



(DNOTE)  
State of Wisconsin  
2005 - 2006 LEGISLATURE

LRB-4240/12  
JTK:kjf:gh

wanted Tue 2/7 8:30AM

**2005 BILL**

Regen

1 AN ACT *to repeal* 11.31 (1) (de) and 11.50 (3) (a) 2.; *to amend* 8.35 (4) (b), 11.12  
2 (2), 11.16 (2), 11.16 (3), 11.26 (1) (a), 11.26 (2) (a), 11.26 (9) (a), 11.26 (9) (b), 11.26  
3 (13), 11.31 (1) (d), 11.50 (1) (a) 1., 11.50 (3) (b) and 11.64 (2); *to repeal and*  
4 *recreate* 11.12 (2), 11.16 (2), 11.24 (4), 11.26 (2) (as), 11.26 (9) (a) (intro.), 11.26  
5 (9) (b) and 11.50 (1) (a) 1. a.; and *to create* 11.01 (14m), 11.26 (1) (am), 11.26 (2)  
6 (an), 11.26 (9) (ba), 11.501 to 11.522, 19.45 (8) (d), 19.45 (8m), 20.510 (1) (r),  
7 20.585 (1) (q), 20.585 (1) (r), 20.855 (4) (bb), 25.17 (1) (cm), 25.421 and 895.46  
8 (1) (an) of the statutes; **relating to:** public financing of campaigns for the office  
9 of justice of the supreme court, fund raising during state budget consideration,  
10 payment of legal defense costs, representation by former state officials, transfer  
11 of campaign moneys to defense funds, service by former legislators or

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1 legislative employees as lobbyists, making appropriations, and providing  
2 penalties.

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***Analysis by the Legislative Reference Bureau***

This bill makes various changes in state laws relating to public financing of campaigns for the office of justice of the supreme court, fund raising during state budget consideration, payment of legal defense costs, representation by former state officials, transfer of campaign moneys to defense funds, and service by former legislators or legislative employees as lobbyists.

***Public financing of campaigns for justice of the supreme court***

This bill makes numerous changes in the campaign finance law affecting campaigns for the office of justice of the supreme court. The bill limits the application of the Wisconsin election campaign fund, under which eligible candidates for state offices (except district attorney, court of appeals judge, and circuit judge) may receive public grants from state general purpose revenues derived from designations made by individuals filing state income tax returns, to state offices other than the office of justice of the supreme court. To finance elections for the office of justice of the supreme court, the bill creates a democracy trust fund, under which eligible candidates for this office may receive public grants derived from general purpose revenues.

Under the bill, a candidate for the office of justice of the supreme court may qualify for public financing from the democracy trust fund to finance a campaign in a primary or election by receiving qualifying contributions of at least \$5 but not more than \$100 each made by electors of the state in an aggregate amount of at least \$5,000 but not more than \$15,000. A candidate who accepts public financing may also accept “seed money” contributions in amounts of \$100 or less, subject to aggregate limitations, and may contribute personal funds in specified amounts during specified periods. In order to qualify for a public financing benefit for the primary, a candidate at the primary must have an opponent who qualifies to have his or her name appear on the ballot at the primary, and in order to qualify for a public financing benefit for the spring election, a candidate at the election must have an opponent who qualifies to have his or her name appear on the ballot at the election. A candidate who accepts public financing may not accept any contributions other than qualifying and seed money contributions and contributions from personal funds within the limitations permitted. Public financing benefits for eligible candidates are \$100,000 in the primary election and \$300,000 in the spring election. The benefits are subject to a biennial cost of living adjustment. A candidate who accepts more than a specified amount of qualifying or seed money contributions has the excess deducted from his or her public financing benefit. In addition, if a candidate’s opponent declines to accept public financing and makes expenditures in a total amount that exceeds by more than 5 percent the amount permitted for a candidate who accepts public financing, the candidate who accepts public financing receives additional funding equivalent to the excess expenditures made by his or her

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opponent, but not more than three times the amount of the public financing benefit for the office that the candidate seeks. A candidate also receives additional public financing equivalent to any independent expenditures made against the candidate or in support of his or her opponents if those expenditures exceed 20 percent of the amount of the public financing benefit for the office that the candidate seeks (but not more than three times the amount of that benefit).

Currently, a candidate for the office of justice of the supreme court may qualify to receive a grant from the Wisconsin election campaign fund for use in an election campaign only (no funding is provided for primary campaigns). In order to qualify for a grant, a candidate must qualify to have his or her name appear on the spring election ballot and must have an opponent who qualifies to have his or her name appear on that ballot. The maximum amount of a grant that a candidate may receive is \$97,031. This amount is not subject to any cost of living adjustment. In addition, this amount is reduced by the total amount of contributions received by a candidate from special interest committees and this amount may not be fully funded in a particular year if there are not sufficient moneys in the Wisconsin election campaign fund to provide full financing for all qualifying candidates. A candidate must agree to abide by spending and self-contribution limits in order to receive a grant, but this agreement does not apply if the candidate has an opponent who could have qualified for a grant but declines to do so and declines to file an affidavit of voluntary compliance with spending and self-contribution limits.

Currently, individuals and committees making political contributions to candidates for the office of justice of the supreme court are subject to limitations on the amount or value of any contribution or contributions that may be made cumulatively to any candidate in a campaign. The limitations are \$10,000 in the case of an individual making a contribution to a candidate and \$8,625 in the case of a committee making a contribution to a candidate. This bill replaces these limitations with a contribution limitation of \$1,000 applicable to an individual or committee making any contribution or contributions cumulatively to any candidate for the office of justice of the supreme court who is eligible to qualify for a public financing benefit but who declines to accept one, per campaign.

***Fundraising during state budget consideration***

This bill prohibits any person from making a contribution to an incumbent partisan state official or a candidate for a partisan state office during the period from the date of introduction of the executive budget bill through the date of enactment of the biennial budget act. The prohibition does not apply to an individual who is a candidate for a partisan state office at a special election during the period beginning on the date that the special election is ordered and ending on the date of the special election. In addition, the prohibition does not apply to a contribution made to an incumbent who is subject to a recall election beginning on the date on which a petitioner registers an intent to circulate a petition for a recall election against the incumbent and ending on the date of the recall election, except that if the circulation period expires without offering of the recall petition for filing, the filing officer determines not to file the petition, or the incumbent resigns, the period ends on the date of that event. Currently, there is no such prohibition.

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Violators are subject to a forfeiture (civil penalty) of treble the amount or value of any unlawful contribution. Intentional violators are guilty of a misdemeanor and may be fined not more than \$1,000 or imprisoned for not more than six months or both.

***Payment of legal defense costs***

Currently, if a public officer or employee is a defendant in a legal action or proceeding in his or her official capacity or in connection with his or her official duties, the governmental unit that the officer or employee serves must, at its option, either provide representation to the defendant or pay the defendant's defense costs unless the jury finds that the defendant was not acting within the scope of employment.

This bill provides specifically that a defendant who is charged with or convicted of a criminal violation of the campaign finance law or the statutory code of ethics for public officials and employees shall not be considered to be acting within the scope of employment.

***Representation by former state officials***

Currently, with certain exceptions, no former state public official, for 12 months following the date on which he or she ceases to be a state public official, may, for compensation, on behalf of anyone other than a governmental entity, make any formal or informal appearance before, or negotiate with, any officer or employee of the department or agency with which he or she was associated as a state public official during the 12 months preceding the official's departure from state service. Additional restrictions apply with respect to matters in which a former state public official was involved while serving as a state public official.

This bill provides, in addition, that no former governor or state public official who was appointed to his or her position by the governor, for 12 months following the date on which he or she ceases to occupy the office of governor or the position to which he or she was appointed by the governor may, for compensation, on behalf of anyone other than a governmental entity, make any formal or informal appearance before, or negotiate with, any officer or employee in the executive branch of state government.

***Transfer of campaign moneys to defense funds***

Currently, any person who is being investigated for, charged with, or convicted of a crime has the constitutional right to establish a defense fund and to solicit contributions to the fund. Current state law also provides specifically that a candidate or public official who is being investigated for, charged with, or convicted of a criminal violation of the campaign finance law or a prohibited election practice, or whose agent is so investigated, charged, or convicted, may establish a defense fund to finance expenditures incurred in supporting or defending the person or agent or any dependent of the person or agent. No reporting is required, but the person who establishes the fund may not transfer moneys from a campaign account to a defense fund unless the permission of the contributor of the moneys is obtained.

~~This bill provides that no moneys may be transferred from a campaign account to a defense fund even if the permission of the contributor is obtained. Under the bill, it is still possible for the recipient of a contribution to return the contribution to the~~

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contributor. Once returned, the contributor may use the contribution for any lawful purpose, including the payment of legal defense costs. The bill retains current law regulating the permitted uses of moneys solicited for political purposes.

*Service by former legislators and legislative employees as lobbyists*

This bill prohibits any individual who serves as a member or employee of the legislature, for 12 months following the date on which the individual ceases to hold his or her office or position, from being employed as a lobbyist. A "lobbyist" means an individual who is compensated by a principal and whose duties include attempting to influence state legislative action or state administrative rule-making action on behalf of the principal, except that an individual whose duties on behalf of a principal are not limited exclusively to lobbying is a "lobbyist" only if the individual makes lobbying communications on each of at least five days during a six-month reporting period.

Violators are subject to a forfeiture (civil penalty) of not more than \$5,000 for each violation. Intentional violators are guilty of a misdemeanor and are subject to a fine of not less than \$100 nor more than \$5,000 or imprisonment for not more than one year or both for each violation.

Because this bill creates a new crime or revises a penalty for an existing crime, the Joint Review Committee on Criminal Penalties may be requested to prepare a report concerning the proposed penalty and the costs or savings that are likely to result if the bill is enacted.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

***The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:***

- 1           **SECTION 1.** 8.35 (4) (b) of the statutes is amended to read:
- 2           8.35 (4) (b) Notwithstanding par. (a), any unspent and unencumbered moneys
- 3 received by a candidate from the Wisconsin election campaign fund shall be
- 4 immediately transferred to any candidate who is appointed to replace such
- 5 candidate, upon filing of a proper application therefor under s. 11.50 (2). If there is
- 6 no candidate appointed or if no proper application is filed within 7 days of the date
- 7 on which the vacancy occurs, such moneys shall revert to the state as provided in s.
- 8 11.50 (8). Notwithstanding par. (a), any unspent and unencumbered moneys
- 9 received by a candidate from the democracy trust fund shall be immediately

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1 transferred to any candidate who is appointed to replace that candidate upon filing  
2 of a proper application therefor under s. 11.502 (1). For purposes of qualification,  
3 contributions received and disbursements made by the former candidate are  
4 considered to have been received or made by the replacement candidate. If there is  
5 no candidate appointed or if no proper application is filed within 7 days of the date  
6 on which a vacancy occurs, the moneys shall revert to the state.

7 **SECTION 2.** 11.01 (14m) of the statutes is created to read:

8 11.01 (14m) “Partisan state office” means the office of governor, lieutenant  
9 governor, secretary of state, state treasurer, attorney general, state senator, state  
10 representative to the assembly, or district attorney.

11 **SECTION 3.** 11.12 (2) of the statutes is amended to read:

12 11.12 (2) ~~Any No registrant, except a candidate who receives a public financing~~  
13 ~~benefit from the democracy trust fund, may accept an~~ anonymous contribution  
14 ~~exceeding \$10 received by a campaign or committee treasurer or by an individual~~  
15 ~~under s. 11.06 (7) may not be used or expended. The. No candidate who receives a~~  
16 ~~public financing benefit from the democracy trust fund may accept an anonymous~~  
17 ~~contribution exceeding \$5. Any anonymous contribution that may not be accepted~~  
18 ~~under this subsection~~ shall be donated to the common school fund or to ~~any a~~  
19 charitable organization at the option of the registrant’s treasurer.

20 **SECTION 4.** 11.12 (2) of the statutes, as affected by 2001 Wisconsin Act 109, is  
21 repealed and recreated to read:

22 11.12 (2) No registrant, except a candidate who accepts a public financing  
23 benefit from the democracy trust fund, may accept an anonymous contribution  
24 exceeding \$10. No candidate who accepts a public financing benefit from the  
25 democracy trust fund may accept an anonymous contribution exceeding \$5. Any

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1 anonymous contribution that may not be accepted under this subsection shall be  
2 donated to the common school fund or to a charitable organization or transferred to  
3 the board for deposit in the Wisconsin election campaign fund, at the option of  
4 registrant's treasurer.

5 **SECTION 5.** 11.16 (2) of the statutes is amended to read:

6 11.16 (2) LIMITATION ON CASH CONTRIBUTIONS. ~~Every~~ Except as provided in s.  
7 11.506 (6), every contribution of money exceeding \$50 shall be made by negotiable  
8 instrument or evidenced by an itemized credit card receipt bearing on the face the  
9 name of the remitter. No treasurer may accept a contribution made in violation of  
10 this subsection. The treasurer shall promptly return the contribution, or donate it  
11 to the common school fund or to a charitable organization in the event that the donor  
12 cannot be identified.

13 **SECTION 6.** 11.16 (2) of the statutes, as affected by 2001 Wisconsin Act 109, is  
14 repealed and recreated to read:

15 11.16 (2) LIMITATION ON CASH CONTRIBUTIONS. Except as provided in s. 11.506 (6),  
16 every contribution of money exceeding \$50 shall be made by negotiable instrument  
17 or evidenced by an itemized credit card receipt bearing on the face the name of the  
18 remitter. No treasurer may accept a contribution made in violation of this  
19 subsection. The treasurer shall promptly return the contribution, donate the  
20 contribution to the common school fund or to a charitable organization, or transfer  
21 the contribution to the board for deposit in the Wisconsin election campaign fund in  
22 the event that the donor cannot be identified.

23 **SECTION 7.** 11.16 (3) of the statutes is amended to read:

24 11.16 (3) FORM OF DISBURSEMENTS. ~~Every~~ Except as authorized under s. 11.511  
25 (1), every disbursement which is made by a registered individual or treasurer from

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1 the campaign depository account shall be made by negotiable instrument. Such  
2 instrument shall bear on the face the full name of the candidate, committee,  
3 individual or group as it appears on the registration statement filed under s. 11.05  
4 and where necessary, such additional words as are sufficient to clearly indicate the  
5 political nature of the registrant or account of the registrant. The name of a political  
6 party shall include the word “party”. The instrument of each committee registered  
7 with the board and designated under s. 11.05 (3) (c) as a special interest committee  
8 shall bear the identification number assigned under s. 11.21 (12) on the face of the  
9 instrument.

10 **SECTION 8.** 11.24 (4) of the statutes, as created by 2001 Wisconsin Act 109, is  
11 repealed and recreated to read:

12 11.24 (4) (a) Except as provided in par. (c), no person may make a contribution  
13 to an incumbent partisan elective state official or to a candidate for a partisan state  
14 office, or to the personal campaign committee or support committee authorized  
15 under s. 11.05 (3) (p) of such an official or candidate during the period beginning on  
16 the date of introduction of the executive budget bill under s. 16.47 (1m) and ending  
17 on the date of enactment of the biennial budget act.

18 (b) If in any year there is more than one executive budget bill, par. (a) applies  
19 beginning on the date of introduction of the first such bill and ending on the date of  
20 enactment of the last such bill.

21 (c) Paragraph (a) does not apply to an individual who is a candidate for state  
22 office at a special election, or to the personal campaign or authorized support  
23 committee of such a candidate, during the period beginning on the date that the  
24 special election is ordered and ending on the date of the special election.



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1 (d) Notwithstanding par. (a), a person may make a contribution to an  
2 incumbent partisan elective state official against whom a recall petition is circulated  
3 during the period beginning on the date that a petitioner registers an intent to  
4 circulate a petition under s. 9.10 (2) (d) and ending on the date of the recall election,  
5 except that if the circulation period expires without offering of the recall petition for  
6 filing, the filing officer determines not to file the petition, or the official resigns at an  
7 earlier date under s. 9.10 (3) (c), the period ends on the date of that event.

8 **SECTION 9.** 11.26 (1) (a) of the statutes is amended to read:

9 11.26 (1) (a) Candidates for governor, lieutenant governor, secretary of state,  
10 state treasurer, attorney general, or state superintendent ~~or justice~~, \$10,000.

11 **SECTION 10.** 11.26 (1) (am) of the statutes is created to read:

12 11.26 (1) (am) Candidates for justice, \$1,000.

13 **SECTION 11.** 11.26 (2) (a) of the statutes is amended to read:

14 11.26 (2) (a) Candidates for governor, lieutenant governor, secretary of state,  
15 state treasurer, attorney general, or state superintendent ~~or justice~~, 4% of the value  
16 of the disbursement level specified in the schedule under s. 11.31 (1).

17 **SECTION 12.** 11.26 (2) (an) of the statutes is created to read:

18 11.26 (2) (an) Candidates for justice, \$1,000.

19 **SECTION 13.** 11.26 (2) (as) of the statutes, as affected by 2001 Wisconsin Act 109,  
20 is repealed and recreated to read:

21 11.26 (2) (as) Candidates for state superintendent, \$10,000.

22 **SECTION 14.** 11.26 (9) (a) (intro.) of the statutes, as affected by 2005 Wisconsin  
23 Act 109, is repealed and recreated to read:

24 11.26 (9) (a) (intro.) Except as provided in par. (ba) and sub. (9m), no individual  
25 who is a candidate for state or local office may receive and accept more than 65

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1 percent of the value of the total disbursement level determined under s. 11.31 (1),  
2 adjusted as provided under s. 11.31 (9), for the office for which he or she is a candidate  
3 during any primary and election campaign combined from all committees subject to  
4 a filing requirement, including political party committees, except as follows:

5 **SECTION 15.** 11.26 (9) (a) of the statutes is amended to read:

6 11.26 (9) (a) ~~No Except as provided in par. (ba), no~~ individual who is a candidate  
7 for state or local office may receive and accept more than 65% of the value of the total  
8 disbursement level determined under s. 11.31 for the office for which he or she is a  
9 candidate during any primary and election campaign combined from all committees  
10 subject to a filing requirement, including political party and legislative campaign  
11 committees.

12 **SECTION 16.** 11.26 (9) (b) of the statutes is amended to read:

13 11.26 (9) (b) ~~No Except as provided in par. (ba), no~~ individual who is a candidate  
14 for state or local office may receive and accept more than 45% of the value of the total  
15 disbursement level determined under s. 11.31 for the office for which he or she is a  
16 candidate during any primary and election campaign combined from all committees  
17 other than political party and legislative campaign committees subject to a filing  
18 requirement.

19 **SECTION 17.** 11.26 (9) (b) of the statutes, as affected by 2001 Wisconsin Act 109,  
20 is repealed and recreated to read:

21 11.26 (9) (b) Except as provided in par. (ba), no individual who is a candidate  
22 for state office, other than a state office described in par. (am), or local office may  
23 receive and accept more than 45 percent of the value of the total disbursement level  
24 determined under s. 11.31 (1), adjusted as provided under s. 11.31 (9), for the office  
25 for which he or she is a candidate during any primary and election campaign

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1 combined from all committees other than political party committees subject to a  
2 filing requirement.

3 **SECTION 18.** 11.26 (9) (ba) of the statutes is created to read:

4 11.26 (9) (ba) Paragraphs (a) and (b) do not apply to a candidate who receives  
5 a public financing benefit from the democracy trust fund.

6 **SECTION 19.** 11.26 (13) of the statutes is amended to read:

7 11.26 (13) Except as provided in sub. (9), contributions received from the  
8 Wisconsin election campaign fund and public financing benefits received from the  
9 democracy trust fund are not subject to limitation by this section.

10 **SECTION 20.** 11.31 (1) (d) of the statutes is amended to read:

11 11.31 (1) (d) Candidates for secretary of state, state treasurer, justice or state  
12 superintendent, \$215,625.

13 **SECTION 21.** 11.31 (1) (de) of the statutes, as created by 2001 Wisconsin Act 109,  
14 is repealed.

15 **SECTION 22.** 11.50 (1) (a) 1. of the statutes is amended to read:

16 11.50 (1) (a) 1. With respect to a spring or general election, any individual who  
17 is certified under s. 7.08 (2) (a) as a candidate in the spring election for justice or state  
18 superintendent, or an individual who receives at least 6% of the vote cast for all  
19 candidates on all ballots for any state office, except district attorney, for which the  
20 individual is a candidate at the September primary and who is certified under s. 7.08  
21 (2) (a) as a candidate for that office in the general election, or an individual who has  
22 been lawfully appointed and certified to replace either such individual on the ballot  
23 at the spring or general election; and who has qualified for a grant under sub. (2).

24 **SECTION 23.** 11.50 (1) (a) 1. a. of the statutes, as affected by 2001 Wisconsin Act  
25 109, is repealed and recreated to read:

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1           11.50 (1) (a) 1. a. With respect to a spring or general election, any individual  
2 who is certified under s. 7.08 (2) (a) as a candidate in the spring election for state  
3 superintendent, or an individual who receives at least 6 percent of the vote cast for  
4 all candidates on all ballots for any state office, except district attorney, for which the  
5 individual is a candidate at the September primary and who is certified under s. 7.08  
6 (2) (a) as a candidate for that office in the general election, or an individual who has  
7 been lawfully appointed and certified to replace either such individual on the ballot  
8 at the spring or general election; and who has qualified for a grant under sub. (2).

9           **SECTION 24.** 11.50 (3) (a) 2. of the statutes is repealed.

10          **SECTION 25.** 11.50 (3) (b) of the statutes is amended to read:

11           11.50 (3) (b) If a vacancy occurs in the office of state superintendent ~~or justice~~  
12 after August 15 in any year and an election is scheduled to fill the vacancy at the  
13 spring election in the following year, the state treasurer shall transfer an amount not  
14 exceeding 8% of the moneys transferred to the fund on the preceding August 15 to  
15 the superintendency account ~~for the office in which the vacancy occurs~~, such moneys  
16 to be drawn from any account within the accounts created under sub. (4) in the  
17 amount or amounts specified by the board.

18          **SECTION 26.** 11.501 to 11.522 of the statutes are created to read:

19          **11.501 Definitions.** In ss. 11.501 to 11.522:

20           (1) “Allowable contribution” means a qualifying contribution, seed money  
21 contribution, or personal contribution authorized under ss. 11.502 to 11.522.

22           (2) “Campaign” has the meaning given in s. 11.26 (17).

23           (3) “Election campaign period” means the period beginning on the day after the  
24 spring primary election or the day on which a primary election would be held, if  
25 required, and ending on the day of the succeeding spring election.

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1           (4) “Eligible candidate” means a candidate for the office of justice who has an  
2           opponent who has qualified to have his or her name certified for placement on the  
3           ballot at the spring primary or election and who qualifies for public financing by  
4           collecting the required number of qualifying contributions, making all required  
5           reports and disclosures, and being certified by the board as being in compliance with  
6           ss. 11.502 to 11.522.

7           (5) “Excess disbursement amount” means the amount of disbursements made  
8           by a nonparticipating candidate in excess of the public financing benefit available to  
9           an eligible candidate for the same office that the nonparticipating candidate seeks.

10          (6) “Excess qualifying contribution amount” means the amount of qualifying  
11          contributions accepted by a candidate beyond the number or dollar amount of  
12          contributions required to qualify a candidate for a public financing benefit.

13          (7) “Exploratory period” means the period that begins after the date of a spring  
14          election and ends on the first day of the public financing qualifying period for the next  
15          election for justice.

16          (9) “Immediate family,” when used with reference to a candidate, includes the  
17          candidate’s spouse and children.

18          (10) “Independent disbursement” means a disbursement by a person expressly  
19          advocating the election or defeat of a clearly identified candidate which is made  
20          without cooperation or consultation with a candidate, or any authorized committee  
21          or agent of a candidate, and which is not made in concert with, or at the request or  
22          suggestion of, any candidate, or any authorized committee or agent of a candidate.

23          (11) “Nonparticipating candidate” means a candidate for the office of justice  
24          who does not apply for a public financing benefit or who is otherwise ineligible or fails  
25          to qualify for a public financing benefit under ss. 11.502 to 11.522.

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1           (12) “Personal funds” means funds contributed by a candidate or a member of  
2 a candidate’s immediate family.

3           (13) “Primary election campaign period” means the period beginning on the  
4 day after the last day prescribed by law for filing nomination papers for that office  
5 and ending on the day of the spring primary election for that office or the day on  
6 which the primary election would be held, if required.

7           (14) “Public financing qualifying period” means the period beginning on the  
8 first day of July of any year and ending on the day before the beginning of the primary  
9 election campaign period for that office.

10           (15) “Qualifying contribution” means a contribution made to a candidate by an  
11 elector of this state during the public financing qualifying period, which is  
12 acknowledged by written receipt identifying the contributor.

13           (16) “Seed money contribution” means a contribution in an amount of not more  
14 than \$100 made to a candidate by an elector of the jurisdiction or district in which  
15 the candidate seeks office during the exploratory period or the public financing  
16 qualifying period, or a contribution made to a candidate consisting of personal funds  
17 of that candidate in an amount not more than the amount authorized under s. 11.507  
18 during the exploratory period or the public financing qualifying period.

19           **11.502 Qualification; certification.** (1) Before a candidate for justice in the  
20 primary election may be certified as an eligible candidate to receive a public  
21 financing benefit for the primary election campaign period, the candidate shall apply  
22 to the board for a public financing benefit and file a sworn statement that the  
23 candidate has complied and will comply with all requirements of this section and ss.  
24 11.503 to 11.522 throughout the applicable campaign, which includes the primary  
25 and election for that office. A candidate shall file the application and statement no

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1 later than the beginning of the primary election campaign period for the office that  
2 the candidate seeks.

3 (2) A candidate shall be certified by the board as an eligible candidate for  
4 receipt of public financing for a primary election if the candidate complies with sub.  
5 (1) and receives at least 1,000 qualifying contributions in amounts equal to not less  
6 than \$5 nor more than \$100 and in an aggregate amount of not less than \$5,000 nor  
7 more than \$15,000 before the close of the public financing qualifying period.

8 (3) The board shall verify a candidate's compliance with the requirements of  
9 sub. (2) by such verification and sampling techniques as the board considers  
10 appropriate.

11 (4) Each candidate shall:

12 (a) Acknowledge each qualifying contribution by a receipt to the contributor  
13 which contains the contributor's name and home address.

14 (b) No later than the 15th or the last day of the month which immediately  
15 follows the date of receipt of a qualifying contribution, whichever comes first, file a  
16 copy of the receipt under par. (a) with the board, except that during July, August, and  
17 September a copy need only be filed on the last day of the month.

18 (5) A qualifying contribution may be utilized only for the purpose of making  
19 a disbursement authorized by law.

20 **11.503 Time of application.** (1) Before a candidate may be certified as  
21 eligible for receipt of public financing for a spring election, the candidate shall apply  
22 to the board and file a sworn statement that the candidate has fulfilled all the  
23 requirements of ss. 11.502 to 11.522 during the primary election campaign period  
24 and will comply with such requirements during the election campaign period.  
25 Except as authorized in s. 8.35 (4) (b), the application shall be filed no later than the

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1 7th day after the date of the spring primary election or the day on which the primary  
2 election would be held if a primary were required.

3 (2) The board shall certify a candidate as an eligible candidate for receipt of  
4 public financing for a spring election if the candidate complies with sub. (1) and the  
5 candidate was an eligible candidate during the primary election campaign period.

6 **11.505 Agreement by candidate.** An eligible candidate who accepts a public  
7 financing benefit under ss. 11.502 to 11.522 during the primary election campaign  
8 period shall agree to comply with all requirements of ss. 11.502 to 11.522 throughout  
9 the election campaign period during the same campaign as a precondition to receipt  
10 of public financing. An eligible candidate who accepts a public financing benefit  
11 during a primary election campaign period may not elect to accept private  
12 contributions in violation of ss. 11.502 to 11.522 during the corresponding election  
13 campaign period.

14 **11.506 Requirements imposed upon candidates.** (1) An eligible  
15 candidate may not accept private contributions other than seed money contributions  
16 and qualifying contributions that the candidate accepts during the exploratory  
17 period and the public financing qualifying period.

18 (2) In addition to reports required to be filed under ss. 11.12 (5) and 11.20, a  
19 candidate who receives a public financing benefit shall furnish complete financial  
20 records, including records of seed money contributions, qualifying contributions, and  
21 disbursements, to the board on the 15th or the last day of the month that  
22 immediately follows the receipt of the contribution or the making of the  
23 disbursement, whichever comes first, except that during July, August, and  
24 September records need only be furnished on the last day of the month. Each such  
25 candidate shall cooperate with any audit or examination by the board.



**BILL**

1           (3) In addition to adhering to requirements imposed under ss. 11.06 (5) and  
2           11.12 (3), a candidate who receives a public financing benefit shall maintain records  
3           of all contributions received by the candidate of more than \$5 but less than \$50,  
4           including seed money contributions and qualifying contributions, which shall  
5           contain the full name of the contributor and the contributor's full home address. In  
6           addition, if a contributor's aggregate contributions to any candidate exceed \$50 for  
7           any campaign, the candidate shall also maintain a record of the contributor's  
8           principal occupation and the name and business address of the contributor's place  
9           of employment.

10           (4) The failure to record or provide the information specified in sub. (3)  
11           disqualifies a contribution from counting as a qualifying contribution.

12           (5) No eligible candidate and no person acting on a candidate's behalf may  
13           deposit any contribution that is not recorded in accordance with sub. (3) in a  
14           candidate's campaign depository account.

15           (6) No eligible candidate may accept more than \$25 in cash from any  
16           contributor and no such candidate may accept cash from all sources in a total amount  
17           greater than one-tenth of 1 percent of the public financing benefit for the office that  
18           the candidate seeks or \$500, whichever is greater.

19           **11.507 Personal funds of candidates.** (1) The personal funds of a candidate  
20           contributed as seed money contributions may not exceed an aggregate amount of  
21           \$5,000.

22           (2) No eligible candidate may make any disbursement derived from personal  
23           funds after the close of the public financing qualifying period.

24           **11.508 Seed money contributions.** (1) An eligible candidate may accept  
25           seed money contributions from any individual or committee prior to the end of the

**BILL****SECTION 26**

1 public financing qualifying period, provided the total contributions received from one  
2 contributor, except personal funds and qualifying contributions otherwise permitted  
3 under ss. 11.502 to 11.522, do not exceed \$100, and the aggregate contributions,  
4 including personal funds, but not including qualifying contributions, do not exceed  
5 \$5,000.

6 (2) An eligible candidate may make disbursements derived from seed money  
7 contributions only during the exploratory period and the public financing qualifying  
8 period.

9 **11.509 Excess contributions.** If an eligible candidate receives excess seed  
10 money contributions or qualifying contributions on an aggregate basis, the  
11 candidate may retain the contributions and make disbursements derived from the  
12 contributions, in an amount not exceeding \$15,000. An amount equivalent to the  
13 excess contributions shall be deducted by the board from the candidate's public  
14 financing benefit. A candidate shall return to the board all seed money and  
15 qualifying contributions that exceed the limits prescribed in this section within 48  
16 hours after the end of the exploratory period. The board shall deposit all  
17 contributions returned under this section in the democracy trust fund.

18 **11.51 Certification by candidate.** (1) To apply for a public financing benefit,  
19 a candidate shall certify to the board that the candidate has complied and will  
20 comply, throughout the applicable campaign, with all requirements of ss. 11.502 to  
21 11.522 and that all disclosures required as of the time of application have been made,  
22 and shall present evidence of the requisite number of qualifying contributions  
23 received by the candidate. The candidate's request for certification shall be signed  
24 by the candidate and the candidate's campaign treasurer.

**BILL**

1           (2) The board shall distribute to each eligible candidate at the spring primary  
2 election a check for the amount of the public financing benefit payable to the  
3 candidate promptly after the candidate demonstrates his or her eligibility and, in  
4 any event, not later than 5 days after the end of the public financing qualifying  
5 period; however, no candidate may utilize a check received under this subsection  
6 until the beginning of the primary election campaign period.

7           (3) The board shall distribute to each eligible candidate for justice at a spring  
8 election a check for the amount of the public financing benefit payable to the  
9 candidate not later than 48 hours after the date of the spring primary election for the  
10 office of justice, or the date that the primary election would be held if a primary were  
11 required. However, no candidate for a particular office shall receive a check until all  
12 candidates for the office of justice who apply and qualify for a public financing benefit  
13 have been certified as eligible candidates.

14           (4) If any candidate who receives a public financing benefit violates the  
15 requirements of ss. 11.502 to 11.522, the board shall require the candidate to repay  
16 all public funds received by the candidate to the board. The board shall deposit all  
17 repayments received under this subsection in the democracy trust fund.

18           **11.511 Public financing benefits.** (1) The board shall provide to each  
19 eligible candidate who qualifies to receive a public financing benefit for the primary  
20 or election campaign period separate checks for the public financing benefits payable  
21 to the candidate for the primary and election campaign periods in the amounts  
22 specified in this section, subject to any required adjustment under s. 11.509, 11.512  
23 (2) or 11.513 (2). An eligible candidate may use this public financing benefit to  
24 finance any lawful disbursements during the primary and election campaign periods  
25 to further the election of the candidate in that primary or election. An eligible

**BILL**

1 candidate may not use this public financing benefit to repay any loan, or in violation  
2 of ss. 11.502 to 11.522 or any other applicable law.

3 (2) Except as provided in ss. 11.512 (2) and 11.513 (2), the public financing  
4 benefit for a primary election campaign period is \$100,000.

5 (3) Except as provided in ss. 11.512 (2) and 11.513 (2), the public financing  
6 benefit for an election campaign period is \$300,000.

7 (4) If there is no spring primary election for the office of justice, no eligible  
8 candidate may receive a public financing benefit for the primary election campaign  
9 period.

10 (5g) An eligible candidate who receives a public financing benefit in the  
11 primary election campaign period and whose name is certified to appear on the ballot  
12 at the election following that primary may utilize any unencumbered balance of the  
13 public financing benefit received by the candidate in the primary election campaign  
14 period for the election campaign period.

15 (5r) Except as permitted in sub. (5g), an eligible candidate who receives a  
16 public financing benefit and who does not encumber or expend some portion of the  
17 benefit for a purpose described in sub. (1) shall return any unencumbered portion of  
18 the benefit to the board within 30 days after the primary or election in which the  
19 candidate participates.

20 (6) Notwithstanding subs. (2) and (3), beginning on July 1, 2008, and every 2  
21 years thereafter, the board shall modify the public financing benefits provided for in  
22 subs. (2) and (3) to adjust for the change in the consumer price index, all items, U.S.  
23 city average, published by the U.S. department of labor for the preceding 2-year  
24 period ending on December 31.

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1           **11.512 Financial activity by nonparticipating candidates.** (1) In  
2 addition to other reports required by law, a nonparticipating candidate for an office  
3 at a primary or election who receives contributions or makes or obligates to make  
4 disbursements in an amount more than 5 percent greater than the public financing  
5 benefit applicable to an eligible candidate for the same office at the same primary or  
6 election shall file a report with the board itemizing the total contributions received  
7 and disbursements made or obligated to be made by the candidate as of the date of  
8 the report. The board shall transmit copies of the report to all candidates for the  
9 same office at the same election. A nonparticipating candidate shall file additional  
10 reports after the candidate receives each additional \$1,000 of contributions, or the  
11 candidate makes or obligates to make each additional \$1,000 of disbursements. If  
12 such contributions are received or such disbursements are made or obligated to be  
13 made more than 6 weeks prior to the date of the primary election at which the name  
14 of the candidate appears on the ballot, or prior to the date that the primary election  
15 would be held, if a primary were required, such reports shall be made at the next  
16 regular reporting interval under s. 11.506. If such contributions are received or such  
17 disbursements made or obligated to be made within 6 weeks prior to the date of the  
18 primary election at which the name of the candidate appears on the ballot, or within  
19 6 weeks prior to the date that the primary election would be held, if a primary were  
20 required, such reports shall be made within 24 hours after each instance in which  
21 such contributions are received, or such disbursements are made or obligated to be  
22 made.

23           (2) Upon receipt of such information, the state treasurer shall immediately  
24 issue a check to an opposing eligible candidate in an additional amount equivalent

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1 to the total excess disbursements made or obligated to be made, but not to exceed 3  
2 times the public financing benefit for the applicable office.

3 **11.513 Independent disbursements.** (1) If any person makes, or becomes  
4 obligated to make, by oral or written agreement, an independent disbursement in  
5 excess of \$1,000 with respect to a candidate for the office of justice at a spring primary  
6 or election, that person shall file with the board a notice of such disbursement or  
7 obligation to make such a disbursement. Any such person shall file reports of such  
8 disbursements or obligations to make such disbursements on the 15th or last day of  
9 the month that immediately follows the date of the disbursement or the obligation  
10 to make the disbursement, whichever comes first, except that, within 6 weeks prior  
11 to the date of the spring primary election, the person shall file such reports within  
12 24 hours after each independent disbursement is made or obligated to be made. Any  
13 such person shall file additional reports after each additional \$1,000 of  
14 disbursements are made or obligated to be made.

15 (2) When the aggregate independent disbursements against an eligible  
16 candidate for an office or for the opponents of that candidate exceed 20 percent of the  
17 public financing benefit for that office in any campaign, the board shall immediately  
18 credit that candidate's account with an additional line of credit equivalent to the total  
19 disbursements made or obligated to be made, but not to exceed 3 times the public  
20 financing benefit for the applicable office.

21 **11.515 Democracy trust fund.** The democracy trust fund shall be  
22 administered by the state treasurer.

23 **11.516 Administration.** Except as otherwise specifically provided in ss.  
24 11.501 to 11.522, the duties of and authority for administering and enforcing ss.  
25 11.501 to 11.522 are vested in the board.

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1           **11.517 Penalties; enforcement.** (1) If an eligible candidate makes  
2 disbursements that exceed the total amount of the public financing benefit allocated  
3 to the candidate for any campaign and the total qualifying and seed money  
4 contributions lawfully accepted by the candidate, the candidate may be required to  
5 forfeit not more than 10 times the amount by which the disbursements exceed the  
6 allocation.

7           (2) Any eligible candidate who accepts contributions in excess of any limitation  
8 imposed under ss. 11.502 to 11.522 may be required to forfeit not more than 10 times  
9 the amount by which the contributions exceed the applicable limitation.

10           (3) If the board finds that there is probable cause to believe that a candidate  
11 has made excess disbursements or has accepted excess contributions contrary to sub.  
12 (1) or (2), the board shall attempt for a period of not more than 14 days after its  
13 finding to correct the matter by informal methods of conference and conciliation and  
14 to enter into a settlement and conciliation agreement under s. 5.05 (1) (c) with the  
15 person involved. A settlement and conciliation agreement made pursuant to this  
16 subsection shall be a matter of public record. Unless violated, a settlement and  
17 conciliation agreement is a bar to any civil action under sub. (4).

18           (4) If the board has probable cause to believe that a candidate has made excess  
19 disbursements or has accepted excess contributions and the board is unable to  
20 correct the matter by informal methods within the time prescribed in sub. (3), the  
21 board shall make a public finding of probable cause in the matter. After making a  
22 public finding, the board shall bring an action in the circuit court for Dane County  
23 to impose a forfeiture under sub. (1) or (2).

24           (5) If an elector believes that a candidate has violated ss. 11.502 to 11.522 and  
25 the elector is entitled to vote for or against the candidate in the election in connection

**BILL****SECTION 26**

1 with which the violation is alleged to occur, the elector may file a complaint with the  
2 board requesting it to take remedial action. If the board refuses to take remedial  
3 action or, within 30 days after the filing of such a complaint, fails to take remedial  
4 action, the elector may commence a civil action in the appropriate circuit court under  
5 sub. (4) requesting the court to impose a forfeiture under sub. (1) or (2).

6 (6) The board and courts shall expedite all proceedings under ss. 11.502 to  
7 11.522 so that all complaints brought prior to an election are resolved, to the extent  
8 possible, before the election is held.

9 (7) If a complaint brought under ss. 11.502 to 11.522 is resolved against the  
10 complainant and is found to have been brought in bad faith and without reasonable  
11 basis therefor, the board or court may assess costs, including reasonable attorney  
12 fees, against the complainant.

13 **11.518 Prohibited acts.** (1) If a candidate or agent of a candidate knowingly  
14 accepts more contributions than the candidate is entitled to receive, or makes  
15 disbursements exceeding the total amount of the public financing benefit received  
16 by the candidate and the qualifying and seed money contributions lawfully received  
17 by the candidate, the candidate or agent may be fined not more than \$25,000 or  
18 imprisoned for not more than 5 years or both.

19 (3) If, in connection with the receipt or disbursement of a public financing  
20 benefit for an election campaign, any person knowingly provides false information  
21 to the board, or knowingly conceals or withholds information from the board, that  
22 person may be fined not more than \$25,000 or imprisoned for not more than 5 years  
23 or both.

24 **11.522 Contributions to nonparticipating candidates; attributions.** (1)  
25 A nonparticipating candidate may accept contributions from private sources without



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1 limitation, except that no person may make any contribution or contributions to a  
2 nonparticipating candidate exceeding a total of \$1,000 during any campaign.

3 (2) Any electronic or print communication paid for or authorized by a  
4 nonparticipating candidate shall contain the following sentence: "This  
5 communication is paid for with money raised from private sources. This candidate  
6 has not agreed to abide by campaign contribution and spending limits."

*Change  
comparat*

7 **SECTION 27.** 11.64 <sup>W</sup>(2) of the statutes is amended to read: ~~repealed.~~

8 ~~11.64 (2) No person may utilize a contribution received from a contributor to~~  
9 ~~a campaign fund for a purpose for which a defense fund is authorized under sub. (1)~~  
10 ~~unless the authorization of the contributor is obtained. Notwithstanding s. 11.25 (2)~~  
11 ~~(a), any contributor may authorize the transfer of all or part of a contribution from~~  
12 ~~a campaign fund to a defense fund.~~

13 **SECTION 28.** 19.45 (8) (d) of the statutes is created to read:

14 19.45 (8) (d) No former governor or former state public official who was  
15 appointed to his or her state public office by the governor, for 12 months following the  
16 date on which he or she ceases to occupy the office of governor or the position to which  
17 he or she was appointed by the governor, may for compensation, on behalf of any  
18 person other than a governmental entity, make any formal or informal appearance  
19 before, or negotiate with, any employee of a department in the executive branch of  
20 state government.

21 **SECTION 29.** 19.45 (8m) of the statutes is created to read:

22 19.45 (8m) No individual who serves as a member <sup>of the legislature</sup> or <sup>an</sup> employee of the  
23 legislature <sup>identified in s. 20.923 (6)(h)</sup> for 12 months following the date on which the individual ceases to hold  
24 his or her office or position, may be employed as a lobbyist as defined in s. 13.62 (11).



**BILL**

1 required to provide public financing benefits that candidates qualify to receive from  
2 the democracy trust fund, to be transferred from the general fund to the democracy  
3 trust fund no later than the time required to make payments of grants under s. 11.51  
4 (2) and (3).

5 **SECTION 35.** 25.17 (1) (cm) of the statutes is created to read:

6 25.17 (1) (cm) Democracy trust fund (s. 25.421);

7 **SECTION 36.** 25.421 of the statutes is created to read:

8 **25.421 Democracy trust fund.** All moneys appropriated under s. 20.855 (4)

9 (bb) and all moneys deposited in the state treasury under ss. 11.509, 11.51 (4) and  
10 11.511 (5r) constitute the democracy trust fund, to be expended for the purposes of  
11 ss. 11.501 to 11.522.

12 **SECTION 37.** 895.46 (1) (an) of the statutes is created to read:

13 895.46 (1) (an) A defendant who is charged with or convicted of a criminal  
14 violation of ch. 11 or subch. III of ch. 19 shall not be considered to be acting within  
15 the scope of employment under this subsection.

16 **SECTION 38. Nonstatutory provisions.**

17 (1) Notwithstanding section 990.001 (1) of the statutes, if a court finds that all  
18 or any portion of section 11.12 (2), 11.16 (2), 11.26 (2) (as) or (9) (a) (intro.) or (b), or  
19 11.50 (1) (a) 1. a. of the statutes, as repealed and recreated by this act, or 11.31 (1)  
20 (de) of the statutes, as repealed by this act, or any part of the laws specified in 2001  
21 Wisconsin Act 109, section 9115 (2y), is unconstitutional, then the repeal and  
22 recreation of sections 11.12 (2), 11.16 (2), 11.26 (2) (as) and (9) (a) (intro.) and (b), and  
23 11.50 (1) (a) 1. a. of the statutes, and the repeal of section 11.31 (1) (de) of the statutes  
24 by this act are void in their entirety.

25 (END)

D-Note

2005-2006 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

LRB-4240/2ins  
JTK.....

4  
INS C:

***Payment of certain criminal defense costs and expenses***

X Under current law, the legislature appropriates moneys to itself and to other state agencies to be used to carry out the functions of the agencies as authorized by the laws and constitution of this state. The courts have held, in addition, that these moneys may only be used for a public purpose, which has been liberally construed. It is unlikely that, in most cases, the courts would consider a "public purpose" to include the payment of legal expenses or costs of a state officer or employee who is convicted of a criminal violation of any state law.

This bill provides specifically that no state officer or agency in any branch of state government may authorize payment or pay from any appropriation made by law to carry out a program of a state agency any legal expenses or costs incurred by any state officer or employee who is investigated for, charged with, or convicted of a criminal violation of the campaign finance law or the code of ethics for state public officials and employees, regardless of whether the officer or employee is convicted of a criminal offense. The bill does not preclude the claims board from awarding payment of a claim against the state made by a state officer or employee if the board finds that payment is justified based upon equitable principles.

INS 4A:

NOA With certain exceptions, current state law also forbids moneys solicited for political purposes from being used for any nonpolitical purpose. Under the law, a nonpolitical purpose specifically includes supporting or defending a person who is being investigated for, charged with, or convicted of a criminal violation of any state or federal law, or an agent or dependent of such a person. One exception to the prohibition permits the use of the political moneys for payment of civil penalties incurred under the campaign finance law.

INS 4B:

Ⓟ This bill deletes current state law that specifically authorizes the creation of a statutory defense fund and that forbids transfers of moneys from a campaign finance account to a defense fund unless the permission of the contributor is obtained. NO Ⓟ

INS 27-4:

SECTION 1. 20.931 of the statutes is created to read:

**20.931 Expenses and costs in certain criminal investigations or actions.** No state officer or state agency may authorize payment or pay from any appropriation made by law to carry out any program of a state agency any legal expenses or costs incurred by a state officer or employee who is investigated for, charged with, or convicted of a criminal violation of ch. 11 or subch. III of ch. 19. This section does not preclude the claims board from awarding payment of a claim against the state made by a state officer or employee if the board finds that payment is justified based upon equitable principles.

X

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

LRB-4240/2dn  
JTK...*gf*

*Date*

Amy Kasper:

X  
X  
X  
1. Proposed s. 20.931, which specifically bars payment from state appropriations of certain legal expenses or costs incurred by state officers or employees who are investigated for, charged with, or convicted of a criminal violation of ch. 11, stats. [the campaign finance law] or subch. III of ch. 19, stats. [the code of ethics for state public officials and employees] may raise the inference that it might be possible to use state appropriations to pay criminal defense expenses or costs incurred by violators or alleged violators of other state laws. Under current law, in most cases, this payment would either not be authorized by law or would violate the public purpose test, or both.

X  
2. If proposed s. 20.931 is limited only to violations of ch. 11 and subch. III of ch. 19, stats., you may want to consider including s. 946.12 [misconduct in public office] in your proposed prohibition.

X  
3. Although we did not discuss it, I would note in this connection that s. 895.35, stats., currently requires payment of legal expenses for certain local government officers who are charged with criminal violations of the law and in one narrow case, authorizes payment of legal expenses for these officers if they are convicted of criminal violations.

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

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

LRB-4240/2dn  
JTK:kjfrs

February 6, 2006

Amy Kasper:

1. Proposed s. 20.931, which specifically bars payment from state appropriations of certain legal expenses or costs incurred by state officers or employees who are investigated for, charged with, or convicted of a criminal violation of ch. 11, stats. [the campaign finance law], or subch. III of ch. 19, stats. [the code of ethics for state public officials and employees], may raise the inference that it might be possible to use state appropriations to pay criminal defense expenses or costs incurred by violators or alleged violators of other state laws. Under current law, in most cases, this payment would either not be authorized by law or would violate the public purpose test, or both.
2. If proposed s. 20.931 is limited only to violations of ch. 11 and subch. III of ch. 19, stats., you may want to consider including s. 946.12 [misconduct in public office] in your proposed prohibition.
3. Although we did not discuss it, I would note in this connection that s. 895.35, stats., currently requires payment of legal expenses for certain local government officers who are charged with criminal violations of the law and in one narrow case, authorizes payment of legal expenses for these officers if they are convicted of criminal violations.

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