

1999 DRAFTING REQUEST

Bill

Received: 01/13/99

Received By: kuesejt

Wanted: As time permits

Identical to LRB:

For: David Travis (608) 266-5340

By/Representing: Bill Graf

This file may be shown to any legislator: NO

Drafter: kuesejt

May Contact:

Alt. Drafters:

Subject: Elections - campaign finance

Extra Copies: RJM - 1

Pre Topic:

No specific pre topic given

Topic:

Campaign finance disclosure and penalties

Instructions:

Per LRB 97-4158/2.

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>
/?	kuesejt 02/8/99	wjackson 02/11/99		_____			
/1			lpaasch 02/12/99	_____	lrb_docadmin 02/12/99	lrb_docadmin 02/18/99	

FE Sent For:

Not Required

<END>

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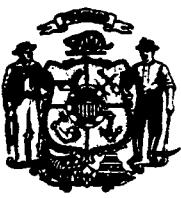
<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
1/1	kuesejt	2/8 / 1 2/10 wlj 1 3/11 jlg	2-12LP	2/12 ES JS			

FE Sent For:

<END>

11/11/11

1



WJ + jg

1999
~~1997~~ BILL

REGEN

1 AN ACT ~~to repeal~~ 11.01 (3); *to renumber* 11.002 (2); *to amend* 11.01 (16) (a) 1.,
2 11.06 (2), 11.06 (7) (a), 11.12 (6), 11.16 (1) (a) and (b) and 11.30 (2) (d); and *to*
3 *create* 11.002 (2) and 11.60 (3n), (3p) and (3r) of the statutes; **relating to:**
4 disclosure of certain activity for the purpose of influencing elections and
5 providing penalties.

Analysis by the Legislative Reference Bureau

Currently, if any individual or organization makes expenditures, in cash or in kind, to make a communication or to engage in some other activity for the purpose of influencing an election for state or local office, that individual or organization is potentially subject to registration and reporting requirements. If the individual is not a candidate or the organization is not a political party, political action committee or some other entity that is organized exclusively for the purpose of influencing elections, the individual is not required to register or report unless the individual or organization makes a contribution or makes expenditures, in cash or in kind, to expressly advocate the election or defeat of a candidate whose name, photograph or drawing is used or who is unambiguously referred to in the activity. If the individual or organization makes expenditures, in cash or in kind, to advocate the election or defeat of such a candidate independently of the candidate who is supported or whose opponent is opposed, the individual or organization must file an oath affirming the independence of the individual or organization before making expenditures to advocate the election or defeat of such a candidate. Violators are subject to a forfeiture (civil penalty) of not more than \$500 for failing to register or to file reports.

This bill changes the standard for reporting of expenditures to influence an election for state or local office, and the applicability of registration requirements resulting from those expenditures, so that registration and reporting is required if an individual or organization makes expenditures the primary purpose of which is

to cause the election, defeat, recall or retention of a candidate. In determining the primary purpose of a communication, the bill provides that the proximity of the communication to an election and the audience to whom the communication is addressed shall be considered. Under the bill, violators of the registration and reporting requirements who or which make expenditures to support the election, defeat, recall or retention of a candidate independently of any candidate who is supported or whose opponent is opposed are subject to a forfeiture of treble the amount of any unreported expenditures or obligations to make expenditures, or treble the difference between the amount of any expenditure or obligation to make an expenditure that is reported and the amount of the expenditure actually made or the obligation to make an expenditure actually incurred.

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

1 SECTION 1. 11.002 (2) of the statutes is renumbered 11.002 (1).

2 SECTION 2. 11.002 (2) of the statutes is created to read:

3 11.002 (2) In determining the primary purpose of a communication, the
4 proximity of the communication to an election and the audience to whom the
5 communication is addressed shall be considered.

6 SECTION 3. 11.01 (3) of the statutes is repealed.

7 SECTION 4. 11.01 (16) (a) 1. of the statutes is amended to read:

8 11.01 (16) (a) 1. The making of a communication the primary purpose of which
9 ~~expressly advocates the~~ is to cause the election, defeat, recall or retention of a clearly
10 ~~identified~~ candidate or a particular vote at a referendum.

11 SECTION 5. 11.06 (2) of the statutes is amended to read:

12 11.06 (2) DISCLOSURE OF CERTAIN INDIRECT DISBURSEMENTS. Notwithstanding
13 sub. (1), if a disbursement is made or obligation incurred by an individual other than
14 a candidate or by a committee or group which is not primarily organized for political
15 purposes, and the disbursement does not constitute a contribution to any candidate
16 or other individual, committee or group, the disbursement or obligation is required

Please proof w/ stats.

1 to be reported only if the primary purpose is to ~~expressly advocate~~ cause the election
2 ~~or, defeat, recall or retention~~ of a ~~clearly identified~~ candidate or the adoption or
3 rejection of a referendum. The exemption provided by this subsection shall in no case
4 be construed to apply to a political party, legislative campaign, personal campaign
5 or support committee.

6 SECTION 6. 11.06 (7) (a) [✓] of the statutes is amended to read:

7 11.06 (7) (a) Every committee, other than a personal campaign committee,
8 which and every individual, other than a candidate, who desires to make
9 disbursements during any calendar year, the primary purpose of which are to be used
10 is to advocate cause the election ~~or, defeat, recall or retention~~ of any ~~clearly identified~~
11 candidate or candidates in any election shall before making any disbursement,
12 except within the amount authorized under s. 11.05 (1) or (2), file with the
13 registration statement under s. 11.05 a statement under oath affirming that the
14 committee or individual does not act in cooperation or consultation with any
15 candidate or agent or authorized committee of a candidate who is supported, that the
16 committee or individual does not act in concert with, or at the request or suggestion
17 of, any candidate or any agent or authorized committee of a candidate who is
18 supported, that the committee or individual does not act in cooperation or
19 consultation with any candidate or agent or authorized committee of a candidate who
20 benefits from a disbursement made in opposition to a candidate, and that the
21 committee or individual does not act in concert with, or at the request or suggestion
22 of, any candidate or agent or authorized committee of a candidate who benefits from
23 a disbursement made in opposition to a candidate. A committee which or individual
24 who acts independently of one or more candidates or agents or authorized
25 committees of candidates and also in cooperation or upon consultation with, in

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1 concert with, or at the request or suggestion of one or more candidates or agents or
2 authorized committees of candidates shall indicate in the oath the names of the
3 candidate or candidates to which it applies.

4 SECTION 7. 11.12 (6)[✓] of the statutes is amended to read:

5 11.12 (6) If any disbursement of more than \$20 cumulatively is made to
6 ~~advocate the election or defeat of a clearly identified candidate~~ by an individual or
7 committee later than 15 days prior to a primary or election in which ~~the a~~ candidate's
8 name appears on the ballot, and the primary purpose of the disbursement is to cause
9 the election, defeat, recall or retention of that candidate, and the disbursement is
10 made without cooperation or consultation with a candidate or agent or authorized
11 committee of a candidate who is supported or opposed, and not in concert with or at
12 the request or suggestion of such a candidate, agent or committee, the individual or
13 treasurer of the committee shall, within 24 hours of making the disbursement,
14 inform the appropriate filing officer of the information required under s. 11.06 (1) in
15 such manner as the board may prescribe. The information shall also be included in
16 the next regular report of the individual or committee under s. 11.20. For purposes
17 of this subsection, disbursements cumulate beginning with the day after the last
18 date covered on the preprimary or preelection report and ending with the day before
19 the primary or election. Upon receipt of a report under this subsection, the filing
20 officer shall, within 24 hours of receipt, mail a copy of the report to all candidates for
21 any office in support of or opposition to one of whom a disbursement identified in the
22 report is made.

23 SECTION 8. 11.16 (1) (a)[✓] and (b)[✓] of the statutes are amended to read:

24 11.16 (1) (a) No disbursement may be made or obligation incurred by a
25 ~~candidate, or by any other person or committee to advocate, other than by an~~

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Please proof w/ stats.

1 individual who or a committee ^{that} which has filed an oath under s. 11.06 (7), the primary
 2 purpose of which is to cause the election or, defeat, recall or retention of a clearly
 3 ~~identified candidate, other than an individual who, or a committee which, has~~
 4 ~~registered under s. 11.05 and filed an oath under s. 11.06 (7),~~ except by the campaign
 5 treasurer of the candidate or other agent designated by the candidate and acting
 6 under his or her authority.

7 (b) The treasurer of each committee and each individual who proposes to make
 8 a disbursement the primary purpose of which is to advocate cause the election or,
 9 defeat, recall or retention of a clearly identified candidate shall notify the treasurer
 10 or other agent designated under par. (a) of the candidate who is supported or whose
 11 opponent is opposed and obtain the authorization of the treasurer prior to making
 12 the disbursement. This paragraph does not apply to an individual or committee
 13 filing an oath under s. 11.06 (7) with respect to the candidate who is supported or
 14 opposed.

15 **SECTION 9.** 11.30 (2) (d) [✓] of the statutes is amended to read:

16 11.30 (2) (d) In addition to the requirements of pars. (a) [✓] to (c) [✓], a committee
 17 ~~which~~ ^{that} or individual who is required to file an oath under s. 11.06 (7) [✓] shall also in every
 18 communication ~~in support of or in opposition to any clearly identified~~ the primary
 19 purpose of which is to cause the election, defeat, recall or retention of a candidate or
 20 candidates include the words "Not authorized by any candidate or candidate's agent
 21 or committee".

22 **SECTION 10.** 11.60 (3n) [✓], (3p) [✓] and (3r) [✓] of the statutes are created to read:

23 11.60 (3n) Notwithstanding [✓] sub. (1) [✓], if an individual who or committee ^{that} ~~which~~
 24 is required to file an oath under s. 11.06 (7) [✓] files a report under this chapter ~~which~~ ^{that} ~~stet~~
 25 overstates the amount of a disbursement made or obligation incurred by the

1 individual or committee in support of or in opposition to any candidate, the
2 individual or committee shall forfeit an amount equal to treble the difference
3 between the amount of the disbursement actually made or the obligation actually
4 incurred and the amount reported.

5 (3p) Notwithstanding sub. (1), if an individual who or committee^{that} which is
6 required to file an oath under s. 11.06 (7) files a report under this chapter^{stet} which
7 understates the amount of a disbursement made or obligation incurred by the
8 individual or committee in support of or in opposition to any candidate, the
9 individual or committee shall forfeit an amount equal to treble the difference
10 between the amount of the disbursement actually made or the obligation actually
11 incurred and the amount reported.

12 (3r) Notwithstanding sub. (1), if an individual who or committee^{that} which is
13 required to register under s. 11.05 and to file an oath under s. 11.06 (7) fails to register
14 under s. 11.05 or to file a report required under s. 11.12 (6) or 11.20, or files a report
15 which fails to identify any obligations or disbursements that are required to be
16 reported under s. 11.06 or 11.12 (6), the individual or committee shall forfeit an
17 amount equal to treble the amount of any obligations incurred and disbursements
18 not previously reported as obligations made by the individual or committee that were
19 not reported as required under s. 11.06 or 11.12 (6).

20

(END)

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-4158/1dn

JTK/af:km

new date { ~~Friday, November 7, 1997~~

-1752/dn
WLJ
JLJ

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). This proposal appears to extend beyond the boundaries which the court permitted in 1976. As a result, its enforceability at the correct time appears to rest upon a shift by the court in its stance on this issue. *Current*

If you need further information or would like to make any changes based on the above information, please let me know.

Jeffery T. Kuesel
Assistant Chief Counsel
266-6778

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-1752/1dn
JTK:wlj&jlg:lp

February 12, 1999

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). This proposal appears to extend beyond the boundaries that 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.

If you need further information or would like to make any changes based on the above information, please let me know.

Jeffery T. Kuesel
Assistant Chief Counsel
266-6778

**SUBMITTAL
FORM**

**LEGISLATIVE REFERENCE BUREAU
Legal Section Telephone: 266-3561
5th Floor, 100 N. Hamilton Street**

The attached draft is submitted for your inspection. Please check each part carefully, proofread each word, and sign on the appropriate line(s) below.

Date: 2/12/99

To: Representative Travis

Relating to LRB drafting number: LRB-1752

Topic

Campaign finance disclosure and penalties

Subject(s)

Elections - campaign finance

1. **JACKET** the draft for introduction *Dan Travis*
in the **Senate** ____ or the **Assembly** (check only one). Only the requester under whose name the drafting request is entered in the LRB's drafting records may authorize the draft to be submitted. Please allow one day for the preparation of the required copies.

2. **REDRAFT.** See the changes indicated or attached _____.
A revised draft will be submitted for your approval with changes incorporated.

3. Obtain **FISCAL ESTIMATE NOW**, prior to introduction _____.
If the analysis indicates that a fiscal estimate is required because the proposal makes an appropriation or increases or decreases existing appropriations or state or general local government fiscal liability or revenues, you have the option to request the fiscal estimate prior to introduction. If you choose to introduce the proposal without the fiscal estimate, the fiscal estimate will be requested automatically upon introduction. It takes about 10 days to obtain a fiscal estimate. Requesting the fiscal estimate prior to introduction retains your flexibility for possible redrafting of the proposal.

If you have any questions regarding the above procedures, please call 266-3561. If you have any questions relating to the attached draft, please feel free to call me.

Jeffery T. Kuesel, Managing Attorney
Telephone: (608) 266-6778