



Legislative Fiscal Bureau

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November 3, 2009

TO: Members
Joint Committee on Finance

FROM: Bob Lang, Director

SUBJECT: 2009 Senate Bill 40/Assembly Bill 65: Creation of Democracy Trust Fund for Supreme Court Races

Senate Bill 40 (SB 40) and Assembly Bill 65 (AB 65) are companion bills that would create a new Democracy Trust Fund to provide public financing to eligible Supreme Court Justice candidates.

Senate Bill 40 was introduced on February 5, 2009, and was referred to the Senate Committee on Judiciary, Corrections, Insurance, Campaign Finance Reform, and Housing. On August 25, 2009, the Senate Committee on Judiciary, Corrections, Insurance, Campaign Finance Reform, and Housing recommended passage of SB 40 on a vote of 3-2. On September 8, 2009, SB 40 was referred to the Joint Committee on Finance.

Assembly Bill 65 was introduced on February 17, 2009, and was referred to the Assembly Committee on Elections and Campaign Reform. On October 21, 2009, the Assembly Committee on Elections and Campaign Reform recommended passage of AB 65 on a vote of 4-3. On October 21, 2009, AB 65 was referred to the Joint Committee on Finance.

SUMMARY OF BILLS

Overview

Under the bills, candidates for Supreme Court Justice would no longer receive public financing under the Wisconsin Election Campaign Fund (WECF). Instead, Supreme Court Justice candidates would receive public financing under a new Democracy Trust Fund (DTF). The DTF would be supported by funds generated from an increased campaign finance check-off on state individual income tax returns. The bills would increase the check-off from \$1 to \$3, and provide

that the \$2 increase in the check-off would be used exclusively to fund the DTF. As the increased \$3 designation would not increase the tax liability or reduce the tax refund of the taxfiler (as under current law), the increased revenue generated from the check-off would be transferred to the DTF from a sum sufficient GPR appropriation.

The bills would also create a second GPR sum sufficient appropriation entitled the democracy trust fund transfer appropriation. If income tax check-off funding were insufficient to fully fund all DTF grants to qualifying Supreme Court Justice candidates in a given election cycle, this latter sum sufficient appropriation would provide the remaining funding to fully fund these grants.

Under the bills, the maximum base grant for an "eligible candidate" for Supreme Court Justice would be increased to \$300,000 for the spring election, and, for the first time, such a candidate would also be eligible for a maximum base grant of \$100,000 for the spring primary (prior to any future adjustment to account for inflation).

For the first time, the bills would create a supplemental grant available to candidates participating in the DTF to match disbursements made, or obligated to be made, by a non-participating candidate exceeding the base grant for either the spring primary or spring election. Such a supplemental grant would not be made unless the non-participating candidate's disbursements made, or obligated to be made, exceeded 105% of the relevant base grant. In addition, the total supplemental grant to match a non-participating candidate's disbursements made, or obligated to be made, could not exceed three times the relevant base grant for the spring primary or spring election. As a result, this supplemental grant could not exceed \$300,000 for the spring primary and \$900,000 for the spring election (prior to any future adjustment for inflation).

The bills would also create a second supplemental grant available to candidates participating in the DTF to match "independent disbursements" made against the DTF candidate, or for the opponents of the DTF candidate, that exceed 120% of the relevant base grant. In addition, the total supplemental grant to match independent disbursements could not exceed three times the relevant base grant for the spring primary or spring election. As a result, this supplemental grant could not exceed \$300,000 for the spring primary and \$900,000 for the spring election (prior to any future adjustment for inflation).

The provisions of SB 40 and AB 65 are detailed in the following sections. Subsequent to these sections, the fiscal effect of the bills is addressed.

Democracy Trust Fund-Related Definitions

In applying the law under the proposed Democracy Trust Fund (DTF), the bills create a series of new definitions associated with: (a) Supreme Court Justice candidates; (b) campaign periods; (c) campaign contributions; and (d) campaign-related disbursements. These new definitions are utilized throughout the bills and are identified in the following four sections. In the remainder of

this summary, these terms will be highlighted through the use of italics.

Definitions Related to Supreme Court Justice Candidates

"Eligible candidate" (for a grant under the DTF) would mean a candidate for Supreme Court Justice who qualified for public financing by collecting the required number of *qualifying contributions*, made all required reports and disclosures, was certified by the Government Accountability Board (GAB) as being in compliance with DTF statutory provisions, and who had an opponent who qualified to have his or her name certified for placement on the ballot at the spring primary or election.

"Nonparticipating candidate" would mean a candidate for Supreme Court Justice who did not apply for a *public financing benefit* under the DTF, or who was otherwise ineligible or failed to qualify for a DTF *public financing benefit*.

Campaign Period Definitions

"Exploratory period" would mean the period that begins after the date of a spring election and ends on the first day of the *public financing qualifying period* for the next election for Supreme Court Justice.

"Public financing qualifying period" would mean the period beginning on the first day of July of any year and ending on the day before the beginning of the *primary election campaign period* for Supreme Court Justice.

"Primary election campaign period" would mean the period beginning on the day after the last day prescribed by law for filing nomination papers for Supreme Court Justice and ending on the day of the spring primary election for that office, or the day on which the primary election would have been held, if required.

"Election campaign period" would mean the period beginning on the day after the spring primary election, or the day on which the primary election would have been held, if required, and ending on the day of the succeeding spring election.

Definitions Related to Campaign Contributions

"Allowable contribution" would mean a *qualifying contribution*, *seed money contribution*, or personal contribution authorized under DTF laws.

"Qualifying contribution" would mean a contribution in an amount of not less than \$5 nor more than \$100 made to a candidate by an elector of this state during the *public financing qualifying period*, which was acknowledged by written receipt identifying the contributor.

"Excess qualifying contribution amount" would mean the amount of *qualifying contributions* accepted by a candidate beyond the number or dollar amount of contributions required to qualify a candidate for a *public financing benefit* under the DTF.

"Seed money contribution" would mean a contribution in an amount of not more than \$100 made to a candidate by an elector of this state during the *exploratory period* or the *public financing qualifying period*, or a contribution made to a candidate consisting of *personal funds* of that candidate in an amount authorized by the DTF during the *exploratory period* or the *public financing qualifying period*.

"Personal funds" would mean funds contributed by a candidate or a member of a candidate's *immediate family*.

"Immediate family" when used in reference to a candidate, would include the candidate's spouse and children.

"Public financing benefit" means a DTF grant provided to an *eligible candidate*.

Definitions Associated with Campaign-Related Disbursements

"Excess disbursement amount" would mean the amount of disbursements made by a *nonparticipating candidate* in excess of the DTF base grant available to an *eligible candidate* for the same office that the *nonparticipating candidate* seeks.

"Independent disbursement" would mean a disbursement by a person expressly advocating the election or defeat of a clearly identified candidate which was made without cooperation or consultation with a candidate, or any authorized committee or agent of a candidate, and which was not made in concert with, or at the request or suggestion of, any candidate, or any authorized committee or agent of a candidate.

Creation of the Democracy Trust Fund

Current Law. The Wisconsin Election Campaign Fund (WECF) provides public financing for the election campaigns of qualifying candidates for the offices of Governor, Lieutenant Governor, Attorney General, State Treasurer, Secretary of State, Superintendent of Public Instruction, Justice of the Supreme Court, State Senator, and Member of the Assembly.

The WECF is primarily supported through taxfiler designations on individual income tax returns. Each taxfiler may designate that \$1 be provided to the WECF. Since the designation does not increase the tax liability or reduce the tax refund of the taxfiler, the amount generated from the WECF check-off is transferred to the WECF from a sum sufficient general purpose revenue (GPR) appropriation. For tax year 2008, there were 181,300 taxfiler designations to the WECF.

Senate Bill 40/Assembly Bill 65. The bills would eliminate public financing from the WECF for the election campaigns of *eligible candidates* for the office of Justice of the Supreme Court. Instead, the bills would create a Democracy Trust Fund (DTF) to provide this financing. Under the bills, the State of Wisconsin Investment Board would have exclusive control of the investment and collection of the principal and interest of all moneys loaned or invested from the DTF, and the State Treasurer would administer the DTF.

The bills would create two democracy trust fund administration SEG annual appropriations, one under GAB and one under the State Treasurer, to provide funding to these agencies for DTF administration costs. These appropriations would be funded from the DTF, but neither appropriation would be provided expenditure authority under the bills. The bills would also create a "public financing benefits; candidates for justice" SEG sum sufficient appropriation under the State Treasurer to provide for payment of *public financing benefits* to eligible Supreme Court candidates. Again, funding for the appropriation would come from the DTF.

Under the bills, every individual filing an income tax return who has a tax liability or is entitled to a tax refund could now designate \$3 for the WECF and the DTF. One-third of the total amount designated by taxfilers through the campaign finance check-off would be credited to the WECF, and the remaining two-thirds would be credited to the DTF through a new GPR sum sufficient appropriation.

The change to the campaign finance check-off would first apply to taxable years beginning on January 1 of the year in which the enacted bill took effect, except that if the bill took effect after July 31 in a given year, the change to the campaign finance check-off would first apply to taxable years beginning on January 1 of the year following the year in which the bill took effect. As a result, if the bill were to take effect prior to July 31, 2010, the campaign finance check-off would be increased to \$3 for the calendar year 2010 tax year. If the bill were to take effect after July 31, 2010, the campaign finance check-off would be increased to \$3 for the calendar year 2011 tax year. In either event, increased revenue for the DTF from the check-off would not be available until 2011-13. Under state law, the Department of Revenue would not certify the number of campaign finance check-offs from calendar year 2010 tax returns until August 15, 2011 (the 2011-12 state fiscal year).

The bills would also create a GPR sum sufficient "Democracy trust fund transfer" appropriation. This appropriation would provide additional funding to the DTF equal to the difference between the unencumbered balance in the DTF and the administrative funding appropriated to GAB and the State Treasurer, and the amounts required to provide full *public financing benefits* to Supreme Court candidates participating in the DTF.

The bills would provide that all *seed money* and *qualifying contributions* of Supreme Court candidates exceeding DTF limits for such contributions, still held by these candidates after the end of the *exploratory period*, would have to be deposited with GAB within 48 hours after the end of the *exploratory period*. These amounts would have to be deposited by GAB to the DTF. Finally,

the DTF would also consist of: (a) grant funds repaid to GAB by Supreme Court candidates who violated the statutory requirements for receipt of the DTF grant funds; and (b) any unencumbered portion of a grant award under the DTF within 30 days after the primary or election in which the candidate participates. However, an *eligible candidate* whose name is certified to appear on the ballot at the election following the primary could utilize any unencumbered balance of the *public financing benefit* received by the candidate in the *primary election campaign period* for the *election campaign period*.

[As the unencumbered balance in the DTF would already net out amounts appropriated to GAB and the State Treasurer for DTF administration, the Legislature could consider deleting the reference to administrative funding appropriated to these agencies in the GPR sum sufficient "Democracy trust fund transfer" appropriation.]

Candidate Eligibility for Public Financing

Primary Election. Under the bills, before a candidate for Supreme Court Justice in the primary election could be certified as an *eligible candidate* to receive a *public financing benefit* for the *primary election campaign period*, the candidate would have to apply to GAB for a *public financing benefit* and file a sworn statement that the candidate had complied and would comply with DTF law throughout the applicable campaign, which would include the primary and election for that office. A candidate would be required to file the application and statement no later than the beginning of the *primary election campaign period*.

The Government Accountability Board would have to certify a candidate as an *eligible candidate* for receipt of public financing for a primary election if the candidate: (a) filed the required application and sworn statement identified in the previous paragraph; and (b) received at least 1,000 *qualifying contributions* from separate contributors in an aggregate amount of not less than \$5,000 nor more than \$15,000 before the close of the *public financing qualifying period*. The Board would have to verify a candidate's compliance with these requirements by such verification and sampling techniques as the Board would consider appropriate.

Each candidate would be required to: (a) acknowledge each *qualifying contribution* by a receipt to the contributor which contained the contributor's name and home address; and (b) no later than the 15th or the last day of the month which immediately follows the date of receipt of a *qualifying contribution*, whichever would come first, file a copy of the receipt of the contribution with GAB, except that during July, August, and September a copy would only have to be filed on the last day of the month. A *qualifying contribution* could only be utilized by a candidate for the purpose of making a disbursement authorized by law.

Spring Election. Before a candidate could be certified as eligible for receipt of public financing for a spring election, the bills specify that the candidate would have to apply to GAB and file a sworn statement that the candidate had fulfilled the DTF requirements during the *primary election campaign period* and would comply with such requirements during the *election campaign*

period. The application could generally 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 have been held if a primary had been required. A candidate satisfying these requirements who was an *eligible candidate* during the *primary election campaign period* would have to be certified by GAB as an *eligible candidate* for receipt of public financing for the spring election.

Conditions to Receiving Public Financing under the Democracy Trust Fund

Under the bills, an *eligible candidate* could not accept private contributions other than *seed money contributions* and *qualifying contributions* that the candidate accepted during the *exploratory period* and the *public financing qualifying period*.

In order to qualify for a DTF grant, a Supreme Court Justice candidate would have to receive at least 1,000 *qualifying contributions* from separate contributors in an aggregate amount of not less than \$5,000 nor more than \$15,000 before the close of the *public financing qualifying period*.

An *eligible candidate* could also accept *seed money contributions* from any individual or committee prior to the end of the *public financing qualifying period*, provided the total *seed money contributions* received from any one contributor (not including *personal funds* and *qualifying contributions*) did not exceed \$100, and the aggregate *seed money contributions*, including *personal funds* (but not including *qualifying contributions*) did not exceed \$5,000. An *eligible candidate* could make disbursements derived from *seed money contributions* only during the *exploratory period* and the *public financing qualifying period*.

No *eligible candidate* could accept more than \$25 in cash from any contributor and no such candidate could accept cash from all sources in a total amount greater than one-tenth of one percent of the *public financing benefit* or \$500, whichever would be greater.

Under the DTF, the *personal funds* of a candidate contributed as *seed money contributions* could not exceed an aggregate amount of \$5,000. No *eligible candidate* could make any disbursement derived from *personal funds* after the close of the *public financing qualifying period*.

If an *eligible candidate* received excess *seed money contributions* or *qualifying contributions* on an aggregate basis, the candidate could retain the contributions and make disbursements derived from the contributions, in an amount not exceeding \$15,000. An amount equivalent to the excess contributions would have to be deducted by GAB from the candidate's DTF *public financing benefit*. A candidate would be required to transfer to the Board all *seed money and qualifying contributions* that exceeded the limits identified here within 48 hours after the end of the *exploratory period*.

An *eligible candidate* who accepted a *public financing benefit* during the *primary election campaign period* would be required to comply with DTF requirements throughout the *election campaign period* during the same campaign as a precondition to receipt of public financing. An

eligible candidate who accepted a *public financing benefit* during a *primary election campaign period* could not elect to accept private contributions in violation of DTF grant rules during the corresponding *election campaign period*.

No candidate who received a DTF *public financing benefit* could accept an anonymous contribution exceeding \$5. Any anonymous contribution that could not be accepted would have to be donated to the common school fund or to a charitable organization at the option of the registrant's treasurer.

Timing of Democracy Trust Fund Grant Awards

The bills specify that in order to apply for a DTF *public financing benefit*, a candidate would be required to: (a) certify to GAB that the candidate had complied with and would comply, throughout the applicable campaign, with all DTF requirements and that all disclosures required as of the time of application had been made; and (b) present evidence of the requisite number of *qualifying contributions* received by the candidate. The candidate's request for certification would have to be signed by the candidate and the candidate's campaign treasurer.

The Government Accountability Board would have to distribute to each *eligible candidate* at the spring primary election a check for the amount of the DTF *public financing benefit* payable to the candidate promptly after the candidate demonstrated his or her eligibility and, in any event, not later than five days after the end of the *public financing qualifying period*. No candidate could utilize this funding, however, until the beginning of the *primary election campaign period*.

The Government Accountability Board would be required to distribute to each eligible candidate at a spring election a check for the amount of the DTF *public financing benefit* payable to the candidate not later than 48 hours after the date of the spring primary election, or the date that the primary election would have been held had a primary been required. However, no candidate could receive a check until all candidates who applied and qualified for a DTF *public financing benefit* had been certified as eligible candidates.

[It should be noted that as the State Treasurer would be responsible under the bills for providing DTF *public financing benefits* to Supreme Court Justice candidates, the language of this section could be amended to provide that the State Treasurer, and not GAB, would credit candidate's accounts with an additional line of credit when providing a *public financing benefit*.]

Democracy Trust Fund Base Grants

Under the bills, the base grant for an *eligible candidate* for the *primary election campaign period* would be \$100,000, while the base grant for an *eligible candidate* for the *election campaign period* would be \$300,000. An *eligible candidate* could use these grant funds to finance any lawful disbursements during the primary and election campaign periods to further the election of the candidate in that primary or election. An *eligible candidate* could not use these grant funds to repay

any loan, or in violation of DTF requirements or any other applicable law.

If there was no spring primary, no *eligible candidate* for Supreme Court Justice could receive a DTF *public financing benefit* for the *primary election campaign period*.

Beginning on July 1, 2012, and every two years thereafter, GAB would be required to modify the amount of the DTF base grants to adjust for the change in the consumer price index, all items, U.S. city average, published by the U.S. Department of Labor for the preceding two year period ending on December 31.

Nonparticipating Candidate Supplemental Grants

The bills require that upon receiving information that a *nonparticipating candidate* for Supreme Court Justice at a primary or election received contributions, or made or obligated to make disbursements, exceeding 105% of the base grant provided to an *eligible candidate* for the same office at the same primary or election, the State Treasurer would be required to immediately issue a check to an opposing *eligible candidate* in an additional amount equivalent to the total excess disbursements made or obligated to be made, but not to exceed three times the *public financing benefit* provided during the relevant primary or election. Prior to any future adjustments to reflect changes in the consumer price index, as the base grants for the primary and election campaigns are \$100,000 and \$300,000 respectively, the maximum nonparticipating candidate supplemental grants for the primary and election campaigns would equal \$300,000 and \$900,000 respectively.

Under the bills *nonparticipating candidates* are required to report contributions received, or disbursements made or obligated to be made, that exceed 105% of the relevant base grant for a candidate participating in the DTF. However, nonparticipating candidate supplemental grants provided to a DTF candidate are based only on the disbursements made or obligated to be made by the *nonparticipating candidate*. In other words, nonparticipating candidate supplemental grants do not match contributions received by the *nonparticipating candidate*, but only disbursements.

[If there were multiple *nonparticipating candidates* for Supreme Court Justice in a primary, the language of the bills could be read to permit maximum supplemental grants of \$300,000 to be provided to an *eligible candidate* for each *nonparticipating candidate* whose disbursements made or obligated to be made exceeded 105% of the relevant base grant. The Legislature may wish to clarify its intent as to how this cap would apply during a primary.]

Independent Disbursements Supplemental Grants

Under the bills, when the aggregate *independent disbursements* against an *eligible candidate* for Supreme Court Justice or for the opponents of that *eligible candidate*, exceed 120% of the base grant in the primary or election campaign, GAB would be required to immediately credit the *eligible candidate's* account with an additional line of credit equivalent to the total disbursements made or obligated to be made, but not to exceed three times the *public financing benefit* provided

during the relevant primary or election. Prior to any future adjustments to reflect changes in the consumer price index, as the base grants for the primary and election campaigns are \$100,000 and \$300,000 respectively, the maximum independent disbursements supplemental grants for the primary and election campaigns would equal \$300,000 and \$900,000 respectively.

[If there were multiple entities producing *independent disbursements*, against an *eligible candidate* for Supreme Court Justice or for the opponents of that *eligible candidate*, that exceeded 120% of the base grant in the spring primary or election campaign, the language of the bills could be read to permit maximum supplemental grants of either \$300,000 (in a spring primary) or \$900,000 (in a spring election) to be provided to an *eligible candidate* for each entity producing these independent disbursements whose aggregate disbursements exceeded 120% of the relevant base grant. The Legislature may wish to clarify its intent as to how this cap would apply.

Further, it should be noted that as the State Treasurer would be responsible under the bills for providing DTF *public financing benefits* to Supreme Court Justice candidates, the language of this section could be amended to provide that the State Treasurer, and not GAB, would credit candidate's accounts with an additional line of credit when providing an independent disbursements supplemental grant.]

Transfer of Democracy Trust Fund Grants to Replacement Candidate

The bills specify that any unspent and unencumbered moneys received by a candidate from the DTF would have to be immediately transferred to any successor candidate who was appointed to replace that candidate upon filing of a proper application with GAB to determine the successor candidate's eligibility to participate in the DTF. For purposes of qualifying to receive DTF funding, contributions received and disbursements made by the former candidate would be considered to have been received or made by the replacement candidate. If no replacement candidate was appointed, or if no proper application was filed with GAB within seven days of the date on which the vacancy occurred, the unspent and unencumbered DTF funds would have to revert to the state.

Campaign Contributions to Supreme Court Justice Candidates

Current Law. Individuals may not give more than \$10,000 to a candidate for Supreme Court Justice. An individual campaign committee may not give more than 4% of the spending limit for Supreme Court, or \$8,625, to a candidate for Supreme Court Justice.

A Supreme Court Justice candidate may not accept more than 45% of the spending limit for the Supreme Court, or \$97,031, in contributions from political action committees and other candidates' campaign committees. A Supreme Court Justice candidate may not accept more than 65% of the spending limit for the Supreme Court, or \$140,156, in contributions from political action committees, other candidates' campaign committees and political party committees.

Senate Bill 40/Assembly Bill 65. The bills would delete the current law restrictions on

contributions that may be received by a Supreme Court Justice candidate from individuals and individual campaign committees. Candidates participating in the DTF would be subject to the contribution limitations for *seed money and qualifying contributions* identified above. A *nonparticipating candidate* could accept contributions from private sources without limitation, except that no person could make any contribution or contributions to a *nonparticipating candidate* exceeding a total of \$1,000 during any campaign. This contribution limit would apply to both individuals and single campaign committees.

In addition, the bills would delete: (a) the current law spending limit under the WECF for Supreme Court races of \$215,625; (b) the limitation that a Supreme Court Justice candidate not accept more than 45% of the spending limit for the Supreme Court, or \$97,031, in contributions from political action committees and other candidates' campaign committees; and (c) the limitation that a Supreme Court Justice candidate not accept more than 65% of the spending limit for the Supreme Court, or \$140,156, in contributions from political action committees, other candidates' campaign committees and political party committees.

Campaign Communications Produced by Nonparticipating Candidates

Under the bills, any electronic or print communication paid for or authorized by a *nonparticipating candidate* would be required to 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."

Additional Reporting Requirements for Democracy Trust Fund Grant Recipients

In addition to campaign finance reports required under current law, the bills specify that a Supreme Court Justice candidate who received a DTF *public financing benefit* would be required to furnish complete financial records, including records of *seed money contributions, qualifying contributions*, and disbursements to GAB on the 15th or the last day of the month that immediately followed the receipt of the contribution or the making of the disbursement, whichever came first, except that during July, August, and September such records would only have to be furnished by the last day of the month. Any candidate receiving DTF funding would be required to cooperate with any audit or examination by GAB.

In addition to data required to be reported under current law, a Supreme Court Justice candidate who received a DTF *public financing benefit* would be required to maintain records of all contributions received by the candidate of more than \$5 but less than \$50, including *seed money contributions* and *qualifying contributions*, which would have to contain the full name of the contributor and the contributor's full home address. In addition, if a contributor's aggregate contributions to any candidate exceeded \$50 for any campaign, the candidate would also have to maintain a record of the contributor's principal occupation and the name and business address of the contributor's place of employment. Any failure to record or provide this information would disqualify the relevant contribution from being used by a candidate as a *qualifying contribution*.

No *eligible candidate*, and no person acting on a candidate's behalf, could deposit any contribution that was not recorded in accordance with these provisions in a candidate's campaign depository account.

Additional Reporting Requirements for Nonparticipating Candidates

In addition to other reports required by law, under the bills a *nonparticipating candidate* for Supreme Court Justice at a primary or election who received contributions, or made or obligated to make disbursements, in an amount that is more than 5% greater than the *public financing benefit* (that is, an amount greater than 105% of the relevant base grant) applicable to an *eligible candidate* for the same office at the same primary or election, would be required to file a report with GAB itemizing the total contributions received and disbursements made or obligated to be made by the candidate as of the date of the report. The Government Accountability Board would be required to transmit copies of the report to all candidates for the same office at the same election. A *nonparticipating candidate* would be required to file additional reports after the candidate received each additional \$1,000 of contributions, or the candidate made or obligated to make each additional \$1,000 of disbursements. If such contributions were received, or such disbursements were made or obligated to be made, more than six weeks prior to the date of the primary election at which the name of the candidate appeared on the ballot (or prior to the date that the primary election would have been held, had a primary been required), such reports would have to be made at the next regular reporting interval under current law. If such contributions were received, or such disbursements were made or obligated to be made, within six weeks prior to the date of the primary election at which the name of the candidate appeared on the ballot (or prior to the date that the primary election would have been held, had a primary been required), such reports would have to be made within 24 hours after each instance in which such contributions were received, or such disbursements were made or obligated to be made.

Additional Reporting Requirements for Independent Disbursements

Under the bills, if any person made, or became obligated to make, by oral or written agreement, an *independent disbursement* in excess of \$1,000 with respect to a Supreme Court Justice candidate at a spring primary or election, that person would be required to file with GAB a notice of such disbursement, or obligation to make such a disbursement. Any such person would be required to file reports of such disbursements, or obligations to make such disbursements, 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 would come first. However, within six weeks prior to the date of the spring primary election, if a primary is held, and within six weeks prior to the date of the spring election, the person would be required to file such reports within 24 hours after each *independent disbursement* was made or obligated to be made. Any such person would be required to file an additional report after each additional \$1,000 of disbursements were made or obligated to be made.

Administration of Democracy Trust Fund Statutory Provisions

Except as otherwise specifically provided, the duties of and authority for administering and enforcing the DTF statutory provisions are vested in GAB. The duty to administer the fund itself would be assigned to the State Treasurer under the bills.

Civil Penalties for Excess Contributions or Disbursements by Supreme Court Justice Candidates Participating in the Democracy Trust Fund

Under the bills, notwithstanding current law civil penalties for violating Wisconsin campaign finance laws, if an *eligible candidate* for Supreme Court Justice made disbursements that exceeded the total amount of the DTF public financing benefit allocated to the candidate for any campaign and the total *qualifying and seed money contributions* lawfully accepted by the candidate, the candidate could be required to forfeit no more than 10 times the amount by which the disbursements exceeded the allocation.

Notwithstanding current law civil penalties for violating Wisconsin campaign finance laws, any *eligible candidate* who accepted contributions in excess of any limitation imposed under DTF statutory provisions could be required to forfeit not more than 10 times the amount by which the contributions exceeded the applicable limitation.

If GAB found that there was probable cause to believe that an *eligible candidate* had made excess disbursements or had accepted excess contributions contrary to DTF statutory provisions, 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. Such a settlement and conciliation agreement would be a matter of public record. Unless violated, such an agreement would be a bar to a civil action.

If GAB was unable to correct the matter by informal methods within the required 14 day timeframe, the Board would be required to make a public finding of probable cause in the matter. After making such a public finding, the Board would be authorized to bring a civil action against the candidate.

Citizen-Initiated Complaints Regarding Excess Contributions or Disbursements by Supreme Court Justice Candidates Participating in the Democracy Trust Fund

The bills specify that if an elector believed that an *eligible candidate* had made excess disbursements or had accepted excess contributions contrary to DTF statutory provisions, and the elector was entitled to vote for or against the candidate in the election in connection with which the violation was alleged to occur, the elector could file a complaint with GAB requesting it to take remedial action. If GAB refused to take remedial action or, within 30 days after the filing of such complaint, failed to take remedial action, the elector could commence a civil action requesting the

court to impose a forfeiture in circuit court for the county where GAB would be authorized to bring such an action.

Other Provisions Governing Civil Proceedings

The courts and GAB would be required under the bills to expedite all civil proceedings under DTF statutory provisions so that all complaints brought prior to an election would be resolved, to the extent possible, before the election was held. If a civil complaint brought under DTF statutory provisions was resolved against the complainant and was found to have been brought in bad faith and without reasonable basis therefore, the court or GAB could assess costs, including reasonable attorney fees, against the complainant. Civil proceedings under DTF statutory provisions could be brought by GAB or by the district attorney for the county where the defendant resides or, if the defendant is a nonresident, by the district attorney for the county where the violation was alleged to have occurred.

Criminal Penalties

Under the bills, notwithstanding current law criminal penalties for violating Wisconsin campaign finance laws, if an eligible candidate or agent of a candidate knowingly accepted more contributions than the candidate was entitled to receive, or made disbursements exceeding the total amount of the DTF public financing benefit received by the candidate and the *qualifying and seed money contributions* lawfully received by the candidate, the candidate or agent would be guilty of a Class G felony [a maximum of five years in prison and five years of extended supervision].

Further, notwithstanding current law criminal penalties for violating Wisconsin campaign finance laws, if in connection with the receipt or disbursement of a DTF public financing benefit for an election campaign, any person knowingly provided false information to GAB, or knowingly concealed or withheld information from GAB, that person would be guilty of a Class G felony.

All criminal prosecutions under DTF statutory provisions would have to be conducted by the district attorney for the county where the defendant resides or, if the defendant was a nonresident, by the district attorney for the county where the violation was alleged to have occurred.

Effective Dates

The provisions of SB 40 and AB 65 would take effect on December 1 following the date of publication of the bill as an act.

FISCAL EFFECT

The bills would create a new Democracy Trust Fund (DTF) to provide public financing for candidates for Supreme Court Justice. The DTF would be supported by a \$2 increase (from \$1 to \$3) in the campaign finance check-off on individual income tax returns. As the increased income

tax check-off would not increase the tax liability or reduce the tax refund of the taxfiler, the increased revenue generated from the check-off would be transferred to the DTF from a sum sufficient GPR appropriation. Assuming that participation would remain at tax year 2008 levels when 181,300 taxfilers participated in the campaign finance check-off, it is anticipated that increasing the check-off from \$1 to \$3 to fund the DTF would increase the draw on the general fund by \$362,600 GPR annually. This increased draw on the general fund would be incurred annually by the state regardless of the level of participation by Supreme Court Justice candidates in the DTF. This estimate assumes that taxfiler participation in the campaign finance check-off would not be negatively impacted by the higher check-off amount.

In a given Supreme Court race, the level of grant funding to be provided and the associated draw on the general fund could vary widely. The following table identifies the possible fiscal impact of the bills if: (a) three candidates participated in a race for Supreme Court Justice; (b) two candidates qualified for and accepted maximum base grants for the spring primary; (c) one candidate qualified for and accepted the maximum base grant for the spring election; (d) one candidate did not participate in the DTF and his or her disbursements in the spring primary and spring election triggered the maximum supplemental matching grants for a nonparticipating candidate's disbursements; and (e) independent disbursements from a single entity in the spring primary and spring election triggered the maximum supplemental independent disbursement matching grants for candidates participating in the DTF. Under this hypothetical scenario, the fiscal impact of the bills in a given Supreme Court election could equal \$3.5 million.

Possible Fiscal Impact of SB 40/AB 65

<u>Candidates</u>	<u>Primary</u>			<u>Spring Election</u>			<u>Total</u>
	<u>Base Grant</u>	<u>Nonparticipating Candidate Supplemental Grant</u>	<u>Independent Disbursements Supplemental Grant</u>	<u>Base Grant</u>	<u>Nonparticipating Candidate Supplemental Grant</u>	<u>Independent Disbursements Supplemental Grant</u>	
DTF Candidate Loses Primary	\$100,000	\$300,000	\$300,000	\$0	\$0	\$0	\$700,000
DTF Candidate Advances Past Primary	100,000	300,000	300,000	300,000	900,000	900,000	2,800,000
Non-Participating Candidate	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
Total	\$200,000	\$600,000	\$600,000	\$300,000	\$900,000	\$900,000	\$3,500,000

The actual draw on the general fund in a given Supreme Court race over and above the annual draw on the general fund associated with the increased campaign finance check-off (\$362,600) would be dependent upon: (a) the level of accumulated funding in the DTF available to be disbursed as grants; (b) the level of candidate participation in the DTF; (c) the level of nonparticipating candidate supplemental grants; (d) the level of independent disbursement supplemental grants; and (e) the legislative determination as to how the caps on supplemental grants would apply (whether the caps would be applied to excess disbursements of each

nonparticipating candidate and entity creating *independent disbursements* on an individual basis, or whether the caps would be applied on an aggregate basis).

It should be noted that under the bills a candidate for Supreme Court Justice only qualifies for a grant under the DTF if he or she has an opponent who has qualified to have his or her name certified for placement on the ballot at the spring primary or election. It should be further noted that the restrictions on contributions that may be received by a *nonparticipating candidate* under the bills (no more than \$1,000 from any one donor, as opposed to \$10,000 per individual and \$8,625 per committee under current law) could make it more difficult for a *nonparticipating candidate* to raise sufficient contributions to trigger the nonparticipating candidate supplemental grants.

It should also be noted that if SB 40 or AB 65 were to become law, individuals and organizations making *independent disbursements* in a Supreme Court race could choose to produce "issue ads" as opposed to express advocacy to avoid the reporting requirements of the bills, and to avoid providing their opponent with independent disbursement supplemental grants from the DTF. Under the hypothetical scenario in the table above, avoiding express advocacy would reduce DTF grants by \$1.5 million.

Finally, GAB has indicated that it would need an additional full-time campaign auditor at an annualized cost of \$53,000 to: (a) administer the additional responsibilities under the bills; and (b) address an existing backlog of campaign finance audits. The Board further identified \$5,000 in one-time start up costs for the position. These resources are not currently provided to the Board under the bills, but the bills do create a DTF administrative annual appropriation for the Board that could be subsequently utilized to provide these resources if the Legislature concurred with this need assessment.

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