

2001 DRAFTING REQUEST

Assembly Substitute Amendment (ASA-AB682)

Received: 12/29/2001

Received By: kuesejt

Wanted: Soon

Identical to LRB:

For: Mark Gundrum (608) 267-5158

By/Representing: him

This file may be shown to any legislator: NO

Drafter: kuesejt

May Contact:

Addl. Drafters:

Subject: **Ethics**

Extra Copies: **RJM - 1**

Submit via email: NO

Pre Topic:

No specific pre topic given

Topic:

ASA to AB-682

Instructions:

See Attached.

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	kuesejt 01/02/2002	gilfokm 01/02/2002		_____			
/1			haugeca 01/03/2002	_____	lrb_docadmin 01/03/2002	lrb_docadmin 01/03/2002	
/2	kuesejt 01/03/2002	gilfokm 01/03/2002	haugeca 01/04/2002	_____	lrb_docadmin 01/04/2002	lrb_docadmin 01/04/2002	

FE Sent For:

<END>

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1/?	kuesejt	1-1/2-02 <i>[Signature]</i>	1-2-02 <i>[Signature]</i>	2/17/02 <i>[Signature]</i>			

FE Sent For:

<END>

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

LRBa1015/1dn
JTK:cjs:jf

December 19, 2001

Representative Gundrum:

This amendment addresses a technical issue raised by Bob Conlin. The amendment extends the additional forfeiture that the bill applies to state public officials who violate proposed s. 19.45 (13) to apply also to local public officials who violate proposed s. 19.59 (1) (br). If you have any further question regarding this amendment, please let me know.

Jeffery T. Kuesel
Managing Attorney
Phone: (608) 266-6778

**ASSEMBLY AMENDMENT ,
TO 2001 ASSEMBLY BILL 682**

1 At the locations indicated, amend the bill as follows:

2 **1.** Page 4, line 24: after that line insert:

3 **"SECTION 6m.** 19.59 (7) of the statutes is amended to read:

4 19.59 (7) Any person who violates sub. (1) may be required to forfeit not more
5 than \$1,000 for each violation, and, if the court determines that the accused has
6 violated sub. (1) (br), the court may, in addition, order the accused to forfeit an
7 amount equal to the amount or value of any political contribution, service, or other
8 thing of value that was wrongfully procured."

9 (END)

Kuesel, Jeffery

From: Conlin, Robert
Sent: Friday, December 21, 2001 4:46 PM
To: Kuesel, Jeffery; Marchant, Robert
Cc: Learned, Julie
Subject: FW: AB 682

Jeff and Rob:

FYI and amusement. Feel free to rip the draft apart, but please leave me some shred of dignity. If you actually need the draft for anything, contact Julie Learned in our office and she'll help you out. Happy Holidays!

Bob

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

From: Conlin, Robert
Sent: Friday, December 21, 2001 4:43 PM
To: Rep.Gundrum; Gundrum, Mark
Subject: AB 682

Rep. Gundrum:

I've attached 2 documents herewith. One is the draft of the substitute amendment that we discussed yesterday (12/20). The other is a brief cover memo explaining the provisions of the draft and highlighting the changes. I've also noted in a couple of places some technical issues you may want to consider. Also, I've spoken with Jeff Kuesel and Rob Marchant at the LRB. Jeff will be back at the office next Friday, Dec. 28. I explained to both of them what your intentions were with respect to the sub. Jeff may have some additional technical issues that he will raise once he reviews what I've put together.

Since I will be out of the office until January 7, I am going to forward a copy of the draft to Jeff and Rob at the LRB in the interest of facilitating moving this process along. I hope that is ok. In any event, they will keep the material confidential and will be in a better position to assist you should you need it.

Hope this is helpful. Don Dyke, as you know, is familiar with your proposal and I've bounced some of the ideas contained in the draft off of him so he is somewhat up to speed if you need to contact someone here. I think he is out of the office until January 2nd.

Anyway, here are the two attachments. The one on the left is the memo and the other is the draft.



21gundrum.pdf



02381.pdf

Happy Holidays!

Bob Conlin

Senior Staff Attorney
Wisconsin Legislative Council Staff
(608) 266-2298



**WISCONSIN LEGISLATIVE COUNCIL
STAFF MEMORANDUM**

TO: REPRESENTATIVE MARK GUNDRUM

FROM: Robert J. Conlin, Senior Staff Attorney

RE: Assembly Substitute Amendment __ (WLC: 0238/1), to 2001 Assembly Bill 682

DATE: December 21, 2001

Attached to this memorandum you will find a draft of Assembly Substitute Amendment __ (WLC: 0238/1) (the "draft"), to 2001 Assembly Bill 682. As you know, Assembly Bill 682, which you introduced, relates to official action in return for providing or withholding political contributions, services, or other things of value and providing a penalty. This memorandum will identify the various provisions of the draft and note, where appropriate, how it differs from Assembly Bill 682. In addition, where appropriate, this memorandum will raise issues you may wish to consider as you proceed in developing a final substitute amendment.

It should be noted, however, that this is just a rough draft and not in final form. It was intended as a tool for you to aid in the discussion of developing a consensus substitute amendment. When you are ready to have the Legislative Reference Bureau (LRB) put the amendment in final form, you may notice certain stylistic or technical differences between the attached draft and the final product from the LRB. I believe, though, that I have captured your intent with this draft and the LRB will help you put it in final, official form.

The remainder of this memorandum describes the provisions of the draft.

SECTION 1 of the draft relates to the payment of civil penalties incurred by a registrant under the campaign finance laws and is taken, without change, from Assembly Bill 682.

SECTION 2 of the draft incorporates the definition of "communication" and a modified definition of "independent expenditure" based upon an amendment to the bill proposed by Representative Travis. In particular, the definition of "independent expenditure" has been expanded to mean "an expenditure made for the purpose of making a communication that contains a reference to a clearly identified state public official holding an elective office or to a candidate."

Comment: With respect to the use of the term "independent expenditure" as defined in the draft, and because it is substantially different than the

term "independent expenditure" as it is used in ch. 11, relating to campaign financing, you may wish to consider using a different term other than "independent expenditure" in order to reduce confusion between the use of the terms.

SECTION 3 is a modified version of the substantive heart of Assembly Bill 682, the so-called "pay-to-play" prohibition. The modification is contained at the end of line 14 wherein the phrase "or any person who makes an independent expenditure" is added. Thus, under this version, a state public official holding an elective office may not, among other things, promise to vote upon a proposal in exchange for a political contribution or other thing of value to or for the benefit of a candidate, a political party, any other registrant under the campaign finance laws, or any person who makes an independent expenditure, as defined in the draft.

SECTION 4 of the draft provides that a verified complaint alleging a violation of the "pay-to-play" provisions relating to state or local officials in the draft may not be filed during the period beginning 120 days before a general or spring election, or during the period commencing on the date of the order of a special election, and ending on the date of that election against a candidate who files a declaration of candidacy to have his or her name appear on the ballot at that election. This provision differs from that contained in Assembly Bill 682. Under the bill, an *action on a complaint* could not be commenced in court during the period beginning 120 days before a general spring or special election. Also, the time period with respect to a special election is changed to coincide with the time from the "call" of a special election to the election.

SECTIONS 5 and 6 of the draft toll the three-year limitation on filing complaints under the Ethics Code for the period for which a complaint may not be filed, as described above. There was no similar provision in Assembly Bill 682.

SECTION 7 of the draft is taken from Assembly Bill 682 and is the provision that authorizes an additional forfeiture against someone who has violated the "pay-to-play" provisions in an amount equal to the amount or value of any political contribution, service or other thing of value that was wrongfully "procured."

Comment: You may want to consider whether the term "procured" is too narrow in the context of the "pay-to-play" provision. The "pay-to-play" provision prohibits, among other things, an elective official from voting on a proposal in exchange for someone refraining from making a contribution. Are you satisfied that "procured" would adequately encompass the notion of refraining from making a contribution?



SECTION 8 of the draft is taken from Assembly Bill 682 and allows for the direct enforcement of a complaint alleging a violation of the "pay-to-play" provisions against a state elective official.

SECTION 9 of the draft applies the "pay-to-play" provisions to local elective officials, as contained in the bill, but with the modification described with respect to SECTION 3, above, concerning a person who makes an independent expenditure.

SECTION 10 authorizes an additional forfeiture to be imposed upon a local elective official, like that imposed by the draft on a state elective official, who violates the "pay-to-play" provisions. This provision was not in the original bill.

SECTIONS 11 and 12 of the draft authorize the direct enforcement of the "pay-to-play" provisions against a local elective public official. This provision was not in the bill.

As you know, I will be out of the office from December 24 through January 4. If you have questions on the draft while I am out of the office, you may contact Jeff Kuesel at the LRB after December 27. In addition, you may also wish to consider having the Ethics Board review this draft to see if it contains any problematic ambiguities or other problems that may prevent your intent from being effectuated.

RJC:rv;jal

Attachment

**ASSEMBLY SUBSTITUTE AMENDMENT ,
TO 2001 ASSEMBLY BILL 682**

1 **AN ACT** *to renumber and amend* 19.49 (5); *to amend* 11.25 (2) (b), 19.53 (6), 19.59
2 (7) and 19.59 (8) (c); and *to create* 19.42 (4m) and (7p), 19.45 (13), 19.49 (1m),
3 19.49 (5) (b), 19.535, 19.59 (1) (br) and 19.59 (8) (cm) of the statutes; **relating to:**
4 official action in return for providing or withholding political contributions, services,
5 or other things of value and providing a penalty.

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

6 **SECTION 1.** 11.25 (2) (b) of the statutes is amended to read:
7 11.25 (2) (b) Notwithstanding par. (a), a registrant may accept contributions and make
8 disbursements from a campaign depository account for the purpose of making expenditures
9 in connection with a campaign for national office; for payment of civil penalties incurred by
10 the registrant under this chapter but not under any other chapter; or for payment of the
11 expenses of nonpartisan campaigns to increase voter registration or participation.
12 Notwithstanding par. (a), a personal campaign committee or support committee may accept
13 contributions and make disbursements from a campaign depository account for payment of
14 inaugural expenses of an individual who is elected to state or local office. If such expenses
15 are paid from contributions made to the campaign depository account, they are reportable
16 under s. 11.06 (1) as disbursements. Otherwise, such expenses are not reportable under s.
17 11.06 (1). If contributions from the campaign depository account are used for such expenses,
18 they are subject to s. 11.26.

1 SECTION 2. 19.42 (4m) and (7p) of the statutes are created to read:

2 19.42 (4m) "Communication" means a message transmitted by means of a printed
3 advertisement, billboard, handbill, sample ballot, radio or television advertisement, telephone
4 call, or any medium that may be utilized for the purpose of disseminating or broadcasting a
5 message, but not including a poll conducted solely for the purpose of identifying or collecting
6 data concerning the attitudes or preferences of electors.

7 (7p) "Independent expenditure" means an expenditure made for the purpose of making
8 a communication that contains a reference to a clearly identified state public official holding
9 an elective office or to a candidate, as defined in s. 11.01.

10 SECTION 3. 19.45 (13) of the statutes is created to read:

11 19.45 (13) No state public official holding an elective office may, directly or by means
12 of an agent, give, or offer or promise to give, or withhold, or offer or promise to withhold, his
13 or her vote or influence, or promise to take or refrain from taking official action with respect
14 to any proposed or pending matter in consideration of or upon condition that any other person
15 make or refrain from making a political contribution, or provide or refrain from providing any
16 service or other thing of value, to or for the benefit of a candidate, a political party, any other
17 person who is subject to a registration requirement under s. 11.05, or any person who makes
18 an independent expenditure.

19 SECTION 4. 19.49 (1m) of the statutes is created to read:

20 19.49 (1m) No verified complaint alleging a violation of s. 19.45 (13) or 19.59 (1) (br)
21 may be filed during the period beginning 120 days before a general or spring election, or
22 during the period commencing on the date of the order of a special election under s. 8.50, and
23 ending on the date of that election against a candidate who files a declaration of candidacy to
24 have his or her name appear on the ballot at that election.

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of

→
19.59(8)

Memo
3

1 **SECTION 5.** 19.49 (5) of the statutes is renumbered 19.49 (5) (a) and as renumbered is
2 amended to read:

3 19.49 (5) (a) ~~No~~ Except as provided in par. (b), no action may be taken on any complaint
4 which is filed later than 3 years after a violation of this subchapter or subch. III of ch. 13 is
5 alleged to have occurred.

6 **SECTION 6.** 19.49 (5) (b) of the statutes is created to read:

7 19.49 (5) (b) The 3-year limitation under par. (a) shall be tolled for a claim alleging a
8 violation of s. 19.45 (13) or 19.59 (1) (br) for the period for which such a complaint may not
9 be filed under s. 19.49 (1m).

10 **SECTION 7.** 19.53 (6) of the statutes is amended to read:

11 19.53 (6) An order requiring the accused to forfeit not more than \$500 for each violation
12 of s. 19.43, 19.44 or 19.56 (2) or not more than \$5,000 for each violation of any other provision
13 of this subchapter, or not more than the applicable amount specified in s. 13.69 for each
14 violation of subch. III of ch. 13; ~~and, if.~~ If the board determines that the accused has realized
15 economic gain as a result of the violation, an the board may, in addition, order requiring the
16 accused to forfeit the amount gained as a result of the violation, and, if the board determines
17 that the accused has violated s. 19.45 (13), the board may, in addition, order the accused to
18 forfeit an amount equal to the amount or value of any political contribution, service, or other
19 thing of value that was wrongfully procured. The attorney general, when so requested by the
20 board, shall institute proceedings to recover any forfeiture incurred under this section or s.
21 19.545 which is not paid by the person against whom it is assessed.

22 **SECTION 8.** 19.535 of the statutes is created to read:

23 **19.535 Direct enforcement.** (1) If the board refuses or otherwise fails to authorize an
24 investigation under s. 19.49 (3) with respect to a violation of s. 19.45 (13) within 30 days after

1 receiving a verified complaint alleging a violation of s. 19.45 (13) by that person, the person
2 making the complaint may bring an action to recover the forfeiture under s. 19.53 (6) on his
3 or her relation in the name, and on behalf, of the state. In such actions, the court may award
4 actual and necessary costs of prosecution, including reasonable attorney fees, to the relator if
5 he or she prevails, but any forfeiture recovered shall be paid to the state. If the court finds in
6 any such action that the cause of action was frivolous as provided in s. 814.025, the court shall
7 award costs and fees to the defendant under that section.

8 **SECTION 9.** 19.59 (1) (br) of the statutes is created to read:

9 19.59 (1) (br) No local public official holding an elective office may, directly or by
10 means of an agent, give, or offer or promise to give, or withhold, or offer or promise to
11 withhold, his or her vote or influence, or promise to take or refrain from taking official action
12 with respect to any proposed or pending matter in consideration of or upon condition that any
13 other person make or refrain from making a political contribution, or provide or refrain from
14 providing any service or other thing of value, to or for the benefit of a candidate, a political
15 party, any other person who is subject to a registration requirement under s. 11.05, or any
16 person who makes an independent expenditure.

17 **SECTION 10.** 19.59 (7) of the statutes is amended to read:

18 19.59 (7) Any person who violates sub. (1) may be required to forfeit not more than
19 \$1,000 for each violation, and, if the court determines that the accused has violated sub. (1)
20 (br), the court may, in addition, order the accused to forfeit an amount equal to the amount or
21 value of any political contribution, service, or other thing of value that was wrongfully
22 procured.

23 **SECTION 11.** 19.59 (8) (c) of the statutes is amended to read:

Kuesel, Jeffery

From: Gundrum, Mark
Sent: Thursday, December 27, 2001 3:17 PM
To: Travis, Dave; Judd, Roth; Kennedy, Kevin; Kuesel, Jeffery; Conlin, Robert
Subject: FW: AB 682

Gentlemen,

Attached is a memo and substitute amendment by Robert Conlin, related to AB 682, the so-called "pay-to-play" bill. I would appreciate greatly if each of you would take a careful look at the substitute amendment, as compared to the original bill and give me your thoughts on the substitute amendment ASAP. This bill is presently scheduled to be voted on in the Campaigns and Elections Committee the morning of January 8th. Realistically then, I would like to have an agreed upon substitute amendment to Rep. Freese no later than next Friday afternoon, January 4th, so I do not run into any close calls on the 24-hour rule.

While there are several changes in the sub., the main focus of the sub. is to include so-called "Issue Ad" groups to the prohibition, i.e. to ensure that moneys could not be steered toward Issue Ad groups in exchange for official acts.

That said, I would like to point out a few issues with the substitute amendment and bill, and get input from all of you specifically with regard to these issues.

- ✓ 1.) p. 2, lines 7-9. I don't think we should be using the term "independent expenditure" with the definition on lines 7-9, in that "independent expenditure" has a somewhat different definition in other contexts. I'm not sure what term would be better, but am very open to suggestions. Alternatively, I'm sure a skilled drafter at LRB could draft this to include the definition language without having to use any specific term. For example, while it may be a little more awkward to word it this way, it could be done like this: p.2, lines 17-18, "... person who is subject to a registration requirement under s. 11.05, or any person making a communication that contains a reference to a clearly identified state [or local] public official holding an elective office or to a candidate, as defined in s. 11.01." I suspect something like this could be done artfully and I think it would be better than trying to give these things a specific name like "independent expenditure" or "election-related expenditure," or whatever.
- ✓ 2.) Unless I am missing the application of our language on p. 2, lines 7-9, to local public officials, we should make sure this also applies to local public officials. Unless someone can come up with a compelling reason not to have all of the prohibitions/provisions in this legislation applying to local officials as well as state officials, they should all apply to local officials as well as state officials.
- ✓ 3.) AB 682 originally prohibits "actions" under this section from being filed within 120 days prior to an election. I don't believe I ever intended that to be "actions" filed in court, but rather original complaints filed with the Board. What I don't want is to create another opportunity for political combatants to use this new law for the sole purpose of getting public headlines during a campaign alleging these violations against someone. There is a 3-yr. statute of limitation on this and we now, in the sub., toll the time lost if that 3-yrs. is going to expire during this 120-day period. Thus I see no reason why a complainant should have to file these type of complaints with the Board during the election "season." Allowing such complaints to be filed during election "season," in my opinion, would just breed political mischief rather than focusing on legitimate violations of the law. For this reason, I asked that the sub. be drafted to prohibit "verified complaints" from being filed during this 120-day time period. If a verified complaint was filed prior to this 120-day time period, the process would be permitted to proceed, even though it would be proceeding during the election season. Presumably the Board would not proceed with an investigation unless there was some merit to the complaint and, I strongly suspect, that, if the Board chose not to proceed, due to lack of merit, there would be very few political combatants willing to go so far as to file a court action for political purposes. While they very well may file verified complaints with the Board for political purposes, I doubt they would be proceeding in court without a legitimate claim. *bd/da could proceed during campaign period.*
- 4.) Bob Conlin raises questions about the use of the word "procured" on pages 3, line 19, and 4, line 22. I agree that "procured" may not be the correct word here. Perhaps "expended" or some other word would be better here. Please let me know your thoughts on what we could do here that might be better. *? KE N/A?*

Bob may have addressed a few other matters in his memo, but these were the ones that stood out for me.

I would GREATLY appreciate any and all input you are able to provide me with as soon as you can, so I can get this redrafted as necessary and get a final draft of the subst. am. to Rep. Freese no later than next Friday afternoon.

Thanks so much for your time and attention to this matter.

Mark

<http://www.legis.state.wi.us/2001/data/AB682hst.html> (Text of AB 682)

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

From: Conlin, Robert
Sent: Friday, December 21, 2001 4:43 PM
To: Rep.Gundrum; Gundrum, Mark
Subject: AB 682

Rep. Gundrum:

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21gundrum.pdf



02381.pdf

Happy Holidays!

Bob Conlin
Senior Staff Attorney
Wisconsin Legislative Council Staff
(608) 266-2298

Kuesel, Jeffery

From: Kennedy, Kevin
Sent: Thursday, December 27, 2001 6:24 PM
To: Gundrum, Mark; Travis, Dave; Judd, Roth; Kuesel, Jeffery; Conlin, Robert
Subject: RE: AB 682

I have the following comments in response to your request for feedback on the proposed substitute amendment for AB 682.

- ✓ 1. I agree that the term "independent expenditure" should not be used to capture issue advocacy and independent expenditures. You may want to consider the term "political expenditure". The definition as set out in p.2 lines 7-9 clearly covers those communications commonly referred to as independent expenditures and issue advocacy. My only concern is whether the language is so broad that it infringes on First Amendment protected speech. However since this a penalty for what amounts to misconduct in office, the state has a compelling state interest.
- ✓ 2. The definition can be expanded to local elected officials by adding the term " or local" to modify state public official.
- ✓ 3. I understand your concern and think the draft addresses it.
- ✓ 4. The use of the term expended may be a better choice. To capture the benefit derived from refraining to make a contribution, you may want to provide that the additional forfeiture in that case is equal to the maximum contribution under 11.26 (1) for individuals or (2) for political committees.

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

From: Gundrum, Mark
Sent: Thursday, December 27, 2001 3:17 PM
To: Travis, Dave; Judd, Roth; Kennedy, Kevin; Kuesel, Jeffery; Conlin, Robert
Subject: FW: AB 682

Gentlemen,

Attached is a memo and substitute amendment by Robert Conlin, related to AB 682, the so-called "pay-to-play" bill. I would appreciate greatly if each of you would take a careful look at the substitute amendment, as compared to the original bill and give me your thoughts on the substitute amendment ASAP. This bill is presently scheduled to be voted on in the Campaigns and Elections Committee the morning of January 8th. Realistically then, I would like to have an agreed upon substitute amendment to Rep. Freese no later than next Friday afternoon, January 4th, so I do not run into any close calls on the 24-hour rule.

While there are several changes in the sub., the main focus of the sub. is to include so-called "Issue Ad" groups to the prohibition, i.e. to ensure that moneys could not be steered toward Issue Ad groups in exchange for official acts.

That said, I would like to point out a few issues with the substitute amendment and bill, and get input from all of you specifically with regard to these issues.

1.) p. 2, lines 7-9. I don't think we should be using the term "independent expenditure" with the definition on lines 7-9, in that "independent expenditure" has a somewhat different definition in other contexts. I'm not sure what term would be better, but am very open to suggestions. Alternatively, I'm sure a skilled drafter at LRB could draft this to include the definition language without having to use any specific term. For example, while it may be a little more awkward to word it this way, it could be done like this: p.2, lines 17-18, "... person who is subject to a registration requirement under s. 11.05, or any person making a communication that contains a reference to a clearly identified state [or local] public official holding an elective office or to a candidate, as defined in s. 11.01." I suspect something like this could be done artfully and I think it would be better than trying to give these things a specific name like "independent expenditure" or "election-related expenditure," or whatever.

2.) Unless I am missing the application of our language on p. 2, lines 7-9, to local public officials, we should make sure this also applies to local public officials. Unless someone can come up with a compelling reason not to have all of the prohibitions/provisions in this legislation applying to local officials as well as state officials, they should all apply to local officials as well as state officials.

3.) AB 682 originally prohibits "actions" under this section from being filed within 120 days prior to an election. I don't believe I ever intended that to be "actions" filed in court, but rather original complaints filed with the Board. What I

don't want is to create another opportunity for political combatants to use this new law for the sole purpose of getting public headlines during a campaign alleging these violations against someone. There is a 3-yr. statute of limitation on this and we now, in the sub., toll the time lost if that 3-yrs. is going to expire during this 120-day period. Thus I see no reason why a complainant should have to file these type of complaints with the Board during the election "season." Allowing such complaints to be filed during election "season," in my opinion, would just breed political mischief rather than focusing on legitimate violations of the law. For this reason, I asked that the sub. be drafted to prohibit "verified complaints" from being filed during this 120-day time period. If a verified complaint was filed prior to this 120-day time period, the process would be permitted to proceed, eventhough it would be proceeding during the election season. Presumably the Board would not proceed with an investigation unless there was some merit to the complaint and, I strongly suspect, that, if the Board chose not to proceed, due to lack of merit, there would be very few political combatants willing to go so far as to file a court action for political purposes. While they very well may file verified complaints with the Board for political purposes, I doubt they would be proceeding in court without a legitimate claim.

4.) Bob Conlin raises questions about the use of the word "procured" on pages 3, line 19, and 4, line 22. I agree that "procured" may not be the correct word here. Perhaps "expended" or some other word would be better here. Please let me know your thoughts on what we could do here that might be better.

Bob may have addressed a few other matters in his memo, but these were the ones that stood out for me.

I would GREATLY appreciate any and all input you are able to provide me with as soon as you can, so I can get this redrafted as necessary and get a final draft of the subst. am. to Rep. Freese no later than next Friday afternoon.

Thanks so much for your time and attention to this matter.

Mark

<http://www.legis.state.wi.us/2001/data/AB682hst.html> (Text of AB 682)

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

From: Conlin, Robert
Sent: Friday, December 21, 2001 4:43 PM
To: Rep.Gundrum; Gundrum, Mark
Subject: AB 682

Rep. Gundrum:

I've attached 2 documents herewith. One is the draft of the substitute amendment that we discussed yesterday (12/20). The other is a brief cover memo explaining the provisions of the draft and highlighting the changes. I've also noted in a couple of places some technical issues you may want to consider. Also, I've spoken with Jeff Kuesel and Rob Marchant at the LRB. Jeff will be back at the office next Friday, Dec. 28. I explained to both of them what your intentions were with respect to the sub. Jeff may have some additional technical issues that he will raise once he reviews what I've put together.

Since I will be out of the office until January 7, I am going to forward a copy of the draft to Jeff and Rob at the LRB in the interest of facilitating moving this process along. I hope that is ok. In any event, they will keep the material confidential and will be in a better position to assist you should you need it.

Hope this is helpful. Don Dyke, as you know, is familiar with your proposal and I've bounced some of the ideas contained in the draft off of him so he is somewhat up to speed if you need to contact someone here. I think he is out of the office until January 2nd.

Anyway, here are the two attachments. The one on the left is the memo and the other is the draft.

<< File: 21gundrum.pdf >> << File: 02381.pdf >>

Kuesel, Jeffery

From: Gundrum, Mark
Sent: Friday, December 28, 2001 5:13 PM
To: Kuesel, Jeffery
Cc: Becker, Jonathan
Subject: FW: AB 682

Jeff,

Here are Jonathan Becker's thoughts.

- ✓ Should we change "procured" to "obtained" for those where contributions are obtained/procured?
- ✓ I do think Jonathan makes a good point about "verified" complaints. Perhaps we should just remove the word "verified" and have a straight and simple prohibition against filing any complaint with the Board (though *not* a prohibition against filing a complaint/action in court if the Board fails to act) during the relevant time period.
- As to issue (3), it is not always going to be clear, especially in the Issue Ad/Independent Expenditure contexts just what office the contribution is related to. A general smearing of someone's name during a Spring election could easily effect both their Spring and Fall election even if no particular office is mentioned. This does, however, merit a little more thought. Can you see a good way to try and sensibly structure this as he suggests, without running into the problem that it might not always be clearly and specifically stated which office the "communication" is directed at? Let's talk a little more about this. It's not as if the elected official is getting a free pass altogether. A complaint related to this type of violation, which is now not addressed at all by statutes, could still be filed a day after the general election and if a misdemeanor conviction ultimately results, the person will likely have to forward his/her office under the State Constitution. Or, again, if the mischief occurred prior to 120 day before the Spring general election, a complaint could be filed just before that 120 day time period and thereby proceed.
- ✓ As to number (4), I still feel, as you seem to, that we should stop trying to define a specific "term" and just work the definition straight into the language.

Jeff, if you are going to be in working on Saturday and you get this e-mail Sat., please do not hesitate to contact me to discuss some of these issues further.

Mark

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

From: Becker, Jonathan
Sent: Friday, December 28, 2001 9:36 AM
To: Gundrum, Mark
Cc: Judd, Roth
Subject: FW: AB 682

I think the substitute seems fine overall. I have just a few comments. (1) Why not change the word "procured" to "obtained" in s. 19.53(6). (2) Should the prohibition on filing a verified complaint during certain time periods be extended to filing any complaint, verified or not. Most of the complaints the Ethics Board receives are not verified. (3) As it now reads, a person could not file a complaint against a state elected official 120 days before the *spring* election even if the official used office to obtain a contribution for someone who was going to run in the general election. Is that okay or should the 120 day no-filing periods be tied to whether an official attempted to get a contribution for that specific election. (4) How about using the term "political expenditure" rather than "independent expenditure" to avoid any confusion with campaign finance laws.

Jonathan Becker

jonathan.becker@ethics.state.wi.us
Phone: (608) 267-0647 Fax: (608) 264-9319

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

From: Judd, Roth

Sent: Thursday, December 27, 2001 6:05 PM
To: Gundrum, Mark
Cc: Becker, Jonathan
Subject: RE: AB 682

Rep. Gundrum--

Congratulations on the favorable reception that AB 682 is receiving and thanks for the opportunity to comment. By copy of this note I am asking the Ethics Board's legal counsel to review carefully the items you have noted and to alert you to considerations from the Ethics Board's point of view.

Best wishes on this legislation and for 2002.

roth

*Roth Judd, Director
Wisconsin Ethics Board
roth.judd@ethics.state.wi.us
voice: 608-266-8111 fax: 608-264-9319
Visit us on the internet: <http://ethics.state.wi.us>*

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

From: Gundrum, Mark
Sent: Thursday, December 27, 2001 3:17 PM
To: Travis, Dave; Judd, Roth; Kennedy, Kevin; Kuesel, Jeffery; Conlin, Robert
Subject: FW: AB 682

Gentlemen,

Attached is a memo and substitute amendment by Robert Conlin, related to AB 682, the so-called "pay-to-play" bill. I would appreciate greatly if each of you would take a careful look at the substitute amendment, as compared to the original bill and give me your thoughts on the substitute amendment ASAP. This bill is presently scheduled to be voted on in the Campaigns and Elections Committee the morning of January 8th. Realistically then, I would like to have an agreed upon substitute amendment to Rep. Freese no later than next Friday afternoon, January 4th, so I do not run into any close calls on the 24-hour rule.

While there are several changes in the sub., the main focus of the sub. is to include so-called "Issue Ad" groups to the prohibition, i.e. to ensure that moneys could not be steered toward Issue Ad groups in exchange for official acts.

That said, I would like to point out a few issues with the substitute amendment and bill, and get input from all of you specifically with regard to these issues.

1.) p. 2, lines 7-9. I don't think we should be using the term "independent expenditure" with the definition on lines 7-9, in that "independent expenditure" has a somewhat different definition in other contexts. I'm not sure what term would be better, but am very open to suggestions. Alternatively, I'm sure a skilled drafter at LRB could draft this to include the definition language without having to use any specific term. For example, while it may be a little more awkward to word it this way, it could be done like this: p.2, lines 17-18, ". . . person who is subject to a registration requirement under s. 11.05, or any person making a communication that contains a reference to a clearly identified state [or local] public official holding an elective office or to a candidate, as defined in s. 11.01." I suspect something like this could be done artfully and I think it would be better than trying to give these things a specific name like "independent expenditure" or "election-related expenditure," or whatever.

2.) Unless I am missing the application of our language on p. 2, lines 7-9, to local public officials, we should make sure this also applies to local public officials. Unless someone can come up with a compelling reason not to have all of the prohibitions/provisions in this legislation applying to local officials as well as state officials, they should all apply to local officials as well as state officials.

3.) AB 682 originally prohibits "actions" under this section from being filed within 120 days prior to an election. I don't believe I ever intended that to be "actions" filed in court, but rather original complaints filed with the Board. What I don't want is to create another opportunity for political combatants to use this new law for the sole purpose of getting public headlines during a campaign alleging these violations against someone. There is a 3-yr. statute of limitation on this and we now, in the sub., toll the time lost if that 3-yr. is going to expire during this 120-day period. Thus I see no reason why a complainant should have to file these type of complaints with the Board during the election "season."

Allowing such complaints to be filed during election "season," in my opinion, would just breed political mischief rather than focusing on legitimate violations of the law. For this reason, I asked that the sub. be drafted to prohibit "verified complaints" from being filed during this 120-day time period. If a verified complaint was filed prior to this 120-day time period, the process would be permitted to proceed, even though it would be proceeding during the election season. Presumably the Board would not proceed with an investigation unless there was some merit to the complaint and, I strongly suspect, that, if the Board chose not to proceed, due to lack of merit, there would be very few political combatants willing to go so far as to file a court action for political purposes. While they very well may file verified complaints with the Board for political purposes, I doubt they would be proceeding in court without a legitimate claim.

4.) Bob Conlin raises questions about the use of the word "procured" on pages 3, line 19, and 4, line 22. I agree that "procured" may not be the correct word here. Perhaps "expended" or some other word would be better here. Please let me know your thoughts on what we could do here that might be better.

Bob may have addressed a few other matters in his memo, but these were the ones that stood out for me.

I would GREATLY appreciate any and all input you are able to provide me with as soon as you can, so I can get this redrafted as necessary and get a final draft of the subst. am. to Rep. Freese no later than next Friday afternoon.

Thanks so much for your time and attention to this matter.

Mark

<http://www.legis.state.wi.us/2001/data/AB682hst.html> (Text of AB 682)

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

From: Conlin, Robert
Sent: Friday, December 21, 2001 4:43 PM
To: Rep.Gundrum; Gundrum, Mark
Subject: AB 682

Rep. Gundrum:

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<< File: 21gundrum.pdf >> << File: 02381.pdf >>

Happy Holidays!

Bob Conlin

Senior Staff Attorney
Wisconsin Legislative Council Staff
(608) 266-2298

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2001 - 2002 LEGISLATURE

50270/1
LRB-297873
JTK:kmg pg

Assembly SUB AMDS —
TO 2001 ASSEMBLY BILL 682

D-NOTE

December 17, 2001 - Introduced by Representatives GUNDRUM, JENSEN, TRAVIS, FREESE, LASSA, LADWIG, ZIEGELBAUER, STONE, MCCORMICK, OLSEN, STARZYK, KESTELL, SKINDRUD, NASS, HAHN, ALBERS, KRAWCZYK, D. MEYER, KREIBICH, DUFF, PETROWSKI, HUEBSCH, VRAKAS, BIES and LIPPERT, cosponsored by Senators ROSENZWEIG, HUELSMAN, ROESSLER and HARSDORF. Referred to Committee on Campaigns and Elections.

(regenerate)

- 1 AN ACT ~~to amend 11.25 (2) (b) and 19.53 (6), and to create 19.45 (13), 19.535 and~~
- 2 ~~19.59 (1) (br)~~ of the statutes; **relating to:** official action in return for providing
- 3 or withholding political contributions, services, or other things of value and
- 4 providing a penalty.

Analysis by the Legislative Reference Bureau

Currently, no person may offer or give to a state public official, including a member of the legislature, directly or indirectly, and no state public official may solicit or accept from any person, directly or indirectly, anything of value if it could reasonably be expected to influence the state public official's vote, official actions, or judgment, or could reasonably be considered a reward for any official action or inaction on the part of the state public official.

This bill provides, in addition, that no state or local public official holding an elective office may, directly or by means of an agent, give, or offer or promise to give, or withhold, or offer or promise to withhold, his or her vote or influence, or promise to take or refrain from taking official action with respect to any proposed or pending matter in consideration of or upon condition that any other person make or refrain from making a political contribution, or provide or refrain from providing any service or other thing of value, to or for the benefit of a candidate, a political party, or any other person who is subject to a registration requirement under the campaign finance law.

Violators are subject to a forfeiture (civil penalty) of not more than \$5,000 for each violation, and are also subject to a forfeiture in an amount equal to the amount

ASSEMBLY BILL 682

~~or value of any political contribution, service, or other thing of value that was wrongfully procured. Intentional violators are guilty of a misdemeanor and are subject to a fine of not less than \$100 nor more than \$5,000 or imprisonment in the county jail for not more than one year or both.~~

~~The bill also provides that, if the ethics board refuses or otherwise fails to authorize an investigation with respect to any violation of the prohibition created by the bill within 30 days after receiving a verified complaint alleging such a violation, the person making the complaint may bring a lawsuit to recover a forfeiture on behalf of the state. If the person making the complaint prevails, the bill provides that the court may require the defendant to pay the complainant's attorney fees and costs, but any forfeiture recovered must be paid to the state. If the court finds that a lawsuit was frivolous, the court must award fees and costs to the defendant. The bill provides that no lawsuit based upon such a complaint may be brought during the period beginning 120 days before a general, spring, or special election and ending on the date of that election against a candidate who files a declaration of candidacy to have his or her name appear on the ballot at that election.~~

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

1 **SECTION 1.** 11.25 (2) (b) of the statutes is amended to read:

2 11.25 (2) (b) Notwithstanding par. (a), a registrant may accept contributions
3 and make disbursements from a campaign depository account for the purpose of
4 making expenditures in connection with a campaign for national office; for payment
5 of civil penalties incurred by the registrant under this chapter but not under any
6 other chapter; or for payment of the expenses of nonpartisan campaigns to increase
7 voter registration or participation. Notwithstanding par. (a), a personal campaign
8 committee or support committee may accept contributions and make disbursements
9 from a campaign depository account for payment of inaugural expenses of an
10 individual who is elected to state or local office. If such expenses are paid from
11 contributions made to the campaign depository account, they are reportable under
12 s. 11.06 (1) as disbursements. Otherwise, such expenses are not reportable under s.

ASSEMBLY BILL 682

1 11.06 (1). If contributions from the campaign depository account are used for such
2 expenses, they are subject to s. 11.26.

INS
3-2

3 SECTION 2. 19.45 (13) of the statutes is created to read:

4 19.45 (13) No state public official holding an elective office may, directly or by
5 means of an agent, give, or offer or promise to give, or withhold, or offer or promise
6 to withhold, his or her vote or influence, or promise to take or refrain from taking
7 official action with respect to any proposed or pending matter in consideration of or
8 upon condition that any other person make or refrain from making a political
9 contribution, or provide or refrain from providing any service or other thing of value,
10 to or for the benefit of a candidate, a political party, or any other person who is subject

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11 to a registration requirement under s. 11.05. *or any person making a communication*
12 that contains a reference to a clearly identified state public official holding an elective

13 SECTION 3. 19.53 (6) of the statutes is amended to read:

INS
3-12

14 19.53 (6) An order requiring the accused to forfeit not more than \$500 for each
15 violation of s. 19.43, 19.44, or 19.56 (2) or not more than \$5,000 for each violation of
16 any other provision of this subchapter, or not more than the applicable amount
17 specified in s. 13.69 for each violation of subch. III of ch. 13; and, if the board
18 determines that the accused has realized economic gain as a result of the violation,
19 an the board may, in addition, order requiring the accused to forfeit the amount
20 gained as a result of the violation, and, if the board determines that the accused has
21 violated s. 19.45 (13), the board may, in addition, order the accused to forfeit an

22 amount equal to the amount or value of any political contribution, service, or other
23 thing of value that was wrongfully ~~procured~~ *obtained or if no thing of value was obtained,*
24 requested by the board, shall institute proceedings to recover any forfeiture incurred
25 under this section or s. 19.545 which is not paid by the person against whom it is
assessed.

as an amount equal to the maximum contribution authorized under s. 11.26 (1) for the office held by the official

ASSEMBLY BILL 682

SECTION 4. 19.535 of the statutes is created to read:

19.535 Direct enforcement. Except as provided in sub. (2), if the board refuses or otherwise fails to authorize an investigation under s. 19.49 (3) with respect to a violation of s. 19.45 (13) within 30 days after receiving a verified complaint alleging a violation of s. 19.45 (13) by that person, the person making the complaint may bring an action to recover the forfeiture under s. 19.53 (6) on his or her relation in the name, and on behalf, of the state. In such actions, the court may award actual and necessary costs of prosecution, including reasonable attorney fees, to the relator if he or she prevails, but any forfeiture recovered shall be paid to the state. If the court finds in any such action that the cause of action was frivolous as provided in s. 814.025, the court shall award costs and fees to the defendant under that section.

(2) No action based upon a complaint that is filed under sub. (1) may be commenced during the period beginning 120 days before a general, spring, or special election and ending on the date of that election against a candidate who files a declaration of candidacy to have his or her name appear on the ballot at that election.

SECTION 5. 19.59 (1) (br) of the statutes is created to read:

19.59 (1) (br) No local public official holding an elective office may, directly or by means of an agent, give, or offer or promise to give, or withhold, or offer or promise to withhold, his or her vote or influence, or promise to take or refrain from taking official action with respect to any proposed or pending matter in consideration of or upon condition that any other person make or refrain from making a political contribution, or provide or refrain from providing any service or other thing of value, to or for the benefit of a candidate, a political party, or any other person who is subject

to a registration requirement under s. 11.05, or my person making a communication that contains a reference to a clearly identified local public official holding an elective office or to a candidate for local public office

17

SECTION ~~19.59~~ 19.59 (7) of the statutes is amended to read:

18

19.59 (7) Any person who violates sub. (1) may be required to forfeit not more than

19

\$1,000 for each violation, and, if the court determines that the accused has violated sub. (1)

20

(br), the court may, in addition, order the accused to forfeit an amount equal to the amount or

21

value of any political contribution, service, or other thing of value that was wrongfully

22

~~procured. obtained, or, if no thing of value was obtained, an amount equal to the maximum contribution authorized under s. 11.25 (1) for the office held by the official~~

23

SECTION 19.59 (8) (c) of the statutes is amended to read:

12/21/2001

- 5 -

WLC: 0238/1

1

19.59 (8) (c) ~~If~~ ^{rather plain} Except as provided in par. (a) ~~and~~ the district attorney fails to commence

2

an action to enforce sub. (1) ~~within 20 days after receiving a verified complaint or if the district~~ ^{(a), (b), or (c) to (g)}

3

attorney refuses to commence such an action, the person making the complaint may petition

4

the attorney general to act upon the complaint. The attorney general may then bring an action

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under par. (a) or (b), or both.

19

SECTION ~~19.59 (1m)~~ ^{19.59 (2) (cm) and (cn)} of the statutes ~~is~~ ^{are} created to read:

20

~~19.59 (8) (cm) No~~ ^{sub.} ~~19.59 (1m) No~~ verified complaint alleging a violation of ~~s. 19.4 (12) or 19.59 (1) (br)~~

21

may be filed during the period beginning 120 days before a general or spring election, or

22

during the period commencing on the date of the order of a special election under s. 8.50, and

23

ending on the date of that election against a candidate who files a declaration of candidacy to

24

have his or her name appear on the ballot at that election.

w/ FOLLOW

w/ FOLLOW

w/ word word

(en)

19.59 (8) ~~(en)~~ If the district attorney refuses or otherwise fails to commence an action to enforce sub. (1) (br) within 30 days after receiving a verified complaint alleging a violation of sub. (1) (br) ~~by that person~~, the person making the complaint may bring an action to recover the forfeiture under sub. (7) on his or her relation in the name, and on behalf, of the state. In such actions, the court may award actual and necessary costs of prosecution, including reasonable attorney fees, to the relator if he or she prevails, but any forfeiture recovered shall be paid to the state. If the court finds in any such action that the cause of action was frivolous as provided in s. 814.025, the court shall award costs and fees to the defendant under that section.

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(END)

word for
word

(B)

PLS 3-2

SECTION # ~~19.42 (3m)~~ ^(4g) and ~~(4m)~~ ^(4r)
 meaning given in s. 11.01(1). "candidate" except as otherwise provided, has the
 to a communication containing a reference to a person, means:
 (a) The person's name appears
 (b) A photograph or drawing of the person appears
 (c) The identity of the person is apparent by

12/21/2001

-2-

WLC: 0238/1

unambiguous reference.

SECTION 2 ~~19.42 (4m)~~ ^(4r) of the statutes are created to read:

19.42 (4m) "Communication" means a message transmitted by means of a printed advertisement, billboard, handbill, sample ballot, radio or television advertisement, telephone call, or any medium that may be utilized for the purpose of disseminating or broadcasting a message, but not including a poll conducted solely for the purpose of identifying or collecting data concerning the attitudes or preferences of electors.

word for word

LPS: SORT; out-of-order.

12/21/2001

-3-

WLC: 0238/1

SECTION # 19.49 (5) of the statutes is renumbered 19.49 (5) (a) and as renumbered is amended to read:

19.49 (5) (a) ~~No~~ ^{that} Except as provided in par. (b), no action may be taken on any complaint which is filed later than 3 years after a violation of this subchapter or subch. III of ch. 13 is alleged to have occurred.

SECTION # 19.49 (5) (b) of the statutes is created to read:
 19.49 (5) (b) The ~~3-year~~ ^{period of} limitation under par. (a) ~~shall~~ ^{is} tolled for ~~a claim~~ ^{stet} alleging a violation of s. 19.45 (13) or 19.59 (1) (br) for the period ^{during} for which such a complaint may not be filed under s. 19.49 (1m) or 19.59 (8) (cm)

paper with folio

word for word

JWS 3-12 ✓

19

SECTION # 19.49 (1m) of the statutes is created to read:

20

19.49 (1m) No ~~written~~ complaint alleging a violation of s. 19.45 (13) or 19.59 (1) (b)

21

may be filed during the period beginning 120 days before a general or spring election, or

22

during the period commencing on the date of the order of a special election under s. 8.50, and

23

ending on the date of that election, against a candidate who files a declaration of candidacy to

24

have his or her name appear on the ballot at that election.

[Handwritten notes and scribbles]
proof
word
word

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRBs0270/1dn

JTK...:k....

KMG

Representative Gundrum:

1. The definition of "clearly identified" in proposed s. 19.42 (4g) of this draft is taken from s. 11.01 (3), stats. It was not picked up when LRBA1014/1 (the Travis amendment) was incorporated into WLC:0238/1.

2. This draft slightly alters the treatment of s. 19.59 (8) (c), stats, in WLC: 0298/1 to clarify that the right to direct enforcement of proposed s. 19.59 (1) (br) is an alternative to the right that would otherwise exist to petition the attorney general for discretionary enforcement of the other provisions of s. 19.59 (1), stats. I assume this was what was intended by the exception inserted into s. 19.59 (8) (c), stats, by WLC: 0298/1.

3. This draft does not treat the issue of connecting the hiatus period for filing of complaints under proposed ss. 19.49 (m) and 19.59 (8) (cm) to the

Jeffery T. Kuesel
Managing Attorney
Phone: (608) 266-6778

Subject of the communication, as addressed in Jonathan Becker's E-mail of December 28.

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRBs0270/1dn
JTK:kmg:ch

January 2, 2002

Representative Gundrum:

1. The definition of "clearly identified" in proposed s. 19.42 (4g) of this draft is taken from s. 11.01 (3), stats. It was not picked up when LRBA1014/1 (the Travis amendment) was incorporated into WLC:0238/1.
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3. This draft does not treat the issue of connecting the hiatus period for filing of complaints under proposed ss. 19.49 (1m) and 19.59 (8) (cm) to the subject of the communication, as addressed in Jonathan Becker's e-mail of December 28.

Jeffery T. Kuesel
Managing Attorney
Phone: (608) 266-6778

Kuesel, Jeffery

From: Gundrum, Mark
Sent: Wednesday, January 02, 2002 10:33 PM
To: Kuesel, Jeffery
Subject: RE: AB 682

I'm fine with all of these except #3 right now. I think we need to talk directly and work through the issue on #3 on the phone or in person on Thursday. I will be in Madison on Thursday. I will be at a meeting from about 9:30 a.m. to Noon. Maybe we can set up a time like 1 p.m. for us to meet in my office to finalize where we are and work through the issue on #3. I will have Jolene in my office to call you and confirm a meeting time.

Thanks

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

From: Kuesel, Jeffery
Sent: Saturday, December 29, 2001 1:36 PM
To: Gundrum, Mark
Subject: RE: AB 682

Rep. Gundrum,

Regarding Jonathan Becker's thoughts:

(1) I think "obtained" might be a little better than "procured" in that it doesn't require a showing that the official actively solicited the contribution or service, only that it was accepted. If you agree, I would make that change.

(2) I would drop the limitation under proposed s. 19.49 (1m) that bars the filing of a *verified* complaint during the 120-day window because it doesn't make sense to preclude a verified complaint from being filed but not preclude an unverified complaint from being filed. However, I would retain the limitation in proposed s. 19.535 (1) that permits direct enforcement only if a verified complaint has been filed because under s.19.49 (1) and (2), stats., the board is not required to accept an unverified complaint and I don't think it's too much to ask a person to have the complaint sworn if we are going to permit the person to bypass the board and go to court.

(3) To address the issue of tying the 120-window to the election at which the alleged violation occurs, we could insert qualifying language like "with respect to a communication relating to an office to be filled at that election" in proposed s. 19.49 (1m). You are correct that in some cases, it might not be possible to determine with certainty the office to which the communication relates, but in most cases, this would not be a problem and inserting the language would address this issue, which might otherwise result in a technical criticism of the draft.

(4) I think we are agreed that we can avoid this issue by deleting the definition.

I will have this draft on my desk until Wednesday morning because the LRB editors will not return until then so you can get back to me when it's convenient. If we don't get everything into the draft on the first attempt we can make minor adjustments later in the week.

Jeff Kuesel

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

From: Gundrum, Mark
Sent: Friday, December 28, 2001 5:13 PM
To: Kuesel, Jeffery
Cc: Becker, Jonathan
Subject: FW: AB 682

Jeff,

Here are Jonathan Becker's thoughts.

Should we change "procured" to "obtained" for those where contributions are obtained/procured?

I do think Jonathan makes a good point about "verified" complaints. Perhaps we should just remove the word "verified" and have a straight and simple prohibition against filing any complaint with the Board (though *not* a prohibition against filing a complaint/action in court if the Board fails to act) during the relevant time period.

As to issue (3), it is not always going to be clear, especially in the Issue Ad/Independent Expenditure contexts just what office the contribution is related to. A general smearing of someone's name during a Spring election could easily effect both their Spring and Fall election even if no particular office is mentioned. This does, however, merit a little more thought. Can you see a good way to try and sensibly structure this as he suggests, without running

into the problem that it might not always be clearly and specifically stated which office the "communication" is directed at? Let's talk a little more about this. It's not as if the elected official is getting a free pass altogether. A complaint related to this type of violation, which is now not addressed at all by statutes, could still be filed a day after the general election and if a misdemeanor conviction ultimately results, the person will likely have to forward his/her office under the State Constitution. Or, again, if the mischief occurred prior to 120 day before the Spring general election, a complaint could be filed just before that 120 day time period and thereby proceed.

As to number (4), I still feel, as you seem to, that we should stop trying to define a specific "term" and just work the definition straight into the language.

Jeff, if you are going to be in working on Saturday and you get this e-mail Sat., please do not hesitate to contact me to discuss some of these issues further.

Mark

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

From: Becker, Jonathan
Sent: Friday, December 28, 2001 9:36 AM
To: Gundrum, Mark
Cc: Judd, Roth
Subject: FW: AB 682

I think the substitute seems fine overall. I have just a few comments. (1) Why not change the word "procured" to "obtained" in s. 19.53(6). (2) Should the prohibition on filing a verified complaint during certain time periods be extended to filing any complaint, verified or not. Most of the complaints the Ethics Board receives are not verified. (3) As it now reads, a person could not file a complaint against a state elected official 120 days before the *spring* election even if the official used office to obtain a contribution for someone who was going to run in the general election. Is that okay or should the 120 day no-filing periods be tied to whether an official attempted to get a contribution for that specific election. (4) How about using the term "political expenditure" rather than "independent expenditure" to avoid any confusion with campaign finance laws.

Jonathan Becker

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Phone: (608) 267-0647 Fax: (608) 264-9319

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

From: Judd, Roth
Sent: Thursday, December 27, 2001 6:05 PM
To: Gundrum, Mark
Cc: Becker, Jonathan
Subject: RE: AB 682

Rep. Gundrum--

Congratulations on the favorable reception that AB 682 is receiving and thanks for the opportunity to comment. By copy of this note I am asking the Ethics Board's legal counsel to review carefully the items you have noted and to alert you to considerations from the Ethics Board's point of view.

Best wishes on this legislation and for 2002.

roth

*Roth Judd, Director
Wisconsin Ethics Board
roth.judd@ethics.state.wi.us
voice: 608-266-8111 fax: 608-264-9319
Visit us on the internet: <http://ethics.state.wi.us>*

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

From: Gundrum, Mark
Sent: Thursday, December 27, 2001 3:17 PM

To: Travis, Dave; Judd, Roth; Kennedy, Kevin; Kuesel, Jeffery; Conlin, Robert
Subject: FW: AB 682

Gentlemen,

Attached is a memo and substitute amendment by Robert Conlin, related to AB 682, the so-called "pay-to-play" bill. I would appreciate greatly if each of you would take a careful look at the substitute amendment, as compared to the original bill and give me your thoughts on the substitute amendment ASAP. This bill is presently scheduled to be voted on in the Campaigns and Elections Committee the morning of January 8th. Realistically then, I would like to have an agreed upon substitute amendment to Rep. Freese no later than next Friday afternoon, January 4th, so I do not run into any close calls on the 24-hour rule.

While there are several changes in the sub., the main focus of the sub. is to include so-called "Issue Ad" groups to the prohibition, i.e. to ensure that moneys could not be steered toward Issue Ad groups in exchange for official acts.

That said, I would like to point out a few issues with the substitute amendment and bill, and get input from all of you specifically with regard to these issues.

1.) p. 2, lines 7-9. I don't think we should be using the term "independent expenditure" with the definition on lines 7-9, in that "independent expenditure" has a somewhat different definition in other contexts. I'm not sure what term would be better, but am very open to suggestions. Alternatively, I'm sure a skilled drafter at LRB could draft this to include the definition language without having to use any specific term. For example, while it may be a little more awkward to word it this way, it could be done like this: p.2, lines 17-18, "... person who is subject to a registration requirement under s. 11.05, or any person making a communication that contains a reference to a clearly identified state [or local] public official holding an elective office or to a candidate, as defined in s. 11.01." I suspect something like this could be done artfully and I think it would be better than trying to give these things a specific name like "independent expenditure" or "election-related expenditure," or whatever.

2.) Unless I am missing the application of our language on p. 2, lines 7-9, to local public officials, we should make sure this also applies to local public officials. Unless someone can come up with a compelling reason not to have all of the prohibitions/provisions in this legislation applying to local officials as well as state officials, they should all apply to local officials as well as state officials.

3.) AB 682 originally prohibits "actions" under this section from being filed within 120 days prior to an election. I don't believe I ever intended that to be "actions" filed in court, but rather original complaints filed with the Board. What I don't want is to create another opportunity for political combatants to use this new law for the sole purpose of getting public headlines during a campaign alleging these violations against someone. There is a 3-yr. statute of limitation on this and we now, in the sub., toll the time lost if that 3-yrs. is going to expire during this 120-day period. Thus I see no reason why a complainant should have to file these type of complaints with the Board during the election "season." Allowing such complaints to be filed during election "season," in my opinion, would just breed political mischief rather than focusing on legitimate violations of the law. For this reason, I asked that the sub. be drafted to prohibit "verified complaints" from being filed during this 120-day time period. If a verified complaint was filed prior to this 120-day time period, the process would be permitted to proceed, even though it would be proceeding during the election season. Presumably the Board would not proceed with an investigation unless there was some merit to the complaint and, I strongly suspect, that, if the Board chose not to proceed, due to lack of merit, there would be very few political combatants willing to go so far as to file a court action for political purposes. While they very well may file verified complaints with the Board for political purposes, I doubt they would be proceeding in court without a legitimate claim.

4.) Bob Conlin raises questions about the use of the word "procured" on pages 3, line 19, and 4, line 22. I agree that "procured" may not be the correct word here. Perhaps "expended" or some other word would be better here. Please let me know your thoughts on what we could do here that might be better.

Bob may have addressed a few other matters in his memo, but these were the ones that stood out for me.

I would GREATLY appreciate any and all input you are able to provide me with as soon as you can, so I can get this redrafted as necessary and get a final draft of the subst. am. to Rep. Freese no later than next Friday afternoon.

Thanks so much for your time and attention to this matter.

Mark

<http://www.legis.state.wi.us/2001/data/AB682hst.html> (Text of AB 682)

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

From: Conlin, Robert
Sent: Friday, December 21, 2001 4:43 PM
To: Rep.Gundrum; Gundrum, Mark
Subject: AB 682

Rep. Gundrum:

I've attached 2 documents herewith. One is the draft of the substitute amendment that we discussed yesterday (12/20). The other is a brief cover memo explaining the provisions of the draft and highlighting the changes. I've also noted in a couple of places some technical issues you may want to consider. Also, I've spoken with Jeff Kuesel and Rob Marchant at the LRB. Jeff will be back at the office next Friday, Dec. 28. I explained to both of them what your intentions were with respect to the sub. Jeff may have some additional technical issues that he will raise once he reviews what I've put together.

Since I will be out of the office until January 7, I am going to forward a copy of the draft to Jeff and Rob at the LRB in the interest of facilitating moving this process along. I hope that is ok. In any event, they will keep the material confidential and will be in a better position to assist you should you need it.

Hope this is helpful. Don Dyke, as you know, is familiar with your proposal and I've bounced some of the ideas contained in the draft off of him so he is somewhat up to speed if you need to contact someone here. I think he is out of the office until January 2nd.

Anyway, here are the two attachments. The one on the left is the memo and the other is the draft.

<< File: 21gundrum.pdf >> << File: 02381.pdf >>

Happy Holidays!

Bob Conlin

Senior Staff Attorney
Wisconsin Legislative Council Staff
(608) 266-2298



State of Wisconsin
2001 - 2002 LEGISLATURE

LRBs0270/1 2
JTK:kmg:ch

wanted Fri 1/4 - 9AM

ASSEMBLY SUBSTITUTE AMENDMENT,
TO 2001 ASSEMBLY BILL 682

1 AN ACT ^(regenerate) *to renumber and amend 19.49 (5); to amend 11.25 (2) (b), 19.53 (6),*
2 *19.59 (7) and 19.59 (8) (c); and to create 19.42 (3m), (4g) and (4r), 19.45 (13),*
3 *19.49 (1m), 19.49 (5) (b), 19.535, 19.59 (1) (br) and 19.59 (8) (cm) and (cn)* of the
4 statutes; **relating to:** official action in return for providing or withholding
5 political contributions, services, or other things of value and providing a
6 penalty.

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

7 SECTION 1. 11.25 (2) (b) of the statutes is amended to read:
8 11.25 (2) (b) Notwithstanding par. (a), a registrant may accept contributions
9 and make disbursements from a campaign depository account for the purpose of
10 making expenditures in connection with a campaign for national office; for payment
11 of civil penalties incurred by the registrant under this chapter but not under any
12 other chapter; or for payment of the expenses of nonpartisan campaigns to increase

1 official action with respect to any proposed or pending matter in consideration of, or
2 upon condition that, any other person make or refrain from making a political
3 contribution, or provide or refrain from providing any service or other thing of value,
4 to or for the benefit of a candidate, a political party, any other person who is subject
5 to a registration requirement under s. 11.05, or any person making a communication
6 that contains a reference to a clearly identified state public official holding an
7 elective office or to a candidate for state public office.

8 **SECTION 4.** 19.49 (1m) of the statutes is created to read:

9 19.49 (1m) No complaint alleging a violation of s. 19.45 (13) may be filed during
10 the period beginning 120 days before a general or spring election, or during the
11 period commencing on the date of the order of a special election under s. 8.50, and
12 ending on the date of that election, against a candidate who files a declaration of
13 candidacy to have his or her name appear on the ballot at that election.

14 **SECTION 5.** 19.49 (5) of the statutes is renumbered 19.49 (5) (a) and amended
15 to read:

16 19.49 (5) (a) No Except as provided in par. (b), no action may be taken on any
17 complaint which that is filed later than 3 years after a violation of this subchapter
18 or subch. III of ch. 13 is alleged to have occurred.

19 **SECTION 6.** 19.49 (5) (b) of the statutes is created to read:

20 19.49 (5) (b) The period of limitation under par. (a) is tolled for a complaint
21 alleging a violation of s. 19.45 (13) or 19.59 (1) (br) for the period during which such
22 a complaint may not be filed under s. 19.49 (1m) or 19.59 (8) (cm).

23 **SECTION 7.** 19.53 (6) of the statutes is amended to read:

24 19.53 (6) An order requiring the accused to forfeit not more than \$500 for each
25 violation of s. 19.43, 19.44, or 19.56 (2) or not more than \$5,000 for each violation of

1 19.59 (1) (br) No local public official holding an elective office may, directly or
2 by means of an agent, give, or offer or promise to give, or withhold, or offer or promise
3 to withhold, his or her vote or influence, or promise to take or refrain from taking
4 official action with respect to any proposed or pending matter in consideration of, or
5 upon condition that, any other person make or refrain from making a political
6 contribution, or provide or refrain from providing any service or other thing of value,
7 to or for the benefit of a candidate, a political party, any other person who is subject
8 to a registration requirement under s. 11.05, or any person making a communication
9 that contains a reference to a clearly identified local public official holding an elective
10 office or to a candidate for local public office.

11 **SECTION 10.** 19.59 (7) of the statutes is ^{renumbered 19.59 (7) (a) and} amended to read:

12 19.59 (7) ^(a) Any person who violates sub. (1) may be required to forfeit not more
13 than \$1,000 for each violation, and, if the court determines that the accused has
14 violated sub. (1) (br), the court may, in addition, order the accused to forfeit an
15 amount equal to the amount or value of any political contribution, service, or other
16 thing of value that was wrongfully obtained, or, if no thing of value was obtained, an
17 amount equal to the maximum contribution authorized under s. 11.26 (1) for the
18 office held by the official.

19 **SECTION 11.** 19.59 (8) (c) of the statutes is amended to read:

20 19.59 (8) (c) If the district attorney fails to commence an action to enforce sub.
21 (1) (a), (b), or (c) to (g) within 20 days after receiving a verified complaint or if the
22 district attorney refuses to commence such an action, the person making the
23 complaint may petition the attorney general to act upon the complaint. The attorney
24 general may then bring an action under par. (a) or (b), or both.

25 **SECTION 12.** 19.59 (8) (cm) and (cn) of the statutes are created to read:

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5-18

2001-2002 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRBs0270/2ins
JTK.....

INS 5-18:

SEC. # CR; 19.59(7)(b)

(b) Any person who violates sub. (1) may be required to forfeit not more than \$1,000 for each violation, and, if the court determines that a local public official has violated sub. (1) (br) and no thing of value was obtained by the official, the court may, in addition, order the accused to forfeit an amount equal to the maximum contribution authorized under s. 11.26 (1) for the office held or sought by the official, whichever amount is greater.

Barman, Mike

From: Barman, Mike
Sent: Monday, January 07, 2002 11:09 AM
To: Conlin, Robert
Subject: LRBs0270/2 & LRBa1026/1 (attached) (per JTK)



01s0270/2



01a1026/1