

Meeting of the Board
Wednesday, March 25, 2015
3:00 P.M.

Agenda
Open Session

Teleconference Meeting

Government Accountability Board Offices
212 East Washington Avenue, Third Floor
Madison, Wisconsin

Wednesday, March 25, 2015

3:00 P.M.

Page

- A. Call to Order
- B. Director’s Report of Appropriate Meeting Notice
- C. Review of Proposed Campaign Finance Settlement Offer Schedule 2
- D. Director’s Report
- E. Closed Session

- 19.85 (1) (g) The Board may confer with legal counsel concerning litigation strategy.
- 19.851 The Board’s deliberations concerning investigations of any violation of the ethics code, lobbying law, and campaign finance law shall be in closed session.
- 19.85 (1) (c) The Board may consider performance evaluation data of a public employee over which it exercises responsibility.

The Government Accountability Board has scheduled its next meeting for Friday, April 10, 2015 at the Government Accountability Board offices, 212 East Washington Avenue, Third Floor in Madison, Wisconsin beginning at 9:00 a.m. The meeting will be conducted by teleconference.

State of Wisconsin \ Government Accountability Board

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JUDGE GERALD C. NICHOL
Chair

KEVIN J. KENNEDY
Director and General Counsel

MEMORANDUM

DATE: For the March 25, 2015 Board meeting

TO: Members, Government Accountability Board

FROM: Jonathan Becker, Division Administrator
Ethics and Accountability Division

Prepared by:
Adam Harvell, Campaign Finance Auditor

SUBJECT: Schedule and Procedures for Implementing Settlement Offers for Campaign Finance Violations

Overview:

A proposed Campaign Finance Violation Settlement Schedule accompanies this document. The notes below highlight how each section has been changed from the 2008 schedule which is also attached. Any violation that is not covered by the attached schedule will be referred to the Board on a case-by-case basis.

1. Late Filing of Continuing Reports:

Continuing campaign finance reports are filed in January and July of each year. The reports cover a full six-month period ending on December 31 or June 30. Registrants may be required to file pre-primary and pre-election reports between the continuing reports. In those cases, the continuing reports cover activity from the close of the pre-election report to the end of the continuing report period.

The 2008 schedule imposed penalties after 45 days – that has been changed to 30 days. Previously, there was a penalty of \$25 for each additional month of delinquency – that has been changed to \$100.

The 2008 schedule treated continuing reports for registrants involved in the election as election related reports. However, since continuing reports are due no sooner than 2 ½ months after the regular election is over, harsh and immediate penalties seem out of place. Treating all filers alike avoids administrative difficulties in having to identify different types of committees and applying two separate sets of penalties.

The 2008 schedule instructed staff to separately track filings for the electronic and paper copies of each report. Penalties varied if neither copy of the report was filed timely, or if only one copy of the report was filed on time. Statutory changes effective March 2014 remove the requirement to file a paper report if a registrant files an electronic report with an electronic signature. Separate tracking requirements and penalties have been removed.

Applicable Statutes:

- §11.20(3),(4),(8) – General reporting requirements
- §11.23(4) – Reporting by Referenda Groups
- §11.38(8)(b) – Reporting by Sponsoring Organizations
- §11.06(11)(a) – Reporting by Conduits
- §11.60(1) - \$500 penalty
- §11.60(2) – penalty of \$50 or 1% of annual salary of office sought, per day

2. Late Filing of Pre-Primary, Pre-Election, and special Post-Election Reports:

The 2008 schedule imposed penalties after three days – that has been changed to zero. Penalties were \$50 for the first offense, plus \$50 for the first month of delinquency, plus \$25 per each additional month of delinquency. The proposed schedule allows waiver of penalties for some registrants.

Applicable Statutes:

- §11.20(3)(a),(3)(c), – General reporting requirements
- §11.23(4) – Reporting by Referenda Groups
- §11.06(11)(a) – Reporting by Conduits
- §11.60(1) - \$500 penalty
- §11.60(2) – penalty of \$50 or 1% of annual salary of office sought, per day

3. Late Filing Fees:

The 2008 schedule did not include settlement amounts for late filers, although the Elections Board had approved the \$300 amount in past meetings. This documents current practice.

Applicable Statutes:

- §11.055 – Filing Fee Requirement
- §11.055(3) – Exception for candidate committees and committees with up to \$2,500 of activity in a calendar year
- §11.60(3m) – Max penalty of \$500 plus treble \$100 filing fee

4. Late/Incomplete Filing of 48-Hour Reports:

The previous text read “The failure to file a special report of late contribution in a timely manner will result in referral to the Board with a recommendation for a settlement offer to be determined on a case by case basis.” Beginning in 2014, staff began to conduct regular audits of late reporting. A standard schedule like the one proposed would save the Board from routine questions. Staff will concentrate enforcement efforts on larger committees with significant violations.

Applicable Statutes:

- §11.23(6) – Referenda Groups – (statute still says 24 hour reporting)
- §11.12(5) – Candidates, PACs, and Parties
- §11.12(6) – Independent disbursements, \$20 threshold
- §11.06(11) – Conduits
- §11.60(1) - \$500 penalty
- §11.60(2) – penalty of \$50 or 1% of annual salary of office sought, per day

5. Incomplete Contribution Information:

Wis. Stat. §11.06(5) requires a committee to “make a good faith effort to acquire all required information.” Staff recommends establishing a standard threshold that the provision of required information for 90 percent of contributions, coupled with demonstrated efforts to obtain required information, is prima facie evidence of a “good faith effort.” The 2008 schedule required enforcement for every single violation if the contribution was \$250 or more. This provision was incompatible with the statute and has been removed.

Previous language read “failed to provide required information for five percent or more of the total number of contributions.” The “five percent or more of the total number of contributions” was inexact. For example, a committee with 1001 total contributions and 50 contributions over \$100 that provided employer information on zero of those 50 contributions would fall under the five percent threshold. Staff recommends a new standard that would require a committee to provide employer information on at least 40 of the 50 contributions over \$100, ignoring the total number of contributions. Staff will concentrate enforcement efforts on larger committees with significant violations.

Applicable Statutes:

- §11.06(1)(a) - Name, address, date and contribution amount requirements
- §11.06(1)(b) – Occupation and employer information requirement
- §11.06(5) – Good faith effort standard
- §11.60(1) - \$500 penalty

6. Cash Balance Discrepancies:

The 2008 schedule defined a discrepancy only when the ending cash balance of the preceding report differed from the beginning cash balance of the subsequent report. The proposed schedule adds the requirement that beginning cash balance plus receipts, minus expenses, must equal the ending cash balance. Previously, a cash balance discrepancy was one that differed “to any extent.” The \$100 threshold allows staff to focus on significant reporting issues. The time to make corrections has been changed from 10 days to 30. Penalties will be assessed only if the registrant fails to correct the issue.

Staff will expect a committee to make a good faith effort to reconcile a discrepancy, rather than just to pay a forfeiture. If a committee has made an effort to correct the issue, but a discrepancy still remains, the committee or G.A.B. staff will make a correcting entry on the report(s) in question.

Applicable Statutes:

- §11.06(5) – Report must be complete
- §11.27(1) – False reports
- §11.60(1) - \$500 penalty, for each missing transaction and/or incomplete report

7. Exceeding Contributions Limits

The 2008 schedule imposes a penalty of \$100 plus 10 percent of the transaction for violation of contribution limits, after the return of the contribution to the donor, charity, or the common school fund. The proposed schedule simply requires the contribution be forfeited to the common school fund or charity.

Almost all excess contributions will be resolved by having the receiving committee forfeit the amount of the excess contribution. If the receiving committee insists on returning the contribution to the donor (its legal right under Wis. Stat. §11.26(11)), staff may pursue a forfeiture from the donor as well. Such circumstances will be brought to the board on a case-by-case basis.

Applicable Statutes:

- §11.26(1) – Individual limits
- §11.26(2) – Single committee limits
- §11.26(8)(a) – Political party aggregate PAC limit of \$150,000
- §11.26(8)(b) – Political party single committee limit of \$6,000
- §11.26(11) – Option to return contribution to donor, charity, common school fund
- §11.26(14) – No committee may receive or accept excess contribution
- §11.60(1) - \$500 penalty
- §11.60(3) – Max penalty to contributor of 3 times excess contribution

8. Prohibited Corporate Contributions

The 2008 schedule required corporate contributions to be referred to the Board on a case-by-case basis. This establishes a standard penalty. Wis. Stat. §11.60(3) and §11.38(4) allow for a penalty of six times the amount of the contribution for corporate contributors.

Applicable Statutes:

- §11.38(1)(a) 1. – Ban on corporate contributions
- §11.38(6) - Option to return contribution to donor, charity, common school fund
- §11.38(4) – Penalty double the treble contribution penalty in §11.60(3)

9. Prohibited Lobbyist Contributions

The 2008 schedule did not include mention of lobbyist contributions prohibited under Wis. Stat. §13.625, which had been administered by the Ethics Board.

Applicable Statutes:

- §13.625(1)(c) – window for lobbyist contributions to state partisan candidates
- §13.69(2) – Maximum lobbyist penalty \$1,000
- §13.69(6) – Receiving committee maximum penalty \$1,000

10. Board procedures for implementing settlement offers and resolving violations

This section has been substantially revised to simplify language. New items discuss terminating committees and notifying the Board of deviations from the settlement schedule, and all offers, settlements, and suspensions.

The section below is a general time frame for audits. It is meant to keep the Board informed of procedures. Because it has limited value to the public, it will not be published as part of the settlement schedule.

- a. Board Staff's goal shall be to perform the following audits on a yearly basis:
 - An audit of individual contributions over \$100 to determine if committees have made a good faith effort to report employer information.
 - An audit of contributions from businesses to determine if committees have accepted illegal corporate contributions.
 - An audit of committees' reports, to determine if the reported ending cash balance equals the starting balance, plus all receipts, minus all expenses. This audit will also determine if the ending cash balance matches the beginning cash balance of the subsequent report.
 - An audit of lobbyist contributions to determine if lobbyists have made contributions outside of the legal window.
- b. Board Staff's goal shall be to perform the following audits within a year of the close of each campaign period:
 - An audit of individual contributions to candidate committees, to determine whether any individual has contributed more than the individual limit for the office in question.
 - An audit of committee contributions to candidate committees, to determine whether any committee has accepted more than the contribution limit from a single committee.
 - An audit of receiving committees, conduits, and independent disbursement committees, to determine whether those committees have met late reporting requirements.
- c. Board Staff may perform additional audits at the request of the Board, or in response to a complaint.
- d. Staff may also present additional violations to the Board, if they find repeated failure to comply with reporting requirements or repeated violations below the thresholds set out in the sections above.)

MOTION: Approve the attached schedule for treatment of campaign finance violations as of 3/15/2015, and direct staff to follow these procedures.

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Settlement Offer Schedule for Campaign Finance Violations

This document sets out authorized settlement offers for campaign finance violations, in lieu of pursuing court action. It includes recommended settlement amounts for specific situations. The Board's authority to make settlement offers is set out in Wis. Stat. §5.05(1)(c). The Board may specify penalties for certain offenses and may compromise and settle those matters without formal investigation per Wis. Stat. § 5.05(2m) 12. If an individual or committee chooses not to accept a settlement offer, the Board may bring a civil action and seek the maximum forfeitures provided by law, including costs and attorneys' fees.

The Board's primary interest is providing timely and accurate campaign finance information to the public, and collection of civil penalties is secondary. When addressing violations, Board staff will consider mitigating or exacerbating circumstances, and may adjust penalties accordingly. These circumstances include:

- The number of previous offenses
- The amount of financial activity
- Whether the committee is a candidate or non-candidate committee
- A candidate's presence on the ballot
- Whether the committee has provided a portion of the required information
- The sophistication of the parties, and whether the individuals involved should have been aware of the violation.

1. Late Filing of Continuing Campaign Finance Reports:

(Calendar) Days Late:	First Offense:	Second or Greater Offense:
0-30	Warning	Warning
31-60	\$100	\$200
61-90	\$200	\$300
91-120	\$300	\$400
Over 120	\$500	\$500

Every registered committee, referenda group or sponsoring organization must file a continuing report every six months. Committees on "exempt" status that have less than \$1,000 activity in a calendar year do not have to file reports. Reports are due by January 31 and July 20, or if those dates fall on a weekend, the following Monday.

Maximum penalty is \$500 plus the greater of \$50 or one percent of the annual salary of the office sought for each day of delinquency. If a report is not filed after 120 days or a forfeiture is not paid, a registrant may be subject to court action and/or administrative suspension. A committee on administrative suspension may not engage in any activity without subjecting itself to court action.

Committees required to file electronically that file only on paper may be considered as not having filed.

2. Late Filing of Pre-Primary, Pre-Election, and special Post-Election Reports:

(Business) Days Late:	Penalty:
1	\$100
2	\$150
3	\$200
4	\$250
5	\$300
6	\$350
7	\$400
8	\$450
9	\$500

Election related reports are the Pre-Primary, Pre-Election and special Post-Election reports. Every candidate on the ballot in an election, and every committee or conduit that gives to a candidate on the ballot must file the Pre-Primary or Pre-Election reports. Non-Partisan state-level candidates with no primary must file a Pre-Primary report. Candidates who lose their primary must still file a Pre-Election report. Only candidates in special elections must file the special Post-Election report. Local candidates with no primary do not file with the G.A.B. and do not have to file a Pre-Primary report.

Pre-Primary and Pre-Election reports cover up to 15 days before the election and are due 8 days before Election Day. Special Post-Election reports cover up to 22 days after the election and are due within 30 days after Election Day. If a due date falls on a weekend, reports are due the following Monday.

Maximum penalty is \$500 plus the greater of \$50 or one percent of the annual salary of the office sought for each day of delinquency. If a report is not filed by a losing candidate after 60 days or a forfeiture is not paid, the candidate may be subject to court action and/or administrative suspension. A committee on administrative suspension may not engage in any activity without subjecting itself to court action. Office holders and other registrants may be subject to court action.

3. Late Payment of Annual Filing Fees (Wis. Stat. §11.055):

(Calendar) Days Late:	Penalty:
1-15	Warning
16-45	\$300
46-90	\$500
91 or more	\$800

All non-candidate committees with more than \$2,500 in expenses in the previous calendar year must pay a \$100 filing fee by January 31, or the following Monday if January 31 is on a weekend. Maximum penalty is \$800.

4. Late/Incomplete Filing of 48-Hour Reports:

Late/Incomplete Reporting

Penalty:

5% of the total amount of unreported contributions
(\$25 per \$500 unreported)

Candidate committees, party committees, PACs, and referenda groups must report contributions of \$500 or more received between the closing date of the Pre-Primary or Pre-Election report and the day of the Primary or Election. Any such contributions must be reported to the G.A.B. within 48 hours. Conduits forwarding \$500 or more to a single committee during that period must also file 48-hour reports. Those committees required to report independent disbursements must report disbursements of \$20 or more during the same time frame.

Maximum penalty is \$500 for each reporting violation.

5. Incomplete Contribution Information:

(Calendar) Days Late:

Up to 30 days from staff contact
31 or more days from staff contact

Penalty:

No penalty
\$100 plus 10% of contributions with incomplete information

When a registrant fails to disclose required contributor information such as address, occupation or name and address of principal place of employment, Board staff will request the information from the registrant and make a record of the request. If a registrant does not respond to a staff request for the required information within 30 days, the Board may initiate enforcement action. Staff will have discretion to extend the 30 day deadline based on a registrant's level of activity, number of violations and partial communication of the required information.

Maximum penalty is \$500 per reporting violation.

Wis. Stat. §11.06(5) requires a committee to "make a good faith effort to acquire all required information." If a registrant demonstrates a concerted effort to obtain required information and provides all required information for at least 90% of its contributions where the information is required, no forfeiture will be sought. No forfeiture will be sought if 10 or fewer contributions have incomplete information.

6. Cash Balance Discrepancies:

(Calendar) Days Late:

Up to 30 days from staff contact
31 or more days from staff contact

Penalty:

No penalty
\$100 plus 10% of discrepancy

A cash balance discrepancy occurs when a registrant submits a campaign finance report with a beginning cash balance which differs \$100 or more from the ending cash balance on the prior campaign finance report. A cash balance discrepancy can also occur if the report's beginning cash balance, plus all receipts, minus all expenditures differs by \$100 or more from the reported ending cash balance.

The registrant who filed the report will be contacted and informed that the report is inaccurate and given 30 days to file a corrected campaign finance report.

Maximum penalty is \$500 per unreported transaction that led to the discrepancy.

Staff will have discretion to extend the deadlines based on a registrant's level of activity, number of violations and partial communication of the required information.

7. Exceeding Contributions Limits

Violation Type:

Receiving Excess Contribution
Furnishing Excess Contribution

Penalty:

Amount of excess contribution
If receiving committee forfeits
full amount of excess contribution, \$0.
Otherwise, case-by-case basis

There shall be no penalty for excess or improper contributions returned within 15 days as provided by Wis. Stat. §11.06(4)(b).

If any registrant pays the amount of the excess contributions to the common school fund (through the Board) or to charity, no additional penalty will be required from the contributor. If a registrant contributes funds to charity, staff will request documentation of that payment.

Wis. Stat. §11.26(11) provides that a receiving committee has the option to return excess contributions to the donor. However, if this occurs more than 15 days from the receipt of the contribution, the Board may seek a forfeiture from the committee and contributor of the amount of the illegal contributions. This will be presented to the Board on a case-by-case basis.

Maximum penalties for the receiving committee are \$500, plus payment of the amount of the excess contribution to the donor, the common school fund, or charity. Maximum penalties for the contributor are \$500 plus treble the amount of the portion of the contribution that exceeds the maximum.

8. Prohibited Corporate Contributions

Violation Type:

Corporate Contribution – Committee Penalty

Penalty:

Amount of contribution
plus the lesser of \$500 or 50% of the
contribution

Corporate Contribution – Corporate Penalty

3 times amount of contribution

There shall be no penalty for excess or improper contributions returned within 15 days as provided by Wis. Stat. §11.06(4)(b).

Maximum penalty for the receiving committee is \$500 but a committee that refuses to pay the amount of the excess contribution to the donor, the common school fund, or charity may be subject to a criminal referral. Maximum penalty for the corporate contributor is six times the amount of the contribution.

9. Prohibited Lobbyist Contributions

Violation Type:

Lobbyist Contribution – Committee Penalty

Penalty:

Return of the contribution
to the lobbyist

Lobbyist Contribution – Lobbyist Penalty

1.5 times amount of contribution,
up to maximum of \$1,000

There shall be no penalty for excess or improper contributions returned within 15 days as provided by Wis. Stat. §11.06(4)(b).

Limitation on lobbyist contributions are set out in Chapter 13 but the settlement offer schedule is set out here. Maximum penalty for the receiving committee is \$1,000. Maximum penalty for the lobbyist is \$1,000.

10. Board procedures for implementing settlement offers and resolving violations

- a. Staff may issue warnings for minor violations.
- b. Staff will consider registrants' explanations, and mitigating or exacerbating circumstances, when assessing penalties or recommending action to the Board.
- c. Penalties may be reduced or waived at the staff's discretion if the committee has terminated or is terminating and has insufficient funds to pay a penalty.
- d. Board staff will inform the Board as soon as practicable of any deviations from the standard settlement offer schedule and the reasons therefore.
- e. Once Board staff has notified a registrant or individual of the violation and settlement offer, the registrant or individual shall have 30 days to pay the settlement offer or submit a written request to the Board to present their case.
- f. The Board may, on its own motion or at the request of its staff, reconsider any settlement offer. Material mistakes and new evidence are among factors the Board may consider.
- g. If the registrant or individual refuses to accept the Board's settlement offer or does not respond, staff counsel may commence a civil action to collect a forfeiture of at least the amount of the settlement offer. After litigation begins, any settlement of the case shall include all costs of litigation.
- h. Staff may place some registrants on administrative suspension rather than pursue civil action. This will generally apply to registrants with little activity that cannot be contacted. When staff believes a registrant should be placed on administrative suspension, staff will present the situation for the Board's approval. If a registrant on administrative suspension wishes to become active again, staff will actively seek all incurred penalties and all reports, including asking the Board to initiate a civil action.
- i. Board staff will inform the Board of all late reports, settlement offers, paid settlements and administrative suspensions, and will compile a yearly summary for each calendar year.

2008 Settlement Offer Schedule

**SCHEDULE AND PROCEDURES FOR IMPLEMENTING SETTLEMENT OFFERS
FOR CAMPAIGN FINANCE VIOLATIONS**

This document sets out the Elections Board procedure for implementing settlement offers for campaign finance violations and sets forth a schedule of recommended settlement amounts in specific situations. The Board's authority for initiating settlement offers is set out in s.5.05(1)(c), Wis. Stats. Where intentional violations are identified by the Board, a recommendation for criminal prosecution may also be made in addition to the civil settlement offer.

1. Registration Violations, s.11.05, Wis. Stats.

a. Failure to Timely Register or Amend Registration Statement

If a registration statement is filed late or is amended after the ten-day statutory requirement, the staff treats the matter as a non-flagrant violation unless circumstances warrant enforcement action.

b. No Registration Statement or Amendment Filed when Required

If an individual, committee, or group fails to file or amend a registration statement within 15 days after receiving notification of the requirement from the Elections Board staff, the Board shall make a settlement offer in the amount of \$100 for failure to file a registration statement, \$100 for failure to amend with regard to the office sought by the candidate, and \$25 for failure to amend the registration statement with regard to other required information.

2. Late Filing of Financial Reports, s. 11.20(3), (4), (8) Wis. Stats.

a. Continuing Reports in Non-Election Years

If a registrant fails to file a continuing report within 45 days of the filing deadline after receiving two written notices from staff, the Board shall make a minimum settlement offer of \$50 for the first offense, plus \$50 for the first month of delinquency, or part thereof, and \$25 for each additional month of delinquency, or part thereof. The minimum amount shall be increased by multiples of \$50 for subsequent offenses. Non-incumbent candidates who have not received a grant from the Wisconsin Election Campaign Fund and who fail to file the continuing report will be placed on administrative suspension by the staff and will be sent a notice of accumulating penalty. Where no reports are filed, a civil action shall be commenced unless the registrant is eligible for administrative suspension.

b. Election-Related Reports

The continuing reports due immediately preceding and following a scheduled election, the pre-primary and pre-election reports, are designated election-related reports. If a registrant fails to file any of these reports within three days of the filing deadline, the Board shall make a minimum settlement offer of \$100 plus \$50 for the first month of delinquency, or part thereof, and \$25 for each additional month of delinquency, or part thereof. The minimum amount shall be increased by multiples of \$100 for subsequent offenses.

c. Electronic Filing of Reports, s.11.21 (17), Wis. Stats

If a registrant fails to file their report electronically or files their electronic report late, the Board shall make a settlement offer based on the schedule set out below.

1. Non-filing of Electronic Report/ Non-filing of Paper Report	\$150 plus \$25 for each additional month
2. Non-filing of Electronic Report / Late filing of Paper Report	\$150 plus \$25 for each additional month
3. Non-filing of Electronic Report/ Timely filing of Paper Report	\$125
4. Late filing of Electronic Report/ Non-filing of Paper Report	\$150 plus \$25 for each additional month
5. Late filing of Electronic Report/ Late filing of Paper Report	\$150
6. Late filing of Electronic Report/ Timely filing of Paper Report	\$125
7. Timely filed Electronic Report/ Non-filing of Paper Report	\$100
8. Timely filed Electronic Report/ Late filing of Paper Report	\$100

d. Special Reports of Late Contribution, s. 11.21 (5), Wis. Stats.

The failure to file a special report of late contribution in a timely manner will result in referral to the Board with a recommendation for a settlement offer to be determined on a case-by-case basis.

e. Corporate Reports, ss. 11.20 (4), (8), 11.38 (1)(a) 2. Wis. Stats.

If a corporation fails to file a corporate campaign report (Form EB-12) disclosing administrative and solicitation expenses within 45 days of the filing deadline after receiving two written notices from staff, the Board shall make a minimum settlement offer of \$50 for the first offense, plus \$50 for the first month of delinquency, or part thereof, and \$25 for each additional month of delinquency, or part thereof. The minimum amount shall be increased by multiples of \$50 for subsequent offenses. A corporation whose sponsored political action committee is exempt from filing reports must still file a corporate financial report unless the corporation terminates its registration.

f. Conduit Reports

Conduits failing to timely file a conduit campaign report (EB-10) disclosing conduit activity shall be treated under the provisions of sections 1.a. and b. of this schedule.

3. **Disclosure Violations, s. 11.06, Wis. Stats.**

a. Failure to Report Contributor Information

When a registrant fails to disclose required contributor information such as address, occupation, name and address of principal place of employment, the Elections Board staff shall request the information from the registrant and make a record of the request. If a registrant does not respond to a staff request for the required information, the Board will initiate enforcement action on the following matters.

- (1) If a registrant does not provide the required information for a contribution of \$250 or more, the Board shall extend a settlement offer of \$100 plus 10% of the incompletely documented contribution.
- (2) If a registrant fails to provide the required information for 5% or more of the total number of contributions, the Board shall extend a settlement offer of \$100 plus 10% of the incompletely documented contributions.

b. Failure to Report Expenditure Information

When a registrant fails to disclose required expenditure information such as address, amount or specific purpose of the expenditure, the Elections Board staff shall request the information from the registrant and make a record of the request. If a registrant does not respond to a staff request for the required information, the Board will initiate enforcement action on the following matters.

- (1) If a registrant does not provide the required information for an expenditure of \$100 or more, the Board shall extend a settlement offer of \$100 plus 10% of the incompletely documented contribution.
- (2) If a registrant fails to provide the required information for 5% or more of the total number of expenditures, the Board shall extend a settlement offer of \$100 plus 10% of the incompletely documented expenditures.

c. Failure to Report a Contribution

The Board shall make a settlement offer of \$100 plus ten percent of any unreported contributions. As a condition of the settlement offer, the registrant must donate the unreported contributions to the Wisconsin Election Campaign fund, the Common School fund or to charity.

d. Failure to Report an Expenditure

The Board shall make a settlement offer of \$100 plus ten percent of any unreported expenditures.

e. Incomplete Reports – Cash Balance Discrepancies

When a registrant submits a campaign finance report that presents a beginning cash balance in the Cash Summary portion of the report, which differs, to any extent, from the ending cash balance on the prior campaign finance report, the report will be considered incomplete and inaccurate within the meaning of S. 11.06(5) Wis. Stats., and may be considered a false report under S. 11.27(1) Wis. Stats., unless registrant submits a written statement which provides an explanation for the difference between the ending cash balance shown on the prior report, and the beginning cash balance on the current report. The registrant who filed the report will be contacted and informed that the report is inaccurate and given 10 business days to file a corrected finance report.

The Board shall extend a settlement offer of \$100 plus 10% of the difference between the correct beginning cash balance and the cash balance reported on the original report. An additional \$100 per month will be assessed for each additional month that an incomplete report is not replaced by a corrected report.

4. **Contribution Violations, s.11.26, Wis. Stats.**

a. Exceeding 45% or 65% Cumulative Contribution Limits

Staff will inform any registrant that exceeds cumulative contribution limits by \$100 or less of the nature of the violation by letter and direct that the excess contributions be donated to the Wisconsin Election Campaign fund, the Common School fund or charity. In the event that cumulative contribution limits are exceeded by more than \$100, the Board shall make a settlement offer of a minimum of \$100 plus ten percent of the amount in excess of the contribution limits. If the excess contribution was identified by the registrant prior to staff audit, the registrant may choose to return the contribution to the contributor or charity. If the excess contribution is identified by staff audit as a condition of the settlement offer, all excess contributions must be donated to the Wisconsin Election Campaign fund, the Common School fund or charity.

b. Making or Receiving Other Illegal Contributions

Staff shall inform any registrant making or receiving illegal contributions of the nature of the violation by letter and direct the registrant to return the illegal contributions or donate them to the Wisconsin Election Campaign fund, the Common School fund or charity. In the case of illegal contributions in excess of \$100, the Board shall make a settlement offer of \$100 plus ten percent of the illegal amount. In the case of a registrant receiving a contribution from a non-registered individual or committee, there will be no penalty for the receipt of the initial contribution. If the registrant receives additional contributions from an unregistered individual or committee after receiving notice from the Board staff of the unregistered status of the contributor, the matter will be referred to the Board with the recommended settlement amount to be determined on a case-by-case basis.

c. Corporate Contributions, Earmarking or Laundering

These matters shall be referred to the Board with a recommended settlement offer to be determined on a case-by-case basis.

5. **Disbursement Violations, s.11.31, Wis. Stats**

a. Exceeding Spending Limits

If a registrant exceeds the disbursement limits by \$100 or less, the staff shall inform the registrant of the nature of the violation by letter and direct the registrant to return the amount in excess of the disbursement limit to the Wisconsin Election Campaign Fund. In those cases where a registrant exceeds disbursement limits by more than \$100, the matter shall be referred to the Board with a recommended settlement offer to be determined on a case-by-case basis.

b. Making Illegal Disbursements

The Elections Board staff shall refer all violations for disbursing campaign funds for non-political purposes to the Board with the settlement offer to be determined on a case-by-case basis. If a registrant improperly donates campaign funds to charity, the staff shall send a discretion letter to the registrant informing the registrant of the nature of the violation.

6. **Violations Related to the Use of Grant from the Wisconsin Election Campaign Fund, s.11.50, Wis. Stats., El.Bd. 1.45 Wisconsin Administrative Code**

a. Failure to Return Excess Unencumbered Funds

If a registrant fails to return required grant funds within 90 days after the day of election, the Board shall make a \$50 minimum settlement offer plus ten percent of the amount involved.

b. Improper Use of Grant Funds

If a registrant improperly uses grants in an amount of \$100 or less, the staff shall inform the registrant of the nature of the violation by letter and direct the registrant to return any funds improperly expended to the Wisconsin Election Campaign Fund. If the amount improperly used is more than \$100, the Board shall make a settlement offer of \$100 plus ten percent of the amount involved and direct the registrant to return the amount improperly expended to the Wisconsin Election Campaign Fund.

c. Late Filing of Use of Grant Reports

If a registrant fails to file the Use of Grant report within three days after the filing deadline, the Board shall make a minimum \$100 settlement offer, plus \$50 for the first month of delinquency, or part thereof, and \$25 for each additional month of delinquency, or part thereof. The minimum settlement amount shall be increased by multiples of \$100 for subsequent offenses.

7. Violations Related to Independent Expenditures, s.11.06 (7), Wis. Stats.

a. Failure to File Voluntary Oath

The Elections Board staff shall refer all violations relating to the failure to timely file a complete voluntary oath or amendment to the Elections Board with the settlement offer to be determined on a case-by-case basis.

8. Miscellaneous Violations

a. Attribution Statements, s.11.30 (2), Wis. Stats.

When a registrant informs the Elections Board staff of the failure to use a disclaimer, staff will direct the registrant to submit a letter explaining the circumstances and steps taken to correct the problem. The Elections Board staff shall refer cases involving the failure to use a disclaimer or using a misleading disclaimer to the Elections Board with the settlement offer to be determined on a case-by-case basis.

b. Unlawful Use of Reports, s.11.21 (5), Wis. Stats.

The Elections Board staff shall refer violations involving the unlawful use of reports to the Board with the settlement amount to be determined on a case-by-case basis.

c. Other Violations

The Elections Board staff shall refer flagrant or repeated violations and violations not addressed in this schedule to the Board with a settlement offer to be determined on a case-by-case basis.

9. Staff Procedures for Identifying Campaign Finance Violations

a. The Elections Board staff shall prepare a memorandum describing flagrant violations of the campaign finance law. A flagrant violation is any violation set out in this schedule. The staff may determine that other violations not listed should be treated as flagrant if the activity undermines the disclosure provisions of the campaign finance law.

b. The staff shall also present any repeated failure to comply with technical reporting requirements or repeated activity below thresholds set out in sections 1 through 7 of this schedule to the Board.

c. The Elections Board staff shall administratively resolve any technical violations of the campaign finance disclosure law by advising registrants in writing of the nature of the violation and that no further action will be taken except in the case of repeated or flagrant violations.

d. The Elections Board staff shall evaluate the explanations provided by registrants in response to staff notices of violations. The Elections Board staff shall take into consideration any mitigating circumstances it identifies or that are brought to its

attention when preparing its recommendations. These circumstances may include the lack of financial activity by a registrant.

10. Board Procedures for Implementing Settlement Offers

- a. The Elections Board staff shall notify the registrant of the violation and settlement offer providing the registrant with 30 days to pay or submit a written request to appear before the Board to present their case.
- b. The Board's campaign finance director or legal counsel shall mail the settlement offer to the registrant or the registrant's attorney offering to settle and compromise the case pursuant to s.5.05(1)(c), Wis. Stats. The registrant shall have 30 days from the date of campaign finance director's or the counsel's letter to accept the settlement offer unless the Board otherwise directs.
- c. The Elections Board may, on its own motion or at the request of its staff, reconsider any settlement offer. The Board will not reconsider any settlement offer unless the registrant informs the Board about any material mistake or new evidence which the Board decides is a basis for reconsidering its original settlement offer.
- d. If the registrant refuses to accept the Board's settlement offer or does not respond within the time period allowed, legal counsel shall commence a civil action to collect a forfeiture in an amount not less than the amount of the offer pursuant to s.11.60, Wis. Stats. After litigation begins, any settlement of the case shall include reimbursement to the state for all costs of commencing the litigation.

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AN ETHICS BOARD PROGRAM DESIGNED TO
IDENTIFY FINANCIAL INTERESTS OF STATE PUBLIC OFFICIALS
 TO FACILITATE A CLEAN AND OPEN GOVERNMENT IN WISCONSIN

Procedures-Forfeiture Schedule Annual Filing

The forfeiture schedule/notification that follows was accepted by the Board at its March 24, 2004 Meeting:

Did you forget?

Our records as of April 19, 2004 show that we have not received your Statement of Economic Interests for 2003. Your Statement is due at the Ethics Board or postmarked no later than April 30. If you believe our records are in error or if there are circumstances of which we ought to be aware, please let us know. Wisconsin Statutes require each person who held a state office in January 2004 to file a Statement by April 30, 2004. To avoid penalty, fax or mail your Statement today.

If your Statement has not been received or postmarked by April 30, you are immediately subject to the following:

<u>Date Statement postmarked or received</u>	<u>Penalty that must accompany Statement</u>
May 1-15	\$10
May 16 or later	\$50

The Ethics Board may file a complaint against you and you may be required to pay a penalty of up to \$500. In addition, *Wisconsin Statutes*, §19.43(7), directs the State Treasurer to withhold any per diem, salary, income tax refund, or other payment due you from the state.

Please contact our office if you have a question or there are circumstances of which we ought to be aware.

STATE OF WISCONSIN ETHICS BOARD
 Phone: (608) 266-8123
 Fax: (608) 264-9319
 E-mail: ethics@ethics.state.wi.us
 Web: <http://ethics.state.wi.us>

The board also approved allowing staff flexibility in accepting statements received on the first two working days after the filing deadline.

Lobbying Forfeiture Schedule

- late registration, licensure, and authorization -

Ethics Board discovers that a person is engaged in lobbying without benefit of the required registration, license, or authorization

The Ethics Board authorizes its director to settle, on the Ethics Board's behalf, violations of §§13.64, 13.65, and 13.66, Wisconsin Statutes, arising from the practice of lobbying without benefit of registration, licensure, or authorization, in accordance with the formulas that follow:

	Fee	Harm	Forfeiture	Comments
Principal's failure to register	\$375	STEALTH LOBBYING; Public, other lobbyists unaware organization is lobbying.	Principal pays \$1,500	Multiple of 4 times registration fee
Lobbying without authorization	\$125	STEALTH LOBBYING; Public, other lobbyists unaware who is acting for organization.	Principal pays \$600 If principal has been lobbying without authorizing <u>any</u> lobbyist \$250 for second and each additional unauthorized lobbyist	Multiple of 4 times authorization fee. Principal pays, rather than lobbyist because even if lobbyist shares responsibility, it is more effective punishment to make the principal pay the forfeiture. It also avoids need for fact-finding.
Lobbying without license	\$250	No harm to public not already accounted for by failure of authorization.	Lobbyist pays \$500 If a lobbyist has been lobbying without a license and represents only one principal	Multiple of 2 times license fee. Less harm than above. Applies only to contract lobbyists because principal should be responsible for employee lobbyists and principal is already paying \$600 (since our system precludes the authorization of an unlicensed individual).
Lobbying for second client without proper license	\$400	No harm to public not already accounted for by failure of authorization.	Lobbyist pays \$300	Multiple of 2 times difference between single license fee and multiple license fee. <u>Applies only when there has also been a failure to authorize.</u>

Delinquent alerts Ethics Board to delinquency and obtains the tardy registration, license, or authorization

In accordance with the formulas that follow, the director may reduce a forfeiture indicated in the foregoing table if the erring party [1] brings the omission to the Board's attention [2] obtains the tardy registration, license, or authorization and [3] the Ethics Board has not warned or penalized the delinquent for a like offense during the preceding 36 months:

Within 7 days	Warning
Within 8 through 30 days	25% of forfeiture in the table
Within 31 through 150 days	50% of forfeiture in the table
After 150 days	80% of forfeiture in the table

Delinquent obtains the tardy registration, license, or authorization but does not otherwise alert the Ethics Board to the delinquency

In accordance with the formulas that follow, the director may reduce a forfeiture indicated in the foregoing table if the erring party [1] obtains the tardy registration, license, or authorization but does not otherwise alert the Ethics Board to the delinquency and [2] the Ethics Board has not warned or penalized the delinquent for a like offense during the preceding 36 months:

Within 7 days	Warning
Within 8 through 30 days AND no lobbying communication was made on the principal's behalf between the 5th day on which a lobbying communication was made and the day that the Ethics Board granted the registration, license, or authorization	25% of forfeiture in the table
Within 8 through 30 days AND a lobbying communication was made on the principal's behalf between the 5th day on which a lobbying communication was made and the day that the Ethics Board granted the registration, license, or authorization	50% of forfeiture in the table
After 30 days	80% of forfeiture in the table

Board may address offenses with aggravating or mitigating circumstances

If in the director's judgment a violation of §13.64, 13.65, or 13.66, *Wisconsin Statutes*, has associated with it aggravating or mitigating circumstances that suggest that a departure from the foregoing forfeiture schedule is warranted, the Director may bring the matter to the Ethics Board's attention and request direction.

Statutory requirement concerning registration, licensure, and authorization

13.64 Lobbying registry. (1) Every principal who makes expenditures or incurs obligations in an aggregate amount exceeding \$500 in a calendar year for the purpose of engaging in lobbying which is not exempt under s. 13.621 shall, within 10 days after exceeding \$500, cause to be filed with the board a registration statement * * *

13.65 Lobbyist authorization. Before engaging in lobbying on behalf of a principal, a lobbyist or the principal who employs a lobbyist shall file with the board a written authorization for the lobbyist to represent the principal, signed by or on behalf of the principal. A lobbyist or principal shall file a separate authorization for each principal represented by a lobbyist.

13.66 Restrictions on practice of lobbying. . . . no person may engage in lobbying as a lobbyist unless the person has been licensed under s. 13.63 and has been authorized to act as a lobbyist for the principal whom the lobbyist represents under s. 13.65. Except as authorized under s. 13.621, no principal may authorize its lobbyist to engage in lobbying until the lobbyist is licensed and the principal is registered under s. 13.64.

Penalties

13.69 Enforcement and penalties. (1) . . . any principal violating ss. 13.61 to 13.68 or a rule of the board promulgated under those sections may be required to forfeit not more than \$5,000. In the case of a partnership, each of the partners is jointly and severally liable for any forfeiture imposed under this subsection.

(2) Any lobbyist violating ss. 13.61 to 13.68 or a rule of the board promulgated under such sections may be required to forfeit not more than \$1,000.

(7) In addition to the penalties imposed for violation of ss. 13.61 to 13.68, the license of any lobbyist who is convicted of a violation may be revoked for a period not to exceed 3 years and a lobbyist who is convicted of a criminal violation is ineligible for licensure for a period of 5 years from the date of conviction.

Late report of lobbying interests¹ Forfeiture Schedule

§13.69 Enforcement and penalties. (2m) Any principal who fails to comply with s. 13.67 (1) and who has not been found to have committed the same offense within the 3-year period preceding the date of the violation may be required to forfeit not more than \$25. Any principal who fails to comply with s. 13.67 (1) a 2nd time within a period of 3 years from the date of the first violation may be required to forfeit not more than \$100 for the 2nd offense.

First offense:

1 or 2 late reported interests <50% of all reported interests and <50% of principal's lobbying effort	Warning
More than 2 late reported interests	\$25 per late reported interests >2
Late reported interests ≥50% of all interests the principal has reported	\$25 for first late reported interest \$50 for each additional late reported interest
≥50% of principal's lobbying effort was devoted to late reported interests	\$25 for first late reported interest \$50 for each additional late reported interest

The above penalties may be remediated as follows:

Principal reported <8 hours lobbying during reporting period	Warning only
Principal previously reported interest in another form (e.g., as a topic)	Warning only

¹ §13.67 (1), Wisconsin Statutes, provides, in pertinent part:

13.67 Identification of legislative and administrative proposals and topics. (1) . . . no person may engage in lobbying as a lobbyist . . . and no principal may authorize a lobbyist to engage in lobbying . . . unless the principal reports to the board . . . each legislative proposal, budget bill subject and proposed administrative rule number in connection with which the principal has made or intends to make a lobbying communication or, if the lobbying does not relate to a legislative proposal or proposed administrative rule that has been numbered or a budget bill subject, each topic of a lobbying communication made or intended to be made by the principal. * * *

The principal shall file the report no later than the end of the 15th day after the date on which the principal makes a lobbying communication with respect to a legislative proposal, proposed administrative rule, budget bill subject or other topic not previously reported by the principal

* * * * *

Second offense within 3 years:

1 or 2 late reported interests <50% of all reported interests and <50% of principal's lobbying effort	\$25 per late reported interest
More than 2 late reported interests	\$25 per late reported interests <2 and \$50 per late reported interest >2
Late reported interests ≥50% of all interests the principal has reported	\$50 for first late reported interest \$75 for each additional late reported interest
≥50% of principal's lobbying effort was devoted to late reported interests	\$50 for first late reported interest \$75 for each additional late reported interest

The above penalties may be remediated as follows:

Principal reported <8 hours lobbying during reporting period	Warning only
Principal previously reported interest in another form (e.g., as a topic)	Warning only

Third or more offense within 3 years:

Maximum statutory forfeitures

Other circumstances:

The staff may ask the Ethics Board to depart from the above forfeiture schedule if there are mitigating or aggravating circumstances. Mitigating circumstances might include:

- Principal is new.
- Personnel at principal are new.
- Principal brought mistake to Board's attention

Aggravating circumstances might include:

- Principal did not report interest at all
- Principal has violated other provisions of lobbying law