



WISCONSIN LEGISLATIVE COUNCIL ACT MEMO

2007 Wisconsin Act 1
[January 2007 Special Session
Senate Bill 1]

Government Accountability Board

2007 Wisconsin Act 1 creates the Government Accountability Board (GAB) to replace the current Elections Board and Ethics Board. The GAB will be responsible for administering the state election, campaign financing, ethics, and lobbying laws.

THE GAB

Membership

The GAB consists of six members, each of whom must formerly have served as an elected judge of a court of record in Wisconsin. Members serve six-year terms, with the exception of the initial members, who serve staggered terms for the periods set forth in the Act. Any action by the GAB requires the affirmative vote of at least four members.

The Act imposes several limitations on GAB members, including holding another state or local public office, engaging in specified partisan political activities, becoming a candidate for state or local elective office, making political contributions, and being a lobbyist or an employee of a person who employs a lobbyist. Limitations on political activities and certain contributions apply both during, and for the 12-month period preceding, a member's term.

GAB members are eligible for a per diem equal to the amount paid circuit court reserve judges and for reimbursement of actual and necessary expenses.

Nomination Process

The Act creates a **Government Accountability Candidate Committee** (Candidate Committee) to submit to the governor names of prospective nominees to the GAB. The Candidate Committee consists of one court of appeals judge from each of the four court of appeals districts, chosen by lot by

This memo provides a brief description of the Act. For more detailed information, consult the text of the law and related legislative documents at the Legislature's Web site at: <http://www.legis.state.wi.us/>.

the Chief Justice of the Wisconsin Supreme Court in the presence of the other supreme court justices. Initial terms for members of the Candidate Committee expire on March 1, 2009; subsequent terms are two years.

The first task of the Candidate Committee is to submit to the governor the names of at least eight qualified individuals to fill the initial GAB positions. In making initial nominations, the Candidate Committee is required to draw lots at a meeting of the committee to assign a numerical sequence to each nomination to determine the initial staggered terms of GAB members. From the list submitted by the Candidate Committee, the governor is required to submit three GAB nominees to the Assembly and the three other nominees to the Senate. These initial nominees are subject to confirmation solely by a majority of the members present and voting in the house to which their names are submitted.

After it makes the initial nominations to the governor, the Candidate Committee is required to meet when a vacancy occurs in the membership of the GAB that requires the nomination to be submitted to the governor. The number of nominations the Candidate Committee is required to submit per vacancy is specified by statute. After the initial board is established, members of the GAB are nominated by the governor from names submitted by the Candidate Committee, and with the advice and consent of 2/3 of the members of the Senate present and voting, appointed.

Note that no person may be nominated by the Candidate Committee unless the person receives unanimous approval of the committee.

Duties

Act 1 creates two divisions in the GAB, each of which is under the direction and supervision of an administrator appointed by the GAB: the Ethics and Accountability Division and the Elections Division. The former has responsibility for administering campaign financing, lobbying, and ethics laws. The latter has responsibility for the administration of election laws. In addition, the GAB is required to employ, outside the classified service, a legal counsel to perform legal and administrative functions for the board.

In addition to the above general administrative duties, once the current ethics and elections boards are abolished and their functions are taken over by the GAB, the GAB is required within 12 months to review existing internal operating procedures, guidelines, rules, orders, and formal opinions of the former boards. As part of the review process, the GAB is required to reaffirm formerly issued formal opinions, guidelines, rules, or orders; if not reaffirmed the formal opinion, guideline, rule, or order will terminate.

Finally, the GAB has investigation and prosecution responsibilities, described more fully below.

ENFORCEMENT

The GAB is required to investigate violations of laws it administers and may prosecute, by its legal counsel or a special prosecutor, alleged civil violations of those laws. Alternatively, it may refer prosecution of alleged civil violations to the appropriate district attorney (which is the same prosecutor authorized to prosecute criminal violations). The prosecution of alleged criminal violations investigated by the board may be brought only as follows:

- If the board finds there is probable cause to believe that a violation of laws it administers has occurred or is occurring, the board may refer the matter to the district attorney for the county in which the alleged violator resides.
- If the board discovers evidence of a potential violation of law that is not administered by the board arising from or in relation to the official functions of the subject of the investigation or any matter that involves elections, campaign financing, ethics, or lobbying regulation, the board may refer the matter to the district attorney for the county in which the alleged violator resides.
- If the district attorney to whom a potential violation is referred informs the GAB that he or she declines to prosecute or fails to commence a prosecution within sixty days of the board's referral, the board may refer the matter to the district attorney for another contiguous prosecutorial unit. If there is more than one such prosecutorial unit, the chair of the GAB must determine the district attorney to whom the matter must be referred by publicly drawing lots at a meeting of the board. If the second district attorney declines or fails to prosecute, the GAB may refer the matter to the Attorney General.

Note that special provisions regarding who prosecutes apply if the defendant is a district attorney, judge, the attorney general, or a candidate for those offices.

In general under the Act, a Wisconsin resident must be criminally or civilly prosecuted in the county of residence for violations of laws relating to elections, campaign financing, lobbying, or ethics; to the official functions of the subject of an investigation of the GAB; or to any matter involving elections, campaign financing, lobbying regulation, or ethics. However, the Act includes a procedure for a defendant to move to change the place of trial to the county where the offense was committed. If that occurs, the judge who orders the change in the place of trial presides at the trial and the jury is chosen from the county where the trial will be held. In addition, a change in place of trial does not affect who has responsibility to prosecute.

EFFECTIVE DATES

Act 1 generally takes effect, e.g. the existing boards are abolished, the new board takes over the duties of the former boards, and all necessary transfers of employees, property, contracts, and pending matters occur, on the **later** of;

- The first day of the seventh month beginning after publication of the Act (the Act was published February 16; therefore, the first day of the seventh month beginning after publication is September 1); or
- The 31st day beginning after the date on which the GAB has given final approval to the hiring of individuals to initially fill the positions of legal counsel, administrator of the Ethics and Accountability Division, and an administrator of the Elections Division.

However, provisions of the Act concerning the Candidate Committee and the formation and initial appointments to the GAB generally take effect on February 17.

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