

# Wisconsin Impartial Justice Act and Democracy Trust Fund

## Overview of Statutory Provisions

The Democracy Trust Fund (“the Fund”) was created by 2009 Act 89 and 2009 Act 216 (collectively, “the Impartial Justice Act” or “the Act”). The Impartial Justice Act established a voluntary public financing program for campaigns for the office of Wisconsin Supreme Court Justice. For qualifying candidates, the Act provides public financing grants in return for the candidate abiding by strict fundraising and expenditure restrictions.

The amount of the grants are \$150,000 for candidates qualifying for a Spring Primary, and \$300,000 for candidates qualifying for the Spring Election. In addition, participating candidates are awarded matching funds in the event that an opposing, non-participating candidate or independent individuals or committees exceed contributions or expenditures above certain threshold amounts in opposition to the participating candidate.

The Impartial Justice Act took effect on May 1, 2010. The Democracy Trust Fund is administered and enforced by the Government Accountability Board, except that public financing grants are issued to participating candidates as a line of credit by the State Treasurer.

This summary is intended to provide guidance to candidates for the office of Supreme Court Justice as either a participating or nonparticipating candidate in the Democracy Trust Fund, and to individuals and committees interested in engaging in independent expenditures to expressly advocate the election or defeat of a candidate for Supreme Court Justice. This Summary is not intended as legal advice or as a substitute for consulting the Wisconsin Statutes or any other applicable rules or procedures of the Government Accountability Board (“the Board”).

### A. Selected Definitions

- 1) “Election campaign period” means the period beginning on the day after the Spring Primary election or the day on which a primary election would be held, if required, and ending on the day of the succeeding Spring Election. §11.501(3), Stats.
- 2) “Eligible candidate” means a candidate for the office of Supreme Court Justice who has an opponent who has qualified to have his or her name certified for placement on the ballot at the Spring Primary or Spring Election, and who qualifies for a public financing benefit by collecting the required number of qualifying contributions, making all required reports and disclosures, and being certified by the Board as in compliance with the provisions of the Act. §11.501(4), Stats.

- 3) “Excess qualifying contribution amount” means the amount of qualifying contributions accepted by a candidate beyond the number or dollar amount of contributions required to qualify a candidate for a public financing benefit. §11.501(6), Stats.
- 4) “Exploratory period” means the period beginning after the date of a Spring Election in the year prior to an election for Supreme Court Justice and ending on the first day of the public financing qualifying period (July 1) for said Justice position. **However**, the exploratory period applicable to the 2011 election for Supreme Court Justice begins on May 1, 2010. §11.501(7), Stats.; Section 10(1) Nonstatutory provisions of 2009 Wisconsin Act 216.
- 5) “Nonparticipating candidate” means a candidate who does not apply for a public financing benefit or who is otherwise ineligible or fails to qualify for the public financing benefit. §11.501(11), Stats.
- 6) “Primary election campaign period” means the period beginning on the day after the deadline for filing nomination papers for the office of Supreme Court Justice and ending on the day of the Spring Primary election for that office or the day on which the Primary election would be held, if required. §11.501(13), Stats.
- 7) “Public financing benefit” means a benefit provided to an eligible candidate for the office of Supreme Court Justice from the Democracy Trust Fund and pursuant to the provisions of the Impartial Justice Act. §11.501(14), Stats.
- 8) “Public financing qualifying period” means, for each election for the office of Supreme Court Justice, the period beginning on July 1<sup>st</sup> of the year immediately preceding the year of that election and ending on the day of the deadline for filing nomination papers for that office, the first Tuesday in January. §11.501(15), Stats.
- 9) “Qualifying contribution” means a contribution in an amount of not less than \$5 nor more than \$100 made to a candidate by a Wisconsin elector during the public financing qualifying period, and which is acknowledged by written receipt identifying the contributor. §11.501(16), Stats.
- 10) “Seed money contribution” means a contribution in an amount of not more than \$100 made to a candidate by a Wisconsin elector during the exploratory period or the public financing qualifying period, or a contribution made to a candidate consisting of personal funds of that candidate in an amount not to exceed \$5,000 during the exploratory or public financing qualifying periods. §11.501(17), Stats.

B. Private Fundraising

- 1) **Participating candidates:** Excluding qualifying contributions, a participating candidate may raise up to \$5,000 in private seed money contributions, consisting of contributions not exceeding \$100 or up to \$5,000 in personal funds of the candidate, during the exploratory and public financing qualifying periods (for the 2011 Election, from May 1, 2010 until January 4, 2011). §11.508, Stats.

To become eligible for a public financing benefit, a candidate must receive qualifying contributions (\$5 to \$100 contributions) from at least 1,000 separate contributors in an aggregate amount of between \$5,000 and \$15,000 during the qualifying period (from July 1 to the first Tuesday in January). §11.502(2), Stats.

The maximum amount of private funds that may be legally raised and spent by a participating candidate is \$20,000 (up to \$5,000 in seed money contributions and up to \$15,000 in qualifying contributions). §§11.502(2), 11.506(1), 11.508(1), 11.505, Stats. Any seed money or qualifying contributions exceeding that aggregate total must be transferred to the Government Accountability Board and are deposited into the Democracy Trust Fund. §11.509, Stats. In addition, a candidate who accepts a public financing benefit during a primary election campaign period may not accept private contributions during the election campaign period. §11.505, Stats.

Participating candidates may not accept an anonymous contribution exceeding \$5. Any anonymous contribution exceeding \$5 shall be donated to the common school fund or to a charitable organization. §11.12(2), Stats. A participating candidate may not accept more than \$25 in cash from any contributor, or cash from all sources in a total amount greater than one-tenth of 1 percent of the public financing benefit or \$500, whichever is greater. §11.506(6), Stats.

- 2) **Nonparticipating candidates:** A nonparticipating candidate may accept contributions from private sources throughout any applicable election period, up to a maximum amount of \$1,000 per contributor during any campaign. §§11.26(1)(am), 11.522(1), Stats. Nonparticipating candidates are not limited in the total amount of contributions or expenditures. However, the Act retains limitations on the amount of contributions that nonparticipating candidates may receive from political committees, which is based on the total amount of seed money contributions, qualifying contributions, and initial public financing grants for the Spring Primary and Spring Election that a participating candidate for the same office obtains. A nonparticipating candidate may not accept more than 65 percent of this expenditure limitation for participating candidates in the form of contributions from all political committees required to file campaign finance reports, including political party and legislative campaign committees. §§11.26(9)(a), 11.511(7)(a). A nonparticipating candidate may not accept more

than 45 percent of this expenditure limitation for participating candidates in the form of contributions from all political committees other than political party and legislative campaign committees. §§11.26(9)(b), 11.511(7)(a)

### C. Spending Restrictions

- 1) **Participating candidates:** A participating candidate may not make or authorize total disbursements, from the first day of the exploratory period to the date of the Spring Election, in excess of the maximum seed money contributions, qualifying contributions, and any applicable public financing benefits and matching funds. 11.511(7)(a), Stats. Seed money contributions and contributions from a participating candidate's personal funds may not be spent after the close of the qualifying period. §§11.507(2), 11.508(2), Stats.
- 2) **Nonparticipating candidates:** A nonparticipating candidate is not subject to any limit on campaign spending under the Act.

### D. Public Financing Benefit

An eligible candidate must file an application with the Board, including a sworn statement that the candidate has complied and will comply with all requirements of the Impartial Justice Act throughout the campaign. An application may be filed no later than the day after the deadline for filing nomination papers. §11.502, Stats.

The Board shall certify the eligibility of a candidate for a Spring Primary election public financing benefit if the candidate files the required application and receives the requisite qualifying contributions (see B.1 above). To qualify for a public financing benefit for the Spring Election, the candidate must file a second application certifying that the candidate complied with the Act's provisions during the Primary election and will continue to do so during the election campaign period. §11.503(1), Stats.

The public financing benefit for the primary election campaign period is \$100,000. §11.511(2), Stats. If there is no primary, a candidate may not receive the public financing benefit for the primary election campaign period. §11.511(4), Stats. The public financing benefit for the Spring Election campaign period is \$300,000. §11.511(3), Stats. An eligible candidate who does not encumber or spend some portion of the benefit for the campaign shall return any unencumbered portion to the Board within 30 days after the Primary or Spring Election in which the candidate participated. §11.511(6), Stats. However, if the candidate remains eligible for the Spring Election public financing benefit, any unencumbered balance of the public financing benefit received for the primary

campaign period may be used in the Spring Election campaign period. §11.511(5g), Stats.

Each eligible participating candidate shall receive from the State Treasurer separate lines of credit for the public financing benefits payable to the candidate for the primary and election campaign periods. The lines of credit may be used by the candidate to finance any lawful disbursements during the respective campaign periods to further the candidate's election. A line of credit may not be used to repay a loan. §11.511(1), Stats.

#### E. Matching Funds

A participating candidate receives a supplemental public grant, upon the occurrence of one of two triggering events. A supplemental grant is provided when (1) a non-participating, privately-funded opponent's campaign expenditures exceed 5% above the initial grant for the applicable period (\$105,000 in the Primary Election and \$315,000 in the Spring Election); and/or (2) aggregate independent expenditures against the participating candidate exceed 120% of the initial public financing grant (\$120,000 in the Primary Election and \$360,000 in the Spring Election). §§11.512(2), 11.513(2), Stats.

The amount of the first supplemental grant is equal to the total excess disbursement amount made or obligated to be made by an opposing candidate. A participating candidate may be granted an amount up to a maximum amount equal to three times the applicable public financing benefit for either the Primary or Spring Election periods. A participating candidate may also be granted an amount equal to the total disbursements made or obligated to be made by aggregate independent disbursements, up to a maximum amount equal to three times the applicable public financing benefit for either the Primary or Spring Election. §§11.512(2), 11.513(2), Stats.

#### F. Recordkeeping and Reporting

- 1) **Participating candidates:** A participating candidate must acknowledge each qualifying contribution by a receipt to the contributor which contains the contributor's name and home address. No later than the 15<sup>th</sup> or the last day of the month which immediately follows the receipt of the qualifying contribution, whichever comes first, the candidate must file a copy of the receipt with the Board, except that during July, August, and September a copy must be filed only by the last day of the month. §11.502(4), Stats.

In addition to regular campaign finance reports, participating candidates must furnish complete financial records, including records of seed money contributions, qualifying contributions, and disbursements to the Board on the 15<sup>th</sup> or the last day of the month that immediately follows the receipt of the contribution or the making of the disbursement, whichever comes first, except that during July, August, and September records must be filed only by the last day of the month. §11.506(2), Stats.

A participating candidate who receives a public financing benefit shall maintain records of all contributions received by the candidate of more than \$5 but less than \$50, which shall contain the full name of the contributor and the contributor's home address, and, if the contributor's aggregate contributions exceed \$50 for the campaign, the contributor's principal occupation and name and address of the contributor's place of employment. §11.506(3), Stats. Failure to record or provide this information shall disqualify a contribution from being used as a qualifying contribution. §11.506(4), Stats.

- 2) **Nonparticipating candidates:** In addition to other campaign finance reports required by law, a nonparticipating candidate who receives contributions or makes or obligates to make disbursements in an amount exceeding 5% greater than the applicable public financing benefit shall file a report with the Board itemizing the total contributions received and disbursements made or obligated to be made as of the date of the report. A nonparticipating candidate shall file additional reports after the candidate receives each additional \$1,000 of contributions or makes or obligates to make each additional \$1,000 of disbursements. The Board transmits copies of the report to all candidates for the same office at the same election. §11.512(1), Stats.

The deadline for filing the reports depends upon the timing in the campaign period. If the contributions are received or disbursements are made or obligated to be made more than six weeks prior to the date of the Primary Election, the reports shall be made on the next 15<sup>th</sup> or last day of the month, except in July, August, and September, when the reports must be filed only by the last day of the month. If the contributions are received or disbursements are made or incurred within six weeks of the Primary Election, the reports shall be filed within 24 hours. §11.512(1), Stats.

- 3) **Independent disbursements:** Any person making, or becoming obligated to make, an independent disbursement in excess of \$1,000 with respect to a candidate for the office of Supreme Court Justice at a Spring Primary or Spring Election, shall file a notice of the disbursement or obligation to make a disbursement with the Board. Such reports shall be filed on the 15<sup>th</sup> or last day of the month that immediately follows the date of the disbursement or obligation to make the disbursement, whichever comes first. However, when such

disbursements or obligations are made within six weeks of the Primary or Spring Election, such reports shall be filed within 24 hours after each independent expenditure is made or is obligated to be made. Additional reports shall be filed after each additional \$1,000 of disbursements are made or incurred. §11.513(1), Stats.

#### G. Penalties for Violations

- 1) **Participating candidates:** A participating candidate who receives a public financing benefit and violates the requirements of the Act shall repay to the Board the amount obligated from the Democracy Trust Fund for the campaign period for which the candidate received the benefit. §11.51(4), Stats.

A participating candidate who accepts contributions exceeding the allowable private contributions, or makes disbursements exceeding the total allowable private contributions and public financing benefits may be required to forfeit up to 10 times the amount by which the contributions or disbursements exceed the allowable amounts. §11.517(1) and (2), Stats.

If a participating candidate or agent of such a candidate knowingly accepts more contributions or makes disbursements exceeding the total amounts permitted by the Act, the candidate may be prosecuted as a Class G felon. §11.518(1)

Any person who knowingly provides false information to the Board in connection with the receipt or disbursement of a public financing benefit, or who knowingly conceals or withholds information from the Board, is guilty of a Class G felony. §11.518(2).

**For additional information, please contact the Ethics and Accountability Division of the Wisconsin Government Accountability Board at 608-266-8005.**