

Agenda Item F.

State of Wisconsin \ Government Accountability Board

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DATE: For the October 20, 2015 Board Meeting

TO: Members, Government Accountability Board

FROM: Jonathan Becker, Administrator
Division of Ethics and Accountability

SUBJECT: Significant Changes in Campaign Finance Legislation

The purpose of this memorandum is to highlight the significant changes that would be made to campaign finance law upon adoption of Assembly Bill 387. This is staff's initial reaction to the bill. It reflects our initial analysis only. The bill may change as it progresses through the legislative process.

- General reorganization, making the law easier to understand.
- Doubles most contribution limits.
- Limits are raised every 5 years to account for inflation.
- Increases registration and reporting threshold for PACs to \$5,000 and for referendum committees to \$10,000.
- Eliminates contribution limits to *political parties* and *legislative campaign committees* by individuals. This codifies effect of the *Young v. Vocke* case striking down annual aggregate \$10,000 limit on individual contributions, which was heretofore the only limit on contributions to these entities. Committees have never had limits on contributions to these entities.
- Eliminates candidate limit on aggregate receipt of more than 45% of contributions from PACs. This codifies *CRG Network* case.
- Creates, and requires registration and reporting by, independent expenditure committees. A committee is an independent expenditure committee if its "major purpose" is express advocacy.
- Requires any person that is not a committee and that spends \$5,000 or more on express advocacy made within 60 days before an election to provide a statement, within 72 hours, disclosing date of disbursement, who received it, purpose, amount, candidate affected, an oath of non-coordination, and name and address of agent.
- Defines "major purpose" as 1) that specified in an entity's organizational documents; 2) as indicated by an entity to the Board; or 3) the use of more than 50% of spending on express advocacy in a 12-month period.
- Eliminates use of the term "political purpose" and uses "express advocacy" instead. Only express advocacy is regulated.

- Defines “express advocacy” to mean communication that contains terms such as the following with reference to a clearly identified candidate and that unambiguously relates to the election or defeat of that candidate:
 - (a) "Vote for".
 - (b) "Elect".
 - (c) "Support".
 - (d) "Cast your ballot for".
 - (e) "Smith for ... (an elective office)".
 - (f) "Vote against".
 - (g) "Defeat".
 - (h) "Reject".
 - (i) "Cast your ballot against".

(This is similar to Board’s administrative rule 1.28 (2) but does not include “or their functional equivalents.”)
- Prohibits corporations, cooperatives, labor organizations, and tribes from contributing to committees. Previously, did not apply to a labor organization incorporated prior to January 1, 1978.
- Permits political parties to make independent expenditures through a separate segregated fund. Currently not allowed.
- Because “separate segregated fund” is not defined or mentioned elsewhere, they presumably will also be able to produce issue ads, build party offices and to take contributions from anyone (including corporations and unions).
- Permits use of contributions for any lawful purpose, not just political purpose. It is not lawful to use contributions for an individual’s “strictly personal use.”
- Amends Ethics Code to permit an elected official or candidate to solicit a donation for use by a non-profit organization (e.g., a charity or a superPAC) with which the official is associated. Currently not allowed.
- Increases continuing reporting from twice to four times per year.
- Reporting of late contributions changed from 48 to 72 hours after receipt.
- Committees need only file continuing reports if they have made an expenditure supporting a candidate during the reporting period.
- Eliminates reporting of contributor employer information. Continues to require occupation information.
- Eliminates prohibition on use of CFIS data for a commercial purpose.
- Eliminates restriction on media increasing advertising rates for political ads (although this is prohibited by the FCC).
- Eliminates sponsoring organizations but permits corporations to pay PACs’ and Independent Disbursement Committees’ fundraising and administrative expenses because money for such purposes excluded from definition of “disbursement.”
- Exclusion from regulation for communications with members changed from communicating only with “members, shareholders or subscribers” to communicating with “a shareholder, employee, or officer of the organization, or an individual who has affirmatively manifested an interest in joining, supporting or aiding the organization.”
- Legislation does not appear to regulate all that would be constitutionally permissible. Does not address “electioneering communications” or communications “not reasonably susceptible of any interpretation other than as a call to vote for or against a candidate.”