

2001 DRAFTING REQUEST**Assembly Amendment (AA-ASA1-SB55)**Received: **06/21/2001**Received By: **rmarchan**Wanted: **Soon**

Identical to LRB:

For: **Spencer Black (608) 266-7521**By/Representing: **Susan**This file may be shown to any legislator: **NO**Drafter: **rmarchan**

May Contact:

Addl. Drafters: **kuesejt**Subject: **Elections - campaign finance**

Extra Copies:

Submit via email: **YES**Requester's email: **representative black**

Pre Topic:

No specific pre topic given

Topic:

Reporting requirements under the campaign finance law

Instructions:

See Attached. Same as ASA-1 to AB-18.

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
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	kuesejt 06/22/2001			_____			
/1			rschluet 06/25/2001	_____	lrb_docadmin 06/25/2001	lrb_docadmin 06/25/2001	

Vers. Drafted Reviewed Typed Proofed Submitted Jacketed Required

FE Sent For:

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1?	rmarchan	1/1 6/22/01 jlc	Amst 1 6/25	_____	_____	_____	_____

FE Sent For:

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Assembly Democrat Budget Amendment Requests

Request Number: 43
(not LRB number)

Agency: *campaigns*

Description: Requiring identification of issue ad donors

Attachments: AB 18

Cost (if known):

Contact person: Susan McMurray, 266-7521, Representative Black's Office



6-21

RJM

*Tel Susan in Rep. Black's office.
Use ASA-1 to AB-18.*

2001 ASSEMBLY BILL 18

January 16, 2001 - Introduced by JOINT COMMITTEE FOR REVIEW OF ADMINISTRATIVE RULES. Referred to Committee on Campaigns and Elections.

1 AN ACT *to repeal* 11.06 (3) (b); *to amend* 11.06 (1) (intro.), 11.06 (2) and 11.12
2 (4); and *to create* 11.01 (13) and (20) and 11.01 (16) (a) 3. of the statutes;
3 **relating to:** the scope of regulation and reporting of information by
4 nonresident registrants under the campaign finance law.

Analysis by the Legislative Reference Bureau

This bill is introduced as required by s. 227.19 (5) (e), stats., in support of the objections of the assembly committee on campaigns and elections on February 16, 2000, and of the senate committee on economic development, housing and government operations on February 14, 2000, and the objection of the joint committee for review of administrative rules on April 14, 2000, to the issuance of clearinghouse rule number 99-150 by the elections board. The proposed rule relates to the subject of disclosure and record-keeping requirements under the campaign finance law.

Currently, individuals who accept contributions, organizations which make or accept contributions, or individuals who or organizations which incur obligations or make disbursements for the purpose of influencing an election for state or local office are generally required to register with the appropriate filing officer and to file financial reports with that officer, regardless of whether they act in conjunction with or independently of any candidate who is supported or opposed.

With certain exceptions, this bill imposes registration and reporting requirements, in addition, upon any individual who or organization that, within 60 days of an election and by means of a newspaper, periodical, commercial billboard,

ASSEMBLY BILL 18

radio station, television station, mass mailing, or telephone bank operator, makes a communication which includes the name or likeness of a candidate at that election, an office to be filled at that election, or a political party. The bill, however, does not require registration and reporting if the communication is made by a corporation, cooperative, or nonpolitical voluntary association and is limited to the corporation's, cooperative's, or association's members, shareholders, or subscribers.

Currently, with certain exceptions, registrants under the campaign finance law are required to file regular reports with the appropriate filing officer or agency. The reports must identify contributors of more than \$20 cumulatively within a calendar year; the occupation and principal place of employment, if any, of each contributor whose cumulative contributions within a calendar year exceed \$100; the registrants from whom or to whom funds are transferred; other income exceeding \$20; contributions donated to a charitable organization or the common school fund; loans exceeding \$20 together with the identity of the lenders and guarantors, if any; disbursements (expenditures) and obligations exceeding \$20; and certain information from registrants making disbursements independently of candidates. However, if a registrant does not maintain an office or street address within this state, the registrant need only identify contributions, transfers, loans, and other income received from sources in this state and disbursements and obligations incurred with respect to elections for state or local office in this state.

This bill deletes the exception for registrants who or which do not maintain an office or street address within this state, so that these registrants are required to report the same information as other registrants.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 11.01 (13) and (20) of the statutes are created to read:

2 11.01 (13) "Mass mailing" means the distribution of 50 or more pieces of
3 substantially identical material.

4 (20) "Telephone bank operator" means any person who places or directs the
5 placement of telephone calls to individuals.

6 **SECTION 2.** 11.01 (16) (a) 3. of the statutes is created to read:

7 11.01 (16) (a) 3. A communication that is made by means of one or more
8 communications media or a mass mailing, or through a telephone bank operator,
9 other than a communication that is exempt from reporting under s. 11.29, that is
10 made during the period beginning on the 60th day preceding an election and ending

ASSEMBLY BILL 18

1 on the date of that election and that includes a name or likeness of a candidate whose
2 name is certified under s. 7.08 (2) (a) or 8.50 (1) (d) to appear on the ballot at that
3 election, the name of an office to be filled at that election, or the name of a political
4 party.

5 **SECTION 3.** 11.06 (1) (intro.) of the statutes is amended to read:

6 11.06 (1) CONTENTS OF REPORT. (intro.) Except as provided in subs. (2), ~~(3)~~ and
7 (3m) and ss. 11.05 (2r) and 11.19 (2), each registrant under s. 11.05 shall make full
8 reports, upon a form prescribed by the board and signed by the appropriate
9 individual under sub. (5), of all contributions received, contributions or
10 disbursements made, and obligations incurred. Each report shall contain the
11 following information, covering the period since the last date covered on the previous
12 report, unless otherwise provided:

13 **SECTION 4.** 11.06 (2) of the statutes is amended to read:

14 11.06 (2) DISCLOSURE OF CERTAIN INDIRECT DISBURSEMENTS. Notwithstanding
15 sub. (1), if a disbursement is made or obligation incurred by an individual other than
16 a candidate or by a committee or group which is not primarily organized for political
17 purposes, and the disbursement does not constitute a contribution to any candidate
18 or other individual, committee or group, the disbursement or obligation is required
19 to be reported only if the purpose is to expressly advocate the election or defeat of a
20 clearly identified candidate or the adoption or rejection of a referendum or if the
21 disbursement is made or the obligation incurred to make a communication that is
22 specified in s. 11.01 (16) (a) 3. The exemption provided by this subsection shall in no
23 case be construed to apply to a political party, legislative campaign, personal
24 campaign or support committee.

25 **SECTION 5.** 11.06 (3) (b) of the statutes is repealed.

01-16-01. A. Joint committee for Review of Administrative Rules report received pursuant to s. 227.19(6)(a), Wisconsin Statutes.

ADC

JLD BMW
DWTE

**ASSEMBLY SUBSTITUTE AMENDMENT 1,
TO 2001 ASSEMBLY BILL 18**

AA - ASA 1 - ~~bill~~ SB 55

March 6, 2001 - Offered by Representatives KRUG, BLACK, BOCK, HEBL, POCAN and MILLER.

1 **AN ACT to repeal** 11.06 (3) (b); **to amend** 11.06 (1) (intro.), 11.06 (2), 11.12 (4) and
2 11.61 (1) (a) to (c); and **to create** 11.01 (13) and (20), 11.01 (16) (a) 3., 11.24 (1v),
3 11.60 (3s) and 11.61 (1) (d) of the statutes; **relating to:** acceptance of
4 contributions, the scope of regulation and reporting of information by
5 nonresident registrants under the campaign finance law, making an
6 appropriation, and providing a penalty.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

~~WVW~~ #. Page 7, line 4: after ~~WVW~~ that line insert:

7 95c SECTION 11.01 (13) ~~and (20)~~ of the statutes ~~are~~ created to read:

8 11.01 (13) "Mass mailing" means the distribution of 50 or more pieces of
9 substantially identical material.

10 SECTION 95c. CR; 11.01 (20)
11 11.01 (20) "Telephone bank operator" means any person who places or directs the
placement of 50 or more substantially identical telephone calls to individuals.

95e ✓

1 SECTION 2. 11.01 (16) (a) 3. of the statutes is created to read:

2 11.01 (16) (a) 3. A communication that is made by means of one or more
3 communications media or a mass mailing, or through a telephone bank operator,
4 other than a communication that is exempt from reporting under s. 11.29, that is
5 made during the period beginning on the 60th day preceding an election and ending
6 on the date of that election and that includes a name or likeness of a candidate whose
7 name is certified under s. 7.08 (2) (a) or 8.50 (1) (d) to appear on the ballot at that
8 election or the name of an office to be filled at that election.

9 SECTION 3. 11.06 (1) (intro.) of the statutes is amended to read:

10 11.06 (1) CONTENTS OF REPORT. (intro.) Except as provided in subs. (2), (3) and
11 (3m) and ss. 11.05 (2r) and 11.19 (2), each registrant under s. 11.05 shall make full
12 reports, upon a form prescribed by the board and signed by the appropriate
13 individual under sub. (5), of all contributions received, contributions or
14 disbursements made, and obligations incurred. Each report shall contain the
15 following information, covering the period since the last date covered on the previous
16 report, unless otherwise provided:

95j ✓

17 SECTION 4. 11.06 (2) of the statutes is amended to read:

18 11.06 (2) DISCLOSURE OF CERTAIN INDIRECT DISBURSEMENTS. Notwithstanding
19 sub. (1), if a disbursement is made or obligation incurred by an individual other than
20 a candidate or by a committee or group which is not primarily organized for political
21 purposes, and the disbursement does not constitute a contribution to any candidate
22 or other individual, committee or group, the disbursement or obligation is required
23 to be reported only if the purpose is to expressly advocate the election or defeat of a
24 clearly identified candidate or the adoption or rejection of a referendum or if the
25 disbursement is made or the obligation incurred to make a communication that is

1 specified in s. 11.01[✓](16)(a) 3. The exemption provided by this subsection shall in no
2 case be construed to apply to a political party, legislative campaign, personal
3 campaign or support committee. - (95i)

4 ~~SECTION 5.~~ 11.06 (3) (b)[✓] of the statutes is repealed. (95k)

5 ~~SECTION 6.~~ 11.12 (4)[✓] of the statutes is amended to read:

6 11.12 (4) Each registrant shall report contributions, disbursements and
7 incurred obligations in accordance with s. 11.20. Except as permitted under s. 11.06
8 (2), (3) and (3m), each report shall contain the information which is required under
9 s. 11.06 (1). (95m)

10 ~~SECTION 7.~~ 11.24 (1v)[✓] of the statutes is created to read:

11 11.24 (1v) No registrant may accept any contribution made by a committee or
12 group that does not maintain an office or street address within this state at the time
13 that the contribution is made unless that committee or group is registered with the
14 federal election commission under 2 USC 433 (a). (95p)

15 ~~SECTION 8.~~ 11.60 (3s)[✓] of the statutes is created to read:

16 11.60 (3s) Notwithstanding sub. (1), if any person, including any committee,
17 group, or corporation, fails to register or to report a contribution, disbursement, or
18 incurred obligation, makes an unlawful contribution or disbursement, or incurs an
19 unlawful obligation, and the violation results from a communication made for a
20 political purpose described under s. 11.01 (16) (a) 3.[✓] but not from an act for a political
21 purpose described under any other provision of s. 11.01 (16),[✓] the person may be
22 required to forfeit not more than 3 times the amount or value of the contribution,
23 disbursement, or incurred obligation. (95r)

24 ~~SECTION 9.~~ 11.61 (1) (a) to (c) of the statutes are amended to read:

1 11.61 (1) (a) ~~Whoever~~ Except as provided in par. (d), whoever intentionally
2 violates s. 11.05 (1), (2), (2g) or (2r), 11.07 (1) or (5), 11.10 (1), 11.12 (5), 11.23 (6) or
3 11.24 (1) may be fined not more than \$10,000 or imprisoned for not more than 4 years
4 and 6 months or both.

5 (b) ~~Whoever~~ Except as provided in par. (d), whoever intentionally violates s.
6 11.25, 11.26, 11.27 (1), 11.30 (1) or 11.38 where the intentional violation does not
7 involve a specific figure, or where the intentional violation concerns a figure which
8 exceeds \$100 in amount or value may be fined not more than \$10,000 or imprisoned
9 for not more than 4 years and 6 months or both.

10 (c) ~~Whoever~~ Except as provided in par. (d), whoever intentionally violates any
11 provision of this chapter other than those provided in par. (a) and whoever
12 intentionally violates any provision under par. (b) where the intentional violation
13 concerns a specific figure which does not exceed \$100 in amount or value may be fined
14 not more than \$1,000 or imprisoned not more than 6 months or both.

15 **SECTION 10.** 11.61 (1) (d) of the statutes is created to read: 95+

16 11.61 (1) (d) Paragraphs (a) to (c) do not apply to any violation that is
17 punishable under s. 11.60 (3s). "

18 ~~SECTION 11. Appropriation changes.~~ *Man #. Page 255, line 11:* NO
FF

19 ~~(1) In the schedule under section 20.005 (3) of the statutes for the appropriation~~
20 ~~to the elections board under section 20.510 (1) (a) of the statutes, as affected by the~~
21 ~~acts of 2001,~~ increase the dollar amount ~~is increased~~ is increased by \$67,400 for fiscal year 2001-02 and
22 increase the dollar amount ~~is increased~~ is increased by \$67,400 for fiscal year 2002-03 to increase the
23 authorized FTE positions for the elections board by 1.0 GPR position and to provide
24 for supporting expenses and to provide for limited term staffing needs for the purpose
25 of implementing this act. The expanded regulation of campaign financing under

~~MAN #~~ Page 1397, line 11: after line

that line insert:

CS

1
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~~SECTION 12. Initial applicability.~~

CAMPAIGN FINANCE REPORTS.

19

(1) The treatment of sections 11.06 (1) (intro.) and (3) (b) and 11.12 (4) of the statutes first applies with respect to reporting periods which begin on or after the effective date of this subsection.

MA (END)

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0311/1dn
JTK/RJM/MS/JK/km

1/1dn

September 25, 2000 } date

JLD

Representative Black:

Per the instructions of your staff, this amendment is based on ASA 01 to 2001 AB-18.

1. This bill accomplishes your intended treatment of conduits in a more straight-forward manner than the treatment in 1997 LRB-4577/2. Rather than leaving conduit provisions in the law while eliminating the purpose for forming a conduit, this draft simply repeals the conduit provisions altogether. Please let us know if you have any questions regarding this treatment.

2. For this draft, we have included an appropriation but have specified "\$-0-" for expenditure in fiscal years 2001-02 and 2002-03. When you know the dollar amounts that you need to include in the proposal, contact us and we will either redraft the proposal or draft an amendment, whichever is appropriate. Please also be aware that since the biennial budget act repeals and recreates the appropriation schedule under s. 20.005 (3), stats., if this draft is introduced and becomes law before the biennial budget act, that act will eliminate any appropriation increase provided in this draft. Therefore, you may wish to seek incorporation of any desired appropriation increase into the biennial budget bill.

3. Concerning proposed s. 11.19 (6), you may wish to exempt candidates for partisan office at a special election that is called concurrently with the spring election from the prohibition on retention of certain campaign moneys after December 31 of even-numbered years.

4. Upon reviewing the political party funding mechanism, we noted that 1999 LRB-1184/P1 did not contain any provision for disposal of moneys allocated from the checkoff on behalf of the candidates of a political party after that party ceases to be eligible for or withdraws from participation. This draft, therefore, provides for those moneys to be transferred to the general account of the Wisconsin election campaign fund.

① 5. Currently, ch. 11., stats., generally requires disclosure of financial activity by individuals and committees seeking to influence the election or defeat of candidates for state or local office [see ss. 11.01 (6), (7), (11), and (16), 11.05, and 11.06, stats.], unless a disbursement is made or obligation incurred by an individual other than a candidate or by a committee which is not organized primarily for political purposes, the disbursement is not a contribution as defined in the law and the disbursement is not made to expressly advocate the election or defeat of a clearly identified candidate [see s. 11.06 (2), stats.]. This language pretty closely tracks the holding of the U.S. Supreme Court in *Buckley v. Valeo, et al.*, 96 S. Ct. 612, 656-664 (1976), which prescribes the

boundaries of disclosure that may be constitutionally enforced (except as those requirements affect certain minor parties and independent candidates). Proposed s. 11.01 (16) (a) 3., which requires registration and reporting by individuals who or committees that make certain mass communications within 60 days of an election containing a name or likeness of a candidate at that election, ^{or} an office to be filled at that election ~~by a political party~~, appears to extend beyond the boundaries which the court permitted in 1976. As a result, its enforceability at the current time appears to rest upon a shift by the court in its stance on this issue.

^{We} want to note briefly that a few of the provisions of this draft are innovative, and we do not yet have, to my knowledge, specific guidance from the U.S. Supreme Court concerning the enforceability of provisions of these types. It is well possible that a court may find a rational basis for these provisions that would permit them to be upheld. However, because of the concerns expressed by the U.S. Supreme Court in *Buckley v. Valeo, et al.*, 96 S. Ct. 612 (1976), and certain other cases, that attempts to regulate campaign financing activities may, in some instances, impermissibly intrude upon freedom of speech or association or upon equal protection guarantees, it is possible that enforceability problems with these provisions may occur. In particular, those provisions concerning which we do not have specific guidance at this time are:

(a) Proposed s. 11.12(8), which requires candidates who do not accept public grants to file special reports that are not required of candidates who accept public grants.

(b) Proposed s. 11.24 (1v), which restricts the acceptance of contributions made by nonresident contributors.

~~(c) Proposed s. 11.50 (9) (b) and (ba), which provides public grants to qualifying candidates to match certain independent disbursements and disbursements exceeding the disbursement limitations by candidates who do not accept public grants. Although relevant case law has developed regarding this issue in the federal courts of appeal, there is no consensus among these courts on this issue. Due to the unsettled nature of the law in this area, it is not possible to predict how a court would rule if proposed s. 11.50 (9) (b) or (ba) were challenged.~~

(d) Proposed s. 11.19 (1m) and (6), which mandates disposal of certain campaign funds in a specified manner.

(e) Proposed s. 11.26 (8m), which prohibits committees from making contributions to certain other committees. Although the U.S. Supreme Court has not ruled on the enforceability of a provision of this type, the court has indicated some willingness to permit limits on contributions beyond those specifically approved in *Buckley v. Valeo*, 424 U.S. 1. See *California Med. Assn. v. FEC*, 453 U.S. 182, 193-99 (1981) (\$5,000 limitation on individual-to-PAC contributions is a reasonable method of preventing individuals from evading limits on direct campaign contributions).

2. ^{is} ^{this type} ^{this provision} ^{it}

made

[RJM]
[JTK]

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRBb1452/1dn
JTK&RJM:jld:cmh

June 25, 2001

Representative Black:

Per the instructions of your staff, this amendment is based on ASA 1 to 2001 AB-18.

1. Currently, ch. 11., stats., generally requires disclosure of financial activity by individuals and committees seeking to influence the election or defeat of candidates for state or local office [see ss. 11.01 (6), (7), (11), and (16), 11.05, and 11.06, stats.], unless a disbursement is made or obligation incurred by an individual other than a candidate or by a committee which is not organized primarily for political purposes, the disbursement is not a contribution as defined in the law and the disbursement is not made to expressly advocate the election or defeat of a clearly identified candidate [see s. 11.06 (2), stats.]. This language pretty closely tracks the holding of the U.S. Supreme Court in *Buckley v. Valeo, et al.*, 96 S. Ct. 612, 656-664 (1976), which prescribes the boundaries of disclosure that may be constitutionally enforced (except as those requirements affect certain minor parties and independent candidates). Proposed s. 11.01 (16) (a) 3., which requires registration and reporting by individuals who or committees that make certain mass communications within 60 days of an election containing a name or likeness of a candidate at that election or an office to be filled at that election, appears to extend beyond the boundaries which the court permitted in 1976. As a result, its enforceability at the current time appears to rest upon a shift by the court in its stance on this issue.

2. We want to note briefly that proposed s. 11.24 (1v), which restricts the acceptance of contributions made by nonresident contributors, is innovative, and we do not yet have, to my knowledge, specific guidance from the U.S. Supreme Court concerning the enforceability of provisions of this type. It is well possible that a court may find a rational basis for this provision that would permit it to be upheld. However, because of the concerns expressed by the U.S. Supreme Court in *Buckley v. Valeo, et al.*, 96 S. Ct. 612 (1976), and certain other cases, that attempts to regulate campaign financing activities may, in some instances, impermissibly intrude upon freedom of speech or association or upon equal protection guarantees, it is possible that enforceability problems with this provision may occur.

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