

Wisconsin
Legislative
Council

Wisconsin Legislator
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Chapter G

Ethics, Lobbying, Elections, and Campaign Finance

The Government Accountability Board (GAB) administers and enforces the ethics, lobbying, elections, and campaign finance laws.¹ The board is discussed in Part 1 of this chapter. Parts 2 and 3 discuss ethics code and lobbying law requirements, particularly as they relate to legislators (page G-5 and G-13, respectively). Part 4 is a more general summary of election and campaign finance laws (page G-19).

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G-3 **Administrative Duties of the GAB**

G-3 **Enforcement Duties of the GAB**

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Part 1: The GAB

The GAB is responsible for administering the state ethics, lobbying, elections, and campaign finance laws and has enforcement responsibilities as well.²

The GAB consists of six members, each of whom must formerly have served as an elected judge of a court of record in Wisconsin. Members serve six-year terms, with the exception of the initial members, who serve staggered terms.³

State law imposes several limitations on GAB members, including holding another state or local public office, engaging in specified partisan political activities, becoming a candidate for state or local elective office, making political contributions, and being a lobbyist or an employee of a person who employs a lobbyist. Limitations on political activities and certain contributions apply both during, and for the 12-month period preceding, a member's term.

Names of prospective nominees to the GAB are submitted to the Governor by the Government Accountability Candidate Committee (Candidate Committee). The Candidate Committee consists of one court of appeals judge from each of the court of appeals districts, chosen by lot by the Chief Justice of the Wisconsin Supreme Court.

The Candidate Committee is required to meet when a vacancy occurs in the membership of the GAB that requires that nominations be submitted to the Governor. The number of nominations the Candidate Committee is required to submit per vacancy is specified by statute. Members of the GAB are nominated by the Governor from names submitted by the Candidate Committee, and with the advice and consent of 2/3rds of the members of the Senate present and voting, appointed. No person may be nominated by the Candidate Committee unless the person receives unanimous approval of the committee.

Any action by the GAB requires the affirmative vote of at least four members. GAB members are eligible for a per diem equal to the amount paid circuit court reserve judges and for reimbursement of actual and necessary expenses.

As of the publication date of this chapter, members of the GAB are Judge Gordon Myse, Chair; Judge Thomas Barland, Vice Chair; Judge Michael Brennan; Judge Thomas Cane; Judge David Deininger; and Judge Gerald Nichol. The GAB's website is: <http://gab.wi.gov/>.

Administrative Duties of the GAB

There are two divisions in the GAB, each of which is under the direction and supervision of an administrator appointed by the GAB: the Ethics and Accountability Division and the Elections Division.⁴ The former has responsibility for administering campaign finance, lobbying, and ethics laws.⁵ The latter is responsible for the administration of election laws.⁶ In addition, the GAB is required to employ, outside the classified service, legal counsel to perform legal and administrative functions for the board.⁷ The current director and general counsel for the GAB is Kevin Kennedy.

Enforcement Duties of the GAB

The GAB is required to investigate possible violations of laws it administers. If the GAB believes there is a reasonable suspicion that a violation has occurred, it may authorize a formal investigation, subject to specified conditions and procedures. (The GAB, by rule, may prescribe categories of civil offenses that may be settled without formal investigation.)

If the GAB finds probable cause that a violation has occurred, it may prosecute, by its legal counsel or a special prosecutor, alleged civil violations of those laws. Alternatively, it may refer prosecution of alleged civil violations to the appropriate district attorney (which is the same prosecutor authorized to prosecute criminal violations).

The prosecution of alleged criminal violations investigated by the GAB may be brought only as follows:

- If the board finds there is probable cause to believe that a violation of laws it administers has occurred or is occurring, the board may refer the matter to the district attorney for the county in which the alleged violator resides.
- If the board discovers evidence of a potential violation of law that is not administered by the board arising from or in relation to the official functions of the subject of the investigation or any matter that involves elections, campaign finance, ethics, or lobbying regulation, the board may refer the matter to the district attorney for the county in which the alleged violator resides.
- If the district attorney to whom the potential violation is referred informs the GAB that he or she declines to prosecute or fails to commence a prosecution within 60 days of the board's referral, the board may refer the matter to the district attorney for a contiguous prosecutorial unit. If there is more than one such prosecutorial unit, the chair of the GAB must determine the district attorney to whom the matter is referred by publicly drawing lots at a meeting of the board. If the second district attorney declines or fails to prosecute, the GAB may refer the matter to the Attorney General.
- Special provisions regarding who prosecutes apply if the defendant is a district attorney, judge, the Attorney General, or a candidate for those offices.

In general, a Wisconsin resident must be criminally or civilly prosecuted in the county of residence for violations of laws relating to the official functions of the subject of an investigation of the GAB, or to any matter involving elections, cam-

paign finance, lobbying regulation, or ethics. However, a defendant may move to change the place of trial to the county where the offense was committed. If that occurs, the judge who orders the change in the place of trial presides at the trial and a jury is chosen from the county where the trial will be held. In addition, a change in place of trial does not affect who has responsibility to prosecute.

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Part 2: Ethics Code

G-6 **Public Disclosure of Financial Interests**

Wisconsin legislators are subject to the Ethics Code. The Code contains financial disclosure requirements, standards of conduct, enforcement procedures, and penalties for its violation.⁸

G-6 **Conduct Prohibited Under the Ethics Code**

The GAB administers and enforces the Ethics Code.⁹ The standards of conduct under the Code are, for the most part, stated in the form of general principles, rather than as specific, detailed regulations. Consequently, to predict the possible application of the Ethics Code in a specific situation requires consideration of all relevant facts.

G-8 **Conflicts of Interests Under the Code**

G-9 **Questions to Ask Concerning the Possible Application of the Code**

The comments regarding the Ethics Code contained in this part should be viewed only as a general description of, and guide to, the statutory provisions. The pertinent statutes and administrative rules, GAB opinion summaries, GAB guides, and the board itself (through the Ethics and Accountability Division and its staff), should be consulted when questions arise. The GAB website is recommended as an initial source of information. For example, the website contains forms, instructions, and a listing of frequently asked questions about completing the required Statement of Economic Interests and includes guidelines interpreting some of the Ethics Code's standards of conduct. Many of these guidelines are specifically referenced in this part.

G-10 **GAB Guidelines Addressing Application of Ethics Code to Specific Situations**

G-11 **Who Can Answer Questions Concerning the Possible Application of the Code**

Please note that Part 3 of this chapter describes the key provisions of the lobbying law that relate to legislators. Similar conduct is addressed by both the Ethics Code and the lobbying law. (The GAB's website is also recommended as a source for information regarding the lobbying laws.)

G-11 **Relationship of the Ethics Code to the Lobbying Law**

G-11 **Civil Penalties for Violation of the Code**

Further note that Parts 2 and 3 of this chapter neither identify nor discuss laws outside the Ethics Code and lobbying law which also may apply to the conduct of a legislator. These other restrictions are found primarily in the election laws (see Part 4) and those Criminal Code provisions applicable to public officers and employees.

G-12 **Criminal Penalties for Violation of the Code**

G-12 **Advisory Opinions**

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Public Disclosure of Financial Interests

What Must Be Disclosed?

The Ethics Code requires legislators to disclose annually the following information regarding financial interests relating to themselves and, in most cases, their immediate family (for additional information, refer to GAB Guidelines GAB-401 and GAB-402):

- Management and financial relationships with certain organizations, such as being a director, officer, or trustee, holding a 10% or greater ownership interest, or being an authorized representative or agent.
- Securities held having a value of \$5,000 or more, categorized by whether the approximate value is less or greater than \$50,000. [For information on accounting for an interest in a trust, refer to GAB Guideline GAB-422.]
- Names of creditors to whom \$5,000 or more is owed, categorized by whether the amount owed is less or greater than \$50,000.
- The identity of and interest in real property holdings in Wisconsin, other than a principal residence.
- The identity of direct, and certain indirect, sources of income of \$1,000 or more (for additional information, refer to GAB Guideline GAB-421).
- Names of donors (nonrelatives) of gifts having a value over \$50.
- Lodging, transportation, money, or other items, having a value over \$50, which are received from one source for a published work, presentation of a talk, or participation in a meeting. (See, also, the discussion of transportation and lodging in the following section of this part.)

How Are Disclosures Made?

Financial interests that must be disclosed under the Ethics Code are set forth in a form called "Statement of Economic Interests." The GAB provides pre-printed forms and instructions to incumbent legislators annually for updates and provides on its website or by mail blank forms and instructions for potential candidates, well in advance of the filing deadlines.

A Statement of Economic Interests is retained by the board until the passage of three years after a person ceases to be a state public official; the board then destroys all of its copies of the filer's statements. The statement is open for public inspection at the GAB offices while on file. The GAB must notify the person who filed the statement of the full name and address of any person who inspects his or her statement.

When Must the Statement Be Filed?

A candidate for the Legislature must file the Statement of Economic Interests within three days after the deadline for filing nomination papers. Subsequent filings must be updated annually. The GAB furnishes appropriate forms, on a timely basis, to assist legislators in complying with filing deadlines.

Conduct Prohibited Under the Ethics Code

Summarized below are the general categories of conduct prohibited under the Ethics Code. The Ethics Code also separately addresses "conflicts of interests," discussed in the following section of this part (for additional information, refer to GAB Guideline GAB-1201).

Use of Office for Private Benefit

A legislator is prohibited from using the office of legislator to obtain financial gain or anything of substantial value for the private benefit of the legislator, the legislator's immediate family, or organizations with which the legislator is associated.

"Anything of value" is defined under the Ethics Code as "any money or property, favor, service, payment, advance, forbearance, loan, or promise of future employment," but does **not** include: compensation and expenses paid by the state; honorariums and expenses otherwise allowed under the Code; political contributions that are reported under campaign finance law; or hospitality extended for a purpose unrelated to state business by a person other than an organization.¹⁰ While "anything of 'substantial' value" is not defined under the Code, the former Ethics Board has indicated that the term should be contrasted with the idea of "nominal," or "token" value to determine whether, under a specific factual setting, anything of substantial value is involved.

Improper Influence or Reward for Official Actions

A legislator is prohibited from soliciting or receiving anything of value if it could reasonably be expected to influence or reward official actions.

Taking Official Action in Exchange for Political Contributions or Anything Else of Value ("Pay-to-Play")

A legislator or candidate for legislative office is prohibited from taking official action in exchange for political contributions or anything else of value for the benefit of a candidate, political party, or any person making certain candidate-related communications.

More specifically, no legislator may, directly or by means of an agent, give or offer or promise to give, or withhold or offer or promise to withhold, his or her vote or influence, or promise to take or refrain from taking official action on any proposed or pending matter, in consideration of, or upon condition that, any other person make or refrain from making a political contribution or provide or refrain from providing any service or any other thing of value, to or for the benefit of a candidate, political party, other registrant, or any person making certain candidate-related communications, as defined.

Use of Confidential Information for Private Gain

A legislator is prohibited from using confidential information, obtained by reason of or in the course of legislative activities, for the private gain of the legislator, the legislator's immediate family, or any other person.

Use of Office for Unlawful Benefits, Advantages, or Privileges

A legislator is prohibited from using the position of legislator to influence or gain unlawful benefits, advantages, or privileges for the legislator or others.

Entering Into State Contracts or Leases

A legislator is prohibited from entering into a contract or lease involving payments of more than \$3,000 within a 12-month period, which are made in whole or in part from state funds, unless written disclosure of the contract or lease is made to the GAB

and to the state department that is responsible for the contract or lease. This provision applies to state contracts or leases that may be entered into by the legislator, the legislator's immediate family, or any organization in which the legislator or any member of the legislator's immediate family has a 10% or greater interest.

Representation of Persons Before State Agencies

A legislator is prohibited from representing persons before state agencies in an unofficial capacity and for compensation, except under the following circumstances (for additional information, refer to GAB Guideline GAB-1236):

- In contested cases (as defined in ch. 227, Stats., Administrative Procedure) that involve a party, other than the state, with interests adverse to the interests of the party represented by the legislator;
- At an open hearing at which a record is maintained;
- In a manner that involves only ministerial actions by the agency; or
- In a matter before the Department of Revenue or Tax Appeals Commission that involves representation of a client in connection with a tax matter.

The prohibition regarding a legislator's representation of persons before state agencies is of particular relevance to legislators who are lawyers and to other legislators whose occupation may involve representation of clients (e.g., accountants).

Acceptance or Retention of Transportation, Lodging, Meals, Food, or Beverage

A legislator is prohibited from accepting or retaining any transportation, lodging, meals, food, or beverage, except as expressly permitted under the Code.

Conflicts of Interests Under the Code

In addition to the prohibited conduct summarized in the previous section of this part, the Ethics Code contains prohibitions on conflicts of interests (for additional information, refer to GAB Guideline GAB-1232). Under the Code, except in accordance with the GAB's advice, a legislator may not:

- Take any official action substantially affecting a matter in which the legislator, the legislator's immediate family, or an organization with which the legislator is associated, has a substantial financial interest.
- Use his or her office or position in a way that produces or assists in the production of a substantial benefit, direct or indirect, for the legislator, the legislator's immediate family, or an organization with which the legislator is associated.

It is important to note that the Code expressly provides that these prohibitions on conflicts of interests do not prohibit a legislator from:

- Taking any action concerning the lawful payment of salaries or employee benefits or reimbursement of actual and necessary expenses.
- Taking official action on any proposal to modify state law or the state Administrative Code (e.g., voting).

Despite the plain statutory language stating that the conflict of interests prohibitions do not prohibit taking official action on any proposal to modify state law or administrative rules, the GAB takes the position that the Ethics Code may nonetheless prevent a legislator from taking official action, including voting, under certain circumstances.

In support of its position, the board cites the prohibition against using the office of legislator to obtain financial gain or anything of substantial value for the private benefit of the legislator, the legislator's immediate family, or certain organizations with which the legislator or the legislator's immediate family is associated. (See the previous section of this part.) The latter prohibition appears independently of the conflict of interests prohibitions. Under the board's interpretation, the prohibition against using the office of legislator to obtain financial gain or anything of substantial value may prohibit a legislator from taking official action on a state law or administrative rule unless:

- The legislator's action affects a whole class of similarly situated interests and the legislator's interest is insignificant when compared to all affected interests in the class; and
- The effect of the legislator's actions on the legislator's private interests is neither significantly greater nor less than upon other members of the class.

Assembly and Senate rules require legislators to vote when present unless excused for "special cause." [Assembly Rule 77; Senate Rule 73 (1).] When in doubt on the propriety of a vote or other official action, consultation with the GAB and legislative leadership is suggested. The board's advice on potential conflicts of interests can be obtained by seeking an advisory opinion of the board, as described in the final section of this part.

Questions to Ask Concerning the Possible Application of the Code

The Ethics Code's prohibitions may be difficult to apply on a case-by-case basis. One way legislators can ensure compliance is to be sensitive to those situations that might invoke the application of the Code.

The questions listed below should be kept in mind in evaluating the application of the Ethics Code to a specific action. An affirmative answer to any one of these questions should prompt further inquiry regarding the possible application of the Code.

- Am I, my immediate family, or an organization with which I am associated receiving anything of value for private benefit because I hold the office of legislator?
- Am I using the influence of my position as legislator to solicit something for the private benefit of me, my family, or an organization with which I am associated?
- Am I taking official action in exchange for political contributions or anything else of value for the benefit of a candidate, political party, or any person making certain candidate-related communication?
- Am I, my immediate family, or an organization with which I am associated receiving from a nonrelative anything of value for which we have not paid?
- Will an official action on my part possibly result in private benefit to me, my immediate family, or an organization with which I am associated?

- Will the use of my staff or state facilities benefit me in my private capacity?
- Am I using the state's time, resources, or facilities in my campaign for elective office?

GAB Guidelines Addressing Application of Ethics Code to Specific Situations

Because the Ethics Code's prohibitions are generally stated as general principles, rather than detailed rules, the application of the Code to specific situations is often difficult to determine. GAB guidelines address situations that legislators may frequently encounter and are helpful in assessing the possible application of the Code (and, in some cases, related statutes). GAB guidelines that may be of particular interest to legislators include:

1. **OFFICIALS' RECEIPT OF FOOD, DRINK, FAVORS, SERVICES, ETC. (GAB-1211).**
2. **TICKETS AND ACCESS TO SKYBOXES AND OTHER PREMIUM AREAS (GAB-1220).**
3. **ATTENDING CONFERENCES, SEMINARS, AND RECEPTIONS WHEN NOT A SPEAKER (GAB-1222).**
4. **EXPENSES AND COMPENSATION FOR TALKS (GAB-1223).**
5. **SOLICITATION OF ITEMS OR SERVICES (GAB-1231).**
6. **NEPOTISM (GAB-1233).**
7. **TELEPHONE CALLS (GAB-1234).**
8. **DISPOSITION AND REPORTING OF GIFTS (GAB-1235).**
9. **LAME DUCK TRAVEL (GAB-1239).**
10. **LETTERS OF REFERENCE (GAB-1244).**
11. **PUBLIC SERVICE ANNOUNCEMENTS (GAB-1245).**
12. **SCHEDULING NONGOVERNMENTAL EVENTS ON GOVERNMENT CALENDAR (GAB-1247).**
13. **LEGISLATIVE EMPLOYEES' CAMPAIGN ACTIVITIES (GAB-1252).**
14. **OFFICIAL'S SEEKING PRIVATE EMPLOYMENT (GAB-1270).**
15. **LEGAL DEFENSE FUNDS (GAB-1281).**

See the final section of this part regarding advisory opinions from the GAB.

Who Can Answer Questions Concerning the Possible Application of the Code

If questions concerning the possible application of the Ethics Code relate to an event for which there is a sponsor, the sponsor should be asked whether the event, and participation by legislators, has been cleared with the GAB. If there is no sponsor or if the sponsor has not cleared the event with the GAB, the GAB itself should be consulted directly. (See the final section of this part regarding advisory opinions from the GAB.)

Relationship of the Ethics Code to the Lobbying Law

If receipt and retention of expense reimbursement for the presentation of a talk or participation in a meeting related to state government issues is permitted under the Ethics Code, it is also permitted under the lobbying law, regardless of whether it is reimbursed by a lobbyist or an employer of a lobbyist. However, receipt of any other thing of value, including an honorarium, from a lobbyist or the lobbyist's employer, is generally a violation of the lobbying law. In general terms, the lobbying law is concerned with who is involved (i.e., a lobbyist or a lobbyist's employer), while the Ethics Code is concerned with what is done and with the underlying purpose or result of particular conduct.

If a lobbyist or employer of a lobbyist is involved in an action or activity, both the lobbying law and Ethics Code should be consulted. If a lobbyist or employer of a lobbyist is not involved, the lobbying law need not be consulted. (See Part 3 of this chapter on the lobbying law.)

Civil Penalties for Violation of the Code

A violation of the Ethics Code that is not an intentional violation is subject to a forfeiture of not more than \$500 for each violation of the disclosure requirements and the provisions relating to reporting and acceptance of honorariums, fees, and expenses; or not more than \$5,000 for each violation of other provisions of the Code relating to prohibited conduct, including the pay-to-play prohibition.

Also, if the court determines that the violator has realized economic gain as a result of the violation, the court may order the person to forfeit the amount gained as a result of the violation.

A civil forfeiture imposed by a court for violations of the pay-to-play prohibitions may also include an amount equal to the amount or value of any political contribution, service, or any other thing of value wrongfully obtained or, if nothing of value is obtained (because, for example, a campaign contribution was withheld as a result of the violation), an amount equal to the maximum contribution authorized for the office held or sought.

Criminal Penalties for Violation of the Code

In addition to the civil forfeitures described in the previous section, the Ethics Code contains criminal penalties. Any person who intentionally violates the Ethics Code may be fined not less than \$100 nor more than \$5,000 or imprisoned not more than one year in the county jail, or both.

Violations of the pay-to-play prohibition are subject to a different penalty. An intentional violation is punishable as a Class I felony (\$10,000 maximum fine; three years, six months maximum imprisonment; or both).

A criminal penalty under the Code does not limit the power of either house of the Legislature to discipline its own members or to impeach a public official.

Any legislator may request from the GAB written advice regarding the propriety of any matter to which he or she is or may become a party.

Advisory Opinions

An important function of the GAB is to give advisory opinions. Any legislator may request from the GAB written advice regarding the propriety under the Ethics Code of any matter to which he or she is or may become a party. The GAB may issue a formal advisory opinion or may authorize its legal counsel to issue an informal advisory opinion on behalf of the board. A person who disagrees with an advisory opinion may have a public or private hearing before the GAB for reconsideration of the opinion.

No person acting in good faith upon an advisory opinion is subject to civil or criminal prosecution for so acting.

All requests for advisory opinions are confidential (unless confidentiality is waived). No member or employee of the GAB may make public the identity of the person requesting an advisory opinion on the application of the Ethics Code or of persons mentioned in the opinion.

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G-13 **Administration and Enforcement of the Lobbying Law**

G-13 **Purpose of the Lobbying Law**

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Part 3: Lobbying Law

Wisconsin legislators are directly and indirectly affected by the lobbying law which is set forth in ss. 13.61 to 13.75, Stats.

Legislators are directly affected by the prohibited practices section of the law, which prohibits a legislator from soliciting or accepting anything of pecuniary value from a lobbyist or the person employing the lobbyist (the principal).¹¹

Legislators are indirectly affected by the regulatory features of the law (registration, licensing, and reporting) because constituents may or may not be subject to these requirements if they attempt to influence the legislative process. Legislators need to understand the regulatory aspects of the law in order to answer questions from their constituents regarding whether their lobbying activities are covered by the law.

Administration and Enforcement of the Lobbying Law

The GAB is responsible for administering the state lobbying laws.¹²

Purpose of the Lobbying Law

The lobbying law is designed to maintain the integrity of state government decision-making by regulating the activities of persons who are hired to influence legislative and executive actions. The lobbying law also promotes open and responsible government by requiring public disclosure of the identity, expenditures, and activities of those persons.¹³

Definition of Lobbying

“Lobbying” is attempting to influence the legislative or administrative decisions of state government by oral or written communication with any elective state official, agency official, or legislative employee. Lobbying includes the time spent in preparation for such communication and appearances at public hearings or meetings or service on a committee in which such preparation or communication occurs.¹⁴

Persons Subject to the Lobbying Law

The persons directly subject to the regulatory requirements of the lobbying law are “lobbyists” and “principals.”

A “lobbyist” is defined as a person who either: (1) is employed by a principal; or (2) contracts for or receives payment, other than reimbursement for actual expenses, from a principal and whose duties include lobbying on behalf of the principal. If an individual’s duties on behalf of a principal are not limited exclusively to lobbying, the individual is a lobbyist only if he or she makes lobbying communications on each of at least five days within a six-month reporting period.¹⁵ (The reporting periods are January 1 to June 30 and July 1 to December 31.)

A “principal” is any person, association, corporation, limited liability company, or partnership that employs a lobbyist. The individual officers, employees, members, shareholders, or partners of an association, corporation, limited liability company, or partnership that employs a lobbyist are not considered to be principals.¹⁶

The law requires all lobbyists to be licensed by the GAB. Principals must be registered and must file semi-annual lobbying expense reports with the GAB.

Employees of state agencies who engage in lobbying also are subject to the lobbying law, and special restrictions and reporting requirements apply to them. Elective state officials, local officials, tribal officials, and employees of the Legislature are not subject to the licensing or reporting requirements of the lobbying law when acting in an official capacity.

Conduct Prohibited Under the Lobbying Law

The “prohibited practices” provisions of the lobbying law generally prohibit lobbyists and principals from giving anything of value to legislators and prohibit legislators from soliciting or accepting anything of value from lobbyists or principals. These provisions are described below according to the three categories of persons to whom they apply: legislators; private lobbyists and principals; and state agency lobbyists. There are certain exceptions to these prohibitions, which are set forth in a separate section.

It should be noted that any individual may request an advisory opinion from the GAB regarding the propriety under the lobbying law of any matter to which the person is or may become a party. The GAB may issue a formal advisory opinion or may authorize its legal counsel to issue an informal advisory opinion on behalf of the board. A person who disagrees with an advisory opinion may have a public or private hearing before the GAB for reconsideration of the opinion. No person acting in good faith upon an advisory opinion is subject to civil or criminal prosecution for so acting, if the material facts are as stated in the opinion request.

All requests for advisory opinions are confidential (unless confidentiality is waived). No member or employee of the GAB may make public the identity of the person requesting the advisory opinion on the application of the lobbying law or of persons mentioned in the opinion.

Actions of Legislators Prohibited or Restricted Under the Lobbying Law

Under the lobbying law, a legislator may not solicit or accept anything of pecuniary value from a lobbyist or a principal, except as provided in the exceptions to the general prohibitions, as described below. Violation of this prohibition is punishable by a civil forfeiture not to exceed \$1,000.

To protect himself or herself from violating this prohibition, a legislator should ask any person who offers something of value whether or not the person is listed as a lobbyist or principal in the registry maintained by the GAB.

This information can also be obtained from the GAB website located at <http://www.gab.wi.gov>.

Actions of Private Lobbyists and Principals Prohibited or Restricted Under the Lobbying Law

The lobbying law imposes numerous restrictions on lobbyists and principals. In particular, it prohibits lobbyists and principals from furnishing any of the items listed below to legislators or to other elective state officials, agency officials, legislative employees, or candidates for elective state office:

- Lodging.
- Transportation.
- Food, meals, beverages, or money.
- Any other thing of pecuniary value.

Actions of State Agency Lobbyists Prohibited or Restricted Under the Lobbying Law

Each state agency must file a semi-annual statement with the GAB identifying agency officers and employees whose regular duties include lobbying. These officers or employees are prohibited from using state funds to provide lodging, transportation, food, meals, beverages, money, or any other thing of pecuniary value to any legislator or other elective state official, legislative employee, or candidate for elective state office.

This restriction on agencies does not prohibit an agency officer or employee from doing any of the following:

- Authorizing salaries and other payments authorized by law.
- Authorizing property or services of the agency to be provided for official purposes or other purposes authorized by law.
- Providing information at the request of a member or employee of the Legislature, or a legislative committee.

Exceptions to the General Prohibition

Several exceptions apply to the prohibition against a lobbyist or principal giving, and a legislator accepting, anything of pecuniary value.

A principal may give and a legislator may accept anything of pecuniary value which is also made available to the general public.

A lobbyist or principal may give and a candidate for legislative office may accept campaign contributions, provided the contributions comply with the requirements of ch. 11, Stats., and the time limitations of the lobbying law. Under the lobbying law, campaign contributions may be given to and received by a candidate for legislative office, in the year of the election, between June 1 and the day of the general election, but only if the Legislature has concluded its final floorperiod and is not in special or extraordinary session. These restrictions also apply to campaign contributions made to the personal campaign committee of a candidate for legislative office.

A legislator may receive reimbursement or payment of actual and reasonable expenses from a lobbyist or principal for a published work or for the presentation of a talk or participation in a meeting, under certain circumstances authorized under the Ethics Code. (See, generally, Part 2 of this chapter on the Ethics Code.)

A legislator may accept food, meals, beverages, or entertainment provided by the Governor when acting in an official capacity.

A legislator may accept anything of pecuniary value furnished by a principal or lobbyist who is a relative of the legislator or lives in the same household as the legislator.

A principal that is a local governmental unit may give certain things of pecuniary value to a legislator who also serves as an elected official of the local governmental unit in an amount not exceeding the amount given to other similarly situated elected officials of the local governmental unit.

A lobbyist or principal may provide educational or informational material to legislators.

Under certain circumstances, a principal may provide compensation or employee benefits to an employee who is a candidate for elective state office but who does not hold an elective state office.

A lobbyist may provide uncompensated personal services to a legislator's campaign for reelection. Although this exception is not set forth in the statutes, a 1993 decision of the U.S. District Court for the Western District of Wisconsin held that the Free Speech Clause of the First Amendment to the U.S. Constitution guarantees lobbyists the right to provide uncompensated personal services on behalf of candidates for elective office [*Barker v. Wisconsin Ethics Board*, 841 F. Supp. 255 (W.D. Wis. 1993)].

Bribery

Bribery is a criminal activity that is not directly dealt with under the lobbying law. However, the solicitation or acceptance by a legislator of something of pecuniary value from a lobbyist or principal may amount to a violation of the bribery statute in

s. 946.10, Stats., if it is done with the understanding that the legislator will officially act in a certain manner or will do or omit to do any act in violation of a lawful duty.

The crime of bribery is a felony. If a legislator is found guilty of this crime, his or her office becomes vacant and he or she is subject to a fine not to exceed \$10,000 or imprisonment not to exceed six years, or both.

Legislator Advice to Constituents

Legislators are frequently asked by constituents whether their activities subject them to the regulatory requirements of the lobbying law. When asked, a legislator may wish to explain that the purpose of the lobbying law is not to hinder citizens' rights to express freely their opinions on legislation or other policy decisions of their government.

Constituents can be told that the only persons who are subject to licensing and regulation as lobbyists are those who are paid to lobby. Further, a legislator may wish to inform the constituent that the law does not apply to or interfere with the right of any person to engage in lobbying in either of the following manners:

- Solely on his or her own behalf.
- By communicating solely with the legislator who represents the Senate or Assembly district in which the person resides, whether or not the communication is made on behalf of the person or on behalf of another person.

Thus, for example, a sole proprietor of a business, who engages in lobbying solely on his or her own behalf, may compensate himself or herself for these lobbying activities without being subject to regulation under the law. Also, a person who is compensated for lobbying on behalf of another is exempt from coverage by the law, if his or her lobbying communications are restricted solely to the legislators who represent the Senate and Assembly districts in which the person resides.

If a constituent is unsure whether or not his or her lobbying activities or employment status make him or her subject to regulation as a lobbyist, a legislator should advise the constituent to contact the GAB.

As the state agency responsible for the administration of the lobbying law, the GAB is in a position to give specific authoritative advice to the constituent on whether or not he or she is subject to regulation. As discussed above, any individual may request an advisory opinion from the GAB with respect to his or her authority or responsibility under the lobbying law.

The GAB also can inform the constituent of the numerous exceptions to regulation. By taking advantage of these exceptions, a constituent can limit the regulatory impact of the law on his or her particular lobbying activities.

Please note that Part 2 of this chapter describes the key provisions of the Ethics Code which relate to legislators. Similar conduct is addressed by both the lobbying law and the Ethics Code.

Further note that this part and Part 2 neither identify nor discuss laws outside the Ethics Code and lobbying law which also may apply to the conduct of a legislator. These other restrictions are found primarily in the election laws and those Criminal Code provisions applicable to public officers and employees.

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Wisconsin Legislative Council

- G-19 **Elections**
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Finance**
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References**

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Part 4: Election and Campaign Finance Law

State election and campaign finance laws are administered and enforced by the GAB.¹⁷ Specifically, the Elections Division of GAB administers election laws, and the Ethics and Accountability Division of GAB administers campaign finance laws.¹⁸

Federal law contains various election and campaign finance laws. Candidates for national office, such as candidates for the U.S. Congress, must comply with federal campaign finance laws. State campaign finance laws apply to candidates, except candidates for national office, who may receive votes at an election in the state.¹⁹ In addition, the federal Help America Vote Act (HAVA) of 2002 requires states to comply with certain requirements regarding the administration of elections. Although federal laws may be discussed in this part, a full discussion of federal campaign finance law and HAVA is beyond the scope of this part.

Elections

State election laws govern various issues related to elections. This part highlights some of the more significant state election laws regarding candidates, referenda, voters, voting, post-election activities, and recall.

Candidates

To qualify as a candidate, an individual must file nomination papers. In some cases, a caucus procedure may be used to nominate candidates for town or village office, instead of nomination papers. The number of signatures that is required on nomination papers is determined by the office that the candidate is campaigning to fill. For example, the number of signatures required for the office of State Senator is not less than 400 but not more than 800, and for the office of State Representative, not less than 200 but not more than 400. The signatures must be of electors who reside in the district or jurisdiction that the candidate, if elected, will represent.²⁰

For spring elections, nomination papers may be circulated beginning on December 1 preceding the election and generally must be filed by 5 p.m. on the first Tuesday in January before the election (or the following day if that Tuesday is a holiday).²¹ For fall elections, nomination papers may be circulated beginning on June 1 preceding the

election and generally must be filed by 5 p.m. on the second Tuesday of July before the September primary.²²

A candidate must file a declaration of candidacy with the nomination papers. If the candidate has not filed a registration statement, as required under the campaign finance law, the candidate must file a registration statement with the nomination papers. If the candidate is a candidate for state office or municipal judge, the candidate must also file a statement of economic interests with the GAB by 4:30 p.m. on the third day after nomination papers are due.²³

Referenda

Generally, all proposed constitutional amendments and other questions or measures to be included on the election ballot must be filed with the official who prepares the ballots for an election no later than 42 days before the election.²⁴

Voters

Qualifications for Voting:

- U.S. citizen.
- 18 years of age or older.
- Reside in election district or ward for 10 days prior to election.

Voter Qualifications and Disqualifications. To be eligible to vote, an individual must be a U.S. citizen at least 18 years old and must reside in an election district or ward for 10 days prior to the election in which the individual will vote.²⁵ An individual is disqualified from voting if the individual was convicted of a felony, treason, or bribery or was adjudicated incompetent.²⁶ The voting right of an individual who is disqualified from voting by reason of a felony, treason, or bribery conviction is restored through pardon or completion of the term of imprisonment or probation.²⁷

Voter Registration. An individual generally must register before voting in an election.²⁸ However, the registration requirement does not apply to the following individuals²⁹:

- New Wisconsin residents who will vote only in the presidential election.
- Former Wisconsin residents who will vote only in the presidential election.
- Military electors.

An individual may register in person or by mail prior to Election Day or at the polling place on Election Day.

An individual may register to vote in person or by mail prior to Election Day or at the polling place on Election Day.

Registration in Person. Registration in person closes at 5 p.m. on the third Wednesday prior to the election. An individual may register in person at the municipal clerk's office, county clerk's office, office of the board of election commissioners, or other designated registration locations.³⁰

However, an individual may register in person after the close of registration until the day before an election at the municipal clerk's office.³¹ If an individual registers after the close of registration and is not a military or overseas elector, the individual must provide proof of residence. Table 1 lists the documents that are considered proof of residence if they contain a current and complete name and residential address.³²

Table 1: Proof of Residence
<ul style="list-style-type: none"> • Current and valid Wisconsin driver's license. • Current and valid Wisconsin ID card. • Any other official ID license or card issued by a Wisconsin governmental unit or body. • ID license or card issued by an employer in the normal course of business, excluding a business card, that contains a photo of the elector. • Real estate tax bill or receipt for the current or previous year. • Residential lease (except for electors registering by mail). • University, college, or technical college identification or fee card that includes a photo of the elector. • Utility bill for the period beginning not earlier than 90 days prior to the date of registration. • Bank statement. • Paycheck. • Check or other document issued by a governmental unit.

If an individual does not have proof of residence, the information in the registration form must be corroborated by another elector; the corroborator must provide proof of residence.³³

Registration by Mail. Registrations by mail must be delivered to the municipal clerk's office or postmarked on or before the third Wednesday prior to the election.³⁴ An individual may obtain a registration form from the municipal clerk or at <http://gab.wi.gov/elections-voting/voters/registration-voting>.

If an individual registers by mail, has not voted in an election in Wisconsin, and is not a military or overseas elector, the individual must provide proof of residence when voting in person or a copy of a document that demonstrates proof of residence when voting by absentee ballot.³⁵

Registration at Polling Place on Election Day. An individual may register to vote at the polling place on Election Day. The individual must fill out a registration form and provide proof of residence. If the individual does not have proof of residence, the information in the registration form must be corroborated by another elector; the corroborator must provide proof of residence. An election inspector must sign the form, indicating that the registration form has been accepted. If the registration is accepted, the individual must be permitted to vote.³⁶

<p>Additional information about Election Day voter registration may be found at http://gab.wi.gov/elections-voting/voters/registration-voting.</p>
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Voting

<p><i>Any qualified elector who is registered to vote may vote by absentee ballot.</i></p>
--

Absentee Voting. Any qualified elector who is registered to vote may vote by absentee ballot.³⁷ A registered elector may obtain an absentee ballot by applying, in writing, through several methods, including by mail, in person at the municipal clerk's office, and by e-mail or fax. If an elector applies for an absentee ballot by mail, the application must be received by 5 p.m. on the fifth day prior to the election. If an elector applies in person, the application must be made by 5 p.m. on the day prior to the election.³⁸

The clerk must initial the absentee ballot and place it in an unsealed envelope. The envelope contains a certification to be signed by the elector. The clerk must then mail or deliver the ballot to the elector.³⁹

The elector must complete the certification on the envelope of the absentee ballot before an adult witness who is a U.S. citizen and must mark the ballot. The elector must then fold the ballot and insert it into the envelope, along with proof of residence, if required. The envelope is sealed and mailed or delivered to the clerk. The ballot must be received by the clerk by 8 p.m. on Election Day.⁴⁰

At the polling place on Election Day, the election inspectors announce the name of an absent elector. The inspectors verify that the certification was properly executed; the elector is a qualified elector of the election district or ward; and the elector has not voted in the election. On the poll list, the inspectors note that the elector voted by absentee ballot. Then, the inspectors open the ballot and verify that the ballot has been endorsed by the clerk and that proof of residence is enclosed, if required. Finally, the inspectors insert the ballot into the ballot box and enter the elector's name or voting number after the elector's name on the poll list.⁴¹

Many of the absentee voting procedures for military and overseas electors and for residents of nursing and retirement homes and certain community-based residential facilities differ from the procedure described above.⁴²

It should be noted that the federal Military and Overseas Voter Empowerment (MOVE) Act, signed by President Obama on October 28, 2009, requires that states establish certain requirements for absentee voting by military and overseas voters in federal elections. Because of the timing of Wisconsin's September primary date, the state requested an undue hardship waiver for the November 2010 election of the provision in the MOVE Act that requires that states transmit absentee ballots to military and overseas voters no later than 45 days before an election. The request was denied by the U.S. Department of Defense, and the GAB and U.S. Department of Justice reached a resolution regarding the enforcement of the MOVE Act for the November 2010 election. More information about the MOVE Act may be found in Legislative Council Information Memorandum 2010-16, *Military and Overseas Voter Empowerment (MOVE) Act*, at http://www.legis.state.wi.us/lc/publications/im/IM_2010_16.pdf.

Polling places are open from 7 a.m. to 8 p.m. on Election Day.

Voting on Election Day. An elector must vote at the polling place for the elector's residence.⁴³ Polling places are open from 7 a.m. to 8 p.m. on Election Day. Any elector waiting to vote when the polls close must be permitted to vote.⁴⁴

Each election ward has two poll lists containing information about electors. An elector provides his or her full name and address, and the election officials verify that the name and address are the same as that on the poll list. An elector may not vote if he or she does not provide his or her name and address, unless the elector has a confidential listing. The officials then enter a serial number for the elector next to the elector's name in the poll list and provide the elector with a slip listing the serial number.⁴⁵ The elector will then receive a ballot.

If the poll list indicates that an elector is required to provide proof of residence, the officials must require that the elector provide proof of residence. The officials must verify the name and address on the document and record the type of document in the poll list.⁴⁶ If the poll list indicates that an elector is not eligible to vote because of a felony, treason, or bribery conviction, the officials must notify the elector of the elector's ineligibility. If the elector insists that he or she is eligible to vote, the officials must allow the elector to vote and then challenge the ballot.⁴⁷

A voting booth may be occupied by only one voter at a time, except if accompanied by a minor child or ward or an individual who is providing assistance to the voter. If a voter spoils or incorrectly marks a ballot, the voter may receive another ballot. However, a voter may not receive more than three ballots because of spoiled or

incorrectly marked previous ballots. A voter must be given a reasonable amount of time to vote.⁴⁸

Election Days. The **spring primary** is held on the third Tuesday in February to nominate nonpartisan candidates for the spring election and express preferences for presidential candidates.⁴⁹ The **spring election** is held on the first Tuesday in April to elect judicial, municipal, and educational officers, nonpartisan county officers, and sewerage commissioners.⁵⁰

The **fall primary** is held on the second Tuesday in September to nominate candidates for the fall election and determine which candidates may receive funding from the Wisconsin Election Campaign Fund.⁵¹ The **fall election** is held on the Tuesday after the first Monday in November in even-numbered years to elect presidential electors, U.S. Senators and Representatives, State Senators and Representatives, state officers (except judicial officers and State Superintendent), county officers (except county supervisors and executives), and district attorneys.⁵²

Post-Election Activities

Canvass. A canvass is conducted after an election to certify the official results. After an election, the board of canvassers meets and conducts the canvass process, which includes tallying the votes for each office. The board completes its report and certifies the results.⁵³

Additional information about canvassing procedures may be found at http://gab.wi.gov/sites/default/files/publication/65/ea_post_election_pdf_21818.pdf.

Recount. The recount procedure is the exclusive remedy to test the results of an election against an alleged defect, irregularity, or mistake.⁵⁴ A candidate voted for at an election or an elector who voted on a referendum question may petition for a recount.⁵⁵

A recount petition must be filed by 5 p.m. on the third business day after the last meeting of the board of canvassers. The petition must state the following⁵⁶:

- The petitioner was a candidate or voted on a referendum question at the election.
- The petitioner believes that fraud or mistakes have occurred in the counting and return of votes or that another irregularity, illegality, or defect has occurred.

After the petition is filed and any required fee is paid, the board of canvassers conducts the recount.⁵⁷ The recount determination may be appealed to the circuit court.⁵⁸

Additional information about recount procedures may be found at http://gab.wi.gov/sites/default/files/publication/65/ea_recounts_pdf_15301.pdf.

Recall

An incumbent elective official of a state, county, congressional, legislative, judicial, city, village, town, town sanitary district, prosecutorial unit, or school district office may be subject to the recall process if qualified electors petition for the recall of that official. Qualified electors must file a petition signed by a certain number of electors demanding the recall of the official.⁵⁹ For city, village, town, town sanitary district, or school district officials, a statement of the reason for recall that is related to the official's responsibilities must be included in the recall petition.⁶⁰

State, County, Congressional, Legislative, Judicial, and Prosecutorial Unit Offices. The filing official must determine whether the petition is sufficient and record that in the certificate attached to the petition. If the petition is sufficient, the official must call for a recall election. The official subject to recall is a candidate at

the recall election without nomination unless he or she resigns within 10 days after the date that the petition is filed. Other candidates for the recall election are nominated by filing nomination papers and declarations of candidacy. A recall primary is held if more than two candidates compete for the office.⁶¹

City, Village, Town, Town Sanitary District, and School District Offices. The clerk or board of election commissioners must determine whether the petition is sufficient and record that in the certificate attached to the petition. If the petition is sufficient, the petition and certificate are transmitted to the governing body. The governing body must then call for a recall election. The official subject to recall is a candidate at the recall election without nomination unless he or she resigns within 10 days following the date of the certificate. Other candidates for the recall election are nominated by filing nomination papers and declarations of candidacy. A recall primary is held if more than two candidates compete for the office.⁶²

An official is not subject to recall during the first year of the official's term of office.

No recall petition may be offered for filing during the first year of an official's term of office.⁶³ In addition, no additional recall petitions may be filed against an official during the official's term of office after one recall petition and election has occurred.⁶⁴

Campaign Finance

State campaign finance laws govern various issues, including contributions, expenditures, registration and reporting, and public funding. This section briefly highlights some of the more significant state campaign finance laws.

Registration and Reporting Requirements

Every candidate and certain individuals, committees, and groups must file a registration statement.⁶⁵ A registrant must report all contributions, disbursements, and obligations, and each report must include certain information, including the name and address of each individual who has made a contribution of more than \$20.⁶⁶ [The full list of required information may be found in s. 11.06 (1), Stats.]

Contribution Limits

State law limits the amount of contributions that an individual or committee may contribute to a candidate for state or local office. The contribution limits apply cumulatively to the candidate's campaign for the primary and general election. A candidate is not bound by the contribution limits for personal contributions that the candidate makes to his or her campaign. Table 2 lists the limits, by office, that an individual or committee, other than a legislative campaign committee or political party committee, may contribute to candidates for state office.⁶⁷

State law limits the amount of contributions that an individual or committee may contribute to a candidate for state or local office.

	Individual	Committee
Governor	\$10,000	\$43,128
Lieutenant Governor	\$10,000	\$12,939
Attorney General	\$10,000	\$21,560
Secretary of State	\$10,000	\$ 8,625
State Treasurer	\$10,000	\$ 8,625
State Superintendent	\$10,000	\$ 8,625
Supreme Court Justice	\$ 1,000	\$ 1,000
Court of Appeals Judge (District I)	\$ 3,000	\$ 3,000
Court of Appeals Judge (Districts II, III, & IV)	\$ 2,500	\$ 2,500
Circuit Court Judge (Milwaukee, Dane, & Waukesha Counties)	\$ 3,000	\$ 3,000
Circuit Court Judge (Other Counties)	\$ 1,000	\$ 1,000
District Attorney (Milwaukee, Dane, & Waukesha Counties)	\$ 3,000	\$ 3,000
District Attorney (Other Counties)	\$ 1,000	\$ 1,000
State Senator	\$ 1,000	\$ 1,000
State Representative	\$ 500	\$ 500

Additional information about contribution limits for candidates for state or local office may be found at <http://gab.wi.gov/campaign-finance/limits-deadlines>.

Expenditure Limits

State law contains expenditure limits for candidates for state or local office.⁶⁸ The U.S. Supreme Court held that expenditure limits violate the First Amendment in *Buckley v. Valeo*, 424 U.S. 1 (1976). Consequently, a state generally may not restrict the amount of funds that a candidate spends in a campaign by requiring that candidates comply with expenditure limits. However, the expenditure limits in state law exist for purposes of the Wisconsin Election Campaign Fund. A candidate for state office who receives a grant from the Wisconsin Election Campaign Fund must comply with the expenditure limits.⁶⁹ In addition, a candidate may voluntarily choose to comply with the expenditure limits.⁷⁰

Wisconsin Election Campaign Fund

Candidates for the following offices may be eligible to receive public funding from the Wisconsin Election Campaign Fund⁷¹:

- Governor
- Lieutenant Governor
- Attorney General
- Secretary of State
- State Treasurer
- State Superintendent
- State Senator
- State Representative

Candidates for some state offices may receive grants from the Wisconsin Election Campaign Fund.

If a candidate wants to receive a grant from the Wisconsin Election Campaign Fund, the candidate generally must file an application with the GAB by the deadline for filing nomination papers. The application must include a sworn statement that the candidate has complied and will continue to comply with the contribution and expenditure limits.⁷² Table 3 lists the expenditure limits, by office, for the Wisconsin Election Campaign Fund.⁷³

Governor	\$1,078,200
Lieutenant Governor	\$ 323,475
Attorney General	\$ 539,000
Secretary of State	\$ 215,625
State Treasurer	\$ 215,625
State Superintendent	\$ 215,625
State Senator	\$ 34,500
State Representative	\$ 17,250

The GAB must promptly notify the candidate, in writing, of the approval or disapproval of the application. The GAB must approve the application if all of the following criteria are satisfied⁷⁴:

- The application was submitted by the deadline.
- The candidate is certified to appear on the election ballot.
- The candidate has an opponent who will appear on the election ballot.

- The candidate’s financial reports demonstrate that the candidate has complied with contribution and expenditure limits.
- The candidate received the mandatory number of individual contributions of \$100 or less. [A candidate for State Senator or State Representative must receive 10% of the office’s expenditure limit in individual contributions of \$100 or less. A candidate for Governor, Lieutenant Governor, Attorney General, Secretary of State, State Treasurer, or State Superintendent must receive 5% of the office’s expenditure limit in individual contributions of \$100 or less.] Table 4 lists the total amount of individual contributions of \$100 or less that a candidate must receive.

Governor	\$ 53,910
Lieutenant Governor	\$ 16,174
Attorney General	\$ 26,950
Secretary of State	\$ 10,781
State Treasurer	\$ 10,781
State Superintendent	\$ 10,781
State Senator	\$ 3,450
State Representative	\$ 1,725

Grants are distributed based on office and maximum amounts.⁷⁵ Grants may only be used for services from a communications medium; printing, advertising, or graphic arts services; postage; and office supplies.⁷⁶

Additional information about the Wisconsin Election Campaign Fund may be found at http://gab.wi.gov/sites/default/files/publication/63/wecf_manual_pdf_20668.pdf.

Democracy Trust Fund

2009 Wisconsin Act 89 created the Democracy Trust Fund from which candidates for Supreme Court Justice may receive public financing derived from general purpose revenues and from an expanded income tax check-off. An eligible candidate is a candidate for Supreme Court Justice who has an opponent who has qualified to have his or her name certified for placement on the ballot at the spring primary or election. An eligible candidate:

1. May not accept private contributions other than seed money contributions and qualifying contributions.
2. May not accept more than \$25 in cash from any contributor or accept cash from all sources in a total amount greater than .1% of the public financing benefit or \$500, whichever is greater.
3. May not make any disbursement derived from personal funds after the close of the public financing qualifying period.

Public financing is provided to an eligible candidate in the amount of \$100,000 for a primary election campaign and in the amount of \$300,000 for a general election campaign. These amounts are subject to a biennial cost of living adjustment.

If an eligible candidate is opposed in a primary or election by a candidate who does not apply for, is ineligible for, or fails to qualify for public financing, and the opponent makes disbursements in a total amount that exceeds by more than 5% the amount of the public financing benefit for an eligible candidate at the same primary or election, the eligible candidate receives additional funding equal to the excess

disbursements, but not more than, in the aggregate, three times the amount of the public financing benefit.

In addition, if the aggregate independent disbursements made or obligated to be made by a person against an eligible candidate or for the opponents of that candidate exceed 120% of the public financing benefit for that office during the primary election campaign period or the election campaign period, the eligible candidate receives an additional benefit amount. This amount is equal to the disbursements made or obligated to be made by a person, but not to exceed an amount equal to three times the public financing benefit payable to a candidate for the applicable office at the primary or other election for which the benefit is received.

A candidate not participating in the Democracy Trust Fund may accept private contributions without limitation. However, no person may make a contribution to that candidate exceeding a total of \$1,000 during any campaign.

Constitutional Issues

Campaign finance laws have frequently been challenged as unconstitutional. The primary challenge to campaign finance laws asserts the right to free speech in the First Amendment to the U.S. Constitution. The landmark decisions in campaign finance law are *Buckley* and *McConnell v. Federal Election Commission*, 540 U.S. 93 (2003). More recently, *Federal Election Commission v. Wisconsin Right to Life*, 551 U.S. 449 (2007), and *Citizens United v. Federal Election Commission*, 130 S. Ct. 876 (2010), have been added to the history of campaign finance case law.

In *Buckley*, the U.S. Supreme Court held that contribution limits and reporting and disclosure requirements are constitutional and that expenditure limits and limits on the use of personal funds by a candidate in the Federal Election Campaign Act (FECA) of 1971 violate the First Amendment. The Court also developed a “magic words” test, which indicated that communications using “vote for,” “vote against,” “elect,” “reject,” or similar words, may be regulated.

In *McConnell*, the Court upheld the regulation of “issue ads” in the Bipartisan Campaign Reform Act (BCRA) of 2002, even though the communications did not use the “magic words” from *Buckley*. Later, in *Wisconsin Right to Life*, the Court’s principal decision held BCRA’s “issue ads” provision unconstitutional as applied to specific ads but did not explicitly overturn the *McConnell* decision.

In *Citizens United*, the Court held that government may not prohibit corporations from using their general treasury funds to make independent expenditures, overturning *Austin v. Michigan Chamber of Commerce*, 494 U.S. 652 (1990), and, in part, *McConnell*. However, the Court held that government may impose disclosure and disclaimer requirements on corporate political speech.

Additional information about *Wisconsin Right to Life* may be found at http://www.legis.state.wi.us/lc/publications/im/IM07_04_jk.pdf. Additional information about *Citizens United* may be found at http://www.legis.state.wi.us/lc/publications/im/IM_2010_02.pdf.

Express and Issue Advocacy

In general, communications that are made for “political purposes” are subject to regulation under ch. 11, Stats.⁷⁷

An act is for “political purposes” when the act is done to influence the election of any individual to state or local office or to influence a particular vote at a referendum. Acts that are for “political purposes” include: (1) making a communication that expressly advocates the election, defeat, retention, or recall of a clearly identified candidate or a particular vote at a referendum; and (2) attempting to influence an

endorsement or nomination to be made at a political party convention regarding a campaign for state or local office.⁷⁸

Further, the Wisconsin Administrative Code provides that a communication is for “political purposes,” and thus subject to regulation under ch. 11, Stats., if one of the following applies⁷⁹:

1. The communication contains terms such as “vote for,” “elect,” “support,” “cast your ballot for,” “Smith for Assembly,” “vote against,” “defeat,” or “reject,” or their functional equivalents; references a clearly identified candidate; and unambiguously relates to that candidate’s campaign.
2. The communication is susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate. A communication is susceptible of no other reasonable interpretation if the communication:
 - a. Is made during the period beginning on the 30th day preceding a primary election and ending on the date of that election, or is made during the period beginning on the 60th day preceding a general or spring election and ending on the date of that election;
 - b. Includes a reference to or depiction of a clearly identified candidate; and
 - c. Refers to the personal character, qualities, or fitness of the candidate; supports or condemns the candidate’s stance or position on issues; or supports or condemns the candidate’s public record.

At the time of the publication of this chapter, actions challenging the constitutionality of the language in item 2., above, are pending in the Wisconsin Supreme Court, the U.S. District Court for the Western District of Wisconsin, and the U.S. District Court for the Eastern District of Wisconsin. The Wisconsin Supreme Court temporarily enjoined the enforcement of the language in item 2., above, pending further order of the court.

Additional References

1. The **GAB** has various manuals and forms available at <http://gab.wi.gov/publications/manuals> and <http://gab.wi.gov/forms>.
2. The **U.S. Federal Election Commission** has information on federal campaign finance laws available at www.fec.gov.
3. The **Legislative Fiscal Bureau** prepares Informational Papers that describe various state programs, which may be found at <http://www.legis.state.wi.us/lfb/index.html> (click on Publications).
4. The **Legislative Reference Bureau** prepares publications concerning election law. Those publications may be found at <http://www.legis.wisconsin.gov/lrb/pubs/pubsub/elections.htm>.
5. The **Legislative Audit Bureau** prepares audits of various state programs. For examples, see *Compliance with Election Laws*, Report 07-16, November 2007, at www.legis.wi.gov/lab/reports/07-16full.pdf and *Voter Registration*, Report 05-12, September 2005, at www.legis.wisconsin.gov/lab/reports/05-12Full.pdf.
6. The **National Conference of State Legislatures** has information about election and campaign finance laws in other states available at www.ncsl.org/programs/legismgt/elect/elect.htm.

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- ¹ s. 5.05, Stats.
 - ² *Id.*
 - ³ s. 15.60, Stats.
 - ⁴ s. 15.603, Stats.
 - ⁵ s. 5.05 (2s), Stats.
 - ⁶ s. 5.05 (2w), Stats.
 - ⁷ s. 5.05 (1m), Stats.
 - ⁸ subch. III of ch. 19, Stats.
 - ⁹ s. 5.05, Stats.
 - ¹⁰ s. 19.42 (1), Stats.
 - ¹¹ s. 13.625, Stats.
 - ¹² s. 5.05, Stats.
 - ¹³ s. 13.61, Stats.
 - ¹⁴ s. 13.62 (10), Stats.
 - ¹⁵ s. 13.62 (11), Stats.
 - ¹⁶ s. 13.62 (12), Stats.
 - ¹⁷ s. 5.05, Stats.
 - ¹⁸ s. 5.05 (2s) and (2w), Stats.
 - ¹⁹ s. 11.01 (1), Stats.
 - ²⁰ ss. 8.10 and 8.15, Stats.
 - ²¹ s. 8.10 (2) (a), Stats.
 - ²² s. 8.15 (1), Stats.
 - ²³ ss. 8.10 (5) and 8.15 (4) (b), Stats.
 - ²⁴ s. 8.37, Stats.
 - ²⁵ s. 6.02 (1), Stats.
 - ²⁶ s. 6.03, Stats.
 - ²⁷ *Id.*; see, also, s. 304.078 (3), Stats.
 - ²⁸ s. 6.27, Stats.
 - ²⁹ ss. 6.15, 6.18, 6.22, and 6.27, Stats.
 - ³⁰ s. 6.28 (1), Stats.
 - ³¹ s. 6.29 (2) (a), Stats.
 - ³² s. 6.34 (2) and (3), Stats.
 - ³³ s. 6.29 (2) (a), Stats.
 - ³⁴ s. 6.28 (1), Stats.
 - ³⁵ s. 6.34 (2), Stats.
 - ³⁶ s. 6.55, Stats.
 - ³⁷ s. 6.20, Stats.
 - ³⁸ s. 6.86 (1), Stats.
 - ³⁹ s. 6.87 (1) to (3), Stats.
 - ⁴⁰ s. 6.87 (4) and (6), Stats.
 - ⁴¹ s. 6.88 (3) (a), Stats.
 - ⁴² ss. 6.86, 6.865, and 6.875, Stats.
 - ⁴³ s. 6.77 (1), Stats.
 - ⁴⁴ s. 6.78, Stats.
 - ⁴⁵ s. 6.79 (1m) to (3), Stats.
 - ⁴⁶ s. 6.79 (2) (d) and (4), Stats.
 - ⁴⁷ s. 6.79 (2) (dm), Stats.
 - ⁴⁸ s. 6.80, Stats.
 - ⁴⁹ s. 5.02 (22), Stats.
 - ⁵⁰ s. 5.02 (21), Stats.
 - ⁵¹ s. 5.02 (18), Stats.
 - ⁵² s. 5.02 (5), Stats.
 - ⁵³ s. 7.51, Stats.
 - ⁵⁴ s. 9.01 (11), Stats.
 - ⁵⁵ s. 9.01 (1), Stats.
 - ⁵⁶ *Id.*
 - ⁵⁷ *Id.*
 - ⁵⁸ s. 9.01 (6), Stats.
 - ⁵⁹ s. 9.10 (1), Stats., and art. XIII, s. 12, Wis. Const.
 - ⁶⁰ s. 9.10 (2) (b), Stats.
 - ⁶¹ s. 9.10 (3), Stats., and art. XIII, s. 12, Wis. Const.

- ⁶² s. 9.10 (4), Stats.
- ⁶³ s. 9.10 (2) (s), Stats.
- ⁶⁴ s. 9.10 (6), Stats.
- ⁶⁵ s. 11.05, Stats.
- ⁶⁶ s. 11.06 (1), Stats.
- ⁶⁷ s. 11.26, Stats.
- ⁶⁸ s. 11.31 (1), Stats.
- ⁶⁹ s. 11.31 (2), Stats.
- ⁷⁰ s. 11.31 (2m), Stats.
- ⁷¹ s. 11.50 (1), Stats.
- ⁷² s. 11.50 (2) (a), Stats.
- ⁷³ s. 11.31 (1), Stats.
- ⁷⁴ s. 11.50 (2) (b) and (f), Stats.
- ⁷⁵ s. 11.50 (3), (4), and (9), Stats.
- ⁷⁶ s. 11.50 (7), Stats.
- ⁷⁷ ss. 11.05 and 11.06, Stats.
- ⁷⁸ s. 11.01 (16), Stats.
- ⁷⁹ s. GAB 1.28, Wis. Adm. Code.

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