

## 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\_pt08c**

➤ Record of Comm. Proceedings ... RCP

➤ \*\*



# TERRI McCORMICK

WISCONSIN STATE REPRESENTATIVE

CHAIR, COMMITTEE ON ECONOMIC DEVELOPMENT  
VICE-CHAIR, COMMITTEE ON JUDICIARY  
COMMITTEE ON PUBLIC HEALTH  
COMMITTEE ON INSURANCE  
56<sup>TH</sup> ASSEMBLY DISTRICT

## SUMMARY OF SENATE BILL 1

- This bill abolishes both the State Ethics and Elections boards and replaces them with a Government Accountability Board.
- The board is composed of four members serving for staggered four-year terms who are nominated by the Governor and appointed with the advice and consent of the senate.
- Each of the members must be appointed from nominations submitted by a Government Accountability Candidate Committee, which consists of the Chief Justice of the Supreme Court, the dean of the University of Wisconsin law school, and the dean of the Marquette University law school.
- No member, for one year immediately prior to the date of appointment, may have been, and no member while serving on the board may become, a member of a political party, an officer or member of a committee in any partisan political club or organization, a candidate for any partisan office or an officer or employee of a registrant under the campaign finance law. No member may be a lobbyist.
- The bill creates an Enforcement Division within the Government Accountability Board.
- The Enforcement Division has independent authority to investigate violations of the elections, ethics, and lobbying regulation laws and to prosecute civil violations without the consent of the Government Accountability Board,
- Before bringing an action to prosecute any alleged criminal violation, the division must provide written notice to the district attorney for the county where the alleged violation occurs. If the district attorney fails to prosecute within 30 days after receiving the notice or declines to prosecute, the division may then prosecute the alleged violation.
- Under the bill, any person may file a sworn complaint with the division alleging a violation of the elections, ethics, or lobbying regulation laws. The division must investigate the complaint unless the division finds the complaint to be without merit.
- Amendments have been drafted to address the concerns over frivolous complaints and effective dates.



# TERRI MCCORMICK

WISCONSIN STATE REPRESENTATIVE

CHAIR, COMMITTEE ON ECONOMIC DEVELOPMENT  
VICE-CHAIR, COMMITTEE ON JUDICIARY  
COMMITTEE ON PUBLIC HEALTH  
COMMITTEE ON INSURANCE  
56<sup>TH</sup> ASSEMBLY DISTRICT

## Testimony for SB 1 -- Joint Committee on Finance -- 1/25/05

- Mr. Chairman, Committee Members, Thank you for allowing me to testify before you today on this very important piece of legislation.
- As you are no doubt well aware, legislators from both sides of the aisle have recently pled guilty to using their legislative offices as campaign headquarters, using taxpayer money to win reelection, and using positions of leadership to solicit campaign contributions from special interest groups in exchange for action on legislation
- The caucus scandal, combined with years of increased spending on pork projects and special interest legislation has gradually eroded Wisconsin's reputation as a "Clean Government" state.
- A recent poll from the Wisconsin Policy Research Institute found that only 6% of Wisconsin residents believe that their elected officials are putting their interests ahead of special interests.
- And that was before it became public that dozens of U.S. Representatives have received millions of dollars in illegal contributions and favors from lobbyists.
- It is time that we put honesty and integrity back into Government.
- Senator Ellis' Bill is a tremendous step in the right direction.
- As you know, SB 1 would merge the state Ethics and Elections Boards into a new "Government Accountability Board."
- The key component of the new Agency is the Enforcement Division, which "is empowered to investigate violations and bring civil and criminal actions to enforce the elections, ethics, and lobbying regulation laws" of the state.
- Wisconsin needs an agency with the independent authority to investigate ethics violations so that our elected leaders can be held accountable for their decisions.



## WISCONSIN LEGISLATIVE COUNCIL AMENDMENT MEMO

**2005 Senate Bill 1**

**Senate Amendments 1, 2, 3, 4,  
and 5**

*Memo published:* November 1, 2005

*Contact:* Ronald Sklansky, Senior Staff Attorney (266-1946)

### **Senate Amendment 1**

Senate Amendment 1 makes the following changes to Senate Bill 1:

1. The bill provides that prior to commencing any criminal prosecution, the enforcement division of the new government accountability board must provide written notice to the district attorney for the county in which the violation is alleged to have occurred. If the district attorney will not commence a criminal prosecution, the enforcement division may commence a criminal prosecution with respect to that alleged violation. *Senate Amendment 1* provides that the enforcement division, following the district attorney's failure to prosecute, may commence a criminal prosecution only with the approval of the government accountability board.
2. The bill provides that the enforcement division may employ special counsel, may issue subpoenas, and obtain search warrants. *Senate Amendment 1* provides that these actions may be taken only if the enforcement division submits a written request for these purposes to the government accountability board and if the board does not disapprove the requests within seven days of receiving them.
3. Under current law, and if the bill were enacted into law, the administrator of the enforcement division could be removed from office at the pleasure of the executive director of the government accountability board. *Senate Amendment 1* clarifies that the administrator of the enforcement division in the government accountability board may be removed from office only by the executive director of the board, for cause.

### **Senate Amendment 2**

Senate Amendment 2 makes the following changes to Senate Bill 1:

1. The bill creates an 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, and one person appointed by the Governor to represent each political party whose candidate for Governor, Attorney General, Secretary of State, or State Treasurer received at least 1% of the vote in the most recent general election. No member, other than a member who is appointed to represent a political party, may be a state public official or local public official or otherwise be a member of a partisan organization. A member also may not be a lobbyist or an employee of a principal. *Senate Amendment 2* reduces the membership of the board to four persons nominated by the Governor, and with the advice and consent of the Senate, appointed for four-year terms. In addition, the amendment also provides that a member may not be an officer or employee of a registrant under the campaign financing law.
2. The bill provides that members of the board who do not represent political parties 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; and (d) the chief officers of the Wisconsin Counties Association, the Wisconsin Towns Association, the League of Wisconsin Municipalities, the League of Wisconsin Municipalities, the League of Women Voters of Wisconsin, the Wisconsin Newspaper Association, and the State Bar of Wisconsin. The committee must elect a chairperson and vice chairperson and may not nominate a person unless that person receives the vote of at least six members of the committee. *Senate Amendment 2* reduces the membership of the nominating committee to the Chief Justice of the Supreme Court and the Deans of the Marquette University Law School and University of Wisconsin Law School. The Chief Justice serves as the chairperson of the committee and a nominee for a position on the board must receive the unanimous approval of the committee.

### *Senate Amendment 3*

Senate Amendment 3 removes all references to new appropriations in the bill. The bill, as amended by Senate Amendment 3, leaves no appropriation language in the statutes regarding either the current Elections Board or the proposed Government Accountability Board. Also, the form of the amendment: (a) eliminates various aids currently provided by the Elections Board to local governments; (b) eliminates the specific authority of the new board to employ special counsel; (c) eliminates the authority of the Enforcement Division to seek, independently, supplemental appropriations from the Joint Committee on Finance; and (d) eliminates new position authorizations for the board.

### *Senate Amendment 4*

Senate Amendment 4 moves the general effective date of Senate Bill 1 from May 1, 2006 to the first day of the sixth month beginning after the date of publication of the enactment. The statutes relating to the creation of the board take effect on the day after publication.

### *Senate Amendment 5*

Senate Amendment 5 provides that if the Enforcement Division of the board finds, by a preponderance of 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. If a request is made by the Enforcement Division, the Attorney General must begin proceedings to recover the amount of any unpaid forfeiture.

**Legislative History**

On November 1, 2005, the Senate took the following actions: (a) Senate Amendments 1 to 4 were adopted on voice votes; (b) Senate Amendment 5 was adopted on a vote of Ayes, 33; Noes, 0; and (c) Senate Bill 1 was passed on a vote of Ayes, 28; Noes, 5.

RS:ksm:rv:jal



## LEAGUE OF WOMEN VOTERS® OF WISCONSIN

122 State Street, #405  
Madison, WI 53703-2500

Phone: (608) 256-0827  
Fax: (608) 256-1761

<http://www.lwwwi.org>  
[lwwwisconsin@lwwwi.org](mailto:lwwwisconsin@lwwwi.org)

January 25, 2006

To: Assembly Committee on Campaigns and Elections  
Re: Senate Bill 1

The League enthusiastically supported Senate Bill 1 when it was introduced in May 2005. We continue to support this proposal to create one state agency with responsibility for ethics and elections, as well as the authority and capacity to enforce the law in these areas. Given that SB 1 has been amended since it was introduced, the following statement addresses the bill in its current form.

The League's advocacy at the state and national levels is always grounded in our underlying commitment to promote an open governmental system which is representative, accountable, and responsive. We also believe government should function efficiently and economically, and this requires clear assignment of responsibility, adequate financing, and coordination among the different agencies of government. Beyond this our campaign finance positions, among other things, require that we work to create and maintain a strong governmental body to monitor and enforce campaign finance laws.

This proposal which places the responsibility for ethics and elections, including campaign finance laws, under one independent Wisconsin Government Accountability Board has the potential to accomplish the above goals.

For the structure and workings of the Board, we recommend:

1. The members of this nonpartisan board should be recommended to the Governor by a nominating committee that includes representatives of nonpartisan groups, as suggested in the original bill. While individual members of the Board will have their own perspectives, this approach is more likely to result in a board that will think and act independently.
2. A unanimous vote of the nominating committee should be required to nominate a candidate. This will reduce partisanship.
3. The Board should have at least five members, and more would be better. A larger board brings more perspectives to the table. Also, it results in a larger quorum.
4. Board members should have staggered, six-year terms. This will encourage institutional memory and buffer the Board from partisan trends.
5. Board decisions should require a supermajority vote.

The Enforcement Division is the core element of SB 1. Without it, the bill cannot make a difference. To achieve the highest degree of integrity in our state government, it is essential that there be adequate staffing and funding for the Enforcement Division. We commend the authors and supporters of the bill for insisting on a trailer bill that provides adequate funds for all three divisions of the Government Accountability Board.

Finally, we recommend that both the Ethics and Elections divisions be authorized to give advisory opinions in confidence to officials and citizens who request them. The opinions, if binding, should be public but anonymous, satisfying the need for open records and fairness, while protecting the name of the requester.

With adequate funding, this bill's provisions will ensure that the good government for which Wisconsin is known will continue to serve the citizens of Wisconsin in a fair and timely way.

We urge you to favorably recommend this bill to the Assembly, along with the appropriations trailer bill. Thank you very much.

**Testimony before the Assembly Committee on Campaign and Elections  
In support of Senate Bill 1  
George Penn, 4634 Bonner Lane, Madison, WI 53704, 608-244-5165  
January 25, 2006**

Let me start by thanking you for holding these public hearings. I strongly believe they are an essential part of any healthy democracy, but only a part as today's discussions before the committee will show.

I am not here representing any organization, I am a recently (and likely until I die) activated citizen for government reform. I am politically independent precisely because I see that both of the duopoly parties are spinning and squirming to not pass meaningful reform. And from my citizen perspective, issues are moot under our broken democracy.

I am glad that you are considering Senate Bill 1 and I hope you will promptly pass it out of committee so that it will receive full Assembly debate and passage this session. It is a toddler's step along the path we need to travel to get our government back to the people. Unfortunately, I do not see the proper level of consideration for campaign finance reform legislation - like the public financing bill, AB 626, which I understand has been pulled from the agenda today. When AB 626 does finally receive public hearing I will eagerly appear before this committee prepared to testify in support of that bill in its current form.

But, until we convince you to have the fortitude (and we will be working to ensure you will) to pass that bill, Senate Bill 1 is most important. The recent indictments show that too many politicians cannot be trusted and there needs to be enforceable authority to put them in jail when they break the law. I constantly see in the papers and on the radio both parties suggesting they are victims - because they got caught and others didn't - which is laughable and unacceptable to many of us citizens and shows how the politicians' thinking is warped by the system. And a growing number of us NOBODIES are becoming increasingly impatient with the double speak that many legislators use: "That's how the system works so we have to do it too;" or "We didn't know that we were doing anything wrong [like the caucus scandal claims] because the laws are unclear." I for one do not fall for that circle of deception - YOU WRITE THE LAWS. I understand that this bill calls for an independent prosecutor, which is a good thing - the fact that incumbents of both parties are uncomfortable with it demonstrates its necessity. This bill would not be supportable to those of us who are working to clean up the corruption in our state politics without an independent prosecutor.

What the bill is sorely missing is adequate funding for the new merged organization to be able to do a fraction of the things the bill assigns to it - least of which is to enforce criminal activities by legislators. So, in that respect the bill is unsupportable.

However, I have looked into this aspect and it APPEARS that you all are saying that there will be a "trailer" bill to provide adequate funding. I'll believe it when I see it - AND I and many others will be watching. We will not accept the "it costs too much" excuse that I am sure also will be used for AB 626 when it comes to hearing. The corrupt pay-to-play system costs multiples more.

While I support it as it is, Senate Bill 1 is currently just another shell game to allow both parties to spin that they have passed reform legislation (to lead people to believe the system is fixed). It is not fixed without adequate funding and you have passed NO reform with this bill without adequate funding. I and others in the reform community will be telling people that there is no real reform until we see adequate funding.

So, I encourage you to pass Senate Bill 1. And I look forward to future opportunities to comment before this committee on the important public funding bill, AB626.

## Government Accountability Board Enforcement Administrator Compared to the Federal Government's Independent Counsel

| <u>Subject Area</u>       | <u>Independent Counsel</u>   | <u>Enforcement Administrator</u>  |
|---------------------------|--|---|
| Initiate Civil Actions    | May engage in any civil litigation the Independent Counsel considers necessary                         | May bring civil actions only under chs. 5-12, subch. III of ch. 13 and subch. III of ch. 19   |
| Initiate Criminal Actions | May engage in any criminal litigation the Independent Counsel considers necessary                      | May bring criminal actions only under chs. 5-12, subch. III of ch. 13 and subch. III of ch. 19 and only after first referring the matter to the appropriate district attorney and the district attorney does not commence a criminal prosecution within 30 days |
| Investigations            | Has same authority as any US Attorney to compel testimony and obtain evidence in an investigation      | May subpoena witnesses and apply for search warrants but only upon probable cause and only after providing notice to the subject of the investigation   |
| Grand Jury Investigations | May conduct grand jury proceedings in the same way as any US Attorney                                  | No authority  |
| Tax Returns               | May obtain copies of tax returns in the same way as any US Attorney                                    | No authority  |
| Grants of Immunity        | May obtain grants of immunity for witnesses in the same way as any US Attorney                         | No authority  |
| Security Clearances       | May obtain appropriate national security clearances  | No authority  |
| Perjury                   | May commence criminal prosecutions of perjury  | No authority  |
| Obstruction of Justice    | May commence criminal prosecutions of obstruction of justice   | No authority  |
| Tax Evasion/Fraud         | May commence criminal prosecutions of tax evasion or fraud   | No authority  |
| RICO                      | May commence criminal prosecutions under the Racketeer Influenced and Corrupt Organizations (RICO) Act | No authority  |



210 N. Bassett St., Suite 215 / Madison, WI 53703 / 608 255-4260 / [www.wisdc.org](http://www.wisdc.org)

## Testimony of the Wisconsin Democracy Campaign on Senate Bill 1

### Assembly Campaigns and Elections Committee January 25, 2006

The state of state government is corrupt. The way the public's business has been conducted at the Capitol in recent years is criminal – literally criminal.

This sorry reality is the ultimate indictment of the enforcement agencies that are supposed to police ethical behavior in Wisconsin government and state election campaigns. Wisconsin is in the midst of the biggest political corruption scandal in our state's history, and a big part of the problem is that the watchdog agencies charged with enforcing the state ethics code and campaign finance laws are toothless. The Wisconsin Democracy Campaign strongly supports the creation of a new Government Accountability Board as called for under Senate Bill 1 to restore integrity and independence to the enforcement of high ethical standards in state and local government.

Three things need to happen to restore the public's faith that our state ethics code and campaign finance laws will be faithfully interpreted and rigorously enforced. **First**, the dysfunctional state Elections Board and Ethics Board need to be replaced by a politically independent agency. **Second**, this new agency must have teeth – specifically, it should have the authority to not only investigate but also prosecute wrongdoing. **Third**, it must have the staff and budgetary resources to do its job right.

Senate Bill 1 as it was originally written passed these three tests. The amended version of the bill that emerged from the Joint Finance Committee and was approved by the Senate passed the first two tests but not the third. Both versions put some serious distance between the members appointed to the new Government Accountability Board and the elected officials whose conduct they would be responsible for overseeing. Both versions create an enforcement division within the new agency with full investigative powers and prosecutorial authority. The bill approved by the finance committee and passed by the Senate no longer includes funding for the new agency, however. Funding either needs to be restored in SB 1 or a trailer bill providing the necessary financial resources needs to be developed and approved.

If these three things happen, Wisconsin will have taken a major step forward in addressing the growing problem of government corruption. And the state will have taken a major step toward

restoring the public's faith in the integrity of state government and state officials. As the recent Wisconsin Policy Research Institute poll showed, only 6% of state residents now believe elected officials are representing voters' interests. The vast majority of citizens believe that their elected representatives are just advancing their own political careers and doing the bidding of wealthy special interests.

This is not a sustainable condition. A government cannot be regarded as legitimate when only 6% of citizens feel they are represented. Dramatic action is needed to address this disconnect between the citizenry and those in charge of the government.

One of many necessary steps is the restoration of public confidence that ethics and elections rules will be taken seriously. The state Elections Board and Ethics Board have provided countless examples in recent years of why they are not up to the task of policing either ethics in government or the way election campaigns are conducted in Wisconsin.

Here are just a few such examples:

The Elections Board has repeatedly chosen to look the other way even when confronted with evidence of flagrant violations of campaign finance laws. In one instance, a major campaign donor was found to have been among numerous contributors who substantially exceeded the \$10,000 annual limit on campaign contributions. The contributor appeared before the Elections Board, admitted she had exceeded the limit, and offered to pay a fine to make amends for the illegal campaign contributions. The board refused to take her money and imposed no penalty of any kind on her or any of the other violators.

A "Citizens Right to Know" law was enacted in 1998 requiring the Elections Board to create a system of electronic filing of campaign reports by July 1999. The board squandered several hundred thousand dollars it initially received without successfully implementing an electronic disclosure system. More than two years after the deadline for implementation of the Citizens Right to Know law, the board submitted a request to the Joint Finance Committee for \$3.5 million to fund development of the new system, which the committee rejected. After battling years of bureaucratic foot dragging, the Wisconsin Democracy Campaign and another citizen group hired a law firm to pursue a court order. Under threat of a lawsuit, the Elections Board adopted an emergency rule we drafted implementing a system of electronic filing – *at no additional cost to the taxpayer*. Four years after the Legislature passed it, the Citizens Right to Know law finally took effect.

The Elections Board's mishandling of Citizens Right to Know implementation and its \$3.5 million funding request to do work that we ultimately proved could be done at no extra cost by adoption of a simple rule should have caused taxpayers and elected officials alike to shudder as the board embarked on the state voter registration project.

The Elections Board entered into a contract in November 2004 with the global outsourcing firm Accenture to develop a statewide voter registration list. Under the contract, Accenture is to be paid \$13.9 million for computer software development and maintenance. In addition to the \$13.9 million for Accenture, millions more are being spent on other aspects of the voter registration project – including \$4.1 million to another private firm, Deloitte Consulting, for project

management and \$10.2 million for state Elections Board staff oversight, hardware and data entry – for a total cost of \$28.2 million. In contrast, Minnesota relied on state employees to do its statewide voter list and completed the work at a cost of \$5.3 million.

The Accenture voter-list contract is a horribly raw deal for the taxpayer that was cut in a secretive and dangerously unaccountable manner. Now the voter-list project has evolved into another apt illustration of Elections Board bungling, as Wisconsin has missed the January 1, 2006 federal deadline for implementation of a statewide computerized voter registration system and still faces many major obstacles to completion of the project.

Perhaps the best illustration of the Elections Board's dysfunction is its response to an open invitation from the state Supreme Court to craft new regulations closing a gaping loophole in Wisconsin's campaign finance laws that special interest groups have exploited to avoid the law's disclosure requirements and campaign contribution limits. Instead of taking the Court up on its invitation, the board instead opted for a rule that institutionalized the loophole. Then the board significantly widened the loophole when it ruled that state political parties also can avoid campaign contribution limits and disclosure requirements in Wisconsin law by running so-called "issue ads."

After the U.S. Supreme Court upheld the federal McCain-Feingold campaign reform law in December 2003 and ruled that issue ads could be regulated and unlimited, anonymous donations known as "soft money" could be banned, the Democracy Campaign asked the Elections Board to revisit the issue and drafted for the board's consideration a proposed truth-in-campaigning rule requiring full disclosure and closing the state soft money loophole.

On three procedural votes, the board voted to move forward with the rulemaking. But when the time came for the vote on final approval of the rule last September, the Elections Board voted down the disclosure rule 5-4. The key vote against the rule was cast by the Democratic Party of Wisconsin's appointee to the board, who had previously voted three times to move forward with the rulemaking – once in January and two more times in March – before higher ups pressured her to change her position.

If Wisconsin had a politically independent board devoted to campaign finance law enforcement such as the one created by Senate Bill 1, the soft money loophole allowing unlimited, anonymous donations that even Trent Lott has called "sewer money" could be closed in Wisconsin. If not for our dysfunctional Elections Board, the "full and prompt disclosure of all election-related activities" that 90 percent of voters supported in the 2000 referendum would be reality. Phony front groups like All Children Matter, Americans for a Brighter Tomorrow, Citizens for Clean and Responsible Government, Coalition for America's Families, Coalition to Keep America Working, Independent Citizens for Democracy, Alliance for a Working Wisconsin, Working Families of Wisconsin and so many others would be a thing of the past.

The Elections Board's failures are due to a fatally flawed structure that has produced a classic example of the fox guarding the chicken coop. On the other hand, the state Ethics Board is equally ineffective but for somewhat different reasons.

In recent years, Wisconsin has seen a half dozen of the most powerful politicians in the state charged with nearly four dozen felonies – including extortion, money laundering, kickbacks, bid rigging, illegal campaign contributions and criminal misconduct in public office. Five have been convicted. Pretty ugly stuff for the state formerly known as squeaky clean Wisconsin. And powerful testimony to the ineffectiveness of the government watchdog agencies.

The Ethics Board should have been the public's first line of defense against the corrupt behavior that ultimately resulted in these criminal charges and convictions. Instead the Ethics Board was asleep on the job. Not only did the board fail to act preemptively to nip these problems in the bud, we eventually learned that the board conducted no investigation of abuses in the legislative caucuses even after the story of illegal campaigning in these state offices broke in the media.

There was no investigation for good reason. Whenever the Ethics Board wants to conduct an ethics investigation, it has to go hat in hand to the Joint Finance Committee and ask for money to fund the probe. Keep in mind that one of the legislators caught up in the corruption scandal – and eventually charged with 18 felonies and later convicted – was co-chairman of the finance committee at the time. Another former finance committee chairman is now serving time in federal prison.

It is truly mind boggling to think that in Wisconsin we require an enforcement agency to ask a legislative committee for funds to launch an ethics investigation of that committee's chairman. Such a ridiculous situation makes it painfully obvious why we need the kind of independent ethics agency with expanded enforcement powers that is created by Senate Bill 1.

How ethics investigations are authorized and financed is only one of the barriers to good enforcement, however. An even more fundamental problem speaks volumes about why the Ethics Board and Elections Board should be merged into a single enforcement agency under the direction of a far more politically independent board.

The common thread running through most all of the criminal charges and most all of the ethical lapses in Wisconsin politics today is the chase for campaign money. But the Ethics Board is not responsible for policing campaign finances. This bears repeating: *The chief ethics enforcement agency in the state is powerless to respond to the single biggest reason ethical corners are being cut in Wisconsin.* When evidence of corruption surfaces – and nowadays it almost inevitably involves the solicitation or offer of campaign contributions – the Ethics Board's answer to those demanding action is "sorry, we don't have jurisdiction."

In fairness, our state ethics code and the Ethics Board itself were created at a time when no one could envision the role campaign contributions would play in state elections in the 21st Century. The profound change in the way election campaigns are conducted demands a profound change in the way ethics enforcement is handled. Senate Bill 1 embodies this needed change.

Without this change, we will continue to have an Elections Board that is a jury of politicians' pals, not a jury of citizens' peers devoted to serving in the public interest. We will continue to have an Ethics Board that seemingly has never met a conflict of interest it couldn't tolerate. State law forbids public officials from accepting gifts because of the office they hold. Yet the Ethics

Board sees no problem with the governor accepting free flights on the private plane of a big campaign donor.

State law forbids public officials from accepting *anything of value* from lobbyists or the organizations that employ them. Yet the plain meaning of those words – “anything of value” – has not prevented the Ethics Board from giving its blessing to dozens of gifts from lobbyists to this governor and the one who preceded him.

The Ethics Board had no problem with the exclusive contract the College Savings Program Board gave Strong Capital Management even as evidence mounted that the mutual fund company was playing fast and loose with investors' money. New York's attorney general blew the whistle and the rumors of illegal trading turned into a criminal investigation, but the Ethics Board remained untroubled – despite the fact two senators serving on the College Savings Program Board that gave Strong the sweetheart deal to run the state's EdVest program had longstanding political, social and professional ties to Strong.

One of the senators sitting on the board that granted Strong its lucrative contract is a former Strong employee whose political career was launched with the help of large campaign donations from Strong executives. To this day much of his net worth is tied up in Strong funds. The other senator also is a longtime recipient of Strong campaign contributions and her family at one point during her service on the board held more than a half-million dollars worth of Strong funds.

If these relationships do not represent a conflict of interest – as the Ethics Board ruled they do not – then what exactly would amount to a conflict of interest?

We are confident that this question, and so many others that are being deflected or dodged by the Ethics Board and Elections Board, will be addressed – and answered in the public interest – by an independent enforcement agency that is empowered to confront the formidable ethical problems plaguing Wisconsin politics. Senate Bill 1 creates just such an agency. Wisconsin needs this legislation to be enacted in the worst way. And soon.

**Testimony in Support of SB 1**  
**Submitted by: Thomas Thoresen**  
**January 25, 2006**

Thank You. Mr. Chairman and Committee members. I am Tom Thoresen, a private citizen submitting testimony in support of Senate Bill 1. I recently retired after 30 years of state service. My first 4 1/2 years were working in the Legislature and the next 25 1/2 in Department of Natural Resources Law Enforcement. I retired as the Deputy Chief Conservation Warden.

I'd like to briefly explain from my perspective why this Bill is necessary and an important step to improving integrity in state government. But before I start, I'd like to read a quote from Teddy Roosevelt as I believe it gets at why the suggested legislative changes in SB 1 to improve Wisconsin's watchdog systems are necessary.

(Read Quote) "We can afford to differ...."

Roosevelt makes a couple of key points in this statement... The need for "honesty" in those in public service and secondly that we can not condone corruption in government.

Ask yourself what systems do we have to root out corruption in government?

First and foremost we have a free press that helps keep politicians/government servants honest and our democracy in line by reporting those issues relating to ethics and elections. While the press can bring some pressure to bear through stories and editorials that shed light on our government, the press can not conduct civil and criminal investigations and enforce the actual ethics and election laws in our statutes. The press and clean government watchdogs are calling for passage of SB1 as a needed step to returning Wisconsin to the clean government reputation we once had. We need the combined Ethics/Elections Board and the Enforcement Authority as proposed. The current system is too weak, full of conflicts of interests, understaffed and under funded.

30 years ago when Senator Ellis, the bill's lead sponsor was in the Assembly representing the 55<sup>th</sup> Assembly District, I was fortunate enough to work in the Assembly Chief Clerk's Office and see first hand why Wisconsin had a reputation for clean government.

My boss at the time Assistant Chief Clerk Tom Melvin, had been in the Assembly since 1965 and expected staff and legislators to be doing the right thing. When reporters Art Srb and Eldon Knocke reported the "phone use scandal" by legislators, this went a long way correcting an ethics issue at the Capitol. Generally at that time, legislative leadership exemplified high ethical standards, focused on good, clean government first and partisan ideology second. While partisan politics was present, cooperation and civility for the best interest of the public were demonstrated by the legislative leaders of both parties not just talk as seems to be the rhetoric today.

I don't need to go into the "Caucus and Pay to Play" scandals that point out the need for reforms such as this bill and campaign finance reform in AB 626, but I do need to say that citizens need to have a strong, independent combined Ethics and Elections Agency that they have confidence that any complaint will be looked at objectively.

One of the problem right now is both the Ethics and Elections Boards are essentially political appointees of the existing power structure and citizens are concerned how any complaints will be handed. The reputation of the individual agencies is weak, compromised, and few state citizens know where to take any complaints of ethics or election abuses.

Secondly, both staffs are woefully understaffed and under funded. Citizens are really not aware of what either agency can and cannot investigate. As a 26 year law enforcement officer, I was unaware of the "Ethics Board" ability to investigate any ethics issues and then personally saw first hand several years ago in 2002 and 2003 while testifying as a witness in a government ethics abuse case that the Ethics Board was not staffed nor equipped to really do any substantial ethics investigations.

Citizens are also concerned about going to the Attorney General over the concern of how any complaint or investigation could be used politically as some citizens feel the "A.G. stands for "Aspiring Governor". There is a strong need to have any complaints investigated by dedicated civil servants who look at the public interests and facts of each individual ethics or elections complaint.

An independent, combined agency that is perceived to function like a civil servant based on common sense and the law is what citizens are looking for and the state needs.

I recommend that the Committee pass Senate Bill 1 as soon as possible and in future sessions make changes to the combined agency based on staff and public input. My experience in state government shows their will be more public acceptance of "Classified Employees" who perform job duties as civil servants.

I'd like to reinforce that the committee, the Senate and the full legislature pass this reform measure as well as AB 626. Passage of this bill is taking a step to independently restoring integrity to Wisconsin's State Government.

Think back to what Teddy Roosevelt and Bob LaFollette were fighting for 100 years ago. Civil Service systems, Ethics and election reforms that took big money out of buying politicians and elections.

We need to pass Senate Bill 1.

Thank you.



Thomas N. Thoresen  
5874 Persimmon Dr.  
Fitchburg, WI 53711

**Assembly Committee on Campaigns and Elections  
2005 Senate Bill 1**

Testimony of Kevin J. Kennedy  
Executive Director  
Wisconsin State Elections Board  
December 8, 2005

Chairman Freese and Committee Members:

Thank you for the opportunity to testify on 2005 Senate Bill 1. It is an honor to appear before the Committee. Senate Bill 1 was conceived to provide more enforcement resources for the state's campaign finance, election, ethics and lobby laws. In its current form, the legislation offers no more than lip service to this objective. In fact, in its current form the legislation will eviscerate the current level of enforcement carried out by the State Elections Board and the State Ethics Board.

In my written statement I will address the challenges presented by the legislation. The legislation creates an illusion of reform. This chimera is generated in part because the legislation merely shifts administrative responsibilities and creates an unfunded enforcement division, and in part because it is presented as redressing fundamental problems with the status quo. The legislation generates new administrative issues and ignores the expanded role election administration plays in the operations of the State Elections Board.

**Administrative Responsibilities**

The legislation combines the current statutory duties of the State Elections Board and the State Ethics Board under the umbrella of a single agency. These responsibilities are diverse. There is some, but very little, overlap in the regulated areas. The State Elections Board sets policy for the administration of elections, campaign finance disclosure, public financing of political campaigns and enforcement of election and campaign finance requirements. The State Ethics Board sets

policy for the administration of the state ethics code, personal financial disclosure, including conflict of interest, and lobbying regulation and disclosure.

This requires the new agency staff to provide information and advice on a broad range of regulations and requirements. The staff must collect and maintain required disclosure and ballot access documents in each of these disparate areas. All of this information is reviewed or audited to ensure compliance with applicable state law.

The legislation makes no change in any substantive disclosure requirement or limitation on regulated financial transactions. To the extent that the Legislature or the public believes that current regulations in this area are inadequate to ensure governmental accountability, this legislation fails to provide any reform.

The proposed structure of the new agency creates three independent silos of responsibility in the form of three administrative divisions: elections, ethics and enforcement. This mirrors the status quo. The combination of these diverse responsibilities will require the new agency to integrate several different recordkeeping and filing systems. The new agency will need the flexibility to shift its limited resources to best meet its statutory mission.

### **Lack of funding**

The single biggest problem with the legislation is its failure to appropriate any funding, much less the additional funding this endeavor requires. The legislation does not contain funding for the new agency. The existing budget authority for the soon to be former agencies is eliminated when they are merged into the new, unfunded agency. The new agency is given an additional four full time equivalent positions, but no funding to support the agency operations, much less the additional positions.

Anyone who supports this new agency without the funding to carry out current responsibilities cannot claim to support reform. The legislation demonstrates a lack of accountability if it does

not contain the funding necessary to enable the agency to operate effectively. This will require more than merely resurrecting the existing funding for the current agencies.

For the past three budgets, the State Elections Board has requested additional staff resources to enable it to meet its current audit and election administration responsibilities. In response, the staffing level has been reduced from 14 to 11 GPR funded positions. The State Elections Board has added several temporary federally funded positions to meet the implementation requirements of the Help America Vote Act of 2002 (HAVA). There is not sufficient federal funding to maintain the new HAVA related responsibilities of the State Elections Board.

The State Ethics Board has less than seven GPR funded positions.

It appears from public statements that the Legislative leadership and the Governor support this new agency with expanded enforcement resources. If that is the case, then there is no reason not to provide the necessary funding now rather than promise that it will be addressed after passage. The existing agencies have not been and are not now adequately funded. Where is the assurance that the new agency will be provided the necessary resources to ensure governmental accountability? For this reason alone, the legislation does not merit support.

### **Problems with status quo**

This legislation makes no substantive change in the areas of governmental accountability the agency is being created to administer. Part of this is because Wisconsin has some of the best disclosure and election laws in the country. If the Legislature believes that improvement in the substantive laws regulating campaigns, elections, lobbying and the conduct of public officials, it should look to recent legislation signed into law yesterday in Connecticut.

That legislation instituted significant public funding of political campaigns and more importantly infused \$2 million into the Connecticut Election Enforcement Commission for additional staffing and technology upgrades. What I find ironic in this widely heralded reform package is that it contains many elements that have been a part of Wisconsin law for more than 30 years. The

campaign disclosure reports will be filed with the agency that does the enforcement for late, incomplete and inaccurate reports. The new law creates a ban on contributions from lobbyists and imposes limits on PAC contributions. These have been basic elements of Wisconsin law for decades.

If we are limiting reform to enforcement, then the legislation should add three components. The legislation must have the necessary funding to carryout the contemplated enforcement. The legislation should extend enforcement responsibility to include enforcement against local public officials in the areas of campaign finance and standards of conduct. Disclosure should stay at the local level, but enforcement should be handled by the subject matter experts envisioned by the legislation. This is a model that works well in other states. The enforcement authority is independent of the public officials it is regulating.

Similarly, the legislation should create a series of civil penalties for election officials and individuals who violate the election law. The State Elections Board has compliance review authority over local election officials. However, the ability to impose civil sanctions on individuals who engage in falsifying ballot access documents, electioneering and other forms of election misconduct, such as voting twice, may lead to swifter enforcement because the burden of proof is lower and will be handled by staff with subject matter expertise. These civil penalties are in addition to existing criminal penalties.

#### **Ability of part-time citizens to master the subject matter**

The legislation creates a 4-member citizen Board. I do not believe that a group of part-time citizens, no matter how committed, will be able to acquire the subject matter expertise required to set policy in the areas of campaign finance, election administration, voter registration, public funding of political campaigns, standards of conduct, conflict of interest, personal financial disclosure and lobbying. The State Elections Board consists of nine members who serve two-year terms. They are nominated by partisan officials, except in the case of the nominee of the chief justice of the Supreme Court. As a result Board members represent a wide spectrum of the political process in Wisconsin.

The State Ethics Board consists of six nonpartisan members appointed by the Governor subject to confirmation by the Senate. They provide an independent source of counsel and regulation in the sensitive area of standards of conduct, personal financial disclosure and conflicts of interest.

For four citizens meeting once or twice a month to grasp all the complexities of the diverse areas of regulation will require a commitment that many private citizens will not have the time to offer. The Legislature and the Governor may want to consider a Commission structure rather than a Board structure. Three full-time commissioners may provide the subject matter expertise and the independence to ensure governmental accountability as contemplated by this legislation.

The commissioners would be independent of the regulated community and could provide policy direction to the agency staff. The state has existing models for a commission structure. The commissioners would have a level of personal accountability that is missing from part-time citizen boards.

#### **Expanded role of election administration**

The legislation does not recognize the expanded role that election administration requires following the passage of HAVA and 2003 Wisconsin Act 265. The proposed changes in election administration recommended by the Legislative Council's Special Committee on Election Law Review and 2005 Assembly Bill 627 also contemplate an expanded state role in election administration that will require significant additional resources.

The Statewide Voter Registration System (SVRS) currently under development will require additional staffing and financial resources to provide services to local election officials and the public. This includes the infrastructure maintenance and support costs charged by the Department of Administration, the transaction costs for data base matching with the Department of Transportation, the Department of Corrections and the Department of Health and Family Services. The agency will need technical support staff, a help desk, election specialists to work

with local election officials, a training team and an administrator to oversee the area of voter registration.

In addition, the increasing complexity of voting equipment will require additional state staff to oversee vendor compliance and assist local election officials with purchasing, programming and maintenance of voting systems. The state will also have to maintain the increased level of assistance and training currently being provided to local election officials. This will require making the six HAVA funded project positions permanent.

One approach to addressing this expanded state role would be to separate the election and voter registration functions from the campaign finance, ethics and lobbying functions. I believe it is essential that the administration of elections continue to be conducted under a nonpartisan chief election official and a nonpartisan staff. The lessons learned from the abuses of partisan chief election officials in California, Ohio and Florida should be sufficient cause for maintaining nonpartisan control over election administration in Wisconsin.

This can be done by creating a separate agency responsible for election administration and voter registration. The agency head could be appointed by the new Board and there could be some sharing of resources particularly in the area of enforcement. In any event the proposed legislation does not adequately account for the increased election administration responsibilities that are now part of the duties of the State Elections Board.

## **Conclusion**

The proposed legislation is designed to restore public confidence in the accountability of government. In its current form it will not accomplish that objective. To label this legislation as reform is to deny the reality that the bill provides no additional resources and makes no substantive change in the areas of regulation under the existing independent agencies. The glare of public scrutiny on the conduct of public officials and elections in Wisconsin is a powerful catalyst for change. This requires a commitment of government resources that has not been

available to the State Elections Board or the State Ethics Board and is not available in the current legislation.

Respectfully submitted,

**Wisconsin State Elections Board**

Kevin J. Kennedy  
Executive Director

Omit references to executive director's issuing advisory opinions. Clean up several reference, that remain from earlier draft, that refer to advisory opinions from the executive director.

Page 38, lines 28-29

Page 39, lines 13-14 and line 16

Page 47, line 8

5961 ✓  
**Remove Governor's control over hiring of lawyers as investigators or special counsel.** §20.930 requires governor's approval to hire an attorney. Address this so that a governor will not control investigations and prosecutions

**20.930 Attorney fees.** Except as provided in ss. 46.27 (7g) (h), 49.496 (3) (f) and 49.682 (6), no state agency in the executive branch may employ any attorney until such employment has been approved by the governor.

**History:** 1979 c. 221; 1989 a. 119 s. 1; Stats. 1989 s. 20.930; 1993 a. 490; 1999 a. 9.

This section applies to principal administrative units and whatever agencies assist those units in administration and governance of the unit. *Kaye v. Board of Regents*, 158 Wis. 2d 664, 463 N.W.2d 398 (Ct. App. 1990).

✓ **Stagger terms of board's members; a term expiring each year.** To promote institutional memory, precedent, and consistency, stagger terms

didn't do ✓  
**Address prosecutor's conflicts, not age.** Omit requirement that special prosecutor be lawyer with "senior status" as defined by Supreme Court. The Court has not defined that term. The key to avoid conflicting interests. All law firms undertake conflict checks before taking on a case. Insisting on a conflict check is more effective than hiring someone because of age, which is irrelevant to existence of a conflict.

already in there ✓  
**Restore current law to permit the board to authorize an investigation when it finds there is a reasonable basis to warrant an investigation.** Virtually every inquiry that the Ethics Board has initiated-- DOT fundraiser, Senator George, Governor McCallum's boat and airplane, *et cetera* -- has been at the Board's own initiative, and not in answer to a complaint. Board should try to get ahead of complaints and address matters before they erupt into matters of general public concern.

**Consider identifying primary responsibilities of divisions.** The Legislature may address the board's organizational structure or may leave those decisions to the new board.

- I believe didn't do ✓
- assign responsibilities for administration of chapters 5-10 and 12 to the Elections Division. Designate that administrator the State Elections Officer.
  - assign responsibilities for administration of chapter 11 and subchapters III of chapters 13 and 19 to the Accountability and Integrity Division.

Cross training

Admin

Investigator

Attorney

New executive director

Admin Enforcement

Attorney for enforcement

Investigator

Instead of venue change for prosecuting  
offense will occur in County of  
Residence

Local officials

1 1/2  
2-3 Hours

**Griffiths, Terri**

---

**From:** Jane Kavaloski [jhammatt@mhtc.net]  
**Sent:** Wednesday, March 08, 2006 5:37 AM  
**To:** Rep.Freese  
**Subject:** Thank You

Dear Rep. Steve Freese,

Thank you for your support of Senate Bill 1. I appreciate your leadership for this important piece of legislation.

Sincerely,

Jane H. Kavaloski  
3817 Evans Quarry Road  
Dodgeville, WI

*Diane Crabney Dept Suppl  
609-235-2356  
ON SB 325*