



WISCONSIN LEGISLATIVE COUNCIL AMENDMENT MEMO

2001 Assembly Bill 682	Assembly Substitute Amendment 1 and Assembly Amendments 1 and 2 to Assembly Substitute Amendment 1
Memo published: January 25, 2002	Contact: Robert J. Conlin, Senior Staff Attorney (266-2298)

CURRENT LAW

Current law prohibits any person from offering or giving to a state public official, and prohibits a state public official from soliciting or accepting, anything of value if it could reasonably be expected to influence the state public official's vote, official actions or judgment, or if it could reasonably be considered a reward for any official action or inaction on the part of the state public official.

2001 ASSEMBLY BILL 682

2001 Assembly Bill 682 generally prohibits an elected official from trading his or her vote or official action for a campaign contribution. Specifically, the bill provides that no state or local public official holding an elective office may, directly or by means of an agent, give, or offer or promise to give, or withhold, or offer or promise to withhold, his or her vote or influence, or promise to take or refrain from taking official action with respect to any proposed or pending matter in consideration of or upon condition that any other person make or refrain from making a political contribution, or provide or refrain from providing any service or other thing of value, to or for the benefit of a candidate, a political party, or any other person who is subject to a registration requirement under the campaign finance law.

A state or local public official who violates this so-called "pay-to-play" prohibition is subject to a civil forfeiture for each violation. In addition, under the bill, the offending official may also be required to forfeit an amount equal to the amount or value of any political contribution, service, or other thing of value that was wrongfully procured. Intentional violators would be guilty of a misdemeanor under current law and would be subject to a fine of not less than \$100 nor more than \$5,000, or imprisonment in the county jail for not more than one year, or both.

Additionally, Assembly Bill 682 provides that if the Ethics Board refuses or otherwise fails to authorize an investigation with respect to any violation by a state public official of the “pay-to-play” prohibition created by the bill within 30 days after receiving a complaint, the person making the complaint may bring a lawsuit to recover the forfeiture on behalf of the state. Under the bill, if the person making the complaint wins, the court may require the defendant to pay the complainant’s attorney fees and costs, but any forfeiture ordered by the court must be paid to the state.

Finally, under the bill, no court action stemming from a complaint about a violation of the “pay-to-play” provision may be brought during the period beginning 120 days before a general, spring or special election and ending on the date of that election against an elected official who files to be a candidate at that election.

ASSEMBLY SUBSTITUTE AMENDMENT 1

Assembly Substitute Amendment 1 makes the following changes to the bill:

- Expands the “pay-to-play” prohibition created by the bill to include prohibiting a state or local elected official from trading his or her vote or official action for a contribution to ***any person making a communication that contains a reference to a clearly identified state or local public official holding an elective office or to a candidate for an elective office.***
- Contains the same penalty provisions as the bill but also provides that if a public official violates the “pay-to-play” provisions and no thing of value was obtained by the official, e.g., a contribution, service or other thing of value was ***withheld*** in exchange for the official’s vote or action, the official may be ordered to forfeit an amount equal to the maximum individual contribution limit under the campaign finance laws for the office held or sought by the official, whichever is greater.
- Instead of prohibiting the filing of a court action based on a complaint alleging a violation of the “pay to play” provisions during specified periods, the substitute amendment provides that no ***complaint*** alleging a violation of the “pay-to-play” provisions may be filed during certain periods. Under the substitute amendment, the period extends from 120 days before a general or spring election, or from the date of the order of a special election, and ending on the date of the election. Additionally, the substitute amendment tolls, or temporarily suspends, during this time period the three-year statute of limitations for the filing of complaints with respect to complaints for violations of the “pay-to-play” provisions.
- Extends all of the provisions of the bill which relate to a state public official to a local elected public official, including the direct enforcement provisions and the additional penalty provisions.

ASSEMBLY AMENDMENT 1 TO ASSEMBLY SUBSTITUTE AMENDMENT 1

Assembly Amendment 1 to Assembly Substitute Amendment 1 clarifies the additional penalty created by the substitute amendment. As noted above, the substitute amendment provides that if a public official has violated the “pay-to-play” provisions and no thing of value was obtained by the official, the official may be required to forfeit an amount equal to the maximum individual contribution

limit under the campaign finance laws for the office held or sought by the official, whichever is greater. Assembly Amendment 1 deletes the phrase “by the official” so that the additional forfeiture will apply if the official has secured the withholding of a contribution or other thing of value from being made to a candidate, political party, other registrant under the campaign finance laws or a person who makes a communication containing a reference to a clearly identified candidate or official.

ASSEMBLY AMENDMENT 2 TO ASSEMBLY SUBSTITUTE AMENDMENT 1

Assembly Amendment 2 to Assembly Substitute Amendment 1 also clarifies the additional penalty created by the substitute amendment. As noted above, the substitute amendment provides that if a public official has violated the “pay-to-play” provisions and ***no thing of value*** was obtained, a forfeiture may be imposed on the official. Assembly Amendment 2 clarifies that the penalty for a violation will apply if ***no political contribution, service or other thing of value*** was obtained.

On January 24, 2002, all of the above-described amendments were adopted by the Assembly by voice vote. The bill, as amended, passed the Assembly on the same date on a vote of Ayes, 96; Noes, 0.

RJC:rv:jal;tlu