

# NOTICE OF OPEN AND CLOSED MEETING

## Wisconsin Ethics Commission

212 East Washington Avenue, Third Floor Board Room  
Madison, Wisconsin  
Wednesday June 7, 2017, 9:00 a.m.

### Open Session Agenda

A. Call to Order	
B. Report of Appropriate Meeting Notice	
C. Introduction of New Staff Members	
D. Commission Policy on Succession of the Chair	Page 3
E. Minutes of March 7, 2017 Meeting	Page 5
F. Personal Appearances	
G. Administrative Rules Update – ETH Chapters 6, 21, 25, and 26	Page 11
H. RA-2017-2 Response	Page 55
I. Complaint Process Overview Documents	Page 59
J. Internal Policies	Page 61
1. Public Records Notice and Policy	Page 63
2. Internal Staff Policies	Page 65
K. Agency Office Space Request	Page 69
L. Updated Shared Staffing MOU with Elections Commission	Page 77
M. Verbal Update on the 2017-2019 Biennial Budget Process	
N. Agency Operating Budget Update	Page 83
O. Administrator's Report	Page 87
P. Consideration of Future Agenda Items	
Q. Closed Session	
1. Requests for Advice	
2. Complaints and Investigations	
3. Employment , Promotion, Compensation, Performance Evaluations	
R. Adjourn	

*The Ethics Commission will convene in open session but may move to closed session under WIS. STAT. § 19.85(1)(c), (g), and (h). This notice is to inform the public that the Commission intends to convene in open session, but may move to closed session. The Commission plans to return to open session to adjourn following that closed session. WIS. STAT. § 19.85(2).*

Ethics Commission Meeting

June 7, 2017

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WIS. STAT. §§19.50 & 19.55(3) No employee of the Commission may disclose information related to an investigation or prosecution under ch. 11, subchapter III of ch. 13, or ch. 19.

WIS. STAT. §19.85(1)(c) Considering employment, promotion, compensation, or performance evaluation data of any public employee over which the governmental body has jurisdiction or exercises responsibility.

WIS. STAT. §19.85(1)(g) Conferring with legal counsel for the governmental body who is rendering oral or written advice concerning strategy to be adopted by the body with respect to litigation in which it is or is likely to become involved.

WIS. STAT. §19.85(1)(h) The Commission's deliberations on requests for advice under the ethics code, lobbying law, and campaign finance law shall be in closed session.



# Wisconsin Ethics Commission

212 East Washington Avenue | Third Floor | P.O. Box 7984 | Madison, WI 53707-7984  
(608) 266-8123 | [ethics@wi.gov](mailto:ethics@wi.gov) | [ethics.wi.gov](http://ethics.wi.gov)

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**DATE:** For the June 7, 2017 Commission Meeting

**TO:** Members, Wisconsin Ethics Commission

**FROM:** David Buerger, Staff Counsel

**SUBJECT:** Succession of Chairperson

Chairperson Lautenschlager resigned effective April 7, 2017. The process for selecting a Chair for the Ethics Commission is governed by [Wis. Stat. § 15.06\(2\)\(b\)2.](#), which reads:

*The chairperson of the ethics commission shall be chosen from the members appointed under s. 15.62(1)(a)1. to 4. by affirmative vote of at least two-thirds of the commission members at the commission's first meeting every 2 years. The chairperson shall serve a 2-year term. The first chairperson shall be chosen from the commissioners affiliated with the same major political party. The major political party from which to select the first chairperson shall be determined by lot. The 2nd chairperson shall be chosen from the commissioners affiliated with the other major political party. Each subsequent chairperson shall be chosen from the commissioners affiliated with the 2 major political parties on a rotating basis.*

The statute does not describe the process for replacing a chair who resigns mid-term. However, at the Ethics Commission meeting on July 11, 2016, the Commission decided to select a vice chair as permitted by [Wis. Stat. § 15.06\(2\)\(a\)](#). While succession in the event of a permanent vacancy was not discussed, the Commission did consider temporary vacancies in its discussion of the selection of the vice chair and the Commission affirmatively decided to elect a vice chair of a party other than the party of the chair.

As there is now a permanent vacancy in the office of chairperson, the matter of succession must be decided. As described above, state law does not specify how the Commission replaces a chair mid-term. However, it does specify that the second chairperson shall be chosen from the commissioners affiliated with the other major party. Additionally, the Commission also decided at its July 2016 meeting to conduct its meetings using the most recent version of Robert's Rules of Order (11<sup>th</sup> Edition). Under Robert's Rules, if the body has not adopted by-laws that direct otherwise, in the event of a vacancy of the chairperson's position the vice chair automatically becomes the chair for the remainder of the term, and the body fills the vacancy in position of vice chair instead. *Robert's Rules of Order Newly Revised*, 11<sup>th</sup> Edition (2013), at page 575. This would be consistent with [Wis. Stat. § 15.06\(2\)\(b\)2.](#), which requires the second chair to be selected from the commissioners affiliated with the other major party.

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Administrator  
Brian M. Bell, MPA

However, such a succession would mean that the Democratic Party had its representative as chair for approximately nine months, while the Republican Party would have its representative as chair for the remaining 15 months of the 24-month term. It would also mean that the next chairperson would again be selected from the representatives of the Democratic Party in June 2018.

If the Commission agrees with the above analysis and wishes to continue its prior decision of having a vice chair of the other major party, Commissioner McCallum would succeed Commissioner Lautenschlager as chairperson for the remainder of the term and the Commission would need to select a new vice chair from the non-judicial Democratic Party commissioners.

If the Commission wishes to pursue an alternative succession process, the Commission can adopt bylaws to govern how such a process shall operate.



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(608) 266-8005 | [ethics@wi.gov](mailto:ethics@wi.gov) | [ethics.wi.gov](http://ethics.wi.gov)

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## Wisconsin Ethics Commission

Board Room  
212 East Washington Avenue  
Madison, Wisconsin  
March 7, 2017  
9:00 a.m.

### Open Session Minutes

Present: Peg Lautenschlager, Katie McCallum, Mac Davis, David Halbrooks, Pat Strachota, and Timothy Van Akkeren

Staff present: Brian Bell, David Buerger, Richard Bohringer, Kyle Kundert, Molly Nagappala, Adam Harvell, and Julie Nischik

#### A. Call to Order

Commission Chair Peg Lautenschlager called the meeting to order at 9:13 a.m.

#### B. Report of Appropriate Meeting Notice

Administrator Brian Bell reported that appropriate notice of the Commission meeting had been given to the public and news media.

#### C. Minutes of the November 9, 2016 Meeting

**MOTION:** Approve the minutes. Moved by Commissioner Strachota, seconded by Commissioner McCallum. Motion carried unanimously (5-0).

#### D. Minutes of the December 6, 2016 Meeting

Commission Chair Lautenschlager directed Commissioners to the draft meeting minutes in the meeting materials.

Page 4 of the December minutes states motion carried unanimously, and also a roll call vote. David Buerger to review the recording and discuss later in the meeting.

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Mac Davis | David R. Halbrooks | Peg Lautenschlager | Katie McCallum | Pat Strachota | Timothy Van Akkeren

## **E. Minutes of the February 23, 2017 Meeting**

**MOTION:** Approve the minutes. Moved by Commissioner Strachota, seconded by Commissioner McCallum. Motion carries unanimously (5-0).

## **F. Personal Appearances**

There was one personal appearance by members of the public:

**Mike Wittenwyler** appeared regarding a requested advisory opinion on registration thresholds applicable to section 527 organizations and non-resident PACs, the applicability of contribution limits to each, and the applicability of source restrictions to each.

## **G. Requests for Advice Public Hearing: 2017-RA-002: Wittenwyler – Treatment of 527 Organizations and Non-Resident Political Action Committees (PACs) Under Chapter 11, Wis. Stat.**

Staff Counsel Buerger presented the memo starting on page 15 of the meeting materials.

Discussion.

Commissioner Van Akkeren arrived at 9:43 am.

**MOTION:** The Commission adopts parts 1, 2, and 3 in section IV of the memo, with a draft opinion to be presented at the next meeting. Moved by Commissioner Strachota, seconded by Commissioner Halbrooks. Motion carried unanimously.

**MOTION:** The Commission seeks guidance from the legislative oversight committee, as there is no guidance available in the law. Moved by Commissioner Strachota, seconded by Commissioner Halbrooks. Motion carried unanimously.

## **H. Delegation of Authority to Administrator – Informal Opinions**

Administrator Bell presented the memo starting on page 25 of the meeting materials.

Discussion.

**MOTION:** The Commission adopts criteria 1, 3, and 4 and 5 as modified. Moved by Commissioner Davis, seconded by Commissioner Strachota. Motion carried unanimously.

## **I. Analysis of Holding Commission Meetings Outside of the Madison Office**

Administrator Bell presented the memo starting on page 27 of the meeting materials.

When there are agenda items of particular interest to a specific geographic region, would consider holding a meeting closer to that area. Commission Chair Lautenschlager will set aside this information for future consideration at the discretion of the Chair and Vice Chair.

No action was taken.

#### **J. Update on the 2017 – 2019 Biennial Budget Process**

Administrator Bell presented the memo starting on page 29 of the meeting materials.

Discussion of commissioner meeting per diems.

No action was taken.

#### **K. FY2018 Agency IT Strategic Plan Completed – Information Only**

Administrator Bell presented the memo starting on page 30 of the meeting materials.

No action was taken.

#### **L. Administrative Rules Update – ETH Chapters 6, 21, 25, and 26**

Staff Counsel Buerger presented the memo starting on page 33 of the meeting materials.

Discussion.

**MOTION:** The Commission approves the scope of the proposed administrative rules, ETH 21 and ETH 25. Moved by Commissioner Strachota, seconded by Commissioner Van Akkeren. Motion carries unanimously.

Commission Chair Lautenschlager requested the draft for ETH 26 be distributed when it is complete.

#### **M. Administrator's Report**

Administrator Bell presented the memo starting on page 39 of the meeting materials.

Discussion.

The Commission requests that training materials be updated to include common filing mistakes, as a way to reduce the number of settlements.

## N. Consideration of Future Agenda Items

Commissioner Halbrooks directs staff to draft guidance and/or expectations for filing complaints.

Commissioner Strachota proposes a joint meeting with Representative Bernier's and Senator LeMahieu's committees with the Ethics Commission, and possibly the Elections Commission, to discuss legislation and the agency transitions.

Return to Item D of the agenda, Minutes of the December 6, 2017 Meeting. Per the record, there was a motion to approve Ethics 21, which did not pass unanimously. A roll call vote was recorded correctly in the minutes, and the motion failed.

**MOTION:** The Commission approve the minutes with the amendment to the minutes to "The Commission moves to approve the proposed administrative rule, ETH 21. Moved by Commissioner Kinney, seconded by Commissioner Lautenschlager.", then strike "Motion carried unanimously". Moved by Commissioner McCallum, seconded by Commissioner Halbrooks. Motion carried unanimously.

Administrator Bell requested clarification on legislative updates to the Commissioners. Administrator Bell will provide updates to the Commissioners on bills related to the Commission which are moving forward, and/or which have a scheduled hearing.

## O. Closed Session

**MOTION:** The Commission went into closed session pursuant to Wis. Stat. §§ 19.50, 19.55(3), 19.85(1)(g), (h). Moved by Commissioner Van Akkeren, seconded by Commissioner McCallum. Motion carried unanimously.

## P. Adjourn

**MOTION:** To adjourn. Moved by Commissioner Halbrooks, seconded by Commissioner Van Akkeren. Motion carried unanimously.

The Commission adjourned at 2:42 p.m.

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March 7, 2017 Wisconsin Ethics Commissioners meeting minutes prepared by:

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Julie Nischik, Office Management Specialist

June 7, 2017

March 7, 2017 Wisconsin Ethics Commissioners meeting minutes certified by:

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Katie McCallum, Vice Chair

June 7, 2017





# Wisconsin Ethics Commission

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**DATE:** For the June 7, 2017 Commission Meeting

**TO:** Members, Wisconsin Ethics Commission

**FROM:** David Buerger, Staff Counsel

**SUBJECT:** Administrative Rule Update / Hearing Procedure

## I. Chapter ETH 6 (Procedure)

This draft rule would update ETH 6 to reflect the changes of 2015 Acts 117 and 118 on Commission procedures.

At the Ethics Commission's December 6, 2016 meeting the Commission approved the text of this draft rule. The draft rule was submitted to LRB for pre-submission editing on May 3, 2017. After incorporating LRB's edits, the draft rulemaking order was submitted to the Legislative Council Administrative Rules Clearinghouse on May 9, 2017. Staff provided a notice of hearing for this rule in Administrative Register 737A3, which was published on May 15, 2017. The Commission will hold a hearing on this rule at the June 7 meeting. After all public comments have been considered and the rule is in its final draft form, it may be submitted to the Governor's office for approval.

See Attachment A for the materials associated with ETH 6.

## II. Chapter ETH 21 (Advisory Opinions)

This draft rule would repeal ETH 21 in its entirety. On March 7, 2017, the Commission adopted a new written policy setting forth the conditions under which the staff of the Commission may issue advisory opinions on the behalf of the Commission.

At the Ethics Commission's December 6, 2016 meeting it directed staff to repeal this rule. Staff drafted an amended statement of scope that was approved by the Commission at its March 7, 2017 meeting. Staff submitted the amended scope statement to the Governor's office on March 8, 2017, and it was approved on March 20, 2017. The draft rulemaking order was submitted to the Legislative Council Administrative Rules Clearinghouse on May 10, 2017. Staff provided a notice of hearing for this rule in Administrative Register 737A3, which was published on May 15, 2017. The Commission will hold a hearing on this rule at the June 7 meeting. After all public comments have been considered and the rule is in its final draft form, it may be submitted to the Governor's office for approval.

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See Attachment B for the materials associated with ETH 21.

### **III. Chapter ETH 25 (Forms)**

This draft rule would repeal ETH 25 in its entirety.

At the Ethics Commission's December 6, 2016 meeting it directed staff to repeal this rule. Staff drafted an amended statement of scope that was approved by the Commission at its March 7, 2017 meeting. Staff submitted the amended scope statement to the Governor's office on March 8, 2017, and it was approved on April 4, 2017. The draft rulemaking order was submitted to the Legislative Council Administrative Rules Clearinghouse on May 10, 2017. Staff provided a notice of hearing for this rule in Administrative Register 737A3, which was published on May 15, 2017. The Commission will hold a hearing on this rule at the June 7 meeting. After all public comments have been considered and the rule is in its final draft form, it may be submitted to the Governor's office for approval.

See Attachment C for the materials associated with ETH 25.

### **IV. Chapter ETH 26 (Settlement Schedule)**

This draft rule would create ETH 26 to codify the settlement schedule adopted by the Commission at its October 10, 2016 meeting.

At the Ethics Commission's December 6, 2016 meeting the Commission directed staff to draft this rule. The draft rule was submitted to LRB for pre-submission editing on April 12, 2017. After incorporating LRB's edits, the draft rulemaking order was submitted to the Legislative Council Administrative Rules Clearinghouse on May 8, 2017. Staff provided a notice of hearing for this rule in Administrative Register 737A3, which was published on May 15, 2017. The Commission will hold a hearing on this rule at the June 7 meeting. After all public comments have been considered and the rule is in its final draft form, it may be submitted to the Governor's office for approval.

See Attachment D for the materials associated with ETH 26.

### **V. Hearing Procedure**

With certain exceptions, Wisconsin law requires agencies to hold public hearings on their proposed administrative rules to allow members of the public to provide testimony as to the proposed rule. At the hearing the Commission is required to explain the purpose of the hearing and describe how testimony will be received, present a summary of the factual information on which the proposed rule is based, afford each interested person the opportunity to present facts, opinions, or arguments in writing, and keep a record of the hearing. [WIS. STAT. § 227.18\(1\).](#)

The Commission may choose to limit oral presentations if the hearing would be unduly lengthened by repetitious testimony, question or allow others present to question the person testifying, administer an oath or affirmation to any person appearing, or continue or postpone the hearing to a specified date, time, and place. [WIS. STAT. § 227.18\(2\)](#).

## VI. Attachments

- A. ETH 6
  - 1. Proposed Rulemaking Order
  - 2. Notice of Submittal to Legislative Council Rules Clearinghouse
  - 3. Notice of Hearing
  - 4. Fiscal Estimate and Economic Impact Analysis
  - 5. Legislative Council Report (Supplemental Materials)
- B. ETH 21
  - 1. Proposed Rulemaking Order
  - 2. Notice of Submittal to Legislative Council Rules Clearinghouse
  - 3. Notice of Hearing
  - 4. Fiscal Estimate and Economic Impact Analysis
  - 5. Legislative Council Report (Supplemental Materials)
- C. ETH 25
  - 1. Proposed Rulemaking Order
  - 2. Notice of Submittal to Legislative Council Rules Clearinghouse
  - 3. Notice of Hearing
  - 4. Fiscal Estimate and Economic Impact Analysis
  - 5. Legislative Council Report (Supplemental Materials)
- D. ETH 26
  - 1. Proposed Rulemaking Order
  - 2. Notice of Submittal to Legislative Council Rules Clearinghouse
  - 3. Notice of Hearing
  - 4. Fiscal Estimate and Economic Impact Analysis
  - 5. Legislative Council Report (Supplemental Materials)

**WISCONSIN ETHICS COMMISSION**  
**Proposed Rule Making Order**

**INTRODUCTORY CLAUSE**

The Wisconsin Ethics Commission proposes an order to amend ETH 6, related to procedures used by the Ethics Commission.

**RULE SUMMARY**

- A. **Statutes interpreted:** ss. 11.0102, 11.0103, 11.0104, 11.0105, 11.0202, 11.0203, 11.0204, 11.0302, 11.0303, 11.0304, 11.0402, 11.0403, 11.0404, 11.0502, 11.0503, 11.0504, 11.0505, 11.0602, 11.0603, 11.0604, 11.0605, 11.0702, 11.0703, 11.0704, 11.0802, 11.0803, 11.0804, 11.0902, 11.0903, 11.0904, 11.1001, 11.1304, 19.46(2).
- B. **Statutory authority:** The Ethics Commission has general authority for the promulgation of rules to carry out the requirements of Chapters 11, 13, and 19.

s. 11.1304(17), Stats.:

**11.1304 Duties of the ethics commission.** The commission shall:  
(17) Promulgate rules to administer this chapter.

s. 19.48(1), Stats.:

**19.48 Duties of the ethics commission.** The commission shall:  
(1) Promulgate rules necessary to carry out ch. 11, subch. III of ch. 13, and this subchapter.

s. 227.11(2)(a), Stats.:

**227.11 Extent to which chapter confers rule-making authority.**  
(2) Rule-making authority is expressly conferred on an agency as follows:  
(a) Each agency may promulgate rules interpreting the provisions of any statute enforced or administered by the agency, if the agency considers it necessary to effectuate the purpose of the statute, but a rule is not valid if the rule exceeds the bounds of correct interpretation.

- C. **Explanation of agency authority:** The Ethics Commission has general authority for the promulgation of rules to carry out the requirements of Chapters 11, 13, and 19. Each state agency may promulgate rules interpreting the provisions of any statute enforced or administered by the agency if the agency considers it necessary to effectuate the purpose of the statute.

- D. Related statute(s) or rule(s):** ETH 1.39.
- E. Plain language analysis:** Chapter ETH 6 was created and transferred to the Ethics Commission pursuant to the determination of the Secretary of Administration as directed by 2015 Wisconsin Act 118, Section 266(6). The purpose of this rulemaking is simply to update Chapter ETH 6 to remove language related to the subject matter now under the jurisdiction of the Elections Commission and add relevant statutory references that changed under 2015 Wisconsin Act 117.
- F. Summary of, and comparison with, existing or proposed federal regulations:** There is no existing or proposed federal regulation that is intended to address the activities to be regulated by the proposed rule. However, similar rules for the FEC require a committee to file all reports electronically if their total contributions or expenditures exceed \$50,000 in a calendar year. 11 CFR 104.18. The FEC does not permit filing by fax. All filings must either be filed electronically, by mail, or by hand-delivery.

**G. Comparison with similar rules in adjacent states:**

Illinois: The Campaign Disclosure Guide published in 2016 states that reports may be submitted facsimile so long as the original record of the document and transmission date are retained by the filer. Neither the Illinois Campaign Disclosure Act of 2016, nor rules of the Illinois State Board of Elections address informal advice given from staff to interested parties.

Iowa: All filing reports are permitted to be sent by facsimile transmission, electronic mail, United States postmark or by hand so long as they are received prior to the due date. IOWA CODE § 68.402(1). In practice the Board issues informal advice on a regular basis and issues declaratory orders when a formal petition is submitted to the Board regarding the applicability of statutes, policies decisions, or orders. IOWA ADMIN. CODE r. 351—12.7(1).

Michigan: State law requires committees that received or expended \$5,000 in the preceding calendar year to file all statements and reports electronically. MICH. COMP. LAWS § 169.218. Staff may issue advice within the parameters of declaratory rulings and interpretive statements already issued at the discretion of the Secretary of State. For matters outside of declaratory rulings, interested persons must submit a request for a new ruling. MICH. COMP. LAWS § 169.215(2).

Minnesota: All campaign finance filings are required electronically, unless a waiver is granted by the Campaign Finance and Public Disclosure Board. Filing electronically allows automatic rejection if filings, reports and registrations are incomplete or incorrect. MINN. STAT. § 10A.025 (2016). Filing by facsimile or electronic transmission has the same force as an original paper document, however the filer is required to maintain an original copy with the date of transmission. MINN. R. 4501.0500 (2006).

**H. Summary of factual data and analytical methodologies:** N/A

**I. Analysis and supporting documentation used to determine effect on small businesses:**  
N/A

**J. Effect on small business:** N/A

**K. Agency contact person:**

David P. Buerger  
David.Buerger@wisconsin.gov  
(608) 267-0951

**L. Place where comments are to be submitted and deadline for submission:**

Written comments on the proposed rule will be accepted and receive consideration if they are received by June 6, 2017. Written comments should be addressed by mail to: David Buerger, P.O. Box 7984, Madison, WI 53707-7984; or by email to: eth.rulecomments@wi.gov.

Fiscal Estimate: The creation of this rule does not affect business.

Initial Regulatory Flexibility Analysis: The creation of this rule has no fiscal effect.

#### **TEXT OF RULE**

SECTION 1. ETH 6.02 (1) and (2) are amended to read:

**ETH 6.02 Registration statement sufficiency.** (1) Any registration filed with a filing officer under ss. 11.0201, 11.0202, 11.0203, 11.0301, 11.0302, 11.0303, 11.0401, 11.0402, 11.0403, 11.0501, 11.0502, 11.0503, 11.0601, 11.0602, 11.0603, 11.0701, 11.0702, 11.0703, 11.0801, 11.0802, 11.0803, 11.0901, 11.0902, and 11.0903, Stats., which is insufficient as to essential form, information or attestation shall be rejected by such officer and shall be promptly returned if possible to the proposed registrant indicating the nature of the insufficiency. The proposed registrant shall be informed that the attempted registration is not effective.

(2) Any registration statement filed with a filing officer under ss. 11.0201, 11.0202, 11.0203, 11.0301, 11.0302, 11.0303, 11.0401, 11.0402, 11.0403, 11.0501, 11.0502, 11.0503, 11.0601, 11.0602, 11.0603, 11.0701, 11.0702, 11.0703, 11.0801, 11.0802, 11.0803, 11.0901, 11.0902, and 11.0903, Stats., which is insufficient or incomplete in some manner but substantially complies with law shall be accepted by such officer who shall then promptly notify the registrant indicating the nature of the incompleteness or insufficiency. The registrant shall then have 15 days from the date of such notice to rectify the problem. If the incompleteness or insufficiency is not rectified by the registrant within 15 days from the date of the notice, the registration lapses and is not effective.

SECTION 2. ETH 6.03 is amended to read:

**ETH 6.03 Assistance by ethics commission staff.** Pursuant to the authority and responsibility vested in the ethics commission by the statutes, specifically s. 19.46 (2), Stats., the staff of the ~~board~~ commission is authorized to provide advice to any interested person with respect to the proper application of ~~title II ch. 11, subch. III of ch. 13, and subch. III of ch. 19, Stats.~~ Such advice should not be construed as a formal opinion of the ~~board~~ commission under s. 19.46 (2) (c), Stats.

SECTION 3. ETH 6.04 (1) (a) is renumbered ETH 6.04 (1) (ar).

SECTION 4. ETH 6.04 (1) (ag) is created to read:

**ETH 6.04 (1) (ag)** "Commission" means the ethics commission.

SECTION 5. ETH 6.04 (1) (d), (2), (3) (a) and (b), and (4) to (6) are amended to read:

- (d) "~~Filing Local filing officer~~" means ~~the ethics commission or any other an elections official, other than the commission,~~ with whom ~~elections or~~ campaign finance documents are required to be filed ~~by chs. 5 to 12 under ch. 11~~, Stats.
- (2) ~~Nomination papers, recall petitions, and those campaign~~ Campaign finance reports provided in ss. 11.0103, 11.0204, 11.0304, 11.0404, 11.0504, 11.0505, 11.0604, 11.0605, 11.0704, 11.0804, 11.0904, and 11.1001, Stats., may not be filed with the ~~commission or a local~~ filing officer by facsimile process. ~~Nomination papers and recall petitions shall not be considered filed with the filing officer until the signed original of each nomination paper and recall petition is received in the offices of the filing officer.~~ Campaign finance reports which are provided in ss. 11.0103, 11.0204, 11.0304, 11.0404, 11.0504, 11.0604, 11.0704, 11.0804, and 11.0904, and 11.1001, Stats., and which are delivered by the U.S. mails are considered filed with the local filing officer when the report is postmarked. Campaign finance reports which are provided in ss. 11.0103, 11.0204, 11.0304, 11.0404, 11.0504, 11.0604, 11.0704, 11.0804, and 11.0904, and 11.1001, Stats., and which are not delivered by the U.S. mails, are considered filed with the local filing officer when received in the local filing officer's offices. Campaign finance reports that are provided in ss. 11.0103, 11.0204, 11.0304, 11.0404, 11.0504, 11.0604, 11.0704, 11.0804, 11.0904, and 11.1001, Stats., are considered filed with the commission when received in the commission's offices.
- (3)
  - (a) A duplicate copy of the document is received by the commission or local filing officer, in its offices, by facsimile process, no later than the day and hour at which the document is required to be filed and
  - (b) The signed original of the document is received at the offices of the commission or local filing officer with a postmark not later than the filing deadline; or the signed original is delivered to the commission or local filing officer not later than the filing deadline.
- (4) Any document which is filed by facsimile process under this rule shall be considered received at the time of transmission as recorded and entered by the receiving equipment by the commission or local filing officer's staff when the facsimile copy is delivered to the commission or local filing officer's offices.

- (5) If, for any reason, transmission of a document is not received at the commission or local filing officer's offices, whether because of a failure in the receiving system of the commission or local filing officer or because of a failure in the transmitting system of the person attempting to file or for any other reason, a document shall not be considered received or filed until a facsimile copy is delivered to and received at the commission or local filing officer's offices and the signed original is received at the commission or local filing officer's offices with a postmark not later than the filing deadline.
- (6) The burden of establishing that a document has been received by facsimile process at the offices of the commission or local filing officer shall be upon the person who, or the committee or group which, is required to file the document.

SECTION 4. ETH 6.05 (1) (a), (c), (f) and (2) are amended to read:

- ETH 6.05 (1)** (a) "Campaign period" for a candidate, ~~personal campaign committee or support committee~~ has the same meaning as provided in s. 11.1103, Stats., and for any other registrant begins on January 1 of an odd-numbered year and ends on December 31 of the following year.
- (c) "Electronic format" means ~~computer diskette or~~ a computer data file created using ~~Access or Excel software or software that produces a delimited text file.~~ the online system maintained by the commission for campaign finance registration and reporting.
  - (f) "Report" means any filing required by ss. 11.0103, 11.0204, 11.0304, 11.0404, ~~11.0501, 11.0502, 11.0503,~~ 11.0504, 11.0505 (3), 11.0604, 11.0605 (3), 11.0704, 11.0804, 11.0904, and 11.1001, Stats.
  - (2) Any registrant who files with the ethics commission and who accepts contributions or makes disbursements in a total amount or value of ~~\$20,000 or more than \$1,000~~ during a campaign period shall file each campaign finance report that is required to be filed by ch. 11, Stats., in an electronic format.

SECTION 5. ETH 6.05 (5) and (6) are repealed.

SECTION 6. EFFECTIVE DATE: This rule shall take effect on the first day of the first campaign finance reporting period following publication in the Wisconsin Administrative Register as provided in s. 227.22 (2) (intro.), Stats.

## **Notice of Submittal of Proposed Rule to Legislative Council Rules Clearinghouse**

On May 9, 2017, the Ethics Commission submitted a proposed rule to the Wisconsin Legislative Council Clearinghouse pursuant to s. 227.15 (1), Wis. Stats.

### **Analysis**

The proposed rule affects Chapter ETH 6, relating to procedures used by the Ethics Commission and updates the rule to reflect the changes of 2015 Act 118.

### **Statement of Scope**

The scope statement for this rule, SS 073-16, was approved by the Governor on August 5, 2016, published in Register No. 728A3, on August 15, 2016, and approved by the Government Accountability Board on April 26, 2016.

### **Agency Procedure for Promulgation**

A public hearing is required and will be held on June 7, 2017.

### **Agency Organizational Unit Primarily Responsible for Promulgating Rule**

Ethics Commission

### **Agency Contact Person**

David P. Buerger  
P.O. Box 7984, Madison, WI 53707-7984  
[David.Buerger@wisconsin.gov](mailto:David.Buerger@wisconsin.gov)  
(608) 267-0951

## **Notice of Hearing**

The Wisconsin Ethics Commission announces that it will hold a public hearing on a permanent rule to amend ch. ETH 6 relating to procedure used by the Ethics Commission, at the time and place shown below.

### **Hearing Information**

Date: June 7, 2017

Time: 9:00 A.M.

Location: 212 East Washington Avenue, 3<sup>rd</sup> Floor, Madison, WI 53703

### **Appearances at the Hearing and Submittal of Written Comments**

The proposed rule may be reviewed at <http://docs.legis.wisconsin.gov/code> and <https://ethics.wi.gov/Pages/Resources/StatutesAndRules.aspx>.

Written comments may be submitted to David Buerger, Staff Counsel, Wisconsin Ethics Commission, P.O. Box 7984, Madison, WI 53707-7984, or by email to [eth.rulecomments@wi.gov](mailto:eth.rulecomments@wi.gov). Written comments must be received no later than June 6, 2017 to be included in the record of rulemaking proceedings.

Individuals who wish to provide their comments in person at the hearing are encouraged to also submit a written copy of their testimony for inclusion in the record.

### **Initial Regulatory Flexibility Analysis**

The proposed rule will not have an effect on small businesses, as defined under s. 227.114 (1).

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1. Type of Estimate and Analysis

Original  Updated  Corrected

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2. Administrative Rule Chapter, Title and Number

ETH 6 – Procedure

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3. Subject

The procedures by which candidates, political parties, and other registrants file various documents with the Ethics Commission.

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4. Fund Sources Affected

GPR  FED  PRO  PRS  SEG  SEG-S

5. Chapter 20, Stats. Appropriations Affected

N/A

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6. Fiscal Effect of Implementing the Rule

No Fiscal Effect  
 Indeterminate

Increase Existing Revenues  
 Decrease Existing Revenues

Increase Costs  
 Could Absorb Within Agency's Budget  
 Decrease Cost

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7. The Rule Will Impact the Following (Check All That Apply)

State's Economy  
 Local Government Units

Specific Businesses/Sectors  
 Public Utility Rate Payers  
 Small Businesses (**if checked, complete Attachment A**)

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8. Would Implementation and Compliance Costs Be Greater Than \$20 million?

Yes  No

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9. Policy Problem Addressed by the Rule

The proposed rule will amend or remove portions of Chapter ETH 6 that do not apply to the Ethics Commission. There is no new policy being proposed, only updating by way of amending or repealing sections of the chapter so they are consistent with 2015 Acts 117 and 118.

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10. Summary of the businesses, business sectors, associations representing business, local governmental units, and individuals that may be affected by the proposed rule that were contacted for comments.

N/A

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11. Identify the local governmental units that participated in the development of this EIA.

N/A

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12. Summary of Rule's Economic and Fiscal Impact on Specific Businesses, Business Sectors, Public Utility Rate Payers, Local Governmental Units and the State's Economy as a Whole (Include Implementation and Compliance Costs Expected to be Incurred)

The Commission finds that the proposed rule will have no economic impact on small businesses.

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13. Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule

Promulgating the rule would provide certainty to the regulated community as to the procedures by which they can file various documents with the Ethics Commission and prevent confusion as to whether the Ethics or Elections Commission should receive various documents.

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The alternative would be to not amend the rule. Such inaction could confuse candidates, political parties, and other registrants as to which Commission is the proper recipient of a given document.

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14. Long Range Implications of Implementing the Rule

Promulgating the rule would permit the Ethics Commission to avoid confusion with the subject matter now controlled by the Elections Commission.

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15. Compare With Approaches Being Used by Federal Government

The FEC requires a committee to file all reports and statements electronically if their total contributions or expenditures exceed \$50,000 in a calendar year. 11 CFR 104.18. The FEC does not permit filing by fax. All filings must either be

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filed electronically, by mail, or by hand-delivery.

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16. Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota)

Illinois: The Campaign Disclosure Guide published in 2016 states that reports may be submitted facsimile so long as the original record of the document and transmission date are retained by the filer. Neither the Illinois Campaign Disclosure Act of 2016, nor rules of the Illinois State Board of Elections address informal advice given from staff to interested parties.

Iowa: All filing reports are permitted to be sent by facsimile transmission, electronic mail, United States postmark or by hand so long as they are received prior to the due date. IOWA CODE § 68.402(1). In practice the Board issues informal advice on a regular basis and issues declaratory orders when a formal petition is submitted to the Board regarding the applicability of statutes, policies decisions, or orders. IOWA ADMIN. CODE r. 351—12.7(1).

Michigan: State law requires committees that received or expended \$5,000 in the preceding calendar year to file all statements and reports electronically. MICH. COMP. LAWS § 169.218. Staff may issue advice within the parameters of declaratory rulings and interpretive statements already issued at the discretion of the Secretary of State. For matters outside of declaratory rulings, interested persons must submit a request for a new ruling. MICH. COMP. LAWS § 169.215(2).

Minnesota: All campaign finance filings are required electronically, unless a waiver is granted by the Campaign Finance and Public Disclosure Board. Filing electronically allows automatic rejection if filings, reports and registrations are incomplete or incorrect. MINN. STAT. § 10A.025 (2016). Filing by facsimile or electronic transmission has the same force as an original paper document, however the filer is required to maintain an original copy with the date of transmission. MINN. R. 4501.0500 (2006).

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17. Contact Name

David P. Buerger

18. Contact Phone Number

(608) 267-0951

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This document can be made available in alternate formats to individuals with disabilities upon request.

## **ATTACHMENT A**

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1. Summary of Rule's Economic and Fiscal Impact on Small Businesses (Separately for each Small Business Sector, Include Implementation and Compliance Costs Expected to be Incurred)

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2. Summary of the data sources used to measure the Rule's impact on Small Businesses

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3. Did the agency consider the following methods to reduce the impact of the Rule on Small Businesses?

- Less Stringent Compliance or Reporting Requirements
- Less Stringent Schedules or Deadlines for Compliance or Reporting
- Consolidation or Simplification of Reporting Requirements
- Establishment of performance standards in lieu of Design or Operational Standards
- Exemption of Small Businesses from some or all requirements
- Other, describe:

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4. Describe the methods incorporated into the Rule that will reduce its impact on Small Businesses

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5. Describe the Rule's Enforcement Provisions

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6. Did the Agency prepare a Cost Benefit Analysis (if Yes, attach to form)

- 
- Yes
  - No

**WISCONSIN ETHICS COMMISSION**  
**Proposed Rule Making Order**

**INTRODUCTORY CLAUSE**

The Wisconsin Ethics Commission proposes an order to repeal ETH 21, related to requests for written advice issued on behalf of the Ethics Commission.

**RULE SUMMARY**

- A. **Statutes interpreted:** s. 19.46(2)(b), Stats.
- B. **Statutory authority:** Wisconsin law provides for the Commission to authorize the commission administrator or his or her designee to issue informal advisory opinions on the Commission's behalf.

s. 19.46(2)(b), Stats.:

**19.46(2)(b) Conflict of interest prohibited; exception.**

1. The commission may authorize the commission administrator or his or her designee to issue an informal written advisory opinion or transmit an informal advisory opinion electronically on behalf of the commission, subject to such limitations as the commission deems appropriate. Every informal advisory opinion shall be consistent with applicable formal advisory opinions issued by the commission, statute or other law, and case law.
2. Any individual may request in writing, electronically, or by telephone an informal advisory opinion from the commission under this paragraph. The commission's designee shall provide a written response, a written reference to an applicable statute or law, or a written reference to a formal advisory opinion of the commission to the individual, or shall refer the request to the commission for review and the issuance of a formal advisory opinion.
3. Any person receiving an informal advisory opinion under this paragraph may, at any time, request a formal advisory opinion from the commission on the same matter.

The Ethics Commission also has general authority for the promulgation of rules to carry out the requirements of Chapters 11, 13, and 19.

s. 11.1304(17), Stats.:

**11.1304 Duties of the ethics commission.** The commission shall:  
**(17)** Promulgate rules to administer this chapter.

s. 19.48(1), Stats.:

**19.48 Duties of the ethics commission.** The commission shall:

- (1) Promulgate rules necessary to carry out ch. 11, subch. III of ch. 13, and this subchapter.

s. 227.11(2)(a), Stats.:

**227.11 Extent to which chapter confers rule-making authority.**

- (2) Rule-making authority is expressly conferred on an agency as follows:

(a) Each agency may promulgate rules interpreting the provisions of any statute enforced or administered by the agency, if the agency considers it necessary to effectuate the purpose of the statute, but a rule is not valid if the rule exceeds the bounds of correct interpretation.

C. **Explanation of agency authority:** The Ethics Commission may authorize the commission administrator to issue informal opinions on its behalf. However, it is not required do so via administrative rule.

D. **Related statute(s) or rule(s):** N/A.

E. **Plain language analysis:** This rule repeals the conditions imposed on issuance of informal opinions currently in the administrative code. The Commission adopted a new policy on March 7, 2017, setting forth the conditions under which the staff of the commission may respond to a request for advice on behalf of the Commission.

F. **Summary of, and comparison with, existing or proposed federal regulations:**

The Federal Election Commission (FEC) issues advisory opinions to any entity that is unclear about the application of FECA to its prospective activities. If the activity had been prescribed previously, the FEC will advise within the relevant advisory opinion. 52 U.S.C. § 30108; 11 CFR § 112. Informal advice is given for procedural matters such as which reports to file, or how to register a committee, but not in regards to the application of opinions or statutes.

G. **Comparison with similar rules in adjacent states:**

Illinois: The Illinois State Board of Elections issues formal advice only within a narrow scope of campaign finance law. All other advice is given on an informal basis by staff. ILL. ADMIN. CODE tit. 26 § 125.710.

Iowa: In practice the Ethics and Disclosure Board director and staff issue informal advice which does not hold the same force as advice requested and given through the declaratory order process. Advice is only binding when it is given as a declaratory order in response to a petition regarding the applicability of statutes, policies decisions, or orders. IOWA ADMIN. CODE r. 351—12.7(1).

Michigan: Permits staff to issue advice within the parameters of declaratory rulings and interpretive statements already issued at the discretion of the Secretary of State. For matters outside of declaratory rulings, interested persons must submit a request for a new ruling. MICH. COMP. LAWS § 169.215(2).

Minnesota: Permits staff to issue nonbinding informal advice. Formal advisory opinions are issued only to parties covered by the request and are binding on the board and subsequent proceedings regarding only the party or parties involved. MINN. STAT. § 10A.02 subd. 12 (2016).

**H. Summary of factual data and analytical methodologies:** N/A

**I. Analysis and supporting documentation used to determine effect on small businesses:**  
N/A

**J. Effect on small business:** N/A

**K. Agency contact person:**

David P. Buerger  
David.Buerger@wisconsin.gov  
(608) 267-0951

**L. Place where comments are to be submitted and deadline for submission:**

Written comments on the proposed rule will be accepted and receive consideration if they are received by June 6, 2017. Written comments should be addressed by mail to: David Buerger, P.O. Box 7984, Madison, WI 53707-7984; or by email to: eth.rulecomments@wi.gov.

Fiscal Estimate: The creation of this rule does not affect business.

Initial Regulatory Flexibility Analysis: The creation of this rule has no fiscal effect.

**TEXT OF RULE**

SECTION 1. Chapter ETH 21 is repealed.

SECTION 2. EFFECTIVE DATE.

This rule shall take effect on the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.22 (2), Stats.

**Notice of Submittal of Proposed Rule to  
Legislative Council Rules Clearinghouse**

On May 10, 2017, the Ethics Commission submitted a proposed rule to the Wisconsin Legislative Council Clearinghouse pursuant to s. 227.15 (1), Wis. Stats.

**Analysis**

The proposed rule repeals Chapter ETH 21 in its entirety. The Ethics Commission adopted a new policy governing the conditions under which the staff of the commission may respond to requests for advice on behalf of the Commission on March 7, 2017.

**Statement of Scope**

The scope statement for this rule, SS 033-17, was approved by the Governor on March 20, 2017, published in Register No. 735B, on March 27, 2017, and approved by the Ethics Commission on March 7, 2017.

**Agency Procedure for Promulgation**

A public hearing is required and will be held on June 7, 2017.

**Agency Organizational Unit Primarily Responsible for Promulgating Rule**

Ethics Commission

**Agency Contact Person**

David P. Buerger  
P.O. Box 7984, Madison, WI 53707-7984  
[David.Buerger@wisconsin.gov](mailto:David.Buerger@wisconsin.gov)  
(608) 267-0951

## **Notice of Hearing**

The Wisconsin Ethics Commission announces that it will hold a public hearing on a permanent rule to repeal ETH 21, related to requests for written advice issued on behalf of the Ethics Commission, at the time and place shown below.

### **Hearing Information**

Date: June 7, 2017

Time: 9:00 A.M.

Location: 212 East Washington Avenue, 3<sup>rd</sup> Floor, Madison, WI 53703

### **Appearances at the Hearing and Submittal of Written Comments**

The proposed rule may be reviewed at <http://docs.legis.wisconsin.gov/code> and <https://ethics.wi.gov/Pages/Resources/StatutesAndRules.aspx>.

Written comments may be submitted to David Buerger, Staff Counsel, Wisconsin Ethics Commission, P.O. Box 7984, Madison, WI 53707-7984, or by email to [eth.rulecomments@wi.gov](mailto:eth.rulecomments@wi.gov). Written comments must be received no later than June 6, 2017 to be included in the record of rulemaking proceedings.

Individuals who wish to provide their comments in person at the hearing are encouraged to also submit a written copy of their testimony for inclusion in the record.

### **Initial Regulatory Flexibility Analysis**

The proposed rule will not have an effect on small businesses, as defined under s. 227.114 (1).

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1. Type of Estimate and Analysis

Original  Updated  Corrected

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2. Administrative Rule Chapter, Title and Number

ETH 21 – Practice and Procedure

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3. Subject

The procedure by which Ethics Commission staff may provide advice on behalf of the Commission pursuant to WIS. STAT. § 19.46(2)(b).

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4. Fund Sources Affected

GPR  FED  PRO  PRS  SEG  SEG-S

5. Chapter 20, Stats. Appropriations Affected

N/A

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6. Fiscal Effect of Implementing the Rule

No Fiscal Effect

Increase Existing Revenues

Increase Costs

Indeterminate

Decrease Existing Revenues

Could Absorb Within Agency's Budget

Decrease Cost

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7. The Rule Will Impact the Following (Check All That Apply)

State's Economy

Specific Businesses/Sectors

Local Government Units

Public Utility Rate Payers

Small Businesses (**if checked, complete Attachment A**)

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8. Would Implementation and Compliance Costs Be Greater Than \$20 million?

Yes  No

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9. Policy Problem Addressed by the Rule

The proposed rule repeals Chapter ETH 21 in its entirety. The Ethics Commission adopted a new policy governing the conditions under which the staff of the commission may respond to requests for advice on behalf of the Commission on March 7, 2017.

10. Summary of the businesses, business sectors, associations representing business, local governmental units, and individuals that may be affected by the proposed rule that were contacted for comments.

N/A

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11. Identify the local governmental units that participated in the development of this EIA.

N/A

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12. Summary of Rule's Economic and Fiscal Impact on Specific Businesses, Business Sectors, Public Utility Rate Payers, Local Governmental Units and the State's Economy as a Whole (Include Implementation and Compliance Costs Expected to be Incurred)

The Commission finds that the proposed rule will have no economic impact on small businesses.

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13. Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule

Promulgating the rule brings Chapter ETH 21 into conformity with 2015 Wisconsin Act 118 and the Ethics Commission new policy governing the conditions under which staff of the commission may respond to requests for advice on behalf of the Commission.

The alternatives would be to either leave the rule as it currently exists or amend the rule to reflect the Commission's current policy. Leaving the rule in place as it currently exists could create confusion among the regulated community as to how to request advice as it refers to a position that no longer exists. Amending the rule to reflect the Commission's current policy is possible, but due to the cumbersome nature of the rulemaking process is not ideal should the Commission decide to modify its policy in the future.

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14. Long Range Implications of Implementing the Rule

Promulgating this rule allows the Ethics Commission to be more flexible in setting the conditions under which commission staff may respond to requests for advice on behalf of the Commission.

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**15. Compare With Approaches Being Used by Federal Government**

The Federal Election Commission (FEC) issues advisory opinions to any entity that is unclear about the application of FECA to its prospective activities. If the activity had been prescribed previously, the FEC will advise within the relevant advisory opinion. 52 U.S.C. § 30108; 11 CFR § 112. Informal advice is given for procedural matters such as which reports to file, or how to register a committee, but not in regards to the application of opinions or statutes.

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**16. Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota)**

Illinois: The Illinois State Board of Elections issues formal advice only within a narrow scope of campaign finance law. All other advice is given on an informal basis by staff. Ill. Admin. Code tit. 26 § 125.710

Iowa: In practice the Ethics and Disclosure Board director and staff issue informal advice which does not hold the same force as advice requested and given through the declaratory order process. Advice is only binding when it is given as a declaratory order in response to a petition regarding the applicability of statutes, policies decisions, or orders. Iowa Admin. Code r. 351—12.7(1).

Michigan: Permits staff to issue advice within the parameters of declaratory rulings and interpretive statements already issued at the discretion of the Secretary of State. For matters outside of declaratory rulings, interested persons must submit a request for a new ruling. Mich. Comp. Laws § 169.215(2).

Minnesota: Permits staff to issue nonbinding informal advice. Formal advisory opinions are issued only to parties covered by the request and are binding on the board and subsequent proceedings regarding only the party or parties involved. Minn. Stat. § 10A.02 subd. 12 (2016).

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**17. Contact Name**

David P. Buerger

**18. Contact Phone Number**

(608) 267-0951

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This document can be made available in alternate formats to individuals with disabilities upon request.

## **ATTACHMENT A**

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1. Summary of Rule's Economic and Fiscal Impact on Small Businesses (Separately for each Small Business Sector, Include Implementation and Compliance Costs Expected to be Incurred)

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2. Summary of the data sources used to measure the Rule's impact on Small Businesses

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3. Did the agency consider the following methods to reduce the impact of the Rule on Small Businesses?

- Less Stringent Compliance or Reporting Requirements
- Less Stringent Schedules or Deadlines for Compliance or Reporting
- Consolidation or Simplification of Reporting Requirements
- Establishment of performance standards in lieu of Design or Operational Standards
- Exemption of Small Businesses from some or all requirements
- Other, describe:

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4. Describe the methods incorporated into the Rule that will reduce its impact on Small Businesses

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5. Describe the Rule's Enforcement Provisions

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6. Did the Agency prepare a Cost Benefit Analysis (if Yes, attach to form)

- 
- Yes
  - No

**WISCONSIN ETHICS COMMISSION**  
**Proposed Rule Making Order**

**INTRODUCTORY CLAUSE**

The Wisconsin Ethics Commission proposes an order to repeal ETH 25, related to Ethics Commission forms.

**RULE SUMMARY**

- A. **Statutes interpreted:** s. 19.48(2), Stats.
- B. **Statutory authority:** There is no specific statutory authority for an administrative rule prescribing forms, but the Ethics Commission has general authority for the promulgation of rules to carry out the requirements of Chapters 11, 13, and 19.
  - s. 11.1304(17), Stats.:
    - 11.1304 Duties of the ethics commission.** The commission shall:
      - (17) Promulgate rules to administer this chapter.
  - s. 19.48(1), Stats.:
    - 19.48 Duties of the ethics commission.** The commission shall:
      - (1) Promulgate rules necessary to carry out ch. 11, subch. III of ch. 13, and this subchapter.
  - s. 227.11(2)(a), Stats.:
    - 227.11 Extent to which chapter confers rule-making authority.**
      - (2) Rule-making authority is expressly conferred on an agency as follows:
        - (a) Each agency may promulgate rules interpreting the provisions of any statute enforced or administered by the agency, if the agency considers it necessary to effectuate the purpose of the statute, but a rule is not valid if the rule exceeds the bounds of correct interpretation.

- C. **Explanation of agency authority:** The Ethics Commission is required to prescribe and make available forms for use under Chapter 11, subchapter III of Chapter 13, and subchapter III of Chapter 19.

- D. **Related statute(s) or rule(s):** N/A.

- E. **Plain language analysis:** This rule repeals the listing of campaign finance and ethics forms currently in the administrative code. The Ethics Commission will continue to prescribe and

make available the forms necessary to administer Chapter 11, subchapter III of Chapter 13, and subchapter III of Chapter 19.

**F. Summary of, and comparison with, existing or proposed federal regulations:** The Federal Election Commission has the duty to prescribe rules, regulations and forms to carry out provisions of the Federal Election Campaign Act. 52 U.S.C. § 30111. There is no existing or proposed regulation that is intended to address the prescription of specific forms.

**G. Comparison with similar rules in adjacent states:**

Illinois: The State Board of Elections publishes official forms but no statute, administrative rule, or code prescribes such forms. ILL. ADMIN. CODE tit. 26 § 100.20.

Iowa: Requires the Iowa Ethics and Campaign Finance Disclosure Board make all necessary forms available but no statute, administrative rule, or code prescribes such forms. IOWA CODE § 68.201.

Michigan: Designated forms are determined at the discretion of the Secretary of State which oversees campaign finance disclosure and lobbying activities, but no statute, administrative rule, or code prescribes such forms. MICH. COMP. LAWS § 169.218.

Minnesota: Requires reports and statements to be submitted on electronic forms provided by the Campaign and Public Disclosure Board, unless a waiver for paper forms has been approved. There is no statute, administrative rule or code which prescribes such forms. MINN. R. 4501.0500 (2006).

**H. Summary of factual data and analytical methodologies:** N/A

**I. Analysis and supporting documentation used to determine effect on small businesses:**  
N/A

**J. Effect on small business:** N/A

**K. Agency contact person:**

David P. Buerger  
David.Buerger@wisconsin.gov  
(608) 267-0951

**L. Place where comments are to be submitted and deadline for submission:**

Written comments on the proposed rule will be accepted and receive consideration if they are received by June 6, 2017. Written comments should be addressed by mail to: David Buerger, P.O. Box 7984, Madison, WI 53707-7984; or by email to: eth.rulecomments@wi.gov.

Fiscal Estimate: The creation of this rule does not affect business.

Initial Regulatory Flexibility Analysis: The creation of this rule has no fiscal effect.

**TEXT OF RULE**

SECTION 1. Chapter ETH 25 is repealed.

SECTION 2. EFFECTIVE DATE.

This rule shall take effect on the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.22 (2), Stats.

**Notice of Submittal of Proposed Rule to  
Legislative Council Rules Clearinghouse**

On May 10, 2017, the Ethics Commission submitted a proposed rule to the Wisconsin Legislative Council Clearinghouse pursuant to s. 227.15 (1), Wis. Stats.

**Analysis**

The proposed rule repeals Chapter ETH 25 in its entirety. The Ethics Commission continues to prescribe a variety of forms necessary to the proper administration of Chapter 11, subchapter III of Chapter 13, and subchapter III of Chapter 19; as authorized by WIS. STAT. § 19.48(2).

**Statement of Scope**

The scope statement for this rule, SS 034-17, was approved by the Governor on April 4, 2017, published in Register No. 736A2, on April 10, 2017, and approved by the Ethics Commission on March 7, 2017.

**Agency Procedure for Promulgation**

A public hearing is required and will be held on June 7, 2017.

**Agency Organizational Unit Primarily Responsible for Promulgating Rule**

Ethics Commission

**Agency Contact Person**

David P. Buerger  
P.O. Box 7984, Madison, WI 53707-7984  
[David.Buerger@wisconsin.gov](mailto:David.Buerger@wisconsin.gov)  
(608) 267-0951

## **Notice of Hearing**

The Wisconsin Ethics Commission announces that it will hold a public hearing on a permanent rule to repeal ch. ETH 25 relating to Ethics Commission forms, at the time and place shown below.

### **Hearing Information**

Date: June 7, 2017

Time: 9:00 A.M.

Location: 212 East Washington Avenue, 3<sup>rd</sup> Floor, Madison, WI 53703

### **Appearances at the Hearing and Submittal of Written Comments**

The proposed rule may be reviewed at <http://docs.legis.wisconsin.gov/code> and <https://ethics.wi.gov/Pages/Resources/StatutesAndRules.aspx>.

Written comments may be submitted to David Buerger, Staff Counsel, Wisconsin Ethics Commission, P.O. Box 7984, Madison, WI 53707-7984, or by email to [eth.rulecomments@wi.gov](mailto:eth.rulecomments@wi.gov). Written comments must be received no later than June 6, 2017 to be included in the record of rulemaking proceedings.

Individuals who wish to provide their comments in person at the hearing are encouraged to also submit a written copy of their testimony for inclusion in the record.

### **Initial Regulatory Flexibility Analysis**

The proposed rule will not have an effect on small businesses, as defined under s. 227.114 (1).

1. Type of Estimate and Analysis <input checked="" type="checkbox"/> Original <input type="checkbox"/> Updated <input type="checkbox"/> Corrected														
2. Administrative Rule Chapter, Title and Number ETH 25 – Forms														
3. Subject Forms prescribed by the Ethics Commission.														
4. Fund Sources Affected <input type="checkbox"/> GPR <input type="checkbox"/> FED <input type="checkbox"/> PRO <input type="checkbox"/> PRS <input type="checkbox"/> SEG <input type="checkbox"/> SEG-S			5. Chapter 20, Stats. Appropriations Affected N/A											
6. Fiscal Effect of Implementing the Rule <table> <tr> <td><input checked="" type="checkbox"/> No Fiscal Effect</td> <td><input type="checkbox"/> Increase Existing Revenues</td> <td><input type="checkbox"/> Increase Costs</td> </tr> <tr> <td><input type="checkbox"/> Indeterminate</td> <td><input type="checkbox"/> Decrease Existing Revenues</td> <td><input type="checkbox"/> Could Absorb Within Agency's Budget</td> </tr> <tr> <td></td> <td></td> <td><input type="checkbox"/> Decrease Cost</td> </tr> </table>						<input checked="" type="checkbox"/> No Fiscal Effect	<input type="checkbox"/> Increase Existing Revenues	<input type="checkbox"/> Increase Costs	<input type="checkbox"/> Indeterminate	<input type="checkbox"/> Decrease Existing Revenues	<input type="checkbox"/> Could Absorb Within Agency's Budget			<input type="checkbox"/> Decrease Cost
<input checked="" type="checkbox"/> No Fiscal Effect	<input type="checkbox"/> Increase Existing Revenues	<input type="checkbox"/> Increase Costs												
<input type="checkbox"/> Indeterminate	<input type="checkbox"/> Decrease Existing Revenues	<input type="checkbox"/> Could Absorb Within Agency's Budget												
		<input type="checkbox"/> Decrease Cost												
7. The Rule Will Impact the Following (Check All That Apply) <table> <tr> <td><input type="checkbox"/> State's Economy</td> <td><input type="checkbox"/> Specific Businesses/Sectors</td> </tr> <tr> <td><input type="checkbox"/> Local Government Units</td> <td><input type="checkbox"/> Public Utility Rate Payers</td> </tr> <tr> <td colspan="2"><input type="checkbox"/> Small Businesses (<b>if checked, complete Attachment A</b>)</td> </tr> </table>						<input type="checkbox"/> State's Economy	<input type="checkbox"/> Specific Businesses/Sectors	<input type="checkbox"/> Local Government Units	<input type="checkbox"/> Public Utility Rate Payers	<input type="checkbox"/> Small Businesses ( <b>if checked, complete Attachment A</b> )				
<input type="checkbox"/> State's Economy	<input type="checkbox"/> Specific Businesses/Sectors													
<input type="checkbox"/> Local Government Units	<input type="checkbox"/> Public Utility Rate Payers													
<input type="checkbox"/> Small Businesses ( <b>if checked, complete Attachment A</b> )														
8. Would Implementation and Compliance Costs Be Greater Than \$20 million? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No														
9. Policy Problem Addressed by the Rule The proposed rule repeals Chapter ETH 25 in its entirety. The Ethics Commission is not required to prescribe its forms by rule. Maintaining a list of forms in administrative rule is cumbersome and unnecessary.														
10. Summary of the businesses, business sectors, associations representing business, local governmental units, and individuals that may be affected by the proposed rule that were contacted for comments. N/A														
11. Identify the local governmental units that participated in the development of this EIA. N/A														
12. Summary of Rule's Economic and Fiscal Impact on Specific Businesses, Business Sectors, Public Utility Rate Payers, Local Governmental Units and the State's Economy as a Whole (Include Implementation and Compliance Costs Expected to be Incurred) The Commission finds that the proposed rule will have no economic impact on small businesses.														
13. Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule Promulgating the rule would simply remove the list of campaign finance forms and ethics forms from the administrative code. The Commission would continue to prescribe forms necessary for the administration of Chapter 11, subchapter III of Chapter 13, and subchapter III of Chapter 19; and make such forms available on its website and its office. No new policy is being proposed.  The alternative would be to either leave the rule as it currently exists or amend it to bring it up to date with current forms prescribed by the Commission. Leaving the rule as it currently exists could confuse the regulated community as the rule is significantly out of date and references forms that are no longer in use. Amending the rule to bring it up to date is possible, but not ideal due to cumbersome nature of the administrative rulemaking process.														
14. Long Range Implications of Implementing the Rule Promulgating the rule would permit the Commission to prescribe forms as necessary to comply with Chapter 11, subchapter III of Chapter 13, and subchapter III of Chapter 19; without engaging the rulemaking process.														
15. Compare With Approaches Being Used by Federal Government														

Federal Election Commission has the duty to prescribe rules, regulations and forms to carry out provisions of the Federal Election Campaign Act. 52 U.S.C. § 30111. There is no existing or proposed regulation that is intended to address the prescription of specific forms.

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16. Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota)

Illinois: The State Board of Elections publishes official forms but no statute, administrative rule, or code prescribes such forms. Ill. Admin. Code tit. 26 § 100.20.

Iowa: Requires the Iowa Ethics and Campaign Finance Disclosure Board make all necessary forms available but no statute, administrative rule, or code prescribes such forms. Iowa Code § 68.201.

Michigan: Designated forms are determined at the discretion of the Secretary of State which oversees campaign finance disclosure and lobbying activities, but no statute, administrative rule, or code prescribes such forms. Mich. Comp. Laws § 169.218.

Minnesota: Requires reports and statements to be submitted on electronic forms provided by the Campaign and Public Disclosure Board, unless a waiver for paper forms has been approved. There is no statute, administrative rule or code which prescribes such forms. Minn. R. 4501.0500 (2006).

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17. Contact Name

David P. Buerger

18. Contact Phone Number

(608) 267-0951

This document can be made available in alternate formats to individuals with disabilities upon request.

## **ATTACHMENT A**

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1. Summary of Rule's Economic and Fiscal Impact on Small Businesses (Separately for each Small Business Sector, Include Implementation and Compliance Costs Expected to be Incurred)

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2. Summary of the data sources used to measure the Rule's impact on Small Businesses

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3. Did the agency consider the following methods to reduce the impact of the Rule on Small Businesses?

- Less Stringent Compliance or Reporting Requirements
- Less Stringent Schedules or Deadlines for Compliance or Reporting
- Consolidation or Simplification of Reporting Requirements
- Establishment of performance standards in lieu of Design or Operational Standards
- Exemption of Small Businesses from some or all requirements
- Other, describe:

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4. Describe the methods incorporated into the Rule that will reduce its impact on Small Businesses

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5. Describe the Rule's Enforcement Provisions

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6. Did the Agency prepare a Cost Benefit Analysis (if Yes, attach to form)

- 
- Yes
  - No

**WISCONSIN ETHICS COMMISSION**  
**Proposed Rule Making Order**

**INTRODUCTORY CLAUSE**

The Wisconsin Ethics Commission proposes an order to create ETH 26, related to settlement of campaign finance, lobbying, and ethics violations.

**RULE SUMMARY**

- A. **Statutes interpreted:** s. 19.49(2)(b)10., Stats.
- B. **Statutory authority:** The Wisconsin Ethics Commission is specifically directed to promulgate this rule pursuant to s. 19.49(2)(b)10., Stats.
  - 10.** The commission shall, by rule, prescribe categories of civil offenses which the commission will agree to compromise and settle without a formal investigation upon payment of specified amounts by the alleged offender.

The Commission also has general authority for the promulgation of rules to carry out the requirements of Chapters 11, 13, and 19.

s. 11.1304(17), Stats.:

- 11.1304 Duties of the ethics commission.** The commission shall:
  - (17) Promulgate rules to administer this chapter.

s. 19.48(1), Stats.:

- 19.48 Duties of the ethics commission.** The commission shall:
  - (1) Promulgate rules necessary to carry out ch. 11, subch. III of ch. 13, and this subchapter.

s. 227.11(2)(a), Stats.:

- 227.11 Extent to which chapter confers rule-making authority.**
  - (2) Rule-making authority is expressly conferred on an agency as follows:
    - (a) Each agency may promulgate rules interpreting the provisions of any statute enforced or administered by the agency, if the agency considers it necessary to effectuate the purpose of the statute, but a rule is not valid if the rule exceeds the bounds of correct interpretation.

- C. **Explanation of agency authority:** The Ethics Commission is required to prescribe, by rule, categories of civil offenses which the Commission will agree to compromise and settle

without a formal investigation upon payment of specified amounts by the alleged offender. The Commission may only settle alleged offenses, which in the opinion of the Commission, constitute a minor violation, a violation caused by excusable neglect, or which for other good cause shown is not in the public interest to prosecute.

- D. **Related statute(s) or rule(s):** ss. 11.1400, 13.69, and 19.579, Stats.
- E. **Plain language analysis:** The rule sets forth categories of civil offenses and specifies the amounts for which the Commission will agree to settle various violations of Chapter 11, subchapter III of Chapter 13, and subchapter III of Chapter 19.
- F. **Summary of, and comparison with, existing or proposed federal regulations:** There is no existing or proposed federal regulation that is intended to address the activities to be regulated by the proposed rule.

G. **Comparison with similar rules in adjacent states:**

Illinois: Permits settlement of similar campaign finance violations subject to approval by the state board of elections. The board of elections publishes the factors they will consider in offering a settlement. State law prescribes standard late fees for various reports and administrative code further details the penalties to be assessed for late reports based on the total amount of receipts, expenditures, and the committee's balance at the end of the report. ILL. ADMIN. CODE tit. 26 § 125.425. These civil penalties range from the lowest category of \$25 per business day for the first violation, \$50 per business day for the second violation, and \$75 per business day for the third and each subsequent violation; to the highest category of \$50 per business day for the first violation, \$100 per business day for the second violation, and \$200 per business day for the third and each subsequent violation. *Id.*

Iowa: Permits settlement of similar violations subject to approval by the Ethics and Campaign Finance Disclosure Board, but does not publish a schedule of potential settlement terms for violations. The Board is authorized to administratively resolve late reports by assessment of automatic civil penalties as established by the Board. IOWA ADMIN. CODE r. 351—9.4(5).

Michigan: Permits settlement of similar violations subject to approval by the Secretary of State. The Secretary of State publishes information related to good cause waivers of late filing fees, but does not have a full settlement schedule for all violations. State law provides a standard \$10 per business day late fee for campaign registration statements. MICH. COMP. LAWS § 169.224. State law also provides an escalating penalty for late campaign finance reports of \$25 for each business day the report remains unfiled, an additional \$25 for each business day after the first three business days the report remains unfiled, and an additional \$50 for each business day after the first ten business days the report remains unfiled. MICH. COMP. LAWS § 169.232.

Minnesota: Permits settlement of similar campaign finance, lobbying, and ethics violations with the approval of the Campaign Finance and Public Disclosure Board. The manuals published by this Board state various amounts as late fees for different reports. Additionally, the Office of Administrative Hearings uses a penalty matrix designed by the Secretary of State's office to provide guidance for most campaign finance violations.

H. **Summary of factual data and analytical methodologies:** N/A

**I. Analysis and supporting documentation used to determine effect on small businesses:**  
N/A

**J. Effect on small business:** N/A

**K. Agency contact person:**

David P. Buerger  
David.Buerger@wisconsin.gov  
(608) 267-0951

**L. Place where comments are to be submitted and deadline for submission:**

Written comments on the proposed rule will be accepted and receive consideration if they are received by June 6, 2017. Written comments should be addressed by mail to: David Buerger, P.O. Box 7984, Madison, WI 53707-7984; or by email to: eth.rulecomments@wi.gov.

Fiscal Estimate: The creation of this rule does not affect business.

Initial Regulatory Flexibility Analysis: The creation of this rule has no fiscal effect.

#### **TEXT OF RULE**

SECTION 1. Chapter ETH 26 is created to read:

### **CHAPTER ETH 26 SETTLEMENT OFFER SCHEDULE**

**ETH 26.01 Definitions.** In this chapter:

- (1)** “15 day report” means the report referred to in s. 13.67, Stats.
- (2)** “Commission” means the Wisconsin Ethics Commission.
- (3)** “Continuing report” includes the campaign finance reports due in January and July referred to in ss. 11.0204 (2) (c), (3) (b), (4) (c) and (d), (5) (b) and (c), and (6) (a) and (b); 11.0304 (2) (c), (3) (b), (4) (c) and (d), and (5) (b) and (c); 11.0404 (2) (c) and (d), and (3) (b) and (c); 11.0504 (2) (c), (3) (b), (4) (c) and (d), and (5) (b) and (c); 11.0604 (2) (c), (3) (b), (4) (c) and (d); and (5) (b) and (c); 11.0704 (2), (3) (a), (4) (a) and (b), and (5) (a) and (b); 11.0804 (2) (c), (3) (b), (4) (c) and (d), and (5) (b) and (c); and 11.0904 (2) (c), (3) (b), (4) (c) and (d), and (5) (b) and (c), Stats.
- (4)** “Contribution” has the meaning given in s. 11.0101 (8), Stats.
- (5)** “Contributor” means a person or committee who makes a contribution as defined under s. 11.0101 (8), Stats.

- (6) “Contributor information” includes the information required by ss. 11.0204 (1) (a) 1. and 3.; 11.0304 (1) (a) 1. and 3.; 11.0404 (1) (a) 1. and 3.; 11.0504 (1) (a) 1. and 3.; 11.0604 (1) (a) 1. and 3.; 11.0704 (1) (b) 1. and 2.; 11.0804 (1) (a) 1. and 2.; and 11.0904 (1) (a) 1. and 3., Stats.
- (7) “Disbursement” has the meaning given in s.11.0101 (10), Stats.
- (8) “Disbursement information” includes the information required by ss. 11.0204 (1) (a) 8., 11.0304 (1) (a) 8., 11.0404 (1) (a) 8., 11.0504 (1) (a) 8., 11.0604 (1) (a) 8., 11.0804 (1) (a) 8., and 11.0904 (1) (a) 8., Stats., regarding disbursements greater than \$20.
- (9) “Excess contribution” means a contribution that exceeds any of the limits set in ss. 11.1101, 11.1104, 11.1107, and 11.1108, Stats.
- (10) “Filing fee” means the fee required by s. 11.0102 (2), Stats.
- (11) “Late contribution” means a contribution or contributions of \$1,000 or more cumulatively from a single contributor made later than 15 days prior to a primary or election as described in ss. 11.0204 (7), 11.0304 (7), and 11.0404 (4), Stats.
- (12) “Late contribution report” includes the campaign finance reports referred to in ss. 11.0204 (7), 11.0304 (7), and 11.0404 (4), Stats., that are due no later than 72 hours after receiving a late contribution if the late contribution was not previously included in the registrant’s preprimary or preelection report.
- (13) “Lobbyist” has the meaning given in s. 13.62 (11), Stats.
- (14) “Post-election campaign finance report” includes the campaign finance reports referred to in ss. 11.0204 (3) (c) and (5) (d); 11.0304 (3) (c) and (5) (d); 11.0404 (3) (d); 11.0504 (3) (c) and (5) (d); 11.0604 (3) (c) and (5) (d); and 11.0704 (3) (b) and (5) (c), Stats., that are due no earlier than 23 days and no later than 45 days after a special election.
- (15) “Preelection campaign finance report” includes the campaign finance reports referred to in ss. 11.0204 (2) (b), (3) (a), (4) (b), and (5) (a); 11.0304 (2) (b), (3) (a), (4) (b), and (5) (a); 11.0404 (2) (b) and (3) (a); 11.0504 (2) (b), (3) (a), (4) (b), and (5) (a); 11.0604 (2) (b), (3) (a), (4) (b), and (5) (a); 11.0804 (2) (b), (3) (a), (4) (b), and (5) (a); and 11.0904 (2) (b), (3) (a), (4) (b), and (5) (a), Stats., that are due no earlier than 14 days and no later than eight days before an election.
- (16) “Preprimary campaign finance report” includes the campaign finance reports referred to in ss. 11.0204 (2) (a) and (4) (a); 11.0304 (2) (a) and (4) (a); 11.0404 (2) (a); 11.0504 (2) (a) and (4) (a); 11.0604 (2) (a) and (4) (a); 11.0804 (2) (a) and (4) (a); and 11.0904 (2) (a) and (4) (a), Stats., that are due no earlier than 14 days and no later than eight days before a primary.

- (17) “Principal” has the meaning given in s. 13.62 (12), Stats.
- (18) “Prior offense” means a previous violation of the same provision within the past three years.
- (19) “Registrant” means an individual or organization registered with the ethics commission.
- (20) “September report” includes the campaign finance reports due in September referred to in ss. 11.0204 (4) (d), (5) (c), and (6) (b); 11.0304 (4) (d) and (5) (c); 11.0404 (2) (d) and (3) (c); 11.0504 (4) (d) and (5) (c); 11.0604 (4) (d) and (5) (c); 11.0704 (4) (b) and (5) (b); 11.0804 (4) (d) and (5) (c), and 11.0904 (4) (d) and (5) (c).
- (21) “Specific express advocacy report” includes the campaign finance reports referred to in ss. 11.0505, 11.0605, and 11.1001, Stats., that are due no later 72 hours after making a disbursement on express advocacy during the period beginning on the day that is 60 days prior to the day of the primary or election and ending on the day of the primary or election.
- (22) “Statement of economic interests” means a statement of economic interests that an individual is required to file under s. 19.43, Stats.
- (23) “Statement of lobbying activity and expenditures” means the statement referred to in s. 13.68, Stats.

## **ETH 26.02 Settlement of campaign finance violations.**

- (1) FAILURE TO TIMELY FILE A CONTINUING REPORT OR SEPTEMBER REPORT.
  - (a) If the commission receives a continuing or September report within 30 days after the due date for that report, the commission may issue a written warning to the registrant.
  - (b) If the commission receives a continuing or September report within 31 to 60 days after the due date for that report, the commission may extend a settlement offer to the registrant as follows:
    1. If the registrant has committed no prior offenses, a settlement offer of \$100 may be extended.
    2. If the registrant has committed one or more prior offenses, a settlement offer of \$200 may be extended.
  - (c) If a continuing or September report is received within 61 to 90 days after the due date for that report, the commission may extend a settlement offer to the registrant as follows:
    1. If no prior offenses have been committed by the registrant, a settlement offer of \$200 may be extended.

2. If a prior offense has been committed by the registrant, a settlement offer of \$300 may be extended.
- (d) If a continuing or September report is received within 91 to 120 days after the due date for that report, the commission may extend a settlement offer to the registrant as follows:
1. If no prior offenses have been committed by the registrant, a settlement offer of \$300 may be extended.
  2. If a prior offense has been committed by the registrant, a settlement offer of \$400 may be extended.
- (e) If a continuing or September report is received more than 120 days after the due date for that report, the commission may extend a settlement offer of \$500.
- (2) FAILURE TO TIMELY FILE A PREPRIMARY, PREELECTION, OR POST-ELECTION REPORT.**
- (a) If a preprimary, preelection, or post-election report is received one day after the due date for that report, the commission may extend a settlement offer of \$100.
  - (b) If a preprimary, preelection, or post-election report is received two days after the due date for that report, the commission may extend a settlement offer of \$150.
  - (c) If a preprimary, preelection, or post-election report is received three days after the due date for that report, the commission may extend a settlement offer of \$200.
  - (d) If a preprimary, preelection, or post-election report is received four days after the due date for that report, the commission may extend a settlement offer of \$250.
  - (e) If a preprimary, preelection, or post-election report is received five days after the due date for that report, the commission may extend a settlement offer of \$300.
  - (f) If a preprimary, preelection, or post-election report is received six days after the due date for that report, the commission may extend a settlement offer of \$350.
  - (g) If a preprimary, preelection, or post-election report is received seven days after the due date for that report, the commission may extend a settlement offer of \$400.
  - (h) If a preprimary, preelection, or post-election report is received eight days after the due date for that report, the commission may extend a settlement offer of \$450.
  - (i) If a preprimary, preelection, or post-election report is received nine or more days after the due date for that report, the commission may extend a settlement offer of \$500.
- (3) FAILURE TO TIMELY PAY A FILING FEE.**

- (a) If a filing fee is received within one to 15 days after the due date, the commission may issue a written warning to the registrant.
- (b) If a filing fee is received within 16 to 45 days after the due date, the commission may extend a settlement offer of \$300.
- (c) If a filing fee is received within 46 to 90 days after the due date, the commission may extend a settlement offer of \$500.
- (d) If a filing fee is received more than 90 days after the due date, the commission may extend a settlement offer of \$800.

**(4) FAILURE TO TIMELY FILE A LATE CONTRIBUTION REPORT.** If a registrant fails to timely file a late contribution report, the commission may extend a settlement offer of five percent of the total amount of the late contribution.

**(5) FAILURE TO TIMELY FILE A SPECIFIC EXPRESS ADVOCACY REPORT.** If a registrant fails to timely file a specific express advocacy report, the commission may extend a settlement offer of five percent of the disbursement.

**(6) FAILURE TO PROVIDE CONTRIBUTOR INFORMATION.**

- (a) If contributor information is not included on a campaign finance report, but is received within 30 days after notification from the commission, the commission may issue a written warning to the registrant.
- (b) If contributor information is not included on a campaign finance report, but is received more than 30 days after notification from the commission, the commission may extend a settlement offer of \$100 plus 10 percent of the contributions with incomplete information.

**(7) FAILURE TO PROVIDE DISBURSEMENT INFORMATION.**

- (a) If disbursement information is not included on a campaign finance report, but is received within 30 days after notification from the commission, the commission may issue a written warning to the registrant.
- (b) If disbursement information is not included on a campaign finance report, but is received more than 30 days after notification from the commission, the commission may issue a settlement offer of \$100 plus 10 percent of the contributions with incomplete information.

**(8) CASH BALANCE DISCREPANCIES.** If a registrant's cash balance at the beginning of a reporting period does not match the registrant's cash balance reported at the end of the prior reporting

period; or the reported beginning balance of a report, plus all receipts, minus all expenditures, does not equal the reported ending balance of that report; and the cash balance is corrected:

- (a) Within 30 days after notification from the commission, the commission may issue a written warning to the registrant.
- (b) More than 30 days after notification from the commission, the commission may extend a settlement offer of \$100 plus 10 percent of the cash balance discrepancy.

**(9) EXCEEDING CONTRIBUTION LIMITS.** Any registrant that receives an excess contribution may be extended a settlement offer in the amount by which the contribution exceeded the applicable limit.

**(10) PROHIBITED CORPORATE, UNION, ASSOCIATION, OR TRIBAL CONTRIBUTIONS.**

- (a) Any registrant that receives a contribution contrary to s. 11.1112, Stats., may be extended a settlement offer in the amount of 1.5 times the amount of the contribution, up to a maximum of \$500 plus surrendering the amount of the unlawful contribution.
- (b) Any person that makes a contribution contrary to s. 11.1112, Stats., may be extended a settlement offer in the amount of 1.5 times the amount of the contribution.

**(11) PROHIBITED LOBBYIST CONTRIBUTIONS.**

- (a) Any candidate committee that receives a contribution in violation of s. 13.625, Stats., may be extended a settlement offer requiring the return of the contribution to the lobbyist.
- (b) Any lobbyist that makes a contribution in violation of s. 13.625, Stats., may be extended a settlement offer in the amount of 1.5 times the amount of the contribution, up to a maximum of \$1,000.

**(12) AGGRAVATING OR MITIGATING CIRCUMSTANCES.** Notwithstanding the settlement offer amounts specified in this chapter, the commission may consider aggravating or mitigating circumstances in determining the terms of any settlement offer that may be extended.

### **ETH 26.03 Settlement of lobbying violations.**

- (1) FAILURE TO TIMELY FILE A STATEMENT OF LOBBYING ACTIVITY AND EXPENDITURES.**
- (a) If the statement of lobbying activity and expenditures is received within two business days after the due date for that report:
    1. If no prior offenses have been committed by the principal, no penalty may be imposed.

2. If a prior offense has been committed by the principal, the commission may issue a written warning to the principal.

(b) If the statement of lobbying activity and expenditures is received within three to five days after the due date for that report:

1. If no prior offenses have been committed by the principal, the commission may issue a written warning to the principal.
2. If a prior offense has been committed by the principal, the commission may extend a settlement offer of \$50.

(c) If the statement of lobbying activity and expenditures is received within six to 15 days after the due date for that report:

1. If no prior offenses have been committed by the principal, the commission may issue a written warning to the principal.
2. If a prior offense has been committed by the principal, the commission may extend a settlement offer of \$100.

(d) If the statement of lobbying activity and expenditures is received within 16 to 29 days after the due date for that report:

1. If no prior offenses have been committed by the principal, the commission may extend a settlement offer of \$50.
2. If a prior offense has been committed by the principal, the commission may extend a settlement offer of \$250.

(e) If the statement of lobbying activity and expenditures is received 30 days or more after the due date for that report:

1. If no prior offenses have been committed by the principal, the commission may extend a settlement offer of \$100.
2. If a prior offense has been committed by the principal, the commission may extend a settlement offer of \$500.

**(2) FAILURE TO TIMELY FILE A 15 DAY REPORT.**

(a) If a 15 day report is not timely received and the principal has no prior offenses:

1. If the unreported interest is less than 10 percent of the principal's total effort, the commission may issue a written warning to the principal.

2. If the unreported interest is 10 percent or more of the principal's total effort, the commission may extend a settlement offer of \$25 per late reported interest.

(b) If a 15 day report is not timely received and the principal has one prior offense:

1. If the unreported interest is less than 10 percent of the principal's total effort, the commission may extend a settlement offer of \$50 per late reported interest.
2. If the unreported interest is 10 percent or more of the principal's total effort, the commission may extend a settlement offer of \$100 per late reported interest.

(c) If a 15 day report is not timely received and the principal has two or more prior offenses, the commission may extend a settlement offer of \$100 per late reported interest.

**(3) AGGRAVATING OR MITIGATING CIRCUMSTANCES.** Notwithstanding the settlement terms provided in this chapter, the commission may consider aggravating or mitigating circumstances in determining the terms of any settlement offer that may be extended.

#### **ETH 26.04 Settlement of ethics violations.**

##### **(1) FAILURE TO TIMELY FILE A STATEMENT OF ECONOMIC INTERESTS.**

- (a) If the statement of economic interests is received within 15 days after the due date for the statement of economic interests, the commission may issue a written warning to the individual.
- (b) If the statement of economic interests is received 16 or more days after the due date for the statement of economic interests, the commission may extend a settlement offer of \$100 plus \$100 for every additional 15 days.

**(2) AGGRAVATING OR MITIGATING CIRCUMSTANCES.** Notwithstanding the settlement terms provided in this chapter, the commission may consider aggravating or mitigating circumstances in determining the terms of any settlement offer that may be extended.

#### **SECTION 2. EFFECTIVE DATE.**

This rule shall take effect on the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.22 (2), Stats.

**Notice of Submittal of Proposed Rule to  
Legislative Council Rules Clearinghouse**

On May 8, 2017, the Ethics Commission submitted a proposed rule to the Wisconsin Legislative Council Clearinghouse pursuant to s. 227.15 (1), Wis. Stats.

**Analysis**

The proposed rule creates Chapter ETH 26 to carry out the requirements of Chapters 11, 13, and 19, relating to settlement of campaign finance, lobbying, and ethics violations.

**Statement of Scope**

The scope statement for this rule, SS 103-16, was approved by the Governor on October 31, 2016, published in Register No. 731A1, on November 7, 2016, and approved by the Ethics Commission on December 6, 2016.

**Agency Procedure for Promulgation**

A public hearing is required and will be held on June 7, 2017.

**Agency Organizational Unit Primarily Responsible for Promulgating Rule**

Ethics Commission

**Agency Contact Person**

David P. Buerger  
P.O. Box 7984, Madison, WI 53707-7984  
[David.Buerger@wisconsin.gov](mailto:David.Buerger@wisconsin.gov)  
(608) 267-0951

## **Notice of Hearing**

The Wisconsin Ethics Commission announces that it will hold a public hearing on a permanent rule to create ch. ETH 26 relating to settlement of campaign finance, lobbying, and ethics violations; at the time and place shown below.

### **Hearing Information**

Date: June 7, 2017

Time: 9:00 A.M.

Location: 212 East Washington Avenue, 3<sup>rd</sup> Floor, Madison, WI 53703

### **Appearances at the Hearing and Submittal of Written Comments**

The proposed rule may be reviewed at <http://docs.legis.wisconsin.gov/code> and <https://ethics.wi.gov/Pages/Resources/StatutesAndRules.aspx>.

Written comments may be submitted to David Buerger, Staff Counsel, Wisconsin Ethics Commission, P.O. Box 7984, Madison, WI 53707-7984, or by email to [eth.rulecomments@wi.gov](mailto:eth.rulecomments@wi.gov). Written comments must be received no later than June 6, 2017 to be included in the record of rulemaking proceedings.

Individuals who wish to provide their comments in person at the hearing are encouraged to also submit a written copy of their testimony for inclusion in the record.

### **Initial Regulatory Flexibility Analysis**

The proposed rule will not have an effect on small businesses, as defined under s. 227.114 (1).

1. Type of Estimate and Analysis <input checked="" type="checkbox"/> Original <input type="checkbox"/> Updated <input type="checkbox"/> Corrected	
2. Administrative Rule Chapter, Title and Number ETH 26 – Settlement Offer Schedule	
3. Subject Settlement offer schedules for violations of Chs. 11, 13, and 19.	
4. Fund Sources Affected <input type="checkbox"/> GPR <input type="checkbox"/> FED <input type="checkbox"/> PRO <input type="checkbox"/> PRS <input type="checkbox"/> SEG <input type="checkbox"/> SEG-S	5. Chapter 20, Stats. Appropriations Affected N/A
6. Fiscal Effect of Implementing the Rule <input checked="" type="checkbox"/> No Fiscal Effect <input type="checkbox"/> Increase Existing Revenues <input type="checkbox"/> Increase Costs <input type="checkbox"/> Indeterminate <input type="checkbox"/> Decrease Existing Revenues <input type="checkbox"/> Could Absorb Within Agency's Budget <input type="checkbox"/> <input type="checkbox"/> Decrease Cost	
7. The Rule Will Impact the Following (Check All That Apply) <input type="checkbox"/> State's Economy <input type="checkbox"/> Specific Businesses/Sectors <input type="checkbox"/> Local Government Units <input type="checkbox"/> Public Utility Rate Payers <input type="checkbox"/> <input type="checkbox"/> Small Businesses <b>(if checked, complete Attachment A)</b>	
8. Would Implementation and Compliance Costs Be Greater Than \$20 million? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
9. Policy Problem Addressed by the Rule The Commission proposes a rule to comply with the requirement of WIS. STAT. § 19.49(2)(b)10. This statute requires the Commission to prescribe, by rule, categories of civil offenses which the Commission will agree to compromise and settle without a formal investigation upon payment of specified amounts by the alleged offender. The Ethics Commission currently does not have a settlement schedule established in administrative code. There is no new policy being proposed. The proposed rule will simply enshrine the Commission's most recently adopted settlement schedule.	
10. Summary of the businesses, business sectors, associations representing business, local governmental units, and individuals that may be affected by the proposed rule that were contacted for comments. N/A	
11. Identify the local governmental units that participated in the development of this EIA. N/A	
12. Summary of Rule's Economic and Fiscal Impact on Specific Businesses, Business Sectors, Public Utility Rate Payers, Local Governmental Units and the State's Economy as a Whole (Include Implementation and Compliance Costs Expected to be Incurred) The Commission finds that the proposed rule will have no economic impact on small businesses.	
13. Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule Promulgating the rule would provide certainty to the regulated community as to the potential penalties for violations of the laws the Commission administers. It would also permit the Commission to authorize the Commission Administrator to settle the specified alleged offenses on its behalf if the alleged offenses in aggregate do not involve payment of more than \$2,500, which could accelerate the speed with which potential violations could be resolved.  The alternative would be to not create such a rule, but instead continue to rely on the Commission's established settlement schedule. Such inaction could lead to confusion among the regulated community as to what offenses the Commission would settle and the amounts to be paid for various offenses as these have varied over time and between the predecessor agencies and the Ethics Commission. Lack of an administrative rule would also limit the ability of the Commission to delegate settlement authority to the Commission Administrator, which could significantly delay	

resolution of complaints and audit findings.

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**14. Long Range Implications of Implementing the Rule**

Promulgating the rule would permit the Commission to increase the efficiency of resolving violations of the laws the Commission administers.

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**15. Compare With Approaches Being Used by Federal Government**

The Federal Elections Commission (FEC) has an administrative fine program that permits the FEC to impose fines, calculated using published schedules, for violations of the Federal Election Campaign Act. 11 C.F.R. 111.43.

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**16. Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota)**

Illinois: Permits settlement of similar campaign finance violations subject to approval by the state board of elections. The board of elections publishes the factors they will consider in offering a settlement. State law prescribes standard late fees for various reports and administrative code further details the penalties to be assessed for late reports based on the total amount of receipts, expenditures, and the committee's balance at the end of the report. ILL. ADMIN. CODE tit. 26 § 125.425. These civil penalties range from the lowest category of \$25 per business day for the first violation, \$50 per business day for the second violation, and \$75 per business day for the third and each subsequent violation; to the highest category of \$50 per business day for the first violation, \$100 per business day for the second violation, and \$200 per business day for the third and each subsequent violation. *Id.*

Iowa: Permits settlement of similar violations subject to approval by the Ethics and Campaign Finance Disclosure Board, but does not publish a schedule of potential settlement terms for violations. The Board is authorized to administratively resolve late reports by assessment of automatic civil penalties as established by the Board. IOWA ADMIN. CODE r. 351—9.4(5).

Michigan: Permits settlement of similar violations subject to approval by the Secretary of State. The Secretary of State publishes information related to good cause waivers of late filing fees, but does not have a full settlement schedule for all violations. State law provides a standard \$10 per business day late fee for campaign registration statements. MICH. COMP. LAWS § 169.224. State law also provides an escalating penalty for late campaign finance reports of \$25 for each business day the report remains unfiled, an additional \$25 for each business day after the first three business days the report remains unfiled, and an additional \$50 for each business day after the first ten business days the report remains unfiled. MICH. COMP. LAWS § 169.232.

Minnesota: Permits settlement of similar campaign finance, lobbying, and ethics violations with the approval of the Campaign Finance and Public Disclosure Board. The manuals published by this Board state various amounts as late fees for different reports. Additionally, the Office of Administrative Hearings uses a penalty matrix designed by the Secretary of State's office to provide guidance for most campaign finance violations.

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17. Contact Name

David P. Buerger

18. Contact Phone Number

(608) 267-0951

---

This document can be made available in alternate formats to individuals with disabilities upon request.

## **ATTACHMENT A**

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1. Summary of Rule's Economic and Fiscal Impact on Small Businesses (Separately for each Small Business Sector, Include Implementation and Compliance Costs Expected to be Incurred)

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2. Summary of the data sources used to measure the Rule's impact on Small Businesses

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3. Did the agency consider the following methods to reduce the impact of the Rule on Small Businesses?

- Less Stringent Compliance or Reporting Requirements
- Less Stringent Schedules or Deadlines for Compliance or Reporting
- Consolidation or Simplification of Reporting Requirements
- Establishment of performance standards in lieu of Design or Operational Standards
- Exemption of Small Businesses from some or all requirements
- Other, describe:

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4. Describe the methods incorporated into the Rule that will reduce its impact on Small Businesses

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5. Describe the Rule's Enforcement Provisions

---

6. Did the Agency prepare a Cost Benefit Analysis (if Yes, attach to form)

- 
- Yes
  - No



# Wisconsin Ethics Commission

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*Sent via email only*

[Date Approved]

Mike Wittenwyler  
Godfrey & Kahn, S.C.  
PO Box 2719  
Madison, WI 53701

RE: Advisory Opinion Request – Regulation of Section 527 Organizations and Nonresident PACs

Dear Atty. Wittenwyler:

On February 1, 2017, you requested an advisory opinion of the Commission pursuant to [Wis. STAT. § 19.46\(2\)](#) regarding the registration thresholds, contribution limits, and source restrictions applicable to section 527 organizations and nonresident PACs. The Wisconsin Ethics Commission met March 7, 2017, considered your request at a public hearing at which you provided comment, and directed staff to issue this informal opinion.

It is the opinion of the Commission that a section 527 organization or nonresident PAC is only required to register as a committee in Wisconsin if it meets the applicable chapter 11 thresholds; that if required to register in Wisconsin as a committee, a section 527 organization or nonresident PAC must abide by Wisconsin source restrictions and contribution limits applicable to that committee; and that if not required to register in Wisconsin as a committee, a section 527 organization or nonresident PAC must abide by the contribution limits applicable to “other persons.” The Commission declines to offer an opinion as to the applicability of source restrictions when a section 527 organization or nonresident PAC is not required to register in Wisconsin but would like to contribute to a Wisconsin committee, but instead refers this issue to the standing legislative oversight committees.

## Analysis

Section 527 organizations are so named because they are formed pursuant to section 527 of the Internal Revenue Code. Section 527 organizations are tax-exempt entities that are established and operated primarily for the purpose of influencing the selection, nomination, or appointment of any individual to any federal, state, or local public office, or office in a political organization. Section 527 organizations may raise and spend unlimited money for political activities without source restrictions, but they must also disclose their donors and cannot coordinate their activities with any campaign. All organizations that register and file reports with the Federal Election

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March 14, 2017

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Commission are 527 organizations, but not all 527 organizations are federally registered political committees. Notable section 527 organizations include such groups as the Republican Governors Association, American Crossroads, and EMILY's List.

A nonresident PAC is a committee that does not maintain an office or street address in Wisconsin. [Wis. STAT. § 11.0103\(5\)](#). The term can cover PACs and independent expenditure only committees (Super PACs) registered in other states or with the Federal Election Commission. Nonresident PACs, as they operate outside of Wisconsin, would be limited in the contributions they can receive and the sources they can receive money from depending on the jurisdiction they are registered in.

### 1. Registration and Reporting Thresholds

Like any other political committee, a 527 organization or nonresident PAC is only required to register with the Ethics Commission and report on its activities upon reaching a specified amount of activity on elections for state or local office in Wisconsin. An organization is required to register as a PAC if: (1) the organization's major purpose is express advocacy or more than 50% of its total spending in a 12-month period is on express advocacy, expenditures made to support or defeat a referendum, and contributions made to a candidate committee, legislative campaign committee, or political party; and (2) the organization makes or accepts contributions, makes disbursements, or incurs obligations in excess of \$2,500 in a calendar year. [WIS. STAT. §§ 11.0101\(25\), 11.0502\(1\)](#).

An organization is required to register as an independent expenditure committee if: (1) the organization's major purpose is making independent expenditures or more than 50% of its spending in a 12-month period is on independent expenditures and expenditures in support or opposition of a referendum; and, (2) it makes or accepts contributions, makes disbursements, or incurs obligations in excess of \$2,500 in a calendar year. [WIS. STAT. §§ 11.0101\(17\), 11.0602\(1\)](#).

An organization may also be required to file reports as an “other person” with the Commission if it spends more than \$2,500 on express advocacy during the period beginning on the day that is 60 days prior to the day of the primary or election for which the express advocacy was made and ending on the day of the election. [WIS. STAT. § 11.1001\(1\)\(a\)](#).

Nonresident committees, if required to register, must report to the Ethics Commission all disbursements made and obligations incurred with respect to an election for a state or local office in this state as well as all contributions from within the state. [WIS. STAT. § 11.0103\(5\)](#).

### 2. Contribution Limits

In addition to the above reporting requirements, if a 527 organization or nonresident PAC registers as a PAC in Wisconsin, Wisconsin PAC contribution limits to candidates apply. If the organization registers as an independent expenditure committee then like any other Wisconsin independent expenditure committee, it cannot make contributions to candidates. [WIS. STAT. § 11.0601\(3\)\(b\)](#).

If a section 527 organization or nonresident PAC is not required to register in Wisconsin, it may still contribute to Wisconsin candidates if it is not otherwise prohibited by [Wis. STAT. § 11.1112](#) (e.g., corporations). Referred to as “other persons” in Chapter 11, these entities are not required to register and are subject to the same contribution limits as PACs. [Wis. STAT. § 11.1101\(4\)](#).

### 3. Source Restrictions

If a section 527 organization or nonresident PAC registers as a PAC in Wisconsin, it is prohibited from accepting contributions from corporations, associations, labor unions, or tribes. [Wis. STAT. § 11.1112](#). If an entity registers as an independent expenditure committee, no source restrictions apply. *Id.* If an entity is not required to register in Wisconsin, but chooses to contribute to Wisconsin committees, the law is unclear as to what, if any, source restrictions would apply.

Wisconsin’s source restriction provision, [Wis. STAT. § 11.1112](#), states:

“No foreign or domestic corporation, no association organized under ch. [185](#) or [193](#), no labor organization, and no federally recognized American Indian Tribe may make a contribution to a committee, other than an independent expenditure committee or referendum committee, but may make a contribution to a segregated fund as provided under s. [11.1104 \(6\)](#) in amounts not to exceed \$12,000 in the aggregate in a calendar year.”

“Committee” is defined by [Wis. STAT. § 11.0101\(6\)](#) as:

“A candidate committee, legislative campaign committee, political action committee, independent expenditure committee, political party, recall committee, and referendum committee.”

The absence of language addressing unregistered entities in [Wis. STAT. § 11.1112](#) is expected as the entity may have no ties to Wisconsin and those sources may be perfectly permissible in the entity’s home jurisdiction. However, when such an unregistered entity chooses to contribute to a Wisconsin committee there may be reason to question whether the entity should be required to make such a contribution only from sources of funds permissible in Wisconsin. Federal campaign finance law specifically addresses this type of situation and requires the unregistered contributor to make donations only from funds that are permissible under federal law. See 52 U.S.C. § 30125; 11 CFR § 102.5.

The courts have said, “If a statute fails to cover a particular situation, and the omission should be cured, the remedy lies with the Legislature, not the courts.” *La Crosse Lutheran Hosp. v. La Crosse County*, 133 Wis. 2d. 335, 338 (1986). Accordingly, the Commission will not read words into the statute that are not there, but instead refers the matter to the standing legislative oversight committees.

Finally, until the Legislature can address this issue, the Commission advises that corporations, associations, labor organizations, or tribes, while not prohibited from making genuine

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contributions to section 527 organizations and nonresident PACs, are prohibited using these entities as strawman donors in an attempt to circumvent Wisconsin law. [WIS. STAT. § 11.1204](#).

This letter constitutes an informal opinion of the Ethics Commission. No person acting in good faith upon this opinion is subject to criminal or civil prosecution for so acting if the material facts are as stated in the opinion request and the individual is following the advice provided above. If you have any further questions regarding this opinion or would like further assistance, please contact me at (608) 267-0951 or [david.buerger@wisconsin.gov](mailto:david.buerger@wisconsin.gov).

Sincerely,

A handwritten signature in black ink that reads "David Buerger". The signature is fluid and cursive, with "David" on top and "Buerger" below it.

David Buerger  
Staff Counsel  
Wisconsin Ethics Commission



# Wisconsin Ethics Commission

212 East Washington Avenue | Third Floor | P.O. Box 7984 | Madison, WI 53707-7984  
(608) 266-8123 | [ethics@wi.gov](mailto:ethics@wi.gov) | [ethics.wi.gov](http://ethics.wi.gov)

---

**DATE:** For the June 7, 2017 Commission Meeting

**TO:** Members, Wisconsin Ethics Commission

**FROM:** Brian M. Bell, MPA  
Commission Administrator

**SUBJECT:** Summary of How to File a Complaint

At its March 7, 2017 meeting, the Commission directed staff to update information available to the public that further outlined the process for filing a complaint and providing an overview of how complaints are processed.

Staff updated the agency website to include the flowchart of the complaint process and the Commission's complaint procedures on the complaints page on the website, under enforcement: <https://ethics.wi.gov/Pages/Enforcement/Complaints.aspx>. The staff has also added a *Special Notes* section to more directly address the information that should be included in a complaint that would aid the Commission in determining whether or not to make a finding of reasonable suspicion. Below is a copy of that new section.

## ***Special Notes***

Please note that the Ethics Commission and its staff can only conduct an investigation upon a finding of reasonable suspicion, so a complaint should include all applicable information regarding the alleged violation that you want the Commission to consider in determining whether or not to make a finding of reasonable suspicion. The Commission will only consider information filed by the complainant and respondent, and the memo prepared by staff which simply provides background information regarding related statutes and case law. You may wish to have an attorney assist with filing a complaint with the Ethics Commission, but you are not required to do so in order to file a complaint. The Ethics Commission and its staff cannot provide legal assistance to you.

No further action is required at this time, unless the Commission wishes to provide any additional direction to the staff on this matter.

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---

**DATE:** For the June 7, 2017 Commission Meeting

**TO:** Members, Wisconsin Ethics Commission

**FROM:** Brian M. Bell, MPA  
Commission Administrator

**SUBJECT:** Internal Policies

The Ethics Commission is required by [Wis. STAT. §19.47\(9\)\(a\)](#) to annually adopt written policies and procedures in order to govern its internal operations and management, and report those policies and procedures to the appropriate standing committees of the Legislature. Following this memo are two proposed policies for the Commission to consider adopting.

The first policy is a public records notice and policy, which is required of each state agency. The attached notice includes all mandatory information and specifies policies for charging for records.

The second policy enclosed is an internal staff policy. This document outlines various internal staff policies to govern internal staff operations and standardizations.

Both of these enclosed policies are currently in place and are being followed. The Commission could choose to make any desired modifications to these policies, adopt the policies without any changes, or choose to take no formal action.

Encl.

Public Records Notice and Policy  
Internal Staff Policies

*Wisconsin Ethics Commissioners*

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*Administrator*  
Brian M. Bell, MPA





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DATE: For the June 7, 2017 Meeting

TO: Members, Ethics Commission

FROM: Brian M. Bell, MPA  
Commission Administrator

SUBJECT: Public Records Notice

The notice provided below is available on the agency's website here:  
<https://ethics.wi.gov/Pages/AboutUs/PublicRecordsNotice.aspx>.

[Ethics](#) > Public Records Notice  
**Public Records Notice**

## Wisconsin Ethics Commission Public Records Notice

The bipartisan Ethics Commission started operations on June 30, 2016, assuming responsibility for administering campaign finance, lobbying, and ethics laws in Wisconsin from the former Government Accountability Board. The mission of the Ethics Commission is to enhance representative democracy by furthering Wisconsin's tradition of clean and open government through the administration of Wisconsin's campaign finance, lobbying, and ethics laws, and through the dissemination of information to the public. All members of the Ethics Commission and the Commission Administrator are state public officials holding state public office.

The Ethics Commission has designated a Custodian of Public Records for the Commission in order to meet its obligations under state public records laws. Members of the public may obtain access to the Commission's public records, or obtain copies of these records, by making a request of the Commission's Custodian of Public Records during the Commission's office hours of Monday through Friday, 7:45 a.m. to 4:30 p.m. Such requests should be made to:

David Buerger  
Staff Counsel  
Wisconsin Ethics Commission  
P.O. Box 7984  
Madison, WI 53707-7984

The law permits the Commission to impose fees for certain "actual, necessary, and direct" costs associated with responding to public records requests. The Commission may bill requestors \$0.15 for each photocopied page provided and \$0.07 per page for physical content scanned and converted into an electronic format. The Commission may charge for

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staff time and other actual costs to copy records from one electronic format to another electronic format and/or physical media. If physical media is required, the Commission may charge \$0.14 per CD or DVD to requesters. The actual cost of postage, courier, or delivery services may be charged. There will be an additional charge for specialized documents, and for retrieving records and files from the State Records Center. The cost of locating responsive records may be charged if it is \$50.00 or more and will be calculated as hourly pay rate (including fringe benefits) of the person locating records (not to exceed \$30 per hour) multiplied by actual time expended to locate records. No fee will be imposed for requests where the total amount due is less than \$25.00. Requests which total \$25.00 or more may require prepayment. Requesters appearing in person may be asked to make their own copies, or the Commission may make copies for requesters at its discretion. All requests will be processed as soon as practicable and without delay.



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---

**DATE:** May 3, 2017

**TO:** Staff, Wisconsin Ethics Commission

**FROM:** Brian M. Bell, MPA  
Commission Administrator

**SUBJECT:** Internal Policies for Ethics Commission Staff

The purpose of this memorandum is to outline internal staff policies and provide a written document that presents these policies to staff. This allows employees the opportunity to review these policies, discuss them with their supervisor, and acknowledge understanding of these policies. It also is intended to create objective standards and consistency across the entire agency. Staff will be promptly notified of any changes to these policies, and asked to sign a statement that they have received and understand the policies and expectations.

## Public Records

1. All staff will follow the records disposition authorizations (RDAs) approved for the agency and the standard schedules, as applicable.
2. All final, original copies of internal electronic documents and any document currently in use by multiple staff members will be stored on the internal SharePoint site:  
<https://ethicsapp.wi.gov>.
3. Archived digital records will be stored on the agency shared network drive (H:\).
4. Employees may store drafts, working notes, and their own individual records that are confidential on their own network drive (G:\).
5. All final copies of external documents will be published in the resources folder of the agency's website on SharePoint. The final draft versions of external documents (e.g., Word document version of a form) will be saved in the documents folder on the agency's website on SharePoint. No duplicate copies will be saved on either the internal SharePoint site, or the shared network drive (H:\).
6. External documents should be saved on the appropriate agency website (public content management site, CFIS, Eye on Lobbying, etc.)

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7. If the agency receives a paper document and that document is scanned and saved on the shared network drive in a format that essentially resembles the original document (clearly readable, relevant coloring, etc.) that electronic version should be considered the official record, and the paper version need not be retained.
8. Records for complaints, investigations, audits, and requests for advice should be saved on the agency's internal SharePoint site.
9. Requests for public records should be forwarded to staff counsel.

### **Document Formatting**

1. Memoranda and letters should be drafted using the approved templates saved on the shared network drive.
2. Document titles and title pages should be centered and in all capital letters.
3. Document text should use Times New Roman font, 12-point font size, and justified alignment.
4. The first level heading should be in bold typeface; the second level heading should use underlined typeface; the third level heading should be in italic typeface.
5. Punctuation should always be followed by a single space.
6. Legal citations should follow the Bluebook format, although the year may be omitted unless specifically referencing old law. Provide a link to the official source wherever possible.

<b>Source</b>	<b>Example</b>
U.S. Code	<a href="#">52 U.S.C. § 30104(b)(3)</a>
Wisconsin Statutes	<a href="#">WIS. STAT. § 13.625(1)(b)</a>
Wisconsin Administrative Code	<a href="#">WIS. ADMIN. CODE ETH § 15.045</a>

7. In general, and unless otherwise clarified here, documents should follow the APA manual of style.

### **Work Rules Policies**

1. The standard State of Wisconsin agency hours of operation are 7:45 A.M. to 4:30 P.M., therefore the Ethic Commission must remain open to public during those hours on normal business days.
2. Because of the small number of staff, it is essential to consider staff availability for scheduling leave time, unpaid lunch breaks, and paid breaks in order to ensure adequate staff coverage during normal office hours.

3. Employees identified as being FLSA non-exempt are required to report a combination of hours worked and approved leave requests that total at least 40 hours each week (Sunday through Saturday). Non-exempt staff must get pre-approval from their supervisor to deviate from their regularly scheduled work hours.
4. Employees identified as being FLSA exempt are required to report a combination of hours worked and approved leave requests that total at least 80 hours during each pay period (two-week period, Sunday through Saturday). Exempt staff must get pre-approval from their supervisor prior to working outside of normal work day hours (6AM – 6PM, Monday – Friday, excluding observed holidays).
5. All requests for leave shall be reported through the agency shared staff calendar by sending a meeting request to the shared calendar, and must be approved by the employee's supervisor. The Outlook meeting request for time off should be titled following this template: "*Employee name – Out*"; in the notes section of the meeting, please include a reason for the absence and the number of hours of each type of leave time you plan to use.
6. If any employee is unable to report to work, they should email or call their supervisor to notify them of the absence, and make a preliminary determination on the type of leave to be used.
7. Any overtime, night, or weekend hours worked must be approved in writing by the supervisor in advance.
8. Employees shall maintain a professional appearance and dress appropriately in business casual or business professional attire. Business professional attire should be worn for events such as presentations and formal meetings with elected/appointed officials. Business casual attire would be appropriate for most work days. Supervisors may authorize a more casual dress code on certain days at their discretion. However, even when a more casual dress code is authorized, employees shall still dress in a manner which does not adversely affect proper performance of duties.
9. In addition to these work rules, employees are subject to the Work Rules and Violations Policy Memo provided by the Department of Administration on August 26, 2016. Employees may contact their supervisor for a copy of that memo.
10. Nonpartisan staff policy. Wisconsin Ethics Commission staff members are required to be non-partisan, in accordance with [Wis. Stat. § 19.47\(10\)](#). Staff shall also comply with the Ethics Commission's adopted [nonpartisan staff policy](#).
11. Confidentiality. Commission staff receives and responds to requests for information and requires the judgment necessary to discern what information may or may not be released to the public. Due to the nature of the responsibilities of the Ethics Commission, staff work with and is privy to statutorily confidential information, which requires an increased level of professionalism and the maintenance of confidentiality in order to preserve the public trust in the efforts of the Commission. Any violation of [Wis. Stat. § 19.50](#) could result in a fine up to \$10,000, up to nine months imprisonment, or both.

### **Employee / Supervisor Acknowledgement**

I have read and understand the policies contained in this document. I further understand that I can discuss any questions regarding these policies with my supervisor. My supervisor will inform me of any changes to these policies in writing. I also acknowledge that I will be required to review and acknowledge these policies at least once a year (within a 12-month period).

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(Employee Printed Name)

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(Supervisor Printed Name)

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(Employee Signature)

(Date)

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(Supervisor Signature)

(Date)



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**DATE:** For the June 7, 2017 Meeting

**TO:** Members, Ethics Commission

**FROM:** Brian M. Bell, MPA  
Commission Administrator

**SUBJECT:** Agency Space Request

## Background

One provision of the transition plan from the GAB to the new commissions was that the new agencies would assume the office space lease. As part of the memorandum of understanding that the two commissions entered into regarding shared office space, the Ethics Commission agreed to pay approximately 25 percent of the monthly lease payment, based on staffing levels and office space usage. This lease expires December 31, 2018.

## Agency Space Request

As required by the policies and procedures of the Department of Administration (DOA), we submitted an Agency Space Request to the Bureau of Real Estate Management, Division of Facilities Management in DOA. Using the prescribed guidelines, the request shows that the agency's requested space would decrease from 3,250 square feet under the current lease to 1,868 feet – a reduction of 1,382 square feet. If the lease rate for the new office space was to remain the same as the current rate, it would result in a cost savings of approximately \$34,560 annually. If suitable office space were available at a lower rate, those savings would increase.

The request asks for office space within one to three blocks of the capitol square in order to maintain close proximity to those we interact with and serve most frequently. The request also asked for either privately leased space, or state owned space that could be secured as well as protect the anonymity of those seeking such privacy (e.g., requesting advice).

## Request Status and Next Steps

On April 5, 2017, we were notified that our space request was approved by both the Bureau of Real Estate Management and the State Budget Office. Our assigned leasing specialist will assist the agency in identifying suitable space. He will be reviewing available state-owned space immediately, and beginning reviewing available privately leased spaced sometime in the Spring of 2018. A copy of the approved request and related correspondence is enclosed. No further action by the Commission is required at this time.

*Wisconsin Ethics Commissioners*

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*Administrator*  
Brian M. Bell, MPA

**CORRESPONDENCE\MEMORANDUM**

***Division of Facilities Management  
Bureau of Real Estate Management***

***State of Wisconsin***

***Department of Administration***

Date: April 5, 2017

To: Brian Bell  
Department of Workforce Development

From: Mark Runkel  
Real Property Leasing Assistant

Subject: Agency Space Request #2700

Attached is the approved space request for Department of Ethics Commission in Madison. This request has been assigned to the Leasing Specialist as initialed in the "Assigned To" area in the upper right hand corner of the Space Request Form.

Note: Approval of this form acknowledges funding available for estimated space changes, not approval of a specific location or final measurement and cost of space. Substantial change of final amount of space and cost may require further funding approvals.

If you have any questions please feel free to call the Leasing Specialist handling your request.

DOA, Division of Facilities Management  
Bureau of Real Estate Management

GM	Gary Mohoney	266-8183
MR	Mark Runkel	267-2917
BF	Bruce Felland	261-7420
SB	Scott Berger	267-2004

**CORRESPONDENCE\MEMORANDUM**

**Division of Facilities Management**  
**Bureau of Real Estate Management**

***State of Wisconsin***

***Department of Administration***

**Date:** March 12, 2017

**Agency:** Wisconsin Ethics Commission (EMC)

**Lease #:** 521-001

**Subject/Space Request #:** 2700

**Street Address (if available):** Unknown

**City:** Madison

**Local Agency Contact:** Brian Bell

Please review the attached space request. If approved, initial below and provide comments, as necessary.

- ① MM Marcel Maul, Bureau Director
- ② DS State Budget Office

Return to: Marcel Maul, Bureau Director  
 Bureau of Real Estate Management  
 7<sup>th</sup> Floor - Administration Building

**Justification:**

The Wisconsin Ethics Commission was created when the Government Accountability Board (GAB) was abolished in 2016. The Ethic Commission has taken over a portion of the leased space previously occupied by the GAB under lease #511-452. This lease will expire on 12/31/18. At that time, WEC wishes to downsize from its current space and enter into its own separate lease. WEC wishes to remain located close to the Capitol.

Comments:

- 1) Will look at space in a state office building if available & location is not in conflict with adj. agencies. MM
- 2)
- 3)

Budget Analyst Comments:

Commission expected to backfill space at current DOR after expiration of lease at end of CY18. DFM will attempt to have WEC in state owned building near Capitol in CY19 and beyond; if not, they will move to small office bldg. in vicinity. Expected savings from staying in smaller downtown locations

-DS 3/23/17

**Date:** March 12, 2017  
**Agency:** Wisconsin Ethics Commission (WEC)  
**Lease #:** 521-001  
**Subject/Space Request #:** 2700  
**Street Address (if available):** Unknown  
**City:** Madison  
**Local Agency Contact:** Brian Bell – (608) 267-0715

The above Space Request is being reviewed to determine if an agency space needs or goals are met and based on the agency's justification, DOA can determine the appropriate action.

**AGENCY JUSTIFICATION:**

The Wisconsin Ethics Commission was created when the Government Accountability Board (GAB) was abolished in 2016. The Ethic Commission has taken over a portion of the leased space previously occupied by the GAB under lease #511-452. This lease will expire on 12/31/18. At that time, WEC wishes to downsize from its current space and enter into its own separate lease. WEC wishes to remain located close to the Capitol.

**What issues will occur if the Status Quo continues or this Space Request is not approved or accomplished on the timeline noted in the request?**

WEC currently occupies leased space that is leased by a GAB, a State agency that has been abolished and will no longer have funding. Upon the expiration of this lease, this space will no longer be available to WEC.

To assist in the review, please provide the following information regarding the above request. This review will compare the requested action to the status quo of continuing with the existing lease. If the change in square footage is required the lease will be viewed with the existing rights to continue occupancy on a month-to-month basis until the decrease or increase can be obtained at the existing or new location.

**1) If an existing lease, is there a Holdover provision and does it provide for a rent increase.**

N/A. The current lease will expire on 12/31/18. At that time, the Agency wishes to enter into a new lease.

**2) Anticipated over rent reduction**

The Agency estimates its space requirements have decreased by approximately 1,382 sq. ft. and which in turn results in a decrease in annual rent of approximately \$34,560.00.

**3) Cost Avoidance**

Estimate a reduction in annual rent of \$34,560.00 annually and partially offset by moving and tenant improvement costs.

**4) Health and safety concerns**

None

**5) Program requirements**

Space requirements have decreased by approximately 1,400 sq. ft.

**6) Source of funding? Will current funding source cover the entire lease obligation?**

GPR and PR

Act 2015 Wisconsin Act 118, Appropriation GPR 10100 – 20.52(a), PR 12300 – 20.521 (im)

**7) Tenant improvements – If any, how are they to be handled?**

Any tenant improvements are to be amortized by the Lessor.

**8) Cost to move – If applicable, how are they to be handled?**

Agency estimates the cost to move to be \$5,000. Agency intends to pay for these costs outside of the new lease with current funds on hand.

**9) Furniture costs (new, refurbished or existing?) - How does the agency plan to pay for this cost?**

Agency intends to use move and reuse its existing furniture.

Return to:

Bureau of Real Estate Management  
7<sup>th</sup> Floor DOA Building

Based upon the above review, this request is

Rejected and return to the Agency

Date:

Initials:

Approved to continue space request review with DOA Budget:

Date:

Initial:

State of Wisconsin  
Department of Administration  
Division of Facilities Management  
DOA-8176 (R03/2013)

## SPACE REQUEST

Return Completed Form (Inter-D) To:  
DOA, Lease Administration  
101 E. Wilson Street, 7th Floor  
FAX (608) 267-0200

### State Owned & Leased Facilities

1. Agency Name <b>Ethics Commission</b>		2. Lease Number <b>521-001</b>	3. (DOA Use) Space Request # <b>2700</b>	4. (DOA Use) Assigned to: <b>SKJ</b>			
5. Division and Unit <b>Agency - 8.0 FTE</b>		6. Desired Occupancy or current lease term end date. <b>12/31/2018</b>	7. Reason desired occupancy date is crucial, if applicable. <b>current lease expires</b>				
8. Street Address & City of Space Requested <b>within 1-3 blocks of the capitol</b>		9. Desired Length of Lease <b>10 years</b>	10. Number & Length of Renewal options <b>2 x 5 years</b>				
Space Allocation by Classification List Each Position		Furniture/Office	# of Positions	Standard	Square Feet		
Civil Service Class	Working Title	Select Type of Furniture From Pull-Down	Existing	Lease Term Forecast	Amount of Square Feet Per Position	Forecast Request	(DOA Use) Total Approved
Staff Attorney	Counsel	Private Office	1	1	120	120	
Office Management Spec.	Office Manager	Private Office	1	1	120	120	
Ethics/Elections Specialist	Elections Specialist	Systems	5	5	64	320	
Legal/Policy Intern	Intern	Systems	1	1	64	64	
IT Contractor	Contractor	Systems	1	1	64	64	
Executive	Administrator	Private Office	1	1	225	225	
11. <input type="checkbox"/> Check box if additional pages are attached.		12. Total square feet forecasted for space allocation by Classification.			913		

### Miscellaneous Furniture and Equipment

List open work areas only, not private offices. Open offices contain work surface, 2 chairs, computer, shelves, filing space, and waste basket.

Item	Square Foot per Item	If Filing, enter 2, otherwise enter 1	Allocation per Item	X Number of Pieces =	Forecast Request	Existing
Open File Area - 42 (SEIs)	10.5	2	21	7	147	
			0		0	
*Note - if digitizing files records could be eliminated			0		0	
			0		0	

13. Total square footage forecasted for Miscellaneous Furniture & Equipment

Special Use Spaces (Describe Space Fully)	Average Number		Frequency of Use			Forecast Request	Existing
	Visitors	Staff	Hrs/Day	Days/Week	Weeks/Year		
Break Area - 2	0	8	2	5	52	124	
Reception/Waiting Area - 1	4	1	8	5	52	100	
Copy Area	0	8	8	5	52	50	

14. Total square footage forecasted for Special use Spaces

274 0

Totals	Forecast Request
15. Total Space Allocation By Classification (Same as #12)	913
16. Total Miscellaneous Furniture And Equipment (Same as #13)	147
17. Total Special Use Spaces (Same as #14)	274
18. Subtotal Square Feet (Add #12 + #13 + #14)	1334
19. Sub-Total + 40% Circulation = Total Square Feet Requested (Multiply #18 x 1.4)	1868
20. Other Special Requirements:	

Conference Rm-3 (240 sq. ft) for 8 staff, up to 4 hours per week, each week - can be shared space  
 Conference Rm-6 or larger (720 sq. ft.) for Commission meetings 4 -8 days per year - can be shared or held at Capitol  
 Must able to secure the agency space from other agencies/officials we regulate - please call to discuss if needed

#### Justification

Space needed for the following reason/s (attach additional justification, as needed): Place a P before the appropriate option.

21.  Creation/Deletion of Unit

22.  Expansion Or Contraction of an Existing Unit

23.  Other (Please Explain)

The Ethics Commission was created when the Government Accountability Board was abolished. Ethics took over part of lease previously held by the GAB. The Commission wishes to have its own space as a separate agency, but remain located closed to the capitol and the vast majority of the constituencies we serve.

Budget Impact	Current (or N/A)	Requested New Rate	Change
24. Rental Rate Change per Square Feet	\$25.00	\$25.00	\$0.00
25. Square Feet Change	3250	1868	-1382
26. Annual Space Cost Change	\$81,250.00	\$46,690.00	-\$34,560.00
27. Change in number of positions	10	10	0
	Position Count		
	Without Cabling	With Cabling	Total
28. Moving Costs (Enter number of each staff)		10	\$5,000.00
29. Estimated Furniture Costs			\$0.00
30. Estimate Tenant Improvement Costs			\$0.00
31. Estimated Grand Total			\$51,690.00

#### Funding

32. Can all costs in the fiscal year be funded from the agency's existing budget level for the lease term requested?

Yes  No

33. If no, explain how funds will be obtained.

34. Type of funding:

GPR, PR

35. What authorizing source or appropriation will be used?

Act 2015 Wisconsin Act 118 - created the Ethics Commission

Appropriation GPR 10100 - 20.521(a), PR 12300 - 20.521(im)

#### Signature Approvals

	20170309
36. Agency Authorization 	Date 3-23-17
37. DOA State Budget Office	Date
38. DOA Space Planner	Date



**MEMORANDUM OF UNDERSTANDING BETWEEN**  
**THE WISCONSIN ELECTIONS COMMISSION**  
**AND**  
**THE WISCONSIN ETHICS COMMISSION**  
**SHARED STAFFING AGREEMENT**

**I. PARTIES**

The parties to this Memorandum of Understanding (hereinafter referred to as "MOU" or "agreement") are the Wisconsin Elections Commission (hereinafter referred to as "Elections Commission") and the Wisconsin Ethics Commission (hereinafter referred to as "Ethics Commission"); both are Wisconsin state agencies with effective start dates of June 30, 2016. The Elections Commission and Ethics Commission are the successor agencies of the former Wisconsin Government Accountability Board (hereinafter referred to as "GAB").

**II. PURPOSE**

The purpose of this MOU is to identify the tasks/services and employees that may be shared by both commissions through December 31, 2018. The Elections Commission and Ethics Commission occupy the former GAB office space at 212 E. Washington Ave., Madison, WI, 53703, 3<sup>rd</sup> Floor, until the current lease agreement for that space expires on December 31, 2018. To reduce duplicated services while the commissions share office space, the Elections Commission and Ethics Commission agree to share the services of several employees to perform tasks/services for both commissions. The shared employees will be employees of the Elections Commission and provide assistance to the Ethics Commission on an as-needed basis. Elections Commission shared staff that are federally funded will track their time spent on Ethics Commission tasks in accordance with this agreement.

**III. TERM OF AGREEMENT**

This MOU shall remain in effect until December 31, 2018, unless the agreement is terminated or amended in accordance with the procedures set forth in Section VII of this agreement.

## **IV. SHARED EMPLOYEE TASKS AND SERVICES**

### **A. RECEPTION STAFF**

The reception staff of the Elections Commission shall be utilized by both commissions. The shared reception staff shall complete the following tasks on behalf of the Ethics Commission:

1. Greet office visitors and assist them or direct them to the appropriate staff member.
2. Answer phone calls received at the reception desk and direct them to the appropriate staff member.
3. Receive and sign for packages and other deliveries.
4. Process and sort incoming correspondence.
5. Assist with data entry.
6. Other administrative tasks as assigned by the Ethics Commission Administrator.

The shared staff members include the Office Operations Associates of the Elections Commission assigned to the reception desk. The shared staff members that are federally funded shall track their time spent on Ethics Commission tasks in accordance with the procedures set forth in Section VI of this agreement.

### **B. HELP DESK STAFF**

The Help Desk of the Elections Commission shall be utilized by both commissions. The shared Help Desk staff shall provide support for IT-related tasks. The shared staff members include all Help Desk staff of the Elections Commission. The shared staff members that are federally funded shall track their time spent on Ethics Commission tasks in accordance with the procedures set forth in Section V of this agreement.

### **C. OTHER STAFF**

Elections Commission and Ethics Commission staff will continue to share information and work collaboratively on matters that impact both agencies.

## **V. CONFIDENTIALITY**

The Elections Commission Administrator and Ethics Commission Administrator agree that staff with access to the other Commission's data or records will be required to adhere to the policies and procedures of the other Commission regarding the confidentiality of the shared data or records.

## **VI. SHARED EMPLOYEE TIME-KEEPING**

The Elections Commission employees designated as shared staff members under Section IV of this agreement and who are federally funded shall keep bi-weekly timesheets

accounting for time spent on Ethics Commission tasks and projects rounded to the nearest quarter-hour. Shared staff members which are federally funded shall also track their time in the State's timekeeping system, attributing their time spent on Ethics Commission tasks when appropriate. The completed, employee-signed timesheet shall be submitted to both the shared employee's supervisor and the Ethics Commission Administrator on a bi-weekly basis for review. Quarterly adjustments to ensure the appropriate commission's budget is charged according to the time spent by the employee may be made if there is an error or disagreement in the amount of time charged by the employee. In the case of a disagreement, the shared employee may be required to provide additional documentation or explanation of the tasks performed to justify the time charged on their timesheet.

Other Elections Commission employees designated as shared staff members under Section IV of this agreement that are not federally funded are not required to keep bi-weekly timesheets accounting for their time.

## VII. TERMINATION OR AMENDMENT OF AGREEMENT

- A. Termination: This agreement is effective until terminated by either party with a thirty (30) calendar day advance written notice. The party wishing to terminate this agreement shall provide written notice to the contact specified in Section VII, stating their intent to terminate the agreement.
- B. Amendment: This agreement may be amended by mutual written agreement between the Elections Commission Administrator and the Ethics Commission Administrator. The agency wishing to amend this agreement shall provide sixty (60) calendar days written notice to the other party and provide any proposed amendment language at that time. Any proposed amendments are not effective until signed by the Elections and Ethics Commission Administrators and the original agreement shall continue through any amendment negotiations unless the original agreement is terminated per subsection A. Any signed amendments shall be attached to this MOU and considered part of the original agreement.

## VIII. AGREEMENT CONTACTS

Elections Commission: The contact person for this agreement within the Elections Commission is Michael Haas, Elections Commission Administrator, 608-266-0136, [Michael.Haas@wisconsin.gov](mailto:Michael.Haas@wisconsin.gov).

Ethics Commission: The contact person for this agreement within the Ethics Commission is Brian Bell, Ethics Commission Administrator, 608-267-0715, [BrianM.Bell@wisconsin.gov](mailto:BrianM.Bell@wisconsin.gov).

Should either of the contacts for each commission no longer be available to act in that role for this agreement, a new contact shall be determined by the respective commission as soon as practicable and such information shall be communicated to the other commission in writing within 10 days of the change.

## **IX. EFFECTIVE DATE**

This agreement shall be effective on the date in which the last signature of the authorized representative of the Elections Commission or the Ethics Commission is obtained on the attached Shared Staffing Agreement Signature Page.

**MEMORANDUM OF UNDERSTANDING BETWEEN**  
**THE WISCONSIN ELECTIONS COMMISSION**  
**AND**  
**THE WISCONSIN ETHICS COMMISSION**

**SHARED STAFFING AGREEMENT**

**SIGNATURE PAGE**

**SIGNATURES:**

For the Wisconsin Elections Commission

By: Michael Haas

Michael Haas, Administrator

Dated this 3rd day of May, 2017

For the Wisconsin Ethics Commission

By: Brian Bell

Brian Bell, Administrator

Dated this 3rd day of May, 2017

Effective: Date of last signature above.





# Wisconsin Ethics Commission

212 East Washington Avenue | Third Floor | P.O. Box 7984 | Madison, WI 53707-7984  
(608) 266-8123 | ethics@wi.gov | ethics.wi.gov

**DATE:** For the June 7, 2017 Commission Meeting

**TO:** Members, Wisconsin Ethics Commission

**FROM:** Julie Nischik – Office Management Specialist  
Brian M. Bell, MPA – Commission Administrator

**SUBJECT:** Operating Expense & Revenue Budgets Update

The tables below provide a summary update on the agency's operating budgets for fiscal year 2017, as of May 23, 2017, with about one month remaining in the fiscal year. The first table summarizes the operating budgets allotment lines (Salary; LTE; Fringe; Supplies and Services) across all appropriations. The second table summarizes fiscal year 2017 revenue for the Program Revenue appropriations. The subsequent tables provide a detailed breakdown of the budget position within each appropriation.

The salary and fringe budget amounts indicate the agency's spending authority. The LTE and supplies and services budgets indicate approximately what we anticipate spending during the fiscal year.

## Expense Appropriation Level Summary

Allotment	Budgeted	Expenditures	Encumbrance	Difference	% spent	% remain
Salary	\$ 473,900	\$ 308,246		\$ 165,654	65.04%	34.96%
LTE	\$ 15,000	\$ 12,261		\$ 2,739	81.74%	18.26%
Fringe	\$ 194,200	\$ 122,398		\$ 71,802	63.03%	36.97%
Supplies & Services	\$ 742,700	\$ 343,567	\$ 50,611	\$ 348,522	53.07%	46.93%
<b>Totals</b>	<b>\$ 1,425,800</b>	<b>\$ 786,472</b>	<b>\$ 50,611</b>	<b>\$ 588,717</b>	<b>58.71%</b>	<b>41.29%</b>

## Program Revenue Appropriation Level Summary

	Beginning Balance	FY17 Revenue	FY17 Expenses	Projected Balance for FY18
120 Filing Fees	\$ 136,860	\$ 40,100	\$ 2,291	\$ 174,669
122 Materials & Services	\$ 15,213	\$ 303	\$ -	\$ 15,516
123 Lobbying	\$ 313,997	\$ 533,242	\$ 251,582	\$ 596,409

*Wisconsin Ethics Commissioners*

Mac Davis | David R. Halbrooks | Katie McCallum | Pat Strachota | Timothy Van Akkeren | Jeralyn Wendelberger

*Administrator*  
Brian M. Bell, MPA

### **General Purpose Revenue – Appropriation 101**

<b>Category</b>	<b>Expense</b>	<b>Encumbrance</b>	<b>Budget</b>	<b>Difference</b>	<b>% spent</b>	<b>% remain</b>
Permanent/Project Salaries	\$ 224,303.82		\$ 245,000.00	\$ 20,696.18	91.55%	8.45%
LTE Salaries	\$ 12,261.24		\$ 15,000.00	\$ 2,738.76	81.74%	18.26%
Fringe Benefits	\$ 86,551.22		\$ 99,800.00	\$ 13,248.78	86.72%	13.28%
Data Processing - Private	\$ 76,307.74	\$ 11,470.00	\$ 95,000.00	\$ 7,222.26	92.40%	7.60%
Data Processing - State	\$ 21,192.80	\$ -	\$ 26,400.00	\$ 5,207.20	80.28%	19.72%
Other Supplies/Services	\$ 13,262.88	\$ 7,435.22	\$ 86,500.00	\$ 65,801.90	15.33%	76.07%
Mail, Postage, & Freight	\$ 1,952.19	\$ -	\$ 2,000.00	\$ 47.81	97.61%	2.39%
Printing	\$ 424.19	\$ -	\$ 500.00	\$ 75.81	84.84%	15.16%
Rent/Lease Bldg/Land	\$ 71,443.51	\$ -	\$ 71,500.00	\$ 56.49	99.92%	0.08%
Telecommunications	\$ 2,172.59	\$ -	\$ 3,000.00	\$ 827.41	72.42%	27.58%
Other Travel & Training	\$ 3,656.89	\$ -	\$ 4,300.00	\$ 643.11	85.04%	14.96%
<b>Appropriation Total</b>	<b>\$ 513,529.07</b>	<b>\$ 18,905.22</b>	<b>\$ 649,000.00</b>	<b>\$ 116,565.71</b>	<b>82.04%</b>	<b>17.96%</b>

### **Investigations – Appropriation 105**

<b>Category</b>	<b>Expense</b>	<b>Budget</b>	<b>Difference</b>	<b>% spent</b>	<b>% remain</b>
Other Supplies/Services	\$ 51.76	\$ 224,800.00	\$ 224,748.24	0.02%	99.98%
Other Travel & Training	\$ 113.24	\$ 200.00	\$ 86.76	56.62%	43.38%
<b>Supplies and Services Subtotal</b>	<b>\$ 165.00</b>	<b>\$ 225,000.00</b>	<b>\$ 224,835.00</b>	<b>0.07%</b>	<b>99.93%</b>

### **Program Revenue – Filing Fees – Appropriation 120**

<b>Category</b>	<b>Expense</b>	<b>Budget</b>	<b>Difference</b>	<b>% spent</b>	<b>% remain</b>
Data Processing - State	\$ 2,289.10	\$ 3,000.00	\$ 710.90	76.30%	23.70%
Other Supplies/Services	\$ -	\$ 28,600.00	\$ 28,600.00	0.00%	100.00%
Mail, Postage, & Freight	\$ 1.43	\$ 100.00	\$ 98.57	1.43%	98.57%
<b>Supplies and Services Subtotal</b>	<b>\$ 2,290.53</b>	<b>\$ 31,700.00</b>	<b>\$ 29,409.47</b>	<b>7.23%</b>	<b>92.77%</b>

**Program Revenue – Materials and Services – Appropriation 122**

<b>Category</b>	<b>Expense</b>	<b>Encumbrance</b>	<b>Budget</b>	<b>Difference</b>	<b>% spent</b>	<b>% remain</b>
Other Supplies/Services	\$ -	\$ -	\$ 11,500.00	\$ 11,500	0.00%	100%
<b>Supplies and Services Subtotal</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ 11,500.00</b>	<b>\$ 11,500</b>	<b>0.00%</b>	<b>100%</b>

**Program Revenue – Lobbying Fees – Appropriation 123**

<b>Category</b>	<b>Expense</b>	<b>Encumbrance</b>	<b>Budget</b>	<b>Difference</b>	<b>% spent</b>	<b>% remain</b>
Permanent/Project Salaries	\$ 83,942.14		\$ 228,900.00	\$ 144,957.86	36.67%	63.33%
LTE	\$ -		\$ -	\$ -		
Fringe Benefits	\$ 35,847.07		\$ 94,400.00	\$ 58,552.93	37.97%	62.03%
Data Processing - Private	\$ 88,050.00	\$ 29,250.00	\$ 126,300.00	\$ 9,000.00	92.87%	7.13%
Data Processing - State	\$ 9,221.88	\$ -	\$ 12,000.00	\$ 2,778.12	76.85%	23.15%
Other Supplies/Services	\$ 90.15	\$ -	\$ 41,700.00	\$ 41,609.85	0.56%	99.44%
Mail, Postage, & Freight	\$ 43.93	\$ -	\$ 100.00	\$ 56.07	43.93%	56.07%
Trav/Trng Out-of State	\$ 4,451.59	\$ -	\$ 4,500.00	\$ 48.41	98.92%	1.08%
Other Travel & Training	\$ 685.67	\$ -	\$ 700.00	\$ 14.33	97.95%	2.05%
<b>Appropriation Totals</b>	<b>\$ 222,332.43</b>	<b>\$ 29,250.00</b>	<b>\$ 508,600.00</b>	<b>\$ 286,267.57</b>	<b>43.71%</b>	<b>56.29%</b>





# Wisconsin Ethics Commission

212 East Washington Avenue | Third Floor | P.O. Box 7984 | Madison, WI 53707-7984  
(608) 266-8123 | [ethics@wi.gov](mailto:ethics@wi.gov) | [ethics.wi.gov](http://ethics.wi.gov)

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DATE: For the June 7, 2017 Meeting

TO: Members, Ethics Commission

FROM: Brian M. Bell, MPA  
Commission Administrator

SUBJECT: Ethics Commission Staff Report

## **Commission Administration**

### Personnel Updates

We are excited to welcome David Divine and Caroline Russell to our team as of April 3, 2017! David is an Elections Specialist and Caroline is an Ethics Specialist. They will be working across all program areas - campaign finance, lobbying, statements of economic interest, advice, and complaints.

We have also completed the recruitment for the Ethics Specialist position, formerly held by Kyle Kundert. Application review was completed on May 8<sup>th</sup>, and interviews were conducted on May 16 and 17, 2017. As a result of the interviews, an offer was extended to Colette Reinke. She has accepted the position and will start on June 26, 2017.

We submitted our annual Discretionary Equity and Retention Adjustment / Discretionary Merit Compensation (DERA/DMC) plan to DOA on May 17th, and received approval the same day.

Additional information about both the recruitment efforts and the agency's DERA/DMC plan will be discussed during closed session.

### Accepting Credit Card Payments

Staff continues to work with DOA on accepting credit card payments. Implementing credit card payments for lobbying fees was set as first priority. The staff has completed testing the new payment process and has implemented accepting credit card payments for lobbying program fees starting on April 12. Staff plans to next begin working on accepting credit cards for campaign finance filing fees, and then for settlement offers and general petty cash transactions (e.g., public records requests). The Department of Administration has been delayed in working on this project for us due to efforts to complete the statewide year end close in the new financial system. The estimated time to complete these enhancements is undetermined due to reliance on DOA and US Bank.

*Wisconsin Ethics Commissioners*

Mac Davis | David R. Halbrooks | Katie McCallum | Pat Strachota | Timothy Van Akkeren | Jeralyn Wendelberger

## **Attorney General Opinion Requests**

On February 21, 2017, staff received an update from the Wisconsin Department of Justice in regard to the two pending requests for an Attorney General Opinion. The request regarding the ability of a candidate committee to claim exemption from campaign finance reporting in the year the candidate appears on the ballot is still being evaluated. The second opinion request was in regards the constitutionality of [WIS. STAT. § 13.68\(6\)](#) and the ability of the Commission to suspend a lobbyist's ability to lobbying on behalf of a principal as a result of the principal failing to file timely reports. As of February 21, 2017, that Attorney General opinion was in the process of being drafted. Staff contacted the Wisconsin Department of Justice on May 16, 2017 to receive an update on the status of these requests, but the Department of Justice has not yet responded to our inquiry.

## **Code of Ethics and Financial Disclosure**

### Design of a new SEI system

Staff continues to work on the development of the new application for statements of economic interest reporting. Kavita has developed screens for agency users, including entry of positions required to file. She is currently developing data entry screens for officials required to file SEIs.

### Statements of Economic Interests

On a regular basis, staff continues to process SEIs for newly nominated and appointed officials, and responds to requests to view statements.

As of May 23, 2017, there were 2,426 officials required to file an SEI in 2017. The 2016 annual SEI filing was due by May 1, 2017. As of May 23, 2017, only 5 officials have not turned in their annual filing, and 2 of those have left state service. Of the 2,373 SEIs filed so far this year, 1,326 have been entered into our database.

### State of Wisconsin Investment Board Quarterly Reports

The quarterly reports due by May 1, covering January 1 through March 31, 2017 have all been received and copies have been delivered to the Legislative Audit Bureau, as required by statute. The next quarterly reports will be due by July 3, 2017, covering April 1<sup>st</sup> through June 30<sup>th</sup>.

## **Campaign Finance**

### CFIS Maintenance and Support Contract

We completed renegotiations with the CFIS software vendor, PCC, to renew the contract for maintenance and support of the system for fiscal year 2018, holding costs at the current level. Staff is also exploring options to either upgrade the current system to PCC's latest software version or develop an upgrade solution in-house with contractor support. Staff completed a review of the campaign finance statutes to identify and document system requirements. We will

next be validating those requirements for the current system and use them as requirements for the next system.

### 2017 January Continuing Reports

As of February 23, 2017, there were 1,025 2017 January continuing reports filed. Of those reports, only 2 were not filed electronically. And 928 (91%) were filed by the reporting deadline. There are currently 3 committees which have not yet filed the report.

### 2017 Spring Pre-Election Reports

The 2017 Spring Pre-Election report, was due by March 27, 2017, and included all activity of each committee required to file since their previous report through March 20, 2017. There were 39 candidates required to file, and all filed their reports timely.

### 2017 July Continuing Reports

All registered committees not on exempt status (approximately 900 committees) will be required to file the 2017 July continuing report by July 17, 2017 (the 15<sup>th</sup> falls on a Saturday). The reports will include all activity since the previously filed report through June 30, 2017.

## **Lobbying**

### Principal Registration, Lobbyist Licensing, and Authorizations for the 2017-2018 Session

As of May 24, 2017, there were 673 lobbying principals registered, 534 lobbyists licensed, and 1,421 lobbyists authorizations completed through the Eye On Lobbying site for the 2017-2018 Legislative Session.

In the 2015-2016 legislative session there were 171 lobbying principals that did not re-register. For this session, there are 215 that have not re-registered. All previously registered principals have been notified of the registration and authorizations requirements and encouraged to re-register if they would be required to do so. Twelve lobbyist authorization fees are outstanding. Correspondence is ongoing.

### Legislative Liaison Reporting

The Legislative Council publishes a *State Agency Staff Directory*, which is not statutorily required. Attempts to work with the Council to direct inquiries about legislative liaisons to our reporting have not been successful. Staff worked to identify differences in liaisons between the two documents. Over 40 agencies had differing liaison information. Each agency was contacted and asked to verify accurateness of the liaisons reported to the Commission. Feedback from those agencies suggested that our reporting held the most accurate legislative liaison information. The next reporting deadline is July 31<sup>st</sup>.

### SLAE Period 1: January 1 to June 30, 2017

The first Statement of Lobbying Activities and Expenditures for the 2017-2018 session will be due by July 31, 2017 and will cover lobbying between January 1 and June 30, 2017. This reporting period has historically been the most active report period of the legislative session due to lobbying on the state budget.

### Eye On Lobbying Manuals

User and administrator manuals are currently being updated. The user manual is intended to be the main tool lobbyists use for questions about the website. An introductory lobbying law “basics” guide will be added to add additional lobbyist support regarding reporting. The administrator manual will be used to train new Commission staff, and to help staff less familiar with the administrative capabilities quickly navigate necessary information, as well as establishing standard operating procedures for staff.

### **Legislative Updates**

1. Senate Joint Resolution 3 – relating to: deleting from the constitution the office of state treasurer (second consideration). This amendment would delete from the constitution the office of state treasurer.

The resolution passed the Senate 18-15 and the Assembly 68-31. If the amendment is adopted at a statewide referendum, this would amend the state constitution and eliminate the office of state treasurer.

2. *Assembly Bill 42 and Senate Bill 15 – relating to: various changes regarding administrative rules and rule-making procedures and making an appropriation.*

This substitute amendment to this bill 1) requires scope statements for proposed administrative rules to be reviewed by the Department of Administration for a determination of an agency's authority to promulgate a rule; 2) requires agencies to hold preliminary public hearings and comment periods on scope statements for rules if directed to do so by the Joint Committee for Review of Administrative Rules (JCRAR); 3) requires the passage of a bill in order for an agency to promulgate a rule that would result in implementation and compliance costs of \$10 million over any two-year period, subject to certain exceptions; 4) allows either a co-chairperson of JCRAR or JCRAR as a whole, at certain steps in the rule-making process, to request the preparation of an independent economic impact analysis for a proposed rule; and 5) allows JCRAR to make an indefinite objection to a proposed rule to prevent the agency from promulgating the rule.

The Assembly Committee on State Affairs held a public hearing on AB42 on April 19, 2017 and an executive session on May 3, 2017. On May 9, 2017, the Assembly Committee on State Affairs recommended adoption of Assembly Amendment 6 to Substitute Amendment 1, Substitute Amendment 1, and the bill as amended, each by a vote of 10-5.

The Senate Committee on Government Operations, Technology, and Consumer Protection held a public hearing on March 30, 2017 and an executive session on April 26, 2017. Senator LeMahieu offered Senate Substitute Amendment 1 on April 24, 2017. The committee reported adoption of Senate Substitute Amendment 1, and recommended passage of the bill as amended, both on a 3-2 vote. Senator LeMahieu offered Senate Amendment 1 to Senate Substitute Amendment 1 on May 1, 2017. The Senate passed Senate Bill 15 as amended by Senate Substitute Amendment 1 and Senate Amendment 1 by a vote of 19-14 on May 2, 2017.

3. *Assembly Bill 64 and Senate Bill 30 – relating to: state finances and appropriations, constituting the executive budget act of the 2017 legislature.* These are the state budget bills. The Joint Committee on Finance held agency budget briefings with selected agencies March 28 through March 30, 2017. The Ethics Commission was not invited for an agency briefing.
4. *Assembly Bill 66 and Senate Bill 65 – relating to: leases of real property for executive agencies and a plan to relocate the Department of Children and Families headquarters.*

The Assembly Committee on Government Accountability and Oversight held a public hearing on AB66 on March 15, 2017 and an executive session on April 6, 2017, recommending passage by a vote of 6-2.

5. *Assembly Bill 137 – relating to notice of certain campaign finance contributions made to a judge or justice.* This bill provides that whenever an interested contributor makes a contribution to the candidate committee of a court of appeals, circuit, or municipal judge or supreme court justice in a pending civil or criminal action or proceeding over which the judge or justice is presiding, the contributor must, within five days of the date that the contribution is made, notify the judge or justice and every party other than the interested contributor to the action or proceeding, in writing, of the fact that the contribution has been made and the date and amount of the contribution. The bill defines an “interested contributor” as a party to a pending civil or criminal action or proceeding; an affiliate of such a party; a spouse, minor child, or minor stepchild of such a party; an attorney representing such a party; or the law firm, partner, or associate of such an attorney. Currently, there is no similar requirement. However, the recipient of a campaign finance contribution, as well as any contributor that also accepts contributions, is subject to registration and periodic reporting requirements, with certain exceptions.

The Assembly Committee on Judiciary held a public hearing on AB137 on April 27, 2017.

6. *Assembly Bill 163 and Senate Bill 113 – relating to: the establishment of November 11 as a day on which the offices of the agencies of state government are closed.* This bill would designate Veterans Day as a state holiday; increase the number of regular paid holidays state employees receive annually from nine to ten; and eliminates the personal floating holiday provided in recognition of Veterans Day.

The Assembly Committee on State Affairs held a public hearing on AB163 on March 29 and an Executive Session on April 12.

7. *Assembly Bill 148 and Senate Bill 100 – relating to: expirations of statements of scope for administrative rules.* Under current law, an agency must prepare a statement of the scope of any administrative rule that it plans to promulgate that contains certain information about the agency's proposal to promulgate the rule. This bill provides for the expiration of a statement of scope 30 months after the date on which the statement is published in the Wisconsin Administrative Register. The substitute amendment provides that once a statement of scope expires, an agency may not submit a proposed rule based on that statement of scope to the legislature for final review, and any such rule that has not yet been submitted to the legislature is considered withdrawn.

The Senate Committee on Government Operations, Technology, and Consumer Protection held a public hearing on March 30, 2017 and an executive session on April 26, 2017. Senator Nass introduced Senate Substitute Amendment 1 on April 20, 2017. The committee reported adoption of Senate Substitute Amendment 1, and recommended passage as amended, both by a vote of 5-0. The Senate adopted SB100 as amended by Senate Substitute Amendment 1 by a voice vote on May 2, 2017.

The Joint Committee for Review of Administrative Rules held a public hearing on SB100 and AB148 on May 16, 2017.

8. *Assembly Bill 205 and Senate Bill 145 – relating to: state leases for real property.* Under current law, the Department of Administration has the general responsibility for leasing real property by the state. Under this bill, DOA, when entering into or renewing a lease, must conduct a cost-benefit analysis comparing the proposed lease to the purchase of the space or another suitable space and must evaluate comparable lease options within a 10-mile radius to ensure that the proposed lease rates do not exceed lease rates on comparable properties or the market rate by more than 5 percent. In addition, under the bill, if a proposed lease involves an annual rent of more than \$500,000, it must be signed by the secretary of administration and DOA must submit the proposed lease, as well as the cost-benefit analysis and evaluation of comparable lease rates, to the Joint Committee on Finance for a 14-day passive review.

The Senate Committee on Government Operations, Technology, and Consumer Protection Held a public hearing on SB145 on April 18, 2017. The Assembly Committee on State Affairs held a public hearing on AB205 on May 3, 2017. Representatives Doyle and Hutton introduced Assembly Amendment 1 on May 15, 2017, which would allow DOA to expand the radius to search for comparable properties if needed. Senator Kapenga introduced Senate Amendment 1, which mirrors Assembly Amendment 1, on May 18, 2017. The committee held an executive session on May 23, 2017 at which they recommended adoption of Assembly Amendment 1 by a vote of 11-3, and passage as amended by a vote of 10-4.

9. *Assembly Bill 317 – relating to: review by state agencies of administrative rules and enactments; an expedited process for repealing rules an agency no longer has the authority to promulgate; retrospective economic impact analyses for rules; and reporting by the Legislative Reference Bureau on rules in need of revision. This bill provides for an alternate, expedited procedure an agency can use to repeal a rule that the agency determines it no*

*longer has the authority to promulgate because of the repeal or amendment of the law that previously authorized its promulgation (unauthorized rule).* The bill requires agencies to review enactments of the legislature (acts) to determine whether any part of an act impacts any of its rules, and then take specified actions within six months. The bill requires the LRB to biennially report to JCRAR regarding rules in the code that the LRB has identified as possibly being in need of revision. The bill also allows JCRAR to direct an agency to prepare a retrospective economic impact analysis for any of an agency's rules that are published in the code. JCRAR may identify one or more specific chapters, sections, or other subunits in the code that are administered by the agency as the rules that are to be the subject of the analysis and may specify a deadline for the preparation of the analysis. An agency must include in a retrospective economic impact analysis a comparison of the actual economic effect of the rules to any economic impact analysis that analyzed the economic effect of the rules when they were proposed. The bill otherwise requires an agency to prepare a retrospective economic impact analysis in a manner similar to that prescribed for an economic impact analysis for a proposed rule.

The Assembly Committee on State Affairs held a public hearing on AB317 on May 17, 2017, and an executive session on May 24, 2017.



Ethics Commission

June 7, 2017 Meeting

Open Session

Supplemental Materials



LCRC  
FORM 2

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## WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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Scott Grosz  
*Clearinghouse Director*

Margit S. Kelley  
*Clearinghouse Assistant Director*

Terry C. Anderson  
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Jessica Karls-Ruplinger  
*Legislative Council Deputy Director*

### CLEARINGHOUSE REPORT TO AGENCY

[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

#### CLEARINGHOUSE RULE 17-036

AN ORDER to repeal ETH 6.05 (5) and (6); to renumber ETH 6.04 (1) (a); to amend ETH 6.02 (1) and (2), 6.03, 6.04 (1) (d), (2), (3) (a) and (b), and (4) to (6), and 6.05 (1) (a), (c) and (f) and (2); and to create ETH 6.04 (1) (ag), relating to procedures used by the Ethics Commission and updates the rule to reflect the changes of 2015 Act 118.

Submitted by **ETHICS COMMISSION**

05-09-2017 RECEIVED BY LEGISLATIVE COUNCIL.

06-06-2017 REPORT SENT TO AGENCY.

MSK:MQ

**LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT**

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]

Comment Attached      YES       NO

2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]

Comment Attached      YES       NO

3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]

Comment Attached      YES       NO

4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS  
[s. 227.15 (2) (e)]

Comment Attached      YES       NO

5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]

Comment Attached      YES       NO

6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL  
REGULATIONS [s. 227.15 (2) (g)]

Comment Attached      YES       NO

7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]

Comment Attached      YES       NO



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## WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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Jessica Karls-Ruplinger  
*Legislative Council Deputy Director*

### **CLEARINGHOUSE RULE 17-036**

#### **Comments**

**[NOTE:** All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Legislative Reference Bureau and the Legislative Council Staff, dated December 2014.]

#### **2. Form, Style and Placement in Administrative Code**

The introductory clause for the proposed rule should be corrected to enumerate each of the particular rule provisions treated by the proposed rule and the nature of the treatment for each affected provision. Also, the relating clause could be revised to better identify the subject matter of the proposed rule; for example, consider a relating clause along the following lines: “relating to campaign finance reporting procedures.”. [s. 1.02 (1), Manual.]



LCRC  
FORM 2

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## WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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### CLEARINGHOUSE REPORT TO AGENCY

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#### CLEARINGHOUSE RULE 17-038

AN ORDER to repeal ETH 21, relating to requests for written advice issued on behalf of the Ethics Commission.

Submitted by **ETHICS COMMISSION**

05-10-2017 RECEIVED BY LEGISLATIVE COUNCIL.

06-06-2017 REPORT SENT TO AGENCY.

MSK:MQ

**LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT**

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]

Comment Attached      YES       NO

2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]

Comment Attached      YES       NO

3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]

Comment Attached      YES       NO

4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS [s. 227.15 (2) (e)]

Comment Attached      YES       NO

5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]

Comment Attached      YES       NO

6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL REGULATIONS [s. 227.15 (2) (g)]

Comment Attached      YES       NO

7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]

Comment Attached      YES       NO



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## WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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*Legislative Council Director*

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*Legislative Council Deputy Director*

### **CLEARINGHOUSE RULE 17-038**

#### **Comments**

**[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Legislative Reference Bureau and the Legislative Council Staff, dated December 2014.]**

#### **1. Statutory Authority**

a. In the Fiscal Estimate and Economic Impact Analysis, the Ethics Commission states that, “Amending the rule to reflect the Commission’s current policy is possible, but due to the cumbersome nature of the rulemaking process is not ideal should the Commission decide to modify its policy in the future.”. However, if the Ethics Commission’s new policy governing the conditions under which staff may respond to requests for advice on behalf of the Commission meets the definition of a “rule”, then the Ethics Commission must promulgate the policy as a rule. Subject to certain exemptions, the statutes define a “rule” to include a regulation, standard, statement of policy, or order of general application that governs the procedure of the agency. [s. 227.01 (13), Stats.] Under state law, each agency is required to promulgate as a rule each statement of general policy and each interpretation of a statute that it specifically adopts to govern its administration of that statute. [s. 227.10 (1), Stats.] If a policy meets the definition of a “rule”, the decision whether to promulgate a policy as a rule is not discretionary. A judgment by the Ethics Commission that the rulemaking process is “cumbersome” is not an exception to state law.

In the rule summary’s explanation of agency authority and the plain language analysis, the Commission could consider explaining its apparent distinction between a “rule” and its “new policy” that it states was adopted on March 7, 2017.

b. In the rule summary’s listing of statutory authority, the reference to s. 19.46 (2) (b), Stats., could be removed, as that citation provides the language that is being interpreted. The other citations that are listed provide the specific authority to promulgate the rule. [s. 1.02 (2m), Manual.]





LCRC  
FORM 2

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## WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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*Legislative Council Deputy Director*

### CLEARINGHOUSE REPORT TO AGENCY

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#### CLEARINGHOUSE RULE 17-037

AN ORDER to repeal ETH 25, relating to Ethics Commission forms.

Submitted by **ETHICS COMMISSION**

05-10-2017    RECEIVED BY LEGISLATIVE COUNCIL.

06-06-2017    REPORT SENT TO AGENCY.

SG:JKR

**LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT**

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]

Comment Attached      YES       NO

2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]

Comment Attached      YES       NO

3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]

Comment Attached      YES       NO

4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS [s. 227.15 (2) (e)]

Comment Attached      YES       NO

5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]

Comment Attached      YES       NO

6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL REGULATIONS [s. 227.15 (2) (g)]

Comment Attached      YES       NO

7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]

Comment Attached      YES       NO



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## WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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### **CLEARINGHOUSE RULE 17-037**

#### **Comments**

**[NOTE:** All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Legislative Reference Bureau and the Legislative Council Staff, dated December 2014.]

#### **1. Statutory Authority**

In its description of statutory authority, the agency should consider including an analysis of the proposed rule in relation to s. 227.01 (13) (q), Stats., which provides an exception to the definition of “rule” for forms the content or substantive requirements of which are prescribed by a rule or statute. Has the agency confirmed that the forms repealed by the proposed rule meet this exception?

#### **2. Form, Style and Placement in Administrative Code**

In the introductory clause, “ch.” should be inserted before “ETH 25”. [s. 1.02 (1) (Example), Manual.]





LCRC  
FORM 2

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## WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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*Legislative Council Deputy Director*

### CLEARINGHOUSE REPORT TO AGENCY

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#### CLEARINGHOUSE RULE 17-035

AN ORDER to create ETH 26, relating to settlement of campaign finance, lobbying, and ethics violations.

Submitted by **ETHICS COMMISSION**

05-08-2017 RECEIVED BY LEGISLATIVE COUNCIL.

06-06-2017 REPORT SENT TO AGENCY.

SG:JKR

**LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT**

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]

Comment Attached      YES       NO

2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]

Comment Attached      YES       NO

3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]

Comment Attached      YES       NO

4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS [s. 227.15 (2) (e)]

Comment Attached      YES       NO

5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]

Comment Attached      YES       NO

6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL REGULATIONS [s. 227.15 (2) (g)]

Comment Attached      YES       NO

7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]

Comment Attached      YES       NO



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## WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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*Legislative Council Director*

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*Clearinghouse Assistant Director*

Jessica Karls-Ruplinger  
*Legislative Council Deputy Director*

### **CLEARINGHOUSE RULE 17-035**

#### **Comments**

**[NOTE:** All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Legislative Reference Bureau and the Legislative Council Staff, dated December 2014.]

#### **2. Form, Style and Placement in Administrative Code**

- a. In the introductory clause, “ch.” should be inserted before “ETH 26”. [s. 1.02 (1) (Example), Manual.]
- b. Throughout the proposed rule, numbers should be expressed using Arabic numerals, except that numbers at the beginning of a sentence and the number “one” are generally spelled out. [s. 1.01 (5), Manual.]
- c. In s. ETH 26.01 (3), (6), (8), (12), (14) to (16), and (20) to (21), should “means” replace “includes”? The use of the term “means” limits the scope of the definition solely to the examples stated, whereas the use of the term “includes” expands the scope of the definition to encompass other reasonably related examples not specifically enumerated. [s. 1.01 (7) (c), Manual.]

#### **4. Adequacy of References to Related Statutes, Rules and Forms**

- a. In s. ETH 26.01 (8), “11.0804 (1) (a) 7.” should replace “11.0804 (1) (a) 8.” because the latter appears to be an incorrect reference.
- b. In s. ETH 26.01 (20), “, Stats” should be inserted at the end of the subsection, before the period. [s. 1.07 (2), Manual.]
- c. In ss. ETH 26.02 (12), 26.03 (3), and 26.04 (2), “section” should replace “chapter”.

##### **5. Clarity, Grammar, Punctuation and Use of Plain Language**

a. Throughout the proposed rule, the agency should replace passive voice with active voice and should clearly identify the commission as the actor that receives a report or extends a settlement offer. For example:

- In s. ETH 26.02 (1) (c) (intro.), (d) (intro.), and (e), “If the commission receives a continuing or September report” should replace “If a continuing or September report is received”.
  - In s. ETH 26.02 (1) (c) 1. and (d) 1., “If the registrant has committed no prior offenses” should replace “If no prior offenses have been committed by the registrant”.
  - In s. ETH 26.02 (1) (c) 2. and (d) 2., “If the registrant has committed a prior offense” should replace “If a prior offense has been committed by the registrant”.
  - In s. ETH 26.02 (9), the subsection should be replaced with “If a registrant receives an excess contribution, the commission may extend a settlement offer in the amount by which the contribution exceeded the applicable limit.”.
- b. In s. ETH 26.01 (3), the comma after “11.0404 (2) (c) and (d)” should be omitted and the semicolon after “11.0604 (2) (c), (3) (b), (4) (c) and (d)” should be omitted.
- c. In s. ETH 26.01 (5), “as defined under s. 11.0101 (8), Stats.” should be omitted. This language is unnecessary because of the definition of “contribution” in s. ETH 26.01 (4).
- d. In s. ETH 26.01 (20), the comma after “11.0804 (4) (d) and (5) (c)” should be replaced with a semicolon to be consistent with other punctuation in the subsection.
- e. In s. ETH 26.02 (1) (b) 2., “a prior offense” should replace “one or more prior offenses” to be consistent with pars. (c) 2. and (d) 2. of the subsection.
- f. In s. ETH 26.02 (5), the subsection should describe which disbursements are subject to the 5% calculation. Does the calculation apply to the total amount of disbursements on express advocacy made during the period described in ss. 11.0505, 11.0605, and 11.1001, Stats.?
- g. In s. ETH 26.02 (5), the use of the word “registrant” appears to limit the application of the subsection to registered committees under ch. 11, Stats. Does the agency intend that the subsection apply to a person who reports under s. 11.1001, Stats., but is not a registered committee?
- h. In s. ETH 26.02 (6) (b) and (7) (b), it appears that “total amount of” should be inserted before “contributions”. In addition, does “contributions with incomplete information” refer only to those contributions with missing contributor information, in sub. (6) (b), or missing disbursement information, in sub. (7) (b), or to those contributions with any missing information?
- i. In s. ETH 26.02 (7) (b), “extend” should replace “issue”.
  - j. In s. ETH 26.02 (10) (a), it appears that a comma should be inserted after “\$500”.
- k. In s. ETH 26.04 (1) (b), the commission’s settlement offer includes \$100 for every additional 15 days. Does “additional 15 days” refer to each 15-day period after the due date or after the 16<sup>th</sup> day following the due date?

June 2, 2017

**VIA HAND DELIVERY**

Wisconsin Ethics Commission  
212 East Washington Ave.  
Madison, WI 53703

June 7, 2017 Open Meeting Agenda  
Item H: RA-2017-2

Dear Vice Chair McCallum:

We write regarding Item H “RA-2017-2 Response” on the Wisconsin Ethics Commission’s (the “Commission’s”) June 7, 2017 Open Session Agenda. Item H contains a proposed informal advisory opinion (hereinafter “proposed opinion”) for Commission review and approval. The proposed opinion was drafted in response to our February 1, 2017 request for advice under Wis. Stat. § 19.46(2). Copy attached.

The proposed opinion contains contradictory statements about the advice it offers and misapplies the rules of statutory construction. Accordingly, we urge the Commission to direct staff to revise the proposed opinion and present it to the Commission for approval at its August meeting.

Our February 1, 2017 request sought confirmation of the following:

1. A section 527 organization or nonresident PAC is required to register as a committee in Wisconsin only if it meets the applicable chapter 11 thresholds;
2. If required to register as a Wisconsin committee, a section 527 organization or nonresident PAC must abide by the Wisconsin law source restrictions and contribution limits applicable to that committee;
3. If not required to register as a Wisconsin committee, a section 527 organization or nonresident PAC must abide by the Wisconsin law contribution limits applicable to “other persons” under Wis. Stat. § 11.1101(4); and,
4. If not required to register as a Wisconsin committee, Wisconsin law source restrictions [in Wis. Stat. § 11.1112] do not apply to the donations to a section 527 organization or nonresident PAC.

The proposed opinion confirms Item Numbers 1 through 3 above and states that it will not offer an opinion as to Item Number 4. Yet, it nonetheless presents an analysis and conclusion that confirms Item Number 4. In addition, it states that the Commission refrains from providing guidance about Wis. Stat. § 11.1112 for reasons that are not supported by the rules of statutory construction. Accordingly, we request that the Commission direct staff to revise the proposed opinion as it relates to Item Number 4 and confirm the conclusion it contains as the opinion does for Item Numbers 1 through 3.

### **Conflict within the Proposed Opinion**

The final paragraph on page 3 of the proposed opinion confirms that Wisconsin law source restrictions do not apply to donations to a section 527 organization or nonresident PAC. It states:

“[T]he Commission advises that corporations, associations, labor organizations, or tribes, while not prohibited from making genuine contributions to section 527 organizations and nonresident PACs, are prohibited from (sic) using these entities as strawman donors in an attempt to circumvent Wisconsin law.”

This conclusion presumes that section 527 organizations and nonresident PACs are not subject to chapter 11 source restrictions and may contribute any donor funds to Wisconsin committees. It would not be possible for a corporation, association, labor organization or tribe to “circumvent Wisconsin law” by donating to a section 527 organization or nonresident PAC unless both are permitted to contribute those funds to Wisconsin committees. If Wis. Stat. § 11.1112 required either entity to make contributions only from donations it received from individuals, PACs and other committees,<sup>1</sup> the strawman warning would be unnecessary.

In short, the caution in the proposed opinion recognizes that Wis. Stat. § 11.1112 does not restrict the source of funds a section 527 organization or nonresident PAC may contribute to Wisconsin committees. Nonetheless, the second paragraph on page 1 of the proposed opinion states that the Commission will not expressly offer this opinion.

“The Commission declines to offer an opinion as to the applicability of source restrictions when a section 527 organization or nonresident PAC is not required to register in Wisconsin but would like to contribute to a Wisconsin committee, but instead refers this issue to the standing legislative oversight committees.”

Wis. Stat. § 11.1112 is clear and the Commission can and should provide guidance to regulated entities as to its application. Accordingly, the draft opinion should be revised to expressly provide the advice resulting from the analysis it presents and confirm the conclusion in Item Number 4 of our initial request.

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<sup>1</sup> Wis. Stat. § 11.1101(4).

## No Ambiguity in Wis. Stat. § 11.1112

The purpose of statutory interpretation “is to determine what a statute means in order to give the statute its full, proper, and intended effect.”<sup>2</sup> All statutory interpretation begins with the text of the statute; if the meaning of the statute is plain, the inquiry ordinarily stops there.<sup>3</sup>

Although not expressly stated, we understand the draft opinion’s arguments and conclusions to be:

- Wis. Stat. § 11.1112 is ambiguous because it is silent as to the sources of donations to section 527 organizations and nonresident PACs;
- This ambiguity in Wis. Stat. § 11.1112 can be cured only by restricting contributions to Wisconsin committees by section 527 organizations and nonresident PACs;
- The legislature and not the Commission must adopt such restrictions; *and*,
- Until the legislature acts, the Commission is unable to provide guidance about the application of Wis. Stat. § 11.1112 to those regulated by chapter 11.

A statute is ambiguous if it is capable of being understood by reasonably well-informed persons in two or more senses.<sup>4</sup> It is not enough that there is a disagreement about the statutory meaning. The test for ambiguity examines the language of the statute “to determine whether well-informed persons *should have* become confused, that is, whether the statutory ... language reasonably gives rise to different meanings.”<sup>5</sup>

The meaning of the Wis. Stat. § 11.1112 is plain. The draft opinion’s reluctance to confirm Item Number 4 above is not caused by a disagreement about statutory meaning and it is, in fact, completely unrelated to the text of Wis. Stat. § 11.1112. Instead, staff’s disagreement appears to be with the legislature’s policy decision not to prohibit a section 527 organization or a nonresident PAC from contributing to Wisconsin committees with specific categories of donations it receives. A belief that Wis. Stat. § 11.1112 should have been written differently or more broadly by the legislature does not render it ambiguous. Indeed, “[s]tatutory interpretation involves the ascertainment of meaning, not a search for ambiguity.”<sup>6</sup>

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<sup>2</sup> *Orion Flight Services v. Basler Flight Service*, 2006 WI 51, ¶ 16, 290 Wis. 2d 421, 714 N.W.2d 130.

<sup>3</sup> *Sands v. Whitnall Sch. Dist.*, 2008 WI 89, ¶ 15, 312 Wis. 2d 1, 754 N.W.2d 439.

<sup>4</sup> *Bruno v. Milwaukee Co.*, 2003 WI 28, ¶ 19, 260 Wis. 2d 633, 660 N.W.2d 656; *Martin*, 162 Wis. 2d 883, 894, 470 N.W.2d 900 (1991).

<sup>5</sup> *Bruno*, ¶ 21 (internal citations omitted).

<sup>6</sup> *State ex rel. Kalal v. Circuit Court for Dane Cty.*, 2004 WI 58, ¶ 47, 271 Wis. 2d 633, 663–64, 681 N.W.2d 110, 124.

### **Statutory Silence is Not Ambiguity**

Chapter 11 of the Wisconsin Statutes (“chapter 11”) limits annual contributions to a Wisconsin committee by a section 527 organization or a nonresident PAC.<sup>7</sup> It is silent, however, on the application of source restrictions to either entity. The draft opinion suggests that this silence prevents the Commission from advising regulated entities about the permitted activity of section 527 organizations and nonresident PACs. Although not directly stated, the opinion infers that any time a statute fails to directly address a particular situation, an agency may not act until the legislature fills the perceived gap in regulation. It mistakenly relies on *La Crosse Lutheran Hosp. v. La Crosse County*<sup>8</sup> for this premise.

In *La Crosse Lutheran*, the Wisconsin Supreme Court concluded that a state statute required a county to reimburse a hospital when a prisoner receives medical treatment outside of a jail after being transferred from a jail. But the same statute did not require reimbursement when a person detained by law enforcement, who has not been in jail, is transported to a hospital by the county.<sup>9</sup> The statute’s silence did not prevent the county from applying the statute, nor did the silence require an act of the legislature before it could be enforced. The court merely advised that it could not rewrite the statute to “meet the hospital’s desired construction” by requiring reimbursement and that if “the omission should be cured,” this is a policy decision for the legislature.<sup>10</sup>

Like the county reimbursement statute, chapter 11 establishes a list of organizations that may not contribute to Wisconsin committees.<sup>11</sup> Neither section 527 organizations nor nonresident PACs are on that list of prohibited sources. In fact, both organizations are expressly permitted to make contributions to committees.<sup>12</sup> But the draft opinion argues that “there may be reason to question whether the entity should be required to make...a contribution only from sources of funds permissible in Wisconsin.” This policy debate, however, is wholly unrelated to the meaning of the existing statutes. While staff may wish for the legislature to modify Wis. Stat. § 11.1112 and restrict contributions by section 527 organizations and nonresident PACs, the Commission’s obligation is to provide guidance about the statutes already enacted and enforce them accordingly.

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<sup>7</sup> Wis. Stat. § 11.1101(4).

<sup>8</sup> 133 Wis. 2d 325, 295 N.W.2d 612 (1986).

<sup>9</sup> *La Crosse Lutheran* at 338.

<sup>10</sup> *Id.*

<sup>11</sup> Wis. Stat. § 11.1112.

<sup>12</sup> Wis. Stat. § 11.1101(4).

### **Statutory Silence is a Not a Deficiency**

Nothing compels the legislature to directly address every ancillary issue each time it enacts a new law. It is reasonable to assume that when the legislature wishes to address a major issue, it does so directly. As the U.S. Supreme Court noted, on the federal level, “Congress...does not alter the fundamental details of a regulatory scheme in vague terms or ancillary provisions – it does not...hide elephants in mouseholes.”<sup>13</sup>

Indeed, the Wisconsin Supreme Court said that the statute at issue in *La Crosse Lutheran* was not ambiguous simply because it omitted certain contingencies. The silence there was a negative inference as it is here. That is, when the legislature identifies specific categories for regulation with detail, it is reasonable to assume that all other categories are excluded.<sup>14</sup> The draft opinion’s suggestion that Wis. Stat. § 11.1112 is ambiguous because it does not regulate everything that could be regulated is not supported by *La Crosse Lutheran* or the rules of statutory construction. If a statute is clear, omissions or failures to provide for contingencies do not justify adding them through statutory interpretation. The arguable wisdom of adding such contingencies is not relevant.<sup>15</sup>

The negative inference in Wis. Stat. § 11.1112 means that section 527 organizations and nonresident PACs may use any donations received to make contributions to Wisconsin committees. The Commission can confirm this conclusion without “read[ing] words into the statute that are not there” as the draft opinion claims. Words need only be added to the statute if the goal is to achieve a different result – a different policy result.

The draft opinion accurately notes that adding new categories is not proper construction and is an enlargement of the statute.<sup>16</sup> But again, the statute is clear with the categories it currently contains. The question for the Commission is simply whether the resulting conclusion is correct and not whether it is the best policy choice by the legislature. The Commission’s duty is to administer and enforce legislative policy and not to formulate new policy or substitute its policy judgement for that of the legislature.

### **Regulation in other Jurisdictions**

The exclusion of provisions adopted by other states does not render Wis. Stat. § 11.1112 ambiguous as the draft opinion suggests. As we noted in our original request, federal law requires unregistered entities to make contributions only from funds that are permissible under

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<sup>13</sup> *Whitman v. American Trucking Ass’ns, Inc.* 531 U.S. 457, 468 (2001).

<sup>14</sup> See *Iselin v. United States*, 270 U.S. 245, 250 (1926); *Andrus v. Glover Const. Co.*, 498 U.S. 251, 257 (1980).

<sup>15</sup> See *State ex rel. U.S. Fid. & Guar. Co. v. Smith*, 184 Wis. 309, 199 N.W. 954 (1924).

<sup>16</sup> *Iselin* at 250.

federal law. In addition, some states have adopted major donor and intermediary reporting requirements.

That other jurisdictions restrict contributions by section 527 organizations or nonresident PACs does not give the Commission “reason to question whether the entity should be required to make such contribution only from sources of funds permissible in Wisconsin.” To the contrary, if the legislature had wanted to restrict section 527 organizations and nonresident PACs, it could have said so. It could have borrowed language from the United States Code or California or Connecticut statutes, among others, but it did not. The legislature made a policy decision and wrote a statute that is clear and unambiguous.

### **Conclusion**

Legislative silence on a particular issue does not render a statute ambiguous. The draft opinion presents no ambiguity in the statutes and does not conclude that the statutory silence can be interpreted in multiple ways. Instead, it concludes – as we did – that legislative silence prevents the Commission from imposing source restrictions on section 527 organizations and nonresident PACs. But staff does not appear to like that conclusion and, as a result, the draft opinion endeavors to have the legislature adopt a new policy, not to clarify a statute.

For these reasons, the draft opinion should be amended to confirm Item Number 4 in our February 1, 2017 request for advice. Specifically:

If [a section 527 organization or nonresident PAC is] not required to register as a Wisconsin committee, Wisconsin law source restrictions in Wis. Stat. § 11.1112 do not apply to the donations to a section 527 organization or nonresident PAC.

The Commission may of course advise the legislature that it has provided this advice to us but does not like it. The Commission may even decide to advance a policy position by inviting the legislature to consider amendments to Wis. Stat. § 11.1112 or other chapter 11 provisions. But until the legislature acts, the Commission has an obligation to enforce the clear language of chapter 11.

GODFREY & KAHN, S.C.



Mike B. Wittenwyler  
Jodi Jensen

Attachment

cc: Brian Bell (via e-mail w/ attachment)  
David Buerger (via email w/ attachment)

February 1, 2017

**VIA HAND DELIVERY**

Wisconsin Ethics Commission  
212 East Washington Ave.  
Madison, WI 53703

**Regulation of Section 527 Organizations  
and Nonresident PACs**

Dear Chairperson Lautenschlager:

Pursuant to Wis. Stat. § 19.46(2), we are seeking the Wisconsin Ethics Commission's (the "Commission's") opinion regarding the treatment of section 527 organizations and nonresident political action committees ("PACs") under Chapter 11 of the Wisconsin Statutes. Specifically, we are seeking guidance on the following:

- Registration thresholds applicable to each;
- Applicability of contribution limits; *and*,
- Applicability of source restrictions.

Section 527 organizations are political organizations or funds established primarily for accepting donations and making expenditures in support of political activities that attempt to influence the selection of elected or appointed officials.<sup>1</sup> Section 527 organizations may make contributions to political committees, sponsor independent expenditures or engage in activities that may not be regulated by campaign finance laws such as sponsoring certain issue advocacy communications.<sup>2</sup>

A committee is a nonresident committee if it does not maintain an office or a street address in Wisconsin.<sup>3</sup> This includes PACs and independent expenditure-only committees (commonly

<sup>1</sup> Section 527 of the Internal Revenue Code refers to "exempt function" activity which is defined as "the function of influencing or attempting to influence the selection, nomination, election, or appointment of any individual to any Federal, State, or local public office or office in a political organization, or the election of Presidential or Vice-Presidential electors, whether or not such individual or electors are selected, nominated, elected, or appointed." I.R.C. § 527(e)(2).

<sup>2</sup> Under the Internal Revenue Code, section 527 organizations include every type of political committee including candidate campaign committees, political party committees and PACs. However, during the last twenty years, "section 527 organizations" are generally thought of as organizations that influence elections in a manner that is primarily outside the scope of state or federal campaign finance law – even though the definition under the Internal Revenue Code is not limited to these organizations. In this letter and for purposes of this advisory opinion request, "section 527 organizations" are *not* political committees under state or federal campaign finance law.

<sup>3</sup> Wis. Stat. § 11.0103(5).

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referred to as “super PACs”) registered in other states or with the Federal Election Commission (“FEC”).

The source and amount of financial support for a section 527 organization is generally not limited by the Internal Revenue Code (the “Code”). Individuals, corporations, cooperatives, labor organizations and federally-recognized Indian tribes may contribute unlimited amounts to a section 527 organization. Similarly, source restrictions and contribution limits vary in each state and under federal law. Accordingly, many nonresident committees may accept contributions from corporations or labor organizations.

### **Wisconsin Registration and Reporting Thresholds**

A nonresident committee is required to register with the Commission and report activity only if it meets the “applicable thresholds for submitting reports.”<sup>4</sup> Section 527 organizations are not expressly addressed in statute but likewise must register with the Commission and report activity only if they meet the applicable thresholds. As a result, chapter 11 requires a person, including a nonresident committee or a section 527 organization, to register as a Wisconsin PAC or independent expenditure committee (“IEC”) when specific thresholds are met. PAC registration is required if:

- The person’s stated purpose is express advocacy or more than 50% of its total spending in a 12-month period is on express advocacy, expenditures made to support or defeat a referendum, and contributions made to a candidate committee, legislative campaign committee, or political party; *and*,
- It makes or accepts contributions, makes disbursements or incurs obligations in excess of \$2,500 in a calendar year.<sup>5</sup>

Registration as an IEC is required if:

- The person’s stated purpose is making independent expenditures or more than 50% of its spending in a 12-month period is on independent expenditures and expenditures in support or opposition of a referendum; *and*,
- It makes or accepts contributions, makes disbursements or incurs obligations in excess of \$2,500 in a calendar year.<sup>6</sup>

In either case, if both thresholds are met, registration must occur within 10 business days of the receipt of the first contribution that exceeds the \$2,500 threshold.<sup>7</sup>

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<sup>4</sup> Id.

<sup>5</sup> Wis. Stat. § 11.0101 (25)(a).

<sup>6</sup> Wis. Stat. § 11.0602.

<sup>7</sup> Wis. Stat. §§ 11.0502; 11.0602.

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Once registered as a PAC or IEC, the registrant must comply with applicable Wisconsin law reporting requirements, including disclosure of essentially all contributions received and disbursements made.<sup>8</sup> A nonresident committee that registers, however, must report only contributions received from Wisconsin sources and disbursements made with respect to an election for a state or local office in Wisconsin.<sup>9</sup>

In addition to these reporting requirements, once registered as a Wisconsin PAC, chapter 11 source restrictions and contribution limits apply.<sup>10</sup> An IEC is not subject to source restrictions or contribution limits.<sup>11</sup>

### **Wisconsin Contribution Limits for “Other Persons”**

A section 527 organization or nonresident PAC that does not meet the chapter 11 registration thresholds is a permitted source of contributions to Wisconsin committees since each is an unincorporated organization.<sup>12</sup> Referred to as “other persons” by chapter 11, their contributions to candidates, political action committees, political parties, legislative campaign committees and segregated funds of political parties and legislative campaign committees are subject to the same contribution limits as those applicable to PACs.<sup>13</sup> Like PACs, the contributions of a section 527 organization or nonresident PAC to a Wisconsin PAC, independent expenditure committee, referendum committee or recall committee are not limited.<sup>14</sup>

### **Wisconsin Source Restrictions for “Other Persons”**

A section 527 organization or nonresident PAC that does not meet the chapter 11 registration thresholds is not subject to Wisconsin law source restrictions. Both may receive donations from a restricted source (including an affiliated source such as the sponsoring organization of a nonresident PAC) and remain a permitted source of contributions to Wisconsin committees. That is, chapter 11 does not restrict contributions by a section 527 organization or nonresident PAC based on its sources of funding.

Wisconsin’s source restrictions only apply to Wisconsin committees. Chapter 11 is unambiguous: corporations, cooperatives, labor organizations and tribes may not make direct

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<sup>8</sup> Wis. Stat. §§ 11.0504(1)(a); 11.0604(1)(a).

<sup>9</sup> Wis. Stat. § 11.0103(5).

<sup>10</sup> Wis. Stat. § § 11.1101(3) 11.1112.

<sup>11</sup> Wis. Stat. § 11.1112.

<sup>12</sup> Id.

<sup>13</sup> Wis. Stat. §§ 11.1101(3), (4); 11.1104(3), (4), (6).

<sup>14</sup> Wis. Stat. § 11.1104(1), (11), (12), (13).

contributions to Wisconsin candidates, PACs, political parties, legislative campaign committees or recall committees.

Corporations, cooperatives, and tribes. No foreign or domestic corporation, no association organized under ch. 185 or 193, no labor organization, and no federally recognized American Indian Tribe may make a contribution to a committee, other than an independent expenditure committee or referendum committee, but may make a contribution to a segregated fund as provided under s. 11.1104 (6) in amounts not to exceed \$12,000 in the aggregate in a calendar year.<sup>15</sup>

This is a prohibition on direct contributions to Wisconsin committees by these sources only. It does not apply to a section 527 organization or nonresident PAC that has received donations from one or more of these sources. Had the state legislature intended to prohibit contributions by a section 527 organization or nonresident PAC under such a circumstance, it could have expanded the source restriction beyond direct contributions to Wisconsin committees. For example, federal law requires unregistered donors who do not qualify as federal committees to make donations only from funds that are permissible under federal law.<sup>16</sup> Moreover, the FEC has express authority to review the records of an unregistered donor to verify that permissible funds were used.

The state legislature chose not to restrict contributions by a nonresident PAC or section 527 organization based on its donors. Nonresident PACs and section 527 organizations were not subject to contributions limits under 2015 Wisconsin Act 117. In March 2016, legislation was enacted to place contribution limits on “other persons” that includes section 527 organizations and nonresident PACs as well as other unincorporated organizations.<sup>17</sup> Had the state legislature intended to further restrict a section 527 organization’s or nonresident PAC’s contributions to Wisconsin committees, it could have done so at that time.

Lastly, the chapter 11 prohibition on contributions-in-the-name-of-another do not apply to section 527 organizations or nonresident PACs.<sup>18</sup> These prohibitions are in place to prevent earmarked and concealed contributions that allow a contributor to evade state contribution limits and/or source restrictions by using a third-party straw person who acts under the direction and control of the individual or entity reimbursing the straw-person for the political contribution. In contrast, when an individual or organization makes a non-earmarked contribution to a section 527 organization or nonresident PAC, it is relinquishing control and ownership of those funds. The contribution is also comingled with the funds of other donors and loses its identity. The

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<sup>15</sup> Wis. Stat. § 11.1112.

<sup>16</sup> See 52 U.S.C. § 30125; 11 CFR § 102.5.

<sup>17</sup> See 2015 Wisconsin Act 261.

<sup>18</sup> See Wis. Stat. § 11.1204(1).

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February 1, 2017  
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contribution is also likely subject to public disclosure as a result of periodic reporting requirements applicable to the section 527 organization or nonresident PAC.

Without a fundamental change in how non-earmarked PAC contributions are viewed, the prohibition on making a contribution in the name of another person does not apply to a section 527 organization or nonresident PAC. If the state legislature had intended to require a donor to a section 527 organization or nonresident PAC to be considered as the source of a contribution to a Wisconsin committee, statutory tools were available to it such as major donor and intermediary reporting requirements. Moreover, if the contribution-in-the-name-of-another provision did apply to section 527 organizations or nonresident PACs, it would also then apply to contributions to Wisconsin PACs and other committees that then make contributions to other Wisconsin committees using their respective funds.

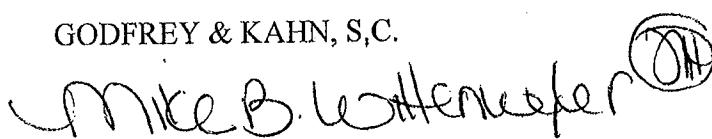
### **Conclusion**

In sum and based on the forgoing, we are seeking the Commission's confirmation of our interpretation of state law:

- A section 527 organization or nonresident PAC is required to register as a committee in Wisconsin only if it meets the applicable chapter 11 thresholds;
- If required to register as a Wisconsin committee, a section 527 organization or nonresident PAC must abide by the Wisconsin law source restrictions and contribution limits applicable to that committee;
- If not required to register as a Wisconsin committee, a section 527 organization or nonresident PAC must abide by the Wisconsin law contribution limits applicable to "other persons;" and,
- If not required to register as a Wisconsin committee, Wisconsin law source restrictions do not apply to the donations to a section 527 organization or nonresident PAC.

Please let us know if you have questions or need any additional information. We look forward to receiving the Commission's reply.

GODFREY & KAHN, S.C.

A handwritten signature in black ink that reads "Mike B. Wittenwyler". To the right of the signature is a small circular stamp containing the letters "JAH".

Mike B. Wittenwyler  
Jodi Jensen

cc: Brian Bell  
David Buerger  
16719377.1





# Wisconsin Ethics Commission

212 East Washington Avenue | Third Floor | P.O. Box 7984 | Madison, WI 53707-7984  
(608) 266-8123 | [ethics@wi.gov](mailto:ethics@wi.gov) | [ethics.wi.gov](http://ethics.wi.gov)

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*Sent via email only*

[Date Approved]

Mike Wittenwyler  
Godfrey & Kahn, S.C.  
PO Box 2719  
Madison, WI 53701

RE: Advisory Opinion Request – Regulation of Section 527 Organizations and Nonresident PACs

Dear Atty. Wittenwyler:

On February 1, 2017, you requested an advisory opinion of the Commission pursuant to [Wis. STAT. § 19.46\(2\)](#) regarding the registration thresholds, contribution limits, and source restrictions applicable to section 527 organizations and nonresident PACs. The Wisconsin Ethics Commission met March 7, 2017, considered your request at a public hearing at which you provided comment, and directed staff to issue this informal opinion.

It is the opinion of the Commission that a section 527 organization or nonresident PAC is only required to register as a committee in Wisconsin if it meets the applicable chapter 11 thresholds; that if required to register in Wisconsin as a committee, a section 527 organization or nonresident PAC must abide by Wisconsin source restrictions and contribution limits applicable to that committee; and that if not required to register in Wisconsin as a committee, a section 527 organization or nonresident PAC must abide by the contribution limits applicable to “other persons.” The Commission declines to offer an opinion as to the applicability of source restrictions when a section 527 organization or nonresident PAC is not required to register in Wisconsin but would like to contribute to a Wisconsin committee, but instead refers this issue to the standing legislative oversight committees.

## Analysis

Section 527 organizations are so named because they are formed pursuant to section 527 of the Internal Revenue Code. Section 527 organizations are tax-exempt entities that are established and operated primarily for the purpose of influencing the selection, nomination, or appointment of any individual to any federal, state, or local public office, or office in a political organization. Section 527 organizations may raise and spend unlimited money for political activities without source restrictions, but they must also disclose their donors and cannot coordinate their activities with any campaign. All organizations that register and file reports with the Federal Election

*Wisconsin Ethics Commissioners*

Mac Davis | David R. Halbrooks | Katie McCallum | Pat Strachota | Timothy Van Akkeren | Jeralyn Wendelberger

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*Administrator*  
Brian M. Bell, MPA

Commission are 527 organizations, but not all 527 organizations are federally registered political committees. Notable section 527 organizations include such groups as the Republican Governors Association, American Crossroads, and EMILY's List.

A nonresident PAC is a committee that does not maintain an office or street address in Wisconsin. [Wis. STAT. § 11.0103\(5\)](#). The term can cover PACs and independent expenditure only committees (Super PACs) registered in other states or with the Federal Election Commission. Nonresident PACs, as they operate outside of Wisconsin, would be limited in the contributions they can receive and the sources they can receive money from depending on the jurisdiction they are registered in.

#### 1. Registration and Reporting Thresholds

Like any other political committee, a 527 organization or nonresident PAC is only required to register with the Ethics Commission and report on its activities upon reaching a specified amount of activity on elections for state or local office in Wisconsin. An organization is required to register as a PAC if: (1) the organization's major purpose is express advocacy or more than 50% of its total spending in a 12-month period is on express advocacy, expenditures made to support or defeat a referendum, and contributions made to a candidate committee, legislative campaign committee, or political party; and (2) the organization makes or accepts contributions, makes disbursements, or incurs obligations in excess of \$2,500 in a calendar year. [WIS. STAT. §§ 11.0101\(25\), 11.0502\(1\)](#).

An organization is required to register as an independent expenditure committee if: (1) the organization's major purpose is making independent expenditures or more than 50% of its spending in a 12-month period is on independent expenditures and expenditures in support or opposition of a referendum; and, (2) it makes or accepts contributions, makes disbursements, or incurs obligations in excess of \$2,500 in a calendar year. [WIS. STAT. §§ 11.0101\(17\), 11.0602\(1\)](#).

An organization may also be required to file reports as an “other person” with the Commission if it spends more than \$2,500 on express advocacy during the period beginning on the day that is 60 days prior to the day of the primary or election for which the express advocacy was made and ending on the day of the election. [WIS. STAT. § 11.1001\(1\)\(a\)](#).

Nonresident committees, if required to register, must report to the Ethics Commission all disbursements made and obligations incurred with respect to an election for a state or local office in this state as well as all contributions from within the state. [WIS. STAT. § 11.0103\(5\)](#).

#### 2. Contribution Limits

In addition to the above reporting requirements, if a 527 organization or nonresident PAC registers as a PAC in Wisconsin, Wisconsin PAC contribution limits to candidates apply. If the organization registers as an independent expenditure committee then like any other Wisconsin independent expenditure committee, it cannot make contributions to candidates. [WIS. STAT. § 11.0601\(3\)\(b\)](#).

If a section 527 organization or nonresident PAC is not required to register in Wisconsin, it may still contribute to Wisconsin candidates if it is not otherwise prohibited by [Wis. STAT. § 11.1112](#) (e.g., corporations). Referred to as “other persons” in Chapter 11, these entities are not required to register and are subject to the same contribution limits as PACs. [Wis. STAT. § 11.1101\(4\)](#).

This letter constitutes an informal opinion of the Ethics Commission. No person acting in good faith upon this opinion is subject to criminal or civil prosecution for so acting if the material facts are as stated in the opinion request and the individual is following the advice provided above. If you have any further questions regarding this opinion or would like further assistance, please contact me at (608) 267-0951 or [david.buerger@wisconsin.gov](mailto:david.buerger@wisconsin.gov).

Sincerely,

A handwritten signature in black ink that reads "David Buerger". The signature is fluid and cursive, with "David" on top and "Buerger" below it.

David Buerger  
Staff Counsel  
Wisconsin Ethics Commission

