



WISCONSIN LEGISLATIVE COUNCIL INFORMATION MEMORANDUM

Elections Commission and Ethics Commission

2015 Wisconsin Act 118 replaces the Government Accountability Board (GAB) with two commissions, effective June 30, 2016: (1) the Elections Commission, which administers and enforces election laws; and (2) the Ethics Commission, which administers and enforces campaign finance, ethics, and lobbying laws. The commission members serve for five-year terms and are appointed by legislative leadership or the Governor. Each commission is under the direction and supervision of an administrator, appointed by the commission and confirmed by the Senate.

This Information Memorandum describes the Act, including the structure and governance of the new commissions and changes to the administration and enforcement of election, campaign finance, ethics, and lobbying laws.

COMMISSION STRUCTURE

Current law provides that the GAB has six members who are former judges and serve for staggered, six-year terms. The members of the GAB are appointed by the Governor and confirmed by two-thirds of the Senate. The Governor appoints members from a limited list of candidates submitted by a nominating committee. The nominating committee consists of one appellate judge from each of the four Wisconsin Court of Appeals districts, selected, by lot, by the Chief Justice of the Wisconsin Supreme Court. Nominating committee members serve two-year terms.

The **Act** replaces the GAB with the Elections Commission and the Ethics Commission. Each commission has four members appointed by legislative leadership and at least two members appointed by the Governor. The commission members serve for five-year terms.

ELECTIONS COMMISSION

Under the **Act**, the Elections Commission consists of the following members, who serve for five-year terms:

- One member appointed by the Senate Majority Leader.
- One member appointed by the Senate Minority Leader.
- One member appointed by the Assembly Speaker.
- One member appointed by the Assembly Minority Leader.
- Two members who formerly served as county or municipal clerks and who are nominated by the Governor and confirmed by a majority of the Senate. The legislative leadership of the two major political parties that received the largest number of votes for President must prepare a list of three individuals such that each major political party has prepared one list. The Governor must choose one nominee from each list.

- One member for each political party, other than the two major political parties, qualifying for a separate ballot whose candidate for Governor received at least 10% of the vote in the most recent gubernatorial election and who is nominated by the Governor and confirmed by a majority of the Senate. The Governor must choose each nominee from a list of three individuals selected by the chief officer of that political party.

In addition, under the Act, if a vacancy occurs for a member appointed by the Senate Majority Leader, Senate Minority Leader, Assembly Speaker, or Assembly Minority Leader, the legislator responsible for making the appointment must appoint a new member no later than 45 days after the date of the vacancy. If the political party affiliation of the Senate Majority Leader, Senate Minority Leader, Assembly Speaker, or Assembly Minority Leader is not the same as the political party affiliation of the individual who made the initial appointment, the legislative leader of the political party that made the initial appointment must fill the vacancy.

Further, under the Act, if a vacancy occurs for a member nominated by the Governor, a new member must be selected, nominated, and submitted to the Senate for confirmation no later than 45 days after the date of the vacancy.

Lastly, the Act provides that appointees may serve prior to Senate confirmation.

ETHICS COMMISSION

Under the **Act**, the Ethics Commission consists of the following members, who serve for five-year terms:

- One member appointed by the Senate Majority Leader.
- One member appointed by the Senate Minority Leader.
- One member appointed by the Assembly Speaker.
- One member appointed by the Assembly Minority Leader.
- Two former judges nominated by the Governor and confirmed by a majority of the Senate. The two former judges must have formerly served as judges for a court of record in this state and been elected to those positions. The legislative leadership of the two major political parties that received the largest number of votes for President must prepare a list of three individuals such that each major political party has prepared one list. The Governor must choose one nominee from each list.
- One member for each political party, other than the two major political parties, qualifying for a separate ballot whose candidate for Governor received at least 10% of the vote in the most recent gubernatorial election and who is nominated by the Governor and confirmed by a majority of the Senate. The Governor must choose each nominee from a list of three individuals selected by the chief officer of that political party.

In addition, under the Act, if a vacancy occurs for a member appointed by the Senate Majority Leader, Senate Minority Leader, Assembly Speaker, or Assembly Minority Leader, the legislator responsible for making the appointment must appoint a new member no later than 45 days after the date of the vacancy. If the political party affiliation of the Senate Majority Leader, Senate Minority Leader, Assembly Speaker, or Assembly Minority Leader is not the same as the political party affiliation of the individual who made the initial appointment, the legislative leader of the political party that made the initial appointment must fill the vacancy.

Further, under the Act, if a vacancy occurs for a member nominated by the Governor, a new member must be selected, nominated, and submitted to the Senate for confirmation no later than 45 days after the date of the vacancy.

Lastly, the Act provides that appointees may serve prior to Senate confirmation.

CHAIRPERSON

Under **current law**, the GAB chairperson is chosen, by lot, at the first meeting of the board in January of each year.

Under the **Act**, the chairperson of the Elections Commission and the chairperson of the Ethics Commission are each chosen by affirmative vote of at least two-thirds of the commission members at the commission's first meeting every two years. The chairperson serves a two-year term. The first chairperson is chosen from the commissioners affiliated with the same major political party. The major political party from which to select the first chairperson is determined by lot. The second chairperson is chosen from the commissioners affiliated with the other major political party. Each subsequent chairperson is chosen from the commissioners affiliated with the two major political parties on a rotating basis.

In addition, the Act provides that the chairperson of each commission must be selected from among the commission members who are appointed by the Senate Majority Leader, Senate Minority Leader, Assembly Speaker, and Assembly Minority Leader.

MEMBER ELIGIBILITY

Current law disqualifies individuals engaged in certain activities from serving on the GAB. An individual is ineligible to serve on the GAB if he or she does any of the following during the year immediately prior to nomination or service: (1) is a member of a political party; (2) is an officer or member of a committee in any partisan political club or organization; (3) is an officer or employee of an entity that is required to register under state campaign finance law; or (4) makes a contribution to a candidate for partisan state or local office.

Current law also prohibits GAB members from engaging in certain activities while serving on the board. A member of the board may not do any of the following: (1) hold another office or position that is a state or local public office (except as a reserve judge); (2) become a candidate for state or local office; (3) become a member of a political party; (4) become an officer or member of a committee in any partisan political club or organization; (5) become an officer or employee of an entity required to register under state campaign finance law; (6) make a contribution to a candidate for state or local office; or (7) be a lobbyist or an employee of a principal (any person who employs a lobbyist).

The **Act** eliminates all activities that would disqualify a nominee if they occurred during the year immediately prior to nomination or service, but it retains the prohibitions on certain activities while serving on the Elections Commission or the Ethics Commission. Specifically, under the Act, a member of the Elections Commission or the Ethics Commission may not: (1) hold another office or position that is a state or local public office (except as a reserve judge); (2) become a candidate for state or local office; or (3) be a lobbyist. The Act also prohibits a member of the Ethics Commission from being an employee of a principal.

COMMISSION GOVERNANCE

Under **current law**, the GAB employs an individual to serve as legal counsel who performs legal and administrative functions for the board. In addition, the GAB has two divisions (the Elections Division and the Ethics and Accountability Division) that are directed and supervised by administrators appointed by the GAB.

ADMINISTRATOR

The **Act** provides that the Elections Commission and the Ethics Commission are each under the direction and supervision of an administrator who serves for a four-year term expiring on July 1 of the odd-numbered year. Each administrator must: (1) appoint such other personnel as required to carry out the duties of the commission; and (2) perform duties assigned by the commission in its administration of:

(a) for the Elections Commission, election laws; and (b) for the Ethics Commission, campaign finance, ethics, and lobbying laws.

The Act requires the administrator of the Elections Commission to be appointed by a majority of the members of the Elections Commission and confirmed by the Senate. Similarly, the administrator of the Ethics Commission is appointed by a majority of the members of the Ethics Commission and confirmed by the Senate. Until the Senate confirms an administrator, an interim administrator selected by a majority of the commission directs and supervises the commission. If a vacancy occurs in an administrator position, the commission must appoint a new administrator, and submit the appointment for Senate confirmation, no later than 45 days after the date of the vacancy.

However, under the Act, if a commission has not appointed a new administrator at the end of the 45-day period, the Joint Committee on Legislative Organization (JCLO)¹ must appoint an interim administrator to serve until a new administrator has been confirmed by the Senate, but for a term of no longer than one year. If the administrator position remains vacant at the end of the one-year period, the process for filling the vacancy through JCLO is repeated until the vacancy is filled.

Lastly, the Act provides that an administrator may be removed by the affirmative vote of a majority of all members of the commission voting at a meeting of the commission called for that purpose.

LEGAL COUNSEL

Current law provides that the GAB must employ an individual to serve as legal counsel. The legal counsel performs legal and administrative functions for the board, and also performs other specific duties assigned within the statutes.

The **Act** eliminates the requirement for the GAB to hire an individual to serve as legal counsel and removes references to the legal counsel and to the position's specifically assigned or delegated duties. Instead, the Act allows: (1) the administrator of the Elections Commission to designate a commission employee to serve as the Elections Commission's legal counsel; and (2) the administrator of the Ethics Commission to designate a commission employee to serve as the Ethics Commission's legal counsel.

CHIEF ELECTION OFFICER

Under **current law**, the GAB designates an employee of the board to serve as the chief election officer of the state.

Under the **Act**, the administrator of the Elections Commission serves as the chief election officer of the state.

ELECTION ADMINISTRATION COUNCIL

Current law creates an "Election Administration Council" within the GAB consisting of members appointed by the administrator of the Elections Division. The council must include: (1) the clerk or executive director of the Board of Election Commissioners of the two counties or municipalities having the largest population; (2) one or more election officials of other counties or municipalities; (3) representatives of organizations that advocate for the interests of individuals with disabilities and organizations that advocate for the interests of the voting public; and (4) other electors of the state.

The **Act** eliminates the Election Administration Council.

COMMISSION OPERATIONS

Under **current law**, any action by the GAB requires the affirmative vote of at least four board members.

The **Act** provides that any action by the Elections Commission or the Ethics Commission, except an action relating to procedure of a commission, requires the affirmative vote of at least two-thirds of the members

¹ The membership of JCLO consists of the Assembly Speaker, Senate President, and the majority and minority leaders and assistant majority and minority leaders of the two houses. [s. 13.80 (2), Stats.]

of the commission. In addition, the Act requires each commission to conduct meetings in accordance with accepted parliamentary procedure.

COMMISSION INVESTIGATIONS

Under **current law**, the GAB investigates alleged violations of election, campaign finance, ethics, and lobbying laws.

The **Act** generally transfers the GAB's investigatory authority to the Elections Commission to investigate alleged violations of election laws and to the Ethics Commission to investigate alleged violations of campaign finance, ethics, and lobbying laws. Changes made to investigatory authority by the Act are described below.

INITIATING AN INVESTIGATION

Current law permits the GAB to authorize an investigation by passing a resolution, if the board believes there is reasonable suspicion that a violation occurred. The resolution must specifically set forth any matter that is authorized to be investigated. An investigation may originate from the GAB itself, or the GAB may initiate an investigation in response to a complaint filed with the board alleging a violation of election, campaign finance, ethics, or lobbying laws. The GAB may also initiate an investigation into ethics or lobbying violations in response to a person's request for an investigation into his or her own conduct or into allegations about that conduct.

The **Act** generally retains the procedures by which the Elections Commission or the Ethics Commission may authorize an investigation, except that it restricts the ability of a commission to initiate an investigation. The Act provides that a commission may only initiate an investigation of an alleged violation based on a sworn complaint filed with the commission.² It also prohibits the commission, and any individual commission member or employee (including a commission administrator), from filing a sworn complaint. In addition, the Act prohibits the commission from conducting any investigation or taking any other action solely on the basis of a complaint by an unidentified complainant.

NOTICE OF COMPLAINT AND RESPONSE

Current law does not contain a specific requirement that the GAB notify a person who is alleged, in a complaint, to have committed a violation within a specified period of time.

Under the **Act**, no later than five days after receiving a complaint alleging a violation, the Elections Commission or the Ethics Commission must notify each person who is alleged, in the complaint, to have committed a violation. Before the commission votes on whether to take any action regarding the complaint, other than to dismiss the complaint, the commission must provide each notified person an opportunity to respond. Specifically, the commission must provide each person with an opportunity to demonstrate to the commission, in writing and within 15 days after receiving the notice, that the commission should take no action against the person on the basis of the complaint.

FUNDING FOR INVESTIGATIONS

Current law provides a sum sufficient appropriation for the purpose of financing investigations authorized by the GAB into alleged violations of election, campaign finance, ethics, or lobbying laws.

Appropriation

The **Act** provides sum certain appropriations for financing investigations, rather than sum sufficient appropriations. It provides one sum certain appropriation for the Elections Commission to finance its investigations into alleged violations of election laws and a second sum certain appropriation for the

² The Act includes an exception for minor civil offenses that the Elections Commission or the Ethics Commission agrees to compromise and settle without a formal investigation upon payment of specified amounts by the alleged violator.

Ethics Commission to finance its investigations into alleged violations of campaign finance, ethics, or lobbying laws.

In addition, the Act creates a procedure, described below, by which the Elections Commission or the Ethics Commission may request supplemental funds for continuing an ongoing investigation.

Supplemental Funding

The **Act** creates a procedure for passive review by the Joint Finance Committee (JFC) of any request made by the Elections Commission or the Ethics Commission for supplemental investigation funding. Specifically, the procedure requires the commission to file a request for supplemental funds with the Secretary of the Department of Administration (DOA) and the JFC co-chairs. The request must be in writing and contain a statement of the following: (1) the action requested; (2) the purposes of the requested action; (3) the statutory provision authorizing or directing performance of the action; and (4) information about the nature of the investigation, excluding the name of any individual or organization that is the subject of the investigation.

Under the Act, if the JFC co-chairs **do not** notify the DOA Secretary that the committee has scheduled a meeting to review the request within 14 working days after the commission filed the request, then the Secretary must supplement the commission's appropriation, from the DOA special counsel appropriation under s. 20.505 (1) (d), Stats., in an amount not to exceed the amount the commission requested. However, if the JFC co-chairs **do** notify the Secretary that the committee has scheduled a meeting to review the commission's request, then the Secretary may only supplement the appropriation with the approval of the committee.

INVESTIGATION REPORTS

Current law prohibits the GAB from expending more than **\$10,000** to finance the cost of an investigation before receiving a report on the progress of the investigation and a recommendation to commit additional resources.

Under the **Act**, the Elections Commission and the Ethics Commission may not expend more than **\$25,000** to finance the cost of an investigation before receiving a report on the progress of the investigation and a recommendation to commit additional resources.

SEARCH WARRANTS

Current law permits the GAB to either investigate potential violations on its own³ or retain a special investigator to assist in the investigation. As part of the investigation, the special investigator may ask the GAB to issue a subpoena or to authorize the investigator to request a circuit court to issue a search warrant.

The **Act** maintains the authority of the Elections Commission and the Ethics Commission to retain a special investigator, but makes a change to the procedure for requesting a search warrant from a court. Unlike current law, a special investigator may only request a search warrant from the circuit court of the county in which the person subject to the warrant resides.

CLOSED SESSION

Current law allows the GAB to hold deliberations concerning an investigation into campaign finance, ethics, or lobbying violations in closed session. However, prior to convening in closed session, the GAB must vote to convene "in the manner provided in s. 19.85 (1)," which is the statutory subsection containing exemptions to the open meetings law.

The **Act** provides that the Elections Commission and the Ethics Commission may convene in closed session pursuant to the reasons outlined for closed session in s. 19.85 (1), Stats. (which apply to any

³ The board may also authorize its Ethics and Accountability Division administrator to investigate potential violations.

governmental body), and that the Ethics Commission may also convene in closed session for deliberations concerning a campaign finance, ethics, or lobbying investigation. In addition, the Act requires that prior to convening in closed session, the Elections Commission or the Ethics Commission must identify the specific reason or reasons that the commission is convening in closed session.

COMMISSION ENFORCEMENT

Under **current law**, the GAB prosecutes alleged civil violations of election, campaign finance, ethics, and lobbying laws and may refer matters to an appropriate district attorney, to the Attorney General, or to a special prosecutor for criminal prosecution.

The **Act** generally transfers the GAB's enforcement authority to the Elections Commission to prosecute or refer alleged violations of election laws and to the Ethics Commission to prosecute or refer alleged violations of campaign finance, ethics, and lobbying laws. Changes made to enforcement authority by the Act are described below.

EXCLUSIVE REMEDY

Current law does not specify that the GAB's authority to initiate a civil enforcement action is the exclusive remedy for an alleged civil violation of election, campaign finance, ethics, or lobbying laws.

The **Act** provides that the Elections Commission's authority to initiate a civil enforcement action is the exclusive remedy for an alleged civil violation of election laws. In addition, under the Act, the Ethics Commission's authority to initiate a civil enforcement action is the exclusive remedy for an alleged civil violation of campaign finance, ethics, or lobbying laws.

SPECIAL COUNSEL APPROPRIATION

Current law permits the GAB to retain special counsel to assist in prosecuting alleged civil violations of election, campaign finance, ethics, or lobbying laws. Compensation for GAB special counsel is charged to a sum sufficient DOA appropriation that also funds special counsel for other purposes.

The **Act** retains the authority for the Elections Commission and the Ethics Commission to retain special counsel, but changes the appropriation that funds compensation for that counsel. The Act provides that compensation for special counsel in Elections Commission prosecutions is charged to a sum certain Elections Commission appropriation, rather than a sum sufficient DOA appropriation. In addition, the Act provides that compensation for special counsel in Ethics Commission prosecutions is charged to a sum certain Ethics Commission appropriation, rather than a sum sufficient DOA appropriation.

REFERRAL OF "OTHER VIOLATIONS"

Current law provides that if a GAB investigation discovers evidence of a potential violation of a law not administered by the board arising from or in relation to the official functions of the subject of the investigation or any matter than involves elections, ethics, or lobbying regulation, then the GAB may refer the matter to the appropriate district attorney.

The **Act** provides that the Elections Commission or the Ethics Commission may also refer a matter concerning a potential violation of a law not administered by the commission to the Attorney General. The Attorney General may then commence a civil or criminal prosecution relating to the matter.

MINOR VIOLATIONS

Under **current law**, the GAB may authorize the administrator of the Ethics and Accountability Division to compromise and settle, without a formal investigation, certain alleged offenses if the alleged offenses by an offender, in the aggregate, do not involve payment of more than **\$1,000**.

Under the **Act**, the Elections Commission or the Ethics Commission may authorize its administrator to compromise and settle, without a formal investigation, certain alleged offenses if the alleged offenses by an offender, in the aggregate, do not involve payment of more than **\$2,500**.

COMMISSION ADVISORY OPINIONS

Current law provides that any individual may request an advisory opinion from the GAB about an election, campaign finance, lobbying, or ethics matter, or may request such an opinion on behalf of an organization or governmental body.

The **Act** provides that any individual may request an advisory opinion from the Elections Commission on an elections matter or from the Ethics Commission on a campaign finance, ethics, or lobbying matter.

FORMAT OF OPINIONS

Under **current law**, the GAB may issue either a formal or informal opinion in response to an opinion request. A formal opinion is issued by the board itself, while an informal opinion is issued by the board's legal counsel (if the board authorizes legal counsel to do so). The board must review an opinion request and may decide to issue either a formal written opinion or an electronic opinion. A person who acts in good faith based on an advisory opinion issued by the board is not subject to criminal or civil prosecution, provided that the material facts are as stated in the opinion request.

The **Act** provides that the Elections Commission or the Ethics Commission may authorize its administrator, or his or her designee, to issue an informal written opinion or to transmit an informal opinion electronically. The Act also imposes additional requirements regarding formal opinions and informal opinions.

The Act provides that any individual may request a **formal** opinion from the Elections Commission or the Ethics Commission in writing, electronically, or by telephone. Further, any person who previously received an informal opinion may, at any time, request a formal opinion on the same matter. An individual may also request the review or modification of a formal opinion issued by the commission. The commission must review a request for a formal opinion and may decide whether or not to issue such an opinion. If the commission declines to issue a formal opinion, it may refer the matter to the Attorney General or the standing legislative oversight committees.

The Act also provides that any individual may request an **informal** opinion from the Elections Commission or the Ethics Commission in writing, electronically, or by telephone. The commission's designee must provide one of the following to the individual: (1) a written response; (2) a written reference to an applicable statute or law; or (3) a written reference to a formal advisory opinion of the commission. Alternatively, the designee may refer the request to the commission for review and the issuance of a formal advisory opinion.

Under the Act, if a commission disagrees with any formal or informal opinion previously issued by or on behalf of the commission, it may withdraw the opinion, issue a revised formal or informal opinion, or request an opinion from the Attorney General. Further, the Act provides that any member of the Elections Commission may, by written request, require the Elections Commission to review an advisory opinion. Similarly, any member of the Ethics Commission may, by written request, require the Ethics Commission to review an advisory opinion.

REVIEW OF INFORMAL OPINIONS

Current law does not explicitly require the GAB to review informal opinions issued by legal counsel, unless a requester who disagrees with an opinion asks for a hearing. The requester may ask for either a public or private hearing before the board, which the board must grant. The board may then choose to reconsider its opinion and may issue a revised opinion. If the formal, reissued opinion is not open to the public, the GAB must publish a summary of the opinion.

The **Act** requires the Elections Commission or the Ethics Commission to review certain informal opinions issued by its administrator. At each regular meeting of a commission, the commission's administrator must review informal opinions requested of and issued by the administrator and that relate to: (1) recurring issues; or (2) issues of first impression for which no formal opinion has been issued. Following this review of informal opinions, the commission may choose to issue a formal opinion adopting or modifying the informal opinion.

CONFIDENTIALITY

Current law provides that certain GAB advisory opinions and related records are public, while portions of other opinions and records are confidential. Whether an advisory opinion and related records are public depends, in part, on whether the opinion relates to an elections matter or to a campaign finance, ethics, or lobbying matter. Opinions and records related to matters under the jurisdiction of the Elections Division are public, while portions of campaign finance, ethics, and lobbying opinions and records are not.

For campaign finance, ethics, and lobbying advisory opinions, the identity of an individual, organization, or governmental body requesting a GAB opinion is confidential, and the records related to the request generally are not subject to open records requests. No GAB member or employee may make public a requester's identity or the identity of any individual or organization mentioned in an opinion. However, the GAB may release summaries of advisory opinions that do not disclose the identity of individuals requesting opinions or organizations on whose behalf they are requested. The GAB may also release records if the requesting individual, or organization or governmental body on whose behalf the opinion is requested, consents or waives confidentiality by making a portion of the opinion public.

The **Act** allows the Ethics Commission to release records obtained in connection with an **informal** advisory opinion if the requesting individual, or the organization or governmental body on whose behalf it was requested, consents or waives confidentiality by making a portion of the opinion public. The Act requires that all **formal** opinions and records be made public, but **identities must still be confidential**, within 30 days after completing an investigation related to and the preparation of a formal advisory opinion. The Act provides that the identity of any organization or governmental body on whose behalf the formal opinion is requested be replaced with generic, descriptive terms. The identity of any individual requesting the opinion must be redacted.

For the Elections Commission, the Act requires that all **formal and informal** opinions and records be made public. Specifically, the Act provides that all opinions and records relating to matters under the jurisdiction of the Elections Commission be made public, **including the identity** of individuals requesting opinions or organizations or governmental bodies on whose behalf they are requested.

The Act also requires the Elections Commission and the Ethics Commission to publish every formal advisory opinion on the commission's website (excluding the confidential information, as described above).

GUIDANCE FOLLOWING COURT DECISIONS

Current law assigns the GAB responsibility for administering election, campaign finance, ethics, and lobbying laws, but does not explicitly require the GAB to update its administrative rules, guidance, or opinions based on court decisions.

The **Act** requires the Elections Commission and the Ethics Commission to update their rules, guidance, and opinions within a specified period following the issuance of a binding court decision. The Act provides that each commission must do one of the following within two months after publication of a state or federal court decision binding on the commission and the state: (1) issue updated guidance or formal advisory opinions; (2) commence the rulemaking procedure to revise administrative rules promulgated by the commission; or (3) request an opinion from the Attorney General on the applicability of the court decision.

ADMINISTRATIVE RULES

Current law authorizes the GAB to promulgate certain items in administrative rules, but does not require the board to do so. The statutes currently allow the GAB to promulgate the following by rule: (1) categories of civil offenses that the board will agree to compromise and settle without a formal investigation upon payment of specified amounts by the alleged violator; (2) reasonable rules for administration of the statutory subchapter relating to electronic voting systems; (3) rules regarding

proper conduct of election observers; and (4) a list of small items on which campaign attributions do not have to be printed.

The **Act** changes the existing authorizations to **require** the Elections Commission or the Ethics Commission to promulgate the items listed above, by rule.

POLICIES AND PROCEDURES

Current law does not explicitly require the GAB to adopt written policies and procedures to govern its internal operations and management or to report them to the Legislature.

The **Act** requires the Elections Commission and the Ethics Commission to adopt such written policies and procedures annually, and to report their policies and procedures to the appropriate legislative standing committees annually. In addition, the Act allows a commission to reconsider, at any time, any policy or procedure that was adopted by the commission. If a commission revises a policy or procedure that was previously reported to the standing committees, the committee must report the revision to the standing committees. Lastly, the Act provides that a commission may reconsider, at any time, any written directives or guidance provided to the general public or to any person regarding the enforcement and administration of: (1) for the Elections Commission, election laws; and (2) for the Ethics Commission, campaign finance, ethics, or lobbying laws.

PAYMENTS

Current law does not specify the mechanism by which the GAB may accept payments for amounts owed pursuant to the administration of election laws.

Under the **Act**, the Elections Commission and the Ethics Commission may accept payment by credit card, debit card, or other electronic payment mechanism for any amounts owed pursuant to the administration of election, campaign finance, ethics, and lobbying laws. In addition, the Act authorizes each commission to charge a surcharge to the payer to recover charges associated with the acceptance of that electronic payment.

ANNUAL REPORTS

Current law requires the GAB to submit a biennial report to the Governor and Chief Clerk of each house of the Legislature that includes the names and duties of all individuals employed by the GAB and a summary of the GAB's determinations and advisory opinions.

The **Act** requires the Elections Commission and the Ethics Commission to each submit an annual report, rather than a biennial report. The Act further requires each commission, in its report, to identify the statutory duties of the commission administrator, together with a description of the manner in which those duties are being fulfilled. Further, the report must specify the total number of investigations conducted by the commission since the last annual report and a description of the nature of each investigation.

AUDIT RECOMMENDATIONS

Current law does not explicitly require the GAB to make changes or take actions recommended by the Legislative Audit Bureau (LAB) in its Report 14-14 and Report 15-13.

The **Act** requires the Election Commission and the Ethics Commission, and their employees, to implement the recommendations contained in the LAB reports. The Act also requires the commissions to report their progress implementing those recommendations to the Legislature no later than December 31, 2016.

TRANSITION TO ELECTIONS COMMISSION AND ETHICS COMMISSION

The **Act** contains several nonstatutory provisions that govern the transition of GAB functions and staff to the Elections Commission and the Ethics Commission.

ASSETS AND LIABILITIES

Under the **Act**, all assets and liabilities of the GAB are transferred to the Elections Commission and the Ethics Commission on June 30, 2016. The DOA Secretary must determine which assets and liabilities are transferred to each commission.

POSITIONS AND EMPLOYEES

Under the **Act**, all full-time equivalent (FTE) positions of the GAB are transferred to the Elections Commission and the Ethics Commission on June 30, 2016. The DOA Secretary must determine which FTE positions are transferred to each commission.

In addition, the Act provides that all incumbent employees holding positions at the GAB on June 30, 2016, except the incumbent employee holding the position of director and general counsel, are transferred on June 30, 2016, to the Elections Commission or the Ethics Commission. The DOA Secretary must determine which incumbent employees are transferred to each commission. The transferred employees have all the rights and the same status under the State Employment Labor Relations Act (subch. V of ch. 111, Stats.) at the Elections Commission or the Ethics Commission that they enjoyed at the GAB immediately before the transfer. No transferred employee who has attained permanent status in class is required to serve a probationary period.

TANGIBLE PERSONAL PROPERTY

Under the **Act**, all tangible personal property, including records, of the GAB is transferred to the Elections Commission and the Ethics Commission on June 30, 2016. The DOA Secretary must determine which property is transferred to each commission.

CONTRACTS

Under the **Act**, all contracts entered into by the GAB that are in effect on June 30, 2016, remain in effect and are transferred to the Elections Commission and the Ethics Commission. The DOA Secretary must determine which contracts are transferred to each commission. The commissions must carry out all contractual obligations under each contract until the contract is modified or rescinded by the commission to the extent allowed under the contract.

RULES, ORDERS, AND FORMAL OPINIONS

Under the **Act**, all rules promulgated and all formal opinions and orders issued by the GAB that are in effect on June 30, 2016, are transferred to the Elections Commission and the Ethics Commission. The rules, formal opinions, and orders remain in effect until the commission to which they are transferred amends or repeals a rule or order or changes or withdraws a formal opinion. The DOA Secretary must determine which rules, orders, and formal opinions are transferred to each commission.

PENDING MATTERS

Under the **Act**, all matters pending with the GAB on June 30, 2016, are transferred to the Elections Commission and the Ethics Commission, and all materials submitted to or actions taken by the GAB with respect to any pending matter are considered as having been submitted to or taken by the Elections Commission or the Ethics Commission. The DOA Secretary must determine which pending matters are transferred to each commission.

TRANSITIONS AND INITIAL TERMS

Initial Members

Under the **Act**, the terms of office of all members of the GAB holding office on June 30, 2016, expire on June 30, 2016. On June 30, 2016, all members of the Elections Commission and the Ethics Commission who are appointed and qualify for office must take office. One-half of the members of the Elections Commission who are appointed as initial members of the commission must serve for terms expiring on May 1, 2019. One-half of the members of the Ethics Commission who are appointed as initial members of the commission must serve for terms expiring on May 1, 2019.

Nonvoting Members on the GAB

The **Act** provides that the Governor, Senate Majority Leader, Senate Minority Leader, Assembly Speaker, and Assembly Minority Leader may appoint members to serve on the GAB in a nonvoting capacity effective February 1, 2016. Such appointees may also be appointed to the Elections Commission or the Ethics Commission and may serve prior to Senate confirmation.

Initial Administrator

Under the **Act**, the initial appointees may identify and appoint an individual to serve as administrator and the Senate may confirm the appointment of the administrator, but that individual may not serve as administrator until June 30, 2016.

In addition, the Act provides that members of the Elections Commission and the Ethics Commission must appoint an individual to serve as administrator no later than 45 days after June 30, 2016. If a commission has not made such appointment, JCLO must appoint an interim administrator to serve until an administrator has been confirmed by the Senate, but for a term of no longer than one year. If the administrator position remains vacant at the end of the one-year period, the process for filling the position through JCLO is repeated until the position is filled.

Reporting to Standing Committees

The **Act** provides that the chairperson of the Assembly Committee on Campaigns and Elections or the Senate Committee on Elections and Local Government may request individuals employed by the GAB on December 17, 2015, and the individual who is serving as director and general counsel of the GAB on December 17, 2015, to appear before either or both committees for the purpose of providing information to the committees about the progress of transitioning from the GAB to the Elections Commission and the Ethics Commission.

IMPLEMENTATION PLAN

Under the **Act**, the DOA Secretary must submit an implementation plan by June 1, 2016, to JFC for approval under s. 13.10, Stats. In the plan, the DOA Secretary must propose expenditure authority for the Elections Commission and the Ethics Commission by appropriation and must specify funding sources of all positions for each commission.

In addition, under the Act, the individual serving as director and general counsel of the GAB on December 17, 2015, must: (1) work in concert with the DOA Secretary and members appointed to the Elections Commission and the Ethics Commission to ensure a smooth transition; and (2) participate in formulating the implementation plan.

This memorandum is not a policy statement of the Joint Legislative Council or its staff.

This memorandum was prepared by Jessica Karls-Ruplinger, Deputy Director, on December 21, 2015.

WISCONSIN LEGISLATIVE COUNCIL

One East Main Street, Suite 401 • P.O. Box 2536 • Madison, WI 53701-2536

Telephone: (608) 266-1304 • Fax: (608) 266-3830

Email: leg.council@legis.wisconsin.gov

<http://www.legis.wisconsin.gov/lc>