

MEMORANDUM

TO: Interested Parties

FROM: Mike Wittenwyler / Jodi Jensen
Godfrey & Kahn, S.C.

DATE: December 16, 2015

SUBJECT: 2015 Wisconsin Act 117 Campaign Finance Legislation

On December 16, 2015, Wisconsin Act 117 (“Act 117”) was signed into law. It repeals and recreates chapter 11 of the Wisconsin statutes, effective January 1, 2016. Separate legislation enacted on the same day (2015 Wisconsin Act 118) dissolves the Government Accountability Board (“G.A.B.”) and replaces it with two independent commissions: the Ethics Commission which will administer and oversee campaign finance (chapter 11), lobbying (subchapter III of chapter 13) and ethics laws (subchapter III of chapter 19) and the Elections Commission which will administer and oversee election administration laws (chapters 5 through 10 and 12 of the statutes).¹

Act 117 was drafted in response to numerous court decisions on Wisconsin campaign finance laws including the Wisconsin Supreme Court’s decision in *State ex rel. Two Unnamed Petitioners v. Peterson* (the “John Doe decision”). It codifies contribution source restrictions, contribution limits and the regulation of independent political speech as well as making a number of changes to the regulation of political committees in Wisconsin. Some notable provisions in Act 117 include:

- **Increased Contribution Limits.** Limits on contributions to candidate committees are increased (with two exceptions noted below) or eliminated. Individual and political action committee (“PAC”) contribution limits are doubled; existing PAC limits are rounded to the nearest \$1,000 and then doubled. Contributions by candidate committees are now subject to the same limits as individuals rather than PACs. With the exception of contributions to the governor and the attorney general, this results in increased contribution limits for transfers by a candidate committee. Party and legislative campaign committee contributions are unlimited. Contribution limits to candidate committees are *not* indexed for inflation in future years.
- **Unlimited Party Transfers.** Political parties and legislative campaign committees may make unlimited contributions to candidate committees.

¹ Under Act 117 the dissolution of the G.A.B. and creation of the two commissions is not effective until June 30, 2016, six months after Act 117 is effective. Although the G.A.B. will administer the rewritten chapter 11 for six months, this memorandum refers to the Ethics Commission throughout.

- **Increased PAC Contributions.** The annual limit on PAC contributions to political parties and legislative campaign committees is doubled and set at \$12,000. PACs may make unlimited contributions to other PACs and to a segregated fund established by a political party or legislative campaign committee provided that the fund does not make contributions to candidate committees or disbursements for express advocacy.
- **Corporations, Labor Organizations and Tribes Restricted.** Corporations, cooperatives, unincorporated associations, labor organizations and federally recognized Indian Tribes (“tribes”) may contribute unlimited amounts to independent expenditure committees and referendum committees. They may also make contributions of up to \$12,000 annually to a segregated fund established and administered by a political party or a legislative campaign committee provided the fund does not make contributions to candidate committees or disbursements for express advocacy. Otherwise, these contributors are prohibited from making contributions.
- **LLC Contributions Permitted.** Certain limited liability companies (“LLCs”) may contribute to committees, including candidate committees. These LLC contributions are treated as individual contributions and subject to the applicable limits. Prior to Act 117, all LLCs were treated as corporations prohibited from making contributions to committees.
- **In-Kind Valuation.** For non-cash contributions, the requirements for establishing the value of in-kind contributions at fair market value and the value of polling per a statutory formula will not change. In-kind contributions do not include uncompensated services provided to a committee, even if the individual would normally charge a fee for those services.
- **Exception for Private Residence Events.** In-kind contributions do not include the cost of invitations, food and beverages for a candidate event at a private residence.
- **Unlimited Sponsorship Exceptions and No Reporting.** Sponsors of PACs, independent expenditure committees and conduits may spend unlimited amounts on administrative and solicitation activities. A sponsor is not required to separately register with the Ethics Commission or report its spending. Likewise, the committee or conduit it sponsors is not required to report the spending by its sponsoring organization.
- **Stale Conduit Funds.** A conduit must make five good faith attempts to contact a contributor, rather than ten good faith attempts under current law, before redirecting stale funds. Other existing requirements for the redirection continue to apply.
- **Independent Expenditures.** Independent expenditure committees may receive unlimited contributions from PACs, other independent expenditure committees, corporations, cooperatives, tribes, unincorporated associations, and labor organizations for the purpose of engaging in express advocacy.

PACs, political parties and legislative campaign committees may make independent expenditures as well but they may not receive contributions from independent expenditure committees, corporations, cooperatives, tribes, unincorporated associations, and labor organizations to fund them.

Individuals and organizations that make independent expenditures, but are not required to form a committee, are subject to limited reporting requirements. Unlike committees, these organizations are not required to report contributions received.

- **Impermissible Coordination Codified.** An independent expenditure is coordinated when: (1) a candidate or candidate’s agent, legislative campaign committee of the candidate’s political party or the candidate’s political party specifically requests an expenditure be made and the individual, organization or committee explicitly assents to the request before making the expenditures; or, (2) a candidate or candidate’s agent, legislative campaign committee of the candidate’s political party or the candidate’s political party controls the expenditure or the express advocacy communication.

If the expenditure complies with applicable source restrictions and contribution limits, an independent expenditure may be coordinated and must be reported to the Ethics Commission. A coordinated expenditure that violates either source restrictions or contribution limits subjects the donor to penalties.

- **Issued Advocacy Exempt.** Issue advocacy communications are not subject to regulation under chapter 11.

Candidate Committee Contribution Limits

	Individual Contributor* (including sole proprietorships, partnerships and certain LLCs)	PAC Contributor	Candidate Committee Contributor	Political Party Contributor	Legislative Campaign Committee Contributor
Governor	\$20,000	\$86,000	\$20,000**	Unlimited	Unlimited
Lt. Governor	\$20,000	\$26,000	\$20,000**	Unlimited	Unlimited
Attorney General	\$20,000	\$44,000	\$20,000	Unlimited	Unlimited
Justice	\$20,000	\$18,000	\$20,000	Unlimited	Unlimited
Secretary of State	\$20,000	\$18,000	\$20,000	Unlimited	Unlimited
State Treasurer					
State Senate	\$2,000	2,000	\$2,000	Unlimited	Unlimited
State Assembly	\$1,000	1,000	\$1,000	Unlimited	Unlimited

*A candidate may make unlimited contributions to his or her candidate committee from personal or marital funds or property.

**There is no limit on the transfer of contributions between the governor and lieutenant governor of the same political party.

Other Committee Contribution Limits

	Corporation Cooperative Unincorporated Association Labor Organization Indian Tribe	Individual Contributor	PAC Contributor
PAC	Prohibited	Unlimited	Unlimited
Political Party	Prohibited	Unlimited	\$12,000 Annually
Legislative Campaign Committee	Prohibited	Unlimited	\$12,000 Annually
Segregated Fund of Political Party or Legislative Campaign Committee*	\$12,000 Annually	Unlimited	Unlimited
Independent Expenditure Committee	Unlimited	Unlimited	Unlimited
Recall Committee	Prohibited	Unlimited	Unlimited
Referendum Committee	Unlimited	Unlimited	Unlimited

*A segregated fund is not established for the purpose of making contributions to candidate committees or disbursements for express advocacy.

Please let us know if you have questions or need any additional information.

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