

**ORDER**  
**OF**  
**STATE ELECTIONS BOARD**

The Wisconsin State Elections Board proposes an order to amend EIBd 1.39(2), relating to the conversion of a federal campaign committee to a state campaign committee.

**ANALYSIS PREPARED BY THE STATE ELECTIONS BOARD:**

1. Statutory authority: ss.5.05(1)(f) and 227.11(2)(a)
2. Statutes interpreted: ss.11.01(1), (6), (15), (16), 11.05(1), (7), 11.06(1), (3), (4), (12), 11.(07), 11.10(4), 11.24(2), 11.26(4), (10), 11.38(1)
3. Explanation of agency authority: Under ss.5.05(1)(f) and 227.11(2)(a), Stats., the elections board is given the authority to promulgate rules regulating compliance with the provisions of ch.11, Stats., Wisconsin's campaign finance law. The proposed rule amends an existing rule governing conversion of a federal campaign committee to a state campaign committee and the resultant transfer of money from the federal committee to the state committee.
4. Related statute or rule: ss.11.26(4) and (10), Stats.
5. Plain language analysis: Since the Bi-Partisan Campaign Reform Act of 2002, (BICRA), transfers of funds from a federal campaign committee to a state campaign committee had not been authorized under federal law. In November, 2004, Congress amended the Federal Election Campaign Act, (H.R. 4818, s.532(3) and 532(4), to permit the transfer of a federal candidate's campaign committee's funds to the candidate's state campaign committee, if state law permitted, and subject to the state law's requirements and restrictions.

Because of Congress' action in November, 2004, money which had not been available to a state committee under BICRA, and which might not have qualified for use for political purposes in a state campaign because of its source or because of other noncompliance with state law, could now be transferred to a state committee, if state law permitted. Wisconsin law, under the Board's current rule, EIBd 1.39(2), Wis. Adm. Code, allows for conversion of federal campaign committees, and their funds, to a state campaign committee without regard to the source of those funds and without regard to contribution limitations. The Board found that prohibiting conversions and restricting such transfers to the maximum permissible for any other single committee to a candidate for the same office is found to be in the public interest. The rule

attempts to level the playing field for both candidates with and without a federal campaign committee.

6. Summary of, and comparison with, existing or proposed federal regulations: Federal law (the Federal Election Campaign Act) now permits a federal campaign committee to convert to a state campaign committee if state law allows the conversion. Federal law does not permit the conversion of a state committee to a federal committee.

7. Comparison with rules in adjacent states: None of the four states adjacent to Wisconsin has a statute or rule authorizing or prohibiting the conversion of a federal campaign committee to a state committee, but the State of Iowa does have a statute (s.56.40 of the Iowa Code) that implies that a candidate with both a state and federal committee may be able to contribute funds from his or her federal committee to his or her state committee.

8. Summary of factual data and analytical methodologies: The Board did not compile or rely on any factual data, but it was aware that the last two federal campaign committees to convert to a state committee converted almost \$2,000,000 in federal assets for use in the state race. The only analytical methodology upon which the Board's rule may be based is the concept that candidates for the same office should be subject to the same rules and sources for raising campaign contributions for that office.

9. Analysis and supporting documents used to determine effect on small business or in preparation of economic impact report: The rule has no effect on small business and preparation of an economic impact report is not required.

10. Effect on small business: The rule has no effect on small business.

11. Agency contact person (including e-mail and telephone): George A. Dunst  
Legal Counsel, State Elections Board, 17 West Main Street, P.O. Box 2973  
Madison, Wisconsin 53701-2973; Phone 266-0136; (george.dunst@seb.state.wi.us)

12. Place where comments are to be submitted and deadline for submission: State Elections Board, 17 West Main Street, P.O. Box 2973, Madison, WI 53701-2973; (elections.state.wi.us)

Pursuant to the authority vested in the State of Wisconsin Elections Board by ss.5.05(1)(f) and 227.(11)(2)(a), Stats., the Elections Board proposes to amend Rule EIBd 1.39 interpreting ss.11.01(1), (6), (15), (16), 11.05(1), (7), 11.06(1), (3), (4), (12), 11.(07), 11.10(4), 11.24(2), 11.26(4), (10), 11.38(1), Stats., as follows:

SECTION 1. EIBd 1.39(2) is amended to read:

**EIBd 1.39 Conversion of federal campaign committee to state committee prohibited.**

**(2)(a) A candidate's federal campaign committee may not be converted to a state campaign committee, ~~and~~**

(b) A candidate's federal campaign committee may contribute use funds collected for federal purposes to in the candidate's a state or local campaign, not to exceed the maximum amount that may be contributed by a single committee to a candidate for the same office under ss.11.26(2) and (10), Stats, by filing a campaign finance registration statement, pursuant to s.

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[bin/om\\_isapi.dll?clientID=24537107&infobase=stats.nfo&jump=11.05&softpage=Document](http://folio.legis.state.wi.us/cgi-bin/om_isapi.dll?clientID=24537107&infobase=stats.nfo&jump=11.05&softpage=Document) - JUMPDEST 11.0511.05, Stats., with the appropriate filing officer, ~~and simultaneously filing a campaign finance disclosure report showing the sources of all funds on hand being contributed at the time of the report, pursuant to the requirements of s.~~

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[bin/om\\_isapi.dll?clientID=24537107&infobase=stats.nfo&jump=11.06%281%29%28a%29&softpage=Document](http://folio.legis.state.wi.us/cgi-bin/om_isapi.dll?clientID=24537107&infobase=stats.nfo&jump=11.06%281%29%28a%29&softpage=Document) - JUMPDEST 11.06(1)(a)~~11.06 (1) (a)~~;

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[http://folio.legis.state.wi.us/cgi-](http://folio.legis.state.wi.us/cgi-bin/om_isapi.dll?clientID=24537107&infobase=stats.nfo&jump=11.06%281%29%28f%29&softpage=Document)

[bin/om\\_isapi.dll?clientID=24537107&infobase=stats.nfo&jump=11.06%281%29%28f%29&softpage=Document](http://folio.legis.state.wi.us/cgi-bin/om_isapi.dll?clientID=24537107&infobase=stats.nfo&jump=11.06%281%29%28f%29&softpage=Document) - JUMPDEST 11.06(1)(f)~~(f)~~, Stats. In determining the sources of funds on hand being contributed and allocating those funds among the sources, the funds shall be treated on a last in, last out basis, so that they will be attributed in the report to the most recent sources, in the full amount received from each source.

#### FINAL REGULATORY FLEXIBILITY ANALYSIS:

The creation of this rule does not affect business.

#### FISCAL ESTIMATE:

The creation of this rule has no fiscal effect.

The creation of this rule will take effect on the first day of the month following its publication in the Wisconsin Administrative Register pursuant to s.227.22(2), Stats.

Dated September 13, 2005

STATE ELECTIONS BOARD

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KEVIN J. KENNEDY  
Executive Director

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