

1999 DRAFTING REQUEST

Senate Amendment (SA-SB181)

Received: **09/22/1999**

Received By: **kuesejt**

Wanted: **Soon**

Identical to LRB:

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

By/Representing: **Dan Rossmiller**

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

Drafter: **kuesejt**

May Contact: **Rep. Bock may inspect file.**

Alt. Drafters:

Subject: **Elections - campaign finance**

Extra Copies: **JTK - 1**

Pre Topic:

No specific pre topic given

Topic:

SA to SB181

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 10/04/1999	chanaman 10/05/1999		_____			
/1			kfollet 10/05/1999	_____	lrb_docadmin 10/05/1999	lrb_docadmin 10/05/1999	
/2	kuesejt 10/18/1999	chanaman 10/19/1999	jfrantze 10/19/1999	_____	lrb_docadmin 10/19/1999	lrb_docadmin 10/19/1999	

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/1	<i>12 kuesejt</i> <i>10/18</i>	<i>cmh</i> <i>10/19</i>		kfollet 10/05/1999	_____	lrb_docadmin 10/05/1999	lrb_docadmin 10/05/1999

FE Sent For:

10/19
10/19
10/19
<END>

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12/1	kuesejt 10/4	cmh 6 10/4	kjf 10/5	kjf/jf 10/5			

FE Sent For:

<END>

State of Wisconsin



GARY R. GEORGE
SENATOR

MEMORANDUM

CONFIDENTIAL

TO: Jeff Kuesel,
Legislative Reference Bureau Drafting Attorneys

FROM: Dan Rossmiller *DR*

DATE: September 22, 1999

RE: Drafting Request

Senator George would like to have an amendment drafted to Senate Bill 181 that would make the changes indicated in the attached memo. As we discussed on the phone, it is my understanding that Rep. Bock's office will be making a request to have an identical amendment drafted to the Assembly companion version of this bill. You have our permission to discuss this request with Rep. Bock's office. (I have asked Rep. Bock's office to grant similar permission for you to speak with our office about their amendment request.) It is our intent that the two amendments be identical.

Thank you for your assistance.

Please feel free to contact me (6-2500) if you have any questions.

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

Reporting requirements

- ✓ 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.

Goal
treat

issue ads

like indep.

Expend. Part of Issue ads

1999

Date (time) needed WANTED TUE 10/5

LRB a 0659 1 1

AMENDMENT DNOR

JR:cm4:

See form AMENDMENTS — COMPONENTS & ITEMS.

(S) A AMENDMENT

~~TO S A AMENDMENT _____ (LRBa _____),~~

~~TO S A SUBSTITUTE AMENDMENT _____ (LRBs _____),~~

TO 1999 **(SB)** ~~SJR SR AB AJR AR~~ 181 (LRB ~~_____~~)

At the locations indicated, amend the 6-11 as follows:

(fill ONLY if "engrossed" or "as shown by")

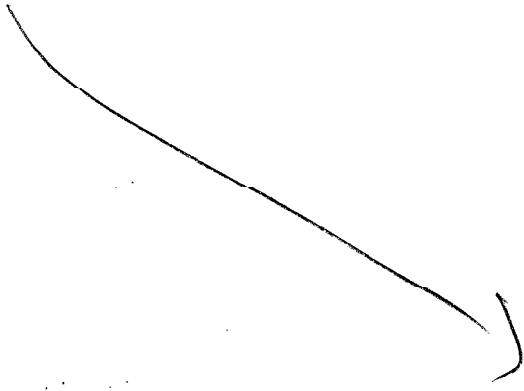
#. Page, line

#. Page, line

#. Page, line

#. Page, line

#. Page, line



1999-2000 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRBa0659/lins
JTK.....

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

1. Page 8, line 4: delete lines 4 to 7.
2. Page 9, line 8: delete "of \$5".
3. Page 10, line 5: after "contributions" insert "in amounts equal to not less than \$5 nor more than \$100 and in an aggregate amount of not less than \$15,000".
4. Page 13, line 16: delete the material beginning with "A" and ending with "period." on page 13, line 18. candidate
5. Page 13, line 21: delete "; line of credit". not Bow
6. Page 14, line 5: delete "line of credit for public financing" and substitute "check for the amount of the public financing benefit payable to the candidate".
7. Page 14, line 7: delete "line". "
8. Page 14, line 8: delete "of credit" and substitute "check received". "
9. Page 14, line 14: delete "line of credit" and substitute "check".
10. Page 14, line 23: delete "lines of credit" and substitute "checks for the public financing benefits payable to the candidate".
11. Page 15, line 1: delete "credit" and substitute "public financing benefit".
12. Page 15, line 3: delete "credit" and substitute "public financing benefit".
13. Page 15, line 4: delete "The" and substitute "Except as provided in ss. 11.512 (2), 11.513 (2), and 11.514 (5) and 11.519 (2) the".
14. Page 15, line 7: delete "The" and substitute "Except as provided in ss. 11.512 (2), 11.513 (2), and 11.514 (5) and 11.519 (2) the".

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

LRBa0659/lins
JTK.....

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

16. Page 15, line 16: after that line insert:

text treat
"(5g) An eligible candidate who receives a public financing benefit in the primary election campaign period and whose name is certified to appear on the ballot at the election following that primary may utilize any unencumbered balance of the public financing benefit received by the candidate in the primary election campaign period for the election campaign period.

(5r) Except as permitted in sub. (5g), an eligible candidate who receives a public financing benefit and who does not encumber or expend some portion of the benefit for a purpose described in sub. (1) shall return any unencumbered portion of the benefit to the board within 30 days after the primary or election in which the candidate participates."

17. Page 16, line 18: delete "board" and substitute "state treasurer".

18. Page 16, line 18: delete "credit" and substitute "issue a check to".

19. Page 16, line 19: delete "candidate's account with" and substitute "in".

20. Page 17, line 9: after "disbursements" insert "made or obligations to be made".

21. Page 17, line 11: delete "board" and substitute "state treasurer".

22. Page 17, line 11: delete "credit" and substitute "issue a check to".

23. Page 17, line 12: delete "candidate's account with" and substitute "in".

24. Page 17, line 12: delete "line of credit" and substitute "amount".

25. Page 17, line 14: after that line insert:

"11.514 Independent expenditures. (1) In this section:

(a) "Independent expenditure" means an expenditure other than a disbursement that is made by means of one or more communications media for the purpose of making a communication within 30 days of a spring primary or within 60 days of a spring election ~~which~~^{that} includes mention of the name of a candidate for the office of justice whose name appears on the ballot at that primary or election, and ~~which~~^{that} cannot reasonably be subject to any interpretation other than that the communication is made for the purpose of electioneering.

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

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

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

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

(b).

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

(4) Each report under sub. (3) shall contain an itemization of each independent expenditure made and each obligation to make an independent expenditure incurred by the organization in an amount or value exceeding \$20, the amount or value of the independent expenditure or obligation, the date that the independent expenditure is made or the obligation to make the independent expenditure is incurred, the person to whom the independent expenditure is made or to whom the obligation to make the independent expenditure is incurred and the cumulative total independent expenditures made and obligations to make independent expenditures incurred with respect to that primary and election.

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

26. Page 17, line 15: delete "(1)".

27. Page 17, line 16: delete the material beginning with "The" and ending with "11.506." on page 18, line 5.

28. Page 18, line 10: after "the" insert "total amount of the".

29. Page 18, line 11: after "campaign" insert "and the total qualifying and seed money contributions lawfully accepted by the candidate".

30. Page 18, line 12: delete "exceeded" and substitute "exceed".

31. Page 19, line 21: after "exceeding the" insert "total".

state treasurer shall

exceed

32. Page 19, line 22: ~~after~~ "candidate" ~~insert~~ "and the qualifying and seed money contributions lawfully received by the candidate".
delete *and substitute* *candidate*

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

34. Page 22, line 6: delete "lines of credit" and substitute "public financing benefits".

35. Page 22, line 7: after "fund" insert "and to provide for administration of the fund".
trust

36. Page 22, line 14: delete "and 11.51 (4)" and substitute ", 11.51 (4) and 11.511 (5r)".

(END)

~~del~~
Page 20, line 15: delete "board" and substitute "state treasurer".
the accounts of

Page 20, line 16: delete "credit" and substitute "issue a check to".

~~substitute~~
Page 20, line 17: delete "line of credit" and substitute "with an additional in an amount".
Page 20, line 18: delete "public financing benefits" and substitute "check".
Page 20, line 20: delete "credit" and substitute "check benefits".

D-NOTE
↓

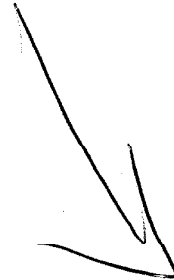
**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRBa0659/1dn
JTK.....

emj

DATE

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 "~~which~~ ^{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.



LRB a 0659/1
JTK:

Drafter's note:

organizations

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. ~~11.01 (16) (a) 3.~~ ^{11.514,} which requires registration and reporting by ~~individuals who or committees~~ that make certain communications within 60 days of an election containing the name or likeness of a candidate at that election or the name or likeness of a political party, 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.

30 days of a primary or

3. Proposed ~~s. 11.50 (9) (b) and (ba)~~ ^{ss. 11.512(2), 11.513(2), and 11.514(5) and 11.514(2)} which increase the public grant payable to a candidate when independent disbursements are made against the candidate or for his or her opponents, or when the candidate's opponents raise more than a specified level of contributions from certain sources or spend amounts exceeding the disbursement limitations for the office which the candidate seeks, and proposed s. 11.31 (3p), which increases disbursement limitations by an amount equal to any grant received under proposed s. 11.50 (9) (b) or (ba), may result in an abridgement of the First Amendment rights of the persons making the disbursements or contributions. 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. While this case expressly involved only

excess disbursements are made by an opponent or when

financial benefit

expenditures

or "issue advocacy" expenditures

~~independent expenditures, since this case and other federal cases hold that the making of a contribution is a protected First Amendment right, the same issue could be raised in the context of contributions.~~ 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.

JTK

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRBa0659/1dn
JTK:cmh:kjf

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



State of Wisconsin
1999 - 2000 LEGISLATURE

LRBa0659/2
JTK:cmh:kjf

Wanted Tue 10/19-AM

**SENATE AMENDMENT ,
TO 1999 SENATE BILL 181**

same as
LRBa0692/2

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 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”.

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)