



Legislative Briefs

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ETHICS REGULATION REFORM

2007 Wisconsin Act 1, passed by the legislature and signed by Governor Jim Doyle on February 2, 2007, overhauls the regulation of elections, ethics, and lobbying in Wisconsin by merging the functions of the State Ethics and Elections boards into the new Government Accountability Board (GAB). This legislation gives the new board expanded authority to conduct investigations, and includes some highly-debated provisions concerning venue and employee leaks. Ethics reform has been a top priority in recent legislative sessions, fueled in part by the "caucus scandal" that began in 2001. Five members of the legislature were convicted of using legislative staff to do campaign work and were sentenced in 2006. Also in 2006, an executive branch employee was tried and convicted of steering a state contract towards a campaign contributor of the governor.

2007 WISCONSIN ACT 1

2007 Wisconsin Act 1 was introduced on January 11, 2007 as Special Session Senate Bill 1 by the Joint Committee on Legislative Organization. One of the most contested provisions of the original bill was the nonseverability clause, which would have invalidated the entire piece of legislation if any part of it was found unconstitutional. Senate Substitute Amendment 2, introduced by the Joint Committee on Finance, removed the nonseverability provision. The senate passed the amended bill unanimously.

In the assembly, two other heavily debated bill provisions were the subjects of amendments. The amendments would have eliminated a provision that called for offenders to be tried in their home counties and another that penalized GAB members, employees, and agents who leaked information on investiga-

tions. Both amendments were tabled by the assembly. On January 30, the assembly passed Special Session Senate Bill 1 by a vote of 97 to 2.

Creation of GAB. The most significant provision of Act 1 is the abolition of the ethics and elections boards and establishment of the GAB. Section 5.05, Wisconsin Statutes, is amended to detail the powers and duties of the board. Act 1 gives the GAB the responsibility for administration of Wisconsin Statutes previously under the purview of the ethics and elections boards. The duties will be divided between the Ethics and Accountability Division and the Elections Division; employees of both abolished boards, except the incumbent executive directors, will be transferred to these two divisions. Legal and administrative functions will be performed by a Legal Counsel, and the executive director positions from the previous boards will be eliminated.

According to the nonstatutory provisions of Act 1, the four-person Government Accountability Candidate Committee, consisting of one court of appeals judge from each district, will submit at least eight names to the governor to fill the initial positions of the GAB. The governor will then submit three of those names to be approved by the senate and three to be approved by the assembly, for a total of six GAB members. Each member of the board must be a former judge who was elected to his or her position in the state of Wisconsin. The six initial members will serve terms expiring successively each year beginning on May 1, 2009, with the last initial board member's term expiring in 2014. Members appointed in future will serve six-year terms, and will be subject only to confirmation by a vote of 2/3 of the senate.

Enforcement authority. Currently, civil enforcement authority of ethics, elections, and

lobbying laws is shared between the ethics and elections boards, district attorneys, and in some cases county election authorities and the attorney general. District attorneys exercise both civil and criminal enforcement authority.

Act 1 creates uniform procedures for all investigations and prosecutions of alleged elections, ethics, and lobbying law violations. The GAB may investigate any alleged violation and may prosecute civil violations. Suspected civil or criminal violations may be referred to a district attorney. In other cases, the board may retain a special investigator, or may authorize the administrator of the Ethics and Accountability Division to investigate.

During an investigation, the special investigator or administrator must report to the board every 30 days. The progress of the investigation must be reviewed every 90 days, with the investigation terminated after that time, unless the board votes to continue the investigation for another 90 days. The board may not expend more than \$10,000 on any investigation before receiving a progress report and a recommendation to commit additional resources. District attorneys retain current enforcement authority, with some exceptions.

OTHER MAJOR PROVISIONS

Venue. A much-debated provision of the bill amends the venue laws to specify that, unless otherwise provided, actions brought by the board or prosecutions for civil and criminal offenses are to be conducted in the county in which the defendant resides. Essentially, any public official, lobbyist, or candidate accused of wrongdoing is tried in his or her home county, not necessarily in the county where the violation allegedly took place, as formerly occurred.

According to Section 801.64, Wisconsin Statutes, created by Act 1, the legislature finds that providing for the place of trial in the county where the offender resides is consistent with the legislature's authority under the state constitution. It also finds that such a violation of public trust should be decided in that county

so the individuals whom the defendant represents can judge guilt or innocence.

Penalties for leaks. Act 1 provides for the creation of penalties for board members, investigators, prosecutors, or their employees who disclose information or records relating to an investigation before such information is presented in a court of law. Persons with whom the above may communicate are specified by statute. The penalty for leaking such information is a fine of up to \$10,000, imprisonment for up to nine months, or both.

PAST ATTEMPTS AT REFORM

Bills from past sessions have proposed reforms similar to those in 2007 Wisconsin Act 1. 2003 Senate Bill 11, sponsored by Senator Mike Ellis and others, proposed the abolition of the ethics and elections boards in favor of an Ethics and Elections Accountability and Control Board. In committee, a substitute amendment renamed it the Government Accountability Board. The bill was recommended by the committee but expired with the session. 2005 Senate Bill 1, which also proposed a Government Accountability Board and was sponsored by Senator Ellis and others, passed the senate 28 to 5, but the assembly refused to withdraw the bill from committee.

EFFECTIVE DATES

The terms of all ethics and elections board members will expire September 1, 2007, or the date on which the initial legal counsel and division administrators assume office, whichever is later. New GAB members may take office and hold meetings as soon as all of their appointments are confirmed, however they do not exercise any administrative or enforcement authority until the terms of the ethics and elections board members expire. The budget for the GAB takes effect for 2007-08 fiscal year; transitional funding will be made available for the 2006-07 fiscal year.

Further information. View a copy of 2007 Wisconsin Act 1 at www.legis.state.wi.us/2007/data/acts/07Act1.pdf