



Summary of Initiative 1464

Prepared for members of the Washington House of Representatives by the House Office of Program Research.

This information has been prepared in response to various requests for a summary of Initiative 1464. It is provided for analytical and legislative policy purposes only. It is not provided as an expression of support for or opposition to any ballot measure. These materials are intended to provide general information and are not intended to be an exhaustive analysis of all issues presented by the measure.

BRIEF SUMMARY

- Creates the Democracy Credit Program (Program) under which eligible individuals may allocate publicly funded campaign contributions to certain candidates for state office.
- Repeals the state sales tax exemption for nonresidents to fund the Program.
- Changes campaign financing laws by: restricting the amount public contractors and lobbyists may contribute to political candidates; establishing certain independent expenditures as political contributions; limiting the amount of surplus campaign funds that are reimbursable to a candidate for lost earnings during a campaign; and requiring additional disclosures related to political advertising.
- Restricts lobbying by former public officers and employees.

BACKGROUND

Initiative 1464

Initiative 1464 was certified to the ballot on August 2, 2016. The ballot title and ballot measure summary prepared by the Attorney General are as follows:

Ballot Title

Statement of Subject: Initiative Measure No. 1464 concerns campaign finance laws and lobbyists.

Concise Description: This measure would create a campaign-finance system; allow residents to direct state funds to candidates; repeal the non-resident sales-tax exemption; restrict lobbying employment by certain former public employees; and add enforcement requirements.

Should this measure be enacted into law? Yes [] No []

Ballot Measure Summary

This measure would create a state-funded campaign finance program allowing residents to direct up to three \$50 contributions to candidates for certain state offices. It would repeal the non-resident sales tax exemption, directing resulting funds to this program. It would restrict lobbying employment by certain former public employees; restrict campaign contributions from lobbyists and state contractors; increase penalties for campaign finance violations; increase campaign finance administration and enforcement; and revise campaign finance and disclosure laws.

Campaign Finance and Disclosure Law

Washington's campaign finance and disclosure laws impose campaign contribution limits, restrict the use of public funds for political purposes, and require the disclosure of campaign finances, lobbyist activities, and financial affairs of elective officers and candidates. The Public Disclosure Commission (PDC) enforces the campaign finance and disclosure laws and has authority to develop procedures, adopt rules, investigate complaints, and impose civil fines.

Disclosure Requirements. Election candidates and political committees organized to support or oppose any political candidate or ballot measure must periodically report to the PDC on their contribution and expenditure activities. Lobbyists and public agencies also must report their lobbying activities to the PDC.

Political Advertising. Political advertisements must include the sponsor's name, and written advertisements must also include the sponsor's address. Advertisements sponsored by a political committee must list the top five persons or entities making the largest contributions in excess of \$700 during the 12-month period before the date the advertisement is initially published or presented to the public.

Public Financing of Campaigns. State funds may not be used to finance political campaigns for state or school district offices. A local government may publicly finance campaigns for other local offices upon voter approval, but local public financing may only use funds derived from local sources.

Campaign Contribution Limits. State law limits campaign contributions made to candidates for certain public offices. A contribution includes a donation, payment, loan, service, or anything of value, as well as financing of a political advertisement or electioneering communication prepared by a candidate or political committee.

Individuals, unions, businesses, and political action committees are limited to contributing an

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aggregate of:

- \$1,000 per election to a candidate for the Legislature or county office, city council office, mayoral office, or school board office; and
- \$2,000 per election to a candidate for statewide elective office, judicial office, or large port district office.

State party organizations and legislative caucus political committees are limited to contributing an aggregate of:

- \$1 per registered voter in the jurisdiction in which the candidate is running for state executive, legislative, or local office; and
- \$2,000 per election for judicial candidates.

County central committees and legislative district committees combined may not contribute to any one candidate an amount more than 50 cents per registered voter within the candidate's election district.

The PDC may adjust these contribution limits based on an inflationary index.

Surplus Campaign Funds. Funds left over from a campaign may be returned to the donor, used to reimburse the candidate for lost earnings, transferred to a political party, donated to a charitable organization or the state, or held for future campaigns by the same candidate. Surplus funds are not transferrable to another candidate or political committee.

Enforcement Actions in Court. In addition to regulatory enforcement by the PDC, the Attorney General and local prosecutors may bring a civil action in court to enforce violations of the campaign finance and disclosure laws. A citizen also may sue on behalf of the state if the Attorney General and local prosecutor fail to do so after specified waiting periods.

State Ethics Law

State Procurement. State ethics laws restrict gifts to contractors who contract with an agency to perform services related to procurement for or on behalf of the state. In addition, a person or entity seeking a contract with a state agency may not give anything of value to a state officer or employee that would cause that officer or employee to be in violation of ethics laws related to assistance in transactions, compensation for performance or nonperformance of official or outside duties, or gifts.

Post-Public Employment Prohibitions. A former state officer or employee is subject to the following limits after leaving public service:

- a one-year restriction on accepting employment or compensation for fulfilling or implementing a contract the officer or employee worked on within two years before leaving public service;

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- a two-year restriction on having a beneficial interest in a contract or grant if the officer or employee participated in the specific legislative or executive funding of that contract or grant;
- a lifetime restriction on accepting employment or compensation from an employer if the officer or employee believes the offer was made to influence or reward performance while in public service; and
- a lifetime restriction on assisting another person in a transaction involving the state if the officer or employee participated in the transaction during state employment.

Sales and Use Tax Exemption for Nonresidents

Retail sales and use taxes are imposed by the state, most cities, and all counties on most articles of tangible personal property and some services. Tangible personal property purchased in Washington by nonresidents for use outside the state is exempt from sales and use tax. To qualify for the exemption, a nonresident must be a bona fide resident of a state or possession of the United States or a Canadian province that either does not impose a retail sales or use tax of 3 percent or more or provides an exemption for Washington residents.

SUMMARY

Public Financing of Election Campaigns

The Public Disclosure Commission (PDC) must establish and operate the Democracy Credit Program (Program) as a public financing source for state candidate election campaigns. The Program applies to elections beginning in 2018 and in each subsequent even-numbered year. For the first three elections (2018, 2020, and 2022), only candidates running for a state legislative office are eligible for Program funding. The PDC may expand Program eligibility to other state elected offices in subsequent even-numbered years, prioritizing certain statewide elected offices. Beginning in 2021, the PDC must consider expansion to odd-numbered years, and beginning in 2022, the PDC must consider expansion to federal elections.

Allocation and Distribution of Credit Contributions. Under the Program, each registered voter is eligible to use up to three \$50 credit contributions that he or she may direct the PDC to distribute to a qualified candidate. The PDC makes the actual contribution to the qualified candidate from a dedicated account. The credit contribution must be allocated during a designated contribution period beginning on April 1 of an eligible election year, unless otherwise established by the PDC. The PDC may adjust the number and amount of credit contributions based on Program funding and estimated campaign costs. Beginning in 2020, an adult resident who is ineligible to vote but who is not precluded from contributing to a state or federal election campaign may request to be verified as eligible to participate in the Program.

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At least 10 days before the start of the contribution period until one week before the general election, the PDC must issue personal verification codes and instructions by mail to each individual eligible to allocate a Program credit contribution. To make a contribution, an individual must verify his or her personal identifying information as recorded on his or her voter registration and use the personal verification codes issued by the PDC. County election departments must assist individuals in making contributions.

Program credit contributions are considered contributions made by the eligible individual but are not considered income of the individual. Program credit contributions are not transferrable or authorized by proxy. An attempt to sell or buy a credit contribution is a gross misdemeanor, and a completed sale or purchase of a credit contribution is a class C felony.

Qualification of Candidates and Use of Contributions. The PDC must certify each candidate qualified to receive Program funding. To qualify, a state legislative candidate:

- must file a declaration of candidacy for the election;
- must collect qualifying contributions, between \$10 and one-half of the applicable state contribution limits, from 75 individuals within the candidate's election district within a time period designated by the PDC;
- must agree to finance his or her campaign only from personal funds of up to \$5,000, qualifying contributions, and Program credit contributions of up to \$150,000 for a House of Representatives candidate or up to \$250,000 for a Senate candidate;
- must return contributions of personal funds over the \$5,000 limit and refund any contributions received in excess of the qualifying limit;
- may not solicit other unqualified contributions for the candidate's own campaign or any other campaign; and
- may not make contributions from Program funding to another political committee.

The PDC must establish dollar amounts that apply to candidates for other offices that may become eligible after 2022.

A qualifying candidate must use Program credit contributions for campaign costs during the relevant election cycle or for a reasonable period after the election, as set by the PDC. A qualifying candidate may not transfer Program credit contributions and may not use Program credit contributions to pay:

- the candidate or his or her immediate family, except to reimburse for campaign expenses;
- an entity of which the candidate or immediate family member owns at least 10 percent;
- penalties or fines; or
- an amount over the fair market value for goods, services, or facilities.

Candidate Disqualification. A candidate may no longer receive Program contributions after the end of the general election or if he or she withdraws or abandons the election, becomes ineligible

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for office, loses the primary election, or violates Program requirements or election laws. After paying all debts and obligations, a disqualified candidate must remit a percentage of remaining funds equal to the percentage of the total amount of Program funds received.

Program Administration. The PDC must manage the Program with a goal of long-term sustainability, maximizing widespread and diverse Program participation. The PDC must contract for the development and management of a private and secure electronic system to operate the Program, including an online portal accessible to eligible individuals for making Program contributions. The PDC must supervise the operation of the electronic system.

The PDC must maintain a web site and telephone hotline and produce guidebooks and reports on the status of the Program. The PDC may adopt rules to govern the Program, investigate and enforce requirements, and issue civil penalties for violations.

Funding. The state sales tax exemption for nonresidents is repealed, and the amount of increased revenue resulting from that repeal is transferred to the Campaign Financing and Enforcement Fund Account (Fund) to fund the Program and other PDC activities, with at least three-fourths allocated to the Program each fiscal year.

Starting in 2017 the Department of Revenue must estimate the revenue increase of the repealed exemption to determine the amount to be transferred to the Fund. The State Treasurer must make an initial transfer of \$15 million for the 2017 fiscal year. For each subsequent year, the State Treasurer must transfer up to \$30 million of the revenue estimated from repeal of the tax exemption to the Fund. If the resulting revenue from the repeal is less than the total amount to be transferred, the State Treasurer must transfer the difference from the General Fund.

Campaign Contributions

Public Contractors. Campaign contribution restrictions apply to certain public contractors who make contributions to a candidate for an office that has a decisionmaking role in the negotiation, award, performance, or enforcement of the contractor's contract. Such a public contractor may not:

- contribute more than \$100 per election to a relevant candidate;
- solicit contributions over \$100 for an individual candidate or over \$500 in total for each election;
- solicit contributions from the contractor's employees, subcontractors, clients, or close family members;
- deliver or transmit contributions to a relevant candidate; or
- engage in a private business relationship with a relevant candidate, including any entity in which the candidate has a substantial financial interest, unless it is clear beyond a reasonable doubt that the relationship is not designed to have influence over the candidate.

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The restrictions apply to a person or entity with a public contract or series of contracts that involve the aggregate payment of at least \$100,000 of public funds during the election cycle for the relevant candidate. The restrictions extend to prospective contractors who have applied for a public contract or specifically intend to apply for such a contract, as well as the contractor or prospective contractor's immediate family members.

Lobbyists. Similar restrictions apply to registered lobbyists, including their immediate family members, and lobbying firms, who may not:

- contribute more than \$100 per election to a candidate if the lobbyist was involved during the previous four years in lobbying about legislation or a rule, standard, rate, or enactment in which the candidate's office had an actual or potential decisionmaking role;
- solicit contributions for such a candidate in an amount exceeding \$100 individually or \$500 in the aggregate for each election;
- deliver or transmit contributions to such a candidate;
- engage in a private business relationship with such a candidate, including any entity in which the candidate has a substantial financial interest, unless it is clear beyond a reasonable doubt that the relationship is not designed to have influence over the candidate; or
- solicit contributions from the lobbyist's employees, clients, or close family members.

Lobbyists and state agencies must file required statements and reports online to a public, searchable database designed and developed by the PDC.

Presumed Contributions. A political expenditure supporting a candidate or opposing a candidate's opponent is presumed to be made in coordination with the candidate's campaign, and is therefore a campaign contribution, if:

- the candidate or his or her agent knew of the expenditure;
- the expenditure was made by or in coordination with the candidate's immediate family member, partner, or employee; or
- within two years before the expenditure was made and within the same election cycle, the candidate or his or her agent:
 - attended a meeting with the donor that involved discussion of the candidate's campaign strategy or planning;
 - solicited contributions at an event hosted by the political committee that made the expenditure;
 - contributed to the political committee that made the expenditure; or
 - shared office space with the donor, had the same agent as the donor, or coordinated with the same person as the donor for campaign purposes.

The presumption of coordination between the donor and the candidate is rebuttable and may be

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disproved by a preponderance of the evidence presented. The PDC must publish guidelines on best practices that, if followed, effectively rebut a presumption of coordination. The presumption of coordination may not be used to demonstrate a violation of state campaign finance laws in a citizen's enforcement action.

Surplus Campaign Funds. Surplus funds from a candidate's campaign that are used to reimburse the candidate for lost earnings during the campaign may not exceed the estimated pro rata median household income for the state. Surplus campaign funds may not be held for the candidate's possible future election campaigns.

Disclosure of Top Five Contributors

If any of the top five contributors to the sponsor of a political advertisement is a political committee, that committee's top five contributors must be identified and the process repeated until the highest contributing individuals or entities (other than political committees) have been identified. The advertisement then must list the top five identified individuals or entities (other than political committees) that made the largest contributions over \$700 within the last year to the sponsor. A contribution earmarked or used for a purpose other than the advertisement is not used to calculate the top five contributors. The PDC must adjust the reporting thresholds for top five contributors to political advertisements based on inflation.

Post-Public Employment Prohibitions

A state or local public official or employee may not receive compensation from a registered lobbyist who lobbied on legislation or a rule, standard, rate, or enactment in which the official or employee had a decisionmaking role. The ban lasts for three years after the official or employee leaves public employment or five years after the lobbying activity, whichever comes first.

A state or local public official may not lobby his or her same office or agency until three years after leaving that office or agency. An elected candidate's campaign officer may not lobby the elected candidate for compensation for three years after the officer's service on the campaign.

Enforcement and Penalties

Penalties. The civil penalties for violations of the campaign finance laws are increased to a maximum of \$50,000 for each reckless or intentional violation (instead of \$10,000). A person who fails to properly file a statement or report is subject to a civil penalty of up to \$50 per day of delinquency (instead of \$10 per day). A state agency director who fails to file a statement on agency legislative activities is subject to a maximum penalty of \$500 (instead of \$100). The PDC may recover its investigation and enforcement costs and attorneys' fees for any intentional violation. Half of the penalties imposed are awarded to the PDC for investigation and prevention purposes.

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A person may not use campaign contributions to pay a penalty unless the person cannot otherwise pay the amount owed. An officer or director of a political committee or other entity may be held personally liable for a penalty if the political committee or entity cannot pay the penalty without using campaign contributions and the officer or director acted recklessly or intentionally contributed to the violation.

Reporting Hotline. The PDC must maintain a telephone hotline to receive anonymous tips regarding potential violations. Elected officials, lobbyists, and political committees must post notice of the hotline for their employees.

Citizen Action. The waiting period for a citizen action is shortened if the violation occurred within 60 days of the election.

Effective Date: The measure takes effect 30 days after the election at which it is approved.

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