DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB–1218/1dn
JTK:jlg:hmh

Friday, January 8, 1999

1. This draft prohibits single transfers between political action committees exceeding $100 each. It does not limit the number of such transfers that may be made within any time period.

2. This draft provides for public funding of campaigns for county or 1st class city offices by local option. Under the draft, a county or city may condition its financing upon agreement by a candidate to accept spending or self–contribution limits specified by the county or city. The draft does not provide for these limits to be constrained by the disbursement levels or contribution limitations prescribed under ch. 11, stats., which are currently unenforceable under *Buckley v. Valeo, et. al.*, 96 S. Ct. 612 (1976). Please let me know if you believe that a county or city should not permit disbursements or self–contributions to exceed the state limitations.

3. This draft contains a blank appropriation increase to provide funds for the division of hearings and appeals to carry out its functions under proposed s. 5.065. When you know the dollar amount that you need to include in the proposal for this purpose, contact me and I will either redraft the proposal or draft an amendment, whichever is appropriate. For the purpose of obtaining the necessary dollar figure, you may wish to request the fiscal estimate prior to introduction.

4. 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. 11.065, which requires registration by individuals who or organizations which publish, broadcast or disseminate communications containing the name or likeness of a candidate for state or local office, 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.

5. Proposed ss. 11.24 (1t) and 11.25 (4) prohibit the former personal campaign committee of a candidate which becomes an independent committee from making contributions or disbursements to advocate the election or defeat of a candidate from money or property acquired by the committee prior to its change in status. The U.S. Supreme Court has held that limits may not be imposed on the spending of committees that wish to express their views independently of candidates. See *Buckley v. Valeo, et al.*, 96 S. Ct. 612, 644–650 (1976) and *F.E.C. v. N.C.P.A.C.*, 105 S.Ct. 1459, 1465–1471 (1985). However, the court has also held, in *Buckley*, that reasonable contribution limitations may be imposed upon committees. If one views this proposal simply as an attempt to restrict independent spending, it would likely not meet the court's current standard for passing constitutional muster. If one views this proposal as only a limited restriction designed to protect contributors by ensuring that their contributions are not used for purposes they did not intend, the proposal may be viewed more favorably, and could be sustained.

6. I also 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 federal courts 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 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. 11.26 (7) and (8e), which prohibits certain contributions to be made by candidates to other candidates or political parties.

(b) Proposed s. 11.26 (8m), which prohibits political action committees from making certain contributions to other political action committees, and prohibits conduits from transferring certain contributions to political action committees.

(c) Proposed s. 11.31 (2e), which imposes upon all candidates a limitation upon disbursements using moneys derived from sources other than individuals.

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