

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

LRB-1518/1dn  
JTK&RJM:wlj&kmg:km

March 12, 2001

Representative Bock:

For this draft, we have included two appropriations for administration but have specified "\$-0-" for expenditure in fiscal years 2001-02 and 2002-03. When you know the dollar amounts that you need to include in the proposal, contact us and we will either redraft the proposal or draft an amendment, whichever is appropriate. In considering this issue, please be aware that the executive budget bill, if enacted after this bill, may eliminate any funding for these appropriations.

In addition, we would like to briefly note the following legal issues:

1. 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. 11.501 (10) and 11.513, which require reporting by persons that make certain communications during certain periods containing a reference to a candidate for the office of justice, 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*, 168F. 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*.
2. Proposed ss. 11.512 (2) and 11.513 (3), which increase the public financing benefit available to a candidate for the office of justice when independent expenditures 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 expenditures

or disbursements. Although relevant case law has developed regarding this issue in the federal courts of appeal, there is no consensus among these courts on this issue. Due to the unsettled nature of the law in this area, it is not possible to predict how a court would rule if proposed s. 11.512 (2) or 11.513 (3) were challenged.

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.

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

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