

2001 DRAFTING REQUEST

Senate Amendment (SA-SSA1-SB104)

Received: 11/20/2001

Received By: **kuesejt**

Wanted: **Soon**

Identical to LRB:

For: **Michael Ellis (608) 266-0718**

By/Representing: **Genie Martinez**

This file may be shown to any legislator: **NO**

Drafter: **kuesejt**

May Contact:

Addl. Drafters: **rmarchan**

Subject: **Elections - campaign finance**

Extra Copics:

Submit via email: **NO**

Pre Topic:

No specific pre topic given

Topic:

SA to SSA1 to SB-104 (Spccial reports per original bill)

Instructions:

Restore special reports per proposed s. 11.12 (6) of original bill.

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 11/28/2001 rmarchan 11/29/2001	gilfokm 11/29/2001		_____			
/1			pgreensl 11/30/2001	_____	lrb_docadmin 11/30/2001	lrb_docadmin 11/30/2001	

FE Sent For:

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SA to SSA1 to SB-104 (Special reports per original bill)

Instructions:

Restore special reports per proposed s. 11.12 (6) of original bill.

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1?	kuesejt 11/28	1-11/29 King	11/30 P8	11/30 P8/KJK			

FE Sent For:

<END>

2001

Date (time) needed

NOTE
Fri: 11/30

LRBa 0972-1

AMENDMENT

JPK + RJM: Kmp

See form AMENDMENTS — COMPONENTS & ITEMS.

S A AMENDMENT

~~TO S A AMENDMENT (LRBa 1),~~
TO S ~~A~~ SUBSTITUTE AMENDMENT 1 (LRBs 1),
TO 2001 SB ~~SJR SR AB AJR AR~~ 104 (LRB 1)

At the locations indicated, amend the substitute amendment as follows:

(fill ONLY if "engrossed ..." or "as shown by")

✓ #. Page 22, line 23 delete the material beginning with that line and ending with page 23, line 16, and substitute:
appropriations
✓ #. Page 2, line 14 after "providing" insert "and"
penalties" → delete "and". #. Page 2, line 15:

#. Page, line:

#. Page, line:

#. Page, line:

6 ~~conduit has accepted or intends to accept any contribution~~
 7 ~~to or for personal campaign committee of a candidate for~~
 8 ~~office specified in s. 11.31 (1) (a) to (d), (e), or (f) at the general or a special~~
 9 ~~election, or any candidate who seeks a nomination for such an office at a~~
 10 ~~primary election, the conduit shall report to the board at the times specified in s.~~
 11 ~~11.20 (2s), in such manner as the board may prescribe, the name of each candidate~~
 12 ~~or personal campaign committee to whom the conduit intends to transfer one or more~~
 13 ~~contributions during the 21-day period following the date on which the report is due~~
 14 ~~to be filed and the amount to be transferred to that candidate or committee.~~

15 2. A conduit who or which is required to file reports under this paragraph shall
 16 also report to the board, at the times specified in s. 11.20 (2t), in such manner as the
 17 board may prescribe, the name of each candidate or personal campaign committee
 18 to whom the conduit transferred one or more contributions during the 21-day period
 19 ending on each date specified in s. 11.20 (2t) and the date and amount of that transfer.

20 ¶ " 11.20(c) 1. If any committee identified under s. 11.05 (3) (c) as a special interest
 21 committee, other than a conduit, intends to receive any contribution, make any
 22 disbursement, or incur any obligation to make a disbursement for the purpose of
 23 advocating the election or defeat of a clearly identified candidate for a state office
 24 specified in s. 11.31 (1) (a) to ^(de) (f) at the general or a special election, or any
 25 such candidate who seeks a nomination for such an office at a primary election,
 without cooperation or consultation with a candidate or agent or authorized
 committee of a candidate who is supported or whose opponent is opposed, and not in
 concert with or at the request or suggestion of such a candidate, agent, or committee,
 the committee shall report to the board at the times specified in s. 11.20 (2s), in such
 manner as the board may prescribe, the name of each candidate who is supported or

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1 whose opponent is opposed and the total amount of contributions to be received,
2 disbursements to be made, and obligations to be incurred for such a purpose in
3 support or opposition to that candidate during the 21-day period following the date
4 on which the report is due to be filed.

5 2. A committee which is required to file reports under this paragraph shall also
6 report to the board, at the times specified in s. 11.20 (2t), in such manner as the board
7 may prescribe, the amount and date of each contribution received, disbursement
8 made, or obligation incurred for the purpose of advocating the election or defeat of
9 a candidate specified in this paragraph in the manner specified in this paragraph,
10 and the name of the candidate in support of or in opposition to whom the contribution
11 was received, disbursement made, or obligation incurred, during the 21-day period
12 ending on each date specified in s. 11.20 (2t).

13 3. A committee which files a report under this paragraph concerning a
14 disbursement is not required to file a report pertaining to the same disbursement
15 under par. (a). "

16 (d) All information reported by a registrant under this subsection shall also be
17 included in the next regular report of the registrant under s. 11.20.

18 (e) 1. If any committee identified under s. 11.05 (3) (c) as a special interest
19 committee, other than a conduit, intends to make one or more contributions to a
20 candidate for a state office specified in s. 11.31 (1) (a) to (d), (e), or (f) at the general
21 or a special election, or to any such candidate who seeks a nomination for such an
22 office at a primary election, or to the personal campaign committee of any such
23 candidate, the committee shall report to the board at the times specified in s. 11.20
24 (2s), in such manner as the board may prescribe, the name of each candidate or
25 personal campaign committee to whom the committee intends to make one or more

→ ✓ # Page 27, line 14: after that line insert:

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1 The committee shall include this information in all solicitations for the effort or
 2 program. All contributions received and disbursements made by the committee in
 3 connection with the effort or program shall be received and disbursed through a
 4 separate depository account under s. 11.14 (1) that is identified in the agreement.
 5 For purposes of s. 11.06 (1), the committee conducting the effort or program shall
 6 prepare a schedule in the form prescribed by the board supplying all required
 7 information under s. 11.06 (1) and items qualifying for exclusion under s. 11.31 (6)
 8 for the effort or program, and shall transmit a copy of the schedule to each candidate
 9 who receives any of the proceeds within the period prescribed in s. 11.06 (4) (c).

10 SECTION 25. 11.20 (2e) of the statutes is created to read:

11 11.20 (2e) Postelection reports under s. 11.06 (1) with respect to an election for
 12 a state office specified in s. 11.31 (1) (a) to (d), (e), or (f) shall be received by the board
 13 no earlier than 4 days after and no later than 10 days after each general election at
 14 which that office is filled.

15 SECTION 26. 11.20 (2m) of the statutes is amended to read:

16 11.20 (2m) ~~Election~~ Postelection reports under s. 11.12 with respect to a special
 17 election for an office specified in s. 11.31 (1) (a) to (d), (e), or (f) shall be received by
 18 the board no earlier than 4 days and no later than 10 days after that election.
 19 Postelection reports under s. 11.12 with respect to any other special election shall be
 20 received by the appropriate filing officer no earlier than 23 days and no later than
 21 30 days after each that special election, unless a continuing report is required to be
 22 filed under sub. (4) on or before the 30th day after the special election.

23 SECTION ⁵⁴⁹~~27~~. 11.20 (2s) of the statutes is created to read:

24 11.20 (2s) A registrant who or which is required to file reports under s. 11.12
 25 (6) ~~(b)(1)(c) 1. (b)(1)(c) 1.~~ with respect to a candidate at the general election shall file

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1 the reports on the 63rd, 42nd, and 21st day prior to that election. A registrant who
2 is required to file reports under s. 11.12 (6) ~~with~~ (c) 1. ~~or~~ with respect to a
3 special election shall file a report on the 21st day prior to that election.

4 SECTION 28. 11.20 (2t) of the statutes is created to read:

5 11.20 (2t) A registrant who or which is required to file reports under s. 11.12
6 (6) ~~with~~ (c) 2. ~~or~~ with respect to a candidate at the general election shall file
7 the reports no later than the 39th and 18th days prior to that election. A registrant
8 who or which is required to file reports under s. 11.12 (6) ~~with~~ (c) 2. ~~or~~ with
9 respect to a candidate at a special election shall file the reports no later than the 18th
10 day prior to that election. "

11 SECTION 29. 11.20 (3) (d) of the statutes is amended to read:

12 11.20 (3) (d) A registered committee or individual other than a candidate or
13 personal campaign committee making or accepting contributions, making
14 disbursements or incurring obligations in support of or in opposition to one or more
15 candidates for office at an election, or supporting or opposing other committees or
16 individuals who are engaging in such activities, shall file a preelection report. A
17 registered committee or individual other than a candidate or personal campaign
18 committee, making or accepting contributions, making disbursements, or incurring
19 obligations in support of or in opposition to one or more candidates for an office
20 specified in s. 11.31 (1) (a) to (d), (e), or (f) at the general election or a special election,
21 or supporting or opposing other committees or individuals who are engaging in such
22 activities, shall file a postelection report.

23 SECTION 30. 11.20 (3) (g) of the statutes is amended to read:

24 11.20 (3) (g) A contribution, disbursement or obligation in support of or in
25 opposition to a candidate at an election which is made, accepted or incurred during

→ # Page 49, line 14: delete the material beginning with that line and ending with page 50, line 3, and substitute:

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1 ~~11.50 (9) (a) 1. For candidates for the office of governor and lieutenant governor~~
2 ~~jointly, \$670,000.~~

3 ~~2. For a candidate for the office of attorney general, \$135,000.~~

4 ~~3. For a candidate for the office of secretary of state, state treasurer,~~
5 ~~superintendent, or justice, \$67,000.~~

6 ~~4. For a candidate for the office of state senator, \$40,000.~~

7 ~~5. For a candidate for the office of representative to the assembly, \$20,000.~~

8 ~~SECTION 87. 11.50 (9) (b) of the statutes is created to read:~~

9 ~~11.50 (9) (b) If an eligible candidate who accepts a grant is opposed by one or~~
10 ~~more candidates in a general or special election whose names are certified under s.~~
11 ~~7.08 (2) (a) or 8.50 (1) (d) to appear on the ballot, and if a committee intends to receive~~
12 ~~or receives any contribution or contributions that are intended to be used or that are~~
13 ~~used to oppose the election of the eligible candidate who accepts a grant or to support~~
14 ~~a certified opponent of that candidate without cooperation or consultation with any~~
15 ~~certified opposing candidate or such a candidate's agent or authorized committee,~~
16 ~~and not in concert with, or at the request or suggestion of any certified opposing~~
17 ~~candidate's agent or authorized committee, then the board shall make an additional~~
18 ~~grant to the eligible candidate who accepts a grant in an amount equal to the total~~
19 ~~amount of contributions received for the purpose of advocating the election of the~~
20 ~~certified opposing candidate or for the purpose of opposing the election of the eligible~~
21 ~~candidate who accepts the grant, as reported by committees under s. 11.12 (6) (c). //~~

22 ~~SECTION 88. 11.50 (9) (ba) of the statutes is created to read:~~

23 ~~11.50 (9) (ba) If an eligible candidate who accepts a grant is opposed by one or~~
24 ~~more candidates in a general or special election who are required, or whose personal~~
25 ~~campaign committees are required, to file a report under s. 11.12 (7), then the board~~

✓ # Page 51, line 18: after that line insert:

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1 sub. (2) (a) as a precondition to receipt of a grant, except as authorized in sub. (2) (h)
2 or (i).

3 // SECTION ^{120m} 93. 11.60 (3s) and (3t) of the statutes are created to read:

4 11.60 (3s) Notwithstanding sub. (1), if any candidate or ~~other individual or~~
5 committee, ^{other than} including a conduit, accepts or ~~transfers~~ a contribution, makes a
6 disbursement, or incurs an obligation to make a disbursement for the purpose of
7 supporting or opposing a candidate for an office specified in s. 11.31 (1) (a) to ^(de) (d), (e),
8 or (f) ~~or for a purpose specified in s. 11.01 (16) (a) 3.~~ without first registering under
9 s. 11.05 (1), (2), or (2g) to the extent required under s. 11.05 (1), (2), and (2g), or
10 without reporting the information required under s. 11.12 (6) ~~(c) or (e) or (f)~~ or ⁸ (f) or
11 11.20 (3) or (4) with respect to that contribution, disbursement, or obligation, to the
12 extent required under ss. 11.12 (6) ~~(c) and (e) and (f)~~ and ⁸ (f) and 11.20 (3) and (4), the
13 candidate or other individual or committee may be required to forfeit not more than
14 \$500 per day for each day of continued violation.

15 (3t) Notwithstanding sub. (1), if any candidate or ~~other individual or~~
16 committee, ^{other than} including a conduit, accepts or ~~transfers~~ one or more contributions,
17 makes one or more disbursements, or incurs one or more obligations to make
18 disbursements for the purpose of supporting or opposing a candidate for an office
19 specified in s. 11.31 (1) (a) to ^(de) (d), (e), or (f) ~~or for a purpose specified in s. 11.01 (16)~~
20 ~~(a) 3.~~ in an amount or value that differs from the amount reported by that individual
21 or committee under s. 11.12 (6) ~~(c) or (e) or (f)~~ or ⁸ (f) or 11.20 (3) or (4):

22 (a) By more than 5% but not more than 10% cumulatively, the candidate or
23 other individual or committee shall forfeit 4 times the amount or value of the
24 difference.

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1 (b) By more than 10% but not more than 15% cumulatively, the candidate or
2 other individual or committee shall forfeit 6 times the amount or value of the
3 difference.

4 (c) By more than 15% cumulatively, the candidate or other individual or
5 committee shall forfeit 8 times the amount of the difference.

6 **SECTION 94.** 11.61 (1) (a) of the statutes is amended to read:

7 11.61 (1) (a) ~~Whoever~~ Except as provided in par. (d), whoever intentionally
8 violates s. 11.05 (1), (2), (2g) or (2r), 11.07 (1) or (5), 11.10 (1), 11.12 (5), 11.23 (6) or
9 11.24 (1) may be fined not more than \$10,000 or imprisoned for not more than 4 years
10 and 6 months or both.

11 **SECTION 95.** 11.61 (1) (b) of the statutes is amended to read:

12 11.61 (1) (b) ~~Whoever~~ Except as provided in par. (d), whoever intentionally
13 violates s. 11.25, 11.26, 11.27 (1), 11.30 (1) or 11.38 where the intentional violation
14 does not involve a specific figure, or where the intentional violation concerns a figure
15 which exceeds \$100 in amount or value may be fined not more than \$10,000 or
16 imprisoned for not more than 4 years and 6 months or both.

17 **SECTION 96.** 11.61 (1) (c) of the statutes is amended to read:

18 11.61 (1) (c) ~~Whoever~~ Except as provided in par. (d), whoever intentionally
19 violates any provision of this chapter other than those provided in par. (a) and
20 whoever intentionally violates any provision under par. (b) where the intentional
21 violation concerns a specific figure which does not exceed \$100 in amount or value
22 may be fined not more than \$1,000 or imprisoned not more than 6 months or both.

23 **SECTION 97.** 11.61 (1) (d) of the statutes is created to read:

24 11.61 (1) (d) Whoever, with intent to conceal or deceive, accepts or transfers a
25 contribution, ~~makes a disbursement, or incurs an obligation to make a disbursement~~

(End)

Senator Ellis:

I also want to note briefly that a few of the provisions of this draft are innovative, and we do not yet have, to my knowledge, specific guidance from the U.S. Supreme Court concerning the enforceability of provisions of these types. It is well possible that a court may find a rational basis for these provisions that would permit them to be upheld. However, because of the concerns expressed by the U.S. Supreme Court in *Buckley v. Valeo, et al.*, 96 S. Ct. 612 (1976), and certain other cases that attempts to regulate campaign financing activities may, in some instances, impermissibly intrude upon freedom of speech or association, or equal protection guarantees, it is possible that enforceability problems with these provisions may occur. In particular, those provisions concerning which we do not have specific guidance at this time are:

This provision

Prov. 3.5M

a provision of this type

(a) Proposed s. 11.12 (6) ~~ADAMS~~ (c), which impose^s a waiting period of up to 21 days before certain contributions may be transferred or accepted or before certain disbursements may be made or obligations to make disbursements may be incurred,

This provision

(b) Proposed s. 11.12 (7) (a), (b), (c), and (d), which imposes additional reporting requirements upon candidates who decline to accept disbursement and contribution limitations and restrictions.

(c) Proposed s. 11.24 (1t), which prohibits certain candidates and their personal campaign committees from accepting contributions within 10 days of an election in which the candidates participate. Although the U.S. Circuit Court of Appeals that covers Wisconsin has not addressed the constitutionality of this type of provision, the U.S. Court of Appeals for the 6th circuit has indicated that this type of provision may be constitutional, provided the provision allows a candidate to contribute an unlimited amount to his or her own campaign during the period. See *Gable v. Patton*, 142 F.3d 940 (6th cir. 1998), *Cert. den.* 525 U.S. 1177 (1998).

(d) Proposed s. 11.50 (9) (b) to (bc), which increase the public grants payable to certain candidates when independent disbursements are made against them or their opponents, or when their opponents raise more than a specified level of contributions from certain sources, or when special interest committees, including conduits, report that they intend to make or transfer contributions to their opponents, and proposed s. 11.31 (3p), which increases disbursement limitations by an amount equal to any grant received under proposed s. 11.50 (9) (b) to (bc). 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 these statutes were challenged.

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DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRBa0972/1dn
JTK&RJM:kmg:pg

November 30, 2001

Senator Ellis:

Proposed s. 11.12 (6) (c), which imposes a waiting period of up to 21 days before certain contributions may be transferred or accepted or before certain disbursements may be made or obligations to make disbursements may be incurred, is an innovative provision, and we do not yet have, to our knowledge, specific guidance from the U.S. Supreme Court concerning the enforceability of a provision of this type. It is well possible that a court may find a rational basis for this provision that would permit it to be upheld. However, because of the concerns expressed by the U.S. Supreme Court in *Buckley v. Valeo, et al.*, 96 S. Ct. 612 (1976), and certain other cases that attempts to regulate campaign financing activities may, in some instances, impermissibly intrude upon freedom of speech or association, or equal protection guarantees, it is possible that enforceability problems with this provision may occur.

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