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SENATE

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2/7/91-

Duncan - no problem with a committee bill -

Frost - likes the existing law -
likes the format the existing law
as a starting point -

- use the regular format -

- take good ideas and put into
our current law -

Collins - want to avoid the problems last
year

Frost - no problem with campaign financing -
- pay issue should not be in bill -

Duncan - most people would prefer not
to put pay issue in the bill -
are you seriously restricting what
legislators can do to earn a living
he thinks that campaign should be
separate piece of legislation -

Collins - a package of bill -
- compensation bill - should stand on own
merit
- campaign financing bill -

Frank - if we limit outside income then
yes a pay raise -

- if you limit outside income - he thinks
is wrong - since you will only

Frank - focus on the guts of the issue

have staff in a work session
walk through the bill so that

- Thursdays 8:00 AM -

look at areas want to focus on -

Council on Governmental Ethics Laws

**A Model Law
for
Campaign Finance, Ethics, and Lobbying
Regulation**

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Ethics

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Lobbying

Council on Governmental Ethics Laws

The Council on Governmental Ethics Laws (COGEL) is a professional organization for agencies and individuals with responsibilities in governmental ethics, elections, campaign finance, and lobby law regulation. COGEL's membership is drawn from federal, state, provincial, regional, and local governments.

COGEL provides a medium for exchanging useful information about significant developments and trends in governmental ethics, elections, campaign finance, and lobby laws. COGEL provides timely information to its membership through the biennial publication, Campaign Finance, Ethics, and Lobby Law Blue Book; its newsletter, the "COGEL Guardian"; and other information services.

An annual conference each Fall provides members and other registrants with the ability to learn about recent developments in law and technology, and to discuss emerging philosophical and administrative problems with counterparts from around the world.

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Council on Governmental Ethics Law

A Model Law for Campaign Finance, Ethics, and Lobbying

This model law for campaign finance, ethics, and lobbying was developed over a three-year period by a committee of the Council on Governmental Ethics Laws. The project involved hundreds of hours of work contributed by leading practitioners in the field, and reflects state of the art practice tempered by practical experience and a dose of reality.

This model is intended to be a guide for jurisdictions seeking to change their system of regulating governmental ethics and elections. We do not suggest that a jurisdiction adopt the model blindly, without consideration for how adoption would impact upon a myriad of other laws in the jurisdiction, but rather that a unit of government look to this model for advice as to how to navigate the often murky waters of reform.

This model is fully integrated. The drafters felt strongly that campaign finance, ethics, and lobbying regulation cannot be viewed in isolation, and therefore drafted this model with a comprehensive view in mind. Users are cautioned to fully think through potential implications that might result from adoption of separate pieces of this model, and to examine carefully the remainder of the model for an indication of how a given change might impact upon a different area of reform.

Many people contributed to the development of this model under the overall coordination of Ed Feigenbaum. **Betty Reynolds** (Oregon Government Ethics Commission), with the assistance of **Russ Sipes** (Common Cause/Indiana) directed preparation of the lobbying regulation section. **John Larsen** (Illinois State Board of Ethics) directed the preparation of the personal financial disclosure and conflict of interest section, assisted by **Roth Judd** (Wisconsin State Ethics Board), **Dan Mollway** (Hawaii State Ethics Commission), **Harriet McCullough** (formerly Chicago Board of Ethics), **Jane Ley** (U.S. Office of Government Ethics), **Carol Williams** (Kansas Public Disclosure Commission), **Maris LeBlanc McCrory** (Louisiana Supervisory Commission on Government Ethics), **John Hendricks** (Chicago Board of Ethics), **Gary Baker** (South Carolina State Ethics Commission), **John O'Donnell** (Maryland Ethics Commission), **Ron Crowe** (Mississippi State Ethics Commission), **Sheila D'Amico** (National Center for State Courts), **David Freel** (Ohio Ethics Commission), **Andy Crane** (Massachusetts State Ethics Commission), **Topf Wells** (Wisconsin Legislative Reference Bureau), **Mel Cooper** (Alabama State Ethics Commission), and **Larry Dwyer** (Illinois State Board of Ethics). The campaign finance section was prepared under the direction of **Ed Feigenbaum** (Indiana), and assisted by **Bob Stern** (California Commission on Campaign Financing), **Jeff Garfield** (Connecticut State Elections Enforcement Commission), **Barb Mason** and **Sharon Steward** (Illinois State Board of Elections), **Ray Wallace** (Kentucky Registry of Election Finance), **Kevin Kennedy** (Wisconsin State Elections Board), and **Don McTigue** (Ohio Secretary of State's Office). Additional assistance was provided at the Indianapolis (June 1989) and Chicago (February 1990) drafting sessions by **Ron Gould** (Elections Canada), and **John Manske** (Common Cause/Illinois).

Special thanks goes to drafting consultant **Brad King**, late of the Indiana Legislative Services Agency, for his assistance in promoting consistency and proper structure.

This project was presented to and approved by COGEL members under the chairmanship of **Steve Stover**, work proceeded under the chairmanships of **Fred Herrmann**, **Graham Johnson**, and **Ron Michaelson**, and concluded under the chairmanship of **John Surina**.

1 **§100 Campaign Finance Act**

2
3 This is the Campaign Finance Act.

4
5 **§102 Statement of Intent and Purposes**

6
7 **§102.01 Legislative Findings**

8
9 The legislature finds and declares the following:

10
11 (1) Monetary contributions to political campaigns are a legitimate form of participation in the American political
12 process, but the financial strength of certain individuals or organizations should not permit them to exercise a disproportionate
13 or controlling influence on the election of candidates.

14
15 (2) The rapidly increasing costs of political campaigns have forced many candidates to raise larger percentages of money
16 from interest groups with a specific financial stake in matters before the state government. This has caused the public
17 perception that votes are being improperly influenced by contributions. This perception is undermining the credibility and
18 integrity of the governmental process.

19
20 (3) Candidates are raising less money in small contributions and more money in large individual and organizational
21 contributions. This has created the public impression that the small contributor has an insignificant role to play in political
22 campaigns.

23
24 (4) High campaign costs are forcing officeholders to spend more time on fundraising and less time on public business.
25 The constant pressure to raise contributions is distracting officeholders from urgent governmental matters.

26
27 (5) Officeholders are responding to high campaign costs by raising large amounts of money in years in which a general
28 election is not held. This fundraising distracts them from important public matters, encourages contributions that may have
29 a corrupting influence, and gives incumbents an unfair advantage over potential challengers.

30
31 (6) The integrity of the governmental process, the competitiveness of campaigns, and public confidence in elective
32 officials are diminishing.

33
34 (7) Disclosure of contribution and expenditures is needed to maintain the integrity of the process.

35
36 **§102.02 Legislative Intent**

37
38 This Act is intended to serve the following purposes:

39
40 (1) To ensure that individuals and interest groups have a fair and equal opportunity to participate in the elective and
41 government processes.

42
43 (2) To reduce the influence of large contributors with a specific financial stake in matters before government, thus
44 countering the perception that decisions are influenced more by the size of contributions than the best interests of the people.

45
46 (3) To assist serious candidates in raising enough money to communicate their views and positions adequately to the
47 public without excessive expenditures or large contributions, thereby promoting public discussion of the important issues
48 involved in political campaigns.

49
50 (4) To limit overall expenditures in campaigns, thereby reducing the pressure on candidates to raise large campaign war
51 chests beyond the amount reasonably necessary to communicate with voters.

52
53 (5) To provide a neutral source of campaign financing by allowing individual taxpayers voluntarily to dedicate a portion
54 of their taxes to defray a portion of the costs of campaigns.

55
56 **Comment:**

57
58 *This provision is included in the event the state chooses to publicly finance campaigns for public office.*

59
60 (6) To increase the importance of smaller contributions.

61
62 (7) To eliminate fundraising except in general election years.

63
64 (8) To reduce the excessive fundraising advantages of incumbents, and thus encourage competition for elective office.
65

(9) To allow candidates and officeholders to spend a lesser amount of their time on fundraising, and a greater proportion of their time discussing important issues.

(10) To improve the disclosure of contribution sources in reasonable and effective ways.

(11) To ensure that serious candidates are able to raise enough money to communicate their views and positions adequately to the public, thereby ensuring promoting public discussion of the important issues involved in political campaigns.

(12) To help restore public trust in governmental institutions and the electoral process.

§104 Definitions

The definitions in this section apply throughout this Act.

§104.01 "Accounts receivable" means an unfulfilled pledge, subscription, agreement, or promise, whether or not legally enforceable, to make a contribution.

§104.02 "Ballot measure" means an initiative, referendum, recall, or any proposition or measure submitted to voters for their approval.

Comment:

Some states use special methods for retaining judges on appellate courts. States should carefully evaluate the provisions in this model law to decide whether such judicial retention elections should be within the scope of this definition, or should be treated in the same manner as a candidate election.

§104.03 "Candidate" means an individual who seeks nomination or election to elective office. An individual is a candidate when the individual:

(1) files a statement of candidacy or petition for nomination for office with the appropriate filing officer;

(2) is nominated for office by:

(a) a party at a primary;

(b) nominating convention; or

(c) petition for nomination;

(3) solicits or receives and accepts contributions, makes expenditures, or gives consent to an individual, organization, political party, or committee to solicit or receive and accept contributions or make expenditures to secure nomination or election to any office at any time, whether or not the office for which the individual will seek nomination or election is known when:

(a) the solicitation is made;

(b) the contribution is received and retained; or

(c) the expenditure is made; or

(4) is an officeholder who is the subject of a recall election.

Comment:

This section is intended to cover all persons who seek office at an election, regardless of the type of election by which the office is obtained. For example, a person seeking appointment by a political party caucus to fill a vacant office would be a candidate under this section. This definition also covers unannounced candidates who are accepting contributions or making expenditures in obvious furtherance of a candidacy. Write-in candidates who receive contributions or make expenditures will be required to file campaign statements.

§104.04 "Candidate committee" means the committee designated by a candidate to:

(1) promote the candidate's candidacy; and

(2) serve as the recipient of all contributions and the disbursing officer of all expenditures.

§104.05 "Committee" includes a candidate committee, controlled committee, legislative caucus committee, party committee, and a political committee.

Comment:

A committee is defined not as a physical person, but rather as an artificial one.

§104.06 (a) "Contribution" means:

(1) a gift, subscription, loan, guarantee or forgiveness of a loan, conveyance, advance, payment, distribution, or deposit of money or anything of value made to a political party or for influencing the results of an election, including a ballot measure election, or reducing the debt of a candidate for nomination or election to public office;

(2) a written contract, promise, or agreement to make a contribution for any purpose described in subdivision (1);

(3) an expenditure made by a person or committee, other than a candidate's committee, with the cooperation of, or in consultation with, a committee, a candidate, candidate committee, or candidate's agent or that is made in concert with, or at the request or suggestion of, a candidate, candidate committee, or candidate's agent;

(4) the payment to a person other than a candidate or committee of compensation for personal services that are rendered to a candidate or committee at a rate less than the reasonable and customary charge to the candidate or committee for those services;

(5) funds or anything of value received by a committee that are transferred from another committee or other source;

(6) the purchase of tickets for an event such as a meal, reception, rally, and a similar fundraising event;

(7) the candidate's own money used on behalf of that candidate's candidacy; or

(8) the granting of a discount or rebate:

(A) not extended to the public generally; or

(B) by a television or radio station not extended equally to all candidates for the same office.

Comment:

This language is intended to cover all contributions made in the normal context of promoting or opposing a candidacy. This definition also covers contributions to a political party for more general purposes, and candidacies that may be suspended in mid-campaign. Of particular interest is whether a post-election contribution to an unsuccessful candidacy should be considered a contribution, in light of the fact that it is not intended to influence the results of an election. The Ninth Circuit Court of Appeals ruled in July, 1988 that a Federal Election Commission interpretation of a similar federal provision should be given deference, and that guarantors of a loan taken out before the election could not pay the loan off after an unsuccessful campaign if they would exceed their aggregate individual contribution limits by doing so.

(b) A contribution does not include the following:

(1) Volunteer personal services.

(2) A payment made by an individual for the individual's own travel expenses if the payment is made voluntarily without an understanding or agreement that the payment will be repaid to the individual.

(3) A payment made by an occupant of a residence or office for costs related to a meeting or fundraising event held in the occupant's residence or office if the costs for the meeting or fundraising event do not exceed five hundred dollars (\$500). However, if the occupant hosts more than one (1) event in an election cycle for the same beneficiary, all subsequent payments that exceed five hundred dollars (\$500) in the aggregate are a contribution.

(4) A loan of money made in the ordinary course of business by a financial institution authorized to transact business in this state at terms and interest rates generally available to a member of the public without regard to that person's status as a public official or public employee by the institution.

(5) Nonpartisan voter registration activities.

(6) A communication by a corporation, organization, or association aimed at its members, owners, stockholders, executive administrative personnel, or their families.

(7) An offer or tender of a contribution if the offer or tender is:

(A) expressly and unconditionally rejected and returned to the contributor within two (2) days; and

(B) is not negotiated, deposited, or used, including as collateral, or is escheated to the state if the contribution is an anonymous contribution.

§104.07 (a) "Controlled Committee" means a committee which:

(1) is controlled directly or indirectly by a candidate; or

(2) acts jointly with a candidate or controlled committee;

in connection with the making of expenditures.

(b) A candidate controls a committee if the candidate, the candidate's agent, or any other committee the candidate controls has a significant influence on the actions or decisions of the committee.

§104.08 "Corporation" means an entity organized in the corporate form under federal law or the laws of this state.

§104.09 "Elective official" means an individual elected to a state, regional, county, or municipal office, or an individual who is appointed to fill a vacancy in the office.

Comment:

The definitions of an elective or public official are necessarily different in the Campaign Finance, Ethics, and Lobby acts. The Campaign Finance Act will not refer to certain officials such as those employed by universities.

§104.10 "Election" means a primary, general, special, or recall election in which a candidate or ballot measure is on the ballot.

Comment:

The primary and general or special elections are separate elections for purposes of this act. A jurisdiction providing for run-off elections will need to add appropriate language to this definition.

§104.11 "Election cycle" means the period beginning the day after the general, up to and including the following general election, including a primary, special primary and the following special general election.

Comment:

This definition effectively begins an election cycle on the day following the previous general election. An alternative to this definition would be a definition beginning the election cycle on the date when a declaration of candidacy or petition for nomination may be filed for that election.

§104.12 (a) "Expenditure" means a purchase, payment, distribution, loan, forgiveness of a loan or payment of a loan by a third party, advance, deposit, transfer of funds between committees, a promise to make a payment, or a gift of money or anything of value made to influence the results of an election, or reducing the debt of a candidate for nomination or election to office.

(b) An expenditure does not include the following:

(1) A loan of money, made in the ordinary course of business, by a financial institution authorized to transact business in this state.

(2) Nonpartisan voter registration activities.

(3) A communication by a corporation, organization, or association aimed at its members, owners, stockholders, executive administrative personnel, or their families, except an extraordinary committee promoting or opposing a candidate or candidates.

(4) Uncompensated services provided by an individual volunteering the individual's time.

(5) A payment made by an occupant of a residence or office for costs related to a meeting or fundraising event held in the occupant's residence or office if the costs for the meeting or fundraising event do not exceed five hundred dollars (\$500). However, if the occupant hosts more than one event per election for the same beneficiary, all subsequent payments that exceed five hundred dollars (\$500) in the aggregate are an expenditure.

(6) An offer or tender of an expenditure if the offer or tender is expressly and unconditionally rejected and returned to the person making the expenditure within the time prescribed by this Act.

§104.13 "Expenditures incurred" means an amount owed to a creditor for purchase of delivered goods or completed services.

§104.14 "Immediate family" means an unemancipated child residing in a candidate's household, a spouse of a candidate, or an individual claimed by that candidate or that candidate's spouse as a dependent for federal income tax purposes.

§104.15 "Independent expenditure" means an expenditure made by a person to advocate the election or defeat of a clearly identified candidate, or, taken as a whole and in context, expressly urges a particular result in an election, but which is not made to, controlled by, coordinated with, requested by, or made upon consultation with a candidate, committee, or agent of a candidate or committee.

§104.16 "In-kind contribution or expenditure" means goods or services provided to or by a person at no charge or for less than their fair market value.

§104.17 (a) "Intermediary" means an individual who transmits a contribution to a candidate or committee from another person unless the contribution is from the individual's employer, immediate family, or an association to which the individual belongs.

(b) A treasurer or a candidate is not an intermediary for purpose of the committee that the treasurer or candidate serves.

(c) A professional fundraiser is not an intermediary if the fundraiser is compensated for fundraising services at the usual and customary rate.

(d) A volunteer hosting a fundraising event at the individual's home is not an intermediary for purposes of that event.

Comment:

This section is directed at eliminating the practice of "bundling" of contributions, a procedure by which entities have seen fit to increase their influence with elective officials. This section severely restricts the ability of entities to bundle individual contributions, and attempts to close loopholes which might otherwise permit individuals to take up the slack for such entities. Individuals are permitted exemptions for certain limited activities, including hosting small fundraising events and presenting the candidate with checks collected at the event, and transmitting contributions from their employer to a committee.

§107.18 (a) "Legislative caucus committee" means a committee controlled by the caucus of each political party of each house of the [legislature].

(b) Each party of each house may establish only one such committee.

(c) A legislative caucus committee is not a candidate-controlled committee.

(d) For purposes of [the sections of this Act which cover contribution limitations], the term "political committee" does not include a legislative caucus committee.

§104.19 "Loan" means a transfer of money, property, guarantee, or anything of value in exchange for an obligation, conditional or not, to repay in whole or part.

§104.20 "Organization" means a:

(1) labor organization;

(2) collective bargaining organization;

(3) local, state, or national organization to which a labor organization pays membership or per capita fees, based upon its affiliation and membership; or

(4) trade or professional association that receives its funds exclusively from membership dues or service fees, whether organized inside or outside the state.

1 §104.21 "Party committee" means the generally recognized organization which, according to the bylaws of the political
2 party, is responsible for the daily operation of the party at a state or local level.

3
4 §104.22 "Person" means an individual, proprietorship, firm, partnership, joint venture, joint stock company, syndicate,
5 business trust, estate, company, corporation, association, club, committee, organization, or group of persons acting in
6 concert.

7
8 Comment:

9
10 *If the jurisdiction permits contributions from non-individuals, it must define "person" broadly.*

11
12 §104.23 (a) "Political committee" means a person or a combination of persons who:

13
14 (1) receives and accepts contributions aggregating at least five hundred dollars (\$500) in a calendar year;

15
16 (2) makes independent expenditures aggregating at least five hundred dollars (\$500) in a calendar year; or

17
18 (3) makes contributions aggregating at least five thousand dollars (\$5,000) in a calendar year to, or at the request of,
19 a candidate or committee.

20
21 Comment:

22
23 *This subsection creates a special status for an individual who makes large contributions to certain committees. Such an*
24 *individual is required to report the making of such contributions, but is not required to file a registration statement.*

25
26 (b) A political committee does not include a party committee or legislative caucus committee.

27
28 Comment:

29
30 *A noncandidate committee is considered to be a political committee.*

31
32 §104.24 "Public property" means resources such as stationery, postage, equipment, vehicles, office space, publications, and
33 lists compiled or obtained by the government entity.

34
35 §104.25 "Public time" means the use of a public employee's time during regular working hours or while on duty, or use
36 of a public official's time while on duty, regardless of whether the elective official is compensated.

37
38 §104.26 "Regulated industry" means a telephone, telegraph, electric, gas, water, sewer, or other utility whose rates are
39 determined by the state or a political subdivision of the state. The term includes an insurance company, national or state
40 bank or credit union, corporation organized in whole or in part to operate a lottery or parimutuel wagering facilities, or a
41 public or quasi-public board, commission, agency, or entity recognized and funded by state law.

42
43 Comment:

44
45 *The state may wish to expand this definition to ensure that it covers such things as state fairs, special festivals, and*
46 *convention and visitors associations.*

47
48 §106.27 "State office" means an office other than a federal office eligible to be voted upon by all electors of the state, and
49 the state legislature.

50
51 Comment:

52
53 *In some states, certain "state offices" may not be elected by all of the electors of the state. Some states elect judges of the*
54 *appellate or supreme courts by districts, yet these types of state offices are intended to be included in this definition. States*
55 *with these types of district elections should amend this definition to suit their circumstances.*

56
57 §104.28 "Transfer" means the movement or exchange of funds or anything of value between political committees, party
58 committees, or candidate committees, except the disposition of surplus funds or material assets by a candidate committee to
59 a party committee in accordance with the dissolution procedures in this Act.

60
61 §104.29 "Volunteer" means an individual who:

62
63 (1) is not self-employed who provides services free of charge outside of the individual's normal working hours; or

64
65 (2) is self-employed who provides services free of charge if the individual does not ordinarily sell or otherwise charge
66 for services.

1 **§106 Contributions**

2
3 **§106.01 Limitations on Contributions from a Person**

4
5 (a) (1) A person or political committee shall not make to a candidate committee and a candidate committee shall not
6 accept from a person or political committee, contributions aggregating more than \$ [should range depending upon the race:
7 \$5,000 for governor/elective officials of counties and municipalities of more than 100,000 in population; \$2,500 for other
8 statewide elective officials; \$1,000 for senate candidates; and \$500 for house candidates] for each election in which the
9 candidate is on the ballot or is a write-in candidate.

10
11 (2) This restriction shall not apply to:

12 (A) a candidate making a contributions to the candidate's own campaign;

13 (B) contributions to a political committee;

14 (C) contributions to or from a legislative caucus committee; or

15 (D) contributions to or from a political party committee.

16
17 **Comment:**

18
19 *Contributions should be limited on an election basis, rather than by calendar year or fiscal year, both of which unduly benefit
20 the incumbent if nonelection year contributions are allowed. Challengers rarely begin fundraising two or three years before
21 the election, while incumbents often engage in year-round fundraising. Thresholds should not be established at too low a
22 level, but rather with the philosophy of reducing the influence or potential influence of large contributors kept in mind.*

23 (b) A person or political committee shall not make to a political committee, and a political committee shall not accept
24 contributions from one (1) person or political committee aggregating more than \$ [1,000] per calendar year.

25
26 **Comment:**

27
28 *This provision limits contributions by a person or committee to committees that are not candidate committees, for example,
29 political action committees.*

30 (c) A person shall not make to a political party committee, and a party committee or legislative caucus committee shall
31 not accept from a person contributions aggregating more than five thousand dollars (\$5,000) in a calendar year.

32
33 **Comment:**

34
35 *A state may wish to permit committees that receive all of their money in small contributions to make larger contributions than
36 other organizations or committees. This can be done through creating a "small contributor political action committee," one
37 that (1) only receives contributions from a person in a 12-month period that aggregate not more than \$50; (2) has been
38 registered for at least six months; (3) contributes to at least [between two and five] candidates in an election cycle; and (4)
39 is not a candidate committee.*

40 (d) A person shall not make to candidate committees or to political committees supporting or opposing candidates
41 contributions aggregating more than twenty-five thousand dollars (\$25,000) in an election cycle.

42 (e) A political committee shall not make to candidate committees or political committees supporting or opposing
43 candidates contributions aggregating more than one hundred thousand dollars (\$100,000) in an election cycle.

44
45 **Comment:**

46
47 *Federal law limits individuals to contributing a total of \$25,000 to all federal candidates. This provision is similar to federal
48 law, but also covers political committees.*

49
50 **§106.02 Limitations on Contributions from Political Parties and Legislative Caucuses**

51 A candidate committee shall not accept contributions from a party committee or legislative caucus committee of more
52 than:

53 (1) one hundred thousand dollars (\$100,000) per election in the case of a candidate for [governor or elective official
54 in a large county/municipality];

55 (2) fifty thousand dollars (\$50,000) per election in the case of a candidate for [other non-federal statewide office];

(3) twenty-five thousand dollars (\$25,000) per election in the case of a candidate for [state senate]; and

(4) ten thousand dollars (\$10,000) per election in the case of a candidate for [state representative].

Comment:

Political parties and legislative caucus committees should be allowed to make large, but limited, contributions.

§106.03 Limitations on Total Non-Individual Contributions a Candidate Committee May Accept

A candidate committee shall not accept more than \$ [should be approximately one-third of the expenditure limits, or a range in the neighborhood of \$10,000 for house of representatives; \$25,000 for state senate, \$100,000 for a non-federal statewide office, and \$500,000 for governor/elective official in a large county or municipality] in contributions from non-individuals in an election.

Comment:

This provision caps contributions that a candidate committee may accept from organizations and political committees. Arizona, Kansas, Louisiana, Montana, and Wisconsin have similar provisions. This type of provision has grown in popularity in the latter part of the eighties.

§106.04 Prohibition on Contributions by a Corporation and an Organization

(1) A corporation or an organization shall not make a contribution or expenditure to, or for the benefit of, a candidate or committee in connection with an election, except that this provision shall not apply to:

(A) a campaign or committee solely for or against a ballot measure;

(B) communications by a corporation to its shareholders, directors, and executive or administrative personnel and their families;

(C) communications by an organization to its directors, members, and their families on any subject;

(D) nonpartisan voter registration and get-out-the vote campaigns by a corporation to its shareholders, directors, and executive or administrative personnel and their families;

(E) nonpartisan voter registration and get-out-the vote campaigns by an organization to its directors, members, and their families on any subject; and

(F) the establishment, administration, and solicitation of contributions to a political committee to be utilized for political purposes by a corporation or organization.

(2) It shall be unlawful for:

(A) a political committee to make a contribution or expenditure by using anything of value secured by physical force, job discrimination, financial reprisals, or threat of the same, or by dues, fees, or other monies required as a condition of membership in a labor organization, or as a condition of employment, or by monies obtained in a commercial transaction;

(B) a person to solicit an employee for a contribution to fail to inform the employee of the political purposes of the committee, and of the employee's right to refuse to contribute without any advantage or promise of an advantage conditioned upon making the contribution, or reprisal or threat of reprisal related to the failure to make the contribution;

(C) a corporation or political committee of a corporation to solicit contributions to the political committee from a person other than its shareholders, directors, executive and administrative personnel, and their families; and

(D) an organization or political committee of an organization to solicit contributions to such a committee from a person other than its members and their families.

§106.05 Prohibition on Transfer of Funds Between Committees

(1) A candidate committee or a committee controlled by a candidate shall not make a contribution to another candidate or make an independent expenditure on behalf of another candidate.

(2) This section does not prohibit a candidate from making a contribution from the candidate's own funds on behalf of the candidate's candidacy or to the committee of another candidate for a different office.

(3) This section does not prohibit a candidate committee from providing its surplus funds or material assets to a party committee in accordance with the procedures for dissolution of a candidate committee under this Act.

Comment:

The transfer of contributions from the coffers of one candidate to another is one of the most controversial campaign finance practices. Many contributors abhor the practice because the money they give to a candidate they favor ends up in the war chest of a candidate they may oppose. Transfers have also been a favorite tool of legislative leadership as they seek to consolidate their own power or the power base of their party. California now bans such contributions. This should not limit a candidate committee from turning over surplus funds or equipment to a party committee when the candidate committee dissolves.

§106.06 Aggregation of Contributions

For purposes of the contribution limitations, the following apply:

(1) All contributions made by a political committee whose contribution or expenditure activity is financed, maintained, or controlled by a corporation, labor organization, association, political party, or any other person or committee, including a parent, subsidiary, branch, division, department, or local unit of the corporation, labor organization, association, political party, or any other person, or by a group of such persons are considered made by the same political committee.

(2) Two (2) or more entities are treated as a single entity if the entities:

- (A) share the majority of members on their boards of directors;
- (B) share two (2) or more officers;
- (C) are owned or controlled by the same majority shareholder or shareholders;
- (D) are in a parent-subsidiary relationship; or
- (E) have by-laws so stating.

(3) A candidate committee and a committee other than a candidate committee are treated as a single committee if the committees both have the candidate or a member of the candidate's immediate family as an officer.

Comment:

This provision is an extremely important safeguard that will prevent groups from using subsidiaries or other controlled organizations as a means to exceed the contribution limits. Some contributors attempt to evade contribution limitations by making additional donations through subsidiaries that they own or through committees established to funnel contributions to candidates. If laws are not specifically written to cover such possibilities, contributors are encouraged to use subterfuge to circumvent the law.

The statute should contain a strict attribution section so that contributions from the same source are aggregated. This section states that contributions would be aggregated from corporate parents, subsidiaries, and corporations that share the same officers, majority of boards of directors, or are owned or controlled by the same majority stockholder.

This provision also aggregates contributions made to a candidate committee, such as the "John Doe for Governor Committee," and a candidate-controlled committee, such as the "Governor John Doe Good Government Committee." Because it is likely that such committee may act in concert, it is necessary to restrict the maximum amounts that a person may contribute to such committees.

§106.07 Attribution and Aggregation of Family Contributions

(1) Contributions by a husband and wife are considered separate contributions and not aggregated.

(2) Contributions by unemancipated children under eighteen (18) years of age are considered contributions by their parents and attributed proportionately to each parent. Fifty percent (50%) of the contributions are attributed to each parent or, in the case of a single custodial parent, the total amount is attributed to the parent.

Comment:

Contributions by unemancipated children have become a problem in areas with strict contribution limits. In Kentucky's 1987 gubernatorial campaign, some "politically astute" 13 year-olds contributed as much as \$3,000 each to a candidate. This provision eliminates the loophole that could allow parents to use their children as a way to circumvent the limits. A less

1 prohibitive alternative would be to require the age of the unemancipated children making a contribution to be reported. This
2 alternative can alert interested persons to situations in which candidates or their contributors feel that it is necessary to resort
3 to the collection of such contributions.

4
5 The state may also wish to stipulate by administrative rule that the individual signing the check is presumed to be the maker
6 of the contribution. The law on this matter may be different in community property states.

7 §106.08 Restrictions on Loans

8
9
10 (1) A loan is considered a contribution from the maker and the guarantor of the loan and is subject to the contribution
11 limitations of this Act.

12
13 (2) A loan to a candidate or the candidate committee must be by written agreement.

14
15 (3) The proceeds of a loan made to a candidate:

16 (A) by a commercial lending institution;

17 (B) made in the regular course of business;

18 (C) on the same terms ordinarily available to members of the public; and

19 (D) which is secured or guaranteed;

20
21 are not subject to the contribution limits of this Act.

22 Comment:

23
24 Loans are often used to circumvent contribution limits. If a loan is from a commercial lending institution, the loan should
25 not be regarded as a campaign contribution if made in the ordinary course of business. But loans from friends or non-lending
26 institutions should be treated as if they were contributions. Guarantors of loans are very important and should be regulated.
27 Extensions of credit can also be very valuable to a candidate. For example, a campaign consulting firm may pay certain
28 expenses for a candidate and hope to be repaid after the election. These payments should be subject to contribution limits.

29
30 This section adds a unique twist: a limitation on the total amount of loans that a candidate committee may accept. A
31 candidate may, however, personally qualify for a loan and contribute—or loan it to the committee in an attempt to circumvent
32 this cap. Such a practice would be readily noticed under the reporting provisions, and the public would no doubt soon learn
33 of this practice. In addition, the candidate, not the committee, would be responsible for repaying the loan, making most
34 candidates particularly wary about engaging in the practice. This provision should be constitutional, as a person may instead
35 choose to make a contribution, rather than a loan.

36 §106.09 Limitation on Loans Made by a Candidate

37
38 (1) A candidate for governor, or a member of the candidate's immediate family who has made a loan to the candidate's
39 committee shall not be repaid more than fifty thousand dollars (\$50,000) in the aggregate for such loans after the election.

40
41 (2) A candidate for non-federal statewide elective office other than governor, or a member of the candidate's immediate
42 family who has made a loan to the candidate's committee shall not be repaid more than twenty-five thousand dollars
43 (\$25,000) in the aggregate for such loans after the election.

44
45 (3) A candidate for office other than those specified above, or a member of the candidate's immediate family who has
46 made a loan to the candidate's committee shall not be repaid more than ten thousand dollars (\$10,000) in the aggregate for
47 such loans after the election.

48 Comment:

49
50 This section, based upon a Kentucky statute, limits the amount that a candidate and the candidate's family may contribute
51 to a campaign, and, in the case of a candidate for governor, limits the amount that a candidate may receive from the
52 candidate's committee as reimbursement or repayment for a contribution or a loan. The constitutionality of the provision
53 has not yet been tested.

54
55 While a candidate for governor may still contribute an unlimited amount to the candidate's own campaign, this section
56 attaches greater stakes to the transaction by limiting the amount that a gubernatorial candidate may recover. In the case
57 of a winning candidate, when a debt is retired, or contributions accepted after the election, many people may wish to
58 contribute, knowing that their contributions will go from the committee directly to the candidate's personal coffers as
59 repayment for the loan or contribution made by the candidate. This section levels the playing field to a limited extent for
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61
62
63
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66

those candidates who cannot afford to risk the personal resources that some candidates are able to gamble with. This section finesses the constitutional protection of free speech by allowing unlimited contributions to be made, and merely limiting the recovery of certain monies.

§106.10 Anonymous Contributions

(1) A person shall not make to a committee and a committee shall not accept an anonymous contribution exceeding one hundred dollars (\$100) in a calendar year.

(2) The recipient of an anonymous contribution of more than the disclosure threshold for a contribution shall not keep the contribution, but shall within two (2) days remit the contribution to the General Fund of the state, and report the action to the Agency.

Comment:

Anonymous contributions must be regulated to ensure that the system works. Practicality suggests that tracing small anonymous contributions (such as those obtained through "passing the hat" at a fundraising event) is not possible, but a reasonable threshold should be established to prevent committees from claiming that they do not know the source of large contributions. Requiring the anonymous funds to escheat to the state gives committees a good incentive to discover the identity of the donor.

Regulations should be promulgated that would set forth standards for "good faith" transmission of money required to escheat to the state.

This section marks the first reference to the "Agency." The Agency is the state entity that is established to handle the regulation of campaign finance (and ethics and lobbying) activities. The reference is not defined because each state will want to name their agency according to their own wishes.

§106.11 Contributions on Behalf of Another

(1) A person, other than an individual, shall not be an intermediary or an agent for a contribution.

(2) An individual shall not make a contribution on behalf of another person, or while acting as the intermediary or agent of another person, without disclosing to the recipient of the contribution both his or her full name, street address, occupation, name of employer (if any) or place of business if self-employed, and the same information for each contributor for whom the individual serves as intermediary or agent.

§106.12 Cash Contributions

(1) An individual shall not make to a committee and a committee shall not accept a contribution of more than one hundred dollars (\$100) in cash.

(2) A committee shall not make a contribution in cash.

§106.13 Certain Contributions Required to be by Written Instrument

(1) An individual shall not make a contribution of more than one hundred dollars (\$100), other than an in-kind contribution, except by written instrument containing the name of the donor and the name of the payee.

(2) A committee shall not make a contribution, other than in-kind, except by written instrument containing the name of the donor and the name of the payee.

Comment:

Cash contributions are hard to audit and difficult to trace. Upper limits should be placed upon contributions that are not made by written instrument.

§106.14 Contributions During Legislative Sessions

ALTERNATIVE A: A candidate for or member of the legislature, the candidate or member's candidate committee, or a political committee of a legislative caucus shall not solicit or receive a contribution or promise of a contribution while the legislature is in session.

ALTERNATIVE B: (a) A candidate for state office or the controlled committee of such a person shall not accept a contribution in a year in which the candidate is not on the ballot.

(b) In the case of a candidate for an office which has term of four (4) or more years, this prohibition does not apply to the year prior to the year in which the candidate is on the ballot.

Comment:

The purpose of this section is to put some distance between receipt of contributions and legislative action. Contributions are often timed to have their greatest impact. By creating a breathing space, at least one opportunity for undue influence is removed. Alternatively, legislators may be required to immediately report contributions received during a legislative session. There are, of course, problems in completely preventing circumvention of the intent of this legislation.

States that have year-round legislative sessions--or those without constitutional dates for adjournment--may need to modify this language to include only periods in which the legislature is in session. States with legislative committees that function during interim periods may wish to restrict the solicitation or receipt of contributions by legislators serving on interim committees from those who would be directly affected by action taken by such a committee. This restriction, however, puts interim committee members at a disadvantage that not all members would have.

§106.15 Attribution of Certain Contributions

For purposes of this Act:

- (1) A contribution made on or before the day of the primary is attributable to the primary.
- (2) A contribution made after the day of the primary is considered to be made for the general election.

Comment:

The purpose of this section is to prevent someone from betting on the horse that has already won. In many states, winning a primary election is tantamount to winning the general election. Those who have been contributors to the losing candidates for the office in question may decide that it is best to join the winning bandwagon, and will do so by contributing toward paying off primary debts. This section prohibits the practice.

§106.16 Use of Officeholder Funds

All funds received by an elective officer or candidate (other than funds received from a governmental agency) which are used for officeholder expenses shall be subject to the provisions of this Act.

Comment:

The purpose of this section is to restrict contributions to officeholder funds. Such funds are often established by incumbents to pay for legitimate expenses which cannot be paid for by the government. If contributions to those funds are not limited, officeholders are tempted to use these accounts to circumvent the limitations.

§108 Use of Public Resources for Political Purposes

§108.01 Statement of Intent

The philosophy of this and the following sections is that political contributions from particular sources require additional reporting, special rules regarding solicitation, or outright prohibition, to serve public policy purposes beyond those generally served by the campaign finance laws.

The use of public resources, awarding of public contracts, and enactment of legislation should be for the public good, not for campaign purposes. In some cases, additional disclosure requirements may serve as a deterrent to abuse of the public trust. In other circumstances, stronger measures are necessary to insure that these altruistic purposes will not be circumvented.

§108.02 Use of Public Funds, Property, Time, and Personnel to Influence Elections

- (1) A person shall not use or authorize the use of public funds, property, time, to influence the outcome of an election.
- (2) A person shall not use or authorize the use of public funds, property, or time to produce, print, publish, broadcast, or otherwise disseminate material designed or timed to influence the results of an election, regardless of the lack of specific reference to the election.
- (3) A person shall not print or distribute or cause to be printed or distributed, at public expense, a newsletter or other mass mailing of promotional material on behalf of a public official from the day the official files a declaration of candidacy or petition for nomination through the date of the election for the office.

(4) A person shall not solicit, verbally or in writing, or receive a contribution on behalf of a committee in a facility ordinarily used for the conduct of public business.

(5) A person shall not deliver, in person or by mail, a contribution to any other person in a facility ordinarily used for the conduct of public business.

(6) A person shall not distribute or post, or cause to be distributed or posted, a communication designed to influence the outcome of an election in a facility ordinarily used for the conduct of public business.

(7) This section, except for subsection (3), does not apply to:

(A) activities that are part of the ordinary conduct of the government office or agency; and

(B) nonpartisan voter registration activities.

Comment:

The use of public funds and property should be used for the good of the public at large and should not be used to further partisan campaign purposes or to influence the outcome of an election. To do so gives an unfair advantage to one side in the electoral process, as well as resulting in an involuntary contribution by taxpayers to the officeholder. Although use of public funds and property for private purposes may be prohibited by a state's constitution or common law, it is advisable to codify the restrictions on the use of such funds and property. Subdivision (1) is a general prohibition on the use of public resources for campaign purposes.

Subdivisions (2) and (3) are intended to address functions that are often abused by officeholders to further their own name recognition or election at taxpayer expense. Public officials have often been able to avoid constraints against using public funds to influence the outcome of an election by simply not referring to the election in mass produced advertising or materials. The ostensible purpose of advertising and materials is to "educate" the public regarding the services offered by a particular officeholder or the need of a government body for additional funds or the enactment or status of pending legislation. The time period covered by this prohibition is as broad as can be legislated.

Subdivisions (4) and (5) are general prohibitions on the use of public facilities and property for soliciting or receiving contributions. Subdivision (6) is intended to include passive activities designed to influence an election, such as posting placards or leaving literature to be taken by persons using the facilities.

§108.03 Solicitation of and Contributions by Government Employees

(1) An officeholder or the officeholder's agent shall not knowingly solicit, directly or indirectly, a contribution from an employee in the officeholder's agency.

(2) A public official or employee shall not provide an advantage or disadvantage to an employee or applicant for employment in the [classified civil service] concerning the applicant's or employee's:

(A) employment;

(B) conditions of employment;

(C) application for employment;

based on the employee or applicant's contribution or promise to contribute, failure to make a contribution or contribute to a political party or committee.

Comment:

The principal purpose of establishing a classified civil service is to promote the nonpartisan administration of the government. To ensure this, it is necessary to restrict the activities of civil service employees and public employers.

Some states permit an employee to contribute to an officeholder or political party as long as the contributions are voluntary and are not solicited. However, within the employment context, pressure to contribute may be subtle and not rise to the level of being a solicitation or involuntary contribution. In addition, even voluntary contributions may work to the disadvantage of other employees in the same office. An alternative is to prohibit contributions only to candidates, officeholders, and political parties at the same level of government as the employee.

§108.04 Solicitations and Contributions by Certain Public Officials and Employees

(a) The following persons shall not personally solicit, verbally or in writing, a contribution to a political party or committee:

- (1) A member of a [civil service commission] or an employee of a [civil service commission].
- (2) A law enforcement officer while in uniform.
- (3) A full-time prosecuting attorney, assistant prosecuting attorney, or an employee of the prosecuting attorney.
- (4) A judge, magistrate, referee, administrative law judge, candidate for judicial office, or employee of a court.

(b) These restrictions on solicitation of contributions shall not apply to a candidate soliciting a contribution to the candidate's own candidate committee, except for a law enforcement officer while in uniform, who shall not be permitted to solicit a contribution to any political party or committee.

(c) A judge or candidate for judicial office shall not make a contribution to any other candidate or to a political party, or committee while the individual is a candidate for, or holds, judicial office.

Comment:

Certain individuals hold positions so closely associated with equal administration and enforcement of the law, that it is desirable to remove any appearance of impropriety that may result from personally soliciting political contributions. An elected official who falls within one of these categories may, nevertheless, raise contributions for the official's election through members of the official's candidate committee.

§110 Restrictions on Contracts and Contributions by Contractors

§110.01 Prohibition on Contributions from Certain Contractors

A person who contracts with the jurisdiction, either for the rendition of personal services or for the furnishing of material, supplies, or equipment to the jurisdiction, or for selling land or a building to the jurisdiction, if the value of the transaction exceeds \$ [an amount subject to the approval of the elected officials of the jurisdiction] shall not make a contribution to a candidate committee of the official during the period between the commencement of negotiations for, and during either:

- (1) the completion of the performance under; or
- (2) the termination of negotiations for the contract or the furnishing of supplies, equipment, land, or building, whichever occurs later.

Comment:

In some areas, contractors contribute campaign funds while they are bidding on a public contract. This coincidence reduces the public's confidence in governmental decisions. Several jurisdictions, particularly cities, have prohibited contractors from making campaign donations while bidding on contracts. A person who is negotiating or involved in a contract with the entity should not be permitted to make a campaign contribution to a candidate in the jurisdiction. However, this provision would only apply to contracts approved or scheduled to be approved by the elected body. The prohibition would not extend to those merchants who were furnishing stationery or other supplies to the entity as long as the governing body is not specifically involved in approving the contract since such a prohibition would not serve a public purpose and would add unnecessary government regulation and paperwork to the Act's implementation. The City of Gardena, California, has the toughest restriction on city contractors: anyone who does business with the city is forbidden from making contributions to the councilmembers or city council candidates. Most people in Gardena would agree that the provision has eliminated the perception that contractors receive business from the city because of their campaign contributions. The law had its most dramatic effect on the cable television companies bidding on a franchise in Gardena in the early 1980s. Unlike cable operators in other cities, cable companies in Gardena were unable to make campaign contributions to officials. The process of selecting a cable company thus was made free of an atmosphere of public suspicion that campaign funds were influencing the election.

§112 Miscellaneous Restrictions

- (1) A public utility shall not include in operating expenses a contribution or expenditure to influence an election or to operate a political action committee.

Comment:

Public utilities are granted monopoly privileges by the government. Consumers of a public utility's services have no choice but to purchase those services from that utility. Thus, the public utilities should not be permitted to include political expenditures in operating expenses, the basis upon which utility rates are figured. Rather, those expenditures should be charged directly to the shareholders of the public utility. Alternatively, a public utility may be prohibited from making political contributions or operating a political action committee.

(2) A labor organization shall not use agency shop fees paid by an individual who is not a member of the organization to make contributions or expenditures to influence an election or to operate a political action committee, unless affirmatively authorized by the individual.

Comment:

An agency shop fee is an involuntary payment. Therefore, use of the fees for political purposes without consent abridges the individual's freedom of association.

(3) A person shall not solicit from a candidate, committee, political party, or other person, money or other property as a condition or consideration for an endorsement, article, or other communication in the news media promoting or opposing a candidate, committee, or political party.

Comment:

This subdivision prohibits the buying and selling of endorsements and other forms of political assistance. Tainted endorsements and assistance mislead the public as to the true extent of community support for a candidate or ballot issue.

(4) An employer shall not provide an advantage or disadvantage to an employee concerning the employee's employment or conditions of employment based on the employee's contribution, promise to contribute, or failure to contribute to a candidate, committee, or political party.

Comment:

This subdivision is the private sector corollary to the prohibition on public employers taking action against public employees based on the employee's political activity--or lack of it.

(5) A person shall not, directly or indirectly, reimburse a person for a contribution to a candidate, committee, or political party.

Comment:

This provision helps to ensure the voluntary nature of contributions, and decrease the effectiveness of an employer to bundle contributions. This subdivision also ensures that the true source of contributions will be reflected in campaign finance reports.

§114 Expenditures

§114.01 Limitation on Expenditures

(1) An expenditure may not be authorized or made by a committee while there is a vacancy in the office of campaign treasurer.

(2) A candidate may make expenditures on behalf of the candidate's candidacy only through a contribution to the candidate's candidate committee.

Comment:

These housekeeping provisions require a committee to employ good common and financial sense in their activities. Subdivision (2) promotes accountability by requiring that the candidate use the candidate committee as the vehicle for contributions.

(3) A candidate or the candidate's immediate family may not receive payments, other than reimbursements, from a committee. Committee funds may not be used to defray personal living expenses for the candidate or the candidate's immediate family which are unrelated to the campaign or the office if the person is an officeholder.

Comment:

This section prohibits a candidate from receiving personal gain from contributions. Expenses included in this category would likely include child care, formal clothing for special events, food, and similar items. Some states have defined such expenses through advisory opinions and administrative regulations to include such items as personal computers and automobiles.

(4) (a) An expenditure may not be made, and a person may not pay money or anything of value for speaking in furtherance of a candidate's candidacy.

(b) The candidate, or a person speaking for the candidate, may not pay money or anything of value for the privilege.

1 **Comment:**

2
3 *This provision is intended to keep a candidate from exercising undue influence over a person or group through the use of*
4 *financial incentives.*

5
6 (c) This section shall not apply to the payment of reasonable and necessary travel expenses, or to food or beverages
7 consumed by the candidate while at, and in connection with, the speaking engagement.

8
9 (5) An expenditure may only be made by a committee to influence or attempt to influence the actions of the voters for
10 or against the nomination or election of a candidate to the office for which the candidate has filed, or for officeholder
11 expenses. An expenditure may not be made if it is clear from the surrounding circumstances that it was not made for these
12 purposes. This subdivision does not apply to:

13
14 (A) "thank you" advertisements by a candidate after an election;

15
16 (B) an election night "victory party"; and

17
18 (C) fees of lawyers or accountants necessary to comply with this Act, or to represent the candidate or committee in
19 a subsequent proceeding arising from the campaign.

20
21 **Comment:**

22
23 *Candidates often seek to get a head start on a future campaign by activities undertaken in the current campaign. An example*
24 *of this might be a candidate for a district office sending mailings outside of the district, or a candidate for a district office*
25 *at one end of the state buying media time outside of the range of the district because the candidate is contemplating a future*
26 *statewide race. Such activities would certainly be questionable under this provision.*

27 *A state may prefer to make the restriction more concrete by specifically prohibiting an expenditure from being made outside*
28 *the district the candidate is seeking election from if the fruits of the expenditure cannot be generally attributable to the race*
29 *at hand.*

30
31 (6) An expenditure of funds may not be made which the candidate or committee knows, has reason to believe, or
32 reasonably should know were contributed to the committee in violation of this Act.

33
34 (7) An expenditure of more than twenty-five dollars (\$25):

35
36 (A) may not be made in cash; and

37
38 (B) must be made by written instrument drawn upon the campaign account containing the name of the committee and
39 the name of the recipient.

40
41 (8) An expenditure of more than twenty-five dollars (\$25) must be accounted for by a written receipt indicating:

42
43 (A) the date of the expenditure;

44
45 (B) the amount;

46
47 (C) the name and address of the recipient;

48
49 (D) the reason for the expenditure; and

50
51 (E) the form of the expenditure (including cash, credit card, check, or money order).

52
53 **Comment:**

54
55 *The preceding two subsections provide accountability for expenditures. Cash expenditures, particularly those occurring*
56 *shortly before election day for the purpose of providing "walking around" money, can be a means for evading other provisions*
57 *of the law.*

58
59 (9) An expenditure may not be made, other than for overhead or normal operating expenses, by an agent, independent
60 contractor, or advertising agency, on behalf of or for the benefit of a committee unless the expenditure is reported by the
61 committee as if the expenditure were made directly by the committee. The agent, independent contractor, or advertising
62 agency shall make all information required to be reported available to the committee.

1 Comment:

2
3 *This provision is related to reporting requirements, and is intended to ensure that information regarding all important*
4 *expenditures is made public. Lump sum expenditures to "consultants" or "advertising agencies" often mask the true purpose*
5 *of the expenditure.*

6
7 (10) An expenditure may not be made that is clearly in excess of the fair market value of services, materials, facilities,
8 or other things of value received in exchange.

9
10 Comment:

11
12 *This subsection is intended to prevent a committee from making an excess contribution to a person in exchange for something*
13 *of minimal value. Such an exchange for less than full value may be subterfuge for a candidate or committee rewarding a*
14 *supporter, buying a person's support, or otherwise using committee resources in a manner contrary to good public policy.*

15
16 §114.02 Petty Cash Fund

17
18 (1) A campaign treasurer may withdraw from the campaign account not more than five hundred dollars (\$500) to
19 establish or replenish a petty cash fund for the candidate or committee at any time, but at no time may the fund exceed five
20 hundred dollars (\$500).

21
22 (2) An expenditure from the petty cash fund:

23
24 (A) may not be made in an amount of more than twenty-five dollars (\$25);

25
26 (B) may be made only for office supplies, transportation expenses, and other necessities; and

27
28 (C) may not be used for the purchase of time, space, or services from the media.

29
30 §114.03 Independent Expenditures

31
32 (1) A committee which makes an independent expenditure of \$100 (one hundred dollars) or more for a written
33 communication to voters supporting or opposing a candidate shall include the following statement on the communication:
34 "NOTICE TO VOTERS (Required by Law) This advertisement is not authorized or approved by any candidate. It is paid
35 for by (name, address, city, state)."

36
37 (2) This statement must:

38
39 (A) appear on each page or fold of the written communication in at least ten (10) point type (or in type at least ten
40 percent (10%) of the largest size type used in a written communication directed at more than one voter, such as a billboard
41 or poster, whichever is larger);

42
43 (B) not be subject to the half-tone or screening process; and

44
45 (C) be in a printed or drawn box set apart from any other printed matter; or

46
47 (D) be clearly spoken on any broadcast advertisement.

48
49 Comment:

50
51 *The preceding subsections set forth the means by which an independent expenditure may clearly be recognized as such.*

52
53 §116 Designation of Candidate Committees

54
55 (1) A candidate shall designate one (1) candidate committee by filing a statement of organization no later than ten (10)
56 days after becoming a candidate.

57
58 (2) A candidate shall not designate more than one (1) candidate committee.

59
60 Comment:

61
62 *This section imposes an organizational framework upon candidates for the purpose of identifying those who will be held*
63 *accountable for the financial records of the committee. Most states require candidates to form a principal campaign*
64 *committee, and many states restrict the candidate's participation to one committee. In almost every circumstance, a candidate*
65 *will be able to provide the information required by this section on the statement of organization.*

1 §118 Committee Officers

2
3 §118.01 General Provisions

- 4
5 (1) A person may be chair, treasurer, or both chair and treasurer of the committee.
6
7 (2) A committee officer must accept the appointment, in writing, on the statement of organization.
8
9 (3) A treasurer or agent of the committee must be a resident of this state.
10
11 (4) A candidate may not serve as treasurer, except as treasurer of the candidate's own committee.
12
13 (5) A deputy treasurer may also be appointed and serve in the treasurer's capacity if the treasurer is unable to perform
14 the treasurer's duties. The designation may be on the statement of organization.
15

16 Comment:

17
18 *These provisions are not particularly restrictive; however, they do require that those with treasurer responsibilities reside*
19 *within the state, and also that officers must accept their appointments in writing. These two requirements should enhance*
20 *enforcement capabilities. The former makes it easier to obtain jurisdiction over the individuals, while the latter gives the*
21 *Agency written proof that these officers are aware of their responsibilities and accept them.*
22

23 *Bonding of treasurers was discussed, but the potential chilling effect that it might have upon grassroots activity and its*
24 *logistic difficulties would tend to outweigh any advantages that it might otherwise offer.*
25

26 §118.02 Candidate Committee Officer Vacancies

- 27
28 (1) A treasurer or chair may be removed from office by the candidate.
29
30 (2) When a vacancy occurs in a candidate committee office, the candidate shall:
31
32 (A) notify the Agency no later than five (5) business days after the vacancy;
33
34 (B) assume the duties and responsibilities of the vacant office;
35
36 (C) notify the Agency of the appointment of an officer to fill the vacancy; and
37
38 (D) provide all information required by the statement of organization, for the new appointee, no later than five (5)
39 business days after the appointment.
40
41 (3) If a candidate dies and there is no living committee officer, the executor of the candidate's estate shall dissolve the
42 committee as soon as is practicable under terms of the dissolution procedures provided under this Act and the time limits
43 imposed for probating an estate.
44

45 Comment:

46
47 *This section establishes the candidate as the individual who must accept responsibility when a vacancy occurs in his or her*
48 *committee. Subsection (3) designates the candidate's executor as the responsible party for cleaning up committee activities*
49 *in the event the candidate dies and the committee does not have other officers.*
50

51 §118.03 Noncandidate Committee Officer Vacancies

- 52
53 (1) When a vacancy occurs in a noncandidate committee office, the committee shall:
54
55 (A) notify the Agency no later than five (5) business days after the vacancy;
56
57 (B) designate an individual qualified under this Act to assume the duties and responsibilities of the vacant office
58 no later than five (5) business days after the vacancy;
59
60 (C) notify the Agency of the appointment of an officer to fill the vacancy; and
61
62 (D) provide all information required by the statement of organization, for the new appointee, no later than five (5)
63 business days after the appointment.
64
65

Comment:

This section outlines procedures and timetables to be met when a vacancy occurs in a noncandidate committee office.

§118.04 Duties of a Treasurer

(1) A committee treasurer shall maintain and preserve an account of the following:

(A) The total of contributions accepted by the committee.

(B) The full name, address, and, in the case of an individual, the occupation and employer, of each person making a contribution of \$ [should range from \$25 to \$100, but less than the amount required to be disclosed on reports] or more, including the date and amount of the contribution.

(C) The total of expenditures made by or on behalf of the committee.

(D) The full name and mailing address of each person to whom an expenditure is made of more than \$ [should range from \$25 to \$100, and should be consistent with the amount specified in subdivision (B)], including the date, amount, purpose, and beneficiary of the expenditure.

(E) All receipted bills, canceled checks, or other proofs of payment, with an explanation of each, for each expenditure.

(2) The treasurer shall maintain and preserve all receipted bills and accounts required by the Act for at least four (4) years from the date of the last required report.

(3) The treasurer shall file, in a timely manner, the appropriate reports on the forms prescribed by the Agency.

(4) A report submitted to the Agency must be signed by the treasurer, who shall attest to the reports accuracy and veracity.

(5) The treasurer shall file an amended report as required under this Act if the treasurer has knowledge of an error or omission on a filed report of the committee.

Comment:

This section establishes the treasurer as the principal officer in charge of financial records and transactions. Accurate records ensure more complete disclosure. Treasurers should maintain a recordkeeping system consistent with the reporting requirements.

Shown is a range at which complete information is required to be maintained by the treasurer. This amount must be lower than what is required to be itemized on the actual reports. The lower the amount is, the more disclosure is possible, but compliance costs are also higher. Although most states collect a limited amount of information on contributions and expenditures beneath a certain threshold, treasurers may want to obtain fuller disclosure for any transaction, regardless of the amount, to provide accurate reports once the threshold level is met.

The treasurer is in a position to monitor contribution limits and record transactions as they occur. The treasurer should, as a rule, accept the full name, address, and occupation of each person making a contribution of more than \$25, including the date and amount of the contribution; and the person's address, occupation, and employer (and, if self-employed, the name and place of the business). The treasurer should use a "best efforts" standard to obtain the occupation-related information from a contributor. Finally, the treasurer should be forced to go beyond an occupation being listed as something on the order of "businessman."

§120 Exclusive Campaign Depository and Campaign Account

(1) A committee shall establish an exclusive campaign depository:

(A) in a financial institution that ordinarily conducts business within the state; and

(B) in an office located within the state that ordinarily conducts business with the general public.

(2) The committee must maintain a campaign account in the depository in the name of the committee. Acronyms may not be used.

(3) Expenses paid on behalf of a committee must be drawn from the campaign account and issued on a check signed by the treasurer or the chair.

(4) All contributions received by the candidate or committee treasurer, directly or indirectly, must be deposited by the treasurer, within ten (10) days after receipt in the campaign account. All contributions received by an agent of a committee must be provided to the treasurer not later than five (5) days after receipt.

(5) A committee shall be required to disclose the location of its campaign account.

(6) A contribution of (between \$25 and \$100; an amount consistent with the amount in §118.04(B)) or more may not be deposited until the committee receives all the information about the contributor required by §118.04(B).

Comment:

This section requires campaign accounts to be established in a single institution. The accounts are to be maintained within the state to make them easier to access and audit. The single depository for a campaign committee is advisable to eliminate the commingling of contributions. However, this restriction may pose problems for candidates, particularly statewide candidates. An option would be to allow statewide candidates or committees to establish branch committees designating deputy officers. Additional committee addresses and the names and addresses of deputy officers would be included on the statement of organization. More than one depository could be allowed, in which case the maintenance of a central bookkeeping system should be required. This would allow a significant degree of flexibility without reducing the ultimate authority of the principal officers.

This section was drafted so that an out-of-state financial institution may not open an "office" in another state exclusively devoted to servicing a particular candidate. This restriction also prohibits an in-state institution from establishing an office or facility exclusively to service a committee, providing a commercial and political advantage to that committee.

The accounts must also be clearly identifiable as a political committee account. This section is intended to limit access to a campaign committee's funds to the designated officers; requiring two signatures on the checks may be desirable. Limiting access to campaign committee funds to the chair and treasurer and forcing them to act in concert in making expenditures is a more restrictive provision than found in most states. Requiring two officers to regulate expenditures promotes accuracy in recordkeeping and reporting and reduces the possibility of circumventing expenditure limits. However, if one officer is disabled or removed, the committee would not be allowed to make any expenditures. One option might be to set an expenditure threshold authorizing expenditures of less than a certain amount (perhaps the expenditure reporting threshold) by someone other than the treasurer or chair.

Setting a time limit on the deposit of contributions as specified in §120(4) makes it impossible for a treasurer to hold checks in an attempt to circumvent contribution limits. Failing to deposit checks within a reasonable length of time also makes cross-checking of committee reports difficult.

Included in §120(6) is a provision which forces a treasurer to obtain all necessary reporting information from a contributor before depositing the contribution. This should ultimately make the completion of reports easier for a treasurer. There should be a corresponding requirement on campaign disclosure statements for the listing of all contributions received, but not yet deposited, pending the receipt of such information.

§122 Registration Requirements

§122.01 Candidate Registration

(1) A candidate may designate no more than one (1) candidate campaign committee.

(2) If a candidate receives or spends in excess of five hundred dollars (\$500) the candidate must file a statement of organization with the Agency or appropriate local official no later than ten (10) days after such receipts or expenditures.

(3) (A) If a candidate does not anticipate receiving or expending in excess of five hundred dollars (\$500), the candidate is not required to form a committee.

(B) In lieu of filing a statement of organization, the candidate may file a statement indicating that the candidate does not anticipate receiving or expending in excess of five hundred dollars (\$500).

(C) A candidate may withdraw a statement filed under subsection (b) if

(i) the candidate anticipates receiving or expending in excess of five hundred dollars (\$500); or

(ii) when the candidate actually receives or expends in excess of five hundred dollars (\$500); whichever comes first.

(D) A candidate who withdraws a statement under subsection (c) must file a statement of organization within ten (10) days after the requirement arises.

Comment:

This section requires the registration of all candidates, but sets a \$500 threshold for the filing of a statement of organization. By establishing a threshold for filing, many candidates who run small-money campaigns will not be required to file a statement of organization and set up a formal committee. Yet because a statement indicating a candidate's intention not to spend more than \$500 is required, a means of monitoring candidate spending is created, and a candidate is left with the feeling of being "watched." The opportunity to withdraw such a statement gives the candidate an opportunity to admit commission of an honest mistake, or deal with an unanticipated change in circumstances without penalty.

The debate over whether a threshold for filing should be set, and, if so, at what level it should be fixed, is one in which arguments for many different points of view may be offered. Establishing some type of threshold to eliminate administrative problems for both the Agency and the candidate is the most popular. Each jurisdiction is offered the opportunity to determine what threshold best fits its own particular circumstances.

Another way to eliminate a certain class of filings would be to eliminate filing obligations for particular offices (such as school boards), or to change the officer with whom they must file.

§122.01 Noncandidate Committee Registration

A noncandidate committee, including an out-of-state committee, which contributes or expends in excess of five hundred dollars (\$500) in any election must file a statement of organization with the Agency or appropriate local official no later than five (5) days after making the contribution or expenditure.

Comment:

A threshold is established for noncandidate committees, just as a threshold exists for candidate committees. However, unlike candidate committees, noncandidate committees file nothing if they do not cross the threshold. This is justified, because normally noncandidate committees will be making contributions which will appear on candidate committee reports, allowing spending to be monitored in that way.

The same arguments recommending thresholds for candidate committees exist for noncandidate committees. By setting a reasonable threshold, grassroots activities may flourish, and "mom and pop"-type committees may operate without being inundated or intimidated by an inordinate amount of paperwork.

§124 Statement of Organization

§124.01 Candidate Committee Statement of Organization

(1) The statement of organization must include the following:

(A) The full name of the candidate's committee.

(B) The party affiliation, if any, of the candidate.

(C) The complete mailing address and telephone number of the candidate and the candidate's residence address, if different from the mailing address.

(D) The date the committee was organized.

(E) The office being sought by the candidate or, in the case of a recall election, the purpose of the committee.

(F) The full name, mailing address, telephone number, and principal place of business of the chair, the treasurer, and, if appointed, a deputy treasurer.

(G) The full name and address of the depository in which the committee will maintain its campaign account.

(H) Written acceptance of appointment by the chair and treasurer.

(I) A certification of the statement by the candidate and the treasurer.

(2) The candidate shall notify the Agency, in writing, of a change in information previously reported in a statement of organization no later than ten (10) business days after the change, unless a different date for such an amendment is provided elsewhere in this Act.

1 **Comment:**

2
3 *The statement of organization should be short and concise, yet should contain all pertinent information. The early designation*
4 *of officers, and their acceptance in writing, identifies the accountable persons in the committee. The requirement for*
5 *committees to designate both a chair and a treasurer allows the Agency greater access to the committee.*
6

7 **§124.02 Noncandidate Committee Statement of Organization**

8
9 (1) The statement of organization must include the following:

10 (A) The full name of the committee, which may not include the name of a candidate.

11 (B) The complete mailing address and telephone number of the committee.

12 (C) The date the committee was organized.

13 (D) The area, scope, or jurisdiction of the committee.

14 (E) An indication as to whether the committee is a political party committee.

15 (F) The name and mailing address of a corporation or an organization that sponsors the committee or is affiliated
16 with the committee. If the committee is not sponsored by or affiliated with a corporation or an organization, the committee
17 must specify the trade, profession, or primary interest of contributors to the committee.

18 (G) The full name, mailing address, telephone number, occupation, and principal place of business of the chair.

19 (H) The full name, mailing address, telephone number, occupation, and principal place of business of the treasurer,
20 and, if appointed, of a deputy treasurer.

21 (I) An indication of whether the committee was formed to support or oppose a specific ballot question or questions,
22 and, if so, a brief description of the question.

23 (J) The full name, mailing address, telephone number, occupation, and principal place of business of the custodian
24 of the books and accounts if other than the designated officers.

25 (K) The full name and address of the depository in which the committee will maintain its campaign account.

26 (L) Written acceptance of appointment by the chair and treasurer.

27 (M) A certification of the statement by the chair and the treasurer.

28
29 (2) The name of the committee designated on the statement of organization must incorporate the full name of the
30 sponsoring entity, if any. An acronym or abbreviation may be used in other communications if the acronym or abbreviation
31 is commonly known or clearly recognized by the general public.

32 (3) The chair shall notify the Agency, in writing, of a change in information previously reported in a statement of
33 organization no later than ten (10) business days after the change, unless a different date for such an amendment is provided
34 elsewhere in this Act.

35 **Comment:**

36 *This section imposes an organizational framework upon committees for the purpose of identifying those who will be held*
37 *accountable for the financial records of the committee. The designation of officers, and their acceptance in writing, identifies*
38 *the accountable persons in the committee. The requirement for committees to designate both a chair and a treasurer allows*
39 *the Agency fuller access to the committee. This section is consistent with many state laws pertaining to committee formation*
40 *and the accountability of officers.*

41 *The statement of organization is the primary source of information for the Agency. The statement also serves as the vehicle*
42 *for the registration of all candidates and political committees. This section is drafted as to obtain as much information as*
43 *possible at this initial stage.*

44 **§126 Statement of Financial Disclosure by Candidates for Elective Office**

45 **§126.01 Candidates Required to File and Filing Dates and Repositories**

1 (1) This section applies to a person who has not filed a statement for the calendar year as an officeholder under [the
2 Ethics Act].
3

4 (2) A candidate shall file a statement of financial interest for the preceding calendar year at the same time and with the
5 same official with whom the candidate files a declaration of candidacy or petition for nomination.
6

7 (3) A candidate shall, no later than five (5) business days after filing a statement of financial interest under subdivision
8 (1), file a copy of the statement with the Agency.
9

10 (4) An individual who becomes a candidate other than by filing shall, no later than fifteen (15) business days after
11 becoming a candidate, file a statement of financial interest for the preceding calendar year with the Agency.
12

13 (5) An officer shall not accept a declaration of candidacy or petition for nomination unless the declaration or petition
14 is accompanied by a statement of financial interest.
15

16 (6) If the candidate files for office before January 1 of the year in which the election is held, the candidate shall file
17 a supplementary statement covering the preceding calendar year no later than April 1 of the year in which the election is held.
18

19 (7) A candidate who is not an officeholder otherwise filing a statement has the same disclosure requirements as an
20 officeholder, with the exception of reporting of gifts.
21

22 **Comment:**
23

24 *The statement of financial interest is the primary source of information about the candidate's personal finances. The*
25 *requirement to file a copy of the statement of financial interest with the Agency does not exist in many states. Thus,*
26 *information about the candidate's personal finances may not be readily available to the public. Including this requirement*
27 *provides more information about the candidate's background to the public.*
28

29 **§128 Required Reports of Contributions and Expenditures**
30

31 **§128.01 Periodic Reports by Candidate and Noncandidate Committees**
32

33 (1) Except as provided in subdivisions (2) and (3), the treasurer of each committee shall file quarterly reports of
34 contributions and expenditures no later than January 15, April 15, July 15, and October 15, and include all contributions
35 and expenditures made as of December 31, March 31, June 30, and September 30, respectively.
36

37 (2) The treasurer of each candidate committee that receives public funding shall file monthly reports for the period that
38 public financing is accepted. The report must be filed not later than the fifteenth day of the following month, complete as
39 of the last day of the reporting month.
40

41 **Comment:**
42

43 *This provision is only to be used if the jurisdiction opts for public financing of campaigns. More frequent reports for public*
44 *financing may be justified on the grounds that the public's money is being used.*
45

46 (3) (A) The treasurer of a candidate committee may file semi-annual rather than quarterly reports in a year in which
47 the office sought is not up for election.
48

49 (B) The treasurer of a noncandidate committee may file semi-annual rather than quarterly reports in a year in which
50 the treasurer's committee is not participating in an election cycle.
51

52 (C) Semi-annual reports are due July 15 and January 15, and must include all contributions and expenditures made
53 by June 30 and December 31, respectively.
54

55 **§128.02 Pre-election Reports by Candidate and Noncandidate Committees**
56

57 (1) A committee shall file a pre-election report if the committee supports or opposes a candidate for office in that
58 election cycle, or if the committee supports or opposes a question of public policy on the ballot in that election.
59

60 (2) A pre-election report must be filed no later than [should range from five to ten days] before an election. This pre-
61 election report must include information for all transactions made since the last report filed through [should range from ten
62 to 15 days] before the date the report must be filed.
63
64
65

Comment:

An acceptable reporting schedule is, without question, an integral part of a campaign finance law. Assuming that a perfect reporting schedule is impossible to attain when taking into consideration (1) varying primary schedules; (2) varying election schedules within each state with respect to county, municipal, and special elections; (3) public financing for some offices; and (4) varying degrees of political activity across the country, this proposal for quarterly/semi-annual reporting with one pre-election report is submitted with the hope that it is a sensible compromise between a reporting schedule which would be unduly burdensome for some and not stringent enough for others.

Quarterly reporting for candidate committees during an election year and for noncandidate committees during an election cycle was chosen because (1) a committee would never go longer than three months without filing, and (2) this would provide a measure of compatibility with the Federal Election Commission's filing schedule.

Semi-annual reporting for candidate committees during a nonelection year and for noncandidate committees during an election cycle in which they are not participating was chosen to make it easier for an "inactive committee" while still obtaining information from them twice annually.

A pre-election report is due based upon who or what the committee is supporting or opposing. This allows for reporting by committees that are involved in an election, without requiring reporting by those who have no interest in, and perhaps no knowledge of, a particular election.

The inclusion of a post-election report was considered but not required for two reasons. First, varying election cycles may cause overlap of a post-election report with other reporting periods. Eliminating one in place of the other for a particular reason would be confusing at best. The same problem may arise occasionally with the pre-election report, but individual election jurisdictions should be able to alleviate those problems with minimal confusion or undue burden. Finally, requiring quarterly reporting for candidate committees during an election year and for noncandidate committees during an election cycle in which they will be participating ensures that regular reporting will be accomplished in a timely fashion without specifically requiring the filing of an unnecessary post-election report.

More frequent reporting for those accepting public funding is necessary to monitor funds appropriated from public coffers. Monthly reporting was chosen because of its uniformity. Other options include additional pre-election reports as well as post-election reporting.

§130 Filing Location

(1) The location where a committee must file its statement of organization and all subsequent reports of contributions and expenditures shall be determined as follows:

(A) The treasurer of a nonfederal statewide, legislative, or judicial candidate committee, the treasurer of a committee supporting or opposing a statewide question of public policy, and the treasurer of a committee supporting or opposing such a candidate, shall file with the Agency.

(B) The treasurer of a multi-county candidate committee, and the treasurer of a committee supporting or opposing such a candidate other than for those offices listed in subsection (A), shall file with the designated county official in the county of district which has the largest population.

(C) The treasurer of a county candidate committee, and the treasurer of a committee supporting or opposing such a candidate, shall file with the designated county official.

(D) The treasurer of a municipal candidate committee, and the treasurer of a committee supporting or opposing such a candidate, shall file with the designated city official.

(E) The treasurer of a noncandidate committee supporting or opposing a question of public policy on the ballot within one county shall file with the designated county official.

Comment:

This section essentially requires candidates and committees involved in statewide and legislative races to file with the Agency. Those involved at the local level file locally, with the appropriate county or local official. The decentralized filing option was chosen to provide easier access to reports by the public. Those interested in state races can access all reports in one location. Those interested in local races can find the information at a location closer to home. Another consideration was the administrative nightmare which could result in highly populated states if the Agency was required to handle all filings. States requiring candidates for offices such as local school board to file with their statewide campaign finance agency have generally found the experience to be less than ideal.

Demographic and geographic considerations play a large part in determining the feasibility of any particular approach. For example, the chosen approach requires legislative candidate committees to file only at the state level. This may not be practical in geographically large states where a trip to the Agency offices may require several hours. Under such circumstances, a state may wish to require legislative candidates to file with the county clerk in the largest county in a candidate's district in addition to filing with the Agency.

Another potential modification to this approach may be advisable in states which cover a small area. In these smaller states, instead of requiring local committees to file locally, these committees could be required to file with the Agency. The number of filings would not be unwieldy, and access to reports by the public would not require a great deal of travel.

Although not specifically addressed in the model, states are encouraged to mandate that copies of reports filed locally be forwarded to the Agency by county filing officers. This provides a degree of centralization to a process that ideally should be totally centralized, but is not because of geographic, demographic, and administrative considerations. However, by requiring the forwarding of documents, the Agency may be able to maintain at least a modicum of control and uniformity. The forwarding of documents also encourages cooperation and communication between Agency and local officials, which is necessary to make a system function effectively.

§132 Filing Options

§132.01 Options for Candidate and Noncandidate Committees

(1) If a committee has accepted one (1) or more contributions, or made one (1) or more expenditures during a reporting period, the treasurer shall file a complete report of contributions and expenditures.

(2) If a committee has not accepted any contributions and has made no expenditures during a reporting period, the treasurer shall file a statement of inactivity.

Comment:

Even if a committee has had no activity during a reporting period, it is important for enforcement purposes that the committee be required to file "something" each reporting period. If no report were required when a committee was inactive, the filing authority would have no way of knowing whether the committee had had no activity or whether it had simply forgotten or otherwise neglected to file, making it difficult to cite a delinquent committee.

§134 Report Contents

§134.01 Basic Reporting Form

(1) The basic reporting form must include the following administrative information:

(A) Committee name and address.

(B) Type of report (quarterly, semi-annual, monthly, or pre-election).

(C) If a pre-election report, the election date.

(2) The form must include the balance of cash and cash equivalents on hand at the beginning of the reporting period.

(3) The form must include the following information about contributions:

(A) The total amount of all contributions received during the reporting period.

(B) The total amount of contributions for the year to date.

(C) The total amount of contributions of less than one hundred dollars (\$100) in the aggregate from one (1) source received during the reporting period.

(D) The name, address, occupation, and employer (if self-employed, the name and place of business) of each contributor contributing, or intermediary transmitting, a contribution of one hundred dollars (\$100) or more in the aggregate during the reporting period, the date and amount of a contribution, and the year to date. If the contributor is not an individual, the information about occupation and employer is not required.

(4) The form must include the following information about loans:

(A) The total amount of all loans received during the reporting period, and the total amount of loans for the year to date.

1 (B) The total amount of all loans of less than one hundred dollars (\$100) received during the reporting period, and
2 the total amount of loans for the year to date.

3
4 (C) The date and amount of each loan of one hundred dollars (\$100) or more in aggregate from one (1) source
5 during the reporting period, and:

6
7 (i) the name and address of the lending institution;

8
9 (ii) the name, address, occupation, and employer (if self-employed, the name and place of business; however,
10 if the lender is a political committee, the occupation and employer information is not required) of each lender or endorser

11
12 (iii) the year to date total; and

13
14 (iv) the terms of the loan, including the interest rate and repayment schedule.

15
16 (5) Written promises or pledges to make a contribution shall be reported separately in the same manner as other
17 monetary contributions.

18
19 (6) The form must contain the same information for in-kind contributions as for monetary contributions, and must also
20 include a description of the in-kind contribution.

21
22 (7) Upon the request of the treasurer, a person making an in-kind contribution shall promptly provide all necessary
23 information to the treasurer, including the value of the contribution.

24
25 (8) The form must contain the following information about fundraising:

26
27 (A) The date and description of each fundraiser held during the reporting period and the amount raised.

28
29 (B) The total amount of proceeds received by the committee during the reporting period from:

30
31 (i) the sale of tickets for each dinner, luncheon, cocktail party, rally, and other fundraising events;

32
33 (ii) mass collections made at such events;

34
35 (iii) sales of items such as political campaign pins, buttons, badges, stickers, flags, emblems, glasses, hats and
36 other wearing apparel, banners, literature, and similar materials during the reporting period; and

37
38 (iv) the year-to-date total.

39
40 (C) The total amount of proceeds received from fundraising events that are less than one hundred dollars (\$100)
41 in the aggregate from a single source during the reporting period.

42
43 (D) The date and amount of a purchase of one hundred dollars (\$100) or more in the aggregate by one (1) person
44 or committee during the reporting period, and the name, address, occupation, and employer (if self-employed, the name and
45 place of business) of the purchaser, and the year to date total. If the purchaser is a political committee, the occupation and
46 employer information is not required.

47
48 (9) The form must contain the following information about other receipts:

49
50 (A) The total of refunds, rebates, interest, or other receipts not previously identified during the reporting period,
51 and the year-to-date total.

52
53 (B) The total amount of other receipts received of less than one hundred dollars (\$100) in the aggregate from one
54 (1) source during the reporting period.

55
56 (C) The date and amount of each refund, rebate, interest, or other receipt not previously identified of one hundred
57 dollars (\$100) or more in the aggregate from a one (1) source, the name and address of each source, and the year to date
58 total.

59
60 (D) The amount of funds loaned or donated by a corporation or labor organization to its political committee for
61 the establishment and for solicitation costs of the committee.

62
63 (10) The form must contain:

64
65 (A) the aggregate total of contributions, loans, fundraising proceeds, and other receipts during the reporting period,
66 and the year-to-date aggregate total; and

1 (B) separate totals for in-kind contributions.

2
3 (11) The form must contain the following information about expenditures (including transfers and ticket purchases):

4
5 (A) The total of expenditures made during the reporting period and the year to date total, including in-kind
6 expenditures which must be equal to in-kind contributions received.

7
8 (B) The total of expenditures made during the reporting period of less than one hundred dollars (\$100) in the
9 aggregate to one (1) entity.

10
11 (C) The amount, date, and a brief description of consideration for which each campaign expenditure was made
12 of one hundred dollars (\$100) or more in the aggregate to one (1) entity during the reporting period, the name and address
13 of the entity to which the expenditure was made, the beneficiary of the expenditure, and the year to date total. Disbursements
14 to consultants, advertising agencies, and similar firms; credit card expenses; and candidate reimbursements must be itemized
15 to permit a reasonable person to determine the ultimate intended recipient of the expenditure and its purpose.

16
17 (12) The form must contain the following information about independent expenditures:

18
19 (A) The total of independent expenditures made during the reporting period and the year to date total.

20
21 (B) The total of independent expenditures made during the reporting period of less than one hundred dollars
22 (\$100) in the aggregate to one (1) entity.

23
24 (C) The amount and date of each independent expenditure of one hundred dollars (\$100) or more in the aggregate
25 during the reporting period, and the name and address of the entity, the beneficiary and purpose of the expenditure, and the
26 year-to-date total.

27
28 (13) The form must contain the following information about loans made:

29
30 (A) The total value of loans made to others during the reporting period and the year to date total.

31
32 (B) The amount and date of each loan made of one hundred dollars (\$100) or more in the aggregate to one (1)
33 entity during the reporting period, the name and address of the recipient of the loan, the terms of the loan (repayment
34 schedule and interest rate), the purpose, and the year-to-date total.

35
36 (14) The form must contain the following information about the unpaid loan balance:

37
38 (A) The total balance of loans owed by the committee.

39
40 (B) The total balance of loans of less than one hundred dollars (\$100) in the aggregate owed by the committee to
41 one (1) entity.

42
43 (C) The balance of loans owed by the committee, itemized by name and address, and the date of the loan if one
44 hundred dollars (\$100) or more is owed to one (1) entity.

45
46 (D) The total balance of loans owed to the committee.

47
48 (E) The total balance of loans of less than one hundred dollars (\$100) in the aggregate owed to the committee by
49 one (1) entity.

50
51 (F) The balance of loans owed to the committee, itemized by name and address, and date of the loan, if one
52 hundred dollars (\$100) or more is owed by one (1) entity.

53
54 (15) The form must contain the following information about expenditures incurred:

55
56 (A) The total amount of all expenditures incurred. An expenditure incurred is reported on each report filed after
57 the date or receipt of goods or services until payment is made by the vendor. A payment must be listed as an expenditure
58 when the payment is made.

59
60 (B) The total amount of expenditures incurred of less than one hundred dollars (\$100) in the aggregate owed to
61 one (1) entity.

62
63 (C) A list of expenditures incurred, and the name and address of the creditor if the amount is one hundred dollars
64 (\$100) or more in the aggregate, the purpose of the purchase, the beneficiary, and the date the goods or services were
65 delivered.

(16) The form must state the cash balance on hand as of the close of the reporting period.

(17) The form must include a certification by the treasurer.

Comment:

To fully detail report content requirements, this section must be both lengthy and detailed--perhaps oppressively so. Following are the points which may be unique and need additional explanation or justification.

Thresholds have been established for itemization. A blanket itemization threshold of \$100 was agreed upon as the threshold for basic itemization. This is a relatively low threshold, but considering that during an election year, this threshold applies for a period that cannot exceed three months, it is not unreasonably low. A low threshold is also important for monitoring contributions when contribution limits and public funding are in effect.

Year to date totals such as required by the Federal Election Commission are included. Each report is self-contained; therefore no repeat itemization is necessary. Only the cumulative totals need be carried forward.

Also required is reporting of pledges. Based upon this information, it may be possible to anticipate a committee's level of spending. Despite increased reporting requirements, a committee may actually have greater success in the collection of pledges if the pledge becomes a public record. The provision may, however, prove burdensome to committees that rely heavily upon pledges made annually but paid through monthly installments.

Explicit information about reimbursements and expenditures made to advertising agencies, consulting firms, and credit card companies is required. Under these provisions, such expenditures must be broken down as to whom, and for what purpose, the expenditure was made. This will eliminate the large expenditures made to one of these entities without itemization or accountability.

Provisions for reporting loan balances existing from both loans made to the committees as well as loans made by the committee have been included. Reporting of expenditures incurred--unpaid bills--is also included. These provisions were deemed necessary to monitor loan and debt activities.

§134.02 Statement of Inactivity

(1) A statement of inactivity must include the following information:

(A) The committee name and address.

(B) The type of report (quarterly, semi-annual, or pre-election).

(C) A statement by the treasurer verifying that a contribution was not received and an expenditure was not made during the reporting period.

(2) Interest earned is not a contribution.

Comment:

The statement of inactivity is provided so that a committee that has received no contributions and has made no expenditures during a reporting period may attest to that fact on a simple one page form. The form could be modified somewhat by adding the requirement that the current fund balance be included. This would provide an indication as to whether the committee had indeed been inactive.

§136 Reports by a Lobbyist or Legislator

§136.01 Report by a Legislator of Contributions from a Lobbyist

(1) A legislator shall report a contribution of one hundred dollars (\$100) or more in the aggregate from a registered lobbyist or lobbying firm during a legislative session. A report must be filed for each month that the legislature is in session.

(2) The report must:

(A) be complete as of the last day of each month during which the legislature is in session;

(B) be filed no later than the fifteenth day following the end of the monthly reporting period; and

(C) include the name and address of the lobbyist or lobbying firm, and the date and amount of the contribution received during the reporting period.

Comment:

This section requires additional reporting by legislators during the legislative session if they accept contributions from lobbyists during that period. A monthly report including only contributions of \$100 or more in the aggregate from lobbyists is required while the legislature is in session. If none are accepted, no report is necessary.

The purpose of this section is to provide disclosure in a format that is more readily understood, because it is detailing only one particular type of contribution. A contribution from a lobbyist during a legislative session should receive special scrutiny due to the potential for abuse which exists. If, indeed, contributions to legislators during a legislative session are allowed at all, the burden created by this additional reporting is more than offset by the compelling need of the public to have timely access to the information.

An alternative to this proposal would be to require copies of the report filed with the Agency to be distributed to fellow legislators, or at least to the legislative leadership. The knowledge that fellow legislators have automatic access to these reports may serve to eliminate some of the more questionable practices that currently exist.

§136.02 Report by a Lobbyist of Contributions to a Public Official or Candidate

(1) A lobbyist shall file a report of contributions with the Agency, not later than January 31 of each year. The report must include an itemization of contributions made during the previous calendar year to a:

- (A) public official;
- (B) candidate who became a public official; or
- (C) political party

at the same level of government at which the lobbyist conducts activities regulated by [the lobbying act].

(2) The report must itemize contributions from:

- (A) the lobbyist;
- (B) the lobbyist's immediate family members;
- (C) the lobbyist's employer;
- (D) a political action committee sponsored by the employer;
- (E) the lobbyist's clients and the political action committees sponsored by the lobbyist's clients; and
- (F) contributions solicited, arranged, or transmitted by the lobbyist.

(3) The report must indicate the following:

- (A) The date of each contribution.
- (B) The name and address of the contributor.
- (C) The public official to whom the contribution was made.
- (D) The amount of the contribution.

(4) A lobbying firm may file a single report concerning more than one (1) of its lobbyists. A report filed by a lobbying firm must be verified by each lobbyist whose activities are covered by the report.

Comment:

The relationship between public officials and contributions from lobbyists and the special interests that lobbyists represent has been a subject of growing concern. While reports filed by candidates and political action committees reveal sources of contributions, they are inadequate in identifying sources that may relate to lobbying activities. The relationship between the contributor and the lobbyist may not be readily apparent, and the contributions may be scattered among other contributions, and be disclosed in different reports.

1 Requiring reports to be filed by lobbyists will significantly enhance public disclosure. At least one purpose of public disclosure
2 is to deter illegal or unethical practices by public officials. This purpose is frustrated if information is not accessible. The
3 report of contributions required to be filed by this section may be combined with the reports required to be filed by lobbyists
4 detailing other expenditures made to influence executive or legislative action. This section should apply to lobbyists who
5 lobby executive departments and agencies and to those who lobby the legislature.
6

7 An additional proposal that may be considered is to prohibit lobbyists from soliciting contributions on the behalf of an
8 officeholder at the same level of government at which the lobbyist's activities are conducted. Personal contributions from
9 a lobbyist may be permitted, but the lobbyist would be prohibited from directly arranging for, or "bundling" contributions
10 to a public official whom the lobbyist might be seeking to influence.
11

12 The reference to "same level of government" should be construed as meaning state, regional, county, or municipal
13 government. Certain minor political subdivisions such as townships in the Midwest, or towns in the Northeast may be
14 difficult to characterize as belonging to the same level of government as another entity.
15

16 §138 Records Maintained by Certain Businesses, Persons, or Groups

17
18 (1) In election year, a business, person, or group that furnishes any of the following services, facilities, or supplies for
19 political purposes to a candidate, individual, or group shall maintain a record of each transaction:
20

- 21 (A) Newspaper.
- 22 (B) Radio.
- 23 (C) Television.
- 24 (D) Advertising.
- 25 (E) Advertising agency services.
- 26 (F) Accounting.
- 27 (G) Billboards.
- 28 (H) Printing.
- 29 (I) Secretarial services.
- 30 (J) Public management.
- 31 (K) Media production or preparation.
- 32 (L) Computer services.
- 33
- 34
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- 44

45 Comment:

46
47 This is not a reporting requirement, but merely a recordkeeping requirement. This requirement would serve as a valuable
48 investigative tool if needed, permitting a cross-check to ensure that committees are reporting all expenditures, and providing
49 an accurate accounting of the purpose. Such a requirement can also be a valuable investigative tool. This would also be a
50 means of identifying groups or individuals making independent expenditures or in-kind contributions.
51

52 This is not a common requirement in current state law. The information it would supply would be valuable. However, the
53 determination must be made as to whether it is too burdensome on those who are not involved in the political process.
54

55 The decision not to require an actual report of these activities was made because it was felt that such a requirement would
56 be unduly burdensome on those not directly involved in the political process.
57

58 (2) An expenditure shall not be made, other than for overhead or normal operating expenses, by an agent or independent
59 contractor, on behalf of, or for the benefit of, a candidate or committee, unless it is reported by the candidate or committee.
60

61 (3) An agent or independent contractor making an expenditure required to be reported shall provide all information
62 required to be reported under this section to the candidate or committee.
63
64

§140 Report of Late Contributions

A contribution of five hundred dollars (\$500) or more in the aggregate received from one (1) source after the closing date for the pre-election reporting period must be reported to the Agency or the Agency or the designated county official on the appropriate form within twenty-four (24) hours of receipt by hand delivery, facsimile transmission, telegram, or express delivery service. This contribution must be included on the next report filed by the committee.

Comment:

Regulation in the area of last minute contributions is essential to prevent late contributions from flowing into campaigns after the standard pre-election reporting period deadline, and thereby allowing those critical contributions to go unreported until after the election. The 24-hour deadline, which has been gaining popularity among the states, was established to impress upon committees the importance of this provision. To comply, committees will be unable to use normal mail delivery, but will have to avail themselves of a quicker means of delivery.

§142 Report of Late Independent Expenditures

A committee that makes an independent expenditure of five hundred dollars (\$500) or more after the closing date of the pre-election reporting period shall report the expenditure to the Agency or the Agency or the designated county official within twenty-four (24) hours of making the expenditure by hand delivery, facsimile transmission, telegram, or express delivery service. The expenditure must be itemized by name, address, and purpose. This information must be included on the next report filed by the committee.

Comment:

The making of last minute independent expenditures are another means to pour money into a campaign after the pre-election reporting period deadline has passed. Requiring late large expenditures to be reported prior to the election will bring information regarding massive advertising campaigns and other late large expenditures before the public. If the independent expenditures involve negative campaigning, at least the targeted candidate and the public will be able to determine the source prior to the election.

§144 Report of a Government Contractor and Agency

(1) A person who has been awarded a sole source contract from a government entity of five thousand dollars (\$5,000) or more in the aggregate during the preceding calendar year shall file a report with the Agency. The report must:

(A) include an itemized list of the contributions made to a party committee or candidates for state, county, or municipal office by the contract recipient, a principal associated with the contract recipient, including a subcontractor or consultant, a spouse of a principal, or a political committee sponsored by the person; and

(B) be filed no later than fifteen (15) days after the signing of the contract.

(2) A government entity that awards a sole source contract of five hundred dollars (\$500) or more in the aggregate shall, no later than five (5) days after the date of the contract award, notify the Agency of the name and address of the recipient, the amount of the award, and a description of the nature of the contract.

Comment:

Jurisdictions which perceive problems with the methods used in the award of government contracts may wish to avail themselves of this section.

§146 Notification of Filing Obligation

(1) The Agency or designated local filing officer shall send by first class mail a notice of obligation to file and appropriate forms for filing the necessary report or statement no less than thirty (30) days before each filing date for which a committee is required to file the statement or report. The Agency or designated local official shall notify each registered committee no less than thirty (30) days before each filing date for a monthly, quarterly, or semi-annual report. The Agency shall send a notice of obligation to file a pre-election report to a committee if information provided on the statement of organization indicates probable involvement in a particular election.

(2) A committee is not relieved of its reporting responsibilities if:

(A) the Agency or appropriate local official fails to send, a notice or form; or

(B) the committee does not receive a notice or form.

Comment:

To achieve greater compliance, committees should be notified when their reports are due. Forms should be sent at the same time to ensure that the committees have the necessary forms on hand. Though the cost may be greater for the Agency, the notice of obligation to file will encourage timely filing and reduce the Agency's follow-up burden.

A section is also included requiring a committee to file the required reports even if the committee did not receive the required notification. This drives home the point that the committee has a responsibility to know the law, and the excuse of lack of knowledge will not be acceptable.

The obligation to notify is split between the Agency and the local official. This is because many committees file with the local officials and the local officials are in a better position than the Agency to know what types of elections are being held at what times. However, problems may arise from this decentralized notification procedure. There may be duplication between the Agency and the local official. There is also a greater chance that partisan politics may play a role locally where certain committee may "inadvertently" not receive notification.

§148 Report Filing Requirements

(1) Reports shall be filed on a format specified by the Agency.

(2) Except for a report submitted under subdivision (3), a report filed must be typed or printed in black ink on forms supplied by the Agency, or on legible direct reproductions of the forms.

(3) A report may be filed with the Agency on a computerized printout if the following requirements are satisfied:

(A) The Agency reviews and approves the proposed format for use by the committee before the format is used to file a report.

(B) The printer used is of a double-strike or laser quality.

(C) Individual sheets are separated.

(D) The Agency reviews and approves a proposed amendment to the format for use by the committee before the amended format is used to file a report.

Comment:

Increasing computerization requires that agencies adjust rigid standards. Agencies should be required to accept computerized printouts to satisfy filing requirements if they meet certain conditions. While this may initially pose some problems for the Agency, by exercising appropriate discretion over format the process should work out best for all involved.

§150 Dissolution Procedures

(1) A candidate committee may not dissolve until after:

(A) a primary election or convention in which the candidate is defeated; or

(B) the general election in which the candidate is a candidate by:

(i) inclusion on the ballot, or

(ii) seeking election as a qualified write-in candidate.

(2) A party committee may dissolve only after the party itself dissolves.

(3) A committee other than a party or candidate committee may dissolve only after it determines that it will not accept contributions or make expenditures.

(4) A final report may be filed at the time, or before a scheduled filing is due. The form must:

(A) be marked "final"; and

(B) include a list of the material assets worth fifty dollars (\$50) or more, and detail their disposition.

(5) If a committee owes or is owed money, the committee may dissolve, but must report the status of the debts quarterly on the same schedule as active committees until all debts are resolved. Methods of resolution must also be detailed.

(6) Committee assets must be disposed of according to this Act before dissolution.

Comment:

Provisions must be made for the dissolution of a committee. A committee that wishes to dissolve must meet certain requirements. The Act requires committees to dispose of all surplus funds and committee assets prior to dissolution. However, a committee is not required to dissolve.

Some states require the dissolution of a candidate or special purpose committee after an election. The advantage is that it provides a means to discourage the compilation of massive war chests by certain candidates, particularly legislative leaders and entrenched incumbents. Forced dissolution may also strengthen political parties, because it is assumed that large amounts of money would escheat to the parties from dissolving committees. However, a candidate or other committee forced to dissolve may simply dissolve and reactivate for another vague purpose simply to keep the committee active. The more open-ended proposal is preferred, since the purpose is not to limit activity, but to account for it to as great an extent as possible.

The law allows a committee to dissolve with outstanding debts (loans that the committee has not repaid and unpaid bills) and funds owed to it as the result of a loan made. However, these must be reported quarterly until some resolution has been reached.

As an alternative, committees could be forced to remain active and continue filing until all indebtedness is resolved. As long as regular reporting of committee indebtedness is required, either option would accomplish the goal of disclosure. However, the original proposal, by requiring liquidation of all assets may be of some assistance in the area of debt resolution.

In conclusion, the requirement that a committee dispose of its material assets is an area rarely addressed in current law. As the political committee system becomes more sophisticated, the tools to operate the system become more sophisticated and expensive. Large committees need more than typewriters and adding machines; they need computers and software. Other things such as committee-owned cars--or even planes may also exist. Because of the increasing value of committee assets, this must be addressed, not merely reported, but the disposition of assets must be controlled.

§152 Public Access to Reports

(1) A report must be made available for public inspection at the office of the Agency or the office of the Agency and the office of the designated local official no later than two (2) business days after receipt.

(2) The Agency or the designated local official shall not require the viewer to provide any information or identification as a condition of viewing a report or reports.

(3) The Agency or the designated local official shall ensure that the reports are available for copying or purchase at a reasonable cost, which must not exceed ten cents (\$.10) per page.

Comment:

Without provisions for access to reports, the value of the disclosure law is nil. Simple and convenient access to reports should be provided to any interested person. While some jurisdictions require production of identification as a prerequisite to viewing reports and payment of actual copying costs, the preferred view is that these actions should be avoided so as to promote public access.

Some jurisdictions prefer to require identification of individuals seeking access to campaign records, and specification of the files they wish to peruse. Such a procedure is justified in these jurisdictions by a perceived need to ensure that files are not tampered with, but this is not the preferred view.

Many states already provide for the disclosure of all public records, including campaign finance reports under general freedom of information statutes.

§154 Use of Surplus Funds

§154.01 Prohibition on Use of Contributions for a Different Office

A candidate committee shall not use or permit the use of contributions solicited for or received by the candidate committee to further the candidacy of the individual for an office other than the office designated on the statement of organization. A contribution solicited for or received on behalf of the candidate are considered solicited or received for the candidacy for which the individual is then a candidate if the funds or contributions are solicited or received before the general election for which the candidate is a nominee or is unopposed.

1 §154.02 Disposition of Surplus Funds

2
3 (1) A candidate whose candidate committee has an unexpended balance of funds not otherwise obligated for the payment
4 of expenses incurred to further the candidate's candidacy shall designate how the surplus funds are to be distributed. The
5 surplus funds may:

6
7 (A) escheat to the state [general fund];

8
9 (B) be returned pro rata to all contributors;

10
11 (C) in the case of a partisan candidate, be transferred to the [state or local] executive committee of the political
12 party of which the candidate is a member at the time the funds were received; or

13
14 (D) be distributed using a combination of these options.

15
16 (2) A political committee, other than a candidate committee, with an unexpended balance of funds not otherwise
17 obligated for the payment of expenses incurred to further the committee's purposes shall designate how the surplus funds
18 are to be distributed. The surplus funds may:

19
20 (A) escheat to the state [general fund or public financing fund];

21
22 (B) be returned pro rata to all contributors; or

23
24 (D) be distributed using a combination of these options.

25
26 Comment:

27
28 *A candidate committee must terminate after the election in which a candidate is voted on. Candidates who are elected are*
29 *permitted to retain surplus funds from that campaign to finance a subsequent campaign, but only for the same office.*
30 *Campaign funds accumulated by a candidate committee may be derived from contributions made by individuals or political*
31 *committees. Such funds are deemed to be a public trust to be used for a specific purpose: to support or oppose a candidate*
32 *for public office.*

33
34 *Surplus candidate committee funds may only be used in three ways: returned to contributors on a pro rata basis, donated*
35 *to the candidate's political party, or turned over to the state treasury. A political committee other than a candidate committee*
36 *may not contribute surplus funds to a political party, but is limited to the options of returning contributions on a pro rata*
37 *basis or escheating to the state treasury.*

38
39 *Candidate committees are not permitted to dispose of surplus funds to charitable organizations because these contributions*
40 *have the potential to "buy" the goodwill of the organization—or a number of organizations, in the case of surplus funds*
41 *spread among more than one organization—for a future campaign.*

42
43 (3) If a pro rata refund is chosen, the candidate or a member of the candidate's immediate family is not eligible to a
44 refund of funds that the candidate or a member of the candidate's immediate family has contributed to the committee unless
45 the pro rata refund that other contributors would receive is greater than the contributors' aggregate contributions.

46
47 Comment:

48
49 *This subdivision prohibits a candidate from recovering a contribution in the form of a pro rata distribution of surplus funds*
50 *until after other contributors have been fully satisfied. Subdivision (3), which is apparently not found in any state, has the*
51 *effect of adding the contributions of a candidate and a candidate's family to the refund pool to the extent that adding these*
52 *funds in does not result in a windfall to other contributors.*

53
54 (4) If the pro rata refund that a contributor would receive is greater than the contributor's aggregate contributions, a
55 contributor shall receive a full refund of the contributor's contribution. The candidate or a member of the candidate's
56 immediate family is then eligible to receive a pro rata refund of the remaining funds.

1 **§107 Public Financing**

2
3 **§107.00 Statement of Intent and Purpose**

4
5 The legislature finds and declares the following:

6
7 (1) The enactment of a system of public financing of election campaigns is an essential means to protect the integrity
8 of the electoral process and ensure the maintenance of free government.

9
10 (2) It is desirable to encourage the broadest possible participation in financing campaigns by all citizens of the state, and
11 to enable candidates to have an equal opportunity to present their programs to the voters.

12
13 (3) Our democratic system of government can be maintained only if the electorate is informed.

14
15 (4) A publicly funded system of financing election campaigns in this state will encourage full discussion of issues,
16 provide a fair and equal opportunity for all candidates to participate in the election process, and reduce the influence of
17 special interests in election campaigns and the daily affairs of government.

18
19 (5) Public financing provides a neutral source of revenue to assist candidates in raising sufficient money to communicate
20 their views and positions adequately to the voters. Public financing provides a level playing field to facilitate competitive
21 campaigns and promote public discussion of the issues. By providing public financing of election campaigns, the potential
22 corrupting influence of special interests and large contributions is diminished, and candidates can reduce their reliance on
23 these sources of funding. Public financing reduces the fundraising advantages of incumbents while allowing all candidates
24 to devote less time to fundraising and more time to discussion of the issues.

25
26 (6) Public funding of election campaigns permits the state to regulate the escalating amount of expenditures on political
27 campaigns, while providing an equal opportunity for candidates to present their views and to provide for a better informed
28 electorate.

29
30 **Comment:**

31
32 *This draft is based on a grant system of providing eligible candidates block funds in sufficient amounts to run an effective*
33 *campaign. Matching funds based on contributions raised is an alternative to providing block grants. Using matching funds*
34 *for the primary and block grants for the general election is similar to the federal presidential primary public funding*
35 *procedures.*

36
37 *Separate grants are available for the primary and general election campaigns. The candidate may qualify for either or both.*
38 *Eligible candidates demonstrate their viability by qualifying for placement on the ballot and raising a minimum threshold*
39 *of itemized contributions from individuals residing within the district the candidate seeks to represent. A candidate must also*
40 *have a viable opponent on the ballot in the primary and/or the general election in order to receive a grant. The viability of*
41 *the opponent is determined by one of two factors: either the opponent has also qualified for a grant, or the opponent has*
42 *raised a sufficient amount of money to carry out a credible campaign.*

43
44 *The publicly funded grant is designed to replace all special interest contributions. The grant of public funds is conditioned*
45 *upon a limitation of self-contributions by the candidate, and the imposition of separate primary and general election spending*
46 *limits. The use of the publicly funded grant is limited to specific conventional campaign goods and services, and the proper*
47 *use of grant funds must be substantiated through a proof of payment procedure.*

48
49 **§107.01 Definitions**

50
51 (1) "Fund" means the Election Campaign Fund.

52
53 (2) "Grant" means a contribution from the fund.

54
55 (3) (A) "Qualifying contribution" means

56
57 (i) a contribution of [should be between \$100 and \$500 dollars] or less;

58
59 (ii) made to a candidate;

60
61 (iii) by and from a qualified elector residing in the district the candidate seeks to represent;

62
63 (iv) received on or after January 1 of an election year in which the recipient is a candidate for office, or, if a
64 special election, after the date the special election is called.
65

(B) A qualifying contribution does not include a loan, pledge, or non-monetary contribution.

Comment:

Loans, pledges, and in-kind contributions are specifically excluded from the types of campaign contributions that may be used to qualify for a grant. In order to maintain the integrity of the system, it is essential that a candidate receive actual contributions with no strings attached. The difficulty of ascertaining the value of in-kind contributions and the potential for abuse requires their exclusion from use in qualifying to receive a grant.

This draft limits qualifying contributions to contributions provided by a qualified elector in the district the candidate seeks to represent. This provision could be expanded to non-electors, depending upon such concerns as the barriers to voting, i.e., residency and registration. The provision could be expanded to state residents because of their overall stake in selecting state officials. Out-of-state contributions should not be permitted to be used for qualification for a grant.

§107.02 Election Campaign Fund

(1) Each individual filing an income tax return for any taxable year who has a tax liability or is entitled to a tax refund or other payment from the [Department of Revenue] may designate an amount of [should be between one and five dollars] to be deposited into the Election Campaign Fund. If individuals filing a joint return have a tax liability or are entitled to a tax refund or other payment from the [Department of Revenue], each individual may make a designation under this section.

(2) A designation shall not increase a taxpayer's liability or decrease a refund or other payment to the individual from the [Department of Revenue].

(3) The [Department of Revenue] shall place on the top one-third (1/3) of the first page of all tax returns to be filed the following language:

**ELECTION
CAMPAIGN
FUND** I designate \$ _____ to go to the Election Campaign Fund.

FUND NOTE: A designation will not increase the taxes you pay or reduce your refund or other payment from the [Department of Revenue].

(4) (A) During [or for] a fiscal year which contains an election, the legislature shall, in its final budget, appropriate from the state General Fund, an amount sufficient to fully fund all candidates eligible to receive a grant from the Election Campaign Fund.

(B) The agency shall provide a written estimate of the amount necessary to fully fund all eligible candidates no later than January 1 in an election year.

(C) If insufficient funds are appropriated in the final budget to pay such sums, the legislature, upon the request of the agency, shall transfer sufficient monies from the [appropriation for contingencies] to make all payments authorized by the provisions of the Act.

Comment:

The checkoff funding mechanism permits low income taxpayers and minors—people otherwise unlikely to be direct participants in the process—to designate money to go to the Election Campaign Fund. Often, persons with no tax liability file tax returns in order to receive payments or credits. The fact that they pay no direct tax should not inhibit their ability to designate the use of state funds for the overriding purposes supported by publicly funded campaigns. Subsection (4) provides for supplemental or full funding by direct legislative appropriation in order to ensure sufficient funding of campaign grants. The general experience among the states has been that a tax checkoff raises more funds than an add-on option. A checkoff combined with a state match is essentially nothing more than a disguise means for increasing the checkoff amount.

§107.03 Application and Withdrawal Procedures

(1) Each candidate for statewide, judicial, or legislative office shall file a statement of intent to accept or to reject a grant from the Election Campaign Fund. The statement shall be filed no later than the deadline for filing nomination papers.

(2) A candidate who intends to accept a grant shall swear or affirm that the candidate and the candidate's authorized agents have complied with and will continue to comply with all applicable contribution and expenditure limits at all times to which the limits apply to the candidate's candidacy for the office in contest.

(3) A candidate shall designate in the statement of acceptance whether the candidate will accept or reject a grant in either the primary or the general election. A candidate may designate both.

(4) A candidate may rescind the statement of acceptance:

(A) for a primary election grant no later than ten (10) calendar days after the last date for filing nomination papers; or

(B) for a general election grant no later than ten (10) calendar days after the primary election.

Comment:

To ensure grants for primary campaigns, an early application procedure tied to the deadline for ballot access is important. This section can be modified to provide for nomination by caucus, convention, or appointment.

An alternative procedure would require an application from interested candidates rather than forcing candidates to make a public statement of rejection of public funds. This may be preferable in some jurisdictions.

Subsection (4) provides for an early date for withdrawing the statement of acceptance in order to provide adequate notice to opposing candidates and to avoid unfair campaign practices.

§107.04 Qualification Procedures

(1) The agency shall approve the payment of a primary or a general election grant or both a primary election grant and a general election grant if an eligible candidate meets all of the following requirements:

(A) The candidate has filed a timely statement of acceptance.

(B) The candidate is certified to appear on the ballot for the election for which the grant is sought.

(C) The candidate is opposed by a candidate for the same office:

(i) who has qualified to receive a grant; or

(ii) whose campaign finance reports indicate that the opposing candidate has received, expended, or has cash on hand of at least [a dollar amount should be designated in the range of 25-33% of the applicable expenditure limit];

(D) The financial reports filed by or on behalf of the candidate as of the date of qualification indicate that the candidate has received:

(i) qualifying contributions equal to five (5) percent of the expenditure limits for candidates for statewide office or for candidates at a special election; or

(ii) qualifying contributions equal to ten (10) percent of the expenditure limit for candidates for legislative or judicial office.

Comment:

Paragraphs (A) through (E) comprise the five separate steps for qualification. To protect the integrity of the process, only candidates who are opposed by viable candidates in the primary or general election should receive grants. By determining the viability of an opponent based upon the amount of funds raised or the qualification for a grant rather than primary vote, more opportunity to qualify for a grant is provided to third party and independent candidates. As an alternative, viability of a candidate could be determined on the ability to garner votes at a primary or the general election. For example, in Wisconsin, a six percent primary vote threshold is required, which effectively eliminates third party and independent candidates from qualifying for public funding.

Candidates who seek public funding must comply with both contribution and expenditure limits from the beginning of their campaigns through the post-election and audit period.

An essential aspect of determining candidate qualification is the ability to raise funds in small amounts from a number of individuals. In some situations, the ten percent threshold for legislative and judicial district offices may seem high when

1 coupled with the requirement that contributions come from within the district. Since all electors of the state have an interest
2 in the competitiveness of campaigns throughout the state, the ten percent threshold could be reduced to five percent for
3 in-district contributions, coupled with a ten percent threshold for contributions raised outside of the district. In any event,
4 out-of-state contributions should not be permitted to serve as qualifying contributions.
5

6 §107.05 Contribution Limits 7

8 (1) A candidate filing a statement of acceptance shall not receive a contribution or contributions from the candidate's
9 own funds or from those of the candidate's immediate family that exceed [should be a figure ranging between 200 to 500 %
10 of the amount an individual may contribute to a candidate for that office].
11

12 (2) A candidate filing a statement of acceptance shall not receive a contribution or contributions from a political
13 committee other than a political party committee.
14

15 (3) An eligible candidate filing a statement of acceptance may receive a primary election grant, a general election grant,
16 or both a primary election grant and a general election grant equal to [should be an between 45 and 65 % of the applicable
17 spending limits].
18

19 (4) An eligible candidate filing a statement of acceptance may voluntarily limit the amount of the grant received by
20 designating a reduced grant amount in writing:
21

22 (A) for a primary election grant, no later than ten (10) calendar days after the deadline for filing nomination papers;
23 or
24

25 (B) for a general election grant, no later than ten (10) calendar days after the primary election.
26

27 Comment: 28

29 *Most states that provide public funding to candidates do so on a dollar-for-dollar matching basis, unlike this proposal. One*
30 *of the largest sources of special interest money is a candidate's own funds. This provision ties the self-contribution limit*
31 *to a multiple of the amount that an individual can legally give to a campaign.*
32

33 *Since one goal of public financing is to reduce the reliance on special interests, all political action committee contributions*
34 *are also prohibited. As an alternative, candidates could accept a combination of PAC contributions and grant funds up to*
35 *a specified amount, such as is permitted in Wisconsin. In this case, grant funds have been tied to the cumulative PAC*
36 *contribution limits. Candidates voluntarily limiting the amount of the grant received could be permitted to accept PAC funds*
37 *up to the proposed PAC contribution limit.*
38

39 *The draft proposal keeps political party committee funds available in recognition of the special roles that these committees*
40 *play in candidate recruitment and presentation of a united political philosophy.*
41

42 §107.06 Expenditure Limits 43

44 (1) A candidate for office who files a statement of acceptance of a grant from the Election Campaign Fund shall not
45 make a qualified campaign expenditure or qualified campaign expenditures in excess of the following amounts:
46

47 (A) For a candidate for governor, [\$500,000] in the primary election and [\$1,000,000] in the general election.
48

49 (B) For a candidate for lieutenant governor or attorney general, [\$250,000] in the primary election and [\$500,000]
50 in the general election.
51

52 (C) For a candidate for other statewide executive office, [\$250,000] in the primary election and [\$350,000] in the
53 general election.
54

55 (D) For a candidate for state senator or statewide judicial office, [\$100,000] in the primary election and [\$100,000]
56 in the general election.
57

58 (E) For a candidate for state representative or [countywide or district judge], [\$50,000] in the primary election and
59 [\$50,000] in the general election.
60

61 (2) (A) For purposes of the expenditure limits, a qualified campaign expenditure made before [the last day of the month
62 in which the primary election is held] of the general election year shall be considered a primary election expenditure.
63

64 (B) A qualified expenditure made from [should be the day following the date listed in the preceding paragraph]
65 through December 31 of the general election year shall be considered a general election expenditure.

(C) Notwithstanding the provisions of paragraphs (A) and (B) above, in the event that payments are made, but the goods or services are not used during the period purchased, the payments shall be considered qualified campaign expenditures for the time period when they are used or during which benefit is derived from them. Payment for goods and services used in both time periods shall be prorated.

(3) A candidate filing a rejection of a grant from the Election Campaign Fund may file an affidavit agreeing to voluntarily comply with the applicable contribution and expenditure limits no later than the deadline for filing nomination papers. An affidavit filed under this section shall be binding unless rescinded:

(A) no later than ten (10) calendar days after the nomination paper filing deadline in the case of primary expenditure limits; or

(B) no later than ten (10) calendar days after the primary election in the case of general election expenditure limits.

(4) (A) If a candidate filing a statement of acceptance:

(i) is opposed by a candidate who has declined to accept a grant, and

(ii) the opposing candidate does not voluntarily agree to limit the receipt of contributions and expenditures under section (3) above; or

(iii) if an independent expenditure is made in an amount greater than [should be a dollar amount equal to at least 25 percent of the applicable expenditure limits] in support of or in opposition to a candidate for that office;

the expenditure limits shall no longer be applicable to all candidates running for the same office.

(B) If an independent expenditure is made in an amount greater than [should be a dollar amount equal to at least 25 percent of the applicable expenditure limits] in support of or in opposition to a candidate for that office, each candidate who has filed a statement of acceptance of a grant or an affidavit voluntarily agreeing to abide by spending and contribution limits, shall be permitted to receive an additional [should be ten percent of the applicable cumulative contribution limits] for either the primary election or general election, as appropriate, notwithstanding the contribution limits otherwise applicable to the election.

(5) In computing applicable expenditure limits, a candidate or campaign treasurer may exclude the following items:

(A) A contribution or contributions returned to the contributor.

(B) A loan repayment.

(C) An expense incurred as a direct result of a recount.

(D) A refund of a deposit paid.

Comment:

The size of the limits on expenditures is a critical decision. The expenditure limits should be set high enough to ensure a full presentation and discussion of the issues. The actual amount will vary considerably dependent upon the circumstances unique to the jurisdiction. Wisconsin's figures are shown for illustrative purposes.

Wisconsin has a provision to allowing a candidate not receiving a grant to voluntarily agree to comply with expenditure limits. This is an additional means of maintaining spending limits since it creates a reliance interest for all candidates and forces candidates to conduct their campaign within a targeted amount. However, it is not often used, can be confusing, and is an administrative burden.

There is an escape clause for candidates who are challenged by candidates who will spend a large amount of money or who are targeted by independent spending campaigns. Additional funding is permitted for those candidates receiving grant funds when expenditure limits are lifted. They are entitled to receive a specified amount of additional contributions free from applicable contribution limits. Alternatively, the additional funds could be made in the form of a supplemental grant.

One unresolved issue is how to prevent "sham" independent expenditure campaigns that are undertaken by an ostensibly independent person as a means to increase the funding available to a candidate. Such campaigns might either be undertaken to portray the favored candidate in a good light, or make such an obviously unfair attack on the candidate that the candidate will not only get sympathy from a backlash, but will also get more money to spend. While the candidate's opponent will also get or spend more, often campaign managers believe their own money is worth more than money being spent against them.

1 **§107.07 Disbursement of Funds**

2
3 (1) The agency shall immediately review the:

4 (A) statements of acceptance;

5 (B) nomination papers; and

6 (C) financial reports

7
8
9
10 of candidates filing a statement of intent to accept a grant to determine the eligible of a candidate filing a statement of
11 acceptance.

12
13
14 (2) The agency shall certify whether a candidate is eligible to receive a primary election grant no later than seven (7)
15 calendar days before the deadline for certifying the candidate for the primary election ballot.

16
17 (3) The agency shall certify whether a candidate is eligible to receive a general election grant no later than seven (7)
18 calendar days after the certification of the primary election results.

19
20 (4) A separate determination shall be made for a primary and a general election grant.

21
22 (5) The certification by the agency must indicate:

23 (A) whether a candidate is eligible to receive a grant; and

24 (B) the amount of grant the candidate is eligible to receive.

25
26
27
28 (6) If a candidate who has filed a statement of intent to accept a grant is not eligible to receive a grant, the certification
29 must:

30 (A) state the reasons why the candidate is not eligible to receive a grant; and

31 (B) what action, if any, the candidate may take to qualify for a grant.

32
33
34
35 (7) The agency shall certify a candidate who becomes eligible after the deadline in subsections (2) and (3) if the
36 candidate qualifies after the deadline, but before the primary election or general election for which the funds are sought.

37
38 (8) The grant check must be included with the certification.

39
40 (9) A candidate may file a written request to review the determination of the agency no later than seven (7) calendar
41 days after the date of certification.

42
43 (10) The amount of the grant may not exceed [specify an amount of 45-65 percent of the applicable expenditure limit].

44
45 **Comment:**

46
47 *To avoid political skullduggery, a candidate may qualify for a grant at any point up until the primary election or general*
48 *election. Once a candidate has raised the necessary qualifying contributions and the opponent has demonstrated viability,*
49 *the candidate is in a position to receive a grant.*

50
51 **§107.08 Use of Grant Funds**

52
53 (1) All grants must be deposited in the candidate committee's campaign depository account.

54
55 (2) Grant funds may be expended only for one or more of the following:

56 (A) Purchase of services from a communications medium, including production costs.

57 (B) Printing, photography, graphic arts, or advertising.

58 (C) Office supplies.

59 (D) Postage and other commercial delivery services.

60 (E) Repayment of loans secured by a statement of intent to accept a grant pursuant to section 107.12(1).

(3) Grant funds may not be expended, directly or indirectly, for the following items or services:

(A) Purchase of capital equipment.

(B) Purchase of computer software.

(C) Payment of fees for placement of political advertisements.

(D) Items or services otherwise prohibited under this Act or the laws of this state.

Comment:

Because public funds are involved, it is essential that the money be used for intended purposes. Items described in subsection 2 reflect the bulk of most campaign purchases. Items excluded in section 3 represent things with "carry-over" value beyond the duration of the campaign, or services which create the opportunity to use public funds to promote cronyism or goods or services that could be subject to other abuse.

§107.09 Return of Grant Funds

(1) (A) Grant funds disbursed under this section remain the property of the state until disbursed or encumbered for lawful campaign purposes.

(B) Grant funds that are unspent and unencumbered by a candidate on the day after the election in which the candidate participates must revert to the state. A deposit or refund derived from grant funds that are received by a candidate after the day of the election in which the candidate participates shall revert to the state. All reversions shall be returned to the agency which shall deposit the money in the fund.

(2) Return of grant funds after the withdrawal date set forth in section 107.03(4) does not remove applicable contribution and expenditure limits.

Comment:

To provide the state with additional leverage for recovering misappropriated funds, this provision vests a state interest in the grant funds until properly disbursed or encumbered under the provisions of this Act. In addition, candidates cannot return grant funds late in the game so that they might escape contribution or expenditure limits.

§107.10 Lawful Use of Grant Funds

(1) A person shall not:

(A) expend;

(B) authorize the expenditure of; or

(C) incur an obligation to expend a grant;

for a purpose other than to advance the candidacy by lawful means of the specific candidate or candidates who qualify for the grant.

(2) A person shall not:

(A) expend;

(B) authorize the expenditure of; or

(C) incur an obligation to expend a grant;

after the date of an election where the grant is returnable to the state under section 107.09(1).

(3) A candidate shall not:

(A) expend;

(B) authorize the expenditure of; or

1 (C) incur an obligation to expend a grant;
2
3 if the candidate violates the pledge required under §107.03(2).
4

5 (4) A person shall not prepare or transmit to a registrant or to the agency evidence that purports to demonstrate the
6 amount or purpose for which a grant has been used if such evidence specifies an amount or purpose for which a payment
7 is received other than the true amount or purpose.
8

9 §107.11 Proof of Payment

10
11 (1) The candidate or the candidate's campaign treasurer shall deliver or transmit to the agency sufficient proof of
12 payment of all disbursements made from grant funds no later than the due date for the next campaign finance report occurring
13 at least thirty (30) days after the election in which the candidate received the grant.
14

15 (2) The agency shall determine what constitutes sufficient proof of payment and shall promulgate:

16 (A) procedures;

17 (B) reporting forms; and

18 (C) administrative rules;
19
20

21 necessary to implement this responsibility.
22
23

24
25 (3) The agency shall conduct a random audit of the accounts and records of a candidate filing a statement of intent to
26 accept a grant.
27

28 Comment:

29
30 *Because public funds are involved, the candidate must demonstrate the appropriateness of the use of funds. The agency*
31 *should be given flexibility in determining what constitutes sufficient proof along with the authority to conduct an audit of the*
32 *campaign records.*
33

34 §107.12 Miscellaneous Provisions

35
36 (1) A candidate or a candidate's treasurer may use the candidate's statement of intent to accept a grant as security for
37 a loan made for campaign purposes from an institution that ordinarily makes loans in the course of its business.
38

39 (2) To the extent that proceeds of a loan obtained under the provisions of (1) above are used for a purpose set forth in
40 §107.08(2), repayment of such a loan may be made from grant funds.
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1 **§200 Ethics, Conflict of Interest, and Personal Financial Disclosure**

2
3 This is the Ethics, Conflict of Interest, and Personal Financial Disclosure Act.

4
5 **§202 Intent and Purpose**

6
7 The proper operation of democratic government requires that a public official or employee be independent and impartial;
8 that government policy and decisions be made through the established processes of government; that a public official or
9 employee not use public office to obtain private benefits; that a public official or employee avoid action which creates the
10 appearance of using public office to obtain a benefit; and that the public have confidence in the integrity of its government
11 and public officials and employees.

12
13 Comment:

14
15 *Public office is a public trust. That trust is eroded by actions that appear to place the private interest of a public official or*
16 *employee above the public good. This Act seeks to avoid the erosion of public confidence that arises through such conflicts*
17 *or appearances of conflicts, and to declare as public policy of this state that a public official or employee shall work for the*
18 *benefit of the people of the state.*

19
20 **§204 Definitions**

21
22 §204.01 (a) "Anything of value" includes the following:

23
24 Comment:

25
26 *In drafting this section, the intent is to be as expansive as possible to illustrate the range of possibilities for unacceptable*
27 *influence in the governmental process.*

- 28
29 (1) A pecuniary item, including money, or a bank bill or note.
30
31 (2) A promissory note, bill of exchange, order, draft, warrant, check, or bond given for the payment of money.
32
33 (3) A contract, agreement, promise, or other obligation for an advance, conveyance, forgiveness of indebtedness,
34 deposit, distribution, loan, payment, gift, pledge, or transfer of money.
35
36 (4) A stock, bond, note, or other investment interest in an entity.
37
38 (5) A receipt given for the payment of money or other property.
39
40 (6) A right in action.
41
42 (7) A gift, tangible good, chattel, or an interest in a gift, tangible good, or chattel.
43
44 (8) A loan or forgiveness of indebtedness.
45
46 (9) A work of art, antique, or collectible.
47
48 (10) An automobile or other means of personal transportation.
49
50 (11) Real property or an interest in real property, including title to realty, a fee simple or partial interest, present or
51 future, contingent or vested within realty, a leasehold interest, or other beneficial interest in realty.
52
53 (12) An honorarium or compensation for services.
54
55 (13) A rebate or discount in the price of anything of value unless the rebate or discount is made in the ordinary course
56 of business to a member of the public without regard to that person's status as a public official or public employee, or the
57 sale or trade of something for reasonable compensation that would ordinarily not be available to a member of the public.

58
59 Comment:

60
61 *The latter portion of this provision is designed to prevent someone from currying favor with an official by selling the official*
62 *a ticket to a sold-out athletic event such as the Super Bowl at face value if such a ticket would not otherwise ordinarily be*
63 *available to the public official or employee on similar terms without regard to his or her governmental status. This provision*
64 *recognizes that certain transactions, even though ostensibly fair trades for value, are not of the type which should be*
65 *permitted.*

1 (14) A promise or offer of employment.

2
3 (15) Any other thing of value that is pecuniary or compensatory in value to a person.

4
5 (b) The agency may also promulgate rules and regulations defining additional things of value.

6
7 (c) "Anything of value" does not mean a campaign contribution properly received and reported, if reportable, as required
8 under the Campaign Finance Act.

9
10 §204.02 "Associated," when used with reference to an organization, includes an organization in which an individual or a
11 member of his or her immediate family is a director, officer, fiduciary, trustee, agent, or partner, or owns or controls, in
12 the aggregate, at least [should range from any interest at all to two (2) percent or a value of \$5,000 or greater, in comport
13 with the following definition] of the outstanding equity.

14
15 §204.03 "Business associate" includes the following:

16
17 (1) An employer.

18
19 (2) A general or limited partnership, or a general or limited partner within the partnership.

20
21 (3) A corporation:

22
23 (A) that is family-owned; or

24
25 (B) in which all shares of stock are closely-held;

26
27 or the shareholders, owners, or officers of the corporation.

28
29 (4) A corporation in which the public official or employee, or other person subject to the Act:

30
31 (A) has an investment interest;

32
33 (B) owns; or

34
35 (C) has a beneficial interest in shares of stock which constitute more than:

36
37 (i) five percent (5%) of the value of the corporation, or

38
39 (ii) [a specific dollar figure, probably \$500 to \$1,000].

40
41 (5) A corporation, business association, or other business entity in which the public official or employee, or other person
42 subject to the Act serves as an agent or a compensated representative.

43
44 (6) An association not otherwise covered by this definition between the public official or employee, or other person
45 subject to the Act, and another person, which involves the conduct of a common enterprise.

46
47 §204.04 "Candidate" means an individual who seeks nomination or election to [state] office. An individual is a candidate
48 when the individual:

49
50 (1) files a statement of candidacy or petition for nomination for office with the appropriate filing officer;

51
52 (2) is nominated for office by:

53
54 (A) a party at a primary;

55
56 (B) nominating convention; or

57
58 (C) petition for nomination;

59
60 (3) solicits or receives and retains contributions, makes expenditures, or gives consent to an individual, organization,
61 political party, or committee to solicit or receive and retain contributions or make expenditures to secure nomination or
62 election to any office at any time, whether or not the office for which the individual will seek nomination or election is
63 known when the:

64
65 (A) solicitation is made;

(B) contribution is received and retained; or

(C) expenditure is made; or

(4) is an officeholder who is the subject of a recall election.

Comment:

This section is intended to cover all persons who seek office at an election, regardless of the type of election by which the office is obtained. For example, a person seeking appointment by a political party caucus to fill a vacant office would be a candidate under this section. This definition also covers unannounced candidates who are accepting contributions or making expenditures in obvious furtherance of a candidacy.

§204.05 "Charitable organization" means an organization described in 26 U.S.C. §170(c) as it currently exists or as it may be amended.

§204.06 (a) "Compensation" includes:

(1) an advance, conveyance, forgiveness of indebtedness, deposit, distribution, loan, payment, gift, pledge, or transfer of money or anything of value; or

(2) a contract, agreement, promise, or other obligation for an advance, conveyance, forgiveness of indebtedness, deposit, distribution, loan, payment, gift, pledge, or transfer of money or anything of value, for services rendered or to be rendered.

(b) The term does not include reimbursement of expenses if:

(1) the reimbursement does not exceed the amount actually expended for the expenses; and

(2) it is substantiated by an itemization of expenses.

§204.07 "Consultant" means an individual other than a public official or public employee who contracts to:

(1) evaluate bids for public contracts; or

(2) award public contracts;

for the state [or political subdivision].

§204.08 "Economic interest" means an interest distinct from that of the general public in a state purchase, sale, lease, contract, option, or other transaction or arrangement involving property or services in which a public official or public employee may gain an economic benefit of fifty dollars (\$50) or more.

§204.09 "Family member" means an individual:

(1) who is the spouse, parent, sibling, child, mother-in-law, father-in-law, son-in-law, daughter-in-law, grandparent, or grandchild; or

(2) is a member of the individual's household.

Comment:

Consideration might be given to expanding this definition to include "step," "foster," or "guardian" relationships.

§204.10 "Filer" means an individual who is:

(1) a public official or who is nominated to be a public official;

(2) a public employee appointed by a public official;

(3) a candidate under the Campaign Finance Act;

(4) a public member; or

(5) a consultant.

1 §204.11 (a) "Gift" means anything of value other than a contribution to [a committee as defined under the Campaign Finance
2 Act] to the extent that consideration of equal or greater value is not received. The term includes a rebate or discount in the
3 price of anything of value unless the rebate or discount is made in the ordinary course of business to a member of the public
4 without regard to that person's status as a candidate.
5

6 (b) The term does not include the following:
7

8 (1) Printed informational promotional material.
9

10 **Comment:**
11

12 *The intent of this provision is to permit the limited acceptance and use of material advertising something, such as books,*
13 *reports, pamphlets, calendars, or periodicals, that would have limited value to the recipient, and are clearly produced to*
14 *promote an entity or product, rather than to serve as a more general gift that might be intended or used as leverage.*
15

16 (2) A gift that:
17

18 (A) is not used; and
19

20 (B) no later than thirty (30) days after receipt, is returned to the donor or delivered to a charitable organization and
21 is not claimed as a charitable contribution for federal income tax purposes.
22

23 (3) A gift, devise, or inheritance from an individual's spouse, child, parent, grandparent, brother, sister, parent-in-law,
24 brother-in-law, sister-in-law, nephew, niece, aunt, uncle, or first cousin or the spouse of that individual, if the donor is not
25 acting as the agent or intermediary for someone other than a person covered by this paragraph.
26

27 (4) A personalized plaque or trophy with a value that does not exceed one hundred and fifty dollars (\$150).
28

29 (5) Food and beverage consumed on the occasion when participation in a charitable, civic, or community event which
30 bears a relationship to the public official's or public employee's office and the official or employee is attending in an official
31 capacity.
32

33 §204.12 "Immediate family" means an unemancipated child residing in a public official's or public employee's household,
34 a spouse of a public official or public employee, or an individual claimed by the public official or public employee, or the
35 public official's or public employee's spouse as a dependent for tax purposes.
36

37 §204.13 "Informal representation" means a contact, including a request for information, whether in person, by mail, or by
38 telephone, made with a state or local agency official or employee on behalf of a client or constituent.
39

40 §204.14 "Judge" means an official who presides over a state, county, or municipal court [or an administrative law tribunal].
41

42 §204.15 (a) "Local entity" means a local or regional government office, department, division, bureau, board, or commission.
43

44 (b) The term does not include a court.
45

46 §204.16 "Negotiating" or "negotiate for employment" means a communication, directly or indirectly, with a prospective
47 employer to discuss rendering services for compensation to that prospective employer.
48

49 §204.17 "Negotiation for employment" means the period that begins with a communication to a prospective employer to
50 discuss rendering services for compensation to the prospective employer.
51

52 §204.18 "Official responsibility" means the direct administrative or operating authority, whether intermediate or final, and
53 either exercisable alone or with others, and either personally or through subordinates, to approve, disapprove, or otherwise
54 direct government action.
55

56 §204.19 "Participation" includes decision, approval, disapproval, recommendation, the rendering of advice, or vote.
57

58 §204.20 "Particular matter" includes a judicial or other proceeding, application, request for a ruling or other determination,
59 contract, claim, controversy, investigation, charge, accusation, arrest, rulemaking, or legislation.
60

61 §204.21 "Person" means an individual, proprietorship, firm, partnership, joint venture, joint stock company, syndicate,
62 business trust, estate, company, corporation, association, club, committee, organization, or group of persons acting in
63 concert.
64

65 §204.22 "Prime contractor" means a person who has entered into a public contract.

1 §204.23 "Prime contractor employee" means an officer, employee, or agent of a prime contractor.

2
3 §204.24 "Public contract" means a contract for goods, services, or construction let by a unit of government.

4
5 §204.25 "Public employee" means an individual appointed to a position, including a person appointed to a position created
6 by statute, whether compensated or not, in state [, county, or municipal] government, including members of the judiciary.

7
8 §204.26 "Public member" means a member appointed to a noncompensated part-time position on a board, commission, or
9 council. A public member does not lose this status by receiving reimbursement of expenses or a per diem payment for
10 services.

11
12 §204.27 (a) "Public official" means an individual elected to a state, county, or municipal office, or an individual who is
13 appointed to fill a vacancy in the office, whether or not the individual has yet assumed the office. The term includes a
14 member of the [board of regents or trustees, chancellor and vice chancellor or equivalent of the state university system, and
15 a president of a state university].

16
17 (b) The term does not include a public member of an advisory board, commission, or council.

18
19 §204.28 "Remunerable activity" means a service for which a person receives payment in the form of a wage, salary, or other
20 goods or services.

21
22 §204.29 "Representation" means an appearance before a state or local entity whether gratuitous or for compensation.

23
24 §204.30 "Sheltered market" has the meaning ascribed to it in Section 2 of the federal Minority and Female Business
25 Enterprise Act as it currently exists and as it may be amended.

26
27 §204.31 (a) "State entity" means a state agency, office, department, division, bureau, board, commission, or council,
28 including the legislature.

29
30 **Comment:**

31
32 *This definition is intended to include quasi-governmental entities, and public-private partnerships. Each jurisdiction will have*
33 *to look closely at the wording of this definition to ensure that it covers all such potentials.*

34
35 (b) The term does not include a court or an agency in the judicial branch.

36
37 §204.31 "Subcontract" means a contract or contractual action entered into by a prime contractor or subcontractor for
38 obtaining goods or services under a prime contract.

39
40 §204.32 "Subcontractor" means:

41
42 (1) a person, other than the prime contractor, who offers to furnish or furnishes goods or services under a prime contract
43 or a subcontract entered into in connection with the prime contract; and

44
45 (2) a person who offers to furnish or furnishes goods or services to the prime contractor or a higher tier subcontractor.

46
47 §204.33 "Subcontractor employee" means an officer, employee, or agent of a subcontractor.

48
49 §204.34 "Substantial value" means a monetary value of fifty dollars (\$50) or more, if a monetary value is ascertainable,
50 or if a monetary value is not ascertainable, anything of more than nominal value.

51
52 §204.35 "Unit of state or local government" means the state or a unit or agency of state government; a county or municipal
53 government or committee or an agency of county or municipal government; or any other entity funded by or expending tax
54 dollars or the proceeds of publicly guaranteed bonds.

55
56 §204.36 "Unwarranted privilege" means a privilege, treatment, or advantage not available to others on an equal basis.

57
58 **§206 Use of Title and Prestige of Public Office**

59
60 (1) A public official or employee shall not receive anything of value for the private benefit of the official or employee
61 or his or her immediate family or an organization with which the official is associated, unless the public official or public
62 employee can show by clear and convincing evidence that:

63
64 (A) the thing of value was conveyed for a reason unrelated to and not arising from the recipient's holding or having
65 held a public office or public position; and

(B) was unrelated to actions or matters before or affecting the government body of which the public official's or public employee's office or employment is a part.

(2) This provision does not apply to receipt of the following things of value:

(A) a certificate or plaque or commemorative token [of less than \$150 value];

(B) informational promotional material; or

(C) educational material [directly related to the public official or public employee's government duties].

§208 Nepotism

(1) A public official or public employee shall not advocate or cause the:

(A) employment;

(B) appointment;

(C) promotion;

(D) transfer; or

(E) advancement;

to an office or position of the state [, county, municipality, or political subdivision], or supervise or manage a member of the public official or public employee's household or a family member.

(2) A public official or public employee shall not participate in an action relating to the employment or discipline of a member of the public official's or public employee's household or a family member.

Comment:

This section prohibits the hiring, advancement, transfer, or appointment of a family member related to a public official or employee who has supervisory or management control over that person.

§210 Misuse of Office

(1) A public official or employee shall not use public funds, time, personnel, facilities, or equipment for the official or employee's private gain or that of another unless the use is authorized by law.

(2) A public official or public employee shall not use public funds, time, personnel, facilities, or equipment for political or campaign activity unless the use is:

(A) authorized by law; or

(B) properly incidental to another activity required or authorized by law.

(3) The agency may adopt rules specifying examples of political or campaign activity permissible or not permissible under this section.

Comment:

This section deals with two areas of misconduct. Section 210(1) covers situations where an employee or official is improperly using public resources for personal gain or that of another. Many states currently have some form of this prohibition by statute, personnel rule, or legal opinion. In recent years, states have become more involved in economic development activities that involve using state resources to assist private endeavors. The modifying language allowing the use of public resources where authorized by law recognizes this activity by providing for possible exceptions to the prohibition. One drafting alternative would be to limit vagueness by inserting the word "misuse" in the first line after the word "not." However, this might make enforcement more difficult.

Section 210(2) covers situations where an official or employee is using public resources for political activity. A review of several state laws and legal opinions suggests that a consensus approach does not exist regarding the regulation of use of public resources for political activity. The State of Washington applies this type of bar to ballot questions, while other states have various types of prohibitions applicable only to candidates. In adopting the language in §210(2), a definition of political

1 or campaign activity should also be considered for inclusion in the law. Some states, including Connecticut and Wisconsin,
2 limit state-paid materials that can be sent out by an incumbent for a period immediately prior to an election even if those
3 materials could arguably be considered to serve a reasonable governmental purpose. California goes even further. California
4 law prohibits all mailings of more than 200 pieces by public officials at any time. Other states, including Alabama, have
5 broad prohibitions against the use of public resources similar to those found in §226(2).

6
7 Difficult issues can arise under this type of provision, especially regarding the political activities of incumbent elected
8 officials. For example, these officials are often assigned staff and vehicles that may be accompanying the official to events
9 or activities that range from partly political to purely political. Similarly, legislative personnel staff, where these positions
10 exist, may be involved with people or events that could be considered political activity (for a broad review of issues regarding
11 use of legislative staff see "Political Campaign Activity - The Use of Legislative Staff and Resources," published by the New
12 York State Senate Research Service in January of 1988).

13
14 Another drafting consideration regarding §210(2) is whether it should be included in the jurisdiction's ethics law or its
15 election law. A drafting alternative is to include §210(2) in the ethics law with a cross-reference in the election law.

16
17 An alternative to §210 is to rely upon a general prohibition against using an official's or employee's position for personal
18 gain or the gain of another as a means for reaching these types of misconduct. Some states regard a broad approach as a
19 general tool that can be used to prohibit or allow conduct based on whether it appears to be improper. This broader
20 approach was rejected for the model law as not being clear enough to let those covered by the law know the topics to be
21 covered, and because these types of sections have more potential for legal challenge on the grounds of vagueness.

22
23 Sections 210(1) and (2) have been drafted to allow some administrative or statutory flexibility to deal with gray areas, provide
24 for exceptions, and to facilitate more specific guidelines. Wisconsin, for example, has issued guidelines covering specific
25 prohibited uses of state resources for political activity. A drafting alternative would be to only include the prohibitions and
26 not the language providing for exceptions. Generally, some flexibility is seen as desirable; however, given the range of
27 conduct that could be at issue the need to have the option to be specific as frequent problem areas arise is paramount.

28
29 These provisions should be read in conjunction with the provisions applicable to use of public resources that may be found
30 in the campaign finance portion of this Act.

31 32 **§212 Representation by Public Officials and Public Employees**

33
34 (a) (1) A state elective official other than a legislator shall not represent another person before a state or local entity,
35 except as required by statute.

36
37 (2) A legislator shall not represent another person before a state entity, other than a court.

38 39 Comment:

40
41 Consideration might be given to extending this restriction to also apply to representation before a court entity, such as a
42 judicial disciplinary commission, or a state panel that considers discipline of lawyers.

43
44 (3) A public official shall not represent another person before an entity of the same political subdivision which the
45 public official serves, except as required by statute.

46
47 (4) A public official or public employee shall not represent another person before the entity the public official or public
48 employee serves.

49
50 (5) A public employee [restrictions on grade or salary may be appropriate here] receiving compensation other than
51 reimbursement or per diem payments for the public employee's official duties shall not represent another person before an
52 entity of the same political division [of a lesser stature], including a court.

53
54 (6) These restrictions do not apply to the following:

55
56 (A) Purely ministerial matters which do not require discretion on the part of the entity.

57
58 (B) Representation by a public official or public employee in the course of the official or employee's official
59 duties.

60
61 (C) Representation of the public official or public employee in the official or employee's personal capacity.

62
63 (D) Representation by an attorney who is a public official or a public employee before a court when such
64 representation is not otherwise prohibited by applicable codes of attorney or judicial conduct.

(b) The restrictions set forth in this section do not apply if the former public official or former public employee is:

(1) testifying under oath to facts that are within the individual's knowledge, or as an expert witness who does not accept compensation other than regularly provided for by law, or rule for subpoenaed witnesses; or

(2) an elected representative of the federal government, or a local government within the state, or whose principal occupation or employment is with the federal government or a local government, and the appearance, communication, assistance, or representation is on behalf of the government.

Comment:

The preceding section prohibits a public official or public employee from appearing before other government entities as an advocate or attorney for another person. This limitation is imposed to remove the appearance of impropriety that may arise when an official or employee seeks to influence the actions of other government officials who may be more prone to side with the official or employee than with an adversary unknown to them.

Some observers believe that this section should distinguish ethical problems resulting from a public official or public employee having a financial interest in the outcome of a representation case as opposed to problems inherent in the misuse of title or position to achieve leverage in a representation matter.

This section is not intended to apply to members of the same law firm as the public official or public employee, but is intended to cover matters such as sales to public agencies. An alternative approach is to limit the prohibition on representation to appearances before entities on the same level of government that the public official or employee serves. States may also wish to allow public officials or employees to represent clients before such bodies as workers' compensation commissions, whose proceedings are adversarial in nature.

A state with a part-time legislature may wish to permit legislators to represent clients or constituents with appropriate disclosure. Language that would permit this is:

"A member of the legislature may represent a client or constituent before a state or local entity if the member files a disclosure statement with the agency and with the [ethics panel or presiding officer of the chamber in which the members serves] stating the services rendered."

Consideration might also be given to banning appearances by legislators before local governmental bodies, because the leverage that may be applied in such settings is potentially subject to similar abuse as appearance before such state entities.

§214 Votes, Deliberations, and Discussions

(1) A public official or public employee shall not participate in, vote on, influence, or attempt to influence an official decision if the public official or public employee or a business or organization with which the public official or public employee is associated has:

(A) a pecuniary interest in; or

(B) a reasonably foreseeable benefit from;

the matter under consideration by the governmental entity of which the public official or public employee is a member. A potential benefit includes detriment to a business competitor to the public official or public employee or business or organization with which the public official or public employee is associated.

(2) Except as permitted in subdivision (3), a public official described by this subdivision but not exempt shall abstain from participation in the discussion and vote on the decision. The public official's abstention must be recorded in the governmental entity's minutes.

(3) A public official or public employee may participate in, vote on, or influence or attempt to influence an official decision if the only pecuniary interest or reasonably foreseeable benefit that may accrue to the public official or public employee is incidental to the public official's or public employee's position, or which accrues to the public official or public employee as a member of a profession, occupation, or large class, to no greater extent than the pecuniary interest or potential benefit could reasonably be foreseen to accrue to all other members of the profession, occupation, or large class.

(4) The restrictions of this section apply to a business or organization with which a family member of a public official or employee is associated if the family member's pecuniary interest or a business or organization with which a family member is associated has a reasonably foreseeable benefit from a matter under consideration.

1 Comment:

2
3 *Subsections (1) and (2) would generally preclude a public servant from any involvement in an official matter in which the*
4 *public servant had an interest in or potential benefit from the interest if the benefit did not accrue to the entire profession,*
5 *occupation, or large class. The term large class covers employees and should be considered on a case-by-case basis. The*
6 *prohibition would not apply when the public servant's interest or benefit is prohibited by another ethics measure. The*
7 *abstention does not legalize a prohibited interest. This provision applies to an interest not otherwise prohibited. The section*
8 *also prohibits a public official from using public office to harm a business competitor. An additional benefit of this provision*
9 *is that it can be used to gauge whether a measure being voted upon is weak or strong; if there are a number of abstentions,*
10 *the measure may be extremely comprehensive, while few abstentions may suggest that the measure does not cover as much.*
11 *Inchoate interests, those interests likely to arise, but which have not yet been perfected, are intended to be included.*
12

13 **§216 Restraints on Solicitation or Acceptance of Gifts and Gratuities**

14
15 (1) A person shall not, directly or indirectly, give, offer, or promise anything of value to:

16
17 (A) a public official or public employee; or

18
19 (B) a person who has been elected or selected to be a public official or public employee;

20
21 with the intent to:

22
23 (i) influence an official act;

24
25 (ii) influence a public official or public employee, or individual who has been selected to be a public official
26 or public employee, to commit, aid in committing, collude in, or allow fraud on a state, county, or municipal entity; or

27
28 (iii) induce a public official or public employee, or individual who has been selected to be a public official or
29 public employee, to perform or fail to perform an act in violation of the public official or public employee's lawful duty.
30

31 Comment:

32
33 *A number of practitioners believe that proving "intent" is too difficult a standard to meet, and suggest use of the phrase*
34 *(referring to prohibited gifts) "which can reasonably be inferred as intended to benefit or expected to benefit" as an*
35 *alternative. Another option would be to prohibit all gifts and list exceptions.*
36

37 (2) A public official or employee, or individual who has been elected or selected to be a public official or public
38 employee, shall not, directly or indirectly, ask, demand, exact, solicit, seek, accept, assign, receive, or agree to receive
39 anything of value for the public official or employee, or individual who has been selected to be a public official or public
40 employee, or for any other person or entity, in return for being:

41
42 (A) influenced in the performance of an official act;

43
44 (B) influenced to commit, aid in committing, collude in, allow fraud, or make an opportunity for the commission
45 of fraud on a state, county, or municipal governmental entity; or

46
47 (C) induced to perform or fail to perform an act in violation of the public official or public employee's official duty.

48
49 (3) A person shall not, directly or indirectly, give, offer, or promise to give anything of value to another person or
50 entity, with intent to influence testimony under oath or affirmation in a trial or other proceeding before:

51
52 (A) a court;

53
54 (B) a committee or either house or both houses of the legislature; or

55
56 (C) an agency, commission, or officer authorized to hear evidence or take testimony, or with intent to influence
57 a witness to fail to appear.
58

59 (4) A person shall not, directly or indirectly, ask, demand, exact, solicit, seek, accept, assign, receive, or agree to
60 receive anything of value in return for influencing testimony under oath or affirmation in a trial or other proceeding before:

61
62 (A) a court;

63
64 (B) a committee or either house or both houses of the legislature; or
65

1 (C) an agency, commission, or officer authorized to hear evidence or take testimony, or with intent to influence
2 a witness to fail to appear.
3

4 (5) Subsections (3) and (4) do not prohibit the payment or receipt of witness fees provided by law or the payment by
5 the party upon whose behalf a witness is called and receipt by a witness of the reasonable cost of travel and subsistence at
6 a trial, hearing, or proceeding, or, in the case of an expert witness involving a technical or professional opinion, a reasonable
7 fee for time spent in the preparation of the opinion, and in appearing or testifying.
8

9 §218 Private Interests by a Public Official or Public Employee in Public Contracts

10
11 (1) A public official or public employee may not have an interest in a public contract if the public official or public
12 employee is authorized to perform an official function relating to the contract requiring the exercise of discretion.
13

14 (2) A public official or public employee may not have an interest in a public contract if the public official or public
15 employee or a family member of a public official or public employee or a business or organization with which the official
16 is associated has a substantial financial interest.
17

18 Comment:

19
20 *A public official or employee has considerable insight into the procedures and future plans of the agency the official or*
21 *employee serves. The official or employee may at least be acquainted with the agency's procurement personnel. While chances*
22 *are lower that an official or employee would be so well-versed with the personnel and circumstances surrounding a*
23 *procurement by another agency or level of government, there still exists the potential for impropriety, or, at a minimum, for*
24 *the appearance of impropriety. To maintain confidence in the process when it contracts for goods or services with a*
25 *government employee, those responsible for contract approval must be scrupulous in their scrutiny of the process attendant*
26 *to award. If there is a suspicion that the use of inside information or the improper use of position has played a role in the*
27 *decisionmaking process, approval of the contract should be suspended until the suspicion has been resolved.*
28

29 §220 Actions Taken While Negotiating for Employment

30
31 A public official or public employee may not act or fail to take action in a matter affecting a person with whom the
32 public official or public employee is negotiating for employment.
33

34 §222 Representation of Clients After Government Service

35
36 (1) A former public official or former public employee may not represent a person in a matter before a government
37 entity in which the former public official or former public employee participated personally and substantially while a public
38 official or public employee.
39

40 (2) A former public official or former public employee may not represent a person in a matter which was pending
41 under the former public official's or former public employee's official responsibility within one (1) year before the
42 termination of that responsibility for two (2) years after the former public official's or former public employee's service in
43 the public position has ceased.
44

45 (3) A former public official or former public employee may not represent a person in a matter before the
46 government entity which the former public official or former public employee served for a period of one (1) year after the
47 former public official's or former public employee's employment has ceased.
48

49 (4) A former public official may not register as a lobbyist or lobbyist's principal, other than for a government
50 entity, for a period of one (1) year after the latter of:
51

52 (A) the date of leaving office; or

53
54 (B) the date the term of office to which the public official was elected expires.
55

56 §224 Blind Trusts

57
58 (a) A public official or public employee who has a direct, indirect, or beneficial interest in a blind trust which meets
59 the standards set forth below is not required to disclose the pro rata share of interests in real property or investments, or
60 income deriving from such interests or investments, if those interests are acquired by the trustee after the trust complies with
61 subsection (b).
62

63 (b) A blind trust must comply with the following conditions:

64 (i) the trustee must be:
65

1 (a) a disinterested party other than the public official or employee's spouse, child, parent, grandparent,
2 grandchild, brother, sister, parent-in-law, brother-in-law, sister-in-law, aunt, uncle, first cousin, or the spouse of any such
3 person;

4 (b) someone who is not a public official or public employee; and

5
6 (c) someone who has not been appointed to a public entity by the public official or public employee, or by
7 a public official or public employee supervised by the filer.

8
9 (2) the trustee must be given complete discretion to manage the trust, including, but not limited to, the power to
10 dispose of and acquire trust assets without consulting or notifying the filer.

11
12 (3) the trustee must be required to notify the filer of the date of disposition and value at disposition of any original
13 investments or interests in real property so that information can be reported on the filer's personal financial disclosure
14 statement.

15
16 (4) the trustee must be prohibited from disclosing to the filer any information concerning the replacement assets
17 except for information required under this subsection or the minimum tax information which lists only the totals of taxable
18 items from the trust and does not describe the source of individual items of income.

19
20 (5) a copy of the trust agreement must be filed with the Agency within five (5) business days after execution,
21 including:

22 (a) an identification of the assets placed in trust;

23
24 (b) a statement detailing the date of its creation, and the name and address of the trustee; and

25
26 (c) a statement signed by the trustee, under penalty of perjury, stating that he or she has not revealed any
27 information to the filer, except that which is permitted under this section, and that, to the best of the trustee's knowledge,
28 the trust is in compliance with this section.

29
30 (6) (i) if the trust is revoked while the filer is a public official or public employee, or if the filer learns of any
31 replacement assets of the trust, the filer must file an amendment to the most recent statement of personal financial disclosure
32 disclosing the date of revocation and the previously unreported pro rata share of the trust's interests in real property or
33 investments or income deriving from any such interests in real property or investments, and disqualify himself or herself,
34 as necessary.

35
36 (ii) For purposes of this section, any replacement of assets of which the filer learns shall thereafter be treated
37 as though they were original assets of the trust.

38
39 **Comment:**

40
41 *To be truly effective, blind trusts must not allow a public official or public employee to peek at the assets, or to play even*
42 *a minimal role in their management. This section details the requirements for a blind trust, and allows a blind trust to be*
43 *created in compliance with the spirit and letter of the sections on personal financial disclosure and prohibited activities.*

44
45 *Language for this section was based upon a California administrative regulation tempered by additional restrictions from*
46 *Wisconsin.*

47
48 **§226 Personal Financial Disclosure**

49
50 **§226.01 Exceptions to Reporting Requirements**

51
52 This section does not require the disclosure of financial information concerning the following:

53
54 (1) A spouse legally separated from the public official or public employee.

55
56 (2) A former spouse.

57
58 (3) A gift from a family member.

59
60 (4) A campaign contribution that is permitted and reported under [the Campaign Finance Act], if required.

61
62 **§226.02 Individuals Required to File**

63
64 The following individuals shall file a statement of financial interests with the agency:

- (1) A public official or public employee.
- (2) An individual nominated to become a public official or public employee.
- (3) An individual who is a candidate to become a public official.
- (4) A public member.
- (5) A consultant.

Comment:

The requirement that a certain classes of individuals file a statement of financial interest, identifying the official or employee's personal financial interests and that of family members, reminds these people both of what financial interests are actually held, and of the need to avoid affecting them through a personal action or inaction. Violations are also deterred by the knowledge that a filer's financial interests have been made a matter of public record, making it easier to detect a violation. The preferred practice in states of late has been to move toward classes of individuals as a determinant of whom should be required to file, rather than relying upon often misleading salary schedules as the determinant.

§226.04 Deadline for Filing Statements

The statement of financial interest must be filed for the preceding year no later than April 30 of each year, complete through December 31 of the preceding year, except:

- (1) In the case of an individual nominated to be a public official, public member, or public employee, no later than 21 (twenty-one) days after the nomination.
- (2) In the case of a candidate to become a public official, at the time of filing for the public office.
- (3) In the case of a public employee employed after January 1, the later of April 30 or 21 days after employment.

Comment:

The April 30 deadline for filing for the preceding year may appear to be a long deadline, but was chosen to allow an individual to receive and evaluate all of the tax-related materials that he or she might need to fully complete the statement of economic interest, and to review his or her federal and state income tax returns for items that might otherwise have been overlooked on the disclosure forms.

§226.06 Filing Entity for Consultant Statements

A consultant shall file a statement of economic interests no later than twenty-one (21) days after entering into a contractual relationship with the state or a political subdivision if the consultant, or a member of the household of the consultant has an economic interest in an entity:

- (1) whose bid was evaluated by the consultant and who was subsequently awarded the contract by the state or the political subdivision that contracted with the consultant; or
- (2) who was awarded a contract by the consultant.

§226.08 Amounts to be Reported

(1) Where an amount is reported, a filer must report information in the following category amounts unless otherwise indicated:

- (A) \$1,000 - \$9,999
- (B) \$10,000 - \$24,999
- (C) \$25,000 - \$49,999
- (D) \$50,000 - \$99,999
- (E) \$100,000 - \$149,000
- (F) \$150,000 - \$249,000
- (G) \$250,000 - \$499,000

(H) \$500,000 - \$999,999

(I) \$1,000,000 and above.

Comment:

This section requires identification of specific amounts and interests. An alternate, minority view expressed is that the value of a statement of financial interests is found in the identification of financial interests, not identification of a person's wealth or lack of wealth. In this view, a person ought not to have personal financial interests in a business or other entity which the official or employee affects by official action or inaction, and the added information that the investment was valued at between, e.g., \$10,000 and \$24,999, rather than a greater amount, does not exonerate a public official or public employee, nor make a conflict less noteworthy.

In this view, the value of an investment (or income or indebtedness) is not helpful to identification of conflicting interests and is a deterrent to an individual's candid completion of a statement of financial interests. This alternative recommends that a public official or public employee merely identify those entities in which the officials or employees, or members of their families, have invested more than a specified sum (e.g., \$5,000) or from which the family derived more than a specified amount of gross income (e.g., \$500) during the reporting period.

§226.10 Agency Handling of Disclosure Statements

(1) The Agency may grant a reasonable extension of time for filing a statement of financial interests. The extension may not exceed thirty (30) days, except in cases of illness or incapacitation.

(2) A statement of financial interests becomes a public record available for copying when received by the Agency. A statement may be reviewed and copied at the office of the Agency during ordinary business hours.

(3) A statement of financial interests must be retained by the Agency for a period of five (5) years after filing in a form, including microfilming, that will facilitate document retention, except that:

(A) Upon the expiration of three (3) years after an individual ceases to be a public official, the Agency shall, unless the former public official otherwise requests, destroy any statements of financial interests or copies of such statements filed by the former public official and any copies in the possession of the Agency.

(B) Upon the expiration of three years after any election at which a candidate for election as a public official was not elected, or a nominee for public office or public employee is not confirmed in the position, the Agency shall destroy any statements of financial interests or copies of such statements filed by him or her as a candidate,

(i) unless the individual is otherwise required to file a statement; or

(ii) unless the individual otherwise requests.

Comment:

There is some sentiment for retention of disclosure statements by the Agency for an indefinite period of time.

§226.12 Information Required

(1) A statement of financial interests must contain full and complete information concerning the following:

(A) The name, business or governmental address, and work place telephone number of the filer.

(B) The source, type, and amount or value of income received from a governmental entity by the filer and the filer's spouse and dependents.

(C) The source, type, and amount of income in cash or in-kind received by the filer and the filer's spouse, and dependents.

(D) The source, payee, type, date, and exact amount of gifts, including food, lodging, or entertainment:

(i) received by a filer and a filer's spouse and dependents; and

(ii) in excess of fifty dollars (\$50) in a calendar year.

(E) The source, payee, type, date, and exact amount of anything of value received from a lobbyist or lobbyist's principal, including a notation of the word "lobbyist" to identify gifts received by the filer, or filer's spouse and dependents from a person engaged in lobbying activities or any lobbyist organization.

1 **Comment:**

2
3 *This provision does not sanction receipt by an official or employee of anything of value from a lobbyist or a lobbyist's*
4 *principal that is otherwise prohibited under the Lobby Regulation Act.*
5

6 (F) (i) The description (commercial, residential, or rural), value, and location of all real property owned during the
7 calendar year by a public official, public employee, or consultant, and the official's or employee's immediate family
8 members, and the same information for options to purchase such real property;
9

10 (ii) the amount received from the sale, lease, or rental of real property; the name of the person the payment was
11 received from; and
12

13 (iii) an identification of all commercial tenants, lobbyists, and lobbyist's principals (but not individuals who are not
14 lobbyists or lobbyist's principals) from which income of [\$1,000 or more] including rent or purchase money was derived
15 during the reporting period.
16

17 If the sale, lease, or rental of real property involves a state, county, or municipal instrumentality of government, a copy of
18 the contract, lease, or rental agreement must be attached to the statement of financial interests.
19

20 (G) The description, location, and amount of payment received from the sale, lease, or rental of personal property
21 during the preceding calendar year by a public official, or public employee, and the official's or employee's immediate family
22 members, and an identification of all lobbyists and lobbyist's principals from which income of [\$250 or more] was derived
23 during the reporting period.
24

25 If the sale, lease, or rental of personal property involves a state, county, or municipal instrumentality of government, a copy
26 of the contract, lease, or rental agreement must be attached to the statement of financial interests.
27

28 (H) The identity of every business or entity in which the public official or public employee, or a family member
29 of the public official or public employee held securities valued at [should range from \$1,000 to \$5,000] or more during the
30 reporting period.
31

32 (I) A listing by name and address of:
33

34 (i) each creditor to whom the public official, public employee, or consultant, and the official or employee or
35 consultant's immediate family members owed a debt in excess of five hundred dollars (\$500) at any time during the calendar
36 year, other than for a credit card or retail installment contract, and the original amount of the debt and amount outstanding;
37 and
38

39 (ii) the rate of interest charged the public official, public employee, or consultant, and the official or employee
40 or consultant's immediate family members.
41

42 If a discharge of the debt has been made, the date of the transaction must be shown.
43

44 (J) The amount and listing by name and address of all clients represented by the public official, public employee,
45 or consultant, and the official's or employee's immediate family members before a state, county, or municipal regulatory
46 Agency for a fee, reward, gift, or other compensation in excess of [\$250] during the preceding calendar year.
47

48 **Comment:**
49

50 *The disclosure of names of clients by attorneys as a requirement of governmental financial disclosure laws has been upheld*
51 *in some states, including California. At least one other state, Wisconsin, permits such disclosure under a rule of the state's*
52 *supreme court.*
53

54 (K) Every officership, directorship, trusteeship, or other fiduciary relationship held in a business during the
55 disclosure period, the term of office, and the annual compensation.
56

57 (L) The amount and identity of every creditor interest in an insolvent business held during the disclosure period
58 having a value of five hundred dollars (\$500) or more.
59

60 (M) The amount of every loan made to someone by the public official or public employee and their immediate family
61 members in an amount of five hundred dollars (\$500) or more, the original amount of the loan and amount outstanding, rate
62 of interest, payment schedule, and the name and address of the person to whom the loan was made.
63

64 (N) State professional or occupational permits or licenses held.
65

1 (O) The name of a lobbyist who is:

2
3 (i) an immediate family member of the public official or employee;

4
5 (ii) a partner of the public official or employee or of an immediate family member;

6
7 (iii) an officer or director of the public official or public employee's employer, or employer of the public official
8 or public employee or an immediate family member; or

9
10 (iv) a business associate of a public official or public employee or member of the public official's or public
11 employee's immediate family.

12
13 (2) The information shall be filed on a form prescribed by the Agency.
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1 **§300 Lobby Regulation Act**

2
3 This is the Lobby Regulation Act.

4
5 **Comment:**

6
7 *The basis for this form of regulation is that the operation of an open and responsible government requires that the fullest*
8 *opportunity be afforded to the people to petition their government for the redress of grievances, and to express freely to*
9 *officials of the executive or legislative branches their opinions on legislation, pending administrative rules and other*
10 *administrative policy decisions, and on current issues.*

11
12 *Essential to the continued functioning of an open government is the preservation of the integrity of the governmental*
13 *decisionmaking process. To preserve and maintain the integrity of the process, it is necessary to regulate and publicly disclose*
14 *the identity, expenditures, and activities of persons who are hired to influence actions of the executive and legislative*
15 *branches.*

16
17 **§302 Statement of Intent and Purposes**

18
19 The legislature finds and declares the following:

20
21 (1) The operation of open and responsible government requires the fullest opportunity to be afforded to the people
22 to petition their government for the redress of grievances and to express freely their opinions on executive and legislative
23 action.

24
25 (2) The identity and expenditures of certain persons who attempt to influence executive and legislative actions should
26 be publicly identified to preserve and maintain the integrity of government.

27
28 **Comment:**

29
30 *The statement of purpose acknowledges that, while the Constitution affords citizens the right to petition government,*
31 *preservation of integrity in government is an overriding public interest which justifies a limited amount of regulation. The*
32 *statement is similar to those in several states.*

33
34 *A particular matter of concern to the drafters was that the law provide information on who is financing third parties who*
35 *would otherwise remain anonymous, e.g., being able to learn that "Citizens for Low Cost Energy" is actually an energy*
36 *company consortium.*

37
38 *The State of Wisconsin uses the term "regulate" in its statement of purpose. The term could be added to allude to the*
39 *prohibitions set forth.*

40
41 **§304 Definitions**

42
43 The definitions in this section apply throughout this Act.

44
45 §304.01 (a) "Anything of value" includes the following:

46
47 **Comment:**

48
49 *In drafting this section, the intent is to be as expansive as possible to illustrate the range of possibilities for unacceptable*
50 *influence in the governmental process.*

51
52 (1) A pecuniary item, including money, or a bank bill or note.

53
54 (2) A promissory note, bill of exchange, order, draft, warrant, check, or bond given for the payment of money.

55
56 (3) A contract, agreement, promise, or other obligation for an advance, conveyance, forgiveness of indebtedness,
57 deposit, distribution, loan, payment, gift, pledge, or transfer of money.

58
59 (4) A stock, bond, note, or other investment interest in an entity.

60
61 (5) A receipt given for the payment of money or other property.

62
63 (6) A right in action.

64
65 (7) A gift, tangible good, chattel, or an interest in a gift, tangible good, or chattel.

- 1 (8) A loan or forgiveness of indebtedness.
2
3 (9) A work of art, antique, or collectible.
4
5 (10) An automobile or other means of personal transportation.
6
7 (11) Real property or an interest in real property, including title to realty, a fee simple or partial interest, present or
8 future, contingent or vested within realty, a leasehold interest, or other beneficial interest in realty.
9
10 (12) An honorarium or compensation for services.
11
12 (13) A rebate or discount in the price of anything of value unless the rebate or discount is made in the ordinary course
13 of business to a member of the public without regard to that person's status as a public official or public employee, or the
14 sale or trade of something for reasonable compensation that would ordinarily not be available to a member of the public.
15

16 Comment:

17 *The latter portion of this provision is designed to prevent someone from currying favor with an official by selling the official*
18 *a ticket to a sold-out athletic event such as the Super Bowl at face value if such a ticket would not otherwise ordinarily be*
19 *available to the public official or employee on similar terms without regard to his or her governmental status. This provision*
20 *recognizes that certain transactions, even though ostensibly fair trades for value, are not of the type which should be*
21 *permitted.*
22

- 23
24 (14) A promise or offer of employment.
25
26 (15) Any other thing of value that is pecuniary or compensatory in value to a person.
27
28 (b) The agency may also promulgate rules and regulations defining additional things of value.
29
30 (c) "Anything of value" does not mean a campaign contribution properly received and reported, if reportable, as required
31 under the Campaign Finance Act.
32

33 §304.02 "Business associate" includes the following:

- 34
35 (1) An employer.
36
37 (2) A general or limited partnership, or a general or limited partner within the partnership.
38
39 (3) A corporation:
40
41 (A) that is family-owned; or
42
43 (B) in which all shares of stock are closely-held;
44
45 or the shareholders, owners, or officers of the corporation.
46
47 (4) A corporation in which the public official or employee, or other person subject to the Act:
48
49 (A) has an investment interest;
50
51 (B) owns; or
52
53 (C) has a beneficial interest in shares of stock which constitute more than:
54
55 (i) five percent (5%) of the value of the corporation, or
56
57 (ii) [a specific dollar figure, probably \$500 to \$1,000].
58
59 (5) A corporation, business association, or other business entity in which the public official or employee, or other person
60 subject to the Act serves as an agent or a compensated representative.
61
62 (6) An association not otherwise covered by this definition between the public official or employee, or other person
63 subject to the Act, and another person, which involves the conduct of a common enterprise.
64
65

1 §304.03 (a) "Compensation" includes:

2
3 (1) an advance, conveyance, forgiveness of indebtedness, deposit, distribution, loan, payment, gift, pledge, or transfer
4 of money or anything of value; or

5
6 (2) a contract, agreement, promise, or other obligation for an advance, conveyance, forgiveness of indebtedness,
7 deposit, distribution, loan, payment, gift, pledge, or transfer of money or anything of value, for services rendered or to be
8 rendered.

9
10 (b) The term does not include reimbursement of expenses if:

11
12 (1) the reimbursement does not exceed the amount actually expended for the expenses; and

13
14 (2) it is substantiated by an itemization of expenses.

15
16 §304.04(a) "Contribution" means:

17
18 (1) a gift, subscription, loan or forgiveness of a loan, conveyance, advance, payment, distribution, or deposit of
19 money or anything of value made to a political party or for influencing the results of an election, or reducing the debt of
20 a candidate for nomination or election to public office;

21
22 (2) a written contract, promise, or agreement to make a contribution for any purpose described in subdivision (1);

23
24 (3) an expenditure made by a person or committee (as defined under the Campaign Finance Act), other than a
25 candidate's committee, with the cooperation of, or in consultation with, a candidate, candidate committee, or candidate's
26 agent or that is made in concert with, or at the request or suggestion of, a candidate, candidate committee, or candidate's
27 agent;

28
29 (4) the payment to a person other than a candidate or committee of compensation for personal services that are
30 rendered to a candidate or committee at a rate less than the reasonable and customary charge to the candidate or committee
31 for those services;

32
33 (5) funds or anything of value received by a committee that are transferred from another committee or other source;

34
35 (6) the purchase of tickets for an event such as a meal, reception, rally, and a similar fundraising event;

36
37 (7) the candidate's own money or property used on behalf of that candidate's candidacy; or

38
39 (8) the granting of a discount or rebate:

40
41 (A) not extended to the public generally; or

42
43 (B) by a television or radio station not extended equally to all candidates for the same office.

44
45 (b) A contribution does not include the following:

46
47 (1) Volunteer personal services.

48
49 (2) A payment made by an individual for the individual's own travel expenses if the payment is made voluntarily
50 without an understanding or agreement that the payment will be repaid to the individual.

51
52 (3) A payment made by an occupant of a residence or office for costs related to a meeting or fundraising event held
53 in the occupant's residence or office if the costs for the meeting or fundraising event do not exceed five hundred dollars
54 (\$500). However, if the occupant hosts more than one (1) event in an election cycle for the same beneficiary, all subsequent
55 payments that exceed five hundred dollars (\$500) in the aggregate are a contribution.

56
57 (4) A loan of money made in the ordinary course of business by a financial institution authorized to transact business
58 in this state at terms and interest rates generally available to a member of the public without regard to that person's status
59 as a public official or public employee by the institution.

60
61 (5) Expenditures for nonpartisan voter registration.

62
63 (6) A communication by a corporation, organization, or association aimed at its members, owners, stockholders,
64 executive administrative personnel, or their families.

(7) An offer or tender of a contribution if the offer or tender is expressly and unconditionally rejected and not negotiated, deposited, or used, including as collateral, and returned to the contributor within two (2) days or to the state, if the contribution is an anonymous contribution prohibited under this Act.

§304.05 "Executive action" means the proposal, drafting, development, consideration, amendment, adoption, approval, promulgation, issuance, modification, rejection, or postponement by a state entity of a rule, regulation, order, decision, determination, or other quasi-legislative or quasi-judicial action or proceeding.

§304.06 "Executive agency" means:

- (1) an agency, board, commission, or other body in the executive branch of state government; or
- (2) an independent body of state government that is not a part of the legislative or judicial branch.

§304.07 "Executive official" includes:

- (1) a member or employee of a state agency, board, commission, or other body in the executive branch of state government; or
- (2) a public official or employee of the state who takes an executive action.

§304.08 "Expenditure" means the following:

- (1) A purchase, payment, distribution, loan, forgiveness of a loan or payment of a loan by a third party, advance, deposit, transfer of funds, a promise to make a payment, or a gift of money or anything of value for any purpose.

Comment:

This provision is designed to have the broadest possible interpretation, and should not in any way limit the scope of the term "expenditure." The intent of the drafters was to provide reported information that describes accurately and fully any financial activity on the part of a lobbyist. Of particular concern was the full disclosure of any financial or otherwise valuable relationship or transaction of any kind between a lobbyist and a public official or public employee or member of their immediate families. The definition also includes compensation.

- (2) A payment to a lobbyist for salary, fee, compensation for expenses, or other purpose by a person employing, retaining, or contracting for the services of the lobbyist separately or jointly with other persons.

- (3) A payment in support of or assistance to a lobbyist or the lobbyist's activities, including the direct payment of expenses incurred at the request or suggestion of the lobbyist.

- (4) A payment that directly benefits a public official or a member of the official's immediate family.

- (5) A payment, including compensation, payment, or reimbursement for the services, time, or expenses of an employee for or in connection with direct communication with a public official.

- (6) A payment for or in connection with soliciting or urging other persons to enter into direct communication with a public official.

- (7) A payment or reimbursement for food or beverages.

- (8) A payment or reimbursement for categories established in this Act.

§304.09 (a) "Gift" means anything of value other than a contribution under §304.03(a)(1) to [a committee as defined under the Campaign Finance Act] to the extent that consideration of equal or greater value is not received. The term includes a rebate or discount in the price of anything of value unless the rebate or discount is made in the ordinary course of business to a member of the public without regard to that person's status as a candidate.

- (b) The term does not include the following:

- (1) Printed informational promotional material.

Comment:

The intent of this provision is to permit the limited acceptance and use of material advertising something, such as books, reports, pamphlets, calendars, or periodicals, that would have limited value to the recipient, and are clearly produced to promote an entity or product, rather than to serve as a more general gift that might be intended or used as leverage.

1 (2) A gift that:

2
3 (A) is not used; and

4
5 (B) no later than thirty (30) days after receipt, is returned to the donor or delivered to a charitable organization and
6 is not claimed as a charitable contribution for federal income tax purposes.

7
8 (3) A gift, devise, or inheritance from an individual's spouse, child, parent, grandparent, brother, sister, parent-in-law,
9 brother-in-law, sister-in-law, nephew, niece, aunt, uncle, or first cousin or the spouse of that individual, if the donor is not
10 acting as the agent or intermediary for someone other than a person covered by this paragraph.

11
12 (4) A personalized plaque or trophy with a value that does not exceed one hundred and fifty dollars (\$150).

13
14 §304.10 "Immediate family" means an unemancipated child residing in a public official's or public employee's household,
15 a spouse of a public official or public employee, or an individual claimed by that public official or public employee or that
16 public official's or public employee's spouse as a dependent for tax purposes.

17
18 §304.11 "Legislative action" includes the following:

19
20 (1) Preparation, research, drafting, introduction, consideration, modification, amendment, approval, passage, enactment,
21 tabling, postponement, defeat, or rejection of a bill, resolution, amendment, motion, report, nomination, appointment, or
22 other matter by:

23
24 (A) the legislature; or

25
26 (B) a member or employee of the legislature acting or purporting to act in an official capacity.

27
28 (2) Action by the governor in approving or vetoing a bill, resolution, or other action of the legislature.

29
30 (3) Action by the legislature in:

31
32 (A) overriding or sustaining a veto by the governor; or

33
34 (B) considering, confirming, or rejecting an executive appointment of the governor.

35
36 §304.12 "Legislative official" includes:

37
38 (1) a member, member-elect, or presiding officers of the legislature;

39
40 (2) a member of a commission or other entity established by and responsible to the legislature, or either house of the
41 legislature; or

42
43 (3) a staff member to a member or member-elect of the legislature, or to a member of a commission or other entity
44 established by and responsible to the legislature, or either house of the legislature.

45
46 §304.13 "Lobbying" means:

47
48 (1) influencing or attempting to influence legislative or executive action through oral or written communication;

49
50 (2) solicitation of others to influence legislative or executive action; or

51
52 (3) an attempt to obtain the goodwill of a legislative or executive official by non-educational activities intended to
53 influence the official's actions.

54
55 **Comment:**

56
57 *There is some divergence of opinion with respect to subsection (3) of this definition. Some feel that unfettered restrictions on*
58 *"goodwill" activities could interfere with genuinely helpful educational efforts. Most educational efforts arguably have a*
59 *side effect of building "goodwill" among legislators, many of whom appreciate having the information. However, many*
60 *lobbying activities can be explained away as "educational" in nature. An official invited for an afternoon of golf may be told*
61 *in passing about a problem the lobbyist has, and have the day's activities attributed to "educational activities." Jurisdictions*
62 *may wish to add a proviso about the activity being "reasonably intended to influence" the official, or clarify "educational*
63 *activities" in their regulations.*
64
65
66

1 *There is also some sentiment for regulating what some have termed as the "selling of access": "opening doors" or arranging*
2 *a meeting for someone. Jurisdictions should determine whether they wish such an expansive interpretation made of their laws.*
3 *If so, consideration should be given to making these activities more explicit in the statutory language.*
4

5 §304.14 "Lobbyist" means an individual who:
6

- 7 (1) is employed and receives payments, or who contracts for economic consideration, including reimbursement for
8 reasonable travel and living expenses, for the purpose of lobbying;
9
10 (2) is an individual who represents an organization, association, or other group for the purpose of lobbying;
11
12 (3) is a sole proprietor who has a pecuniary interest in legislative or executive action; or
13
14 (4) is a public official or public employee who lobbies.
15

16 **Comment:**
17

18 *This provision should be read in conjunction with the ethics model law provision that prohibits certain lobbying activities*
19 *by public officials in their first year after leaving office.*
20

21 §304.15 "Lobbyist's client" means the person in whose behalf the lobbyist influences or attempts to influence legislative
22 or executive action.
23

24 §304.16 "Person" means an individual, proprietorship, firm, partnership, joint venture, joint stock company, syndicate,
25 business trust, estate, company, corporation, association, club, committee, organization, or group of persons acting in
26 concert.
27

28 §304.17 "Public employee" means an individual appointed to a position, including a person appointed to a position created
29 by statute, whether compensated or not, in state [, county, or municipal] government, including members of the judiciary.
30

31 §304.18 "Public official" means an individual elected to a state [, county, or municipal] office, or an individual who is
32 appointed to fill a vacancy in the office. The term includes a member of the [board of regents or trustees, chancellor and vice
33 chancellor or equivalent of the state university system, and a president of a state university].
34

35 §304.18 "Value" means the retail cost or fair market worth of an item or items, whichever is greater.
36

37 **§306 Registration**
38

39 **§306.01 Registration Requirements**
40

41 A lobbyist or lobbyist's client shall file a registration statement with the Agency within five (5) days after becoming a
42 lobbyist or lobbyist's client.
43

44 **§306.02 Contents of Registration Statement**
45

46 A registration statement must include the following information:
47

- 48 (1) The name, address, and telephone number of the lobbyist.
49
50 (2) The name, address, and telephone number of the lobbyist's client.
51
52 (3) The kind of business of the lobbyist's client.
53
54 (4) The full name of the individual who controls the lobbyist's client, the partners, if any, and officers of the
55 lobbyist's client.
56
57 (5) The full name, address, and telephone number of each lobbyist employed by or representing the lobbyist's
58 client.
59
60 (6) An identification of the subject matter in which the lobbyist or lobbyist's client will engage in lobbying, including
61 the name of the piece of legislation or name of a case or action, if known.
62
63 (7) The name and address of a legislative or executive official who:
64
65
66

(A) is employed by; or

(B) has a business association with the lobbyist or the lobbyist's client.

(8) Certification by the lobbyist or lobbyist's client that the information contained on the lobbyist registration statement is true and correct.

(9) If the [state] is a lobbyist's client, the [state] is exempt from filing a lobbyist's client registration statement.

Comment:

Additional information required in some states includes both the permanent address and office address of the lobbyist; identification of every bill number of a bill that is lobbied for or against; authorization of the lobbyist's client for the lobbyist to engage in lobbying on the lobbyist's client's behalf; and registration by the lobbyist's client.

Some states also require a license or badge to be issued to registered lobbyists; specify that a licensing agency maintain a docket; mandate a termination form; and require an addendum to a registration statement to be filed if any changes are necessary.

§308 Lobbyist Reporting

(1) A lobbyist shall file a separate report for each lobbyist's client of contributions, expenditures, and gifts with the Agency containing all contributions or expenditures that were initiated or paid by the lobbyist on behalf of each lobbyist's client during the prior calendar quarter.

(2) Each expenditure for the purpose of lobbying must be reported by the category of the expenditure as determined.

(3) The report must include a description of a contribution or expenditure of fifty dollars (\$50) or more in the aggregate in one (1) year initiated or made by a lobbyist to an executive or legislative official.

(4) For each legislative or executive official or employee in whose behalf a payment of fifty dollars (\$50) or more in the aggregate in one (1) year was initiated or made by the lobbyist under subsection (3), the report must also include the:

(A) name of the legislative or executive official in whose behalf the payment was made;

(B) name of the person receiving the payment;

(C) name of the person making the payment;

(D) amount of the payment; and

(E) date of the payment.

(5) A report of contributions and expenditures must be filed with the Agency no later than January 31, April 30, July 31, and October 31 for each preceding calendar quarter.

(6) The report due January 31 shall include a cumulative total for the calendar year for all reportable categories.

Comment:

Categories must be carefully defined to ensure that expenditures are fully and appropriately disclosed. Categories might, for example, include food and beverages; entertainment; compensation to the client; compensation for support personnel; reimbursements; research and education; communication; and travel and lodging.

§310 Lobbyist's Client Reporting

(1) No later than January 31 and July 31 of each year, a lobbyist's client shall file a report of contributions and expenditures with the Agency. The report must contain information on all contributions or expenditures paid by the lobbyist's client during the preceding six (6) calendar months.

(2) The report must report expenditures for the purpose of lobbying according to the following categories, including:

(A) Salaries, fees, and retainers paid to lobbyists.

(B) Those portions of office rent, utilities, supplies, and compensation of support personnel attributable to lobbying activities.

1 (C) Other lobbying expenditures.

2
3 (3) For each legislative or executive official or employee in whose behalf a payment of fifty dollars (\$50) or more in
4 the aggregate in one (1) year was initiated or made by the lobbyist's client under subsection (3), the report must also include
5 the:

- 6
7 (A) name of the legislative or executive official in whose behalf the payment was made;
8
9 (B) name of the person receiving the payment;
10
11 (C) name of the person making the payment;
12
13 (D) amount of the payment; and
14
15 (E) date of the payment.
16

17 An expenditure previously reported by a lobbyist under §308.04 need not be reported in the report of a lobbyist's client.

18
19 (4) Each expenditure for the purpose of lobbying must be reported by the category of the expenditure as determined.
20

21 (5) The report must include a description of a contribution or expenditure of fifty dollars (\$50) or more in the aggregate
22 in one (1) year initiated or made by a lobbyist to an executive or legislative official.
23

24 (6) If the [state] is a lobbyist's client, the [state] is exempt from filing an annual report.
25

26 (7) The report due January 31 shall include a cumulative total for the calendar year for all reportable categories.
27

28 §312 Exemptions

29 The registration and reporting provisions of this Act do not apply to:

- 30
31 (1) (A) An elective state official;
32
33 (B) A legislator; or
34
35 (C) A legislative staff member;
36

37 acting in an official capacity.

38
39 (2) An individual who:

- 40
41 (A) represents only the individual;
42
43 (B) purports to represent only the individual;
44
45 (C) receives no compensation or anything of value for lobbying; and
46
47 (D) has no pecuniary interest in the legislative or executive action; and the individual's lobbying does not exceed:
48
49 (i) [between 16 and 60] hours; or
50
51 (ii) [between \$100 and \$1,000];
52

53 in any calendar quarter.

54
55 (3) An individual who:

- 56
57 (A) limits lobbying solely to formal testimony before a public meeting of a legislative body, or executive agency;
58
59 and
60
61 (B) registers the appearance in the records of the public body.
62

63 (4) A person whose lobbying does not exceed:

- 64
65 (A) [between 16 and 60] hours; or
66

(B) [between \$100 and \$1,000];

in any calendar quarter.

(5) News media and employees of the news media whose activity is limited solely to the publication or broadcast of news, editorial comments, or paid advertisements that attempt to influence legislative or executive action.

Comment:

This section exempts lobbying by state elective officials, but is intended to apply only to lobbying by officials on public matters pertinent to their official duties. While this section should be broadly interpreted, this section should not justify, e.g., an elective Supreme Court Clerk to lobby on a wetlands preservation bill without registering and reporting if the applicable thresholds are reached.

Some states also exempt lobbying at the invitation of a legislative or executive official. This exemption was not included because of the subjectivity involved, and the difficulty in verifying such invitations. The exemption provided for legislative or executive officials should address some of the concerns regarding invited or required testimony.

Some states also exempt bona fide religious groups, and professional bill drafting services or technical advice regarding the legislative process.

The intent of this section is to require corporations to file statements if they exceed the applicable thresholds.

§314 Prohibited Conduct

(1) A lobbyist, lobbyist's client, or a person acting on behalf of a lobbyist or a lobbyist's client shall not offer, solicit, initiate, facilitate, or provide to or on behalf of, a legislative official or candidate for the legislature, and a legislative official or candidate for the legislature shall not solicit or receive a:

(A) gift;

(B) loan, other than a loan made in the ordinary course of business by a financial institution authorized to transact business in this state at terms and interest rates generally available to a member of the public without regard to that person's status as a public official or public employee by the institution; or

(C) campaign contribution;

during a legislative session.

(2) A lobbyist, lobbyist's client, or a person acting on behalf of a lobbyist or a lobbyist's client shall not offer or provide to, and an executive official shall not solicit or receive a:

(A) gift;

(B) loan, other than a loan:

(i) made by a financial institution authorized to transact business in this state;

(ii) in the ordinary course of business; or

(C) campaign contribution;

during the time an executive action affecting the lobbyist, lobbyist's client, or a client of either the lobbyist or the lobbyist's client is being considered by the executive official.

(3) The prohibitions in subsections (1) and (2) do not apply to food or beverage for immediate consumption, provided the food or beverage transaction is properly reported under this Act.

(4) A lobbyist, lobbyist's client, or a person acting on behalf of a lobbyist or a lobbyist's client shall not offer, solicit, initiate, facilitate, or provide to or on behalf of, a legislative official or candidate for the legislature or executive branch official, a gift or gifts having a value in excess of fifty dollars (\$50) in a calendar year.

(5) A lobbyist shall not contract to receive, or accept compensation dependent upon the success or failure of a legislative or executive action.

(6) A lobbyist shall not knowingly or willfully make or cause to be made a false statement or misrepresentation of the facts to a legislative or executive official.

1 (7) A lobbyist shall not cause the introduction of legislative or executive action for the purpose of obtaining employment
2 to lobby in support of or in opposition to the legislative or executive action.

3
4 (8) A lobbyist shall not serve as a treasurer for a candidate or committee.

5
6 (9) A lobbyist shall not make a gift that would violate the provisions of [§206 of the Ethics Act].
7

8 **Comment:**

9
10 *Some states also prohibit bribery or other inducements in attempting to influence legislative action; the use or state of lists*
11 *of registered lobbyists for fundraising purposes; retention of an unregistered lobbyist; and the post-government employment*
12 *as a lobbyist of certain high-ranking officials.*

13
14 *Subsection (9) makes it illegal for a lobbyist to engage in conduct that would cause a public official or public employee to*
15 *be in violation of the provisions of the Ethics Act.*
16

17 **§316 Retention of Records by a Lobbyist or Lobbyist's Client**

18
19 A lobbyist and a lobbyist's client shall preserve for a period of one year from the [date of the state statute of limitations
20 for the activity] all accounts, bills, books, papers, receipts, and other documents and records necessary to substantiate the
21 expenditure reports submitted under this Act.
22

23 **§318 Termination**

24
25 (1) A lobbyist may seek to terminate a lobbyist registration by filing a report required under §308 or §310 including
26 information through the last day of lobbying activity.
27

28 (2) A termination report must indicate that the lobbyist intends to use the report as the final accounting of lobbying
29 activity.
30

31 (3) Termination does not become effective until approved by the Agency. In determining whether the termination should
32 become effective, the Agency shall consider the following:
33

34 (A) Completeness and accuracy of reporting.

35 (B) The likelihood that the lobbying activity will continue.

36
37 (C) Any circumstances about the lobbyist or lobbyist's client that the Agency deems appropriate in determining
38 whether the termination should be honored.
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67

1 **§500 Agency Organization and Responsibilities**

2
3 **§500.01 Establishment and Composition of the Agency**

4
5 (1) The Agency is established as an independent authority.

6
7 (2) The Agency consists of five (5) members. The members are appointed by the governor from a panel of ten (10)
8 individuals nominated by the chief justice of the [state court of last resort]. A member of the Agency must be a citizen of
9 the United States and a resident of this state. A member of the Agency shall not be a:

10
11 (A) public official;

12 (B) public employee; or

13 (C) candidate;

14 (D) lobbyist or lobbyist's principal;

15
16 or a member of the immediate family of such an individual while a member of the Agency.

17
18 **Comment:**

19
20 *Consideration might also be given to language that would prohibit certain classes of campaign contributors from being*
21 *members of the Agency. Language might be drafted as follows:*

22
23 (E) contributor within two years of appointment of more than [\$100] to:

24 (i) the campaign committee of a person seeking election to a public office to which this Act pertains; or

25 (ii) a political party.

26
27 (3) A member of the Agency serves a term of four (4) years. However, the initial members of the Agency serve the
28 following terms:

29 (A) One (1) member serves a term of one (1) year.

30 (B) One (1) member serves a term of two (2) years.

31 (C) One (1) member serves a term of three (3) years.

32 (D) Two (2) members serve a term of four (4) years.

33
34 (4) An individual may not serve more than two (2) consecutive terms as a member of the Agency. A member of the
35 Agency continues in office until a successor is appointed and has qualified.

36
37 **Comment:**

38
39 *To foster consistency of decisions, predictability of the Agency's treatment of matters, and institutional memory of prior*
40 *actions, terms of at least four years are encouraged. Longer terms may also be appropriate.*

41
42 **§500.02 Election and Duties of the Chair and Vice Chair**

43
44 The chair and vice chair of the Agency are elected by a majority of the members of the Agency. The chair and vice chair
45 serve a term of one (1) year, and may be re-elected. The chair presides at meetings of the Agency. The vice chair presides
46 in the absence or disability of the chair.

47
48 **§500.03 Agency Meetings**

49
50 The Agency meets at the call of the chair or a majority of its members. A quorum consists of three (3) or more members.
51 An affirmative vote of three (3) or more members is necessary for an Agency action.

52
53 **§500.04 Filling of a Vacancy**

54
55 A vacancy is filled for the remainder of an unexpired term in the same manner as an original appointment, except that
56 the chief justice of the [state court of last resort] shall nominate two (2) individuals for gubernatorial appointment to a
57 vacancy.

1 §500.05 Removal of a Member
2

3 The governor may remove or suspend a member of the Agency upon filing with the Agency a written finding of the
4 member's misfeasance or malfeasance, and upon serving a copy of the written finding on the member removed or suspended.
5

6 §500.06 Expenses for Agency Members
7

8 A member of the Agency serves without compensation, but is afforded actual and necessary expenses incurred in the
9 performance of duties.
10

11 §500.07 Agency Staff
12

13 (1) The Agency may employ and remove at its pleasure an executive director to perform its functions. The executive
14 director shall have the responsibility for employing and removing other personnel as may be necessary.
15

16 Comment:
17

18 *Some jurisdictions require agencies to avail themselves of central state legal services rather than permitting the employment*
19 *of attorneys by individual agencies. The commission established by this Act should be permitted to employ attorneys for its*
20 *own purposes, rather than being forced to rely upon the vagaries of the state legal structure to have access to counsel. States*
21 *might wish to expressly provide for hiring of legal help in their statutes.*
22

23 (2) An executive director shall administer the daily business of the Agency, and perform the duties assigned by the
24 Agency.
25

26 (3) The Agency shall fix the compensation of its employees. The staff of the Agency is outside of the [classified state
27 service]. A member of the staff of the Agency shall not be:
28

29 (A) a public official; or
30

31 (B) a candidate;
32

33 while a member of the staff of the Agency.
34

35 §500.08 Filing of Statement of Financial Disclosure
36

37 A member and an employee of the Agency shall file a statement of financial disclosure with the Agency, which shall be
38 a public record.
39

40 §500.09 Prohibition on Political Activity by Agency Members and Staff
41

42 A member of the Agency and its staff shall not participate in political management or in a political campaign during the
43 member or employee's term of office or employment. A member of the Agency and its staff shall not:
44

45 (1) make a financial contribution to a candidate;
46

47 (2) make a financial contribution to a political committee; or
48

49 (3) knowingly attend a fundraiser held for the benefit of a candidate or political committee.
50

51 §500.10 Prohibition on Lobbying Activity by Agency Members and Staff
52

53 (1) A member of the Agency and its staff may not be a registered lobbyist or participate in lobbying activities that would
54 require the individual to register as a lobbyist, unless the lobbying activities are:
55

56 (A) authorized by the Agency;
57

58 (B) conducted on behalf of the Agency; and
59

60 (C) permitted under state law.
61

62 §502 Agency Authority
63

64 §502.01 General Powers of the Agency
65

1 Except as expressly provided otherwise, the Agency is responsible for administering the provisions of this chapter. The
2 Agency shall have the power and duties set forth in this Act.

3
4 §502.02 Issuance of Advisory Opinions
5

6 (1) The Agency may render advisory opinions concerning this Act based upon real or hypothetical circumstances, when
7 requested in writing by:

8 (A) a public official or public employee;

9 (B) a former public official or former public employee; or

10 (C) a person who is personally and directly involved in the matter.

11 (2) An advisory opinion request by a public official or public employee concerning his or her own affairs or the affairs
12 of a subordinate public official or employee or a potential public official or public employee shall be confidential.

13 (3) An advisory opinion request by a former public official or former public employee concerning his or her own affairs
14 shall be confidential.

15 (4) An advisory opinion request by a person concerning his or her own affairs with regard to potential public service
16 shall be confidential.

17 (5) An advisory opinion shall be in writing and must be made available to the public, but in the case of a confidential
18 advisory opinion, the identity of the person requesting the opinion and of a person whose affairs are involved in the
19 circumstances described in the request for the advisory opinion, are confidential.

20 (6) An advisory opinion shall be deemed rendered when signed by three or more Agency members subscribing to the
21 advisory opinion.

22 (7) An Agency member who agrees with the advisory opinion but for different reasons than as stated may file a written
23 concurring opinion.

24 (8) An Agency member who disagrees with the advisory opinion may file a written dissenting opinion, which will be
25 placed at the end of the majority opinion, or at the end of a concurring opinion, if any.

26 (9) Agency attorneys may issue advice either orally or in writing concerning this Act based upon real or hypothetical
27 circumstances when requested when such advice is consistent with this Act or previous advisory opinions issued by the
28 Agency, provided that such advice shall be confidential when an advisory opinion on the matter would be confidential.
29 Advice so issued by Agency attorneys need not be made available to the public.

30 (10) An advisory opinion requested under this section and any related internal Agency materials requested or prepared
31 as a result of such an advisory opinion request shall be confidential.

32 (11) The confidentiality of an advisory opinion may be waived either:

33 (A) in writing, by the person who requested the advisory opinion; or

34 (B) by majority vote of the members of the Agency, if a person makes or purports to make public the substance
35 or any portion of an advisory opinion requested by or on behalf of the person. The Agency may, in such an event, also vote
36 to make public the advisory opinion request and related materials.

37 Comment:

38 *This provision authorizes the Agency to issue advisory opinions, but leaves to the Agency's discretion the assessment of the
39 appropriateness of issuing an opinion.*

40 *There is considerable merit to the idea of having anyone be able to request an advisory opinion, and for having such an
41 advisory opinion request and response be a matter of public record. However, allowing anyone to request an advisory opinion
42 can tie up the actions of an agency with partisan- or personal-based attacks upon the actions of a public official or employee.
43 Public officials or employees should be able to request advisory opinions about themselves and their subordinates, and there
44 is significant sentiment for keeping these requests and responses confidential. Many feel, however, that ethics would be greatly
45 fostered by giving the Agency the authority to issue a non-confidential advisory opinion to a member of the public who is
46 involved in some matter involving a public official or public employee, and a state official or employee should also have the
47 ability to request a public advisory opinion about another state official or employee who is not a subordinate. For example,
48 a member of a state board might want to know whether another member of the board has a potential conflict of interest.*

1 *Permitting members of the public who might not have a particular interest to request an advisory opinion would serve the*
2 *purpose of having an advisory opinion on record if, for example, a board member refused to request such an opinion with*
3 *respect to a potential conflict that he or she might have. Ethics agencies around the nation are frequently contacted by the*
4 *news media or members of the public regarding something that a state official or employee is doing. Without the ability to*
5 *issue an advisory opinion to a member of the public, the agencies have a difficult time responding to these concerns. Even*
6 *if the Agency contacts the state official or employee involved, their advice would normally be privileged or confidential, and*
7 *thus they would have a problem responding to a member of the public or news media with respect to the particular situation.*

8
9 *The section permitting staff attorneys to issue advice either orally or in writing, when such advice is based upon clear law*
10 *or precedents is set forth to cover those situations in which there is not a need to issue an advisory opinion to answer a*
11 *question.*

12
13 *Jurisdictions should closely examine their open meetings laws to determine whether a specific exemption to such laws that*
14 *would permit the Agency to meet in closed session to consider requests for advisory opinions is necessary.*

15 §502.03 Conduct of Investigations

16
17
18 (1) The Agency may conduct investigations, inquiries, and hearings concerning any matter covered by this Act and
19 certify its own acts and records.

20
21 (2) The Agency may determine whether to:

22 (A) investigate; and

23 (B) act upon a complaint.

24
25
26
27 When the Agency determines that assistance is needed in conducting investigations, or when required by law, the Agency
28 shall request the assistance of other appropriate agencies.

29 §502.04 Adoption of Rules

30
31
32 The Agency shall adopt, amend, repeal, and enforce rules to implement this Act.

33 §502.05 Prescription of Forms and Preservation of Documents

34
35
36 The Agency shall prescribe and provide forms for reports, statements, notices, and other documents required by this Act.
37 Documents filed with the Agency as public records must be retained for at least four (4) years from the date of their receipt.

38 Comment:

39
40
41 *States should check this provision against other provisions of state law which govern retention of records. Most states have*
42 *a general statute which covers the retention and disposition of public records.*

43 §502.06 Review of Statements

44
45 The Agency shall:

46
47 (1) review each statement filed in accordance with this Act for compliance with its provisions; and

48
49 notify the individual on whose behalf the statement is filed of an omission or deficiency.

50 §502.07 Access to Statements

51
52
53 The Agency shall make statements and reports filed with the Agency available upon the written request of an individual
54 for public inspection and copying during regular office hours. The Agency shall make copying facilities available free of
55 charge or at a cost not to exceed actual cost. A statement may be requested by mail, and the Agency shall mail a copy of
56 the requested statement to the individual making the request upon payment of appropriate postage costs. ...

57 §502.08 Maintenance of Statements

58
59
60 The Agency shall compile and maintain an index of reports and statements filed with the Agency to facilitate public
61 access to the reports and statements.

1 §502.09 Access to Information for Investigations
2

3 The Agency may require the cooperation of a state agency, official, employee, and other person whose conduct is
4 regulated by this Act. An individual shall make information reasonably related to an investigation available to the Agency
5 on written request.
6

7 §502.10 Annual Report of the Agency
8

9 No later than [December 1] of each year, the Agency shall report to the legislature and the governor on the Agency's
10 activities in the preceding [fiscal] year. The report must contain the names and duties of each individual employed by the
11 Agency, and a summary of Agency determinations and advisory opinions. The Agency shall prevent disclosure of the identity
12 of a person involved in [decisions or] confidential advisory opinions. The report may contain other information on matters
13 within the Agency's jurisdiction and recommendations for legislation as the Agency deems desirable.
14

15 §502.11 Publication of Information
16

17 The Agency shall publish and make available to the persons subject to this Act and the public explanatory information
18 concerning this Act, the duties imposed by it, and the means for enforcing it.
19

20 §502.12 Research and Educational Outreach
21

22 The Agency may:

- 23 (1) conduct research concerning state governmental ethics; and
24
25 (2) implement the educational programs it considers necessary to effectuate this Act.
26
27

28 §502.13 Oaths and Subpoenas
29

30 The Agency may:

- 31 (1) administer oaths and affirmations for the testimony of witnesses; and
32
33 (2) issue subpoenas by a vote of three or more members, subject to judicial enforcement, for the procurement of
34 witnesses and materials relevant to the Agency's investigations, including books, papers, records, documents, or other
35 tangible objects.
36
37

38 §502.14 Local Rules
39

40 The Agency shall issue rules governing state government [campaign finance,] conflicts of interest, financial disclosure
41 [, and lobbyist regulation]. The rules may be adopted by a local jurisdiction or imposed upon a local jurisdiction under this
42 Act.
43

44 §502.15 Other Duties
45

46 The Agency may perform the other acts, duties, and functions authorized by this Act that it deems appropriate in
47 connection with this Act.
48

49 §504 Complaints
50

51 §504.01 Complaints Initiated by an Individual
52

53 (1) The Agency shall accept from an individual, either personally or on behalf of an organization or governmental body,
54 a verified complaint in writing that states the name of a person alleged to have committed a violation of this Act, and sets
55 forth the particulars of the violation.
56

57 (2) The Agency shall forward a copy of the complaint and a general statement of the applicable law with respect to the
58 complaint to the respondent.
59

60 (3) If the Agency determines that the complaint does not allege facts sufficient to constitute a violation of the Act, it
61 shall dismiss the complaint and notify the complainant and the respondent. If the Agency determines that the complaint
62 alleges facts sufficient to constitute a violation of the Act, an investigation may be conducted with respect to an alleged
63 violation.
64
65

1 §504.02 Complaints Initiated by the Agency

2
3 (1) If the Agency determines that information the Agency has received:

4 (A) provides an adequate basis for the belief that a violation of the Act has been committed; or

5
6 (B) that an investigation of a possible violation is warranted;

7
8 an investigation may be conducted with respect to an alleged violation.

9
10
11 (2) If the Agency, during the course of an investigation, or upon the receipt of information finds probable cause to
12 believe that a violation of the Act has occurred, it may, upon its own motion, make a complaint in writing, stating the name
13 of the person who is alleged to have committed a violation of the Act, and set forth the particulars thereof. A complaint
14 initiated by the Agency must be signed by a majority of the members of Agency.

15
16 (3) The Agency shall forward a copy of the complaint, and a general statement of the applicable laws with respect to
17 the complaint to the respondent.

18
19 §504.03 Amendment of Complaints

20
21 (1) If a verified complaint has been filed, or if the Agency has issued its own complaint, and subsequently the Agency
22 finds probable cause to believe that a violation of the Act has occurred, other than an alleged violation in the complaint, the
23 Agency may amend the complaint upon its own motion to include the violation.

24
25 (2) An amended complaint issued by the Agency must be signed by a majority of the members of Agency. The Agency
26 shall forward a copy of the amended complaint, and a general statement of the applicable laws with respect to the amended
27 complaint to the complainant and respondent.

28
29 §504.04 Right to Appear

30
31 The Agency shall afford a public official or employee who is the subject of a complaint an opportunity to explain the
32 conduct alleged to be in violation of the Act. A public official or employee who is the subject of a complaint has the right
33 to appear and be heard [under oath] and to offer information which may tend to exonerate the public official or employee
34 of probable cause to believe that there has been a violation of the Act.

35
36 §504.05 Right to Request an Investigation of One's Own Conduct

37
38 A public official or employee may request the Agency to make an investigation of the public official or employee's own
39 conduct, or of allegations made by another individual as to the public official or employee's conduct. This request must be
40 in writing and set forth in detail the reasons for requesting an investigation.

41
42 §504.06 Statute of Limitations

43
44 (1) Action may not be taken on a complaint filed more than three (3) years after the violation of the Act is alleged to
45 have occurred.

46
47 (2) Nothing herein shall bar proceedings against a person who by fraud or other device prevents discovery of a violation
48 of the Act.

49
50 §504.06 Referral of Evidence of a Violation of Law

51
52 Notwithstanding [the provisions of a state confidentiality law], the Agency may, in its discretion, turn over to an
53 appropriate government Agency [upon request or as a matter of course], apparent evidence of a violation of law.

54
55 Comment:

56
57 *This section permits the Agency to make available to an appropriate government official or agency information that may be*
58 *used in a criminal proceeding or other breach of the law. The question that the state needs to resolve is whether this*
59 *information should be turned over to such an entity automatically, or only after the material has been requested of the*
60 *Agency. Automatic release of materials may promote more prosecutions, for the appropriate prosecutorial authorities may*
61 *be unaware of certain transgressions without such notice. Release upon request would serve to reduce the burden on*
62 *prosecutorial authorities, for they would then only be required to look into more information on the investigations that they*
63 *had initiated.*

1 While a mandatory requirement for Agency action was considered, it was rejected as a being an undue burden on the Agency
2 with respect to both action and timing.

3 4 §506 Investigations and Hearings

5 6 §506.01 Authorization to Conduct an Investigation

7
8 Before the Agency may subpoena a witnesses, administer oaths, take testimony, or require the production for examination
9 of books or papers with respect to an investigation or hearing, it shall, by resolution adopted by a vote of three or more of
10 its members, define the nature and scope of its inquiry.

11 12 Comment:

13
14 *This section requires the Agency to define the scope of a proceeding at its outset. The question that the state needs to resolve*
15 *is whether this definition of the nature and scope of the inquiry is to be limiting or advisory. If the former, the resolution*
16 *should be drawn as broadly as possible, or made subject to later amendment. If the latter, there should be some specificity*
17 *to guard against the proverbial government witchhunt.*

18 19 §506.02 Agency Investigatory Powers

20
21 In an investigation or hearing conducted under this section, the Agency may do the following:

22
23 (1) Require an individual to submit in writing verified reports and answers to questions relevant to the proceedings
24 conducted under this section.

25
26 (2) Administer oaths and require by subpoena the attendance and testimony of witnesses and the production of
27 documentary evidence relating to the investigation or hearing being conducted.

28
29 (3) Order testimony taken by deposition before an individual designated by the Agency who has the power to administer
30 oaths, and, to compel such testimony and the production of evidence by subpoena.

31
32 (4) Pay witnesses the same fees and mileage reimbursement paid in similar circumstances by the courts of the state.

33
34 (5) Request and obtain from the [state department of taxation or revenue] copies of state income tax returns and access
35 to other appropriate information regarding a person who is the subject of an investigation.

36
37 (6) Request the respondent's attendance at a meeting [or hearing] of the Agency conducted to obtain further information
38 from the respondent.

39 40 §506.03 Enforcement of Subpoenas

41
42 Enforcement of subpoenas issued by the Agency may be effected by written application of the Agency to a [local court]
43 judge.

44 45 §506.04 Probable Cause of Violation

46
47 (1) At the conclusion of its investigation, the Agency shall, in preliminary written decision with findings of fact and
48 conclusions of law, make a determination of whether probable cause exists to believe that a violation of the Act has occurred.
49 If the Agency determines that probable cause does not exist, it shall send written notice of the determination to the respondent
50 and the complainant. The written notice of no probable cause must be in the form of a written decision with findings of fact
51 and conclusions of law.

52
53 (2) If the Agency determines that there is probable cause to believe that a violation of the Act has been committed, its
54 preliminary decision with findings of fact and conclusions of law may contain an order setting forth a date for hearing before
55 the Agency to determine whether a violation of the Act has occurred. The order shall be served upon the respondent. The
56 respondent is entitled to full discovery rights before a hearing is ordered, including adverse examination of witnesses who
57 will testify at the hearing at a reasonable time before the date of the hearing.

58
59 (3) If the Agency finds probable cause to believe that a violation of the Act has occurred, the Agency may waive further
60 proceedings because of action the respondent takes to remedy or correct the alleged violation. The Agency shall make the
61 remedial or corrective action taken by the respondent, the Agency's decision in light of the action to waive further
62 proceedings, and the Agency's justification for its decision, a part of the public record.

1 §506.05 Hearing Procedures

2
3 (1) The Agency may appoint a qualified individual as a hearing examiner. The hearing examiner must:

4 (A) be a member of the bar of the state;

5
6 (B) not be an elective official or a full-time employee of the executive or legislative branch; and

7
8 (C) not be a member or employee of the Agency.

9
10
11 (2) The hearing examiner shall conduct a hearing or rehearing under this section in accordance with the [requirements
12 of the state administrative procedure act], except as otherwise expressly provided.

13
14 (3) During an investigation or hearing to determine whether a violation of the Act has occurred, the respondent may
15 be represented by counsel of the respondent's choice.

16
17 (4) The respondent has the following rights:

18 (A) To be afforded an opportunity to challenge the veracity and sufficiency of a complaint filed against the
19 respondent.

20 (B) To present witnesses, who shall be subpoenaed by the Agency to compel attendance upon the respondent's
21 request.

22 (C) To establish pertinent facts and circumstances;

23 (D) To rebut or offer countervailing evidence;

24
25 (E) To question or refute testimony or evidence, including the opportunity to confront and cross-examine an adverse
26 witness.

27 (F) To exercise fully any pretrial discovery procedure usually available in a civil action.

28
29 (5) During an Agency hearing conducted to determine whether a violation of the Act has occurred, all evidence,
30 including records the Agency considers, shall be fully offered and made a part of the record in the proceedings.

31
32 (6) A person whose name is mentioned or who is otherwise identified during an Agency hearing, and who, in the
33 opinion of the Agency, may be adversely affected as a result, may, upon the request of the person or the person's
34 representative:

35 (A) appear personally before the Agency and testify on the person's own behalf;

36 (B) have a representative appear to testify; or

37 (C) rebut or offer countervailing evidence.

38
39 The Agency may permit any other person to appear and testify at a hearing.

40
41 (7) The Agency shall not be bound by the strict rules of evidence when conducting a hearing to determine whether a
42 violation of this Act has occurred, and the degree or quantum of proof required shall be a preponderance of the evidence.

43 (8) After the conclusion of its hearing, the Agency shall, as soon as practicable:

44 (A) begin deliberations on the evidence presented at the hearing; and

45 (B) determine whether the respondent has violated the Act.

46
47 (9) If a hearing officer is appointed and a majority of the members of the Agency are not present at the hearing, the
48 Agency shall not begin deliberations until after:

49 (A) the proposed decision is served upon the Agency and the parties; and

50 (B) an opportunity is provided for oral arguments.

1 (10) A hearing to determine whether there has been a violation of the Act must be public, unless the Agency votes to
2 hear the evidence in executive session.
3

4 (11) A member of the Agency may administer oaths. A member of the Agency may hear testimony or receive other
5 evidence in a proceeding before the Agency.
6

7 §506.06 Orders and Recommendations
8

9 (1) No later than [a reasonable time] after the conclusion of a hearing to determine whether a violation of the Act has
10 occurred, the Agency shall set forth its determination in a written decision with findings of fact and conclusions of law. The
11 Agency shall send its written decision with findings of fact and conclusions of law to the respondent and complainant.
12

13 (2) If the Agency determines that a violation of the Act has occurred, its written decision with findings of fact and
14 conclusions of law must contain one (1) or more of the following orders or recommendations:
15

16 (A) In the case of a state official liable to impeachment, a recommendation to the presiding officer of each chamber
17 of the legislature that the official be removed from office.
18

19 (B) In the case of a public official or public employee in the [classified or unclassified] service, a recommendation
20 to the appropriate appointing authority that the public official or public employee be censured, suspended, or removed from
21 office or employment.
22

23 (C) In the case of a member of the state legislature, a recommendation to the presiding officer of the appropriate
24 chamber of the legislature that the legislator be censured, suspended, or removed from office.
25

26 (D) In the case of a judge, a recommendation to the [state court of last resort] and to the presiding officer of each
27 chamber of the legislature that the judge be censured, suspended, or removed from office.
28

29 (E) An order requiring the public official or public employee to conform the official's or employee's conduct to
30 the requirements of the Act.
31

32 (F) An order requiring the public official or public employee to pay a civil penalty of not more than [\$2,000] for
33 each violation of the Act. The attorney general, when requested by the Agency, shall institute proceedings to recover a fine
34 or forfeiture incurred under this section not paid by, or on behalf of, the person against whom it is assessed.
35

36 (G) Other recommendations or orders, including:
37

38 (i) forfeiture of gifts, receipts or profits obtained through a violation of the Act;
39

40 (ii) voiding of a state action obtained through a violation of the Act; or
41

42 (iii) or a combination of the above, as necessary and appropriate, consistent with the Act.
43

44 (3) A fine imposed by the Agency, disciplinary action taken by an appropriate authority, or a determination not to take
45 disciplinary action made by an appropriate authority is public record.
46

47 (4) This section does not limit the power of:
48

49 (A) either chamber of the legislature to discipline its own members or to impeach a public official; or
50

51 (B) of a department to discipline its officials or employees.
52

53 §506.07 Rehearings
54

55 (1) After the service upon the alleged violator by the Agency of a decision under section 506.06 containing an order
56 or recommendation, the respondent may apply to the Agency for a rehearing with respect to a matter determined in the
57 decision.
58

59 (2) An application for a rehearing is governed by rules established by the Agency. The Agency may grant one (1)
60 rehearing to a particular respondent.
61

62 (3) An Agency order may not become effective:
63

64 (A) before twenty (20) days after it is issued;
65

1 (B) while an application for rehearing or a rehearing is pending; or

2
3 (C) before ten (10) days after the application for rehearing is either denied, or the Agency has announced its final
4 determination on rehearing.

5
6 §506.08 Action by the Attorney General

7
8 (1) The attorney general may recover a fee, compensation, gift, or profit received by a person as a result of a violation
9 of the Act.

10
11 (2) Action taken by the attorney general under this subsection must be brought no later than one (1) year after a
12 determination of a violation of the Act.

13
14 §506.09 Appeal

15
16 A final action by the Agency under this Act is subject to review in accordance with the [state administrative procedure
17 act].

18
19 §506.10 Settlement Agreements

20
21 A public official or employee under investigation by the Agency for a possible violation of the Act may enter into a
22 settlement agreement with the Agency to resolve the matter to preclude further proceedings or hearings. A settlement
23 agreement is a matter of public record.

24
25 §506.11 Authentication of Agency Actions

26
27 A decision or advisory opinion of the Agency must be in writing and signed by three or more members of the Agency.

28
29 §506.12 Public Inspection of Records

30
31 (1) Except as provided in subsection (2) below, all Agency records are open for public inspection during normal business
32 hours.

33
34 (2) The following Agency records are not open for public inspection:

35
36 (A) Records obtained in connection with a request for an advisory opinion. The Agency may make records
37 described by this subdivision public with the consent of the individual to whom the records pertain.

38
39 (B) Records obtained or prepared by the Agency in connection with an investigation or complaint. However, the
40 Agency shall permit inspection of the following:

41
42 (i) Records made public in the course of a hearing.

43
44 (ii) Verified complaints filed with the Agency.

45
46 (iii) Complaints issued by the Agency.

47
48 (iv) Probable cause decisions with findings of fact and conclusions of law.

49
50 (v) Decisions with findings of fact and conclusions of law issued after a hearing.

51
52 (vi) A determination made by the Agency regarding a rehearing.

53
54 (vii) A settlement agreement entered into by the Agency and a respondent.

55
56 (3) A person who makes or purports to make public the substance or a portion of a confidential advisory opinion
57 requested by or on behalf of the person has waived the confidentiality of the request for an advisory opinion, and of a record
58 obtained by the Agency in connection with the request for an advisory opinion.

59
60 (4) The Agency may publicly respond to a statement or interpretation made concerning the contents of an advisory
61 opinion or decision it has issued or is purported to have issued.

1 §506.13 Freedom from Reprisal for Disclosure of Improper Acts

2
3 (1) A public official or public employee who reports or attempts to report to the Agency or the official's or employee's
4 department, division, board, bureau, commission, chamber of the legislature, or other agency of the state, information
5 concerning an action that the public official or public employee reasonably believes to involve:

- 6
7 (A) corruption;
8
9 (B) unethical practices;
10
11 (C) violation of federal, state, or local laws or regulations;
12
13 (D) mismanagement;
14
15 (E) gross waste of public funds or resources;
16
17 (F) abuse of authority;
18
19 (G) danger to the public safety; or
20
21 (H) other alleged acts of impropriety;

22
23 within a state department, division, board, bureau, commission, chamber of the legislature, or other agency of the state, may
24 not be subject to discipline or reprisal for reporting the acts of alleged impropriety to the extent that the public official or
25 employee is not directly responsible for the acts complained of.

26
27 (2) A public official or employee shall not subject a person who reports to a government entity or the Agency
28 information concerning an action the person reasonably believes is a violation of the Act, or of any order, or rule, issued
29 by the Agency to reprisal or retaliation.

30
31 (3) A public official or employee who is discharged, disciplined, or otherwise penalized by a government employer in
32 violation of this section may, after exhausting all available administrative remedies, bring a civil action, no later than ninety
33 (90) days after the date of the final administrative determination or not later than ninety (90) days after the violation,
34 whichever is later, in [district-level] court for:

- 35
36 (A) reinstatement to the position held at the time of the disclosure;
37
38 (B) payment of back wages and benefits; and
39
40 (C) other relief as the public official or employee may deem appropriate or necessary.

41
42 (4) An employee found to have knowingly made a false report shall be subject to disciplinary action which may include
43 dismissal.

44
45 **Comment:**

46
47 *An individual, particularly a public employee, should be free to speak out on issues relating to fraud, waste, and abuse in*
48 *government without fear of retaliation through demotion, transfer, cut in pay, or an unsatisfactory performance review. This*
49 *provision permits a public employee or any person to disclose alleged improprieties without reprisal by the government.*
50 *Safeguards for reinstating an employee and deterring willful misconduct through making false accusations are also included.*

51
52 §506.16 Copy of the Act to be Furnished to Public Officials and Employees

53
54 (1) Each public official and employee shall receive a copy of this Act [notice of amendments.] and a brochure describing
55 the general application of the Act before January 15 of each year, from the public official or employee's department, division,
56 board, bureau, commission, chamber of the legislature, or other agency of the state, upon assuming the duties of office or
57 position within state government.

58
59 (2) The [jurisdiction] may choose to assume the responsibility for the distribution of the Act for appropriate public
60 officials and employees under subsection (1) above if it annually includes a copy of the Act with each official or employee's
61 paycheck or statement of electronic funds transfer.
62

§508 Miscellaneous Penalty Provisions

§508.01 Forfeiture of Pension and Retirement Benefits

(1) A public official or public employee, or a survivor, heir, successor, or estate of a public official or public employee who is convicted of a felony:

(A) relating to; or

(B) arising out of;

the public official or public employee's public service may not receive the portion of pension or retirement benefits paid by a public entity and interest accrued on that portion.

(2) A public official or public employee entering public service subsequent to the passage of this Act is deemed to have consented to this section as a condition of coverage.

Comment:

Principles of fairness are at stake in the distribution of the government share of retirement or pension benefits to a public official or employee who has abused the public trust. Situations in Pennsylvania and Illinois have highlighted the problem in recent years. This section denies the government's payments (and accrued interest on the payments) to a public official or employee's pension or retirement plan if the official or employee's felony conviction is related to the individual's government service. The public official or employee is still entitled to redeem the employee's share of the contribution to the pension or retirement plan. A similar statute in Illinois has survived constitutional challenge.

§508.02 Tax Treatment of Fines and Repayments

(1) A fine, penalty, reimbursement, or other payment ordered by the Agency or court in connection with making the government whole for a transaction improperly entered into by a public official, employee, or consultant, or a member of the immediate household of a public official, employee, or consultant does not qualify for a state or local tax credit or deduction.

(2) The guilt or innocence of a party making a payment under subsection (1) has no effect upon the state or local tax consequences, nor does an admission or failure to admit guilt or complicity in a transaction.

Comment:

A corrupt public official or employee should not be able to profit from his or her action in any manner, direct or indirect. Much of the language of this statute has been oriented to proscribing the direct benefits. This section and section 248 are devoted to keeping the wrongdoer from deriving some good from the wrongdoing. The scenario is not hypothetical; former Vice President Spiro T. Agnew tried to do just this.

§508.03 Administrative Debarment

If the head of a department or agency of the executive branch in which a former officer or employee served finds, after notice and opportunity for a hearing, that the former officer or employee violated subsection (1), (2), or (3) of this section, the department or agency head may prohibit that person from making, on behalf of any other person (except the state), an appearance before, or with the intent to influence, an oral or written communication to the department or agency on a matter for not more than five (5) years. The disciplinary action is subject to review in an appropriate state [district level] court. A department or agency shall, in consultation with [the attorney general or the Agency], adopt rules to implement this subsection.

§508.04 Suspension or Revocation of Lobbying Privilege

The Agency may by a majority vote, as a result of a violation of the Lobbying Regulation Act, after a public hearing, suspend or revoke the registration privileges of a lobbyist.

§510 Agency Duties

Comment:

This section sets forth the required powers and duties of the Agency which are considered essential to the effective investigation of suspected or alleged violations, and enforcement of the provisions of this Act. The authority prescribed in this section was drafted after consideration of detailed survey responses from 30 officials charged with enforcement of campaign finance laws in their respective jurisdictions in the United States and Canada, and the drafter's own experience

of ten years practice in this area. In broad terms, this section addresses the critical investigative and auditing functions of the Agency, and the authority necessary to enforce compliance with the registration and reporting provisions of this Act.

§510.01 Responsibility of the Agency

The Agency shall do the following:

(1) Investigate a suspected violation of this Act on its own initiative or upon receipt of a written complaint under oath by an individual with respect to an alleged violation of this Act.

(A) No later than seven (7) days after the Agency has received a sworn complaint, or decides to investigate on its own initiative, the Agency must acknowledge receipt of the complaint to the complainant by certified mail, where appropriate.

(B) A complaint must be filed, or an investigation must be begun by the Agency on its own initiative, no later than four (4) years from the date that the violation is suspected or alleged to have been committed.

Comment:

These provisions require the Agency to investigate a suspected or alleged violation of the Act on its own volition or upon the receipt of a properly verified complaint from an individual. This process is consistent with the authority granted to the vast majority of independent boards and commissions in the United States that have been established to administer and enforce such laws.

Even in the absence of a complaint, it is essential for the Agency to begin an investigation when it possesses information that bears upon a possible violation of the laws. The failure to act in such circumstances may erode the public's confidence in the electoral process, and will surely tarnish the credibility of the Agency.

The language does not specify whether a majority or extraordinary majority vote of the Agency members should be required to initiate an investigation in the absence of a complaint. The intent is to reserve these procedural issues for a decision by the Agency in the resolution of the formal regulation-making process governed by the Administrative Procedure Act of the particular jurisdiction. However, we recommend that a simple majority vote of the Agency members be required, rather than an extraordinary majority, in order to facilitate such action. The language is certainly broad enough to ensure, for example, that the results of staff audits may serve as the basis for a full investigation. However, the necessity for the Agency to review these results and adopt a motion to initiate an investigation is an important check on the discretion of its staff.

By contrast, no vote by Agency members is required as a prerequisite to the investigation of a verified complaint. The oath requirement, coupled with penalties for false oaths that will undoubtedly exist elsewhere in the law of the jurisdiction, greatly deters the opportunity for fabrication of patently fraudulent charges. A sworn complaint should carry sufficient legitimacy to justify an investigation of the charges without requiring formal Agency approval.

No further conditions are prescribed for the complaint filing process to encourage its use to address questions of propriety. While there was some support for a requirement that the complainant have personal knowledge of the facts recited, it was rejected as burdensome and because it places an unnecessary impediment to the initiation of an investigation.

Written notice of receipt of a complaint must be sent to the complainant by the Agency. To prevent stale claims, a four year statute of limitations is placed upon the filing of complaints and commencement of investigations.

(2) Receive and examine each statement and report filed under the Act and determine whether it is complete and is in compliance with the provisions of the Act.

Comment:

The Agency is required to both receive and examine the registration and financial disclosure reports filed in accordance with the provisions of the Act. Although a few jurisdictions assign the repository function to an official or agency that does not possess the audit, investigative, and enforcement functions (typically the Secretary of State or county clerks), the preferred approach is to combine all functions in a single independent agency that is not comprised of elected officials subject to the requirements of the Act.

In addition to the elimination of conflicts of interests and a reduction in partisanship, both real and potential, the delegation of all functions to an independent entity promotes efficiency, facilitates dissemination of information to the public, and ensures greater compliance with the laws.

Among other adverse consequences, the separation of the repository function from the audit and enforcement functions will increase the likelihood that those subject to the requirements of the Act will receive inconsistent advice, and diminish the ability of the audit and enforcement agency to review the statements and reports for compliance.

1 Under ideal circumstances, a more complete and detailed review (audit) should be undertaken with respect to each report
2 filed. However, the practical fiscal limitations on resources available to the Agency preclude such detailed reviews in each
3 instance without some overt showing of need or random desk or field audit requirement.
4

5 (3) Review and audit a statement or report filed under the Act:

6
7 (A) to determine if an applicant for public funds is eligible to receive such funds and has otherwise complied
8 with the requirements of [the public financing section of the Act];
9

10 (B) as may be necessary to conduct a fair and complete investigation of a suspected or alleged violation of the
11 Act commenced pursuant to subsection (1) of this section; and
12

13 (C) in any other circumstances deemed necessary to effectuate the purposes of the Act in accordance with the
14 regulations adopted by the Agency under the Act.
15

16 Comment:
17

18 *The public interest in comprehensive auditing of campaign disclosure reports is considered most significant when taxpayer*
19 *funds are sought or used to finance a political campaign, and when the guilt or innocence of an individual or other person*
20 *suspected of a violation is determined by the enforcement agency. Consequently, an audit is required by law only in those*
21 *instances.*
22

23 *The Agency's ability to conduct audits under other circumstances should not be constrained if it possesses sufficient resources*
24 *if the circumstances are set forth in regulations promulgated by the Agency in accordance with the Administrative Procedure*
25 *Act of the particular jurisdiction.*
26

27 (4) (A) Impose a late filing fee, payable to the Agency, against a person who fails to file a statement or report with
28 the Agency by a deadline set forth under the Act.
29

30 (B) Imposition of a late filing fee shall not be an appealable matter, either to the Agency or to a court.
31

32 (C) The Agency may, for good cause, and in accordance with procedural rules it shall adopt, waive a late filing
33 fee required to be imposed under this subsection.
34

35 (D) A late filing fee shall be assessed on the following basis:
36

37 (i) A late filing fee of fifty dollars (\$50) shall be assessed against a person for failure to file a required
38 statement or report in a timely manner.
39

40 (ii) An additional late filing fee of ten dollars (\$10) shall be imposed for each day after the first day that a
41 required statement or report is not filed.
42

43 (iii) A late filing fee of one hundred dollars (\$100) shall be assessed against a person for failure to timely file
44 a required statement or report that must be filed within thirty (30) days before a primary or general election.
45

46 (iv) An additional late filing fee of fifty dollars (\$50) shall be imposed for each day after the first day that
47 a required statement or report that must be filed within thirty (30) days before a primary or general election is not filed.
48

49 (E) The total amount of late filing fees imposed and due under this subsection with respect to a single required
50 statement or report for any one person may not exceed one thousand dollars (\$1,000).
51

52 Comment:
53

54 *This subsection requires the Agency to impose a late filing fee against a person who is required to file a statement or*
55 *disclosure report, and who fails to do so by the time required by the Act.*
56

57 *The imposition of a late filing fee is automatic, and is not appealable. The lack of an appeal ensures timely disclosure and*
58 *prevents dilatory tactics. Automatic increases of the fee for continued delinquency are also prescribed, with the total amount*
59 *of fees that may be assessed against any one person for the nonfiling or late filing of a single statement or report may not*
60 *exceed \$1,000.*
61

62 *As the statements and reports required to be filed immediately preceding an election are likely to be the most important to*
63 *the public, the late filing fee for noncompliance is set at a higher threshold.*
64
65

1 *The Agency is authorized to waive any late filing fee imposed under terms of the Act, but only if the circumstances satisfy the*
2 *criteria set forth in regulations adopted by the Agency in accordance with the Administrative Procedure Act of the jurisdiction.*
3 *Standardized requirements for the granting of such waivers will help to ensure that the Agency is not subjected to unjustified*
4 *criticism, or subject to claims of selective enforcement.*
5

6 (5) Issue a finding of probable cause or no probable cause to believe that a violation of the Act has been committed.
7

8 (A) If a finding is not issued by the Agency within one hundred and twenty (120) days after the Agency receives
9 a complaint, an individual who resides within the jurisdiction of the office for which the candidate complained against seeks
10 may file a civil action to enforce the provisions of the Act in the [trial] court for the jurisdiction in which the violation is
11 alleged to have occurred. An action brought under this subsection shall have precedence for purposes of [] in the order
12 of time filed, and over all other civil actions for any cause.
13

14 (B) In addition to the service required for the commencement of a civil action, an individual brings a civil
15 action under this subsection shall, within seven (7) days after filing the action, serve a copy of the complaint on the Agency.
16

17 The Agency shall file a motion to dismiss the civil action commenced under this section within three (3) days after its receipt
18 of a copy of the complaint if it has issued a probable cause or no probable cause finding, and shall serve notice of its motion
19 on all parties. The court shall hear the motion not less than three (3) nor more than seven (7) days after its filing by the
20 Agency, and shall render a judgment on the motion at the conclusion of the hearing.
21

22 (C) A civil action may not be filed under subsection (A) if:
23

24 (i) the action alleges a violation against a person for failure to timely file a required statement or report;
25

26 (ii) the Agency has:
27

28 (a) issued a finding of probable cause or no probable cause to believe that a violation has been
29 committed in connection with the original complaint; or
30

31 (b) has referred evidence compiled in its investigation to the [appropriate prosecutorial authority]; or
32

33 (iii) the violation occurred more than four years before the date the civil action is filed.
34

35 (D) The court shall have the same powers as reserved to the Agency if the court determines that a civil violation
36 of the Act has occurred.
37

38 (E) A plaintiff or defendant who prevails in a civil action shall be entitled to recover attorneys fees and court
39 costs from an opposing party, other than the Agency, if the court so decides. A successful plaintiff shall also be entitled to
40 receive one-third (1/3) of the amount of a civil penalty and forfeiture of a contribution or expenditure ordered by the court
41 to be paid by the defendant under subsection (A).
42

43 (F) The Agency retains jurisdiction over the original complaint unless:
44

45 (i) a civil action has been commenced under subsection (A) within the time required; and
46

47 (ii) the Agency has not issued a finding of probable cause or no probable cause to believe that a violation
48 has occurred, or has referred evidence compiled in its investigation to the [appropriate prosecutorial authority].
49

50 **Comment:**
51

52 *The Agency must act upon a complaint it receives. If the Agency does not act within 120 days after its receipt, an individual*
53 *within the jurisdiction may file a complaint with the trial level court to ensure the civil enforcement of the campaign finance*
54 *laws. While only a few jurisdictions have such a "citizen suit" provision, this check on the Agency's actions is considered*
55 *to be an important and necessary safeguard in the enforcement process.*
56

57 *The 120-day period provides the Agency a reasonable opportunity to act fairly upon the substantial majority of complaints*
58 *that it receives even if its appropriated funds and dedicated resources are modest--as is the reality with respect to most entities*
59 *which investigate and enforce campaign finance laws. The fair and expeditious resolution of these complaints is a worthy*
60 *objective, and legislatures should adequately fund the enforcement agency to achieve this goal. If such funding is not*
61 *provided, this time constraint will only serve to diminish the Agency's effectiveness and adversely impact upon the public's*
62 *perception of its operations.*
63

64 *The "citizen suit" provision is not available if the Agency has, at a minimum, issued a finding of probable cause, or the*
65 *absence of such cause. Unless a civil action is commenced, the primary jurisdiction of the Agency is not lost if the Agency*
66 *fails to issue a finding or make a referral to another prosecutorial authority within the 120-day period.*

1 §511 Agency Discretionary Authority
2

3 Comment:
4

5 *This section sets forth the Agency's discretionary authority. To ensure that the Agency can fully and effectively investigate*
6 *alleged violations, it must have the power to issue subpoenas to compel testimony and the production of any relevant*
7 *documents during any given stage of an investigation. Once an violation is discovered, the Agency must be able to*
8 *expeditiously correct it, and, if appropriate, punish offenders through employment of effective sanctions to deter future*
9 *transgressions. Various enforcement tools and options are provided to enable the Agency to effectively deal with the range*
10 *of violations it will discover, and the particular circumstances unique to each case.*
11

12 §511.01 In the performance of its required duties, the Agency has the authority to do the following:
13

14 (1) Subpoena persons in connection with an investigation or hearing under procedural regulations it may adopt. A
15 subpoena may be issued to compel attendance and testimony, and to require the production for examination of books, records,
16 papers, computer software, or other documents or materials the Agency deems relevant to a matter under investigation or
17 in question.
18

19 (A) In the event of a refusal to comply with a subpoena issued pursuant to this subsection or to testify with
20 respect to a matter upon which the person may be properly interrogated, the [trial level court of the county in which the
21 Agency maintains its principal office], on application of the Agency, may issue an order requiring the person to comply and
22 to testify.
23

24 (B) Failure to obey an order of the court compelling compliance or testimony may be punished by the court as
25 contempt.
26

27 Comment:
28

29 *This subsection authorizes the Agency to issue subpoenas in connection with an investigation or hearing, require the*
30 *production of records, documents, or materials relevant to the matter in question, and compel the testimony of any person.*
31

32 *Adequate subpoena power is considered essential to ascertain the facts and veracity of a particular complaint or investigation.*
33 *Such authority is typically delegated to most agencies that investigate election complaints.*
34

35 *The text requires the Agency to adopt procedural regulations concerning the issuance of subpoenas to ensure uniformity and*
36 *compliance with the constitutional guarantees of due process. The Agency is also authorized to enforce compliance with its*
37 *subpoena by direct action to a trial court which, in turn, is empowered to issue a contempt order in the event of*
38 *noncompliance with the subpoena. Again, this is an essential component of the subpoena power, without which the power*
39 *would be rendered impotent.*
40

41 *To preclude the possibility of political interference—or even the raising of a valid claim to that effect—the Agency is permitted*
42 *to enforce its subpoena directly in the court without the prior approval of the attorney general or similar prosecutorial*
43 *authority.*
44

45 (2) Issue an order requiring the custodian of financial records necessary for the Agency to complete and audit
46 conducted under Section 170(3) to produce such records for examination.
47

48 (A) If a person refuses to comply with such an order, the [trial level court] situated in the same [judicial district
49 or county] where the Agency maintains its principal office may, on application of the Agency, issue an order requiring the
50 person to comply with the Agency order; and
51

52 (B) The failure to obey such an order may be punished by the court as contempt.
53

54 Comment:
55

56 *This subsection is intended to ensure that the Agency is afforded access to all financial records necessary to conduct an audit*
57 *when required by the law and circumstances, and in the absence of a pending complaint or investigation. If the Commission*
58 *is involved in an investigation, it can use its subpoena power to compel production of such records, which may include such*
59 *items as bank statements, checkbook ledgers, canceled checks, deposit tickets, invoices, receipts, and the like.*
60

61 *Because the enabling subpoena authority applies exclusively to investigations and hearings, it does not cover audits*
62 *undertaken which do not result in full investigations. This provision complements the subpoena authority by permitting the*
63 *Agency to issue an enforceable order to produce such records under the circumstances described above. This authority is both*
64 *a logical and necessary component of the audit authority.*
65

(3) Secure voluntary compliance with the provisions of the Act through informal means of persuasion and conciliation.

Comment:

The Agency should act expeditiously to correct minor discrepancies or omissions which it may discover. Formal procedural requirements, such as a hearing, should be viewed as a last resort, and must not interfere with the Agency's mandate to ensure compliance with the registration and reporting requirements of the Act. The collective experience in administration of these laws suggests that there are many inadvertent errors and omissions in registration and reporting that may easily be rectified and should not be subject to penalty. In these common and frequent circumstances, the public policy underlying these laws is best achieved by securing timely and complete disclosure of campaign finances.

(4) Consult with and request additional investigatory or audit personnel from the:

- (A) office of the attorney general;
- (B) [local prosecutorial authority];
- (C) [commissioner or head of the state police or state law enforcement investigatory authority];
- (D) chief of a local police department;
- (E) state or county auditors; or
- (F) local [election authorities];

when necessary to determine compliance with the provisions of the Act. Such assistance shall be provided to the Agency upon request.

Comment:

Many of the existing agencies with the jurisdiction to administer and enforce campaign finance laws are not adequately funded to employ a sufficient number of auditors or investigators to properly attempt or conduct necessary audits or investigations. The integrity of the entire process is, however, dependent upon the proper allocation of these resources to monitor activities.

Even in those jurisdictions which have provided their respective enforcement agencies with ample resources to handle day-to-day operations, there will be investigations or audits that require the infusion of significantly more resources than a typical case to complete them quickly, thoroughly, and fairly. In addition, the issues involved in a particular investigation or audit may have legal or financial ramifications beyond the Agency's internal expertise. The Agency must, at a minimum, possess the ability to marshal the resources of other law enforcement and prosecutorial entities in an effort to complete these investigations and audits.

(5) Conduct a hearing when it is deemed necessary to determine if a violation of the Act has occurred in accordance with the requirements of the [administrative procedure act] and with the regulations that the Agency shall adopt.

(A) An opportunity for a hearing shall be provided to a respondent prior to the issuance of an order by the Agency requiring:

- (i) payment of a civil penalty;
- (ii) return of a contribution to a contributor; or
- (iii) the escheat of a contribution to the state;

however, a hearing is not required prior to the imposition of a late filing fee imposed under Section 170 (4).

(B) A hearing shall be preceded by written notice to the respondent of not less than ten (10) days, and must include the charges and references to the provisions of the Act that are alleged to have been committed. A respondent may waive the right to a hearing by written stipulation.

(C) A hearing conducted pursuant to paragraph (A) of this subsection is open to the public.

(D) A respondent at a hearing conducted pursuant to paragraph (A) of this subsection shall have all of the protections granted by the [administrative procedure act], including:

(i) the right to be represented by counsel;

(ii) the ability to call, examine, and cross-examine witnesses; and

(iii) the opportunity to require production of evidence by subpoena.

(E) A member of the Agency [or a senior judge or referee] shall act as the hearing officer for purposes of conducting the hearing. The hearing officer may be assisted by counsel to the Agency in the conduct of the hearing.

(F) In lieu of a hearing officer, the Agency may, acting en banc, conduct the hearing.

(G) Upon the conclusion of the hearing, the hearing officer or designee of the Agency, shall prepare a report consisting of:

(i) findings of fact;

(ii) conclusions of law; and

(iii) a recommended order.

The hearing officer may be assisted by counsel to the Agency in the preparation of this report. The report must be issued to the respondent no later than thirty (30) days after the conclusion of the hearing and submission of briefs, if any. A requirement of this paragraph may be waived by written stipulation of the complainant and the respondent.

(H) The Agency shall, by a majority vote of a quorum of those members present:

(i) adopt;

(ii) modify; or

(iii) reject

the report of the hearing officer within thirty (30) days after its issuance to the respondent.

(I) A decision of the Agency to

(i) adopt;

(ii) modify; or

(iii) reject

a report under this section may be appealed by the respondent to the [trial court] of the jurisdiction where the Agency maintains its principal office within the time required by the [administrative procedure act].

Comment:

This subsection prescribes the Agency's general discretionary authority to conduct a hearing when necessary to determine whether a violation of the law has been committed.

The hearing must be conducted in accordance with the jurisdiction's administrative procedure act to ensure compliance with the constitutional requirements of due process. However, an opportunity for a hearing is not required unless the Agency orders that a civil penalty be paid or improper contributions be forfeited to the state or refunded to donors.

In instances where property is sought to be taken by the Agency, constitutional due process requires notice to the person whose property is subject to such an action, and an opportunity for the person to be heard at a hearing. Mandatory administrative hearings in other cases are not only not legally necessary, but are also generally too cumbersome and time-consuming to justify when the essential purpose of the law is to ensure the expeditious resolution of disputes. Due process requirements are satisfied by the court in circumstances when the Agency refers evidence of criminal violations to the appropriate criminal prosecutorial authorities, or when the Agency refers evidence requiring an injunction, quo warranto, or equitable relief to civil prosecutorial authorities. Consequently, an Agency hearing on such issues would be redundant.

Consideration might be given to allowing a judicial appeal to be taken by a losing civil complainant after an Agency hearing, or to specifically permit an appeal to be taken by a respondent who merely wishes to have an issue or finding fully resolved after an Agency hearing.

(6) Issue an order against a person found to have committed a violation of the Act to cease and desist the violation.

Comment:

This subsection authorizes the Agency to take direct enforcement action in the event a violation has been committed. The ability to order a cease and desist action is important to prevent the continuation of the offense. The enforcement Agency must be able to accomplish this directly without resort to another forum.

(7) Issue an order against a person found to have committed a violation of the Act to pay a civil penalty:

(A) not to exceed five thousand dollars (\$5,000); or

(B) an amount equivalent to three (3) times the amount of an unlawful contribution or expenditure;

whichever is greater.

Such an order may not be issued against a person without providing the person written notice and an opportunity to be heard at a hearing as required by this statute. A person may waive these rights by written stipulation. If a civil penalty is imposed upon a candidate, the Agency may order that the penalty, or any portion of the penalty, be paid from the candidate's personal funds.

Comment:

The Agency must be provided with the authority to enforce its orders. The ability to directly impose significant monetary penalties against violators is the most potent tool for the effective enforcement of the campaign finance laws. Most existing enforcement agencies possess such authority, and each Agency considers this to be absolutely essential to maintain the integrity of the process. The threat of monetary sanctions is a deterrent to potential violators--but only if the amount of the penalty that may be assessed for a given violation is significant.

An enforcement agency should be consistent and fair in its treatment of violations. However, in practice, a law cannot be drafted that addresses each circumstance--mitigating or aggravating--that may be present in the context of a particular violation. Consequently, the Agency should be afforded discretion to determine the amount of the penalty to be assessed in a particular case.

Reasonable limitations on this discretion should be--and are--carefully drawn in the statute. The maximum penalty that may be imposed must reflect the actual amount that was given, loaned, transferred, received, or spent in violation of the law to provide the deterrent effect that is so critical to any penal system. In addition, no penalty should be extracted from a person without due process of law. Accordingly, notice and an opportunity to be heard at a hearing is required.

Although many states permit fines to be paid from committee funds, this is not an effective deterrent to the commission of violations. Consequently, the Agency is given discretion to assess the fine against the candidate personally.

(8) Issue an order against a person found to have received a contribution that is prohibited, or is in excess of the limitations prescribed by this Act. Such an order may require:

(A) forfeiture of the prohibited contribution or the excessive portion of a contribution to the state General Fund;
or

(B) return of the prohibited contribution or the excessive portion of a contribution to the original contributor.

The Agency may not issue such an order without providing the person making the contribution and the person receiving the contribution written notice and an opportunity to be heard at a hearing as required by subsection (4) of this section. A person may waive his or her rights by consent or written stipulation.

Comment:

In addition to the imposition of monetary civil penalties against a violator, the Agency must possess the authority to "make the campaign finance process whole." To ensure that this objective is accomplished, the Agency is provided with the authority to issue an enforceable order directing the recipient of a contribution that is in excess of the limitations or otherwise in violation of the substantive provisions of the law to forfeit the illegal sums to the Agency or to return them to the original contributor, at the Agency's discretion. Any sums collected, as in the case of civil penalties or late filing fees, must be deposited in the state General Fund.

Both the recipient and contributor are to be afforded notice and opportunity to be heard, because both the making and the receipt of an improper contribution may be prosecuted under the Act.

(9) (A) If an order issued by the Agency is not complied with by the person to whom it is directed, the [trial level court] where the Agency maintains its principal office shall, upon application of the Agency, issue an order requiring the person to comply with the Agency's order.

(B) Failure to obey such a court order may be punished as contempt.

Comment:

The authority of the Agency to enforce its orders by judicial intervention is essential. The ability of the court to punish by contempt a person who refuses to comply with an Agency order provides assurance that the enforcement process is effective, and serves as a further deterrence to potential wrongdoers.

(10) Refer evidence that a violation of the Act has been knowingly and wilfully committed to the [local or state prosecutorial authority] to determine whether criminal prosecution should be commenced against any such person.

Comment:

Each jurisdiction provides for the possible criminal enforcement of violations of the campaign finance laws. Undoubtedly, there will be some cases where the violation is intentional and extremely serious, and where civil enforcement will not be adequate to punish the offender or provide suitable deterrence. Criminal enforcement is, therefore, essential.

Most jurisdictions require the offender to act intentionally or with some degree of greater awareness of his or her unlawful conduct before criminal sanctions may be applied. The standard most often used to determine the presence of criminal conduct is that the person "knowingly and wilfully" violated the Act, which is incorporated in this text.

The Agency, as the primary investigatory authority, must therefore be authorized to refer evidence of these criminal violations to the jurisdiction's prosecutorial authorities. Due to its experience in handling all campaign finance violations, the Agency is best equipped to initially adjudge whether the case deserves consideration for prosecution. None of the boards and commissions that have existing jurisdiction to investigate these violations also possess the authority to prosecute criminally.

The needs for checks and balances, and the complexity of criminal prosecution clearly suggests that the Agency should not have the authority to maintain criminal prosecution. The same kinds of considerations strongly mitigate against removal of prosecutorial jurisdiction upon an Agency referral. Mandatory criminal prosecution, although an appealing concept, does not seem justified when measured against a variety of other compelling reasons for maintaining discretion in this area.

(11) (A) Refer evidence of a violation of the Act to the [local or state civil prosecutorial authority] to determine whether proceedings for:

(i) quo warranto;

(ii) injunctive relief; or

(iii) equitable relief

should be sought.

(B) The [local or state prosecutorial authority] is authorized to commence such a proceeding by application to the [local trial level court] in the [county or district] where the Agency maintains its principal office.

Comment:

Many jurisdictions permit injunctive or equitable relief to be sought from the courts to enforce compliance with campaign finance laws. These actions are ordinarily instituted by the Attorney General or similar civil prosecutorial authority after an Agency investigation. As these actions are both complex and extraordinary, the civil prosecutor should have the responsibility for them.

Quo warranto proceedings are generally not applicable to violations of the campaign finance laws, however, in the most egregious circumstances where a candidate's election to office was the result of significant wilful violations of the law, quo warranto should be available to challenge the ostensible victor's right to the office.

§512 Civil Penalties

§512.01 Amounts of Civil Penalties

A person who violates a provision of this Act, except as provided in §170(4), shall be liable for a civil penalty:

- 1 (1) not to exceed five thousand dollars (\$5,000) per violation; or
2
3 (2) an amount equivalent to three (3) times the amount of the total amount of an unlawful contribution or expenditure;
4
5 whichever is greater.

6
7 A penalty or fee collected by the Agency shall be deposited in the state General Fund.

8
9 **§512.02 Joint and Several Liability**

10
11 If two (2) or more persons are responsible for a violation, they shall be jointly and severally liable.

12
13 **§513 Criminal Sanctions**

14
15 (1) A person who knowingly and wilfully violates a provision of the Act may be punished by:

16 (A) a fine not to exceed ten thousand dollars (\$10,000); or

17 (B) imprisonment not to exceed five (5) years;

18
19 or both.

20
21 (2) A person who is convicted under this section shall be disqualified from holding elective public office for a period
22 of four years from the date of conviction.

23
24 **Comment:**

25
26 *Criminal sanctions for knowing and wilful violations of the campaign finance laws exist in most jurisdictions and are essential
27 to the effective enforcement of these laws. The range of existing criminal sanctions varies.*

28
29 *To provide an effective deterrent to pernicious conduct, the offender ought to be subject to severe treatment. The sanctions
30 incorporated in this section are consistent with those applicable to non-capital felonies. Some jurisdictions treat these
31 violations as misdemeanors. The loss of voting rights which, in most jurisdictions, also results in disqualification from seeking
32 or holding public office upon conviction of a felony is an appropriate remedy for a serious election-related offense.*

33
34
35 **§514 Venue**

36
37 Venue for a prosecution commenced under §513 shall be in the county or district where the campaign statement was filed,
38 or where the offense has been alleged to have been committed.

39
40
41 **§515 Statute of Limitations**

42
43 A prosecution under §173 shall be commenced no later than five (5) years after the date that the violation is alleged to
44 have been committed.

45
46 **§516 Disclosure of Complaints, Records of Agency Investigations or Audits, or Hearings**

47
48 (1) A complaint filed with the Agency is open to public inspection, and a copy of an Agency report shall be provided
49 to any person upon request.

50
51 (2) A record compiled or made by the Agency in an investigation pursuant to section 170(1) is confidential, and shall
52 not be disclosed by a member or staff of the Agency until:

53 (A) the investigation is completed; and

54 (B) the Agency has issued its findings.

55
56 (3) Notwithstanding paragraph (2) above, a record may be disclosed:

57
58 (A) to a respondent or subject of an investigation, or the attorney for a respondent or subject of an investigation,
59 in an attempt to conciliate or otherwise settle the matter;

60
61 (B) to a respondent in a hearing conducted by the Agency to determine whether the respondent has violated a
62 provision of the Act, if authorized by the rules of discovery pertaining to such hearings that the Agency shall adopt;

1 (C) when necessary to conduct a full and fair hearing to determine whether a violation of the provision of the Act
2 has been committed; or

3
4 (D) to a law enforcement Agency or officer to fulfill the purposes of section 171(4).

5
6 (4) If the Agency decides to refer evidence of a violation of the Act to the [appropriate prosecutorial authority] pursuant
7 to §171(10), no record compiled or made by the Agency in an investigation of the violation shall be disclosed by the
8 members or staff of the Agency to any other person until:

9
10 (A) the [appropriate prosecutorial authority] has determined not to prosecute the matter; or

11
12 (B) the case has been finally adjudicated in the courts;

13
14 whichever is applicable.

15
16 (5) A record compiled or made by the Agency in an inspection or audit of a report or statement filed in accordance with
17 provisions of the Act is open to public inspection and shall be provided to any person upon request.

18
19 (6) Notwithstanding paragraph (5) above, a record used by the Agency in an investigation that it has initiated is
20 confidential, and shall not be disclosed by a member or staff of the Agency until:

21
22 (A) the investigation is completed; and

23
24 (B) the Agency has issued its findings.

25
26 (7) Except in the case of a hearing conducted under §171(5)(B), a hearing conducted by the Agency is confidential
27 unless each respondent in the hearing requests otherwise.

28
29 (8) A final decision or findings issued by the Agency after a completed investigation is open to public inspection. The
30 Agency shall mail a copy to the complainant and respondent within five (5) days of such a decision or findings, and provide
31 such a decision or findings to any person upon request.

32
33 Comment:

34
35 *This section addresses the sensitive issues concerning disclosure of complaints, Agency investigatory and auditing records,*
36 *hearings, and final decisions issued by the Agency.*

37
38 *While there is a consensus for "sunshine" to reign to the greatest extent possible, there are legitimate concerns--such as the*
39 *protection of reputations against baseless complaints--that require confidentiality of certain records and proceedings, at least*
40 *until the Agency has made a determination of the accused's guilt or innocence. Confidentiality of investigative records is*
41 *essential while an investigation is in progress to encourage witnesses to speak freely and truthfully, protect them against*
42 *possible threats or coercion, and diminish the ability of the respondent to construct or fabricate defenses. Such compelling*
43 *considerations do not exist once an investigation is completed. At that point, the public's right to know supersedes other*
44 *possible interests.*

45
46 *Practical concerns mitigate against confidentiality of the actual complaint. The public's perception of the Agency could be*
47 *severely tarnished if it could not, at least, publicly acknowledge that a complaint has been filed. While a statutory gag order*
48 *could be imposed on the Agency, it cannot silence the complainant. There is no effective means to preclude release of the*
49 *complaint. This section attempts to strike the appropriate balance between the public's right to know and the need for secrecy*
50 *in the investigatory process.*