



WISCONSIN LEGISLATIVE COUNCIL AMENDMENT MEMO

2015 Senate Bill 292	Senate Amendments 1 and 2
<i>Memo published:</i> October 23, 2015 <i>Contact:</i> Jessica Karls-Ruplinger, Deputy Director (266-2230) Katie Bender-Olson, Senior Staff Attorney (266-2988)	

2015 Senate Bill 292 repeals and recreates the statutory chapter that governs state campaign finance law (ch. 11, Stats.) The bill creates a two-part reporting structure: (1) ongoing reporting for committees and conduits; and (2) “event-based” reporting for express advocacy made within a certain time period before an election.

The bill increases existing contribution limits and prohibits contributions from corporations, labor organizations, and American Indian tribes to most regulated committees. The bill also prohibits anyone from coordinating express advocacy with candidates¹, legislative campaign committees, or political parties, if the spending for that express advocacy exceeds a certain amount. Express advocacy that does not exceed a certain amount can be coordinated. However, the disbursements made for that express advocacy are treated as an in-kind contribution to the candidate and must be reported as a contribution, in addition to being subject to contribution limits.

Senate Amendments 1 and 2 make a number of substantive changes to the bill, including to the following items: key definitions; contributor information that must be reported; timelines for reporting contributions or express advocacy occurring close to an election; the window of time during which express advocacy occurring close to an election triggers reporting and the monetary threshold that triggers such reporting; communications that require attributions; reporting requirements for nonresident committees; the number of independent expenditure committees (IECs) a person may form; the period during which contribution limits apply; and solicitation for nonprofit organizations. The changes are described in more detail in the following sections.

¹ The bill also prohibits express advocacy that is coordinated with a candidate committee or candidate’s agent, in addition to the candidate himself or herself.

DEFINITIONS OF “CONTRIBUTION” AND “DISBURSEMENT”

The Bill

The bill creates definitions for “contribution” and “disbursement” detailing items that are specifically included in each definition, as well as items that are specifically excluded from each definition. Items that are excluded from the definitions are generally exempt from reporting and restrictions under the newly-created statutory chapter.

Senate Amendment 1

Senate Amendment 1 creates several new exceptions to the definitions of “contribution” and “disbursement.” The amendment provides that the following are excluded:

- Issue Advocacy. The amendment provides that “contribution” does not include any communication that does not expressly advocate for the election or defeat of a clearly identified candidate.
- Membership Communications. The amendment provides that “contribution” and “disbursement” do not include a communication made exclusively between an organization and its members. A member of an organization means a shareholder, employee, or officer of the organization, or an individual who has affirmatively manifested an interest in joining, supporting, or aiding the organization.
- Internet Activity. The amendment provides that “contribution” and “disbursement” do not include any cost incurred to conduct Internet activity² by an individual acting in his or her own behalf, or acting in behalf of another person if the individual is not compensated specifically for those services, including the cost or value of any computers, software, Internet domain names, Internet service providers, and any other technology that is used to provide access to or use of the Internet, but not including professional video production services purchased by the individual.
- Media Coverage. The amendment provides that “contribution” and “disbursement” do not include any news story, commentary, or editorial by a broadcasting station, cable television operator, producer, or programmer, Internet site, or newspaper or other periodical publication, including an Internet or other electronic publication, unless a committee owns the medium in which the news story, commentary, or editorial appears.

² The amendment creates a definition of “Internet activity,” which defines the term to include sending or forwarding an electronic message; providing a hyperlink or other direct access on a person’s Internet site to an Internet site operated by another person; blogging; creating, maintaining, or hosting an Internet site; payment by a person of a nominal fee for the use of an Internet site operated by another person; or any other form of communication distributed over the Internet.

- Funds from Sponsoring Organizations.³ The amendment provides that “contribution” and “disbursement” do not include an expenditure of funds by a sponsoring organization for a political action committee’s (PAC) or an IEC’s administrative or solicitation expenses. The amendment also provides that “contribution” and “disbursement” do not include an expenditure of funds by a sponsor⁴ for a conduit’s administrative or solicitation expenses.
- Nominal Fee for a Communication. The amendment provides that “disbursement” does not include a nominal fee paid for a communication to the general public.
- Fundraising and Administrative Expenses. The amendment provides that “disbursement” does not include an expenditure of funds for a PAC’s, an IEC’s, or a conduit’s fundraising and administrative expenses.

DEFINITION OF “EXPRESS ADVOCACY”

The Bill

The bill defines “express advocacy” as communication that contains terms such as the following or their functional equivalents with reference to a clearly identified candidate and that unambiguously relates to the campaign of that candidate: “Vote for,” “Elect,” “Support,” “Cast your ballot for,” “Smith for...(elective office),” “Vote against,” “Defeat,” “Reject,” or “Cast your ballot against.”

Senate Amendment 1

Senate Amendment 1 removes the phrase “or their functional equivalents” from the definition of express advocacy. Under the amendment, “express advocacy” means a communication that contains terms such as the following with reference to a clearly identified candidate and that unambiguously relates to the election or defeat of that candidate: “Vote for,” “Elect,” “Support,” “Cast your ballot for,” “Smith for...(elective office),” “Vote against,” “Defeat,” “Reject,” or “Cast your ballot against.”

DEFINITION OF “MAJOR PURPOSE”

The Bill

The bill defines “major purpose” as a person’s (not including an individual) major purpose as specified in the person’s organizational documents or as indicated by the person to the Government Accountability Board (GAB).

³ The amendment also creates a definition of “sponsoring organization.” The term is defined as an entity that establishes, administers, or financially supports a PAC or IEC.

⁴ The bill defines “sponsor” as a person, other than an individual or candidate committee, that is associated with a conduit.

Senate Amendment 1

Senate Amendment 1 changes the definition such that entities will also qualify as PACs, IECs, or referendum committees based on their spending on express advocacy, referendums, or certain contributions, and not only based on self-selection.

The amendment provides that “major purpose” means all of the following: (1) person’s (not an individual) major purpose as specified in the person’s organizational or governing documents, the person’s bylaws, resolutions of the person’s governing body, or registration statements filed by the person under ch. 11, Stats.; and (2) use of more than 50% of a person’s (not an individual) total spending in a 12-month period on expenditures for express advocacy, expenditures made to support or defeat a referendum, or contributions made to a candidate committee, legislative campaign committee, or political party. Total spending does not include a committee’s fundraising or administrative expenses.

Senate Amendment 2

Senate Amendment 2 deletes the definition of “major purpose.” Under the amendment, the elements of the “major purpose” definition are incorporated into the definitions of “political action committee,” “independent expenditure committee,” and “referendum committee.”

DEFINITION OF “POLITICAL ACTION COMMITTEE”

The Bill

Under the bill, “political action committee” means an entity that: (1) is organized by any person (other than an individual) or by any permanent or temporary combination of two or more persons unrelated by marriage; (2) has express advocacy as its major purpose; and (3) makes or accepts contributions, or makes disbursements, with regard to a state or local office and to support or oppose a candidate, candidate committee, legislative campaign committee, political party, PAC, or recall committee. “Political action committee” does not include a candidate committee, legislative campaign committee, political party, or recall committee.

Senate Amendment 1

Senate Amendment 1 changes the definition of “political action committee” so that either item (2) or (3), described above, is required, but not both.

Specifically, under the amendment, “political action committee” means an entity that is organized by any person (other than an individual), or by any permanent or temporary combination of two or more persons unrelated by marriage, and that: (1) has express advocacy as its major purpose; or (2) makes or accepts contributions, or makes disbursements, with regard to a state or local office and to support or oppose a candidate, candidate committee, legislative campaign committee, political party, PAC, or recall committee. “Political action committee” does not include a candidate committee, legislative campaign committee, political party, or recall committee.

Senate Amendment 2

Senate Amendment 2 changes the definition of “political action committee” to: (1) incorporate the elements of the “major purpose” definition in Senate Amendment 1; and (2) delete item (2) in the “political action committee” definition in Senate Amendment 1.

Specifically, under the amendment, “political action committee” means any person (other than an individual), or any permanent or temporary combination of two or more persons unrelated by marriage, that satisfies any of the following:

- It has the major purpose of express advocacy, as specified in the person’s organizational or governing documents, the person’s bylaws, resolutions of the person’s governing body, or registration statements filed by the person under ch. 11, Stats.
- It uses more than 50% of its total spending in a 12-month period on expenditures for express advocacy, expenditures made to support or defeat a referendum, and contributions made to a candidate committee, legislative campaign committee, or political party. In this provision, total spending does not include a committee’s fundraising or administrative expenses.

“Political action committee” does not include a candidate committee, legislative campaign committee, political party, or recall committee.

DEFINITION OF “INDEPENDENT EXPENDITURE COMMITTEE”

The Bill

Under the bill, “independent expenditure committee” means any person (other than an individual), or any permanent or temporary combination of two or more persons unrelated by marriage, formed for the major purpose of making independent expenditures.

Senate Amendment 2

Senate Amendment 2 changes the definition of “independent expenditure committee” to incorporate the elements of the “major purpose” definition in Senate Amendment 1.

Specifically, under the amendment, “independent expenditure committee” means any person (other than an individual), or any permanent or temporary combination of two or more persons unrelated by marriage, that satisfies any of the following:

- It has the major purpose of making independent expenditures, as specified in the person’s organizational or governing documents, the person’s bylaws, resolutions of the person’s governing body, or registration statements filed by the person under ch. 11, Stats.
- It uses more than 50% of its total spending in a 12-month period on independent expenditures and expenditures made to support or defeat a referendum. In this

provision, total spending does not include a committee's fundraising or administrative expenses.

DEFINITION OF "REFERENDUM COMMITTEE"

The Bill

The bill defines "referendum committee" as a committee that is organized by any person (other than an individual), or by any permanent or temporary combination of two or more persons unrelated by marriage, that acts to support or oppose the passage or defeat of a referendum held in this state, but that does not receive contributions or make disbursements or contributions for the purpose of influencing or attempting to influence a candidate's nomination or election.

Senate Amendment 1

Senate Amendment 1 changes the definition to require the entity to also have the major purpose of supporting or opposing a referendum.

Specifically, the amendment provides that "referendum committee" means an entity that satisfies all of the following: (1) has supporting or opposing the passage or defeat of a referendum in this state as its major purpose; (2) is organized by any person (other than an individual) or by any permanent or temporary combination of two or more persons unrelated by marriage; and (3) does not receive contributions or make disbursements or contributions for the purpose of influencing or attempting to influence a candidate's nomination or election.

Senate Amendment 2

Senate Amendment 2 changes the definition of "referendum committee" to incorporate the elements of the "major purpose" definition in Senate Amendment 1.

Specifically, under the amendment, "referendum committee" means an entity that satisfies all of the following:

- It satisfies either of the following:
 - It has the major purpose of making expenditures to support or defeat a referendum, as specified in the entity's organizational or governing documents, the entity's bylaws, resolutions of the entity's governing body, or registration statements filed by the entity under ch. 11, Stats.
 - It uses more than 50% of its total spending in a 12-month period on expenditures made to support or defeat a referendum. In this provision, total spending does not include a committee's fundraising or administrative expenses.
- It is organized by any person (other than an individual) or by any permanent or temporary combination of two or more persons unrelated by marriage.

- It does not receive contributions or make disbursements or contributions for the purpose of influencing or attempting to influence a candidate's nomination or election.

REPORTING CONTRIBUTOR OCCUPATION

The Bill

The bill requires committees to report, among other items, the name of the principal place of employment, if any, of each individual contributor whose cumulative contributions to the committee for the calendar year are in excess of \$200.

Senate Amendment 1

Senate Amendment 1 requires the reporting of a contributor's **occupation**, rather than his or her place of employment. Under the amendment, committees must report the occupation, if any, of each individual contributor whose cumulative contributions to the committee for the calendar year are in excess of \$200.

48-HOUR REPORTING

The Bill

Reporting of Late Contributions

Under the bill, if a candidate committee, legislative campaign committee, or political party receives a contribution or contributions of \$1,000 or more cumulatively from a single contributor later than 15 days prior to a primary or election, and the contribution or contributions are not included in the committee's preprimary or preelection report, the committee must report the contribution within 48 hours of receipt.

Reporting of Specific Express Advocacy

The bill contains a separate reporting structure for express advocacy made within a certain time period before an election, as described below. If a person's activity triggers this reporting requirement, the person must report certain information to the GAB no later than 48 hours after making the disbursements for the express advocacy.

Senate Amendment 1

Senate Amendment 1 increases the 48-hour reporting requirements for late contributions and specific express advocacy to **72** hours.

WINDOW AND MONETARY THRESHOLD FOR SPECIFIC EXPRESS ADVOCACY

The Bill

The bill contains a separate reporting structure for express advocacy made within 30 days (or, for a PAC or an IEC, 60 days) of an election, which requires “event-based” reporting rather than ongoing reporting. The reporting requirement for specific express advocacy is triggered when a person spends \$5,000 or more in the aggregate on express advocacy if the express advocacy is made during the period beginning on the day that is 30 days (or, for a PAC or an IEC, 60 days) prior to the day of the primary or election involving the candidate who is affected by the express advocacy and ending on the day of the primary or election involving that candidate.

Senate Amendment 1

Senate Amendment 1 makes the window for specific express advocacy consistent between PACs, IECs, and other persons by increasing the 30-day window to **60** days for other persons.

Senate Amendment 2

Senate Amendment 2 lowers the monetary threshold that triggers reporting for specific express advocacy from \$5,000 to **\$2,500**.

ATTRIBUTIONS

The Bill

The bill requires every printed advertisement, billboard, handbill, sample ballot, television or radio advertisement, or other communication paid for by any contribution or disbursement to clearly identify its source. However, the bill provides an exception for communications printed on small items on which the required information cannot be conveniently printed. The bill allows the GAB to specify small items, by rule, which are exempt from the attribution requirement.

Senate Amendment 1

Senate Amendment 1 specifies that only communications containing **express advocacy** paid for by any contribution or disbursement must clearly identify its source. Further, the amendment includes certain electronic communications within the exception for small items. The amendment provides an exception for communications containing express advocacy printed on small items on which the required information cannot be conveniently printed, **including** text messages, social media communications, and certain small advertisements on mobile phones. Under the amendment, the GAB may specify small items or other communications, by rule, which are exempted from the attribution requirement.

Senate Amendment 2

Senate Amendment 2 creates an additional attribution requirement for express advocacy made by any person. Specifically, under the amendment, every communication for express advocacy the cost of which exceeds \$2,500 and is paid for or reimbursed by any person, other than a committee, must identify its source by the words "Paid for by" followed by the name of the person.

COMMITTEES REQUIRED TO SELF-IDENTIFY

The Bill

The bill requires regulated committees (candidate committees, political parties, legislative campaign committees, PACs, IECs, conduits, referendum committees, and recall committees) to file a registration statement. The statement must include specific information, such as the name and mailing address of the committee.

Senate Amendment 1

Senate Amendment 1 requires regulated committees to include an additional item on the registration statement. Under the amendment, a regulated committee must indicate which type of committee it is registering as on its registration statement.

NONRESIDENT COMMITTEES

The Bill

Under the bill, a committee that does not maintain an office or a street address in this state (nonresident committee) is subject to the same registration and reporting requirements as other committees.

Senate Amendment 1

Under Senate Amendment 1, a nonresident committee must submit reports on a form prescribed by the GAB of all disbursements made and obligations incurred with respect to an election for a state or local office in this state.

Senate Amendment 2

Under Senate Amendment 2, a nonresident committee must also report contributions from sources in this state, in addition to the information required under Senate Amendment 1. Consequently, a nonresident committee must submit reports on a form prescribed by the GAB of all disbursements made and obligations incurred with respect to an election for a state or local office in this state and contributions from sources in this state.

NUMBER OF IECs

The Bill

Under the bill, a person **may not** register more than one IEC.

Senate Amendment 1

Under Senate Amendment 1, a person **may** register more than one IEC.

PERIOD DURING WHICH CONTRIBUTION LIMITS APPLY

The Bill

The bill limits the amount that an individual or PAC may contribute to a candidate committee and the amount that a candidate committee may contribute to another candidate committee. Under the bill, for an individual who is a candidate for an office that the individual holds, the contribution limits apply during the term of that office. Otherwise, the contribution limits apply during the period beginning on the date on which an individual becomes a candidate and ending on: (1) for a candidate at a spring primary or spring election, **July 1**; (2) for a candidate at a partisan primary or general election, **January 1**; or (3) for a candidate at a special election, **60 days** after the special election.

Senate Amendment 1

Senate Amendment 1 changes the period during which contribution limits apply for an individual who is not a candidate for an office that the individual holds. Under the amendment, the contribution limits for such an individual apply during the period beginning on the date on which an individual becomes a candidate and ending on the **day before the term of office begins** for the office sought by the candidate.

SOLICITATION FOR NONPROFIT ORGANIZATIONS

The Bill

Under the bill, a candidate may solicit anything of value for use by an organization⁵ with which he or she is associated.⁶

⁵ "Organization" means any corporation, partnership, proprietorship, firm, enterprise, franchise, association, trust or other legal entity other than an individual or body politic.

⁶ "Associated" includes any organization in which an individual or a member of his or her immediate family is a director, officer or trustee, or owns or controls, directly or indirectly, and severally or in the aggregate, at least 10% of the outstanding equity or of which an individual or a member of his or her immediate family is an authorized representative or agent.

Senate Amendment 1

Under Senate Amendment 1, a candidate may solicit a **donation** for use by a **nonprofit organization** with which he or she is associated.

SOLICITATION OF STATE EMPLOYEES

The Bill

The bill prohibits any person from soliciting or receiving from any state officer or employee, or any University of Wisconsin Hospitals and Clinics Authority officer or employee, any contribution or service, unless that officer or employee is on an unpaid leave of absence.

Senate Amendment 1

Senate Amendment 1 changes the prohibited activity such that only solicitation of contributions is prohibited, and that activity is only prohibited during work hours or while an employee is engaged in official duties. Specifically, the amendment prohibits any person from soliciting or receiving from any state officer or employee, or any University of Wisconsin Hospitals and Clinics Authority officer or employee, a contribution during established hours of employment or while the officer or employee is engaged in his or her official duties.

EMPLOYER EXPRESSING POLITICAL OPINION

The Bill

Current law contained in s. 12.07, Stats., *Election restrictions on employers*, prohibits any person from, directly or indirectly, causing any person to make a contribution or provide any service or other thing of value to or for the benefit of a registered committee with the purpose of influencing the election or nomination of a candidate to national, state, or local office or the passage or defeat of a referendum by means of the denial or the threat of denial of any employment, position, work or promotion, or any compensation or other benefit of such employment, position or work, or by means of discharge, demotion or disciplinary action or the threat to impose a discharge, demotion or disciplinary action. However, the prohibition does not apply to employment by a registered committee in connection with a campaign or political party activities.

The bill does not change the substance of this current law prohibition. Instead, the bill changes only cross-references to ch. 11, Stats.

Senate Amendment 1

Senate Amendment 1 provides that the current law prohibition does not apply to information provided by any person that expresses that person's opinion on any candidate or committee, any referendum or the possible effects of any referendum, or the policies advocated by any candidate or committee.

USE OF REPORTED INFORMATION FOR COMMERCIAL PURPOSES

The Bill

The bill does not prohibit the use of information copied from campaign finance reports and statements for commercial purposes.

Senate Amendment 2

Senate Amendment 2 provides that no information copied from campaign finance reports and statements may be sold or utilized by any person for any commercial purpose.

BILL HISTORY

On October 22, 2015, Senate Amendments 1 and 2 were offered by Senator Fitzgerald. On that same date, the Senate Committee on Elections and Local Government recommended adoption of the amendments and passage of the bill, as amended, on votes of Ayes, 3; Noes, 2.

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