

2005-06 SESSION

COMMITTEE HEARING RECORDS

Assembly Committee on Campaigns & Elections (AC-CE)

Sample:

Record of Comm. Proceedings ... RCP

- 05hrAC-EdR_RCP_pt01a
- 05hrAC-EdR_RCP_pt01b
- 05hrAC-EdR_RCP_pt02

➤ Appointments ... Appt

➤ **

➤ Clearinghouse Rules ... CRule

➤ **

➤ Committee Hearings ... CH

➤ **

➤ Committee Reports ... CR

➤ **

➤ Executive Sessions ... ES

➤ **

➤ Hearing Records ... HR

➤ **

➤ Miscellaneous ... Misc

➤ **05hr_AC-CE_Misc_pt08a**

➤ Record of Comm. Proceedings ... RCP

➤ **

Government Integrity Board

Six members
Six-year staggered terms
Nonpartisan
Appointed by Governor
from list provided by
selection committee

Director of Government Integrity

administers standards of conduct; financial disclosure; lobbying registrations, reports, and conduct; and campaign finance laws

CONDUCT

Issues advisory opinions
Publishes guidelines
Conducts training, seminars and meetings to foster compliance

COLLECTION AND DISSEMINATION OF RECORDS

Financial disclosure
Lobbying registrations, reports
Campaign finance

Government Accountability Enforcement Review Board

acts on referrals and initiates investigations

Hires and oversees investigative assistance
Authorizes subpoenas and depositions
Oversees investigations
Determines probable cause
Issues complaints
Orders hearings & referrals
Exclusive jurisdiction for ethics, campaign finance, and lobbying complaints
Sum sufficient

State Elections Officer

administers state's election laws

Ballots
Referenda
Recalls
Registration
Nominations
Vote machines
Vote counts
Poll workers
Clerks
et cetera

Four or five members
Staggered five-year terms
Two career prosecutors designated by senior Republican and Democratic DAs
Two or three nonpartisan members

Draft instructions

Request from Representative Freese for an Assembly Substitute Amendment to Senate Bill 1 (as amended in the Senate).

1. The Government Accountability Board

- a. Seven member body.
- b. Six members will have the qualifications and restrictions contained in SB 1. Four of these six must have prosecutorial experience. The seventh member will be a retired judge.
- c. The non-judge members will be nominated by a nominating committee consisting of the chief justice and the deans of the law schools. A nominee must receive the unanimous approval of the committee. The retired judge will be selected randomly by the chief justice.
- d. Nominees must receive confirmation from both houses of the legislature.
- e. The board's actions will be taken by a simple majority. All of the board's investigatory proceedings, except for the results of a vote on a board action, and investigatory materials will be confidential.
- f. In proposed s. 5.05 (2m) (c) 1., delete "investigator" and insert "full-time support staff person."

2. Investigations and actions

- a. The board and a district attorney may not conduct simultaneous investigations. The board and a district attorney shall share investigatory information regarding possible violations under the board's jurisdiction and, if it appears that simultaneous investigations may begin or have begun, the board's investigation will continue and the district attorney's investigation will be suspended.
- b. If a district attorney is conducting an investigation, and the board is not, the district attorney may refer the investigation to the board at any time.
- c. Before a district attorney may commence a criminal prosecution, the district attorney must provide written notice to the board. If the board will not commence a criminal prosecution within 30 days of the notice, the district attorney may proceed.
- d. The seven day passive review periods in SB 1 should be changed to 10 day passive review periods.

- e. A defendant in a criminal case has the right to one change of venue. The second venue will be randomly selected by the chief justice from the remainder of the counties in the state with the exception of the defendant's home county.

3. Local officials

- a. Local officials must comply with the state ethics code.
- b. The board's jurisdiction will be expanded to allow it to begin civil, not criminal, actions against local officials.

4. Advisory opinions and frivolous complaints

Ensure that:

- a. That the ability to receive confidential advisory opinions, reliance upon which shows good faith, applies to all matters under the board's jurisdiction.
- b. The frivolous complaint penalty applies to all matters under the board's jurisdiction.

5. Board nominations must be made by December 31, 2006 and board operations must commence on June 1, 2007.

District Attorney Jurisdiction, Confidentiality and Other Investigatory Issues

- Board actions confidential unless a vote is taken
- Board and DAs shall share information in investigation phase – only one investigation at a time
- DA may turn over investigation, state or local, to Board at any point
- Board has jurisdiction over state and local officials
- DA has jurisdiction over state and local – but if DA wants to file criminal charges against a state official, DA must first turn that over to Board.
- If, after 30 days, Board does not act, DA may continue

Changes to SB 1

- 7-member Government Accountability Board chaired by retired judge.
- Six public members with qualifications/restrictions as in SB 1, but four of the six also required to have previous prosecutorial experience.
- Remove 30-day review by local district attorney
- 10-day passive review on investigations
- Simple majority
- Confirmation by both houses of the Legislature
- Effective dates January 1, 2007 and June 1, 2007
- Provide board with authority to pursue civil investigations/penalties on local officials.
- Require local officials to file ethics statements with board
- Defendant in criminal cases has right to change of venue – one time, in randomly selected county, not defendant's home county
- Change title of enforcement division "investigator" to "legal counsel."

"Tweaks"

- Ensure confidentiality provisions on advisory opinions covers all board areas
- Ensure "get out of jail free" provision – acting in good faith on advisory opinions applies to all
- Ensure advisory opinions apply to elections as well as ethics questions.
- Ensure breadth of "frivolous" complaint penalty

Items under consideration:

- Nominating board
 - Needs transparency, step removed from politics, governor and political leaders.
 - Assembly to come back
- Role of district attorneys, jurisdiction over ethics and elections laws
 - Gundrum (Assembly?) wants no jurisdiction for DAs
 - Possible compromise would require DA to first recommend criminal charges against state officials to GAB for 30-day review
 - If GAB does nothing, DA may proceed

g. 'Exceptions.' i. An open conference is not held when it appears that only nonsubstantial aspects of the petition will be discussed.

ii. Upon vote of the majority, the court may discuss and act on the petition in conference closed to the public.

iii. Upon motion of a member of the court at open conference to discuss matters pertaining to personnel, the conference is adjourned to closed session and reconvenes in open session upon vote of the majority.

3. *Private Discussion.* Because these are rule-making matters, members of the court are not precluded from discussing privately the subject of a pending rule petition among themselves or with others.

History: Sup. Ct. Order No. 95-06, 192 Wis. 2d xv; Sup. Ct. Order No. 96-11, filed and eff. Sept. 16, 1996.

IV. APPOINTMENT PROCESS The Wisconsin Supreme Court, pursuant to statutory authority and the court's rules, regularly appoints lawyers and nonlawyer members of the public to various boards, committees, and other entities. In making those appointments, it is the court's objective to maximize the participation of lawyers and the public in the work of those entities. To avoid the appearance of favoritism or patronage in the appointment process, the court has created a committee independent of the court to assist in the process. The Appointment Selection Committee solicits and evaluates persons for appointment and nominates for the court's consideration the persons it determines are best qualified to serve. In evaluating the qualifications of persons interested in appointment, the Appointment Selection Committee applies the criteria established by the court for each of the entities to which appointment is made.

In order to ensure the integrity of the appointment process and avoid any perception that individual members of the court are interested or involved in the selection of specific individuals to be nominated by the Committee for appointment, the Appointment Selection Committee itself is not appointed by the court but by persons - lawyers and members of the public - designated not by name but by positions held in organizations related to the bar and state government. In this way, any perception that an individual member of the court is in a position to exert influence over any member of the Appointment Selection Committee or any of its decisions is obviated. No member of the court participates in the appointment process until after the Appointment Selection Committee has submitted nominations for specific appointment.

In making appointments, the court's objective is to provide quality and promote diversity on the boards, committees and other entities. The appointment procedure established by the court is designed to produce appointments based solely on the qualities of integrity, intelligence, experience and commitment.

A. APPOINTMENT SELECTION COMMITTEE The Appointment Selection Committee (Committee) consists of the following 12 persons:

One attorney from the Milwaukee metropolitan area selected by the dean of the Marquette University Law School.

One attorney from outside the Milwaukee metropolitan area selected by the dean of the University of Wisconsin Law School.

The president of a county bar association located within the Eastern District of Wisconsin chosen by the court by lot, or his or her designee.

The president of a county bar association located within the Western District of Wisconsin chosen by the court by lot, or his or her designee.

The chair of the Family Law Section of the State Bar of Wisconsin, or his or her designee.

The chair of the General Practice Section of the State Bar of Wisconsin, or his or her designee.

The president of the Government Lawyers Division of the State Bar of Wisconsin, or his or her designee.

One former member of the Board of Attorneys Professional Responsibility or the Board of Bar Examiners who has not served within the preceding five years, chosen by the court by lot.

The chair of one of the district professional responsibility committees provided in SCR 21.08, chosen by the court by lot.

One nonlawyer member of the public designated by the Senate Co-Chair of the Legislative Council.

One nonlawyer member of the public designated by the Assembly Co-Chair of the Legislative Council.

One nonlawyer member of the public designated by the chair of the State Ethics Board.

To be eligible to serve on the Appointment Selection Committee, a lawyer must have practiced law for more than five years.

The term of a member is three years; the terms of the initial members are staggered by the court by lot to provide for the expiration of four members' terms each year.

Vacancies on the Appointment Selection Committee are filled by the persons identified above, respectively. Where the person is specified to be chosen by lot, a person is chosen by lot each time there is a vacancy in that position.

The Committee selects its chair at the first meeting of each calendar year. Staff support is provided to the Committee by a Supreme Court commissioner.

B. MEETINGS The Committee meets at such times as considered necessary by its chair. The meetings are held at locations throughout the state so as to enable the greatest number of members to participate.

C. NOMINATION PROCEDURE 1. *Notice of Vacancy.* Each board, committee and other entity to which the Supreme Court makes appointment of lawyers and nonlawyer members of the public notifies the clerk of the court as soon as practicable of appointments that need to be made. The clerk of the court notifies the Committee chair of those appointments.

2. *Information to and Solicitation of Interested Persons.* In addition to the information disseminated by the court regarding the appointment of lawyers and nonlawyer members of the public, the Committee publicizes the appointments to be made by such means as, in the Committee's discretion, will provide notice to the greatest number of persons likely to be interested in being appointed. To the extent it deems necessary, the Committee conducts in person information and solicitation sessions at locations throughout the state likely to produce qualified persons interested in being appointed.

3. *Resumes; Interviews.* The Committee invites persons interested in being appointed to submit a written resume of their qualifications. The Committee may personally interview those persons whose resumes demonstrate qualifications that appear to warrant a personal, confidential interview before the full Committee or any number of its members the Committee may designate.

4. *Nomination.* Not less than 30 days prior to the expiration of a term or other applicable date that requires an appointment by the Supreme Court, the Committee submits to the Supreme Court the names of the persons, not less than two, it nominates for appointment. If more than one position on a particular board, committee or other entity is to be filled by appointment at the same time, the Committee, in its discretion, may submit the number of names it considers appropriate for appointment to the positions generally or in respect to each position separately. Together with the nominations, the Committee submits to the court the resumes and other material it has considered regarding the persons nominated. The court may ask the Committee to submit additional nominations.

5. *Reappointment.* When a member of a board, committee or other entity is eligible for reappointment to a successive term, the Committee ascertains whether the member regularly attended meetings of the board, committee or other entity, made

SUPREME COURT INTERNAL OPERATING PROCEDURES

significant contribution to its work, and is willing to accept reappointment. If the member's participation has been satisfactory and the member is willing to accept reappointment, and the Committee nominates the member for reappointment to a successive term, it is unnecessary for the Committee to nominate other persons for appointment to the position. If the member's participation has been unsatisfactory or the member is not willing to accept reappointment, the Committee proceeds as in the case of an appointment.

6. *Criteria.* In determining the qualifications of persons for appointment, the Committee applies the criteria for the specific position established by the court from time to time and provided to the Committee in writing. The Committee may, with the approval of the court, apply additional specific criteria.

D. REIMBURSEMENT Members of the Committee are reimbursed for travel, lodging and related expenses reasonably incurred in carrying out their duties.

History: Sup. Ct. Order No. 00-03, 2000 WI 25, 233 Wis. 2d xiii.

State of Wisconsin \ Elections Board

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CARL HOLBORN
Chairperson

KEVIN J. KENNEDY
Executive Director

DATE: February 15, 2006

TO: Representative Freese, Senator Ellis

FROM: Kevin J. Kennedy

SUBJECT: Technical Problems with Assembly Substitute Amendment 1 to 2005 Senate Bill 1

After my initial review of Assembly Substitute Amendment 1 to 2005 Senate Bill 1 (LRB 0514/2), I find some technical drafting issues that could impact the effective administration of the career agencies during transition and the new agency. These problems are described below.

1. Authority for enforcement of local campaign finance violations.

Assembly Substitute Amendment 1 (LRB 0514/2) does not give civil enforcement authority for local campaign finance violations to the new Board. **Section 7** does not appear to override current provisions in Sections 11.38 (5), 11.60 (4), 11.61 (2) and 12.60 (4) for authority to enforce campaign finance and election violations.

2. Timing of current Elections and Ethics Board member terms and new Governmental Accountability Board member terms.

Section 190 (3) – If the terms of the current Elections Board and Ethics Board members expire on the first day of the 6th month after the date of publication of the act, there will be no Board members serving starting sometime in October. (Assuming an April, 2006 publication date.) The existing Boards will continue to operate until June 1, 2007, without any Board members. I think this should be changed to June 1, 2007.

Nominations for the new Board must be completed by November 1, 2006, but the Legislature may not confirm the nominees until sometime in 2007. The new Board is supposed to begin operations on June 1, 2007, which sets a target date for confirmation of new Board members.

The term expiration date in Section 190 (3)(c) for 3 Board members is May 1, 2007, which is less than a full year if they are approved between November 1, 2006 and May 1, 2007. I think this should be changed to May 1, 2011.



DOC for data matching that have not been projected. These costs would not surface until the next budget cycle.

Campaign Finance

In order to ensure that the agency can reduce the current audit backlog, the agency needs to add a campaign auditor (\$50,000) and a program support staff (\$38,000). These positions are in addition to the election administration positions described above. The SEB budget currently has \$100,000 held by Joint Finance to prepare an RFP for an electronic filing software package and campaign finance data base. There is also lease funding to acquire the software package. DOA is required to project manage this endeavor.

Proposed Agency Structure

As 2005 Senate Bill 1 has progressed, I have expressed my concern that the new agency be adequately funded to ensure that the agency can provide the enforcement envisioned by the drafters, but more importantly have the resources for election administration required to meet the expanded responsibilities required by law. If the proposed agency continues to have 3 divisions, I recommend that the campaign finance responsibilities and resources be shifted to the division responsible for ethics and lobbying and the remaining resources of the current SEB be allocated to election administration.

A better solution is to house election administration in a single independent agency separate from the proposed Government Accountability Board. A single citizen board is not going to have the time or ability to effectively set policy in the areas of election administration along with campaign finance, ethics and lobbying. The stated goal of the legislation is to improve enforcement of campaign finance, ethics and lobbying provisions of state law. Adding local enforcement to the agency responsibilities is a good improvement that furthers the initial basis for the legislation. A separate independent agency for election administration would be a more effective use of the resource allocation described in this report.

I encourage you to add these resources to the proposed trailer bill. More importantly I urge you to work to develop two separate independent agencies: an Elections Board to administer Chapters 5 through 10 and 12 and a Governmental Accountability Board to administer and enforce campaign finance (Chapter 11), ethics (Chapter 19) and lobbying (Chapter 13). I have attached a chart that lists the current agency budget lines with amounts and sources and the proposed additional funding lines.

State Elections Board

Kevin J. Kennedy
Executive Director

C: Members, Assembly Committee on Campaigns and Elections

changes to state law and HAVA, the agency will have to add 25 permanent positions. This is based on an analysis prepared for the State Elections Board (SEB) by Deloitte Consulting as part of its SVRS implementation contract. A copy of the proposed organizational chart accompanies this report. A copy of the final report will be provided once it is completed.

The SEB currently has an authorized GPR FTE level of 11 FTE – Executive Director, Legal Counsel, Election Director, two election specialists, Campaign Finance and Agency Operations Director, 3 campaign auditors, a financial specialist and a receptionist. This is down three positions lost through budget reduction requirements – information technology specialist, public information officer/training director and a support position. The agency has 4 HAVA funded project positions budgeted through June 30, 2007 – 3 election specialists and a support position.

The SEB has three IT employees that have been assigned to SVRS that are on loan from the Division of Enterprise Technology (DET) in the Department of Administration (DOA) and two IT project positions. In addition the SEB has 8 election specialists, 7 deployment specialists, 8 trainers and three help desk personnel in project or LTE positions on the SVRS project.

For the next budget cycle SEB would need the following 25 additional positions:

<u>Position Title</u>	<u>Annual Cost (salary, fringe, support)</u>	<u>Suggested Funding Source</u>
Deputy Director	115,000	GPR
SVRS Director	108,000	HAVA
Training Director	108,000	HAVA
Election Director	108,000	HAVA
3 IT Staff	345,000	GPR
4 Help Desk Staff	210,000	HAVA
4 Election Specialists	200,000	HAVA
4 Training Staff	210,000	HAVA
2 Communication Staff	110,000	GPR
3 Budget, Contract, & Record Management	150,000	GPR
3 agency support	114,000	HAVA

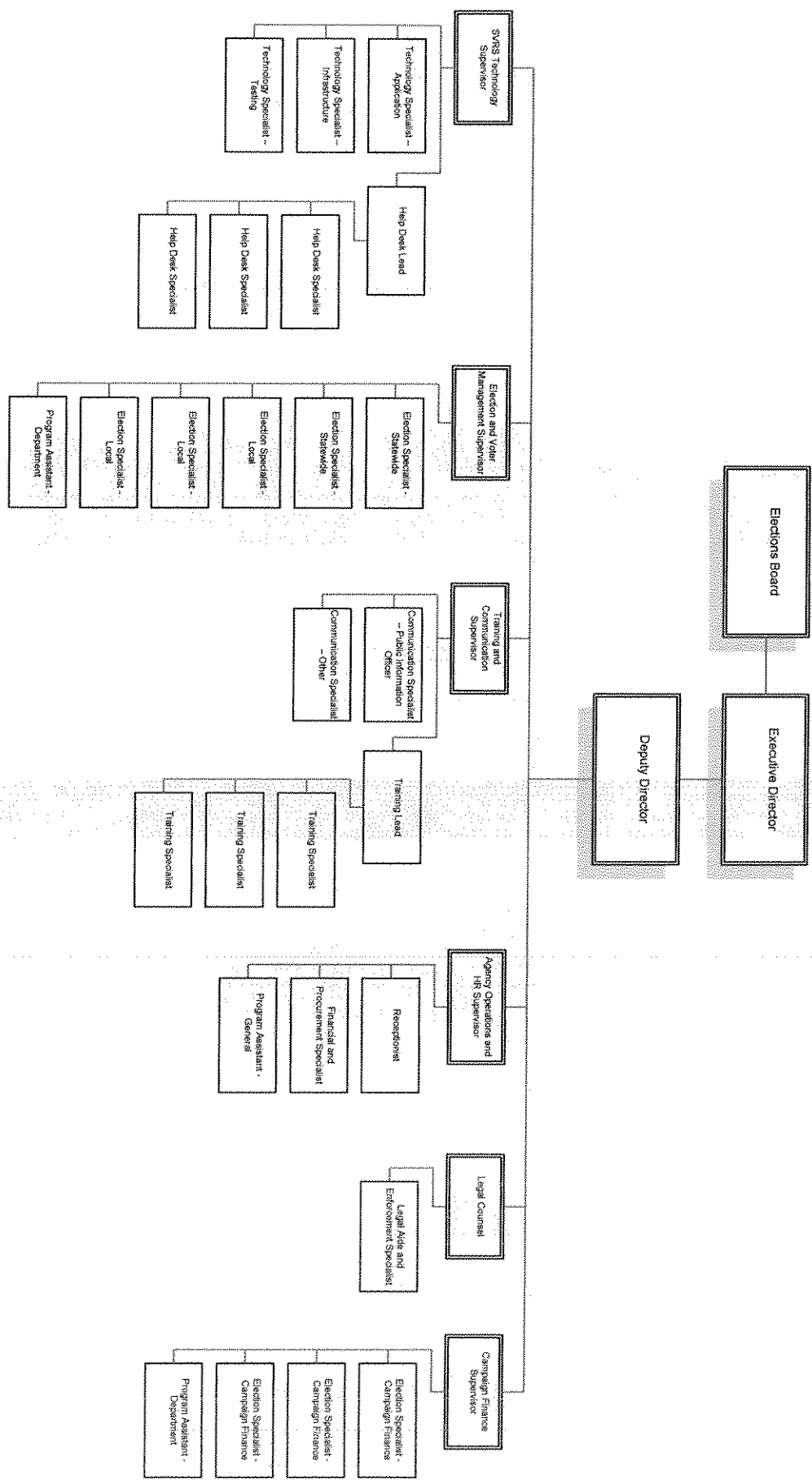
25 positions \$1,778,000 (GPR/720,000, HAVA/1,058,000)

For purposes of the trailer bill only 50% of the GPR needs to be appropriated, but the additional positions need to be authorized – 9 GPR and 16 Federal. The deputy director position should be placed in the Executive Salary Group.

This represents a slight rearrangement of responsibilities from the suggested staffing proposed by Deloitte. This is based on my evaluation of the highest agency needs. The support costs do not include additional rent, in-state travel costs or project development costs for web based training initiatives that are presently being explored.

There will be DET charges for SVRS of at least \$600,000 annually that will not be able to be picked up by HAVA funding. There will also be increased SVRS related postage costs that have not been projected. SEB will have to be SVRS related charges to DOT, DH & FS and

Proposed SEB Organizational Structure



Summary of Estimated Costs to Fund 2005 Senate Bill 1

<u>Current Budget (FY 7)</u>	<u>Funding Source</u>	<u>Amount</u>
State Elections Board		
	GPR	1,280,500
	Program Revenue	57,700
	Segregated (Taxpayer Checkoff)	750,100
State Ethics Board		
	GPR	295,300
	Program Revenue	397,700
Enforcement Division		Beginning January 1, 2007
	GPR	593,600
Additional Election and SVRS Administration		Beginning January 1, 2007
	GPR	360,000
Additional Campaign Finance Support		Beginning July 1, 2006
	GPR	88,000

2/7/2006

State of Wisconsin \ Elections Board

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CARL HOLBORN
Chairperson

KEVIN J. KENNEDY
Executive Director

February 7, 2006

The Honorable Stephen J. Freese, Chair
Assembly Committee on Campaigns and Elections
State Capitol, Room 115 West
Madison, WI 53702

Dear Representative Freese:

You have asked for financial information to assist you in preparing a trailer bill to fund 2005 Senate Bill 1, which combines the State Elections Board and the State Ethics Board into a single agency and adds an enforcement division to the new agency. You specifically asked me to provide funding data to ensure that the agency can carry out the expanded responsibilities for election administration as a result of the Help America Vote Act of 2002 (HAVA) and 2003 Wisconsin Act 265. You also asked me to describe the resources necessary to enable the agency to address the audit backlog of campaign finance reports.

I have broken down the funding categories into three sections so that the trailer bill can be tailored to reflect the form in which 2005 Senate Bill 1 emerges from the Assembly Committee on Campaigns and Elections. The first section reflects the costs associated with adding four FTE positions set out in the original legislation to enhance the enforcement capabilities of the new agency. The second section describes the funding components necessary to ensure that the administration of elections, including the operation of the Statewide Voter Registration System (SVRS), is properly funded. The third section describes the resources necessary to enable the agency to address the audit backlog of campaign finance reports.

The financial figures are the best available at this time. They will need to be refined, but should enable the legislature to establish a figure that closely approximates the costs needed to enable the agency to perform the responsibilities directed by the Legislature. The proposed funding is in addition to the existing base budget authority for the two agencies.

Enforcement

The original fiscal estimate for 2005 Senate Bill 1 placed the additional costs for adding four FTE positions at approximately \$593,600 in GPR funds. This reflects the salary, fringe and support costs associated with adding a new executive director, an enforcement division administrator, an attorney and a staff investigator. These positions are part of the original legislation and were in the legislation when it passed the Senate.

Election Administration

In order to carry out the expanded election related responsibilities required to meet the election administration, training, voting equipment approval and voter registration duties required by



WISCONSIN LEGISLATIVE COUNCIL

Terry C. Anderson, Director
Laura D. Rose, Deputy Director

TO: REPRESENTATIVE STEPHEN FREESE
FROM: Ronald Sklansky, Senior Staff Attorney
RE: 2005 Senate Bill 1
DATE: February 22, 2006

2005 Senate Bill 1, as amended by the Senate, creates a new agency entitled the Government Accountability Board to regulate the election, lobby, and ethics laws of Wisconsin. This memorandum briefly compares Senate Bill 1 with the provisions of Assembly Substitute Amendment 1 to Senate Bill 1 and with a substitute amendment (LRB-0556/1) proposed by Representative Mark Gundrum.

GOVERNMENT ACCOUNTABILITY BOARD

A. Senate Bill 1

1. Creation

Senate Bill 1 in effect combines the powers and duties of the current Elections Board and Ethics Board into a new entity entitled the Government Accountability Board (board). The new body consists of four persons nominated by the Governor, and appointed with the advice and consent of the Senate. A member may not be an officer or employee of a registrant under the campaign finance law. Except for initial appointments, members will serve for four-year terms.

The members of the board will be appointed from nominations submitted to the Governor by a nominating committee consisting of:

- a. The Chief Justice of the Supreme Court.
- b. The Dean of the Marquette University Law School.
- c. The Dean of the University of Wisconsin Law School.

The nominating committee also must convene and make recommendations to the Governor when vacancies occur on the board. The Chief Justice serves as chairperson of the committee. No person may be nominated by the committee unless the person receives the unanimous approval of the committee.

2. Board Employees

The board is required to employ an executive director outside the classified service and is required to employ its own legal counsel. The board will have three division administrators. The administrator of the Enforcement Division may be removed from office only by the executive director for cause.

B. Substitute Amendment 1

1. Creation

Substitute Amendment 1 increases the membership of the board from four to seven. Six members of the board may not be officers or employees of registrants under the campaign finance law. Four of these six members must have prosecutorial experience. The seventh member must be a retired judge.

The non-judge members of the board will be nominated by a nominating committee consisting of the Chief Justice and the Deans of the Marquette University and University of Wisconsin Law Schools. These nominees must receive the unanimous approval of the nominating committee. The retired judge will be selected randomly by the Chief Justice. All seven members of the board must receive confirmation from both houses of the Legislature. The board's actions will be taken by a simple majority of the board. The board's investigatory proceedings, except for the results of a vote on a board action, may be conducted in closed session and, prior to public proceedings regarding violations of the law, all of the board's investigatory materials will be confidential.

2. Board Employees

Substitute Amendment 1 makes no change to the provisions of Senate Bill 1.

C. Proposed Substitute Amendment 2

1. Creation

The proposed substitute amendment changes the name of the board to the Government Accountability and Integrity Board and increases the membership of the body from four to seven. Four members of the board must have prosecutorial experience, two members of the board must have prior service as a nonpartisan elective official of a local governmental unit, and one member of the board must be a retired judge.

All members of the board must be appointed from nominations submitted to the Governor by a nominating committee consisting of one Court of Appeals judge from each of the Court of Appeals districts. The Court of Appeals judges must be chosen as members by lot by the Chief Justice of the Supreme Court in the presence of the other justices of the Supreme Court. The nominees to the board

must receive the unanimous approval of the nominating committee. The nominees also must receive confirmation from both houses of the Legislature. Any action by the board requires the affirmative vote of at least four members. The board's investigatory proceedings, except the results of a vote on a board action, may be conducted in closed session and, prior to public proceedings regarding violations of the law, all of the board's investigatory materials, including the full text of a complaint received by the board, will be confidential. No person other than a person who is the subject of an investigation by the board may provide access to any record of the board that is not subject to access to any person other than a member, employee, or agent of the board. A person who violates this provision may be fined not more than \$500 or imprisoned for not more than 30 days or both.

2. Board Employees

The proposed substitute amendment makes no change to the provisions of Senate Bill 1.

ENFORCEMENT DIVISION

A. Senate Bill 1

1. Creation

Senate Bill 1 creates an Enforcement Division that is attached to the board. An administrator, who will be appointed by the executive director of the board, with the advice and consent of the board, will direct and supervise the Enforcement Division. The administrator will serve a term of not less than four years nor more than six years.

2. Powers and Duties of Enforcement Division

The Enforcement Division is required to investigate and prosecute alleged violations of laws administered by the board, including civil and criminal actions brought by the board, and must assist district attorneys and the Attorney General in prosecuting criminal actions referred to them by the Enforcement Division. The board must employ at least one full-time attorney and at least one full-time investigator within the Enforcement Division.

Any person may file a complaint with the Enforcement Division alleging a violation of the election, lobbying, or ethics laws. The division must investigate the complaint unless the Enforcement Division finds the complaint to be without merit. The Enforcement Division may on its own, or upon direction of the board, investigate any potential violation of the election, ethics, or lobby laws whenever the division has probable cause to believe that a violation has occurred. If the complaint concerns a question as to whether an election official or a private person is acting in conformity with the law or rules of the board, the person filing the complaint must serve a copy of the complaint upon that official or private person and that official or private person becomes a party to the case. An election official or private person may move to dismiss a complaint if it is clearly without merit. If the Enforcement Division finds, in response to a motion, that a complaint is clearly without merit, the division must dismiss the complaint. If the division does not dismiss a complaint, the division must issue a proposed decision, which must include findings of fact and conclusions of law and may include an order. The order may require an election official or a private person to act in conformity with the relevant laws or

rules of the board or may impose a civil penalty for such violations for which a civil penalty is applicable.

Generally, the Enforcement Division may, with or without approval of the board, prosecute any civil or criminal violation of election, lobby, and ethics laws in the name of the board. However, prior to commencing a criminal prosecution, the Enforcement Division must notify the district attorney for the county in which the violation is alleged to have occurred. If the district attorney notifies the Enforcement Division that a criminal prosecution will not be commenced, or the district attorney fails to commence a prosecution within 30 days after receiving notice from the Enforcement Division, the Enforcement Division may, with the approval of the board, commence a criminal prosecution regarding that alleged violation. The jurisdiction of the Enforcement Division is concurrent with the jurisdiction of the board, the district attorneys, and the Attorney General to conduct investigations and enforce the election, lobby, and ethics laws. The Enforcement Division may request assistance from the Department of Justice.

The Enforcement Division may subpoena and bring before it any person and require the production of any papers, books, or other records relevant to an investigation and may obtain an order from a circuit court to permit the inspection and copying of records of a financial institution to obtain evidence of violation of election, lobby, or ethics laws. Prior to issuing a subpoena or obtaining a search warrant, the Enforcement Division must submit a written request to do so to the board. If the board does not disapprove the request within seven days of receiving the request, the Enforcement Division may proceed to issue the subpoena or obtain the search warrant.

If the Enforcement Division issues a decision that contains an order, the order is effective upon service of the order notwithstanding any appeal to the board or a circuit court except that the Enforcement Division may stay such an order pending an appeal.

The Enforcement Division is bound by applicable laws, rules, formal opinions, and actions of the board, except that the Enforcement Division may nonacquiesce in any formal opinion or action of the board by publishing a notice of nonacquiescence in the Wisconsin Administrative Register. Following publication of the notice, the Enforcement Division is not bound by the formal opinion or action in which nonacquiescence has been registered.

A party aggrieved by an Enforcement Division decision may, within 20 days, appeal to the board, which may affirm, modify, or reverse an order of the Enforcement Division. The Enforcement Division or a defendant may seek judicial review of the board's decision.

If the Enforcement Division finds, by a preponderance of the evidence, that a complaint is frivolous, the division may order the complainant to forfeit not more than the greater of \$500 or the expenses incurred in investigating the complaint. Upon request of the division, the Attorney General must begin proceedings to recover the amount of any unpaid forfeiture.

3. Budget Requests

All budget requests by the Enforcement Division must be submitted by the board to the Department of Administration without change except as concurred in by the Enforcement Division.

B. Substitute Amendment 1

1. Creation

Substitute Amendment 1 makes no change to the provisions of Senate Bill 1 relating to the creation of the Enforcement Division.

2. Powers and Duties of Enforcement Division

Substitute Amendment 1 makes the following changes to the provisions of Senate Bill 1 relating to the powers and duties of the board and the Enforcement Division:

a. The board and a district attorney may not conduct simultaneous investigations. The board and a district attorney shall share investigatory information regarding possible violations under the board's jurisdictions and, if it appears that simultaneous investigations may begin or have begun, the board's investigation will continue and the district attorney's investigation will be suspended. If a district attorney is conducting an investigation, and the board is not, the district attorney may refer the investigation to the board at any time. Before a district attorney may commence a criminal prosecution, the district attorney must provide written notice to the board. If the board will not commence a criminal prosecution within 30 days of the notice, the district attorney may proceed.

b. The board's seven-day passive review period, relating to the issuance of a subpoena or obtaining a search warrant, is extended to a 10-day passive review period.

c. A defendant in a criminal case relating to the violation of a law under the board's jurisdiction has the right to one change of venue. The second venue will be randomly selected by the Chief Justice of the Wisconsin Supreme Court from the remainder of the counties in the state, with the exception of the defendant's county of residence.

3. Budget Requests

Senate Substitute Amendment 1 makes no change to the provisions of Senate Bill 1.

C. The Proposed Substitute Amendment

1. Creation

The proposed substitute amendment does not attach an Enforcement Division to the board. All three divisions in the board, the Enforcement Division, the Accountability and Integrity Division, and the Elections Division, will be under the direction and supervision of administrators who will be appointed by the board. The administrator of the Enforcement Division will serve for a term of not less than four years nor more than six years expiring on September 1 of an odd-numbered year. Further, this administrator must be an attorney licensed to practice law in Wisconsin who has criminal justice experience.

2. Powers and Duties of Enforcement Division

The proposed substitute amendment removes the independent authority of the Enforcement Division. Instead, the division acts, under the direction and supervision of the board, to investigate and prosecute alleged violations of laws administered by the board. Further, with respect to the laws under the board's jurisdiction, only the board may investigate and prosecute civil or criminal actions. Jurisdiction over these matters is removed from other entities such as the Attorney General and district attorneys. Finally, the authority of the board to apply for a subpoena is removed.

The proposed substitute amendment creates a new process for acting on complaints. The administrator of the Enforcement Division must make an initial determination as to whether there is reasonable suspicion that a violation of the law has occurred and whether an investigation is appropriate. The board must be notified within 10 days of the opening of an investigation of any matter. If, within this 10-day period, a member of the board requests the chairperson to call a meeting of the board and the member requests that the investigation be suspended until the meeting is held, the administrator must suspend the investigation until the board directs the investigation to proceed. A meeting must be held within 10 working days after an investigation is suspended. If the board believes that there is reasonable suspicion that a violation of the law has occurred or is occurring, the board may proceed with the investigation and may retain an investigator. If the board retains an investigator, the administrator must submit to the board the names of three qualified individuals who may serve. An investigator who is retained by the board must make periodic reports, but in no case may the interval for reporting exceed 90 days. If the board authorizes the administrator to investigate a matter without retaining an investigator, the administrator must make periodic reports to the board, but in no case may the reporting interval exceed 90 days. If, after receiving a report, the board does not vote to continue an investigation for an additional period not exceeding 90 days, the investigation is terminated at the end of the reporting interval. At the conclusion of an investigation, the administrator must present to the board one of the following:

- a. A recommendation to make a finding that probable causes exists to believe that one or more violations of the law have occurred or are occurring, together with a recommended course of action.
- b. A recommendation for further investigation of the matter together with facts supporting that course of action.
- c. A recommendation to terminate the investigation due to lack of sufficient evidence to indicate that a violation of the law has occurred or is occurring.

The Enforcement Division may file a complaint only upon authorization by the board. The division may request the assistance of special counsel and submit to the board the names of three qualified individuals to serve as special counsel. This person must be a retired judge or an attorney who, at the time of appointment, has senior status as a member of the State Bar of Wisconsin, as defined by the Supreme Court. When the board authorizes commencement of a prosecution and the prosecution is not concluded in circuit court or settled within six months of the date of the authorization, the administrator of the Enforcement Division or any special counsel may not proceed with the prosecution and must move to dismiss it, unless the board authorizes the prosecution to proceed for an additional period, not to exceed six months. The board may, by rule, prescribe categories of civil offenses that the board will agree to compromise and settle without a formal investigation upon payment of specified amounts by the alleged offender. The board may authorize the administrator of the Enforcement

Division to settle these charges if the offenses, in the aggregate, do not involve payment of more than \$500. No employee of the Enforcement Division, no investigator, and no special counsel may, while so employed or retained, or for 12 months after ceasing to be so employed or retained, become a candidate for state or local office.

3. Budget Requests

The proposed substitute amendment does not authorize the Enforcement Division to make budget requests.

ADVICE FROM EXECUTIVE DIRECTOR

A. Senate Bill 1

Current law provides that a person may request a formal opinion from the Elections Board with respect to the person's authority or responsibilities under Wisconsin's election laws. No person acting in good faith upon a formal opinion issued to the person by the board will be subject to civil or criminal prosecution, if the material facts are as stated in the opinion request. Similarly, an individual may request an advisory opinion from the Ethics Board regarding the propriety of any matter regarding the application of Wisconsin's ethics or lobby laws. It is *prima facie* evidence of intent to comply with these laws when a person refers a matter to the board and abides by the board's advisory opinion, if the material facts are as stated in the opinion request.

Senate Bill 1 retains current law providing that a person may request a formal opinion from the board's executive director with respect to the person's authority or responsibilities under Wisconsin's election laws. The executive director may consult with the board before issuing a formal opinion. Senate Bill 1 also provides that a person seeking advice as to the applicability of Wisconsin's election, ethics, or lobby laws must present the opinion request to the executive director of the board. The executive director may issue an opinion. Prior to issuing an opinion, the executive director may consult with the board, and, in the case of an opinion regarding Wisconsin's ethics or lobby laws, must not reveal any information to the board that would identify the requester of the opinion.

B. The Substitute Amendment

Substitute Amendment 1 makes no change to the provisions of Senate Bill 1 relating to advice from the executive director, except that the current law provision regarding a formal opinion under the Election Law is removed.

C. The Proposed Substitute Amendment

The proposed substitute amendment retains current law providing that a person may request a formal opinion from the board with respect to the person's authority or responsibilities under Wisconsin's election laws. The proposed substitute amendment also provides that an individual may request of the board an advisory opinion regarding the applicability of Wisconsin's election, ethics, or lobby laws. The board must review a request for an advisory opinion and may advise the person making the request. As under current law, the board's deliberations and actions upon the requests must be in meetings not open to the public. The substitute amendment also provides that if any act that is referenced in the opinion is prohibited by law, the executive director of the board must include in the

opinion a citation to the legal authority prohibiting the act. If no legal authority clearly prohibits an act that is referenced in the opinion, the executive director must so state.

EFFECTIVE DATE AND INTERIM MANAGEMENT

A. Senate Bill 1

The provisions of the bill relating to the creation of the board and the Enforcement Division generally take effect on the day after publication of the bill as an act. The remaining provisions generally take effect on the first day of the sixth month beginning after the date of publication.

Further, the Director of the Legislative Council staff is required to serve as executive director of the board, without additional compensation for that service, until such time as the board initially appoints an executive director and the appointee qualifies to take office. The executive director of the Legislative Council staff is vested with full authority and responsibility to carry out all functions of the executive director of the board, the Enforcement Division, and the administrator of the Enforcement Division prior to appointment and qualification of the initial executive director, including the retention and termination of all staff not transferred to the board that the board is authorized to employ under the bill.

B. Substitute Amendment 1

Substitute Amendment 1 provides that the process by which the board will be created and operated will take effect on the day after publication of the new law. The remainder of the provisions of the substitute amendment will take effect on June 1, 2007.

C. The Proposed Substitute Amendment

The proposed substitute amendment provides that the process by which the board will be created and operated will take effect on January 1, 2007. The remainder of the provisions of the proposed substitute amendment will take effect on July 1, 2007.

LOCAL OFFICIALS

Substitute Amendment 1 provides that local public officials must comply with the state Ethics Code and that the board's jurisdiction will be expanded to allow it to begin civil and criminal actions against local officials. Neither Senate Bill 1 nor the proposed substitute amendment provide that local public officials must comply with the Ethics Code.

RS:all:rv