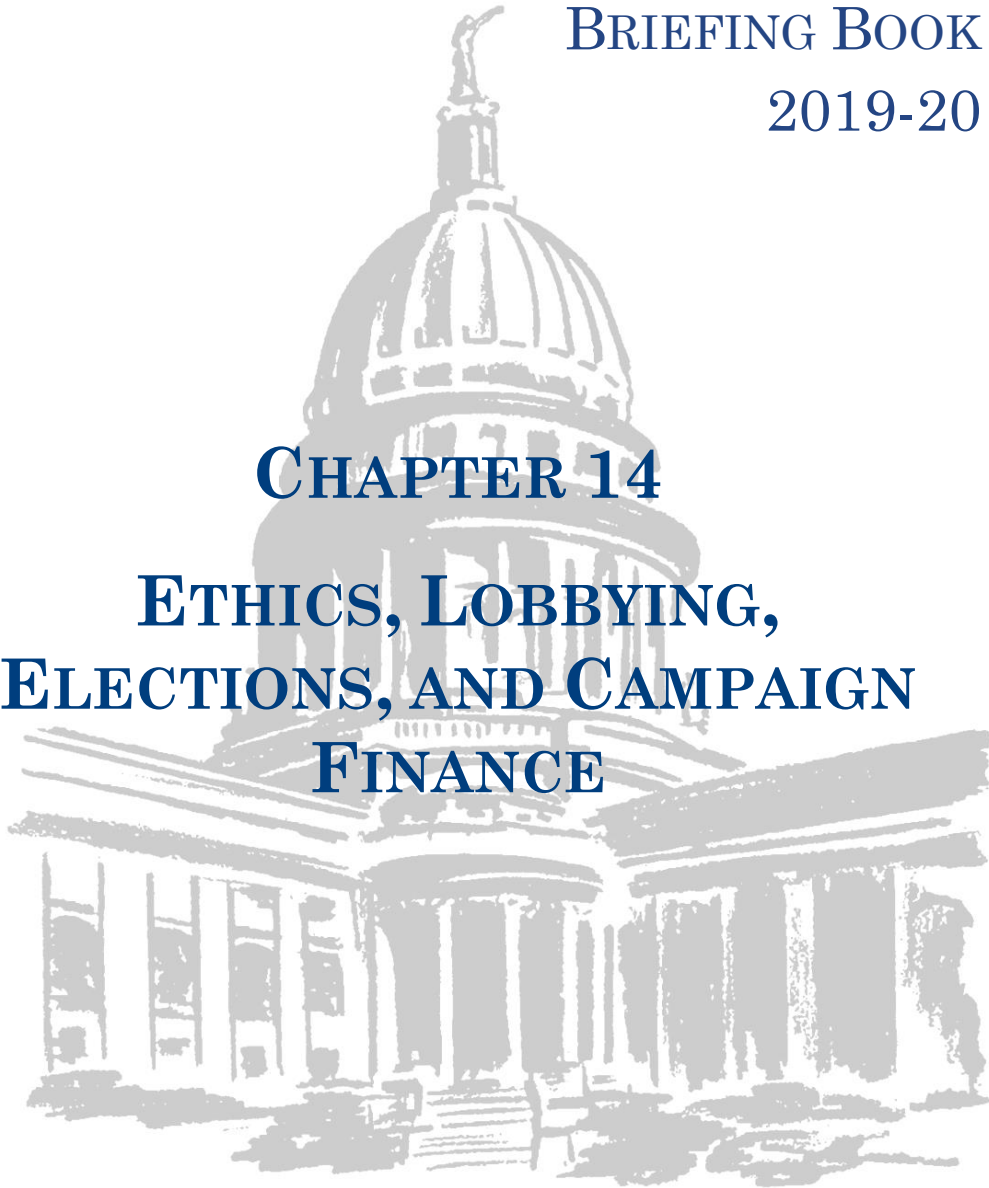


WISCONSIN LEGISLATOR
BRIEFING BOOK
2019-20

CHAPTER 14
**ETHICS, LOBBYING,
ELECTIONS, AND CAMPAIGN
FINANCE**



Jessica Karls-Ruplinger, Acting Director, and Katie Bender-
Olson, Senior Staff Attorney
Wisconsin Legislative Council

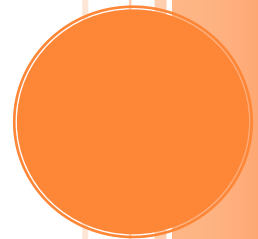


TABLE OF CONTENTS

| | |
|--|----|
| INTRODUCTION | 1 |
| ETHICS CODE | 1 |
| Disclosure of Financial Interests | 1 |
| Prohibited Conduct | 2 |
| Conflicts of Interest..... | 4 |
| Questions to Ask Concerning the Possible Application of the Code | 6 |
| Who Can Answer Questions Concerning Application of the Code..... | 6 |
| Relationship of the Ethics Code to the Lobbying Law | 6 |
| LOBBYING LAW | 7 |
| Purpose of the Lobbying Law..... | 7 |
| Definition of Lobbying..... | 7 |
| Persons Subject to the Lobbying Law..... | 7 |
| Prohibited Conduct | 8 |
| Exceptions to the General Prohibition..... | 9 |
| Bribery..... | 10 |
| Legislator Advice to Constituents..... | 10 |
| ELECTION LAW | 11 |
| Candidates..... | 11 |
| Voter Qualifications and Disqualifications..... | 12 |
| Voter Registration..... | 12 |
| Absentee Voting | 14 |
| Voting on Election Day..... | 15 |
| Election Days..... | 16 |
| Canvass | 16 |
| Recount..... | 17 |
| CAMPAIGN FINANCE LAW | 17 |
| Registration and Reporting..... | 17 |
| Contribution Limits | 19 |
| Coordination..... | 21 |
| ADVISORY OPINIONS..... | 21 |
| ADDITIONAL REFERENCES | 22 |
| GLOSSARY..... | 22 |

INTRODUCTION

The Elections Commission administers and enforces Wisconsin’s election laws and the Ethics Commission administers and enforces Wisconsin’s campaign finance, ethics, and lobbying laws. This chapter describes the Ethics Code and lobbying law requirements, particularly as they relate to legislators, and summarizes election and campaign finance laws. In addition, this chapter discusses the role of the Elections Commission and the Ethics Commission in providing advisory opinions on the application of ethics, lobbying, elections, and campaign finance laws.

ETHICS CODE

Wisconsin legislators, as well as other state public officials, are subject to the Ethics Code set forth in subch. III of ch. 19, Stats. The Ethics Code contains financial disclosure requirements, standards of conduct, enforcement procedures, and penalties for violations.

Ethics Commission guidelines that relate to ethics are available at:

<https://ethics.wi.gov>

The Ethics Commission administers and enforces the Ethics Code. [s. 19.49, Stats.] The standards of conduct under the Code are stated in the form of general principles, rather than as specific,

detailed regulations. Consequently, predicting the possible application of the Ethics Code in a specific situation requires consideration of all relevant facts.

The comments regarding the Ethics Code contained in this section should be viewed only as a general description of, and guide to, the statutory provisions. The pertinent statutes and administrative rules and the Ethics Commission should be consulted when questions arise.

The key provisions of the lobbying law that relate to legislators are described later in this chapter. Similar conduct is addressed by both the Ethics Code and the lobbying law.

Disclosure of Financial Interests

The Ethics Code requires legislators and certain other state officials to disclose annually the following information regarding financial interests relating to themselves and, in most cases, their immediate families:

- Management and financial relationships with certain organizations, such as being a director, officer, or trustee, holding a 10% or greater ownership interest, or being an authorized representative or agent.
- Securities held having a value of \$5,000 or more, categorized by whether the approximate value is less or greater than \$50,000.
- Names of creditors to whom \$5,000 or more is owed, categorized by whether the amount owed is less or greater than \$50,000.

- Interests in real property holdings in Wisconsin, other than a principal residence.
- Identity of direct sources of income of \$1,000 or more and certain indirect sources of income of \$10,000 or more.
- Identity of donors (nonrelatives) of gifts having a value over \$50.
- Lodging, transportation, money, or other items, having a value over \$50, that are received for a published work, presentation of a talk, or participation in a meeting. (See, also, the discussion of transportation and lodging below.)

Legislators must annually file a Statement of Economic Interests, which discloses certain financial interests of the legislator.

Financial interests that must be disclosed under the Ethics Code are set forth in a form called the “Statement of Economic Interests.” The Ethics Commission provides forms and instructions to incumbent legislators annually for updates and provides on its website or by mail forms and instructions for potential candidates.

Additional information on disclosure of financial interests can be found at:

<https://ethics.wi.gov/Pages/Ethics/StatementsOfEconomicInterests.aspx>

A Statement of Economic Interests is retained by the commission until three years after a person ceases to be a state public official; the commission then destroys all of its copies of the filer’s statements. The statement is open for public inspection at the commission offices while on file. The commission must notify the

person who filed the statement of the full name and address of any person who inspects the filer’s statement.

A candidate for the Legislature must file the Statement of Economic Interests within three days after the deadline for filing nomination papers. Subsequent filings must be updated annually no later than April 30. [ss. 19.43, 19.44, and 19.48, Stats.]

Prohibited Conduct

Summarized below are the general categories of conduct prohibited under the Ethics Code. The Ethics Code also separately addresses conflicts of interest, discussed later in this chapter.

Use of Office for Private Benefit

A legislator is prohibited from using his or her public position or office to obtain financial gain or anything of

A legislator is prohibited from using the office of legislator to obtain financial gain or anything of substantial value for the private benefit of the legislator; and from soliciting or receiving anything of value if it could reasonably be expected to influence or reward official actions.

substantial value for the private benefit of the legislator, the legislator’s immediate family, or organizations with which the legislator is associated. [s. 19.45 (2), Stats.]

“Anything of value” is defined under the Ethics Code as any money or property, favor, service, payment, advance, forbearance, loan, or promise of future employment, but does **not** include: compensation and expenses paid by the state; fees and expenses otherwise allowed under the Code; political contributions that are reported under campaign finance law; or hospitality extended for a purpose unrelated to state business by a person other than an organization. [s. 19.42 (1), Stats.] “Anything of ‘**substantial**’ value” is not defined under the Code.

Additional information on prohibited conduct can be found at:

<https://ethics.wi.gov/Resources/1201-StatePublicOfficialConduct.pdf>

Improper Influence or Reward for Official’s Actions

A legislator is prohibited from soliciting or receiving anything of value if it could reasonably be expected to influence or reward official actions. [s. 19.45 (3), Stats.]

Taking Official Action in Exchange for Political Contributions or Anything Else of Value (“Pay-to-Play”)

A legislator or candidate for legislative office is prohibited from taking official action in exchange for political contributions or anything else of value for the benefit of a candidate, political party, or certain committees or persons.

More specifically, no legislator may, directly or by means of an agent, give or offer or promise to give, or withhold or offer or promise to withhold, his or her vote or influence, or promise to take or refrain from taking official action on any proposed or pending matter, in consideration of, or upon condition that, any other person make or refrain from making a political contribution or provide or refrain from providing any service or any other thing of value, to or for the benefit of a candidate, political party, any committee registered under state campaign finance law, or any person making certain candidate-related communications. [s. 19.45 (13), Stats.]

Use of Confidential Information for Private Gain

A legislator is prohibited from using confidential information, obtained by reason of or in the course of legislative activities, for the private gain of the legislator, the legislator’s immediate family, or any other person. [s. 19.45 (4), Stats.]

Use of Office for Unlawful Benefits, Advantages, or Privileges

A legislator is prohibited from using his or her public position to influence or gain unlawful benefits, advantages, or privileges for the legislator or others. [s. 19.45 (5), Stats.]

Entering Into State Contracts or Leases

A legislator is prohibited from entering into a contract or lease involving payments of more than \$3,000 within a 12-month period, which are made in whole or in part from state funds, unless certain written disclosure is made to the Ethics Commission and to the state department that is responsible for the contract or lease. This provision applies to state contracts or leases that may be entered into by the legislator, the legislator's immediate family, or any organization in which the legislator or any member of the legislator's immediate family has a 10% or greater interest. [s. 19.45 (6), Stats.]

Representation of Persons Before State Agencies

A legislator is generally prohibited from representing persons before state agencies in an unofficial capacity and for compensation. However, such representation is allowed under any of the following circumstances:

- In contested cases (as defined in ch. 227, Stats., Administrative Procedure and Review) that involve a party, other than the state, with interests adverse to the interests of the party represented by the legislator.
- At an open hearing at which a record is maintained.
- In a manner that involves only ministerial actions by the agency.
- In a matter before the Department of Revenue or Tax Appeals Commission that involves representation of a client in connection with a tax matter.

The prohibition regarding a legislator's representation of persons before state agencies is of particular relevance to legislators who are lawyers and to other legislators whose occupation may involve representation of clients (e.g., accountants). [s. 19.45 (7), Stats.]

Acceptance or Retention of Transportation, Lodging, Meals, Food, or Beverage

A legislator is prohibited from accepting or retaining any transportation, lodging, meals, food, or beverage, except as expressly permitted under the Ethics Code. [s. 19.45 (3m), Stats.]

Conflicts of Interest

The Ethics Code also contains prohibitions on conflicts of interest. Under the Code, except in accordance with the Ethics Commission's advice, a legislator may not:

- Take any official action substantially affecting a matter in which the legislator, the legislator's immediate family, or an organization with which

A legislator may not take any official action substantially affecting a matter in which the legislator has a substantial financial interest; and may not use his or her office to produce a substantial benefit for the legislator.

the legislator is associated, has a substantial financial interest.

Additional information on conflicts of interest can be found at:

<https://ethics.wi.gov/Resources/1232-PrivateInterestOfficial.pdf>

- Use his or her office or position in a way that produces or assists in the production of a substantial benefit, direct or indirect, for the legislator, the legislator’s immediate family, or an organization with which the legislator is associated.

The Code expressly provides that these prohibitions on conflicts of interests do not prohibit a legislator from:

- Taking any action concerning the lawful payment of salaries or employee benefits or reimbursement of actual and necessary expenses.
- Taking official action on any proposal to modify state law or administrative rules (e.g., voting).

[s. 19.46, Stats.]

Despite the plain statutory language stating that the conflict of interests prohibitions do not prohibit taking official action on any proposal to modify state law or administrative rules, the Ethics Commission takes the position that the Ethics Code may nonetheless prevent a legislator from taking official action, including voting, under certain circumstances.

In support of this position, the commission cites the prohibition against using the office of legislator to obtain financial gain or anything of substantial value for the private benefit of the legislator, the legislator’s immediate family, or certain organizations with which the legislator is associated. The latter prohibition appears independently of the conflict of interests prohibitions. Under the commission’s interpretation, the prohibition against using the office of legislator to obtain financial gain or anything of substantial value may prohibit a legislator from taking official action on a state law or administrative rule unless all of the following apply:

- The legislator’s action affects a whole class of similarly-situated interests and the legislator’s interest is insignificant when compared to all affected interests in the class.
- The effect of the legislator’s actions on the legislator’s private interests is neither significantly greater nor less than on other members of the class.

Assembly and Senate rules require legislators to vote when present unless excused for “special cause.” [Assembly Rule 77; Senate Rule 73 (1).] When in doubt on the propriety of a vote or other official action, consultation with the Ethics Commission and legislative leadership is recommended. The commission’s advice on potential conflicts of interests can be obtained by seeking an advisory opinion of the commission.

Questions to Ask Concerning the Possible Application of the Code

The Ethics Code's prohibitions may be difficult to apply on a case-by-case basis. One way legislators can ensure compliance is to be sensitive to those situations that might invoke the application of the Code.

The questions listed below should be kept in mind when evaluating how the Ethics Code might apply to a specific action. An affirmative answer to any one of these questions should prompt further inquiry regarding the possible application of the Code.

- Am I, my immediate family, or an organization with which I am associated receiving anything of value for private benefit because I hold the office of legislator?
- Am I using the influence of my position as legislator to solicit something for the private benefit of me, my immediate family, or an organization with which I am associated?
- Am I taking official action in exchange for political contributions or anything else of value for the benefit of a candidate, political party, any committee registered under state campaign finance law, or any person making certain candidate-related communications?
- Am I, my immediate family, or an organization with which I am associated receiving from a nonrelative anything of value for which we have not paid?
- Will an official action on my part possibly result in private benefit to me, my immediate family, or an organization with which I am associated?
- Will the use of my staff or state facilities benefit me in my private capacity?
- Am I using the state's time, resources, or facilities in my campaign for elective office?

Who Can Answer Questions Concerning Application of the Code

If questions concerning the application of the Ethics Code relate to an event for which there is a sponsor, the sponsor should be asked whether the event, and participation by legislators, has been cleared with the Ethics Commission. If there is no sponsor or if the sponsor has not cleared the event with the commission, the commission itself should be consulted directly.

Relationship of the Ethics Code to the Lobbying Law

The lobbying law is generally concerned with who is involved in an activity (i.e., a lobbyist or a lobbyist's employer), while the Ethics Code is concerned with what is done and with the underlying purpose or result of particular conduct. If receipt and retention of expense reimbursement for the presentation of a talk or participation in a meeting related to state government issues is permitted under the Ethics Code, it is also permitted under the lobbying law, regardless of whether it is reimbursed by a lobbyist or an employer of a lobbyist. However, receipt of any other thing of value, including an honorarium, from a

lobbyist or the lobbyist’s employer, is generally a violation of the lobbying law. [s. 13.625, Stats.]

If a lobbyist or employer of a lobbyist is involved in an action or activity, both the lobbying law and Ethics Code should be consulted. If a lobbyist or employer of a lobbyist is not involved, the lobbying law need not be consulted.

LOBBYING LAW

Wisconsin legislators are directly and indirectly affected by the lobbying law, which is set forth in subch. III of ch. 13, Stats. The Ethics Commission is responsible for administering the state lobbying law. [s. 19.49, Stats.]

Legislators are directly affected by the prohibited practices section of the law, which prohibits a legislator from soliciting or accepting anything of pecuniary value from a lobbyist or the person employing the lobbyist (the principal). [s. 13.625, Stats.]

Ethics Commission guidelines that relate to lobbying are available at:

<https://ethics.wi.gov>

Legislators are indirectly affected by the regulatory features of the law (registration, licensing, and reporting) because constituents may be subject to these requirements if they attempt to influence the legislative process.

Purpose of the Lobbying Law

The lobbying law is designed to maintain the integrity of state government decision-making by regulating the activities of persons who are hired to influence legislative and executive actions. The lobbying law also promotes open and responsible government by requiring public disclosure of the identity, expenditures, and activities of those persons. [s. 13.61, Stats.]

Definition of Lobbying

“Lobbying” is attempting to influence the legislative or administrative decisions of state government by oral or written communication with any elective state official, agency official, or legislative employee. Lobbying includes the time spent in preparation for such communication; appearances at meetings or public hearings; and service on a committee in which such preparation or communication occurs. [s. 13.62 (10), Stats.]

Persons Subject to the Lobbying Law

The persons directly subject to the regulatory requirements of the lobbying law are “lobbyists” and “principals.”

A “lobbyist” is an individual who either is employed by a principal or contracts for or receives payment, other than reimbursement for actual expenses, from a principal and whose duties include lobbying on behalf of the principal. If an individual’s duties on behalf of a principal are not limited exclusively to lobbying, the individual is a lobbyist only if the

individual makes lobbying communications on each of at least five days within a six-month reporting period. (The reporting periods are January 1 to June 30 and July 1 to December 31.)

A “principal” is any person, association, corporation, limited liability company, or partnership that employs a lobbyist. The individual officers, employees, members, shareholders, or partners of an association, corporation, limited liability company, or partnership that employs a lobbyist are not considered to be principals.

The law requires all lobbyists to be licensed by the Ethics Commission. Principals must be registered and must file semi-annual lobbying expense reports with the commission.

Employees of state agencies who engage in lobbying also are subject to the lobbying law, and special restrictions and reporting requirements apply to them. Elective state officials, local officials, tribal officials, and employees of the Legislature are not subject to the licensing or reporting requirements of the lobbying law when acting in an official capacity.

[ss. 13.62 (11), (12), and (12r), 13.621, 13.63, 13.64, 13.68, and 13.695, Stats.]

Prohibited Conduct

The “prohibited practices” provisions of the lobbying law generally prohibit lobbyists and principals from giving anything of value to legislators and prohibit legislators from soliciting or accepting anything of value from lobbyists or principals. These provisions are described below according to the three categories of persons to whom they apply: (1) legislators; (2) private lobbyists and principals; and (3) state agency lobbyists. There are certain exceptions to these prohibitions, which are set forth later in this chapter.

Actions of Legislators Prohibited or Restricted

A legislator may not solicit or accept anything of pecuniary value from a lobbyist or a principal, except as provided in the exceptions to the general prohibitions, as described below.

A legislator generally may not solicit or accept anything of value from lobbyists or

To protect himself or herself from violating this prohibition, a legislator should ask any person who offers something of value whether or not the person is listed as a lobbyist or principal in the registry maintained by the Ethics Commission.

Actions of Private Lobbyists and Principals Prohibited or Restricted

The lobbying law imposes numerous restrictions on lobbyists and principals. In particular, it prohibits lobbyists and principals from furnishing any of the items listed below to legislators or to other elective state officials, agency officials, legislative employees, or candidates for elective state office:

- Lodging.
- Transportation.

- Food, meals, beverages, or money.
- Any other thing of pecuniary value.

[s. 13.625 (1) (b) and (2), Stats.]

Actions of State Agency Lobbyists Prohibited

Each state agency must file a semi-annual statement with the Ethics Commission identifying agency officers and employees whose regular duties include lobbying. These officers or employees are prohibited from using state funds to provide lodging, transportation, food, meals, beverages, money, or any other thing of pecuniary value to any legislator or other elective state official, legislative employee, or candidate for elective state office.

This restriction on agencies does not prohibit an agency officer or employee from doing any of the following:

- Authorizing salaries and other payments authorized by law.
- Authorizing property or services of the agency to be provided for official purposes or other purposes authorized by law.
- Providing information at the request of a member or employee of the Legislature, or a legislative committee.

[ss. 13.621 (1) (c) and 13.695, Stats.]

Exceptions to the General Prohibition

Several exceptions apply to the prohibition against a lobbyist or principal giving, and a legislator accepting, anything of pecuniary value.

A principal may give and a legislator may accept anything of pecuniary value that is also made available to the general public.

A lobbyist or principal may give, and a candidate for legislative office may accept, campaign contributions, provided the contributions comply with state campaign finance law (ch. 11, Stats.), and the time limitations of the lobbying law. Under the lobbying law, a lobbyist may make a campaign contribution from his or her personal funds, and a candidate for legislative office may accept such contribution, in the year of the election between April 15 and the day of the general election, but only if the Legislature has concluded its final floorperiod and is not in special or extraordinary session. A lobbyist may deliver or convey a contribution on behalf of another organization or person, and a candidate for legislative office may accept such contribution, at any time. These restrictions also apply to campaign contributions made to the personal campaign committee of a candidate for legislative office.

A legislator may receive reimbursement or payment of actual and reasonable expenses from a lobbyist or principal for a published work or for the presentation of a talk or participation

in a meeting, under certain circumstances authorized under the Ethics Code. (See, generally, the section of this chapter on the Ethics Code.)

A legislator may accept food, meals, beverages, or entertainment provided by the Governor when acting in an official capacity.

A legislator may accept anything of pecuniary value furnished by a principal or lobbyist who is a relative of the legislator or resides in the same household as the legislator.

A principal that is a local governmental unit may give certain things of pecuniary value to a legislator who also serves as an elected official of the local governmental unit in an amount not exceeding the amount given to other similarly-situated elected officials of the local governmental unit.

A lobbyist or principal may provide educational or informational material to legislators.

Under certain circumstances, a principal may provide compensation or employee benefits to an employee who is a candidate for elective state office but who does not hold an elective state office. [s. 13.625, Stats.]

A lobbyist may provide uncompensated personal services to a legislator's campaign for reelection. Although this exception is not set forth in the statutes, a 1993 decision of the U.S. District Court for the Western District of Wisconsin held that the Free Speech Clause of the First Amendment to the U.S. Constitution guarantees lobbyists the right to provide uncompensated personal services on behalf of candidates for elective office. [*Barker v. Wisconsin Ethics Board*, 841 F. Supp. 255 (W.D. Wis. 1993).]

Bribery

Bribery is a criminal activity that is not directly addressed by the lobbying law. However, the solicitation or acceptance by a legislator of something of pecuniary value from a lobbyist or principal may amount to a violation of the bribery statute in s. 946.10, Stats., if it is done with the understanding that the legislator will officially act in a certain manner or will do or not do any act in violation of a lawful duty.

Legislator Advice to Constituents

Legislators are frequently asked by constituents whether their activities subject them to the regulatory requirements of the lobbying law. When asked, a legislator may wish to explain that the purpose of the lobbying law is not to hinder citizens' rights to express their opinions on legislation or other policy decisions of their government.

Constituents can be told that the only persons who are subject to licensing and regulation as lobbyists are those who are paid to lobby. Further, a legislator may wish to inform the constituent that the law does not apply to or interfere with the right of any person to engage in lobbying in either of the following manners:

- Solely on his or her own behalf.

- By communicating solely with the legislator who represents the Senate or Assembly district in which the person resides, whether or not the communication is made on behalf of the person or on behalf of another person.

[s. 13.621 (6), Stats.]

If a constituent is unsure whether or not his or her lobbying activities or employment status makes him or her subject to regulation as a lobbyist, a legislator should advise the constituent to contact the Ethics Commission.

The Ethics Commission can advise an individual on whether the individual is subject to regulation under the lobbying law.

ELECTION LAW

State election laws are administered and enforced by the Elections Commission. [s. 5.05, Stats.] This section highlights some of the significant state election laws relating to candidates, eligible voters, voting, and post-election activities.

Federal law also impacts the administration and conduct of registration and elections. A full discussion of federal election law is beyond the scope of this chapter.

Candidates

To qualify as a candidate for an elected office, an individual must file nomination papers. A caucus procedure may be used to nominate candidates for town or village office, instead of nomination papers, in some cases. The number of signatures required on nomination papers is determined by the office that the candidate is seeking to fill.

An individual generally must file nomination papers and a declaration of candidacy to become a candidate for an elected office.

For example, the number of signatures required for the Office of State Senator is not less than 400 but not more than 800, and for the Office of State Representative, not less than 200 but not more than 400. The signatures must be of electors who reside in the district or jurisdiction that the candidate, if elected, will represent.

For the Spring Election, nomination papers may be circulated beginning on December 1 preceding the election and generally must be filed by 5 p.m. on the first Tuesday in January before the election (or the following day if that Tuesday is a holiday). For the partisan primary, nomination papers may be circulated beginning on April 15 preceding the election and generally must be filed by 5 p.m. on June 1 preceding the partisan primary.

A candidate must file a declaration of candidacy with the nomination papers. If the candidate has not filed a registration statement, as required under the campaign finance

law, the candidate must file a registration statement with the nomination papers. If the candidate is a candidate for state office or municipal judge, the candidate must also file a Statement of Economic Interests with the Ethics Commission by 4:30 p.m. on the third day after nomination papers are due. [ss. 8.05, 8.10, and 8.15, Stats.]

Voter Qualifications and Disqualifications

To be eligible to vote, state statutes require an individual to be a U.S. citizen at least 18 years old and reside in an election district or ward for 10 days¹ prior to the election in which the individual will vote. An individual is disqualified from voting if the individual was convicted of a felony, treason, or bribery or was adjudicated incompetent. An individual who is disqualified from voting by reason of a

An individual must be a U.S. citizen at least 18 years old and must reside in an election district or ward for a specified number of days prior to an election in order to be eligible to vote in the election.

felony, treason, or bribery conviction will have his or her right to vote restored after receiving a pardon or after completing the sentence. [ss. 6.02, 6.03, and 304.078 (3), Stats.]

Voter Registration

An individual generally must register before voting in an election. However, the registration requirement does not apply to the following individuals:

- New Wisconsin residents who will vote only in the presidential election.
- Former Wisconsin residents who will vote only in the presidential election.
- Military electors.

An individual may register in person or by mail prior to Election Day or at the polling place on Election Day. In addition, an individual may register online if the individual holds a current and valid Wisconsin driver's license or ID card.

When an individual registers to vote, he or she must provide proof of residence unless the individual is a military or overseas elector or the individual registers online. Table 1 lists the documents that are considered proof of residence if they contain a current and complete name and residential address, except that a university, college, or technical college ID card is not required to contain a residential address. [ss. 6.15, 6.18, 6.22, 6.27, 6.30, and 6.34, Stats.]

¹ The United States District Court for the Western District of Wisconsin found a statutory increase of the durational residency requirement from 10 days (under prior law) to 28 consecutive days (under current state statutes) to be unconstitutional in *One Wisconsin Institute, Inc., v. Thomsen*, case 15-CV-324 (W.D. Wis. July 29, 2016). As of the date of publication, the 28-day residency requirement is not in effect, and the 10-day residency requirement is in effect.

Table 1: Proof of Residence

- Current and valid Wisconsin driver's license.
- Current and valid Wisconsin ID card.
- Any other official ID license or card issued by a Wisconsin governmental unit or body, subject to s. 66.0438, Stats., which places limitations on ID cards issued by counties, cities, villages, and towns.
- ID license or card issued by an employer in the normal course of business, excluding a business card, that contains a photograph of the elector.
- Real estate tax bill or receipt for the current or previous year.
- Residential lease (except for electors registering online or by mail).
- University, college, or technical college ID card that includes a photograph of the elector, accompanied by certain other documentation.
- Utility bill for the period beginning not earlier than 90 days prior to the date of registration.
- Bank statement.
- Paycheck.
- Check or other document issued by a governmental unit.
- Contract or intake document prepared by a residential care facility that specifies that the elector currently resides in the facility.
- Wisconsin tribal ID card.

Registration in person closes at 5 p.m. on the third Wednesday prior to the election. An individual may register in person at the municipal clerk's office, county clerk's office, office of the board of election commissioners, or other designated registration locations. However, an individual may register in person after the close of registration until the Friday before an election at the municipal clerk's office. [ss. 6.28 (1), 6.29 (2) (a), and 6.30 (1), Stats.]

An individual may register to vote online, in person, or by mail prior to Election Day or at the polling place on Election Day.

Registrations by mail must be delivered to the municipal clerk's office or postmarked on or before the third Wednesday prior to the election. Online registration closes at 11:59 p.m. on the third Wednesday prior to the election. [ss. 6.28 (1) and 6.30 (4) and (5), Stats.]

An individual may obtain a registration form from the municipal clerk or can visit:

<https://myvote.wi.gov/en-us>

An individual may register to vote at the polling place on Election Day. The individual must fill out a registration form and an election inspector must sign the form, indicating that the registration form has been accepted.

[s. 6.55, Stats.]

Absentee Voting

Any qualified elector who is registered to vote may vote by absentee ballot. A registered elector may obtain an absentee ballot by applying, in writing, through several methods, including by mail, in person at the municipal clerk’s office, or by e-mail or fax. If an elector applies for an absentee ballot by mail, the application must be received by 5 p.m. on the fifth day prior to the election. If an elector applies for an absentee ballot in person, the application must be made prior to the Monday preceding the election.²

Any qualified elector who is registered to vote may vote by absentee ballot.

An elector who applies for an absentee ballot must provide proof of identification (also known as “Voter ID”) with the application, unless the elector is exempt from the proof of identification requirement. Table 2 lists the documents that qualify as proof of identification, if the documents satisfy certain requirements.

| Table 2: Proof of Identification (“Voter ID”) |
|--|
| <ul style="list-style-type: none"> • Wisconsin driver’s license. • Wisconsin ID card. • U.S. uniformed service identification card. • U.S. passport. • Certificate of U.S. naturalization. • Driving receipt. • Wisconsin ID card receipt. • Wisconsin tribal ID card. • University or college ID card. • Veteran ID card. |

Upon receipt of an application for an absentee ballot, the municipal clerk must verify that the name on the proof of identification conforms to the name on the application and, if the elector applies in person, the clerk must verify that any photograph on the proof of identification reasonably resembles the elector. If the application is complete, the clerk must mail or deliver the absentee ballot to the elector.

² Under state statutes, if an elector applies in person, the application must be made no earlier than the third Monday preceding the election and no later than 7 p.m. on the Friday preceding the election. An in-person application may only be received Monday to Friday between 8 a.m. and 7 p.m. and cannot be received on a legal holiday. If an elector applies for an absentee ballot in person, the application must be made prior to the Monday preceding the election. However, the U.S. District Court found that the limits on the time for in-person absentee voting, except the prohibition on voting the Monday before Election Day, to be unconstitutional in *One Wisconsin Institute*, Case 15-CV-324 (W.D. Wis. July 29, 2016). As of the date of this publication, these limitations on in-person absentee voting times are not in effect.

The elector must complete the certification on the envelope of the absentee ballot before an adult witness who is a U.S. citizen and must mark the ballot. The elector must then fold the ballot and insert it into the envelope, along with proof of residence, if required. The envelope is sealed and mailed or delivered to the clerk. The absentee ballot must be returned by 8 p.m. on Election Day.

At the polling place on Election Day, the election inspectors open the ballot envelopes and announce the name of each absentee elector. The inspectors verify that the certification was properly executed; the elector is a qualified elector of the election district or ward; and the elector has not voted in the election. The inspectors note on the poll list that the elector voted by absentee ballot. Then, the inspectors open the ballot and verify that the ballot has been endorsed by the clerk and that proof of residence is enclosed, if required. Finally, the inspectors insert the ballot into the ballot box and enter the elector's name or voting number after the elector's name on the poll list.

Some of the absentee voting procedures for military and overseas electors and for residents of certain residential care facilities and retirement homes differ from the procedure described above. [ss. 5.02 (6m) and (16c), 6.20, 6.22, 6.24, and 6.86 to 6.88, Stats.]

Voting on Election Day

An elector must vote at the polling place for the elector's residence. Polling places are open from 7 a.m. to 8 p.m. on Election Day. Any elector waiting to vote when the polls close must be permitted to vote.

An elector provides his or her full name and address, and the election officials verify that the name and address are the same as that in the poll list. An elector may not vote if he or she does not provide his or her name and address, unless the elector has a confidential listing. In addition, an elector must present proof of identification, unless the elector is exempt from the proof of identification requirement. The election officials must verify that the name on the proof of identification conforms to the name on the poll list and that any photograph on the proof of identification reasonably resembles the elector. Then, the elector must sign the poll list, unless exempt from the signature requirement due to physical disability.

Polling places are open from 7 a.m. to 8 p.m. on Election Day.

The officials enter a serial number for the elector next to the elector's name in the poll list and provide the elector with a slip listing the serial number. The elector will then receive a ballot.

If the poll list indicates that an elector is required to provide proof of residence, the officials must require that the elector provide proof of residence. The officials must verify the name and address on the document and record the type of document. If the poll list indicates that an elector is not eligible to vote because of a felony, treason, or bribery conviction, the

officials must notify the elector of the elector’s ineligibility. If the elector insists that he or she is eligible to vote, the officials must allow the elector to vote and then challenge the ballot.

A voting booth may be occupied by only one voter at a time, except if accompanied by a minor child or ward or an individual who is providing assistance to the voter. If a voter spoils or incorrectly marks a ballot, the voter may receive another ballot. However, a voter may not receive more than three ballots because of spoiled or incorrectly marked previous ballots. A voter must be given a reasonable amount of time to vote. [ss. 6.77 to 6.80, Stats.]

Election Days

The **spring primary** is held on the third Tuesday in February to nominate nonpartisan candidates for the spring election. The **spring election** is held on the first Tuesday in April to elect judicial, municipal, and educational officers, nonpartisan county officers, and sewerage commissioners and to express preferences for presidential candidates.

The **partisan primary** is held on the second Tuesday in August to nominate candidates for the general election. The **general election** is held on the Tuesday after the first Monday in November in even-numbered years to elect presidential electors, U.S. Senators and Representatives, State Senators and Representatives, state officers (except judicial officers and State Superintendent), county officers (except county supervisors and executives), and district attorneys. [s. 5.02 (5), (12s), (21), and (22), Stats.]

Canvass

A canvass is conducted after an election to certify the official results of the election. The canvass process may consist of a municipal, county, state, or school district canvass, or a combination thereof, depending on the offices that are elected at the election. A board of canvassers conducts any municipal, county, or school district canvass. For a municipal canvass, the board of canvassers must meet no later than 9 a.m. on the Monday following the election. For a county or school district canvass, the board of canvassers must meet no later than 9 a.m. on the Tuesday following the election. For a state canvass, the Elections Commission chairperson, or the chairperson’s designee, must canvass the returns on or before the 2nd Tuesday following a spring primary, May 15th following a spring election, the 3rd Wednesday following a partisan primary, or December 1 following a general election.

A recount cannot be requested until the canvass is completed. If a recount is not requested for an office, the certificate of election for that office is issued to the declared winner immediately after the expiration of the time allowed to file a recount petition. If a recount is requested, the certification of election is not issued until the recount has been completed and the time allowed for filing an appeal has passed, or, if appealed, until the appeal is decided. [subch. II of ch. 7, Stats.]

Recount

Additional information on recount procedures can be found at:

<http://elections.wi.gov/manuals/recount>

The recount procedure is the exclusive remedy to test the results of an election against an alleged defect, irregularity, or mistake. A candidate who is an “aggrieved party” or an elector who voted on a referendum question may petition for a

recount. An “aggrieved party” means any of the following: (1) for an election at which 4,000 or fewer votes are cast for the office that the candidate seeks, a candidate who trails the leading candidate by no more than 40 votes; or (2) for an election at which more than 4,000 votes are cast for the office that the candidate seeks, a candidate who trails the leading candidate by no more than 1% of the total votes cast for that office.

A recount petition must be filed by 5 p.m. on the third business day after the last meeting of the board of canvassers that determines the election for that office or on that referendum question, except that for an election for president, a petitioner must file a recount petition by 5 p.m. on the first business day following the day on which the Elections Commission receives the last statement from a county board of canvassers for the election. The petition must state all of the following:

- The petitioner is an aggrieved party or voted on a referendum question at the election.
- The petitioner believes that a mistake or fraud has occurred in the counting and return of votes or that another irregularity, illegality, or defect has occurred.

After the petition is filed and any required fee is paid, the board of canvassers conducts the recount. The recount determination may be appealed to the circuit court. [s. 9.01, Stats.]

CAMPAIGN FINANCE LAW

State campaign finance law (ch. 11, Stats.) is administered and enforced by the Ethics Commission. [s. 19.49, Stats.] 2015 Wisconsin Act 117 repealed ch. 11, Stats., in its entirety and replaced it with a new statutory chapter as of January 1, 2016. This section highlights campaign finance laws relating to registration and reporting, contribution limits, and coordination.

In general, state campaign finance law applies to candidates for state or local office. Federal campaign finance law applies to candidates for national office, such as U.S. Congress. A discussion of federal campaign finance law is beyond the scope of this chapter.

Registration and Reporting

Committee Registration and Reporting

State law generally requires the following types of committees to file a registration statement and to report campaign finance activity relating to contributions, disbursements,

and obligations on an ongoing basis: (1) candidate committees; (2) legislative campaign committees; (3) political parties; (4) political action committees (PACs); (5) independent expenditure committees (IECs); (6) recall committees; and (7) referendum committees. Similar registration and reporting requirements also apply to conduits.

The registration requirement is triggered under certain circumstances. A candidate committee must register when the individual qualifies as a candidate. A legislative campaign committee, political party, or conduit must register upon inception of the committee or conduit. A PAC, IEC, recall committee, or referendum committee must register when the committee exceeds a certain monetary threshold in contributions, disbursements, or obligations.

For a list of all information that a registered committee must report, refer to ss. 11.0204, 11.0304, 11.0404, 11.0504, 11.0604, 11.0704, 11.0804, and 11.0904, Stats.

A registered committee is subject to ongoing reporting requirements. The committee must file preprimary reports, preelection reports, and twice-yearly reports (in January and July) with information relating to contributions, disbursements, and obligations. For example, the reports must include contributions received, contributions made, contributor occupation, contribution totals, disbursements made, and disbursement totals.

[subchs. II to IX of ch. 11, Stats.]

Specific Express Advocacy Reporting

In addition to ongoing reporting, the law contains an “event-based” reporting structure for certain express advocacy made within 60 days of an election. This reporting requirement applies to any person, including corporations, spending a total of \$2,500 or more on express advocacy that is made during the 60 days prior to a primary or election involving an identified candidate.

A PAC or IEC that engages in such express advocacy must comply with the “event-based” reporting requirements, as well as the ongoing reporting requirements, described above. However, the “event-based” reporting requirements do not apply to candidate committees, legislative campaign committees, political parties, referendum committees, or recall committees, even if they engage in qualifying express advocacy in the 60 days prior to an election.

A person whose activity triggers the reporting requirement must provide specified information to the Ethics Commission within 72 hours after making the disbursements for express advocacy. For example, the report must include the date, recipients, purpose, and amount of the disbursements and the name of any candidate affected by the disbursements.

[ss. 11.0505, 11.0605, and 11.1001, Stats.]

Contribution Limits

State campaign finance law imposes limits on the amount that: (1) an individual, PAC, or other person may contribute to a candidate committee; (2) one candidate committee may contribute to another candidate committee; and (3) a PAC or other person may contribute to a legislative campaign committee or political party. In addition, the law generally prohibits contributions from an IEC, corporation, labor union, or American Indian tribe to most committees, but allows contributions to a limited range of recipient committees.

State law limits the amount that an individual, PAC, candidate committee, or other person may contribute to a candidate for state or local office.

Contributions to State Candidates

State law places the following limits on contributions to candidates for state office:

| | INDIVIDUAL | CANDIDATE COMMITTEE | POLITICAL ACTION COMMITTEE | OTHER PERSON |
|--|------------|---------------------|----------------------------|--------------|
| GOVERNOR | \$20,000 | \$20,000 | \$86,000 | \$86,000 |
| LT. GOVERNOR | \$20,000 | \$20,000 | \$26,000 | \$26,000 |
| SECRETARY OF STATE | \$20,000 | \$20,000 | \$18,000 | \$18,000 |
| STATE TREASURER | \$20,000 | \$20,000 | \$18,000 | \$18,000 |
| ATTORNEY GENERAL | \$20,000 | \$20,000 | \$44,000 | \$44,000 |
| STATE SUPERINTENDENT | \$20,000 | \$20,000 | \$18,000 | \$18,000 |
| SUPREME COURT JUSTICE | \$20,000 | \$20,000 | \$18,000 | \$18,000 |
| STATE SENATOR | \$2,000 | \$2,000 | \$2,000 | \$2,000 |
| ASSEMBLY REPRESENTATIVE | \$1,000 | \$1,000 | \$1,000 | \$1,000 |
| COURT OF APPEALS JUDGE (DISTRICT I) | \$6,000 | \$6,000 | \$6,000 | \$6,000 |
| COURT OF APPEALS JUDGE (DISTRICTS II, III, & IV) | \$5,000 | \$5,000 | \$5,000 | \$5,000 |
| CIRCUIT COURT JUDGE (MILWAUKEE, DANE, & WAUKESHA COUNTIES) | \$6,000 | \$6,000 | \$6,000 | \$6,000 |
| CIRCUIT COURT JUDGE (OTHER COUNTIES) | \$2,000 | \$2,000 | \$2,000 | \$2,000 |
| DISTRICT ATTORNEY (MILWAUKEE, DANE, & WAUKESHA COUNTIES) | \$6,000 | \$6,000 | \$6,000 | \$6,000 |
| DISTRICT ATTORNEY (OTHER COUNTIES) | \$2,000 | \$2,000 | \$2,000 | \$2,000 |

[s. 11.1101, Stats.]

Contributions to Local Candidates

The law places the following limits on contributions to candidates for local office:

- **Contributions from an Individual or Candidate Committee:** An individual or candidate committee may contribute the greater of: (1) \$500; or (2) \$0.02 times the number of inhabitants of the jurisdiction or district, not exceeding \$6,000.
- **Contributions from a PAC or Other Person:** A PAC or other person may contribute the greater of: (1) \$400; or (2) \$0.02 times the number of inhabitants of the jurisdiction or district, not exceeding \$5,000.

[s. 11.1101, Stats.]

Contributions to Legislative Campaign Committees and Political Parties

The law allows legislative campaign committees and political parties to receive unlimited contributions from most contributors, but restricts contributions from PACs, other persons subject to contribution limits, corporations, labor unions, and American Indian tribes, as follows:

- **Contributions from a PAC or “Other Person”:** A PAC, or other person subject to contribution limits, may contribute no more than \$12,000 in a calendar year to any of the following: (1) a legislative campaign committee; (2) a political party; or (3) a segregated fund established and administered by a political party or legislative campaign committee for purposes other than making contributions to a candidate committee or making disbursements for express advocacy.
- **Contributions from a Corporation, Labor Union, or Tribe:** A corporation, labor union, or American Indian tribe may contribute to a segregated fund of a legislative campaign committee or political party, described above, in amounts not to exceed \$12,000 in the aggregate in a calendar year.

[ss. 11.1104 and 11.1112, Stats.]

Prohibited Contributions

The law prohibits IECs, corporations, labor unions, and American Indian tribes from making any contributions to committees, as follows:

- **Contributions from an IEC:** An IEC may not make contributions to a candidate committee, legislative campaign committee, political party, PAC, or recall committee. However, an IEC may make contributions to referendum committees and other IECs in unlimited amounts.
- **Contributions from a Corporation, Labor Union, or Tribe:** A corporation, labor union, or American Indian tribe may not make contributions to a candidate committee, legislative campaign committee, political party, PAC, or recall committee. However,

they may make contributions to a referendum committee or IEC in unlimited amounts and to a legislative campaign committee's or political party's segregated fund up to \$12,000, as described above.

[ss. 11.0601 and 11.1112, Stats.]

Coordination

The law prohibits individuals, PACs, IECs, and others required to report express advocacy made within 60 days of an election, as described above, from coordinating with a candidate, legislative campaign committee, or political party on express advocacy that exceeds a particular dollar threshold or that violates source restrictions. An expenditure for express advocacy is “coordinated” if either of the following applies:

- The candidate, candidate's agent, legislative campaign committee of the candidate's political party, or the candidate's political party communicates directly with the PAC, IEC, other person, or individual making the expenditure to specifically request the expenditure benefiting the candidate; and the PAC, IEC, other person, or individual explicitly assents to the request before making the expenditure.
- The candidate, candidate's agent, legislative campaign committee of the candidate's political party, or the candidate's political party exercises control over the expenditure or the content, timing, location, form, intended audience, number, or frequency of the communication.

[s. 11.1203, Stats.]

ADVISORY OPINIONS

In addition to administering and enforcing relevant laws, the Elections Commission provides advisory opinions on the application of election laws and the Ethics Commission provides advisory opinions on the application of campaign finance, ethics, and lobbying laws. Any person may request a formal or informal advisory opinion from the Elections Commission or the Ethics Commission regarding the application of election, campaign finance, ethics, or lobbying laws to any matter to which the person is or may become a party. A person who acts on an advisory opinion in good faith is not subject to civil or criminal prosecution, if the material facts are as stated in the opinion request.

If a person requests a formal opinion, the commission must review the request and may decide whether or not to issue an opinion. If the commission declines to issue a formal opinion, it may refer the matter to the Attorney General or the standing legislative oversight committees. If a person requests an informal opinion, the commission's designee

A legislator may seek an advisory opinion from the Elections Commission on the application of election laws or from the Ethics Commission on the application of campaign finance, ethics, or lobbying laws.

must provide one of the following to the person: (1) a written response; (2) a written reference to an applicable statute or law; or (3) a written reference to a formal advisory opinion of the commission. Alternatively, the designee may refer the request to the commission for review and the issuance of a formal advisory opinion.

All formal and informal advisory opinions of the Elections Commission, including the identity of a requester, must be made public. All formal advisory opinions of the Ethics Commission must also be made public, except that the identity of a requester is confidential and, if the requester is an organization or governmental body, is replaced with generic, descriptive terms. All informal advisory opinions of the Ethics Commission are confidential unless the requester consents or waives confidentiality by making a portion of the opinion public.

[ss. 5.05 (5s) (f) and (6a), 19.46 (2), and 19.55 (4), Stats.]

ADDITIONAL REFERENCES

1. The Elections Commission has various manuals and forms relating to election law available at: <http://www.elections.wi.gov>.
2. The Ethics Commission has various manuals and forms relating to campaign finance, ethics, and lobbying laws available at: <http://www.ethics.gov>.
3. The U.S. Federal Election Commission has information on federal campaign finance laws available at: <http://www.fec.gov>.
4. The Legislative Reference Bureau prepares publications on election law. Those publications may be found at: <http://www.legis.wisconsin.gov/lrb/>.
5. The Legislative Audit Bureau prepares audits of various state programs. For examples, see *Complaints Considered by the Government Accountability Board* (Audit Report 15-13), *Government Accountability Board* (Audit Report 14-14), *Compliance with Election Laws* (Audit Report 07-16), and *Voter Registration* (Audit Report 05-12), at: <http://www.legis.wisconsin.gov/lab>.
6. The National Conference of State Legislatures has information on election and campaign finance laws in other states available at: <http://www.ncsl.org/research/elections-and-campaigns.aspx>.

GLOSSARY

Canvass: The process conducted after an election to certify the official results of the election.

Ethics Code: The state law that governs the conduct of state and local officials and contains financial disclosure requirements, standards of conduct, enforcement procedures, and penalties for violations.

Elections Commission: The state agency that administers and enforces state election laws.

Ethics Commission: The state agency that administers and enforces state campaign finance, ethics, and lobbying laws.

General election: The election held on the Tuesday after the first Monday in November in even-numbered years to elect presidential electors, U.S. Senators and Representatives, State Senators and Representatives, state officers (except judicial officers and State Superintendent), county officers (except county supervisors and executives), and district attorneys.

Lobbying law: The state law that regulates the activities of persons who are hired to influence legislative and executive actions.

Partisan primary: The election held on the second Tuesday in August to nominate candidates for the general election.

Recount: The exclusive remedy to test the results of an election against an alleged defect, irregularity, or mistake.

Spring Election: The election held on the first Tuesday in April to elect judicial, municipal, and educational officers, nonpartisan county officers, and sewerage commissioners and to express preferences for presidential candidates.

Spring Primary: The election held on the third Tuesday in February to nominate nonpartisan candidates for the spring election.

Statement of Economic Interests: A statement that must be filed annually by state officials that contains information regarding the financial interests of an official.

Wisconsin Legislative Council

One East Main Street, Suite 401
Madison, WI 53703-3382
Phone: (608) 266-1304