

D NOTE

2001 - 2002 LEGISLATURE

-1518/1
LRB-155175

JTK&RJM:wlj&kmg:km

WANTED MON 3/12 9AM

2001 BILL

LPS
Only change
is to D-NOTE

REGEN

1 AN ACT *to repeal* 11.50 (3) (a) 2.; *to amend* 5.05 (1) (e), 8.35 (4) (b), 11.16 (2), 11.26
2 (1) (a), 11.26 (2) (a), 11.26 (9) (a), 11.26 (9) (b), 11.26 (13), 11.27 (1), 11.31 (1) (d),
3 11.50 (1) (a) 1., 11.50 (3) (b) and 12.05; and *to create* 11.001 (2m), 11.26 (1) (am),
4 11.26 (2) (am), 11.26 (9) (ba), 11.501 to 11.518, 20.510 (1) (r), 20.585 (1) (q),
5 20.585 (1) (r), 20.855 (4) (bb), 25.17 (1) (cm) and 25.421 of the statutes; **relating**
6 **to:** campaign financing with respect to the office of justice of the supreme court,
7 making 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 removes candidates for the office of justice from eligibility for grants under 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 finance elections for the office of justice, the bill instead creates a democracy trust fund, under which eligible candidates for this office may receive public financing benefits derived from general purpose revenues without regard to designations made by individuals filing state income tax returns.

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 only an

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election campaign. No funding is provided for primary campaigns. 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 and personal campaign 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 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.

Under this bill, a candidate for the office of justice of the supreme court may qualify for a public financing benefit from the democracy trust fund to finance a campaign in a primary or election by receiving qualifying contributions from at least 500 residents of this state in amounts of not less than \$10 nor more than \$100. A candidate who accepts a public financing benefit may accept "seed money" contributions in amounts of \$100 or less and may contribute personal funds in an aggregate amount not exceeding \$5,000 during specified periods. With limited exceptions, a candidate who accepts a public financing benefit may not accept any contributions other than qualifying and seed money contributions, including contributions from personal funds. Disbursements (expenditures) made by a candidate from qualifying and seed money contributions may not exceed \$25,000. If a candidate who accepts a public financing benefit receives qualifying and seed money contributions in a total amount greater than \$25,000, the candidate must remit the excess contributions to the elections board for deposit in the democracy trust fund. Initial public financing benefits for eligible candidates are \$100,000 in the spring primary and \$300,000 in the spring election. The benefits are subject to a biennial cost of living adjustment, beginning in 2004, in accordance with the rate of increase or decrease in the "consumer price index," as determined by the U.S. department of labor, with the result in turn adjusted by the rate of increase or decrease in the voting age population of this state, as determined by the federal election commission. The bill provides that if a candidate for the office of justice has an unencumbered balance in his or her campaign depository account on the day the bill becomes law, that candidate may make disbursements from that balance for his or her campaign, but an amount equal to the balance is deducted from the candidate's public financing benefit.

In addition, if a candidate's opponent declines to accept a public financing benefit and accepts contributions or makes disbursements in a total amount that exceeds the amount of the initial public financing benefit for a candidate who accepts a public financing benefit, the candidate who accepts a public financing benefit receives additional funding equivalent to the excess contributions accepted or disbursements made by his or her opponent. The funding is determined on the basis of information provided by candidates who decline to accept public financing

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benefits. Under the bill, these candidates must file reports with the board disclosing their total contributions accepted and disbursements made. A candidate who receives a public financing benefit also receives additional funding equivalent to independent expenditures for communications exceeding \$2,000 cumulatively for certain communications 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 of justice. The bill defines "independent expenditure" to include only those expenditures made independently of a candidate for the office of justice for communications that contain a reference to such a candidate and that are made during the period beginning 30 days before the spring primary and ending on the date of the spring election (or during the last 60 days before the spring election if no primary is held). The bill requires persons who make communications financed with independent expenditures to file reports with the board disclosing the amounts expended for those expenditures. Under the bill, additional funding may not exceed three times the amount of the initial public financing benefit.

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 any contribution or contributions to a candidate and \$8,625 in the case of a committee making any contribution or contributions to a candidate. This bill replaces these limitations with a contribution limitation of \$5,000 applicable to an individual or committee making any contribution or contributions to a candidate for the office of justice. Because, under the bill, a candidate who accepts a public financing benefit is subject to more restrictive provisions in most cases, the limitations generally apply only to contributions made to a candidate who declines to accept a public financing benefit.

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.** 5.05 (1) (e) of the statutes is amended to read:
- 2 5.05 (1) (e) Delegate to its executive director the authority to issue a subpoena
- 3 under par. (b), apply for a search warrant under par. (b), commence an action under
- 4 par. (d), intervene in an action or proceeding under sub. (9), issue an order under s.
- 5 5.06, exempt a polling place from accessibility requirements under s. 5.25 (4) (a),
- 6 exempt a municipality from the requirement to use voting machines or an electronic

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1 voting system under s. 5.40 (5m), approve an electronic data recording system for
2 maintaining poll lists under s. 6.79, ~~or~~ authorize nonappointment of an individual
3 who is nominated to serve as an election official under s. 7.30 (4) (e), or make a
4 determination concerning the nature of an independent expenditure under s. 11.513
5 (4), subject to such limitations as the board deems appropriate.

6 **SECTION 2.** 8.35 (4) (b) of the statutes is amended to read:

7 8.35 (4) (b) Notwithstanding par. (a), any unspent and unencumbered moneys
8 received by a candidate from the Wisconsin election campaign fund shall be
9 immediately transferred to any candidate who is appointed to replace such
10 candidate, upon filing of a proper application therefor under s. 11.50 (2). If there is
11 no candidate appointed or if no proper application is filed within 7 days of the date
12 on which the vacancy occurs, such moneys shall revert to the state as provided in s.
13 11.50 (8). Notwithstanding par. (a), any unspent and unencumbered moneys
14 received by a candidate from the democracy trust fund shall be immediately
15 transferred to any candidate who is appointed to replace such candidate. If there is
16 no candidate appointed, the moneys shall revert to the state.

17 **SECTION 3.** 11.001 (2m) of the statutes is created to read:

18 11.001 (2m) The declarations of policy and intent in this section have
19 particular application in elections for the office of justice. The legislature finds that
20 an independent, elected judiciary is an indispensable part of state government, and
21 it is essential that the public have confidence in the absolute integrity of the
22 nonpartisan judiciary in general and the supreme court in particular, which has
23 supervisory authority over the judiciary. To the extent consistent with the state and
24 federal constitutions, judicial elections should be free from both partisan and
25 financial influence, including even the suggestion that a judicial candidate is

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1 associated with a committee, group, or cause other than the candidate's own personal
2 campaign committee. Ethical constraints may limit the ability of judicial candidates
3 to engage in fund raising, and candidates who are incumbent judges may have
4 limited ability to discuss cases in which they have been involved. The legislature
5 finds, therefore, that there is a compelling justification for public financing of
6 campaigns for the office of justice, to help remove even the appearance of impropriety
7 from the electoral process. The legislature further finds a compelling justification
8 for minimal disclosure of all communications made near the time of an election that
9 include the name or likeness of a candidate for the office of justice to allow increased
10 funding for such candidates based upon independent expenditures. This minimal
11 disclosure burden is outweighed by the need to establish an effective funding
12 mechanism for candidates for the office of justice to effectively respond to
13 independent expenditures that may impact an election for that office.

14 **SECTION 4.** 11.16 (2) of the statutes is amended to read:

15 11.16 (2) **LIMITATION ON CASH CONTRIBUTIONS.** Every Except as provided in s.
16 11.506 (6), every contribution of money exceeding \$50 shall be made by negotiable
17 instrument or evidenced by an itemized credit card receipt bearing on the face the
18 name of the remitter. No treasurer may accept a contribution made in violation of
19 this subsection. The treasurer shall promptly return the contribution, or donate it
20 to the common school fund or to a charitable organization in the event that the donor
21 cannot be identified.

22 **SECTION 5.** 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 6.** 11.26 (1) (am) of the statutes is created to read:

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1 11.26 (1) (am) Candidates for justice, \$5,000.

2 **SECTION 7.** 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 8.** 11.26 (2) (am) of the statutes is created to read:

7 11.26 (2) (am) Candidates for justice, \$5,000.

8 **SECTION 9.** 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 10.** 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 11.** 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 12.** 11.26 (13) of the statutes is amended to read:

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

4 **SECTION 13.** 11.27 (1) of the statutes is amended to read:

5 11.27 (1) No person may prepare or submit a false report or statement to a filing
6 officer under this chapter. This subsection does not apply to any information
7 reported by a person making an independent expenditure, as defined in s. 11.501
8 (10), under s. 11.513 (2) (b).

9 **SECTION 14.** 11.31 (1) (d) of the statutes is amended to read:

10 11.31 (1) (d) Candidates for secretary of state, state treasurer, justice or state
11 superintendent, \$215,625.

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

13 11.50 (1) (a) 1. With respect to a spring or general election, any individual who
14 is certified under s. 7.08 (2) (a) as a candidate in the spring election for justice or state
15 superintendent, or an individual who receives at least 6% of the vote cast for all
16 candidates on all ballots for any state office, except district attorney, for which the
17 individual is a candidate at the September primary and who is certified under s. 7.08
18 (2) (a) as a candidate for that office in the general election, or an individual who has
19 been lawfully appointed and certified to replace either such individual on the ballot
20 at the spring or general election; and who has qualified for a grant under sub. (2).

21 **SECTION 16.** 11.50 (3) (a) 2. of the statutes is repealed.

22 **SECTION 17.** 11.50 (3) (b) of the statutes is amended to read:

23 11.50 (3) (b) If a vacancy occurs in the office of state superintendent or justice
24 after August 15 in any year, and an election is scheduled to fill the vacancy at the
25 spring election in the following year, the state treasurer shall transfer an amount not

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1 exceeding 8% of the moneys transferred to the fund on the preceding August 15 to
2 the superintendency account for the office in which the vacancy occurs, such moneys
3 to be drawn from any account within the accounts created under sub. (4) in the
4 amount or amounts specified by the board.

5 **SECTION 18.** 11.501 to 11.518 of the statutes are created to read:

6 **11.501 Definitions.** In ss. 11.501 to 11.518:

7 (1) "Business day" means every day except Saturday, Sunday, and a holiday
8 designated in s. 230.35 (4) (a).

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

10 (2m) "Communication" means a message transmitted by means of a printed
11 advertisement, billboard, handbill, sample ballot, radio or television advertisement,
12 telephone call, or any medium that may be utilized for the purpose of disseminating
13 or broadcasting a message, but not including a poll conducted solely for the purpose
14 of identifying or collecting data concerning the attitudes or preferences of electors.

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

18 (4) "Eligible candidate" means a candidate for the office of justice who:

19 (a) Has an opponent who has qualified to have his or her name certified for
20 placement on the ballot at the spring primary or election.

21 (b) Qualifies for a public financing benefit by collecting the required number
22 of qualifying contributions, making all required reports and disclosures, and being
23 certified by the board as being in compliance with ss. 11.502 to 11.518.

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

6 (10) “Independent expenditure” means an expenditure made for the purpose
7 of making a communication that is made during the 30-day period preceding any
8 spring primary for the office of justice and the date of the spring election, or if no
9 primary is held, during the 60-day period preceding the spring election; that
10 contains a reference to a clearly identified candidate for the office of justice at that
11 election; that is made without cooperation or consultation with such a candidate, or
12 any authorized committee or agent of such a candidate; and that is not made in
13 concert with, or at the request or suggestion of, such a candidate, or any authorized
14 committee or agent of such a candidate.

15 (12) “Nonparticipating candidate” means a candidate for the office of justice
16 who does not apply for a public financing benefit or who otherwise is ineligible or fails
17 to qualify for a public financing benefit under ss. 11.502 to 11.518.

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

20 (14) “Primary election campaign period” means the period beginning on the
21 day after the last day prescribed by law for filing nomination papers for the office of
22 justice and ending on the day of the spring primary election for that office or the day
23 on which the primary election would be held, if required.

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

4 (16) “Qualifying contribution” means a contribution made to a candidate by a
5 resident of this state during the public financing qualifying period.

6 (17) “Seed money contribution” means a contribution in an amount of not more
7 than \$100 made to a candidate during the exploratory period or the public financing
8 qualifying period, or a contribution made to a candidate consisting of personal funds
9 of that candidate in an amount not more than the amount authorized under s. 11.507
10 during the exploratory period or the public financing qualifying period. “Seed money
11 contribution” does not include a contribution for a purpose authorized under s.
12 11.506 (1m).

13 **11.502 Qualification and certification at primary election.** (1) Before
14 a candidate for the office of justice in the primary election may be certified as an
15 eligible candidate to receive a public financing benefit for the primary election
16 campaign period, or for the election campaign period if no spring primary election for
17 the office of justice is held, the candidate shall apply to the board for a public
18 financing benefit and file a sworn statement that the candidate has complied and will
19 comply with all requirements of ss. 11.502 to 11.518 throughout the applicable
20 campaign. If the candidate desires to receive public financing benefits by electronic
21 transfer, the candidate shall include in his or her application sufficient information
22 and authorization for the state treasurer to transfer payments to his or her campaign
23 depository account. A candidate shall file the application and statement, together
24 with the list of qualifying contributions required under s. 11.510 (1), no later than

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1 5 p.m. on the 10th day after the last day prescribed by law for filing nomination
2 papers for the office of justice.

3 (2) A candidate for the office of justice shall be certified by the board as an
4 eligible candidate for receipt of a public financing benefit if the candidate complies
5 with sub. (1) and receives qualifying contributions from at least 500 individuals in
6 amounts equal to not less than \$10 nor more than \$100 before the close of the public
7 financing qualifying period.

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

11 (4) Within 3 business days after the deadline provided under sub. (1), any
12 person may challenge the validity of any contribution listed by a candidate by filing
13 a written challenge with the board setting forth any reason why the contribution
14 should not be accepted as a qualifying contribution. Within 5 business days after the
15 deadline provided under sub. (1), the candidate who listed any contribution that is
16 the subject of a challenge may file with the board an additional contribution within
17 the total limitation prescribed under s. 11.509 for consideration as a qualifying
18 contribution. If a contribution is challenged under this subsection, the board shall
19 decide the validity of the challenge no later than the end of the next business day
20 after the day that the challenge is filed, unless the board determines that the
21 candidate whose contribution is challenged has sufficient qualifying contributions
22 to be certified as an eligible candidate under this section without considering the
23 challenge.

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

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1 **11.503 Qualification and certification at spring election.** (1) If a spring
2 primary for the office of justice is held, and a candidate is nominated at the primary
3 to have his or her name appear as a candidate for the office of justice in the spring
4 election, that candidate may apply to the board to receive a public financing benefit
5 for the spring election. Before a candidate may be certified as an eligible candidate
6 to receive a public financing benefit for the spring election, the candidate shall file
7 with the board a sworn statement that the candidate has fulfilled all the
8 requirements of ss. 11.502 to 11.518 during the primary election campaign period
9 and will comply with such requirements during the election campaign period. A
10 candidate shall file the application and statement no later than the day after the date
11 of the spring primary election or the day on which the primary election would be held
12 if a primary were required.

13 (2) The board shall certify a candidate as an eligible candidate for receipt of
14 public financing for a spring election if the candidate qualifies under sub. (1) to
15 receive the benefit and the candidate complies with sub. (1).

16 **11.506 Requirements imposed upon candidates.** (1) Except provided in
17 sub. (1m), an eligible candidate may not accept private contributions other than seed
18 money contributions and qualifying contributions that the candidate accepts during
19 the exploratory period and the public financing qualifying period.

20 (1m) An eligible candidate may accept private contributions at any time for the
21 purpose of payment of legal expenses in connection with a civil investigation or
22 prosecution for an alleged violation of this chapter by the candidate or his or her
23 personal campaign committee, payment of civil penalties incurred under this
24 chapter by the candidate or his or her personal campaign committee, payment of
25 recount expenses incurred by the candidate or his or her personal campaign

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1 committee, or payment of inaugural expenses of the candidate, subject to applicable
2 contribution limitations under s. 11.26. This subsection does not preclude payment
3 of such expenses in any other lawful manner.

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

12 (3) In addition to complying with ss. 11.06 (5) and 11.12 (3), a candidate who
13 receives a public financing benefit shall maintain records of all seed money and
14 qualifying contributions received. These records shall contain the full name of the
15 contributor and the contributor's full home address. In addition, if a contributor's
16 aggregate contributions to any candidate exceed \$50 for any campaign, the
17 candidate shall also maintain a record of the contributor's principal occupation and
18 the name and business address of the contributor's place of employment.

19 (4) Failure to record any information pertaining to a contribution under sub.
20 (3) or to provide the board with that information upon request disqualifies the
21 contribution from being counted as a qualifying contribution under s. 11.502 (2).

22 (5) No eligible candidate and no person acting on an eligible candidate's behalf
23 may deposit in the candidate's campaign depository account any contribution unless
24 the information pertaining to that contribution required under sub. (3) has first been
25 recorded by the candidate.

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

5 **11.507 Personal funds of candidates.** (1) The personal funds of a candidate
6 contributed as seed money contributions may not exceed an aggregate amount of
7 \$5,000.

8 (2) No eligible candidate may make any disbursement derived from personal
9 funds after the close of the public financing qualifying period, except for a purpose
10 authorized under s. 11.506 (1m).

11 **11.508 Seed money contributions.** An eligible candidate may accept seed
12 money contributions from any individual or committee prior to the end of the public
13 financing qualifying period. The total seed money contributions accepted by a
14 candidate from one contributor, except personal funds authorized under s. 11.507 (1),
15 may not exceed \$100.

16 **11.509 Disbursements from seed money and qualifying contributions;
17 excess contributions.** An eligible candidate may make disbursements not
18 exceeding a total of \$25,000 from seed money and qualifying contributions received
19 by the candidate at any time after the beginning of the exploratory period. An
20 eligible candidate shall remit to the board all seed money and qualifying
21 contributions received by the candidate exceeding a total of \$25,000 within 48 hours
22 after the end of the exploratory period. The board shall deposit all contributions
23 received under this section in the democracy trust fund. This section does not apply
24 to disbursements for a purpose specified in s. 11.506 (1m).

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1 **11.510 Certification by candidate.** (1) To apply for a public financing
2 benefit, a candidate shall, no later than the time specified in s. 11.502 (1), submit a
3 list identifying the requisite number of qualifying contributions under s. 11.502 (2)
4 that have been received by the candidate, and shall certify to the board that the
5 candidate has made all disclosures required as of the time of application. The
6 candidate's request for certification shall be signed by the candidate and the
7 candidate's campaign treasurer.

8 (2) The board shall process applications for public financing benefits in the
9 order received.

10 (3) The board shall determine a candidate's eligibility to receive a public
11 financing benefit for a spring primary no later than 3 business days after the time
12 that the candidate files the list of qualifying contributions and the certification
13 required under sub. (1) or, if a challenge is filed under s. 11.502 (4), no later than 6
14 business days after the deadline specified in s. 11.502 (1).

15 (4) The board shall determine a candidate's eligibility to receive a public
16 financing benefit for a spring election no later than 2 business days after the date of
17 the spring primary, or if no spring primary is held, no later than the time prescribed
18 under sub. (3).

19 (5) If the board determines that a candidate is eligible to receive a public
20 financing benefit under sub. (3) or (4), the board shall immediately issue a check for
21 or transfer to the candidate's campaign depository account an amount equal to the
22 initial public financing benefit for which the candidate qualifies and shall notify all
23 other candidates for the office of justice of its determination.

24 (6) If a candidate who receives a public financing benefit intentionally violates
25 the requirements of ss. 11.502 to 11.518, the board shall require the candidate to

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1 repay all public funds received by the candidate to the board. If a candidate who
2 receives a public financing benefit otherwise violates the requirements of ss. 11.502
3 to 11.518, the board shall require the candidate to repay a portion of the public funds
4 received by the candidate to the board. The amount of any such repayment shall be
5 commensurate with the severity of the violation. The board shall deposit all
6 repayments received under this subsection in the democracy trust fund.

7 **11.511 Public financing benefits.** (1) The board shall provide to each
8 eligible candidate who qualifies to receive a public financing benefit for the primary
9 or election campaign period separate checks or transfers equal to the public
10 financing benefits payable to the candidate for the primary or election campaign
11 periods in the amounts specified in this section, subject to any required adjustment
12 under s. 11.512 (2) or 11.513 (3). An eligible candidate may use a public financing
13 benefit to finance any lawful disbursements during the primary and election
14 campaign periods to further the election of the candidate in that primary or election.
15 An eligible candidate may not use a public financing benefit to repay any loan or use
16 a public financing benefit in violation of ss. 11.502 to 11.518 or any other applicable
17 law.

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

20 (3) The initial public financing benefit for an election campaign period is
21 \$300,000.

22 (4) If there is no spring primary election for the office of justice, no eligible
23 candidate may receive a public financing benefit for the primary election campaign
24 period.

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

6 (6) (a) In this subsection:

7 1. “Consumer price index” means the average of the consumer price index over
8 each 12-month period, all items, U.S. city average, as determined by the bureau of
9 labor statistics of the U.S. department of labor.

10 2. “Voting age population of this state” means the voting age population of this
11 state, as determined by the federal election commission in its most recent
12 determination prior to the date of any calculation under this subsection.

13 (b) The dollar amounts of the public financing benefits provided for in subs. (2)
14 and (3) shall be subject to a biennial adjustment to be determined by rule of the board
15 in accordance with this subsection. To determine the adjustment, the board shall
16 calculate the percentage difference between the voting age population of this state
17 on December 31 of each odd-numbered year and the voting age population of this
18 state on December 31, 2003. The board shall then calculate the percentage difference
19 between the consumer price index for the 12-month period ending on December 31
20 of each odd-numbered year and the consumer price index for calendar year 2003.
21 The board shall then multiply the public financing benefits by the percentage
22 difference in the voting age populations. The board shall then multiply that product
23 by the percentage difference in the consumer price indexes. For each biennium
24 beginning on July 1 of an even-numbered year, the board shall adjust the public
25 financing benefits provided for in subs. (2) and (3) by rounding that result to the

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1 nearest multiple of \$25 and substituting that result for the existing amounts if
2 different from the adjusted amounts.

3 **11.512 Financial activity by nonparticipating candidates.** (1) In
4 addition to other reports required by law, a nonparticipating candidate for the office
5 of justice at a primary or election shall file a report with the board no later than 7
6 days after receiving notice from the board under s. 11.510 (5). The report shall
7 contain a statement of the total contributions received and disbursements made by
8 the candidate since that date of the candidate's most recent report and cumulatively
9 for the campaign as of the date of the report. In addition, a nonparticipating
10 candidate who makes disbursements that equal or exceed 90% of the public financing
11 benefit for the office of justice for the primary election campaign period or for the
12 election campaign period shall, within 7 days of making disbursements that equal
13 or exceed that amount for that period, file a report with the board containing a
14 statement of the total contributions received and disbursements made by the
15 candidate. A nonparticipating candidate shall file additional reports after the
16 candidate receives each additional \$1,000 of contributions, or the candidate makes
17 each additional \$1,000 of disbursements. Such reports shall be made within 24 hours
18 after each instance in which such contributions are received or such disbursements
19 are made, except that if a nonparticipating candidate receives notification under s.
20 11.510 (5) that an opposing candidate has qualified to receive a public financing
21 benefit for the primary election period, the obligation to file reports under this
22 subsection terminates on the day of the primary election. If the nonparticipating
23 candidate receives notification under s. 11.510 (5) that an opposing candidate has
24 qualified to receive a public financing benefit for the spring election period, the
25 nonparticipating candidate shall resume filing reports under this subsection no later

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1 than 7 days after receiving that notice. The board shall transmit copies of all reports
2 received under this subsection to all candidates for the office of justice at the same
3 election.

4 (2) Upon receipt of any report indicating that a nonparticipating candidate has
5 received total contributions or made total disbursements in excess of the public
6 financing benefit for the office of justice applicable to the primary, if prior to the date
7 that the spring primary for the office of justice is held or the date that the primary
8 would be held if a primary were required, or applicable to the election, if on or after
9 that date, the board shall promptly issue a check or transfer to each eligible opposing
10 candidate who qualifies to receive a public financing benefit an additional public
11 financing benefit. The amount of the additional public financing benefit shall equal
12 the amount by which the total contributions received or the total disbursements
13 made by the nonparticipating candidate, whichever is greater, exceed the amount of
14 the initial public financing benefit for the office of justice applicable under this
15 subsection to the period during which the excess contributions are received or excess
16 disbursements are made, but not to exceed, when combined with any amount
17 received under s. 11.513 (3), 3 times the amount of the initial public financing benefit
18 for that period.

19 **11.513 Independent expenditures.** (1) (a) If any person makes one or more
20 communications to be financed with independent expenditures exceeding \$2,000 in
21 the aggregate, that person shall file a report with the board. The report shall be made
22 whenever the person makes one or more communications financed or to be financed
23 with independent expenditures exceeding \$2,000 in the aggregate and whenever the
24 person makes one or more additional communications financed or to be financed with
25 independent expenditures exceeding \$2,000 in the aggregate that are not identified

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1 in a previous report under this subsection. Reports required under this subsection
2 shall be filed within 7 days after the date that communications financed with
3 independent expenditures exceeding \$2,000 in the aggregate that are not identified
4 in a previous report are made, or if communications are made within 15 days of the
5 date of a spring primary or election, within 24 hours after the date that
6 communications financed with independent expenditures exceeding \$2,000 in the
7 aggregate that are not identified in a previous report are made.

8 (b) If a person makes or incurs an obligation to make a single independent
9 expenditure for the purpose of financing communications that are to be made on
10 more than one day, the person may report the entire expenditure under par. (a) for
11 the day on which the person makes the first communication financed by the
12 expenditure, or the person may report for each day on which the person makes one
13 or more communications financed by the expenditure the proportionate amount of
14 the expenditure attributable to the cost of the communication or communications
15 made on that day.

16 (2) Each report filed under sub. (1) shall contain the following information:

17 (a) The name of each candidate who is identified in each communication
18 financed by an independent expenditure.

19 (b) A statement as to whether the communication is intended to support or
20 oppose any candidate who is identified under par. (a) and if so, the name of that
21 candidate.

22 (c) The total amount or value of the independent expenditure and the
23 cumulative aggregate independent expenditures made by the person with respect to
24 that election.

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1 (3) When the sum of the aggregate independent expenditures reported made
2 against an eligible candidate, and the independent expenditures made for that
3 candidate's opponent, as reported under sub. (1), exceed 20% of the public financing
4 benefit for the office of justice in the primary or election for which the expenditures
5 are made, the board shall issue a check or transfer to that candidate an additional
6 public financing benefit. The amount of the additional public financing benefit shall
7 equal the total such independent expenditures made, but not to exceed, when
8 combined with any amount received under s. 11.512 (2), 3 times the amount of the
9 initial public financing benefit for that primary or election. The board shall issue the
10 check or make the transfer required under this subsection no later than 24 hours
11 after the additional public financing benefit becomes due.

12 (4) If a person who makes an independent expenditure does not indicate
13 whether an independent expenditure is made against an eligible candidate or for an
14 eligible candidate's opponent, or if the report reasonably appears to be incorrect, the
15 board may obtain a copy of the communication and, after examination, determine
16 whether the expenditure was made against an eligible candidate or for an eligible
17 candidate's opponent for purposes of sub. (3). Any determination made by the board
18 under this subsection applies solely for the purpose of administration of sub. (3).

19 **11.515 Democracy trust fund disbursements.** (1) The democracy trust
20 fund shall be administered by the state treasurer.

21 (2) No eligible candidate or agent of an eligible candidate may make a
22 disbursement in the form of cash, except in an amount not exceeding \$100 for the
23 purpose of making subsequent cash disbursements in amounts not exceeding \$25.
24 An eligible candidate shall maintain records of all cash disbursements and shall
25 report such disbursements to the board in accordance with ss. 11.06 (1) and 11.506.

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1 **11.516 Administration.** Except as otherwise specifically provided in ss.
2 11.501 to 11.518, the board shall administer and enforce ss. 11.501 to 11.518.

3 **11.517 Penalties; enforcement.** (1) Except as authorized in s. 11.506 (1m),
4 if an eligible candidate makes disbursements that exceed the total amount of the
5 public financing benefit allocated to the candidate for any campaign and the total
6 qualifying and seed money contributions lawfully accepted by the candidate, the
7 candidate may be required to forfeit not more than 10 times the amount by which the
8 disbursements exceed the allocation.

9 (2) Any eligible candidate who accepts contributions in excess of any limitation
10 imposed under ss. 11.502 to 11.518 may be required to forfeit not more than 10 times
11 the amount by which the contributions exceed the applicable limitation.

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

20 (4) If the board has probable cause to believe that a candidate has made excess
21 disbursements or has accepted excess contributions, and the board is unable to
22 correct the matter by informal methods within the time prescribed in sub. (3), the
23 board shall make a public finding of probable cause in the matter. After making a
24 public finding, the board shall bring an action in the circuit court for Dane County
25 to impose a forfeiture under sub. (1) or (2).

BILL

1 (5) If any elector of this state believes that a candidate has violated ss. 11.502
2 to 11.518, the elector may file a complaint with the board requesting it to take
3 remedial action. If the board refuses to take remedial action or, within 30 days after
4 the filing of such a complaint, fails to take remedial action, the elector may commence
5 a civil action in the appropriate circuit court under sub. (4) requesting the court to
6 impose a forfeiture under sub. (1) or (2).

7 (6) The board and courts shall expedite all proceedings under ss. 11.502 to
8 11.518 so that all complaints brought prior to an election are resolved, to the extent
9 possible, before the election is held.

10 (7) If a complaint brought under ss. 11.502 to 11.518 is resolved against the
11 complainant and the court finds that the complaint has been brought in bad faith and
12 without a reasonable basis, the board or court may assess costs, including reasonable
13 attorney fees, against the complainant.

14 **11.518 Prohibited acts.** (1) If a candidate or agent of a candidate knowingly
15 accepts more contributions than the candidate is entitled to receive, or makes
16 disbursements exceeding the total amount of the public financing benefit received
17 by the candidate, and the total amount of the qualifying and seed money
18 contributions lawfully received by the candidate, except as authorized under s.
19 11.506 (1m), the candidate or agent may be fined not more than \$25,000 or
20 imprisoned for not more than 5 years or both.

21 (2) If a candidate who receives a public financing benefit, or an agent of such
22 a candidate, knowingly makes a disbursement by means other than through use of
23 the candidate's campaign depository account, the candidate or agent may be fined
24 not more than \$25,000 or imprisoned for not more than 5 years or both.

BILL

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

6 **SECTION 19.** 12.05 of the statutes is amended to read:

7 **12.05 False representations affecting elections.** No person may
8 knowingly make or publish, or cause to be made or published, a false representation
9 pertaining to a candidate or referendum ~~which~~ that is intended or tends to affect
10 voting at an election. This section does not apply to any information reported by a
11 person making an independent expenditure, as defined in s. 11.501 (10), under s.
12 11.513 (2) (b).

13 **SECTION 20.** 20.005 (3) (schedule) of the statutes: at the appropriate place,
14 insert the following amounts for the purposes indicated:

			2001-02	2002-03
15				
16	20.510 Elections board			
17	(1) ADMINISTRATION OF ELECTION AND CAMPAIGN LAWS			
18	(r) Democracy trust fund adminis-			
19	tration	SEG A	-0-	-0-

20 **20.585 Treasurer, state**

21	(1) CUSTODIAN OF STATE FUNDS			
22	(r) Democracy trust fund adminis-			
23	tration	SEG A	-0-	-0-

24 **SECTION 21.** 20.510 (1) (r) of the statutes is created to read:

BILL

1 20.510 (1) (r) *Democracy trust fund administration.* From the democracy trust
2 fund, the amounts in the schedule for the administration of ss. 11.501 to 11.518.

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

4 20.585 (1) (q) *Democracy trust fund.* As a continuing appropriation, from the
5 democracy trust fund, the moneys determined under ss. 11.501 to 11.518 to provide
6 for payments to eligible candidates.

7 **SECTION 23.** 20.585 (1) (r) of the statutes is created to read:

8 20.585 (1) (r) *Democracy trust fund administration.* From the democracy trust
9 fund, the amounts in the schedule for the administration of ss. 11.501 to 11.518.

10 **SECTION 24.** 20.855 (4) (bb) of the statutes is created to read:

11 20.855 (4) (bb) *Democracy trust fund transfer.* A sum sufficient equal to the
12 amounts appropriated under ss. 20.510 (1) (r) and 20.585 (1) (r) and the amounts
13 required to provide public financing benefits that candidates qualify to receive from
14 the democracy trust fund, to be transferred from the general fund to the democracy
15 trust fund no later than the time required to make payments of grants under ss.
16 11.510 (5), 11.512 (2), and 11.513 (3).

17 **SECTION 25.** 25.17 (1) (cm) of the statutes is created to read:

18 25.17 (1) (cm) Democracy trust fund (s. 25.421);

19 **SECTION 26.** 25.421 of the statutes is created to read:

20 **25.421 Democracy trust fund.** All moneys appropriated under s. 20.855 (4)
21 (bb) and all moneys deposited in the state treasury under ss. 11.509 and 11.510 (6)
22 constitute the democracy trust fund, to be expended for the purposes of ss. 11.501 to
23 11.518.

24 **SECTION 27. Nonstatutory provisions.**

25 (1) **NONSEVERABILITY.**

BILL

1 (a) Notwithstanding section 990.001 (11) of the statutes, if a court finds that
2 any part of section 11.513 of the statutes, as created by this act, is unconstitutional,
3 that entire section is void.

4 (b) Notwithstanding section 990.001 (11) of the statutes, if a court finds that
5 any part of section 11.512 of the statutes, as created by this act, is unconstitutional,
6 this entire act is void.

7 (2) USE OF PRIOR BALANCES BY CANDIDATES. Notwithstanding sections 11.506 (1),
8 11.509, 11.511, 11.512 (2) , 11.513 (3), and 11.517 of the statutes, as created by this
9 act, an eligible candidate for the office of justice who has an unencumbered balance
10 in his or her campaign depository account on the effective date of this subsection that
11 was lawfully received in accordance with the law in effect prior to the effective date
12 of this subsection may make disbursements from that balance, but the total amount
13 of the public financing benefit payable to that candidate under sections 11.511,
14 11.512 (2), and 11.513 (3) of the statutes, as created by this act, is decreased by the
15 amount of that balance.

SECTION 28. Effective date.

16 (1) This act takes effect on July 1, 2001, or the day after publication, whichever
17 is later.
18

19 (END)

-1518/dn

Representative Back

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. 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 (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. ~~4.~~ 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.

Jeffery T. Kuesel
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DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

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

March 12, 2001

Representative Bock:

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Barman, Mike

From: Barman, Mike
Sent: Monday, March 12, 2001 3:50 PM
To: Kostelic, Jeff
Subject: LRB 01-1518/1



01-1518/1



01-1518/1dn

Mike Barman

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Requested
By JTK



STEPHEN R. MILLER
CHIEF

State of Wisconsin

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March 12, 2001

MEMORANDUM

To: Representative Bock

From: Jeffery T. Kuesel, Managing Attorney

Re: LRB-1518 Campaign finance changes - office of justice

The attached draft was prepared at your request. Please review it carefully to ensure that it is accurate and satisfies your intent. If it does and you would like it jacketed for introduction, please indicate below for which house you would like the draft jacketed and return this memorandum to our office. If you have any questions about jacketing, please call our program assistants at 266-3561. Please allow one day for jacketing.

JACKET FOR ASSEMBLY JACKET FOR SENATE

If you have any questions concerning the attached draft, or would like to have it redrafted, please contact me at (608) 266-6778 or at the address indicated at the top of this memorandum.

If the last paragraph of the analysis states that a fiscal estimate will be prepared, the LRB will request that it be prepared after the draft is introduced. You may obtain a fiscal estimate on the attached draft before it is introduced by calling our program assistants at 266-3561. Please note that if you have previously requested that a fiscal estimate be prepared on an earlier version of this draft, you will need to call our program assistants in order to obtain a fiscal estimate on this version before it is introduced.

Please call our program assistants at 266-3561 if you have any questions regarding this memorandum.