DRAFTER'S NOTE LRB–2872/P2dn
FROM THE JTK/RJM/MES/MDK/JK:cs:pg
LEGISLATIVE REFERENCE BUREAU

April 30, 2001

Representative Duff:

1. This draft is in preliminary form and does not completely reflect your instructions. We wanted to get you as much of the draft as soon as possible in order to facilitate a timely review. This version incorporates all of the items from LRB–1157/1 and a tax credit for free media access. It also incorporates some corrections to the /P1 draft. The items from your instructions that are not included at this time relate to equal access for candidates to public broadcasting and cable access television and limitations on committees.

2. The instructions indicate that you wanted a tax "deduction" for corporations that provide free media access to qualified candidates. However, for Wisconsin corporate income and franchise tax purposes, a corporation cannot claim a "deduction," but may, instead, claim any applicable tax credit. Therefore, this draft creates a tax credit for corporations that provide free media access to qualified candidates. Please let us know if this not consistent with your intent.

3. Under this draft, state party committee PAC limits include amounts contributed to state sub–units and state affiliates, but not to local party committees and their local sub–units and local affiliates. Similarly, the local party committee PAC limits include amounts contributed to local sub–units and local affiliates, but not to state party committees and their state sub–units and state affiliates. See proposed s. 11.26 (8). This approach applies the limit to all party committees that are likely aware of each other's activities and prevents a committee that is subject to a limit from spinning off an unlimited number of subunits and affiliates, each of which could accept contributions up to the applicable maximum amount. Please let us know if this approach is not consistent with your intent.

The local party committee contribution limits established under the draft are dependent upon the population of the county in which the local party committee primarily operates. Please let us know if this treatment is not consistent with your intent.

4. This draft establishes contribution and disbursement limits that are dependent upon the population of certain areas. This draft includes a procedure for the elections board to determine and publish these populations. See proposed s. 11.263. Generally, the determinations must be based upon the best available data from the federal decennial census. Please let us know if you desire any changes.

5. This draft repeals the checkoff procedure for funding the Wisconsin election campaign fund and replaces it with a procedure that allows individuals, committees, and other persons to make donations to the fund and that allows individuals to claim a tax credit of up to $5 for donations they make to the fund on their individual income tax returns. The draft transfers amounts in the fund on the day the bill takes effect to the general account.

6. Currently, under ss. 11.50 (2) (a) and (i), stats., a candidate must swear that he or she has adhered and will continue to adhere to all disbursement and contribution limitations in order to receive a grant, unless the candidate is opposed by another candidate who could have qualified for a grant but declines to accept one. A candidate who declines to accept a grant may nevertheless bind his or her opponent receiving a grant to adhere to disbursement and contribution limitations if the candidate files an affidavit of voluntary compliance with all disbursement and contribution limitations under s. 11.31 (2m), stats. The instructions for this draft specified that if a candidate filed an affidavit of voluntary compliance with disbursement limitations, the candidate would be entitled to more generous contribution limitations. This draft, therefore, limits the affidavit of voluntary compliance under s. 11.31 (2m), stats., to a pledge to adhere to disbursement limitations (plus self–contribution limitations, which the U.S. Supreme Court has treated the same as disbursement limitations for purposes of constitutional analysis under *Buckley v. Valeo,* 96 S.Ct. 612, 650–653 (1976)). The draft, however, continues to require a candidate who actually receives a grant to adhere to all disbursement and contribution limitations. Please let us know if this is not in accord with your intent.

7. This draft, in its treatment of s. 11.50 (3) (a) 2., stats., provides that the supreme court account has first draw on all available moneys derived from taxpayer designations for the proposed general account. Because, under the draft, candidates for partisan offices may receive funding from political party accounts, this may leave campaigns for the office of state superintendent of public instruction underfunded in comparison to other campaigns for state offices. Under s. 11.50 (3) (a) 1., stats., the superintendency account receives 8% of available moneys in those years preceding the year of an election for that office. If you want to rebalance the allocation of moneys available for candidates for state superintendent, you may wish to consider changing the amount of this set–aside.

8. Proposed s. 11.51 of this draft provides for public funding of campaigns for county or 1st class city offices by local option. Under the draft, a county or city may condition its financing upon agreement by a candidate to accept spending or self–contribution limits specified by the county or city. The draft does not provide for these limits to be constrained by the disbursement levels or contribution limitations prescribed under ch. 11, stats., which are currently unenforceable under *Buckley v. Valeo, et. al.,* 96 S. Ct. 612 (1976). Please let me know if you believe that a county or city should not permit disbursements or self–contributions to exceed the state limitations.

9. With respect to injunctive relief, the proposed changes to s. 11.66, stats. in LRB–1157/1 were integrated with proposed s. 5.066 of that draft, which revised the procedure for enforcement of the election laws. Since proposed s. 5.066 is not included

in this draft, the draft does not include that portion of the changes to s. 11.66, stats., in LRB–1157/1 that permitted the executive director of the elections board to order relief, and that further permitted an elector seeking relief to appeal a denial of relief by the executive director to the board, which was then permitted to order the relief sought. This draft retains requirements for an elector seeking relief to file a sworn complaint with the executive director and to include with the complaint notice that the elector intends to sue for injunctive relief. In accordance with current law, if the board fails to file suit within 10 days, the elector may then file suit. Please let us know if you would like to see a different treatment of this issue.

10. There is some authority for the proposition that application of different contribution limits to candidates depending upon whether they accept public grants may be viewed as unconstitutionally coercing candidates to accept public financing. See *Wilkinson v. Jones*, 876 F. Supp. 916, 928 (W.D. Ky. 1995), which holds that a five–to–one disparity in contribution limits and state matching grants for contributions received by nonparticipating candidates are unconstitutionally coercive. This draft, in its treatment of s. 11.26 (1), stats., and in proposed s. 11.26 (1m), imposes separate contribution limitations for candidates who agree to adhere to disbursement and self–contribution limitations, with certain exceptions, regardless of whether they accept public grants. It should be noted that the U.S. Supreme Court has not ruled on this point and there is some disagreement between the lower federal courts regarding the coerciveness of public financing mechanisms.

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