

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-4600/1dn
JTK:kjf:rs

March 27, 2006

Representative Huebsch:

1. Per my telephone conversation with Jodi Jensen on March 15, this draft amends various provisions of the existing campaign finance law, statutory code of ethics, and civil service law that relate to political or campaign activity. Some of the provisions of existing law and some of the provisions of the draft overlap, but they do not conflict. I understand that your intent was to see the broadest sweep possible in this draft, with the understanding that you may wish to consolidate or limit some of the provisions once you have a chance to review the draft.

2. The provisions governing campaign activities that are reflected in proposed s. 230.405 are not currently contained in the statutes or in any legislative rules. It is my understanding that the provisions reflect policies of JCLO with the exception that, per your instruction, they exclude time reporting requirements. These provisions define "campaign activity." Under the draft, these provisions are placed in the civil service law because they closely parallel existing provisions governing political activities by state employees, which are also amended by this draft. The draft also broadens current provisions of the campaign finance law. In that law, political activities are effectively defined in s. 11.01 (16), stats., as interpreted by the Elections Board. In addition, the draft amends and creates new provisions in the statutory code of ethics. That portion of the draft uses the term "political activity" without defining it. Under the draft, the Ethics Board will define the term by rule.

3. You asked whether political activities by state officers or employees would be subject to prosecution under laws other than the ones amended or created by this draft. The answer is that it is possible that certain activities could be restricted or prohibited under the existing code of ethics or criminal code, including potentially the prohibition on misconduct in public office (s. 946.12, stats.) depending upon the facts involved in a given situation. The laws and the draft overlap somewhat and in some situations a violation of one provision would also potentially encompass another violation.

4. The treatment of s. 19.48 (9), stats., by this draft, which requires all state employees to attend periodic ethics training programs is not funded by this draft. Under current law, the Ethics Board may prescribe a fee for attendance at such a program and may use the resulting revenue to finance the cost of the program. For represented employees, the requirement to pay fees is currently subject to collective bargaining and the draft does not change this requirement.

5. Pursuant to our conversation, because state elective officials are state employees, I have excluded them from coverage under some of the provisions of this draft where it did not seem logical to me to cover them. If, however, it was possible to cover them I did so. However, you may wish to review the provisions of the draft that apply to elective officials to ensure that the treatment of these provisions conforms to your intent. In particular, please review the treatment of s. 230.40 (1), stats., by this draft as it applies to elective officials.

6. The treatment of s. 11.36, stats. by this draft that extends current prohibitions against solicitation or receipt of political contributions and services while employees are engaged in official duties to apply generally, regardless of whether employees are engaged in official duties, may raise an issue under the First Amendment because the U.S. Supreme Court has held that the making of a contribution implicates First Amendment rights [*Buckley v. Valeo, et al.*, 424 U.S. 1, 24-29 (1976)]. To ensure enforceability of this draft, you may wish to consider whether your objectives can be achieved through a more limited treatment of s. 11.36, stats.

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