

1999 DRAFTING REQUEST

Bill

Received: **05/4/99**

Received By: **kuesejt**

Wanted: **Soon**

Identical to LRB:

For: **Gary George (608) 266-2500**

By/Representing: **Dan Rosmiller**

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 changes - elections for justice

Instructions:

Per LRB-2224/4. Authorized by David Austin, Rep. Bock's office.

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 05/5/99	wjackson 05/5/99		_____			State
/1			martykr 05/6/99	_____	lrb_docadmin 05/6/99	lrb_docadmin 05/7/99	

FE Sent For: **6/1/99**

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(DNOR)
State of Wisconsin
1999 - 2000 LEGISLATURE

-3024/1
LRB-2224/4
JTK:wlj:jf

WANTED SOON

1999 BILL

Reger

1 **AN ACT** *to amend* 8.35 (4) (b), 11.12 (2), 11.16 (2) and (3), 11.26 (1) (a), 11.26 (2)

2 (a), 11.26 (9) (a), 11.26 (9) (b), 11.26 (13), 11.31 (1) (d), 11.33 (1) (a) (intro.), 11.50

3 (1) (a) 1. and 11.50 (3) (b); and *to create* 11.26 (1) (am), 11.26 (2) (am), 11.26 (9)

4 (ba), 11.33 (4), 11.501 to 11.522, 20.510 (1) (r), 20.585 (1) (q), 20.585 (1) (r),

5 20.855 (4) (bb), 25.17 (1) (cm) and 25.421 of the statutes; **relating to:** campaign

6 financing with respect to the office of justice of the supreme court, making

7 appropriations and providing penalties.

Analysis by the Legislative Reference Bureau

This bill makes numerous changes in the campaign finance law affecting campaigns for the office of justice of the supreme court. The bill limits the application of the Wisconsin election campaign fund, under which eligible candidates for state offices (except district attorney, court of appeals judge and circuit judge) may receive public grants from state general purpose revenues derived from designations made by individuals filing state income tax returns, to state offices other than the office of justice of the supreme court. To finance elections for the office of justice of the supreme court, the bill creates a democracy trust fund, under which eligible candidates for this office may receive public grants derived from general purpose revenues.

Under the bill, a candidate for the office of justice of the supreme court may qualify for public financing from the democracy trust fund to finance a campaign in

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a primary or election by receiving a specified number of qualifying contributions of five dollars each made by electors of the state. A candidate who accepts public financing may accept "seed money" contributions in amounts of \$100 or less, subject to aggregate limitations, and may contribute personal funds in specified amounts during specified periods. A candidate who accepts public financing may not accept any contributions other than qualifying and seed money contributions and contributions from personal funds, subject to specified limitations. Public financing benefits for eligible candidates are \$100,000 in the primary election and \$300,000 in the general election. The benefits are subject to a biennial cost of living adjustment. A candidate who accepts more than a specified amount of qualifying or seed money contributions has the excess deducted from his or her public financing benefit. In addition, if a candidate's opponent declines to accept public financing and makes expenditures in a total amount that exceeds by more than five percent the amount permitted for a candidate who accepts public financing, the candidate who accepts public financing receives additional funding equivalent to the excess expenditures made by his or her opponent, but not more than three times the amount of the public financing benefit for the office that the candidate seeks. A candidate also receives additional public financing equivalent to any independent expenditures made against the candidate or in support of his or her opponents if those expenditures exceed 20% of the amount of the public financing benefit for the office that the candidate seeks (but not more than three times the amount of that benefit), as well as additional financing equivalent to the cost of certain mass mailings made by an incumbent opponent using state funds.

Currently, a candidate for the office of justice of the supreme court may qualify to receive a grant from the Wisconsin election campaign fund for use in an election campaign only (no funding is provided for primary campaigns). In order to qualify for a grant, a candidate must qualify to have his or her name appear on the spring election ballot and must have an opponent who qualifies to have his or her name appear on that ballot. The maximum amount of a grant that a candidate may receive is \$97,031. This amount is not subject to any cost of living adjustment. In addition, this amount is reduced by the total amount of contributions received by a candidate from special interest committees and this amount may not be fully funded in a particular year if there are not sufficient moneys in the Wisconsin election campaign fund to provide full financing for all qualifying candidates. A candidate must agree to abide by spending and self-contribution limits in order to receive a grant, but this agreement does not apply if the candidate has an opponent who could have qualified for a grant but declines to do so and declines to file an affidavit of voluntary compliance with spending and self-contribution limits.

Currently, individuals and committees making political contributions to candidates for the office of justice of the supreme court are subject to limitations on the amount or value of any contribution or contributions that may be made cumulatively to any candidate in a campaign. The limitations are \$10,000 in the case of an individual making a contribution to a candidate and \$8,625 in the case of a committee making a contribution to a candidate. This bill replaces these limitations with a contribution limitation of \$1,000 applicable to an individual or committee

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making any contribution or contributions cumulatively to any candidate for the office of justice of the supreme court who is eligible to qualify for a public financing benefit but who declines to accept one, per campaign.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

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

1 **SECTION 1.** 8.35 (4) (b) of the statutes is amended to read:

2 8.35 (4) (b) Notwithstanding par. (a), any unspent and unencumbered moneys
3 received by a candidate from the Wisconsin election campaign fund shall be
4 immediately transferred to any candidate who is appointed to replace such
5 candidate, upon filing of a proper application therefor under s. 11.50 (2). If there is
6 no candidate appointed or if no proper application is filed within 7 days of the date
7 on which the vacancy occurs, such moneys shall revert to the state as provided in s.
8 11.50 (8). Notwithstanding par. (a), any unspent and unencumbered moneys
9 received by a candidate from the democracy trust fund shall be immediately
10 transferred to any candidate who is appointed to replace such candidate. If there is
11 no candidate appointed, the moneys shall revert to the state.

12 **SECTION 2.** 11.12 (2) of the statutes is amended to read:

13 11.12 (2) ~~Any~~ No registrant, except a candidate who receives a public financing
14 benefit from the democracy trust fund, may accept an anonymous contribution
15 exceeding \$10 received by a campaign or committee treasurer or by an individual
16 under s. 11.06 (7) may not be used or expended. The, No candidate who receives a
17 public financing benefit from the democracy trust fund may accept an anonymous
18 contribution exceeding \$5. Any anonymous contribution that may not be accepted

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1 under this subsection shall be donated to the common school fund or to any charitable
2 organization at the option of the registrant's treasurer.

3 SECTION 3. 11.16 (2) and (3) of the statutes are amended to read:

4 11.16 (2) LIMITATION ON CASH CONTRIBUTIONS. ~~Every~~ Except as provided in s.
5 11.506 (6), every contribution of money exceeding \$50 shall be made by negotiable
6 instrument or evidenced by an itemized credit card receipt bearing on the face the
7 name of the remitter. No treasurer may accept a contribution made in violation of
8 this subsection. The treasurer shall promptly return the contribution, or donate it
9 to the common school fund or to a charitable organization in the event that the donor
10 cannot be identified.

11 (3) FORM OF DISBURSEMENTS. ~~Every~~ Except as authorized under s. 11.511 (1),
12 every disbursement which is made by a registered individual or treasurer from the
13 campaign depository account shall be made by negotiable instrument. Such
14 instrument shall bear on the face the full name of the candidate, committee,
15 individual or group as it appears on the registration statement filed under s. 11.05
16 and where necessary, such additional words as are sufficient to clearly indicate the
17 political nature of the registrant or account of the registrant. The name of a political
18 party shall include the word "party". The instrument of each committee registered
19 with the board and designated under s. 11.05 (3) (c) as a special interest committee
20 shall bear the identification number assigned under s. 11.21 (12) on the face of the
21 instrument.

22 SECTION 4. 11.26 (1) (a) of the statutes is amended to read:

23 11.26 (1) (a) Candidates for governor, lieutenant governor, secretary of state,
24 state treasurer, attorney general, ~~or~~ state superintendent ~~or justice~~, \$10,000.

25 SECTION 5. 11.26 (1) (am) of the statutes is created to read:

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1 11.26 (1) (am) Candidates for justice, \$1,000.

2 **SECTION 6.** 11.26 (2) (a) of the statutes is amended to read:

3 11.26 (2) (a) Candidates for governor, lieutenant governor, secretary of state,
4 state treasurer, attorney general, or state superintendent ~~or justice~~, 4% of the value
5 of the disbursement level specified in the schedule under s. 11.31 (1).

6 **SECTION 7.** 11.26 (2) (am) of the statutes is created to read:

7 11.26 (2) (am) Candidates for justice, \$1,000.

8 **SECTION 8.** 11.26 (9) (a) of the statutes is amended to read:

9 11.26 (9) (a) ~~No~~ Except as provided in par. (ba), no individual who is a candidate
10 for state or local office may receive and accept more than 65% of the value of the total
11 disbursement level determined under s. 11.31 for the office for which he or she is a
12 candidate during any primary and election campaign combined from all committees
13 subject to a filing requirement, including political party and legislative campaign
14 committees.

15 **SECTION 9.** 11.26 (9) (b) of the statutes is amended to read:

16 11.26 (9) (b) ~~No~~ Except as provided in par. (ba), no individual who is a candidate
17 for state or local office may receive and accept more than 45% of the value of the total
18 disbursement level determined under s. 11.31 for the office for which he or she is a
19 candidate during any primary and election campaign combined from all committees
20 other than political party and legislative campaign committees subject to a filing
21 requirement.

22 **SECTION 10.** 11.26 (9) (ba) of the statutes is created to read:

23 11.26 (9) (ba) Paragraphs (a) and (b) do not apply to a candidate who receives
24 a public financing benefit from the democracy trust fund.

25 **SECTION 11.** 11.26 (13) of the statutes is amended to read:

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1 11.26 (13) Except as provided in sub. (9), contributions received from the
2 Wisconsin election campaign fund and public financing benefits received from the
3 democracy trust fund are not subject to limitation by this section.

4 **SECTION 12.** 11.31 (1) (d) of the statutes is amended to read:

5 11.31 (1) (d) Candidates for secretary of state, state treasurer, ~~justice~~ or state
6 superintendent, \$215,625.

7 **SECTION 13.** 11.33 (1) (a) (intro.) of the statutes is amended to read:

8 11.33 (1) (a) (intro.) ~~No~~ Except as provided in sub. (4), no person elected to state
9 or local office who becomes a candidate for national, state or local office may use
10 public funds for the cost of materials or distribution for 50 or more pieces of
11 substantially identical material distributed after:

12 **SECTION 14.** 11.33 (4) of the statutes is created to read:

13 11.33 (4) This section does not apply to a candidate for the office of justice.

14 **SECTION 15.** 11.50 (1) (a) 1. of the statutes is amended to read:

15 11.50 (1) (a) 1. With respect to a spring or general election, any individual who
16 is certified under s. 7.08 (2) (a) as a candidate in the spring election for ~~justice~~ or state
17 superintendent, or an individual who receives at least 6% of the vote cast for all
18 candidates on all ballots for any state office, except district attorney, for which the
19 individual is a candidate at the September primary and who is certified under s. 7.08
20 (2) (a) as a candidate for that office in the general election, or an individual who has
21 been lawfully appointed and certified to replace either such individual on the ballot
22 at the spring or general election; and who has qualified for a grant under sub. (2).

23 **SECTION 16.** 11.50 (3) (b) of the statutes is amended to read:

24 11.50 (3) (b) If a vacancy occurs in the office of state superintendent ~~or justice~~
25 after August 15 in any year and an election is scheduled to fill the vacancy at the

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1 spring election in the following year, the state treasurer shall transfer an amount not
2 exceeding 8% of the moneys transferred to the fund on the preceding August 15 to
3 the superintendency account ~~for the office in which the vacancy occurs~~, such moneys
4 to be drawn from any account within the accounts created under sub. (4) in the
5 amount or amounts specified by the board.

6 **SECTION 17.** 11.501 to 11.522 of the statutes are created to read:

7 **11.501 Definitions.** In ss. 11.501 to 11.522:

8 (1) "Allowable contribution" means a qualifying contribution, seed money
9 contribution or personal contribution authorized under ss. 11.502 to 11.522.

10 (2) "Campaign" has the meaning given in s. 11.26 (17).

11 (3) "Election campaign period" means the period beginning on the day after the
12 spring primary election or the day on which a primary election would be held, if
13 required, and ending on the day of the succeeding spring election.

14 (4) "Eligible candidate" means a candidate for the office of justice who qualifies
15 for public financing by collecting the required number of qualifying contributions,
16 making all required reports and disclosures, and being certified by the board as being
17 in compliance with ss. 11.502 to 11.522.

18 (5) "Excess disbursement amount" means the amount of disbursements made
19 by a noncomplying candidate in excess of the public financing benefit available to an
20 eligible candidate for the same office that the noncomplying candidate seeks.

21 (6) "Excess qualifying contribution amount" means the amount of qualifying
22 contributions accepted by a candidate beyond the number or dollar amount of
23 contributions required to qualify a candidate for a public financing benefit.

BILL**SECTION 17**

1 (7) “Exploratory period” means the period that begins after the date of a spring
2 election and ends on the first day of the public financing qualifying period for the next
3 election for justice.

4 (8) “Fair election debit card” means a debit card issued by the board in
5 accordance with s. 11.515 (2) entitling a candidate and agents of the candidate
6 designated by the candidate to draw money from an account maintained by the board
7 to make disbursements authorized by law.

8 (9) “Immediate family”, when used with reference to a candidate, includes the
9 candidate’s spouse and children.

10 (10) “Independent disbursement” means a disbursement by a person expressly
11 advocating the election or defeat of a clearly identified candidate which is made
12 without cooperation or consultation with a candidate, or any authorized committee
13 or agent of a candidate, and which is not made in concert with, or at the request or
14 suggestion of, any candidate, or any authorized committee or agent of a candidate.

15 (11) “Mass mailing” means a districtwide or statewide mailing of newsletters,
16 pamphlets, brochures or other similar items of more than 100 pieces in which the
17 content of the matter mailed is substantially identical. “Mass mailing” does not
18 include a mailing made in direct response to communications from persons to whom
19 the matter is mailed, a mailing to a federal, state or local government official or a
20 news release to communications media.

21 (12) “Noncomplying candidate” means a candidate for the office of justice who
22 does not apply for a public financing benefit or who otherwise is ineligible or fails to
23 qualify for a public financing benefit under ss. 11.502 to 11.522.

24 (13) “Personal funds” means funds contributed by a candidate or a member of
25 a candidate’s immediate family.

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1 (14) “Primary election campaign period” means the period beginning 30 days
2 after the last day prescribed by law for filing nomination papers for that office and
3 ending on the day of the spring primary election for that office or the day on which
4 the primary election would be held, if required.

5 (15) “Public financing qualifying period” means the period beginning on the
6 first day of July of any year and ending on the day before the beginning of the primary
7 election campaign period for that office.

8 (16) “Qualifying contribution” means a contribution of \$5 made to a candidate
9 made by an elector of the jurisdiction or district in which the candidate seeks office
10 during the public financing qualifying period, which is acknowledged by written
11 receipt identifying the contributor.

12 (17) “Seed money contribution” means a contribution in an amount of not more
13 than \$100 made to a candidate by an elector of the jurisdiction or district in which
14 the candidate seeks office during the exploratory period or the public financing
15 qualifying period, or a contribution made to a candidate consisting of personal funds
16 of that candidate in an amount not more than the amount authorized under s. 11.507
17 during the exploratory period or the public financing qualifying period.

18 **11.502 Qualification; certification.** (1) Before a candidate for justice in the
19 primary election may be certified as an eligible candidate to receive a public
20 financing benefit for the primary election campaign period, the candidate shall apply
21 to the board for a public financing benefit and file a sworn statement that the
22 candidate has complied and will comply with all requirements of ss. 11.502 to 11.522
23 throughout the applicable campaign, which includes the primary and election for
24 that office. A candidate shall file the application and statement no later than the

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1 beginning of the primary election campaign period for the office that the candidate
2 seeks.

3 (2) A candidate shall be certified by the board as an eligible candidate for
4 receipt of public financing for a primary election if the candidate complies with sub.
5 (1) and receives at least 1,000 qualifying contributions before the close of the public
6 financing qualifying period.

7 (3) The board shall verify a candidate's compliance with the requirements of
8 sub. (2) by such verification and sampling techniques as the board considers
9 appropriate.

10 (4) Each candidate shall:

11 (a) Acknowledge each qualifying contribution by a receipt to the contributor
12 which contains the contributor's name and home address.

13 (b) No later than the 15th or the last day of the month which immediately
14 follows the date of receipt of a qualifying contribution, whichever comes first, file a
15 copy of the receipt under par. (a) with the board, except that during July, August and
16 September a copy need only be filed on the last day of the month.

17 (5) A qualifying contribution may be utilized only for the purpose of making
18 a disbursement authorized by law.

19 **11.503 Time of application.** (1) Before a candidate may be certified as
20 eligible for receipt of public financing for a spring election, the candidate shall apply
21 to the board and file a sworn statement that the candidate has fulfilled all the
22 requirements of ss. 11.502 to 11.522 during the primary election campaign period
23 and will comply with such requirements during the election campaign period. The
24 application shall be filed no later than the 7th day after the date of the spring primary

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1 election or the day on which the primary election would be held if a primary were
2 required.

3 (2) The board shall certify a candidate as an eligible candidate for receipt of
4 public financing for a spring election if the candidate complies with sub. (1) and the
5 candidate was an eligible candidate during the primary election campaign period.

6 **11.505 Agreement by candidate.** An eligible candidate who accepts a public
7 financing benefit under ss. 11.502 to 11.522 during the primary election campaign
8 period shall agree to comply with all requirements of ss. 11.502 to 11.522 throughout
9 the election campaign period during the same campaign as a precondition to receipt
10 of public financing. An eligible candidate who accepts a public financing benefit
11 during a primary election campaign period may not elect to accept private
12 contributions in violation of ss. 11.502 to 11.522 during the corresponding election
13 campaign period.

14 **11.506 Requirements imposed upon candidates.** (1) An eligible
15 candidate may not accept private contributions other than seed money contributions
16 and qualifying contributions that the candidate accepts during the exploratory
17 period and the public financing qualifying period.

18 (2) In addition to reports required to be filed under ss. 11.12 (5) and 11.20, a
19 candidate who receives a public financing benefit shall furnish complete financial
20 records, including records of seed money contributions, qualifying contributions and
21 disbursements, to the board on the 15th or the last day of the month that
22 immediately follows the receipt of the contribution or the making of the
23 disbursement, whichever comes first, except that during July, August and
24 September records need only be furnished on the last day of the month. Each such
25 candidate shall cooperate with any audit or examination by the secretary of state.

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1 **(3)** In addition to adhering to requirements imposed under ss. 11.06 (5) and
2 11.12 (3), a candidate who receives a public financing benefit shall maintain records
3 of all contributions received by the candidate of more than \$5 but less than \$50,
4 including seed money contributions and qualifying contributions, which shall
5 contain the full name of the contributor and the contributor's full home address. In
6 addition, if a contributor's aggregate contributions to any candidate exceed \$50 for
7 any campaign, the candidate shall also maintain a record of the contributor's
8 principal occupation and the name and business address of the contributor's place
9 of employment.

10 **(4)** The failure to record or provide the information specified in sub. (3)
11 disqualifies a contribution from counting as a qualifying contribution.

12 **(5)** No eligible candidate and no person acting on a candidate's behalf may
13 deposit any contribution that is not recorded in accordance with sub. (3) in a
14 candidate's campaign depository account.

15 **(6)** No eligible candidate may accept more than \$25 in cash from any
16 contributor and no such candidate may accept cash from all sources in a total amount
17 greater than one-tenth of 1% of the public financing benefit for the office that the
18 candidate seeks or \$500, whichever is greater.

19 **11.507 Personal funds of candidates.** (1) The personal funds of a candidate
20 contributed as seed money contributions may not exceed an aggregate amount of
21 \$5,000.

22 **(2)** No eligible candidate may make any disbursement derived from personal
23 funds after the close of the public financing qualifying period.

24 **11.508 Seed money contributions.** (1) An eligible candidate may accept
25 seed money contributions from any individual or committee prior to the end of the

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1 public financing qualifying period, provided the total contributions from one
2 contributor, except personal funds and qualifying contributions otherwise permitted
3 under ss. 11.502 to 11.522, do not exceed \$100, and the aggregate contributions,
4 including personal funds, but not including qualifying contributions, do not exceed
5 \$5,000.

6 (2) An eligible candidate may make disbursements derived from seed money
7 contributions only during the exploratory period and the public financing qualifying
8 period.

9 **11.509 Excess contributions.** If an eligible candidate receives excess seed
10 money contributions or qualifying contributions on an aggregate basis, the
11 candidate may retain the contributions and make disbursements derived from the
12 contributions, in an amount not exceeding \$15,000. An amount equivalent to the
13 excess contributions shall be deducted by the board from the candidate's public
14 financing benefit. A candidate shall return to the board all seed money and
15 qualifying contributions that exceed the limits prescribed in this section within 48
16 hours after the end of the exploratory period. A candidate shall also return to the
17 board any seed money and qualifying contributions that have not been encumbered
18 or expended by the beginning of the primary election campaign period. The board
19 shall deposit all contributions returned under this section in the democracy trust
20 fund.

21 **11.51 Certification by candidate; line of credit.** (1) To apply for a public
22 financing benefit, a candidate shall certify to the board that the candidate has
23 complied and will comply, throughout the applicable campaign, with all
24 requirements of ss. 11.502 to 11.522 and that all disclosures required as of the time
25 of application have been made, and shall present evidence of the requisite number

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1 of qualifying contributions received by the candidate. The candidate's request for
2 certification shall be signed by the candidate and the candidate's campaign
3 treasurer.

4 (2) The board shall distribute to each eligible candidate at the spring primary
5 election a line of credit for public financing promptly after the candidate
6 demonstrates his or her eligibility and, in any event, not later than 5 days after the
7 end of the public financing qualifying period; however, no candidate may utilize a line
8 of credit under this subsection until the beginning of the primary election campaign
9 period.

10 (3) The board shall distribute to each eligible candidate for justice at a spring
11 election a line of credit for public financing not later than 48 hours after the date of
12 the spring primary election for the office of justice, or the date that the primary
13 election would be held if a primary were required. However, no candidate for a
14 particular office shall receive a line of credit until all candidates for the same office
15 who apply and qualify for a public financing benefit have been certified as eligible
16 candidates.

17 (4) If any candidate who receives a public financing benefit violates the
18 requirements of ss. 11.502 to 11.522, the board shall require the candidate to repay
19 all public funds received by the candidate to the board. The board shall deposit all
20 repayments received under this subsection in the democracy trust fund.

21 **11.511 Public financing benefits.** (1) The board shall provide to each
22 eligible candidate who qualifies to receive a public financing benefit for the primary
23 or election campaign period separate lines of credit for the primary and election
24 campaign periods in the amounts specified in this section, subject to any required
25 adjustment under s. 11.509, 11.512 (2), 11.513 (2) or 11.519 (2). An eligible candidate

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1 may use this credit to finance any lawful disbursements during the primary and
2 election campaign periods to further the election of the candidate in that primary or
3 election. An eligible candidate may not use this credit to repay any loan, or in
4 violation of ss. 11.502 to 11.522 or any other applicable law.

5 (2) The public financing benefit for a primary election campaign period is
6 \$100,000.

7 (3) The public financing benefit for an election campaign period is \$300,000.

8 (4) An eligible candidate in an election in which there are no other candidates,
9 other than write-in candidates, who have received contributions of more than \$1,000
10 in the aggregate, as of the day preceding the beginning of the primary election
11 campaign period for the election in which the eligible candidate seeks office, shall
12 receive a line of credit valued at 25% of the public financing benefit for the primary
13 election campaign period.

14 (5) An eligible candidate in an election in which there are no other candidates
15 whose names appear on the ballot shall receive a line of credit valued at 25% of the
16 public financing benefit for the election campaign period.

17 (6) Notwithstanding subs. (2) and (3), beginning on April 1, 2000, and every
18 2 years thereafter, the board shall modify the public financing benefits provided for
19 in subs. (2) and (3) to adjust for the change in the consumer price index, all items,
20 U.S. city average, published by the U.S. department of labor for the preceding 2-year
21 period ending on December 31.

22 **11.512 Financial activity by noncomplying candidates.** (1) In addition
23 to other reports required by law, a noncomplying candidate for an office at a primary
24 or election who receives contributions or makes or obligates to make disbursements
25 in an amount more than 5% greater than the public financing benefit applicable to

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1 an eligible candidate for the same office at the same primary or election shall file a
2 report with the board itemizing the total contributions received and disbursements
3 made or obligated to be made by the candidate as of the date of the report. The board
4 shall transmit copies of the report to all candidates for the same office at the same
5 election. A noncomplying candidate shall file additional reports after the candidate
6 receives each additional \$1,000 of contributions, or the candidate makes or obligates
7 to make each additional \$1,000 of disbursements. If such contributions are received
8 or such disbursements are made or obligated to be made more than 6 weeks prior to
9 the date of the primary election at which the name of the candidate appears on the
10 ballot, or prior to the date that the primary election would be held, if a primary were
11 required, such reports shall be made at the next regular reporting interval under s.
12 11.506. If such contributions are received or such disbursements made or obligated
13 to be made within 6 weeks prior to the date of the primary election at which the name
14 of the candidate appears on the ballot, or within 6 weeks prior to the date that the
15 primary election would be held, if a primary were required, such reports shall be
16 made within 24 hours after each instance in which such contributions are received,
17 or such disbursements are made or obligated to be made.

18 (2) Upon receipt of such information, the board shall immediately credit an
19 opposing eligible candidate's account with an additional amount equivalent to the
20 total excess disbursements made or obligated to be made, but not to exceed 3 times
21 the public financing benefit for the applicable office.

22 **11.513 Independent disbursements.** (1) If any person makes, or becomes
23 obligated to make, by oral or written agreement, an independent disbursement in
24 excess of \$1,000 with respect to a candidate for the office of justice at a spring primary
25 or election, that person shall file with the board a notice of such disbursement or

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1 obligation to make such a disbursement. Any such person shall file reports of such
2 disbursements or obligations to make such disbursements on the 15th or last day of
3 the month that immediately follows the date of the disbursement or the obligation
4 to make the disbursement, whichever comes first, except that, within 6 weeks prior
5 to the date of the spring primary election, the person shall file such reports within
6 24 hours after each independent disbursement is made or obligated to be made. Any
7 such person shall file additional reports after each additional \$1,000 of
8 disbursements are made or obligated to be made.

9 (2) When the aggregate independent disbursements against an eligible
10 candidate for an office or for the opponents of that candidate exceed 20% of the public
11 financing benefit for that office in any campaign, the board shall immediately credit
12 that candidate's account with an additional line of credit equivalent to the total
13 disbursements made or obligated to be made, but not to exceed 3 times the public
14 financing benefit for the applicable office.

15 **11.515 Democracy trust fund.** (1) The democracy trust fund shall be
16 administered by the state treasurer. The state treasurer shall contract with a debit
17 card issuer to permit eligible candidates and their agents to draw upon the fund
18 through an account with the issuer.

19 (2) Upon a determination of a candidate's eligibility for a public financing
20 benefit as provided for in s. 11.51 (1), the state treasurer shall issue to the eligible
21 candidate a debit card, which shall be known as the fair election debit card, entitling
22 the candidate and agents of the candidate designated by the candidate to draw
23 money from an account to make disbursements on behalf of the candidate.

24 (3) No eligible candidate or agent of an eligible candidate may make any
25 disbursement by any other means other than through the use of the fair election

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1 debit card. No such candidate or agent may utilize a fair election debit card to obtain
2 cash, except that cash amounts of \$100 or less may be drawn on the fair election debit
3 card and used to make disbursements of no more than \$25. A candidate shall
4 maintain records of all such disbursements and shall report such disbursements to
5 the board in accordance with s. 11.506.

6 **11.516 Administration.** Except as otherwise specifically provided in ss.
7 11.501 to 11.522, the duties of and authority for administering and enforcing ss.
8 11.501 to 11.522 are vested in the board.

9 **11.517 Penalties; enforcement.** (1) If an eligible candidate makes
10 disbursements that exceed the public financing benefit allocated to the candidate for
11 any campaign, the candidate may be required to forfeit not more than 10 times the
12 amount by which the disbursements exceeded the allocation.

13 (2) Any eligible candidate who accepts contributions in excess of any limitation
14 imposed under ss. 11.502 to 11.522 may be required to forfeit not more than 10 times
15 the amount by which the contributions exceed the applicable limitation.

16 (3) If the board finds that there is probable cause to believe that a candidate
17 has made excess disbursements or has accepted excess contributions contrary to sub.
18 (1) or (2), the board shall attempt for a period of not more than 14 days after its
19 finding to correct the matter by informal methods of conference and conciliation and
20 to enter into a settlement and conciliation agreement under s. 5.05 (1) (c) with the
21 person involved. A settlement and conciliation agreement made pursuant to this
22 subsection shall be a matter of public record. Unless violated, a settlement and
23 conciliation agreement is a bar to any civil action under sub. (4).

24 (4) If the board has probable cause to believe that a candidate has made excess
25 disbursements or has accepted excess contributions and the board is unable to

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1 correct the matter by informal methods within the time prescribed in sub. (3), the
2 board shall make a public finding of probable cause in the matter. After making a
3 public finding, the board shall bring an action in the circuit court for Dane County
4 to impose a forfeiture under sub. (1) or (2).

5 (5) If an elector believes that a candidate has violated ss. 11.502 to 11.522 and
6 the elector is entitled to vote for or against the candidate in the election in connection
7 with which the violation is alleged to occur, the elector may file a complaint with the
8 board requesting it to take remedial action. If the board refuses to take remedial
9 action or, within 30 days after the filing of such a complaint, fails to take remedial
10 action, the elector may commence a civil action in the appropriate circuit court under
11 sub. (4) requesting the court to impose a forfeiture under sub. (1) or (2).

12 (6) The board and courts shall expedite all proceedings under ss. 11.502 to
13 11.522 so that all complaints brought prior to an election are resolved, to the extent
14 possible, before the election is held.

15 (7) If a complaint brought under ss. 11.502 to 11.522 is resolved against the
16 complainant and is found to have been brought in bad faith and without reasonable
17 basis therefor, the board or court may assess costs, including reasonable attorney
18 fees, against the complainant.

19 **11.518 Prohibited acts.** (1) If a candidate or agent of a candidate knowingly
20 accepts more contributions than the candidate is entitled to receive, or makes
21 disbursements exceeding the amount of the public financing benefit received by the
22 candidate, the candidate or agent may be fined not more than \$25,000 or imprisoned
23 for not more than 5 years or both.

24 (2) If a candidate who receives a public financing benefit, or an agent of such
25 a candidate, knowingly makes a disbursement by means other than through use of

BILL**SECTION 17**

1 the fair election debit card, except as permitted under s. 11.515 (3), the candidate or
2 agent may be fined not more than \$25,000 or imprisoned for not more than 5 years
3 or both.

4 (3) If, in connection with the receipt or disbursement of a public financing
5 benefit for an election campaign, any person knowingly provides false information
6 to the board, or knowingly conceals or withholds information from the board, that
7 person may be fined not more than \$25,000 or imprisoned for not more than 5 years
8 or both.

9 **11.519 Mass mailings.** (1) No person may conduct any mass mailing using
10 state funds on behalf of any person who is a candidate for the office of justice at the
11 spring election during the period between December 1 preceding that election and
12 May 31 following that election.

13 (2) If any person uses state funds to conduct a mass mailing on behalf of any
14 person who is a candidate for the office of justice at the spring election during the
15 period between September 1 and November 30 preceding that election, the board
16 shall immediately credit the accounts of all other eligible candidates for justice on
17 behalf of whom the mailing is conducted with an additional line of credit equal to the
18 cost of printing and mailing of that mass mailing. The additional line of credit may
19 be used solely to fund a mailing promoting the candidacy of the candidate who
20 receives the credit.

21 (3) A candidate for justice at the spring election who plans to use state funds
22 for a mass mailing shall notify the board in writing of his or her intent to do so no later
23 than September 1 preceding the spring election, and shall complete the mailing no
24 later than the following November 30.

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1 (4) All mass mailings funded by the state on behalf of any person who is a
2 candidate for justice at the spring election during the period between September 1
3 and November 30 preceding that election and all mass mailings authorized under
4 sub. (2) shall be issue oriented and nonpolitical, shall not mention any of a
5 candidate's opponents by name and shall be reviewed and approved by the board for
6 compliance with such requirements in advance of the mailing.

7 (5) Except as permitted under sub. (2), no state funds may be used by any
8 incumbent individual holding the office of justice to conduct a mass mailing on behalf
9 of a candidate for that office at the spring election after November 30 preceding that
10 election.

11 **11.522 Contributions to noncomplying candidates; attributions.** (1) A
12 noncomplying candidate may accept contributions from private sources without
13 limitation, except that no person may make any contribution or contributions to a
14 noncomplying candidate exceeding a total of \$1,000 during any campaign.

15 (2) Any electronic or print communication paid for or authorized by a
16 noncomplying candidate shall contain the following sentence: "This communication
17 is paid for with money raised from private sources. This candidate has not agreed
18 to abide by campaign contribution and spending limits."

19 **SECTION 18.** 20.510 (1) (r) of the statutes is created to read:

20 20.510 (1) (r) *Democracy trust fund administration.* From the democracy trust
21 fund, a sum sufficient for the administration of ss. 11.501 to 11.522.

22 **SECTION 19.** 20.585 (1) (q) of the statutes is created to read:

23 20.585 (1) (q) *Democracy trust fund.* As a continuing appropriation, from the
24 democracy trust fund, the moneys determined under ss. 11.501 to 11.522 to provide
25 for payments to eligible candidates.

BILL

1 **SECTION 20.** 20.585 (1) (r) of the statutes is created to read:

2 20.585 (1) (r) *Democracy trust fund administration.* From the democracy trust
3 fund, a sum sufficient for the administration of ss. 11.501 to 11.522.

4 **SECTION 21.** 20.855 (4) (bb) of the statutes is created to read:

5 20.855 (4) (bb) *Democracy trust fund transfer.* A sum sufficient equal to the
6 amounts required to provide lines of credit that candidates qualify to receive from
7 the democracy trust fund, to be transferred from the general fund to the democracy
8 trust fund no later than the time required to make payments of grants under s. 11.51
9 (2) and (3).

10 **SECTION 22.** 25.17 (1) (cm) of the statutes is created to read:

11 25.17 (1) (cm) Democracy trust fund (s. 25.421);

12 **SECTION 23.** 25.421 of the statutes is created to read:

13 **25.421 Democracy trust fund.** All moneys appropriated under s. 20.855 (4)
14 (bb) and all moneys deposited in the state treasury under ss. 11.509 and 11.51 (4)
15 constitute the democracy trust fund, to be expended for the purposes of ss. 11.501 to
16 11.522.

17

(END)



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

3024/1
LRB-22247dm
JTK:wjjf

April 7, 1999

1. Concerning the period for use of a public financing benefit in the spring primary campaign, you are correct that under proposed ss. 11.501 (14) and 11.51 (2), this period is tight; in fact, it could be as little as two weeks. Please let me know if you would like to see a change in this provision.

1. 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. 11.522, relating to labeling of certain political communications by candidates for the office of attorney general or justice of the supreme court who fail to qualify for a public financing benefit 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.

2. Proposed ss. 11.512 (2) and 11.513 (2), which increase the public financing benefit available to a candidate when independent disbursements are made against the candidate or for his or her opponents, or when the candidate's opponents make disbursements exceeding a specified level, may result in an abridgement of the First Amendment rights of the persons making the disbursements. See *Day v. Holahan*, 34F.3d 1356 (8th Cir., 1994), in which a Minnesota law that included provisions similar to proposed ss. 11.512 (2) and 11.513 (2) 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.

3. Proposed s. 11.512 (1), which imposes additional reporting requirements upon candidates for the office of attorney general or justice of the supreme court who fail to qualify for a public financing benefit, may raise an equal protection issue under the 14th Amendment to the U.S. Constitution.

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

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3024/1dn
JTK:wj:km

May 6, 1999

1. 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. 11.522, relating to labeling of certain political communications by candidates for the office of justice of the supreme court who fail to qualify for a public financing benefit 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.

2. Proposed ss. 11.512 (2) and 11.513 (2), which increase the public financing benefit available to a candidate for the office of justice when independent disbursements are made against the candidate or for his or her opponents, or when the candidate's opponents make disbursements exceeding a specified level, may result in an abridgement of the First Amendment rights of the persons making the disbursements. See *Day v. Holahan*, 34F.3d 1356 (8th Cir., 1994), in which a Minnesota law that included provisions similar to proposed ss. 11.512 (2) and 11.513 (2) 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.

3. Proposed s. 11.512 (1), which imposes additional reporting requirements upon candidates for the office of justice of the supreme court who fail to qualify for a public financing benefit, may raise an equal protection issue under the 14th Amendment to the U.S. Constitution.

Jeffery T. Kuesel
Managing Attorney
Phone: (608) 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: 5/6/99

To: Senator George

Relating to LRB drafting number: LRB-3024

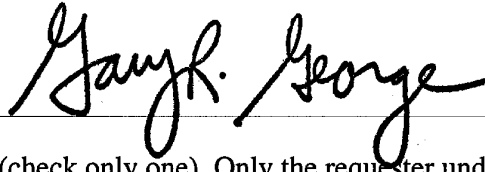
Topic

Campaign finance changes - elections for justice

Subject(s)

Elections - campaign finance

1. **JACKET** the draft for introduction _____



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