



## Legislative Fiscal Bureau

One East Main, Suite 301 • Madison, WI 53703 • (608) 266-3847 • Fax: (608) 267-6873

January 24, 2007

TO: Members  
Joint Committee on Finance

FROM: Bob Lang, Director

SUBJECT: January 2007 Special Session Senate Bill 1 and Assembly Bill 1 (Companion Bills):  
Creation of a Government Accountability Board

On Monday, January 22, the Assembly Committee on Judiciary and Ethics held an executive session on January 2007 Special Session AB 1. That Committee adopted Assembly Substitute Amendment 1 (ASA 1) to AB 1 and recommended the bill for passage, as amended, on a vote of 8-1.

On Tuesday, January 23, the Senate Committee on Ethics Reform and Government Operations held an executive session on January 2007 Special Session SB 1. That Committee adopted Senate Substitute Amendment 1 to SB 1 (identical to ASA 1 to AB 1) and four simple amendments to SSA 1. The Committee then recommended the bill for passage, as amended, on a vote of 4-1.

Both bills have now been referred to the Joint Committee on Finance.

On January 19, this office distributed a document which summarized 2007 SB 1 and AB 1 as introduced. Attached are three additional memoranda on the bills.

- A January 24, 2007, memorandum from the Legislative Fiscal Bureau that reviews the fiscal notes to the bills as prepared by the Ethics Board and the Elections Board. These fiscal notes were forwarded to the Legislature subsequent to the distribution of this office's January 19 summary of the bills.

- A January 22, Amendment Memo, prepared by the Legislative Council staff, which identifies the changes of ASA 1 to AB 1 to the bill as introduced.

- A January 23, Amendment Memo, prepared by the Legislative Council staff, which identifies the changes of SSA 1 to SB 1 to the bill as introduced (SSA 1 is identical to ASA 1). In addition, the memo describes the four simple amendments, which were adopted, to SSA 1 to SB 1.

BL/bh  
Attachments



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One East Main, Suite 301 • Madison, WI 53703 • (608) 266-3847 • Fax: (608) 267-6873

January 24, 2007

TO: Members  
Joint Committee on Finance

FROM: Bob Lang, Director

SUBJECT: Summary of Fiscal Notes on January 2007 Special Session SB 1 and AB 1 as prepared by the Ethics and Elections Boards

Following is a summary of the provisions of the fiscal notes to January 2007 Special Session SB 1 and AB 1 that were prepared by the Ethics Board and the Elections Board.

***Legal Counsel Salary and Fringe Benefit Costs.*** Both Board estimates identify the possible costs associated with an Executive Salary Group (ESG) 6 legal counsel position as envisioned by the bills. Beginning April 1, 2007, the annual salary range for a position assigned to ESG 6 is \$84,733 to \$131,337. The Ethics Board estimate assumes \$180,000 annually for this position (\$130,000 for salary and \$50,000 for fringe benefits), while the Elections Board assumes annual salary and fringe benefit costs for the position of \$177,700 annually. It is unknown to what extent these position costs for the legal counsel position would be incurred as: (a) the estimates assume that the position would be filled at the maximum salary for an ESG 6 position (the position could possibly be filled at a lower point in the salary range for an ESG 6 position); (b) the estimates assume a new legal counsel position would be created (the provisions of the bills currently contemplate that an existing Elections or Ethics Board position would be converted to the legal counsel position - generating some level of savings from the deletion of the converted position); and (c) the cost of the envisioned division administrators under the bills for the Government Accountability Board (which would also have to be converted from existing Elections and Ethics Boards positions) is unknown until: (1) these positions would be assigned ESG levels by the Joint Committee on Employment Relations and filled by GAB; and (2) savings from the deletion of the converted positions could be identified. The Ethics Board estimate also identified possible one-time supplies and services costs for the legal counsel position of \$4,500 (\$2,000 for computer hardware and \$2,500 for office furniture, telephones, and other equipment and supplies), and ongoing supplies and services costs of \$12,000 annually (both estimates assume that the legal counsel position would be created as an additional position for GAB).

**Government Accountability Board Meeting Costs.** The fiscal estimates provided by the Boards identify costs associated with Board meetings of GAB. Assuming 26 Board meetings a year for GAB, the Ethics Board identifies \$31,200 annually in per diem expenses for Board members (\$200 per member per meeting) and an estimate of \$10,000 annually in travel expenses for Board members. The Elections Board assumes the possible need for 21 Board meetings annually and identifies an annual per diem exposure for GAB of \$25,200 (again \$200 per member per meeting). The Elections Board further identifies that under election law, the new Board Chair of GAB would be entitled to a daily per diem of \$200 for conducting the canvass of each state election event. Based on an estimated 18 canvasses in an average biennium, the Elections Board identifies an additional per diem biennial cost of \$3,600 for the Chair of GAB. (Under current law, both Boards provide a per diem of \$25 per day.) The Elections Board assumes that the Elections Board base funding for meals and travel under current law would cover these costs incurred by GAB members under the bills.

It is difficult to know the frequency with which the new Board would meet under the bills. However, given the responsibilities of GAB under the bills, the Board could be required to meet more frequently than either the Elections Board or Ethics Board under current law. It should be noted, however, that: (a) both Boards have some existing base funding for Board per diem, travel, and meal costs; (b) the bills provide \$155,400 GPR in 2006-07 to the Joint Committee on Finance to supplement GAB for the costs of holding meetings, employing staff, and permitting GAB to prepare to assume its full authority and responsibilities; and (c) the bills provide GPR funding for an estimated 12 board meetings annually during 2007-09 (in addition to Ethics and Elections Boards' base funding for Board costs).

Under ASA 1 and SSA 1 to the bills, the per diem for GAB board members would be increased to 90% of the daily salary for a circuit court judge. Under current law, that would increase the daily per diem for a GAB board member from \$200 per day to \$439 per day.

**Investigative Costs.** In its fiscal estimate, the Ethics Board estimates that GAB could incur an additional \$30,000 annually in investigation expenditures if GAB is created. At this point, it is unknown what additional investigation expenditures may be incurred by the new Board, until the state has experience with: (a) the impact of the new procedural rules under the bills; (b) the operation of the new Board; (c) the impact of providing two sum sufficient appropriations for investigation and prosecution costs; and (d) the hourly rate at which special investigators and special counsel are retained by GAB.

**One-Time Administrative Costs.** Both Board estimates identify the issue of moving/remodeling costs if the Boards are merged as envisioned under the bills. The Elections Board identifies that this could be a cost factor in any Board merger, while the Ethics Board identifies possible moving costs of \$16,300 (\$525 per employee of the Elections and Ethics boards) and \$42,000 for possible space remodeling costs. The Ethics Board estimate assumes that both Boards would be moved from existing office space. While there may be good programmatic reasons to consolidate staff into one office space, until specific office space decisions are made by

the new Board, it is difficult to estimate what additional funding need there may be for new/remodeled office space.

The Ethics Board estimate also identifies possible costs of \$65,000 to convert Elections Board employees to the Ethics Board computer system. The Elections Board is currently on a Citrix System and, as a result, Elections Board employees do not have individual computers. The Ethics Board indicates that the databases that support its website are not compatible with Citrix. The Ethics Board did indicate that these information technology costs could be potentially reduced if election administration staff could remain on a separate computer system.

*Technical Appropriation Issue.* The Elections Board identifies a concern in its fiscal estimate that PR-revenues from filing fees from non-candidate campaign finance registrants, and from license fees from lobbyists and registration fees from lobbying principals would be deposited to a single PR-general program operations appropriation. Since campaign finance filing fees may only be utilized to fund campaign finance administration, and since lobbying fees may only be utilized for the administration of the state's lobbying laws, the Elections Board recommends that these fees should be placed in separate PR appropriations. While these revenues could be partitioned in a single appropriation through the use of separate accounting numerics, separate PR appropriations to segregate these revenues and expenditures could be created.

Prepared by: Paul Onsager



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**WISCONSIN LEGISLATIVE COUNCIL  
AMENDMENT MEMO**

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<b>2007 Special Session Assembly Bill 1</b>	<b>Assembly Substitute Amendment 1</b>
<i>Memo published: January 22, 2007</i>	<i>Contact: Don Dyke, Chief of Legal Services (266-0292)</i>

The substitute amendment makes the following changes to the original proposal:

**1. Government Accountability Board Members and Employees**

- a. Deletes reference to “retired” judge in connection with Government Accountability Board (GAB) eligibility and substitutes reference to an individual “who formerly served as a judge.” [SEC. 78, p. 48, lines 18-20.]
- b. Provides that GAB members serve six-year terms, rather than four-year terms. [SEC. 78, p. 48, lines 8 and 9.] Provides that the initial staggered terms (one year through six years) of GAB members will be determined by the Government Accountability Candidate Committee by lot before that committee submits the names of at least eight individuals to the governor to fill the initial positions on the GAB. [SEC. 210 (5) (c), p. 92, lines 7-21.]
- c. Replaces the \$200 per diem for GAB members with a per diem equal to the amount paid temporary circuit court reserve judges under s. 753.075 (3) (a), Stats. (90% of daily salary of a sitting circuit court judge). [SEC. 76, p. 48.]
- d. Eliminates the 12-month post-service and post-employment prohibition on running for elective office after termination of service or employment that applies in the original proposal to GAB members, employees, special counsel, and special investigators.
- e. Permits GAB employees to hold nonpartisan local elective office while employed. [SEC. 10, p. 20, lines 23-24.]
- f. Provides that the GAB legal counsel and the division administrator for both the Elections Division and the Ethics and Accountability Division may not have previously been a lobbyist

or have served in, or been a candidate for, a partisan state or local elective office. [SEC. 10, p. 20, lines 19-22.]

## 2. Government Accountability Board Operations

- a. Deletes from the closed session requirement for certain GAB meetings any meeting for the purpose of deliberating concerning an investigation of any violation of law under the jurisdiction of the Elections Division. (Such meetings would be subject to the general Open Meetings Law.) [SEC. 136, p. 66.]
- b. Requires the GAB to make public advisory opinions and records obtained in connection with requests for advisory opinions relating to matters under the jurisdiction of the Elections Division. [SEC. 16, p. 23.]
- c. Requires the GAB, upon issuance of a formal advisory opinion that is not open to public access, to promptly publish a summary of the opinion. [SEC. 95, p. 55, lines 15-17.]
- d. Revises the provision on unauthorized release of records or information in connection with an investigation or prosecution by deleting reference to “verbally” disclosing information; the prohibition now applies to disclosing information, regardless of manner of disclosure. [SEC. 62, p. 45, line 4.]

## 3. Place of Trial

Permits a defendant who is a resident of the state and who is prosecuted in connection with a violation of an election law, campaign finance law, lobbying law, or ethics law\* to move to change the place of trial to the county where the offense was committed. The court is required to grant the motion if the court determines that the county where the offense was committed is different than the county where the defendant resides. If there is more than one county where the offense was committed, the court determines which of the counties where the offense was committed will be the place of trial. The judge who orders the change in the place of trial presides at the trial and the jury is chosen from the county where the trial is held. Moving the place of trial does not affect which prosecutor has responsibility to prosecute the action. The provision on moving place of trial applies to both civil and criminal actions. [SEC. 207, pp. 82 and 83; see also SECS. 204 and 205, p. 81, providing cross-reference to the place of the trial provision for civil actions, and p. 81, lines 9-11.]

## 4. Severability

Modifies the nonseverability clause by providing that if any portion of the act is found unconstitutional by a court, the entire act is void with the exception of provisions in the act that would reconstitute the Elections Board and Ethics Board. Further, if the act becomes void, all statutory provisions in effect on the date the act is published that are repealed or otherwise treated by the act are

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\* Including any other law arising from or in relation to the official functions of the defendant or any matter that involves elections, campaign financing, lobbying, or ethics regulation.

revived as those provisions read on the date of publication. Under the reconstitution provisions, the prior members of the Elections and Ethics Boards do not resume their offices but the designating and appointing authorities under current law may immediately appoint new members to the boards. The incumbent administrators of the Elections Division and the Ethics and Accountability Division of the GAB become the executive directors of the Elections Board and Ethics Board respectively until the boards otherwise determine. The assets, liabilities, positions, employees, property, contracts, orders, and rules of the GAB are transferred to the Elections Board and the Ethics Board in a manner determined by the Secretary of Administration, except that the secretary may not authorize expenditures by the boards for a period of more than 30 days without concurrence of the Joint Committee on Finance. Provision is also made for notification to the Legislature of any legislation necessary to make changes in pertinent statutes treated after the act becomes law for consistency with the reconstituted statutes. [SEC. 210 (8), p. 94, lines 3-8; SEC. 20, p. 24, et seq.; SEC. 102, p. 56, et seq.]

### 5. Transition

- a. Provides that the proposal generally takes effect on the **later** of the first day of the seventh month beginning after publication or the 31<sup>st</sup> day beginning after the date on which the GAB has given final approval to the hiring of individuals to initially fill the positions of legal counsel to the board, administrator of the Ethics and Accountability Division, and administrator of the Elections Division. (In the original bill, the general effective date is the first day of the seventh month beginning after publication.) In this connection, the required GAB review of existing internal operating procedures, guidelines, rules, orders, and opinions will begin on the new effective date, rather than following the first meeting of the GAB. [SEC. 212 (intro.), p. 95; SEC. 210 (1), p. 84. See, also, the use of the definition of “initiation date” throughout the nonstatutory provisions of the proposal.]
- b. Clarifies that the Director of the Legislative Council staff is to provide “administrative” support to the GAB during the applicable interim period. [SEC. 210 (6) (a), p. 93, lines 1-12.]

### 6. Other

- a. Deletes the repeal of s. 5.68 (7), Stats., relating to reimbursement for additional costs incurred in connection with uniform polling hours, thereby reinstating the provision. [See SEC. 27 of the original bill.]
- b. Clarifies that the Attorney General’s authority under s. 165.25 (1), Stats., to appear, represent, prosecute, or defend any matter in which the state is interested at the request of the governor or either house of the Legislature, or any other authority of the Attorney General under ch. 165, is unaffected by the bill. [SEC. 181, p. 75.]

### Legislative History

Assembly Substitute Amendment 1 was offered by the Assembly Committee on Judiciary and Ethics. It was recommended for adoption and January 22, 2007, Special Session Assembly Bill 1 was recommended for passage, as amended, by a vote of Ayes, 8; Noes, 1.





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**WISCONSIN LEGISLATIVE COUNCIL  
AMENDMENT MEMO**

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<b>2007 Special Session Senate Bill 1</b>	<b>Senate Substitute Amendment 1 and Senate Amendments 1 to 4</b>
<i>Memo published: January 23, 2007</i>	<i>Contact: Don Dyke, Chief of Legal Services (266-0292) Ronald Sklansky, Senior Staff Attorney (266-1946)</i>

**THE SUBSTITUTE AMENDMENT**

The substitute amendment makes the following changes to the original proposal:

**1. Government Accountability Board Members and Employees**

- a. Deletes reference to “retired” judge in connection with Government Accountability Board (GAB) eligibility and substitutes reference to an individual “who formerly served as a judge.” [SEC. 78, p. 48, lines 18-20.]
- b. Provides that GAB members serve six-year terms, rather than four-year terms. [SEC. 78, p. 48, lines 8 and 9.] Provides that the initial staggered terms (one year through six years) of GAB members will be determined by the Government Accountability Candidate Committee by lot before that committee submits the names of at least eight individuals to the governor to fill the initial positions on the GAB. [SEC. 210 (5) (c), p. 92, lines 7-21.]
- c. Replaces the \$200 per diem for GAB members with a per diem equal to the amount paid temporary circuit court reserve judges under s. 753.075 (3) (a), Stats. (90% of daily salary of a sitting circuit court judge). [SEC. 76, p. 48.]
- d. Eliminates the 12-month post-service and post-employment prohibition on running for elective office after termination of service or employment that applies in the original proposal to GAB members, employees, special counsel, and special investigators.
- e. Permits GAB employees to hold nonpartisan local elective office while employed. [SEC. 10, p. 20, lines 23-24.]

- f. Provides that the GAB legal counsel and the division administrator for both the Elections Division and the Ethics and Accountability Division may not have previously been a lobbyist or have served in, or been a candidate for, a partisan state or local elective office. [SEC. 10, p. 20, lines 19-22.]

## 2. Government Accountability Board Operations

- a. Deletes from the closed session requirement for certain GAB meetings any meeting for the purpose of deliberating concerning an investigation of any violation of law under the jurisdiction of the Elections Division. (Such meetings would be subject to the general Open Meetings Law.) [SEC. 136, p. 66.]
- b. Requires the GAB to make public advisory opinions and records obtained in connection with requests for advisory opinions relating to matters under the jurisdiction of the Elections Division. [SEC. 16, p. 23.]
- c. Requires the GAB, upon issuance of a formal advisory opinion that is not open to public access, to promptly publish a summary of the opinion. [SEC. 95, p. 55, lines 15-17.]
- d. Revises the provision on unauthorized release of records or information in connection with an investigation or prosecution by deleting reference to “verbally” disclosing information; the prohibition now applies to disclosing information, regardless of manner of disclosure. [SEC. 62, p. 45, line 4.]

## 3. Place of Trial

Permits a defendant who is a resident of the state and who is prosecuted in connection with a violation of an election law, campaign finance law, lobbying law, or ethics law\* to move to change the place of trial to the county where the offense was committed. The court is required to grant the motion if the court determines that the county where the offense was committed is different than the county where the defendant resides. If there is more than one county where the offense was committed, the court determines which of the counties where the offense was committed will be the place of trial. The judge who orders the change in the place of trial presides at the trial and the jury is chosen from the county where the trial is held. Moving the place of trial does not affect which prosecutor has responsibility to prosecute the action. The provision on moving place of trial applies to both civil and criminal actions. [SEC. 207, pp. 82 and 83; see also SECS. 204 and 205, p. 81, providing cross-reference to the place of the trial provision for civil actions, and p. 81, lines 9-11.]

## 4. Severability

Modifies the nonseverability clause by providing that if any portion of the act is found unconstitutional by a court, the entire act is void with the exception of provisions in the act that would

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\* Including any other law arising from or in relation to the official functions of the defendant or any matter that involves elections, campaign financing, lobbying, or ethics regulation.

reconstitute the Elections Board and Ethics Board. Further, if the act becomes void, all statutory provisions in effect on the date the act is published that are repealed or otherwise treated by the act are revived as those provisions read on the date of publication. Under the reconstitution provisions, the prior members of the Elections and Ethics Boards do not resume their offices but the designating and appointing authorities under current law may immediately appoint new members to the boards. The incumbent administrators of the Elections Division and the Ethics and Accountability Division of the GAB become the executive directors of the Elections Board and Ethics Board respectively until the boards otherwise determine. The assets, liabilities, positions, employees, property, contracts, orders, and rules of the GAB are transferred to the Elections Board and the Ethics Board in a manner determined by the Secretary of Administration, except that the secretary may not authorize expenditures by the boards for a period of more than 30 days without concurrence of the Joint Committee on Finance. Provision is also made for notification to the Legislature of any legislation necessary to make changes in pertinent statutes treated after the act becomes law for consistency with the reconstituted statutes. [SEC. 210 (8), p. 94, lines 3-8; SEC. 20, p. 24, et seq.; SEC. 102, p. 56, et seq.]

### 5. Transition

- a. Provides that the proposal generally takes effect on the **later** of the first day of the seventh month beginning after publication or the 31<sup>st</sup> day beginning after the date on which the GAB has given final approval to the hiring of individuals to initially fill the positions of legal counsel to the board, administrator of the Ethics and Accountability Division, and administrator of the Elections Division. (In the original bill, the general effective date is the first day of the seventh month beginning after publication.) In this connection, the required GAB review of existing internal operating procedures, guidelines, rules, orders, and opinions will begin on the new effective date, rather than following the first meeting of the GAB. [SEC. 212 (intro.), p. 95; SEC. 210 (1), p. 84. See, also, the use of the definition of “initiation date” throughout the nonstatutory provisions of the proposal.]
- b. Clarifies that the Director of the Legislative Council staff is to provide “administrative” support to the GAB during the applicable interim period. [SEC. 210 (6) (a), p. 93, lines 1-12.]

### 6. Other

- a. Deletes the repeal of s. 5.68 (7), Stats., relating to reimbursement for additional costs incurred in connection with uniform polling hours, thereby reinstating the provision. [See SEC. 27 of the original bill.]
- b. Clarifies that the Attorney General’s authority under s. 165.25 (1), Stats., to appear, represent, prosecute, or defend any matter in which the state is interested at the request of the governor or either house of the Legislature, or any other authority of the Attorney General under ch. 165, is unaffected by the bill. [SEC. 181, p. 75.]

## SENATE AMENDMENTS

### 1. Senate Amendment 1

*Senate Amendment 1* removes the nonseverability provisions from the substitute amendment.

## 2. Senate Amendment 2

Proposed s. 12.13 (5), Stats., of the substitute amendment provides that no investigator, prosecutor, employee of an investigator or prosecutor, or member or employee of GAB may verbally disclose information related to a board investigation or prosecution or provide any access to any record of the board to any person other than an employee or agent of the prosecutor or investigator or a member, employee, or agent of the board prior to presentation of the information or record in a court of law.

*Senate Amendment 2* clarifies that the prohibition on disclosing information or providing access to any record does not apply to the following communications:

1. Communications made in the normal course of an investigation or prosecution.
2. Communications with a local, state, or federal law enforcement or prosecutorial authority.
3. Communications made to the attorney of an investigator, prosecutor, employee, or member or to the person, or the attorney of a person, who was investigated or prosecuted.

## 3. Senate Amendment 3

Proposed s. 5.05 (2m) (a), Stats., of the substitute amendment provides that GAB must investigate violations of laws administered by the board and may prosecute alleged civil violations of those laws.

*Senate Amendment 3* clarifies that GAB may act either upon a verified complaint or upon its own motion.

## 4. Senate Amendment 4

Proposed s. 19.851, Stats., of the substitute amendment provides that GAB must hold a meeting in closed session when it meets for the purpose of deliberating about an investigation under the jurisdiction of the ethics and accountability division (campaign financing laws, lobbying laws, and ethics laws).

*Senate Amendment 4* provides that GAB must meet in closed session when it meets for the purpose of deliberating about an investigation into a violation of lobbying laws or ethics laws. Consequently, when the board meets to deliberate about an investigation into a violation of the election laws or the campaign financing laws, it may convene in closed session only for one or more of the reasons specified in s.19.85 (1), Stats.

## Legislative History

On January 23, 2007, the Senate Committee on Ethics Reform and Government Operations took the following actions:

1. Introduced and adopted Senate Substitute Amendment 1 to January 2007 Special Session Bill 1 on a vote of Ayes, 4; Noes, 1.

2. Introduced and adopted Senate Amendments 1 to 4 to the substitute amendment on votes of Ayes, 5; Noes, 0.
3. Recommended January 2007 Special Session Bill 1, as amended, for passage on a vote of Ayes, 4; Noes, 1.

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