

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

LRB-3349/1dn
RCT:bjk:nwn

November 12, 2007

Jay Wadd:

This draft, by requiring the Senate to act on a nomination within a specified time, creates a rule of procedure under article IV, section 8, of the Wisconsin Constitution. The Supreme Court has held that the remedy for noncompliance with this type of provision lies exclusively within the legislative branch. See *State ex rel. La Follette v. Stitt*, 114 Wis. 2d 358, 363-369 (1983). In other words, while this type of provision may be effective to govern internal legislative procedure, the Senate may also choose to ignore it and the courts will not enforce provisions of this type.

An alternative approach might be to provide that if the Senate does not act on a nomination within 180 days, the nomination is considered confirmed. With either alternative, note that there may be more than 180 days between scheduled floor sessions.

Please contact me with any questions or redraft instructions.

Rebecca C. Tradewell
Managing Attorney
Phone: (608) 266-7290
E-mail: becky.tradewell@legis.wisconsin.gov