

Emery, Lynn

From: Emery, Lynn
Sent: Tuesday, January 14, 2003 2:23 PM
To: Boerger, Michael (Legislature)
Subject: LRB-0617/2 (attached from JTK)



03-0617/2

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Mentkowski, Annie

From: Mentkowski, Annie
Sent: Monday, January 27, 2003 4:17 PM
To: Sen.Erpenbach
Subject: 03-0617 per your request

01/27/2003

2003-2004 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0617/lins2
JTK.....

INS 2A:

NOA nonrefundable income tax credits for certain donations to the Wisconsin election campaign fund, candidate time on public broadcasting television stations and public access channels, statewide voter registration,

INS 2B:

2001 Wisconsin Act 109 made comprehensive changes to campaign finance, ethics, lobbying regulation, income tax, public broadcasting, and cable television laws. Most changes made by Act 109 take effect on July 1, 2003. With the exception of provisions requiring candidate time on public broadcasting stations and public access channels at public expense, these provisions were made nonseverable so that if a court found that any of the provisions were unconstitutional, all of the provisions would then be invalid. On December 10, 2002, in *Wisconsin Realtors Association et al. v. Ponto et al.*, the U.S. District Court for the Western District of Wisconsin found that one provision of Act 109 relating to advance reporting of certain independent disbursements before obligations are incurred to make those disbursements violates the First and Fourteenth Amendments. While this decision is subject to appeal, it apparently precludes enforcement and administration of the Act 109 changes as of December 10, 2002. The Act 109 changes, however, currently remain in the statutes and the law in effect before Act 109 is removed from the statutes on July 1, 2003.

This bill deletes all of the changes described above made by Act 109, including the changes not affected by the nonseverability provision, and makes other changes effective on February 1, 2003, or the day after the bill is published as an act, whichever is later. The following is a description of the changes made by this bill to the current statutes (in effect before July 1, 2003) and, in each case, a notation as to whether the change was contained within Act 109:

INS 4A:

NOA The bill also requires an individual or organization who or which becomes subject to a registration requirement by making such a communication to report, upon registration, the information that would have been required to be reported if the individual or organization had been registered with respect to any obligation incurred or disbursement made for the purpose of making such a communication prior to registration.

INS 3A:1

LRB-3008/4
JTK:kmg&jlg:mrc

Currently, with certain limited exceptions, any individual who accepts and makes or transfers political contributions, or who incurs obligations or makes disbursements (expenditures) for political purposes, and any organization that makes or transfers contributions, or that incurs obligations or makes disbursements for political purposes, must register and file reports with the appropriate filing officer or agency identifying contributions received and disbursements made and providing certain other information.

This bill provides that no individual who or organization which is subject to a registration requirement may make any contribution prior to the date of registration. The bill also provides that no registrant may accept any contribution from any individual who or organization which is subject to a registration requirement prior to the date of registration of that individual or organization.

Currently, a new registrant is generally prohibited from making a contribution or disbursement from property or funds received prior to the date of registration, except that, if a registrant holds property or funds at the time of registration that

1999 - 2000 Legislature

- 2 -

LRB-3008/4
JTK:kmg&jlg:mrc

BILL

→ deletes that exception.

were not intended for political purposes in connection with an election for state or local office at the time that they were received, the registrant may report the property or funds as received on the date of registration and may then use the property or funds to make a contribution or disbursement.

✓ This bill

✓ None of the above changes were included in Act 109.

~~2001-11-10-2001-11-10~~

Currently, a nonresident registrant need report only contributions and other income received from sources in this state and disbursements made and obligations incurred with respect to an election for state or local office in this state. This bill deletes this exception.

~~2001-11-10-2001-11-10~~
This change was included in Act 109.

DN53A:2

~~LRB 1930/1
JTK&RJM:cjs:ch~~

Currently, with certain exceptions, a registrant who or which is required to register with a filing officer in this state must file regular reports identifying contributions received and disbursements made and providing certain other information. However, a committee of a candidate for the U.S. senate or house of representatives or a national political party committee need not file reports for any period covered in a report filed by the committee with the federal election commission. In addition, a state political party committee which is registered with the federal election commission and which makes contributions to candidates for national office, as well as contributions to other state political party committees, need not file reports for any period covered by a report filed by the committee with the federal election commission if the elections board receives a copy of that report and the committee makes no contributions to any individual who or organization which is required to register with a filing officer under Wisconsin law. This bill deletes these exceptions to state reporting requirements.

The above changes were ^{not} included in Act 109.

Subs Reporting Thresholds

[Handwritten signature]

1. Provides that, in order to be eligible for a grant, a candidate for partisan office at the general election must have an opponent whose name is certified for placement on the ballot as a candidate for the same office and who received at least 6% of the vote cast for all candidates on all ballots for that office at the September primary.

2. Requires any candidate applying for a grant to file a special financial report with the board which updates the candidate's previous reports as of the date of the primary, or the date on which the primary would be held, if no primary is required. If this report indicates that the candidate has a balance in his or her campaign depository account that is equal to or greater than 100% of the authorized disbursement level for the office that the candidate seeks, the board must deny the candidate's application.

3. Changes the deadline for withdrawal of an application for a grant to the eighth day before the primary or, in a nonpartisan election where no primary is held; the day that the primary would be held if a primary were required or, in a special election where no primary is held, the 35th day before the special election.

PUBLIC BROADCASTING TELEVISION STATIONS AND PUBLIC ACCESS CHANNELS

Act 109 requires effective on July 1, 2003 that
This bill requires free time on public broadcasting television stations and public access channels for candidates for state office. Under current law, the Federal Communications Commission grants licenses for the operation of public broadcasting television stations. Also under current law, a city, village, or town is authorized to grant a franchise to a person that allows that person to operate a cable television system in the city, village, or town. Under the franchise, the person may be required to provide cable television channels that the city, village, or town may use for public, educational, or governmental purposes. A channel that is used exclusively for public, rather than educational or governmental purposes, is commonly referred to as a public access channel. A city, village, or town may operate a public access channel, or a city, village, or town may allow another person to operate the channel.

be provided to

Not Act 109 a 60 required
This bill requires the elections board to promulgate rules that require licensees of public broadcasting stations and operators of public access channels to provide a minimum amount of free time to candidates for state office at general, spring, and special elections. The rules must require the same amount of time for each candidate for a particular state office, but may require different amounts of time for different offices. *These changes are not affected by the court decision in*

No scoring

Wisconsin Realtors Association v. Panta (see above)

OFFICIAL ACTION IN RETURN FOR PROVIDING OR WITHHOLDING THINGS OF VALUE

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

This bill repeals these provisions.

2003-2004 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0617/lins
JTK.....

INS 15-7: ✓

SECTION 1. 5.05 (2) ✓ of the statutes ✓, as aff'ly of WA 109, is repealed and recreated to read:

5.05 (2) AUDITING. In addition to the facial examination of reports and statements required under s. 11.21 (13), the board shall conduct an audit of reports and statements which are required to be filed with it to determine whether violations of ch. 11 have occurred. The board may examine records relating to matters required to be treated in such reports and statements. The board shall make official note in the file of a candidate, committee, group ✓ or individual under ch. 11 of any error or other discrepancy which the board discovers and shall inform the person submitting the report or statement.

NOTE: NOTE: Sub. (2) is amended eff. 7-1-03 by 2001 Wis. Act 109 to read: NOTE:

(2) AUDITING. In addition to the facial examination of reports and statements required under s. 11.21 (13), the board shall conduct an audit of reports and statements which are required to be filed with it to determine whether violations of ch. 11 have occurred. The board may examine records relating to matters required to be treated in such reports and statements. The board shall make official note in the file of a candidate, committee, group or individual under ch. 11 of any error or other discrepancy which the board discovers and shall inform the person submitting the report or statement. The board may also examine all documentation that is required to be maintained by political parties that receive grants from the Wisconsin election campaign fund under s. 11.50 (2s).

History: 1973 c. 334; 1975 c. 85, 93, 199; 1977 c. 29; 1977 c. 196 s. 131; 1977 c. 418, 427, 447; 1979 c. 32 s. 92 (8); 1979 c. 89, 154, 328; 1983 a. 27, 484, 524, 538; 1985 a. 303; 1985 a. 304 ss. 3, 155; 1989 a. 31, 192; 1999 a. 182; 2001 a. 109.

INS 23-5: ✓

SECTION 2. 11.05 (3) (s) ✓ of the statutes ✓ is created to read:

11.05 (3) (s) In the case of a registrant that has made a communication identified in s. 11.01 (16) (a) 3., ✓ a report containing the information specified in s. 11.06 (1) ✓ with respect to any obligation to make a disbursement incurred or any disbursement made for the purpose of making such a communication prior to registration.

INS 23-23:1 :

as aff by 01 WA 109,

SECTION 3. 11.05 (9) (b) of the statutes is repealed and recreated to read:

11.05 (9) (b) An individual who or a committee or group which receives a contribution of money and transfers the contribution to another individual, committee, or group while acting as a conduit is not subject to registration under this section unless the individual, committee, or group transfers the contribution to a candidate or a personal campaign, political party or support committee.

NOTE: NOTE: Par. (b) is amended eff. 7-1-03 by 2001 Wis. Act 109 to read:NOTE:

(b) An individual who or a committee or group which receives a contribution of money and transfers the contribution to another individual, committee, or group while acting as a conduit is not subject to registration under this section unless the individual, committee, or group transfers the contribution to a candidate or a personal campaign, political party, or support committee.

History: 1973 c. 334; 1975 c. 93, 199, 200; 1977 c. 427; 1979 c. 328; 1979 c. 355 s. 241; 1981 c. 314 s. 146; 1983 a. 484; 1985 a. 303 ss. 7 to 15r, 86; 1987 a. 370, 391, 403; 1989 a. 192; 2001 a. 109.

INS 27-5:1:

SECTION 4. 11.06 (3) (b) (intro.) of the statutes is repealed and recreated to read:

NOTE: NOTE: Par. (b)(intro.) is amended eff. 7-1-03 by 2001 Wis. Act 109 to read:NOTE:

11.06 (3) (b) (intro.) A nonresident registrant that makes a report under sub. (1) shall ensure that the report separately states information under sub. (1) concerning all of the following, in a manner prescribed by the board:

History: 1973 c. 334; 1975 c. 93 ss. 47 to 53, 119 (2); 1975 c. 199; 1979 c. 263, 328; 1985 a. 303; 1987 a. 370; 1989 a. 192; 1995 a. 16 s. 2; 2001 a. 109.

INS 28-13:

SECTION 5. 11.06 (7m) (b) of the statutes is repealed and recreated to read:

11.06 (7m) (b) If the committee has already made contributions in excess of the amounts specified in s. 11.26 (2) at the time ^{that} it files an oath under sub. (7), each candidate to whom contributions are made shall promptly return a sufficient amount of contributions to bring the committee ^{into} compliance with this subsection and the committee may not make any additional contributions in violation of this subsection.

NOTE: NOTE: Par. (b) is amended eff. 7-1-03 by 2001 Wis. Act 109 to read:NOTE:

(b) If the committee has already made contributions in excess of the applicable amounts specified in s. 11.26 (2) or (2m) at the time it files an oath under sub. (7), each candidate to whom contributions are made shall promptly return a sufficient amount of contributions to bring the committee in compliance with this subsection and the committee may not make any additional contributions in violation of this subsection.

History: 1973 c. 334; 1975 c. 93 ss. 47 to 53, 149 (2); 1975 c. 199; 1979 c. 263, 328; 1985 a. 303; 1987 a. 370; 1989 a. 192; 1995 a. 16 s. 2; 2001 a. 109.

INS 38-7: ✓

as aff by 01 WA 109,

SECTION 6. 11.20 (2) of the statutes is repealed and recreated to read:

11.20 (2) Preprimary and preelection reports under s. 11.06 (1) shall be received by the appropriate filing officer no earlier than 14 days and no later than 8 days preceding the primary and the election.

NOTE: NOTE: Sub. (2) is amended eff. 7-1-03 by 2001 Wis. Act 109 to read:NOTE:

(2) In addition to any reports required under s. 11.12 (8), each candidate who seeks office at a primary or other election, or his or her personal campaign committee, shall file a preprimary and preelection report under s. 11.06 (1), which shall be received by the appropriate filing officer no earlier than 14 days and no later than 8 days preceding the primary and the election. Each candidate who is required to file reports under s. 11.12 (8), or his or her personal campaign committee, shall file each weekly report so that the report is received by the appropriate filing officer no earlier than the day after the end of the week to which the report pertains and no later than the day after the end of that week, and shall file each daily report so that the report is received no later than the end of the day following the day to which the report pertains.

History: 1973 c. 334; 1975 c. 93, 199; 1979 c. 328 ss. 58, 82 to 92, 146; 1981 c. 314 s. 146; 1983 a. 183, 491, 538; 1985 a. 303 ss. 32m to 37, 88; 1987 a. 370; 1989 a. 192; 1995 a. 16 s. 2; 1997 a. 27; 2001 a. 103, 109.

INS 38-23: ✓

as aff by 01 WA 109,

SECTION 7. 11.20 (8) (intro.) of the statutes is repealed and recreated to read:

11.20 (8) (intro.) Reports filed under subs. (2), (4), and (4m) shall include all contributions received and transactions made as of the end of:

NOTE: NOTE: Sub. (8)(intro.) is amended eff. 7-1-03 by 2001 Wis. Act 109 to read:NOTE:

(8) Reports filed under subs. (2), (4), and (4m) and s. 11.12 (8) shall include all contributions received and transactions made as of the end of:

History: 1973 c. 334; 1975 c. 93, 199; 1979 c. 328 ss. 58, 82 to 92, 146; 1981 c. 314 s. 146; 1983 a. 183, 491, 538; 1985 a. 303 ss. 32m to 37, 88; 1987 a. 370; 1989 a. 192; 1995 a. 16 s. 2; 1997 a. 27; 2001 a. 103, 109.

SECTION 8. 11.20 (8) (a) of the statutes is repealed and recreated to read:

as aff by 01 WA 109,

11.20 (8) (a) The 15th day preceding the primary or election in the case of the preprimary and preelection report.

NOTE: NOTE: Par. (a) is amended eff. 7-1-03 by 2001 Wis. Act 109 to read:NOTE:

(a) The 15th day preceding the primary or election in the case of the preprimary and preelection report under sub. (2).

History: 1973 c. 334; 1975 c. 93, 199; 1979 c. 328 ss. 58, 82 to 92, 146; 1981 c. 314 s. 146; 1983 a. 183, 491, 538; 1985 a. 303 ss. 32m to 37, 88; 1987 a. 370; 1989 a. 192; 1995 a. 16 s. 2; 1997 a. 27; 2001 a. 103, 109.

INS 45-13: ✓

as aff by 01 WA 109,

SECTION 9. 11.26 (3) of the statutes is repealed and recreated to read:

11.26 (3) The contribution limitations of subs. (1) and (2) apply cumulatively to the entire primary and election campaign in which a candidate participates, whether or not there is a contested primary election. The total limitation may be apportioned in any manner desired between the primary and election. All moneys cumulate regardless of the time of contribution.

NOTE: NOTE: Sub. (3) is amended eff. 7-1-03 by 2001 Wis. Act 109 to read: NOTE:

~~(3) The contribution limitations of subs. (1), (1m), (2), and (2m) apply cumulatively to the entire primary and election campaign in which a candidate participates, whether or not there is a contested primary election. The total limitation may be apportioned in any manner desired between the primary and election. All moneys cumulate regardless of the time of contribution.~~

~~History: 1973 c. 334; 1975 c. 93 ss. 89 to 95, 119 (1); 1975 c. 200; 1977 c. 107, 187; 1977 c. 427 s. 132; 1979 c. 263, 328; 1979 c. 355 s. 32; 1983 a. 183, 186; 1985 a. 303 ss. 44 to 55m, 86; 1987 a. 27, 370; 1989 a. 31, 192; 1995 a. 27 s. 9145 (1); 1995 a. 219, 225; 1999 a. 32; 2001 a. 109.~~

INS 45-19: ✓

as aff by 01 WA 109,

SECTION 10. 11.26 (5) of the statutes is repealed and recreated to read:

11.26 (5) The contribution limits provided in subs. (1) and (4) do not apply to a candidate who makes any contribution or contributions to his or her own campaign for office from the candidate's personal funds or property or the personal funds or property which are owned jointly or as marital property with the candidate's spouse, with respect to any contribution or contributions made to that candidate's campaign only. A candidate's personal contributions shall be deposited in his or her campaign depository account and reported in the normal manner.

NOTE: NOTE: Sub. (5) is amended eff. 7-1-03 by 2001 Wis. Act 109 to read: NOTE:

~~(5) The contribution limits provided in subs. (1), (1m), and (4) do not apply to a candidate who makes any contribution or contributions to his or her own campaign for office from the candidate's personal funds or property or the personal funds or property which are owned jointly or as marital property with the candidate's spouse, with respect to any contribution or contributions made to that candidate's campaign only. A candidate's personal contributions shall be deposited in his or her campaign depository account and reported in the normal manner.~~

~~History: 1973 c. 334; 1975 c. 93 ss. 89 to 95, 119 (1); 1975 c. 200; 1977 c. 107, 187; 1977 c. 427 s. 132; 1979 c. 263, 328; 1979 c. 355 s. 32; 1983 a. 183, 186; 1985 a. 303 ss. 44 to 55m, 86; 1987 a. 27, 370; 1989 a. 31, 192; 1995 a. 27 s. 9145 (1); 1995 a. 219, 225; 1999 a. 32; 2001 a. 109.~~

✓ *as aff by 01 WA 109,*

SECTION 11. 11.26 (6) of the statutes is repealed and recreated to read:

11.26 (6) When a candidate adopts a preexisting support committee as his or her personal campaign committee, the support committee is deemed to have been the same committee as the candidate's personal campaign committee for purposes of the application of subs. (1), (2), and (9). The limitations prescribed in subs. (2) and (9) do not apply to the transfer of contributions which is made at the time of such adoption, but do apply to the contributions which have been made by any other committee to the support committee at the time of adoption.

NOTE: NOTE: Sub. (6) is amended eff. 7-1-03 by 2001 Wis. Act 109 to read:NOTE:

~~(6) When a candidate adopts a preexisting support committee as his or her personal campaign committee, the support committee is deemed to have been the same committee as the candidate's personal campaign committee for purposes of the application of subs. (1), (1m), (2), (2m), and (9). The limitations prescribed in subs. (1), (1m), (2), (2m), and (9) do not apply to the transfer of contributions which is made at the time of such adoption, but do apply to the contributions which have been made by any other committee to the support committee at the time of adoption.~~

~~History: 1973 c. 334; 1975 c. 93 ss. 89 to 95, 119 (1); 1975 c. 200; 1977 c. 107, 187; 1977 c. 427 s. 132; 1979 c. 263, 328; 1979 c. 355 s. 32; 1983 a. 183, 186; 1985 a. 303 ss. 44 to 55m, 86; 1987 a. 27, 370; 1989 a. 31, 192; 1995 a. 27 s. 9145 (1); 1995 a. 219, 225; 1999 a. 32; 2001 a. 109.~~

INS 49-3: ✓

was aff by 01 WA 109,

SECTION 12. 11.26 (15) of the statutes is repealed and recreated to read:

11.26 (15) The fact that 2 or more committees, other than personal campaign committees, utilize common policies and practices concerning the endorsement of candidates or agree to make contributions only to such endorsed candidates does not affect the right of each committee independently to make contributions up to the amount specified under sub. (2).

NOTE: NOTE: Sub. (15) is amended eff. 7-1-03 by 2001 Wis. Act 109 to read:NOTE:

~~(15) The fact that 2 or more committees, other than personal campaign committees, utilize common policies and practices concerning the endorsement of candidates or agree to make contributions only to such endorsed candidates does not affect the right of each committee independently to make contributions up to the applicable amount specified under sub. (1), (1m), (2), or (2m).~~

~~History: 1973 c. 334; 1975 c. 93 ss. 89 to 95, 119 (1); 1975 c. 200; 1977 c. 107, 187; 1977 c. 427 s. 132; 1979 c. 263, 328; 1979 c. 355 s. 32; 1983 a. 183, 186; 1985 a. 303 ss. 44 to 55m, 86; 1987 a. 27, 370; 1989 a. 31, 192; 1995 a. 27 s. 9145 (1); 1995 a. 219, 225; 1999 a. 32; 2001 a. 109.~~

was aff by 01 WA 109,

SECTION 13. 11.26 (17) (a) of the statutes is repealed and recreated to read:

11.26 (17) (a) For purposes of application of the limitations imposed in subs. (1), (2), (9)^v and (10), the "campaign" of a candidate begins and ends at the times specified in this subsection.

NOTE: NOTE: Par. (a) is amended eff. 7-1-03 by 2001 Wis. Act 109 to read:NOTE:

(a) For purposes of application of subs. (1), (1m), (2), (2m), (9), (9m), and (10), the "campaign" of a candidate begins and ends at the times specified in this subsection. History: 1973 c. 334; 1975 c. 93 ss. 89 to 95, 118 (1); 1975 c. 200; 1977 c. 107, 187; 1977 c. 427 s. 132; 1979 c. 263, 328; 1979 c. 355 s. 32; 1983 a. 183, 186; 1985 a. 303 ss. 44 to 55m, 86; 1987 a. 27, 370; 1989 a. 31, 192; 1995 a. 27 s. 9145 (1); 1995 a. 219, 225; 1999 a. 32; 2001 a. 109.

INS 54-1: ✓

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

b. With respect to a special election, an individual who is certified under s. 8.50 (1) (d) as a candidate in a special election for state superintendent, or an individual who is certified under s. 8.50 (1) (d) as a candidate in a special election for any state office, except district attorney, on the ballot or column of a party whose candidate for the same office at the preceding general election received at least 6% of the vote cast for all candidates on all ballots for the office, or an individual who has been lawfully appointed and certified to replace either such individual on the ballot at a special election, or an individual who receives at least 6% of the vote cast for all candidates on all ballots for any state office, except district attorney, at a partisan special election; and who qualifies for a grant under sub. (2). Where the boundaries of a district in which an individual seeks office have been changed since the preceding general election such that it is not possible to calculate the exact number of votes that are needed by that individual to qualify as an eligible candidate prior to an election

under this subdivision, the number of votes cast for all candidates for the office at the preceding general election in each ward, combination of wards or municipality which is wholly contained within the boundaries of the newly formed district shall be calculated. If the candidate of the political party on whose ballot or column the individual appears in the newly formed district obtained at least 6% of the number of votes calculated, the individual is deemed to qualify as an eligible candidate prior to the election under this subdivision.

NOTE: NOTE: Par. (a) is affected eff. 7-1-03 by 2001 Wis. Act 109 to read:NOTE:

(a) "Eligible candidate" means:

1. For purposes of qualification for a grant from the general account:

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

b. With respect to a special election, an individual who is certified under s. 8.50 (1) (d) as a candidate in a special election for state superintendent, or an individual who is certified under s. 8.50 (1) (d) as a candidate in a special election for any state office, except district attorney, on the ballot or column of a party whose candidate for the same office at the preceding general election received at least 6% of the vote cast for all candidates on all ballots for the office, or an individual who has been lawfully appointed and certified to replace either such individual on the ballot at a special election, or an individual who receives at least 6% of the vote cast for all candidates on all ballots for any state office, except district attorney, at a partisan special election; and who qualifies for a grant under sub. (2). Where the boundaries of a district in which an individual seeks office have been changed since the preceding general election such that it is not possible to calculate the exact number of votes that are needed by that individual to qualify as an eligible candidate prior to an election, the number of votes cast for all candidates for the office at the preceding general election in each ward, combination of wards or municipality which is wholly contained within the boundaries of the newly formed district shall be calculated. If the candidate of the political party on whose ballot or column the individual appears in the newly formed district obtained at least 6% of the number of votes calculated, the individual is deemed to qualify as an eligible candidate prior to the election.

2m. For purposes of qualification for a grant from a political party account, an individual who is certified under s. 7.08 (2) (a) or 8.50 (1) (d) in the general election or a special election as the candidate of an eligible political party for a state office, other than district attorney, or an individual who has been lawfully appointed and certified to replace such an individual on the ballot at the general or a special election and who has qualified for a grant under sub. (2).

History: 1977 c. 107, 272; 1979 c. 328; 1983 a. 51; 1983 a. 484 s. 174; 1985 a. 303 ss. 73 to 79, 86; 1987 a. 370, 391, 403; 1989 a. 31; 1989 a. 192 s. 75; 2001 a. 109.

INS 55-22: ✓

SECTION 14. 11.50 (2) (b) 3. of the statutes ^{is repealed and recreated to read:}

11.50 (2) (b) 3. The candidate has an opponent who is certified for placement on the election ballot as a candidate for the same office;

NOTE: NOTE: Subd. 3. is amended eff. 7-1-03 by 2001 Wis. Act 109 to read:NOTE:

3. In the case of a candidate at the general election, the candidate has an opponent whose name is certified for placement on the election ballot as a candidate for the same office and who received at least 6% of the vote cast for all candidates on all ballots for that office at the September primary;

History: 1977 c. 107, 272; 1979 c. 328; 1983 a. 51; 1983 a. 484 s. 174; 1985 a. 303 ss. 73 to 79, 86; 1987 a. 370, 391, 403; 1989 a. 31; 1989 a. 192 s. 75; 2001 a. 109.

SECTION 15. 11.50 (2) (b) 4. of the statutes ^{is repealed and recreated to read:}

11.50 (2) (b) 4. The financial reports filed by or on behalf of the candidate as of the date of the spring or September primary, or the date that the special primary

as a ff by 01 WA/09,
as a ff by 01 WA/09

is or would be held, if required, indicate that his or her statement filed with the application under par. (a) is true; and

NOTE: NOTE: Subd. 4. is amended eff. 7-1-03 by 2001 Wis. Act 109 to read:NOTE:

4. The financial reports filed by or on behalf of the candidate as of the date of the spring or September primary, or the date that the special primary is or would be held, if required, indicate that his or her affidavit filed under s. 11.31 (2m) (a) is true;

History: 1977 c. 107, 272; 1979 c. 328; 1983 a. 51; 1983 a. 484 s. 174; 1985 a. 303 ss. 73 to 79, 86; 1987 a. 370, 391, 403; 1989 a. 31; 1989 a. 192 s. 75; 2001 a. 109.

INS 57-14: ✓

SECTION 16. 11.50 (2) (f) of the statutes is repealed and recreated to read:

has aff by 01 W.A. 109

11.50 (2) (f) The board shall inform each candidate in writing of the approval or disapproval of the candidate's application, as promptly as possible after the date of the spring primary, September primary, special primary, or date that the primary would be held, if required. With respect to a candidate at a special election who applies for a postelection grant under sub. (1) (a) 2., the board shall inform the candidate in writing of the conditional approval or disapproval of the candidate's application at the same time.

NOTE: NOTE: Par. (f) is amended eff. 7-1-03 by 2001 Wis. Act 109 to read:NOTE:

(f) The board shall disapprove the application of any candidate who has a balance in his or her campaign depository account, as reported under par. (c), that is equal to or greater than 100% of the disbursement level specified under s. 11.31 (1), as adjusted under s. 11.31 (9), for the office that the candidate seeks, but without respect to any adjustment under s. 11.31 (3r). The board shall inform each candidate in writing of the approval or disapproval of the candidate's application, as promptly as possible after the date of the spring primary, September primary, special primary, or date that the primary would be held, if required. With respect to a candidate at a special election who applies for a postelection grant under sub. (1) (a) 1. b., the board shall inform the candidate in writing of the conditional approval or disapproval of the candidate's application at the same time.

History: 1977 c. 107, 272; 1979 c. 328; 1983 a. 51; 1983 a. 484 s. 174; 1985 a. 303 ss. 73 to 79, 86; 1987 a. 370, 391, 403; 1989 a. 31; 1989 a. 192 s. 75; 2001 a. 109.

INS 61-7: ✓

SECTION 17. 11.50 (7) (intro.) of the statutes is repealed and recreated to read:

has aff by 01 W.A. 109,

11.50 (7) UTILIZATION. (intro.) Grants distributed under this section may be utilized only for deposit in a campaign depository account under s. 11.10. Grants may be expended only for one or more of the following:

NOTE: NOTE: Sub. (7)(intro.) is amended eff. 7-1-03 by 2001 Wis. Act 109 to read:NOTE:

(7) UTILIZATION. Grants distributed under this section and contributions received from a political party under sub. (2s) (f) may be utilized only for deposit in a campaign depository account under s. 11.10. Grants and contributions received from a political party under sub. (2s) (f) may be expended only for one or more of the following:

History: 1977 c. 107, 272; 1979 c. 328; 1983 a. 51; 1983 a. 484 s. 174; 1985 a. 303 ss. 73 to 79, 86; 1987 a. 370, 391, 403; 1989 a. 31; 1989 a. 192 s. 75; 2001 a. 109.

as aff by 01 WA/09,

SECTION 18. 11.50 (8) of the statutes ~~is~~ repealed and recreated to read:

11.50 (8) LAPSING GRANTS. All grants disbursed under sub. (5) remain the property of the state until disbursed or encumbered for a lawful purpose. All grant moneys that are unspent and unencumbered by a candidate on the day after the election in which the candidate participates shall revert to the state. All deposits and refunds derived from grant moneys that are received by a candidate at any time after the day of the election in which the candidate participates shall revert to the state. All reversions shall be returned to the board by the candidate and shall be deposited in the fund.

NOTE: NOTE: Sub. (8) is amended eff. 7-1-03 by 2001 Wis. Act 109 to read: NOTE:

(8) LAPSING GRANTS. All grants disbursed to eligible candidates under sub. (5) remain the property of the state until disbursed or encumbered for a lawful purpose. All grant moneys received by an eligible candidate that are unspent and unencumbered by a candidate on the day after the election in which the candidate participates shall revert to the state. All deposits and refunds derived from grant moneys received by an eligible candidate that are received at any time after the day of the election in which the candidate participates shall revert to the state. All reversions shall be returned to the board by the candidate and shall be deposited in the fund.

History: 1977 c. 107, 272; 1979 c. 328; 1983 a. 51; 1983 a. 484 s. 174; 1985 a. 303 ss. 73 to 79, 86; 1987 a. 370, 391, 403; 1989 a. 31; 1989 a. 192 s. 75; 2001 a. 109.

created

INS 63-14: ✓

X

~~*as aff by 01 WA/09*~~

SECTION 19. 11.50 (10) of the statutes ~~is~~ repealed and recreated to read:

11.50 (10) VOLUNTARY LIMITATION. Any eligible candidate may, by written request, limit his or her participation in the fund to a lesser amount than that authorized under sub. (9).

NOTE: NOTE: Sub. (10) is repealed eff. 7-1-03 by 2001 Wis. Act 109. NOTE:

History: 1977 c. 107, 272; 1979 c. 328; 1983 a. 51; 1983 a. 484 s. 174; 1985 a. 303 ss. 73 to 79, 86; 1987 a. 370, 391, 403; 1989 a. 31; 1989 a. 192 s. 75; 2001 a. 109.

as aff by 01 WA/09,

SECTION 20. 11.50 (10m) of the statutes ~~is~~ repealed and recreated to read:

11.50 (10m) RETURN OF GRANTS. An individual who receives a grant prior to an election in which he or she is a candidate and who desires to return any portion of the grant shall return that portion no later than the 2nd Tuesday in October preceding a general election, the 4th Tuesday preceding a spring election, or the 3rd Tuesday preceding a special election. A candidate who returns all or any portion of

a grant under this subsection remains bound by the candidate's statement filed under sub. (2) (a).

NOTE: NOTE: Sub. (10m) is amended eff. 7-1-03 by 2001 Wis. Act 109 to read:NOTE:

(10m) RETURN OF GRANTS. An individual who receives a grant prior to an election in which he or she is a candidate and who desires to return any portion of the grant shall return that portion no later than the 2nd Tuesday in October preceding a general election, the 4th Tuesday preceding a spring election or the 3rd Tuesday preceding a special election. A candidate who returns all or any portion of a grant under this subsection remains bound by the candidate's affidavit filed under s. 11.31 (2m) (a) and the candidate's statement filed under sub. (2) (a).

History: 1977 c. 107, 272; 1979 c. 328; 1983 a. 51; 1983 a. 484 s. 174; 1985 a. 303 ss. 73 to 79, 86; 1987 a. 370, 391, 403; 1989 a. 31; 1989 a. 192 s. 75; 2001 a. 109.

INS 73-13: ✓

SECTION 21. 2001 Wisconsin Act 109, section 9115 (2v), (2w), (2x) and (2y) are repealed.

SECTION 22. 2001 Wisconsin Act 109, section 9132 (4v) is repealed.

SECTION 23. 2001 Wisconsin Act 109, section 9215 (3v) is repealed.

SECTION 24. 2001 Wisconsin Act 109, section 9244 (6v) is repealed.

SECTION 25. 2001 Wisconsin Act 109, section 9315 (2v) and (2w) are repealed.

SECTION 26. 2001 Wisconsin Act 109, section 9344 (2v) is repealed.

SECTION 27. 2001 Wisconsin Act 109, section 9415 (1zx) is repealed.

RS 23-21 ✓

1999 - 2000 Legislature

- 3 -

LRB-3008/4
JTK:kmg&jlg:mrc
SECTION 2

BILL

1 SECTION 2. 11.05 (5r) of the statutes is created to read:

2 11.05 (5r) CONTRIBUTION PRIOR TO REGISTRATION PROHIBITED. (a) Except as
3 provided in sub. (13)✓, no person, committee✓, or group subject to a registration
4 requirement may make any contribution prior to the date of registration under this
5 section.

6 (b) No registrant may accept any contribution from a person, committee✓, or
7 group subject to a registration requirement prior to the date of registration of that
8 person, committee✓, or group.

9 SECTION 3. 11.05 (6) (title) of the statutes is amended to read:

10 11.05 (6) (title) CONTRIBUTION OR DISBURSEMENT FROM PREEXISTING ASSETS

11 PROHIBITED.

SECTION 4. 11.05 (7) of the statutes is ~~amended to read:~~

✓
RS
A12

repealed.

PNS A

✓

Section #. 11.05 (6) of the statutes is amended to read:

11.05 (6) CONTRIBUTION OR DISBURSEMENT PROHIBITED. Except as provided in ^{✓ sub.} ~~subs. (7) and~~ (13), no person, committee, or group subject to a registration requirement may make any contribution or disbursement from property or funds received prior to the date of registration under this section.

History: 1973 c. 334; 1975 c. 93, 199, 200; ~~1977 c. 427~~; 1979 c. 328; 1979 c. 355 s. 241; 1981 c. 314 s. 146; 1983 a. 484; 1985 a. 303 ss. 7 to 15r, 86; 1987 a. 370, 391, 403; 1989 a. 192; 2001 a. 109.

INS 23-23:2
✓

LRB-3008/4
JTK:kmg&jlg:mrc
SECTION 5

16 SECTION 6. 11.05 (12) (title) of the statutes is amended to read:

17 11.05 (12) (title) TIME OF REGISTRATION; ACCEPTANCE OF UNLAWFUL CONTRIBUTIONS.

JWS27-512

~~LRE-1930/1
JTK&RJM:js:ch
SECTION 16~~

- 3 SECTION 17. 11.06 (3m) of the statutes is repealed.
- 4 SECTION 18. 11.06 (3r) of the statutes is repealed.
- 5 SECTION 19. 11.06 (3w) of the statutes is repealed.

→ SEAM # RP; 11.06 (4) (e) ←

sort, out
of order.

Ans 54-2 ✓

~~Section # 11.50 (1) (a) 2 of the statutes is amended to read:~~ ✓

11.50 (1) (a) 2. With respect to a special election, an individual who is certified under s. 8.50 (1) (d) as a candidate in a special election for state superintendent, or an individual who is certified under s. 8.50 (1) (d) as a candidate in a special election for any state office, except district attorney, on the ballot or column of a party whose candidate for the same office at the preceding general election received at least 6% of the vote cast for all candidates on all ballots for the office, or an individual who has been lawfully appointed and certified to replace either such individual on the ballot at a special election, or an individual who receives at least 6% of the vote cast for all candidates on all ballots for any state office, except district attorney, at a partisan special election; and who qualifies for a grant under sub. (2). Where the boundaries of a district in which an individual seeks office have been changed since the preceding general election such that it is not possible to calculate the exact number of votes that are needed by that individual to qualify as an eligible candidate prior to an election under this subdivision, the number of votes cast for all candidates for the office at the preceding general election in each ward, combination of wards or municipality which is wholly contained within the boundaries of the newly formed district shall be calculated. If the candidate of the political party on whose ballot or column the individual appears in the newly formed district obtained at least 6% of the number of votes calculated, the individual is deemed to qualify as an eligible candidate prior to the election under this subdivision.

~~NOTE: Par. (a) is affected eff. 7-1-03 by 2001 Wis. Act 109 to read:~~

~~(a) "Eligible candidate" means:~~

~~1. For purposes of qualification for a grant from the general account:~~

~~a. With respect to a spring or general election, any individual who is certified under s. 7.08 (2) (a) as a candidate in the spring election for justice or state superintendent, or an individual who receives at least 6% of the vote cast for all candidates on all ballots for any state office, except district attorney, for which the individual is a candidate at the September primary and who is certified under s. 7.08 (2) (a) as a candidate for that office in~~

[Handwritten signature]

IRS 72-5

Section #. 71.08 (1) (intro.) of the statutes is ~~amended~~ *repealed and recreated* to read:



71.08 (1) IMPOSITION. (intro.) If the tax imposed on a natural person, married couple filing jointly, trust, or estate under s. 71.02, not considering the credits under ss. 71.07 (1), (2dd), (2de), (2di), (2dj), (2dL), (2dr), (2ds), (2dx), (2fd), (3m), (3s), (6), ~~(6m)~~ and (9e), 71.28 (1dd), (1de), (1di), (1dj), (1dL), (1ds), (1dx), (1fd), (2m) and (3), and 71.47 (1dd), (1de), (1di), (1dj), (1dL), (1ds), (1dx), (1fd), (2m), and (3) and subchs. VIII and IX and payments to other states under s. 71.07 (7), is less than the tax under this section, there is imposed on that natural person, married couple filing jointly, trust, or estate, instead of the tax under s. 71.02, an alternative minimum tax computed as follows:

~~History: a. 109, 1987 a. 312, 411; 1989 a. 31; 1991 a. 39; 1995 a. 27, 209; 1997 a. 27, 237; 1999 a. 9; 2001 a. 109.~~

2003

INS 74-17

LRB 06/17/11

Nonstat File Sequence: FFF

STR: _____

EFFECTIVE DATE

1. In the component bar: For the action phrase, execute: ... **create** → **action:** → *NS: → **effdate**
For the text, execute: **create** → **text:** → *NS: → **effdateA**
2. Nonstatutory subunits are numbered automatically. Fill in the SECTION # or subsection # only if a "frozen" number is needed.

SECTION # _____ . **Effective date.**

(#1) () This act takes effect on February 1, 2003, or the day after publication, whichever is later.

1. In the component bar: For the action phrase, execute: .. **create** → **action:** → *NS: → **effdateE**
For the text, execute: **create** → **text:** → *NS: → **effdate**
2. Nonstatutory subunits are numbered automatically. Fill in the SECTION # or subsection # only if a "frozen" number is needed.

SECTION # _____ . **Effective dates;**

..... This act takes effect on the day after publication, except as follows:

(#1) () The treatment of sections of the statutes takes effect on

1. In the component bar: For the budget action phrase, execute:.. **create** → **action:** → *NS: → **94XX**
For the text, execute: **create** → **text:** → *NS: → **effdate**
2. Nonstatutory subunits are numbered automatically. Fill in the SECTION # or subsection # only if a "frozen" number is needed. Below, for the budget, fill in the **9400** department code.

SECTION 94 _____ . **Effective dates;**

(#1) () The treatment of sections of the statutes takes effect on

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

-0617/ldw
LRB-4780/tdn
JTK/AM:kg:pg
↑

~~January 28, 2002~~

Senator Ellis:

JNS
D1A

JNS
D2A

JNS
D3A

(16)(a) 3 and
11.12(6)(c)

1. Concerning proposed s. 11.19 (6), you may wish to exempt candidates for partisan office at a special election that is called concurrently with the spring election from the prohibition on retention of certain campaign moneys after December 31 of even-numbered years.

2. In adjusting the percentage qualifier for grant applicants, we noted that a sentence in s. 11.50 (2) (b) 5., stats., was inadvertently stricken in a previous draft and carried into this draft. This sentence relates to the first \$100 of a contribution of more than \$100 being counted towards the qualifier. Because this appeared to us to be a mistake, this draft restores that sentence.

3. Currently, ch. 11, stats., generally requires disclosure of financial activity by individuals and committees seeking to influence the election or defeat of candidates for state or local office [see ss. 11.01 (6), (7), (11), and (16), 11.05, and 11.06, stats.], unless a disbursement is made or obligation incurred by an individual other than a candidate or by a committee which is not organized primarily for political purposes, the disbursement is not a contribution as defined in the law, and the disbursement is not made to expressly advocate the election or defeat of a clearly identified candidate [see s. 11.06 (2), stats.]. This language pretty closely tracks the holding of the U.S. Supreme Court in *Buckley v. Valeo, et al.*, 96 S. Ct. 612, 656-664 (1976), which prescribes the boundaries of disclosure that may be constitutionally enforced (except as those requirements affect certain minor parties and independent candidates). Proposed ss. 11.01 (4a) and (11a) and 11.06 (c) which require registration and reporting by individuals who or committees that make certain mass communications within specified periods preceding an election containing a reference to a candidate at that election, an office to be filled at that election, or a political party, appear to extend beyond the boundaries which the court permitted in 1976. As a result, the enforceability of these provisions at the current time appears to rest upon a shift by the court in its stance on this issue. In this connection, see also *North Carolina Right to Life, Inc., v. Bartlett*, 168 F. 3d 705 (4th Cir. 1999), cert. denied, 120 S. Ct. 1156 (2000), in which the court voided North Carolina's attempt to regulate issue advocacy as inconsistent with *Buckley*.

I also
We want to note briefly that a few of the provisions of this draft are innovative, and we do not yet have, to our knowledge, specific guidance from the U.S. Supreme Court concerning the enforceability of provisions of these types. It is well possible that a court

my

I
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 upon 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:

(a) Proposed s. 11.12 (8), which requires candidates who do not accept public grants to file special reports that are not required of candidates who accept public grants.

(c) ~~(b)~~ Proposed s. 11.50(9) (b), (ba), and (bb) which provides public grants to qualifying candidates to match certain independent disbursements and other expenditures and disbursements exceeding the disbursement limitations by candidates who do not accept public grants. Although relevant case law has developed regarding this issue in the federal courts of appeal, there is no consensus among these courts on this issue. Due to the unsettled nature of the law in this area, it is not possible to predict how a court would rule if proposed s. 11.50 (9) (b), (ba), or (bb) were challenged.

certain contributions received by independent committees and central

(d) ~~(a)~~ Proposed s. 11.26 (8m), which prohibits committees from making contributions to certain other committees. Although the U.S. Supreme Court has not ruled on the enforceability of a provision of this type, the court has indicated some willingness to permit limits on contributions beyond those specifically approved in *Buckley v. Valeo*. See *California Med. Assn. v. FEC*, 453 U.S. 182, 193-99 (1981) (\$5,000 limitation on individual-to-PAC contributions is a reasonable method of preventing individuals from evading limits on direct campaign contributions).

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

me

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

Robert J. Marchant
Legislative Attorney
Phone: (608) 261-4454
E-mail: Robert.Marchant@legis.state.wi.us

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

LRB-0617/1dn
JTK.....

DIA ✓

1. 2001 SB-104 was heavily amended in committee and again on the floor of the senate. The amendments adopted on the floor were not oriented in the same direction philosophically as the committee version. The result was a system of matching grants that had the potential to provide double matches. This draft further changes that system so that contributions are not reportable until received, disbursements and expenditures are not reportable until made, and obligations are not reportable until incurred. The matching triggers in proposed s. 11.50 (9) (b), (ba), and (bb) of this draft attempt to ensure that there will be no double matches. Please review these triggers to ensure that they effect your intent.

D3A ✓

3. This draft provides funding for one additional campaign finance investigator position and one additional auditor position at the elections board. Because the biennial budget act repeals and recreates the appropriation schedule under s. 20.005 (3), stats., if the bill resulting from this draft becomes law before enactment of the budget act and the budget act does not include the funding provided in this draft, the effect will be to eliminate the funding provided in this draft. To preserve the funding of these positions, you may wish to seek inclusion of the funding in the biennial budget bill.

D2A

candidates exceeding the applicable level or limit, this draft permits a candidate to identify contributions or parts thereof *previously received* for use in making the additional disbursements authorized by the draft. This seemed necessary to us to permit a prompt response. Please let us know if you intend differently.

5. Under current law, s. 11.26 (8) (a) and (b), stats., which are the PAC-to-party contribution limits, apply to a political party as defined in s. 5.02 (13), stats., which includes "a state committee... and all county, congressional, legislative, local and other affiliated committees authorized to operate under the same name". Since we believe the current language satisfies your intent and this draft preserves the coverage of these provisions, we did not change their applicability. This treatment is the same as was provided in AB 726.

#3 ~~Recent~~ Senator Kanavas ^{has} raised the issue that the provisions ^{in SB 104} for matching certain independent expenditures for mass communications ~~do not~~ ^{do} adequately address the contingency where a communication ^{related} to more than one candidate, so that a multiple match might be possible. ~~This draft does not include an analogous matching provision, although it does provide, in proposed s. 11.31 (3r), certain concessions to candidates who are adversely affected by certain independent expenditures. One could well argue that even if a communication contained a reference to several candidates, each of them may need to respond utilizing an amount equivalent to the full amount expended for the original communication, so that there is no problem with this draft that corresponds to the potential multiple match in SB 104.~~ If, however, you would nevertheless like to treat this issue differently, please let ~~us~~ ^{me} know.

result from single communication

relates ok this draft contains

In s. 71.10 (3) (a), stats., which relates to the income tax checkoff, we believe that the reference to individuals who are entitled to a refund needs to be deleted in order to effect your intent because this would encompass individuals who have no tax liability and would therefore receive no credit. We have therefore incorporated that change in this draft. Marc Shovers, who drafted this originally, is not in the office at this time so we will be following up to ensure that this language, as changed, is complete and correct. We will let you know if we determine that something more is needed.

8. Currently, ch. 11, stats., generally requires disclosure of financial activity by individuals and committees seeking to influence the election or defeat of candidates for state or local office [see ss. 11.01 (6), (7), (11), and (16), 11.05, and 11.06, stats.], unless a disbursement is made or obligation incurred by an individual other than a candidate or by a committee which is not organized primarily for political purposes, the disbursement is not a contribution as defined in the law and the disbursement is not made to expressly advocate the election or defeat of a clearly identified candidate [see s. 11.06 (2), stats.]. This language pretty closely tracks the holding of the U.S. Supreme Court in *Buckley v. Valeo, et al.*, 96 S. Ct. 612, 656-664 (1976), which prescribes the boundaries of disclosure that may be constitutionally enforced (except as those requirements affect certain minor parties and independent candidates). Proposed ss. 11.01 (4m) and (11m) and 11.065, which require registration and reporting by individuals who or committees that make certain mass communications within

Barman, Mike

From: Kuesel, Jeffery
Sent: Wednesday, December 18, 2002 4:52 PM
To: Basford, Sarah; Emery, Lynn; Barman, Mike
Subject: LRB-0617 (Ellis)

Sarah/Lynn/Mike:

When LRB-0617 (Ellis) is submitted on Thursday, please E mail a copy to Sen. Erpenbach. Also please update the request sheet so Sen. Erpenbach will receive a copy of future redrafts. Thank you.

Jeffery Kuesel
Managing Attorney
Wisconsin Legislative Reference Bureau
P.O.Box 2037
Madison WI 53701-2037
(608) 266-6778
jeffery.kuesel@legis.state.wi.us

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0617/1dn

JTK:kg:rs

December 18, 2002

Senator Ellis:

1. 2001 SB-104 was heavily amended in committee and again on the floor of the senate. The amendments adopted on the floor were not oriented in the same direction philosophically as the committee version. The result was a system of matching grants that had the potential to provide double matches. This draft further changes that system so that contributions are not reportable until received, disbursements and expenditures are not reportable until made, and obligations are not reportable until incurred. The matching triggers in proposed s. 11.50 (9) (b), (ba), and (bb) of this draft attempt to ensure that there will be no double matches. Please review these triggers to ensure that they effect your intent.
2. Senator Kanavas has raised the issue that the provisions of this draft for matching certain independent expenditures for mass communications do not adequately address the contingency where a communication relates to more than one candidate, so that a multiple match might result from a single communication. One could well argue that even if a communication contains a reference to several candidates each of them may need to respond by utilizing an amount equivalent to the full amount expended for the original communication. If, however, you would nevertheless like to treat this issue differently, please let me know.
3. This draft provides funding for one additional campaign finance investigator position and one additional auditor position at the Elections Board. Because the biennial budget act repeals and recreates the appropriation schedule under s. 20.005 (3), stats., if the bill resulting from this draft becomes law before enactment of the budget act and the budget act does not include the funding provided in this draft, the effect will be to eliminate the funding provided in this draft. To preserve the funding of these positions, you may wish to seek inclusion of the funding in the biennial budget bill.
4. Currently, ch. 11, stats., generally requires disclosure of financial activity by individuals and committees seeking to influence the election or defeat of candidates for state or local office [see ss. 11.01 (6), (7), (11), and (16), 11.05, and 11.06, stats.], unless a disbursement is made or obligation incurred by an individual other than a candidate or by a committee which is not organized primarily for political purposes, the disbursement is not a contribution as defined in the law, and the disbursement is not

made to expressly advocate the election or defeat of a clearly identified candidate [see s. 11.06 (2), stats.]. This language pretty closely tracks the holding of the U.S. Supreme Court in *Buckley v. Valeo, et al.*, 96 S. Ct. 612, 656-664 (1976), which prescribes the boundaries of disclosure that may be constitutionally enforced (except as those requirements affect certain minor parties and independent candidates). Proposed ss. 11.01 (16) (a) 3. and 11.12 (6) (c), which require registration and reporting by individuals who or committees that make certain mass communications within specified periods preceding an election containing a reference to a candidate at that election, an office to be filled at that election, or a political party, appear to extend beyond the boundaries which the court permitted in 1976. As a result, the enforceability of these provisions at the current time appears to rest upon a shift by the court in its stance on this issue. In this connection, see also *North Carolina Right to Life, Inc., v. Bartlett*, 168 F. 3d 705 (4th Cir. 1999), cert. denied, 120 S.Ct. 1156 (2000), in which the court voided North Carolina's attempt to regulate issue advocacy as inconsistent with *Buckley*.

I also want to note briefly that a few of the provisions of this draft are innovative, and I 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 upon equal protection guarantees, it is possible that enforceability problems with these provisions may occur. In particular, those provisions concerning which I do not have specific guidance at this time are:

(a) Proposed s. 11.12 (8), which requires candidates who do not accept public grants to file special reports that are not required of candidates who accept public grants.

(b) Proposed s. 11.26 (8m), which prohibits committees from making contributions to certain other committees. Although the U.S. Supreme Court has not ruled on the enforceability of a provision of this type, the court has indicated some willingness to permit limits on contributions beyond those specifically approved in *Buckley v. Valeo*. See *California Med. Assn. v. FEC*, 453 U.S. 182, 193-99 (1981) (\$5,000 limitation on individual-to-PAC contributions is a reasonable method of preventing individuals from evading limits on direct campaign contributions).

(c) Proposed s. 11.50 (9) (b), (ba), and (bb) which provides public grants to qualifying candidates to match contributions received by independent committees and certain independent disbursements and other expenditures and disbursements exceeding the disbursement limitations by candidates who do not accept public grants. Although relevant case law has developed regarding this issue in the federal courts of appeal, there is no consensus among these courts on this issue. Due to the unsettled nature of the law in this area, it is not possible to predict how a court would rule if proposed s. 11.50 (9) (b), (ba), or (bb) were challenged.

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

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

06/17/2

CCC

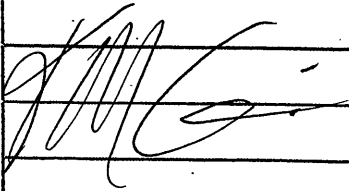
Senate Bill 12

#. Page 23, line 20: delete "created"
and substitute "repealed and
recreated".

#. Page 30, line 2: delete "s. 11.06"
and substitute "sub.".

#. Page 30, line 25: delete "s. 11.06"
and substitute "sub.".

#. Page 31, line 19: delete "s. 11.06"
and substitute "sub.".



JK

Kuesel, Jeffery

From: Sklansky, Ron
Sent: Tuesday, February 11, 2003 1:53 PM
To: Kuesel, Jeffery
Subject: sb 12

Jeff:

Possibly two chief clerk type items for you in SB 12.

On page 23, line 20, should "created" be replaced by "repealed and recreated"?

On pages 30[✓] and 31, lines ~~24~~ and 25 and 19, respectively, should the reference to "s. 11.06 (7)" be replaced by a reference to "sub. (7)"?

Ron



State of Wisconsin
2003-2004 LEGISLATURE

CORRECTIONS IN:

2003 SENATE BILL 12

Prepared by the Legislative Reference Bureau
(February 12, 2003)

1. Page 23, line 20: delete "created" and substitute "repealed and recreated".
2. Page 30, line 2: delete "s. 11.06" and substitute "sub.".
3. Page 30, line 25: delete "s. 11.06" and substitute "sub.".
4. Page 31, line 19: delete "s. 11.06" and substitute "sub.".

Barman, Mike

From: Barman, Mike
Sent: Tuesday, March 18, 2003 8:24 AM
To: Kuesel, Jeffery
Subject: RE: SB-12 (Campaign finance changes etc.) - technical note

Thanks Jeff. I will also need a copy for the drafting file.

Mike Barman

Mike Barman - Senior Program Asst. (PH. 608-266-3561)
(E-Mail: mike.barman@legis.state.wi.us) (FAX: 608-264-6948)

State of Wisconsin
Legislative Reference Bureau - Legal Section - Front Office
100 N. Hamilton Street - 5th Floor
Madison, WI 53703

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

From: Kuesel, Jeffery
Sent: Tuesday, March 18, 2003 8:22 AM
To: Barman, Mike
Subject: SB-12 (Campaign finance changes etc.) - technical note

Mike,

I will be sending out the above technical note with my comments.

Jeff



8, 2003

State of Wisconsin

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March 18, 2003

MEMORANDUM

To: Senator Michael Ellis
Room 118 South, Capitol

From: Jeff Kuesel
Managing Attorney

Subject: Senate Bill 12 relating to campaign financing and related changes – technical note by Department of Revenue

In the attached technical note to SB-12, the Department of Revenue makes two points. The first is that the certification of political parties whose candidates are eligible to receive financing from the Wisconsin election campaign fund should be made no later than November 15. In proposed s. 11.50 (14) (a) 2, the bill provides for this certification to be made no later than December 15 following each general election. The reason for the December 15 deadline is that under s. 7.70 (3) (a), stats., the state canvass of the general election is required to be completed by December 1. In 2001 Act 109, at the insistence of the Department, the deadline for certification was changed to July 1. While an early certification may work better for the Department, the practical result is the information that is officially available on November 15 is more than two years old. No statute governs the deadline for beginning the printing of income tax forms. While technology allows the Department to print income tax forms at a later time than it does currently, the Department elects to use a more traditional process that requires more time. If the Department continues to use that process, it seems that it will not be possible to have the forms reflect the most current information. The bill could, however, easily be changed to substitute as a certification date the date on which the state canvass is completed, which would not be later than December 1.

In the second point, the Department suggests that the provision of proposed s. 71.10 (3) (b), which restricts individuals from placing conditions or restrictions upon designations, is unclear and definitions or examples of inappropriate markups by taxpayers should be given. This sentence has essentially been in the law for 25 years, it is reasonably self explanatory and in my opinion, there is no need to provide definitions or examples of specific kinds of inappropriate markups to facilitate administration of the restriction.

If you would like to discuss these matters or make any changes to SB-12, please let me know.

cc: Ron Sklansky, LC Staff

Bill file

M E M O R A N D U M

February 27, 2003

TO: Marc Shovers
Legislative Reference Bureau

FROM: Dennis Collier
Department of Revenue

SUBJECT: Technical Memorandum on SB12: Campaign Finance Changes

Under proposed sec. 11.50 (14), each even-numbered year, the Elections Board must certify to the Secretary of Revenue, the political parties eligible for campaign designations on the income tax return – 2004 would be the first year certification would be required. If this bill is enacted prior to August 1, 2003, the changes to the campaign fund designations will first apply to 2003 tax returns, in which case certification from the board would have to occur earlier.

Under proposed sec. 11.50 (14)(a)2, the Election Board must certify to the department, by December 15, the names of political parties eligible for election campaign fund designations. This is too late to incorporate the names of the parties into the tax forms for that tax year. Tax forms are normally sent to the printer between October 15 and November 15. If the forms are not sent to the printer until December, they would not be available to the public until February of the following year.

Proposed sec. 71.10(3)(b) disallows a campaign fund designation when a filer places a condition or restriction upon a designation other than indicating the account, either the general account or the account of a particular party to which the designation is made. Definitions of the types of conditions or restrictions that are not permitted would help the department administer this provision.

If you have questions regarding this technical memorandum, please contact Karyn Kriz at 261-8984