



SIoux FALLS AREA
CHAMBER OF COMMERCE
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ISSUE BRIEF:

Campaign Finance and Lobbying Initiative — Initiated Measure 22

July 2016

Approved by the Executive Committee: July 25, 2016

Approved by the Board of Directors: July 27, 2016

The Sioux Falls Area Chamber of Commerce encourages a “NO” vote on Initiated Measure 22 on the 2016 general election ballot.

Background

In South Dakota, statutory changes can be initiated by the citizenry by obtaining valid signatures equaling at least 5 percent of the vote total from the prior gubernatorial election. That means 13,871 signatures are required for measures proposed in 2016. Proponents of Initiated Measure 22 (“IM 22”) gathered 18,122 signatures, so IM 22 will appear on the general election ballot in November. IM 22 is a 34-page act with significant detail and change embedded. In this brief, we will focus on only some of the more significant changes proposed.

IM 22 would do the following

- Create a state-funded “Democracy Credit Program” of up to \$12 million. Funds would come from the state general fund at the rate of \$9 per registered voter or about \$5 million per fiscal year.
 - Two \$50 democracy credits (\$100) would be available to each registered voter to use to provide state funding for political campaigns. Two \$50 credits multiplied by total registered voters in South Dakota equals about \$52 million.
- Create a new State Ethics Commission to administer the democracy credits program and investigate complaints against candidates, elected officials, appointed government officials and lobbyists. No fiscal impact statement for the staffing and operation of the Commission is included.
- Change the definition of “contribution” and set limits on contribution amounts.
- Change current laws with respect to the functioning of political action committees (PACs) and political parties.
- Add a new section of law dealing with expenditures made on behalf of any candidate and classifying them as a contribution.
- Add a new section of law dealing with gifts from lobbyists.

More detail on each of the above bullets is provided below. In his explanation, the State Attorney General notes the possibility of a challenge on constitutional grounds if the measure passes.

Discussion

IM 22, a 34-page act, purports to be a complete overhaul of South Dakota’s rules related to campaign funding, ethics in politics, and lobbying rules.

Democracy Credit Program

Sections 42-63 of IM 22 would establish the Democracy Credit Program, a new program whereby, beginning on July 1, 2017, an annual appropriation of \$9 per registered South

ISSUE BRIEF: Campaign Finance and Lobbying Initiative — Initiated Measure 22

Dakota voter (adjusted each year for inflation) would be made to the Democracy Credit Fund. These funds would be used to provide state funding of political campaigns in South Dakota. The Fund could accumulate up to \$12 million, but the annual impact to the general fund will approach \$5 million until the cap is reached. Essentially every registered voter would receive two democracy credits valued at \$50 each to contribute to political candidates of their choice. In exchange for receiving democracy credits, a candidate would have to agree to limit the amount of other, private contributions he or she receives. IM 22 also would limit the amount of Democracy Credit funds that a candidate for a particular office is able to receive.

State Ethics Commission

Sections 32-41 of IM 22 establish a new State Ethics Commission of five members that is responsible for:

1. Implementing and administering the Democracy Credit Program.
2. Issuing recommendations to public agencies to minimize corruption and promote trust in government.
3. Reviewing all statements and records required to be filed under campaign finance and lobbying laws, including the authority to audit entities required to file.
4. Investigating complaints and referring them to the Secretary of State or Attorney General for investigation and enforcement. The Commission will have authority to take civil action on its own and subpoena documents and witnesses and conduct investigations privately or in executive session.
5. Issuing and publishing advisory opinions

IM 22 would also give the Commission rule-making authority to implement the Act.

IM 22 does not include any estimate of cost for establishing, staffing and operating the Ethics Commission.

Contribution Limits

Sections 5-6 of IM 22 would change and set limits on the contribution amounts a candidate for a specific office, and the candidate's campaign committee, can accept in an aggregate amount from one source in any particular calendar year. The limits are as follows, as listed by particular office:

- Governor — \$4,000 from a person or political committee; \$40,000 from a political party.
- Attorney General and Lieutenant Governor — \$2,000 from a person or political committee; \$20,000 from a political party.
- Secretary of State, Auditor, Treasurer, Commissioner of School and Public Lands, and Public Utilities Commissioner — \$1,000 from a person or political committee; \$10,000 from a political party.
- Legislative or county office — \$750 from a person or political committee; \$5,000 from a political party.

Funds received through the Democracy Credit Program are considered a contribution and subject to these limits.

ISSUE BRIEF: Campaign Finance and Lobbying Initiative — Initiated Measure 22

Political Action Committees and Political Parties

IM 22 also changes current laws with respect to political action committees (PACs) and political parties, by setting limits on the aggregate amount from a single source that a PAC or a political party may accept in any particular calendar year. For a PAC, the limit on contributions from a person, organization, political committee, or political party would be \$2,000. For a political party, a contribution from a person or political committee would be limited to \$5,000. Both PACs and political parties would be barred from accepting contributions from ballot question committees.

For purposes of the contribution limits, any committee established, financed, or controlled by the same corporation, organization, person, or group of persons, including parent and subsidiary relationships, would share a single contribution limit with respect to contributions made and received.

Expenditures Made on Behalf of Any Candidate

IM 22 would add a new section of South Dakota law stating that any “expenditure” by any person, group, committee or other entity in cooperation with or at the request of a candidate, the candidate’s committee, or its agents, is considered a contribution to the candidate. “Expenditure” is defined as including any purchase, payment, distribution, loan, advance, deposit, or gift of money or anything of value, made by any person for the purpose of influencing any election, initiative, measure, or question. IM 22 would prohibit a person, organization, candidate, political committee, or political party from accepting a contribution from a person of more than \$500 in any calendar year unless the person’s occupation and current employer is disclosed to the recipient.

Restrictions on Lobbying Activities

IM 22 would also add a new section of law dealing with gifts from lobbyists or employers of lobbyists to elected state officers, legislative officials or staff persons, or executive department officials or staff persons. Gifts include any compensation, reward, employment, gift, honorarium, beverage, meal, food, or other thing of value. Gifts would be limited to an aggregate of \$100 in a calendar year. The measure would not only prohibit lobbyists or employers of lobbyists from giving such a gift, but also from acting as an agent or intermediary in making the gift. The value of gifts given to immediate family members is attributable to the official or staff person, unless an independent business or family or social relationship exists between the donor and the family member, subject to the approval of the ethics commission established by IM 22. The Measure would also increase the criminal liability for making bribes to influence legislation from a class 1 misdemeanor to a class 5 felony.

Proponent Rationale:

- Funding political campaigns by using taxpayer dollars is one of the best ways to regulate election spending and is a necessary cost of democracy.
- Increased transparency can limit the influence of special interest money and help deter corruption.

ISSUE BRIEF: Campaign Finance and Lobbying Initiative — Initiated Measure 22

- An environment with only private donations increases the likelihood that the socioeconomic differences within an area will translate into differences in representation and access to political power.
- The Ethics Commission and other pieces would increase transparency and reign in corruption in South Dakota politics and state government.

Opponent Rationale:

- Funding political campaigns by using taxpayer dollars is wasteful and takes scarce money away from other public services. The public is not demanding state-funded campaigns to the detriment of other state programs.
- The math does not seem to work. Two \$50 credits per registered voter equals nearly \$52 million, however, the act notes that only up to \$12 million can be in the fund so it appears to be only about 25 percent funded. What happens if all registered voters seek to use their credits? Or, even one-half of them? Where does the rest of the money come from?
- Public financing stifles first amendment rights by forcing support to political parties and candidates from taxpayer funds without taxpayer consent.
- Public funding preserves a status quo that keeps established parties and candidates in power.
- In addition to the public funding of campaigns, IM 22 requires a great deal of new bureaucratic infrastructure that will cost South Dakota taxpayers an unknown, but clearly significant, amount in annual appropriations. The Ethics Commission, to do its job, will need funding for their staff and operations. No mention of that is made, but clearly it will significantly impact the state's general fund further redirecting resources from other state programs.

Note: Detailing “Proponents” and “Opponents” rationale is designed to provide the reader with an understanding of the opinions and talking points from each perspective. They are not intended to reflect any position of the Sioux Falls Area Chamber of Commerce.

Chamber Position (Adopted Aug. 17, 2016)

The Sioux Falls Area Chamber of Commerce encourages a “NO” vote on Initiated Measure 22 on the 2016 general election ballot.

Rationale

IM 22 has so many different and disparate pieces with sweeping impact that it amounts to a shotgun approach to change. Thus, voters will be asked to accept an all or nothing measure rather than having each of the individual issues presented for consideration.

In addition, this measure would not likely to have helped ferret out the bad actor activities that recently came to light in the EB-5 and GEAR-Up programs. While used as examples by the proponents, it is unclear how this measure would do any good in this area. The idea of an Ethics Commission existed in the late 70s in South Dakota, but with a short history and mainly focused on election activity. It was repealed in 1979.

ISSUE BRIEF: Campaign Finance and Lobbying Initiative — Initiated Measure 22

Funding outlined for the government funded campaigns through the “Democracy Credits” program does not make any sense. In short, allowing nearly \$52 million worth of calculated credits against \$12 million of total funding means that less than one in four voters would be able to use their credits.

Finally, the sweeping powers of the proposed Ethics Commission with an undefined – possibly unlimited – budget are bothersome. The combination of funding the Democracy Credits program and the Ethics Commission would undoubtedly mean a reduction in general funds available for core programs in state government.

Sources

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