

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0224/1dn
JTK:wj:jf

October 17, 2006

Senator Ellis:

1. Because under s. 11.60 (4), stats., as affected by this draft, a county board of election commissioners may investigate and prosecute civil violations of the campaign finance law, I have included reference to the board of election commissioners in proposed s. 5.05 (2m), which relates to enforcement procedures. See proposed s. 5.05 (2m) (f).
2. The draft does not specify whether the enforcement division of the Government Accountability Board must bring an enforcement action upon direction of the board if the division does not want to bring that action. You may wish to clarify that point.
3. Proposed SECTION 159 (4), which places the responsibility in the director of the Legislative Council Staff to serve as interim executive director of the Government Accountability Board and to exercise certain authority in that capacity, may raise an issue under the separation-of-powers provisions of the Wisconsin Constitution [art. VI and art. VII, sec. 2] because the draft places administrative and enforcement functions within the legislative branch. While a provision of this type would not be permitted under the constitutions of some states, the Wisconsin Supreme Court has indicated that in this state the separation-of-powers principle will not be applied inflexibly. The test is whether there is an actual and substantial encroachment, rather than a theoretical bridging of the division of power. *J.F. Ahern v. Bldg. Comm.*, 114 Wis.2d 69, 104 (Ct. App., 1983), as quoted in *Martinez v. DILHR*, 165 Wis.2d. 687, 697 (1992). Additionally, in this case, the proposed Government Accountability Board will exercise some authority over all three branches of government. Under the separation of powers doctrine, a statute may not materially impair or practically defeat the proper function of a particular branch of government and the exercise of powers delegated it. *In Matter of E.B.*, 111 Wis. 2d 175, 184 (1983). With respect to a power that is shared between branches, a statute may not unduly burden or substantially interfere with another branch's essential role and powers. *State v. Unnamed Defendant*, 150 Wis. 2d 352, 360 (1989). Whether proposed SECTION 159 (4) will be viewed as a substantial encroachment by one branch of government upon the proper function of another branch cannot be determined with certainty.

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