DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB–1801/1dn
JTK:kg:hmh

March 8, 1999

1. Concerning political contribution refunds, while the Minnesota law refers to claimants of these refunds as "taxpayers" it does not specify what tax these individuals must have paid. Under current Wisconsin law, the Wisconsin election campaign fund checkoff may be exercised by any individual who owes an income tax or is due an income tax refund. The only real qualification for obtaining a refund that I could discern from the Minnesota law is that claimants are required to be state residents. This draft provides, therefore, that any resident individual or married couple may claim the political contribution refund. See proposed s. 11.70. Because under the draft this refund may be claimed at any time and is not tied in with a tax return, the draft provides no delayed effective date for the refund provisions. Please let me know if this is not in accord with your intent.

2. The Minnesota allocation scheme for distribution of money in the general account does not work for Wisconsin because we must factor in nonpartisan candidates (justice and state superintendent), and we don't have state senators with alternating 2–year and 4–year terms. Therefore, this draft retains the current allocation scheme for distribution of moneys in the general account, except that per your oral instructions it increases the allocations for the offices of justice and state superintendent from 8% to 12% of the account for each office, in order to compensate for the fact that candidates for these offices will not benefit from any party designations by tax filers. See the treatment of s. 11.50 (3) and (4), stats. Please let me know if this is not in accord with your intent.

3. This draft provides, in proposed ss. 11.24 (1s) and 11.25 (2) (am), that a candidate who accepts a grant may not thereafter make a contribution or disbursement from his or her campaign treasury for any political purpose other than to advance his or her candidacy. Under the draft, there is no expiration to this obligation; it lasts until the candidate terminates his or her registration. Please let me know if this is not consistent with your intent.

4. Since under current Wisconsin law candidates for the offices of governor and lieutenant governor must separately qualify for grants and maintain separate campaign depository accounts, but may, under s. 11.50 (5), stats., combine accounts if desired, I split the 14% allocation for these offices under the Minnesota law so that candidates for governor receive 12.8% of the allocation and the candidates for lieutenant governor receive 1.2% of the allocation. See proposed s. 11.50 (2s) (c). Please let me know if this is not in accord with your intent.

5. The instructions provided for alternative disposition of moneys set aside in political party accounts for candidates of political parties who fail to sign public subsidy agreements. This draft provides, in addition, for the same disposition to be made if such candidates fail to raise sufficient qualifying contributions. See proposed s. 11.50 (2s) (i) and (j). Please let me know if this is not in accord with your intent.

6. Currently, under Wisconsin law, a candidate who has an opponent who could have qualified to receive a grant but declined to do so is not bound by disbursement and contribution limitations. Minnesota law also includes a similar feature. However, under Wisconsin law, a candidate who declines to accept a grant but is willing to accept disbursement and contribution limitations may file an affidavit of voluntary compliance under s. 11.31 (2m), stats., and thereby continue to bind his or her opponent (who accepts a grant) to disbursement and contribution limitations. Since Minnesota law does not include this feature, this draft deletes it. Please let me know if this is not in accord with your intent.

7. Your instructions indicated "Treat conduits in the same manner as PACs". 1997 SB–463 did something different: it treated conduit committee contributions the same as contributions received from other committees for purposes of committee contribution limits and for purposes of public financing qualification and grant amounts, but it did not subject contributions received from individuals acting as conduits to individual contribution limits. This draft, like SB–463, provides for all conduit committee contributions to be treated in the same manner as contributions from nonconduit committees. Let me know if this is not in accord with your intent.

8. In your instructions, under "Kettl Commission", you indicated that you wanted a biennial cost–of–living adjustment to be made to disbursement limitations. 1997 SB–463 provided for such an adjustment. The Kettl Commission, however, provided for the cost–of–living adjustment to be in turn adjusted by the rate of increase or decrease in the voting–age population of this state, as determined by the federal election commission. This draft incorporates the Kettl Commission language. Please let me know if this is not in accord with your intent.

9. Your instructions did not specify the exact applicability of the "war chest tax". Under this draft, the tax applies only to candidates and personal campaign committees, and only to unencumbered balances in a campaign treasury during the period beginning on the first day of the month following an election at which a candidate appeared on the ballot and ending on the date that the candidate files papers to again become a candidate for reelection or election to another office. See proposed subch. XIII of ch. 77. Please let me know if this is not in accord with your intent.

10. Your instructions did not specify whether those contribution limits that are calculated as a percentage of disbursement levels and the maximum grant amounts are to be increased by 10% for first–time candidates. This draft provides that those contribution limits, as well as the maximum grant amounts, are the same for all candidates seeking the same office. This reflects the treatment of this issue by 1997 SB–7 and similar proposals. Please let me know if this is not in accord with your intent.

11. The instructions provided that all grant moneys exceeding the amount expended by a candidate in his or her campaign shall revert to the state. This draft provides that

grant moneys revert to the state to the extent that the total amount of disbursements that were made or obligated to be made by a candidate after the date of the primary election exceeds the amount of the grant. See the text of s. 11.50 (8), stats., as affected by this draft. Note that under s. 11.50 (7) (b), stats., as affected by this draft, grant moneys may be used only for certain purposes. Please let me know if this is not in accord with your intent.

12. Under the instructions, a public subsidy agreement goes into effect on the deadline for filing a declaration of candidacy (for partisan candidates, the 2nd Tuesday in July). The agreement is in effect for an "election cycle", which begins the following January 1 and ends on December 31 either two years or four years later (10 years later for justice candidates), unless registration is terminated earlier. This methodology does not seem to square with the campaign cycle. This draft, therefore, ends the subsidy agreements when candidates file new ones, either two years or four years (10 years for justice candidates) after the old ones were filed. It also ends the agreements for candidates at special elections during special election campaign periods. See the proposed treatment of s. 11.50 (2) (a), stats. Currently, there is a hiatus period between elections during which a candidate who accepts a grant may make disbursements without being subject to any limitation. This draft ends that practice. See the treatment of s. 11.31 (7) (a), stats. However, because under current law it is possible to start a new campaign before the old one ends and because different candidates for the same office begin and end their campaigns at different times, it is not possible to dovetail the subsidy agreement period with the period during which the disbursement limitation for a particular campaign is calculated. The draft therefore does not attempt to accomplish that. Please let me know if this is not in accord with your intent.

13. 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 or organizations that publish, broadcast or disseminate communications containing the name or likeness of a candidate for state or local office, 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.

14. In *McIntyre v. Ohio Elections Commission*, 115 S.Ct. 1151 (1995), the U.S. Supreme Court found unconstitutional, under the First Amendment, a statute that prohibited publication or distribution of any material designed to promote the nomination or election of a candidate or the adoption or defeat of any issue or to influence the voters at any election without identification of the name and address of

the person who publishes or distributes the material. The court, however, indicated that a state's interest in preventing fraud might justify a more limited disclosure requirement (115 S.Ct. at 1522). Further, the court indicated that it still approved of requirements to disclose independent expenditures, which it upheld in *Buckley v. Valeo, et. al.*, 96 S.Ct. 612, 661–662 (1976), (*McIntyre*, 115 S.Ct. at 1523). In view of this opinion, the constitutionality of disclosure statutes such as proposed s. 11.095, relating to persuasive telephoning, is not clear at this point. We will have to await further decisions from the court before we know the exact limits of a state's ability to regulate in this field.

15. I 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. 11.24 (4), which limits the amount or value of contributions that some individuals may make during certain periods.

b. The proposed revision of s. 11.50, stats., which entitles candidates of established parties to receive additional grants that are not provided to candidates of new parties or independent candidates.

c. The proposed revision of s. 13.625 (1) (c), stats., which prohibits lobbyists from making any campaign contributions.

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

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