

NOTICE OF OPEN AND CLOSED MEETING

Wisconsin Ethics Commission

101 E. Wilson Street, St. Croix Room
Madison, Wisconsin
Tuesday, March 5, 2019, 9:00 a.m.

Open Session Agenda

- A. Call to Order
- B. Report of Appropriate Meeting Notice – Staff Counsel
- C. Approval of Minutes of Prior Meetings
 - 1. Minutes of December 11, 2018 Open Session Meeting Page 3
- D. Personal Appearances
- E. Appearance by Department of Justice Representative
- F. 2017 Act 108 Report Page 7
- G. 2017 Act 369 Report Page 13
- H. Guideline 1211-14 Review Page 21
- I. Ethics Opinions Schedule Review Page 41
- J. Administrative Rules Update Page 43
- K. Staff Report Page 63
- L. Discuss New August Meeting Date
- M. Consideration of Future Agenda Items
- N. Closed Session
 - 1. Requests for Advice
 - 2. Complaints and Investigations
- O. Return to Open Session
- P. Adjourn

Future Ethics Commission Meetings Scheduled:

- Tuesday, April 9, 2019 at 9:00 AM
- Tuesday, June 18, 2019 at 9:00 AM
- Tuesday, August TBD, 2019 at 9:00 AM
- Tuesday, December 3, 2019 at 9:00 AM

The Ethics Commission will convene in open session but may move to closed session under WIS. STAT. § 19.85(1)(c), (g), (h), or WIS. STAT. § 19.851. 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 following that closed session, as outlined in the above agenda. WIS. STAT. § 19.85(2).

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) Any meeting of a governmental body, upon motion duly made and carried, may be convened in closed session under one or more of the exemptions provided in this section. The motion shall be carried by a majority vote in such manner that the vote of each member is ascertained and recorded in the minutes. No motion to convene in closed session may be adopted unless the chief presiding officer announces to those present at the meeting at which such motion is made, the nature of the business to be considered at such closed session, and the specific exemption or exemptions under this subsection by which such closed session is claimed to be authorized. Such announcement shall become part of the record of the meeting. No business may be taken up at any closed session except that which relates to matters contained in the chief presiding officer's announcement of the closed session. A closed session may be held for any of the following purposes:

- (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.
- (h) Consideration of requests for confidential written advice from the elections commission under s. 5.05 (6a) or the ethics commission under s. 19.46 (2), or from any county or municipal ethics board under s. 19.59 (5).

WIS. STAT. § 19.851(2) The commission shall hold each meeting of the commission for the purpose of deliberating concerning an investigation of any violation of the law under the jurisdiction of the commission in closed session under this section.



Wisconsin Ethics Commission

Campaign Finance | Lobbying | Ethics
212 East Washington Avenue | Third Floor | P.O. Box 7125 | Madison, WI 53707-7125
(608) 266-8123 | ethics@wi.gov | <https://ethics.wi.gov>

Wisconsin Ethics Commission

101 E. Wilson Street
Wisconsin Room
Madison, Wisconsin
December 11, 2018
9:00 a.m.

Open Session Minutes

Present: Tamara Packard, Mac Davis, David Halbrooks, Pat Strachota,
Timothy Van Akkeren, and Katie McCallum (phone)

Staff present: Daniel Carlton, David Buerger, Julie Nischik, Rich Bohringer, Adam Harvell,
and Harry Broderick

A. Call to Order

Commission Vice Chair Tamara Packard called the meeting to order at 9:06 a.m.

B. Report of Appropriate Meeting Notice

Staff Counsel David Buerger reported that appropriate notice of the Commission meeting had been given to the public and news media.

C. Approval of Minutes of Prior Meetings

1. Minutes of the August 21, 2018 Meeting

MOTION: Approve the August 21, 2018 minutes. Moved by Commissioner Strachota, seconded by Commissioner Van Akkeren. Motion carried unanimously.

2. Minutes of the September 14, 2018 Meeting

MOTION: Approve the September 14, 2018 minutes. Moved by Commissioner Strachota, seconded by Commissioner Van Akkeren. Motion carried unanimously.

D. Personal Appearances

There was no personal appearance by a member of the public.

E. Review of Lobbying-Related Opinions of Previous Boards

Staff Counsel David Buerger presented the memo on page 11 of the meeting materials.

The Commissioners discussed the opinions staff suggested for withdrawal.

MOTION: To withdraw Eth. Bd. Op. 07-07. Moved by Commissioner Strachota, seconded by Commissioner Van Akkeren. Motion carried unanimously.

MOTION: To withdraw Eth. Bd. Op. 07-14. Moved by Commissioner Strachota, seconded by Commissioner Van Akkeren. Motion carried unanimously.

MOTION: To withdraw Eth. Bd. Op. 04-02. Moved by Commissioner Strachota, seconded by Commissioner Van Akkeren. Motion carried unanimously.

MOTION: To withdraw Eth. Bd. Op. 05-01. Moved by Commissioner Van Akkeren, seconded by Commissioner Halbrooks. Motion carried unanimously.

MOTION: To revise Eth. Bd. Op. 93-01 based on suggestions from staff and as described in the memo. Moved by Commissioner Davis, seconded by Commissioner Van Akkeren. Motion carried unanimously.

MOTION: To reaffirm the remaining opinions in the memo with minor revisions to correct citations. Moved by Commissioner Strachota, seconded by Commissioner Halbrooks. Motion carried unanimously.

F. Unauthorized Lobbying Audit Process Update

Commission staff Adam Harvell presented the memo on page 17 of the meeting materials.

The Commissioners agreed to the updates to the process and made one minor change to the language in the memo.

G. Administrative Rule Update

Staff Counsel David Buerger presented the memo on page 19 of the meeting materials.

MOTION: For ETH 1 – Act 117 Amendments/Attribution, the Commission approves the scope statement and directs staff to begin drafting the proposed rule and associated documents for submission to the Legislative Council Rules Clearinghouse. Moved by Commissioner Van Akkeren, seconded by Commissioner Strachota. Motion carried unanimously.

H. Social Media Guideline

Staff Counsel David Buerger presented the memo on page 25 of the meeting materials.

The Commissioners and staff discussed the potential changes to guideline procedures in current proposed bills. Commissioner Strachota requested an update at the next meeting on any changes to the process at the next Commission meeting.

The Commission discussed the information presented in the memo.

MOTION: The Commission adopts the guideline as presented and authorizes staff to publish the opinion 2018 RA 03. Moved by Commissioner Davis, seconded by Commissioner Halbrooks. Motion carried unanimously.

I. SEI Website Modernization Update

Commission Staff Adam Harvell presented the memo on page 31 of the meeting materials and provided a demonstration of changes to <https://sei.wi.gov>.

J. Legislative Lobbying Plan

Commission Administrator Dan Carlton presented the memo on page 33 of the meeting materials.

The Commissioners discussed priorities of the plan and determined that all items listed should be presented to the legislature as a priority of the Commission. The Commission suggested formatting the changes as technical versus substantive.

MOTION: The Commission directs staff to put forward all proposals as listed in the memo in an omnibus fashion. Moved by Commissioner Davis, seconded by Commissioner Van Akkeren. Motion carried unanimously.

K. Complaint Procedures

Commission Administrator Dan Carlton presented the memo on page 45 of the meeting materials.

The Commissioners discussed the current procedures and potential changes to those procedures.

MOTION: The Commission directs staff to amend the current complaints practice by transmitting unredacted versions of complaints to respondents. Moved by Commissioner Davis, seconded by Commissioner Van Akkeren. Motion carried unanimously.

L. Staff Report

Commission Administrator Dan Carlton presented the memo on page 47 of the meeting materials.

M. Consideration of Future Agenda Items

The Commissioners requested staff reach out to the incoming staff at the Department of Justice, to invite a representative to the March Commission meeting.

The Commissioners also requested the next meeting agenda include a discussion of the process for evaluation of the Administrator.

N. 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 Strachota.

- 1. Requests for Advice
- 2. Complaints and Investigations

O. Adjourn

The Commissioners unanimously consented to adjourning the meeting.

Meeting adjourned at 4:36 p.m.

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December 11, 2018 Wisconsin Ethics Commission meeting minutes prepared by:

Julie Nischik, Office Management Specialist

March 5, 2019

December 11, 2018 Wisconsin Ethics Commission meeting minutes certified by:

Tamara Packard, Vice Chair

March 5, 2019



Wisconsin Ethics Commission

101 East Wilson Street | Room 127 | P.O. Box 7125 | Madison, WI 53707-7125
(608) 266-8123 | ethics@wi.gov | ethics.wi.gov

DATE: For the March 5, 2019 Commission Meeting
TO: Members, Wisconsin Ethics Commission
FROM: David Buerger, Staff Counsel
SUBJECT: 2017 Wisconsin Act 108 Report

FOR COMMISSION ACTION

1. Does the Commission approve the attached draft report to be submitted to JCRAR no later than March 31, 2019?

I. Background

[2017 Wisconsin Act 108](#) requires each agency that has administrative rules to submit a biennial report to the Joint Committee for Review of Administrative Rules (JCRAR) no later than March 31 of each odd-numbered year that lists rules that fall into the following categories:

1. Rules whose authority to be promulgated has been eliminated or restricted. [WIS. STAT. § 227.29\(1\)\(a\), \(b\)](#).
2. Rules that are obsolete or have been rendered unnecessary. [WIS. STAT. § 227.29\(1\)\(c\)](#).
3. Rules that are duplicative of, superseded by, or in conflict with another rule, a state statute, a federal statute or regulation, or a court ruling. [WIS. STAT. § 227.29\(1\)\(d\)](#).
4. Rules that the agency determines are economically burdensome. [WIS. STAT. § 227.29\(1\)\(e\)](#).

The report must also describe the agency's actions, if any, to address each of the rules listed and must include an explanation for any listed rule for which the agency has not taken any action. It must also describe the status of each rule listed in the agency's previous report.

If an identified rule is unauthorized, and is not already in the process of repeal, the agency must submit a petition for expedited repeal within 30 days of submitting the report.

II. Attachments

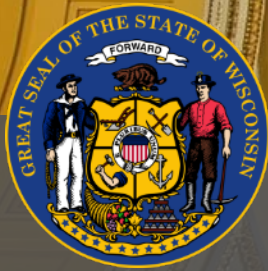
- A. Draft 2019 Ethics Commission Admin Rules Review Report

Wisconsin Ethics Commissioners

Mac Davis | David R. Halbrooks | Katie McCallum | Tamara Packard | Pat Strachota | Timothy Van Akkeren

Administrator

Daniel A. Carlton, Jr.



State of Wisconsin
Ethics Commission

2019 Administrative Rules Review Report

March 29, 2019

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Introduction

The Wisconsin Ethics Commission is pleased to submit its biennial report to the Joint Committee for Review of Administrative Rules, in accordance with [WIS. STAT. § 227.29](#).

This report provides a list of all rules promulgated or otherwise administered by the Wisconsin Ethics Commission within the following categories:

- a. Unauthorized rules.
- b. Rules for which the authority to promulgate has been restricted.
- c. Rules that are obsolete or have been rendered unnecessary.
- d. Rules that are duplicative of, superseded by, or in conflict with another rule, a state statute, a federal statute or regulation, or a ruling of a court of competent jurisdiction.
- e. Rules that the agency determines are economically burdensome.

This report also includes a description of the agency's action to address each rule listed in this report, a description of the status of each rule listed in the previous biennial report, and the agency's formal statement of a determination that there are no rules that fall into a particular category.

A. Unauthorized rules

The Wisconsin Ethics Commission has determined that none of the agency's administrative rules currently fall into this category.

B. Rules for which the authority to promulgate has been restricted

The Wisconsin Ethics Commission has determined that none of the agency's administrative rules currently fall into this category.

C. Rules that are obsolete or have been rendered unnecessary

The Wisconsin Ethics Commission has determined that the following rules are obsolete in that they refer to forms no longer in use or contain references to laws that were repealed by 2015 Wisconsin Act 117:

WIS. ADMIN. CODE ETH 1.20 (9), 1.26 (2), 1.26 (6), 1.60 (1) (b), 1.70 (1), 1.855 (2).

Description of Agency Actions

The Wisconsin Ethics Commission has decided to amend these provisions of WIS. ADMIN. CODE ETH 1. The Commission initially approved the scope statement for this rule on August 21, 2018. Staff submitted the scope statement to the Department of Administration and received approval from the Governor to continue with rulemaking on November 15, 2018. The scope statement was submitted to the Legislative Reference Bureau for publication in the Administrative Register on November 15, 2018. The scope statement was published in Register No. 755A3 on November 19, 2018. On December 11, 2018, the Commission formally approved the scope statement and directed staff to begin drafting the proposed rule and associated documents for submission to the Legislative Council Rules Clearinghouse.

D. Rules that are duplicative of, superseded by, or in conflict with another rule, a state statute, a federal statute or regulation, or a ruling of a court of competent jurisdiction

The Wisconsin Ethics Commission has determined that the following rules are duplicative of, superseded by, or in conflict with state statute as re-created by 2015 Wisconsin Act 117:

WIS. ADMIN. CODE ETH 1.02, 1.04, 1.05, 1.06, 1.10, 1.11, 1.15, 1.26 (3) and (4), 1.28, 1.30, 1.34, 1.36, 1.38, 1.42, 1.43, 1.44, 1.45, 1.455, 1.46, 1.50, 1.56 (4), 1.65, 1.655, 1.75, 1.85 (1), (2), (4), (5), (6) and (7), and 1.91.

Description of Agency Actions

The Wisconsin Ethics Commission has decided to repeal these provisions of WIS. ADMIN. CODE ETH 1. At the Ethics Commission's February 27, 2018, meeting it initially approved the scope statement for this rule. Staff submitted the scope statement to the Department of Administration and received approval from the Governor to continue with rulemaking on March 13, 2018. The scope statement was submitted to the Legislative Reference Bureau for publication in the Administrative Register on March 14, 2018. The scope statement was published in Register No. 747A3 on March 19, 2018. On April 24, 2018, the Commission formally approved the scope statement and directed staff to begin drafting the proposed rule and associated documents for submission to the Legislative Council Rules Clearinghouse. On June 19, 2018, the Commission approved the draft rulemaking documents and directed staff to submit them to the Rules

Clearinghouse and schedule a public hearing for August 21, 2018. Staff submitted the draft rulemaking order on June 22, 2018, and submitted a Notice of Hearing to hold a public hearing on the draft rule on August 21, 2018. The hearing notice was published in Administrative Register No. 751A1 on July 2, 2018. On July 20, 2018, the Commission received the Legislative Council's report on the draft rule that proposed four changes. The Commission incorporated those changes in the draft rule and the rule was submitted to the Governor's office for approval on August 21, 2018. At the time of the drafting of this report the rule is still awaiting approval from the Governor.

E. Rules that the agency determines are economically burdensome

The Wisconsin Ethics Commission has determined that none of the agency's administrative rules currently fall into this category.

Status of Each Rule Listed in the Previous Biennial Report

This is the first biennial report under WIS. STAT. § 227.29 and, as such, there are no status updates to report.



Wisconsin Ethics Commission

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101 E. Wilson Street | Suite 127 | P.O. Box 7125 | Madison, WI 53707-7125
(608) 266-8123 | ethics@wi.gov | <https://ethics.wi.gov>

DATE: For the March 5, 2019 Meeting
TO: Members, Wisconsin Ethics Commission
FROM: Colette Greve, Ethics Specialist
SUBJECT: Report on 2017 Wisconsin Act 369

FOR COMMISSION ACTION

The Commission may:

1. Direct staff to review Commission documents, publications, communications, and websites to determine compliance with Wis. Stat. §§ 227.01 (3m), 227.05, and 227.112, and if necessary, request assistance from the Legislative Council.
2. Take some other action based on today's discussion.

I. Introduction

[2017 Wisconsin Act 369](#), enacted on December 15, 2018, modifies state law relating to agency guidance documents and other agency publications. The Act creates a definition for guidance documents, requirements that guidance documents and agency publications must meet, and a procedure for adopting and publishing guidance documents. The new statutory provisions created by the Act will substantially affect Commission guidance and communications. The Commission may instruct staff to begin taking steps towards meeting the new requirements, such as reviewing and revising guidelines and seeking assistance from the Legislative Council to determine if certain documents and publications are subject to the new requirements.

II. Summary of the Law

The law relating to state agency guidance documents and other agency publications is in Wisconsin Statutes Chapter 227, Administrative Procedure and Review, Subchapter II, Administrative Rules and Guidance Documents. The full text of the statute sections created or modified by 2017 Wisconsin Act 369 are attached to this memorandum.

A. Definition of Guidance Documents

2017 Wisconsin Act 369 created [WIS. STAT. § 227.01 \(3m\)](#) defining guidance document as any formal or official document or communication issued by an agency, including a manual, handbook, directive, or informational bulletin that does the following:

- explains the implementation of statute or rule that is enforced or administered by that agency, including current and proposed operating procedures,
- provides guidance or advice as to how the agency is likely to apply statutes or rules which it enforces or administers, if such guidance or advice is applied to a class of similarly situated persons.

WIS. STAT. § 227.01 (3m) includes a list of exceptions. The exceptions relevant to the Commission are the following:

1. Rules that have been promulgated and currently in effect or proposed rules in the process of being promulgated. [WIS. STAT. § 227.01 \(3m\)\(b\)1.](#)
2. Agency decisions that adopt standards, contain statements of policy or interpretation, upon a particular matter as applied to a specific set of facts. [WIS. STAT. § 227.01 \(3m\)\(b\)2.](#)
3. Any documents that any statutes specifically provide are not required to be promulgated by rule. [WIS. STAT. § 227.01 \(3m\)\(b\)4.](#)
4. Any document that, by law, requires a procedure for public input. (Other than the procedure provided in WIS. STAT. § 227.112 for guidance documents). [WIS. STAT. § 227.01 \(3m\)\(b\)8.](#)
5. Documents that are not subject to the right of inspection and copying under WIS. STAT. § 19.35 (1). [WIS. STAT. § 227.01 \(3m\)\(b\)9.](#)
6. Documents related to internal management that do not affect private rights or interests. [WIS. STAT. § 227.01 \(13\)\(a\).](#)
7. Documents that relate to form and content of reports, records, or accounts of a state agency, and documents that relate to expenditures, the purchasing of materials, equipment or supplies of a state agency. [WIS. STAT. §§ 227.01 \(13\)\(j\)](#) and [\(k\).](#)
8. Personnel standards, job classifications, and salary ranges for agency employees. [WIS. STAT. § 227.01 \(13\)\(L\).](#)
9. Forms containing content or substantive requirements that are prescribed by statute or rule. [WIS. STAT. § 227.01 \(13\)\(q\).](#)
10. Pamphlets or other explanatory material that are not intended or designed as interpretation of legislation that the agency enforces or administers, but are merely informational in nature, unless such pamphlet or material satisfies the definition of guidance document. [WIS. STAT. § 227.01 \(13\)\(r\).](#)

B. Approval and Certification of Guidance Documents

The Act creates a procedure for state agencies to follow before adopting guidance documents. [WIS. STAT. § 227.112 \(1\).](#) Agencies now must submit the proposed document to the Legislative Reference Bureau (LRB), in a format approved by LRB for publication in the register and provide notice of a 21-day public comment period, unless a period shorter than 21-days is approved by the governor. The notice must provide where comments should be submitted and a deadline for submitting comments. All written comments must be considered in determining whether to adopt or take any

action on the guidance document and must be retained by the agency. The proposed guideline cannot be adopted until after the comment period is closed.

After guidance documents are adopted, [WIS. STAT. § 227.112 \(6\)](#) requires that every adopted guidance document be signed by the head of the agency with the following certification:

“I have reviewed this guidance document or proposed guidance document and I certify that it complies with sections 227.10 and 227.11 of the Wisconsin Statutes. I further certify that the guidance document or proposed guidance document contains no standard, requirement, or threshold that is not explicitly required or explicitly permitted by a statute or a rule that has been lawfully promulgated. I further certify that the guidance document or proposed guidance document contains no standard, requirement, or threshold that is more restrictive than a standard, requirement, or threshold contained in the Wisconsin Statutes.”

Additionally, every adopted guidance document must be posted on the agency’s website and allow for continuing public comment, as well as petitions to promulgate a rule in place of the guidance document. [WIS. STAT. §§ 227.12 \(2\)](#) and [\(5\)](#).

The statutes created by the Act explicitly state that guidance documents do not have the force of law and they do not provide authority to implement or enforce standards or requirements. Further, if an agency seeks to rely on a guidance document to the detriment of person, in any proceeding, the agency must afford that person adequate opportunity to contest the document’s legality or wisdom of the position taken in the document. [WIS. STAT. § 227.112 \(3\)](#).

There is a short “grace period” for the statutory changes related to guidance documents. Before July 1, 2019, [WIS. STAT. § 227.112](#) will not apply to existing guidance documents that did not go through the procedure set out in subsection (1) and lack the certification required by subsection (6). On July 1, 2019, any guidance documents that did not follow the procedural requirements and lack the certification will be considered rescinded. [WIS. STAT. § 227.12 \(7\)\(a\)](#).

C. Agency Publications

In addition to defining and creating procedures for guidance documents and communications, the Act created new requirements for agency publications. Effective on July 1, 2019, agencies will be required to identify applicable provisions of federal law, state statutes, or administrative code provisions that support any statements or interpretations of law in any publication, either in print or on the agency’s website, including in guidance documents, forms, pamphlets, and other informational materials. [WIS. STAT. § 227.05](#).

III. Effects on Current Commission Guidance on Publications

A. Guidance Documents

One issue that arises from the new definition of, and required procedures for, guidance documents is determining which Commission documents and communications fall within the scope of the

“guidance document.” The Act states that a guidance document is any formal or official document or communication, but does not define the scope of what is an official or formal communication or document. The statute only provides three examples, manual, handbook, or informational bulletin, and the exceptions listed above. It is unclear what types of documents and communications fall within the scope of the definition of guidance document, other than those types specifically stated in the statute, e.g., manuals, handbooks, directives, and informational bulletins. The Act directs Legislative Council staff to provide assistance to agencies in determining whether document and communications are guidance documents and subject to the approval and certification requirements in WIS. STAT. § 227.112 and the Commission may wish to request assistance from the Legislative Council for certain documents and communications.

Staff believes the following documents are considered “guidance documents” under WIS. STAT. § 227.01 (3m):

- Guidelines
- Campaign Finance Committee Manuals
- Campaign Finance Checklists
- Notices provided to the regulated community
Examples: Special Election Reporting Period Notice and Lobbyist Personal Contribution Window 2018 Notice

The following are documents that could be guidance documents and it would be beneficial to seek assistance from the Legislative Council in making this determination:

- Complaint Process Flowchart and Complaint Procedures Memorandum
- Adopted Policy: Delegation of Authority for Informal Opinions
- Training PowerPoints and recorded presentations
- Auditing procedures and schedule page on website
- CFIS and Eye on Lobbying Manuals would likely fall under the exception in WIS. STAT. § 227.01 (13)(r) because they are merely guides to using the website, not interpreting law or explaining how the Commission applies or enforces the law. These would need to be reviewed to make sure there was not any interpretation or explanation of how the law is applied.

Commission advisory opinions, both informal and formal, should not be considered guidance documents, as they would fall under the exception of agency decisions that adopt standards, contain statement of policy or interpretation, upon a particular matter as applied to a specific set of facts. Advice and assistance that Commission staff provides on day-to-day basis via email and phone calls would be under this exception as well, because it is only applied to a specific set of facts and the individual person or group seeking advice. Documents and communications related to complaints and investigations would also be excluded as they are not subject to the right of public inspection under WIS. STAT. § 19.35(1).

B. Agency Publications and Website

The requirement in WIS. STAT. § 227.05 that any agency publication which contains a statement or interpretation of law, whether in print or on the agency's website, must identify the applicable provisions of the law will require a substantial amount of work by staff. Almost all of the Commission's publications are on the Commission's website, so there will not be any print material to review. However, all of the Commission's websites, including filing system sites, will require a thorough review to ensure that all publications meet the requirements of WIS. STAT. § 227.05. Staff will need to identify pages that contain statements or interpretations of law, and if the applicable provisions of federal or state statute or administrative code are not identified on these pages, staff will need to revise the page to include such citations.

**SUBCHAPTER I
GENERAL PROVISIONS**

227.01 Definitions. In this chapter:

(3m)

(a) "Guidance document" means, except as provided in par. (b), any formal or official document or communication issued by an agency, including a manual, handbook, directive, or informational bulletin, that does any of the following:

1. Explains the agency's implementation of a statute or rule enforced or administered by the agency, including the current or proposed operating procedure of the agency.
2. Provides guidance or advice with respect to how the agency is likely to apply a statute or rule enforced or administered by the agency, if that guidance or advice is likely to apply to a class of persons similarly affected.

(b) "Guidance document" does not include any of the following:

1. A rule that has been promulgated and that is currently in effect or a proposed rule that is in the process of being promulgated.
2. A standard adopted, or a statement of policy or interpretation made, whether preliminary or final, in the decision of a contested case, in a private letter ruling under s. [73.035](#), or in an agency decision upon or disposition of a particular matter as applied to a specific set of facts.
3. Any document or activity described in sub. [\(13\) \(a\) to \(zz\)](#), except that "guidance document" includes a pamphlet or other explanatory material described under sub. [\(13\) \(r\)](#) that otherwise satisfies the definition of "guidance document" under par. (a).
4. Any document that any statute specifically provides is not required to be promulgated as a rule.
5. A declaratory ruling issued under s. [227.41](#).
6. A pleading or brief filed in court by the state, an agency, or an agency official.
7. A letter or written legal advice of the department of justice or a formal or informal opinion of the attorney general, including an opinion issued under s. [165.015 \(1\)](#).
8. Any document or communication for which a procedure for public input, other than that provided under s. [227.112 \(1\)](#), is provided by law.
9. Any document or communication that is not subject to the right of inspection and copying under s. [19.35 \(1\)](#).

227.05 Agency publications. An agency, other than the Board of Regents of the University of Wisconsin System, the Technical College System Board, or the department of employee trust funds, shall identify the applicable provision of federal law or the applicable state statutory or administrative code provision that supports any statement or interpretation of law that the agency makes in any publication, whether in print or on the agency's Internet site, including guidance documents, forms, pamphlets, or other informational materials, regarding the laws the agency administers.

NOTE: This section is created eff. 7-1-19 by [2017 Wis. Act 369](#).

History: [2017 a. 369](#).

**SUBCHAPTER II
ADMINISTRATIVE RULES AND
GUIDANCE DOCUMENTS**

227.112 Guidance documents.

(1)

- (a) Before adopting a guidance document, an agency shall submit to the legislative reference bureau the proposed guidance document with a notice of a public comment period on the proposed guidance document under par. (b), in a format approved by the legislative reference bureau, for publication in the register. The notice shall specify the place where comments should be submitted and the deadline for submitting those comments.
- (b) The agency shall provide for a period for public comment on a proposed guidance document submitted under par. (a), during which any person may submit written comments to the agency with respect to the proposed guidance document. Except as provided in par. (c), the period for public comment shall end no sooner than the 21st day after the date on which the proposed guidance document is published in the register under s. [35.93 \(2\) \(b\) 3. im](#). The agency may not adopt the proposed guidance document until the comment period has concluded and the agency has complied with par. (d).
- (c) An agency may hold a public comment period shorter than 21 days with the approval of the governor.
- (d) An agency shall retain all written comments submitted during the public comment period under par. (b) and shall consider those comments in determining whether to adopt the guidance document as originally proposed, modify the proposed guidance document, or take any other action.
- (2) An agency shall post each guidance document that the agency has adopted on the agency's Internet site and shall permit continuing public comment on the guidance document. The agency shall ensure that each guidance document that the agency has adopted remains on the agency's Internet site as provided in this subsection until the guidance document is no longer in effect, is no longer valid, or is superseded or until the agency otherwise rescinds its adoption of the guidance document.
- (3) A guidance document does not have the force of law and does not provide the authority for implementing or enforcing a standard, requirement, or threshold, including as a term or condition of any license. An agency that proposes to rely on a guidance document to the detriment of a person in any proceeding shall afford the person an adequate opportunity to contest the legality or wisdom of a position taken in the guidance document. An agency may not use a guidance document to foreclose consideration of any issue raised in the guidance document.
- (4) If an agency proposes to act in any proceeding at variance with a position expressed in a guidance document, it shall provide a reasonable explanation for the variance. If an affected person in any proceeding may have relied reasonably on the agency's position, the explanation must include a reasonable justification for the agency's conclusion that the need for the variance outweighs the affected person's reliance interest.
- (5) Persons that qualify under s. [227.12](#) to petition an agency to promulgate a rule may, as provided in s. [227.12](#), petition an agency to promulgate a rule in place of a guidance document.
- (6) Any guidance document shall be signed by the secretary or head of the agency below the following certification: "I have reviewed this guidance document or proposed guidance document and I certify that it complies with sections 227.10 and 227.11 of the Wisconsin Statutes. I further certify that the guidance document or proposed guidance document contains no standard, requirement, or threshold that is not explicitly required or explicitly permitted by a statute or a rule that has been lawfully promulgated. I further certify that the guidance document or proposed guidance document contains no standard, requirement, or threshold that is more restrictive than a standard, requirement, or threshold contained in the Wisconsin Statutes."

(7)

- (a)** This section does not apply to guidance documents adopted before July 1, 2019, but on that date any guidance document that has not been adopted in accordance with sub. [\(1\)](#) or that does not contain the certification required under sub. [\(6\)](#) shall be considered rescinded.
- (b)** This section does not apply to guidance documents or proposed guidance documents of the Board of Regents of the University of Wisconsin System, the Technical College System Board, or the department of employee trust funds.
- (8)** The legislative council staff shall provide agencies with assistance in determining whether documents and communications are guidance documents that are subject to the requirements under this section.

History: [2017 a. 369](#).



Wisconsin Ethics Commission

101 East Wilson Street | Room 127 | P.O. Box 7125 | Madison, WI 53707-7125
(608) 266-8123 | ethics@wi.gov | ethics.wi.gov

DATE: For the March 5, 2019 Commission Meeting
TO: Members, Wisconsin Ethics Commission
FROM: David Buerger, Staff Counsel
SUBJECT: Guideline 1211-14 Review

FOR COMMISSION ACTION

1. Does the Commission direct staff to submit the revised guideline to the Legislative Reference Bureau for publication for public comment?
2. Does the Commission direct staff to modify the proposed guideline consistent with today's discussion and submit it to the Legislative Reference Bureau for publication and public comment?
3. Does the Commission wish to take other action consistent with today's discussion?

I. Overview

In the transition from the Government Accountability Board to the Ethics Commission, a variety of guidance documents were carried over to the new Commission from its predecessor agencies. These guidelines were preliminarily updated to reflect the new Commission's contact information, but these guidelines have not been substantively reviewed or affirmatively re-adopted by the Commission to date. One of the most used guidelines is a guideline discussing officials' receipt of food, drink, favors, services, etc. [Guideline 1211-14](#).¹

As described in the preceding agenda item, if the Commission wishes to continue to provide this consolidated guideline, it must comply with the provisions of [WIS. STAT. § 227.112](#). Staff has reviewed the original guideline and has several suggestions to improve the guideline and make it compliant with [WIS. STAT. § 227.112](#).

¹ Previously there had been four separate guidelines, each targeted to a different audience, but each contained largely the same advice. These guidelines were consolidated into a single guideline when the guidelines were updated to reflect the new Commission in 2016.

Wisconsin Ethics Commissioners

Mac Davis | David R. Halbrooks | Katie McCallum | Tamara Packard | Pat Strachota | Timothy Van Akkeren

Administrator

Daniel A. Carlton, Jr.

II. Analysis

Guideline 1211-14 walks officials through the restrictions and exceptions of both the code of ethics and the lobbying laws. This section will recite the relevant law and will then examine each statement in the guideline to ensure that it has a sufficient legal basis. For each item, the memo will also include staff recommendations, if any, to modify the guideline as necessary to comply with [WIS. STAT. § 227.05](#), or as desirable to provide better guidance to the regulated community. For reference, the original guideline and a proposed revised guideline are attached following this memo.

A. Relevant Law

WIS. STAT. § 13.61 Lobbying regulated; legislative purpose.

The legislature declares that the operation of an open and responsible government requires that the fullest opportunity be afforded to the people to petition their government for the redress of grievances and to express freely to any officials of the executive or legislative branch their opinions on legislation, on pending administrative rules and other policy decisions by administrative agencies, and on current issues. Essential to the continued functioning of an open government is the preservation of the integrity of the governmental decision-making process. In order to preserve and maintain the integrity of the process, the legislature determines that it is necessary to regulate and publicly disclose the identity, expenditures and activities of persons who hire others or are hired to engage in efforts to influence actions of the legislative and executive branches.

WIS. STAT. § 13.625 Prohibited practices.

(1) No lobbyist may:

...

(b) Give to any agency official or legislative employee of the state or to any elective state official or candidate for an elective state office, or to the candidate committee of the official, employee, or candidate:

1. Lodging.
2. Transportation.
3. Food, meals, beverages, money or any other thing of pecuniary value, except that a lobbyist may deliver a contribution or make a personal contribution to a partisan elective state official or candidate for national, state or local office or to the candidate committee of the official or candidate; but a lobbyist may make a personal contribution to which sub. [\(1m\)](#) applies only as authorized in sub. [\(1m\)](#).

...

(2) No principal may engage in the practices prohibited under subs. [\(1\) \(b\)](#) and [\(1m\)](#). This subsection does not apply to the furnishing of transportation, lodging, food, meals, beverages, or any other thing of pecuniary value which is also made available to the general public.

(3) No candidate for an elective state office, elective state official, agency official, or legislative employee of the state may solicit or accept anything of pecuniary value from a lobbyist or principal, except as permitted under subs. [\(1\) \(b\) 3.](#), [\(1m\)](#), [\(2\)](#), [\(4\)](#), [\(5\)](#), [\(6\)](#), [\(7\)](#), [\(8\)](#) and [\(9\)](#). No candidate committee of a candidate for state office may accept anything of

pecuniary value from a lobbyist or principal, except as permitted for such a candidate under subs. [\(1\) \(b\) 3.](#), [\(1m\)](#), [\(2\)](#), and [\(6\)](#).

...

(6) Subsections [\(1\) \(b\)](#), [\(1m\)](#), [\(2\)](#), and [\(3\)](#) do not apply to the furnishing of anything of pecuniary value by an individual who is a lobbyist or principal to a relative of the individual or an individual who resides in the same household as the individual, nor to the receipt of anything of pecuniary value by that relative or individual residing in the same household as the individual.

(6g)

(a) Subsections [\(1\) \(b\)](#) and [\(3\)](#) do not apply to the furnishing of anything of pecuniary value by a principal that is a local governmental unit to a legislative official or an agency official who is an elected official of that local governmental unit, or to the solicitation or acceptance thereof by such a legislative official or agency official, in an amount not exceeding the amount furnished to other similarly situated elected officials of the same local governmental unit.

(b) Subsections [\(1\) \(b\)](#) and [\(3\)](#) do not apply to the furnishing of a per diem or reimbursement for actual and reasonable expenses by a principal that is a local governmental unit to a legislative official or an agency official who is an appointed official of that local governmental unit, or to the solicitation or acceptance thereof by such a legislative official or agency official, in an amount not exceeding the amount furnished to other similarly situated appointed officials of the same local governmental unit.

(6r) Subsections [\(1\) \(b\)](#), [\(1m\)](#), and [\(3\)](#) do not apply to the furnishing of anything of pecuniary value by a lobbyist or principal to an employee of that lobbyist or principal who is a legislative official or an agency official solely because of membership on a state commission, board, council, committee or similar body if the thing of pecuniary value is not in excess of that customarily provided by the employer to similarly situated employees and if the legislative official or agency official receives no compensation for his or her services other than a per diem or reimbursement for actual and necessary expenses incurred in the performance of his or her duties, nor to the receipt of anything of pecuniary value by that legislative official or agency official under those circumstances.

(6s) Subsections [\(1\) \(b\)](#) and [\(3\)](#) do not apply to the furnishing of anything of pecuniary value by a principal to an officer or employee of the University of Wisconsin System, or the solicitation or acceptance thereof by such an officer or employee, for service as a member of the governing body of the principal, in an amount not exceeding the amount furnished to other members of the governing body for the same service.

(6t) Subsections [\(1\) \(b\)](#), [\(2\)](#) and [\(3\)](#) do not apply to the furnishing of educational or informational material by a lobbyist or principal to an elected state official, legislative official or agency official, or acceptance thereof by an elected state official, legislative official or agency official.

(7) This section does not apply to the furnishing or receipt of a reimbursement or payment for actual and reasonable expenses authorized under s. [19.56](#) for the activities listed in that section.

...

(9) This section does not apply to the solicitation, acceptance, or furnishing of anything of pecuniary value by the Wisconsin Economic Development Corporation, or to a principal

furnishing anything of pecuniary value to the Wisconsin Economic Development Corporation, under s. [19.56 \(3\) \(e\)](#) or [\(f\)](#) for the activities specified in s. [19.56 \(3\) \(e\)](#).

(10) This section does not apply to the solicitation, acceptance or furnishing of anything of pecuniary value by the department of tourism, or to a principal furnishing anything of pecuniary value to the department of tourism, under s. [19.56 \(3\) \(em\)](#) or [\(f\)](#) for the activity specified in s. [19.56 \(3\) \(em\)](#).

WIS. STAT. § 19.45 Standards of conduct; state public officials.

(1) The legislature hereby reaffirms that a state public official holds his or her position as a public trust, and any effort to realize substantial personal gain through official conduct is a violation of that trust. This subchapter does not prevent any state public official from accepting other employment or following any pursuit which in no way interferes with the full and faithful discharge of his or her duties to this state. The legislature further recognizes that in a representative democracy, the representatives are drawn from society and, therefore, cannot and should not be without all personal and economic interest in the decisions and policies of government; that citizens who serve as state public officials retain their rights as citizens to interests of a personal or economic nature; that standards of ethical conduct for state public officials need to distinguish between those minor and inconsequential conflicts that are unavoidable in a free society, and those conflicts which are substantial and material; and that state public officials may need to engage in employment, professional or business activities, other than official duties, in order to support themselves or their families and to maintain a continuity of professional or business activity, or may need to maintain investments, which activities or investments do not conflict with the specific provisions of this subchapter.

(2) No state public official may use his or her public position or office to obtain financial gain or anything of substantial value for the private benefit of himself or herself or his or her immediate family, or for an organization with which he or she is associated. This subsection does not prohibit a state public official from using the title or prestige of his or her office to obtain contributions permitted and reported as required by ch. [11](#).

(3) No person may offer or give to a state public official, directly or indirectly, and no state public official may solicit or accept from any person, directly or indirectly, anything of value if it could reasonably be expected to influence the state public official's vote, official actions or judgment, or could reasonably be considered as a reward for any official action or inaction on the part of the state public official. This subsection does not prohibit a state public official from engaging in outside employment.

(3m) No state public official may accept or retain any transportation, lodging, meals, food or beverage, or reimbursement therefor, except in accordance with s. [19.56 \(3\)](#).

WIS. STAT. § 19.56 Honorarium, fees and expenses.

(1) Every state public official is encouraged to meet with clubs, conventions, special interest groups, political groups, school groups and other gatherings to discuss and to interpret legislative, administrative, executive or judicial processes and proposals and issues initiated by or affecting a department or the judicial branch.

...

(3) Notwithstanding s. [19.45](#):

(a) A state public official may receive and retain reimbursement or payment of actual and reasonable expenses and an elected official may retain reasonable compensation, for a published work or for the presentation of a talk or participation in a meeting related to a topic specified in sub. (1) if the payment or reimbursement is paid or arranged by the organizer of the event or the publisher of the work.

(b) A state public official may receive and retain anything of value if the activity or occasion for which it is given is unrelated to the official's use of the state's time, facilities, services or supplies not generally available to all citizens of this state and the official can show by clear and convincing evidence that the payment or reimbursement was unrelated to and did not arise from the recipient's holding or having held a public office and was paid for a purpose unrelated to the purposes specified in sub. (1).

(c) A state public official may receive and retain from the state or on behalf of the state transportation, lodging, meals, food or beverage, or reimbursement therefor or payment or reimbursement of actual and reasonable costs that the official can show by clear and convincing evidence were incurred or received on behalf of the state of Wisconsin and primarily for the benefit of the state and not primarily for the private benefit of the official or any other person.

(d) A state public official may receive and retain from a political committee under ch. 11 transportation, lodging, meals, food or beverage, or reimbursement therefor or payment or reimbursement of costs permitted and reported in accordance with ch. 11.

...

(em) A state public official who is an officer or employee of the department of tourism may solicit, receive and retain on behalf of the state anything of value for the purpose of hosting individuals in order to promote tourism.

(f) A state public official or a local public official may receive and retain from the Wisconsin Economic Development Corporation anything of value which the Wisconsin Economic Development Corporation is authorized to provide under par. (e) and may receive and retain from the department of tourism anything of value which the department of tourism is authorized to provide under par. (em).

WIS. STAT. § 946.11 Special privileges from public utilities.

(1) Whoever does the following is guilty of a Class I felony:

(a) Whoever offers or gives for any purpose to any public officer or to any person at the request or for the advantage of such officer any free pass or frank, or any privilege withheld from any person, for the traveling accommodation or transportation of any person or property or for the transmission of any message or communication; or

(b) Any public officer who asks for or accepts from any person or uses in any manner or for any purpose any free pass or frank, or any privilege withheld from any person for the traveling accommodation or transportation of any person or property or for the transmission of any message or communication; or

(c) Any public utility or agent or officer thereof who offers or gives for any purpose to any public officer or to any person at the request or for the advantage of such officer, any frank or any privilege withheld from any person for any product or service produced, transmitted, delivered, furnished or rendered or to be produced, transmitted, delivered, furnished or rendered by any public utility, or any free product or service whatsoever; or

- (d) Any public officer who asks for or accepts or uses in any manner or for any purpose any frank or privilege withheld from any person for any product or service produced, transmitted, delivered, furnished or rendered by any public utility.
- (2) In this section:
- (a) "Free pass" means any form of ticket or mileage entitling the holder to travel over any part of a railroad or other public transportation system and issued to the holder as a gift or in consideration or partial consideration of any service performed or to be performed by such holder, except that it does not include such ticket or mileage when issued to an employee of the railroad or public transportation system pursuant to a contract of employment and not in excess of the transportation rights of other employees of the same class and seniority, nor does it include free transportation to police officers or fire fighters when on duty.
- (b) "Privilege" means anything of value not available to the general public, but does not include compensation or fringe benefits provided as a result of employment by a public utility to a regular employee or pensioner when the following conditions are satisfied:
1. The regular employee or pensioner is not compensated specifically for services performed for a purpose related to the election or nomination for election of an individual to state or local office, the recall from or retention in office of an individual holding a state or local office, or for the purpose of payment of expenses incurred as a result of a recount at an election.
 2. The regular employee or pensioner is not compensated in excess of that provided to other regular employees or pensioners of like status.
- (c) "Public utility" has the meaning designated in s. [196.01 \(5\)](#) and includes a telecommunications carrier, as defined in s. [196.01 \(8m\)](#).

Wis. CONST. ART. XIII, § 11 Passes, franks, and privileges.

No person, association, co-partnership, or corporation, shall promise, offer or give, for any purpose, to any political committee, or any member or employee thereof, to any candidate for, or incumbent of any office or position under the constitution or laws, or under any ordinance of any town or municipality, of this state, or to any person at the request or for the advantage of all or any of them, any free pass or frank, or any privilege withheld from any person, for the traveling accommodation or transportation of any person or property, or the transmission of any message or communication.

No political committee, and no member or employee thereof, no candidate for and no incumbent of any office or position under the constitution or laws, or under any ordinance of any town or municipality of this state, shall ask for, or accept, from any person, association, copartnership, or corporation, or use, in any manner, or for any purpose, any free pass or frank, or any privilege withheld from any person, for the traveling accommodation or transportation of any person or property, or the transmission of any message or communication.

Any violation of any of the above provisions shall be bribery and punished as provided by law, and if any officer or any member of the legislature be guilty thereof, his office shall become vacant.

No person within the purview of this act shall be privileged from testifying in relation to anything therein prohibited; and no person having so testified shall be liable to any

prosecution or punishment for any offense concerning which he was required to give his testimony or produce any documentary evidence.

Notaries public and regular employees of a railroad or other public utilities who are candidates for or hold public offices for which the annual compensation is not more than three hundred dollars to whom no passes or privileges are extended beyond those which are extended to other regular employees of such corporations are excepted from the provisions of this section.

B. Guideline Review

The original Guideline 1211-14 is comprised of two sections: Items Specifically Authorized (i.e., items that can be accepted), and Statutory Restraints (i.e., items that should not be accepted). Within the Items Specifically Authorized section, the guideline further subdivides into those items acceptable from any person (including a lobbyist/lobbying principal) and items acceptable when from a person other than a lobbyist/lobbying principal. Staff proposes re-titling the sections to be consistent (e.g., An Official May Accept vs. An Official May Not Accept), with three further subdivisions of the first section: (1) From Any Person, (2) From a Person Other Than a Lobbyist/Lobbying Principal, and (3) From Certain Persons.

This memo will address each item in the order of the original guideline.

An Official May Accept...

1. Expenses for Talks and Programs (From Any Person)

The first item in the Specifically Authorized section is expenses for talks and programs. This is referencing the honorarium exceptions of WIS. STAT. §§ [13.625\(7\)](#) and [19.56\(3\)\(a\)](#), which permit a state public official to accept actual and reasonable expenses, and an elected official to accept reasonable compensation, for the presentation of a talk or participation in a meeting related to legislative, administrative, executive, or judicial processes and proposals and issues initiated by or affecting a department or the judicial branch. The lobbying law exception only provides for actual and reasonable expenses for such a presentation of a talk or participation in a meeting. The original guideline discusses this distinction but does not cite the lobbying law exception. Staff recommends adding the lobbying law citation and splitting this into two items (expenses and reasonable compensation) and moving both to the new Certain Persons subsection.

2. Items and Services Made Available to the General Public on the Same Terms (From Any Person)

The second item in the Specifically Authorized section is items and services made available to the general public on the same terms. This is referencing the exceptions of WIS. STAT. §§ [13.625\(2\)](#) and [19.56\(3\)\(b\)](#), which respectively exempt a lobbying principal from the restrictions on providing items of value to covered officials when the item is made available to the general public and permit a state public official to accept something offered for

reasons unrelated to holding public office. The original guideline states that food, drink, transportation, lodging, items and services may be accepted by officials who pay the same price charged to others, if any, when the following three-part test is met:

1. The admission, items, or services are available to anyone who wants them at the same price;
2. The official is not given a preference or advantage in obtaining the items; and,
3. There is no offer or notice of the event, item, or service directed to an official that would confer an advantage to the official.

This test is based on prior opinions of the Ethics Board and an Attorney General opinion that agrees that similar criteria were appropriate for determining whether an item or service is available to the general public. *See e.g., [1991 Wis Eth Bd 3](#), [1991 Wis Eth Bd 9](#), [80 Op. Att’y Gen. 205, 212 \(1992\)](#)*. The actual test endorsed by the Attorney General to determine if an item or service is available to the general public was:

1. It is available to anyone who wants it and who meets the criteria for eligibility;
2. The criteria are:
 - a. Established and readily identifiable; and
 - b. Drawn without the purpose or effect of giving a preference to or conferring an advantage upon an agency official, legislative employee or elective state official; and,
3. There is no offer or notice of the event, item, or service directed to an official that would confer an advantage to the official.

The original guideline does not cite to any of the opinions of the Ethics Board or the Attorney General opinion and staff recommends citing those sources in a revised guideline as well as specifying that the general public exception only applies to lobbying principals, not lobbyists.

3. Food and Drink that the Official Purchases at an Event Intended For and Conducive To the Discussion of State Governmental Processes, Proposals, or Issues (From Any Person)

The third item in the Specifically Authorized section is food and drink that the official purchases at an event intended for and conducive to the discussion of governmental processes, proposals, or issues if the official pays the highest of:

1. The price charged to others,
2. The food and drink’s true value, or
3. The sponsor’s cost.

This item cites the minutes of an Ethics Board meeting and the same Attorney General Opinion as support, but a review of the minutes does not reflect that the Ethics Board found this to be specifically authorized. Rather, the Ethics Board appears to have relied on the legislative purpose statement of [WIS. STAT. § 13.61](#) and directed staff not to apply the lobbying law to prevent officials who were paying their own costs from participating in conferences, seminars, and receptions intended for and conducive to discussion of state governmental policies and processes. A review of the Attorney General’s opinion does

support an official being able to pay their costs and attend such events under the ethics code, but it does not provide any support for an exception to the lobbying law as described nor does it endorse the practice of the official paying the highest of the three costs described.

The requirement to pay the highest of the three costs appears to coincide with the passage of 1989 Wisconsin Act 338, which made significant changes to the lobbying and ethics laws, but the first formal opinion which appears to include a similar test is [1997 Wis Eth Bd 12](#). In that opinion, the Ethics Board held that a lobbying principal may provide food and drink to state officials at a reception if:

1. The organization can demonstrate its genuine attempt to attract the general public to the reception;
2. The reception is open to the public on the same terms it is available to state officials without the purpose or effect of the manner of invitation conferring an advantage on a state official greater than that available to the general public; and,
3. Either:
 - a. The organization sets and collects from each state official the greater of:
 - i. The established charge or ticket price, if any, charged to others for the same or comparable benefit,
 - ii. The organization's cost of acquiring the goods or services the organization provides, or
 - iii. The market price of the recipient's independently acquiring like benefits;

OR

- b. The reception is unrelated to state officials' discussion of state government processes or issues initiated by or affecting state government.

Characterizing the Ethics Board's prior decision or the current Commission's potential decision in a specific case as something that is "Specifically Authorized" is likely misleading and may not be appropriate for a general guidance document. In training presentations to date that have mentioned this guideline, staff has advised both lobbyists and officials against relying on this part of the guideline.

Staff recommends eliminating this item from the guideline as it could be misleading. A similar item would continue in the subsection for items from persons other than lobbyists/lobbying principals. Additionally, staff could also add a citation to [1997 Wis Eth Bd 12](#) in the general public item to specifically guide lobbying principals as to how such an event could qualify for this exception.

4. Expenses Provided By or to the State (From Any Person)

The fourth item in the Specifically Authorized section is expenses provided by or to the state. This is referencing the exception of [WIS. STAT. § 19.56\(3\)\(c\)](#), which permits state public officials to accept from the state or on behalf of the state transportation, lodging, meals, food or beverage, or reimbursement therefor or payment or reimbursement of actual

and reasonable costs that the official can show by clear and convincing evidence were incurred or received on behalf of the state and primarily for the benefit of the state and not primarily for the private benefit of the official or any other person. However, there is no parallel exception to the lobbying law. As discussed in the aforementioned Attorney General's opinion, the expenses permitted by [WIS. STAT. § 13.625\(7\)](#) are limited to those allowed under [WIS. STAT. § 19.56\(3\)\(a\)](#). [80 Op. Att'y Gen. 205, 209 \(1992\)](#).

The original guideline also includes a footnote which states that the certification of the agency head or governing body that the cost or item or service would otherwise be paid by the state is all that is needed to meet the statutory requirement. While this has been the prior advice of our predecessor agencies, there is no statutory or administrative code provision that requires an official to seek out such a certification. *See e.g.*, [1992 Wis Eth Bd 7](#). While such a certification would likely be considered clear and convincing evidence under [WIS. STAT. § 19.56\(3\)\(c\)](#), it is not the only option available.

Finally, in some situations, it is possible for a lobbying principal to provide items of value to the state that may ultimately be re-distributed by the state to agency officials. The Department of Tourism ("Tourism") or the Wisconsin Economic Development Corporation ("WEDC") have separate exceptions that would allow them to solicit and receive donations of such items from lobbying principals to further their respective missions and those agencies could then re-distribute those donations to covered officials consistent with Tourism or WEDC policies. *See* WIS. STAT. §§ [13.625\(9\)](#) and [\(10\)](#), [19.56\(3\)\(em\)](#) and [\(f\)](#).

Staff recommends moving this item from the first subsection (any person) to the second subsection (any person other than a lobbyist or lobbying principal), removing the footnote and modifying the language to clarify that the certification is only one possible example of clear and convincing evidence, and adding an item to the Certain Persons subsection specifically addressing the exceptions to the lobbying law and ethics code available to Tourism and WEDC. *See* attached Proposed Revised Guideline.

5. Information (From Any Person)

The fifth item in the Specifically Authorized section is information. This is referencing the exception of [WIS. STAT. § 13.625\(6t\)](#), which permits lobbyists and lobbying principals to provide educational or informational material to an elected state official, legislative official, or agency official. The guideline indicates that the exception is limited to informational materials that are not of substantial value. Presumably this is referring to the fact that there is no parallel exception in the code of ethics and so an official would still be barred from accepting informational or educational material of substantial value. *See* [WIS. STAT. § 19.45\(2\)](#). However, educational or informational material of substantial value could potentially still be accepted if the material was covered by some other exception, such as the state benefit exception. *See* [WIS. STAT. § 19.56\(3\)\(c\)](#).

Staff recommends adding language consistent with the above to this item as well as adding a citation to [WIS. STAT. § 19.56\(3\)\(c\)](#) as an example of a potential exception. See attached Proposed Revised Guideline.

6. Items and Services Unrelated to Public Position (From Any Person Other Than a Lobbyist/Lobbying Principal)

The sixth item in the Specifically Authorized section, and the first of the second subsection limited to persons other than lobbyists/lobbying principals, is items and services unrelated to public position. This is referencing the exception of [WIS. STAT. § 19.56\(3\)\(b\)](#), which permits a state public official to receive and retain anything of value if the activity or occasion for which it is given is unrelated to the official's use of the state's time, facilities, services, or supplies not generally available to all citizens of this state and the official can show by clear and convincing evidence that the payment or reimbursement was unrelated to and did not arise from the recipient's holding or having held a public office and was paid for a purpose other than official business.

Staff believes this item is accurate, cites sufficient legal authority, and recommends carrying this item over into the attached Proposed Revised Guideline as written.

7. Items and Services For Which the Recipient Pays the Full Cost (From Any Person Other Than a Lobbyist/Lobbying Principal)

The seventh item in the Specifically Authorized section, and the second of the second subsection limited to persons other than lobbyists/lobbying principals is items and services for which the recipient pays the full cost. This appears to be based on an interpretation of the unrelated reasons exception of [WIS. STAT. § 19.56\(3\)\(b\)](#) as well as an Attorney General's opinion.

In an Attorney General's opinion published only a few days before the earlier discussed opinion, the Attorney General opined that a state public official may accept items offered to a state public official because of their office for which the official has paid the cost, unless the opportunity to purchase the item or service itself is of substantial value. See [80 Op. Att'y Gen. 201, 202 \(1992\)](#). The guideline goes on to describe the full cost to be paid as the price charged to all others if the event is open to the general public, or the highest of: (1) the price charged others, (2) the item's or service's true value, or (3) the furnisher's cost, if it is not open to the public. As described above, this advice apparently goes back to the 1990's, but the first formal opinion describing a similar test appears to be [1997 Wis Eth Bd 12](#).

While there is no explicit statutory authority here which discusses an official paying "full cost," staff believes this item is an accurate interpretation of WIS. STAT. §§ [19.45\(3m\)](#) and [19.56\(3\)\(b\)](#) and cites sufficient legal authority, although it could be further bolstered by adding language consistent with the Attorney General's opinion regarding the opportunity to purchase itself being a thing of value, as well as a citation to [1997 Wis Eth Bd 12](#). See attached Proposed Revised Guideline.

8. Item, Services, and Reimbursements From Campaign Committees (From Any Person Other Than a Lobbyist/Lobbying Principal)

The final item in the Specifically Authorized section is items, services, and reimbursements from campaign committees. This is referencing the exception of [WIS. STAT. § 19.56\(3\)\(d\)](#), which permits a state public official to receive and retain from a political committee under ch. 11 transportation, lodging, meals, food or beverage, or reimbursement therefor or payment or reimbursement of costs permitted and reported in accordance with ch. 11.

Staff believes this item is accurate, cites sufficient legal authority, and recommends carrying this item over into the attached Proposed Revised Guideline in the Certain Persons subsection as written.

An Official May Not Accept...

1. Transportation, Traveling Accommodations, or Communication Services

The first item in the Statutory Restraints section is transportation, travelling accommodations, or communication services. This is referencing the restrictions imposed on officials by [WIS. CONST. ART. XIII, § 11](#) and [WIS. STAT. § 946.11](#). Article XIII prohibits any person from giving a free pass, frank, or privilege (e.g., a discount) for transmission of any message or communication, or any transportation or accommodation of any person or property, to government officials or employees or to any other person at their request or that would be to their advantage.

Staff believes this item is accurate, cites sufficient legal authority, and recommends carrying this item over into the attached Proposed Revised Guideline as written.

2. Items or Services from Lobbyists

The second item in the Statutory Restraints section is items or services from lobbyists. This is referencing the restrictions imposed by [WIS. STAT. § 13.625\(1\)-\(3\)](#). The guideline goes on to describe the exception for relatives and members of the same household and discuss the definition of an agency official in a footnote, but does not mention the exception for lobbyists to deliver a contribution as provided by [WIS. STAT. § 13.625\(1\)\(b\)3.](#), make campaign contributions as provided by [WIS. STAT. § 13.625\(1m\)\(b\)](#), or compensate employees as provided by [WIS. STAT. § 13.625\(6r\)](#).

Staff believes this item is accurate and cites sufficient legal authority but recommends modifying this item to remove the footnote and adding the exceptions described above as new items in the list of those things that may be accepted. See attached Proposed Revised Guideline.

3. Items or Services from Lobbying Principals

The third item in the Statutory Restraints section is items or services from organizations that employ lobbyists. This is referencing the restrictions imposed on lobbying principals by [WIS. STAT. § 13.625\(2\)](#). The guideline again mentions the general public exception, and in a footnote describes the definition of agency official and the exceptions for local governmental units and compensation of employees; however, the guideline omits mention of the exception for relatives and members of the same household as provided in [WIS. STAT. § 13.625\(6\)](#) and the exception for officers or employees of the UW to serve on governing bodies of principals as provided in [WIS. STAT. § 13.625\(6s\)](#).

Staff believes this item is accurate and cites sufficient legal authority but recommends modifying this item to remove the footnote and adding the exceptions not previously added as new items in the list of those things that may be accepted. See attached Proposed Revised Guideline.

4. Food, Drink, or Travel Offered for a Reason Related to Holding Any Public Position

The fourth item in the Statutory Restraints section is food, drink, or travel offered for a reason related to holding any public position. This is referencing the restrictions imposed on state public officials by [WIS. STAT. § 19.45\(3m\)](#). The guideline goes on to describe that the restriction also applies to any food, drink, transportation, or lodging offered for a reason related to having previously held any public position, which comes from the unrelated reasons exception of [WIS. STAT. § 19.56\(3\)\(b\)](#). This additional language is unnecessary to include as the original restriction applies to all food, drink, transportation, or lodging offered for a reason related to holding any public position, and the unrelated reasons exception is already amply described in the previous section.

Staff believes this item is accurate and cites sufficient legal authority but believes the item can be trimmed down as discussed above. See attached Proposed Revised Guideline.

5. Other Items or Services Offered Because of State Position

The fifth item in the Statutory Restraints section is other items or services offered because of state position. This is referencing the broad restrictions imposed on state public officials by [WIS. STAT. § 19.45\(2\)](#) from obtaining financial gain or anything of substantial value for themselves, their immediate family, or an organization with which they are associated. The guideline goes on to reframe the prohibition by stating that an official should not accept any item or service of more than nominal value offered because of the person's holding public office.

Staff believes this item is mostly accurate and cites sufficient legal authority but recommends this item be modified to remove the reframing of the prohibition and include the fact that this item requires both a use of office and more broadly applies to benefits for the official's immediate family or organizations with which they are associated. See attached Proposed Revised Guideline.

6. Reward for Official Action

The sixth item in the Statutory Restraints section is rewards for official action. This is referencing the restriction on state public officials by [WIS. STAT. § 19.45\(3\)](#) from accepting anything of value if it could reasonably be considered a reward for any official action or inaction on the part of the state public official.

Staff believes this item is accurate and cites sufficient legal authority to carry over as written. See attached Proposed Revised Guideline.

7. Items and Services That Could Influence Official Action

The seventh item in the Statutory Restraints section is items and services that could influence official action. This is referencing the restriction on state public officials by [WIS. STAT. § 19.45\(3\)](#) from accepting anything of value if it could reasonably be expected to influence the state public official's vote, official actions, or judgment. The guideline does not include the statutory exception in the same provision that states that this provision does not prohibit outside employment.

Staff believes this item is accurate and cites sufficient legal authority but may benefit from adding the fact that the provision does not prohibit outside employment. See attached Proposed Revised Guideline.

8. Payment For Officiating at a Courthouse Wedding (Judges Only)

The final item in the Statutory Restraints section is a payment to a judge for officiating at a courthouse wedding. This item cites [WIS. STAT. § 19.45\(2\)](#) which prohibits state public officials from using their public position or office to obtain financial gain or anything of substantial value for themselves, their immediate family, or an organization with which they are associated. The guideline goes on to state that the restriction applies to officiating at any marriage at the courthouse, regardless of the hour at which the wedding is performed; however, the only opinion that appear to address the hour of the wedding only suggests that it is advisable to refuse to accept gratuities for officiating at a marriage at the courthouse regardless of the hour. *See* 2 Op. Eth Bd 58 (1978).

The underlying statutory prohibition is on the use of office and the exception for unrelated reasons is clear that an official may accept if the occasion for which the gratuity is given is unrelated to the official's use of the state's time, facilities, services or supplies not generally available to all citizens and was unrelated to and did not arise from the recipient's holding public office. *See* WIS. STAT. §§ [19.45\(2\)](#), [19.56\(3\)\(b\)](#). As a later Ethics Board opinion held, "a judge's officiating a wedding does not involve the judge's use of his or her public position or office provided that in connection with the marriage's solemnization the judge does not avail himself or herself of the government's supplies, services or facilities not ordinarily available to any resident." 4 Op. Eth Bd 85, 86 (1981). As such, the direction to reject a gratuity for a marriage at the courthouse, regardless of the hour, may be too broad.

For example, the Milwaukee County ordinance governing fees for weddings only requires that no gratuity be accepting for weddings conducted in certain buildings during the usual and customary hours those buildings are open to the public. [Milwaukee County Ordinance 59.20](#).

Staff believes this item should be modified to reflect that the prohibition is on the acceptance of gratuities for use of access or resources not available to any resident as the act of officiating a marriage is not itself a use of office. The item would also benefit from citations to the underlying Ethics Board opinions. See attached Proposed Revised Guideline.

III. Attachments

- A. Original Guideline 1211-14
- B. Proposed Revised Guideline 1211-14

Wisconsin Ethics Commission

For legislators, legislative employees, and executive branch
officers elected in state-wide elections

Officials' receipt of food, drink, favors, services, etc.

ITEMS SPECIFICALLY AUTHORIZED: Consistent with the statutes administered by the Wisconsin Ethics Commission, *a state public official may accept and retain:*

ALL OFFICIALS MAY ACCEPT FROM ANY ORGANIZATION (EVEN A LOBBYING ORGANIZATION):

- a. **EXPENSES FOR TALKS AND PROGRAMS.** Payment or reimbursement by a meeting's sponsor of expenses an official or employee incurs for presenting a talk or program about state issues (including meal and travel costs)¹ [§ 19.56(3)(a)];
ONLY ELECTED OFFICIALS – May accept reasonable compensation for a talk from the organizer of an event, as long as the organizer is not a lobbyist or lobbying organization.
- b. **ITEMS AND SERVICES MADE AVAILABLE TO THE GENERAL PUBLIC ON THE SAME TERMS.** Food, drink, transportation, lodging, items, and services at the same price, if any, charged others, when each of the following applies:
 - (i) the admission, items, or services are available to anyone who wants them at the same price;
 - (ii) the official is not given a preference or advantage in obtaining the items; and
 - (iii) there is no offer or notice of the event, item, or service directed to an official that would confer an advantage to the official. [§13.625(2), *Wisconsin Statutes*];
- c. **FOOD AND DRINK THAT THE OFFICIAL PURCHASES AT AN EVENT INTENDED FOR AND CONDUCTIVE TO THE DISCUSSION OF STATE GOVERNMENTAL PROCESSES, PROPOSALS, OR ISSUES.** Food and drink that an official purchases at an event intended for and conducive to the discussion of state governmental processes, proposals, or issues if the official pays the highest of (i) the price charged others; (ii) the food and drink's true value, or (iii) the sponsor's cost [80 Op. Att'y Gen. 201 (1992)];¹
- d. **EXPENSES PROVIDED BY OR TO THE STATE.** Food, drink, transportation, lodging, or payment or reimbursement of costs that the official can clearly and convincingly demonstrate are provided by or on behalf of the state and primarily for the state's benefit, not for a private benefit² [§ 19.56(3)(c)]; and
- e. **INFORMATION.** Informational materials that are not of substantial value. [§§ 13.625(6t) and 19.45(2)].

FROM AN INDIVIDUAL/ORGANIZATION OTHER THAN A LOBBYIST/LOBBYING ORGANIZATION:

- f. **ITEMS AND SERVICES UNRELATED TO PUBLIC POSITION.** Food, drink, transportation, lodging, items, and services which the recipient can clearly demonstrate are received for a reason unrelated to the recipient's holding or having held *any* public position [§§ 19.45(3m) and 19.56(3)(b), *Wisconsin Statutes*];
- g. **ITEMS AND SERVICES FOR WHICH THE RECIPIENT PAYS THE FULL COST.** Food, drink, transportation, lodging, items, and services if the official pays either (a) the price charged all others, if

¹ Minutes, open session, Ethics Board, March 8, 1995, 80 Op. Att'y Gen. 201 (1992).

² Normally, the certification of the agency head or governing body that the cost or item or service would otherwise be paid by the state of Wisconsin is all that is needed to meet the statute's requirement that a reimbursement or item or service be provided for the benefit of the state, not for a private benefit.

the event is open to the general public, or (b) the highest of (i) the price charged others; (ii) the item's or service's true value, or (iii) the furnisher's cost [§§ 19.45(3m) and 19.56(3)(b) *Wisconsin Statutes*];

- h. **ITEMS, SERVICES, AND REIMBURSEMENTS FROM CAMPAIGN COMMITTEES.** Services, items, and reimbursements from campaign committees as permitted and reported under campaign finance laws [§ 19.56(3)(d)].

STATUTORY RESTRAINTS: Except as noted on the other side of the page, *a state public official should not accept:*

1. **TRANSPORTATION, TRAVELING ACCOMMODATIONS, OR COMMUNICATION SERVICES.** Discounted transportation or traveling accommodation for which the supplier would usually charge [§946.11; Art. 13, §11, Const.].
2. **ITEMS OR SERVICES FROM LOBBYISTS.** Food, drink, transportation, lodging, employment, or any other thing of pecuniary value from a lobbyist³, either directly or through an agent [§ 13.625(1)-(3)];
3. **ITEMS OR SERVICES FROM ORGANIZATIONS THAT EMPLOY LOBBYISTS.** Food, drink, transportation, lodging, employment, or any other thing of pecuniary value from an organization that employs a lobbyist unless also made available to the general public on like terms and conditions⁴ [§ 13.625(2)]; and
4. **FOOD, DRINK, OR TRAVEL OFFERED FOR A REASON RELATED TO HOLDING ANY PUBLIC POSITION.** Food, drink, transportation, or lodging offered for a reason related to the recipient's holding or having held *any* public position. [§§ 19.45(3m) and 19.56(3)(b)];
5. **OTHER ITEMS OR SERVICES OFFERED BECAUSE OF STATE POSITION.** Any item or service of more than nominal value offered because of the person's holding a state public office [§ 19.45(2), *Wisconsin Statutes*];⁵
6. **REWARDS FOR OFFICIAL ACTION.** Anything of value that could reasonably be considered as a reward for the official's action or inaction [§ 19.45(3), *Wisconsin Statutes*];
7. **ITEMS AND SERVICES THAT COULD INFLUENCE OFFICIAL ACTION.** Anything of value that could reasonably be expected to influence the state public official's vote, official actions, or judgment [§ 19.45(3), *Wisconsin Statutes*].
8. **JUDGES ONLY: PAYMENT FOR OFFICIATING AT A COURTHOUSE WEDDING.** A payment, even if unsolicited, for officiating at a marriage at a courthouse, regardless of the hour at which the marriage is performed.⁶ [§ 19.45 (2)]

³ Unless the official's responsibilities do not include rulemaking or unless the lobbyist and recipient are married to each other, are engaged to be married, reside in the same household, or are close relatives [§ 13.625(6)].

⁴ Unless the official's responsibilities do not include rulemaking . In the case of an official who also holds an *elected* position in a local government that employs a lobbyist, the local government may furnish the individual anything it normally furnishes to its other similarly situated elected officials. [§ 13.625(6g)(a)] If an official is *appointed* to a local government position compatible with the state position, the local government may furnish the individual a per diem or reimbursement of expenses up to the amount furnished to its other similarly situated elected officials. [§ 13.625(6g)(b)]

Members of Commissions, Councils, Boards, Committees, or Similar Bodies: In the case of a person who is a state official solely because of membership on the Board of Regents, the person may receive payments and benefits from his or her employer in an amount the employer customarily provides to similarly situated employees, even if the employer is a lobbyist or retains a lobbyist. [§ 13.625(6r)]

⁵ For more detailed information about **attending conferences, seminars, and receptions**, see Wisconsin Ethics Commission Guideline ETH-1222.

⁶ The Ethics Code provides no obstacle to a judge's accepting a gratuity for officiating at a marriage any place other than a courthouse, provided the payment does not exceed a reasonable amount that a member of the clergy might receive under like circumstances and provided the payment could not reasonably be expected to influence the judge's exercise of judicial duties. When a judge is offered a payment for officiating at a marriage at a courthouse, the judge should decline it or suggest that it be paid instead to a local charity.

Wisconsin Ethics Commission

For state public officials

Officials' receipt of food, drink, favors, services, etc.

AN OFFICIAL MAY ACCEPT...

FROM ANY PERSON:

1. **ITEMS AND SERVICES MADE AVAILABLE TO THE GENERAL PUBLIC ON THE SAME TERMS.** Food, drink, transportation, lodging, items, and services at the same price, if any, charged others by a person other than a lobbyist, when each of the following applies:
 - A. It is available to anyone who wants it and who meets the criteria for eligibility;
 - B. The criteria are:
 - i. Established and readily identifiable; and
 - ii. Drawn without the purpose or effect of giving a preference to or conferring an advantage upon an agency official, legislative employee, or elective state official; and
 - C. There is no offer or notice of the event, item, or service directed to an official that would confer an advantage to the official.

WIS. STAT. §§ 13.625(2), 19.56(3)(b). 80 Op. Att’y Gen. 205, 212 (1992). *See e.g.*, 1991 Wis Eth Bd 3, 1991 Wis Eth Bd 9, 1997 Wis Eth Bd 12.
2. **EDUCATIONAL OR INFORMATIONAL MATERIALS OF UNEXCEPTIONAL VALUE.** Educational or informational materials of substantial value may only be accepted if some other exception applies, such as the state benefit exception. WIS. STAT. §§ 13.625(6t), 19.45(2); *see e.g.*, WIS. STAT. § 19.56(3)(c).

FROM A PERSON OTHER THAN A LOBBYIST/LOBBYING PRINCIPAL:

3. **ITEMS AND SERVICES UNRELATED TO PUBLIC POSITION.** Food, drink, transportation, lodging, items, and services which the recipient can clearly demonstrate are received for a reason unrelated to the recipient's holding or having held *any* public position. WIS. STAT. §§ 19.45(3m) and 19.56(3)(b).
4. **ITEMS AND SERVICES FOR WHICH THE RECIPIENT PAYS THE FULL COST.** Food, drink, transportation, lodging, items, and services if the official pays either (a) the price charged all others, if the event is open to the general public, or (b) the highest of: (i) the price charged others, (ii) the item's or service's true value, or (iii) the furnisher's cost; provided the opportunity to purchase the item itself is not a thing of value. WIS. STAT. §§ 19.45(3m) and 19.56(3)(b); Op. Att’y Gen. 201, 202 (1992); 1997 Wis Eth Bd 12.
5. **EXPENSES PROVIDED BY OR TO THE STATE.** Food, drink, transportation, lodging, or payment or reimbursement of costs that the official can clearly demonstrate are provided by or on behalf of the state and primarily for the state's benefit, not for the private benefit of the official. WIS. STAT. § 19.56(3)(c). Although neither required nor conclusive, a certification of another official who can appropriately be seen as acting on the state's behalf is one possible way to support that the item received was for the state's benefit. *See e.g.*, 2007 Wis Eth Bd 1.

FROM CERTAIN PERSONS:

6. **EXPENSES FOR TALKS AND PROGRAMS.** Payment or reimbursement of actual and reasonable expenses an official incurs for presenting a talk or program about state issues if the payment or reimbursement is paid or arranged by the organizer of the event. WIS. STAT. §§ 13.625(7), 19.56(3)(a).
7. **REASONABLE COMPENSATION (ELECTED OFFICIALS ONLY).** An elected official may accept reasonable compensation for presenting a talk or program about state issues if the compensation is paid or

arranged by the organizer of the event and the person paying or arranging for the compensation is not a lobbyist or lobbying principal. WIS. STAT. §§ 13.625(7), 19.56(3)(a).

8. **ITEMS, SERVICES, AND REIMBURSEMENTS FROM A POLITICAL COMMITTEE.** Services, items, and reimbursements from a political committee if permitted and reported under campaign finance law. WIS. STAT. § 19.56(3)(d).
9. **ANYTHING OF VALUE FROM EITHER THE DEPARTMENT OF TOURISM OR THE WISCONSIN ECONOMIC DEVELOPMENT CORPORATION WHEN AUTHORIZED TO PROVIDE.** WIS. STAT. § 13.625, 19.56(3)(f).
10. **ANYTHING OF VALUE FROM A LOBBYING PRINCIPAL WHO IS A LOCAL GOVERNMENTAL UNIT (LOCAL ELECTED OR APPOINTED OFFICIALS ONLY).** A legislative or agency official who is also a local elected official may accept from a principal that is also a local governmental unit an amount not exceeding that provided to other similarly situated officials of that local governmental unit. WIS. STAT. § 13.625(6g)(a). A legislative or agency official who is also a local appointed official may accept from a principal that is also a local governmental unit a per diem or payment of actual and reasonable expenses not exceeding that provided to other similarly situated officials of that local governmental unit. WIS. STAT. § 13.625(6g)(b).

EXCEPT AS PROVIDED, AN OFFICIAL MAY NOT ACCEPT...

1. **TRANSPORTATION, TRAVELING ACCOMMODATIONS, OR COMMUNICATION SERVICES.** Discounted transportation or traveling accommodation for which the supplier would usually charge. WIS. CONST. art. XIII, § 11; WIS. STAT. § 946.11.
2. **ITEMS OR SERVICES FROM LOBBYISTS OR LOBBYING PRINCIPALS.** Food, drink, transportation, lodging, employment, or any other thing of pecuniary value from a lobbyist or lobbying principal, either directly or through an agent. WIS. STAT. § 13.625(1)-(3). Except:
 - A. **CAMPAIGN CONTRIBUTIONS FROM A LOBBYIST (PARTISAN ELECTED OFFICIALS OR CANDIDATES FOR PARTISAN OFFICE ONLY).** A lobbyist may make a personal campaign contribution only between the first day authorized by law for the circulation of nomination papers as a candidate at a general or special election, and the day of that election, except that a contribution to a candidate for legislative office may be made during that period only if the legislature has concluded its final floor period and is not in special or extraordinary session. Incumbent partisan elected officials may not accept contributions from lobbyists while running for a different office during the spring election. Campaign contributions from other sources (e.g, a political action committee) may be delivered by a lobbyist at any time. WIS. STAT. § 13.625(1m).
 - B. **ANYTHING OF VALUE FROM A LOBBYIST OR LOBBYING PRINCIPAL WHO IS A RELATIVE OF THE OFFICIAL OR WHO RESIDES IN THE SAME HOUSEHOLD.** A “relative” means a parent, grandparent, child, grandchild, brother, sister, parent-in-law, grandparent-in-law, brother-in-law, sister-in-law, uncle, aunt, nephew, niece, spouse, fiancé or fiancée. WIS. STAT. §§ 13.62(12g), 13.625(6).
 - C. **ANYTHING OF VALUE FROM A LOBBYIST OR LOBBYING PRINCIPAL TO AN OFFICIAL WHO IS AN EMPLOYEE.** An individual who is a legislative or agency official solely because of membership on a state commission, board, council, committee, or similar body may accept anything of value from a lobbyist or a lobbying principal who employs the official, if not in excess of that customarily provided by the employer to similarly situated employees and the official receives no compensation for his or her services to the state other than a per diem or reimbursement of actual and necessary expenses incurred in the performance of his or her duties. WIS. STAT. § 13.625(6r).
 - D. **ANYTHING OF VALUE FROM A LOBBYING PRINCIPAL TO AN OFFICER OR EMPLOYEE OF THE UNIVERSITY OF WISCONSIN SYSTEM FOR SERVICE ON THE GOVERNING BODY**

OF THE PRINCIPAL. In an amount not exceeding the amount provided to other members of the governing body for the same service. WIS. STAT. § 13.625(6s).

3. **TRANSPORTATION, LODGING, MEALS, FOOD, OR BEVERAGE OFFERED FOR A REASON RELATED TO HOLDING OR HAVING HELD ANY PUBLIC POSITION.** WIS. STAT. §§ 19.45(3m), 19.56(3)(b).
4. **OTHER ITEMS OR SERVICES OFFERED BECAUSE OF STATE POSITION.** No state public official may use his or her public position to obtain anything of substantial value for himself or herself, or his or her immediate family, or for an organization with which he or she is associated. WIS. STAT. § 19.45(2).
5. **REWARDS FOR OFFICIAL ACTION.** Anything of value that could reasonably be considered as a reward for the official's action or inaction. WIS. STAT. § 19.45(3).
6. **ITEMS AND SERVICES THAT COULD INFLUENCE OFFICIAL ACTION.** Anything of value that could reasonably be expected to influence the state public official's vote, official actions, or judgment. This does not prohibit a state public official from engaging in outside employment. WIS. STAT. § 19.45(3).
7. **PAYMENT FOR OFFICIATING AT A COURTHOUSE WEDDING (JUDGES ONLY).** A payment, even if unsolicited, for officiating at a marriage at a courthouse during business hours or if using access or resources not available to any resident. WIS. STAT. §§ 19.45(2), 19.56(3)(b). 2 Op. Eth Bd 58 (1978), 4 Op. Eth Bd 85, 86 (1981).



Wisconsin Ethics Commission

Campaign Finance | Lobbying | Ethics
101 E. Wilson Street | Suite 127 | P.O. Box 7125 | Madison, WI 53707-7125
(608) 266-8123 | ethics@wi.gov | <https://ethics.wi.gov>

DATE: For the March 5, 2019 Meeting
TO: Members, Wisconsin Ethics Commission
FROM: Colette Greve, Ethics Specialist
SUBJECT: Review of Ethics-Related Opinions of Previous Boards

FOR COMMISSION ACTION

The Commission may decide to

- a. Approve the schedule for review of the opinions, or
- b. Approve a modified schedule consistent with today's discussion.

Background

The Commission has completed the review of opinions from the previous boards (Ethics Board and Government Accountability Board) related to campaign finance and lobbying. There are 150 opinions are related to ethics that still need to be reviewed. The goal of reviewing these opinions is to withdraw or update opinions to ensure consistency with current statutes and Commission opinions and interpretation. Staff has placed the opinions into different subject categories, will do an initial review to determine if the opinion should be reaffirmed, revised, or withdrawn, and then will present one or two categories for Commission review at the next 5 Commission meetings.

Schedule for Review of Lobbying Opinions

- April 9, 2019 – SEI, Commission Confidentiality, and Commission Jurisdiction (6) and Employment Conflicting with Official Duties; Post-Employment (19)
- June 18, 2019 – Gifts; Fees; Honorarium; Meals, Travel, and Entertainment (36)
- August 27, 2019 – Disqualification; Conflict of Interest (21)
- December 3, 2019 – Local Ethics Code - Disqualification; Conflict of Interest (38)
- Date TBD (First Meeting of 2020) – Use of Office; Solicitation (30)

Wisconsin Ethics Commissioners

Mac Davis | David R. Halbrooks | Katie McCallum | Tamara Packard | Pat Strachota | Timothy Van Akkeren

Administrator

Daniel A. Carlton, Jr.



Wisconsin Ethics Commission

101 East Wilson Street | Room 127 | P.O. Box 7125 | Madison, WI 53707-7125
(608) 266-8123 | ethics@wi.gov | ethics.wi.gov

DATE: For the March 5, 2019 Commission Meeting
TO: Members, Wisconsin Ethics Commission
FROM: David Buerger, Staff Counsel
SUBJECT: Administrative Rule Update

FOR COMMISSION ACTION

1. For ETH 1 – Act 117 Amendments/Attribution, does the Commission wish to provide further direction on the specifications to be included in ETH 1.96?

I. Chapter ETH 1 – Act 117 Amendments/Attribution

The Commission initially approved the attached scope statement for this rule on August 21, 2018. Staff submitted the scope statement to the Department of Administration and received approval from the Governor to continue with rulemaking on November 15, 2018. The scope statement was submitted to the Legislative Reference Bureau for publication in the Administrative Register on November 15, 2018. The scope statement was published in Register No. 755A3 on November 19, 2018. On December 11, 2018, the Commission formally approved the scope statement and directed staff to begin drafting the proposed rule and associated documents for submission to the Legislative Council Rules Clearinghouse.

This draft rule would amend WIS. ADMIN. CODE ETH [1.20\(9\)](#), [1.26\(2\)](#), [1.26\(6\)](#), [1.60\(1\)\(b\)](#), [1.70\(1\)](#), and [1.855\(2\)](#) to reflect the changes of 2015 Wisconsin Act 117; and create ETH 1.96 to clarify the attribution requirements of [WIS. STAT. § 11.1303](#). The amendments to the various existing provisions were relatively straightforward updates to remove references to outdated forms or old statutory provisions. Those amendments are drafted and ready to proceed, but the new provision addressing attribution requirements has not yet been finalized. As the Commission directed at its August 21, 2018, meeting, staff has begun drafting language for the new attribution requirements provision to address how the attribution requirement will be applied to modern technology, websites, and social media communications, but staff has not yet finalized the language and is seeking further input from the Commission into the specifics to require of attributions. Staff has tentatively divided the draft provision into requirements for all attributions, requirements for physically printed attributions, and requirements for online attributions.

Wisconsin Ethics Commissioners

Mac Davis | David R. Halbrooks | Katie McCallum | Tamara Packard | Pat Strachota | Timothy Van Akkeren

Administrator

Daniel A. Carlton, Jr.

Staff has also tentatively identified the following elements of an attribution that the Commission could consider specifying in attributions:

- Font – specific fonts or types of fonts like sans-serif fonts?
- Size – 8 point, 10 point, 12 point, or more?
- Contrast – brightness ratio or some other standard/measure?
 - Black text on a white background has a brightness ratio of 21:1.
 - Red text on a white background has a brightness ratio of 4:1.
 - Green text on a white background has a brightness ratio of 1.4:1.
 - Blue text on a white background has a brightness ratio of 8.6:1.

Further research and feedback from the regulated and accessibility communities may be helpful in further developing a standard for these elements.

The Commission may also wish to consider what items it wishes to exempt from the attribution requirement as permitted by [Wis. Stat. § 11.1303\(2\)\(f\)](#). Based on research of the regulations at the federal and state level staff tentatively proposes the following items could be exempted from the attribution requirement:

- Bumper stickers
- Buttons
- Clothing
- Online ads and similar electronic communications where the language required could not conveniently be printed, and that link directly to a website that includes the language required.
- Pens
- Pins
- Skywriting

Staff tentatively plans to present the final draft language for the rule at the April meeting where the Commission could then approve submission of the draft rule to the Legislative Council Rules Clearinghouse. A public hearing on the draft rule would then be tentatively set for the June meeting. Preliminary draft rulemaking documents are attached for your review.

II. Chapter ETH 16 – Lobbying

This rule was referred to the Legislature for consideration on June 18, 2018, but as that was after the Legislature's final general-business floor period, the rule was held over to the new session. The rule was referred to the Senate Committee on Elections, Ethics and Rural Issues on January 16, 2019. The rule was also referred to the Assembly Committee on Constitution and Ethics on January 22, 2019. Each committee has 30 days to review the rule and request a meeting with the agency or notice a meeting or hearing regarding the proposed rule.

As of the time of drafting this memo, staff has received no request for a meeting or notice of a meeting or hearing. Once a committee's review has been completed, the rule will be referred to the Joint Committee on Review of Administrative Rules (JCRAR) for final consideration, which may take another 30 to 60 days.

III. Chapter ETH 1 – 2015 Act 117 Repeals

There is no further action to report on this rule since the last Commission meeting. It is still awaiting final approval by the Governor before it can be sent to the Legislature.

IV. Attachments

- A. ETH 1 – Act 117 Amendments/Attribution
 - 1. Proposed Rulemaking Order
 - 2. Notice of Submittal to Legislative Council Rules Clearinghouse
 - 3. Notice of Hearing
 - 4. Fiscal Estimate and Economic Impact Analysis

SS# 116-18, Wisconsin Administrative Register No. 755A3, 11/19/2018

WISCONSIN ETHICS COMMISSION
Proposed Rule Making Order

INTRODUCTORY CLAUSE

The Wisconsin Ethics Commission proposes a rule to amend WIS. ADMIN. CODE ETH 1.20 (9), 1.26 (2), 1.26 (6), 1.60 (1) (b), 1.70 (1), and 1.855 (2) to reflect the changes of 2015 Wisconsin Act 117; and create ETH 1.96 to clarify the attribution requirements of s. 11.1303, Stats., related to campaign finance.

RULE SUMMARY

- A. **Statutes interpreted:** Chapter 11, Stats.
- B. **Statutory authority:** The Wisconsin Ethics Commission is specifically directed to promulgate rules to administer Chapter 11 pursuant to s. 11.1304 (17), Stats.

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

The Commission also has specific authority to specific small items or other communications to which s. 11.1303 (2), Stats., does not apply pursuant to s. 11.1303 (2) (f), Stats.

11.1303 Attribution of political contributions, disbursements and communications.
(2)

...

(f) This subsection does not apply to communications containing express advocacy printed on small items on which the information required by this subsection cannot be conveniently printed, including text messages, social media communications, and certain small advertisements on mobile phones. The commission may, by rule, specify small items or other communications to which this subsection shall not apply.

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

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.

Explanation of agency authority: The Ethics Commission is required to promulgate rules to administer Chapter 11, Stats. The Wisconsin Ethics Commission is also authorized by s. 11.1303 (2) (f), Stats. to specify small items or other communications to which the attribution requirement shall not apply.

The Government Accountability Board previously reviewed the provisions of Wis. Admin. Code ETH 1 as required by 2015 Wisconsin Act 117. In that review, the Board noted several provisions that were inconsistent with the new law, but it did not address other statutory and administrative references within ETH 1 that needed to be updated to harmonize the language with the newly created Chapter 11 or current administrative procedures before it was dissolved. This proposed rule would update provisions that currently contain references to the prior version of Chapter 11 as well as references to outdated forms of the Government Accountability Board. The Ethics Commission previously sought to repeal the inconsistent provisions in CR 18-047, which is currently pending approval of the Governor, and now seeks to amend the remaining provisions affected by 2015 Act 117.

C. **Related statute(s) or rule(s):** CR 18-047.

D. **Plain language analysis:** The rule amends several provisions of ETH 1 to eliminate references to outdated forms and statutory provisions that were repealed under the new campaign finance law created by 2015 Act 117.

The Commission currently only advises committees as to the language required to comply with s. 11.1303 (2), Stats. However, the Commission regularly receives inquiries regarding the necessity of attributions on certain communications or on items where an attribution cannot be conveniently printed. The Commission also regularly receives inquiries as to the required size of an attribution statement. Wisconsin law currently requires that an attribution statement be “readable, legible, and readily accessible.” This rule will propose standards to better define when an attribution is readable, legible, and readily accessible; as well an exception for certain small items or other communications as allowed by s. 11.1303 (2) (f), Stats.

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

The Federal Elections Commission (FEC) provides a great deal of guidance as to the disclaimers required by federal law. Federal law requires the disclaimer to identify the person(s) who paid for a communication and whether the communication was authorized by

one or more candidates (e.g., “Paid for by the Sheridan for Congress Committee.”) Under federal law, any public communication made by a political committee – including communications that do not expressly advocate for the election or defeat of a clearly identified federal candidate or solicit a contribution – must display a disclaimer. The FEC also requires that disclaimers appear on political committee’s websites, and in certain email communications. All public communications that expressly advocate the election or defeat of a clearly identified candidate, electioneering communications, and all public communications that solicit any contribution require a disclaimer.

Disclaimers are not required when it cannot conveniently be printed (e.g., pens, buttons, similar small items), the display is not practical (e.g., apparel, water towers, skywriting), or when the item is of minimal value and does not contain a political message and is used for administrative purposes (e.g., a check). A disclaimer need not be on the front page of multi-page communications, as long as it is on one of the pages.

Similar to Wisconsin law, a disclaimer is also required when a communication is authorized by a committee even if the committee does not pay for it (e.g., “Paid for by the XYZ State Party Committee and authorized by Sheridan for Congress Committee”) or when another organization makes an express advocacy communication without the authorization of the candidate (e.g., “Paid for by the QRS Committee (www.QRScommittee.org) and not authorized by any candidate or candidate’s committee.)

Federal disclaimers are required to be “clear and conspicuous” regardless of the medium in which the communication is transmitted. A disclaimer is not clear and conspicuous if it is difficult to read or hear, or if its placement is easily overlooked. A printed disclaimer must be contained within a printed box set apart from the contents of the communication.

Example:

Paid for by the Save the Seahorses Committee and authorized by the McKay for Senate Committee.

The print of the disclaimer must be of sufficient size to be “clearly readable” by the recipient of the communication, and the print must have a reasonable degree of color contrast between the background and the printed statement. Federal regulations specifically provide a safe harbor for disclaimers using black text in 12-point font on a white background in printed material measuring no more than 24 inches x 36 inches. In the alternative to a white background, a safe harbor is also available where the degree of contrast between the background color and the disclaimer text color is at least as great as the degree of contrast between the background color and the color of the largest text in the communication.

Television communications have similar guidelines for a “clearly readable” disclaimer at the end of the communication that must be displayed for a period of at least four seconds at a height of at least four percent of the picture height. Radio communications must contain an audio disclaimer, although no specifications are given for an audio disclaimer other than the general “clear and conspicuous” disclaimer requirement.

F. Comparison with similar rules in adjacent states:

Minnesota (MINN. STAT. § 211B.04)

Minnesota law requires a committee to include a disclaimer on campaign literature distributed by the candidate or committee. The required form of the disclaimer is: “Prepared and paid for by the committee, (address).” If the material was produced and distributed without cost, the words “paid for by” may be omitted. The disclaimer requirement does not apply to fund-raising tickets, business cards, personal letters, or similar items that are clearly being distributed by the candidate. A disclaimer is also not required for bumper stickers, pins, buttons, pens, or similar small items on which the disclaimer cannot be conveniently printed; skywriting, wearing apparel, or other means of displaying an advertisement of such a nature that the inclusion of a disclaimer would be impracticable; and online banner ads and similar electronic communications that link directly to an online page that includes the disclaimer.

Minnesota recently revised this requirement effective June 1, 2018. The revised disclaimer requirement makes the following changes:

- The disclaimer address must be either the committee’s mailing address or the committee’s website, if the website includes the committee’s mailing address.
- Adds an independent expenditure disclaimer (e.g., “This is an independent expenditure prepared and paid for by(name of entity participating in the expenditure,(address). It is not coordinated with or approved by any candidate nor is any candidate responsible for it.”
- The disclaimer requirement is met for an entire website or social media page when the disclaimer required appears once on the homepage of the site.
- For written communications other than an outdoor sign, website, or social media page, the disclaimer must be printed in 8-point font or larger.

Illinois (10 ILCS 5/9-9.5)

Illinois law requires that any committee that makes an expenditure for any kind of communication directed at voters and mentioning the name of a candidate in the next upcoming election must ensure that the communication clearly identifies the committee as having paid for it. This applies to any committee that pays for any part of the advertisement, including its production and distribution. This disclosure is not required if the item is too small to contain it. The disclosure is also not required for telephone surveys that use random sampling or other scientific survey methods to gauge public opinion about a candidate or public policy question. Finally, this disclosure requirement does not apply to expenditures for preparation or distribution of any printed communication paid for by a political committee controlled by a member of the Illinois General Assembly, provided the communication is directed at constituents and is made in connection with the performance of governmental or public service functions. Vendors who produce political communications are required

to keep records of the name and address of the person who made or requested the purchase and the amount paid.

Michigan (MICH. COMP. LAWS § 169.247, MICH. ADMIN. CODE r. 169.36)

Michigan law requires candidates and committees to place an identification on printed material referring to an election, candidate, or ballot question (e.g., “Paid for by the CTE Joe Smith, 123 Winners Lane, Lansing Michigan 48933.”) If the printed material is an independent expenditure, the statement must also include a disclaimer (e.g., “Not authorized by any candidate committee.”) Free social media such as Facebook, Twitter, or emails do not require an identification or disclaimer. An individual, other than a candidate, acting independently and not acting as an agent or any candidate or committee, is not required to provide an identification for printed material, but still must include an identification for radio/tv ads, robo-calls, or other paid electronic media. Michigan also requires certain identifications for certain mass communications referencing a clearly identified candidate or ballot question within 30/60 days of a primary/general election when the communication is targeted to the relevant electoral district.

Identifications and disclaimers must be in a place and in a print clearly visible to and readable by an observer. No specific font size is required, but the identification and/or disclaimer should be separate from any text and Michigan’s elections website specifically provides the example that a billboard identifier should be visible from the road. Michigan also lists a host of items that are exempted from the identification requirement due to size or difficulty of placement (e.g., aerial banners, pens, etc.)

Iowa (IOWA CODE § 68A.405, IOWA ADMIN. CODE r. 351-4.38 *et seq.*)

Iowa law requires a “paid for by” attribution statement on printed or displayed material that expressly advocates for or against a clearly identified candidate or ballot issue. The attribution shall identify the person paying for the material by name and address. If the material is an independent expenditure the attribution shall include that the material was not authorized by any candidate, candidate’s committee, or ballot issue committee.

Iowa’s attribution requirement does not apply to:

- Editorials, news articles, or other print or electronic media that are not paid political advertisements.
- Small items upon which the inclusion of the statement is impracticable (e.g., pens, buttons, etc.)
- T-shirts, caps, and other articles of clothing.
- An individual who acts alone and spends less than \$100 of his or her own money to advocate the passage or defeat of a ballot issue.
- Any material subject to federal regulations regarding an attribution requirement

Television, video, or motion picture advertising is required to display the attribution statement on screen for at least four seconds. Multi-page material need only include the

attribution on a single page. For a website, the attribution need only appear on the home page of the site.

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

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

I. Effect on small business: N/A

J. Agency contact person:

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

K. 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 17, 2019. 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

See attached.

TEXT OF RULE

SECTION 1. ETH 1.20 (9) is amended to read:

ETH 1.20 (9) Any registrant who makes or receives an in-kind contribution shall report the contribution on ~~Schedule 3-C~~ of its campaign finance report.

SECTION 2. ETH 1.26 (2) is amended to read:

ETH 1.26 (2) The return of a contribution is not a disbursement ~~subject to the limitations on disbursements in s. 11.31, Stats.,~~ and it is not a contribution subject to the limitations on contributions in ss. 11.1101, 11.1103, 11.1104, and 11.1105, Stats.

SECTION 3. ETH 1.26 (6) is amended to read:

ETH 1.26 (6) A registrant who receives a return of contribution shall report it on the campaign finance report, ~~Form EB-2,~~ on Schedule 1-C, OTHER INCOME, and shall designate this as “return of contribution.”

SECTION 4. ETH 1.60 (1) (b) is amended to read:

ETH 1.60 (1) (b) An authorized expenditure for consulting services made by a candidate, candidate's committee, political action committee, or political party committee on behalf of another candidate shall be reported as an in-kind contribution to the candidate on whose behalf the expenditure was made, except that expenditures made by political party committees on behalf of that party's presidential candidates shall not be reportable and shall not count against that party's state or local candidates' applicable contribution limits under ss. 11.1101, 11.1103, 11.1104, and 11.1105, Stats., ~~and spending limits under s. 11.31 (2), Stats.,~~ except as provided in par. (c).

SECTION 5. ETH 1.70 (1) is amended to read:

ETH 1.70 (1) A candidate for or a person elected to a state or local office does not make an in-kind contribution to another candidate for a state or local office in another district when a candidate or election official travels to the district of the other candidate for political purposes. The candidate for or person elected to state or local office may be reimbursed from his or her personal campaign committee ~~subject to the applicable spending limits of s. 11.31 (2), Stats.,~~ ~~and s. ETH 1.44~~ and is deemed to provide nonreportable volunteer services to the candidate in the other district.

SECTION 6. ETH 1.855 (2) is amended to read:

ETH 1.855 (2) A contribution from a conduit account shall be in the form of a check or other negotiable instrument made out to the named candidate or to the candidate's personal campaign committee, or to a legislative campaign committee; or political party committee; ~~or support~~

~~committee under s. 11.18, Stats.~~ A conduit may not make an in-kind contribution as defined in s. ETH 1.20 (1) (e).

SECTION 7. ETH 1.96 is created to read:

ETH 1.96 Attribution requirements.

- (1) SPECIFICATIONS FOR ALL ATTRIBUTIONS. The attribution required by s. 11.1303, Stats., shall be considered readable, legible, and readily accessible if it is presented in a clear and conspicuous manner that gives the reader adequate notice of the identity of the person making the payment or reimbursement or assuming responsibility for the communication. An attribution is not clear and conspicuous if it is difficult to read, or if the placement of the language is easily overlooked.
- (2) SPECIFICATIONS FOR PRINTED COMMUNICATIONS. In addition to the general requirements of sub. (1), the attribution required by s. 11.1303, Stats. on printed communications, shall be considered readable, legible, and readily accessible if it meets all of the following requirements:
 - (a) [insert language]
- (3) SPECIFICATIONS FOR ONLINE AND ELECTRONIC COMMUNICATIONS. In addition to the general requirements of sub. (1), the attribution required by s. 11.1303, Stats. on online and electronic communications, shall be considered readable, legible, and readily accessible if it meets all of the following requirements:
 - (a) [insert language]
- (4) MATERIAL THAT DOES NOT NEED AN ATTRIBUTION.
 - (a) Bumper stickers.
 - (b) Buttons.
 - (c) Clothing.
 - (d) Online ads and similar electronic communications where the language required could not conveniently be printed, and that link directly to a website that includes the language required by s. 11.1303, Stats.
 - (e) Pens.
 - (f) Pins.
 - (g) Skywriting.

SECTION 8. 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 April 9, 2019, 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 amends parts of Chapter ETH 1 to reflect the changes made by the new campaign finance law created by 2015 Act 117. The proposed rule also creates a new provision that would clarify the attribution requirements of s. 11.1303, Stats.

Statement of Scope

The scope statement for this rule, SS 116-18, was approved by the Governor on November 15, 2018, published in Register No. 755A3, on November 19, 2018, and approved by the Ethics Commission on December 11, 2018.

Agency Procedure for Promulgation

A public hearing is required and will be held on June 18, 2019.

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
(608) 267-0951

Notice of Hearing

The Wisconsin Ethics Commission announces that it will hold a public hearing on a permanent rule to amend WIS. ADMIN. CODE ETH 1.20 (9), 1.26 (2), 1.26 (6), 1.60 (1) (b), 1.70 (1), and 1.855 (2) to reflect the changes of 2015 Wisconsin Act 117; and create WIS. ADMIN. CODE ETH 1.96 to clarify the attribution requirements of s. 11.1303, Stats.; at the time and place shown below.

Hearing Information

Date: June 18, 2019

Time: 9:00 A.M.

Location: 101 East Wilson Street, St. Croix Room, 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. Written comments must be received no later than June 17, 2019 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).

ADMINISTRATIVE RULES

Fiscal Estimate & Economic Impact Analysis

1. Type of Estimate and Analysis

 Original Updated Corrected

2. Administrative Rule Chapter, Title and Number

ETH 1 – Campaign Financing

3. Subject

Amend Wis. Admin. Code ETH 1.20 (9), 1.26 (2), 1.26 (6), 1.60 (1) (b), 1.70 (1), and 1.855 (2) to reflect the changes of 2015 Wisconsin Act 117; and create ETH 1.96 to clarify the attribution requirements of s. 11.1303, Stats.

4. Fund Sources Affected

 GPR FED PRO PRS SEG SEG-S

5. Chapter 20, Stats. Appropriations Affected

N/A

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

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)**

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

 Yes No

9. Policy Problem Addressed by the Rule

2015 Wisconsin Act 117 removed certain provisions of campaign finance law that are referenced in parts of WIS. ADMIN. CODE ETH 1. This rule will remove references to outdated forms and statutory provisions as well as create a provision clarifying the attribution requirements of s. 11.1303, Stats. The Commission also may exempt certain items and other communications to which s. 11.1303 (2) may not apply.

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 remove outdated portions of Chapter ETH 1 and provide clarity as to the requirements for attributions for the regulated community. The alternative would be to not create such a rule, but instead continue to not enforce the outdated provisions and analyze attributions on a case-by-case basis. Such inaction could continue to promote confusion among the regulated community and may lead to inadequate attribution of political communications.

14. Long Range Implications of Implementing the Rule

Promulgating the rule would bring WIS. ADMIN. CODE ETH 1 fully up to date with the changes made by 2015 Act 117 and would provide long-term certainty as to what is required to comply with s. 11.1303, Stats.

15. Compare With Approaches Being Used by Federal Government

The Federal Elections Commission (FEC) provides a great deal of guidance as to the disclaimers required by federal law. Federal law requires the disclaimer to identify the person(s) who paid for a communication and whether the communication was authorized by one or more candidates (e.g., "Paid for by the Sheridan for Congress Committee.")

ADMINISTRATIVE RULES

Fiscal Estimate & Economic Impact Analysis

Under federal law, any public communication made by a political committee – including communications that do not expressly advocate for the election or defeat of a clearly identified federal candidate or solicit a contribution – must display a disclaimer. The FEC also requires that disclaimers appear on political committee’s websites, and in certain email communications. All public communications that expressly advocate the election or defeat of a clearly identified candidate, electioneering communications, and all public communications that solicit any contribution require a disclaimer.

Disclaimers are not required when it cannot conveniently be printed (e.g., pens, buttons, similar small items), the display is not practical (e.g., apparel, water towers, skywriting), or when the item is of minimal value and does not contain a political message and is used for administrative purposes (e.g., a check). A disclaimer need not be on the front page of multi-page communications, as long as it is on one of the pages.

Similar to Wisconsin law, a disclaimer is also required when a communication is authorized by a committee even if the committee does not pay for it (e.g., “Paid for by the XYZ State Party Committee and authorized by Sheridan for Congress Committee”) or when another organization makes an express advocacy communication without the authorization of the candidate (e.g., “Paid for by the QRS Committee (www.QRScommittee.org) and not authorized by any candidate or candidate’s committee.)

Federal disclaimers are required to be “clear and conspicuous” regardless of the medium in which the communication is transmitted. A disclaimer is not clear and conspicuous if it is difficult to read or hear, or if its placement is easily overlooked. A printed disclaimer must be contained within a printed box set apart from the contents of the communication.

Example:

Paid for by the Save the Seahorses Committee and authorized by the
McKay for Senate Committee.

The print of the disclaimer must be of sufficient size to be “clearly readable” by the recipient of the communication, and the print must have a reasonable degree of color contrast between the background and the printed statement. Federal regulations specifically provide a safe harbor for disclaimers using black text in 12-point font on a white background in printed material measuring no more than 24 inches x 36 inches. In the alternative to a white background, a safe harbor is also available where the degree of contrast between the background color and the disclaimer text color is at least as great as the degree of contrast between the background color and the color of the largest text in the communication.

Television communications have similar guidelines for a “clearly readable” disclaimer at the end of the communication that must be displayed for a period of at least four seconds at a height of at least four percent of the picture height. Radio communications must contain an audio disclaimer, although no specifications are given for an audio disclaimer other than the general “clear and conspicuous” disclaimer requirement.

ADMINISTRATIVE RULES

Fiscal Estimate & Economic Impact Analysis

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

Minnesota (MINN. STAT. § 211B.04)

Minnesota law requires a committee to include a disclaimer on campaign literature distributed by the candidate or committee. The required form of the disclaimer is: “Prepared and paid for by the committee, (address).” If the material was produced and distributed without cost, the words “paid for by” may be omitted. The disclaimer requirement does not apply to fund-raising tickets, business cards, personal letters, or similar items that are clearly being distributed by the candidate. A disclaimer is also not required for bumper stickers, pins, buttons, pens, or similar small items on which the disclaimer cannot be conveniently printed; skywriting, wearing apparel, or other means of displaying an advertisement of such a nature that the inclusion of a disclaimer would be impracticable; and online banner ads and similar electronic communications that link directly to an online page that includes the disclaimer.

Minnesota recently revised this requirement effective June 1, 2018. The revised disclaimer requirement makes the following changes:

- The disclaimer address must be either the committee’s mailing address or the committee’s website, if the website includes the committee’s mailing address.
- Adds an independent expenditure disclaimer (e.g., “This is an independent expenditure prepared and paid for by(name of entity participating in the expenditure,(address). It is not coordinated with or approved by any candidate nor is any candidate responsible for it.”
- The disclaimer requirement is met for an entire website or social media page when the disclaimer required appears once on the homepage of the site.
- For written communications other than an outdoor sign, website, or social media page, the disclaimer must be printed in 8-point font or larger.

Illinois (10 ILCS 5/9-9.5)

Illinois law requires that any committee that makes an expenditure for any kind of communication directed at voters and mentioning the name of a candidate in the next upcoming election must ensure that the communication clearly identifies the committee as having paid for it. This applies to any committee that pays for any part of the advertisement, including its production and distribution. This disclosure is not required if the item is too small to contain it. The disclosure is also not required for telephone surveys that use random sampling or other scientific survey methods to gauge public opinion about a candidate or public policy question. Finally, this disclosure requirement does not apply to expenditures for preparation or distribution of any printed communication paid for by a political committee controlled by a member of the Illinois General Assembly, provided the communication is directed at constituents and is made in connection with the performance of governmental or public service functions. Vendors who produce political communications are required to keep records of the name and address of the person who made or requested the purchase and the amount paid.

Michigan (MICH. COMP. LAWS § 169.247, MICH. ADMIN. CODE r. 169.36)

Michigan law requires candidates and committees to place an identification on printed material referring to an election, candidate, or ballot question (e.g., “Paid for by the CTE Joe Smith, 123 Winners Lane, Lansing Michigan 48933.”) If the printed material is an independent expenditure, the statement must also include a disclaimer (e.g., “Not authorized by any candidate committee.”) Free social media such as Facebook, Twitter, or emails do not require an identification or disclaimer. An individual, other than a candidate, acting independently

ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

and not acting as an agent or any candidate or committee, is not required to provide an identification for printed material, but still must include an identification for radio/tv ads, robo-calls, or other paid electronic media. Michigan also requires certain identifications for certain mass communications referencing a clearly identified candidate or ballot question within 30/60 days of a primary/general election when the communication is targeted to the relevant electoral district.

Identifications and disclaimers must be in a place and in a print clearly visible to and readable by an observer. No specific font size is required, but the identification and/or disclaimer should be separate from any text and Michigan's elections website specifically provides the example that a billboard identifier should be visible from the road. Michigan also lists a host of items that are exempted from the identification requirement due to size or difficulty of placement (e.g., aerial banners, pens, etc.)

Iowa (IOWA CODE § 68A.405, IOWA ADMIN. CODE r. 351-4.38 *et seq.*)

Iowa law requires a "paid for by" attribution statement on printed or displayed material that expressly advocates for or against a clearly identified candidate or ballot issue. The attribution shall identify the person paying for the material by name and address. If the material is an independent expenditure the attribution shall include that the material was not authorized by any candidate, candidate's committee, or ballot issue committee.

Iowa's attribution requirement does not apply to:

- Editorials, news articles, or other print or electronic media that are not paid political advertisements.
- Small items upon which the inclusion of the statement is impracticable (e.g., pens, buttons, etc.)
- T-shirts, caps, and other articles of clothing.
- An individual who acts alone and spends less than \$100 of his or her own money to advocate the passage or defeat of a ballot issue.
- Any material subject to federal regulations regarding an attribution requirement

Television, video, or motion picture advertising is required to display the attribution statement on screen for at least four seconds. Multi-page material need only include the attribution on a single page. For a website, the attribution need only appear on the home page of the site.

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.

ADMINISTRATIVE RULES
Fiscal Estimate & Economic Impact Analysis

ATTACHMENT A

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)

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

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:
-

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

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

Campaign Finance | Lobbying | Ethics
101 E. Wilson Street | Suite 127 | P.O. Box 7125 | Madison, WI 53707-7125
(608) 266-8123 | ethics@wi.gov | <https://ethics.wi.gov>

DATE: For the March 5, 2019 Meeting
TO: Members, Ethics Commission
FROM: Ethics Commission Staff
SUBJECT: Ethics Commission Staff Report

Attorney General Opinion Requests

Staff have not yet received any further update from the Department of Justice on the two pending requests for Attorney General Opinions. The Department of Justice did not respond to a request for a status update prior to the drafting of this memo.

Commission Administration

2019-21 Biennial Budget

The Administrator has met with the Governor's Office to discuss the Commission's Agency Budget Request for the 2019-2021 Biennium. The Administrator has followed-up with the Governor's Office and State Budget Office staff. Commission staff are awaiting the Governor's budget proposal, which is expected to be announced February 28, 2019. In addition, the Administrator has also been discussing the Commission's Agency Budget Request during meetings with legislators. Staff will keep the Commission updated throughout the budget process.

Annual Certification of Internal Controls

Each year, agency officials must certify to DOA's State Controller's Office (SCO) that internal controls over financial activities and material weaknesses have been reviewed and reported. The procedures require a comprehensive review of the internal control structure to determine if it is functioning properly and in accordance with the agency's internal control plan. It also includes a determination of whether the internal control structure has been updated accordingly to address operational or procedural changes to processes or program areas made during the period under review. We must also identify weaknesses and take action to ensure that control weaknesses discovered are addressed. We must then report our findings to SCO after this review. The Administrator and Office Management Specialist will perform these tasks, and report to SCO by the due date of March 29, 2019.

Procurement

Commission staff are in the process of re-procuring an IT contractor to continue work on the three websites maintained by the Commission. This procurement process must be completed every three years. The process involves completing a Cost Benefit Analysis, posting a Request for Service, reviewing applicants, and ultimately hiring a contractor to begin April 1, 2019. Commission staff

will also submit the required forms to DOA for a procurement related to IT contractors that cost greater than \$150,000. This contract will be for 1 year, with two optional 1-year renewals.

Agency Office Move

Staff moved to the new office location on December 18, 2018. Staff worked with DOA to facilitate this move. The new Commission address is:

101 E. Wilson Street
Suite 127
Madison, WI 53703

IT Systems Update

- Commission Servers – Staff has determined that the Commission’s servers need to be upgraded, as Microsoft is discontinuing software support of the current versions. This will substantially alleviate some of the load issues that are occurring near deadlines. These upgrades should occur before the new lobbying website is ready to launch. Staff is currently assessing the costs associated with the server upgrade and developing a software maintenance plan moving forward. Staff would like to upgrade the servers at the beginning of the fiscal year (July 1, 2019).
- Campaign Finance – Staff continue to weigh options for replacing the CFIS system. At the August 21, 2018, commission meeting, the Commission directed staff to begin exploring the possibility of redeveloping the campaign finance system through custom development and utilization of existing software from the State of Massachusetts. At the September 14, 2018, Commission meeting, the Commission authorized staff to work with Department of Administrator/Department of Enterprise Technology to do a preliminary review of the Massachusetts code, to verify the quality of the code, confirm that it provides the required security, and is adaptable to the needs and requirements of the Commission and state statutes.

Staff has been in contact with DET and the State of Massachusetts regarding these initial steps in redevelopment, but the code for the Massachusetts software is not yet available for review. The new code/system went live in December 2018, but they are still working on cleaning up their code documentation and will provide us the documentation when it is finalized. In addition to the code documentation, they have offered to provide staff with testing credentials for the filing system so staff can see how their system works. Staff will continue to contact the State of Massachusetts to request access to the code, and when it is received, we will proceed with the steps authorized by the Commission at the September 14 meeting.

- Lobbying – Our work with the Web and Mobile Solutions (WaMS) team through DoIT at the University of Wisconsin—Madison (UW) to modernize the Eye on Lobbying website is on hold temporarily while we assess the project costs and budgetary implications. Once we have sufficient information to proceed, we will define the detailed scope of each phase of the project and resume work to complete the project.

Staff has reached out to the Missouri Ethics Commission (MEC) after seeing a demonstration of their new lobbyist reporting website at the Council on Government Ethics Laws annual conference in December. The MEC allowed staff to internally preview the website, and staff is now using some of that information in our discussions with the WaMS team.

- Statements of Economic Interests – Staff is working on design and construction of the candidate filing screens for the SEI website. Electronic filing for candidates will be available by December 2019 for the Spring 2020 election period.
- Customer Relationship Management (CRM) software – Staff will continue to gather information about and working towards implementing CRM for internal agency use. Staff has received assistance from the Innovation Center within the Division of Enterprise Technology to determine the best-fit CRM platform for our business needs and to develop a simplified bid for purchasing the software.

Campaign Finance

January Continuing 2019 Reports

All committees not claiming exemption from filing campaign finance reports, were required to file a January Continuing 2019 report by January 15, 2019. The report covered from July 1, 2018, or the date of their last report, through December 31, 2018. There are 975 committees that have filed the report, and 16 committees that have not yet filed the report.

Spring Pre-Primary 2019 Reports

All candidates for the Spring 2019 election as well as committees supporting or opposing these candidates were required to a Spring Pre-Primary 2019 report covering all activity from January 1 through February 4, 2019. This report was due Monday, February 11, 2019. There were 20 candidates required to file the report, and all 20 filed on time. There were 43 other committees that filed this report.

Special Election

On January 14, 2019, Governor Evers issued the Executive Order calling for a Special Election in Assembly District 64. The Special Election is set for April 30, with the Primary, if required, on April 2, 2019 (Spring Election). The last day for candidates to register and file to appear on the ballot is March 5, 2019.

Future Filings

The following reports will be required in the next 3 months.

- Spring Pre-Election/Special Pre-Primary Due: 3/25/2019
- Special Pre-Election Report Due: 4/22/2019
- Special Post-Election Report Due: 6/14/2019
- July Continuing 2019 Due: 7/15/2019

Lobbying

2017-18 Legislative Session

The session closed with 796 lobbying principals registered, 656 lobbyists licensed, and 1,766 lobbyists authorizations.

Statutes require each lobbying principal to submit a Statement of Lobbying Activities and Expenditures (SLAE) twice a year. All but one of the July-December 2018 SLAE reports were submitted on time. Staff is currently conducting audits for late 15-Day Reports, Lobbying without Authorization, and Late Payment of Lobbying Fees.

Over the course of the entire 2017-2018 session, \$70,424,510 and 374,052 hours were spent by registered lobbying principals on lobbying communications and activity. The prior session (2015-2016), \$62,857,117 and 383,676 hours were spent by registered lobbying principals on lobbying communications and activity.

2019-2020 Legislative Session

As of February 7, 2019, there are 634 lobbying principals registered, 522 lobbyists licensed, and 1,312 lobbyists authorizations.

This was the first start of a new session in which lobbying related fees could be paid online with a check, credit card, or debit card. Of 1,119 transactions paid for the 2019-2020 legislative session from December 1, 2018, until February 7, 2019; 70% of those transactions were paid using an online method (60% credit/debit card and 10% electronic check). During the same time period for the previous session, only 25% were paid via electronic means.

This was also the first start of a new session in which the Commission pursued auditing and enforcement for the late payment of lobbying fees. Fees were considered late if they were received by the Commission more than fifteen days after the submission of a lobbyist license application or principal registration. Of the 2,494 fees generated for the 2019-2020 legislative session thus far, forty-seven (1.9%) were received late. In comparison, for the 2017-18 legislative session, 3,274 fees generated. Of those, 633 (19%) were received late.

Statutes require each lobbying principal to submit a Statement of Lobbying Activities and Expenditures (SLAE) twice a year. The next deadline is July 31, 2019, which will cover activity from January 1-June 30, 2019. After principals and lobbyists file their reports, staff will conduct audits for late SLAEs, late 15-Day Reports, Lobbying without Authorization, and Late Payment of Lobbying Fees.

Legislative Liaison Reporting

The next legislative liaison report is due July 31, 2019.

Code of Ethics and Financial Disclosure

Design of a new SEI system

Kavita is working on adding functionality so candidates will be able to file SEIs online beginning with the 2020 Spring Election.

Statements of Economic Interests

The deadline for annual filing of SEIs is April 30, 2019. This year is a little more complicated because of the election and gubernatorial transition. Departing officials that serve even one day in 2019 must file a 2019 SEI, and officials that start service, or begin a new term of office, must file within 21 days. The deadline for candidates in the Spring Election to submit their SEIs was January 7th, 2019.

As of February 19th, there are 2449 total filers required to file an SEI for 2019. There were 210 filers who were sworn in or appointed to a new term on 1/7/2019, and all of those filers filed within the 15-day grace period. In total, 1130 SEIs for 2019 have already been filed – we are almost halfway done.

State of Wisconsin Investment Board Quarterly Reports

The latest batch of quarterly reports were due by January 31st, covering October 1st through December 31st. All the reports for the 4th quarter of 2018 were received by February 11th and forwarded to the Legislative Audit Bureau for review.

