each such debt: **PROVIDED**, that debts arising out of a "retail installment transaction" as defined in chap. 63.14 R.C.W. (Retail Installment Sales Act) need not be reported; and

(d) Every public or private office, directorship and position as trustee held; and

(e) All persons for whom actual or proposed legislation, rules, rates, or standards has been prepared, promoted, or opposed for current or deferred compensation; the description of such actual or proposed legislation, rules, rates or standards; and the amount of current or deferred compensation paid or promised to be paid; and

(f) The name and address of each governmental entity, corporation, partnership, joint venture, sole proprietorship, association, union, or other business or commercial entity from whom compensation has been received in any form of a total value of five hundred dollars or more; the value of such compensation; and the consideration given or performed in exchange for such compensation; and

(g) The name of any corporation, partnership, joint venture, association, union or other entity in which is held any office, directorship or any general partnership interest, or an ownership interest of ten percent or more; the name or title of that office, directorship or partnership; the nature of ownership interest; and with respect to each such entity the name of each governmental entity, corporation, partnership, joint

venture, sole proprietorship, association, union or other business or commercial entity from which such entity has received compensation in any form in the amount of five hundred dollars or more during the preceding twelve months and the consideration given or performed in exchange for such compensation; and

(h) A list, including legal descriptions, of all real property in the State of Washington, the assessed valuation of which exceeds two thousand five hundred dollars in which any direct financial interest was acquired during the preceding calendar year, and a statement of the amount and nature of the financial interest and of the consideration given in exchange for such interest; and

(i) A list, including legal descriptions, of all real property in the State of Washington, the assessed valuation of which exceeds two thousand five hundred dollars in which any direct financial interest was divested during the preceding calendar year, and a statement of the amount and nature of the consideration received in exchange for such interest, and the name and address of the person furnishing such consideration; and

(j) A list, including legal descriptions, of all real property in the State of Washington, the assessed valuation of which exceeds two thousand five hundred dollars in which a direct financial interest was held: PROVIDED, that if a description of such property has been included in a report previously filed, such property may be listed, for purposes of this provision, by reference to such previously filed report; and

(k) A list, including legal descriptions, of all real property in the State of Washington, the assessed valuation of which exceeds five thousand dollars, in which a corporation, partnership, firm, enterprise or other entity had a direct financial interest, in which corporation, partnership, firm or enterprise a ten percent or greater ownership interest was held; and

(l) Such other information as the commission may deem necessary in order to properly carry out the purposes and policies of this act, as the commission shall by rule prescribe.

(2) Where an amount is required to be reported under subsection (1), paragraphs (a) through (k) of this section, it shall be sufficient to comply with such requirement to report whether the amount is less than one thousand dollars, at least one thousand dollars but less than five thousand dollars, at least five thousand dollars but less than ten thousand dollars, at least ten thousand dollars but less than twenty five thousand dollars, or twenty five thousand dollars or more. An amount of stock may be reported by number of shares instead of by market value. No provision of this subsection shall be interpreted to prevent any person from filing more information or more detailed information than required.

(3) Elected officials and candidates reporting under this section shall not be required to file the statements required to be filed with the Secretary of State under R.C.W. 42.21.060.

CHAPTER IV. PUBLIC RECORDS

SECTION 25. Duty to Publish Procedures. (1) Each state agency shall separately state and currently publish in the Washington Administrative Code and each local agency shall prominently display and make available for inspection and copying at the central office of such local agency, for guidance of the public:

(a) descriptions of its central and field organization and the established places at which, the employees from whom, and the methods whereby, the public may obtain information, make submittals or requests, or obtain copies of agency decisions;

(b) statements of the general course and method by which its operations are channeled and determined, including the nature and requirements of all formal and informal procedures available;

(c) rules of procedure;

(d) substantive rules of general applicability adopted as authorized by law, and statements of general policy or inter-

pretations of general applicability formulated and adopted by the agency; and

(e) each amendment or revision to, or repeal of any of the foregoing.

(2) Except to the extent that he has actual and timely notice of the terms thereof, a person may not in any manner be required to resort to, or be adversely affected by, a matter required to be published or displayed and not so published or displayed.

SECTION 26. Documents and Indexes To Be Made Public.

(1) Each agency, in accordance with published rules, shall make available for public inspection and copying all public records. To the extent required to prevent an unreasonable invasion of personal privacy, an agency shall delete identifying details when it makes available or publishes any public record; however, in each case, the justification for the deletion shall be explained fully in writing.

(2) Each agency shall maintain and make available for public inspection and copying a current index providing identifying information as to the following records issued, adopted, or promulgated after June 30, 1972:

(a) final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases;

(b) those statements of policy and interpretations of policy, statute and the Constitution which have been adopted by the agency;

(c) administrative staff manuals and instructions to staff that affect a member of the public;

(d) planning policies and goals, and interim and final planning decisions;

(e) factual staff reports and studies, factual consultant's reports and studies, scientific reports and studies, and any other factual information derived from tests, studies, reports or surveys, whether conducted by public employees or others; and

(f) correspondence, and materials referred to therein, by and with the agency relating to any regulatory, supervisory or enforcement responsibilities of the agency, whereby the agency determines, or opines upon, or is asked to determine or opine upon, the rights of the state, the public, a subdivision of state government, or of any private party.

(3) An agency need not maintain such an index, if to do so would be unduly burdensome, but it shall in that event:

(a) issue and publish a formal order specifying the reasons why and the extent to which compliance would unduly burden or interfere with agency operations; and

(b) make available for public inspection and copying all indexes maintained for agency use.

(4) A public record may be relied on, used, or cited as precedent by an agency against a party other than an agency and it may be invoked by the agency for any other purpose only if—

(a) it has been indexed in an index available to the public; or

(b) parties affected have timely notice (actual or constructive) of the terms thereof.

(5) This act shall not be construed as giving authority to any agency to give, sell or provide access to lists of individuals requested for commercial purposes, and agencies shall not do so unless specifically authorized or directed by law.

SECTION 27. Facilities for Copying. Public records shall be available to any person for inspection and copying, and agencies shall, upon request for identifiable records, make them promptly available to any person. Agency facilities shall be made available to any person for the copying of public records except when and to the extent that this would unreasonably disrupt the operations of the agency.

SECTION 28. Times for Inspection and Copying. Public records shall be available for inspection and copying during

the customary office hours of the agency: PROVIDED, that if the agency does not have customary office hours of at least thirty hours per week, the public records shall be available from nine o'clock a.m. to noon and from one o'clock p.m. to four o'clock p.m. Monday through Friday, excluding legal holidays, unless the person making the request and the agency or its representative agree on a different time.

SECTION 29. Protection of Public Records. Agencies shall adopt and enforce reasonable rules and regulations, consonant with the intent of this act to provide full public access to official records, to protect public records from damage or disorganization, and to prevent excessive interference with other essential functions of the agency. Such rules and regulations shall provide for the fullest assistance to inquirers and the most timely possible action on requests for information.

SECTION 30. Charges for copying. No fee shall be charged for the inspection of public records. Agencies may impose a reasonable charge for providing copies of public records and for the use by any person of agency equipment to copy public records, which charges shall not exceed the amount necessary to reimburse the agency for its actual costs incident to such copying.

SECTION 31. Certain Personal and Other Records Exempt. (1) The following shall be exempt from public inspection and copying:

(a) Personal information in any files maintained for students in public schools, patients or clients of public institutions or public health agencies, welfare recipients, prisoners, probationers or parolees.

(b) Personal information in files maintained for employees, appointees or elected officials of any public agency to the extent that disclosure would violate their right to privacy.

(c) Information required of any taxpayer in connection with the assessment or collection of any tax if the disclosure of the information to other persons would violate the taxpayer's right to privacy or would result in unfair competitive disadvantage to such taxpayer.

(d) Specific intelligence information and specific investigative files compiled by investigative, law enforcement and penology agencies, and state agencies vested with the responsibility to discipline members of any profession, the non-disclosure of which is essential to effective law enforcement or for the protection of any person's right to privacy.

(e) Information revealing the identity of persons who file complaints with investigative, law enforcement or penology agencies, except as the complainant may authorize.

(f) Test questions, scoring keys, and other examination data used to administer a license, employment or academic examination.

(g) Except as provided by chap. 8.26 R.C.W., the contents of real estate appraisals, made for or by any agency relative to the acquisition of property, until the project is abandoned or until such time as all of the property has been acquired, but in no event shall disclosure be denied for more than three years after the appraisal.

(h) Valuable formulae, designs, drawings and research data obtained by any agency within five years of the request for disclosure when disclosure would produce private gain and public loss.

(i) Preliminary drafts, notes, recommendations, and intra-agency memorandums in which opinions are expressed or policies formulated or recommended except that a specific record shall not be exempt when publicly cited by an agency in connection with any agency action.

(j) Records which are relevant to a controversy to which an agency is a party but which records would not be available to another party under the rules of pretrial discovery for causes pending in the superior courts.

(2) The exemptions of this section shall be inapplicable to

the extent that information, the disclosure of which would violate personal privacy or vital governmental interest, can be deleted from the specific records sought. No exemption shall be construed to permit the nondisclosure of statistical information not descriptive of any readily identifiable person or persons.

(3) Inspection or copying of any specific records, exempt under the provisions of this section, may be permitted if the superior court in the county in which the record is maintained finds, after a hearing with notice thereof to every person in interest and the agency, that the exemption of such records, is clearly unnecessary to protect any individual's right of privacy or any vital governmental function.

(4) Agency responses refusing, in whole or part, inspection of any record shall include a statement of the specific exemption authorizing the withholding of the record (or part) and a brief explanation of how the exemption applies to the record withheld.

SECTION 32. Prompt Responses Required. Responses to requests for records shall be made promptly by agencies. Denials of requests must be accompanied by a written statement of the specific reasons therefor. Agencies shall establish mechanisms for the most prompt possible review of decisions denying inspection, and such review shall be deemed completed at the end of the second business day following the denial of inspection and shall constitute final agency action for the purposes of judicial review.

SECTION 33. Court Protection of Records. The examination of any specific record may be enjoined if, upon motion and affidavit, the superior court for the county in which the movant resides or in which the record is maintained, finds that such examination would clearly not be in the public interest and would substantially and irreparably damage any person, or would substantially and irreparably damage vital governmental functions.

SECTION 34. Judicial Review of Agency Actions. (1) Upon the motion of any person having been denied an opportunity to inspect or copy a public record by an agency, the superior court in the county in which a record is maintained may require the responsible agency to show cause why it has refused to allow inspection or copying of a specific record or class of records. The burden of proof shall be on the agency to establish that refusal to permit public inspection and copying is required.

(2) Judicial review of all agency actions taken or challenged under Sections 25 through 32 of this act shall be *de novo*. Courts shall take into account the policy of this act that free and open examination of public records is in the public interest, even though such examination may cause inconvenience or embarrassment to public officials or others. Courts may examine any record *in camera* in any proceeding brought under this section.

(3) Any person who prevails against an agency in any action in the courts seeking the right to inspect or copy any public record shall be awarded all costs, including reasonable attorney fees, incurred in connection with such legal action. In addition, it shall be within the discretion of the court to award such person an amount not to exceed twenty-five dollars for each day that he was denied the right to inspect or copy said public record.

CHAPTER V. ADMINISTRATION AND ENFORCEMENT

SECTION 35. Commission—Established—Membership. There is hereby established a "Public Disclosure Commission" which shall be composed of five members who shall be appointed by the governor, with the consent of the senate. All

appointees shall be persons of the highest integrity and qualifications. No more than three members shall have an identification with the same political party. The original members shall be appointed within sixty days after the effective date of this act. The term of each member shall be five years except that the original five members shall serve initial terms of one, two, three, four and five years, respectively, as designated by the governor. No member of the commission, during his tenure, shall (1) hold or campaign for elective office; (2) be an officer of any political party or political committee; (3) permit his name to be used, or make contributions, in support of or in opposition to any candidate or proposition; (4) participate in any way in any election campaign; or (5) lobby or employ or assist a lobbyist. No member shall be eligible for appointment to more than one full term. A vacancy on the commission shall be filled within thirty days of the vacancy by the governor, with the consent of the senate, and the appointee shall serve for the remaining term of his predecessor. A vacancy shall not impair the powers of the remaining members to exercise all of the powers of the commission. Three members of the commission shall constitute a quorum. The commission shall elect its own chairman and adopt its own rules of procedure in the manner provided in chapter 34.04 R.C.W. Any member of the commission may be removed by the governor, but only upon grounds of neglect of duty or misconduct in office.

Members shall serve without compensation, but shall be reimbursed for necessary traveling and lodging expenses actually incurred while engaged in the business of the commission as provided in chapter 43.03 R.C.W.

SECTION 36. Commission—Duties. The commission shall:

- (1) Develop and provide forms for the reports and statements required to be made under this act;
- (2) Prepare and publish a manual setting forth recommended uniform methods of bookkeeping and reporting for use by persons required to make reports and statements under this act;
- (3) Compile and maintain a current list of all filed reports and statements;
- (4) Investigate whether properly completed statements and reports have been filed within the times required by this act;
- (5) Upon complaint or upon its own motion, investigate and report apparent violations of this act to the appropriate law enforcement authorities;
- (6) Prepare and publish an annual report to the governor as to the effectiveness of this act and its enforcement by appropriate law enforcement authorities; and
- (7) Enforce this act according to the powers granted it by law.

SECTION 37. Commission—Additional Powers. The commission is empowered to:

- (1) Adopt, promulgate, amend and rescind suitable administrative rules and regulations to carry out the policies and purposes of this act;
- (2) Prepare and publish such reports and technical studies as in its judgment will tend to promote the purposes of this act, including reports and statistics concerning campaign financing, lobbying, financial interests of elected officials, and enforcement of this act;
- (3) Make from time to time, on its own motion, audits and field investigations;
- (4) Make public the fact that an alleged or apparent violation has occurred and the nature thereof;
- (5) Administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence and require the production of any books, papers, correspondence, memorandums or other records which the commission deems relevant or material for the purpose of any investigation authorized under this act, or any other proceeding under this act;

(6) Adopt and promulgate a Code of Fair Campaign Practices;

(7) Relieve, by published regulation of general applicability, candidates or political committees of obligations to comply with the provisions of this act relating to election campaigns, if they have not received contributions nor made expenditures in connection with any election campaign of more than one thousand dollars; and

(8) Enact regulations prescribing reasonable requirements for keeping accounts of and reporting on a quarterly basis costs incurred by state agencies, counties, cities and other municipalities and political subdivisions in preparing, publishing and distributing legislative information. The term "legislative information," for the purposes of this subsection, means books, pamphlets, reports and other materials prepared, published or distributed at substantial cost, a substantial purpose of which is to influence the passage or defeat of any legislation. The state auditor in his regular examination of each agency under chapter 43.09 R.C.W. shall review such regulations, accounts and reports and make appropriate findings, comments and recommendations in his examination reports concerning those agencies.

(9) The commission, after hearing, by order may suspend or modify any of the reporting requirements hereunder in a particular case if it finds that literal application of this act works a manifestly unreasonable hardship and if it also finds that such suspension or modification will not frustrate the purposes of the act. Any such suspension or modification shall be only to the extent necessary to substantially relieve the hardship. The commission shall act to suspend or modify any reporting requirements only if it determines that facts exist that are clear and convincing proof of the findings required hereunder. Any citizen shall have standing to bring an action in Thurston County Superior Court to contest the propriety of any order entered hereunder within one year from the date of entry of such order.

SECTION 38. Secretary of State, Attorney General—Duties.

(1) The secretary of state, through his office, shall perform such ministerial functions as may be necessary to enable the commission to carry out its responsibilities under this act. The office of the secretary of state shall be designated as the place where the public may file papers or correspond with the commission and receive any form or instruction from the commission.

(2) The attorney general, through his office, shall supply such assistance as the commission may require in order to carry out its responsibilities under this act. The commission may employ attorneys who are neither the attorney general nor an assistant attorney general to carry out any function of the attorney general prescribed in this section.

SECTION 39. Civil Remedies and Sanctions. (1) One or more of the following civil remedies and sanctions may be imposed by court order in addition to any other remedies provided by law:

(a) If the court finds that the violation of any provision of this act by any candidate or political committee probably affected the outcome of any election, the result of said election may be held void and a special election held within sixty days of such finding. Any action to void an election shall be commenced within one year of the date of the election in question. It is intended that this remedy be imposed freely in all appropriate cases to protect the right of the electorate to an informed and knowledgeable vote.

(b) If any lobbyist or sponsor of any grass roots lobbying campaign violates any of the provisions of this act, his registration may be revoked or suspended and he may be enjoined from receiving compensation or making expenditures for lobbying; PROVIDED, however, that imposition of such sanction shall not excuse said lobbyist from filing statements and reports required by this act.

(c) Any person who violates any of the provisions of this act may be subject to a civil penalty of not more than ten thousand dollars for each such violation.

(d) Any person who fails to file a properly completed statement or report within the time required by this act may be subject to a civil penalty of ten dollars per day for each day each such delinquency continues.

(e) Any person who fails to report a contribution or expenditure may be subject to a civil penalty equivalent to the amount he failed to report.

(f) The court may enjoin any person to prevent the doing of any act herein prohibited, or to compel the performance of any act required herein.

SECTION 40. Enforcement. (1) The attorney general and the prosecuting authorities of political subdivisions of this state may bring civil actions in the name of the state for any appropriate civil remedy, including but not limited to the special remedies provided in Section 39.

(2) The attorney general and the prosecuting authorities of political subdivisions of this state may investigate or cause to be investigated the activities of any person who there is reason to believe is or has been acting in violation of this act, and may require any such person or any other person reasonably believed to have information concerning the activities of such person to appear at a time and place designated in the county in which such person resides or is found, to give such information under oath and to produce all accounts, bills, receipts, books, papers, and documents which may be relevant or material to any investigation authorized under this act.

(3) When the attorney general or the prosecuting authority of any political subdivision of this state requires the attendance of any person to obtain such information or the production of the accounts, bills, receipts, books, papers, and documents which may be relevant or material to any investigation authorized under this act, he shall issue an order setting forth the time when and the place where attendance is required and shall cause the same to be delivered to or sent by registered mail to the person at least fourteen days before the date fixed for attendance. Such order shall have the same force and effect as a subpoena, shall be effective state-wide, and, upon application of the attorney general or said prosecuting authority, obedience to the order may be enforced by any superior court judge in the county where the person receiving it resides or is found, in the same manner as though the order were a subpoena. The court, after hearing, for good cause, and upon application of any person aggrieved by the order, shall have the right to alter, amend, revise, suspend, or postpone all or any part of its provisions. In any case where the order is not enforced by the court according to its terms, the reasons for the court's actions shall be clearly stated in writing, and such action shall be subject to review by the appellate courts by certiorari or other appropriate proceeding.

(4) Any person who has notified the attorney general in writing that there is reason to believe that some provision of this act is being or has been violated may himself bring in the name of the state any of the actions (hereinafter referred to as a citizen's action) authorized under this act if the attorney general has failed to commence an action hereunder within forty days after such notice and if the attorney general has failed to commence an action within ten days after a notice in writing delivered to the attorney general advising him that a citizen's action will be brought if the attorney general does not bring an action. If the person who brings the citizen's action prevails, he shall be entitled to one-half of any judgment awarded, and to the extent the costs and attorney's fees he has incurred exceed his share of the judgment, he shall be entitled to be reimbursed for such costs and fees by the State of Washington: PROVIDED, that in the case of a citizen's action which is dismissed and which the court also finds was brought without reasonable cause, the court may order the

person commencing the action to pay all costs of trial and reasonable attorney's fees incurred by the defendant.

(5) In any action brought under this section, the court may award to the state all costs of investigation and trial, including a reasonable attorney's fee to be fixed by the court. If the violation is found to have been intentional, the amount of the judgment, which shall for this purpose include the costs, may be trebled as punitive damages. If damages or treble damages are awarded in such an action brought against a lobbyist, the judgment may be awarded against the lobbyist, and the lobbyist's employer or employers joined as defendants, jointly, severally, or both. If the defendant prevails, he shall be awarded all costs of trial, and may be awarded a reasonable attorney's fee to be fixed by the court to be paid by the State of Washington.

SECTION 41. Limitation on Actions. Any action brought under the provisions of this act must be commenced within six years after the date when the violation occurred.

SECTION 42. Date of Mailing Deemed Date of Receipt. When any application, report, statement, notice, or payment required to be made under the provisions of this act has been deposited post-paid in the United States mail properly addressed, it shall be deemed to have been received on the date of mailing. It shall be presumed that the date shown by the post office cancellation mark on the envelope is the date of mailing.

SECTION 43. Certification of Reports. Every report and statement required to be filed under this act shall identify the person preparing it, and shall be certified as complete and correct, both by the person preparing it and by the person on whose behalf it is filed.

SECTION 44. Statements and Reports Public Records. All statements and reports filed under this act shall be public records of the agency where they are filed, and shall be available for public inspection and copying during normal business hours at the expense of the person requesting copies, provided that the charge for such copies shall not exceed actual cost to the agency.

SECTION 45. Duty to Preserve Statements and Reports. Persons with whom statements or reports or copies of statements or reports are required to be filed under this act shall preserve them for not less than six years. The commission, however, shall preserve such statements or reports for not less than ten years.

SECTION 46. Severability. If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected.

SECTION 47. Construction. The provisions of this act are to be liberally construed to effectuate the policies and purposes of this act. In the event of conflict between the provisions of this act and any other act, the provisions of this act shall govern.

SECTION 48. Chapter and Section Headings Not Part of Law. Chapter and section captions or headings as used in this act do not constitute any part of the law.

SECTION 49. Effective Date. The effective date of this act shall be January 1, 1973.

SECTION 50. Repeals. Chapter 9, Laws of 1965, as amended by section 9, chapter 150, Laws of 1965 ex. sess., and R.C.W. 29.18.140; and chapter 131, Laws of 1967 ex. sess. and R.C.W. 44.64; and chapter 82, Laws of 1972 (2nd Leg. 2nd Ex. Sess.) and Referendum Bill No. 24; and chapter 98, Laws of

1972 (42nd Leg. 2nd Ex. Sess.) and Referendum Bill No. 25 are each hereby repealed.

EXPLANATORY COMMENT

Initiative Measure No. 276 filed in the office of the Secretary of State as of March 29, 1972.

Sponsor filed 162,782 supporting signatures as of July 6, 1972.

Signatures found sufficient. Measure then certified to the November 7, 1972 state general election for approval or rejection by the voters.

COMPLETE TEXT OF

Referendum Bill 24

CHAPTER 82, LAWS OF 1972
(42nd Leg., 2nd Ex. Session)

Ballot Title as issued by the Attorney General:

Lobbyists—Regulation, Registration and Reporting

AN ACT regulating legislative lobbying; amending a prior 1967 act relating thereto; continuing to require registration of lobbyists but specifically defining lobbying as attempting to influence, through direct contact with state legislators, the passage or defeat of any legislation; requiring lobbyists to file itemized and detailed reports of lobbying expenditures during legislative sessions; transferring general responsibility for enforcement from the attorney general to the Senate and House Boards of Ethics; authorizing these boards to direct the attorney general to exercise certain enforcement powers; and replacing present criminal penalties with civil remedies including damages and injunctions against lobbyists and other violators.

LEGISLATIVE TITLE
(Sub. House Bill No. 341)

LEGISLATIVE LOBBYING

AN ACT relating to legislative lobbying; providing for the registration and regulation of lobbyists; amending section 3, chapter 150, Laws of 1967 ex. sess. and RCW 44.60.030; amending section 1, chapter 131, Laws of 1967 ex. sess. and RCW 44.64.010; amending section 2, chapter 131, Laws of 1967 ex. sess. and RCW 44.64.020; amending section 3, chapter 131, Laws of 1967 ex. sess. and RCW 44.64.030; amending section 4, chapter 131, Laws of 1967 ex. sess. and RCW 44.64.040; amending section 6, chapter 131, Laws of 1967 ex. sess. and RCW 44.64.060; adding new sections to chapter 131, Laws of 1967 ex. sess. and to chapter 44.64. RCW; repealing section 5, chapter 131, Laws of 1967 ex. sess. and RCW 44.64.050; and providing for a referendum.

BE IT ENACTED, by the Legislature of the State of Washington:

Section 1, Section 1, chapter 131, Laws of 1967 ex. sess. and RCW 44.64.010 are each amended to read as follows:

When used in this chapter:

~~(1) The term "contribution" includes a gift, subscription, loan, advance or deposit of money or anything of value and includes a contract, promise or agreement, whether or not legally enforceable, to make a contribution, given with the intent of influencing the passage or defeat of any pending or proposed legislation;~~

~~(2) The term "expenditure" includes a payment, contribution, subscription, distribution, loan, advance, deposit, or gift of money or anything of value, and includes a contract, promise or agreement, whether or not legally enforceable, to make an expenditure(.);~~

~~(3) The term "person" includes an individual, partnership, committee, association, corporation, and any other organization or group of persons. The term does not include a member or member-elect of either house of the state legislature, an elected state officer nor a gubernatorial appointee to a position requiring confirmation by the senate;~~

~~(4) The term "legislation" means bills, resolutions, amendments, motions, nominations, and other matters pending or proposed in either house or any committee of the legislature;~~

~~(5) The terms "lobby" and "lobbying" each mean attempting to influence, through direct contact with any legislator or legislators, the passage or defeat of any legislation by the legislature;~~

~~(6) The term "lobbyist" means any person, including any public employee, who shall lobby either on his own or another's behalf;~~

~~(7) The term "lobbyist's employer" means the person or persons by whom or on whose behalf the lobbyist is employed, and all persons by whom he is compensated for acting as a lobbyist;~~

~~(8) The term "code reviser" means the person so designated under the provisions of chapter 1.08 RCW;~~

~~(9) The terms "senate board of ethics" and "house board of ethics" mean the boards designated and defined in RCW 44.60.010;~~

~~(10) The term "prescribed form" means a form prescribed by the joint board of ethics.~~

Sec. 2. Section 2, chapter 131, Laws of 1967 ex. sess. and RCW 44.64.020 are each amended to read as follows:

~~(1) Any person who shall be engaged for pay or for any consideration for the purpose of attempting to influence the passage or defeat of any legislation by the legislature of the state of Washington or the approval or veto of any legislation by the governor of the state of Washington shall register with the president of the senate and the speaker of the house before doing anything in furtherance of such object and shall give to such officers in writing and under oath a statement: Before doing any lobbying a lobbyist shall register by filing with the code reviser a lobbyist registration statement executed under oath on a prescribed form, for each of his employers, showing:~~

~~(a) Name ~~and~~ permanent business address, and business address during the legislative session;~~

~~(b) Name and address of the ~~person or persons by whom he is employed and in whose interest he appears or works and by whom he is compensated~~ lobbyist's employer;~~

~~(c) The duration of such employment;~~

~~(d) If employed as a lobbyist, whether he is paid on a permanent basis with a lobbying assignment as a partial, temporary or incidental part of his duties, or whether his compensated employment is solely for lobbying purposes;~~

~~(e) A written authorization from ~~each person by whom he is so employed~~ the lobbyist's employer confirming such employment;~~

1992

November 3

State of
Washington



Published by the
Secretary
of State



EDITION 3



**COMPLETE TEXT OF
Initiative Measure 573
(con't.)**

from or on behalf of a person who, by reason of sections 2 through 5 of this act, is ineligible for the office, nor allow the person's name to appear on the ballot.

(2) No terms or years served in office before November 3, 1992, may be used to determine eligibility to appear on the ballot.

NEW SECTION. Sec. 8. A new section is added to chapter 29.68 RCW to read as follows:

Sections 4 and 5 of this act, regarding candidates for federal legislative office, are not effective until nine states other than Washington have passed laws limiting ballot access or terms of federal legislative office, or both, based on length of service in federal legislative office.

NEW SECTION. Sec. 9. A new section is added to chapter 7.16 RCW to read as follows:

Any resident of this state may bring suit to enforce sections 2 through 8 of this act. If the person prevails, the court shall award the person reasonable attorney's fees and costs of suit.

NEW SECTION. Sec. 10. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

PLEASE NOTE:

In the preceding and following measures, all words in double brackets with a line through them are in the State Law at the present time and are being taken out by the measure. All words underlined do not appear in the State Law as they are now written but will be put in if the measure is adopted.

To obtain a copy of the preceding and following texts for the state measures in larger print, call the Secretary of State's toll-free hotline -- 1-800-448-4881.



**COMPLETE TEXT OF
Initiative Measure 134**

AN ACT Relating to the regulation of political contributions and campaign expenditures; amending RCW 42.17.095, 42.17.125, 42.17.510, 41.04.230, 42.17.180, 42.17.390, and 42.17.240; adding new sections to chapter 42.17 RCW; creating new sections; repealing RCW 42.17.243; and prescribing penalties.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF WASHINGTON:

**PART I
FINDINGS AND INTENT**

NEW SECTION. Sec. 1. FINDINGS. The people of the state of Washington find and declare that:

(1) The financial strength of certain individuals or organizations should not permit them to exercise a disproportionate or controlling influence on the election of candidates.

(2) Rapidly increasing political campaign costs have led many candidates to raise larger percentages of money from special interests with a specific financial stake in matters before state government. This has caused the public perception that decisions of elected officials are being improperly influenced by monetary contributions.

(3) Candidates are raising less money in small contributions from individuals and more money from special interests. This has created the public perception that individuals have an insignificant role to play in the political process.

NEW SECTION. Sec. 2. INTENT. By limiting campaign contributions, the people intend to:

(1) Ensure that individuals and interest groups have fair and equal opportunity to influence elective and governmental processes;

(2) Reduce the influence of large organizational contributors; and

(3) Restore public trust in governmental institutions and the electoral process.

**PART II
DEFINITIONS**

NEW SECTION. Sec. 3. DEFINITIONS. The definitions of RCW 42.17.020 apply to sections 4 through 19 of this act except as modified by this section. Unless the context clearly requires otherwise, the definitions in this section apply throughout sections 4 through 19 of this act.

(1) "Authorized committee" means the political committee authorized by a candidate, or by the state official against whom recall charges have been filed, to accept



COMPLETE TEXT OF Initiative Measure 134 (con't.)

contributions or make expenditures on behalf of the candidate or state official.

(2) "Bona fide political party" means:

(a) An organization that has filed a valid certificate of nomination with the secretary of state under chapter 29.24 RCW; or

(b) The governing body of the state organization of a major political party, as defined in RCW 29.01.090, which is the body authorized by the charter or bylaws of the party to exercise authority on behalf of the state party; or

(c) The county central committee or legislative district committee of a major political party.

(3) "Candidate" means an individual seeking nomination for election or seeking election to a state office. An individual is deemed to be seeking nomination for election or seeking election when the individual first:

(a) Announces publicly or files for the office;

(b) Purchases commercial advertising space or broadcast time to promote his or her candidacy;

(c) Receives contributions or makes expenditures for facilities with intent to promote his or her candidacy for the office; or

(d) Gives his or her consent to another person to take on behalf of the individual any of the actions in (b) or (c) of this subsection.

(4) "Caucus of the state legislature" means the caucus of members of a major political party in the state house of representatives or in the state senate.

(5)(a) "Contribution" includes a loan, gift, deposit, subscription, forgiveness of indebtedness, donation, advance, pledge, payment, transfer of funds between political committees, or transfer of anything of value, including personal and professional services for less than full consideration.

(b) Subject to further definition by the commission, "contribution" does not include the following:

(i) Interest on money deposited in a political committee's account;

(ii) Ordinary home hospitality;

(iii) A contribution received by a candidate or political committee that is returned to the contributor within five business days of the date on which it is received by the candidate or political committee;

(iv) An expenditure or contribution earmarked for voter registration, for absentee ballot information, for precinct caucuses, for get-out-the-vote campaigns, for precinct judges or inspectors, for sample ballots, or for ballot counting, all without promotion of or political advertising for individual candidates;

(v) A news item, feature, commentary, or editorial in a regularly scheduled news medium that is of primary interest

to the general public, that is in a news medium controlled by a person whose primary business is that news medium, and that is not controlled by a candidate or political committee;

(vi) An expenditure by a political committee for its own internal organization or fund raising without direct association with individual candidates;

(vii) An internal political communication primarily limited to the contributors to a political party organization or political action committee, or the officers, management staff, and stockholders of a corporation or similar enterprise, or the members of a labor organization or other membership organization;

(viii) The rendering of personal services of the sort commonly performed by volunteer campaign workers, or incidental expenses personally incurred by volunteer campaign workers not in excess of fifty dollars personally paid for by the worker. "Volunteer services," for the purposes of this section, means services or labor for which the individual is not compensated by any person and that are performed outside the individual's normal working hours; or

(ix) Legal or accounting services rendered to or on behalf of:

(A) A political party or caucus of the state legislature if the person paying for the services is the regular employer of the person rendering such services; or

(B) A candidate or an authorized committee if the person paying for the services is the regular employer of the individual rendering the services and if the services are solely for the purpose of ensuring compliance with state election or public disclosure laws.

(c) Contributions other than money or its equivalent are deemed to have a monetary value equivalent to the fair market value of the contribution.

(d) Sums paid for tickets to fund-raising events such as dinners and parties are contributions, except for the actual cost of the consumables furnished at the event.

(e) An expenditure made by a person in cooperation, consultation, or concert with, or at the request or suggestion of, a candidate, a political committee, or their agents, is considered to be a contribution to such candidate or political committee.

(f) The financing by a person of the dissemination, distribution, or republication, in whole or in part, of broadcast, written, graphic, or other form of political advertising prepared by a candidate, a political committee, or its authorized agent, is considered to be a contribution to the candidate or political committee.

(6) "Election" means a primary or a general or special election in which a candidate is on the ballot.

(7) "Election cycle" means the period beginning on the first day of December after the date of the last previous general election for the office that the candidate seeks and ending on November 30th after the next election for the office. In the case of a special election to fill a vacancy in an office, "election cycle" means the period beginning on the day the vacancy occurs and ending on November 30th after



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the special election.

(8) "General election" means the election that results in the election of a person to a state office. It does not include a primary.

(9) "Immediate family" means a candidate's spouse, and any child, stepchild, grandchild, parent, stepparent, grandparent, brother, half-brother, sister, or half-sister of the candidate and the spouse of any such person and any child, stepchild, grandchild, parent, stepparent, grandparent, brother, half-brother, sister, or half-sister of the candidate's spouse and the spouse of any such person.

(10) "Independent expenditure" means an "expenditure" as defined in RCW 42.17.020 that has each of the following elements:

(a) It is made in support of or in opposition to a candidate for office by a person who is not (i) a candidate for that office, (ii) an authorized committee of that candidate for that office, (iii) a person who has received the candidate's encouragement or approval to make the expenditure, if the expenditure pays in whole or in part for any political advertising supporting that candidate or promoting the defeat of any other candidate or candidates for that office, or (iv) a person with whom the candidate has collaborated for the purpose of making the expenditure, if the expenditure pays in whole or in part for any political advertising supporting that candidate or promoting the defeat of any other candidate or candidates for that office;

(b) The expenditure pays in whole or in part for any political advertising that either specifically names the candidate supported or opposed, or clearly and beyond any doubt identifies the candidate without using the candidate's name; and

(c) The expenditure, alone or in conjunction with another expenditure or other expenditures of the same person in support of or opposition to that candidate, has a value of five hundred dollars or more. A series of expenditures, each of which is under five hundred dollars, constitutes one independent expenditure if their cumulative value is five hundred dollars or more.

(11)(a) "Intermediary" means an individual who transmits a contribution to a candidate or committee from another person unless the contribution is from the individual's employer, immediate family, or an association to which the individual belongs.

(b) A treasurer or a candidate is not an intermediary for purpose of the committee that the treasurer or candidate serves.

(c) A professional fund raiser is not an intermediary if the fund raiser is compensated for fund-raising services at the usual and customary rate.

(d) A volunteer hosting a fund-raising event at the individual's home is not an intermediary for purposes of that event.

(12) "Person" includes:

(a) An individual;

(b) A partnership, limited partnership, public or private corporation, or joint venture;

(c) A nonprofit corporation, organization, or association, including but not limited to, a national, state, or local labor union or collective bargaining organization and a national, state, or local trade or professional association;

(d) A federal, state, or local governmental entity or agency, however constituted;

(e) A candidate, committee, political committee, bona fide political party, or executive committee thereof; and

(f) Any other organization or group of persons, however organized.

(13) "Primary" means the procedure for nominating a candidate to state office under chapter 29.18 or 29.21 RCW or any other primary for an election which uses, in large measure, the procedures established in chapter 29.18 or 29.21 RCW.

(14) "Recall campaign" means the period of time beginning on the date of the filing of recall charges under RCW 29.82.015 and ending thirty days after the recall election.

(15) "State legislative office" means the office of a member of the state house of representatives and the office of a member of the state senate.

(16) "State office" means state legislative office or the office of governor, lieutenant governor, secretary of state, attorney general, commissioner of public lands, insurance commissioner, superintendent of public instruction, state auditor, or state treasurer.

(17) "State official" means a person who holds a state office.

**PART III
CONTRIBUTIONS**

NEW SECTION. Sec. 4. CAMPAIGN CONTRIBUTION LIMITS. (1) No person, other than a bona fide political party or a caucus of the state legislature, may make contributions to a candidate for a state legislative office that in the aggregate exceed five hundred dollars or to a candidate for a state office other than a state legislative office that in the aggregate exceed one thousand dollars for each election in which the candidate is on the ballot or appears as a write-in candidate. Contributions made with respect to a primary may not be made after the date of the primary. Contributions made with respect to a general election may not be made after the final day of the applicable election cycle.

(2) No person, other than a bona fide political party or a caucus of the state legislature, may make contributions to a state official against whom recall charges have been filed, or to a political committee having the expectation of making expenditures in support of the recall of the state official,



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during a recall campaign that in the aggregate exceed five hundred dollars if for a state legislative office or one thousand dollars if for a state office other than a state legislative office.

(3)(a) Notwithstanding subsection (1) of this section, no bona fide political party or caucus of the state legislature may make contributions to a candidate during an election cycle that in the aggregate exceed (i) fifty cents multiplied by the number of eligible registered voters in the jurisdiction from which the candidate is elected if the contributor is a caucus of the state legislature or the governing body of a state organization, or (ii) twenty-five cents multiplied by the number of registered voters in the jurisdiction from which the candidate is elected if the contributor is a county central committee or a legislative district committee.

(b) No candidate may accept contributions from a county central committee or a legislative district committee during an election cycle that when combined with contributions from other county central committees or legislative district committees would in the aggregate exceed twenty-five cents times the number of registered voters in the jurisdiction from which the candidate is elected.

(4)(a) Notwithstanding subsection (2) of this section, no bona fide political party or caucus of the state legislature may make contributions to a state official against whom recall charges have been filed, or to a political committee having the expectation of making expenditures in support of the state official, during a recall campaign that in the aggregate exceed (i) fifty cents multiplied by the number of eligible registered voters in the jurisdiction entitled to recall the state official if the contributor is a caucus of the state legislature of the governing body of a state organization, or (ii) twenty-five cents multiplied by the number of registered voters in the jurisdiction from which the candidate is elected if the contributor is a county central committee or a legislative district committee.

(b) No state official against whom recall charges have been filed, no authorized committee of the official, and no political committee having the expectation of making expenditures in support of the recall of a state official may accept contributions from a county central committee or a legislative district committee or a legislative district committee during an election cycle that when combined with contributions from other county central committees or legislative district committees would in the aggregate exceed twenty-five cents multiplied by the number of registered voters in the jurisdiction from which the candidate is elected.

(5) Notwithstanding subsections (1) through (4) of this section, no person other than an individual, bona fide political party, or caucus of the state legislature may make contributions reportable under this chapter to a caucus of the

state legislature that in the aggregate exceed five hundred dollars in a calendar year or to a bona fide political party that in the aggregate exceed two thousand five hundred dollars in a calendar year. This subsection does not apply to loans made in the ordinary course of business.

(6) For the purposes of sections 4 through 19 of this act, a contribution to the authorized political committee of a candidate, or of a state official against whom recall charges have been filed, is considered to be a contribution to the candidate or state official.

(7) A contribution received within the twelve-month period after a recall election concerning a state office is considered to be a contribution during that recall campaign if the contribution is used to pay a debt or obligation incurred to influence the outcome of that recall campaign.

(8) The contributions allowed by subsection (2) of this section are in addition to those allowed by subsection (1) of this section, and the contributions allowed by subsection (4) of this section are in addition to those allowed by subsection (3) of this section.

(9) Sections 4 through 19 of this act apply to a special election conducted to fill a vacancy in a state office. However, the contributions made to a candidate or received by a candidate for a primary or special election conducted to fill such a vacancy shall not be counted toward any of the limitations that apply to the candidate or to contributions made to the candidate for any other primary or election.

(10) Notwithstanding the other subsections of this section, no corporation or business entity not doing business in Washington state, no labor union with fewer than ten members who reside in Washington state, and no political committee that has not received contributions of ten dollars or more from at least ten persons registered to vote in Washington state during the preceding one hundred eighty days may make contributions reportable under this chapter to a candidate, to a state official against whom recall charges have been filed, or to a political committee having the expectation of making expenditures in support of the recall of the official. This subsection does not apply to loans made in the ordinary course of business.

(11) Notwithstanding the other subsections of this section, no county central committee or legislative district committee may make contributions reportable under this chapter to a candidate, state official against whom recall charges have been filed, or political committee having the expectation of making expenditures in support of the recall of a state official if the county central committee or legislative district committee is outside of the jurisdiction entitled to elect the candidate or recall the state official.

(12) No person may accept contributions that exceed the contribution limitations provided in this section.

NEW SECTION. Sec. 5. **ATTRIBUTION AND AGGREGATION OF FAMILY CONTRIBUTIONS.** (1) Contributions by a husband and wife are considered separate contributions.

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(2) Contributions by unemancipated children under eighteen years of age are considered contributions by their parents and are attributed proportionately to each parent. Fifty percent of the contributions are attributed to each parent or, in the case of a single custodial parent, the total amount is attributed to the parent.

NEW SECTION. Sec. 6. **ATTRIBUTION OF CONTRIBUTIONS BY CONTROLLED ENTITIES.** For purposes of this chapter:

(1) A contribution by a political committee with funds that have all been contributed by one person who exercises exclusive control over the distribution of the funds of the political committee is a contribution by the controlling person.

(2) Two or more entities are treated as a single entity if one of the two or more entities is a subsidiary, branch, or department of a corporation or a local unit, branch, or affiliate of a trade association, labor union, or collective bargaining association. All contributions made by a person or political committee whose contribution or expenditure activity is financed, maintained, or controlled by a trade association, labor union, collective bargaining organization, or the local unit of a trade association, labor union, or collective bargaining organization are considered made by the same person or entity.

NEW SECTION. Sec. 7. **ATTRIBUTION OF CONTRIBUTIONS.** All contributions made by a person or entity, either directly or indirectly, to a candidate, to a state official against whom recall charges have been filed, or to a political committee, are considered to be contributions from that person or entity to the candidate, state official, or political committee, as are contributions that are in any way earmarked or otherwise directed through an intermediary or conduit to the candidate, state official, or political committee. For the purposes of this section, "earmarked" means a designation, instruction, or encumbrance, whether direct or indirect, expressed or implied, or oral or written, that is intended to result in or does result in all or any part of a contribution being made to a certain candidate or state official. If a conduit or intermediary exercises any direction or control over the choice of the recipient candidate or state official, the contribution is considered to be by both the original contributor and the conduit or intermediary.

NEW SECTION. Sec. 8. **LIMITATIONS ON EMPLOYERS OR LABOR ORGANIZATIONS.** (1) No employer or labor organization may increase the salary of an officer or employee, or give an emolument to an officer, employee, or

other person or entity, with the intention that the increase in salary, or the emolument, or a part of it, be contributed or spent to support or oppose a candidate, state official against whom recall charges have been filed, political party, or political committee.

(2) No employer or labor organization may discriminate against an officer or employee in the terms or conditions of employment for (a) the failure to contribute to, (b) the failure in any way to support or oppose, or (c) in any way supporting or opposing a candidate, ballot proposition, political party, or political committee.

(3) No employer or other person or entity responsible for the disbursement of funds in payment of wages or salaries may withhold or divert a portion of an employee's wages or salaries for contributions to political committees or for use as political contributions except upon the written request of the employee. The request must be made on a form prescribed by the commission informing the employee of the prohibition against employer and labor organization discrimination described in subsection (2) of this section. The request is valid for no more than twelve months from the date it is made by the employee.

(4) Each person or entity who withholds contributions under subsection (3) of this section shall maintain open for public inspection for a period of no less than three years, during normal business hours, documents and books of accounts that shall include a copy of each employee's request, the amounts and dates funds were actually withheld, and the amounts and dates funds were transferred to a political committee. Copies of such information shall be delivered to the commission upon request.

NEW SECTION. Sec. 9. **CHANGING MONETARY LIMITS.** At the beginning of each even-numbered calendar year, the commission shall increase or decrease all dollar amounts in this chapter based on changes in economic conditions as reflected in the inflationary index used by the commission under RCW 42.17.370. The new dollar amounts established by the commission under this section shall be rounded off by the commission to amounts as judged most convenient for public understanding and so as to be within ten percent of the target amount equal to the base amount provided in this chapter multiplied by the increase in the inflationary index since the effective date of this act.

NEW SECTION. Sec. 10. **CONTRIBUTIONS FROM BEFORE EFFECTIVE DATE OF ACT.** Contributions made and received before the effective date of this act are considered to be contributions under sections 4 through 19 of this act. Monetary contributions that exceed the contribution limitations and that have not been spent by the recipient of the contribution by the effective date of this act must be disposed of in accordance with RCW 42.17.095.

NEW SECTION. Sec. 11. **TIME LIMIT FOR STATE**



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OFFICIAL TO SOLICIT OR ACCEPT CONTRIBUTIONS. During the period beginning on the thirtieth day before the date a regular legislative session convenes and continuing thirty days past the date of final adjournment, and during the period beginning on the date a special legislative session convenes and continuing through the date that session adjourns, no state official or a person employed by or acting on behalf of a state official or state legislator may solicit or accept contributions to a public office fund, to a candidate or authorized committee, or to retire a campaign debt.

NEW SECTION. Sec. 12. RESTRICTION ON LOANS.

(1) A loan is considered to be a contribution from the maker and the guarantor of the loan and is subject to the contribution limitations of this chapter.

(2) A loan to a candidate or the candidate committee must be by written agreement.

(3) The proceeds of a loan made to a candidate:

(a) By a commercial lending institution;

(b) Made in the regular course of business;

(c) On the same terms ordinarily available to members of the public; and

(d) That is secured or guaranteed,
are not subject to the contribution limits of this chapter.

NEW SECTION. Sec. 13. CONTRIBUTIONS ON BEHALF OF ANOTHER. (1) A person, other than an individual, may not be an intermediary or an agent for a contribution.

(2) An individual may not make a contribution on behalf of another person or entity, or while acting as the intermediary or agent of another person or entity, without disclosing to the recipient of the contribution both his or her full name, street address, occupation, name of employer, if any, or place of business if self-employed, and the same information for each contributor for whom the individual serves as intermediary or agent.

NEW SECTION. Sec. 14. CERTAIN CONTRIBUTIONS REQUIRED TO BE BY WRITTEN INSTRUMENT. (1) An individual may not make a contribution of more than fifty dollars, other than an in-kind contribution, except by a written instrument containing the name of the donor and the name of the payee.

(2) A committee may not make a contribution, other than in-kind, except by a written instrument containing the name of the donor and the name of the payee.

NEW SECTION. Sec. 15. SOLICITATION OF CONTRIBUTIONS BY GOVERNMENT EMPLOYEES. (1) No state official or state official's agent may knowingly solicit, di-

rectly or indirectly, a contribution from an employee in the state official's agency.

(2) No state official or state employee may provide an advantage or disadvantage to an employee or applicant for employment in the classified civil service concerning the applicant's or employee's:

(a) Employment;

(b) Conditions of employment; or

(c) Application for employment,

based on the employee's or applicant's contribution or promise to contribute or failure to make a contribution or contribute to a political party or committee.

NEW SECTION. Sec. 16. AGENCY SHOP FEES AS CONTRIBUTIONS. A labor organization may not use agency shop fees paid by an individual who is not a member of the organization to make contributions or expenditures to influence an election or to operate a political committee, unless affirmatively authorized by the individual.

NEW SECTION. Sec. 17. SOLICITATION FOR ENDORSEMENT FEES. A person or entity may not solicit from a candidate, committee, political party, or other person or entity money or other property as a condition or consideration for an endorsement, article, or other communication in the news media promoting or opposing a candidate, committee, or political party.

NEW SECTION. Sec. 18. REIMBURSEMENT FOR CONTRIBUTIONS. A person or entity may not, directly or indirectly, reimburse another person or entity for a contribution to a candidate, committee, or political party.

NEW SECTION. Sec. 19. PROHIBITION ON USE OF CONTRIBUTIONS FOR A DIFFERENT OFFICE. (1) Except as provided in subsection (2) of this section, a candidate committee may not use or permit the use of contributions solicited for or received by the candidate committee to further the candidacy of the individual for an office other than the office designated on the statement of organization. A contribution solicited for or received on behalf of the candidate is considered solicited or received for the candidacy for which the individual is then a candidate if the contribution is solicited or received before the general elections for which the candidate is a nominee or is unopposed.

(2) With the written approval of the contributor, a candidate committee may use or permit the use of contributions solicited for or received by the candidate committee from that contributor to further the candidacy of the individual for an office other than the office designated on the statement of organization.

Sec. 20. TRANSFER OF FUNDS--USE OF FUNDS FOR OTHER OFFICE ELIMINATED. RCW 42.17.095 and 1982 c 147 s B are each amended to read as follows:

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The surplus funds of a candidate, or of a political committee supporting or opposing a candidate, may only be disposed of in any one or more of the following ways:

(1) Return the surplus to a contributor in an amount not to exceed that contributor's original contribution;

(2) Transfer the surplus to the candidate's personal account as reimbursement for lost earnings incurred as a result of that candidate's election campaign. Such lost earnings shall be verifiable as unpaid salary or, when the candidate is not salaried, as an amount not to exceed income received by the candidate for services rendered during an appropriate, corresponding time period. All lost earnings incurred shall be documented and a record thereof shall be maintained by the candidate or the candidate's political committee. The committee shall include a copy of such record when its expenditure for such reimbursement is reported pursuant to RCW 42.17.090;

(3) Transfer the surplus to ~~(one or more candidates or to)~~ a political ~~(committee or)~~ party or to a caucus of the state legislature;

(4) Donate the surplus to a charitable organization registered in accordance with chapter 19.09 RCW;

(5) Transmit the surplus to the state treasurer for deposit in the general fund; or

(6) Hold the surplus in the campaign depository or depositories designated in accordance with RCW 42.17.050 for possible use in a future election campaign ~~(for political activity, for community activity, or for nonreimbursed public office-related expenses)~~ for the same office last sought by the candidate and report any such disposition in accordance with RCW 42.17.090: PROVIDED, That if the candidate subsequently announces or publicly files for office, information as appropriate is reported to the commission in accordance with RCW 42.17.040 through 42.17.090. If a subsequent office is not sought the surplus held shall be disposed of in accordance with the requirements of this section.

(7) No candidate or authorized committee may transfer funds to any other candidate or other political committee.

Sec. 21. CANDIDATE PERSONAL FUND LOANS LIMITED. RCW 42.17.125 and 1989 c 280 s 12 are each amended to read as follows:

Contributions received and reported in accordance with RCW 42.17.060 through 42.17.090 may only be transferred to the personal account of a candidate, or of a treasurer or other individual or expended for such individual's personal use under the following circumstances:

(1) Reimbursement for or loans to cover lost earnings incurred as a result of campaigning or services performed for

the committee. Such lost earnings shall be verifiable as unpaid salary, or when the individual is not salaried, as an amount not to exceed income received by the individual for services rendered during an appropriate, corresponding time period. All lost earnings incurred shall be documented and a record thereof shall be maintained by the individual or the individual's political committee. The committee shall include a copy of such record when its expenditure for such reimbursement is reported pursuant to RCW 42.17.090.

(2) Reimbursement for direct out-of-pocket election campaign and postelection campaign related expenses made by the individual. To receive reimbursement from the political committee, the individual shall provide the committee with written documentation as to the amount, date, and description of each expense, and the committee shall include a copy of such information when its expenditure for such reimbursement is reported pursuant to RCW 42.17.090.

(3) Repayment of loans made by the individual to political committees, which repayment shall be reported pursuant to RCW 42.17.090. However, contributions may not be used to reimburse a candidate for loans totaling more than three thousand dollars made by the candidate to the candidate's own authorized committee or campaign.

-PART IV- INDEPENDENT EXPENDITURES

Sec. 22. INDEPENDENT EXPENDITURE ADVERTISING DISCLOSURE. RCW 42.17.570 and 1984 c 216 s 1 are each amended to read as follows:

(1) All written political advertising, whether relating to candidates or ballot propositions, shall include the sponsor's name and address. All radio and television political advertising, whether relating to candidates or ballot propositions, shall include the sponsor's name. The use of an assumed name shall be unlawful. The party with which a candidate files shall be clearly identified in political advertising for partisan office.

(2) In addition to the materials required by subsection (1) of this section, all political advertising undertaken as an independent expenditure by a person or entity other than a party organization must include the following statement on the communication "NOTICE TO VOTERS (Required by law): This advertisement is not authorized or approved by any candidate. It is paid for by (name, address, city, state). If the advertisement is undertaken by a nonindividual, then the following notation must also be included: "Top Five Contributors," followed by a listing of the names of the five persons or entities making the largest contributions reportable under this chapter during the twelve-month period before the date of the advertisement.

(3) The statements and listings of contributors required by subsections (1) and (2) of this section shall:

(a) Appear on each page or fold of the written communication in at least ten-point type, or in type at least ten percent of the largest size type used in a written communi-



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cation directed at more than one voter, such as a billboard or poster, whichever is larger;

(b) Not be subject to the half-tone or screening process;

(c) Be in a printed or drawn box set apart from any other printed matter; and

(d) Be clearly spoken on any broadcast advertisement.

(4) Political yard signs are exempt from the requirement of subsections (1) and (2) of this section that the name and address of the sponsor of political advertising be listed on the advertising. In addition, the public disclosure commission shall, by rule, exempt from the identification requirements of subsections (1) and (2) of this section forms of political advertising such as campaign buttons, balloons, pens, pencils, sky-writing, inscriptions, and other forms of advertising where identification is impractical.

((3)) (5) For the purposes of this section, "yard sign" means any outdoor sign with dimensions no greater than eight feet by four feet.

NEW SECTION. Sec. 23. INDEPENDENT EXPENDITURE DISCLOSURE. A person or entity other than a party organization making an independent expenditure by mailing one thousand or more identical or nearly identical cumulative pieces of political advertising in a single calendar year shall, within two working days after the date of the mailing, file a statement disclosing the number of pieces in the mailing and an example of the mailed political advertising with the election officer of the county or residence for the candidate supported or opposed by the independent campaign expenditure or, in the case of an expenditure made in support of or in opposition to a ballot proposition, the county of residence for the person making the expenditure.

PART V

USE OF PUBLIC FUNDS OR OFFICE FOR POLITICAL PURPOSES

NEW SECTION. Sec. 24. Public funds, whether derived through taxes, fees, penalties, or any other sources, shall not be used to finance political campaigns for state or local office.

NEW SECTION. Sec. 25. FRANKING PRIVILEGE LIMITED. During the twelve-month period preceding the expiration of a state legislator's term in office, no incumbent to that office may mail to a constituent at public expense a letter, newsletter, brochure, or other piece of literature that is not in direct response to that constituent's request for a response or for information. However, one mailing mailed within thirty days after the start of a regular legislative session

and one mailing mailed within sixty days after the end of a regular legislative session of identical newsletters to constituents are permitted. A violation of this section constitutes use of the facilities of a public office for the purpose of assisting a campaign under RCW 42.17.130.

The house of representatives and senate shall specifically limit expenditures per member for the total cost of mailings, including but not limited to production costs, printing costs, and postage.

Sec. 26. STATE PAYROLL POLITICAL CHECK-OFF ELIMINATED. RCW 41.04.230 and 1988 c 107 s 19 are each amended to read as follows:

Any official of the state authorized to disburse funds in payment of salaries and wages of public officers or employees is authorized, upon written request of the officer or employee, to deduct from the salaries or wages of the officers or employees, the amount or amounts of subscription payments, premiums, contributions, or continuation thereof, for payment of the following:

(1) Credit union deductions: PROVIDED, That the credit union is organized solely for public employees: AND PROVIDED FURTHER, That twenty-five or more employees of a single state agency or a total of one hundred or more state employees of several agencies have authorized such a deduction for payment to the same credit union.

(2) Parking fee deductions: PROVIDED, That payment is made for parking facilities furnished by the agency or by the department of general administration.

(3) U.S. savings bond deductions: PROVIDED, That a person within the particular agency shall be appointed to act as trustee. The trustee will receive all contributions; purchase and deliver all bond certificates; and keep such records and furnish such bond or security as will render full accountability for all bond contributions.

(4) Board, lodging or uniform deductions when such board, lodging and uniforms are furnished by the state, or deductions for academic tuitions or fees or scholarship contributions payable to the employing institution.

(5) Dues and other fees deductions: PROVIDED, That the deduction is for payment of membership dues to any professional organization formed primarily for public employees or college and university professors: AND PROVIDED, FURTHER, That twenty-five or more employees of a single state agency, or a total of one hundred or more state employees of several agencies have authorized such a deduction for payment to the same professional organization.

(6) Labor or employee organization dues may be deducted in the event that a payroll deduction is not provided under a collective bargaining agreement under the provisions of RCW 41.06.150: PROVIDED, That twenty-five or more officers or employees of a single agency, or a total of one hundred or more officers or employees of several agencies have authorized such a deduction for payment to the same labor or employee organization: PROVIDED, FURTHER, That labor or employee organizations with five hundred or



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more members in state government may have payroll deduction for employee benefit programs.

~~(7) (Voluntary deductions for political committees duly registered with the public disclosure commission and/or the federal election commission. PROVIDED, That twenty-five or more officers or employees of a single agency or a total of one hundred or more officers or employees of several agencies have authorized such a deduction for payment to the same political committee.~~

~~(8)) Insurance contributions to the authority for payment of premiums under contracts authorized by the state health care authority.~~

Deductions from salaries and wages of public officers and employees other than those enumerated in this section or by other law, may be authorized by the director of financial management for purposes clearly related to state employment or goals and objectives of the agency and for plans authorized by the state health care authority.

The authority to make deductions from the salaries and wages of public officers and employees as provided for in this section shall be in addition to such other authority as may be provided by law: PROVIDED, That the state or any department, division, or separate agency of the state shall not be liable to any insurance carrier or contractor for the failure to make or transmit any such deduction.

PART VI POLITICAL EXPENDITURE AND CONTRIBUTION REPORTING

Sec. 27. INDEPENDENT EXPENDITURE ANNUAL REPORTING. RCW 42.17.180 and 1990 c 139 s 4 are each amended to read as follows:

(1) Every employer of a lobbyist registered under this chapter during the preceding calendar year and every person other than an individual that made contributions aggregating to more than ten thousand dollars or independent expenditures aggregating to more than five hundred dollars during the preceding calendar year shall file with the commission on or before ~~((March 31st))~~ the last day of February of each year a statement disclosing for the preceding calendar year the following information:

(a) The name of each state elected official and the name of each candidate for state office who was elected to the office and any member of the immediate family of those persons to whom the ~~((employer))~~ person reporting has paid any compensation in the amount of five hundred dollars or more during the preceding calendar year for personal employment or professional services, including professional services rendered by a corporation, partnership, joint ven-

ture, association, union, or other entity in which the person holds any office, directorship, or any general partnership interest, or an ownership interest of ten percent or more, the value of the compensation in accordance with the reporting provisions set out in RCW 42.17.241(2), and the consideration given or performed in exchange for the compensation.

(b) The name of each state elected official, successful candidate for state office, or members of his immediate family to whom the ~~((lobbyist employer))~~ person reporting made expenditures, directly or indirectly, either through a lobbyist or otherwise, the amount of the expenditures and the purpose for the expenditures. For the purposes of this subsection, the term expenditure shall not include any expenditure made by the employer in the ordinary course of business if the expenditure is not made for the purpose of influencing, honoring, or benefiting the elected official, successful candidate, or member of his immediate family, as an elected official or candidate.

(c) The total expenditures made by the ~~((employer))~~ person reporting for lobbying purposes, whether through or on behalf of a registered lobbyist or otherwise.

(d) All contributions made to a ~~((candidate for state office, to a))~~ political committee supporting or opposing a candidate for state office, or to a political committee supporting or opposing a state-wide ballot proposition. Such contributions shall be identified by the name and the address of the recipient and the aggregate amount contributed to each such recipient.

(e) The name and address of each registered lobbyist employed by the ~~((employer))~~ person reporting and the total expenditures made by ~~((the employer))~~ such person for each such lobbyist for lobbying purposes.

(f) The names, offices sought, and party affiliations of candidates for state offices supported or opposed by independent expenditures of the person reporting and the amount of each such expenditure.

(g) The identifying proposition number and a brief description of any state-wide ballot proposition supported or opposed by expenditures not reported under (d) of this subsection and the amount of each such expenditure.

(h) Such other information as the commission prescribes by rule.

(2)(a) Except as provided in (b) of this subsection, an employer of a lobbyist registered under this chapter shall file a special report with the commission if the employer makes a contribution or contributions aggregating more than one hundred dollars in a calendar month to any one of the following: A candidate, elected official, officer or employee of an agency, or political committee. The report shall identify the date and amount of each such contribution and the name of the candidate, elected official, agency officer or employee, or political committee receiving the contribution or to be benefited by the contribution. The report shall be filed on a form prescribed by the commission and shall be filed within fifteen days after the last day of the calendar



**COMPLETE TEXT OF
Initiative Measure 134
(con't.)**

month during which the contribution was made.

(b) The provisions of (a) of this subsection do not apply to a contribution which is made through a registered lobbyist and reportable under RCW 42.17.170.

**PART VII
PENALTIES**

Sec. 28. PENALTIES. RCW 42.17.390 and 1973 c 1 s 39 are each amended to read as follows:

((+)) One or more of the following civil remedies and sanctions may be imposed by court order in addition to any other remedies provided by law:

((a)) (1) If the court finds that the violation of any provision of this chapter by any candidate or political committee probably affected the outcome of any election, the result of said election may be held void and a special election held within sixty days of such finding. Any action to void an election shall be commenced within one year of the date of the election in question. It is intended that this remedy be imposed freely in all appropriate cases to protect the right of the electorate to an informed and knowledgeable vote.

((b)) (2) If any lobbyist or sponsor of any grass roots lobbying campaign violates any of the provisions of this chapter, his registration may be revoked or suspended and he may be enjoined from receiving compensation or making expenditures for lobbying: PROVIDED, HOWEVER, That imposition of such sanction shall not excuse said lobbyist from filing statements and reports required by this chapter.

((c)) (3) Any person who violates any of the provisions of this chapter may be subject to a civil penalty of not more than ten thousand dollars for each such violation. However, a person or entity who violates section 4 of this act may be subject to a civil penalty of ten thousand dollars or three times the amount of the contribution illegally made or accepted, whichever is greater.

((d)) (4) Any person who fails to file a properly completed statement or report within the time required by this chapter may be subject to a civil penalty of ten dollars per day for each day each such delinquency continues.

((e)) (5) Any person who fails to report a contribution or expenditure may be subject to a civil penalty equivalent to the amount he failed to report.

((f)) (6) The court may enjoin any person to prevent the doing of any act herein prohibited, or to compel the performance of any act required herein.

**PART VIII
PUBLIC DISCLOSURE COMMISSION**

NEW SECTION. Sec. 29. COMMISSION AUDITS. The commission shall conduct a sufficient number of audits and field investigations so as to provide a statistically valid finding regarding the degree of compliance with the provisions of this chapter by all required filers.

**PART IX
GIFTS**

NEW SECTION. Sec. 30. DEFINITIONS. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Benefit" means a commercial, proprietary, financial, economic, or monetary advantage, or the avoidance of a commercial, proprietary, financial, economic, or monetary disadvantage.

(2) "Gift" means a rendering of money, property, services, discount, loan forgiveness, payment of indebtedness, reimbursements from or payments by persons, other than the state of Washington or an agency or political subdivision thereof, for travel or anything else of value in excess of fifty dollars in return for which legal consideration of equal or greater value is not given and received but does not include:

(a) A contribution that is required to be reported under RCW 42.17.090 or 42.17.243;

(b) Informational material that is transferred for the purpose of informing the recipient about matters pertaining to official agency business, and that is not intended to financially benefit that recipient;

(c) A symbolic presentation that is not intended to financially benefit the recipient;

(d) An honorarium that is required to be reported under this chapter;

(e) Hosting in the form of entertainment, meals, or refreshments, the value of which does not exceed fifty dollars, furnished in connection with official appearances, official ceremonies, and occasions where official agency business is discussed;

(f) Gifts that are not used and that, within thirty days after receipt, are returned to the donor or delivered to a charitable organization without being claimed as a charitable contribution for tax purposes;

(g) Intrafamily gifts; or

(h) Gifts received in the normal course of private business or social interaction that are not related to public policy decisions or agency actions.

Sec. 31. PUBLIC OFFICIAL ANNUAL REPORTING OF "GIFTS." RCW 42.17.240 and 1989 c 158 s 1 are each amended to read as follows:

(1) Every elected official and every executive state officer shall after January 1st and before April 15th of each year file with the commission a statement of financial affairs for the preceding calendar year. However, any local elected official whose term of office expires immediately after December 31st shall file the statement required to be filed by this section



**COMPLETE TEXT OF
Initiative Measure 134
(con't.)**

for the year that ended on that December 31st. In addition to and in conjunction with the statement of financial affairs, every official and officer shall file a statement describing any gifts received during the preceding calendar year.

(2) Every candidate shall within two weeks of becoming a candidate file with the commission a statement of financial affairs for the preceding twelve months.

(3) Every person appointed to a vacancy in an elective office or executive state officer position shall within two weeks of being so appointed file with the commission a statement of financial affairs for the preceding twelve months.

(4) A statement of a candidate or appointee filed during the period from January 1st to April 15th shall cover the period from January 1st of the preceding calendar year to the time of candidacy or appointment if the filing of the statement would relieve the individual of a prior obligation to file a statement covering the entire preceding calendar year.

(5) No individual may be required to file more than once in any calendar year.

(6) Each statement of financial affairs filed under this section shall be sworn as to its truth and accuracy.

(7) For the purposes of this section, the term "executive state officer" includes those listed in RCW 42.17.2401.

(8) This section does not apply to incumbents or candidates for a federal office or the office of precinct committee officer.

NEW SECTION. Sec. 32. LOBBYIST NOTIFICATION OF GIFTS. When a listing or a report of contributions is made to the commission under RCW 42.17.170(2)(c), a copy of the listing or report must be given to the candidate, elected official, professional staff member of the legislature, or officer or employee of an agency, or a political committee supporting or opposing a ballot proposition named in the listing or report.

**PART X
MISCELLANEOUS**

NEW SECTION. Sec. 33. CODIFICATION DIRECTIONS. (1) Sections 1 through 19 of this act are each added to chapter 42.17 RCW as a subchapter and codified with the subchapter heading of "CAMPAIGN CONTRIBUTION LIMITATIONS."

(2) Sections 23 through 25, 29, 30, and 32 of this act are each added to chapter 42.17 RCW.

NEW SECTION. Sec. 34. CAPTIONS. Section captions and part headings used in this act do not constitute any part of the law.

NEW SECTION. Sec. 35. REPEALER. RCW 42.17.243 and 1977 ex.s. c 336 s 5 are each repealed.

NEW SECTION. Sec. 36. SHORT TITLE. This act may be known and cited as the Fair Campaign Practices Act.

LANGUAGE ASSISTANCE

In many instances, assistance can be provided to those who have difficulty reading this pamphlet because their primary language is not English. For more information, call the Secretary of State Voter Information Hotline at 1-800-448-4881.

**Employer's
Lobbying Expenses**

L3

THIS SPACE FOR OFFICE USE

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FEB 26 2009

**Public Disclosure
Commission**

1. Employer's Name (Use complete company, association, union or entity name.)
Building Industry Association of Washington

Attention (Identify person to whom inquiries about the information below should be directed; NOT the lobbyist.)
Elliot Swaney

Mailing Address Telephone
PO Box 1909 (360) 352-7800

City State Zip + 4 E-Mail Address Year Report Covers
Olympia WA 98501 elliot@biaw.com 2008

THIS REPORT MUST BE FILED BY THE LAST DAY OF FEBRUARY. Include expenditures made and accrued during the previous calendar year for lobbying the Washington State Legislature and/or any state agency. Complete all sections. Use "none" or "0" when applicable.

2. Identify each of your lobbyists/lobbying firms below. In column 1, show the full amount of salary or fee each earned for lobbying. In column 2, show the full amount paid (plus obligated) for other lobbying related expenses that were made by or through the lobbyist and reported by the lobbyist on the monthly L-2 report (e.g., contributions to legislative candidates, reimbursement for entertainment expenses, etc.). Compute the subtotals across and down the columns; put the grand total of expenses incurred by or through lobbyists in the space designated.

| Names of Registered Lobbyists (If payments were to lobbying firm, list firm name) | Col 1-Salary | Col 2-Other | Total Amount |
|---|--------------|--------------|-----------------|
| Brian Minnich | \$ 24,000.00 | \$ 250.05 | \$ 24,250.05 |
| Trent Mason | 18,000.00 | 208.69 | 18,208.69 |
| Elliot Swaney | 12,000.00 | 6,657.795.51 | 6,669,795.51 |
| Total From Attached Page | 87,000.00 | 4658.60 | 91,658.60 |
| Total Expenses By or Through Lobbyists | | | \$ 6,803,912.85 |

Information continued on attached pages

DO NOT INCLUDE EXPENDITURES ALREADY ACCOUNTED FOR IN ITEM 2 ABOVE when completing Items 3 through 7 below.

3. Other expenditures made by the employer for lobbying purposes. Show total expenditures made/accrued:

- a. to vendors on behalf of or in support of registered lobbyists (e.g., entertainment credit card purchases). \$ _____
- b. to or on behalf of expert witnesses or others retained to provide lobbying services who offer specialized knowledge or expertise that assists the employer's lobbying effort. _____
- c. for entertainment, tickets, passes, travel expenses (e.g., transportation, meals, lodging, etc.) and enrollment or course fees provided to legislators, state officials, state employees and members of their immediate families. (Also complete Item 9.) _____
- d. for composing, designing, producing and distributing informational materials for use primarily to influence legislation; and _____
- e. for grass roots lobbying expenses, including those previously reported by employer on Form L-6, and payments for lobbying communications to clients/customers (other than to corporate stockholders and members of an organization or union). _____

4. Political contributions to candidates for legislative or statewide executive office, committees supporting or opposing these candidates, or committees supporting or opposing statewide ballot measures. (Also complete Item 10.)

- a. Contributions made directly by the employer, including those previously reported on PDC Form L-3c. _____
- b. If contributions were made by a political committee associated, affiliated or sponsored by the employer, show the PAC name below. (Information reported by the PAC on C-4 reports need not be again included as part of this L-3 report.) _____

Name of PAC **Washington Affordable Housing Council**

5. Independent expenditures supporting or opposing a candidate for legislative or statewide executive office or a statewide ballot measure. (Also complete Item 11.) _____

6. Expenditures to or on behalf of legislators, state officials, or their spouse, registered domestic partner and dependents for the purpose of influencing, honoring or benefiting the legislator or official. (Normal course of business payments are not reportable.) (Also complete Item 14) _____

7. Other lobbying-related expenditures, whether through or on behalf of a registered lobbyist. Attach list itemizing each expense (i.e., show date, recipient, purpose and amount). Do not include payments accounted for above. _____

Total Lobbying Expenses \$ 6,803,912.85
(Items 2 thru 7)

8. This report must be certified by the president, secretary-treasurer or similar office of lobbying employer.

Certification: I certify that this report is true, complete and correct to the best of my knowledge.

Signature of Employer Officer **Brian Minnich** Date **2/23/09**

Printed Name and Title of Officer: **Brian Minnich, Legislative Affairs Director**

CONTINUE ON REVERSE

| | | | |
|--|---|---|---|
| Employer's Name Building Industry Association of Washington | | Year report covers: 2008 | |
| | | FEB 26 2009 | |
| 9. Entertainment, tickets, passes, travel expenses (including transportation, meals, lodging, etc.) and enrollment or course fees provided to legislators, state officials, state employees and members of their immediate families. See instruction manual for details. | | | |
| Name and Title | Cost or Value | Date and Description of Expense | |
| | \$ | | |
| <input type="checkbox"/> Information continued on attached pages | | | |
| 10. Contributions (not reported by the lobbyist) totaling over \$25 to a legislative or statewide executive office candidate, a committee formed to support or oppose one of these candidates or a committee supporting or opposing a statewide ballot measure. Do not list employer-affiliated PAC contributions. | | | |
| Name of Recipient | Amount | Date (and, if In-Kind, Description) | |
| | \$ | | |
| <input type="checkbox"/> Information continued on attached pages | | | |
| 11. Independent expenditures in support of or opposition to a) a legislative or statewide executive office candidate or b) a statewide ballot proposition. See instruction manual for definition of "independent expenditure." | | | |
| Candidate's Name, Office Sought & Party or Ballot Proposition Number & Brief Description | Amount | Date and Description of Expense (Note if Support or Oppose) | |
| | \$ | | |
| <input type="checkbox"/> Information continued on attached pages | | | |
| 12. Compensation of \$2,000 or more during the preceding calendar year for employment or professional services paid to state elected officials, successful candidates for state office and each member of their immediate family. | | | |
| Name | Relationship to Candidate or Elected Official if Member of Family | Amount (Code)** | Description of Consideration or Services Exchanged for Compensation |
| <input type="checkbox"/> Information continued on attached pages | | | |
| 13. Compensation of \$2,000 or more during the preceding calendar year for professional services paid to any corporation, partnership, joint venture, association or other entity in which state elected official, successful state candidate or member of their immediate family hold office, partnership, directorship or ownership interest of 10% or more. | | | |
| Firm Name | Person's Name | Amount (Code)** | Description of Consideration or Services Exchanged for Compensation |
| <input type="checkbox"/> Information continued on attached pages | | | |
| 14. Any expenditure, not otherwise reported, made directly or indirectly to a state elected official, successful candidate for state office or member of their immediate family if made to honor, influence or benefit the person because of his or her official position. | | | |
| Name | Amount | Date and Purpose | |
| | \$ | | |
| <input type="checkbox"/> Information continued on attached pages | | | |

****DOLLAR**
CODE AMOUNT
 A - \$1 to \$3,999
 B - \$4,000 to \$19,999
 C - \$20,000 to \$39,999

****DOLLAR**
CODE AMOUNT
 D - \$40,000 to \$99,999
 E - \$100,000 or more

RECEIVED

L3

FEB 26 2009

INFORMATION CONTINUED

(Use this page if you need additional space for items 10 or 11)

Employer's Name: **Building Industry Association of Washington** Year report covers: **2008** Public Disclosure Commission

10. Contributions

| Name of Recipient | Amount | Date (and, if In-Kind, Description) |
|-------------------|--------|-------------------------------------|
| | \$ | |

11. Independent expenditures

| Candidate's Name, Office Sought & Party or Ballot Proposition Number & Brief Description | Amount | Date and Description of Expense (Note if Support or Oppose) |
|--|--------|---|
| | \$ | |

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L3

FEB 26 2009

INFORMATION CONTINUED

(Use this page if you need additional space for items 12 thru 14)

| | | | |
|--|---|----------------------------|---|
| Employer's Name Building Industry Association of Washington | | Year report covers 2008 | Public Disclosure Commission |
| 12. Compensation of \$2,000 or more for employment, etc. | | | |
| Name | Relationship to Candidate or Elected Official if Member of Family | Amount (Code)** | Description of Consideration or Services Exchanged for Compensation |
| | | | |
| 13. Compensation of \$2,000 or more for professional services | | | |
| Firm Name | Person's Name | Amount (Code)** | Description of Consideration or Services Exchanged for Compensation |
| | | | |
| 14. Any expenditure not otherwise reported | | | |
| Name | Amount | Date and Purpose | |
| | \$ | | |

****DOLLAR
CODE AMOUNT**

A - \$1 to \$3,999
 B - \$4,000 to \$19,999
 C - \$20,000 to \$39,999

****DOLLAR
CODE AMOUNT**

D - \$40,000 to \$99,999
 E - \$100,000 or more

L2
11/95

Lobbyist Monthly Expense Report

(as required by chapter 397, 1995 Session Laws)

| | | | | |
|--|--|----------|---|---|
| 1. Lobbyist Name | | Last | First | Middle Initial |
| | | SWANEY | ELLIOT | |
| Mailing Address 111 W 21ST AVE | | | | |
| City OLYMPIA | | State WA | Zip 98501 | New Address? <input type="checkbox"/> Yes <input type="checkbox"/> No |
| 2. This report is for the following period | | 1 | 2006 | Business Phone 360-352-7800 |
| | | Month | Year | |
| | | OR | This report corrects or amends the report for | |
| | | | Month | Year |

| ALL COMPLETE THIS PART | | | COMPLETE IF YOU HAVE MORE THAN ONE EMPLOYER | | |
|---|--|--|--|-------------------------|-------------------------|
| Expense Category | TOTAL AMOUNT THIS MONTH All employers expenses (All Columns) | Amounts paid from lobbyist's own funds, not reimbursed or attributed to an employer. Column A | Amount attributed to each employer | | |
| | | | Employer #1 Identify by name below (11) Column B | Employer #2 Column C | Employer #3 Column D |
| 3. COMPENSATION earned from employer for lobbying this period (salary, wages, retainer) | 1000 | | 1000 | 0.00 | 0.00 |
| 4. PERSONAL EXPENSES for travel, food and refreshments | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| 5. ENTERTAINMENT, GRATUITIES, TRAVEL, SEMINARS for state officials, employees, their families (See #15) | 1475.96 | 0.00 | 1475.96 | 0.00 | 0.00 |
| 6. CONTRIBUTIONS to elected officials, candidates and political committees (See #16) | 20000 | 0.00 | 20000 | 0.00 | 0.00 |
| 7. ADVERTISING, PRINTING, INFORMATIONAL LITERATURE | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| 8. POLITICAL ADS, PUBLIC RELATIONS, POLLING, TELEMARKETING, ETC. (See #17) | 24000 | 0.00 | 24000 | 0.00 | 0.00 |
| 9. OTHER EXPENSES AND SERVICES (See #18) | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| 10. TOTAL COMPENSATION AND EXPENSES INCURRED THIS MONTH | 46475.96 | 0 | 46475.96 | 0 | 0 |

11. EMPLOYERS' NAMES (from above)

- No. 1 (Column B) BUILDING INDUSTRY ASSN OF WA
- No. 2 (Column C)
- No. 3 (Column D)

12. Subject matter of proposed legislation or other legislative activity or rulemaking the lobbyist was supporting or opposing.

- | | | |
|------------------|-------------------------|--|
| Bill Number | Subject Matter or Issue | Legislative Committee or State Agency Considering Matter |
| No. 1 (Column B) | | |
| No. 2 (Column C) | | |
| No. 3 (Column D) | | |

13. Of the time spent lobbying, what percentage was devoted to lobbying : Legislature % State Agencies %

14. TERMINATION: (COMPLETE THIS ITEM ONLY IF YOU WISH TO TERMINATE YOUR REGISTRATION)

Date registration ends: Employer's name:

I understand that an L-2 report is required for any month or portion thereof in which I am a registered lobbyist. I also understand that once I have terminated my registration, I must file a new registration prior to lobbying for that employer in the future. All the registrations terminate automatically on the second Monday in January of each odd numbered year.

CERTIFICATION

I certify that this report is true and complete to the best of my knowledge.

Certified By:
ELLIOT SWANEY

Date Filed
02/11/2006

CONTINUE ON NEXT PAGE

L2
11/05

7088564480
PDC OFFICE USE

Lobbyist Monthly Expense Report

(as required by chapter 397, 1995 Session Laws)

| | | | | |
|--|-------|--------|---|----------------|
| 1. Lobbyist Name | | Last | First | Middle Initial |
| | | SWANEY | ELLIOT | |
| Mailing Address 111 W 21ST AVE | | | | |
| City | State | Zip | New Address? <input type="checkbox"/> Yes <input type="checkbox"/> No | |
| OLYMPIA | WA | 98501 | | |
| 2. This report is for the following period | | 2 | 2006 | Business Phone |
| Month Year | | OR | This report corrects or amends the report for | 360-352-7800 |
| | | Month | Year | Month Year |

| Expense Category | ALL COMPLETE THIS PART | | COMPLETE IF YOU HAVE MORE THAN ONE EMPLOYER | | |
|---|--|--|---|-------------------------|-------------------------|
| | TOTAL AMOUNT THIS MONTH All employers' expenses (All Columns) | Amounts paid from lobbyist's own funds, not reimbursed or attributed to an employer. Column A | Employer #1 Identify by name below (1) Column B | Employer #2 Column C | Employer #3 Column D |
| 3. COMPENSATION earned from employer for lobbying this period (salary, wages, retainer) | 1000 | | 1000 | 0.00 | 0.00 |
| 4. PERSONAL EXPENSES for travel, food and refreshments | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| 5. ENTERTAINMENT, GRATUITIES, TRAVEL, SEMINARS for state officials, employees, their families (See #15) | 19658.03 | 0.00 | 19658.03 | 0.00 | 0.00 |
| 6. CONTRIBUTIONS to elected officials, candidates and political committees (See #16) | 7500 | 0.00 | 7500 | 0.00 | 0.00 |
| 7. ADVERTISING, PRINTING, INFORMATIONAL LITERATURE | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| 8. POLITICAL ADS, PUBLIC RELATIONS, POLLING, TELEMARKETING, ETC. (See #17) | 4000 | 0.00 | 4000 | 0.00 | 0.00 |
| 9. OTHER EXPENSES AND SERVICES (See #18) | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| 10. TOTAL COMPENSATION AND EXPENSES INCURRED THIS MONTH | 32158.03 | 0 | 32158.03 | 0 | 0 |

11. EMPLOYERS' NAMES (from above)

No. 1 (Column B) BUILDING INDUSTRY ASSN OF WA

No. 2 (Column C)

No. 3 (Column D)

12. Subject matter of proposed legislation or other legislative activity or rulemaking the lobbyist was supporting or opposing.

| | | |
|------------------|------------------|------------------|
| No. 1 (Column B) | No. 2 (Column C) | No. 3 (Column D) |
| | | |

13. Of the time spent lobbying, what percentage was devoted to lobbying:

| | | | |
|-------------|---|----------------|---|
| Legislature | % | State Agencies | % |
| | | | |

14. TERMINATION: (COMPLETE THIS ITEM ONLY IF YOU WISH TO TERMINATE YOUR REGISTRATION)

Date registration ends: _____ Employer's name: _____

I understand that an L-2 report is required for any month or portion thereof in which I am a registered lobbyist. I also understand that once I have terminated my registration, I must file a new registration prior to lobbying for that employer in the future. All the registrations terminate automatically on the second Monday in January of each odd numbered year.

CERTIFICATION

| | | |
|--|--------------------------------|--------------------------|
| I certify that this report is true and complete to the best of my knowledge. | Certified By: ELLIOT SWANEY | Date Filed 03/12/2006 |
|--|--------------------------------|--------------------------|

CONTINUE ON NEXT PAGE

15. Itemize all of the following expenditures that were incurred by lobbyist or lobbyist employer(s) for legislators, state officials, state employees and members of their immediate families. Show the actual amount incurred for each individual or the amount fairly attributed to each.

Entertainment expenditures exceeding \$25 per occasion (including lobbyist's expense) for meals, beverages, tickets, passes, or for other forms of entertainment.

Travel, lodging and subsistence expenses in connection with a speech, presentation, appearance, trade mission, seminar or educational program.

Enrollment and course fees in connection with a seminar or educational program.

Lobbyists must provide an elected official with a copy of the L2 Memo Report if the lobbyist reports: 1) spending on one occasion over \$50.00 for food beverages for the official and/or his or her family member(s); or 2) providing travel, lodging, subsistence expenses or enrollment or course fees for the official and, if permitted, the official's family.

| Date | Name of all Persons Entertained or Provided Travel, etc. | Description, Place, etc. | Sponsoring Employer | Amount |
|------------|---|---------------------------------|-------------------------------------|----------|
| 02/06/2008 | SEN. BENTON, SEN. ROACH, SEN. HONEYFORD, SEN. MCCASLIN & AIDE, SEN. MORTON, BRIAN MINNICH, JIM TROYER, TRENT MATSON, ANDY COOK \$169.5 / 10 = \$16.95 PER PERSON | LUNCH - NEWHOUSE BLDG | BUILDING INDUSTRY ASSOCIATION OF | 169.5 |
| 02/07/2008 | REP. DEBOLT, REP. BAILEY, REP. ANDERSON, REP. SMITH, REP. AHERN, TIM HARRIS, TRENT MATSON, \$152.65 / 9 = \$16.95 PER PERSON | LUNCH - REP. DEBOLT'S OFFICE | BUILDING INDUSTRY ASSOCIATION OF | 203.4 |
| 02/20/2008 | SEN. ROACH, SEN. MORTON, AMY BRACKENBURY, TRENT MATSON, BRIAN MINNICH, ANDY COOK | LUNCH - NEWHOUSE BLDG | BUILDING INDUSTRY ASSOCIATION OF | 135.6 |
| 02/13/2008 | BRIAN MINNICH, REP. KRISTIANSEN, REP. HALER, REP. ERICKSEN, REP. CROUSE, REP. SCHINDLER, SCHMICK, REP. SMITH, REP. CONDOTTA, TIMOTHY HARRIS, AMY BRACKENBURY, ELLIOT SWANEY, REP. ROSS, REP. AHERN, REP. RODNE, REP. WARNICK, REP. PEARSON, SEN. CARROLL, SEN. SEN. SCHOESLER, JIM TROYER \$927.99 / 28 = \$33.14 PER PERSON | DINNER - BIAW OFFICES | BUILDING INDUSTRY ASSOCIATION OF | 927.99 |
| 02/26/2008 | REP. AHERN, SEN. CARRELL, REP. CHANDLER, REP. CLIBBORN, REP. CONDOTTA, REP. ERICKS, SEN. HOLMQUIST, JUSTICE JOHNSON, C., JUSTICE JOHNSON, J., REP. KELLEY, SEN. KILMER, SEN. KREIDLER & GUEST, REP. KRETZ, REP. LOOMIS, REP. ORCUTT, JUSTICE OWENS, REP. PEARSON, REP. SCHINDLER, SEN. SCHOESLER, REP. SELLS, REP. SMITH, JUSTICE STEPHENS, REP. TAKKO, JENN DRAKE, STEVE LITZOW, SHARON HANEK, KEVIN PARKER & SPOUSE, JAN ANGEL & SPOUSE, ERIN SHANNON, KIM BRESAW, TIMOTHY HARRIS, JENN KUNKEL, JAN ROHILA, JULIE NICHOLS & DONOVAN QUEBEDEAUX, JENNI HATFIELD, AMANDA FIELDS, DARLA SMITH, BRENDA LOHNES, TOM MCCABE, BRIAN MINNICH, AMY BRACKENBURY, TRENT MATSON, ELLIOT SWANEY, SPOUSES OR GUESTS | LEGISLATIVE RECEPTION - RED | BUILDING INDUSTRY ASSOCIATION OF | 18221.54 |

See Page 7 Attachment For More

CONTINUE ON NEXT PAGE

L2
11/05

Lobbyist Monthly Expense Report

(as required by chapter 397, 1995 Session Laws)

| | | | |
|--|-----------------------|------------------------|--|
| 1. Lobbyist Name | Last SWANEY | First ELLIOT | Middle Initial |
| Mailing Address 111 W 21ST AVE | | | |
| City OLYMPIA | State WA | Zip 98501 | New Address? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No |
| 2. This report is for the following period | 3 Month | 2008 Year | OR This report corrects or amends the report for |
| | | | Month Year Business Phone 360-352-7800 |

ALL COMPLETE THIS PART **COMPLETE IF YOU HAVE MORE THAN ONE EMPLOYER**

Include all reportable expenditures by lobbyist and lobbyist's employer for or on behalf of the lobbyist incurred during the reporting period Amount attributed to each employer

| Expense Category | TOTAL AMOUNT THIS MONTH All employers expenses (All Columns) | Amounts paid from lobbyist's own funds, not reimbursed or attributed to an employer. Column A | Employer #1 | Employer #2 | Employer #3 |
|---|---|--|---|-------------|-------------|
| | | | Identify by name below (11) Column B | Column C | Column D |
| 3. COMPENSATION earned from employer for lobbying this period (salary, wages, retainer) | 1000 | | 1000 | 0.00 | 0.00 |
| 4. PERSONAL EXPENSES for travel, food and refreshments | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| 5. ENTERTAINMENT, GRATUITIES, TRAVEL, SEMINARS for state officials, employees, their families (See #15) | 1610.24 | 0.00 | 1610.24 | 0.00 | 0.00 |
| 6. CONTRIBUTIONS to elected officials, candidates and political committees (See #16) | 500 | 0.00 | 500 | 0.00 | 0.00 |
| 7. ADVERTISING, PRINTING, INFORMATIONAL LITERATURE | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| 8. POLITICAL ADS, PUBLIC RELATIONS, POLLING, TELEMARKETING, ETC. (See #17) | 4000 | 0.00 | 4000 | 0.00 | 0.00 |
| 9. OTHER EXPENSES AND SERVICES (See #18) | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| 10. TOTAL COMPENSATION AND EXPENSES INCURRED THIS MONTH | 7110.24 | 0 | 7110.24 | 0 | 0 |

11. EMPLOYERS' NAMES (from above)

No. 1 (Column B) **BUILDING INDUSTRY ASSN OF WA**

No. 2 (Column C)

No. 3 (Column D)

12. Subject matter of proposed legislation or other legislative activity or rulemaking the lobbyist was supporting or opposing.

| | | |
|------------------|-------------------------|--|
| Bill Number | Subject Matter or Issue | Legislative Committee or State Agency Considering Matter |
| No. 1 (Column B) | | |
| No. 2 (Column C) | | |
| No. 3 (Column D) | | |

13. Of the time spent lobbying, what percentage was devoted to lobbying : Legislature % State Agencies %

14. TERMINATION: (COMPLETE THIS ITEM ONLY IF YOU WISH TO TERMINATE YOUR REGISTRATION)

Date registration ends: _____ Employer's name: _____

I understand that an L-2 report is required for any month or portion thereof in which I am a registered lobbyist. I also understand that once I have terminated my registration, I must file a new registration prior to lobbying for that employer in the future. All the registrations terminate automatically on the second Monday in January of each odd numbered year.

CERTIFICATION

| | | |
|--|---------------------------------------|---------------------------------|
| I certify that this report is true and complete to the best of my knowledge. | Certified By: ELLIOT SWANEY | Date Filed 04/15/2008 |
|--|---------------------------------------|---------------------------------|

CONTINUE ON NEXT PAGE

Lobbyist Employers Continued

| Expense Category | Employ #4 <small>Identify by name below (11)</small> Column E | Employ #5 Column F | Employ #6 Column G | Employ #7 Column H | Employ #8 Column I |
|---|---|-----------------------|-----------------------|-----------------------|-----------------------|
| 3. COMPENSATION earned from employer for lobbying this period (salary, wages, retainer?) | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| 4. PERSONAL EXPENSES for travel, food and refreshments | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| 5. ENTERTAINMENT, GRATUITIES, TRAVEL, SEMINARS for state officials, employees, their families (See #15) | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| 6. CONTRIBUTIONS to elected officials, candidates and political committees (See #16) | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| 7. ADVERTISING, PRINTING, INFORMATIONAL LITERATURE | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| 8. POLITICAL ADS, PUBLIC RELATIONS, POLLING, TELEMARKETING, ETC. (See #17) | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| 9. OTHER EXPENSES AND SERVICES (See #18) | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| 10. TOTAL COMPENSATION AND EXPENSES INCURRED THIS MONTH | 0 | 0 | 0 | 0 | 0 |

11. EMPLOYERS' NAMES (from above)

No. 4 (Column E)

No. 5 (Column F)

No. 6 (Column G)

No. 7 (Column H)

No. 8 (Column I)

12. Subject matter of proposed legislation or other legislative activity or rulemaking the lobbyist was supporting or opposing.

Bill Number

Subject Matter or Issue

Legislative Committee or State Agency Considering Matter

No. 4 (column E)

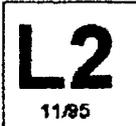
No. 5 (column F)

No. 6 (column G)

No. 7 (column H)

No. 8 (column I)

CONTINUE ON NEXT PAGE



1021390141
POC OFFICE USE

Lobbyist Monthly Expense Report

(as required by chapter 397, 1995 Session Laws)

1. Lobbyist Name Last: SWANEY First: ELLIOT Middle Initial:

2. This report is for the following period: 4 Month 2008 Year

3. City: OLYMPIA State: WA Zip: 98501

4. New Address? Yes No Business Phone: 360-352-7800

ALL COMPLETE THIS PART **COMPLETE IF YOU HAVE MORE THAN ONE EMPLOYER**

Include all reportable expenditures by lobbyist and lobbyist's employer for or on behalf of the lobbyist incurred during the reporting period. Amount attributed to each employer

| Expense Category | TOTAL AMOUNT THIS MONTH All employers expenses (Columns A) | Amounts paid from lobbyist's own funds, not reimbursed or attributed to an employer. Column A | Employer #1 | Employer #2 | Employer #3 |
|---|--|--|--|-------------|-------------|
| | | | Identify by name below (1) Column B | Column C | Column D |
| 3. COMPENSATION earned from employer for lobbying this period (salary, wages, retainer) | 1000 | | 1000 | 0.00 | 0.00 |
| 4. PERSONAL EXPENSES for travel, food and refreshments | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| 5. ENTERTAINMENT, GRATUITIES, TRAVEL, SEMINARS for state officials, employees, their families (See #15) | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| 6. CONTRIBUTIONS to elected officials, candidates and political committees (See #16) | 4000 | 0.00 | 4000 | 0.00 | 0.00 |
| 7. ADVERTISING, PRINTING, INFORMATIONAL LITERATURE | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| 8. POLITICAL ADS, PUBLIC RELATIONS, POLLING, TELEMARKETING, ETC. (See #17) | 190780 | 0.00 | 190780 | 0.00 | 0.00 |
| 9. OTHER EXPENSES AND SERVICES (See #18) | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| 10. TOTAL COMPENSATION AND EXPENSES INCURRED THIS MONTH | 195780 | 0 | 195780 | 0 | 0 |

11. EMPLOYERS' NAMES (from above)

No. 1 (Column B) BUILDING INDUSTRY ASSN OF WA

No. 2 (Column C)

No. 3 (Column D)

12. Subject matter of proposed legislation or other legislative activity or rulemaking the lobbyist was supporting or opposing.

 Bill Number Subject Matter or Issue Legislative Committee or State Agency Considering Matter

No. 1 (Column B)

No. 2 (Column C)

No. 3 (Column D)

13. Of the time spent lobbying, what percentage was devoted to lobbying:

| | | | |
|-------------|---|----------------|---|
| Legislature | % | State Agencies | % |
|-------------|---|----------------|---|

14. TERMINATION: (COMPLETE THIS ITEM ONLY IF YOU WISH TO TERMINATE YOUR REGISTRATION)

Date registration ends: Employer's name:

I understand that an L-2 report is required for any month or portion thereof in which I am a registered lobbyist. I also understand that once I have terminated my registration, I must file a new registration prior to lobbying for that employer in the future. All the registrations terminate automatically on the second Monday in January of each odd numbered year.

CERTIFICATION

I certify that this report is true and complete to the best of my knowledge.

Certified By: ELLIOT SWANEY Date Filed: 05/15/2008

CONTINUE ON NEXT PAGE

L2
11/05

Lobbyist Monthly Expense Report

(as required by chapter 397, 1995 Session Laws)

1. Lobbyist Name: Last **SWANEY** First **ELLIOT** Middle Initial

Mailing Address: **111 W 21ST AVE**

City **OLYMPIA** State **WA** Zip **98501** New Address? Yes No

2. This report is for the following period: **6** Month **2008** Year OR This report corrects or amends the report for: _____ Month _____ Year Business Phone: **360-352-7800**

ALL COMPLETE THIS PART Include all reportable expenditures by lobbyist and lobbyist's employer for or on behalf of the lobbyist incurred during the reporting period

COMPLETE IF YOU HAVE MORE THAN ONE EMPLOYER Amount attributed to each employer

| Expense Category | TOTAL AMOUNT THIS MONTH All employers' expenses (Column A) | Amounts paid from lobbyist's own funds, not reimbursed or attributed to an employer. Column A | Employer #1 | Employer #2 | Employer #3 |
|---|--|--|---|-------------|-------------|
| | | | Identify by name below (11) Column B | Column C | Column D |
| 3. COMPENSATION earned from employer for lobbying this period (salary, wages, retainer) | 1000 | | 1000 | 0.00 | 0.00 |
| 4. PERSONAL EXPENSES for travel, food and refreshments | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| 5. ENTERTAINMENT, GRATUITIES, TRAVEL, SEMINARS for state officials, employees, their families (See #15) | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| 6. CONTRIBUTIONS to elected officials, candidates and political committees (See #16) | 280474 | 0.00 | 280474 | 0.00 | 0.00 |
| 7. ADVERTISING, PRINTING, INFORMATIONAL LITERATURE | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| 8. POLITICAL ADS, PUBLIC RELATIONS, POLLING, TELEMARKETING, ETC. (See #17) | 4000 | 0.00 | 4000 | 0.00 | 0.00 |
| 9. OTHER EXPENSES AND SERVICES (See #18) | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| 10. TOTAL COMPENSATION AND EXPENSES INCURRED THIS MONTH | 265474 | 0 | 265474 | 0 | 0 |

11. EMPLOYERS' NAMES (from above)

No. 1 (Column B) **BUILDING INDUSTRY ASSN OF WA**

No. 2 (Column C)

No. 3 (Column D)

12. Subject matter of proposed legislation or other legislative activity or rulemaking the lobbyist was supporting or opposing.

Bill Number: _____ Subject Matter or Issue: _____ Legislative Committee or State Agency Considering Matter: _____

No. 1 (Column B)

No. 2 (Column C)

No. 3 (Column D)

13. Of the time spent lobbying, what percentage was devoted to lobbying: Legislature % State Agencies %

14. TERMINATION: (COMPLETE THIS ITEM ONLY IF YOU WISH TO TERMINATE YOUR REGISTRATION)

Date registration ends: _____ Employer's name: _____

I understand that an L-2 report is required for any month or portion thereof in which I am a registered lobbyist. I also understand that once I have terminated my registration, I must file a new registration prior to lobbying for that employer in the future. All registrations terminate automatically on the second Monday in January of each odd numbered year.

CERTIFICATION

I certify that this report is true and complete to the best of my knowledge.

Certified By: **ELLIOT SWANEY** Date Filed: **06/16/2008**

CONTINUE ON NEXT PAGE

16. If a monetary or in-kind contribution exceeding \$25 was given or transmitted by the lobbyist to any of the following, itemize the contribution below on an L2 Memo Report: local and state candidates or elected officials; local and state officers or employees; political committees supporting or opposing any candidate, elected official, officer or employee or any local or state ballot proposition. If a contribution exceeding \$25 was given to the following, itemize the contribution below: a caucus political committee; a political party, or a grass roots lobbying campaign.

| Date | Name of Individual or Committee Receiving Contribution | Source of Contribution | Amount |
|------------|--|---|--------|
| 05/29/2008 | REDUCE TRAFFIC CONGESTION | BUILDING INDUSTRY ASSOCIATION OF WASHINGTON | 10000 |
| 05/29/2008 | LIABILITY REFORM COALITION | BUILDING INDUSTRY ASSOCIATION OF WASHINGTON | 2000 |
| 05/28/2008 | CHANGE PAC | BUILDING INDUSTRY ASSOCIATION OF WASHINGTON | 245000 |
| 05/30/2008 | IN KIND TO CHANGE PAC | BUILDING INDUSTRY ASSOCIATION OF WASHINGTON | 750 |
| 05/30/2008 | IN KIND TO WALKING FOR WASHINGTON | BUILDING INDUSTRY ASSOCIATION OF WASHINGTON | 1098 |
| 05/14/2008 | IN KIND TO WALKING FOR WASHINGTON | BUILDING INDUSTRY ASSOCIATION OF WASHINGTON | 1626 |
| | | | |
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| | | | |

If contributions were made directly by a political action committee associated, affiliated or sponsored by your employer, show name of the PAC below. (Information reported by PAC on C-4 report need not be included in this L-2 report.)

Political Action Committee Name:

L2
11/05

7088564480
PDC OFFICE USE

Lobbyist Monthly Expense Report

(as required by chapter 307, 1995 Session Laws)

| | | | | |
|--|--|---|-----------|---|
| 1. Lobbyist Name | | Last | First | Middle Initial |
| | | SWANEY | ELLIOT | |
| Mailing Address 111 W 21ST AVE | | | | |
| City OLYMPIA | | State WA | Zip 98501 | New Address? <input type="checkbox"/> Yes <input type="checkbox"/> No |
| 2. This report is for the following period | | 6 | 2008 | Business Phone 360-352-7600 |
| | | Month | Year | |
| OR | | This report corrects or amends the report for | | |
| | | Month | Year | |

| Expense Category | ALL COMPLETE THIS PART | | COMPLETE IF YOU HAVE MORE THAN ONE EMPLOYER | | |
|---|---|--|---|-------------------------|-------------------------|
| | TOTAL AMOUNT THIS MONTH All employers expenses (All Columns) | Amounts paid from lobbyist's own funds, not reimbursed or attributed to an employer. Column A | Employer #1 Identify by name below (1) Column B | Employer #2 Column C | Employer #3 Column D |
| 3. COMPENSATION earned from employer for lobbying this period (salary, wages, retainer) | 1000 | | 1000 | 0.00 | 0.00 |
| 4. PERSONAL EXPENSES for travel, food and refreshments | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| 5. ENTERTAINMENT, GRATUITIES, TRAVEL, SEMINARS for state officials, employees, their families (See #15) | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| 6. CONTRIBUTIONS to elected officials, candidates and political committees (See #16) | 716997.19 | 0.00 | 716997.19 | 0.00 | 0.00 |
| 7. ADVERTISING, PRINTING, INFORMATIONAL LITERATURE | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| 8. POLITICAL ADS, PUBLIC RELATIONS, POLLING, TELEMARKETING, ETC. (See #17) | 14266.69 | 0.00 | 14266.69 | 0.00 | 0.00 |
| 9. OTHER EXPENSES AND SERVICES (See #18) | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| 10. TOTAL COMPENSATION AND EXPENSES INCURRED THIS MONTH | 732266.08 | 0 | 732266.08 | 0 | 0 |

11. EMPLOYERS' NAMES (from above)

No. 1 (Column B) BUILDING INDUSTRY ASSN OF WA

No. 2 (Column C)

No. 3 (Column D)

12. Subject matter of proposed legislation or other legislative activity or rulemaking the lobbyist was supporting or opposing.

| No. 1 (Column B) | No. 2 (Column C) | No. 3 (Column D) |
|------------------|-------------------------|--|
| Bill Number | Subject Matter or Issue | Legislative Committee or State Agency Considering Matter |
| | | |

13. Of the time spent lobbying, what percentage was devoted to lobbying:

| | | | |
|-------------|---|----------------|---|
| Legislature | % | State Agencies | % |
| | | | |

14. TERMINATION: (COMPLETE THIS ITEM ONLY IF YOU WISH TO TERMINATE YOUR REGISTRATION)

Date registration ends: _____ Employer's name: _____

I understand that an L-2 report is required for any month or portion thereof in which I am a registered lobbyist. I also understand that once I have terminated my registration, I must file a new registration prior to lobbying for that employer in the future. All the registrations terminate automatically on the second Monday in January of each odd numbered year.

CERTIFICATION

| | | |
|--|--------------------------------|---------------------------|
| I certify that this report is true and complete to the best of my knowledge. | Certified By: ELLIOT SWANEY | Date Filed: 07/15/2008 |
|--|--------------------------------|---------------------------|

CONTINUE ON NEXT PAGE

L2
11/05

7088564480
PDC OFFICE USE

Lobbyist Monthly Expense Report
(as required by chapter 387, 1995 Session Laws)

1. Lobbyist Name Last: **SWANEY** First: **ELLIOT** Middle Initial: _____
 Mailing Address: **111 W 21ST AVE**
 City: **OLYMPIA** State: **WA** Zip: **98501** New Address? Yes No
 2. This report is for the following period: **6** Month **2008** Year OR This report corrects or amends the report for _____ Month _____ Year Business Phone: **360-352-7800**

| Expense Category | TOTAL AMOUNT THIS MONTH All employers expenses (All Columns) | Amounts paid from lobbyist's own funds, not reimbursed or attributed to an employer. Column A | COMPLETE IF YOU HAVE MORE THAN ONE EMPLOYER Amount attributed to each employer | | |
|---|--|--|---|-------------------------|-------------------------|
| | | | Employer #1 Identify by name below (1) Column B | Employer #2 Column C | Employer #3 Column D |
| 3. COMPENSATION earned from employer for lobbying this period (salary, wages, retainer) | 1000 | | 1000 | 0.00 | 0.00 |
| 4. PERSONAL EXPENSES for travel, food and refreshments | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| 5. ENTERTAINMENT, GRATUITIES, TRAVEL, SEMINARS for state officials, employees, their families (See #15) | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| 6. CONTRIBUTIONS to elected officials, candidates and political committees (See #16) | 716997.19 | 0.00 | 716997.19 | 0.00 | 0.00 |
| 7. ADVERTISING, PRINTING, INFORMATIONAL LITERATURE | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| 8. POLITICAL ADS, PUBLIC RELATIONS, POLLING, TELEMARKETING, ETC. (See #17) | 14266.89 | 0.00 | 14266.89 | 0.00 | 0.00 |
| 9. OTHER EXPENSES AND SERVICES (See #18) | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| 10. TOTAL COMPENSATION AND EXPENSES INCURRED THIS MONTH | 732266.08 | 0 | 732266.08 | 0 | 0 |

11. EMPLOYERS' NAMES (from above)
 No. 1 (Column B) **BUILDING INDUSTRY ASSN OF WA**
 No. 2 (Column C)
 No. 3 (Column D)

12. Subject matter of proposed legislation or other legislative activity or rulemaking the lobbyist was supporting or opposing.
 Bill Number _____ Subject Matter or Issue _____ Legislative Committee or State Agency Considering Matter _____
 No. 1 (Column B)
 No. 2 (Column C)
 No. 3 (Column D)

13. Of the time spent lobbying, what percentage was devoted to lobbying: Legislature % State Agencies %

14. TERMINATION: (COMPLETE THIS ITEM ONLY IF YOU WISH TO TERMINATE YOUR REGISTRATION)
 Date registration ends: _____ Employer's name: _____
 I understand that an L-2 report is required for any month or portion thereof in which I am a registered lobbyist. I also understand that once I have terminated my registration, I must file a new registration prior to lobbying for that employer in the future. All the registrations terminate automatically on the second Monday in January of each odd numbered year.

CERTIFICATION
 I certify that this report is true and complete to the best of my knowledge. Certified By: **ELLIOT SWANEY** Date Filed: **07/15/2008**

CONTINUE ON NEXT PAGE

Lobbyist Employers Continued

| Expense Category | Employ #4 Identify by name below (11) Column E | Employ #5 Column F | Employ #6 Column G | Employ #7 Column H | Employ #8 Column I |
|---|--|--------------------------|--------------------------|--------------------------|--------------------------|
| 3. COMPENSATION earned from employer for lobbying this period (salary, wages, retainer) | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| 4. PERSONAL EXPENSES for travel, food and refreshments | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| 5. ENTERTAINMENT, GRATUITIES, TRAVEL, SEMINARS for state officials, employees, their families (See #15) | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| 6. CONTRIBUTIONS to elected officials, candidates and political committees (See #16) | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| 7. ADVERTISING, PRINTING, INFORMATIONAL LITERATURE | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| 8. POLITICAL ADS, PUBLIC RELATIONS, POLLING, TELEMARKETING, ETC. (See #17) | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| 9. OTHER EXPENSES AND SERVICES (See #18) | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| 10. TOTAL COMPENSATION AND EXPENSES INCURRED THIS MONTH | 0 | 0 | 0 | 0 | 0 |

11. EMPLOYERS' NAMES (from above)

No. 4 (Column E)

No. 5 (Column F)

No. 6 (Column G)

No. 7 (Column H)

No. 8 (Column I)

12. Subject matter of proposed legislation or other legislative activity or rulemaking the lobbyist was supporting or opposing.

BR Number

Subject Matter or Issue

Legislative Committee or State Agency Considering Matter

No. 4 (column E)

No. 5 (column F)

No. 6 (column G)

No. 7 (column H)

No. 8 (column I)

CONTINUE ON NEXT PAGE

16. If a monetary or in-kind contribution exceeding \$25 was given or transmitted by the lobbyist to any of the following, itemize the contribution below or on a L2 Memo Report: local and state candidates or elected officials; local and state officers or employees; political committees supporting or opposing any candidate, elected official, officer or employee or any local or state ballot proposition. If a contribution exceeding \$25 was given to the following, itemize the contribution below: a caucus political committee; a political party; or a grass roots lobbying campaign.

| Date | Name of Individual or Committee Receiving Contribution | Source of Contribution | Amount |
|------------|--|---|-----------|
| 06/16/2008 | IN KIND TO WALKING FOR WASHINGTON | BUILDING INDUSTRY ASSOCIATION OF WASHINGTON | 3514.88 |
| 06/24/2008 | IN KIND TO WALKING FOR WASHINGTON | BUILDING INDUSTRY ASSOCIATION OF WASHINGTON | 1373 |
| 06/30/2008 | IN KIND TO WALKING FOR WASHINGTON | BUILDING INDUSTRY ASSOCIATION OF WASHINGTON | 1335.11 |
| 06/10/2008 | CHANGE PAC | BUILDING INDUSTRY ASSOCIATION OF WASHINGTON | 250000 |
| 06/26/2008 | CHANGE PAC | BUILDING INDUSTRY ASSOCIATION OF WASHINGTON | 460000.00 |
| 06/30/2008 | IN KIND TO CHANGE PAC | BUILDING INDUSTRY ASSOCIATION OF WASHINGTON | 775.00 |
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See Page 8 Attachment For More

If contributions were made directly by a political action committee associated, affiliated or sponsored by your employer, show name of the PAC below. (Information reported by PAC on C-4 report need not be included in this L-2 report.)

Political Action Committee Name:

L2
11/05

1021390141
PDC OFFICE USE

Lobbyist Monthly Expense Report
(as required by chapter 397, 1985 Session Laws)

1. Lobbyist Name: Last **SWANEY** First **ELLIOT** Middle Initial _____
 Mailing Address: **111 W 21ST AVE**
 City **OLYMPIA** State **WA** Zip **98501** New Address? Yes No
 2. This report is for the following period: **7** Month **2008** Year OR This report corrects or amends the report for: _____ Month _____ Year
 Business Phone: **360-352-7600**

ALL COMPLETE THIS PART Include all reportable expenditures by lobbyist and lobbyist's employer for or on behalf of the lobbyist incurred during the reporting period
COMPLETE IF YOU HAVE MORE THAN ONE EMPLOYER Amount attributed to each employer

| Expense Category | TOTAL AMOUNT THIS MONTH All employers' expenses (Column A) | Amounts paid from lobbyist's own funds, not reimbursed or attributed to an employer. Column A | Employer #1 | Employer #2 | Employer #3 |
|---|--|--|---|-------------|-------------|
| | | | Identify by name below (11) Column B | Column C | Column D |
| 3. COMPENSATION earned from employer for lobbying this period (salary, wages, retainer) | 1000 | | 1000 | 0.00 | 0.00 |
| 4. PERSONAL EXPENSES for travel, food and refreshments | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| 5. ENTERTAINMENT, GRATUITIES, TRAVEL, SEMINARS for state officials, employees, their families (See #15) | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| 6. CONTRIBUTIONS to elected officials, candidates and political committees (See #16) | 589042.01 | 0.00 | 589042.01 | 0.00 | 0.00 |
| 7. ADVERTISING, PRINTING, INFORMATIONAL LITERATURE | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| 8. POLITICAL ADS, PUBLIC RELATIONS, POLLING, TELEMARKETING, ETC. (See #17) | 4000 | 0.00 | 4000 | 0.00 | 0.00 |
| 9. OTHER EXPENSES AND SERVICES (See #18) | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| 10. TOTAL COMPENSATION AND EXPENSES INCURRED THIS MONTH | 594042.01 | 0 | 594042.01 | 0 | 0 |

11. EMPLOYERS' NAMES (from above)
 No. 1 (Column B) **BUILDING INDUSTRY ASSN OF WA**
 No. 2 (Column C) _____
 No. 3 (Column D) _____

12. Subject matter of proposed legislation or other legislative activity or rulemaking the lobbyist was supporting or opposing.
 BIN Number: _____ Subject Matter or Issue: _____ Legislative Committee or State Agency Considering Matter: _____
 No. 1 (Column B) _____
 No. 2 (Column C) _____
 No. 3 (Column D) _____

13. Of the time spent lobbying, what percentage was devoted to lobbying: Legislature % State Agencies %

14. TERMINATION: (COMPLETE THIS ITEM ONLY IF YOU WISH TO TERMINATE YOUR REGISTRATION)
 Date registration ends: _____ Employer's name: _____

I understand that an L-2 report is required for any month or portion thereof in which I am a registered lobbyist. I also understand that once I have terminated my registration, I must file a new registration prior to lobbying for that employer in the future. All the registrations terminate automatically on the second Monday in January of each odd numbered year.

CERTIFICATION
 I certify that this report is true and complete to the best of my knowledge. Certified By: **ELLIOT SWANEY** Date Filed: **07/15/2008**

CONTINUE ON NEXT PAGE

16. If a monetary or in-kind contribution exceeding \$25 was given or transmitted by the lobbyist to any of the following, itemize the contribution below or on a L2 Memo Report: local and state candidates or elected officials; local and state officers or employees; political committees supporting or opposing any candidate, elected official, officer or employee or any local or state ballot proposition. If a contribution exceeding \$25 was given to the following, itemize the contribution below: a caucus political committee; a political party; or a grass roots lobbying campaign.

| Date | Name of Individual or Committee Receiving Contribution | Source of Contribution | Amount |
|------------|--|---|---------|
| 07/30/2008 | IN KIND TO CHANGEPAC | BUILDING INDUSTRY ASSOCIATION OF WASHINGTON | 750 |
| 07/25/2008 | IN KIND TO CHANGEPAC | BUILDING INDUSTRY ASSOCIATION OF WASHINGTON | 400 |
| 07/15/2008 | CHANGEPAC | BUILDING INDUSTRY ASSOCIATION OF WASHINGTON | 21000 |
| 07/09/2008 | CHANGEPAC | BUILDING INDUSTRY ASSOCIATION OF WASHINGTON | 56000 |
| 07/10/2008 | CHANGEPAC | BUILDING INDUSTRY ASSOCIATION OF WASHINGTON | 229000 |
| 07/25/2008 | CHANGEPAC | BUILDING INDUSTRY ASSOCIATION OF WASHINGTON | 150000 |
| 07/31/2008 | CHANGEPAC | BUILDING INDUSTRY ASSOCIATION OF WASHINGTON | 10000 |
| 07/31/2008 | IN KIND TO WALKING FOR WASHINGTON | BUILDING INDUSTRY ASSOCIATION OF WASHINGTON | 1892.01 |
| 07/15/2008 | THE AFFORDABLE HOUSING COUNCIL | BUILDING INDUSTRY ASSOCIATION OF WASHINGTON | 120000 |
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If contributions were made directly by a political action committee associated, affiliated or sponsored by your employer, show name of the PAC below. (Information reported by PAC on C-4 report need not be included in this L-2 report.)

Political Action Committee Name:

L2
11/95

1021390141
PDC OFFICE USE

Lobbyist Monthly Expense Report

(as required by chapter 397, 1995 Session Laws)

1. Lobbyist Name: Last **SWANEY** First **ELLIOT** Middle Initial

Mailing Address: **111 W21ST AVE**

City **OLYMPIA** State **WA** Zip **98501** New Address? Yes No

2. This report is for the following period: Month **7** Year **2008** OR This report corrects or amends the report for Month Year Business Phone **360-352-7800**

| ALL COMPLETE THIS PART | | | COMPLETE IF YOU HAVE MORE THAN ONE EMPLOYER | | |
|---|---|--|--|-------------------------|-------------------------|
| Expense Category | TOTAL AMOUNT THIS MONTH All employers expenses (Column A) | Amounts paid from lobbyist's own funds, not reimbursed or attributed to an employer. Column A | Amount attributed to each employer | | |
| | | | Employer #1 Identify by name below (11) Column B | Employer #2 Column C | Employer #3 Column D |
| 3. COMPENSATION earned from employer for lobbying this period (salary, wages, retainer) | 1000 | | 1000 | 0.00 | 0.00 |
| 4. PERSONAL EXPENSES for travel, food and refreshments | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| 5. ENTERTAINMENT, GRATUITIES, TRAVEL, SEMINARS for state officials, employees, their families (See #15) | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| 6. CONTRIBUTIONS to elected officials, candidates and political committees (See #16) | 589042.01 | 0.00 | 589042.01 | 0.00 | 0.00 |
| 7. ADVERTISING, PRINTING, INFORMATIONAL LITERATURE | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| 8. POLITICAL ADS, PUBLIC RELATIONS, POLLING, TELEMARKETING, ETC. (See #17) | 4000 | 0.00 | 4000 | 0.00 | 0.00 |
| 9. OTHER EXPENSES AND SERVICES (See #18) | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| 10. TOTAL COMPENSATION AND EXPENSES INCURRED THIS MONTH | 594042.01 | 0 | 594042.01 | 0 | 0 |

11. EMPLOYERS' NAMES (from above)

No. 1 (Column B) **BUILDING INDUSTRY ASSN OF WA**

No. 2 (Column C)

No. 3 (Column D)

12. Subject matter of proposed legislation or other legislative activity or rulemaking the lobbyist was supporting or opposing.

Bill Number Subject Matter or Issue Legislative Committee or State Agency Considering Matter

No. 1 (Column B)

No. 2 (Column C)

No. 3 (Column D)

13. Of the time spent lobbying, what percentage was devoted to lobbying: Legislature % State Agencies %

14. TERMINATION: (COMPLETE THIS ITEM ONLY IF YOU WISH TO TERMINATE YOUR REGISTRATION)

Date registration ends: Employer's name:

I understand that an L-2 report is required for any month or portion thereof in which I am a registered lobbyist. I also understand that once I have terminated my registration, I must file a new registration prior to lobbying for that employer in the future. All the registrations terminate automatically on the second Monday in January of each odd numbered year.

CERTIFICATION

I certify that this report is true and complete to the best of my knowledge.

Certified By:
ELLIOT SWANEY

Date Filed
07/15/2008

CONTINUE ON NEXT PAGE

18. If a monetary or in-kind contribution exceeding \$25 was given or transmitted by the lobbyist to any of the following, itemize the contribution below or on a L2 Memo Report: local and state candidates or elected officials; local and state officers or employees; political committees supporting or opposing any candidate, elected official, officer or employee or any local or state ballot proposition. If a contribution exceeding \$25 was given to the following, itemize the contribution below: a caucus political committee; a political party; or a grass roots lobbying campaign.

| Date | Name of Individual or Committee Receiving Contribution | Source of Contribution | Amount |
|------------|--|---|---------|
| 07/30/2008 | IN KIND TO CHANGEPAC | BUILDING INDUSTRY ASSOCIATION OF WASHINGTON | 750 |
| 07/25/2008 | IN KIND TO CHANGEPAC | BUILDING INDUSTRY ASSOCIATION OF WASHINGTON | 400 |
| 07/15/2008 | CHANGEPAC | BUILDING INDUSTRY ASSOCIATION OF WASHINGTON | 21000 |
| 07/08/2008 | CHANGEPAC | BUILDING INDUSTRY ASSOCIATION OF WASHINGTON | 56000 |
| 07/10/2008 | CHANGEPAC | BUILDING INDUSTRY ASSOCIATION OF WASHINGTON | 229000 |
| 07/25/2008 | CHANGEPAC | BUILDING INDUSTRY ASSOCIATION OF WASHINGTON | 150000 |
| 07/31/2008 | CHANGEPAC | BUILDING INDUSTRY ASSOCIATION OF WASHINGTON | 10000 |
| 07/31/2008 | IN KIND TO WALKING FOR WASHINGTON | BUILDING INDUSTRY ASSOCIATION OF WASHINGTON | 1892.01 |
| 07/15/2008 | THE AFFORDABLE HOUSING COUNCIL | BUILDING INDUSTRY ASSOCIATION OF WASHINGTON | 120000 |
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If contributions were made directly by a political action committee associated, affiliated or sponsored by your employer, show name of the PAC below. (Information reported by PAC on C-4 report need not be included in this L-2 report.)

Political Action Committee Name:

L2
11/05

1021390141
PDC OFFICE USE

Lobbyist Monthly Expense Report

(as required by chapter 397, 1995 Session Laws)

1. Lobbyist Name: Last **SWANEY** First **ELLIOT** Middle Initial

Mailing Address: **111 W21ST AVE**

City **OLYMPIA** State **WA** Zip **98501** New Address? Yes No

2. This report is for the following period: **8** Month **2008** Year OR This report corrects or amends the report for: _____ Month _____ Year Business Phone: **360-352-7800**

| Expense Category | ALL COMPLETE THIS PART | | COMPLETE IF YOU HAVE MORE THAN ONE EMPLOYER | | |
|--|--|--|---|-------------------------|-------------------------|
| | TOTAL AMOUNT THIS MONTH All employer expenses (Column a) | Amounts paid from lobbyist's own funds, not reimbursed or attributed to an employer. Column A | Employer #1 Identify by name below (1) Column B | Employer #2 Column C | Employer #3 Column D |
| 3. COMPENSATION earned from employer for lobbying this period (salary, wages, retainer) | 1000 | | 1000 | 0.00 | 0.00 |
| 4. PERSONAL EXPENSES for travel, food and refreshments | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| 5. ENTERTAINMENT, GRATUITIES, TRAVEL SEMINARS for state officials, employees, their families (See #15) | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| 6. CONTRIBUTIONS to elected officials, candidates and political committees (See #16) | 405373 | 0.00 | 405373 | 0.00 | 0.00 |
| 7. ADVERTISING, PRINTING, INFORMATIONAL LITERATURE | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| 8. POLITICAL ADS, PUBLIC RELATIONS, POLLING, TELEMARKETING, ETC. (See #17) | 4000 | 0.00 | 4000 | 0.00 | 0.00 |
| 9. OTHER EXPENSES AND SERVICES (See #18) | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| 10. TOTAL COMPENSATION AND EXPENSES INCURRED THIS MONTH | 410373 | 0 | 410373 | 0 | 0 |

11. EMPLOYERS' NAMES (from above)

No. 1 (Column B) **BUILDING INDUSTRY ASSN OF WA**

No. 2 (Column C)

No. 3 (Column D)

12. Subject matter of proposed legislation or other legislative activity or rulemaking the lobbyist was supporting or opposing.

No. 1 (Column B) **BIR Number**

No. 2 (Column C) **Subject Matter or Issue**

No. 3 (Column D) **Legislative Committee or State Agency Considering Matter**

13. Of the time spent lobbying, what percentage was devoted to lobbying: Legislature % State Agencies %

14. TERMINATION: (COMPLETE THIS ITEM ONLY IF YOU WISH TO TERMINATE YOUR REGISTRATION)

Date registration ends: _____ Employer's name: _____

I understand that an L-2 report is required for any month or portion thereof in which I am a registered lobbyist. I also understand that once I have terminated my registration, I must file a new registration prior to lobbying for that employer in the future. All the registrations terminate automatically on the second Monday in January of each odd numbered year.

CERTIFICATION

I certify that this report is true and complete to the best of my knowledge.

Certified By: **ELLIOT SWANEY** Date Filed: **09/15/2008**

CONTINUE ON NEXT PAGE

L2
11/85

1021390141
PDC OFFICE USE

Lobbyist Monthly Expense Report

(as required by chapter 397, 1995 Session Laws)

1. Lobbyist Name: Last **SWANEY** First **ELLIOT** Middle Initial _____

2. This report is for the following period: Month **9** Year **2008** OR This report corrects or amends the report for Month _____ Year _____

3. City **OLYMPIA** State **WA** Zip **98501** New Address? Yes No

4. Mailing Address **111 W 21ST AVE** Business Phone **360-352-7800**

ALL COMPLETE THIS PART (Include all reportable expenditures by lobbyist and lobbyist's employer for or on behalf of the lobbyist incurred during the reporting period)

COMPLETE IF YOU HAVE MORE THAN ONE EMPLOYER (Amount attributed to each employer)

| Expense Category | TOTAL AMOUNT THIS MONTH All employers' expenses (Column A) | Amounts paid from lobbyist's own funds, not reimbursed or attributed to an employer. Column A | Employer #1 | Employer #2 | Employer #3 |
|--|--|--|--|-------------|-------------|
| | | | Identify by name below (1) Column B | Column C | Column D |
| 3. COMPENSATION earned from employer for lobbying this period (salary, wages, retainer) | 1000 | | 1000 | 0.00 | 0.00 |
| 4. PERSONAL EXPENSES for travel, food and refreshments | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| 5. ENTERTAINMENT, GRATUITIES, TRAVEL SEMINARS for state officials, employees, their families (See #15) | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| 6. CONTRIBUTIONS to elected officials, candidates and political committees (See #16) | 8617.96 | 0.00 | 8617.96 | 0.00 | 0.00 |
| 7. ADVERTISING, PRINTING, INFORMATIONAL LITERATURE | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| 8. POLITICAL ADS, PUBLIC RELATIONS, POLLING, TELEMARKETING, ETC. (See #17) | 16600 | 0.00 | 16600 | 0.00 | 0.00 |
| 9. OTHER EXPENSES AND SERVICES (See #18) | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| 10. TOTAL COMPENSATION AND EXPENSES INCURRED THIS MONTH | 26217.96 | 0 | 26217.96 | 0 | 0 |

11. EMPLOYERS' NAMES (from above)

No. 1 (Column B) **BUILDING INDUSTRY ASSN OF WA**

No. 2 (Column C)

No. 3 (Column D)

12. Subject matter of proposed legislation or other legislative activity or rulemaking the lobbyist was supporting or opposing.

No. 1 (Column B) **Bill Number**

No. 2 (Column C) **Subject Matter or Issue**

No. 3 (Column D) **Legislative Committee or State Agency Considering Matter**

13. Of the time spent lobbying, what percentage was devoted to lobbying: Legislature % State Agencies %

14. TERMINATION: (COMPLETE THIS ITEM ONLY IF YOU WISH TO TERMINATE YOUR REGISTRATION)

Date registration ends: _____ Employer's name: _____

I understand that an L-2 report is required for any month or portion thereof in which I am a registered lobbyist. I also understand that once I have terminated my registration, I must file a new registration prior to lobbying for that employer in the future. All the registrations terminate automatically on the second Monday in January of each odd numbered year.

CERTIFICATION

I certify that this report is true and complete to the best of my knowledge.

Certified By: **ELLIOT SWANEY** Date Filed: **10/15/2008**

CONTINUE ON NEXT PAGE

16. If a monetary or in-kind contribution exceeding \$25 was given or transmitted by the lobbyist to any of the following, itemize the contribution below on an L2 Memo Report: local and state candidates or elected officials; local and state officers or employees; political committees supporting or opposing any candidate, elected official, officer or employee or any local or state ballot proposition. If a contribution exceeding \$25 was given to the following, itemize the contribution below: a caucus political committee; a political party; or a grass roots lobbying campaign.

| Date | Name of Individual or Committee Receiving Contribution | Source of Contribution | Amount |
|------------|--|---|---------|
| 09/10/2008 | IN KIND TO WASHINGTON AFFORDABLE HOUSING COUNCIL | BUILDING INDUSTRY ASSOCIATION OF WASHINGTON | 804.41 |
| 09/01/2008 | IN KIND TO WALKING FOR WASHINGTON | BUILDING INDUSTRY ASSOCIATION OF WASHINGTON | 162.8 |
| 09/30/2008 | IN KIND TO WALKING FOR WASHINGTON | BUILDING INDUSTRY ASSOCIATION OF WASHINGTON | 600.7 |
| 09/30/2008 | IN KIND TO WALKING FOR WASHINGTON | BUILDING INDUSTRY ASSOCIATION OF WASHINGTON | 2250.25 |
| 09/30/2008 | IN KIND TO CHANGE PAC | BUILDING INDUSTRY ASSOCIATION OF WASHINGTON | 5000 |
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If contributions were made directly by a political action committee associated, affiliated or sponsored by your employer, show name of the PAC below. (Information reported by PAC on C-4 report need not be included in this L-2 report.)

Political Action Committee Name:



1021390141
PDC OFFICE USE

Lobbyist Monthly Expense Report

(as required by chapter 397, 1995 Session Laws)

1. Lobbyist Name: Last **SWANEY** First **ELLIOT** Middle Initial

Mailing Address: **111 W 21ST AVE**

City **OLYMPIA** State **WA** Zip **98501** New Address? Yes No

2. This report is for the following period: 10/2006 OR This report corrects or amends the report for: Business Phone: 360-352-7800

ALL COMPLETE THIS PART (Include all reportable expenditures by lobbyist and lobbyist's employer for or on behalf of the lobbyist incurred during the reporting period)

COMPLETE IF YOU HAVE MORE THAN ONE EMPLOYER (Amount attributed to each employer)

| Expense Category | TOTAL AMOUNT THIS MONTH All employer expenses (Column A) | Amounts paid from lobbyist's own funds, not reimbursed or attributed to an employer. Column A | Employer #1 | Employer #2 | Employer #3 |
|---|--|--|---|-------------|-------------|
| | | | Identify by name below (11) Column B | Column C | Column D |
| 3. COMPENSATION earned from employer for lobbying this period (salary, wages, retainer) | 1000 | | 1000 | 0.00 | 0.00 |
| 4. PERSONAL EXPENSES for travel, food and refreshments | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| 5. ENTERTAINMENT, GRATUITIES, TRAVEL, SEMINARS for state officials, employees, their families (See #15) | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| 6. CONTRIBUTIONS to elected officials, candidates and political committees (See #16) | 4347125.7 | 0.00 | 4347125.7 | 0.00 | 0.00 |
| 7. ADVERTISING, PRINTING, INFORMATIONAL LITERATURE | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| 8. POLITICAL ADS, PUBLIC RELATIONS, POLLING, TELEMARKETING, ETC. (See #17) | 4421.83 | 0.00 | 4421.83 | 0.00 | 0.00 |
| 9. OTHER EXPENSES AND SERVICES (See #18) | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| 10. TOTAL COMPENSATION AND EXPENSES INCURRED THIS MONTH | 4352547.53 | 0 | 4352547.53 | 0 | 0 |

11. EMPLOYERS' NAMES (from above)

No. 1 (Column B) **BUILDING INDUSTRY ASSN OF WA**

No. 2 (Column C)

No. 3 (Column D)

12. Subject matter of proposed legislation or other legislative activity or rulemaking the lobbyist was supporting or opposing.

BILL Number Subject Matter or Issue Legislative Committee or State Agency Considering Matter

No. 1 (Column B)

No. 2 (Column C)

No. 3 (Column D)

13. Of the time spent lobbying, what percentage was devoted to lobbying: Legislature % State Agencies %

14. TERMINATION: (COMPLETE THIS ITEM ONLY IF YOU WISH TO TERMINATE YOUR REGISTRATION)

Date registration ends: Employer's name:

I understand that an L-2 report is required for any month or portion thereof in which I am a registered lobbyist. I also understand that once I have terminated my registration, I must file a new registration prior to lobbying for that employer in the future. All the registrations terminate automatically on the second Monday in January of each odd numbered year.

CERTIFICATION

I certify that this report is true and complete to the best of my knowledge.

Certified By: **ELLIOT SWANEY** Date Filed: **11/17/2006**

CONTINUE ON NEXT PAGE

15. If a monetary or in-kind contribution exceeding \$25 was given or transmitted by the lobbyist to any of the following, itemize the contribution below or on a L2 Memo Report: local and state candidates or elected officials; local and state officers or employees; political committees supporting or opposing any candidate, elected official, officer or employee or any local or state ballot proposition. If a contribution exceeding \$25 was given to the following, itemize the contribution below: a caucus political committee; a political party, or a grass roots lobbying campaign.

| Date | Name of Individual or Committee Receiving Contribution | Source of Contribution | Amount |
|------------|--|---|------------|
| 10/31/2008 | IN KIND WALKING FOR WASHINGTON | BUILDING INDUSTRY ASSOCIATION OF WASHINGTON | 600.70 |
| 10/27/2008 | IN KIND WALKING FOR WASHINGTON | BUILDING INDUSTRY ASSOCIATION OF WASHINGTON | 1525.00 |
| 10/02/2008 | CHANGE PAC | BUILDING INDUSTRY ASSOCIATION OF WASHINGTON | 530000.00 |
| 10/10/2008 | CHANGE PAC | BUILDING INDUSTRY ASSOCIATION OF WASHINGTON | 3810000.00 |
| 10/27/2008 | IN KIND CHANGE PAC | BUILDING INDUSTRY ASSOCIATION OF WASHINGTON | 5000.00 |
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If contributions were made directly by a political action committee associated, affiliated or sponsored by your employer, show name of the PAC below. (Information reported by PAC on C-4 report need not be included in this L-2 report.)

Political Action Committee Name:

L2
11/05

1021390141
PDC OFFICE USE

Lobbyist Monthly Expense Report

(as required by chapter 397, 1995 Session Laws)

1. Lobbyist Name Last: **SWANEY** First: **ELLIOT** Middle Initial: _____

Mailing Address: **111 W 21ST AVE**

City: **OLYMPIA** State: **WA** Zip: **98501** New Address? Yes No

2. This report is for the following period: 11 Month, 2008 Year. OR This report corrects or amends the report for _____ Month, _____ Year. Business Phone: **360-352-7800**

ALL COMPLETE THIS PART (Includes all reportable expenditures by lobbyist and lobbyist's employer for or on behalf of the lobbyist incurred during the reporting period)

COMPLETE IF YOU HAVE MORE THAN ONE EMPLOYER (Amount attributed to each employer)

| Expense Category | TOTAL AMOUNT THIS MONTH All employer expenses (Column A) | Amounts paid from lobbyist's own funds, not reimbursed or attributed to an employer. Column A | Employer #1 | Employer #2 | Employer #3 |
|--|--|--|---|-------------|-------------|
| | | | Identify by name below (11) Column B | Column C | Column D |
| 3. COMPENSATION earned from employer for lobbying this period (salary, wages, retainer) | 1000 | | 1000 | 0.00 | 0.00 |
| 4. PERSONAL EXPENSES for travel, food and refreshments | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| 5. ENTERTAINMENT, GRATUITIES, TRAVEL SEMINARS for state officials, employees, their families (See #15) | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| 6. CONTRIBUTIONS to elected officials, candidates and political committees (See #16) | 4000 | 0.00 | 4000 | 0.00 | 0.00 |
| 7. ADVERTISING, PRINTING, INFORMATIONAL LITERATURE | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| 8. POLITICAL ADS, PUBLIC RELATIONS, POLLING, TELEMARKETING, ETC. (See #17) | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| 9. OTHER EXPENSES AND SERVICES (See #18) | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| 10. TOTAL COMPENSATION AND EXPENSES INCURRED THIS MONTH | 5000 | 0 | 5000 | 0 | 0 |

11. EMPLOYERS' NAMES (from above)

No. 1 (Column B): **BUILDING INDUSTRY ASSN OF WA**

No. 2 (Column C): _____

No. 3 (Column D): _____

12. Subject matter of proposed legislation or other legislative activity or rulemaking the lobbyist was supporting or opposing.

No. 1 (Column B): _____
 No. 2 (Column C): _____
 No. 3 (Column D): _____

13. Of the time spent lobbying, what percentage was devoted to lobbying: Legislature _____ % State Agencies _____ %

14. TERMINATION: (COMPLETE THIS ITEM ONLY IF YOU WISH TO TERMINATE YOUR REGISTRATION)

Date registration ends: _____ Employer's name: _____

I understand that an L-2 report is required for any month or portion thereof in which I am a registered lobbyist. I also understand that once I have terminated my registration, I must file a new registration prior to lobbying for that employer in the future. All the registrations terminate automatically on the second Monday in January of each odd numbered year.

CERTIFICATION

I certify that this report is true and complete to the best of my knowledge.

Certified By: **ELLIOT SWANEY** Date Filed: **12/15/2008**

CONTINUE ON NEXT PAGE

L2
11/05

1021390141
PDC OFFICE USE

Lobbyist Monthly Expense Report

(as required by chapter 397, 1995 Session Laws)

1. Lobbyist Name: Last **SWANEY** First **ELLIOT** Middle Initial

Mailing Address: **111 W 21ST AVE**

City **OLYMPIA** State **WA** Zip **98501** New Address? Yes No

2. This report is for the following period: **12** **2006** Month Year
 OR This report corrects or amends the report for: Month Year
 Business Phone: **360-352-7800**

ALL COMPLETE THIS PART

COMPLETE IF YOU HAVE MORE THAN ONE EMPLOYER

| Expense Category | TOTAL AMOUNT THIS MONTH All employers expenses (Column A) | Amounts paid from lobbyist's own funds, not reimbursed or attributed to an employer. Column A | Amount attributed to each employer | | |
|---|---|--|--|-------------------------|-------------------------|
| | | | Employer #1 Identify by name below (11) Column B | Employer #2 Column C | Employer #3 Column D |
| 3. COMPENSATION earned from employer for lobbying this period (salary, wages, retainer) | 1000 | | 1000 | 0.00 | 0.00 |
| 4. PERSONAL EXPENSES for travel, food and refreshments | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| 5. ENTERTAINMENT, GRATUITIES, TRAVEL, SEMINARS for state officials, employees, their families (See #15) | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| 6. CONTRIBUTIONS to elected officials, candidates and political committees (See #16) | 1350.7 | 0.00 | 1350.7 | 0.00 | 0.00 |
| 7. ADVERTISING, PRINTING, INFORMATIONAL LITERATURE | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| 8. POLITICAL ADS, PUBLIC RELATIONS, POLLING, TELEMARKETING, ETC. (See #17) | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| 9. OTHER EXPENSES AND SERVICES (See #18) | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| 10. TOTAL COMPENSATION AND EXPENSES INCURRED THIS MONTH | 2350.7 | 0 | 2350.7 | 0 | 0 |

11. EMPLOYERS' NAMES (from above)

- No. 1 (Column B) **BUILDING INDUSTRY ASSN OF WA**
- No. 2 (Column C)
- No. 3 (Column D)

12. Subject matter of proposed legislation or other legislative activity or rulemaking the lobbyist was supporting or opposing.

- No. 1 (Column B) **Bill Number**
- No. 2 (Column C) **Subject Matter or Issue**
- No. 3 (Column D) **Legislative Committee or State Agency Considering Matter**

13. Of the time spent lobbying, what percentage was devoted to lobbying: Legislature % State Agencies %

14. TERMINATION: (COMPLETE THIS ITEM ONLY IF YOU WISH TO TERMINATE YOUR REGISTRATION)

Date registration ends: Employer's name:

I understand that an L-2 report is required for any month or portion thereof in which I am a registered lobbyist. I also understand that once I have terminated my registration, I must file a new registration prior to lobbying for that employer in the future. All the registrations terminate automatically on the second Monday in January of each odd numbered year.

CERTIFICATION

I certify that this report is true and complete to the best of my knowledge.

Certified By:
ELLIOT SWANEY

Date Filed
01/14/2008

CONTINUE ON NEXT PAGE

