

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0464/1dn

JTK:cjs:jf

December 4, 2006

Senator Ellis:

1. In reviewing 2005 SB-46, I discovered that the change deleting the nonresident reporting exemption that was enacted in 2005 Act 176 was deleted by 2005 Act 177, which repealed and recreated the relevant statute to restore the text in effect prior to the enactment of 2001 Wisconsin Act 109. Had these acts been signed by the governor in the opposite order, this deletion would not have occurred. Both acts originated from bills that were properly drafted at the time they were drafted. As is always the case, however, the bills did not anticipate each other's passage. In accord with SB-46, however, I have restored in this draft the change made by 2005 Act 176, which was also included in SB-46.

2. 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:

(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. 11.50 (9) (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) (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