

## Clearinghouse Rule 09-035

### NOTICE OF PROPOSED ORDER ADOPTING RULE GOVERNMENT ACCOUNTABILITY BOARD

The Government Accountability Board proposed an order to create ch. GAB 22, Wis. Adm. Code, relating to settlement of certain campaign finance, ethics and lobbying violations.

#### ANALYSIS PREPARED BY GOVERNMENT ACCOUNTABILITY BOARD:

1. Statutes interpreted: ss. 5.05(2m)(c)12., 11.05, 11.055, 11.06, 11.12, 11.20, 11.21, 11.26, 13.64, 13.65, 13.66, 13.67, 13.68, 13.625, and 19.43, Stats.
2. Statutory authority: ss. 5.05(2m)(c)12., 5.05(1)(f), and 227.11(2)(a), Stats.
3. Explanation of agency authority: Pursuant to s. 5.05(2m)(c)12., Stats., the legislature specifically authorized the Board to prescribe, by rule, categories of civil offenses which the Board will agree to compromise and settle without a formal investigation and upon payment of specified amounts by the alleged offender.
4. Related statute(s) or rule(s): Wisconsin Statutes ch. 11—Campaign Financing, ch. 13, subchapter III—Regulation of Lobbying, and ch. 19, subchapter III—Code of Ethics for Public Officials and Employees. Administrative Code, Ch. GAB 1—Campaign Financing.
5. Plain language analysis: Chapter GAB 22 will establish settlement offer guidelines that the Government Accountability Board's staff may use to resolve certain violations of chapters 11, 12, and 19, Stats., in lieu of an enforcement action.
6. Summary of, and comparison with, existing or proposed federal regulations: Federal regulations will not apply to the activities covered by ch. GAB 22. The Federal Election Commission has established various formulas and charts for automatic administrative civil penalties for late filing of federal reports that are based upon the amount of activity during the reporting period. See 11 CFR 111.43.
7. Comparison with rules in adjacent states: Illinois statutes prescribe automatic civil penalties for late or failure to file statements of organization of political committees, which are \$25.00 per business day and \$50.00 per business day for statewide offices. 10 ILCS 5/9-3. Illinois has administrative rules regarding civil penalties for late campaign finance reports, categorized based upon the amount of receipts, expenditures and balance at the end of the report. See 26 Ill. Adm. Code

§125.425. These civil penalties range from the lowest category of \$25.00 per business day for the first violation, \$50.00 per business day for the second violation, and \$75.00 per business day for the third and each subsequent violation, to the highest category of \$200.00 per business day for the first violation, \$400.00 per business day for the second violation, and \$600.00 per day for the third and each subsequent violation. Id.

Iowa's Ethics and Campaign Finance Disclosure Board has the authority to administratively resolve late reports by assessment of automatic civil penalties prescribed by the Board. Ch. 351—9.4(5), Iowa Adm. Code.

Michigan has rules prescribing automatic late fees for registration, reports and statements for lobbying and campaign finance matters. Rs. 4.443, 4.52, and 169.4. The automatic late fees campaign registration statements are \$10.00 per business day. See s. 169.224, Mich. Stats. The automatic late fees for campaign finance reports are \$25.00 for each business day it remains unfiled, an additional \$25.00 for each business day after the first three that the report remains unfiled, and an additional \$50.00 for each business day after the first ten that the report remains unfiled.

In Minnesota, the Office of Administrative Hearings has used a “penalty matrix” designed by the Secretary of State’s Office to provide guidance for most campaign finance violations.

8. Summary of factual data and analytical methodologies: Adoption of these rules was primarily predicated upon the legislature’s specific authorization to have the Government Accountability Board prescribe, by rule, categories of civil offenses which the Board will agree to compromise and settle without a formal investigation and upon payment of specified amounts by the alleged offender.
9. Analysis and supporting documentation used to determine effect on small businesses: The rule will have no effect on small business, nor any economic impact.
10. Effect on small business: The creation of this rule does not affect business.
11. Agency contact person: Shane W. Falk, Staff Counsel, Government Accountability Board, 212 E. Washington Avenue, 3<sup>rd</sup> Floor, P.O. Box 7984, Madison, Wisconsin 53707-7984; Phone 266-2094; Shane.Falk@wisconsin.gov

FISCAL ESTIMATE: The creation of this rule has no new fiscal effect.

INITIAL REGULATORY FLEXIBILITY ANALYSIS: The creation of this rule does not affect business.

TEXT OF PROPOSED RULE:

SECTION 1. Ch. GAB 22 is created to read:

## **CHAPTER GAB 22**

### **SETTLEMENT OFFER SCHEDULE**

**22.01 Definitions.** In this chapter:

- (1) “Board” means the Wisconsin government accountability board.
- (2) “Campaign finance registration statement” means the statement required to be filed by individuals, committees and groups under s.11.05, Stats.
- (3) “Continuing campaign finance report” means the semi-annual campaign finance report required under s.11.20(4), Stats.
- (4) Contribution has the meaning given in s.11.01(6), Stats.
- (5) Contributor means an individual or committee who makes a contribution under s.11.01(6), Stats.
- (6) “Contributor information” means the information required by s.11.06(1), Stats., regarding contributions greater than \$20 or greater than \$100.
- (7) “Disbursement” has the meaning given in s.11.01(7), Stats.
- (8) “Disbursement information” means the information required by s.11.06(1), Stats., regarding disbursements greater than \$20.
- (9) “Excess contribution” means a contribution that exceeds any of the limits set in s.11.26, Stats.
- (10) “File a paper copy” means the requirement in s.11.21(16), Stats., that registrants who are required to file a copy of their campaign finance reports in electronic format must also file a paper copy of their campaign finance reports.
- (11) “File electronically” means the requirement in s.11.21(16), Stats., that registrants subject to that section file a copy of their campaign finance reports in electronic format.
- (12) “Filing fee” means the fee required by s.11.055, Stats.
- (13) “Last-minute contribution” means the contribution or contributions described in s.11.12(5), Stats., that are made later than 15 days prior to a primary or an election.

(14) “Lobbyist” has the meaning given in s.13.62(11), Stats.

(15) “Pre-primary report and pre-election report” means the campaign finance reports referred to in s.11.20(2), Stats., that are due no earlier than 14 days before a primary or election and no later than 8 days before a primary or election.

(16) “Principal” has the meaning given in s.13.62(12), Stats.

(17) “Registrant” has the meaning given in s.11.01(18m) Stats.

(18) “Statement of economic interests” has the meaning given in s.19.43, Stats.

## **22.02 Settlement of campaign finance violations.**

(1) Violations of s.11.05, Stats., failure to timely file a campaign registration statement.

- a. If a campaign finance registration statement is received within 5 days of the due date for that registration, no penalty will be imposed on the registrant.
- b. If a campaign finance registration statement is received within 6 to 10 days of the due date for that registration, a settlement offer of \$100 will be extended to the registrant.
- c. If a campaign finance registration statement is received within 11 to 15 days of the due date for that registration, a settlement offer of \$250 will be extended to the registrant.
- d. If a campaign finance registration is received more than 15 days after the due date for that registration, a settlement offer of \$500 will be extended to the registrant.
- e. Notwithstanding the settlement terms provided by the preceding paragraphs, the board may consider mitigating circumstances, including the registrant’s low level of activity, in determining the amount of the settlement offer that will be extended to the registrant.

(2) Violations of s.11.20(4), Stats., failure to timely file the continuing campaign finance report.

- a. If a continuing campaign finance report is received within 5 days of the due date for that report, no penalty will be imposed on the registrant.

- b. If a continuing campaign finance report is received within 6 to 10 days of the due date for that report, a settlement offer of \$200 will be extended to the registrant.
- c. If a continuing campaign finance report is received within 11 to 15 days of the due date for that report, a settlement offer of \$500 will be extended to the registrant.
- d. If a continuing campaign finance report is received within 16 to 30 days of the due date for that report, a settlement offer of \$500 plus the greater of \$50 per day, or .1% of the salary for the office for which registered (for a candidate committee) per day, will be extended to the registrant.
- e. If a continuing campaign finance report is received more than 30 days after the due date for that report, a settlement offer of \$500 plus the greater of \$25 per day, or .5% of the salary for the office for which registered (for a candidate committee), per day, will be extended to the registrant.
- f. Notwithstanding the settlement terms provided by the preceding paragraphs, the board may consider mitigating circumstances, including the registrant's level of activity under \$1,000 in receipts, in determining the amount of the settlement offer that will be extended to the registrant.

**(3) Violations of s.11.20(2), Stats., failure to timely file the pre-primary and pre-election campaign finance reports.**

- a. If a pre-primary or pre-election campaign finance report is received within 1 day of the due date for that report, no penalty will be imposed on the registrant.
- b. If a pre-primary or pre-election campaign finance report is received within 2 days of the due date for that report, a settlement offer of \$250 will be extended to the registrant.
- c. If a pre-primary or pre-election campaign finance report is received within 3 days of the due date for that report, a settlement offer of \$500 will be extended to the registrant.
- d. If a pre-primary or pre-election campaign finance report is received more than 3 days after the due date for that report, a settlement offer of \$500 plus the greater of \$50 per day, or 1% of the annual salary for the office for which registered (for a candidate committee) per day, will be extended to the registrant.
- e. Notwithstanding the settlement terms provided by the preceding paragraphs, the board may consider mitigating circumstances, including

the registrant's failure to win the primary election, in determining the amount of the settlement offer that will be extended to the registrant.

**(4)** Violations of s.11.12(5), Stats., failure to timely file the 24-hour report of last-minute contributions.

- a. If a 24-hour report of last-minute contributions is received within 1 day of the due date for that report, a settlement offer of \$500 will be extended to the registrant.
- b. If a 24-hour report of last-minute contributions is received more than 1 day after the due date for that report, a settlement offer of \$500 plus the greater of \$50 per day, or 1% of the annual salary for the office for which registered (for a candidate committee) per day, will be extended to the registrant.

**(5)** Violations of s.11.21(6), Stats., failure to timely file any campaign finance report electronically when required to do so. The board will extend a settlement offer based on treating the failure to timely file electronically the same as the failure to file a campaign finance report in any other format.

**(6)** Violations of s.11.055, Stats., failure to timely pay the filing fee.

- a. If a registrant has not paid the filing fee within the time provided by s.11.055, Stats., but does pay the fee within 10 days after notice of nonpayment from the Board, a settlement offer of \$300 will be extended to the registrant.
- b. If a registrant has not paid the filing fee within the time provided by s.11.055, Stats., but does pay the fee within 11 to 18 days after notice of nonpayment from the Board, a settlement offer of \$500 will be extended to the registrant.
- c. If a registrant has not paid the filing fee within the time provided by s.11.055, Stats., and does not pay the fee within 18 days after notice of nonpayment from the Board, a settlement offer of \$500 plus three times the payable fee will be extended to the registrant.

**(7)** Violations of s.11.06, Stats., failure to report all required contributor information on a campaign finance report.

- a. If the contributor information required by s.11.06, Stats., is not included on a campaign finance report and is not provided within 10 days of the board's notice of failure to comply – the registrant shall be extended a settlement offer consisting of the registrant's donation of the contribution to charity.

- b. If a report of the donation to charity of the prohibited contribution is not provided within 20 days of notice of the board's settlement offer – a settlement offer of \$500 plus the greater of \$50 per day, or 1% of the annual salary for the office for which registered (for a candidate committee) per day, will be extended to the registrant, and the prohibited contribution must be paid to charity.
- c. Notwithstanding the settlement terms provided by the preceding paragraphs, the board may consider mitigating circumstances, including the registrant's inability to obtain the required information from the contributor, in determining the amount of the settlement offer that will be extended to the registrant.

**(8)** Violations of s.11.06, Stats., failure to report all required disbursement information on a campaign finance report.

- a. If the disbursement information required by s.11.06, Stats., is not included on a campaign finance report and is not provided within 10 days of the board's notice of failure to comply, the registrant will be extended a settlement offer consisting of \$100 plus 10% of the disbursement amount up to a maximum settlement offer of \$500 plus the greater of \$50 per day, or 1% of the annual salary for the office for which registered (for a candidate committee) per day.
- b. If disbursement information required by s.11.06, Stats., is not included on a campaign finance report and is not provided within 20 days of the board's notice of failure to comply, the registrant will be extended a settlement offer consisting of \$100 plus 25% of the disbursement amount up to a maximum settlement offer of \$500 plus the greater of \$50 per day, or 1% of the annual salary for the office for which registered (for a candidate committee) per day.
- c. If the disbursement information required by s.11.06, Stats., is not included on a campaign finance report and is not provided within 30 days of the board's notice of failure to comply, the registrant will be extended a settlement offer consisting of \$500 plus the greater of \$50 per day, or 1% of the annual salary for the office for which registered (for a candidate committee) per day.

**(9)** Violations of s.11.06(5), Stats., failure to timely report the receipt of a contribution.

- a. If a contribution has not been included on a campaign finance report and the late report of the contribution is filed within 10 days of the due date for reporting the contribution, a settlement offer of 10% of the contribution

will be extended to the registrant, up to a maximum settlement offer consisting of \$500, plus the greater of \$50 per day, or 1% of the annual salary for the office for which registered (for a candidate committee), per day.

- b. If the late report of the contribution is filed within 11 to 20 days of the due date for reporting the contribution, a settlement offer of 25% of the contribution will be extended to the registrant, up to a maximum settlement offer consisting of \$500, plus the greater of \$50 per day, or 1% of the annual salary for the office for which registered (for a candidate committee), per day.
- c. If the late report of the contribution is filed more than 20 days after the due date for reporting the contribution, a settlement offer of consisting of \$500, plus the greater of \$50 per day, or 1% of the annual salary for the office for which registered (for a candidate committee), per day, will be extended to the registrant.
- d. Notwithstanding the settlement terms provided by the preceding paragraphs, the board may consider mitigating or aggravating circumstances, including the board's discovery of the receipt of the contribution without disclosure by the registrant, in determining the amount of the settlement offer that will be extended to the registrant.

**(10)** Violations of s.11.06(5), Stats., failure to timely report the receipt of a disbursement.

- a. If a disbursement has not been included on a campaign finance report and the late report of the disbursement is filed within 10 days of the due date for reporting the disbursement, a settlement offer of 10% of the disbursement will be extended to the registrant, up to a maximum settlement offer consisting of \$500, plus the greater of \$50 per day, or 1% of the annual salary for the office for which registered (for a candidate committee), per day.
- b. If the late report of the disbursement is filed within 11 to 20 days of the due date for reporting the disbursement, a settlement offer of 25% of the disbursement will be extended to the registrant, up to a maximum settlement offer consisting of \$500, plus the greater of \$50 per day, or 1% of the annual salary for the office for which registered (for a candidate committee e), per day.
- c. If the late report of the disbursement is filed more than 20 days after the due date for reporting the disbursement, a settlement offer of consisting of \$500, plus the greater of \$50 per day, or 1% of the annual salary for the

office for which registered (for a candidate committee), per day, will be extended to the registrant.

- d. Notwithstanding the settlement terms provided by the preceding paragraphs, the board may consider mitigating or aggravating circumstances, including the board's discovery of the making of the disbursement without disclosure by the registrant, in determining the amount of the settlement offer that will be extended to the registrant.

(11) Violations of s.11.26, Stats., for receiving or making contributions in excess of statutory limits. Any committee that receives a contribution in excess of the limits set by s.11.26, Stats., may be required to pay the excess portion of the contribution to any organization recognized as a charity by the Internal Revenue Code and will also be extended a settlement offer for a forfeiture of 50% of the excess contribution up to a maximum of \$500. Any individual or committee who makes a contribution in excess of the limits set by s.11.26, Stats., may be extended a settlement offer for a forfeiture of one and one-half times the excess portion of the contribution.

(12) Other violations of chapter 11 of the Wisconsin Statutes. Settlement offers to resolve all other violations of chapter 11 of the Wisconsin Statutes will be determined on a case-by-case basis.

**22.03 Violations of Subchapter III of Chapter 19, Stats., the Code of Ethics for Public Officials and Employees:** The failure to timely file the statement of economic interests as required by s.19.43, Stats.,

- (1) If a statement of economic interests is received within 5 days of the due date for that statement, no penalty will be imposed on the official.
- (2) If a statement of economic interests is received within 6 to 10 days of the due date for that statement, a settlement offer of \$10 will be extended to the official.
- (3) If a statement of economic interests is received within 11 to 25 days of the due date for that statement, a settlement offer of \$50 will be extended to the official.
- (4) If a statement of economic interests is received within 26 to 30 days of the due date for that statement, a settlement offer of \$100 will be extended to the official.
- (5) If a statement of economic interests is received more than 30 days after the due date for that statement, a settlement offer of \$250 will be extended to the official.

- (6) Notwithstanding the settlement terms provided by the preceding paragraphs, the board may consider mitigating circumstances, including the fact that the board's staff failed to notify the person filing the statement of the requirement to file the statement of economic interests, in determining the amount of the settlement offer.

#### **22.04 Violations of Subchapter III of Chapter 13, Stats., the Regulation of Lobbying in Wisconsin**

- (1) Violations of s.13.64, Stats., failure of a principal to timely file a registration statement .

- a. If the registration statement of a principal, as required by s.13.64, Stats., is received within 7 days of the due date for that registration, no penalty will be imposed on the registrant, but a warning, that any future failure to timely file could lead to a forfeiture, will be issued.
- b. If the registration statement of a principal is received within 8 to 14 days of the due date for that registration, a settlement offer of \$250 will be extended to the registrant.
- c. If the lobbying registration statement of a principal is received within 15 to 21 days of the due date for that registration, a settlement offer of \$500 will be extended to the registrant.
- d. If the lobbying registration statement of a principal is received within 22 to 28 days of the due date for that registration, a settlement offer of \$750 will be extended to the registrant.
- e. If the lobbying registration statement of a principal is received more than 28 days after the due date for that registration, a settlement offer of \$1,000 will be extended to the registrant.

- (2) Violations of s.13.66, Stats., failure of a lobbyist to timely obtain a license to act as a lobbyist.

- a. If a lobbyist fails to timely obtain a license to act as a lobbyist under s.13.66, Stats., but obtains that license within 7 days of the due date for obtaining that license, no penalty will be imposed on the lobbyist, but a warning, that any future failure to timely file could lead to a forfeiture, will be issued.
- b. If a lobbyist fails to timely obtain a license to act as a lobbyist under s.13.66, Stats., but obtains that license within 8 to 14 days of the due date for obtaining that license, a settlement offer of \$75 will be extended to the lobbyist.

- c. If a lobbyist fails to timely obtain a license to act as a lobbyist under s.13.66, Stats., but obtains that license within 15 to 21 days of the due date for obtaining that license, a settlement offer of \$125 will be extended to the lobbyist.
- d. If a lobbyist fails to timely obtain a license to act as a lobbyist under s.13.66, Stats., but obtains that license within 22 to 28 days of the due date for obtaining that license, a settlement offer of \$250 will be extended to the lobbyist.
- e. If a lobbyist fails to timely obtain a license to act as a lobbyist under s.13.66, Stats., and does not obtain that license until more than 28 days of the due date for obtaining that license, a settlement offer of \$500 will be extended to the lobbyist.

**(3) Violations of s.13.65 Stats., failure of a principal to timely file a written authorization for a lobbyist to represent the principal.**

- a. If a principal fails to timely file a written authorization for a lobbyist to represent the principal under s.13.65, Stats., but files that authorization within 7 days of the due date for filing that authorization, no penalty will be imposed on the principal, but a warning, that any future failure to timely file could lead to a forfeiture, will be issued.
- b. If a principal fails to timely file a written authorization for a lobbyist to represent the principal under s.13.65, Stats., but files that authorization within 8 to 14 days of the due date for filing that authorization, a settlement offer of \$125 will be extended to the principal.
- c. If a principal fails to timely file a written authorization for a lobbyist to represent the principal under s.13.65, Stats., but files that authorization within 15 to 21 days of the due date for filing that authorization, a settlement offer of \$250 will be extended to the principal.
- d. If a principal fails to timely file a written authorization for a lobbyist to represent the principal under s.13.65, Stats., but files that authorization within 22 to 28 days of the due date for filing that authorization, a settlement offer of \$375 will be extended to the principal.
- e. If a principal fails to timely file a written authorization for a lobbyist to represent the principal under s.13.65, Stats., and does not file that authorization until more than 28 days after the due date for filing that authorization, a settlement offer of \$500 will be extended to the principal.

**(4)** Violations of s.13.68, Stats., failure of a principal to timely file the semi-annual report of lobbying expenditures and incurred obligations.

- a. If a principal fails to timely file the semi-annual report of lobbying expenses as required by s.13.68, Stats., but files that report within 2 days of the due date for filing that report, no penalty will be imposed on the principal.
- b. If a principal fails to timely file the semi-annual report of lobbying expenses as required by s.13.68, Stats., but files that report within 3 to 6 days of the due date for filing that report, a settlement offer of \$50 will be extended to the principal.
- c. If a principal fails to timely file the semi-annual report of lobbying expenses as required by s.13.68, Stats., but files that report within 7 to 14 days of the due date for filing that report, a settlement offer of \$200 will be extended to the principal.
- d. If a principal fails to timely file the semi-annual report of lobbying expenses as required by s.13.68, Stats., but files that report within 14 to 21 days of the due date for filing that report, a settlement offer of \$500 will be extended to the principal.

**(5)** Violations of s.13.67, Stats., failure of a principal to timely report the subject matter of lobbying. If a principal has failed to timely report the subject matter of lobbying, as required by s.13.67, Stats., the Board's staff will determine a settlement offer on a case-by-case basis, taking into consideration whether the principal's violation is a first, second, or third offense and taking into consideration the number of late-reported interests and the time period in which the violation or violations occurred.

**(6)** Violations of s.13.625, Stats.: Prohibited campaign contributions by lobbyists. If a lobbyist makes a campaign contribution prohibited by s.13.625, Stats., the recipient will be required to donate that contribution to charity and a settlement offer of \$500 will be extended to the lobbyist.

**(7)** The board's staff shall have the authority to increase or decrease any settlement offer extended for violations of Subchapter III of Chapter 13, Stats., based on mitigating or aggravating circumstances surrounding the violation.

## SECTION 2. EFFECTIVE DATE.

This rule shall take effect on the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.(22), Stats.