

STATE SENATOR KATHY BERNIER
TWENTY-THIRD SENATE DISTRICT



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From: Senator Kathy Bernier
To: The Senate Committee on Elections, Election Process Reform and Ethics
Re: Testimony on Senate Bill 718, 719, 720

Relating to: Campaign finance changes recommended by the Ethics Commission; Changes to the lobbying laws, including changes recommended by the Ethics Commission; and Changes to the administration of the code of ethics, as recommended by the Ethics Commission

Date: December 14, 2021

Thank you committee members for allowing me to provide testimony on Senate Bills 718, 719, and 720 today. I am grateful for the opportunity to work with the Wisconsin Ethics Commission as well as Rep. Wichgers on this legislation.

To provide a basic overview of the three, SB 718 contains the Ethics Commission's recommended changes to improve clarity and administration of Wisconsin's campaign finance law. It clarifies how to administer "exempt status," campaign finance reporting deadlines, and the period in which contribution limits apply. The bill also requires disclosure of all loans to committees and disclaimers on referenda-related communications. It also updates the candidate committee record retention period and makes other technical changes.

SB 719 contains recommended changes to Wisconsin's lobbying laws, including technical revisions and updates to statutes to allow better administration. Also included are changes intended to clarify and reinforce the long-standing practice of legislator's participation in educational events and receptions. Finally, the bill applies the local code of ethics to school district administrators.

SB 720 exempts certain securities from disclosure on an SEI and requires a final SEI to be filed within 21 days of leaving office. It also codifies the long-standing guidance related to disposition of gifts and repeals outdated provisions.

This trio of bills represent the legislative priorities of the Wisconsin Ethics Commission and passage will ensure efficient and proper administration of our state's ethics laws. Which is why I ask you to please consider supporting this package of bills. Thank you again for allowing me to provide testimony today.



CHUCK WICHGERS

STATE REPRESENTATIVE • 83rd ASSEMBLY DISTRICT

Senate Committee on Elections, Election Process Reform and Ethics

December 14, 2021

Senate Bills 718, 719 and 720

State Representative Chuck Wichgers, 83rd Assembly District

Chairwoman Bernier and Committee Members,

Thank you for hearing my testimony today on Senate Bills: 718, 719 and 720. All three of these bills are technical in nature and were brought to myself and Senator Bernier by the Ethics Commission Administrator Dan Carlton.

I serve as the chairman for the Assembly Committee on Constitution and Ethics. As chairman for the past two legislative sessions I have gained quite a bit of insight into the Ethics Commission and its operations from Mr. Carlton. Based on our ongoing conversations I agreed to author the three bills before us today.

As previously stated, these bills are technical cleanups needed for additional clarity and conformity to our present laws. One issue I wanted to highlight is in SB 719. With the passage of 2017 WI Act 369, the Ethics Commission undertook the task of evaluating all of their guidance documents and linking said guidance to a corresponding state statute or administrative code.

An issue arose with a longstanding practice by lobbyists and legislators in their "Lobby Day at the Capitol" events. This bill clarifies that elected officials may attend lobbying/educational events without paying the cost of admission. However, legislators may not receive food, beverages or other items included in the cost of admission unless the official pays for them. In addition, the legislation makes clear that covered officials may accept food, meals, beverages or the cost of admission to events (e.g. legislative lobby days) if the covered official pays for the cost of those items. Finally, an elected official may attend these events without reimbursement if the official does not accept food, meals, or beverages. One last note is that the bill applies the local code of ethics to school district administrators as well.

It is our hope that trade groups and advocates can continue their mission to inform state legislators at their events. Updated laws must be put in place to continue this longstanding tradition. Thank you for your consideration of my testimony, I am happy to take any questions.



Wisconsin Ethics Commission

Campaign Finance | Lobbying | Ethics
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To: Members of the Senate Committee on Elections, Election Process Reform, and Ethics
From: Daniel A. Carlton, Jr., Administrator, Wisconsin Ethics Commission
Date: December 14, 2021
Re: Written Testimony in Support of Senate Bills 718, 719, and 720

Dear Committee Members,

I am writing to support Senate Bills 718, 719, and 720. Since its creation, the Wisconsin Ethics Commission has made a number of legislative recommendations. These recommendations primarily focus on administrative and technical matters. The recommendations in these bills are designed to provide clear statutory guidance to the Commission and the regulated communities about how these laws are to be implemented. The Commission is committed to applying the statutes in its jurisdiction as written and doing so in a fair, bipartisan way. These recommendations were unanimously adopted by the Commission. Below, I will briefly address each bill. However, I would first like to thank Senator Bernier for introducing these bills. I truly appreciate the time and effort she and her staff have given to the Commission's legislative recommendations. I would also like to thank the cosponsors of these bills for their support. We look forward to your support of these legislative recommendations.

Senate Bill 718- Campaign Finance Changes Recommended by the Ethics Commission

SB 718 contains clarifying and technical changes to provide clear guidance on how to administer and comply with campaign finance law. First, the bill provides a clear statutory procedure on how to administer "exempt status." For state level candidates and officials, it provides direction as to when they must claim exempt status, that failing to do so by the deadline results in them being ineligible for "exempt status" for that year, and that candidates cannot be on "exempt status" during a year in which they are running for office. For local candidates and officials, once they have claimed "exempt status," they can remain on it until such time as they exceed the threshold. It also expressly states that incorrectly claiming "exempt status" is not a basis for denying ballot access and requires the filing officer to notify candidates that they are not eligible within 10 days.

SB 718 also clarifies candidate committee recordkeeping requirements. Currently, candidates must keep their records for not less than 3 years after the date of the election in which they participate. The bill clarifies that the treasurer shall maintain the candidate committee records for the applicable contribution limit period for at least 3 years after the last date of that contribution limit period. This will assure that the Commission can fully and accurately audit for compliance with contribution limits. The bill also provides clearer endpoints for the period in which contribution limits apply. These endpoints will now be June 30th for candidates at a Spring Election and December 31st for candidates in the general election. This allows for more timely audits for excess contributions. Also, for the first time, the bill provides a contribution limit period for candidates participating in a special election.

SB 718 also improves current registration and reporting requirements. The bill establishes uniform registration thresholds of \$2,500 across all committee types. Additionally, reporting of all transactions is improved by providing clearer beginning and endpoints for September Reports and for 72-Hour Reports.

Wisconsin Ethics Commissioners

Paul Connell | Awais Khaleel | Shauntay Nelson | Pat Strachota | Timothy Van Akkeren | David Wambach

Administrator

Daniel A. Carlton, Jr.

Finally, SB 718 requires more transparency from groups supporting and opposing referenda by requiring an attribution statement on communications supporting or opposing a referendum.

Senate Bill 719- Changes to the Lobbying Laws, Including Changes Recommended by the Ethics Commission

SB 719 addresses several recommendations by the Wisconsin Ethics Commission. First, the prohibited practices portion of the lobbying law is improved through technical revisions. The current version of WIS. STAT. § 13.625 is confusing to readers because it alternates between prohibitions and exceptions. It also alternates between exceptions only for lobbyists or principals. The statute is revised to make it easier for the reader to understand.

SB 719 also addresses an issue of concern for the Commission, acceptance of meals at Lobby Day events. Past practice allowed a covered official or state employee to accept meals and beverages at those events if the covered official or state employee paid for the meals and beverages. However, there is no statute, rule, or opinion precedent supporting the practice. The bill codifies that practice.

SB 719 also addresses whether the definition of local public official includes school district administrators. While the current definition of local public official in WIS. STAT. §§ 19.42(7x) and (7w) can currently be interpreted to cover school district administrators, other policymakers, and those responsible for fiscal decisions, the Commission recommended that the definition expressly include school district administrators. SB 719 accomplishes that recommendation.

Finally, SB 719 includes language that allows covered officials to attend meetings with clubs, conventions, groups, and other gatherings to discuss government processes and proposals without cost of admission. It further allows them to accept actual and reasonable expenses from principals and lobbyists for published works or presenting or participating in those events but only if they are the organizer of the event or the publisher.

These changes were not included in the Commission's recommendations. The Commission has not taken a position on them. However, the Committee members should be aware that there are currently similar provisions in the lobbying laws and ethics laws. First, WIS. STAT. § 19.56(1) expressly encourages officials to meet with clubs and groups to discuss governmental business. Also, WIS. STAT. § 19.56(3) allows state public officials to accept reimbursement or payment of actual and reasonable expenses for published works and attendance at these types of meetings when paid for by the publisher or organizer. The lobbying law already allows actual and reasonable expenses for these types of meetings. See WIS. STAT. § 13.625(7). Second, the lobbying law allows lobbyists and principals to furnish educational or informational material to a covered official. See WIS. STAT. § 13.625(6t).

SB 720- Changes to the Administration of the Code of Ethics, as Recommended by the Ethics Commission

Senate Bill 720 improves administration of the Statements of Economic Interests requirement. Currently, if a covered official serves even one day in a year, he or she is required to file an SEI by April 30th. In the case of most state-level elected officials, they serve at least a few days in January even if they are leaving office. It is not unusual for former officials to think that they are no longer required to file. Once they leave office, it can be hard for the Commission to find them and obtain the final filing. To fix this issue,

the bill requires only those that are in office at least 14 days in a year to file an SEI by April 30th. Additionally, to maintain the current level of disclosure, the bill requires a "termination" SEI within 21 days of leaving office.

Under the bill, filers will no longer be required to report certain investments such as defined benefit retirement plans, money market funds, mutual funds, and ETFs. The Commission recommended this because officials do not control the holdings within these investment vehicles and the holdings can change at any time without notice or consent of those who own shares. As such, these holdings are unlikely to give rise to a conflict of interest.

This bill also codifies longstanding guidance about disposition of gifts that an official is not allowed to keep. Specifically, the official is required to either treat it as given to his agency, transfer it to another agency or part of government that can use it (such as a library), give it to charity, return it, or, in some cases, purchase it by paying the full retail value.

Finally, this bill repeals outdated, duplicative requirements. First, the Commission will no longer be required to send the Chief Clerks an updated list of licensed lobbyists, legislative liaisons, and principals every week. This information is kept up to date and is publicly available on the Commission's website. Second, the law currently requires the Commission to receive and maintain certain information relating to government contracts. These requirements are duplicated elsewhere, such as through the use of OpenBook and VendorNet. Finally, the bill repeals a provision related to budget requests that was held unconstitutional.

If you would like further information regarding the Commission's legislative recommendations, please let me know. Thank you for your consideration and support of these bills.

Sincerely,

A handwritten signature in black ink, appearing to read "D. Carlton". The signature is fluid and cursive, with a large initial "D" and "C".

Daniel A. Carlton, Jr., Administrator
Wisconsin Ethics Commission

Wisconsin Ethics Commission

For legislators, legislative employees, and executive branch
officers elected in state-wide elections

Officials' receipt of food, drink, favors, services, etc.

ITEMS SPECIFICALLY AUTHORIZED: Consistent with the statutes administered by the Wisconsin Ethics Commission, *a state public official may accept and retain:*

ALL OFFICIALS MAY ACCEPT FROM ANY ORGANIZATION (EVEN A LOBBYING ORGANIZATION):

- a. **EXPENSES FOR TALKS AND PROGRAMS.** Payment or reimbursement by a meeting's sponsor of expenses an official or employee incurs for presenting a talk or program about state issues (including meal and travel costs)¹ [§ 19.56(3)(a)];
ONLY ELECTED OFFICIALS – May accept reasonable compensation for a talk from the organizer of an event, as long as the organizer is not a lobbyist or lobbying organization.
- b. **ITEMS AND SERVICES MADE AVAILABLE TO THE GENERAL PUBLIC ON THE SAME TERMS.** Food, drink, transportation, lodging, items, and services at the same price, if any, charged others, when each of the following applies:
 - (i) the admission, items, or services are available to anyone who wants them at the same price;
 - (ii) the official is not given a preference or advantage in obtaining the items; and
 - (iii) there is no offer or notice of the event, item, or service directed to an official that would confer an advantage to the official. [§13.625(2), *Wisconsin Statutes*];
- c. **FOOD AND DRINK THAT THE OFFICIAL PURCHASES AT AN EVENT INTENDED FOR AND CONDUCTIVE TO THE DISCUSSION OF STATE GOVERNMENTAL PROCESSES, PROPOSALS, OR ISSUES.** Food and drink that an official purchases at an event intended for and conducive to the discussion of state governmental processes, proposals, or issues if the official pays the highest of (i) the price charged others; (ii) the food and drink's true value, or (iii) the sponsor's cost [80 Op. Att'y Gen. 201 (1992)];¹
- d. **EXPENSES PROVIDED BY OR TO THE STATE.** Food, drink, transportation, lodging, or payment or reimbursement of costs that the official can clearly and convincingly demonstrate are provided by or on behalf of the state and primarily for the state's benefit, not for a private benefit² [§ 19.56(3)(c)]; and
- e. **INFORMATION.** Informational materials that are not of substantial value. [§§ 13.625(6t) and 19.45(2)].

FROM AN INDIVIDUAL/ORGANIZATION OTHER THAN A LOBBYIST/LOBBYING ORGANIZATION:

- f. **ITEMS AND SERVICES UNRELATED TO PUBLIC POSITION.** Food, drink, transportation, lodging, items, and services which the recipient can clearly demonstrate are received for a reason unrelated to the recipient's holding or having held *any* public position [§§ 19.45(3m) and 19.56(3)(b), *Wisconsin Statutes*];
- g. **ITEMS AND SERVICES FOR WHICH THE RECIPIENT PAYS THE FULL COST.** Food, drink, transportation, lodging, items, and services if the official pays either (a) the price charged all others, if

¹ Minutes, open session, Ethics Board, March 8, 1995, 80 Op. Att'y Gen. 201 (1992).

² Normally, the certification of the agency head or governing body that the cost or item or service would otherwise be paid by the state of Wisconsin is all that is needed to meet the statute's requirement that a reimbursement or item or service be provided for the benefit of the state, not for a private benefit.

the event is open to the general public, or (b) the highest of (i) the price charged others; (ii) the item's or service's true value, or (iii) the furnisher's cost [§§ 19.45(3m) and 19.56(3)(b) *Wisconsin Statutes*];

- h. **ITEMS, SERVICES, AND REIMBURSEMENTS FROM CAMPAIGN COMMITTEES.** Services, items, and reimbursements from campaign committees as permitted and reported under campaign finance laws [§ 19.56(3)(d)].

STATUTORY RESTRAINTS: Except as noted on the other side of the page, *a state public official should not accept:*

1. **TRANSPORTATION, TRAVELING ACCOMMODATIONS, OR COMMUNICATION SERVICES.** Discounted transportation or traveling accommodation for which the supplier would usually charge [§946.11; Art. 13, §11, Const.].
2. **ITEMS OR SERVICES FROM LOBBYISTS.** Food, drink, transportation, lodging, employment, or any other thing of pecuniary value from a lobbyist³, either directly or through an agent [§ 13.625(1)-(3)];
3. **ITEMS OR SERVICES FROM ORGANIZATIONS THAT EMPLOY LOBBYISTS.** Food, drink, transportation, lodging, employment, or any other thing of pecuniary value from an organization that employs a lobbyist unless also made available to the general public on like terms and conditions⁴ [§ 13.625(2)]; and
4. **FOOD, DRINK, OR TRAVEL OFFERED FOR A REASON RELATED TO HOLDING ANY PUBLIC POSITION.** Food, drink, transportation, or lodging offered for a reason related to the recipient's holding or having held *any* public position. [§§ 19.45(3m) and 19.56(3)(b)];
5. **OTHER ITEMS OR SERVICES OFFERED BECAUSE OF STATE POSITION.** Any item or service of more than nominal value offered because of the person's holding a state public office [§ 19.45(2), *Wisconsin Statutes*];⁵
6. **REWARDS FOR OFFICIAL ACTION.** Anything of value that could reasonably be considered as a reward for the official's action or inaction [§ 19.45(3), *Wisconsin Statutes*];
7. **ITEMS AND SERVICES THAT COULD INFLUENCE OFFICIAL ACTION.** Anything of value that could reasonably be expected to influence the state public official's vote, official actions, or judgment [§ 19.45(3), *Wisconsin Statutes*].
8. **JUDGES ONLY: PAYMENT FOR OFFICIATING AT A COURTHOUSE WEDDING.** A payment, even if unsolicited, for officiating at a marriage at a courthouse, regardless of the hour at which the marriage is performed.⁶ [§ 19.45 (2)]

³ Unless the official's responsibilities do not include rulemaking or unless the lobbyist and recipient are married to each other, are engaged to be married, reside in the same household, or are close relatives [§ 13.625(6)].

⁴ Unless the official's responsibilities do not include rulemaking . In the case of an official who also holds an *elected* position in a local government that employs a lobbyist, the local government may furnish the individual anything it normally furnishes to its other similarly situated elected officials. [§ 13.625(6g)(a)] If an official is *appointed* to a local government position compatible with the state position, the local government may furnish the individual a per diem or reimbursement of expenses up to the amount furnished to its other similarly situated elected officials. [§ 13.625(6g)(b)]

Members of Commissions, Councils, Boards, Committees, or Similar Bodies: In the case of a person who is a state official solely because of membership on the Board of Regents, the person may receive payments and benefits from his or her employer in an amount the employer customarily provides to similarly situated employees, even if the employer is a lobbyist or retains a lobbyist. [§ 13.625(6r)]

⁵ For more detailed information about **attending conferences, seminars, and receptions**, see Wisconsin Ethics Commission Guideline ETH-1222.

⁶ The Ethics Code provides no obstacle to a judge's accepting a gratuity for officiating at a marriage any place other than a courthouse, provided the payment does not exceed a reasonable amount that a member of the clergy might receive under like circumstances and provided the payment could not reasonably be expected to influence the judge's exercise of judicial duties. When a judge is offered a payment for officiating at a marriage at a courthouse, the judge should decline it or suggest that it be paid instead to a local charity.