

2009 DRAFTING REQUEST

Bill

Received: 01/16/2009

Received By: jkuesel

Wanted: As time permits

Identical to LRB:

For: Gordon Hintz (608) 266-2254

By/Representing: Bob Meyer

This file may be shown to any legislator: NO

Drafter: jkuesel

May Contact:

Addl. Drafters: mshovers

Subject: Elections - campaign finance

Extra Copies:

Submit via email: YES

Requester's email: Rep.Hintz@legis.wisconsin.gov

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Public financing for supreme court justice elections

Instructions:

Per LRB-1033/1, with permission of Kathy Daggs, Sen. Kreitlow's office, p/c, 1/16/09.

Drafting History:

| <u>Vers.</u> | <u>Drafted</u> | <u>Reviewed</u> | <u>Typed</u> | <u>Proofed</u> | <u>Submitted</u> | <u>Jacketed</u> | <u>Required</u> |
|--------------|---|------------------------|------------------------|----------------|-----------------------|-----------------------|-----------------|
| /? | jkuesel 01/20/2009 mshovers 01/20/2009 | kfollett 01/20/2009 | | _____ | | | State Crime |
| /1 | | | rschluet 01/20/2009 | _____ | cduerst 01/20/2009 | cduerst 01/20/2009 | |

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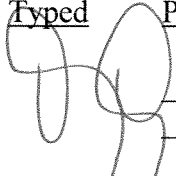
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| 1/1 | jkuesel 1/20/09 | 1/kjf 1/20 |  | | | | |

FE Sent For:

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wanted Wed 1/21

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2009 BILL

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1 AN ACT *to repeal* 11.50 (3) (a) 2.; *to amend* 8.35 (4) (b), 11.12 (2), 11.16 (2), 11.16
2 (3), 11.26 (1) (a), 11.26 (2) (a), 11.26 (9) (a), 11.26 (9) (b), 11.26 (13), 11.31 (1) (d),
3 11.50 (1) (a) 1., 11.50 (3) (b), 11.60 (4), 11.61 (2), 20.855 (4) (b) and 71.10 (3) (a);
4 and *to create* 11.26 (1) (am), 11.26 (2) (an), 11.26 (9) (ba), 11.501 to 11.522,
5 20.511 (1) (r), 20.585 (1) (q), 20.585 (1) (r), 20.855 (4) (ba), 20.855 (4) (bb), 25.17
6 (1) (cm) and 25.421 of the statutes; **relating to:** public financing of campaigns
7 for the office of justice of the supreme court, making appropriations, and
8 providing penalties.

Analysis by the Legislative Reference Bureau

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 certain state offices (including justice of the supreme court) may currently 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. 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.

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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 from at least 1,000 separate contributors who are electors of this state in amounts of not less than \$5 nor more than \$100 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 from electors of this state 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 spring 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 a public financing benefit 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 spring primary 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 a public financing benefit and makes expenditures in a total amount that exceeds by more than 5 percent the amount permitted for a candidate who accepts a public financing benefit, the candidate who accepts a public financing benefit receives additional funding equivalent to the excess expenditures made by his or her opponent, but may not receive 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 by more than 20 percent the amount of the public financing benefit for the office that the candidate seeks, but may not receive more than three times the amount of that benefit.

The bill provides that if a candidate makes disbursements that exceed the total amount of the public financing benefit allocated to the candidate and the total qualifying and seed money contributions lawfully accepted by the candidate, the candidate is subject to a forfeiture (civil penalty) of not more than ten times the amount by which his or her disbursements exceed the allocation. In addition, the bill provides that a candidate who accepts contributions in excess of any limitation imposed under the bill is subject to a forfeiture of not more than ten times the amount by which the contributions exceed the applicable limitation. The bill also provides that if any candidate or agent of a candidate knowingly accepts more contributions than the candidate is entitled to receive, or makes disbursements exceeding the total amount of the public financing benefit received by the candidate and the qualifying and seed money contributions lawfully received by the candidate, the candidate or agent may be fined not more than \$25,000 or imprisoned for not more than ten years, or both. Under the bill, any person who, in connection with the receipt or

BILL

disbursement of a public financing benefit, knowingly provides false information to the Government Accountability Board, or knowingly conceals or withholds information from the board, is subject to the same penalty.

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 during a campaign period 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.

Under current law, the Wisconsin election campaign fund is financed through an individual income tax "checkoff." Every individual filing a state income tax return who has a tax liability or is entitled to a tax refund may direct that \$1 of general purpose revenue be transferred to the fund. Individuals filing a joint return may separately choose whether to direct that the \$1 transfer be made. The designation does not increase an individual's tax liability nor reduce an individual's refund. This bill increases the amount of the individual income tax checkoff for the Wisconsin election campaign fund from \$1 to \$3. Under the bill, individuals filing a joint return may separately choose whether to make the \$3 checkoff. Under the bill, \$2 of each \$3 designation is deposited into the democracy trust fund, and the remaining \$1 is deposited into the Wisconsin election campaign fund, as currently provided. If the total designations do not generate sufficient general purpose revenues to fully fund the costs of public grants and administration of the democracy trust fund, the bill appropriates additional general purpose revenues to finance those costs.

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

BILL

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

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

17 11.12 (2) Any No registrant, other than a candidate who receives a public
18 financing benefit from the democracy trust fund, may accept an anonymous
19 contribution exceeding \$10 received by a campaign or committee treasurer or by an
20 individual under s. 11.06 (7) may not be used or expended. The, No candidate who

BILL

1 receives a public financing benefit from the democracy trust fund may accept an
2 anonymous contribution exceeding \$5. Any anonymous contribution that may not
3 be accepted under this subsection shall be donated to the common school fund or to
4 any a charitable organization at the option of the registrant's treasurer.

5 **SECTION 3.** 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 4.** 11.16 (3) of the statutes is amended to read:

14 11.16 (3) FORM OF DISBURSEMENTS. ~~Every~~ Except as authorized under s. 11.511
15 (1), every disbursement which is made by a registered individual or treasurer from
16 the campaign depository account shall be made by negotiable instrument. Such
17 instrument shall bear on the face the full name of the candidate, committee,
18 individual or group as it appears on the registration statement filed under s. 11.05
19 and where necessary, such additional words as are sufficient to clearly indicate the
20 political nature of the registrant or account of the registrant. The name of a political
21 party shall include the word "party". The instrument of each committee registered
22 with the board and designated under s. 11.05 (3) (c) as a special interest committee
23 shall bear the identification number assigned under s. 11.21 (12) on the face of the
24 instrument.

25 **SECTION 5.** 11.26 (1) (a) of the statutes is amended to read:

BILL**SECTION 5**

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

3 **SECTION 6.** 11.26 (1) (am) of the statutes is created to read:

4 11.26 (1) (am) Candidates for justice, \$1,000.

5 **SECTION 7.** 11.26 (2) (a) of the statutes is amended to read:

6 11.26 (2) (a) Candidates for governor, lieutenant governor, secretary of state,
7 state treasurer, attorney general, or state superintendent ~~or~~ justice, 4 percent of the
8 value of the disbursement level specified in the schedule under s. 11.31 (1).

9 **SECTION 8.** 11.26 (2) (an) of the statutes is created to read:

10 11.26 (2) (an) Candidates for justice, \$1,000.

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

12 11.26 (9) (a) ~~No~~ Except as provided in par. (ba), no individual who is a candidate
13 for state or local office may receive and accept more than 65 percent of the value of
14 the total disbursement level determined under s. 11.31 for the office for which he or
15 she is a candidate during any primary and election campaign combined from all
16 committees subject to a filing requirement, including political party and legislative
17 campaign committees.

18 **SECTION 10.** 11.26 (9) (b) of the statutes is amended to read:

19 11.26 (9) (b) ~~No~~ Except as provided in par. (ba), no individual who is a candidate
20 for state or local office may receive and accept more than 45 percent of the value of
21 the total disbursement level determined under s. 11.31 for the office for which he or
22 she is a candidate during any primary and election campaign combined from all
23 committees other than political party and legislative campaign committees subject
24 to a filing requirement.

25 **SECTION 11.** 11.26 (9) (ba) of the statutes is created to read:

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1 11.26 (9) (ba) Paragraphs (a) and (b) do not apply to a candidate who receives
2 a public financing benefit from the democracy trust fund.

3 **SECTION 12.** 11.26 (13) of the statutes is amended to read:

4 11.26 (13) Except as provided in sub. (9), contributions received from the
5 Wisconsin election campaign fund and public financing benefits received from the
6 democracy trust fund are not subject to limitation by this section.

7 **SECTION 13.** 11.31 (1) (d) of the statutes is amended to read:

8 11.31 (1) (d) Candidates for secretary of state, state treasurer, justice or state
9 superintendent, \$215,625.

10 **SECTION 14.** 11.50 (1) (a) 1. of the statutes is amended to read:

11 11.50 (1) (a) 1. With respect to a spring or general election, any individual who
12 is certified under s. 7.08 (2) (a) as a candidate in the spring election for justice or state
13 superintendent, or an individual who receives at least 6% of the vote cast for all
14 candidates on all ballots for any state office, except district attorney, for which the
15 individual is a candidate at the September primary and who is certified under s. 7.08
16 (2) (a) as a candidate for that office in the general election, or an individual who has
17 been lawfully appointed and certified to replace either such individual on the ballot
18 at the spring or general election; and who has qualified for a grant under sub. (2).

19 **SECTION 15.** 11.50 (3) (a) 2. of the statutes is repealed.

20 **SECTION 16.** 11.50 (3) (b) of the statutes is amended to read:

21 11.50 (3) (b) If a vacancy occurs in the office of state superintendent or justice
22 after August 15 in any year and an election is scheduled to fill the vacancy at the
23 spring election in the following year, the state treasurer shall transfer an amount not
24 exceeding 8 percent of the moneys transferred to the fund on the preceding August
25 15 to the superintendency account ~~for the office in which the vacancy occurs~~, such

BILL**SECTION 16**

1 moneys to be drawn from any account within the accounts created under sub. (4) in
2 the amount or amounts specified by the board.

3 **SECTION 17.** 11.501 to 11.522 of the statutes are created to read:

4 **11.501 Definitions.** In ss. 11.501 to 11.522:

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

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

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

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

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

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

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

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

3 **(10)** “Independent disbursement” means a disbursement by a person expressly
4 advocating the election or defeat of a clearly identified candidate which is made
5 without cooperation or consultation with a candidate, or any authorized committee
6 or agent of a candidate, and which is not made in concert with, or at the request or
7 suggestion of, any candidate, or any authorized committee or agent of a candidate.

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

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

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

17 **(14)** “Public financing benefit” means a benefit provided to an eligible
18 candidate under this section.

19 **(15)** “Public financing qualifying period” means the period beginning on the
20 first day of July of any year and ending on the day before the beginning of the primary
21 election campaign period for that office.

22 **(16)** “Qualifying contribution” means a contribution in an amount of not less
23 than \$5 nor more than \$100 made to a candidate by an elector of this state during
24 the public financing qualifying period, which is acknowledged by written receipt
25 identifying the contributor.

BILL**SECTION 17**

1 **(17)** “Seed money contribution” means a contribution in an amount of not more
2 than \$100 made to a candidate by an elector of this state during the exploratory
3 period or the public financing qualifying period, or a contribution made to a
4 candidate consisting of personal funds of that candidate in an amount not more than
5 the amount authorized under s. 11.507 during the exploratory period or the public
6 financing qualifying period.

7 **11.502 Qualification; certification. (1)** Before a candidate for justice in the
8 primary election may be certified as an eligible candidate to receive a public
9 financing benefit for the primary election campaign period, the candidate shall apply
10 to the board for a public financing benefit and file a sworn statement that the
11 candidate has complied and will comply with all requirements of this section and ss.
12 11.503 to 11.522 throughout the applicable campaign, which includes the primary
13 and election for that office. A candidate shall file the application and statement no
14 later than the beginning of the primary election campaign period for the office that
15 the candidate seeks.

16 **(2)** A candidate shall be certified by the board as an eligible candidate for
17 receipt of a public financing benefit for a primary election if the candidate complies
18 with sub. (1) and receives qualifying contributions from at least 1,000 separate
19 contributors in an aggregate amount of not less than \$5,000 nor more than \$15,000
20 before the close of the public financing qualifying period.

21 **(3)** The board shall verify a candidate’s compliance with the requirements of
22 sub. (2) by such verification and sampling techniques as the board considers
23 appropriate.

24 **(4)** Each candidate shall:

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

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

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

9 **11.503 Time of application.** (1) Before a candidate may be certified as
10 eligible for receipt of a public financing benefit for the spring election, the candidate
11 shall apply to the board and file a sworn statement that the candidate has fulfilled
12 all the requirements of ss. 11.502 to 11.522 during the primary election campaign
13 period and will comply with such requirements during the election campaign period.
14 Except as authorized in s. 8.35 (4) (b), the application shall be filed no later than the
15 7th day after the date of the spring primary or the day on which the primary election
16 would be held if a primary were required.

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

21 **11.505 Agreement by candidate.** An eligible candidate who accepts a public
22 financing benefit under ss. 11.502 to 11.522 during the primary election campaign
23 period shall agree to comply with all requirements of ss. 11.502 to 11.522 throughout
24 the election campaign period during the same campaign as a precondition to receipt
25 of a public financing benefit. An eligible candidate who accepts a public financing

BILL**SECTION 17**

1 benefit during a primary election campaign period may not elect to accept private
2 contributions in violation of ss. 11.502 to 11.522 during the corresponding election
3 campaign period.

4 **11.506 Requirements imposed upon candidates.** (1) An eligible
5 candidate shall not accept private contributions other than seed money
6 contributions and qualifying contributions that the candidate accepts during the
7 exploratory period and the public financing qualifying period.

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

16 (3) In addition to adhering to requirements imposed under ss. 11.06 (5) and
17 11.12 (3), a candidate who receives a public financing benefit shall maintain records
18 of all contributions received by the candidate of more than \$5 but less than \$50,
19 including seed money contributions and qualifying contributions, which shall
20 contain the full name of the contributor and the contributor's full home address. In
21 addition, if a contributor's aggregate contributions to any candidate exceed \$50 for
22 any campaign, the candidate shall also maintain a record of the contributor's
23 principal occupation and the name and business address of the contributor's place
24 of employment.

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1 (4) The failure to record or provide the information specified in sub. (3)
2 disqualifies a contribution from being used by a candidate as a qualifying
3 contribution.

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

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

11 **11.507 Personal funds of candidates.** (1) The personal funds of a candidate
12 contributed as seed money contributions may not exceed an aggregate amount of
13 \$5,000.

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

16 **11.508 Seed money contributions.** (1) An eligible candidate may accept
17 seed money contributions from any individual or committee prior to the end of the
18 public financing qualifying period, provided the total contributions received from one
19 contributor, except personal funds and qualifying contributions otherwise permitted
20 under ss. 11.502 to 11.522, do not exceed \$100, and the aggregate contributions,
21 including personal funds, but not including qualifying contributions, do not exceed
22 \$5,000.

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

BILL**SECTION 17**

1 **11.509 Excess contributions.** If an eligible candidate receives excess seed
2 money contributions or qualifying contributions on an aggregate basis, the
3 candidate may retain the contributions and make disbursements derived from the
4 contributions, in an amount not exceeding \$15,000. An amount equivalent to the
5 excess contributions shall be deducted by the board from the candidate's public
6 financing benefit. An eligible candidate shall transfer to the board all seed money
7 and qualifying contributions that exceed the limits prescribed in this section within
8 48 hours after the end of the exploratory period. The board shall deposit all
9 contributions transferred under this section in the democracy trust fund.

10 **11.51 Certification by candidate. (1)** To apply for a public financing benefit,
11 a candidate shall certify to the board that the candidate has complied and will
12 comply, throughout the applicable campaign, with all requirements of ss. 11.502 to
13 11.522 and that all disclosures required as of the time of application have been made,
14 and shall present evidence of the requisite number of qualifying contributions
15 received by the candidate. The candidate's request for certification shall be signed
16 by the candidate and the candidate's campaign treasurer.

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

23 **(3)** The board shall distribute to each eligible candidate for justice at a spring
24 election a check for the amount of the public financing benefit payable to the
25 candidate not later than 48 hours after the date of the spring primary election for the

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1 office of justice, or the date that the primary election would be held if a primary were
2 required. However, no candidate for a particular office shall receive a check until all
3 candidates for the office of justice who apply and qualify for a public financing benefit
4 have been certified as eligible candidates.

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

9 **11.511 Public financing benefits.** (1) The board shall provide to each
10 eligible candidate who qualifies to receive a public financing benefit for the primary
11 or election campaign period separate checks for the public financing benefits payable
12 to the candidate for the primary and election campaign periods in the amounts
13 specified in this section, subject to any required adjustment under s. 11.509, 11.512
14 (2) or 11.513 (2). An eligible candidate may use this public financing benefit to
15 finance any lawful disbursements during the primary and election campaign periods
16 to further the election of the candidate in that primary or election. An eligible
17 candidate shall not use this public financing benefit to repay any loan, or in violation
18 of ss. 11.502 to 11.522 or any other applicable law.

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

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

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

BILL**SECTION 17**

1 **(5g)** An eligible candidate who receives a public financing benefit in the
2 primary election campaign period and whose name is certified to appear on the ballot
3 at the election following that primary may utilize any unencumbered balance of the
4 public financing benefit received by the candidate in the primary election campaign
5 period for the election campaign period.

6 **(5r)** Except as permitted in sub. (5g), an eligible candidate who receives a
7 public financing benefit and who does not encumber or expend some portion of the
8 benefit for a purpose described in sub. (1) shall return any unencumbered portion of
9 the benefit to the board within 30 days after the primary or election in which the
10 candidate participates.

11 **(6)** Notwithstanding subs. (2) and (3), beginning on July 1, 2012, and every 2
12 years thereafter, the board shall modify the public financing benefits provided for in
13 subs. (2) and (3) to adjust for the change in the consumer price index, all items, U.S.
14 city average, published by the U.S. department of labor for the preceding 2-year
15 period ending on December 31.

16 **11.512 Financial activity by nonparticipating candidates. (1)** In
17 addition to other reports required by law, a nonparticipating candidate for an office
18 at a primary or election who receives contributions or makes or obligates to make
19 disbursements in an amount that is more than 5 percent greater than the public
20 financing benefit applicable to an eligible candidate for the same office at the same
21 primary or election shall file a report with the board itemizing the total contributions
22 received and disbursements made or obligated to be made by the candidate as of the
23 date of the report. The board shall transmit copies of the report to all candidates for
24 the same office at the same election. A nonparticipating candidate shall file
25 additional reports after the candidate receives each additional \$1,000 of

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1 contributions, or the candidate makes or obligates to make each additional \$1,000
2 of disbursements. If such contributions are received or such disbursements are made
3 or obligated to be made more than 6 weeks prior to the date of the primary election
4 at which the name of the candidate appears on the ballot, or prior to the date that
5 the primary election would be held, if a primary were required, the reports shall be
6 made at the next regular reporting interval under s. 11.506. If such contributions
7 are received or such disbursements made or obligated to be made within 6 weeks
8 prior to the date of the primary election at which the name of the candidate appears
9 on the ballot, or within 6 weeks prior to the date that the primary election would be
10 held, if a primary were required, the reports shall be made within 24 hours after each
11 instance in which such contributions are received, or such disbursements are made
12 or obligated to be made.

13 (2) Upon receipt of such information, the state treasurer shall immediately
14 issue a check to an opposing eligible candidate in an additional amount equivalent
15 to the total excess disbursements made or obligated to be made, but not to exceed 3
16 times the public financing benefit for the applicable office.

17 **11.513 Independent disbursements.** (1) If any person makes, or becomes
18 obligated to make, by oral or written agreement, an independent disbursement in
19 excess of \$1,000 with respect to a candidate for the office of justice at a spring primary
20 or election, that person shall file with the board a notice of the disbursement or
21 obligation to make the disbursement. Any such person shall file reports of such
22 disbursements or obligations to make such disbursements on the 15th or last day of
23 the month that immediately follows the date of the disbursement or the obligation
24 to make the disbursement, whichever comes first, except that, within 6 weeks prior
25 to the date of the spring primary election, if a primary is held, and within 6 weeks

BILL**SECTION 17**

1 prior to the date of the spring election, the person shall file such reports within 24
2 hours after each independent disbursement is made or obligated to be made. Any
3 such person shall file an additional report after each additional \$1,000 of
4 disbursements are made or obligated to be made.

5 (2) When the aggregate independent disbursements against an eligible
6 candidate for an office or for the opponents of that candidate exceed 120 percent of
7 the public financing benefit for that office in any campaign, the board shall
8 immediately credit that candidate's account with an additional line of credit
9 equivalent to the total disbursements made or obligated to be made, but not to exceed
10 3 times the public financing benefit for the applicable office.

11 **11.515 Democracy trust fund.** The democracy trust fund shall be
12 administered by the state treasurer.

13 **11.516 Administration.** Except as otherwise specifically provided in ss.
14 11.501 to 11.522, the duties of and authority for administering and enforcing ss.
15 11.501 to 11.522 are vested in the board.

16 **11.517 Penalties; enforcement.** (1) Notwithstanding s. 11.60 (1), if an
17 eligible candidate makes disbursements that exceed the total amount of the public
18 financing benefit allocated to the candidate for any campaign and the total
19 qualifying and seed money contributions lawfully accepted by the candidate, the
20 candidate may be required to forfeit not more than 10 times the amount by which the
21 disbursements exceed the allocation.

22 (2) Notwithstanding s. 11.60 (1), any eligible candidate who accepts
23 contributions in excess of any limitation imposed under ss. 11.502 to 11.522 may be
24 required to forfeit not more than 10 times the amount by which the contributions
25 exceed the applicable limitation.

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

9 **(4)** If the board has probable cause to believe that an eligible candidate has
10 made excess disbursements or has accepted excess contributions and the board is
11 unable to correct the matter by informal methods within the time prescribed in sub.
12 (3), the board shall make a public finding of probable cause in the matter. After
13 making a public finding, the board may bring a civil action against the eligible
14 candidate as provided in s. 5.05 (1) (c).

15 **(5)** If an elector believes that an eligible candidate has violated ss. 11.502 to
16 11.522 and the elector is entitled to vote for or against the eligible candidate in the
17 election in connection with which the violation is alleged to occur, the elector may file
18 a complaint with the board requesting it to take remedial action. If the board refuses
19 to take remedial action or, within 30 days after the filing of such a complaint, fails
20 to take remedial action, the elector may commence a civil action requesting the court
21 to impose a forfeiture under sub. (1) or (2) in circuit court for the county where the
22 board is authorized to bring an action under s. 5.05 (1) (c).

23 **(6)** The board and courts shall expedite all proceedings under ss. 11.502 to
24 11.522 so that all complaints brought prior to an election are resolved, to the extent
25 possible, before the election is held.

BILL**SECTION 17**

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

5 **11.518 Prohibited acts. (1)** Notwithstanding s. 11.61 (1) (c), if an eligible
6 candidate or agent of a candidate knowingly accepts more contributions than the
7 candidate is entitled to receive, or makes disbursements exceeding the total amount
8 of the public financing benefit received by the candidate and the qualifying and seed
9 money contributions lawfully received by the candidate, the candidate or agent is
10 guilty of a Class G felony.

11 **(2)** Notwithstanding s. 11.61 (1) (c), if in connection with the receipt or
12 disbursement of a public financing benefit for an election campaign, any person
13 knowingly provides false information to the board, or knowingly conceals or
14 withholds information from the board, that person is guilty of a Class G felony.

15 **11.522 Contributions to nonparticipating candidates; attributions. (1)**
16 A nonparticipating candidate may accept contributions from private sources without
17 limitation, except that no person may make any contribution or contributions to a
18 nonparticipating candidate exceeding a total of \$1,000 during any campaign.

19 **(2)** In addition to the attribution required under s. 11.30 (2), any electronic or
20 print communication paid for or authorized by a nonparticipating candidate shall
21 contain the following sentence: "This communication is paid for with money raised
22 from private sources. This candidate has not agreed to abide by campaign
23 contribution and spending limits."

24 **SECTION 18.** 11.60 (4) of the statutes is amended to read:

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1 11.60 (4) Except as otherwise provided in ss. 5.05 (2m) (c) 15. and 16. and (h),
2 5.08, and 5.081, actions under this section or 11.517 may be brought by the board or
3 by the district attorney for the county where the defendant resides or, if the
4 defendant is a nonresident, by the district attorney for the county where the violation
5 is alleged to have occurred. For purposes of this subsection, a person other than a
6 natural person resides within a county if the person’s principal place of operation is
7 located within that county.

8 **SECTION 19.** 11.61 (2) of the statutes is amended to read:

9 11.61 (2) Except as otherwise provided in ss. 5.05 (2m) (c) 15. and 16. and (i),
10 5.08, and 5.081, all prosecutions under this section or s. 11.518 shall be conducted
11 by the district attorney for the county where the defendant resides or, if the
12 defendant is a nonresident, by the district attorney for the county where the violation
13 is alleged to have occurred. For purposes of this subsection, a person other than a
14 natural person resides within a county if the person’s principal place of operation is
15 located within that county.

16 **SECTION 20.** 20.005 (3) (schedule) of the statutes: at the appropriate place,
17 insert the following amounts for the purposes indicated:

| | | |
|--|----------------|----------------|
| | 2009-10 | 2010-11 |
|--|----------------|----------------|

19 **20.511 Government accountability**

20 (1) ADMINISTRATION OF ELECTION, ETHICS, AND
21 LOBBYING LAWS

22 (r) Democracy trust fund adminis-
23 tration

| | | | | |
|--|-----|---|-----|-----|
| | SEG | A | -0- | -0- |
|--|-----|---|-----|-----|

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SECTION 20

2009-10

2010-11

1 **20.585 Treasurer, state**

2 (1) CUSTODIAN OF STATE FUNDS

3 (r) Democracy trust fund adminis-
4 tration

SEG A

-0-

-0-

5 **SECTION 21.** 20.511 (1) (r) of the statutes is created to read:6 20.511 (1) (r) *Democracy trust fund administration.* From the democracy trust
7 fund, the amounts in the schedule for the administration of ss. 11.501 to 11.522.8 **SECTION 22.** 20.585 (1) (q) of the statutes is created to read:9 20.585 (1) (q) *Public financing benefits; candidates for justice.* From the
10 democracy trust fund, a sum sufficient to provide for payment of public financing
11 benefits to eligible candidates under ss. 11.501 to 11.522.12 **SECTION 23.** 20.585 (1) (r) of the statutes is created to read:13 20.585 (1) (r) *Democracy trust fund administration.* From the democracy trust
14 fund, the amounts in the schedule for the administration of ss. 11.501 to 11.522.15 **SECTION 24.** 20.855 (4) (b) of the statutes is amended to read:16 20.855 (4) (b) (title) *Election campaign fund payments.* A sum sufficient equal
17 to one-third of the amounts determined under s. 71.10 (3) to be paid into the
18 Wisconsin election campaign fund annually on August 15.19 **SECTION 25.** 20.855 (4) (ba) of the statutes is created to read:20 20.855 (4) (ba) *Democracy trust fund payments.* A sum sufficient equal to
21 two-thirds of the amounts determined under s. 71.10 (3) to be paid into the
22 democracy trust fund annually on August 15.23 **SECTION 26.** 20.855 (4) (bb) of the statutes is created to read:

BILL

1 20.855 (4) (bb) *Democracy trust fund transfer.* A sum sufficient equal to the
2 difference between the unencumbered balance in the democracy trust fund and the
3 sum of the amounts appropriated under ss. 20.511 (1) (r) and 20.585 (1) (r) and the
4 amounts required to provide public financing benefits that candidates qualify to
5 receive from the democracy trust fund, to be transferred from the general fund to the
6 democracy trust fund no later than the time required to make payments of grants
7 under s. 11.51 (2) and (3).

8 **SECTION 27.** 25.17 (1) (cm) of the statutes is created to read:

9 25.17 (1) (cm) Democracy trust fund (s. 25.421);

10 **SECTION 28.** 25.421 of the statutes is created to read:

11 **25.421 Democracy trust fund.** All moneys appropriated under s. 20.855 (4)
12 (ba) and (bb) and all moneys deposited in the state treasury under ss. 11.509, 11.51
13 (4), and 11.511 (5r) constitute the democracy trust fund, to be expended for the
14 purposes of ss. 11.501 to 11.522.

15 **SECTION 29.** 71.10 (3) (a) of the statutes is amended to read:

16 71.10 (3) (a) Every individual filing an income tax return who has a tax liability
17 or is entitled to a tax refund may designate \$1 ~~\$3~~ for the Wisconsin election campaign
18 fund and the democracy trust fund for the use of eligible candidates under s. ss. 11.50
19 and 11.51. If the individuals filing a joint return have a tax liability or are entitled
20 to a tax refund, each individual may make a designation of \$1 ~~\$3~~ under this
21 subsection.

22 **SECTION 30. Initial applicability.**

23 (1) The treatment of section 71.10 (3) (a) of the statutes first applies to taxable
24 years beginning on January 1 of the year in which this subsection takes effect, except
25 that if this subsection takes effect after July 31 the treatment first applies to taxable

BILL

SECTION 30

1 years beginning on January 1 of the year following the year in which this subsection
2 takes effect.

3 **SECTION 31. Effective date.**

4 (1) This act takes effect on December 1 following the date of publication.

5 (END)

D-Note

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

-1600/1 du
LRB-1033/1dn
JTK:kjf:ph

January 12, 2009

Hintz
Representative Hintz:
~~Senator Kreitlow:~~

1. Because it would be disruptive and confusing to implement this draft in the midst of an election campaign, the draft provides for an effective date of December 1 following the date of publication. Please let me know if you want to treat this issue differently.

X 2. This draft includes two appropriations for which I have specified "\$-0-" for expenditure in fiscal years 2009-10 and 2010-11. When you know the dollar amounts that you need to include in the proposal, contact me and I will either redraft the proposal or draft an amendment, whichever is appropriate. 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.

X 3. In *McIntyre v. Ohio Elections Commission*, 115 S. Ct. 1151 (1995), the U.S. Supreme Court found unconstitutional, under the First Amendment, a statute that prohibited publication or distribution of any material designed to promote the nomination or election of a candidate or the adoption or defeat of any issue or to influence the voters at any election without identification of the name and address of the person who publishes or distributes the material. The court, however, indicated that a state's interest in preventing fraud might justify a more limited disclosure requirement (115 S. Ct. at 1522). Further, the court indicated that it still approved of requirements to disclose independent expenditures, which it upheld in *Buckley v. Valeo*, et. al., 96 S. Ct. 612, 661-662 (1976), (*McIntyre*, 115 S. Ct. at 1523). In view of this opinion, the constitutionality of disclosure statutes such as proposed s. 11.522, relating to labeling of certain political communications by candidates for the office of justice of the supreme court who fail to qualify for a public financing benefit is not clear at this point. We will have to await further decisions from the court before we know the exact limits of a state's ability to regulate in this field.

X 4. The lower federal courts have disagreed as to whether statutes such as proposed ss. 11.512 (2) and 11.513 (2), which increase the public financing benefit available to a candidate for the office of justice of the supreme court when independent disbursements are made against the candidate or for his or her opponents, or when the

candidate's opponents make disbursements exceeding a specified level, may result in an abridgement of the First Amendment rights of the persons making the disbursements. See *Day v. Holahan*, 34 F. 3d 1356 (8th Cir., 1994), in which a Minnesota law that included provisions similar to proposed ss. 11.512 (2) and 11.513 (2) was voided. See also *Daggett v. Comm. on Governmental Ethics and Election Practices*, 205 F. 3d 445, 463-65, 467-69 (1st Cir., 2000), in which a similar law in Maine was not found to abridge the First Amendment. The U.S. Supreme Court has not yet spoken on this issue.

4
5. Proposed s. 11.512 (1), which imposes additional reporting requirements upon candidates for the office of justice of the supreme court who fail to qualify for a public financing benefit, will likely be found unenforceable as a result of a recent decision of the U.S. Supreme Court in *Davis v. F.E.C.*, 128 S. Ct. 2759 (2008), where the court held at p. 2767, that asymmetric disclosure requirements imposed by a statute upon two different candidates for the same office at the same election contravene the First Amendment because they impose a substantial burden upon the right of candidates to use personal funds [or implicitly, nonpublic funds] that is not justified by any compelling state interest.

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

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1600/1dn

JTK:kjf:rs

January 20, 2009

Representative Hintz:

1. This draft includes two appropriations for which I have specified "\$-0-" for expenditure in fiscal years 2009-10 and 2010-11. When you know the dollar amounts that you need to include in the proposal, contact me and I will either redraft the proposal or draft an amendment, whichever is appropriate. 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.

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3. The lower federal courts have disagreed as to whether statutes such as proposed ss. 11.512 (2) and 11.513 (2), which increase the public financing benefit available to a candidate for the office of justice of the supreme court when independent disbursements are made against the candidate or for his or her opponents, or when the candidate's opponents make disbursements exceeding a specified level, may result in an abridgement of the First Amendment rights of the persons making the disbursements. See *Day v. Holahan*, 34 F. 3d 1356 (8th Cir., 1994), in which a Minnesota law that included provisions similar to proposed ss. 11.512 (2) and 11.513

(2) was voided. See also *Daggett v. Comm. on Governmental Ethics and Election Practices*, 205 F. 3d 445, 463-65, 467-69 (1st Cir., 2000), in which a similar law in Maine was not found to abridge the First Amendment. The U.S. Supreme Court has not yet spoken on this issue.

4. Proposed s. 11.512 (1), which imposes additional reporting requirements upon candidates for the office of justice of the supreme court who fail to qualify for a public financing benefit, will likely be found unenforceable as a result of a recent decision of the U.S. Supreme Court in *Davis v. F.E.C.*, 128 S. Ct. 2759 (2008), where the court held at p. 2767, that asymmetric disclosure requirements imposed by a statute upon two different candidates for the same office at the same election contravene the First Amendment because they impose a substantial burden upon the right of candidates to use personal funds [or implicitly, nonpublic funds] that is not justified by any compelling state interest.

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

Duerst, Christina

From: Meyer, Bob
Sent: Tuesday, January 20, 2009 2:23 PM
To: LRB.Legal
Subject: Draft Review: LRB 09-1600/1 Topic: Public financing for supreme court justice elections

Please Jacket LRB 09-1600/1 for the ASSEMBLY.