

2011 DRAFTING REQUEST

Senate Amendment (SA-SB292)

Received: 01/19/2012

Received By: **jkuesel**

Wanted: As time permits

Companion to LRB:

For: **Jon Erpenbach (608) 266-6670**

By/Representing: **Julie Landrie**

May Contact:

Drafter: **jkuesel**

Subject: **Elections - campaign finance**

Addl. Drafters:

Extra Copies:

Submit via email: **YES**

Requester's email: **Sen.Erpenbach@legis.wisconsin.gov**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Disbursements by corporations; campaign finance scope of regulation

Instructions:

Per LRB-2892/4.

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 01/19/2012	jdye 01/19/2012		_____			
/1			phenry 01/19/2012	_____	ggodwin 01/19/2012	ggodwin 01/19/2012	

FE Sent For:

<END>

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12/1	jkuesel 1/19/12	1/19 jld	1/19 ph	ks/pl			

FE Sent For:

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State of Wisconsin
2011 - 2012 LEGISLATURE



LRB-2849/4
JTK:wj/kjf/cjs/med:rs

2011 BILL

1 AN ACT *to amend* 11.06 (2), 11.38 (title) and 11.38 (1) (a) 1.; and *to create* 11.01
2 (12v), 11.01 (12w), 11.01 (13), 11.01 (14), 11.01 (16) (a) 3., 11.05 (3) (s), 11.06 (1)
3 (n), 11.12 (7), 11.38 (3e) and 11.38 (9) of the statutes; **relating to:** political
4 disbursements and obligations by corporations, cooperative associations, and
5 labor organizations and the scope of regulated activity and reporting of certain
6 activity under the campaign finance law.

Analysis by the Legislative Reference Bureau

Under current law, corporations and cooperatives are prohibited 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 of the U.S. Supreme Court has cast doubt about whether this law is enforceable as it applies to disbursements. See *Citizens United v. F.E.C.*, 130 S.Ct. 876 (2010).

This bill provides that if a court with jurisdiction in this state 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

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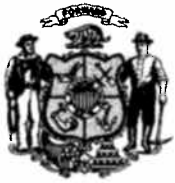
for constitutional reasons, the Government Accountability Board (GAB) must publish a finding to that effect. The bill then provides that, during a period when a finding of unenforceability is in effect, before a corporation, cooperative, or labor organization may make a disbursement or incur an obligation to make a disbursement independently of a candidate, the corporation, cooperative, or labor organization must obtain the express approval of a majority of the members of the board of directors, executive council, or other governing body of the corporation, cooperative, or labor organization by vote of that body taken during the 365-day period preceding the date on which the disbursement is made or the obligation is incurred. The bill also requires each financial report filed by the corporation, cooperative, or labor organization that includes a report of any disbursement made, or obligation to make a disbursement incurred, by the corporation, cooperative, or labor organization independently of a candidate to also include a statement that a majority of the members of the board of directors, executive council, or other governing body of the corporation, cooperative, or labor organization has expressly voted to authorize the disbursement or obligation during the 365-day period preceding the date on which it is made or incurred.

Currently, individuals who accept contributions, organizations that make or accept contributions, and individuals who or organizations that incur obligations or make disbursements for the purpose of influencing an election for state or local office are generally required to register with the appropriate filing officer and to file financial reports with that officer, regardless of whether they act in conjunction with or independently of any candidate who is supported or opposed.

With certain exceptions, this bill imposes registration and reporting requirements, in addition, upon any individual who and organization that, within 60 days of an election, makes any mass communication, including an electronic communication, a mass distribution, or a mass telephoning, that includes a reference to a candidate at that election. In addition, the bill requires an individual who 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 incurred or disbursement made for the purpose of making such a communication prior to registration. The bill, however, does not require registration and reporting if the communication is made by a corporation, cooperative, or nonpolitical voluntary association and 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 (spending) limitations and restrictions by causing reportable "contributions," "obligations," and "disbursements" to include the cost of all reportable communications.

The bill also requires a special report by any campaign finance registrant who makes or incurs an obligation to make a mass communication that becomes reportable under the bill within 60 days of a primary or other election in an amount greater than \$500 cumulatively since the date of the registrant's last report. The special report must be made within 24 hours after the date that disbursements or



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~~PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION~~

SENATE AMENDMENT,
TO 2011 SENATE BILL 292

1 At the locations indicated, amend the bill as follows:

2 1. Page 1, line 3: after "contributions" insert " and political disbursements and
3 obligations by corporations, cooperative associations, and labor organizations, and
4 the scope of regulated activity and reporting of certain activity under the campaign
5 finance law".

6 2. Page 1, line 4: before that line insert:

3. Page 1, line 4: delete "SECTION 1" and substitute "SECTION 10e".

8 4. Page 1, line 7: after that line insert:

9 5. Page 2, line 3: after that line insert:

10 (END)

INS
1-60

INS
1-8

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1-9

(B)
10e

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obligations that exceed \$500 cumulatively are made or incurred and must include the information that would otherwise be reported on the registrant's next regular report in the form prescribed by GAB.

Violators of registration and reporting requirements are subject to a forfeiture (civil penalty) of not more than \$500 for each violation. In addition, any person who is delinquent in filing a report is subject to a forfeiture of not more than \$50 or 1 percent of the annual salary of the office for which a candidate is being supported or opposed, whichever is greater, for each day of delinquency. Intentional violators of the registration requirements and persons who intentionally file false reports or statements may be fined not more than \$1,000 or imprisoned for not more than six months, or both, if the violation involves less than \$100 in amount or value, and may be fined not more than \$10,000 or imprisoned for not more than three years and six months, or both, if the violation involves more than \$100 in amount or value.

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

1 SECTION 1. 11.01 (12v) of the statutes is created to read:

2 11.01 (12v) "Mass communication" means a message that is disseminated by
3 means of one or more communications media, a mass electronic communication, a
4 mass distribution, or a mass telephoning, but not including a bona fide poll
5 conducted for the purpose of objectively identifying or collecting data concerning the
6 attitudes or preferences of electors.

7 SECTION 2. 11.01 (12w) of the statutes is created to read:

8 11.01 (12w) "Mass distribution" means the distribution of 500 or more pieces
9 of substantially identical material.

10 SECTION 3. 11.01 (13) of the statutes is created to read:

11 11.01 (13) "Mass electronic communication" means the transmission of 500 or
12 more pieces of substantially identical material by means of electronic mail or
13 facsimile transmission.

14 SECTION 4. 11.01 (14) of the statutes is created to read:

INS
1-6

b ← (B)

1c ← (B)

1e ← (B)

1g ← (B)



INS 1-6
CONT

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1 11.01 (14) "Mass telephoning" means the making of 500 or more telephone calls
2 conveying a substantially identical message.

3 SECTION 11.01 (16) (a) 3. of the statutes is created to read:

4 11.01 (16) (a) 3. A mass communication, other than a communication that is
5 exempt from reporting under s. 11.29, that is made during the period beginning on
6 the 60th day preceding an election and ending on the date of that election, and that
7 includes a reference to a candidate whose name is certified under s. 7.08 (2) (a) or 8.50
8 (1) (d) to appear on the ballot at that election.

9 SECTION 11.05 (3) (s) of the statutes is created to read:

10 11.05 (3) (s) In the case of a registrant that has made a mass communication
11 identified in s. 11.01 (16) (a) 3., a report containing the information specified in s.
12 11.06 (1) with respect to any obligation to make a disbursement incurred or any
13 disbursement made for the purpose of making such a communication prior to
14 registration.

15 SECTION 11.06 (1) (n) of the statutes is created to read:

16 11.06 (1) (n) In the case of a corporation, cooperative association organized
17 under ch. 185 or 193, or labor organization that makes disbursements or incurs
18 obligations to make disbursements without cooperation or consultation with a
19 candidate, or any authorized committee or agent of a candidate, and not in concert
20 with, or at the request or suggestion of, any candidate, or any authorized committee
21 or agent of a candidate, during a period when a finding of unenforceability under s.
22 11.38 (9) is in effect, a statement that a majority of the members of the board of
23 directors, executive council, or other governing body of the corporation, association,
24 or organization has expressly voted during the 365-day period preceding the date on

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which the disbursement is made or the obligation is incurred to authorize the disbursement to be made or the obligation to be incurred.

SECTION 11.06 (2) of the statutes is amended to read:

11.06 (2) DISCLOSURE OF CERTAIN INDIRECT DISBURSEMENTS. Notwithstanding sub. (1), if a disbursement is made or obligation incurred by an individual other than a candidate or by a committee or group which is not primarily organized for political purposes, and the disbursement does not constitute a contribution to any candidate or other individual, committee, or group, and the disbursement is not made or the obligation is not incurred for the purpose of making a mass communication specified in s. 11.01 (16) (a) 3., the disbursement or obligation is required to be reported only if the purpose is to expressly advocate the election or defeat of a clearly identified candidate or the adoption or rejection of a referendum. The exemption provided by this subsection shall in no case be construed to apply to a political party, legislative campaign, personal campaign, or support committee.

SECTION 11.12 (7) of the statutes is created to read:

11.12 (7) If any registrant makes or incurs an obligation to make a disbursement of more than \$500 cumulatively for the purpose of making a communication specified in s. 11.01 (16) (a) 3. later than 60 days prior to a primary or other election without cooperation or consultation with any candidate or agent or authorized committee of any candidate who is supported or opposed, and not in concert with or at the request or suggestion of any such candidate, agent, or committee, the registrant shall, within 24 hours after making the disbursement or incurring the obligation to make the disbursement, inform the appropriate filing officer of the information required under s. 11.06 (1) in such manner as the board may prescribe. The registrant shall also include the information in the next regular



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SECTION 9

1 report of the registrant under s. 11.20. For purposes of this subsection,
 2 disbursements and obligations cumulate beginning with the day after the last date
 3 covered on the registrant's immediately preceding report and ending with the day
 4 before the election. If a registrant has not filed a previous report, disbursements and
 5 obligations cumulate beginning on the date of the registrant's registration. A
 6 disbursement that was previously reported in a report under this subsection as
 7 obligated to be made shall not be included in the cumulative total. Upon receipt of
 8 a report under this subsection, the filing officer shall, within 24 hours of receipt,
 9 transmit a copy of the report to all candidates for any office in support of or opposition
 10 to one of whom a disbursement identified in the report is made or obligated to be
 11 made.

12 SECTION ~~10~~ 11.38 (title) of the statutes is amended to read:

13 **11.38 (title) Contributions and disbursements by corporations and,**
 14 **cooperatives and labor organizations.**

15 SECTION ~~11~~ 11.38 (1) (a) 1. of the statutes is amended to read:

16 11.38 (1) (a) 1. ~~No~~ Except as authorized in sub. (9), no foreign or domestic
 17 corporation, or association organized under ch. 185 or 193, may make any
 18 contribution or disbursement, directly or indirectly, either independently or through
 19 any political party, committee, group, candidate or individual for any purpose other
 20 than to promote or defeat a referendum.

21 SECTION ~~12~~ 11.38 (3e) of the statutes is created to read:

22 11.38 (3e) Each corporation, cooperative association organized under ch. 185
 23 or 193, or labor organization that wishes to make disbursements or to incur
 24 obligations to make disbursements without cooperation or consultation with a
 25 candidate, or any authorized committee or agent of a candidate, and not in concert

Handwritten annotations on the left margin: a large bracket spanning lines 1-11, a checkmark at line 11, circled numbers 12, 13, 14, 15, 21, and a downward arrow at the bottom.



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1 with, or at the request or suggestion of any candidate, or any authorized committee
 2 or agent of a candidate, during a period when a finding of unenforceability under sub.
 3 (9) is in effect may do so only if a majority of the members of the board of directors,
 4 executive council, or other governing body of the corporation, association, or
 5 organization expressly votes to authorize the disbursements to be made or the
 6 obligations to be incurred during the 365-day period preceding the date on which the
 7 disbursement is made or the obligation is incurred.

8 SECTION 11.38 (9) of the statutes is created to read:

9 11.38 (9) If a court with jurisdiction in this state finds in a reported decision,
 10 whether or not applicable in this state, that a prohibition against the making of
 11 political expenditures by corporations or similar entities is not enforceable for
 12 constitutional reasons, or if any such court later finds in a reported decision that such
 13 a prohibition is enforceable, the board shall promptly publish a finding to that effect
 14 in the Wisconsin Administrative Register. The prohibition against disbursements
 15 under sub (1) (a) 1. does not apply whenever a finding of unenforceability is in effect
 16 if the corporation or association making a disbursement complies with sub. (3e).

17 ~~SECTION 14. Initial applicability~~

18 (2) The treatment of sections 11.01 (12v), (12w), (13), (14), and (16) (a) 3. and
 19 11.06 (2) of the statutes first applies with respect to contributions received,
 20 disbursements made, and obligations incurred on or after the effective date of this
 21 subsection.

22 (END)

Handwritten annotations on the left margin:
 - A large downward arrow from line 1 to line 16.
 - A circle around line 8 containing "1-8".
 - A circle around line 16.
 - A circle around line 18 containing "1-9".
 - A circle around line 21.
 - An upward arrow pointing to line 22.

Handwritten annotations near line 8:
 - A circled "B" with an arrow pointing to "11.38".
 - A circled "W" with an arrow pointing to "11.38".
 - A circled "X" with an arrow pointing to "11.38".

Handwritten annotations on the right margin:
 - Two upward-pointing arrows.