

March 2, 2000

Senate Bill 181 (George/Bock)

Modification to Campaign Finance Laws for Supreme Court Justices
"Impartial Justice Bill"

Summary of Bill -

- ◆ Candidates would voluntarily choose to qualify by obtaining signatures and 1000 small donations.
- ◆ Candidates receive full funding from the Democracy Trust Fund, with full funding defined as \$300,000 for Supreme Court candidates with \$100,000 for primary elections.
- ◆ If a publicly funded candidate has a privately funded opponent, the candidate would receive a supplemental grant when such opponent makes disbursements greater than 5% above the basic grant amount for the publicly financed candidate.
- ◆ "Impartial Justice" funding would be derived from GPR.
- ◆ The annual cost would be \$1 million.

Staff Comments -

Burke amendment:

You will be introducing an amendment (LRB 1394), at the request of Representative Bock. It is identical to AA 1 to AB 377, the companion "Impartial Justice Bill." (note: it is also identical to Senate Amendment 1 introduced by Senator Darling and outlined in the LFB memo).

In a nutshell, this amendment does the following:

- ❖ Calls for increasing the amount a candidate can raise in qualifying funds from \$5,000 to \$15,000 and allows the candidates to keep those funds for the campaign.
- ❖ Changes the method of payment by the state from a credit card to a check.
- ❖ When primaries are held for the race, allows a candidate who wins a primary to use any unspent funds in the general election.
- ❖ Eliminates providing matching funds to candidates in the event Independent Expenditures are used against a candidate. This change is made for the following reasons:
 - A federal circuit court in Minnesota held that a similar provision is unconstitutional.
 - Developing regulations for addressing Independent Expenditures and Issue ads need to be done in the context of all state level races, not just the Supreme Court.

- ❖ Makes other technical changes.

Standing Committee Action -

SB 181 was approved 5-0 by the Senate Committee on Agriculture, Environmental Resources and Campaign Finance Reform on November 10, 1999. Subsequently, on February 16, 2000, Senate Amendment 1 to the bill was offered.

Recommended JFC Action -

Introduction and adoption of LRB 1394 (your amendment).
Passage of SB 181 as amended.

Prepared by Deb



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March 2, 2000

TO: Members
Joint Committee on Finance

FROM: Bob Lang, Director

SUBJECT: Senate Bill 181: Modifications to Campaign Finance Laws for Supreme Court Justices

Senate Bill 181 would make numerous changes to the state campaign finance law as it concerns contests for the office of Justice of the Supreme Court. Senate Bill 181 was introduced on June 1, 1999 and referred to the Senate Committee on Agriculture, Environmental Resources and Campaign Finance Reform. Two public hearings were held and the bill was recommended for passage by that Committee on a 5-0 vote on November 10, 1999. The bill was then referred to the Joint Committee on Finance. Subsequently, on February 16, 2000, Senate Amendment 1 to the bill was offered.

SUMMARY

Democracy Trust Fund

Creation of Democracy Trust Fund. SB 181 would establish a new Democracy Trust Fund (DTF) to provide public financing for qualifying candidates for the office of Justice of the Supreme Court. The bill would repeal the current law provision that publicly-funded candidates for Supreme Court Justice receive funding from the Wisconsin Election Campaign Fund (WECF).

Administration of the Democracy Trust Fund. SB 181 would require the State Treasurer to administer the DTF. As the administrator of the fund, the State Treasurer would have to contract with a debit card issuer to permit eligible candidates and their agents to draw upon the DTF through an account with the issuer. The Elections Board would continue to certify candidate eligibility for public financing and determine the amount that a candidate would receive. A fair election debit card would be issued by the State Treasurer to each eligible candidate to provide access to the candidate's account.

New Basic Grants

Basic Grant Levels. Under SB 181, public grants would be provided for all qualified Supreme Court Justice candidates for both the spring primary and the general elections. The maximum primary basic grant a candidate could receive would be \$100,000 and the maximum general election basic grant would be \$300,000. Under current law, public funding for Supreme Court Justice candidates is only available after the primary and cannot exceed \$97,031 per election (however, the actual grant amount is dependent upon the amount of funding available in the WECF).

Reduced Basic Grants for Certain Candidates. Under current law, unopposed candidates are not eligible for public financing. Under SB 181, certain "unopposed" candidates who qualify could receive a reduced basic grant in both the primary and general elections equal to 25% of the full basic grant for that election. Under the initial levels provided in SB 181, such a candidate would receive a \$25,000 basic grant for the primary and a \$75,000 basic grant for the general election.

Adjustments in Basic Grant Amounts. The above basic grant amounts would be subject to a biennial adjustment based upon changes in the consumer price index (CPI). The bill would require the Election Board to determine the adjustment by calculating the change in consumer price index, all items, U.S. city average as published by the U.S. Department of Labor for the preceding 2-year period ending on December 31. The bill, as drafted, would provide that the CPI adjustment to grant levels would first apply on April 1, 2000, based on CPI increases for the two-year calendar period ending December 31, 1999. [Note: The April 1, 2000 adjustment is estimated to be a 4.3% increase in grant levels. However, for purposes of summarizing the bill and providing an estimated cost, the amounts used are those specified in the bill.]

Basic Grant Eligibility Modifications

Current Law Grant Eligibility Requirements. Under current law, in order for a candidate for the Office of Justice of the Supreme Court to receive a grant from the WECF, the candidate must file a grant application with the Elections Board no later than the deadline for filing of nomination papers. To actually receive a grant, an applicant must be certified as one of the two candidates in the general election. As a condition of receiving a WECF grant, a candidate must adhere to certain limits on contributions and disbursements. Under the bill, in addition to establishing increased grant levels and providing for basic grants for both the primary and general election, SB 181 would modify the current grant eligibility requirement in several ways. Each of these changes is discussed below.

Primary Election Eligibility Requirements. To receive a basic DTF primary grant, a candidate for Supreme Court Justice would have to apply to the Elections Board for public financing and file a sworn statement that the candidate will comply with all contribution and disbursement limitations and reporting requirements. The deadline for filing would be no later than 30 days after the date for filing nomination papers. (The deadline for filing nomination papers for the office of Justice of the Supreme Court is the first Tuesday in January.)

A primary candidate would receive a reduced primary grant if the candidate met the filing and qualifying contributions requirements and there were no other candidates, excluding write-in candidates, who had received total contributions of more than \$1,000 as of the day preceding the beginning of the primary election campaign period. [The primary election campaign period begins 30 days after the deadline for nomination papers and ends the day of the primary election. See Attachment 1 for a timetable of new campaign finance periods created by SB 181.]

General Election Eligibility Requirements. To receive a grant for the general election, a candidate would have to again apply to the Elections Board and file a sworn statement that the candidate has fulfilled all the campaign finance requirements during the primary election campaign period and will comply with such requirements during the general election campaign period. The general election campaign period would begin the day after the primary election, or the day the primary would be held if there was no primary, and would end the day of the spring general election. The application for a spring general election basic grant must be filed no later than the 7th day after the date of the spring primary election or the day on which the primary election would be held if there was no primary.

Under the bill, an eligible candidate for the general election would receive a grant equal to 25% of the public financing benefit for the spring general election campaign period if no other name appears on the ballot.

Qualifying Contribution Requirements. Under the bill, a candidate applying for a grant from the DTF would have to submit to the Elections Board copies of contribution receipts for at least 1,000 qualifying contributions before the close of the public financing qualifying period. A qualifying contribution would be a contribution of \$5 made to a candidate by an elector in this state. The Elections Board would be required to certify the establishment of a method to verify the qualifying contributions. The public financing qualifying period would be from July 1 of the year prior to the spring general election until 30 days after nomination papers filing deadline (first Tuesday in January). The bill would also repeal the current requirement that a candidate for the Supreme Court must collect a minimum of \$10,781 in contributions of \$100 or less to be eligible to receive public financing.

Limit on Use of Personal Funds. As a condition of accepting public financing, SB 181 would provide that a qualifying candidate could use no more than an aggregate amount of \$5,000 in personal funds. Personal funds would be defined as funds contributed by a candidate or a candidate's spouse or children. Under current law, a publicly funded candidate for the office of Justice of the Supreme Court may contribute up to 200% of the amount or value of the maximum allowed individual contribution, or \$20,000. Also, contributions from a candidate's spouse or children are not currently subject to the 200% limit.

Seed Money Contributions. SB 181 would establish a category of contributions deemed "seed money contributions" that could be raised by qualifying candidates beginning with the start of the exploratory period and ending with the end of the public financing qualifying period. A seed

money contribution would be defined as a contribution, not to exceed \$100, from an elector in this state or a contribution from personal funds. The aggregate amount of seed money a publicly funded candidate could accept, including personal funds but not including qualifying contributions, could not exceed \$5,000. An exploratory period would begin after a spring election and run until July 1 of that calendar year (see Attachment 1).

Limit on Contributions that DTF Candidates May Accept. The bill would prohibit an eligible candidate from accepting any private contributions except for seed money contributions and qualifying contributions that the candidate accepts during the exploratory period and the public financing qualifying period. The bill would also prohibit a candidate who accepts a grant for a primary election campaign period from accepting any private contributions during the corresponding primary and general election campaign periods.

Excess Contributions. The bill would provide that if an eligible candidate receives, in aggregate, excess seed money contributions (more than \$5,000) or excess qualifying contributions (more than \$5,000), the candidate may retain the contributions and make disbursements, in an amount not to exceed \$15,000. The Elections Board would be required to decrease the grant by an amount equal to the excess contributions. SB 181 would also require an eligible candidate to transmit to the Elections Board all seed money and qualifying contributions that exceed the \$15,000 limit within 48 hours after the end of the exploratory period and to also transmit to the Board any seed money and qualifying contributions that have not been encumbered or expended by the beginning of the primary election campaign period. The Board would be required to deposit all contributions transmitted in the DTF.

Other Contribution Modifications. SB 181 would specify that grants from the DTF are not subject to the contribution limitations. The bill would also provide that any candidate for the Supreme Court who accepts public financing is exempt from current limitations on cumulative contributions from committees since under the bill an eligible candidate would be prohibited from receiving contributions of more than a total of \$25,000, comprised of qualifying seed money and excess contributions, from non-public funding sources.

Modification to Candidate Disbursement Levels. SB 181 would repeal the current \$215,625 limitation on total disbursements for publicly funded candidates. Instead, the bill would limit disbursements by qualifying candidates prior to the primary election campaign period to the sum of the allowable seed money and qualifying contributions collected. The maximum disbursement from these sources, without triggering a reduction to the primary grant, would be \$10,000. SB 181 would allow up to an additional \$15,000 in qualifying contributions to be accepted and disbursed prior to the primary election campaign period, but would require the Elections Board to reduce the primary election grant by an equivalent amount. During the primary election campaign period and the general election campaign period, disbursements made by the DTF candidate may not exceed the level of DTF grants, both basic and supplemental, provided by the Elections Board for that campaign period. Therefore, during the primary campaign period, the maximum disbursements that a qualified candidate could make would be the \$100,000 basic grant

plus any supplemental grants. Similarly, during the general election the disbursement would be limited to the \$300,000 basic grant plus any supplemental grants.

Fair Election Debit Card. SB 181 would require all DTF candidates, or the agents of such candidates, to make all disbursement using the fair election debit card. Upon a determination by the Elections Board of a candidate's eligibility for a basic or supplementary grant, the State Treasurer would issue to the eligible candidate a fair election debit card, entitling the candidate to draw money from an account to make disbursements. Candidates would be allowed to use the fair election debit card to obtain cash, in amounts of \$100 or less, to make individual disbursements of no more than \$25. A candidate would be required to maintain records of all such disbursements and report such disbursements to the Elections Board.

New Supplemental Grants

SB 181 would also create three new supplemental grants that would be available to candidates who receive a basic DTF grant [i.e., qualifying (eligible) candidates]. The first kind of supplemental grant would be for the purpose of matching disbursements made by non-complying candidates that are above statutory targets. The second kind of supplemental grant would be for the purpose of matching certain independent expenditures made in opposition to a DTF grantee or in support of a non-DTF opponent of a DTF grantee. The third kind of supplemental grant would be for the purpose of matching certain mass mailings made by a candidate using state funds.

Supplemental Grants for Excessive Disbursements. SB 181 would require the Elections Board to provide a supplemental grant to a qualifying candidate whose non-complying opponent or opponents made disbursements greater than 5% above the basic grant amount for the publicly financed candidate for the same office at the same primary or general election. Supplemental grants to a qualified candidate would be limited to a total of three times the amount of the basic grant (\$300,000 for the primary and \$900,000 for the spring election). The 105% disbursement thresholds for each election are shown in Table 1.

TABLE 1

**Non-Complying Opponent Disbursement Threshold
to Trigger a Supplemental Grant**

<u>Election</u>	<u>Amount</u>
Primary	\$105,000
General	315,000

Under the bill, non-complying candidates would be required to report making any disbursement above the specific 105% threshold disbursement levels that would trigger a

supplementary grant. The bill would require a non-complying candidate to file additional reports after the candidate makes, or obligates to make, each additional \$1,000 in disbursements. If the non-complying candidate exceeds the 105% trigger before six weeks prior to the primary election, the bill requires the disbursements to be recorded in the regularly scheduled report under current law. This regularly scheduled report is the semi-annual continuing reports due January 31 covering the six month period in the year prior to the primary election. For any time after six weeks before the primary election, until the general election, the bill would require a non-complying candidate to report such disbursement within 24 hours. The Elections Board would be required to provide supplemental funding to the qualifying candidate equivalent to the total excess disbursements made or obligated to be made above the basic grant amount. This disbursement reporting requirement, and a similar contribution reporting requirement, is discussed further under the "Modifications to Certain Reporting Requirements" section of this summary.

Supplemental Grants for Independent Expenditures. SB 181 would also require the Elections Board to provide a supplementary grant to a qualifying candidate who is subject to aggregate independent expenditures which exceed 20% of the public financing benefit for the office in any campaign. The bill would define independent expenditures for this purpose as a disbursement by a person expressly advocating the election of or defeat of a clearly identified candidate and which is made without the cooperation of or consultation with a candidate, or any authorized committee or agent of a candidate, and which is not made in concert with, or at the request or suggestion of, any candidate, or any authorized committee or agent of a candidate.

Under the bill, any person who makes, or becomes obligated to make, such independent expenditures in excess of \$1,000 would be required to separately report the expenditures to the Elections Board. Upon receipt of information of independent expenditures above the 20% threshold, the Elections Board would be required to provide a supplemental grant equal to the amount of independent expenditures made, or obligated to be made, not to exceed a total of three times the amount of the public financing benefit. This reporting requirement is discussed further under the "Modifications to Certain Reporting Requirements" section of this summary.

Supplemental Grants for Mass Mailings. SB 181 would also authorize the Elections Board to provide a supplemental grant to all other qualifying candidates if any person uses state funds to conduct certain mass mailings on behalf of any candidate for the office of the Justice of the Supreme Court. However, such a mass mailing would be permitted only between the September 1 and November 30 preceding the date for the election. In the event of such a publicly funded mass mailing, the Elections Board would be required to provide a supplemental grant to all other eligible candidates equal to the cost of printing and mailing of that mass mailing. Further, the supplemental grant could only be used to fund a mailing promoting the candidacy of the candidate receiving the grant. The bill would also require candidates to report disbursements for mass mailings that are made with state funds.

Other Grant Modifications. SB 181 would require that any unspent and unencumbered grant moneys which were received by a candidate be immediately transferred to any candidate who is

appointed to replace a vacancy that is caused by death of a candidate after the nomination deadline. If there is no candidate appointed, the money would revert to the state.

Funding Sources for Grants and Administration Costs

Funding From WECF Eliminated. SB 181 would repeal the eligibility of candidates for Justice of the Supreme Court for grants from the Wisconsin Election Campaign Fund, since grant funding would now come from the DTF. The deposit of tax-filer checkoff funds to the WECF would not be affected.

GPR Sum Sufficient Appropriation for DTF. SB 181 would create a GPR sum sufficient appropriation to provide whatever monies would be necessary to fully fund grants provided to qualifying candidates. The amounts required to make full payments of grants to candidates who qualify to receive funding from the DTF would be transferred from the general fund to DTF no later than the time required to make payments of grants.

Continuing Appropriation to Pay Grants. The bill would also create in the Office of the State Treasurer a continuing appropriation, funded from the DTF, for the provision of funds to eligible candidates via a line of credit account.

Administrative Appropriations. SB 181 would create two new sum sufficient segregated appropriations, one for the Elections Board and one for the Office of the State Treasurer, for each agency's cost of administering the new grant program and associated reporting requirements. Funding for these appropriations would come from the DTF.

Changes in General Campaign Contribution Limits

In addition to those changes in contribution limits that would apply only to DTF grant candidates, SB 181 would also make several changes in contribution limits that would apply to all candidates for Justice of the Supreme Court. These changes are summarized below.

Maximum Individual Contribution. SB 181 would decrease the maximum contribution that any individual may make to any candidate for the Office of the Supreme Court from \$10,000 to \$1,000.

Maximum Contribution Amount from Committees. The bill would also reduce the maximum contribution from any committee to a candidate for the Supreme Court to \$1,000. Under current law, the maximum amount a committee may give a candidate is 4% of the disbursement level (\$8,625). Further, under the bill, qualifying candidates could not accept any committee contributions because committee contributions would not be allowable as seed money or qualifying contributions and these are the only contributions that qualifying candidates could accept.

Contributions from Anonymous Sources. SB 181 would decrease the maximum contribution amount any candidate could accept from anonymous sources from \$10 to \$5. As under current law,

anonymous contributions received by a candidate above that limit would have to be donated to the common school fund or to any charitable organization at the discretion of the campaign treasurer.

Cash Contributions. The bill would reduce the maximum cash contribution that a Supreme Court candidate may accept to \$25 from the current \$50. In addition, no Supreme Court candidate who accepts public financing could accept cash contributions from all sources in a total amount greater than one-tenth of 1% of the public financing benefit for the office that the candidate seeks or \$500, whichever is greater.

Contribution Limitations on Non-publicly Funded Candidates. SB 181 would provide that any candidate who does not accept public financing may accept contributions from private sources without aggregate limitation, except for the limitations that no person or individual committee may make any contribution or contributions to such a candidate that exceeds a total of \$1,000 during any campaign. Under current law, candidates for the Supreme Court who do not take public financing are subject to an aggregate limit of \$140,156 from total committee contributions and a maximum of \$10,000 from any individual.

Required Disclosure Statement

Disclosure on Electronic or Print Communication Disbursements. SB 181 would require that any electronic or print communication paid for or authorized by a non-complying candidate contain the following sentence: "This communication is paid for with money raised from private sources. This candidate has not agreed to abide by campaign contribution and spending limits."

New Campaign Finance Reporting Requirements

Qualifying Candidates

SB 181 would require qualifying candidates to file complete financial records, including records of seed money contributions, qualifying contributions and all disbursements, to the Elections Board. Candidates would be required to maintain a record of all contributions received by the candidate of more than \$5 but less than \$50, including the full name of the contributor and the contributor's home address. If a contributor's aggregate contributions exceed \$50 for any campaign, the candidate would have to further keep a record of the contributor's principal occupation and the name and business address of the contributor's place of employment. These reports would be due on the 15th or the last day of the month that immediately follows the receipt of the contribution or the making of the disbursement, whichever comes first. During the months of July, August and September reports would only be required on the last day of the month. SB 181 would prohibit a publicly funded candidate or a person acting on the candidate's behalf from depositing any contribution into a candidate's campaign depository account that is not recorded properly.

SB 181 would also require each eligible candidate to acknowledge each qualifying contribution by providing a receipt to the contributor that contains the contributor's name and home address. The candidate would also be required to file a copy of the receipt with the Elections Board

at the same time as the reports discussed above. SB 181 would disqualify a contribution from counting as a qualifying contribution if an eligible candidate failed to record or provide the information required on the reports.

Non-qualifying Candidates

SB 181 would require a non-qualifying candidate who receives contributions or makes or obligates to make disbursements in an amount more than 5% above the public financing benefit for the office for primary or general election to file a report with the Elections Board. The report would have to itemize the total contributions received and disbursements made or obligated to be made by the candidate as of the date of the report. Additional reports would be required for each additional \$1,000 of contributions or disbursements. If the additional contributions or disbursements are made or obligated to be made more than six weeks prior to the date of the primary election, or the date that the primary election would be held, if a primary were required, such reports would have to be made at the next regular reporting interval. However, if such contributions are received or such disbursements made within six weeks prior to the date of the primary election or within six weeks prior to the date that the primary election would be held, if a primary were required, such reports would have to be made within 24 hours of the receipt or disbursement. The bill would also require the Elections Board to provide copies of the report to all other candidates for the office. As mentioned earlier, the disbursement reports are the basis for the supplemental grants for excessive disbursements by nonqualifying candidates.

Makers of Independent Expenditures

Under current law, individuals or committees that make independent expenditures must file a pre-primary and pre-election report indicating independent expenditure activity 14 days prior to the day of such election. In addition, any disbursements above \$20 made within 14 days of such election must be reported to the Elections Board within 24 hours of disbursement. SB 181 would require that any person who makes, or becomes obligated to make, by oral or written agreement, an independent disbursement in excess of \$1,000 with respect to a candidate for the Supreme Court in a spring primary or general election to file a report with the Elections Board. The independent expenditure reports would be due on the 15th or last day of the month that immediately follows the date of the disbursement or the obligation to make the disbursement, whichever comes first. Additional reports would be required after each additional \$1,000 of disbursements for independent expenditures were made or obligated to be made. However, if the independent expenditure is made within six weeks prior to the date of the spring primary election, the person would be required file such reports within 24 hours after such independent disbursement is made or obligated to be made. Based on these reports, the Elections Board would provide qualifying candidates with a supplemental grant if the aggregate independent expenditures exceeded 20% of the public financing benefit in any campaign.

Mass Mailings Using State Funds

Prohibitions. SB 181 would prohibit any person from conducting any mass mailing using state funds on behalf of any person who is a candidate for Supreme Court at the spring general election during the period between December 1 preceding that election and May 31 following that election. Such mailings would be permitted only during the period from September 1 through November 30 preceding the election. Mass mailings would be defined as district-wide or statewide mailing of newsletters, pamphlets, brochures or other similar items of more than 100 pieces in which the content of the matter is substantially identical. Mass mailings would not include the following: (1) a direct response to communications from a person or persons; (2) a mailing to federal, state or local government officials; or (3) a news release to communications media.

Advance Notice Required. Any candidate for Supreme Court Justice who planned to use state funds for a permitted mass mailing would be required to notify the Elections Board in writing of his or her intent to do so no later than September 1 preceding the spring general election and to complete that mailing no later than the following November 30.

Mass Mailing Content. The bill would stipulate that all state-funded mass mailings on behalf of any person who is a candidate the Supreme Court must be issue-oriented and nonpolitical. Such mass mailings could not mention any of a candidate's opponents by name and would have to be reviewed and approved by the Elections Board for compliance with such requirements in advance of the mailing.

Other. SB 181 would exempt candidates for the Supreme Court from the current prohibition on use of any government materials by candidates.

Enforcement Activities

Election Board Responsibilities. The Elections Board would be responsible for administering and enforcing the majority of campaign financing statutes created by SB 181, including responsibility for investigating violations of the contribution and disbursement limitations. The bill would establish both an informal and a formal process to resolve complaints arising under these new provisions. If the Board found probable cause to believe that a candidate made excess disbursements or accepted excess contributions, the Board would be required to attempt for a period of not more than 14 days after its finding to correct the matter by informal methods of conference and conciliation and to enter into a settlement and conciliation agreement with the person involved. Any settlement and conciliation agreement entered into by the Board or candidate would be a matter of public record. Furthermore, unless the agreed upon terms were violated, a settlement and conciliation agreement would be a bar to any civil action. If the Elections Board were unable to correct the matter by informal methods within 14 days, the Elections Board would then be required to make a public finding of probable cause in the matter and bring an action in Dane County Circuit Court to impose a forfeiture.

Forfeitures. The bill would provide that if the Election Board finds that a publicly financed candidate has made disbursement in excess of grant amounts or has accepted excess contributions, the candidate could be required to forfeit not more than 10 times the amount by which the candidate violated the disbursement or contribution limit. The candidate would also be required to repay to the Elections Board all public funds the candidate had received. The bill directs that repayments would be deposited into the DTF.

Complaints Initiated by an Elector. The bill would stipulate that if an elector believes that a candidate has violated any of the campaign finance statutes governing Supreme Court candidates, and the elector is entitled to vote for or against the candidate in the election in connection with which the violation is alleged to occur, the elector may file a complaint with the Elections Board requesting it to take remedial action. If the Elections Board refuses to take remedial action or, within 30 days after the filing of such a complaint, fails to take remedial action, the elector would be authorized to commence a civil action in Dane County Circuit Court requesting the court to impose a forfeiture.

Expeditious Action. The bill would establish a requirement that the Elections Board and the Dane County Circuit Court expedite all proceedings regarding the violation of campaign finance statutes so that all complaints brought prior to an election are resolved, to the extent possible, before the election is held.

Non-Meritorious Complaints. SB 181 would authorize the Elections Board or the Dane County Circuit Court to assess costs, including reasonable attorney fees, against any complainant whose complaint is found to have been brought in bad faith and without reasonable basis.

Audits. SB 181 would stipulate that each publicly funded candidate must cooperate with any audit or examination conducted by the Secretary of State.

Criminal Penalties. SB 181 would also establish three new criminal penalties for qualifying candidates or their agents who knowingly violate campaign finance statutes. The first penalty would be for any candidate or agent who knowingly accepts more contributions than the candidate is entitled to receive or makes disbursements exceeding the amount of the public financing amounts received by the candidate. The second penalty would be for any candidate, or agent, who knowingly makes a disbursement by means other than through use of the fair election debit card, except as permitted for small purchases under \$25. The last penalty would be for situations where, in connection with the receipt or disbursement of public financing, a person knowingly provides false information to the Board, or knowingly conceals or withholds information from the Board. The penalty for any of these violations would be a fine not to exceed \$25,000 or imprisonment for not more than five years or both. SB 181 would also require that any candidate guilty of a violation would have to repay to the Elections Board all public funds the candidate had received.

Possible Technical Modifications

Apportionment of Grant Amounts to Qualifying Candidate. The bill would create a new Democracy Trust Fund to provide public financing for candidates for the office of Justice of the Supreme Court and eliminates candidates for the Supreme Court from the definition of eligible candidate for WECF funding. However, the bill does not amend the statutory formula for distributing WECF revenues between partisan and non-partisan races and therefore retains the 8% allocation associated with contests for the Supreme Court. Under the bill, revenues to the WECF would still be allocated to the non-partisan account of the WECF for judicial races, however, candidates for the office of the Supreme Court would be ineligible for this funding. A technical amendment to remove the statutory funding allocation for Supreme Court races is necessary. With such a change the freed-up revenues would be allocated proportionately to all the remaining WECF accounts.

Inflationary Adjustment. The bill would make the biennial inflationary adjustments for basic grants first effective on April 1, 2000 which is likely to be prior to the effective date of the bill. The Committee could consider adopting a change to provide that such an adjustment be first effective for the biennium beginning July 1, 2002 which would coincide with the fiscal year and not fall as closely to an election as the April 1 date.

Forfeitures and Criminal Penalties. As drafted, the bill would impose forfeitures and penalties upon publicly funded candidates who make disbursements in excess of the public financing amounts provided. These provisions, however, do not provide for the disbursement by a publicly funded candidate of lawfully collected seed money contributions and qualifying contributions. A technical amendment is necessary to permit the disbursement of such seed money and qualifying contributions by qualifying candidates.

Also, under the bill one of the criminal penalties would be for qualifying candidates or their agents who knowingly accept more contributions than a candidate is entitled to receive or make disbursements exceeding the amount of the public financing benefit received by the candidate. The bill should be amended to allow for the disbursement of qualifying and seed money contributions that would be legally allowed under SB 181.

Administrative Costs. The bill would create two sum sufficient appropriations, to be funded from the DTF, for the purpose of funding the Elections Board and State Treasurer administrative costs associated with this new bill requirement on the respective agencies. However, the bill only provides for the transfer into the DTF from the general fund of an amount equal to the grant costs. A technical amendment authorizing the transfer of monies from the GPR sum sufficient of administrative costs to the DTF administrative appropriation is necessary if these administrative costs are to be paid from the DTF. However, the Committee may also wish to consider whether it would also be desirable to make these administrative appropriations sum-certain to provide greater legislative oversight of these Elections Board and State Treasurer administrative expenditures.

Audits. According to the Legislative Reference Bureau, the bill requirement for publicly funded candidates to cooperate with any audit or examination conducted by the Secretary of State is incorrect and should instead refer to the Elections Board. A technical amendment to correct this reference is necessary.

Summary of Senate Amendment 1

Senate Amendment 1 to SB 181 would make the following changes to the bill:

Fair Election Debit Card. The amendment would delete all the provisions relating to having the State Treasurer establish a line of credit for each grantee and then issuing the fair election debit cards to qualifying candidate as the means of providing DTF grant amounts. SA 1 would replace this method with the requirement for checks to be issued to the qualifying candidate, for the amount of the basic grants plus any supplemental grants.

Independent Expenditures. SA 1 would delete the provisions of the bill which would provide supplemental grants to qualifying candidates for certain independent expenditures made in opposition to their candidacy and all new reporting requirements related to such independent expenditures.

Definition of Qualifying Contributions. The amendment would change the definition of a qualifying contribution by deleting the requirement that it be a \$5 contribution. The amendment would also modify the requirement that to qualify for a grant a candidate must obtain at least 1,000 qualifying contributions by providing that the 1,000 contributions received would have to be in amounts of not less than \$5 nor more than \$100. Further the amendment would provide that the aggregate amount of qualifying contributions must be at least \$5,000 but may not exceed \$15,000.

Retention of Seed Money and Qualifying Contributions. SA 1 would delete the bill requirement that any seed money and qualifying contributions that have not been encumbered or expended by the candidate by the beginning of the primary election campaign period be returned to the Elections Board for deposit into the DTF.

Use of Unexpended Grant Monies. The amendment would authorize a candidate who received a primary grant and is certified to appear on the ballot for the general election to use any unencumbered monies from the primary grant during the general election campaign period. SA 1 would also provide that any candidate who receives public funding in a primary but who does not qualify for the general election and who has unencumbered public funds shall return these funds to the Elections Board within 30 days of the date of the primary election. Similarly, the amendment would require that a grantee who has any unencumbered balance of public funds after the general election would be required to return such funds to the Elections Board within 30 days after the date of the general election. The Elections Board would be required to deposit all returned funds into the DTF.

Issuance of Supplemental Grants. SA 1 would provide that the State Treasurer, rather than the Elections Board, would be responsible for providing the supplemental grants to match excessive disbursements by non-qualifying candidates and mass mailing expenditures.

Forfeitures. The amendment would clarify that publicly funded candidates would not be subject to forfeitures unless total disbursements exceeded the grant amounts plus expenditures of any qualifying contributions and seed money lawfully accepted. Under SB 181, the threshold for forfeitures is defined as any disbursements made in excess of grant amounts allocated to the candidate.

Criminal Penalties. SA 1 would modify the new criminal penalties established by SB 181 by: (1) amending the penalty for exceeding the limit on total disbursements to include the disbursement of qualifying seed money contributions that are legally allowed under SB 181; and (2) deleting the penalty provision for making disbursements without using the fair election debit card.

GPR Transfer to the DTF. The amendment would amend the appropriation language for the new GPR sum sufficient to allow transfer for that amounts necessary to pay for the administration of the DTF.

FISCAL EFFECT

There are three aspects of the bill which have potential fiscal impacts: (1) the costs to fully fund the increased level of grants under the bill, which will be funded from the new DTF; (2) the costs of additional supplementary grants that would be established under the bill and would be paid from the new DTF; and (3) the administrative costs incurred by the Elections Board and State Treasurer that would be funded from new sum sufficient appropriations from the DTF.

The Elections Board fiscal estimate indicates that annualized impact of the grant provisions included in SB 181 would be \$1 million GPR. That estimate assumes that basic grants would be made available to two candidates receiving the maximum \$100,000 grant in the primary election and two candidates receiving the \$300,000 maximum grant in the general election each time there is an election for the Supreme Court. The fiscal estimate further projects an additional \$200,000 annually for possible additional primary candidates qualifying for the primary grant or for supplemental grants related to excessive disbursements, independent expenditures or mass mailings by a non-qualifying candidate. The fiscal estimate does not provide any assumptions regarding the distribution of these costs. In terms of administrative costs, the Elections Board's fiscal estimate indicates one-time costs of \$2,500 GPR to develop candidate manuals, forms, and information materials. As of this writing, there is no fiscal estimate from the State Treasurer regarding any administrative costs for that agency.

While this office's estimate of the overall cost of SB 181 is the same as that provided by the Elections Board, it is premised on somewhat different assumptions and is presented in terms of a four-year election cycle. These assumptions are as follows: (1) passage of SB 181 in the March

floor period and the bill being signed by the Governor no later than May so that the bill would first apply to spring primary and general elections for Supreme Court Justice in 2001; (2) similar to Elections Board fiscal estimate, that all candidates in the primary election and in the general election would take grants; (3) the number of candidates in each primary election would be four rather than the two assumed in the Elections Board estimate [this is based on the average number of primary candidates for this office in the last four elections for Justice of the Supreme Court]; (4) no assumption was made for any additional costs under the bill for the likely cost of supplemental grants related to independent expenditures or mass mailings because we did not have any actual experience on which to base an estimate; and (5) no amounts for the impact of inflationary adjustments on grant amounts were included. These assumptions result in a total cost estimate of \$1,000,000 GPR for each Supreme Court Justice election. Based on known required elections for Supreme Court Justice in the four spring elections beginning in 2001, the estimate of the cost per fiscal year for basic grants is as shown in Table 2.

As the bill is drafted, it is unknown what level of funds, if any, there would be in the DTF to fund administrative costs for the Elections Board or State Treasurer. Further, any projected administrative costs for the State Treasurer are currently not known.

TABLE 2

**Estimated Grant Costs of SB 181 By Fiscal Year
Based on Four-Year Election Cycle**

<u>Expenditure Purpose</u>	<u>2000-01</u>	<u>2001-02</u>	<u>2002-03</u>	<u>2003-04</u>
Basic Primary Grant	\$400,000	\$0	\$400,000	\$0
Basic General Election Grant	<u>600,000</u>	<u>0</u>	<u>600,000</u>	<u>0</u>
Total	\$1,000,000	\$0	\$1,000,000	\$0

Fiscal Effect of Senate Amendment 1

Senate Amendment 1 would eliminate the supplemental grants available to qualifying candidates subject to independent expenditures that oppose the qualifying candidate or support their opponent. The fiscal impact of eliminating this category of supplemental grant would be to reduce the potential cost of the SB 181 campaign finance provisions. However, the amount of this reduction is not calculable because there was insufficient information to use as a basis to make an estimate of that cost under the bill.

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ATTACHMENT 1

Timeline of Significant Campaign Finance Dates in SB 181

<u>Event or Period</u>	<u>Description</u>	<u>Actual Calendar Date if Applied to 2001 Spring Election</u>
Exploratory Period	Begins the day after a previous spring election and ends July 1.	April 5, 2000 until July 1, 2000
Public Finance Qualifying Period	Begins July 1 of the year before an election and ends 30 days after the nomination deadline.*	July 1, 2000 until February 19, 2001.
Primary Election Campaign Period	Begins 30 days after the nomination deadline and ends the day of the primary election.	February 6, 2001 until February 20, 2001.
Election Campaign Period (general election)	Begins the day after the primary election and ends on the day succeeding the spring election.	February 20, 2001 until April 3, 2001.

*Nomination deadline is the first Tuesday in January before the spring election.