



WISCONSIN LEGISLATIVE COUNCIL AMENDMENT MEMO

2009 Senate Bill 540

**Senate Amendments
1 and 2**

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Current Law

Current law prohibits corporations and cooperatives from making contributions or disbursements (expenditures) in campaigns for state or local office. Violators are subject to a forfeiture (civil penalty) of not more than \$500 for each violation. Intentional violators are guilty of a Class I felony, which is punishable by a fine of not more than \$10,000 or imprisonment for three and one-half years, or both, except that if a violation involves \$100 or less, the violation is punishable as a misdemeanor with a fine of not more than \$1,000 or imprisonment for not more than six months, or both. A recent decision by the U.S. Supreme Court has cast doubt about whether this law is enforceable. See, *Citizens United v. FEC*, Case No. 08-205 (2010).

Provisions of Senate Bill 540

Senate Bill 540 deletes the current prohibition on disbursements by corporations and cooperatives. However, the bill provides that before a corporation or cooperative may make a disbursement or incur an obligation to make a disbursement for the purpose of influencing an election for state or local office, the cooperative must file with its registration statement: (1) a copy of a document that is satisfactory to the Government Accountability Board, reflecting action taken not more than two years previous to the time that any disbursement is made or any obligation to make disbursement is incurred, demonstrating that the corporation or cooperative has received approval of a majority of its voting shares or members who are entitled to elect the board of directors for the corporation or cooperative to make disbursements and incur obligations to make disbursements for the purpose of influencing an election for state or local office; or (2) a statement that the corporation or cooperative has no shareholders or members.

The bill also imposes various registration reporting requirements upon any individual or organization that, within 60 days of an election and by means of communications media, makes any communication that includes a reference to a candidate at that election, an office to be filled at that election, or a political party. The bill also requires an individual or organization that becomes subject to

a registration requirement by making such a communication to report, upon registration, the information that would have been required to be reported if the individual or organization had been registered with respect to any obligation occurred or disbursement made for the purpose of making such a communication prior to registration. However, the bill does not require registration reporting if the communication is made by a corporation, cooperative, or nonpolitical voluntary association that is limited to the corporation's, cooperative's, or association's members, shareholders, or subscribers.

The change in the scope of reportable activity under the bill also applies to contribution and disbursement limitations and restrictions by causing reportable "contributions," "obligations," and "disbursements" to include the cost of all reportable communications.

Senate Bill 540 also sets forth penalties for violations of registration reporting requirements or other prohibitions

Senate Amendment 1

Senate Amendment 1 amends the bill to clarify that a *cooperative association* must comply with the same provisions as a corporation with regard to receiving prior approval for making disbursements or incurring obligations. The amendment also modifies the bill to refer to a majority of "voting shares" instead of "shareholders." Also, the amendment makes a cross-reference change in SECTION 2.

Senate Amendment 2

Senate Amendment 2 provides in pertinent part that if a court with jurisdiction in Wisconsin finds in a reported decision, whether or not applicable in this state, that a prohibition against the making of political expenditures by corporations or similar entities is not enforceable for constitutional reasons, or if any such court later finds in a reported decision that such a prohibition is enforceable, the Government Accountability Board must promptly publish a finding to that effect in the Wisconsin Administrative Register. The amendment also makes various other cross-reference changes to reflect the provisions of the bill relating to when a finding of unenforceability is in effect.

Legislative History

2009 Senate Bill 540 was introduced on February 17, 2010 by Senator Wirch and others; cosponsored by Representative Black and others. A public hearing was held by the Senate Committee on Labor, Elections, and Urban Affairs on March 10th. Senator Wirch introduced Senate Amendment 1 and Senate Amendment 2 prior to the hearing. At an executive session on March 16, 2010, the committee voted to adopt Senate Amendment 1 on a vote of Ayes, 3; Noes, 2; and Senate Amendment 2 on a vote of Ayes, 5; Noes, 0; and voted to recommend passage of the bill, as amended, on a vote of Ayes, 3; Noes, 2.

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