

## Chapter ETH 1

### CAMPAIGN FINANCING

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**Note:** Chapter ElBd 1 was renumbered chapter GAB 1 under s. 13.92 (4) (b) 1., Stats., and corrections made under s. 13.92 (4) (b) 6. and 7., Stats., Register April 2008 No. 628. Chapter GAB 1 was renumbered Chapter ETH 1 under s. 13.92 (4) (b) 1., Stats., Register June 2016 No. 726.

#### **ETH 1.20 Treatment and reporting of in-kind contributions. (1)** In this section:

- (a) “Actual value” means the fair market value.
- (b) “Authorized person” means a candidate, treasurer, agent, other person whom a candidate designates, or a person whom any other registrant designates to authorize a proposed in-kind contribution.
- (c) “Contributor” means any individual or registrant who proposes to make an in-kind contribution.
- (d) “Date of contribution” means the time as of which the benefit, of the thing of value given or of the service performed, is conferred upon the candidate’s campaign or upon the registrant.
- (e) “In-kind contribution” means a disbursement by a contributor to procure a thing of value or service for the benefit of a registrant who authorized the disbursement.
- (f) “Registrant” has the same meaning as provided in s. 11.0101 (6) and (7), Stats.

(2) Before making an in-kind contribution to a candidate or other registrant, the prospective contributor shall notify an authorized person and obtain that person’s oral or written consent to the contribution.

(3) When an individual other than a registrant receives authorization to make an in-kind contribution, the authorized person shall obtain from the contributor, in writing: the contributor’s name and address and, where applicable, the contributor’s occupation, the nature of the contribution, its actual value, and the date of the contribution.

(4) When a registrant receives authorization to make an in-kind contribution, the registrant shall provide to the authorized person, in writing, before the closing date of the next campaign finance report in which the contribution is required to be listed: the registrant’s name and address, the nature of the contribution and its actual value, and the date of the contribution.

(5) If a contributor does not know the actual value of an in-kind contribution, the contributor shall give an authorized person a good-faith and reasonable estimate of the fair market value, before the closing date of the next campaign finance report in which the contribution is required to be listed. When the contributor receives bills or other statements reflecting the actual value of the in-kind contribution, the contributor shall immediately forward that information to an authorized person.

(6) An in-kind contribution shall be reported as received and accepted by the candidate or registrant on the date that the bene-

fit, of the material supplied or the service performed, is conferred upon the candidate or other registrant.

(7) A candidate or registrant shall report the value of the in-kind contribution disclosed to him or her by the contributor. If a contributor estimates the fair market value, a candidate or registrant shall report the estimated value. After being informed of the actual value, by the contributor, a candidate or registrant shall report the actual value on the next campaign finance report.

(8) Without the proper authorization to make an in-kind contribution, a contributor may not make the proposed in-kind contribution unless the contribution qualifies as an independent expenditure under ss. 11.0505, 11.0605, and 11.1001, Stats.

(9) Any registrant who makes or receives an in-kind contribution shall report the contribution on its campaign finance report.

**History:** Cr. Register, January, 1992, No. 433, eff. 2-1-92; correction in (1) (f), (8) made under s. 13.92 (4) (b) 7., Stats., Register June 2016 No. 726; CR 19-035: am. (9) Register May 2020 No. 773, eff. 6-1-20; CR 20-010: am. (3), (4) Register June 2021 No. 786, eff. 7-1-21.

**ETH 1.25 Loan treatment respecting limitations.** A loan when made by any person or committee, except a loan of money by a commercial lending institution made by the institution in accordance with applicable banking laws and regulations in the ordinary course of business, shall be reported as a contribution or disbursement, and also as an incurred obligation by the debtor. When such a loan is received by a registrant, it is counted within the contribution limitation of the creditor while outstanding, but is not counted within the limitation after repayment. The amount or value of any such outstanding loans and any other contributions or disbursements shall at no time exceed any limitation specified in ss. 11.1101, 11.1103, 11.1104, and 11.1105, Stats.

**History:** Cr. Register, March, 1975, No. 231, eff. 4-1-75; am. Register, February, 1986, No. 362, eff. 3-1-86; correction made under s. 13.92 (4) (b) 7., Stats., Register June 2016 No. 726; CR 20-010: am. Register June 2021 No. 786, eff. 7-1-21.

**ETH 1.26 Return of contribution. (1)** This rule is promulgated to clarify the treatment and reporting of returned contributions.

(2) The return of a contribution is not a disbursement and it is not a contribution subject to the limitations on contributions in ss. 11.1101, 11.1103, 11.1104, and 11.1105, Stats.

(5) Any registrant and candidate who returns a contribution that is not deposited into the campaign depository within 10 days of receipt is not required to report the returned, unaccepted contribution on a campaign finance report.

(6) A registrant who receives a return of contribution shall report it on the campaign finance report and shall designate this as “return of contribution.”

**History:** Cr. Register, March, 1975, No. 231, eff. 4-1-75; am. Register, September, 1978, No. 273, eff. 10-1-78; r. and recr. (3) to (5), cr. (6), Register, February, 1986, No. 362, eff. 3-1-86; correction in (2) made under s. 13.92 (4) (b) 7., Stats.,

Register June 2016 No. 726; CR 18-047: r. (3), (4) August 2019 No. 764, eff. 9-1-19; CR 19-035: am. (2), (6) Register May 2020 No. 773, eff. 6-1-20.

**ETH 1.32 Contribution of partnership funds. (1)** As used in this rule, “partnership” includes all associations organized for profit and all other partnerships.

(a) A contribution in the name of a partnership shall be treated as an individual contribution from each partner in relation to each partner’s interest in the partnership profits or losses unless the partners agree to apportion the contribution otherwise.

(b) When a contribution is made in the name of a partnership, the registrant must obtain the information as to each partner’s share thereof within 30 days after receiving the contribution or return the contribution.

**History:** Cr. Register, June, 1977, No. 258, eff. 7-1-77.

**ETH 1.33 Retirement of campaign debts incurred to business creditors. (1)** As used in this section “an obligation incurred by a registrant to a business creditor” means an obligation incurred by the registrant for goods or services.

(2) An obligation incurred by a registrant to a business creditor will be treated as a contribution of the creditor if any part of the obligation is outstanding for a period longer than that consistent with normal business or trade practice, or if the obligation is settled for less than the outstanding debt, unless a showing is made to the registrant’s filing officer that the creditor has treated the obligation in a commercially reasonable manner. Such a showing must include at least the following:

(a) The initial extension of credit on which the obligation was incurred was made in the ordinary course of business with terms substantially similar to those granted to non-political debtors of similar credit risk; and

(b) The creditor has made all reasonable efforts to retire the debt, including pursuit of all remedies which would normally be employed by the creditor in pursuit of a non-political debtor. “Reasonable efforts to retire the debt” include lawsuits, if filed in similar circumstances.

**History:** Cr. Register, August, 1977, No. 260, eff. 9-1-77.

**ETH 1.385 Return of contributions to contributors by candidates when candidates file nomination papers for offices that have lower contribution limits than the limits that applied at the time of the contributions.** A candidate shall be subject to the contribution limits that apply to the candidate at the time of the primary election at which the candidate’s name appears on the ballot. If a candidate for any office has unspent contributions in his or her campaign depository at the time of filing nomination papers that were lawful at the time of receipt but exceeded the contribution limit that applies to the office for which the candidate is seeking nomination, the candidate shall dispose of the unspent contributions. The candidate shall either return the excess contribution to the contributor on a reasonable basis that the candidate determines or donate the excess contribution to either the common school fund or a charitable organization.

**History:** Emerg. cr. eff. 6-1-86; cr. Register, November, 1986, No. 371, eff. 12-1-86.

**ETH 1.39 Conversion of federal campaign committee to state committee prohibited. (1)** As used in this rule,

(a) “Federal campaign committee” means the campaign committee of a candidate for federal office, which is not registered with a state or local filing officer, and

(b) “State campaign committee” means the candidate committee of a candidate for state or local office.

(2) (a) A candidate’s federal campaign committee may not be converted to a state campaign committee.

(b) A candidate’s federal campaign committee may contribute funds collected for federal purposes to the candidate’s state or local campaign, not to exceed the maximum amount that may be contributed by a single committee to a candidate for the same office under ss. 11.1101, 11.1103, 11.1104, and 11.1105, Stats., by filing a campaign finance registration statement, pursuant to ss. 11.0501, 11.0502, and 11.0503, Stats., with the appropriate filing officer.

**History:** Cr. Register, August, 1977, No. 260, eff. 9-1-77; CR 05-027: am. (2) Register November 2005 No. 599, eff. 12-1-05; correction in (2) (b) made under s. 13.92 (4) (b) 7., Stats., Register June 2016 No. 726; CR 20-010: am. (1) (b) Register June 2021 No. 786, eff. 7-1-21.

**ETH 1.56 Commercial sales by political registrants. (1)** When a registrant receives donated items for resale the proceeds from the resale transaction shall be reported in the following manner:

(a) The receipt of the item shall be reported in the registrant’s campaign finance report as an in-kind contribution and as an in-kind expenditure at the fair market value of the donated item;

(b) The resale of the item shall be reported in the registrant’s campaign finance report as a contribution from the purchaser in the amount paid by the purchaser.

(c) The registrant must make a good faith effort to accurately reflect the fair market value of the item in its campaign finance report.

(2) When a registrant sells an item which it has purchased for resale to raise funds, the entire amount of the proceeds of the sale shall be reported in the registrant’s campaign finance report as a contribution from the purchaser.

(3) The proceeds from the sale of food and beverage at a fundraiser by a registrant shall be reported in the registrant’s campaign finance report as a contribution from the purchaser.

(5) When a registrant disposes of tangible assets of the campaign by sale in a regular commercial transaction for fair market value, the proceeds of the sale shall be reported as “other income” in the registrant’s campaign finance reports.

**History:** Cr. Register, February, 1985, No. 350, eff. 3-1-85; CR 18-047: r. (4) Register August 2019 No. 764, eff. 9-1-19; CR 20-010: am. (2) Register June 2021 No. 786, eff. 7-1-21.

**ETH 1.60 Consulting services. (1)** (a) Expenditures for consulting services made by a candidate committee, political action committee, legislative campaign committee, or political party on behalf of more than one candidate shall be attributable to each candidate in proportion to, and shall be reported to reflect, the benefit reasonably derived, except as provided in par. (c). This rule shall not apply to independent expenditures made under ss. 11.0505, 11.0605, and 11.1001, Stats.

(b) An authorized expenditure for consulting services made by a candidate, candidate committee, political action committee, or political party on behalf of another candidate shall be reported as an in-kind contribution to the candidate on whose behalf the expenditure was made, except as provided in par. (c).

(c) Exceptions to pars. (a) and (b). Expenditures for rent, personnel, overhead, general administrative, fund-raising, and other costs of political parties or legislative campaign committees, which costs are incurred in the ordinary course of its day-to-day operations, need not be attributed to individual candidates, unless these expenditures are made on behalf of a clearly identified candidate and the expenditure can be directly attributed to that candidate.

(2) If a candidate, candidate committee, political action committee, political party, or legislative campaign committee, for it-

self or another, hires a consultant to work during a campaign period as that term is defined in ss. 11.1101, 11.1103, 11.1104, and 11.1105, Stats., the amount paid or incurred shall be presumed to be an expenditure on behalf of a candidate or candidates who receive assistance from the consultant. This presumption may be rebutted.

(3) Any expenditures for consulting services shall be valued at the fair market value of the item or services at the time of the contribution.

**History:** Emerg. cr. eff. 6-1-86; cr. Register, November, 1986, No. 371, eff. 12-1-86; correction in (2) made under s. 13.93 (2m) (b) 7., Stats., Register, August, 1999, No. 524; correction in (1) (a), (b), (2) made under s. 13.92 (4) (b) 7., Stats., Register June 2016 No. 726; CR 19-035: am. (1) (b) Register May 2020 No. 773, eff. 6-1-20; CR 20-010: am. (1) (a), (c), (2) Register June 2021 No. 786, eff. 7-1-21.

**ETH 1.70 Travel reimbursements.** (1) A candidate for or a person elected to a state or local office does not make an in-kind contribution to another candidate for a state or local office in another district when a candidate or election official travels to the district of the other candidate for political purposes. The candidate for or person elected to state or local office may be reimbursed from his or her candidate committee and is deemed to provide nonreportable volunteer services to the candidate in the other district.

(2) If the candidate or elected official is reimbursed by another individual, candidate committee, political action committee, political party, or legislative campaign committee for travel, the reimbursement is a reportable contribution to the candidate.

(3) If the candidate or elected official is an officer or employee of a political party or legislative campaign committee who travels on committee business, the reimbursement is not a reportable contribution to the candidate or elected official, but is a reportable disbursement of the political party or legislative campaign committee.

**History:** Emerg. cr. eff. 6-1-86; cr. Register, November, 1986, No. 371, eff. 12-1-86; correction in (1) made under s. 13.92 (4) (b) 7., Stats., Register June 2016 No. 726; CR 19-035: am. (1) Register May 2020 No. 773, eff. 6-1-20; CR 20-010: am. (2), (3) Register June 2021 No. 786, eff. 7-1-21.

**ETH 1.85 Conduit registration and reporting requirements.** A conduit shall send to each candidate or committee at the time funds are transferred a letter identifying itself as a conduit, the name and address of the transferee, and listing the name and address of each contributor, the date and amount of each contribution, and the occupation, if any, of each contributor whose cumulative contributions to the transferee for the calendar year are in excess of \$200.

**History:** Emerg. cr. eff. 7-1-86; cr. Register, November, 1986, No. 371, eff. 12-1-86; am. (1) and (4), Register, April, 1998, No. 508, eff. 5-1-98; CR 18-047: r. (1), (2), (4) to (7) Register August 2019 No. 764, eff. 9-1-19; (3) renum. to ETH 1.85 under s. 13.92 (4) (b) 1. Register August 2019 No. 764; CR 20-010: am. Register June 2021 No. 786, eff. 7-1-21.

**ETH 1.855 Contributions from conduit accounts.** (1) No contribution may be made from a conduit member's account without the conduit member's authorization which is specific as to the amount of the contribution and as to the identity of the candidate who is to receive the contribution. The conduit member's authorization may be made in writing, or may be made orally if a contemporaneous written record of the oral authorization is made by the conduit administrator.

(2) A contribution from a conduit account shall be in the form of a check or other negotiable instrument made out to the named candidate or to the candidate committee, or to a legislative campaign committee, political party, or political action committee. A conduit may not make an in-kind contribution as defined in s. ETH 1.20 (1) (e).

**History:** Cr. Register, April, 1998, No. 508, eff. 5-1-98; correction in (2) made under s. 13.92 (4) (b) 7., Stats., Register June 2016 No. 726; CR 19-035: am. (2)

Register May 2020 No. 773, eff. 6-1-20; CR 20-010: r. (3) Register June 2021 No. 786, eff. 7-1-21.

**ETH 1.95 Contributions of individuals under the age of 18.** For purposes of campaign finance regulation under ch. 11, Stats., the contribution to a candidate for election or nomination to any of the offices specified in ss. 11.1101, 11.1103, 11.1104, and 11.1105, Stats., of any individual less than 18 years of age at the time of contribution, shall be treated as follows:

(1) The contribution of individual contributors less than 14 years of age at the time of the contribution shall be treated as the contribution of the contributor's parents or legal guardians. If the contributor has more than one parent or one legal guardian, the contribution shall be attributed to each parent or each guardian in equal shares or in such shares as the parents or the guardians determine by written agreement.

(2) The contribution of individual contributors who are 14 years of age or older at the time of the contribution shall be treated for all purposes of campaign finance regulation under ch. 11, Stats., as the contribution of the individual contributor.

(3) This section shall not affect the determination of an individual's right or authority to make contributions from a multi-party account at a financial institution.

**History:** Cr. Register, January, 1992, No. 433, eff. 2-1-92; correction in (intro.) made under s. 13.92 (4) (b) 7., Stats., Register June 2016 No. 726.

**ETH 1.96 Attribution requirements.** (1) DEFINITIONS. In this section:

(b) "Legible" means each individual letter or character is clearly printed so it can be easily understood.

(br) "Readable" means able to be read easily.

(c) "Readily accessible" means capable of being seen without much difficulty.

(2) SPECIFICATIONS FOR ALL ATTRIBUTIONS. The language required by s. 11.1303, Stats., shall be presented in a clear and conspicuous manner that gives the recipient of the communication adequate notice of the identity of the person making the payment or reimbursement or assuming responsibility for the communication.

(3) ADDITIONAL SPECIFICATIONS FOR ATTRIBUTIONS IN WRITTEN COMMUNICATIONS. Written communications shall include an attribution containing the language required by s. 11.1303, Stats., in a manner that is readable, legible, and readily accessible. It is prima facie evidence that an attribution is readable, legible, and readily accessible if the attribution meets all of the following requirements:

(a) It appears in a sans-serif font.

(b) It meets the following applicable minimum font size:

1. An attribution on a written communication measuring no larger than 8.5 inches by 11 inches must be printed in at least 10-point font;

2. An attribution on a written communication that is larger than 8.5 inches by 11 inches, but is not larger than 24 inches by 36 inches, must be printed in at least 12-point font; or

3. An attribution on any other written communication must appear in letters that are at least four percent of the vertical height of the written communication.

(c) It appears in black text on a white background, or the degree of contrast between the background color and the text color is at least as great as the degree of contrast between the background color and the color of the largest text in the communication.

(d) It remains visible for a period of at least four seconds.

(4) ADDITIONAL SPECIFICATIONS FOR ATTRIBUTIONS IN AU-

DIO-ONLY COMMUNICATIONS. Communications that include only audio shall include an attribution containing the language required by s. 11.1303, Stats., in a manner that is clearly spoken.

**(5) MATERIAL THAT DOES NOT NEED AN ATTRIBUTION.** Communications that are contained in or on any of the following do not require attributions under s. 11.1303, Stats.:

- (a) Business cards.
- (b) Buttons.
- (c) Pencils.
- (d) Pens.
- (e) Pins.
- (f) Skywriting.
- (g) Tickets.

(h) Small online ads and similar electronic communications where the language required by s. 11.1303, Stats., could not conveniently be included, and that either link directly to a website that includes the required attribution, or provide an automatic display that includes the attribution.

1. Sponsors of such small online ads or similar electronic communications must be able to establish, at the Commission's request, that including the attribution on the ad or communication was not possible due to size or technological constraints.

2. The link required by this paragraph must direct the recipient of the small online ad or similar electronic communication to the attribution in a manner that is readable, legible, and readily accessible, with minimal effort and without viewing extraneous material.

3. The automatic display required by this paragraph must display to the recipient of the small online ad or similar electronic communication the attribution in a manner that is readable, legible, and readily accessible. Examples of acceptable automatic display mechanisms include, but are not limited to, non-blockable pop-ups, roll-overs, or other similar mechanisms.

**History:** CR 19-035: cr. Register May 2020 No. 773, eff.6-1-20; (1) (a) renum. (1) (br) under s. 13.92 (4) (b) 1., Stats., and correction in (5) (h) 2., 3. made under s. 35.17, Stats., Register May 2020 No. 773.