



## Legislative Fiscal Bureau

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May 5, 2011

Joint Committee on Finance

Paper #331

### **Democracy Trust Fund (Government Accountability Board, General Fund Taxes, Miscellaneous Appropriations, and State Treasurer)**

[LFB 2011-13 Budget Summary: Page 186, #9, Page 199, #4, Page 291, #10, and Page 413, #4]

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#### **CURRENT LAW**

Supreme Court Justice candidates receive public financing for their campaigns under the Democracy Trust Fund (DTF), created under 2009 Acts 89 and 216. The DTF is supported by funds generated from an increased campaign finance check-off on state individual income tax returns. Of each \$3 campaign finance check-off made, \$2 is deposited to the DTF to support grants for eligible Supreme Court Justice candidates. As the campaign finance check-off does not increase the tax liability or reduce the tax refund of the taxfiler, the increased funding generated from the check-off is transferred to the DTF from the GPR democracy trust fund payments appropriation.

The DTF also has a GPR sum sufficient appropriation. If income tax check-off funding is insufficient to fully fund all DTF grants to qualifying Supreme Court Justice candidates in a given election cycle, this sum sufficient appropriation provides the remaining funding to fully fund these grants.

The maximum base grant for an "eligible candidate" for Supreme Court Justice for the spring primary is \$100,000, and for the spring election is \$300,000. Under the DTF, an "eligible candidate" means a candidate for Supreme Court Justice who qualifies for public financing by collecting the required number of qualifying contributions, makes all required reports and disclosures, is certified by the Government Accountability Board (GAB) as being in compliance with DTF statutory provisions, and who has an opponent who has qualified to have his or her name certified for placement on the ballot at the spring primary or election.

The DTF also provides nonparticipating candidate supplemental grants to match excess disbursements made or obligated to be made by a Supreme Court Justice candidate not participating in the DTF. "Excess disbursement amount" means the amount of disbursements

made by a nonparticipating candidate in excess of the DTF base grant. This supplemental grant is triggered when the nonparticipating candidate makes, or obligates to make, disbursements exceeding 105% of the relevant DTF base grant. These supplemental grants may not exceed, in the aggregate, three times the public financing benefit provided during the relevant spring primary or election. Prior to any future adjustments to reflect changes to the consumer price index, as the base grants for the spring primary and election campaigns are \$100,000 and \$300,000 respectively, the maximum aggregate nonparticipating candidate supplemental grants for the spring primary and election campaigns equal \$300,000 and \$900,000 respectively.

Finally, the DTF also provides independent disbursement supplemental grants to match aggregate independent disbursements made or obligated to be made against an eligible DTF candidate for Supreme Court Justice, or for the opponents of that eligible candidate, that exceed 120% of the relevant base grant. Once the 120% threshold is exceeded, the participating candidate receives a supplemental grant equivalent to the total independent disbursements made or obligated to be made, from the first independent disbursement dollar expended or obligated to be expended. "Independent disbursement" means a disbursement by a person expressly advocating the election or defeat of a clearly identified candidate which is made without cooperation or consultation with a candidate, or any authorized committee or agent of a candidate, and which is not made in concert with, or at the request or suggestion of, any candidate, or any authorized committee or agent of a candidate. Independent disbursement supplemental grants may not exceed three times the public financing benefit provided during the relevant spring primary or election. Prior to any future adjustments to reflect changes in the consumer price index, as the base grants for the spring primary and election campaigns are \$100,000 and \$300,000 respectively, the maximum independent disbursement supplemental grants for the spring primary and election campaigns equal \$300,000 and \$900,000 respectively. This cap on independent disbursement supplemental grants applies on a per producer basis, and not on an aggregate basis.

## **GOVERNOR**

[A detailed summary of the Governor's recommendations are included in the appendix to this paper. This section highlights the major changes to the DTF recommended by the Governor.]

Beginning with taxable years after December 31, 2011, an individual's income tax liability would be increased by \$3 or the individual's tax refund would be decreased by \$3 for any designation made for the Wisconsin Election Campaign Fund and the DTF. Effective January 1, 2013, delete the appropriations that currently provide the funding associated with campaign finance check-offs. Adopt other budget provisions implementing this campaign finance check-off change. [Under current law, for every \$3 campaign finance check-off made, \$2 is deposited to the DTF and \$1 is deposited to the Wisconsin Election Campaign Fund.]

Effective January 1, 2012, delete the GPR sum sufficient democracy trust fund transfer appropriation which provides funding to fully fund all grants under the DTF. The appropriation provides additional funding to the DTF equal to the difference between the unencumbered

balance in the DTF and the amounts required to provide full public financing benefits to Supreme Court Justice candidates participating in the DTF. Eliminate \$1,499,500 GPR in 2012-13, in budgeted expenditure authority provided to this appropriation.

Eliminate the requirement that the state fully fund DTF base grants of \$100,000 in the spring primary and \$300,000 in the spring election. With the deletion of the GPR sum sufficient democracy trust fund transfer appropriation, provide for the proration of base grants. In addition, with the deletion of this appropriation, permit Supreme Court Justice candidates participating in the DTF to receive increased private contributions if there is insufficient funding to fully fund DTF grants. Adopt other budget provisions implementing the proration of base grants and the permissibility of increased private contributions.

Provide that Supreme Court Justice candidates participating in the DTF would no longer be eligible to receive nonparticipating candidate supplemental grants. As a result, candidates participating in the DTF would no longer be eligible to receive supplemental grant funding to match excess disbursements (above base grant amount levels) made or obligated to be made by a Supreme Court Justice candidate not participating in the DTF (up to \$300,000 for the spring primary and up to \$900,000 for the spring election).

Further provide that candidates participating in the DTF would no longer be eligible to receive independent disbursement supplemental grants. As a result, participating DTF candidates would no longer be eligible to receive supplemental funding to match aggregate independent disbursements by a third party made or obligated to be made against an eligible DTF candidate for Supreme Court Justice, or for the opponents of that eligible candidate, that exceed 120% of the relevant base grant (up to \$300,000 per producer of express advocacy in the spring primary and up to \$900,000 per producer of express advocacy in the spring election). [Under current law, once the 120% threshold is exceeded the participating candidate receives a supplemental grant equivalent to the total independent disbursements made or obligated to be made, from the first independent disbursement dollar expended or obligated to be expended.]

Specify that it would now be the responsibility of GAB, and not the State Treasurer, to administer the DTF and to create and extend lines of credit to eligible candidates for Supreme Court Justice. Delete \$1,600,000 annually and transfer the public financing benefit; candidates for justice appropriation to GAB. This appropriation would be amended to provide funding equal in each fiscal year to the lesser of the total amount of campaign finance check-offs certified annually to the DTF minus the amounts appropriated to GAB for administration, and the total amount of DTF grants that eligible candidates qualify to receive in that fiscal year. Finally, delete the DTF administration appropriation under the State Treasurer.

## **DISCUSSION POINTS**

### **Wisconsin Election Campaign Fund**

1. A review of the provisions and history of public financing under the Wisconsin Election Campaign Fund (WECEF) as it relates to Supreme Court Justice candidates, provides background and context for the DTF, which would be amended by the Governor under the budget

bill. Through the spring 2009 Supreme Court election (there was no Supreme Court election in the spring of 2010), Supreme Court Justice candidates were eligible to receive public financing through the WECF. [The WECF provides public financing grants for eligible candidates for Governor, Lieutenant Governor, Attorney General, State Treasurer, Secretary of State, Superintendent of Public Instruction, State Senate, and State Assembly.]

2. In return for public financing, participating Supreme Court Justice candidates agreed to spend no more than \$215,625 on their election. In return for agreeing to abide by spending limits under the WECF, a Supreme Court Justice candidate was eligible to receive a grant of up to 45% of the spending limit, or \$97,031 for the spring election. These provisions reflected the Legislature's declaration of policy under s. 11.001 of the statutes that, "It further finds that excessive spending on campaigns for public office jeopardizes the integrity of elections. It is desirable to encourage the broadest possible participation in financing campaigns by all citizens of the state, and to enable candidates to have an equal opportunity to present their programs to the voters." [The WECF does not provide either primary grant funding or supplemental grant funding.]

3. The spending limit on candidates who accept a grant is intended to address the concerns of those who argue that allowing candidates to spend an unlimited amount on a campaign favors those candidates who have the greatest resources and ability to raise money, compared to those with limited funds and fundraising ability who would be disadvantaged in that regard when waging a campaign. A Supreme Court Justice candidate participating in the WECF, however, was released from the spending limit if the grant recipient's opponent received the required number of votes cast on the date of the primary election to qualify for a WECF grant, but did not accept a grant and declined to file an affidavit to voluntarily comply with the spending limit.

4. Prior to 1987, the Elections Board (the predecessor to GAB) had the authority to adjust campaign spending limits to reflect the biennial impact of inflation, as determined on December 31 of each odd-numbered year. However, 1987 Act 370 repealed this provision, thereby fixing the spending limits for candidates seeking a grant from the fund at 1987 levels.

5. Whether or not a Supreme Court Justice candidate participated in the WECF, a Supreme Court Justice candidate could not accept more than \$10,000 from any individual and more than \$8,625 from a non-political party committee during any campaign. These contributions could be utilized by candidates participating in the WECF to provide additional funding, up to the spending limit, in addition to the WECF grant to fund their campaigns. These contributions limitations reflected the Legislature's declaration of policy under s. 11.001 of the statutes that, "When the true source of support or extent of support is not fully disclosed, or when a candidate becomes overly dependent upon large private contributors, the democratic process is subjected to a potential corrupting influence."

6. Grant funding under the WECF was supported by a \$1 campaign finance check-off on state individual income tax returns. As the campaign finance check-off did not increase the tax liability or decrease the tax refund of the taxfiler, the increased funding from the check-off was transferred to the WECF from a GPR appropriation.

7. Supreme Court Justice candidates in recent elections have spent more on their

campaigns than would be permitted to them if they participated in the WECF. While WECF Supreme Court Justice candidates are limited to spending no more than \$215,625 on their campaigns (unless their opponents do not agree to these spending limits), in the last three Supreme Court elections under the WECF five of the major judicial candidates for office expended an average of \$1,046,600 to run their campaigns during the one year period surrounding their election.

8. There has also been a steady decline in the percentage and absolute number of taxfilers making income tax check-off designations to provide funding for the WECF. While for tax year 1979 almost 20% of all eligible taxfilers (561,083 taxfilers) made a designation for the WECF, by tax year 2009 this had decreased to approximately 4% of all taxfilers (166,344). As a result, the WECF has had to prorate grants at times as there was insufficient funding to fully fund all qualifying grants.

9. In addition, as WECF grants are equal to 45% of the spending limit for the relevant office, and as spending limits have not been adjusted for inflation since 1987, the WECF grant awards have become outdated in terms of providing a meaningful amount of money to effectively run a campaign. While the maximum WECF grant for a Supreme Court Justice candidate was \$97,031 (assuming no proration was required), in recent elections Supreme Court Justice candidates have been expending more than \$1 million to run for office.

10. Since 1986 there has been a substantial decline in candidate participation in the WECF. While in 1986, 140 legislative candidates accepted WECF grants and agreed to be limited by WECF spending limits (117 in the Assembly and 23 in the Senate), by 2010 this had decreased to 28 legislative candidates participating in the WECF (24 in the Assembly and four in the Senate). Likewise, in recent years Supreme Court Justice candidates no longer participated in the WECF. For the last five Supreme Court elections prior to the adoption of the DTF (spring of 2005 through spring of 2009) no candidate for Supreme Court Justice participated in the WECF.

### **Democracy Trust Fund**

11. On December 1, 2009, 2009 Act 89 was enacted which created the Democracy Trust Fund. The provisions of the DTF were intended to reduce the role and influence of private contributions on the campaigns of Supreme Court Justice candidates. While the WECF capped the contributions that could be received by any candidate from an individual at \$10,000, and from a non-political party committee at \$8,625, the DTF reduced these caps to \$1,000 during any campaign, regardless of the source. [As under the WECF, however, Supreme Court Justice candidates may continue to accept contributions from political party committees up to 65% of the spending limit for the office. As a result, a Supreme Court Justice candidate may accept contributions from political party committees totaling \$65,000 during the spring primary election period and \$195,000 during the spring election period. However, under current law candidates receiving grants under the DTF are precluded from receiving contributions from political party committees as they receive grant funding equal to the spending limit, and as campaigns may not receive and expend funding in excess of the spending limit.]

12. In addition, in order to qualify for DTF funding, an eligible candidate participating in the DTF may not accept private contributions, other than "seed money contributions" and

"qualifying contributions," that the candidate accepts through the first Tuesday in January preceding a spring election for Supreme Court Justice. Under the DTF, participating Supreme Court Justice candidates are limited to contributions of no more than \$100 for either a "seed money contribution" or a "qualifying contribution."

13. A "seed money contribution" means a contribution in an amount of not more than \$100 made to a candidate by an elector of this state anytime following the prior spring election through the first Tuesday of the following January immediately preceding a spring election for Supreme Court Justice. Total seed money contributions (including personal funds, but not including qualifying contributions) may not exceed \$5,000.

14. A "qualifying contribution" means a contribution in an amount of not less than \$5 nor more than \$100 made to a candidate by an elector of this state, which is acknowledged by written receipt identifying the contributor. A qualifying contribution must be received anytime from the first day of July immediately preceding the year of the spring election through the first Tuesday of the following January. In order to qualify for a grant, a Supreme Court Justice candidate must receive at least 1,000 qualifying contributions from separate contributors in an aggregate amount of not less than \$5,000, nor more than \$15,000.

15. Prior to the adoption of the DTF, Supreme Court Justice candidates were collecting and expending in excess of \$1 million dollars from private contributors in competitive Supreme Court elections. Under the DTF, participating Supreme Court Justice candidates may not receive and expend more than \$20,000 from private contributors.

16. Consistent with the legislative declaration of policy in statute that, "excessive spending on campaigns for public office jeopardizes the integrity of elections," the DTF provides fully funded base grants of \$100,000 in the spring primary and \$300,000 in the spring election, which represents an increase in grant funding over what was available in the WECF based on 1987 spending limits, but less than what many Supreme Court Justice candidates had been expending in recent elections. However, in order to address potentially high disbursements that could be expended against a DTF Supreme Court Justice candidate, the DTF also provides: (a) nonparticipating candidate supplemental grants to match excess disbursements (above base grant amount levels) made or obligated to be made by a Supreme Court Justice candidate not participating in the DTF (up to \$300,000 for the spring primary and up to \$900,000 for the spring election); and (b) independent disbursement supplemental grants to match aggregate independent disbursements by a third party made or obligated to be made against an eligible DTF candidate for Supreme Court Justice, or for the opponents of that eligible candidate, that exceed 120% of the relevant base grant (up to \$300,000 per producer of express advocacy in the spring primary and up to \$900,000 per producer of express advocacy in the spring election). [Under current law, once the 120% threshold is exceeded the participating candidate receives an independent disbursement supplemental grant equivalent to the total independent disbursements made or obligated to be made, from the first independent disbursement dollar expended or obligated to be expended.]

17. The DTF provides full funding for all grants for which an eligible Supreme Court Justice candidate qualifies. Funding for DTF grants comes from two sources: (a) of each \$3 campaign finance check-off made on state income tax forms, \$2 is deposited to the DTF; and (b) a

backup GPR sum sufficient appropriation.

### **Check-off Revenue**

Under the bill, GPR appropriations from check-off deposits to the DTF are shown as \$328,000 for 2011-12 and \$316,000 for 2012-13. The \$328,000 amount is the estimated amount that will be generated for the DTF from tax year 2011, and the \$316,000 is from tax year 2012. The \$316,000 GPR in funding in 2012-13, under the bill associated with the campaign finance check-off should be deleted if the Governor's recommendations are adopted as the current law check-off would not apply for tax year 2012 (Alternative 2). Beginning with tax year 2012, revenue for the check-off would come from additional donations made by taxfilers, and not from transfers from the general fund.

### **Funding if Current Law is Maintained**

#### *2011 Supreme Court Election*

18. The first Supreme Court election to which the DTF has applied occurred in the spring of 2011. While no Supreme Court Justice candidate participated in the WECF for the last five Supreme Court elections before the creation of the DTF (spring of 2005 through spring of 2009), in the first election to which the DTF applied three of the four candidates running for Supreme Court Justice participated in the DTF. These three candidates each received \$100,000 primary grants. The Supreme Court Justice candidate not participating in the DTF did not advance to the spring election. As a result, the DTF provided two spring election grants totaling \$300,000 each to the two remaining candidates in the spring election. The DTF did not provide any supplemental grant funding during this initial campaign to which the DTF applied. Total grant costs in this first election totaled \$900,000.

19. Grant funding of \$900,000 from the 2011 election for Supreme Court Justice came from three sources -- a transfer from the WECF, the check-off (based on Department of Revenue estimates for tax year 2010 returns), and the back-up GPR sum sufficient. That is shown below.

|                        |                |
|------------------------|----------------|
| Transfer from WECF     | \$100,700      |
| Check-off revenue      | 340,000        |
| Back-up sum sufficient | <u>459,300</u> |
| Total                  | \$900,000      |

#### *2013 Supreme Court Election*

20. In the upcoming biennium, there is currently no Supreme Court election scheduled for April, 2012. However, Justice Roggensack is up for re-election in April, 2013. Under current law, and the budget bill, an estimated \$328,000 in check-off revenue would be deposited into the DTF in 2011-12. In addition, under current law, an estimated \$316,000 of check-off revenues would also be deposited into the DTF in 2012-13. Thus, \$644,000 of estimated check-off revenues would be available for the April, 2013, election. Depending upon the number of candidates who

would seek public financing for that election, the GPR sum sufficient appropriation may or may not be needed. For example, if only two candidates ran for the Supreme Court in 2013, and both applied for DTF funding, \$600,000 would be needed which would be available solely through check-off revenues. If the same number of candidates would seek funding for the 2013 election as did in the 2011 election, then \$900,000 would be needed and the draw on the GPR sum sufficient would be \$256,000. That example is shown below.

|                           |                |
|---------------------------|----------------|
| 2011-12 check-off revenue | \$328,000      |
| 2012-13 check-off revenue | 316,000        |
| Back-up sum sufficient    | <u>256,000</u> |
| Total available           | \$900,000      |

21. Given that the DTF was only recently created, and that three of the four candidates for Justice of the Supreme Court in 2011 applied for, and received grants from the fund, it could be argued that the fund should not be altered. Thus, the current check-off method and the back-up sum sufficient appropriation should be maintained.

22. Currently, base funding of \$1,499,500 GPR is appropriated in the back-up GPR sum sufficient appropriation for each year of the 2011-13 biennium. The Governor's budget eliminates the sum sufficient appropriation and the \$1,499,500 in 2012-13, but does not eliminate the \$1,499,500 in 2011-12. Because there is currently no election scheduled for 2012, the \$1,499,500 could be deleted from the bill for 2011-12. In addition, if the sum sufficient were to be maintained, \$256,000 could be budgeted for 2012-13, which would be sufficient to provide grants equal to \$900,000 for the 2013 election. As a result, the Committee could maintain current law and delete an additional \$1,243,500 GPR from the bill (Alternative 3).

### **Democracy Trust Fund Under the Bill**

23. Under the bill, the \$3 check-off would switch from a draw on the general fund to an increased liability for the taxpayer, effective with tax year 2012. Also, the GPR back-up sum sufficient appropriation would be eliminated on January 1, 2012.

24. Wisconsin already has a series of income tax check-offs where a taxfiler may make a donation creating a liability or reducing a refund. For tax year 2009, the most popular income tax check-off (that created a taxfiler liability) was the endangered resources check-off. Based on an analysis of participation in the endangered resources check-off it is estimated that approximately 1 out of every 200 taxfilers, or 0.5% of taxfilers, would continue to make the campaign finance check-off if it became a donation creating a liability or reducing a refund for the taxfiler. At this participation level the DTF would receive funding of \$40,000 annually to provide grants to Supreme Court Justice candidates to fund their campaigns. As Supreme Court Justice elections occur at least seven out of every 10 years, and as the bill would also eliminate the GPR sum sufficient democracy trust fund transfer appropriation, it is anticipated that these funding changes would make it difficult for the DTF to provide meaningful base grants to Supreme Court Justice candidates on a predictable basis.

25. With annual revenue of \$40,000, it would take a decade to build up sufficient balances in the fund to fully pay base grants for one candidate in both the spring primary and spring

election. While this calculation does not factor in any interest earnings, it could be anticipated that taxfiler interest in the campaign finance check-off could decrease if taxfilers did not believe that the DTF was viable. This calculation is also not reflective of the funding that would be available in the spring election of 2013, based on revenue from the current campaign finance check-off. It is estimated that \$368,000 in check-off revenue would be available in the DTF for the 2013 election.

26. The amount available to the DTF under the bill for the 2013 Supreme Court election is shown below.

|                           |           |
|---------------------------|-----------|
| 2011-12 check-off revenue | \$328,000 |
| 2012-13 check-off revenue | 40,000    |
| Back-up sum sufficient*   | <u>0</u>  |
| Total available           | \$368,000 |

\*Eliminated under the bill.

27. As the table shows, the amount available for the 2013 election is significantly below that provided in the 2011 election (\$900,000). Depending upon the number of candidates who applied for funding in the primary and spring elections, proration of the grants would likely need to be made. In elections beyond 2013, the amount of available funding would diminish significantly.

28. Under the bill, the DTF would typically only be able to offer Supreme Court Justice candidates prorated base grants. Due to the proration of base grants, private contributions to Supreme Court Justice candidates would play a greater role in providing campaign funding under the bill, regardless of whether or not a candidate participated in the DTF. In order to make up for prorated base grant funding, the bill would permit DTF candidates to accept increased private donations of up to \$1,000 per individual or non-political party committee per campaign, to fund the difference between the base grant amount actually received and the permissible spending limit.

29. The bill would also eliminate both types of supplemental grants: (a) grants to match excess disbursements (above base grant amount levels) made or obligated to be made by a Supreme Court Justice candidate not participating in the DTF (up to \$300,000 for the spring primary and up to \$900,000 for the spring election); and (b) independent disbursement supplemental grants to match disbursements for express advocacy made by third parties (up to \$300,000 per producer of express advocacy in the spring primary and up to \$900,000 per producer of express advocacy in the spring election).

30. In the last years of the WECF, Supreme Court Justice candidates were spending in excess of \$1 million dollars to run their campaigns. Aside from permitted seed money contributions (no more than \$5,000) and qualifying contributions (\$5,000 to \$15,000), under the bill candidates participating in the DTF would be restricted to spending no more than \$400,000 on their campaigns (\$100,000 in the spring primary and \$300,000 in the spring election).

31. Under the bill, Supreme Court Justice candidates would remain restricted to collecting contributions of no more than \$100 each from contributors when qualifying to participate in the DTF. Individual and non-political party committee contribution limits to Supreme Court Justice candidates (regardless of whether they participate in the DTF) would remain limited to

\$1,000 per campaign under the bill (instead of \$10,000 per individual and \$8,625 per non-political party committee under the WECF).

32. In his remarks before the Committee, the Director and General Counsel for GAB noted that, "The budget proposal transforms the original programs from a means of providing significant campaign funding for state candidates for partisan office and candidates for the Supreme Court to an underfunded mechanism for delivering nominal amounts of campaign funds with significant administrative costs. It is a significant waste of limited state funds to maintain these programs at a subsistence level given the diversion of precious staff resources at the G.A.B. and the Department of Revenue to provide a few dollars to a handful of candidates for public office."

33. Candidates could conclude that they could not wage competitive campaigns under the revised DTF due to: (a) initial restrictions on the permissible amount of private contributions while qualifying for the DTF; (b) reduced funding for base grants; (c) the elimination of supplemental grant funding; and (d) spending limits substantially below what has been spent by campaigns for Supreme Court Justice in recent years.

34. Because the provisions of the bill would significantly alter the DTF and its ability to fund campaigns in a meaningful way, the Committee may wish to either maintain it as under current law (Alternative 3) or eliminate it in its entirety (Alternative 4).

35. If the DTF were to be eliminated upon enactment of the budget, the \$1,499,500 GPR back-up sum sufficient appropriation for 2011-12 can be deleted from the bill. Second, the GPR appropriations of \$644,000 (\$328,000 in 2011-12 and \$316,000 in 2012-13) for transfers to the DTF from the check-off could be deleted. Third, the \$2 check-off for the DTF would be eliminated beginning with tax year 2011.

## **ALTERNATIVES**

1. Approve the Governor's recommendations to revise the Democracy Trust Fund. Effective January 1, 2012, delete the GPR sum sufficient democracy trust fund transfer appropriation which provides funding to fully fund all grants under the DTF. Eliminate \$1,499,500 GPR in 2012-13, in budgeted expenditure authority provided to this appropriation.

2. Delete \$316,000 GPR associated with check-offs in 2012-13. This funding would not be utilized under the bill as beginning with tax year 2012, the check-off would be funded from increased donations from taxfilers, and not from transfers from the general fund. In addition, delete \$1,499,500 GPR in 2011-12, from the GPR sum sufficient democracy trust fund transfer appropriation which provides funding to fully fund all grants under the DTF. As no Supreme Court election is currently scheduled for April, 2012, this funding would not be required if the budget bill provisions affecting the DTF are adopted. [*This alternative may be adopted in addition to Alternative 1.*]

|              |                                   |
|--------------|-----------------------------------|
| <b>ALT 2</b> | <b>Change to Bill<br/>Funding</b> |
| GPR          | - \$1,815,500                     |

3. Maintain current law for the Democracy Trust Fund. Provide funding of \$256,000 GPR in the sum sufficient Democracy Trust Fund transfer appropriation for 2012-13 and delete \$1,499,500 GPR in 2011-12.

|              |                                   |
|--------------|-----------------------------------|
| <b>ALT 3</b> | <b>Change to Bill<br/>Funding</b> |
| GPR          | - \$1,243,500                     |

4. Eliminate the Democracy Trust Fund. Delete the back-up sum sufficient appropriation amount of \$1,499,500 GPR in 2011-12 and delete the \$644,000 GPR transfer from check-offs (\$328,000 in 2011-12 and \$316,000 in 2012-13). In addition, eliminate the \$2 check-off for the DTF beginning with tax year 2011.

|              |                                   |
|--------------|-----------------------------------|
| <b>ALT 4</b> | <b>Change to Bill<br/>Funding</b> |
| GPR          | - \$2,143,500                     |

Prepared by: Paul Onsager  
Attachment



## APPENDIX

### Democracy Trust Fund Recommendations

Recommend the following changes to the administration of the Democracy Trust Fund (DTF):

#### **Funding from the Campaign Finance Check-Off**

*Current Law.* Beginning with 2010 tax returns, every individual filing an income tax return who has a tax liability or is entitled to a tax refund may now designate \$3 for the Wisconsin Election Campaign Fund (WECF) and the DTF. One-third of the total amount designated by taxpayers through the campaign finance check-off is credited to the WECF, and the remaining two-thirds are credited to the DTF. If individuals filing a joint return have a tax liability or are entitled to a tax refund, each individual may make a \$3 designation. Since the check-off does not affect taxpayer liability, the amount generated from the check-off is transferred to the WECF and the DTF from GPR appropriations. [The WECF provides public financing grants for eligible candidates for statewide and legislative offices.]

The Secretary of the Department of Revenue (DOR) must provide a place for campaign finance check-off designations on the face of the individual income tax return and must provide next to that place a statement that a designation will not increase tax liability. Annually on August 15, the Secretary of DOR must certify to the Government Accountability Board (GAB), the Department of Administration (DOA) and the State Treasurer the total amount of any campaign finance designations made during the preceding fiscal year. If any individual attempts to place any condition or restriction upon a designation, that individual is deemed not to have made a designation on his or her tax return. The names of persons making campaign finance designations must be kept strictly confidential.

*Bill.* Current law provisions regarding the campaign finance check-off would not apply to a taxable year that would begin after December 31, 2011. Instead, for taxable years beginning after December 31, 2011, an individual's income tax liability would be increased by \$3 or the individual's tax refund would be decreased by \$3 for any designation made to the WECF and the DTF on the individual income tax form. As the check-off would now increase a taxpayer's liability or decrease a taxpayer's refund, the bill would delete the GPR appropriations that currently provide the funding associated with campaign finance check-offs. Effective January 1, 2013, these GPR appropriations would be repealed. Any campaign finance check-off made by an individual that would not be funded, in whole or in part, by an individual's increased payment of taxes or by an available refund would be voided. The names of individuals making campaign finance check-offs would be kept strictly confidential.

Campaign finance check-off amounts would generally not be subject to refund unless the taxpayer submitted information to the satisfaction of DOR, within 18 months after the date taxes were due or the date the return was filed, whichever was later, that the amount designated was clearly in error. Any refund granted by DOR would have to be deducted from the moneys received in the fiscal year that the refund was certified.

If an individual placed any conditions on a campaign finance check-off, the designation would be voided. For any voided designation, DOR would disregard the designation and determine the amounts due, owed, refunded, and received without regard to the voided designation.

The Secretary of DOR would be required to provide a place for the designation on the individual income tax return and on forms printed by the Department. This place would be required to be highlighted with a symbol chosen by GAB that related to the WECF and the DTF.

Annually, on or before August 15, the Secretary of DOR would be required to certify to GAB, DOA, and the State Treasurer all of the following: (a) the total administrative costs, including data processing costs, incurred by DOR in administering these provisions during the previous fiscal year; (b) the total amount of campaign finance check-offs made by taxpayers for the WECF and the DTF during the previous fiscal year; and (c) the net amount of check-off revenue remaining after deducting DOR administrative costs. An amount equal to the administrative costs incurred by DOR during the previous fiscal year would be deposited to the general fund and credited to the DOR administration of income tax checkoff voluntary payments appropriation. Of the remaining amounts generated by the campaign finance check-off, one-third would be deposited to the WECF and two-thirds would be deposited to the DTF.

Estimated check-off funding to the DTF would be reduced by \$34,600 in 2011-12, and by \$46,600 in 2012-13. As a result, under the bill it is estimated that check-off funding to the DTF would total \$328,000 in 2011-12, and \$316,000 in 2012-13.

### **Backup Sum Sufficient GPR Funding**

*Current Law.* The GPR sum sufficient democracy trust fund transfer appropriation provides additional funding to the DTF equal to the difference between the unencumbered balance in the DTF and the amounts required to provide full public financing benefits to Supreme Court Justice candidates participating in the DTF.

*Bill.* Delete, effective January 1, 2012, the GPR sum sufficient democracy trust fund transfer appropriation which ensures that there is sufficient funding to fully fund all grants under the DTF. Eliminate \$1,499,500 GPR in 2012-13, in budgeted expenditure authority provided to this appropriation. The appropriation would retain \$1,499,500 GPR in base expenditure authority during 2011-12.

### **Base Grants**

*Current Law.* The DTF provides for a \$100,000 base grant for an eligible candidate for the primary election, while the spring election base grant for an eligible candidate is \$300,000. Under current law, there is no provision for the proration of base grants as the GPR sum sufficient democracy trust fund transfer appropriation ensures that these grants will be fully funded. An eligible candidate may use these grant funds to finance any lawful disbursements during the primary and election campaign periods to further the election of the candidate in that primary or election. If there is no spring primary, no eligible candidate for Supreme Court Justice may receive a DTF public financing benefit for the primary election. Beginning on July 1, 2012, and every two years thereafter, GAB must modify the amount of the DTF base grants to

adjust for the change in the consumer price index, all items, U.S. city average, published by the U.S. Department of Labor for the preceding two year period ending on December 31.

*Bill.* With the deletion of the GPR sum sufficient democracy trust fund transfer appropriation, the bill would now provide for the proration of base grants. As a result, the bill would provide for a maximum base grant of \$100,000 for the primary election, and \$300,000 for the spring election. Upon determination of the number of eligible candidates who qualify for a base grant for the primary election campaign period, GAB would be required to determine the amounts of the base grants payable to all eligible candidates in the primary election campaign period and the spring election campaign period by reserving a base grant amount from the DTF for the spring election campaign period for two eligible candidates, if two or more candidates qualify to receive a base grant for the primary election campaign period, or for one eligible candidate, if only one candidate qualifies to receive a base grant for the primary election campaign period. If there are insufficient moneys in the fund to make full payment of all base grants that are or may become payable for the primary and spring election campaign periods, the Board would be required to prorate the available funding and fully allocate it to the eligible candidates. If on the day that the Board made its certification as to candidates eligible to receive base grant funding for the spring election there would be additional moneys in the fund that would have become available for distribution to eligible candidates in the spring election, GAB would be required to distribute the additional moneys in equal amounts to each eligible candidate at the spring election or, if there was only one eligible candidate, to that candidate alone, up to the maximum amount of the base grant for the spring election.

### **Private Contributions to Supreme Court Justice Candidates**

*Current Law.* An eligible candidate participating in the DTF may not accept private contributions, other than "seed money contributions" and "qualifying contributions," that the candidate accepts through the first Tuesday in January preceding a spring election for Supreme Court Justice.

A "seed money contribution" means a contribution in an amount of not more than \$100 made to a candidate by an elector of this state anytime following the prior spring election through the first Tuesday of the following January immediately preceding a spring election for Supreme Court Justice. A seed money contribution may also include personal funds contributed by a candidate or a member of a candidate's immediate family during this time period. Total seed money contributions (including personal funds, but not including qualifying contributions) may not exceed \$5,000. No eligible candidate may make any disbursement derived from seed money contributions after the first Tuesday in January preceding the spring election for Supreme Court Justice.

A "qualifying contribution" means a contribution in an amount of not less than \$5 nor more than \$100 made to a candidate by an elector of this state, which is acknowledged by written receipt identifying the contributor. A qualifying contribution must be received anytime from the first day of July immediately preceding the year of the spring election through the first Tuesday of the following January. In order to qualify for a grant, a Supreme Court Justice candidate must receive at least 1,000 qualifying contributions from separate contributors in an aggregate amount

of not less than \$5,000, nor more than \$15,000.

If an eligible candidate receives and accepts excess seed money contributions or qualifying contributions in an aggregate amount greater than the limits identified above, the candidate must transfer to the Board all seed money and qualifying contributions that exceed these limits for deposit to the DTF.

A nonparticipating candidate for Supreme Court Justice may accept contributions from private sources without limitation, except that no person may make any contribution or contributions to a nonparticipating candidate exceeding a total of \$1,000 during any campaign.

*Bill.* With the deletion of the GPR sum sufficient democracy trust fund transfer appropriation which ensures the full funding of DTF grants, the bill would now permit Supreme Court Justice candidates participating in the DTF to receive increased private contributions if there was insufficient funding to fully fund DTF grants. Under the bill, an eligible DTF candidate would not be allowed to accept private contributions during the primary election campaign period in an aggregate amount exceeding the difference, if any, between the maximum amount of the base grant for the primary election and the actual amount of the base grant provided for the primary election. Likewise, an eligible DTF candidate would not be permitted to accept private contributions during the election campaign period in an aggregate amount exceeding the difference, if any, between the maximum amount of the base grant for the spring election and the actual amount of the base grant provided for the spring election.

A nonparticipating candidate for Supreme Court Justice could continue to accept a contribution from a person of up to \$1,000 during any campaign. A DTF candidate could likewise now receive contributions of up to \$1,000 per person during any campaign in order to make up any lost funding from a prorated base grant for the spring primary or election.

### **Nonparticipating Candidate Supplemental Grants**

*Current Law.* If a Supreme Court Justice candidate not participating in the DTF receives contributions or makes or obligates to make disbursements exceeding 105% of the base grant provided to an eligible DTF candidate at the same primary or election, each candidate participating in the DTF qualifies for a nonparticipating candidate supplemental grant equivalent to the total excess disbursement amount made or obligated to be made, but these supplemental grants may not exceed, in the aggregate, three times the public financing benefit provided during the relevant primary or election. "Excess disbursement amount" means the amount of disbursements made by a nonparticipating candidate in excess of the DTF base grant. Prior to any future adjustments to reflect changes in the consumer price index, as the base grants for the primary and election campaigns are \$100,000 and \$300,000 respectively, the maximum aggregate nonparticipating candidate supplemental grants for the primary and election campaigns equal \$300,000 and \$900,000 respectively.

Nonparticipating candidates are required to report contributions received, or disbursements made or obligated to be made, that exceed 105% of the relevant base grant. However, nonparticipating candidate supplemental grants provided to a DTF candidate are based only on the disbursements made or obligated to be made by the nonparticipating candidate. In

other words, nonparticipating candidate supplemental grants do not match contributions received by the nonparticipating candidate, but only disbursements.

*Bill.* The bill would delete nonparticipating candidate supplemental grants. As a result, a Supreme Court Justice candidate participating in the DTF would no longer be eligible to receive a nonparticipating candidate supplemental grant to match disbursements made by a nonparticipating candidate that exceed the relevant base grant for the spring primary or election. In addition, nonparticipating candidates would no longer be subject to the contribution and disbursement reporting requirements associated with this grant.

### **Independent Disbursement Supplemental Grants**

*Current Law.* If the aggregate independent disbursements made or obligated to be made against an eligible DTF candidate for Supreme Court Justice, or for the opponents of that eligible candidate, exceed 120% of the base grant in the primary or election campaign, the eligible DTF candidate qualifies for an independent disbursement supplemental grant equal to the aggregate independent disbursements made or obligated to be made, but not to exceed, three times the public financing benefit provided during the relevant primary or election. As a result, once the 120% threshold is exceeded, the participating candidate receives a supplemental grant equivalent to the total independent disbursements made or obligated to be made, from the first independent disbursement dollar expended or obligated to be expended. "Independent disbursement" means a disbursement by a person expressly advocating the election or defeat of a clearly identified candidate which is made without cooperation or consultation with a candidate, or any authorized committee or agent of a candidate, and which is not made in concert with, or at the request or suggestion of, any candidate, or any authorized committee or agent of a candidate. Prior to any future adjustments to reflect changes in the consumer price index, as the base grants for the primary and election campaigns are \$100,000 and \$300,000 respectively, the maximum aggregate independent disbursement supplemental grants for the primary and election campaigns equal \$300,000 and \$900,000 respectively. This cap on independent disbursements supplemental grants applies on a per producer basis, and not on an aggregate basis.

If any person makes, or becomes obligated to make, by oral or written agreement, an independent disbursement in excess of \$1,000 with respect to a candidate for Supreme Court Justice at a spring primary or election, that person must file with GAB a notice of the disbursement or obligation to make the disbursement. Any such person must file reports of such disbursements or obligations to make such disbursements on the 15<sup>th</sup> or last day of the month that immediately follows the date of the disbursement or the obligation to make the disbursement, whichever comes first, except that, within six weeks prior to the date of the spring primary election, if a primary is held, and within six weeks prior to the date of the spring election, the person must file such reports within 24 hours after each independent disbursement is made or obligated to be made. Any such person must file an additional report after each additional \$1,000 of disbursements are made or obligated to be made.

*Bill.* The bill would delete independent disbursement supplemental grants. As a result, a Supreme Court Justice candidate participating in the DTF would no longer be eligible to receive an independent disbursement supplemental grant to match aggregate independent disbursements

made or obligated to be made against an eligible DTF candidate for Supreme Court Justice, or for the opponents of that eligible candidate. In addition, producers of independent disbursements would no longer be subject to the disbursement reporting requirements associated with this grant.

### **Administration of the Democracy Trust Fund**

*Current Law.* It is currently the responsibility of the State Treasurer to administer the DTF and establish an account within the fund for each eligible candidate for Supreme Court Justice. The State Treasurer is responsible for providing lines of credit for base grants, nonparticipating candidate supplemental grants, and independent disbursement supplemental grants, based on information provided to the State Treasurer by GAB. Under the State Treasurer, the SEG public financing benefits; candidates for justice appropriation provides for payments from the DTF to make grants to eligible Supreme Court Justice candidates. The State Treasurer also has a SEG annual democracy trust fund administration appropriation to fund costs incurred by the State Treasurer in administering the DTF.

*Bill.* Specify that it would now be the responsibility of GAB, and not the State Treasurer, to administer the DTF and to create and extend lines of credit to eligible candidates for Supreme Court Justice. Delete \$1,600,000 SEG annually and transfer the SEG public financing benefits; candidates for justice appropriation to GAB. This appropriation would have no authorized expenditure authority under GAB. This appropriation would be amended to provide funding equal in each fiscal year to the lesser of the total amount of campaign finance check-offs certified annually to the DTF minus the amounts appropriated to GAB for administration, and the total amount of DTF grants that eligible candidates qualify to receive in that fiscal year.

Finally, delete the DTF administration appropriation under the State Treasurer which authorizes the State Treasurer to expend the amounts to offset costs incurred to administer the DTF. Under current law, this appropriation has no expenditure authority.

### **Effective Date**

Unless otherwise specified, these campaign finance provisions would take effect January 1, 2012.