

MEMORANDUM

TO: Commission on Strengthening Utah's Democracy

FROM: Stefan P. Brutsch of Parsons Behle & Latimer

DATE: June 2009

SUBJECT: Real-Time Disclosure of Campaign Contributions and Expenditures

The following law summary briefly analyzes the laws and proposed plans of jurisdictions that have, or are considering, a “real-time” disclosure requirement of campaign contributions and expenditures. In reality, the term “real-time” is something of a misnomer, as no jurisdiction actually requires instantaneous disclosure of campaign contributions or expenditures. Jurisdictions have generally shied away from instantaneous disclosure of all contributions and expenditures because of the heavier administrative burden for political committees and the increased cost for state governments.

I. Ontario's “Real Time” Disclosure Law

Ontario, Canada is the only provincial-level jurisdiction in North America to require the “real-time” disclosure of campaign contributions. However, though the Province terms its law a “real-time” disclosure law, it actually requires only the prompt disclosure of contributions by some individuals and certain entities.

Ontario compels registered political parties and registered leadership contestants¹ to file, within ten days² of depositing³ one or more contributions in excess of \$100 from a single source, a report about the contribution with Ontario's Chief Electoral Officer.⁴ Candidates are required to record and disclose contributions, but the ten-day reporting requirement only applies to political parties and leadership contestants.⁵

¹ A “leadership contestant” means a person seeking election as leader of a registered party at a leadership contest called by that party for that purpose. *Election Finances Act* § 1, R.S.O. 1990, Ch. E.7; available at http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_90e07_e.htm#BK33.

² Saturdays, Sundays, and public holidays are excluded from the calculation of days.

³ All money accepted by or on behalf of a political party, constituency association, candidate or leadership contestant registered under this Act shall be paid into the appropriate depository on record with the Chief Electoral Officer. *Election Finances Act* § 16(3).

⁴ *Election Finances Act* § 34(3).

⁵ *Election Finances Act* § 34(1).

Within ten days after a political party or leadership contestant reports a contribution, the Chief Electoral Officer ensures that the report is published online.⁶

Thus, though Ontario's contribution disclosure law is termed a "real-time" disclosure law, it requires disclosure of contributions within ten days only from leadership contestants and political parties. Moreover, just like in Utah, "Last-minute" contributions—those made 12 or fewer days before an election—are reported after Election Day.⁷

II. Michigan's Proposed "Real Time" Disclosure Law

Michigan's Secretary of State, Terri Lynn Land, first proposed in April 2006 that Michigan adopt a true "real-time" reporting requirement of all contributions and expenditures. Secretary Land proposed:

- Requiring real-time online reporting of all contributions, receipts, expenditures and disbursements by every candidate and committee filing with the state.
- Prohibiting candidates and committees from spending contributed funds until the information is posted on the Department of State Web site. The Secretary of State's slogan is, "Don't spend a dime until it's posted online!"
- Redesigning the Secretary of State website so that citizens can immediately view each committee's recent transactions and current cash balance, similar to an electronic checkbook register.⁸

Despite Secretary Land's proposal, Michigan has yet to enact any of those requirements, and no legislation containing those requirements has been considered by Michigan's legislature.

III. Campaign Finance Model Disclosure Law and California

The Campaign Disclosure Project's Model Disclosure Law ("Model Law"), is designed "to be used by legislators, public interest groups, media representatives, citizens and others who are interested in improving the disclosure of campaign finance information at the federal, state or local levels." While the Model Law retains a quarterly reporting system for candidate contributions generally,⁹ it has special provisions to ensure that both large contributions (contributions of over \$1,000) and last-minute contributions (contributions of \$1,000 or more that are received after the last regularly filed report closes) are timely disclosed to the public, and

⁶ *Election Finances Act* § 34(4).

⁷ Utah Code Ann. § 20A-11-204; Utah Code Ann. § 20A-11-303.

⁸ The press release detailing the reform proposed by Michigan's Secretary of State is available at https://mi.gov/sos/0,1607,7-127-1640_9150-141547--,00.html; Ms. Land's detailed proposal is available at http://www.michigan.gov/documents/MI_Camp_Finance_Reform_2006_156826_7.pdf

⁹ Model Disclosure Law, § 126.01.

that they are disclosed prior to an election. The Model Law does not contain a “real-time” reporting requirement, but rather requires that all large contributions be disclosed within two business days, and all last-minute contributions be disclosed within twenty-four hours.¹⁰

The Model Disclosure Law’s focus on real-time disclosure for only large and last-minute contributions is an attempt to balance the need for disclosure with a desire not to impose heavy administrative burdens and costs on candidates and government entities.

California has adopted a modified version of the Model Disclosure Law by requiring candidates to report within 10 business days a contribution of \$5,000 or more received more than 90 days before an election. California also requires candidates to report within 24 hours a contribution of \$1,000 or more received 90 or fewer days before an election.¹¹

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¹⁰ Model Disclosure Law, §§ 134, 148, available at <http://campaigndisclosure.org/modellaw/ModelDisclosureLaw.pdf>

¹¹ Cal. Gov’t Code § 85309.