

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRBs0060/1dn
JTK:kmg:jf

April 21, 2003

Senator Ellis:

1. This draft is predicated upon the assumption that the bill resulting from its enactment will become law no later than November 1, 2003. If the bill becomes law after November 1, 2003, **it may be inoperative**. If it appears that the bill will become law after November 1, 2003, please contact me and I will prepare an amendment to take account of the revised effective date.
2. For this draft, I have included appropriations but have specified “-0-” for expenditure in fiscal years 2003-04 and 2004-05. When you know the dollar amounts that you need to include in the proposal, contact me and I will either redraft the proposal or draft an amendment, whichever is appropriate.
3. The draft does not specify whether the enforcement division of the Government Accountability Board must bring an enforcement action upon direction of the board if the division does not want to bring that action. You may wish to clarify that point.
4. Proposed SECTION 129 (4), which places the responsibility in the director of the Legislative Council Staff to serve as interim executive director of the Government Accountability Board and to exercise certain authority in that capacity, may raise an issue under the separation-of-powers provisions of the Wisconsin Constitution [art. VI and art. VII, sec. 2] because the draft places administrative and enforcement functions within the legislative branch. While a provision of this type would not be permitted under the constitutions of some states, the Wisconsin Supreme Court has indicated that in this state the separation-of-powers principle will not be applied inflexibly. The test is whether there is an actual and substantial encroachment, rather than a theoretical bridging of the division of power. *J.F. Ahern v. Bldg. Comm.*, 114 Wis.2d 69, 104 (Ct. App., 1983), as quoted in *Martinez v. DILHR*, 165 Wis.2d. 687, 697 (1992). Additionally, in this case, the proposed Government Accountability Board will exercise some authority over all three branches of government. Under the separation of powers doctrine, a statute may not materially impair or practically defeat the proper function of a particular branch of government and the exercise of powers delegated it. *In Matter of E.B.*, 111 Wis. 2d 175, 184 (1983). With respect to a power that is shared between branches, a statute may not unduly burden or substantially interfere with another branch's essential role and powers. *State v. Unnamed Defendant*, 150 Wis. 2d 352, 360 (1989). Whether proposed SECTION 129 (4) will be viewed as a substantial

encroachment by one branch of government upon the proper function of another branch cannot be determined with certainty.

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