

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

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This draft may be challenged as a violation of the constitution's separation of powers doctrine.

This doctrine does two things: 1) it prohibits one branch of government from exercising the powers granted to another branch; and 2) in cases where branches of government share power, it prohibits one branch from unduly burdening or substantially interfering with another branch's essential role and powers. With respect to a power that is shared between branches, a statute may not unduly burden or substantially interfere with another branch's essential role and powers. *State v. Unnamed Defendant*, 150 Wis. 2d 352, 360 (1989).

The Wisconsin Supreme Court has recognized that in specific cases it is difficult to classify an action as exclusively legislative, executive, or judicial. The court has said that the doctrine of separation of powers must be viewed as a general principle to be applied to maintain the balance between the three branches of government, to preserve their respective independence and integrity, and to prevent concentration of unchecked power in the hands of any one branch. *State v. Washington*, 83 Wis. 2d 808, 825-826 (1978). The Wisconsin Constitution permits a blending or sharing of powers among the three branches of government." *Ahern Co. v. Building Commission*, 114 Wis. 2d 69, 103 (Ct. App. 1983).

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