



Wisconsin Ethics Commission

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Report From Agency

REPORT

OF

ETHICS COMMISSION

Clearinghouse Rule 17-035
ETH 26
Wisconsin Administrative Code

The Ethics Commission proposes an order to create ch. ETH 26, relating to settlement of campaign finance, lobbying, and ethics violations.

ANALYSIS

1. **Proposed rule:** see proposed order attached immediately following this report.
2. **Statutes interpreted:** s. 19.49(2)(b)10., Stats.
3. **Statutory authority:** The Wisconsin Ethics Commission is specifically directed to promulgate this rule pursuant to s. 19.49(2)(b)10., Stats.

10. The commission shall, by rule, prescribe categories of civil offenses which the commission will agree to compromise and settle without a formal investigation upon payment of specified amounts by the alleged offender.

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

s. 11.1304(17), Stats.:

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

s. 19.48(1), Stats.:

19.48 Duties of the ethics commission. The commission shall:

Wisconsin Ethics Commissioners

Mac Davis | David R. Halbrooks | Katie McCallum | Pat Strachota | Timothy Van Akkeren | Jeralyn Wendelberger

Administrator
Brian M. Bell, MPA

(1) Promulgate rules necessary to carry out ch. 11, subch. III of ch. 13, and this subchapter.

s. 227.11(2)(a), Stats.:

227.11 Extent to which chapter confers rule-making authority.

(2) Rule-making authority is expressly conferred on an agency as follows:

(a) Each agency may promulgate rules interpreting the provisions of any statute enforced or administered by the agency, if the agency considers it necessary to effectuate the purpose of the statute, but a rule is not valid if the rule exceeds the bounds of correct interpretation.

4. **Explanation of agency authority:** The Ethics Commission is required to prescribe, by rule, categories of civil offenses which the Commission will agree to compromise and settle without a formal investigation upon payment of specified amounts by the alleged offender. The Commission may only settle alleged offenses, which in the opinion of the Commission, constitute a minor violation, a violation caused by excusable neglect, or which for other good cause shown is not in the public interest to prosecute.
5. **Related statute(s) or rule(s):** ss. 11.1400, 13.69, and 19.579, Stats.
6. **Plain language analysis:** The rule sets forth categories of civil offenses and specifies the amounts for which the Commission will agree to settle various violations of Chapter 11, subchapter III of Chapter 13, and subchapter III of Chapter 19.
7. **Summary of, and comparison with, existing or proposed federal regulations:** There is no existing or proposed federal regulation that is intended to address the activities to be regulated by the proposed rule.
8. **Comparison with similar rules in adjacent states:**

Illinois: Permits settlement of similar campaign finance violations subject to approval by the state board of elections. The board of elections publishes the factors they will consider in offering a settlement. State law prescribes standard late fees for various reports and administrative code further details the penalties to be assessed for late reports based on the total amount of receipts, expenditures, and the committee's balance at the end of the report. ILL. ADMIN. CODE tit. 26 § 125.425. These civil penalties range from the lowest category of \$25 per business day for the first violation, \$50 per business day for the second violation, and \$75 per business day for the third and each subsequent violation; to the highest category of \$50 per business day for the first violation, \$100 per business day for the second violation, and \$200 per business day for the third and each subsequent violation. *Id.*

Iowa: Permits settlement of similar violations subject to approval by the Ethics and Campaign Finance Disclosure Board, but does not publish a schedule of potential settlement terms for violations. The Board is authorized to administratively resolve late reports by

assessment of automatic civil penalties as established by the Board. IOWA ADMIN. CODE r. 351—9.4(5).

Michigan: Permits settlement of similar violations subject to approval by the Secretary of State. The Secretary of State publishes information related to good cause waivers of late filing fees, but does not have a full settlement schedule for all violations. State law provides a standard \$10 per business day late fee for campaign registration statements. MICH. COMP. LAWS § 169.224. State law also provides an escalating penalty for late campaign finance reports of \$25 for each business day the report remains unfiled, an additional \$25 for each business day after the first three business days the report remains unfiled, and an additional \$50 for each business day after the first ten business days the report remains unfiled. MICH. COMP. LAWS § 169.232.

Minnesota: Permits settlement of similar campaign finance, lobbying, and ethics violations with the approval of the Campaign Finance and Public Disclosure Board. The manuals published by this Board state various amounts as late fees for different reports. Additionally, the Office of Administrative Hearings uses a penalty matrix designed by the Secretary of State's office to provide guidance for most campaign finance violations.

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

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

11. **Effect on small business:** N/A

12. **Agency contact person:**

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

13. **Place where comments are to be submitted and deadline for submission:**

Written comments on the proposed rule will be accepted and receive consideration if they are received by June 6, 2017. Written comments should be addressed by mail to: David Buerger, P.O. Box 7984, Madison, WI 53707-7984; or by email to: eth.rulecomments@wi.gov.

14. **List of persons who appeared or registered for or against the proposed rule at any public hearing held by the agency:** No persons appeared for or against the proposed rule at the hearing held by the agency on June 7, 2017.

15. **Summary of public comments to the proposed rule and the agency's response to the comments:** No public comments were received by the agency.

16. **Explanations of modifications to the proposed rule as a result of the public comments or testimony received at public hearings:** N/A
17. **Legislative Council staff clearinghouse report:** See Clearinghouse report to Agency attached immediately following this report.
18. **Response to Legislative Council staff recommendations in the clearinghouse report:** The Ethics Commission agrees with and adopts the suggested changes presented in the Legislative Council report with one exception.

Item 2.c. of the report suggests replacing “includes” with “means” at various parts of the rule. The Ethics Commission intends to use “includes” in these sections so as to expand the scope to encompass other reasonably related examples not specifically enumerated.