

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

LRB-1451/1dn  
JTK:cs/lk/wj:jf

January 10, 2007

Representative Huebsch:

1. This draft does not specify whether the enforcement division of the Government Accountability and Integrity 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.

2. Proposed SECTION 200 (5) (a), 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 and Integrity 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 192 (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.

3. Proposed s. 15.60 (6) provides that no member of the board may, while serving on the board, *or for 12 months thereafter*, become a candidate for state or local elective office. While the legislature has full latitude to prescribe the qualifications and disqualifications for statutory offices, the courts have held that the legislature may lack that power when it comes to constitutional offices: "It is a well established principle of constitutional law that where qualifications are prescribed in the constitution and the methods of removal are provided in the constitution, the

constitution in those respects is exclusive and it is beyond the power of the legislature to prescribe additional qualifications or to provide for removal in other than the constitutional method." *State ex rel. La Follette v. Kohler*, 220 Wis. 518, 553 (1930). Therefore, it may be difficult to enforce proposed s. 15.60 (6) as it respects some constitutional offices.

4. This draft creates a budget for the Government Accountability Board for the 2007-09 fiscal biennium. As we discussed, because the 2007-09 biennial budget bill has not yet been enacted as of this date, if that bill is enacted after this one, that bill will repeal and recreate the appropriation schedule into which the budget created by this draft is placed. To ensure continuance of any policy decisions embedded in the budget contained in this draft, it will be necessary to incorporate those decisions into the biennial budget bill. As of this early date, the factual information necessary to accurately compile state agency budgets for 2007-09 is not complete. In addition, there will be policy decisions affecting all state agency budgets for 2007-09 that have not yet been made. Lastly, the upcoming budget for the Elections Board requires a major review at this point because that board currently has several federally funded positions performing ongoing work that is required by federal law and federal funding for these positions is being discontinued.

Jeffery T. Kuesel  
Managing Attorney  
Phone: (608) 266-6778