

1999 DRAFTING REQUEST

Bill

Received: **10/13/1999**

Received By: **kuesejt**

Wanted: **10/15/1999**

Identical to LRB:

For: **Charles Chvala (608) 266-9170**

By/Representing: **Doug Burnett**

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

Drafter: **kuesejt**

May Contact:

Alt. Drafters: **rmarchan**

Subject: **Elections - campaign finance**

Extra Copies: **RJM - 1**

Pre Topic:

No specific pre topic given

Topic:

Issue advocacy

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>
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/1	rmarchan 10/14/1999	chanaman 10/15/1999	jfrantze 10/13/1999	_____	lrb_docadmin 10/13/1999		
/2			mclark 10/15/1999	_____	lrb_docadmin 10/15/1999		
/3	kuesejt 10/15/1999	chanaman 10/18/1999	martykr 10/18/1999	_____	lrb_docadmin 10/18/1999	lrb_docadmin 10/19/1999	

10/19/1999 10:52:39 AM

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FE Sent For:		<i>1/2</i>	<i>MRE</i> 10/15	<i>MRE/JF</i> 10/15			

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Kuesel, Jeffery

From: Marchant, Robert
Sent: Wednesday, October 13, 1999 11:18 AM
To: Kuesel, Jeffery
Subject: FW: Campaign Finance Draft

Here is the drafting request from Sen. Chvala.

Robert J. Marchant

Legislative Attorney
State of Wisconsin Legislative Reference Bureau
robert.marchant@legis.state.wi.us

-----Original Message-----

From: Burnett, Douglas
Sent: Wednesday, October 13, 1999 9:28 AM
To: Marchant, Robert
Subject: Campaign Finance Draft

Rob-Please draft for me as a stand-alone bill asap the issue advocacy section of SB 190. Here's the description from the LRB analysis of the section we want drafted:

This bill provides that, whenever any person publishes, disseminates or broadcasts any communication that includes a reference to a candidate for an office to be filled at an election, during the 60-day period preceding that election or during the 30-day period preceding any primary for that election, and the communication is substantially directed toward the electorate for that election, it is presumed that the communication is made for the purpose of influencing the election or nomination for election of that candidate, unless the person making the communication establishes, by a preponderance of the evidence, that the communication was not made for that purpose.

Also please let me know how soon I can get the draft. We are looking at moving the bill during the Fall floor period and need to get it introduced and out of committee very quickly. Thanks!

-2750/1

1999 SENATE BILL 190

WANTED THU 10/14

June 8, 1999 - Introduced by COMMITTEE ON AGRICULTURE, ENVIRONMENTAL RESOURCES AND CAMPAIGN FINANCE REFORM. Referred to Committee on Agriculture, Environmental Resources and Campaign Finance Reform.

(regenerate)

1 AN ACT ~~to repeal~~ 11.01 (5m), 11.01 (12s), 11.05 (3) (o), 11.05 (9) (b), 11.06 (11),
2 11.24 (1m), 11.26 (9) (c), 11.26 (12m), 11.265, 11.31 (1) (b), 11.31 (2m), 11.31 (3),
3 11.31 (3m), 11.31 (4), 11.50 (2) (i), 11.50 (3), 11.50 (6), 20.855 (4) (b) and 71.10
4 (3); ~~to renumber~~ 11.05 (9) (a); ~~to renumber and amend~~ 11.12 (6), 11.50 (2)
5 (b) 5. and 11.50 (9); ~~to amend~~ 5.02 (13), 5.02 (18), 7.08 (2) (c) and (cm), 8.35 (4)
6 (b), 10.02 (3) (b) 2m., 11.05 (3) (c), 11.05 (3) (n), 11.06 (2), 11.06 (7m) (a), 11.06
7 (7m) (c), 11.09 (3), 11.12 (5), 11.16 (5), 11.20 (2m), 11.20 (3) (d), 11.20 (3) (g), 11.20
8 (8) (intro.), 11.20 (12), 11.21 (15), 11.26 (1) (intro.), 11.26 (1) (a), 11.26 (1) (b),
9 11.26 (1) (c), 11.26 (2) (intro.), 11.26 (2) (a), 11.26 (4), 11.26 (8), 11.26 (9) (a), 11.26
10 (9) (b), 11.26 (9) (b), 11.26 (10), 11.26 (13), 11.26 (17) (a), 11.31 (1) (a), 11.31 (1)
11 (c), 11.31 (1) (d), 11.31 (1) (e) and (f), 11.31 (2), 11.38 (1) (a) 3., 11.50 (title), 11.50
12 (1) (b), 11.50 (2) (a), 11.50 (2) (b) (intro.), 11.50 (2) (b) 1. to 3., 11.50 (2) (b) 4., 11.50
13 (2) (g), 11.50 (5), 11.50 (9) (title), 11.50 (11) (e), 11.61 (1) (a), 11.61 (1) (a), 11.61
14 (1) (b), 11.61 (1) (b), 11.61 (1) (c), 14.58 (20), 20.510 (1) (q), 25.17 (1) (ys), 25.42

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1 and chapter 77 (title); **to repeal and recreate** 11.50 (4); and **to create** 11.05
 2 (14), 11.12 (6) (c) and (d), 11.12 (7), 11.12 (8), ~~11.20 (2e)~~, 11.20 (8) (am), 11.20 (8)
 3 (an), 11.24 (1s), 11.24 (1t), 11.24 (1w), 11.26 (1m), 11.26 (10a), 11.31 (1) (cm),
 4 11.31 (3p), 11.31 (9), 11.50 (2) (b) 3m., 11.50 (2) (b) 3s., ~~11.50 (2) (b) 5. a. to f.~~, 11.50
 5 (2) (bm), 11.50 (9) (a) 1. to 6., 11.50 (9) (b), 11.50 (9) (ba), 11.50 (9a), 11.60 (3s)
 6 and (3t), 11.61 (1) (d), 20.855 (4) (ba), 20.855 (4) (bb) and subchapter XIII of
 7 chapter 77 [precedes 77.997] of the statutes; **relating to:** ~~campaign financing,~~
 8 ~~imposition of a lobbying expenditure tax, providing exemptions from~~
 9 ~~emergency rule procedures, granting rule making authority, making~~
 10 ~~appropriations~~ and providing penalties.

Analysis by the Legislative Reference Bureau

This bill makes numerous changes in the campaign finance law and imposes a tax on lobbying expenditures. Significant changes include:

Filing of campaign finance reports

Currently, a committee making contributions or a candidate or other individual or committee accepting contributions, making disbursements (expenditures) or incurring obligations in support of or opposition to a candidate is generally required to file a report no later than the eighth day before a primary or election at which the candidate seeks nomination or election to office. The report must disclose contributions made or accepted, disbursements made and obligations incurred through the 14th day prior to the primary or election.

Currently, if a candidate for state office receives one or more contributions from a single contributor aggregating \$500 or more during the 14-day period preceding an election, the candidate must report to the elections board the information currently required to be disclosed pertaining to contributions received by the candidate no later than 24 hours following receipt of any such contribution or contributions.

This bill requires each candidate at the general or a special election for the office of governor, lieutenant governor, attorney general, secretary of state, justice of the supreme court, state senator or representative to the assembly who does not accept a public grant (see below) and who intends to make any disbursement or who incurs or intends to incur any obligation to make a disbursement after the candidate has made disbursements in his or her campaign exceeding the amount of the disbursement limitation for the office that the candidate seeks, to report to the elections board, no later than 21 days prior to the activity intended to be funded by

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the disbursement or obligation, the information that is currently required to be reported pertaining to disbursements made and obligations incurred by candidates.

The bill similarly requires each committee that intends to make any disbursement or that incurs or intends to incur any obligation to make a disbursement for the purpose of advocating the election or defeat of a candidate for a major state office at the general election or a special election independently of any candidate who is supported or whose opponent is opposed to report to the elections board, no later than 21 days prior to the activity intended to be funded by the disbursement or obligation, specifying the name of each candidate who is supported or whose opponent is opposed and the total amount of disbursements to be made and obligations to be incurred for that purpose.

In addition, the bill provides that if a candidate for a major state office at the general or a special election does not enter into an agreement to accept a public grant in return for abiding by disbursement limitations and contribution restrictions, the candidate must report to the elections board all information currently required to be disclosed pertaining to any contributions received by the candidate no later than 24 hours following receipt of any contribution or contributions after that candidate receives total contributions equal to more than the following amounts during his or her campaign:

1. For candidates for the offices of governor and lieutenant governor jointly, \$500,000 from all committees or \$1,500,000 from all contributors.
2. For a candidate for the office of attorney general, \$100,000 from all committees or \$300,000 from all contributors.
3. For a candidate for the office of secretary of state, state treasurer or state superintendent of public instruction, \$50,000 from all committees or \$150,000 from all contributors.
4. For a candidate for the office of justice, \$225,000 from all contributors.
5. For a candidate for the office of state senator, \$25,000 from all committees or \$75,000 from all contributors.
6. For a candidate for the office of representative to the assembly, \$12,500 from all committees or \$37,500 from all contributors.

Under the bill, these amounts are subject to a biennial cost-of-living adjustment beginning in 2002, in accordance with a formula tied to the "consumer price index" determined by the U.S. department of labor.

The bill also requires each candidate at the general election, and each committee or individual making disbursements or incurring obligations in support of or in opposition to a candidate at the general or a special election, to file an additional report on the tenth day after the election.

~~Mass media activities~~

Currently, individuals who accept contributions, organizations that make or accept contributions, or individuals who or organizations that incur obligations or make disbursements for the purpose of influencing an election for state or local office are generally required to register with the appropriate filing officer and to file financial reports with that officer, regardless of whether they act in conjunction with or independently of any candidate who is supported or opposed. Currently, when a

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person is alleged to have violated registration and reporting requirements, the state has the burden of proving that the violation occurred.

This bill provides that, whenever any person publishes, disseminates or broadcasts any communication that includes a reference to a candidate for an office to be filled at an election, during the 60-day period preceding that election or during the 30-day period preceding any primary for that election, and the communication is substantially directed toward the electorate for that election, it is presumed that the communication is made for the purpose of influencing the election or nomination for election of that candidate, unless the person making the communication establishes, by a preponderance of the evidence, that the communication was not made for that purpose.

Disbursement limitations

Under current law, disbursement (expenditure) levels are specified for candidates for various state and local offices. These levels become a binding limitation upon any candidate for state office who accepts a state grant from the Wisconsin election campaign fund or who agrees to be bound by the limitation, unless the candidate is opposed by a major opponent who could have qualified for a grant but who declines to accept one and declines to file an affidavit of voluntary compliance with disbursement and contribution limitations. Under current law, the disbursement limitations apply to a candidate's entire primary and election campaign combined. Additionally, the disbursement levels for candidates for the offices of state senator and representative to the assembly are subdivided between the primary and election campaign periods in such a way that only about 60% of the total applicable disbursement level for either office may be allocated by a candidate to either the primary or the election campaign period.

This bill:

1. Eliminates disbursement levels and limitations applicable to candidates for state office, except the offices of court of appeals judge, circuit judge and district attorney, on or before the date of the primary election for those offices.
2. Revises the current disbursement levels applicable to candidates for the offices shown in the following chart:

<i>Office</i>	<i>Current Level</i>	<i>Proposed Level</i>
Governor	\$1,078,200	[\$2,000,000
Lieutenant governor	323,475	for both offices]
Attorney general	539,000	600,000
Supreme court justice	215,625	300,000
Secretary of state	215,625	200,000
State treasurer	215,625	200,000
State superintendent of public instruction	215,625	200,000
State senator	34,500	100,000
Representative to the assembly	17,250	50,000

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~~6/ For a candidate for the office of representative to the assembly, \$37,500.~~

~~In addition to these amounts, the bill provides that a candidate who accepts a grant shall receive an additional grant in an amount equal to 1) the amount of any independent disbursements that are made to oppose that candidate or to support that candidate's opponent; 2) the total amount of obligations incurred or proposed to be incurred and disbursements proposed to be made that have not previously been reported as obligations by an opposing candidate who does not accept a grant exceeding the amount of the disbursement limitation for the office that the candidate seeks; and 3) the total amount of contributions accepted by opposing candidates above the level for which 24-hour reports are required.~~

~~Under the bill, qualifying amounts and grant amounts are subject to a biennial cost-of-living adjustment, beginning in 2002, in accordance with a formula tied to the "consumer price index" determined by the U.S. department of labor.~~

~~The bill also requires each candidate, in order to qualify to receive a grant, to file with the elections board, no later than five days before the deadline for filing an application to receive a grant, an application to receive a grant or a statement that the candidate intends to qualify to receive a grant. In addition, the bill requires each candidate, in order to receive a grant, to file with the elections board a specified number of signatures of electors of the jurisdiction or district in which the candidate seeks office that have not been filed by an opposing candidate for the same office.~~

~~**Penalties for violations**~~

Currently, violators of the campaign finance law are subject to a forfeiture (civil penalty) of not more than \$500 for each violation, except that violators of contribution limitations are subject to a forfeiture of not more than treble the amount unlawfully contributed. In addition, currently, any person who is delinquent in filing a report is subject to a forfeiture of not more than \$50 or one percent of the annual salary of the office for which a candidate is being supported or opposed, whichever is greater, for each day of delinquency. Currently, any person who makes an unlawful contribution is subject to a forfeiture of treble the amount of the unlawful contribution.

Currently, whoever intentionally violates certain provisions of the campaign finance law, such as registration requirements, contribution limitations, the prohibition against making contributions in the name of another person, the prohibition against using contributions for most nonpolitical purposes and the prohibition against filing false reports and statements, may be fined not more than \$1,000 or imprisoned for not more than six months, or both, if the violation does not exceed \$100 in amount or value, and may be fined not more than \$10,000 or imprisoned for not more than three years, or both, if the violation exceeds \$100 in amount or value.

~~This bill provides that if any candidate or other individual or committee ~~accepts or transfers a contribution, makes a disbursement or incurs an obligation to make a disbursement for the purpose of supporting or opposing a candidate for a major state office (governor, lieutenant governor, attorney general, secretary of state, state treasurer, state superintendent of public instruction or justice of the supreme court) or for the purpose of making certain communications relating to candidates (see~~~~

→ Makes a

at an election

SENATE BILL 190

^{the} ^{of making such a communication} ^{law}
(above) without first registering and reporting to the extent required under the bill, the offender must pay a forfeiture ~~(civil penalty)~~ of \$500 for each day of violation. The bill also provides that if any of these individuals or committees accepts or transfers one or more contributions, makes one or more disbursements or incurs one or more obligations to make disbursements for ~~such a~~ purpose in an amount that is more or less than the amount reported by that individual or committee:

1. By more than 5% but not more than 10%, the individual or committee must forfeit four times the amount of the difference.

2. By more than 10%, the individual or committee must forfeit six times the amount of the difference.

^{at an election}
The bill also imposes a new penalty upon any person who, with intent to conceal or deceive, accepts or transfers a contribution, makes a disbursement or incurs an obligation to make a disbursement for the purpose of ~~supporting or opposing a candidate for a major state office or for the purpose of making certain communications~~ relating to candidates ~~(see above)~~ without registering or reporting to the extent required under the ~~bill~~, consisting of a fine of not more than \$10,000 or imprisonment for not more than ~~five~~ years, or both (equivalent to a class E felony). ^{law}

~~Lobbying expenditure tax~~

~~This bill imposes a tax on lobbying principals (persons who employ lobbyists) at the rate of 10% on lobbying expenditures that are reportable to the ethics board. The tax is payable to the department of revenue semiannually.~~

~~Nonseverability~~

~~Currently, if any part of an act is found by a court to be invalid, those parts that are valid are severed from the invalid part and the severed parts continue in force. This bill provides that if any part of the act resulting from enactment of the bill relating to reporting of mass media activities, reporting of proposed disbursements and obligations by committees and individuals acting independently of candidates and provision of supplemental grants to candidates who are opposed or whose opponents are supported by those proposed disbursements or obligations are found by a court to be invalid, then all of those parts of the act are void.~~

~~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.** 5.02 (13) of the statutes is amended to read:
- 2 5.02 (13) "Political party" or "party" means a state committee registered under
- 3 s. 11.05 organized exclusively for political purposes under whose name candidates
- 4 appear on a ballot at any election, and all county, congressional, legislative, local and

SENATE BILL 190

1 votes cast on all ballots for the office for which he or she is a candidate, in addition
2 to other requirements.

3 **SECTION 6.** 11.01 (5m) of the statutes is repealed.

4 **SECTION 7.** 11.01 (12s) of the statutes is repealed.

5 **SECTION 8.** 11.05 (3) (c) of the statutes is amended to read:

6 11.05 (3) (c) In the case of a committee, a statement as to whether the
7 committee is a personal campaign committee, a political party committee, a
8 legislative campaign committee, a support committee or a special interest
9 committee.

10 **SECTION 9.** 11.05 (3) (n) of the statutes is amended to read:

11 11.05 (3) (n) In the case of a labor organization, or separate segregated fund
12 under s. 11.38 (1) (a) 2. or conduit established by a labor organization, a statement
13 as to whether the organization is incorporated, and if so, the date of incorporation
14 and whether or not such incorporation is under ch. 181.

15 **SECTION 10.** 11.05 (3) (o) of the statutes is repealed.

16 **SECTION 11.** 11.05 (9) (a) of the statutes is renumbered 11.05 (9).

17 ~~**SECTION 12.** 11.05 (9) (b) of the statutes is repealed.~~

18 **SECTION 13.** 11.05 (14) of the statutes is created to read:

19 11.05 (14) PRESUMPTION CONCERNING CERTAIN COMMUNICATIONS. Whenever any
20 person publishes, disseminates or broadcasts, or causes to be published,
21 disseminated or broadcast, any communication that includes a reference to a clearly
22 identified candidate for an office to be filled at a general, spring or special election,
23 during the 60-day period preceding that election or during the 30-day period
24 preceding any primary for that election, and the communication is substantially
25 directed toward the electorate at that election, it is presumed that the

SENATE BILL 190**SECTION 13**

1 communication is made for the purpose of influencing the election or nomination for
2 election of that candidate, unless the person making the communication or causing
3 the communication to be made establishes, by a preponderance of the evidence, that
4 the communication was not made for that purpose.

5 **SECTION 14.** 11.06 (2) of the statutes is amended to read:

6 11.06 (2) DISCLOSURE OF CERTAIN INDIRECT DISBURSEMENTS. Notwithstanding
7 sub. (1), if a disbursement is made or obligation incurred by an individual other than
8 a candidate or by a committee or group which is not primarily organized for political
9 purposes, and the disbursement does not constitute a contribution to any candidate
10 or other individual, committee or group, the disbursement or obligation is required
11 to be reported only if the purpose is to expressly advocate the election or defeat of a
12 clearly identified candidate or the adoption or rejection of a referendum or if the
13 disbursement is made or the obligation is incurred for the purpose of making a
14 communication specified in s. 11.05 (14). The exemption provided by this subsection
15 shall in no case be construed to apply to a political party, legislative campaign,
16 personal campaign or support committee.

17 **SECTION 15.** ~~11.06 (7m) (a) of the statutes is amended to read:~~

18 ~~11.06 (7m) (a) If a committee which was registered under s. 11.05 as a political~~
19 ~~party committee or legislative campaign committee supporting candidates of a~~
20 ~~political party files an oath under sub. (7) affirming that it does not act in cooperation~~
21 ~~or consultation with any candidate who is nominated to appear on the party ballot~~
22 ~~of the party at a general or special election, that the committee does not act in concert~~
23 ~~with, or at the request or suggestion of, such a candidate, that the committee does~~
24 ~~not act in cooperation or consultation with such a candidate or agent or authorized~~
25 ~~committee of such a candidate who benefits from a disbursement made in opposition~~

SENATE BILL 190

SECTION 93

1 rule is necessary for the public peace, health, safety or welfare and without a finding
2 of emergency.

3 SECTION 94. 11.50 (11) (e) of the statutes is amended to read:

4 11.50 (11) (e) No candidate may expend, authorize the expenditure of or incur
5 any obligation to expend any grant if he or she violates the pledge required under
6 sub. (2) (a) as a precondition to receipt of a grant, except as authorized in sub. (2) (h)
7 or (i).

8 SECTION 95. 11.60 (3s) and (3t) of the statutes are created to read:

9 11.60 (3s) Notwithstanding sub. (1), if any candidate or other individual or
10 committee ~~accepts or transfers a contribution, makes a disbursement or incurs an~~
11 ~~obligation to make a disbursement for the purpose of supporting or opposing a~~
12 ~~candidate for an office specified in s. 11.31 (1) (a) to (d) or~~ makes a communication
13 specified in s. 11.05 (14) without first registering under s. 11.05 (1), (2) or (2g) to the
14 extent required under s. 11.05 (1), (2) and (2g), ^{or stays} or without reporting the information
15 required under s. ~~11.12 (6) (c), (7) or (8) or~~ 11.20 (3) or (4) with respect to that
16 contribution, disbursement or obligation, to the extent required under ~~s. 11.12 (c)~~
17 ~~(c), (7) and (8) and~~ 11.20 (3) and (4), the candidate or other individual or committee
18 may be required to forfeit not more than \$500 per day for each day of continued
19 violation.

20 (3t) Notwithstanding sub. (1), if any candidate or other individual or
21 committee accepts or transfers one or more contributions, makes one or more
22 disbursements or incurs one or more obligations to make disbursements for the
23 purpose of ~~supporting or opposing a candidate for an office specified in s. 11.31 (1)~~
24 ~~(a) to (d) or to make~~ ^{making} a communication specified in s. 11.05 (14) in an amount or value

SENATE BILL 190

1 that differs from the amount reported by that individual or committee under s. ~~11.12~~

2 ~~(6) (e), (7) or (8) or~~ 11.20 (3) or (4):

3 (a) By more than 5% but not more than 10% cumulatively, the individual or
4 committee shall forfeit 4 times the amount or value of the difference.

5 (b) By more than 10% cumulatively, the individual or committee shall forfeit
6 6 times the amount or value of the difference.

7 **SECTION 96.** 11.61 (1) (a) of the statutes is amended to read:

8 11.61 (1) (a) ~~Whoever~~ Except as provided in par. (d), whoever intentionally
9 violates s. 11.05 (1), (2), (2g) or (2r), 11.07 (1) or (5), 11.10 (1), 11.12 (5), 11.23 (6) or
10 11.24 (1) may be fined not more than \$10,000 or imprisoned not more than 3 years
11 or both.

12 **SECTION 97.** 11.61 (1) (a) of the statutes, as affected by 1997 Wisconsin Act 283,
13 is amended to read:

14 11.61 (1) (a) ~~Whoever~~ Except as provided in par. (d), whoever intentionally
15 violates s. 11.05 (1), (2), (2g) or (2r), 11.07 (1) or (5), 11.10 (1), 11.12 (5), 11.23 (6) or
16 11.24 (1) may be fined not more than \$10,000 or imprisoned for not more than 4 years
17 and 6 months or both.

18 **SECTION 98.** 11.61 (1) (b) of the statutes is amended to read:

19 11.61 (1) (b) ~~Whoever~~ Except as provided in par. (d), whoever intentionally
20 violates s. 11.25, 11.26, 11.27 (1), 11.30 (1) or 11.38 where the intentional violation
21 does not involve a specific figure, or where the intentional violation concerns a figure
22 which exceeds \$100 in amount or value may be fined not more than \$10,000 or
23 imprisoned not more than 3 years or both.

24 **SECTION 99.** 11.61 (1) (b) of the statutes, as affected by 1997 Wisconsin Act 283,
25 is amended to read:

SENATE BILL 190

SECTION 99

1 11.61 (1) (b) ~~Whoever~~ Except as provided in par. (d), whoever intentionally
2 violates s. 11.25, 11.26, 11.27 (1), 11.30 (1) or 11.38 where the intentional violation
3 does not involve a specific figure, or where the intentional violation concerns a figure
4 which exceeds \$100 in amount or value may be fined not more than \$10,000 or
5 imprisoned for not more than 4 years and 6 months or both.

6 SECTION 100. 11.61 (1) (c) of the statutes is amended to read:

7 11.61 (1) (c) ~~Whoever~~ Except as provided in par. (d), whoever intentionally
8 violates any provision of this chapter other than those provided in par. (a) and
9 whoever intentionally violates any provision under par. (b) where the intentional
10 violation concerns a specific figure which does not exceed \$100 in amount or value
11 may be fined not more than \$1,000 or imprisoned not more than 6 months or both.

12 SECTION 101. 11.61 (1) (d) of the statutes is created to read:

13 11.61 (1) (d) Whoever, with intent to conceal or deceive, accepts or transfers a
14 contribution, makes a disbursement or incurs an obligation to make a disbursement
15 for the purpose of ^{making} ~~supporting or opposing a candidate for an office specified in s. 11.31~~
16 ~~(a) (a) to (d) or to make~~ a communication specified in s. 11.05 (14) without first
17 registering under s. 11.05 (1), (2) or (2g), to the extent required under s. 11.05 (1), (2)
18 and (2g), or without reporting the information required under s. ~~11.12(6) (a) or (b)~~
19 ~~(6) of~~ 11.20 (3) or (4) with respect to that contribution, disbursement or obligation,
20 to the extent required under ~~s. 11.12(6) (c) and (8) and~~ 11.20 (3) and (4), may
21 be fined not more than \$10,000 or imprisoned for not more than 5 years, or both.

22 SECTION 102. ~~14.58 (20) of the statutes is amended to read:~~

23 14.58 (20) ~~ELECTION CAMPAIGN CLEAN GOVERNMENT FUND.~~ Make disbursements
24 to each candidate certified under s. 7.08 (2) (c) or (cm) by the elections board as

SENATE BILL 190

1 **77.9971 Imposition.** A tax is imposed on every person, except an organization
 2 described in section 501 (c) (3) of the Internal Revenue Code, that is exempt from
 3 federal income taxation under section 501 (a) of the Internal Revenue Code and a
 4 governmental unit, as defined in s. 281.65 (2) (am), at the rate of 10% on lobbying
 5 expenditures that are reportable to the ethics board under s. 13.68 (1).

6 **77.9972 Administration. (1)** The department of revenue shall levy, enforce
 7 and collect the tax under this subchapter.

8 **(2)** The tax under this subchapter and a completed return prescribed by the
 9 department of revenue are due on March 1 and September 1.

10 **(3)** Sections 77.59 (1) to (6), (8) and (8m), 77.60 (1) to (7), (9) and (10), 77.61 (5)
 11 and (12) to (14) and 77.62, as they apply to the taxes under subch. III, apply to the
 12 tax under this subchapter.

13 **77.9973 Certification.** Annually no later than September 15, the secretary
 14 of revenue shall certify to the secretary of administration the amount of taxes
 15 collected under this subchapter for the preceding 12-month period ending on June
 16 30.

SECTION 112. Nonstatutory provisions.

17
 18 (1) Notwithstanding section 990.01 (11) of the statutes, if a court finds that ~~any~~
 19 ~~any~~ portion of ~~section 11.01 (16) (a) 3., 11.12 (6) (c) or 11.50 (9) (b) of the statutes,~~
 20 ~~as created by this act, or section 11.06 (2) of the statutes, as affected by this act is~~
 21 unconstitutional, then sections 11.01 (16) (a) 3., 11.12 (6) (c) and 11.50 (9) (b) of the
 22 ~~statutes, as created by this act, and the treatment of section 11.06 (2) of the statutes~~
 23 ~~by this act are~~ ^{is} void in ^{its} ~~their~~ entirety.

~~**SECTION 113. Initial applicability.**~~

SENATE BILL 190

SECTION 113

1 (1) The treatment of sections 11.12 (7) (d), 11.26 (10a), 11.31 (9) and 11.50 (9a)
2 of the statutes first applies to adjustments for the biennium beginning on January
3 1, 2002.

4 (2) The treatment of subchapter XIII of chapter 77 of the statutes first applies
5 to lobbying expenditures made during the 6-month period ending on December 31,
6 2000.

7 SECTION ~~113~~ **Effective dates.** This act takes effect on the day after
8 publication, except as follows:

9 (1) The treatment of sections 11.61 (1) (a) (by SECTION 97) and ~~11.61 (1)~~ (b) (by
10 SECTION 99) of the statutes takes effect on December 31, 1999.

11 (END)

a.s.
91

a.s.
↑

10-14-99

for Day Burnett

Redraft per email instructions. Need
draft on Friday, 10-15.

Marchant, Robert

From: Burnett, Douglas
Sent: Thursday, October 14, 1999 2:42 PM
To: Marchant, Robert
Cc: Kuesel, Jeffery
Subject: FW: Redraft of 3750 issue ad bill

Rob-I got an out of office reply from Jeff. Can you redraft this asap for me?

-----Original Message-----

From: Burnett, Douglas
Sent: Thursday, October 14, 1999 2:38 PM
To: Kuesel, Jeffery
Subject: Redraft of 3750 issue ad bill

Jeff-Please redraft the issue ad bill so that it does not include the new penalties from SB 190, just the first 2 sections. We want this to be a bill which just changes the issue ad statute and does not affect current law penalties. Also, do not include the nonseverability provision, and change the effective date to July 1, 2000. Thanks.



State of Wisconsin
1999 - 2000 LEGISLATURE

+RSM

LRB-3750/2
JTK:cmh:jf

2

Friday 10-15 3p.m.

1999 BILL

PMNR

re-gen.



1 AN ACT ~~to amend~~ 11.06 (2), 11.61 (1) (a), 11.61 (1) (a), 11.61 (1) (b), 11.61 (1) (b)

2 ~~and 11.61 (1) (c); and to create~~ 11.05 (14), 11.60 (3s) ~~and (3t)~~ and 11.61 (1) (d)

3 ~~of the statutes~~; relating to: mass media activities in relation to election

4 campaigns and providing penalties.

Analysis by the Legislative Reference Bureau

Currently, individuals who accept contributions, organizations that make or accept contributions, or individuals who or organizations that incur obligations or make disbursements for the purpose of influencing an election for state or local office are generally required to register with the appropriate filing officer and to file financial reports with that officer, regardless of whether they act in conjunction with or independently of any candidate who is supported or opposed. Currently, when a person is alleged to have violated registration and reporting requirements, the state has the burden of proving that the violation occurred.

This bill provides that, whenever any person publishes, disseminates or broadcasts any communication that includes a reference to a candidate for an office to be filled at an election, during the 60-day period preceding that election or during the 30-day period preceding any primary for that election, and the communication is substantially directed toward the electorate for that election, it is presumed that the communication is made for the purpose of influencing the election or nomination for election of that candidate, unless the person making the communication establishes, by a preponderance of the evidence, that the communication was not made for that purpose.

If the person fails to rebut the presumption provided under this bill and fails to comply with registration and reporting requirements, the person is ~~also~~ subject to the applicable civil and criminal penalties provided under current law.

no ff
A person who violates the registration and reporting requirements may be subject to civil and criminal penalties, depending upon the type of violation. (no fl)

BILL

Currently, violators of the campaign finance law are subject to a forfeiture (civil penalty) of not more than \$500 for each violation, except that violators of contribution limitations are subject to a forfeiture of not more than treble the amount unlawfully contributed. In addition, currently, any person who is delinquent in filing a report is subject to a forfeiture of not more than \$50 or one percent of the annual salary of the office for which a candidate is being supported or opposed, whichever is greater, for each day of delinquency. Currently, any person who makes an unlawful contribution is subject to a forfeiture of treble the amount of the unlawful contribution.

Currently, whoever intentionally violates certain provisions of the campaign finance law, such as registration requirements, contribution limitations, the prohibition against making contributions in the name of another person, the prohibition against using contributions for most nonpolitical purposes and the prohibition against filing false reports and statements may be fined not more than \$1,000 or imprisoned for not more than six months, or both, if the violation does not exceed \$100 in amount or value, and may be fined not more than \$10,000 or imprisoned for not more than three years, or both, if the violation exceeds \$100 in amount or value.

This bill provides that if any candidate or other individual or committee makes a communication relating to candidates at an election without first registering and reporting to the extent required under the law, the offender must pay a forfeiture of \$500 for each day of violation. The bill also provides that if any of these individuals or committees accepts or transfers one or more contributions, makes one or more disbursements or incurs one or more obligations to make disbursements for the purpose of making such a communication in an amount that is more or less than the amount reported by that individual or committee:

1. By more than 5% but not more than 10%, the individual or committee must forfeit four times the amount of the difference.

2. By more than 10%, the individual or committee must forfeit six times the amount of the difference.

The bill also imposes a new penalty upon any person who, with intent to conceal or deceive, accepts or transfers a contribution, makes a disbursement or incurs an obligation to make a disbursement for the purpose of making a communication relating to candidates at an election without registering or reporting to the extent required under the law, consisting of a fine of not more than \$10,000 or imprisonment for not more than five years, or both (equivalent to a class E felony).

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

1 SECTION 1. 11.05 (14) of the statutes is created to read:

2 11.05 (14) PRESUMPTION CONCERNING CERTAIN COMMUNICATIONS. Whenever any
3 person publishes, disseminates or broadcasts, or causes to be published,

BILL

1 disseminated or broadcast, any communication that includes a reference to a clearly
2 identified candidate for an office to be filled at a general, spring or special election,
3 during the 60-day period preceding that election or during the 30-day period
4 preceding any primary for that election, and the communication is substantially
5 directed toward the electorate at that election, it is presumed that the
6 communication is made for the purpose of influencing the election or nomination for
7 election of that candidate, unless the person making the communication or causing
8 the communication to be made establishes, by a preponderance of the evidence, that
9 the communication was not made for that purpose.

10 **SECTION 2.** 11.06 (2) of the statutes is amended to read:

11 11.06 (2) DISCLOSURE OF CERTAIN INDIRECT DISBURSEMENTS. Notwithstanding
12 sub. (1), if a disbursement is made or obligation incurred by an individual other than
13 a candidate or by a committee or group which is not primarily organized for political
14 purposes, and the disbursement does not constitute a contribution to any candidate
15 or other individual, committee or group, the disbursement or obligation is required
16 to be reported only if the purpose is to expressly advocate the election or defeat of a
17 clearly identified candidate or the adoption or rejection of a referendum or if the
18 disbursement is made or the obligation is incurred for the purpose of making a
19 communication specified in s. 11.05 (14). The exemption provided by this subsection
20 shall in no case be construed to apply to a political party, legislative campaign,
21 personal campaign or support committee.

22 **SECTION 3.** 11.60 (3s) and (3t) of the statutes are created to read:

23 11.60 (3s) Notwithstanding sub. (1), if any candidate or other individual or
24 committee makes a communication specified in s. 11.05 (14) without first registering
25 under s. 11.05 (1), (2) or (2g) to the extent required under s. 11.05 (1), (2) and (2g),

BILL

1 or without reporting the information required under s. 11.20 (3) or (4) with respect
2 to that contribution, disbursement or obligation, to the extent required under s. 11.20
3 (3) and (4), the candidate or other individual or committee may be required to forfeit
4 not more than \$500 per day for each day of continued violation.

5 (3t) Notwithstanding sub. (1), if any candidate or other individual or
6 committee accepts or transfers one or more contributions, makes one or more
7 disbursements or incurs one or more obligations to make disbursements for the
8 purpose of making a communication specified in s. 11.05 (14) in an amount or value
9 that differs from the amount reported by that individual or committee under s. 11.20
10 (3) or (4):

11 (a) By more than 5% but not more than 10% cumulatively, the individual or
12 committee shall forfeit 4 times the amount or value of the difference.

13 (b) By more than 10% cumulatively, the individual or committee shall forfeit
14 6 times the amount or value of the difference.

15 **SECTION 4.** 11.61 (1) (a) of the statutes is amended to read:

16 11.61 (1) (a) ~~Whoever~~ Except as provided in par. (d), whoever intentionally
17 violates s. 11.05 (1), (2), (2g) or (2r), 11.07 (1) or (5), 11.10 (1), 11.12 (5), 11.23 (6) or
18 11.24 (1) may be fined not more than \$10,000 or imprisoned not more than 3 years
19 or both.

20 **SECTION 5.** 11.61 (1) (a) of the statutes, as affected by 1997 Wisconsin Act 283,
21 is amended to read:

22 11.61 (1) (a) ~~Whoever~~ Except as provided in par. (d), whoever intentionally
23 violates s. 11.05 (1), (2), (2g) or (2r), 11.07 (1) or (5), 11.10 (1), 11.12 (5), 11.23 (6) or
24 11.24 (1) may be fined not more than \$10,000 or imprisoned for not more than 4 years
25 and 6 months or both.

BILL

1 **SECTION 6.** 11.61 (1) (b) of the statutes is amended to read:

2 11.61 (1) (b) ~~Whoever~~ Except as provided in par. (d), whoever intentionally
3 violates s. 11.25, 11.26, 11.27 (1), 11.30 (1) or 11.38 where the intentional violation
4 does not involve a specific figure, or where the intentional violation concerns a figure
5 which exceeds \$100 in amount or value may be fined not more than \$10,000 or
6 imprisoned not more than 3 years or both.

7 **SECTION 7.** 11.61 (1) (b) of the statutes, as affected by 1997 Wisconsin Act 283,
8 is amended to read:

9 11.61 (1) (b) ~~Whoever~~ Except as provided in par. (d), whoever intentionally
10 violates s. 11.25, 11.26, 11.27 (1), 11.30 (1) or 11.38 where the intentional violation
11 does not involve a specific figure, or where the intentional violation concerns a figure
12 which exceeds \$100 in amount or value may be fined not more than \$10,000 or
13 imprisoned for not more than 4 years and 6 months or both.

14 **SECTION 8.** 11.61 (1) (c) of the statutes is amended to read:

15 11.61 (1) (c) ~~Whoever~~ Except as provided in par. (d), whoever intentionally
16 violates any provision of this chapter other than those provided in par. (a) and
17 whoever intentionally violates any provision under par. (b) where the intentional
18 violation concerns a specific figure which does not exceed \$100 in amount or value
19 may be fined not more than \$1,000 or imprisoned not more than 6 months or both.

20 **SECTION 9.** 11.61 (1) (d) of the statutes is created to read:

21 11.61 (1) (d) Whoever, with intent to conceal or deceive, accepts or transfers a
22 contribution, makes a disbursement or incurs an obligation to make a disbursement
23 for the purpose of making a communication specified in s. 11.05 (14) without first
24 registering under s. 11.05 (1), (2) or (2g), to the extent required under s. 11.05 (1), (2)
25 and (2g), or without reporting the information required under s. 11.20 (3) or (4) with

BILL

1 respect to that contribution, disbursement or obligation, to the extent required under
2 s. 11.20 (3) and (4), may be fined not more than \$10,000 or imprisoned for not more
3 than 5 years, or both

4 **SECTION 10. Nonstatutory provisions.**

5 (1) Notwithstanding section 990.01 (11) of the statutes, if a court finds that any
6 portion of this act is unconstitutional, then this act is void in its entirety.

7 **SECTION 11. Effective date.** ~~The act takes effect on the day after publication~~

8 ~~except as follows:~~

9 (1) ~~The amendment of section 11.61 (1) (a) (by SECTION 5) and (b) (by SECTION 7)~~
10 ~~of the statutes takes effect on December 31, 1999.~~

11 (END)

This act takes effect on July 1, 2000



State of Wisconsin
1999 - 2000 LEGISLATURE

LRB-3750/2 3

JTK&RJM:cmh:mrc

DNOTE

WANTED MON 10/12 - 8:30AM

1999 BILL

note only

revised

- 1 AN ACT to amend 11.06 (2); and to create 11.05 (14) of the statutes; relating to:
- 2 mass media activities in relation to election campaigns.

Analysis by the Legislative Reference Bureau

Currently, individuals who accept contributions, organizations that make or accept contributions, or individuals who or organizations that incur obligations or make disbursements for the purpose of influencing an election for state or local office are generally required to register with the appropriate filing officer and to file financial reports with that officer, regardless of whether they act in conjunction with or independently of any candidate who is supported or opposed. A person who violates the registration and reporting requirements may be subject to civil and criminal penalties, depending upon the type of violation. Currently, when a person is alleged to have violated registration and reporting requirements, the state has the burden of proving that the violation occurred.

This bill provides that, whenever any person publishes, disseminates or broadcasts any communication that includes a reference to a candidate for an office to be filled at an election, during the 60-day period preceding that election or during the 30-day period preceding any primary for that election, and the communication is substantially directed toward the electorate for that election, it is presumed that the communication is made for the purpose of influencing the election or nomination for election of that candidate, unless the person making the communication establishes, by a preponderance of the evidence, that the communication was not made for that purpose. If the person fails to rebut the presumption provided under

BILL

this bill and fails to comply with registration and reporting requirements, the person is subject to the applicable civil and criminal penalties provided under current law.

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

1 **SECTION 1.** 11.05 (14) of the statutes is created to read:

2 **11.05 (14) PRESUMPTION CONCERNING CERTAIN COMMUNICATIONS.** Whenever any
3 person publishes, disseminates or broadcasts, or causes to be published,
4 disseminated or broadcast, any communication that includes a reference to a clearly
5 identified candidate for an office to be filled at a general, spring or special election,
6 during the 60-day period preceding that election or during the 30-day period
7 preceding any primary for that election, and the communication is substantially
8 directed toward the electorate at that election, it is presumed that the
9 communication is made for the purpose of influencing the election or nomination for
10 election of that candidate, unless the person making the communication or causing
11 the communication to be made establishes, by a preponderance of the evidence, that
12 the communication was not made for that purpose.

13 **SECTION 2.** 11.06 (2) of the statutes is amended to read:

14 **11.06 (2) DISCLOSURE OF CERTAIN INDIRECT DISBURSEMENTS.** Notwithstanding
15 sub. (1), if a disbursement is made or obligation incurred by an individual other than
16 a candidate or by a committee or group which is not primarily organized for political
17 purposes, and the disbursement does not constitute a contribution to any candidate
18 or other individual, committee or group, the disbursement or obligation is required
19 to be reported only if the purpose is to expressly advocate the election or defeat of a
20 clearly identified candidate or the adoption or rejection of a referendum or if the
21 disbursement is made or the obligation is incurred for the purpose of making a

BILL

1 communication specified in s. 11.05 (14). The exemption provided by this subsection
2 shall in no case be construed to apply to a political party, legislative campaign,
3 personal campaign or support committee.

4 **SECTION 3. Effective date.**

5 (1) This act takes effect on July 1, 2000.

6 (END)

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

3750/3
LRB 8/17/1998
JTK:cmh:ch

June 7, 1999

DATC.

1. Under this bill, candidates for the office of governor and lieutenant governor are potentially bound by the same disbursement limitation, which applies to the primary and election campaigns combined. Under current law, these candidates may run separately in the primary election and a candidate for one office but not the other office, or the candidates of one party but not the other party, may be opposed in the primary election. You may wish to consider separate treatment of disbursement limitations for those offices in the primary election. See, for example, proposed SECTIONS 64 and 65 of SB-113.

~~2. Concerning proposed s. 11.05 (14), relating to bogus "issue" advertising, 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). This proposal 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. In this connection, see also *North Carolina Right to Life Inc. v. Bartlett*, 67 U.S.L.W. 4148 (U.S.C.A., 4th Cir., 1999), in which the court voided North Carolina's attempt to regulate issue advocacy as inconsistent with *Buckley*. I know that the McCain-Feingold language has been looked at by respected constitutional scholars who convincingly argue that it passes constitutional muster; however, current state law is specifically molded to fit within the confines of the *Buckley* decision, whereas this language casts aside that decision and takes the stance that another mold should be acceptable. There is also another issue with this language in that under the Fifth, Sixth and Fourteenth amendments, the state has the burden of proof in prosecutions. To the extent that this provision operates to shift that burden to the defendant under certain circumstances, it may be difficult to enforce.~~

~~3. Proposed s. 11.50 (9) (b) and (ba), which increase the public grants payable to certain candidates when independent disbursements are made against them or their~~

JTK

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

LRB-3750/3dn
JTK:cmh:km

October 18, 1999

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). This proposal 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. In this connection, see also *North Carolina Right to Life Inc. v. Bartlett*, 67 U.S.L.W. 4148 (U.S.C.A., 4th Cir., 1999), in which the court voided North Carolina's attempt to regulate issue advocacy as inconsistent with *Buckley*. I know that the McCain-Feingold language has been looked at by respected constitutional scholars who convincingly argue that it passes constitutional muster; however, current state law is specifically molded to fit within the confines of the *Buckley* decision, whereas this language casts aside that decision and takes the stance that another mold should be acceptable. There is also another issue with this language in that under the Fifth, Sixth and Fourteenth amendments, the state has the burden of proof in prosecutions. To the extent that this provision operates to shift that burden to the defendant under certain circumstances, it may be difficult to enforce.

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: 10/18/1999

To: Senator Chvala

Relating to LRB drafting number: LRB-3750

Topic

Issue advocacy

Subject(s)

Elections - campaign finance

1. **JACKET** the draft for introduction

Chuck Chvala

in the Senate or the Assembly _____ (check only one). Only the requester under whose name the drafting request is entered in the LRB 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