

# Model Law on Payments Influencing Candidates and Elected Officials

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**DRAFT MODEL LAW ON PAYMENTS INFLUENCING CANDIDATES AND  
ELECTED OFFICIALS**

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## **Section 1.** The Political Contributions, Payments, & Expenditures Transparency Act

### **Section 2.** Findings

A. Money is a necessary and legitimate part of the political process in our country. Politicians need money to inform voters about themselves and their positions on the issues, and for other campaign purposes. Elected officials need money to fund activities that serve a governmental purpose but are otherwise unfunded or underfunded in modern government budgets. Politicians receive money through monetary contributions and payments from a variety of sources. Money in politics, from whatever source, should serve only governmental or political purposes.

B. In an effort to fight corruption and maintain the credibility of the political process, every state has enacted laws that require the public disclosure of contributions to political campaigns, and all but one require disclosure of campaign expenditures.

C. Most states place monetary limits on contributions to political campaigns by individuals, corporations, unions, and other groups because large contributions are seen to influence elected officials and candidates in an improper way. Further, limits encourage more individual contributors to a campaign; a broader base of monetary contributions to a campaign indicates increased participation by citizens in the political process and promotes competition in elections.

D. Some states also limit gifts that may be received by politicians because the states acknowledge that gifts to politicians, particularly extravagant gifts, create an appearance that the politician is in some way beholden to the donor.

E. The public increasingly believes that fundraising by candidates and elected officials is time consuming and does not serve the public good. Moreover, campaigns are prolonged due to fundraising pressures, and some expenditures by candidates and elected officials seem not to serve constituents or the interests of governmental institutions. Some campaign expenditures seem to benefit individual politicians rather than the electoral or governmental process.

F. Elected officials and candidates are able to circumvent campaign disclosure laws and regulations by raising funds for causes unrelated to a campaign for public office. Large undisclosed payments to non-campaign entities may appear to have, or actually have, a corrupting influence on individual politicians and provide an unfair advantage to incumbent officeholders, often positioned to exploit the power and resources of government. The entities through which politicians now more frequently raise money outside of the campaign finance system include, but are not limited to, legal defense funds, candidate-controlled ballot measure committees, reimbursed travel, political party fundraising, inaugural and swearing-in committees, convention and conference fundraising committees, officeholder accounts and booster funds, party administrative and housekeeping funds, leadership political action committees, foundations, charities, and other situations where a contribution or payment is made at the behest of the elected official or candidate.

G. All money given to or raised by elected officials and candidates, not only money already regulated by campaign finance laws, gives rise to apparent undue influence by large donors and possible corruption of elected officials and candidates. The money raised indirectly through non-campaign entities must be disclosed to the public with the goal of vastly increasing transparency about which individuals and entities are funding elected officials and candidates. Further, expenditures of this money made by elected officials and candidates must be fully disclosed in order to assure that it is being used for a governmental or other legitimate political purpose.

**Section 3.** Intent and purposes

The people enact this title to accomplish the following purposes:

1. Contributions, payments, and expenditures that have an official or political purpose should be fully and truthfully disclosed to the public in order that voters are informed and disclosure laws are not circumvented.
2. Personal use of contributions and payments received for an official or political purpose should be prohibited.
3. Communications made for political purposes should clearly disclose to the public the major sources of their funding.
4. Adequate enforcement mechanisms should be provided to public officials and the public in order that this title will be vigorously enforced.

**Section 4.** Definitions. The definitions in this section apply throughout this Act.

A. “Accrued expenses” means:

an expenditure that is not paid at the time the service is provided but is a debt owed by a campaign to a vendor or a subvendor for goods or services.  
(*Section 10*).

B. “Actual and necessary expenses” means:

expenses which are reasonable and that would be reimbursed by the state or approved by the state ethics/campaign finance entity. Such expenses do not include reimbursement for recreation or entertainment unless specifically permitted by a determination of the state ethics/campaign finance entity.  
(*Section 9*).

C. “Ballot measure” means:

an initiative, referendum, recall, or any proposition or question submitted to voters for their approval, or that is intended to be submitted to a vote at an election, whether or not it qualifies for the ballot.

*(Sections 2 and 6).*

D. “Campaign activity” means:

an action taken by an elected official, candidate, candidate committee, controlled committee, or any other committee or entity the actions of or decisions over which the elected official or candidate has significant influence in connection with a primary, general, special, or recall election that promotes the election or defeat of a candidate to a public office or for the success or defeat of a ballot measure. Such activities include but are not limited to fundraising, advertising, holding meetings and rallies, maintaining a campaign office or offices, paying for staff, consultants, and polling services, organizing volunteers, identifying voters, and participating in get out the vote activities.

*(Sections 6 and 13).*

E. “Candidate” means”

an individual who seeks nomination or election to elected office. A person is a candidate when he or she:

(1) files a statement of candidacy or petition for nomination for office with the agency or appropriate filing officer,

(2) is nominated for office by:

- (a) a party at a primary,
- (b) nominating convention, or
- (c) petition for nomination,

(3) receives and accepts contributions, makes expenditures or gives consent to a person, organization, political party, or political committee to solicit or receive and accept contributions or make expenditures to seek nomination or election to any office at any time, whether or not the office for which the individual will seek nomination or election is known when:

- (a) the contribution is received and retained, or
- (b) the expenditure is made,

(4) is an elected official who is the subject of a recall election or campaign,

(5) qualifies to have write-in votes on his or her behalf counted by election officials,

(6) is a judge who is on a ballot for retention, or

(7) engages in exploratory activity, as defined by this Act.  
(Sections 2, 5, 6, 7, 8, 9, and 13).

F. “Candidate committee” means:

the committee designated by a candidate to:

(1) promote the candidate’s candidacy, and

(2) serve as the recipient of contributions and the disbursing of expenditures.

(Sections 5, 6, and 7).

G. “Charitable entity” means:

an organization described in section 170(c) of the Internal Revenue Code of 1986. (26 U.S.C. 170(c).)

(Sections 2, 7, and 8).

H. “Committee” means:

a candidate committee, controlled committee, legislative caucus committee, party committee, political committee, or exploratory committee.

(Sections 2, 5, 6, 7, and 12).

I. “Contribution” means:

(1) a gift, payment, subscription, loan, guarantee or forgiveness of a loan, conveyance, advance, transfer, rendering of money, distribution, deposit of money, reimbursement, service(s), or anything else of value,

(2) a contract, promise, or agreement to make a payment for any purpose described in paragraph (1) of this subsection,

(3) the granting of a discount or rebate not extended to the public generally, and

(4) the receipt of tickets for travel, lodging, meals, receptions, conferences, and other hospitality or entertainment, or any reimbursement therefore.

The receipt of a contribution is presumed to be for a political purpose unless it can be shown by clear and convincing evidence that it is not made for a political purpose.

A contribution shall not include:

(1) services provided without compensation by an individual volunteering personal time on behalf of an elected official, candidate, candidate committee, controlled committee, or any committee or entity the actions of or decisions over which the elected official or candidate has significant influence.

(2) a payment made by the occupant of a home or office for costs relating to a fundraising event or political meeting held in such home or office if the costs are \$500 or less, or

(3) payments made by an individual for his or her travel expenses if voluntarily made without any understanding or agreement that the payment would be directly or indirectly repaid.

*(Sections 2, 5, 6, 7, 8, 9, 10, 11, and 12).*

J. “Controlled Committee” means:

a committee with respect to which an elected official or candidate, or his or her agent, has significant influence regarding its actions or decisions and which accepts contributions and makes expenditures.

*(Sections 5, 6, and 7).*

K. “Elected official” means:

a person elected to any office that is filled by means of a vote of the public or a significant segment of the public, or a person who is appointed to fill a vacancy in such an office, whether or not the person has yet taken office. The offices include any state, judicial, county, municipal, or other district, ward, township, or other political subdivision office or any political party office that is filled by means of a vote. It also includes any leadership position within a legislative body and membership on a county central committee of a qualified political party if such a position is filled by means of a vote.

*(Sections 2, 5, 6, 7, 8, and 9).*

L. “Election” means:

any primary, general, special, or recall election held in this state. The primary and general elections are separate elections for purposes of this Act.

M. “Entity” means:

an organization that has a distinct identity separate from those of its members and that in addition has legal rights and obligations.

*(Sections 2, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, and 15).*

N. “Expenditure” means:

a payment, a forgiveness of a loan, a payment of a loan by a third party, or an enforceable promise to make a payment, unless it is can be shown by clear and convincing evidence that it is not made for a political purpose.  
(Sections 2, 8, 10, 11, and 12).

O. “Exploratory activity” means:

the actions taken by an individual to determine whether to undertake a campaign for public office including but not limited to fundraising, the conduct of opinion polls, or the creation of a committee to assist in such actions.  
(Section 4).

P. “Loan” means:

a transfer of money, property, guarantee, or anything of value in exchange for an obligation, conditional or not, to repay in whole or in part.  
(Sections 4 and 7).

Q. “Market value” means:

the estimated amount at which property or services would change hands between a willing seller and a willing buyer when neither is under compulsion to sell or to buy and both have reasonable knowledge of the relevant facts.  
(Section 5).

R. “Official or political duties” means:

the activities of an elected official or candidate that are reasonably related to legislative activities, constituent services, or a political campaign.  
(Sections 5, 6, 8, 9, and 10).

S. “Payment” means:

a distribution, transfer, loan, advance, deposit, gift, or other rendering of money, property, services, or anything else of value.  
(Sections 5 and 7).

T. “Person” means:

an individual, proprietorship, limited liability corporation, firm, partnership, joint venture, joint stock company, syndicate, business trust, estate, company, corporation, association, club, political committee, organization, federal, state, or local governmental entity or agency, or group of persons acting in concert.  
(Sections 7, 8, 11, 12, and 14).



U. “Personal hospitality” means:

hospitality, meals, beverages, transportation, lodging, and entertainment furnished but not commercially provided by an individual and motivated by a close personal friendship that would have been given and received even if the recipient were not an elected official or candidate.

*(Section 5).*

V. “Political committee” means:

a person, group of persons, or entity that communicates support for or opposition to a particular, candidate, party, interest, issue, or ballot measure and that directly or indirectly does any of the following:

(1) receives and accepts contributions aggregating at least \$500 during a calendar year,

(2) makes independent expenditures aggregating at least \$500 during a calendar year.

*(Sections 2, 7, 8, and 11).*

W. “Political communication” means:

a message, whether broadcast, written, or communicated by electronic or other means, with no commercial purpose that conveys information of any sort about an election or for a political purpose.

*(Section 11).*

X. “Political party” means:

an organization or association of individuals under whose name candidates appear on a ballot for a partisan office, including state and county central committees and political clubs.

*(Sections 2, 7, and 12).*

Y. “Political purpose” means:

anything that influences

(1) the election or nomination for election of any individual to elected office,

(2) the recall or retention in office of an individual holding elected office,

(3) the qualification of or the vote on a ballot measure,

(4) the recount of an election concerning individual candidates or a ballot measure, or

(5) the official or political duties of or access to an elected official or candidate based on his or her position.

*(Sections 2, 5, 6, 9, and 12).*

Z. “Relative” means:

a spouse, dependent child, or any natural person who is a significant partner of the elected official or candidate and who lives with the elected official or candidate.

*(Sections 5, 6, and 8).*

AA. “Significant influence” means:

a level of involvement in a committee or a non-commercial entity by an elected official or candidate, or his or her agent, which includes, but is not limited to, allowing his or her name or his or her public office to be used in its name, attending its meetings not open to the general public, sitting as a member of the committee or on its board of directors, participating in any joint acts with it, directing, approving or disapproving any expenditure made by it, or participating substantially in its fundraising projects.

*(Sections 5, 6, and 7).*

BB. “Subvendor” means:

a third party that makes one or more expenditures on behalf of an elected official, candidate or committee. It includes, but is not limited to, expenditures made by consultants and services and merchandise purchased using a credit card.

*(Section 10).*

CC. “Transfer” means:

the movement or exchange of funds or anything of value between political committees, party committees, or candidate committees.

*(Sections 7 and 8).*

**Section 5.** Contributions and payments presumed to have a political purpose

A. No elected official or candidate shall receive a contribution or payment in an amount greater than the limits set forth in section 7 of this Act from any source unless it can be shown by clear and convincing evidence that such contribution or payment is not for a political purpose, including but not limited to anything of monetary value given to his or her relative, candidate committee, controlled committee, or any other committee or entity the actions of or decisions over which the elected official or candidate has significant influence, including but not limited to

- legal defense funds,
- ballot measure committees,
- political party fundraising,
- reimbursed travel
- inaugural and swearing-in committees,
- convention and conference fundraising,
- officeholder accounts or booster funds,
- party administrative or housekeeping accounts
- leadership political action committees,
- foundations,
- charities,
- behested contributions, and
- other non-campaign-related entities.

Items or payments received for other than political purposes include, among others, the following:

- (1) anything for which fair market value is paid,
- (2) a gift from a relative,
- (3) anything, including personal hospitality, provided on the basis of a personal friendship unless it is reasonable to believe under the circumstances, such as the donor seeks a tax deduction or business reimbursement for the gift, that the basis of the gift is the political or official position of the recipient,
- (4) wages, salary, dividends, or benefits received in the regular course of employment or business,
- (5) bequests, inheritances, and other transfers at death,
- (6) a plaque, trophy, or other item of a value no greater than \$250 that is substantially commemorative in nature and which is intended solely for presentation,
- (7) an item of little intrinsic value, such as a greeting card, baseball cap, or t-shirt, or

(8) material such as reports, periodicals, pamphlets, and other publications or objects that serve an informational purpose and are provided in the ordinary course of business. No payment or reimbursement for travel or expenses shall be deemed for an informational purpose.

B. The presumption in subsection A of this section may be rebutted by application to and a ruling by the state ethics/campaign finance entity. Such agency is authorized to receive informal and private inquiries as to the particular circumstances of a contribution or payment as well as to issue public advisory opinions regarding the nature and scope of the presumption and/or its application in particular circumstances.

C. Every contribution or payment of a value of \$100 or more per election, unless it shall have been determined to be for other than a political purpose, shall be disclosed to the public, including the name, address, occupation and employer of the donor, and the date and the amount of the contribution or payment, according to the regulations determined by the state ethics/campaign finance entity. For each donor of \$100 or more the required disclosure shall include his or her cumulative contributions or payments for that election as of the date of the report.

D. All contributions or payments disclosed according to subsection C shall be electronically filed with the state ethics/campaign finance entity and immediately posted and accessible to the public. Where no electronic filing system is operable, such disclosure reports shall be made available to the public on the state website within 24 hours of their receipt by the state ethics/campaign finance entity.

**Comment:** *With increasing frequency and much creativity, politicians seek to raise money or receive favors in ways that are not captured by campaign finance laws. These maneuvers around the system circumvent both contribution limits and disclosure provisions and flout laws that are intended to increase transparency in politics and permit citizens to know who is funding candidates and elected officials. Politicians, even in states with “clean” election laws, are continuing to benefit from money and favors that are all but invisible to state campaign finance officials and the public. The Act provides a broad definition of what constitutes a contribution which includes payments to non-campaign entities. This section creates the presumption that all activities by politicians that relate to raising money or receiving favors are for a political purpose and consequently should be fully disclosed unless they are determined by an objective body to be for other than a political purpose.*

*Examples of the loopholes which would be exposed by the blanket disclosure contemplated here abound. They include, among others, money raised by candidates and office holders through inaugural and swearing-in committees, candidate-controlled ballot measure committees, leadership PACs, office holder accounts and booster funds, party administrative and housekeeping accounts, exploratory activities, travel reimbursed by a private entity, convention and conference fundraising, political party fundraising, and foundation and other charitable fundraising. Legal defense funds are another problematic loophole but are addressed separately in section 7. Taken together, these provisions would not seek to make such fundraising illegal*

*but are intended to assure such fundraising is within limits and fully disclosed as part of the public record.*

*Further, this section is intended to specifically support the efforts of candidates and elected officials to comply with the campaign finance laws by encouraging them to make informal inquiries of the state ethics/campaign finance entity as to their activities which might not be for a political purpose and therefore outside the scope of the Act.*

**Section 6.** Prohibition on personal use of contributions and payments

An elected official or candidate, and his or her relatives, candidate committee, controlled committee, or any other committee or entity the actions of or decisions over which the elected official or candidate has significant influence, shall use contributions and payments only for campaign activities and official or political duties of elected office and is prohibited from any personal use of contributions, whether or not such contributions or payments are directly related to a particular campaign for public office or to a particular ballot measure, made to the elected official or candidate, relative, candidate committee, controlled committee, or other entities over which the elected official or candidate has significant influence, unless the presumption of political purpose in section 5 of this Act is rebutted. Payments made to a bone fide charity or a foundation with respect to which the elected official or candidate has significant influence may be used for other than campaign activities or political duties.

**Comment:** *When a politician, or a person or entity closely tied to the politician, is given a contribution or payment as defined by the Act a political purpose is presumed. Contributions to candidates or other political campaigns should be used only for campaign, official, or political activities and not for the personal enrichment of the politician or his or her family. Activities and gifts not covered by this prohibition are those determined by the state ethics/campaign finance entity to be for a purpose other than a political purpose and may be personally used by the politician. The enumeration of such items in section 5 is thus not definitive but should serve as a guide to the state ethics/campaign finance entity.*

**Section 7.** Limitations on contributions and payments

A. No person, elected official, candidate, candidate committee, political committee, or entity as defined by this Act, including a political committee, controlled committee, or any other entity the actions of or decisions over which an elected official or candidate has significant influence, including those committees or entities which are identified using an elected official's or candidate's name or public office, shall make contributions or payments which in the aggregate exceed \$2,300 per election to any elected official or candidate, including payments to his or her relatives, candidate committee, controlled committee, or any other committee or entity the actions of or decisions over which the elected official or candidate has significant influence.

B. No person, elected official, candidate, candidate committee, political committee, or entity shall make contributions or payments to candidates or political committees which in the aggregate exceed \$10,000 per year.

C. No person, elected official, candidate, candidate committee, controlled committee, political committee, or entity shall make contributions or payments which in the aggregate exceed \$4,600 per election to the totality of political party entities in this state.

D. No political party, including the totality of political party entities established and maintained in this state, shall make contributions or payments, including but not limited to transfers, reimbursements, or loans, which in the aggregate exceed \$10,000 per election to any elected official or candidate, including payments to his or her relatives, candidate committee, controlled committee, or any other committee or entity the actions of or decisions over which the elected official or candidate has significant influence.

E. Nothing in this section shall prohibit a person or persons from being a host or co-host of a fundraising event that has a political purpose and from collecting contributions or payments, within the limits established by this section, from persons in attendance at such event and presenting the contributions or payments to an elected official, candidate, or candidate committee. Such collections, however, shall be attributed in full to each host, and, in addition to being individually disclosed per individual donor, shall be fully disclosed as contributions or payments collected by a person, or persons, and identified by the name, address, occupation and employer of such person or persons, and the date of and the amount raised at the fundraising event. Such disclosure shall also include the names of and the total amounts raised for elected officials and candidates per election by such person or persons and any other information required by the state ethics/campaign finance entity.

F. The limits on contributions and payments contained in this section shall not apply to fundraising by an elected official or a candidate on behalf of a bone fide charity or a foundation provided that the elected official or candidate receives no benefit from or does not permit his or her name or his or her public office to be used by such charity or foundation.

G. The limits established by subsections A, B, C, and D of this section shall be adjusted to account for inflation in the same manner and on the same schedule as the limitations contained in 2 U.S.C. 441a.(c).

**Comment:** *The Act acknowledges both that money is an indispensable ingredient of political campaigns and official activities and that there is a legitimate governmental purpose to limits on contributions and payments in the avoidance of even the appearance of corruption of politicians. The Act thus provides limits for all participants, in addition to providing a much broader definition of what constitutes a contribution. It also extends the definition of candidate to include individuals engaged in exploratory activities.*

*The Act intends to allow significant amounts of money to be raised from individual contributors and other entities, including controlled committees and non-campaign entities. Politicians would be free to fundraise for these organizations but would not be free to receive unlimited or very large contributions of money or other payments in excess of the limit from such committees. These entities are treated like individual contributors. This closes the loophole that allows money to flow to the politician in large, often undisclosed amounts, from entities outside the campaign finance system. By creating bright-line limits across the board the Act also seeks to*

*reduce the appearance of undue influence that large contributors have resulting from their large donations to non-campaign entities favored by a politician. The exception for fundraising on behalf of a bone fide charity or a foundation would apply unless the elected official or candidate receives some benefit from or lends his or name or prestige to the organization as is the case, for example, when fundraising takes place to endow a public building or a university chair.*

*Contribution limits for political parties are significantly higher than those for individuals and other entities in order to encourage parties as participants, but the limit is below that currently permitted under many state campaign finance laws. In addition, the Act seeks to increase disclosure related to the practice of bundling of numerous contributions, to reflect more accurately the impact of a group of contributions from a particular industry, corporation, or similarly-minded group of contributors, whether or not the bundler is a registered lobbyist.*

*The Act proposes limits that track federal contribution levels and that, like the federal limits, are periodically indexed to account for inflation.*

**Section 8.** Legal defense funds

A. An elected official or candidate shall be prohibited from establishing a legal defense fund until the commencement of a formal dispute in a judicial, legislative, or administrative forum, including investigations commenced pursuant to Section 14 of this Act, that results from the official or political duties of the elected official or candidate.

(1) Only one such fund shall be established with respect to a particular formal dispute.

(2) Each legal defense fund shall at all times have a treasurer, designated by the elected official or candidate, who shall accept the appointment in a written statement. The treasurer shall be a resident of this state.

(3) Funds constituting a legal defense fund shall be deposited in and expended from a bank account separate from any other bank account held by the elected official or candidate.

(4) A fund established under this section is presumed to cease ninety (90) days following a final judgment in the formal dispute, unless good cause is found by the state ethics/campaign finance entity to extend the termination date.

B. An elected official or candidate is permitted to receive contributions to be placed in a legal defense fund. For purposes of this section, contributions do not include

(1) the provision of legal services to an elected officer by the state or any of its political subdivisions when those services are authorized or required by law,

(2) the provision of free or pro bono legal advice or legal services, provided that any costs incurred or expenses advanced for which clients are liable under other provisions of law shall be deemed contributions, or

(3) payments made for legal advice or services made by the elected official or candidate, or his or her relative.

C. Contributions may be received from any natural person but no individual shall make contributions to a legal defense fund that in the aggregate exceed \$500 per calendar year. No individual shall be prohibited from making contributions to a legal defense fund who has made contributions or payments to an elected official or candidate that in the aggregate total the limitation established in subsection A of section 7 of this Act.

D. Contributions to a legal defense fund are subject to the personal use prohibitions in section 6 of this Act and may be expended only for activities directly related to the formal dispute described in subsection A.

E. Every contribution of \$100 or more per calendar year made to a legal defense fund shall be disclosed to the public, including the name, address, occupation and employer of the donor, and the date and the amount of the contribution, according to regulations determined by the state ethics/campaign finance entity. For each donor of \$100 or more the required disclosure shall include his or her cumulative contributions for that year as of the date of the report. The reporting period for such contributions shall be no fewer than four times per year.

F. All contributions disclosed according to subsection E shall be electronically filed with the state ethics/campaign finance entity and immediately posted and accessible to the public. Where no electronic filing system is operable, such disclosure reports shall be made available to the public on the state website within 24 hours of their receipt by the state ethics/campaign finance entity.

G. The limit established by subsection C shall be adjusted to account for inflation in the same manner and on the same schedule as the limitations established in section 7 of this Act.

H. No elected official or candidate shall transfer funds from a legal defense fund to any candidate, candidate committee, political committee, or political party entity. Surplus funds shall be deposited in the general fund of the state.

**Comment:** *The Act contemplates special treatment of legal defense funds because every elected official or candidate who is faced with a legal challenge that arises from official or political duties is entitled to defend him- or herself. Such a defense could be difficult to finance where supporters already have given the maximum permitted campaign contribution or payment in the election. The Act intends that legal defense fund contributions shall be made by natural persons rather than corporations, political committees, civic organizations, or other entities and that all contributions to a legal defense fund of \$100 or more will be disclosed to the public.*



**Section 9.** Reimbursement for politically-related travel expenses

A. Expenditures for travel incurred by an elected official or candidate may be reimbursed to the elected official or candidate for public office by a governmental, bona fide public or private educational, or charitable entity or from campaign funds if the following requirements are satisfied:

(1) such expenses

- (a) are the actual and necessary expenses of the cost of transportation, lodging, and meals while away from his or her residence or principal place of employment,
- (b) are incurred in travel within the state or beyond the boundary of the state if notice of such travel, including a report itemizing the actual expenses incurred and the identifying by name and address the entity making the reimbursement, is submitted to the state ethics/campaign finance entity for disclosure on its website,
- (c) are reasonably related to, as determined by the state ethics/campaign finance commission, the performance of the official or political duties of the elected official or candidate and limited to the day immediately preceding, the day(s) of, and the day immediately following the performance of official or political duties, and
- (d) are fully and publicly disclosed as payments according to section 5 of this Act and regulations promulgated by the state ethics/campaign finance entity, and

(2) according to guidelines developed by the state ethics/campaign finance entity that include

- (a) a reasonable connection between a trip and official or political duties,
- (b) the amount actually spent on the trip,
- (c) the maximum per diem rates for government travel established by the state, and
- (d) disclosure by the educational or charitable entity of its donors or employees or representatives of the donor of \$1,000 or more during the previous calendar year who accompany the elected official or candidate on the trip, including the name, address, occupation and employer of any such donor as well as the date, amount of the donation, and cumulative amount for the donor in the previous calendar year, and

(3) the disclosure of reimbursable expenses for out-of-state travel required by paragraph (1) of this subsection is made to the state ethics/campaign finance entity within thirty (30) days of the last day of such travel and made available to the public by the entity on its website within 24 hours of receipt of the disclosure report.

B. The presumption that all reimbursed travel is for a political purpose and is thus a contribution or payment can be rebutted by application to the state ethics committee/campaign finance entity, which shall review and disclose on a publicly accessible website the travel, hospitality, or entertainment not paid for by the elected official or candidate out of his or her personal funds.

**Comment:** *Trips, even some that might be considered extravagant, are not necessarily prohibited by this provision. The intent is to assure that the entities funding the travel are identified in a way that is accessible to the general public. The Act would limit to governmental, bona fide educational, and charitable institutions the types of entities that could provide reimbursement however the Act requires that such educational and charitable institutions disclose their large donors of the previous year in order to do so. The Act further requires that reimbursable expenditures be actual, necessary, and reasonable as they relate to the travel and its official or political purpose. For example, a foreign fact-finding trip (determined to be related to official duties) could be reimbursed by the state, by the foreign government, or by an educational institution or a charity, and a candidate could use campaign funds (from a broader base of contributors) to make up any difference as long as the expenditures involved are determined to be actual, necessary, and reasonable. The disclosure required by this section, however, would discourage extravagant travel because there would be accessible records to show the direct association between the expenditures and the donor(s).*

**Section 10.** Expenditures of contributions and payments for official or political duties

A. The contributions and payments described in Section 5 of this Act may be expended only for activities that relate to official or political duties.

B. All expenditures of \$100 or more shall be disclosed to the public, including the name and address of the recipient, his or her business, the amount of the expenditure, the express purpose of the expenditure, and the date the obligation was incurred. The disclosure report required by this section shall include subvendor information and accrued expenses.

C. The state ethics/campaign finance entity shall issue regulations for the filing and review of the disclosure reports required by this section, including both routine and field audits, and shall be authorized to enforce the provisions of this Act.

D. All expenditures disclosed according to subsection B shall be electronically filed with the state ethics/campaign finance entity and immediately posted and accessible to the public. Where no electronic filing system is operable, such disclosure reports shall be made available to the public on the state website within 24 hours of their receipt by the state ethics/campaign finance entity.

**Comment:** *Along with the prohibition against personal use of contributions and payments in section 6, the Act requires that expenditures by elected officials and candidates be made only for activities that relate to official or political duties. In addition, disclosure of expended amounts of \$100 or more is required, including the identity of the recipient, the express purpose of the expenditure, and the date the obligation was incurred. The required disclosure of subvendor and accrued expenses information will increase accountability and reduce the extent to which the true purpose of an expenditure can be obscured.*

*The provision also requires that these disclosure reports be reviewed and audited by the state ethics/campaign finance entity. Such audits further assure that to the greatest extent possible information regarding all important expenditures will be made public.*

**Section 11.** Expenditures for political communications

A. Any person or entity, except a candidate or candidate committee making an expenditure for a political communication related to his or her own campaign for elected office, who makes expenditures for any political communication capable of dissemination to 500 or more persons of a general public audience shall identify within the political communication the three largest contributors to such expenditure including the name and complete address of each contributor. If a political committee is one of the three largest contributors to such expenditure then the communication shall in addition contain identification information including the name and complete address of the three largest contributors to the political committee during the election cycle in which the communication is made. If such committee is a controlled committee the name of the elected official or candidate, in addition to the other required disclosure, shall be disclosed in the communication. This provision shall not apply to bumper stickers, pins, buttons, pens and similar small items.

B. In the case of an audio or video communication such information as is required by subsection A shall be clearly spoken either at the beginning or at the end of the communication and for not less than three seconds per contributor being identified, or shall be written and displayed for not less than four seconds; in the case of a written communication such information shall be contained in a printed or drawn box apart from any other graphic material in at least 10-point type. In the case of larger formats such as a billboard, poster or other public display such information shall be contained in a printed or drawn box in type at least ten percent (10%) of the largest typeface otherwise used in the communication.

C. Communications covered by this section shall include any audio or video communications via broadcast, cable, satellite, telephonic, or electronic or other means and any written communication via advertisements, pamphlets, brochures, flyers, letterheads, or other printed materials. Communications exempted from the requirements of this section shall include editorials, commentary and news stories by any broadcasting station (including a cable television operator, programmer or producer), web site, newspaper, magazine, or other periodical publication (including any electronic publication).

**Comment:** *The Act seeks to increase and make consistent disclosure of the people and interests who fund political communications. It provides a broad definition of political communication that is intended to cover all non-commercial communications that have a political purpose and that would treat all of them the same way. The goal is to require a clear identification for the viewing or reading public of the individuals and interests that are funding such messages as the messages are viewed, heard or read rather than weeks or months later as part of a disclosure report. This provision is designed to enable the public to easily determine when a communication is funded by interests from out of their state. The provision applies to all audio or visual communications regardless of their length and all written communications regardless of their size.*

**Section 12.** Prohibition on evasion of limits or disclosure of funding source

A. It shall be unlawful for a person or entity who makes contributions, payments, or expenditures for a political purpose to create or use any committee or other legal entity to evade the limits contained in section 7 or section 8 of this Act or to avoid disclosure of any person, committee, political party, industry, or business entity as the donor of a contribution or payment or the funding source of a political communication.

B. Two or more entities shall be treated as a single entity if the entities:

- (1) share the majority of members on their boards of directors,
- (2) share two or more officers,
- (3) are owned or controlled by the same majority shareholder or shareholders or persons,
- (4) are in a parent-subsiidiary relationship, or
- (5) have by-laws so stating.

**Comment:** *This provision is intended specifically to prohibit the creation of shell committees or other entities would mask the true identity of individuals who donate to elected officials or candidates or who fund political communications.*

**Section 13.** Duration of political campaigns

A. All campaign activity is presumed to cease no later than 180 days following the date of the general election. If a candidate is defeated in a primary election or otherwise permanently suspends his or her campaign then all campaign activity with respect to that campaign is presumed to cease no later than 180 days following the date of the primary election or the date the candidate leaves the race.

B. The presumption in section A may be rebutted by application to and a ruling by the state ethics/campaign finance entity. Such application is timely made if received by the state ethics/campaign finance entity no later than 60 days following the date of the general election or the primary election or such date as the candidate leaves the race.

C. Campaign funds remaining at the end of the 180-day period shall be deposited in the general fund of the state.

**Comment:** *Political contributions and payments are presumed by the Act to be used only for official or political purposes and more specifically for the conduct of political campaigns. Excessive fundraising activities, particularly activities with non-campaign entities, gives support to the appearance of corruption and frequently the money raised becomes a “war chest” because it greatly exceeds the amount of money expended by a candidate to wage a meaningful campaign. The Act contemplates, therefore that surplus campaign funds will be deposited in the general fund of the state. This encourages campaign funds to be expended for purposes*

*anticipated by donors and discourages fundraising for a purpose unrelated to a specific campaign.*

#### **Section 14.** Enforcement

A. The state ethics/campaign finance entity shall investigate alleged violations of this Act. Complaints about alleged violations must be received by the state ethics/campaign finance entity no later than four years following the alleged violation.

B. Any such investigation shall be commenced promptly following an allegation that a violation of the Act has occurred. Investigation may be commenced internally, or shall commence within thirty (30) days of the receipt of a written complaint from another governmental entity or a citizen of the state. Notice of the alleged violation and that an investigation has commenced shall be given in writing and within twenty-four (24) hours of such commencement to the person or entity involved.

C. A person or entity shall have fifteen (15) business days following receipt of notice from the state ethics/campaign finance entity that an investigation has been commenced to answer the allegations.

D. The state ethics/campaign finance entity shall determine whether there is probable cause to believe that a violation of the Act has occurred. If probable cause is found, the state ethics/campaign finance entity shall notify the person or entity involved and schedule a public hearing within thirty (30) business days of such determination. All proceedings and actions concerning a complaint or investigation prior to a determination of probable cause shall be confidential. Public disclosure of any information involved in an investigation prior to a determination of probable cause shall be punishable as a misdemeanor. The state ethics/campaign finance entity shall make public findings within fifteen (15) business days after the conclusion of any public hearing held to investigate alleged violations of the Act.

E. In all matters regarding the Act the state ethics/campaign finance entity shall have the power to issue subpoenas and cause them to be served. Failure to obey a subpoena shall be punishable as contempt by a trial court of this state.

F. The state ethics/campaign finance entity shall define the penalties that shall attach for violations of the Act, including civil and criminal penalties as provided by law, including referral to the local district attorney or the office of the state attorney general.

**Comment:** *The Act creates an enforcement timeline that does not permit allegations to languish without resolution. The state ethics/campaign finance entity must act quickly to determine whether probable cause of a violation of the Act exists and does so by conducting a non-public investigation according to its regulations. Any public disclosure of information relating to this preliminary phase of the investigation is punishable as a misdemeanor, a provision that is intended to permit a full and fair examination of the information received about the alleged violation and in the answer of the individual or entity involved. A public hearing follows within 30 business days of a determination of probable cause, and findings must be made public within*

*15 business days of its conclusion. At all times the state ethics/campaign finance entity is armed with the power to issue and serve subpoenas.*

**Section 15.** Regulations

The state ethics/campaign finance entity shall issue regulations for the implementation of this Act.

**Section 16.** Severability

The provisions of this Act are severable. If any provision herein is determined to be invalid in a court of competent jurisdiction, the invalidity does not affect the other provisions of the Act that may be given effect without the invalid provision.



CENTER FOR GOVERNMENTAL STUDIES

<b><u>Type of Donation</u></b>	<b><u>Contribution</u></b>	<b><u>Payment</u></b>	<b><u>Limitations</u></b>	<b><u>Disclosure</u></b>
<b>Campaign Funds</b>	<b>x</b>		<b>x</b>	<b>x</b>
<b>Inaugural/ Swearing-in-Funds</b>	<b>x</b>		<b>x</b>	<b>x</b>
<b>Controlled Ballot Measure Fundraising</b>	<b>x</b>		<b>x</b>	<b>x</b>
<b>Officeholder Accounts</b>		<b>x</b>	<b>x</b>	<b>x</b>
<b>Legal Defense Funds</b>		<b>x</b>	<b>x</b>	<b>x</b>
<b>Leadership PACs</b>	<b>x</b>		<b>x</b>	<b>x</b>
<b>Charitable Fundraising*</b>			<b>x</b>	<b>x</b>
<b>Foundation Fundraising*</b>			<b>x</b>	<b>x</b>
<b>Behested Contributions</b>	<b>x</b>		<b>x</b>	<b>x</b>
<b>Reimbursed Travel</b>		<b>x</b>		<b>x</b>
<b>Party Fundraising</b>	<b>x</b>		<b>x</b>	<b>x</b>
<b>Party Administrative/ Housekeeping Accounts</b>	<b>x</b>		<b>x</b>	<b>x</b>

\* Limitations would apply if there is some benefit to the elected official or candidate