

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2257/1dn
JTK:jld:jf

February 24, 2005

Representative Freese:

I 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:

- (1) 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.
- (2) 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