

1999 DRAFTING REQUEST

Assembly Amendment (AA-AB377)

Received: **09/29/1999**

Received By: **kuesejt**

Wanted: **Soon**

Identical to LRB:

For: **Peter Bock (608) 266-8580**

By/Representing: **Jeff Kostelic**

This file may be shown to any legislator: **NO**

Drafter: **kuesejt**

May Contact: **Sen. George may inspect file.**

Alt. Drafters:

Subject: **Elections - campaign finance**

Extra Copies:

Pre Topic:

No specific pre topic given

Topic:

AA to AB-337

Instructions:

See Attached.

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 10/07/1999	ygeller 10/07/1999		_____			
/1			mclark 10/07/1999	_____	lrb_docadmin 10/07/1999	lrb_docadmin 10/07/1999	
/2	kuesejt 10/18/1999	chanaman 10/19/1999	jfrantze 10/19/1999	_____	lrb_docadmin 10/19/1999	lrb_docadmin 10/19/1999	

FE Sent For:

<END>

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/?	kuesejt 10/07/1999	kgeller 10/07/1999		_____			
/1	kuesejt 10/18	cmH 10/19		mclark 10/07/1999	lrb_docadmin 10/07/1999	lrb_docadmin 10/07/1999	
FE Sent For:		12		10/19			<END>

1999 DRAFTING REQUEST

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1? / 1	kuesejt 10/7	1 10/7 jlg	MRC 10/7	MRC/JF 10/7			

FE Sent For:

<END>



STATE REPRESENTATIVE
Peter Bock
Democratic Caucus Chair

MEMO

TO: Jeffery Kuesel

FROM: Jeff Kostelic - Office of Representative Peter Bock

RE: Substitute Amendment - Assembly Bill 377

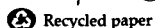
Representative Bock requests that an **Assembly** substitute amendment to Assembly Bill 377 be drafted to incorporate the enclosed modifications.

You may have been contacted by Dan Rossmiller of Senator George's office regarding these modifications. Please feel free to contact Dan at 266-2500 or myself at 266-8580 with any questions.

Thank you.

■ Office: P.O. Box 8952
Madison, WI 53708
(608) 266-8580

■ Toll-free 1-888-529-0007
Fax: (608) 282-3607
E-Mail: Rep.Bock@legis.state.wi.us



■ Home: 4710 West Bluemound Road
Milwaukee, WI 53208
(414) 476-2625

Changes to Impartial Justice Bill

Issue Ads

Add language that provides for matching funds to candidate who accepts public funds and is target of issue ads (ads not currently regulated)

Define issue advocacy that falls under purview of bill:

- Occurs 30 days before primary or 60 days before general election
- Organization spends cumulatively more than \$5,000 on such ads
- Ads mention one or more names of candidates
- Publicly broadcasts the message in paid media including radio, television, newspapers or billboards
- Ads cannot be reasonably subject to any other interpretation than electioneering

Handwritten note:
The above is
the definition
of issue
advocacy

Reporting requirements

Handwritten note: Part of Issue Ads

- Organization registers name, address, key contact with election commission
- reports weekly purchases of paid media until two weeks prior to election, then reports daily

Spending caps

- Merge primary and general limits so that if less than \$100,000 is spent in a primary, the remainder can be spent in the general election.

Payouts

- Checks for the public funds will be given to campaigns; debit cards will not be used

Qualifying funds

- Funds will go to candidates, not Democracy Trust Fund
- 1000 contributions needed to qualify; contributions may range from \$5 to \$100. Total contributions cannot exceed \$15,000.



(DNR073)
State of Wisconsin
1999 - 2000 LEGISLATURE

a 0692/1
LRBa0659/1-
JTK:cmh:kjf
↑
stays

WFO - please
fix
request sheet

Wanted THU 10/7

~~ASSEMBLY~~
SENATE AMENDMENT,
Assembly Bill 377
TO 1999 SENATE BILL 181

- 1 At the locations indicated, amend the bill as follows:
- 2 **1.** Page 8, line 4: delete lines 4 to 7. ✓
- 3 **2.** Page 9, line 8: delete "of \$5". ✓
- 4 **3.** Page 10, line 5: after "contributions" insert "in amounts equal to not less
5 than \$5 nor more than \$100 and in an aggregate amount of not less than \$15,000". ✓
- 6 **4.** Page 13, line 16: delete the material beginning with "A candidate" and
7 ending with "period." on line 18. ✓
- 8 **5.** Page 13, line 21: delete "; line of credit". ✓
- 9 **6.** Page 14, line 5: delete "line of credit for public financing" and substitute
10 "check for the amount of the public financing benefit payable to the candidate". ✓
- 11 **7.** Page 14, line 7: delete "line". ✓
- 12 **8.** Page 14, line 8: delete "of credit" and substitute "check received". ✓

- ① **9.** Page 14, line 11: delete “line of credit for public ^{financing}~~funding~~” and substitute
2 “check for the amount of the public financing benefit payable to the candidate”.
- 3 **10.** Page 14, line 14: delete “line of credit” and substitute “check”.
- 4 **11.** Page 14, line 23: delete “lines of credit” and substitute “checks for the
5 public financing benefits payable to the candidate”.
- 6 **12.** Page 15, line 1: delete “credit” and substitute “public financing benefit”.
- 7 **13.** Page 15, line 3: delete “credit” and substitute “public financing benefit”.
- 8 **14.** Page 15, line 5: delete [✓]“The” and substitute “Except as provided in ss.
9 11.512 (2), 11.513 (2), 11.514 (5) and 11.519 (2), the”.
- 10 **15.** Page 15, line 7: delete [✓]“The” and substitute “Except as provided in ss.
11 11.512 (2), 11.513 (2), 11.514 (5) and 11.519 (2), the”.
- 12 **16.** Page 15, line 12: delete “line of credit” and substitute “public financing
13 benefit”.
- 14 **17.** Page 15, line 15: delete “line of credit” and substitute “public financing
15 benefit”.
- 16 **18.** Page 15, line 16: after that line insert:
17 [✓]“(5g) An eligible candidate who receives a public financing benefit in the
18 primary election campaign period and whose name is certified to appear on the ballot
19 at the election following that primary may utilize any unencumbered balance of the
20 public financing benefit received by the candidate in the primary election campaign
21 period for the election campaign period.
- 22 (5r) Except as permitted in sub. (5g), an eligible candidate who receives a
23 public financing benefit and who does not encumber or expend some portion of the

1 benefit for a purpose described in sub. (1) shall return any unencumbered portion of
2 the benefit to the board within 30 days after the primary or election in which the
3 candidate participates.”.

4 **19.** Page 16, line 18: delete “board”[✓] and substitute “state treasurer”.

5 **20.** Page 16, line 18: delete “credit”[✓] and substitute “issue a check to”.

6 **21.** Page 16, line 19: delete “candidate’s account with” and substitute
7 “candidate in”.[✓]

8 **22.** Page 17, line 9: after “disbursements” insert “made or obligations to be
9 made”.[✓]

10 **23.** Page 17, line 11: delete “board” and substitute “state treasurer”.

11 **24.** Page 17, line 11: delete “credit” and substitute “issue a check to”.

12 **25.** Page 17, line 12: delete “candidate’s account with” and substitute
13 “candidate in”.

14 **26.** Page 17, line 12: delete “line of credit” and substitute “amount”.

15 **27.** Page 17, line 14: after that line insert:

16 [✓]“**11.514 Independent expenditures.** (1) In this section:

17 (a) “Independent expenditure” means an expenditure other than a
18 disbursement that is made by means of one or more communications media for the
19 purpose of making a communication within 30 days of a spring primary or within 60
20 days of a spring election that includes mention of the name of a candidate for the
21 office of justice whose name appears on the ballot at that primary or election, and
22 that cannot reasonably be subject to any interpretation other than that the
23 communication is made for the purpose of electioneering.

1 (b) "Organization" means any person other than an individual.

2 (2) Any organization that makes independent expenditures with respect to any
3 spring primary or election, or both, cumulatively exceeding \$5,000 in amount or
4 value shall register with the board the name and address of the organization and the
5 name and address of an agent.

6 (3) An organization that is subject to a registration requirement under sub. (2)
7 shall report to the board, in such manner as the board prescribes, the information
8 specified in sub. (4):

9 (a) No later than 24 hours after the end of each calendar week during the period
10 beginning 30 days before a spring primary and ending 15 days before that primary
11 and during the period beginning 60 days before the spring election and ending 15
12 days before that election, unless a report is required for the same period under par.

13 (b).

14 (b) No later than 24 hours after the end of each day during the period beginning
15 14 days before each spring primary and ending on the day of the spring primary and
16 during the period beginning 14 days before each spring election and ending on the
17 day of that election.

18 (4) Each report under sub. (3) shall contain an itemization of each independent
19 expenditure made and each obligation to make an independent expenditure incurred
20 by the organization in an amount or value exceeding \$20, the amount or value of the
21 independent expenditure or obligation, the date that the independent expenditure
22 is made or the obligation to make the independent expenditure is incurred, the
23 person to whom the independent expenditure is made or to whom the obligation to
24 make the independent expenditure is incurred and the cumulative total independent

1 expenditures made and obligations to make independent expenditures incurred with
2 respect to that primary and election.

3 (5) When the aggregate independent expenditures made or obligated to be
4 made against an eligible candidate for an office or for the opponents of that candidate
5 exceed 20% of the public financing benefit for that office in any campaign period, the
6 state treasurer shall immediately issue a check to that candidate in an additional
7 amount equivalent to the total independent expenditures made or obligated to be
8 made, but not to exceed 3 times the public financing benefit for the applicable office.”.

9 **28.** Page 17, line 15: delete “(1)”.

10 **29.** Page 17, line 16: delete the material beginning with “The state treasurer
11 shall” and ending with “11.506.” on page 18, line 5.

12 **30.** Page 18, line 10: after “exceed the” insert “total amount of the”.

13 **31.** Page 18, line 11: after “campaign” insert “and the total qualifying and seed
14 money contributions lawfully accepted by the candidate”.

15 **32.** Page 18, line 12: delete “exceeded” and substitute “exceed”.

16 **33.** Page 19, line 21: after “exceeding the” insert “total”.

17 **34.** Page 19, line 22: delete “candidate,” and substitute “candidate and the
18 qualifying and seed money contributions lawfully received by the candidate,”.

19 **35.** Page 19, line 24: delete the material beginning with that line and ending
20 with page 20, line 3.

21 **36.** Page 20, line 15: delete “board” and substitute “state treasurer”.

22 **37.** Page 20, line 16: delete “credit the accounts of” and substitute “issue a
23 check to”.

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRBa0659/rdm 90692/1dn
JTK:cmh:kjf
↑
Stays

new date } October 5, 1999

1. Under current law in s. 11.01 (7)(a) 1. and (16), stats., expenditures are reportable when they are made "...for the purpose of influencing the election or nomination for election of any individual to state or local office...". This draft, in proposed s. 11.514 (1) (a), makes expenditures reportable, under a separate procedure, when they are made for the purpose of making a communication "that cannot reasonably be subject to any interpretation other than that the communication is made for the purpose of electioneering". In order to achieve your intent, a court must distinguish between these standards, because if they have the same meaning, the draft achieves nothing. I'm not sure the draft is clear concerning how these standards should be distinguished.

2. 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. 11.514, which requires registration and reporting by organizations that make certain communications within 30 days of a primary or 60 days of an election, 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.

3. Proposed ss. 11.512 (2), 11.513 (2), 11.514 (5) and 11.519 (2), which increase the public financing benefit payable to a candidate when excess disbursements are made by an opponent or when independent disbursements or "issue advocacy" expenditures are made against the candidate or for his or her opponents, may result in an abridgement of the First Amendment rights of the persons making the disbursements or expenditures. See *Day v. Holahan*, 34 F.3d 1356 (8th Cir., 1994), in which a Minnesota law that included provisions similar to proposed s. 11.31 (3p) was voided. It should be noted that there are viable arguments to be made on both sides of this

issue, this case is not binding in Wisconsin because it did not arise in the circuit that includes Wisconsin and the U.S. Supreme Court has not yet spoken on this issue.

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

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRBa0692/1dn
JTK:cmh:mrc

October 7, 1999

1. Under current law in s. 11.01 (7) (a) 1. and (16), stats., expenditures are reportable when they are made "...for the purpose of influencing the election or nomination for election of any individual to state or local office...". This draft, in proposed s. 11.514 (1) (a), makes expenditures reportable, under a separate procedure, when they are made for the purpose of making a communication "that cannot reasonably be subject to any interpretation other than that the communication is made for the purpose of electioneering". In order to achieve your intent, a court must distinguish between these standards, because if they have the same meaning, the draft achieves nothing. I'm not sure the draft is clear concerning how these standards should be distinguished.

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It should be noted that there are viable arguments to be made on both sides of this issue, this case is not binding in Wisconsin because it did not arise in the circuit that includes Wisconsin and the U.S. Supreme Court has not yet spoken on this issue.

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



State of Wisconsin
1999 - 2000 LEGISLATURE

LRBa0692/v2
JTK:cmh:mrc

Wanted TUE 10/19-AM

**ASSEMBLY AMENDMENT,
TO 1999 ASSEMBLY BILL 377**

- 1 At the locations indicated, amend the bill as follows:
- 2 **1.** Page 8, line 4: delete lines 4 to 7.
- 3 **2.** Page 9, line 8: delete "of \$5".
- 4 **3.** Page 10, line 5: after "contributions" insert "in amounts equal to not less
5 than \$5 nor more than \$100 and in an aggregate amount of not less than ^{\$5,000 nor more than} ~~\$15,000~~".
- 6 **4.** Page 13, line 16: delete the material beginning with "A candidate" and
7 ending with "period." on line 18.
- 8 **5.** Page 13, line 21: delete "; line of credit".
- 9 **6.** Page 14, line 5: delete "line of credit for public financing" and substitute
10 "check for the amount of the public financing benefit payable to the candidate".
- 11 **7.** Page 14, line 7: delete "line".
- 12 **8.** Page 14, line 8: delete "of credit" and substitute "check received".

#. Page 14, line 25: delete ", 11.513 (2)".

1 **9.** Page 14, line 11: delete "line of credit for public financing" and substitute
2 "check for the amount of the public financing benefit payable to the candidate".

3 **10.** Page 14, line 14: delete "line of credit" and substitute "check".

4 **11.** Page 14, line 23: delete "lines of credit" and substitute "checks for the
5 public financing benefits payable to the candidate".

6 **12.** Page 15, line 1: delete "credit" and substitute "public financing benefit".

7 **13.** Page 15, line 3: delete "credit" and substitute "public financing benefit".

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10 **15.** Page 15, line 7: delete "The" and substitute "Except as provided in ss.
11 11.512 (2), ~~11.513 (2), 11.514 (5)~~ and 11.519 (2), the".

12 **16.** Page 15, line 12: delete "line of credit" and substitute "public financing
13 benefit".

14 **17.** Page 15, line 15: delete "line of credit" and substitute "public financing
15 benefit".

16 **18.** Page 15, line 16: after that line insert:
17 "(5g) An eligible candidate who receives a public financing benefit in the
18 primary election campaign period and whose name is certified to appear on the ballot
19 at the election following that primary may utilize any unencumbered balance of the
20 public financing benefit received by the candidate in the primary election campaign
21 period for the election campaign period.

22 **(5r)** Except as permitted in sub. (5g), an eligible candidate who receives a
23 public financing benefit and who does not encumber or expend some portion of the

1 benefit for a purpose described in sub. (1) shall return any unencumbered portion of
2 the benefit to the board within 30 days after the primary or election in which the
3 candidate participates.”

4 **19.** Page 16, line 18: delete “board” and substitute “state treasurer”.

5 **20.** Page 16, line 18: delete “credit” and substitute “issue a check to”.

6 **21.** Page 16, line 19: delete “candidate’s account with” and substitute
7 “candidate in”.

8 **22.** Page 17, line 9: after “disbursements” insert “made or obligations to be
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10 **23.** Page 17, line 11: delete “board” and substitute “state treasurer”.

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14 **26.** Page 17, line 12: delete “line of credit” and substitute “amount”.

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16 **“11.514 Independent expenditures. (1) In this section:**

17 (a) “Independent expenditure” means an expenditure other than a
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19 purpose of making a communication within 30 days of a spring primary or within 60
20 days of a spring election that includes mention of the name of a candidate for the
21 office of justice whose name appears on the ballot at that primary or election, and
22 that cannot reasonably be subject to any interpretation other than that the
23 communication is made for the purpose of electioneering.

Page 16, line 22: delete the material beginning with that line and ending with page 17, line 14.

1 (b) "Organization" means any person other than an individual.

2 (2) Any organization that makes independent expenditures with respect to any
3 spring primary or election, or both, cumulatively exceeding \$5,000 in amount or
4 value shall register with the board the name and address of the organization and the
5 name and address of an agent.

6 (3) An organization that is subject to a registration requirement under sub. (2)
7 shall report to the board, in such manner as the board prescribes, the information
8 specified in sub. (4):

9 (a) No later than 24 hours after the end of each calendar week during the period
10 beginning 30 days before a spring primary and ending 15 days before that primary
11 and during the period beginning 60 days before the spring election and ending 15
12 days before that election, unless a report is required for the same period under par.

13 (b).

14 (b) No later than 24 hours after the end of each day during the period beginning
15 14 days before each spring primary and ending on the day of the spring primary and
16 during the period beginning 14 days before each spring election and ending on the
17 day of that election.

18 (4) Each report under sub. (3) shall contain an itemization of each independent
19 expenditure made and each obligation to make an independent expenditure incurred
20 by the organization in an amount or value exceeding \$20, the amount or value of the
21 independent expenditure or obligation, the date that the independent expenditure
22 is made or the obligation to make the independent expenditure is incurred, the
23 person to whom the independent expenditure is made or to whom the obligation to
24 make the independent expenditure is incurred and the cumulative total independent

1 expenditures made and obligations to make independent expenditures incurred with
2 respect to that primary and election.

3 (5) When the aggregate independent expenditures made or obligated to be
4 made against an eligible candidate for an office or for the opponents of that candidate
5 exceed 20% of the public financing benefit for that office in any campaign period, the
6 state treasurer shall immediately issue a check to that candidate in an additional
7 amount equivalent to the total independent expenditures made or obligated to be
8 made, but not to exceed 3 times the public financing benefit for the applicable office.”

9 **28.** Page 17, line 15: delete “(1)”.

10 **29.** Page 17, line 16: delete the material beginning with “The state treasurer
11 shall” and ending with “11.506.” on page 18, line 5.

12 **30.** Page 18, line 10: after “exceed the” insert “total amount of the”.

13 **31.** Page 18, line 11: after “campaign” insert “and the total qualifying and seed
14 money contributions lawfully accepted by the candidate”.

15 **32.** Page 18, line 12: delete “exceeded” and substitute “exceed”.

16 **33.** Page 19, line 21: after “exceeding the” insert “total”.

17 **34.** Page 19, line 22: delete “candidate,” and substitute “candidate and the
18 qualifying and seed money contributions lawfully received by the candidate,”.

19 **35.** Page 19, line 24: delete the material beginning with that line and ending
20 with page 20, line 3.

21 **36.** Page 20, line 15: delete “board” and substitute “state treasurer”.

22 **37.** Page 20, line 16: delete “credit the accounts of” and substitute “issue a
23 check to”.

- 1 **38.** Page 20, line 17: delete “with an additional line of credit” and substitute
2 “in an amount”.
- 3 **39.** Page 20, line 18: delete “line of credit” and substitute “check”.
- 4 **40.** Page 20, line 20: delete “credit” and substitute “check”.
- 5 **41.** Page 22, line 6: delete “lines of credit” and substitute “public financing
6 benefits”.
- 7 **42.** Page 22, line 7: after “trust fund” insert “and to provide for administration
8 of the fund”.
- 9 **43.** Page 22, line 14: delete “and 11.51 (4)” and substitute “, 11.51 (4) and
10 11.511 (5r)”.

11

(END)