

House Bill 3269

Sponsored by Representative BUCKLEY; Representatives ACKERMAN, BARNHART, HOLVEY, HUNT, MARCH, SHIELDS, TOMEI

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Specifies that independent expenditure is made in support of or in opposition to candidate if communication paid for with expenditure clearly and unambiguously urges election or defeat of clearly identified candidate, communication seeks action rather than simply conveying information and it is clear what action communication advocates.

A BILL FOR AN ACT

1
2 Relating to independent expenditures; creating new provisions; and amending ORS 260.005 and
3 260.044.

4 **Be It Enacted by the People of the State of Oregon:**

5 **SECTION 1.** ORS 260.005, as amended by section 9, chapter 542, Oregon Laws 2003, is amended
6 to read:

7 260.005. As used in this chapter:

8 (1)(a) "Candidate" means:

9 (A) An individual whose name is printed on a ballot, for whom a declaration of candidacy,
10 nominating petition or certificate of nomination to public office has been filed or whose name is
11 expected to be or has been presented, with the individual's consent, for nomination or election to
12 public office;

13 (B) An individual who has solicited or received and accepted a contribution, made an expendi-
14 ture, or given consent to an individual, organization, political party or political committee to solicit
15 or receive and accept a contribution or make an expenditure on the individual's behalf to secure
16 nomination or election to any public office at any time, whether or not the office for which the in-
17 dividual will seek nomination or election is known when the solicitation is made, the contribution
18 is received and retained or the expenditure is made, and whether or not the name of the individual
19 is printed on a ballot; or

20 (C) A public office holder against whom a recall petition has been completed and filed.

21 (b) For purposes of this section and ORS 260.035 to 260.156, "candidate" does not include a
22 candidate for the office of precinct committeeperson.

23 (2) "Committee director" means any person who directly and substantially participates in
24 decision-making on behalf of a political committee concerning the solicitation or expenditure of
25 funds and the support of or opposition to candidates or measures. The officers of a political party
26 shall be considered the directors of any political party committee of that party, unless otherwise
27 provided in the party's bylaws.

28 (3)(a) Except as provided in ORS 260.007, "contribute" or "contribution" includes:

29 (A) The payment, loan, gift, forgiving of indebtedness, or furnishing without equivalent compen-
30 sation or consideration, of money, services other than personal services for which no compensation

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted.
New sections are in **boldfaced** type.

1 is asked or given, supplies, equipment or any other thing of value:

2 (i) For the purpose of influencing an election for public office or an election on a measure, or
 3 of reducing the debt of a candidate for nomination or election to public office or the debt of a pol-
 4 itical committee; or

5 (ii) To or on behalf of a candidate, political committee or measure; and

6 (B) Any unfulfilled pledge, subscription, agreement or promise, whether or not legally enforcea-
 7 ble, to make a contribution.

8 (b) Regarding a contribution made for compensation or consideration of less than equivalent
 9 value, only the excess value of it shall be considered a contribution.

10 (4) "County clerk" means the county clerk or the county official in charge of elections.

11 (5) "Elector" means an individual qualified to vote under section 2, Article II of the Oregon
 12 Constitution.

13 (6) Except as provided in ORS 260.007, "expend" or "expenditure" includes the payment or fur-
 14 nishing of money or anything of value or the incurring or repayment of indebtedness or obligation
 15 by or on behalf of a candidate, political committee or person in consideration for any services,
 16 supplies, equipment or other thing of value performed or furnished for any reason, including support
 17 of or opposition to a candidate, political committee or measure, or for reducing the debt of a can-
 18 didate for nomination or election to public office. "Expenditure" also includes contributions made
 19 by a candidate or political committee to or on behalf of any other candidate or political committee.

20 (7) "Filing officer" means:

21 (a) The Secretary of State, regarding a candidate for any state office or any office to be voted
 22 for in the state at large or in a congressional district or regarding a measure to be voted on in the
 23 state at large.

24 (b) The county clerk, regarding a candidate for any county office or any district or precinct of-
 25 fice within the county, or regarding a measure to be voted for in one county or in a district situated
 26 wholly within one county.

27 (c) The chief city elections officer, regarding a candidate for any city office, or a measure to
 28 be voted for in a city only.

29 (d) The county clerk of the county in which the office of the chief administrative officer or ad-
 30 ministrative board is located regarding a candidate for office for any district or regarding a measure
 31 to be voted on in a district, when the district is situated in more than one county.

32 (e) In the case of an irrigation district formed under ORS chapter 545:

33 (A) The county clerk, regarding any candidate for office or any measure at an irrigation district
 34 formation election where the proposed district is situated wholly in one county;

35 (B) The county clerk of the county in which the office of the secretary of the proposed irrigation
 36 district will be located, regarding any candidate for office or any measure at an irrigation district
 37 formation election where the proposed district is situated in more than one county; or

38 (C) The secretary of the irrigation district for any election other than an irrigation district
 39 formation election.

40 (8) "Independent expenditure" means an expenditure by a person for a communication [*expressly*
 41 *advocating the election or defeat of*] **in support of or in opposition to** a clearly identified candidate
 42 that is not made with the cooperation or with the prior consent of, or in consultation with, or at
 43 the request or suggestion of, a candidate or any agent or authorized committee of the candidate.
 44 [*As used in*] **For purposes of** this subsection:

45 (a) **A communication is "in support of or in opposition to" a candidate if:**

1 **(A) The communication, taken in its context, clearly and unambiguously urges the**
 2 **election or defeat of a clearly identified candidate for nomination or election to public office;**

3 **(B) The communication, as a whole, seeks action rather than simply conveying informa-**
 4 **tion; and**

5 **(C) It is clear what action the communication advocates.**

6 [(a)] **(b) “Agent” means any person who has:**

7 (A) Actual oral or written authority, either express or implied, to make or to authorize the
 8 making of expenditures on behalf of a candidate; or

9 (B) Been placed in a position within the campaign organization where it would reasonably ap-
 10 pear that in the ordinary course of campaign-related activities the person may authorize expen-
 11 ditures.

12 [(b)] **(c) “Clearly identified” means:**

13 (A) The name of the candidate involved appears;

14 (B) A photograph or drawing of the candidate appears; or

15 (C) The identity of the candidate is apparent by unambiguous reference.

16 [(c) *“Expressly advocating” means any communication containing a message advocating election*
 17 *or defeat, including but not limited to the name of the candidate, or expressions such as “vote for,”*
 18 *“elect,” “support,” “cast your ballot for,” “vote against,” “defeat” or “reject.”*]

19 (d) “Made with the cooperation or with the prior consent of, or in consultation with, or at the
 20 request or suggestion of, a candidate or any agent or authorized committee of the candidate”:

21 (A) Means any arrangement, coordination or direction by the candidate or the candidate’s agent
 22 prior to the publication, distribution, display or broadcast of the communication. An expenditure
 23 shall be presumed to be so made when it is:

24 (i) Based on information about the candidate’s plans, projects or needs provided to the expending
 25 person by the candidate or by the candidate’s agent, with a view toward having an expenditure
 26 made; or

27 (ii) Made by or through any person who is or has been authorized to raise or expend funds, who
 28 is or has been an officer of a political committee authorized by the candidate or who is or has been
 29 receiving any form of compensation or reimbursement from the candidate, the candidate’s principal
 30 campaign committee or agent; and

31 (B) Does not include providing to the expending person upon request a copy of this chapter or
 32 any rules adopted by the Secretary of State relating to independent expenditures.

33 (9) “Initiative petition” means a petition to initiate a measure for which a prospective petition
 34 has been filed but that is not yet a measure.

35 (10) “Judge” means judge of the Supreme Court, Court of Appeals, circuit court or the Oregon
 36 Tax Court.

37 (11) “Mass mailing” means more than 200 substantially similar pieces of mail, but does not in-
 38 clude a form letter or other mail that is sent in response to an unsolicited request, letter or other
 39 inquiry.

40 (12) “Measure” includes any of the following submitted to the people for their approval or re-
 41 jection at an election:

42 (a) A proposed law.

43 (b) An Act or part of an Act of the Legislative Assembly.

44 (c) A revision of or amendment to the Oregon Constitution.

45 (d) Local, special or municipal legislation.

1 (e) A proposition or question.

2 (13) "Occupation" means the nature of an individual's principal business or, if the individual is
 3 employed by another person, the nature of the individual's principal business or the business name
 4 and address of the employer.

5 (14) "Person" means an individual, corporation, limited liability company, labor organization,
 6 association, firm, partnership, joint stock company, club, organization or other combination of indi-
 7 viduals having collective capacity.

8 (15)(a) "Political committee" means a combination of two or more individuals, or a person other
 9 than an individual, that has:

10 (A) Received a contribution for the purpose of supporting or opposing a candidate, measure or
 11 political party; or

12 (B) Made an expenditure for the purpose of supporting or opposing a candidate, measure or
 13 political party.

14 (b) For purposes of paragraph (a)(B) of this subsection, an expenditure does not include:

15 (A) A contribution to a candidate or political committee that is required to report the contri-
 16 bution on a statement filed under ORS 260.058, 260.063, 260.068, 260.073, 260.076 or 260.102 or sec-
 17 tion 6, chapter 542, Oregon Laws 2003, or a certificate filed under ORS 260.112; or

18 (B) An independent expenditure for which a statement is required to be filed by a person under
 19 ORS 260.044 (1).

20 (16) "Public office" means any national, state, county, district, city office or position, except a
 21 political party office, that is filled by the electors.

22 (17) "Recall petition" means a petition to recall a public officer for which a prospective petition
 23 has been filed but that is not yet a measure.

24 (18) "Referendum petition" means a petition to refer a measure for which a prospective petition
 25 has been filed but that is not yet a measure.

26 (19) "Slate mailer" means a mass mailing that supports or opposes a total of three or more
 27 candidates or measures.

28 (20)(a) "Slate mailer organization" means, except as provided in paragraph (b) of this subsection,
 29 any person who directly or indirectly:

30 (A) Is involved in the production of one or more slate mailers and exercises control over the
 31 selection of the candidates and measures to be supported or opposed in the slate mailers; and

32 (B) Receives or is promised payment for producing one or more slate mailers or for endorsing
 33 or opposing, or refraining from endorsing or opposing, a candidate or measure in one or more slate
 34 mailers.

35 (b) Notwithstanding paragraph (a) of this subsection, "slate mailer organization" does not in-
 36 clude:

37 (A) A political committee organized by a political party; or

38 (B) A political committee organized by the caucus of either the Senate or the House of Repre-
 39 sentatives of the Legislative Assembly.

40 (21) "State office" means the office of Governor, Secretary of State, State Treasurer, Attorney
 41 General, Commissioner of the Bureau of Labor and Industries, Superintendent of Public Instruction,
 42 state Senator, state Representative, judge or district attorney.

43 **SECTION 2.** ORS 260.044, as amended by section 10, chapter 542, Oregon Laws 2003, is
 44 amended to read:

45 260.044. (1) A person shall file a statement of **independent** expenditures [*made*] if the person

1 makes **independent** expenditures in a total amount of more than \$50 in support of or in opposition
 2 to a candidate, a measure or a political committee.

3 (2) A statement [*filed under*] **described in** subsection (1) of this section shall be filed for the
 4 reporting period described in ORS 260.063 or 260.073 during which the total amount of **independent**
 5 expenditures exceeds \$50. The accounting period for the statement required by subsection (1) of this
 6 section begins on the date that an **independent** expenditure is made. The statement shall specify the
 7 candidate, measure or political committee supported or opposed by the **independent** expenditure.
 8 The Secretary of State by rule shall prescribe the form of the [*statements*] **statement**. If a statement
 9 is filed for the reporting period for the supplement to the second preelection statement, a second
 10 statement for the same **independent** expenditure does not need to be filed in the post-election re-
 11 porting period.

12 (3) Notwithstanding ORS 260.005 (15), a person who solicits and receives a contribution or con-
 13 tributions [*shall be*] **is** a political committee and shall file a statement of organization under ORS
 14 260.042 and the statements required by ORS 260.063, 260.073 or 260.076. The statements filed under
 15 this subsection shall be filed for the reporting period described in ORS 260.063, 260.073 or 260.076
 16 during which any contribution was received. The accounting period for the statement required by
 17 this subsection begins on the date that a contribution is received.

18 (4) For purposes of this section:

19 (a) An **independent** expenditure does not include a contribution to a candidate or political
 20 committee that is required to report the contribution on a statement filed under ORS 260.058,
 21 260.063, 260.068, 260.073, 260.076 or 260.102 or section 6, chapter 542, Oregon Laws 2003, or a cer-
 22 tificate filed under ORS 260.112;

23 (b) An **independent** expenditure does not include a contribution to a candidate who is not re-
 24 quired to file a statement of organization under ORS 260.043; and

25 (c) A person is not a political committee under subsection (3) of this section if all contributions
 26 received by the person are designated to a candidate or political committee and are required to be
 27 reported as contributions by a candidate or political committee on a statement filed under ORS
 28 260.058, 260.063, 260.068, 260.073, 260.076 or 260.102 or section 6, chapter 542, Oregon Laws 2003,
 29 or a certificate filed under ORS 260.112.

30 (5) A person [*shall be*] **is** a principal campaign committee if the person, in preparing to become
 31 a candidate in the general election, receives a contribution, receives a loan, whether repaid or not,
 32 or makes an expenditure in a total amount of more than \$2,000 before the date of the primary
 33 election. A person described in this subsection shall file the statements required by ORS 260.058 as
 34 if the person were a candidate in the primary election. This subsection does not apply to a candi-
 35 date in the primary or nominating election.

36 **SECTION 3. The amendments to ORS 260.005 and 260.044 by sections 1 and 2 of this 2005**
 37 **Act apply to independent expenditures made prior to, on or after the effective date of this**
 38 **2005 Act and required to be reported on statements filed on or after the effective date of this**
 39 **2005 Act.**