



2011 SENATE BILL 67

April 19, 2011 - Introduced by Senators WIRCH, HANSEN, HOLPERIN, C. LARSON and LASSA, cosponsored by Representatives BERCEAU, FIELDS, HEBL, HULSEY and POCAN. Referred to Committee on Transportation and Elections.

1 **AN ACT** *to amend* 11.06 (2); and *to create* 11.01 (16) (a) 3., 11.05 (3) (q), 11.05
2 (3) (s), 11.38 (1m), 11.38 (3e) and 11.38 (9) of the statutes; **relating to:** political
3 disbursements and obligations by corporations and cooperative associations
4 and the scope of regulated activity under the campaign finance law.

Analysis by the Legislative Reference Bureau

Under current law, corporations and cooperatives are prohibited from making contributions or disbursements (expenditures) in campaigns for state or local office. Violators are subject to a forfeiture (civil penalty) of not more than \$500 for each violation. Intentional violators are guilty of a Class I felony, which is punishable by a fine of not more than \$10,000 or imprisonment for three and one-half years, or both, except that if a violation involves \$100 or less, the violation is punishable as a misdemeanor with a fine of not more than \$1,000 or imprisonment for not more than six months, or both. A recent decision of the U.S. Supreme Court has cast doubt about whether this law is enforceable as it applies to disbursements. See *Citizens United v. F.E.C.*, Case No. 08-205 (2010).

This bill provides that if a court with jurisdiction in this state finds in a reported decision, whether or not applicable in this state, that a prohibition against the making of political expenditures by corporations or similar entities is not enforceable for constitutional reasons, the Government Accountability Board (GAB) must publish a finding to that effect. The bill provides that, during a period when a finding of unenforceability is in effect, before a corporation or cooperative may make a disbursement or incur an obligation to make a disbursement for the purpose of

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influencing an election for state or local office, the corporation or cooperative must file with its registration statement and maintain on file with the appropriate filing officer or agency: 1) a copy of a document that is satisfactory to the GAB, reflecting action taken not more than two years previous to the time that any disbursement is made or any obligation to make a disbursement is incurred, demonstrating that the corporation or cooperative has received the approval of a majority of its voting shares or members who are entitled to elect the board of directors for the corporation or cooperative to make disbursements and incur obligations to make disbursements for the purpose of influencing an election for state or local office; or 2) a statement that the corporation or cooperative has no shareholders or members.

The bill also prohibits any corporation or cooperative from making a disbursement in a campaign for state or local office, subject to the current penalties, if the corporation or cooperative is owned or controlled by one or more foreign nationals, as defined by federal law. The bill defines ownership or control as meaning that 1) one or more foreign nationals own 50 percent or more of the voting shares; 2) a majority of the members of the board of directors are foreign nationals; or 3) one or more foreign nationals has the power to direct or control the decision-making process of the corporation or cooperative with respect to the interests of the United States or activities in connection with an election for state or local office.

Currently, individuals who accept contributions, organizations that make or accept contributions, and individuals who or organizations that 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 and organization that, within 60 days of an election and by means of one or more communications media, makes any communication that includes a reference to a candidate at that election, an office to be filled at that election, or a political party. The bill also requires an individual who or organization that becomes subject to a registration requirement by making such a communication to report, upon registration, the information that would have been required to be reported if the individual or organization had been registered with respect to any obligation incurred or disbursement made for the purpose of making such a communication prior to registration. 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.

The change in the scope of reportable activity under the bill also applies to contribution and disbursement limitations and restrictions by causing reportable contributions, obligations, and disbursements to include the cost of all reportable communications.

Violators of registration and reporting requirements or the prohibition created by the bill are subject to a forfeiture of not more than \$500 for each violation. In addition, any person who is delinquent in filing a report is subject to a forfeiture of

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not more than \$50 or 1 percent of the annual salary of the office for which a candidate is being supported or opposed, whichever is greater, for each day of delinquency. Intentional violators of the registration requirements or the prohibition created by the bill are guilty of a Class I felony and may be fined not more than \$10,000 or imprisoned for not more than three years and six months, or both. Persons who intentionally file false reports or statements are guilty of a Class I felony if the violation exceeds \$100 in amount or value and may be fined not more than \$1,000 or imprisoned for not more than six months, or both, if the violation does not exceed \$100 in amount or value.

The bill also provides that no owner, officer, employee, or agent of a corporation or cooperative may cause or authorize the corporation or cooperative to make a disbursement or to incur an obligation that is prohibited under the bill. Under the bill, if an owner, officer, employee, or agent causes or authorizes a violation, action must be brought against the owner, officer, employee, or agent personally and the corporation or cooperative is not financially liable for the violation. In addition, no corporation or cooperative is permitted to reimburse an owner, officer, employee, or agent for any financial liability incurred by the owner, officer, employee, or agent.

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

1 **SECTION 1.** 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, other than a communication that is exempt from reporting
4 under s. 11.29, that is made during the period beginning on the 60th day preceding
5 an election and ending on the date of that election, and that includes a reference to
6 a candidate whose name is certified under s. 7.08 (2) (a) or 8.50 (1) (d) to appear on
7 the ballot at that election, a reference to an office to be filled at that election, or a
8 reference to a political party.

9 **SECTION 2.** 11.05 (3) (q) of the statutes is created to read:

10 11.05 **(3)** (q) In the case of a corporation or cooperative association organized
11 under ch. 185 or 193 that wishes to make disbursements or to incur obligations to
12 make disbursements for the purpose of influencing an election for state or local office
13 during a period when a finding of unenforceability under s. 11.38 (9) is in effect, a

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1 statement that the corporation or cooperative association has received the approval
2 of a majority of the voting shares or members who are entitled to vote to elect the
3 board of directors to make disbursements and to incur obligations to make
4 disbursements, together with the attachment required under s. 11.38 (3e) or, if there
5 are no shareholders or members, a statement to that effect.

6 **SECTION 3.** 11.05 (3) (s) of the statutes is created to read:

7 11.05 (3) (s) In the case of a registrant that has made a communication
8 identified in s. 11.01 (16) (a) 3., a report containing the information specified in s.
9 11.06 (1) with respect to any obligation to make a disbursement incurred or any
10 disbursement made for the purpose of making such a communication prior to
11 registration.

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

13 11.06 (2) DISCLOSURE OF CERTAIN INDIRECT DISBURSEMENTS. Notwithstanding
14 sub. (1), if a disbursement is made or obligation incurred by an individual other than
15 a candidate or by a committee or group which is not primarily organized for political
16 purposes, ~~and~~ the disbursement does not constitute a contribution to any candidate
17 or other individual, committee, or group, and the disbursement is not made or the
18 obligation is not incurred for the purpose of making a communication specified in s.
19 11.01 (16) (a) 3., the disbursement or obligation is required to be reported only if the
20 purpose is to expressly advocate the election or defeat of a clearly identified
21 candidate or the adoption or rejection of a referendum. The exemption provided by
22 this subsection shall in no case be construed to apply to a political party, legislative
23 campaign, personal campaign, or support committee.

24 **SECTION 5.** 11.38 (1m) of the statutes is created to read:

25 11.38 (1m) (a) In this subsection:

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1 1. “Foreign national” has the meaning given in 2 USC 441e (b).

2 2. “Owned or controlled by one or more foreign nationals” means one of the
3 following with respect to a foreign or domestic corporation or an association
4 organized under ch. 185 or 193:

5 a. One or more foreign nationals directly or indirectly own 50 percent or more
6 of the voting shares.

7 b. A majority of the members of the board of directors are foreign nationals.

8 c. One or more foreign nationals has the power to direct or control the
9 decision-making process with respect to the interests of the United States.

10 d. One or more foreign nationals has the power to direct or control the
11 decision-making process with respect to activities in connection with an election for
12 state or local office, including the making of a contribution or disbursement or the
13 establishment or administration of a committee that is required to register under
14 sub. (1) (a) 2.

15 (b) During a period when a finding of unenforceability under sub. (9) is in effect,
16 no foreign or domestic corporation, or association organized under ch. 185 or 193,
17 that is owned or controlled by one or more foreign nationals, may make any
18 disbursement, directly or indirectly, either independently or through any political
19 party, committee, group, candidate. or individual for any purpose other than to
20 promote or defeat a question proposed at a referendum.

21 **SECTION 6.** 11.38 (3e) of the statutes is created to read:

22 11.38 **(3e)** (a) As a part of its registration, each corporation or cooperative
23 association organized under ch. 185 or 193 that wishes to make disbursements or to
24 incur obligations to make disbursements for the purpose of influencing an election
25 for state or local office during a period when a finding of unenforceability under sub.

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1 (9) is in effect shall provide a copy of a document that is satisfactory to the board,
2 reflecting action taken not more than 2 years previous to the time that any
3 disbursement is made or any obligation to make a disbursement is incurred,
4 demonstrating that the corporation or association has received the approval of a
5 majority of the voting shares or members who are entitled to elect the board of
6 directors for the corporation or association to make disbursements and incur
7 obligations to make disbursements in elections for state or local office in this state
8 or a statement that the corporation or association has no shareholders or members.
9 No corporation or cooperative association organized under ch. 185 or 193 may make
10 any disbursement or incur any obligation to make a disbursement, directly or
11 indirectly, or through any political party, committee candidate, or individual for the
12 purpose of influencing an election for state or local office unless the corporation or
13 association has a current statement under this subsection on file with the
14 appropriate filing officer and the statement is accurate.

15 (b) No owner, officer, employee, or agent of a corporation or cooperative
16 association organized under ch. 185 or 193 may cause or authorize the corporation
17 or association to make a disbursement or to incur an obligation in violation of this
18 subsection. If such an owner, officer, employee or agent causes or authorizes a
19 violation of this subsection, action for the violation shall be brought against the
20 owner, officer, employee, or agent personally and the corporation or association is not
21 financially liable for the violation. No such corporation or association may reimburse
22 an owner, officer, employee, or agent for any financial liability incurred by the owner,
23 officer, employee, or agent under this subsection.

24 **SECTION 7m.** 11.38 (9) of the statutes is created to read:

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1 11.38 (9) If a court with jurisdiction in this state finds in a reported decision,
2 whether or not applicable in this state, that a prohibition against the making of
3 political expenditures by corporations or similar entities is not enforceable for
4 constitutional reasons, or if any such court later finds in a reported decision that such
5 a prohibition is enforceable, the board shall promptly publish a finding to that effect
6 in the Wisconsin Administrative Register.

7 **SECTION 7. Initial applicability.**

8 (1) The treatment of section 11.01 (16) (a) 3. of the statutes first applies with
9 respect to contributions received, disbursements made, and obligations incurred on
10 the effective date of this subsection.

11

(END)