DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB–1100/3dn
JTK&RJM:cjs:jf

March 19, 2001

Representative Pocan:

1. Under proposed s. 11.51 (5) of the /2 draft, seed money contributions were limited to a maximum of $100. This draft clarifies this provision slightly and expressly states that this limitation applies to a candidate's contributions to his or her own campaign.

2. Under the /2 draft, seed money and qualifying contributions were separately limited. However, for clarification purposes, this draft, in proposed s. 11.51 (4), provides that a contributor who makes a qualifying contribution may also make a seed money contribution in the full amount permitted under the draft.

3. You are correct that the cost of living adjustment in the /2 draft applied only to disbursement levels. Under this draft, the adjustment is also applied to grant amounts.

4. This draft permits grants to be received by unopposed candidates. You requested that the Maine model be followed, which you said was based on the average amount of expenditures for the immediately preceding two uncontested elections. The Maine statute, in section 16–951 A. 3. and D., provides for a grant of $5 times the number of qualifying contributions received. This draft provides for grants for legislative candidates to be based upon total disbursements made by candidates in uncontested elections for the same office during the four–year period preceding the date of the election, but since there have been no uncontested elections for the office of governor, the draft uses the Maine model, which yields a grant of $12,500 for an election for that office (2,500 qualifying contributions times $5).

5. You requested that independent candidates not be permitted to receive a grant for a general or special election unless they receive at least 5% of the total vote cast at the primary election preceding that election. In order to avoid an equal protection issue, this draft, in proposed s. 11.51 (2) (b), applies this requirement to all candidates, not just independent candidates. Because there is not always a special primary preceding a special election, the requirement applies in special elections only if a special primary is held.

6. 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 that 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 ss. 11.01 (4m) and (11m) and 11.12 (6) (b), which require reporting by persons that make certain communications during certain periods containing a reference to a candidate for the office of governor, state senator, or representative to the assembly, appears to extend beyond the boundaries that the court permitted in 1976. As a result, its enforceability at the current time appears to rest upon a shift by the court in its stance on this issue. In this connection, see also *North Carolina Right to Life, Inc., v. Bartlett*, 168 F. 3d 705 (4th Cir. 1999), cert. denied, 120 S. Ct. 1156 (2000), in which the court voided North Carolina's attempt to regulate issue advocacy as inconsistent with *Buckley.*

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