

MINUTES

Government Accountability Task Force



Senator Jordan Youngberg, Chair
Representative Julie Bartling, Vice Chair

**Second Meeting, 2017 Interim
Tuesday, August 29, 2017**

**Room 413 – State Capitol
Pierre, SD**

The first meeting of the Government Accountability Task Force was called to order by Senator Youngberg at 10:00 a.m. (CDT) on August 29, 2017, in Room 413 of the State Capitol, Pierre, South Dakota.

A quorum was determined by the following members answering the roll call: Senators Brock Greenfield, Craig Kennedy, and Billie Sutton; Representatives Timothy Johns, and Karen Soli; Mr. Tony Venhuizen, Ms. Kea Warne, and Mr. Rich Williams; Representative Julie Bartling, Vice Chair; and Senator Jordan Youngberg, Chair. Member excused: Representative Mike Stevens.

Staff members present included Fred Baatz, Principal Research Analyst; Wenzel Cummings, Legislative Attorney; Jason Simmons, Principal Fiscal Analyst; and Paul Giovanetti, Senior Legislative Secretary.

NOTE: For purpose of continuity, the following minutes are not necessarily in chronological order. Also, all referenced documents distributed at the meeting are attached to the original minutes on file in the Legislative Research Council office. This meeting was web cast live. The archived web cast is available at the LRC web site at <http://sdlegislature.gov>.

Approval of the Minutes

A MOTION WAS MADE BY REPRESENTATIVE JOHNS, SECONDED BY MR. VENHUIZEN, TO APPROVE THE MINUTES OF THE JUNE 19, 2017, GOVERNMENT ACCOUNTABILITY TASK FORCE MEETING. The motion prevailed unanimously on a voice vote.

Opening Remarks

Senator Jordan Youngberg provided opening remarks regarding the agenda.

Mr. Fred Baatz, Principal Research Analyst, Legislative Research Council reviewed the additional information that was added to the website since the last meeting for the task force members and the public. These documents include Initiated Measure 22 (IM 22) ([Document #1](#)); Proposed Constitutional Amendment – Campaign Finance, Lobbyists, Government Accountability Board, Appropriation, and Initiative and Referral Process ([Document #2](#)); and NCSL State Limits on Contributions to Candidates 2017-2018 Election Cycle ([Document #3](#)).

Campaign Finance and the Supreme Court

Ms. Wendy Underhill, Program Director, National Conference of State Legislatures, presented information on Campaign Financing ([Document #4](#)). States generally enact legislation in three areas concerning Campaign Finance Regulation: Disclosure/ Reporting; Public Financing; and Contribution Limits. Disclosure regulations mostly deal with what contributions are disclosed, what size of contribution must be reported, what information is provided, and when the reports are due. Ms. Underhill reviewed the United States Supreme Court cases concerning campaign finance. The courts have ruled that campaign limits on expenditures are unconstitutional, limits on contributions are constitutional but not for contributions to ballot measures, or limits not as an aggregated amount, and limits

cannot be too low to fund a campaign.

Representative Timothy Johns asked what was the rationale for Arizona relieving 501c3 from reporting on campaign finances. Ms. Underhill provided clarification on 501c3 disclosures and the route the Arizona Legislature took with this change and can provide more information if requested.

Senator Youngberg asked if the current trend is for states to increase contribution limits. Ms. Underhill stated that many states have increased limits due to inflationary adjustments. There is a push for providing more transparency of soft or dark money.

Senator Craig Kennedy asked if the United States Supreme Court opinions permit the states from prohibiting contribution limits to individuals from corporations. Ms. Underhill replied that based on the current opinions nothing that would prohibit the state from prohibiting corporations from making contributions to candidates.

Senator Billie Sutton asked if there are any limitations on putting a cap on the total dollars that can be raised from a contributions category (individual contribution cap, political party contribution cap, PAC contribution cap, etc.). Ms. Underhill replied that the state is not allowed to set aggregate contributions limits.

State Campaign Finance Comparisons

Ms. Underhill reviewed the federal contribution limits to candidates. She then presented the comparison of state contribution limits to candidates. Eleven states have no individual limits on contributions to candidates. Fifteen states have no limits on political party contributions to candidates, while other states have contribution limits on what state parties may give to candidates. Most states have "PAC to candidate" limits which correspond to the "individual to candidate" limits.

State Campaign Finance Trends

Ms. Underhill discussed the recent legislative action enacted by the states on campaign finance. Most states have enacted campaign finance disclosure regulations on ballot measures. Other trends that are prevalent include electronic reporting, enforcement penalties for noncompliance, identification for electioneering, and coordination between candidates and independent groups.

Senator Sutton asked how many states have lowered limits since the Citizens United decision. Ms. Underhill replied no states have reduced the limits since the Citizen United Supreme Court decision.

Representative Johns asked if there have been any studies on what an effective amount for a candidate to run a campaign. Ms. Underhill replied there has not been a study done to answer that question which was the subject of a Supreme Court decision.

Senator Youngberg asked if there were any inflationary clauses in the campaign finances laws. Ms. Underhill replied that 17 states have an inflationary clause included in their campaign finance laws.

Senator Kennedy asked if anyone has challenged Colorado's individual contribution limit of \$400. Ms. Underhill replied that contribution limit has not been challenged, but there have been challenges in other states.

Representative Johns asked if a state does not have campaign contribution limits how does that affect political races. Ms. Underhill will research for more information on this topic.

Representative Julie Bartling asked on the states that have adjustments for inflation to the campaign finance limits how is it implemented and the basis typically used. Ms. Underhill will provide the committee with more information on this topic.

South Dakota Campaign Finance – New and Revised Requirements

Ms. Kea Warne, Deputy Secretary of State, Secretary of State's Office reviewed the new reporting deadlines. Previously, all Primary and General reports were due on a Friday, the new law has changed this day to a Monday. Year-end reports were due in December, this has changed to the last Friday in January. A candidate is prohibited from using campaign funds for personal use. There has been a change in the ballot question termination report deadlines. Lastly the filing deadlines require that the candidate use the prescribed forms from the Secretary of State's office and they may be filed electronically. Contribution limits have been revised and corporations and unions may contribute to candidate committees or a political party. She also reviewed the Campaign Finance Complaint Process ([Document #5](#)). She recommended if the task force changes any contribution limits or reporting timelines the Secretary of State's Office recommends a delayed implementation date until 2019 and completion of the 2018 election reports.

Senator Brock Greenfield asked when did the contribution limits change. Ms. Warne replied SDCL Chapter 12-27 was first applied to the 2008 election, then in 2017 it was amended in response to IM 22.

Representative Johns asked if the Secretary of State's Office has received any complaint that the contribution limits are too low. Ms. Warne replied she has not received such complaints during the time she has worked in the office.

Senator Kennedy asked if there was a comparison on reporting requirements showing the difference between current enacted law from SB 54 and IM 22. Ms. Warne stated the Secretary of State's Office has not compiled that information but will work with the Legislative Research Council on that request.

Mr. Baatz reviewed the number of violations that have been established in the campaign financing statutes. The penalties in SDCL Chapter 12-27 include one Class 5 Felony, twenty-three Class 1 Misdemeanors, and twenty-four Class 2 Misdemeanors.

Public Testimony

Mr. David Owen, President, South Dakota Chamber of Commerce and Industry, provided testimony requesting the committee to look at creating ballot action committees for ballot measure questions or some means to allow ballot question committees to continue from one election cycle to the next ([Document #6](#)).

Mr. Tony Venhuizen asked why the chamber could not use a political action committee for this mechanism. Mr. Owen replied that businesses may prefer to make contributions to ballot question committees.

Task Force Discussion

Mr. Venhuizen discussed the draft he is working on with the Office of the Secretary of State. The intent is to make the laws regarding campaign finance contribution limits easier to read and provide clarity.

Representative Karen Soli replied that she appreciates the proposed language which makes it easier to understand.

Senator Kennedy stated that he appreciates the effort in understanding the topic. However, the people passed IM 22 and he does not understand why the campaign finance limits in IM 22 were changed by SB 54. He stated that the provisions in IM 22 regarding campaign finance limits were not a part of what Judge Barnett said was

unconstitutional. Today we heard testimony from NCSL that the campaign finance limits are not unconstitutional. SB 54 increased the amounts and expanded the list on who may contribute. The simplest action the Task Force can do is to propose legislation that are equivalent to the limits passed by the voters in IM 22.

Representative Johns stated the task force has two policy questions what is an appropriate limit to run a campaign in South Dakota and what contributions are appropriate to exclude.

Mr. Venhuizen stated there are three different issues before the task force. First, what should the campaign contribution limits be, second, should corporations and unions be allowed to donate to a campaign, and lastly, what could be done about the ability of some contributors who avoid the contribution limits by creating a series of political action committees or limited liability companies where the individual or entity may contribute multiple times.

Senator Kennedy stated that SB 54 created a problem in which the new limits are inconsistent with what the voters passed in IM 22.

Representative Soli asked if the task force is going to consider setting campaign limits at the amounts the voters passed in IM 22. She stated that the task force should be careful when revising the limits and should look at finding a proper balance.

Representative Johns stated that the United States Supreme Court has stated the constitution requires that the contribution limits must be at an amount that allows candidates to effectively run a campaign.

Senator Youngberg requested the task force to submit questions to him by September 6, 2017, and he will forward the questions to Ms. Underhill.

Planning for Future Meetings

Senator Youngberg proposed that the task force schedule subcommittee meetings to allow the public to testify on campaign finance limits in Rapid City and Sioux Falls. The committee determined the subcommittee meetings will be held on September 11 and 12th from 5pm to 7pm.

The next regular task force meeting will be held on October 16, 2017 at 10:30am in Pierre.

Adjournment

A MOTION WAS MADE BY SENATOR GREENFIELD, SECONDED BY REPRESENTATIVE SOLI, THAT THE GOVERNMENT ACCOUNTABILITY TASK FORCE MEETING BE ADJOURNED. The motion prevailed unanimously on a voice vote.

The task force adjourned at 1:45 pm