



## Legislative Fiscal Bureau

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January 19, 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

January 2007 Special Session Assembly Bill 1 and January 2007 Special Session Senate Bill 1 (companion bills) would consolidate the Elections Board and the Ethics Board as a new Government Accountability Board. The companion bills were both introduced on January 11, 2007, by the Joint Committee on Legislative Organization at the request of Governor Doyle. This memorandum summarizes the provisions of these companion bills, as introduced.

### **SUMMARY OF JANUARY, 2007 SPECIAL SESSION BILLS**

#### **Government Accountability Board**

*Membership and Appointment.* The bills would create a Government Accountability Board (GAB) consisting of six persons. Members of GAB would serve four-year terms. All members of GAB would be nominated by the Governor, and would be appointed with the advice and consent of two-thirds of the members of the Senate who would be present and voting. Further, all members of GAB would have to be Wisconsin retired judges who had been elected to office. The incoming Chairperson of GAB would have to be chosen by lot by the current Chairperson at the first meeting of the Board in January of each year.

The terms of GAB members would expire: (a) for two members, on May 1 in the year preceding the year of a gubernatorial election; (b) for two members, on May 1 in the year of a gubernatorial election; and (c) for two members, on May 1 in the year following the year of a gubernatorial election.

Under the transitional provisions initially creating GAB, the Board would not have a quorum for transaction of business at its initial meeting until the full Board (six members) had been initially appointed and was qualified to serve. The member of GAB who was first nominated would be required to choose the initial Chairperson of the Board at the first meeting of the Board by lot.

The members of GAB would be paid a per diem of \$200 per day, plus actual and necessary expenses for each day on which they were engaged in the performance of their duties. (Current members of the Elections Board and the Ethics Board receive a per diem of \$25 per day, plus actual and necessary expenses.)

On the first day of the seventh month beginning after the enactment of the bill, the terms of office of the members of the Elections Board and Ethics Board would expire. As a result, during a transition period after enactment of the bill, all three boards would exist simultaneously.

*Limitation on Board Membership.* No member of GAB could be a state or local public official, except the role of a reserve judge in either circuit court or the court of appeals. Further, no member of GAB could become a candidate for state or local office, either while serving on the Board or for 12 months thereafter. No member of GAB could be a member of a political party, an officer or member of a committee in any partisan political club or organization, or an officer or employee of any campaign finance registrant under Chapter 11 of the statutes, either within one year immediately prior to the date of nomination to the Board, or at any time while serving on the Board. No member of GAB, while serving on the Board or for a 12-month period prior to beginning that service, would be permitted to make a campaign contribution to any candidate for partisan state or local office. Finally, no member of GAB could be engaged as a lobbyist or as an employee of a principal who employs lobbyists under Wisconsin's lobbying laws (except that a GAB member could serve as a reserve judge in either circuit court or the court of appeals).

*Process for Filling Board Seats—Government Accountability Candidate Committee.* All GAB members would have to be appointed from nominations submitted to the Governor by the Governmental Accountability Candidate Committee (GACC). GACC would consist of four court of appeals judges, one from each of the four Court of Appeals districts. GACC members would serve two-year terms expiring on March 1. Court of Appeals judges serving on GACC would be chosen by lot by the Chief Justice of the Supreme Court, in the presence of the other justices of the Supreme Court. Service on GACC would generally be mandatory for a selected court of appeals judge.

A Court of Appeals judge could decline to serve on GACC, however, provided the judge had good cause for declining to serve. The Director of State Courts would be required to accept from a Court of Appeals judge a written communication setting forth the reasons why the judge could not or should not serve (for good cause), and upon receipt of such communication the Court of Appeals judge would have to be excused from service on GACC. Upon receipt of such a written communication, the Director of State Courts would be required to notify the Chief Justice of the Supreme Court. The vacancy on GACC would be filled by the Chief Justice of the Supreme Court

again choosing a Court of Appeals judge, by lot, in the presence of the other justices of the Supreme Court.

GACC would be required to meet whenever a vacancy occurred in the membership of GAB. No person could be nominated by GACC unless the person received unanimous approval. GACC would be required to submit the following number of nominations to the Governor: (a) to fill one vacancy, two nominations would have to be submitted; (b) to fill two vacancies, three nominations would have to be submitted; (c) to fill three vacancies, five nominations would have to be submitted; (d) to fill four vacancies, six nominations would have to be submitted; and (e) to fill five vacancies, seven nominations would have to be submitted. GACC would be required to submit an additional nominee to the Governor if: (a) a nominee died or withdrew; (b) the Governor withdrew a nomination submitted to the Senate; or (c) the Senate rejected a gubernatorial nominee.

*Initial Seating of the Government Accountability Board.* Notwithstanding the above provisions, the initial members of GACC would serve for terms expiring on March 1, 2009. Also, notwithstanding the above provisions, in initially filling the six open seats on GAB after passage of the bill, GACC would be required to submit to the Governor the names of at least eight qualified individuals to fill the initial positions as members of the Government Accountability Board. Of the six members initially appointed to serve on GAB: (a) two would be appointed to serve for terms expiring on May 1, 2009; (b) two would be appointed to serve for terms expiring on May 1, 2010; and (c) two would be appointed to serve for terms expiring on May 1, 2011.

In initially filling the six open seats on GAB after passage of the bill, the Governor would be required to submit the names of the nominees to initially fill three Board seats to the Assembly, and would be required to submit the names for the three remaining Board seats to the Senate. Nominations submitted to either house would be subject to confirmation solely by a majority of the members present and voting. If a nominee died or withdrew, or if such a nomination was withdrawn by the Governor or rejected by the house to which submitted, GACC would be required to submit an additional nominee to the Governor for appointment to the Board, subject to confirmation by the house which rejected the prior confirmation in accordance with the confirmation process described in this paragraph.

*Board Action.* Any action by the Board would require the affirmative vote of at least four of its six members. Under current law, the Ethics Board is also a six member Board that generally must have an affirmative vote of four of its members in order to take action.

*Closed Session.* The Government Accountability Board would be required to hold each investigation review meeting under the Board's jurisdiction in closed session. The Board would be required to vote to convene in closed session. No business could be conducted by the Board at any closed session, other than to deliberate concerning a GAB investigation, and for other authorized purposes for which the Board may convene in closed session under s. 19.85(1) of the statutes.

## **Jurisdiction and Administrative Organization of the Government Accountability Board**

*Jurisdiction.* The Board would be responsible for administering state election laws (including campaign finance), the Code of Ethics for Public Officials, and the state's lobbying laws.

Under the bills, GAB would be required to employ legal counsel who would perform legal and administrative functions for the Board. Additionally, under the bills, GAB would have two statutorily established Divisions:

*Ethics and Accountability Division.* This Division would be responsible for administering state campaign finance laws, state lobbying laws, and the Code of Ethics for Public Officials. The Division would be under the direction and supervision of an unclassified administrator, who would have to be appointed by the Board.

*Elections Division.* This Division would be responsible for administering state election laws under chapters 5 through 10, and 12 of the statutes. The Division would be under the direction and supervision of an unclassified administrator, who would have to be appointed by the Board.

### **Government Accountability Board Authority to Initiate, Investigate, and Prosecute Civil and Criminal Violations**

*General Authority.* The Board would be responsible for administering state election laws (including campaign finance), the Code of Ethics for Public Officials, and the state's lobbying laws. The Board would be required to investigate violations of laws administered by GAB and would be authorized to prosecute alleged civil violations of those laws, either directly or through its agents. Prosecution of alleged criminal violations investigated by the Board could be brought only as provided below.

The Board would be authorized to bring civil actions to require a forfeiture for any violation of state elections laws (including campaign finance), the Code of Ethics for Public Officials, and the state's lobbying laws. The Board would be further authorized to bring civil actions to revoke lobbying law licenses. The Board would generally be required to bring civil forfeiture and license revocation actions in the circuit court for the county where the defendant resides, or if the defendant was a nonresident of this state, in the circuit court for the county wherein the violation was alleged to have occurred. A person other than a natural person (such as a corporation) would be considered to reside within a county if the person's principal place of operation was located within that county.

The bills would authorize GAB to prosecute and/or settle civil forfeiture actions involving any state election law violation, not just campaign finance violations as under current law for the Elections Board. Under current law, the Elections Board must bring civil forfeiture actions in the circuit court for the county wherein the violation was alleged to have occurred.

Under current law, the Ethics Board is authorized to initiate hearings to determine whether or not a violation of the state's lobbying law or Code of Ethics for Public Officials occurred. If the hearing determines that a violation occurred, or if the Board settles a case in lieu of a hearing, an individual may be ordered to pay a civil forfeiture. (The Ethics Board has seldom used the hearing procedure.) The bills would eliminate the hearing procedure and rely instead on court civil forfeiture actions.

*Initiating Investigations.* Any person would be permitted to file a complaint with GAB alleging a violation of state election laws (including campaign finance), the Code of Ethics for Public Officials, and the state's lobbying laws. If GAB found, by a preponderance of the evidence, that a complaint was frivolous, GAB could order the complainant to forfeit not more than the greater of \$500, or the expenses incurred by the Board in investigating the complaint. [Although not specifically identified in the bills, presumably the Government Accountability Board could also initiate an investigation on its own motion.]

Under current law, the Elections Board must, upon complaint by any person or on its own motion, investigate alleged violations of laws it administers. The Ethics Board may investigate such complaints. Under current law, a person filing a complaint with the Elections Board or Ethics Board is not subject to a possible forfeiture or the payment of Board investigative expenses if his or her complaint is found to be frivolous.

If GAB reviewed a complaint and failed to find that there was a reasonable suspicion that a violation had occurred or was occurring, GAB would be required to dismiss the complaint. If GAB believed that there was a reasonable suspicion that a violation had occurred or was occurring, GAB could, by resolution, authorize the commencement of an investigation. The resolution would be required to specifically set forth any matter that was authorized to be investigated.

Under current law, the Elections Board may dismiss any complaint which it finds to be without merit, while the Ethics Board must dismiss a complaint if it determines that the complaint does not allege facts sufficient to constitute a violation.

*General Investigative Powers.* In the discharge of its duties and after providing notice to any party who is the subject of an investigation, GAB would be authorized to subpoena and bring before it any person and require the production of any papers, books, or other records relevant to an investigation. The issuance of a subpoena, however, would require action by the Board at a meeting of the Board. In the discharge of its duties, GAB could also cause the deposition of witnesses to be taken in the manner prescribed for taking depositions in civil actions in circuit court.

These general investigative powers parallel the general investigative powers granted to the Elections Board under current law with the following exceptions: (a) a subpoena could now only be issued by the Board as a whole (under current law a single Elections Board member may authorize the issuance of a subpoena); and (b) GAB could no longer delegate to staff the authority to issue

subpoenas. Under current law, however, the Ethics Board must approve the issuance of a subpoena in an investigation by an affirmative vote of four of its members.

Pursuant to any authorized investigation, the Government Accountability Board would be further empowered to: (a) require any person to submit in writing such reports and answers to questions relevant to the proceedings as the Board may prescribe, such submissions to be made within such period and under oath or otherwise as the Board may prescribe; and (b) order testimony to be taken by deposition before any individual who is designated by the Board and has the power to administer oaths, and, in such instances, to compel testimony and the production of evidence in the same manner as authorized above.

These general investigative powers, including the powers outlined above, parallel the general investigative powers granted to the Ethics Board under current law.

*Investigative Powers Regarding Alleged Campaign Finance Violations.* A circuit court could by order permit the inspection and copying of the accounts and the depositor's and loan records at any financial institution doing business in the state to obtain evidence of any violation of campaign finance laws, upon a showing by GAB of probable cause to believe that there was a campaign finance violation and that such accounts and records had a substantial relation to the alleged campaign finance violation. These powers parallel the investigative powers granted to the Elections Board under current law to pursue alleged campaign finance violations.

*Special Investigators.* To assist in the investigation, GAB would be permitted to retain special investigators. If GAB elected to retain a special investigator, the Administrator of the Ethics and Accountability Division of GAB would be required to submit to the Board the names of three qualified individuals to serve as a special investigator. The Government Accountability Board could retain one or more of the individuals. The Board would be required to enter into a written contract with any individual who was retained as a special investigator setting forth the terms of the engagement.

A retained special investigator could request that the Board: (a) issue a subpoena to a specific person; or (b) authorize the special investigator to request a circuit court to issue a search warrant. The Government Accountability Board could grant the request by approving an authorizing motion at a meeting of the Board if the Board found that such action was legally appropriate.

Under current law, the Ethics Board is specifically required to authorize the issuance of a subpoena by the affirmative vote of at least four of its members, while the Elections Board is specifically authorized to delegate to its Executive Director the authority to issue a subpoena or apply for a search warrant.

If GAB retains a special investigator to investigate a complaint against a person who was a resident of the state, GAB would be required to provide the district attorney for the county in which the person resided a copy of the complaint and would be required to notify the district attorney that

it had retained a special investigator to investigate the complaint. A person other than a natural person (such as a corporation) would be considered to reside within a county if the person's principal place of operation was located within that county.

Under current law, neither the Ethics nor Election Boards are required to notify the district attorney for the county in which the investigated person resides, if the Board retains an investigator to investigate the complaint.

Under the bills, the Ethics Board's GPR biennial code of ethics investigations appropriation would be amended under GAB to be a GPR sum sufficient investigations appropriation for the purpose of financing the costs of investigations authorized by GAB for potential violations of state election laws (including campaign finance), state lobbying laws, and the Code of Ethics for Public Officials. Board retained special investigators would be compensated from this GPR sum sufficient appropriation. (The bills would place no limitation on the hourly compensation that the Board would be authorized to pay retained special investigators.)

*Investigation Progress Reports.* Each special investigator retained by GAB would be required to make periodic reports to the Board, as directed by the Board, but in no case could the interval for reporting exceed 30 days. If the Board authorized the administrator of the Ethics and Accountability Division to investigate any matter without retaining a special investigator, the administrator would be required to make periodic reports to the Board, as directed by the Board, but in no case could the reporting interval exceed 30 days. During the course of any investigation, the Board would be required to meet for the purpose of reviewing the progress of the investigation at least once every 90 days. The special investigator or administrator would be required to report in person to the Board at that meeting concerning the progress of the investigation. If, after receiving a report, the Board did not vote to continue an investigation for an additional period not exceeding 90 days, the investigation would be terminated at the end of the reporting interval. The Government Accountability Board could not expend 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. The Board would be authorized to vote to terminate an investigation at any time. If an investigation was terminated, any complaint from which the investigation arose would be deemed dismissed by the Board.

Under current law, neither the Elections Board nor the Ethics Board has statutory provisions requiring: (a) board staff or retained investigators to report to the boards at required intervals as to the progress of investigations; and (b) the board to periodically vote to continue investigations.

*Expanding the Scope of an Authorized Investigation.* If in the course of an investigation authorized by the Board, a special investigator or administrator of the Ethics and Accountability Division discovered evidence that a violation of law administered by the Board had occurred or was occurring that was not within the scope of the authorized investigation, the special investigator or administrator could present that evidence to the Board. If the Board found that there was a reasonable suspicion that such a violation, that was not within the scope of the authorized

investigation, had occurred or was occurring, the Board could authorize the special investigator or Administrator to investigate the alleged violation or could elect to authorize a separate investigation of the alleged violation.

Under current law, neither the Elections Board nor the Ethics Board has statutory language specifically requiring Board approval to expand an authorized investigation.

*Probable Cause Determination that a Violation has Occurred.* Unless an investigation was terminated by the Government Accountability Board, at the conclusion of each investigation the Ethics and Accountability Division Administrator would be required to present to the Board one of the following: (a) a recommendation to find that probable cause exists to believe that one or more violations of law administered by the Board have occurred or are occurring, together with a recommended course of action; (b) a recommendation for further investigation of the matter together with facts supporting that course of action; or (c) a recommendation to terminate the investigation due to lack of sufficient evidence to indicate that a violation of law has occurred or is occurring.

After receiving a recommendation from the Ethics and Accountability Division Administrator, at the conclusion of an investigation GAB would be required, in preliminary written findings of fact and conclusions based thereon, to make a determination of whether or not probable cause exists to believe that a violation of law administered by the Board had occurred or was occurring. If the Board determined that no probable cause existed, GAB would be required to dismiss the complaint. If the Board either determined that no probable cause existed in an investigation, or failed to authorize an investigation to continue, GAB would be required to immediately send written notice of the dismissal to the accused and to the party who made the complaint.

If GAB found that there was probable cause to believe that a violation of law administered by the Board had occurred or was occurring, GAB could authorize the administrator of the Ethics and Accountability Division to file a civil complaint against the alleged violator.

Under current law, the Elections Board is not statutorily required to make a finding that probable cause exists to believe that a violation of law administered by the Board has occurred, prior to commencing a legal action for an alleged violation. By contrast, the Ethics Board must make a probable cause finding prior to initiating legal action for an alleged violation of laws under its jurisdiction.

*Civil Violation Prosecutions by the Government Accountability Board.* In cases involving alleged civil violations, the administrator of the Ethics and Accountability Division could request the assistance of special counsel to prosecute any civil action brought by the Board. If the administrator requested the assistance of special counsel with respect to any matter, the administrator would be required to submit to the Board the names of three qualified individuals to serve as special counsel. The Government Accountability Board could retain one of the individuals



to act as special counsel. The staff of GAB would be required to provide assistance to the special counsel, as required, to assist him or her in carrying out his or her responsibilities.

The Government Accountability Board would be required to enter into a written contract with any individual who was retained as special counsel setting forth the terms of the engagement, including the compensation to be paid such counsel by the state. The contract would have to be executed on behalf of the state by the Board's legal counsel, who would be required to file the contract in the Office of the Secretary of State.

Compensation paid to such special counsel would be charged to the Department of Justice's (DOJ) GPR, sum sufficient special counsel appropriation. (Generally, state agencies may not charge expenditures to another agency's appropriation. This permits the Legislature to better monitor the level of expenditures being made by each state agency. In this regard, the Committee could consider creating a sum sufficient appropriation under GAB for special counsel costs, so that Board expenditures for special counsel could be directly attributable to the Board itself.)

The Board would be exempted from the current law requirement that no executive branch state agency, with certain exceptions, may employ outside counsel without the Governor's approval. This exemption would apply to the Board's retention of both special investigators and special counsel. (There is no limitation provided under the bill as to the hourly compensation that the Board would be authorized to pay to retained special investigators and special counsel.)

Upon employment of an individual to serve as special counsel or as a special investigator for GAB, the administrator of the Ethics and Accountability Division would be required to certify the maximum amount provided in the employment contract to the Secretary of Administration, and direct the Department of Administration to pay bills of the special counsel or special investigator related to that case within the certified amount.

Under current law, the Ethics Board must have its contracts to retain outside counsel in investigations approved by the Governor. The Ethics Board is not permitted to charge its outside counsel costs to DOJ's special counsel sum sufficient appropriation, but rather must charge these expenses to a biennial code of ethics investigations appropriation which is under the Board itself. Under 2005 Wisconsin Act 25 this appropriation is budgeted \$32,800 GPR annually, but as the appropriation is a biennial appropriation the Board is authorized to expend up to \$65,600 GPR in any one state fiscal year for the costs of investigations of Code of Ethics violations.

Under current law, the Elections Board must also have its contracts to retain outside counsel in investigations approved by the Governor. The Elections Board is also not permitted to charge its outside counsel costs to DOJ's special counsel sum sufficient appropriation, but the Elections Board does not have a separate appropriation for Board investigation costs. Any Elections Board investigation costs must be paid for from the Board's GPR and PR general program operations appropriations.

*Settlement of Minor Violations.* Under the bills, the Board could compromise and settle any civil action or potential action brought or authorized to be brought by GAB which, in the opinion of the Board, constituted a minor violation, a violation caused by excusable neglect, or which for other good cause shown, would not be in the public interest to prosecute. An actual or proposed civil action by GAB could be settled for such sum as might be agreed between the parties. Any settlement made by GAB would have to be in an amount to deprive the alleged violator of any benefit of his or her wrongdoing and could contain a penalty component to serve as a deterrent to future violations. In settling actual or proposed civil actions, GAB would be required to treat comparable situations in a comparable manner and would have to ensure that any settlement bore a reasonable relationship to the severity of the offense or alleged offense. Whenever GAB would enter into a settlement agreement, GAB would be required to reduce the agreement to writing, together with a statement of the Board's findings and reasons for entering into the settlement agreement. The Board would be required to retain the settlement agreement and accompanying statement in its office for inspection.

These provisions generally parallel current law provisions governing the authority of the Elections Board to settle such cases. The requirements that all such settlements be reduced to writing and available for inspection are not applicable to Elections Board settlements under current law. These latter requirements, however, do apply to Ethics Board settlements under current law.

*Settlement of Alleged Civil Violations Without Formal Investigation.* The Government Accountability Board could, by rule, prescribe categories of civil offenses which the Board would agree to compromise and settle without a formal investigation upon payment of specified amounts by the alleged offender. The Board could authorize the administrator of the Ethics and Accountability Division to compromise and settle such alleged offenses in the name of the Board if the alleged offenses by an offender, in the aggregate, did not involve payment of more than \$1,000.

*Government Accountability Board Civil Prosecutions Involving District Attorneys, Circuit Court Judges, and Candidates for these Offices.* If the defendant in a civil action for a violation of law administered by the Board was a district attorney, a circuit court judge, or a candidate for either such office, the action would have to be brought by the Board.

*Referral of Civil and Criminal Prosecutions to District Attorneys.* If GAB found that there was probable cause to believe that a violation of law administered by the Board had occurred or was occurring, the Board could, in lieu of civil prosecution of any matter by the Board, refer the matter to the district attorney for the county in which the alleged violator resided, or if the alleged violator was a nonresident, to the district attorney for the county where the matter arose. A person other than a natural person (such as a corporation) would be considered to reside within a county if the person's principal's place of operation was located within that county.

Under the bills, the Government Accountability Board would be authorized to refer alleged civil or criminal violations to district attorneys under the process identified above. The bills, however, would specifically prohibit GAB from prosecuting alleged criminal violations of laws it

administers. Instead, except as otherwise provided by law, sole responsibility for prosecuting alleged criminal violations of laws GAB administers would be assigned to district attorneys.

If a special investigator or administrator of the Ethics and Accountability Division, in the course of an investigation authorized by the Board, discovered evidence of a potential violation of a law that was not administered by the Board arising from or in relation to the official functions of the subject of the investigation or any matter that involved elections, ethics, or lobbying regulation, the special investigator or administrator could present that evidence to the Board. The Board could thereupon refer the matter to the district attorney for the county in which the alleged violator resided, or if the alleged violator was a nonresident, to the district attorney for the county where the matter arose.

If the Board referred a matter to a district attorney for prosecution and the district attorney informed the Board that he or she declined to prosecute any alleged civil or criminal violation related to any matter referred to the district attorney by the Board, or the district attorney failed to commence a prosecution of any civil or criminal violation related to any matter referred to the district attorney by the Board within 60 days of the date of the Board's referral, the Board could refer the matter to the district attorney for another prosecutorial unit that is contiguous to the prosecutorial unit of the district attorney to whom the matter was originally referred. If there was more than one such prosecutorial unit, the Chairperson of GAB would be required to determine the district attorney to whom the matter would have to be referred by publicly drawing lots at a meeting of the Board. These provisions would not apply in any case in which a special prosecutor was appointed by a court (under s. 978.045 of the statutes) in lieu of a district attorney who initially received the referral from GAB.

If GAB referred a matter to a subsequent district attorney under the preceding paragraph, and the subsequent district attorney informed GAB that he or she declined to prosecute any alleged civil or criminal violation related to any matter referred to the subsequent district attorney by GAB, or the subsequent district attorney failed to commence a prosecution of any alleged civil or criminal violation related to any matter referred to the subsequent district attorney by GAB within 60 days of the date of GAB's referral, GAB could refer the matter to the Attorney General. The Attorney General could then commence a civil or criminal prosecution relating to the matter. These provisions would not apply in any case in which a special prosecutor was appointed by a court (under s. 978.045 of the statutes) in lieu of a subsequent district attorney who received the referral from GAB.

Under current law, the Elections Board must notify the district attorney, the Attorney General, or the Governor (under certain circumstances) of any facts within its knowledge or evidence in its possession which may be grounds for civil action or criminal prosecution. Under current law, any Ethics Board recommendation for criminal prosecution must be referred to the district attorney in whose jurisdiction the alleged violation occurred, or to the Attorney General if the violation concerns the district attorney. If the district attorney fails to commence a prosecution

within 30 days, the Ethics Board must refer the prosecution to the Attorney General. These current law provisions would be repealed by the bills.

*Attorney General Criminal Prosecutions of District Attorneys, Circuit Court Judges, and Candidates for These Offices.* If the defendant in a criminal action for a violation of law administered by the Board was a district attorney, a circuit court judge, or a candidate for either such office, the action would have to be brought by the Attorney General.

*Civil Prosecution of an Incumbent or Candidate for Attorney General.* If the defendant in a civil action for a violation of law administered by the Board was an incumbent or a candidate for Attorney General, the Board could appoint special counsel to bring suit on behalf of the state. The special counsel would have to be independent of the Attorney General and would not have to be a state employee at the time of his or her appointment.

*Criminal Prosecution of an Incumbent or Candidate for Attorney General.* If the defendant in a criminal action for a violation of law administered by the Board was an incumbent or a candidate for Attorney General, the Board could appoint a special prosecutor to prosecute on behalf of the state. The special prosecutor would have to be independent of the Attorney General and would not have to be a state employee at the time of his or her appointment.

*Reporting Requirement for Case Referrals to District Attorneys, Special Counsel, and the Attorney General.* Any district attorney, special counsel, or the Attorney General receiving a case referred by GAB, would be required to report to GAB concerning any action taken regarding the matter. The report would be required to be transmitted no later than 40 days after the date of the referral. If the matter was not disposed of during that period, the district attorney, special counsel, or Attorney General would be required to file a subsequent report at the end of each 30-day period following the filing of the initial report until final disposition of the matter.

Under current law, the Elections Board must notify the district attorney of the proper county, the Attorney General, or the Governor (under certain circumstances) of any facts within its knowledge or evidence in its possession which may be grounds for civil action or criminal prosecution. In such cases, the district attorney, Attorney General, or special counsel appointed by the Governor have the same reporting requirements to the Elections Board that would be created under the bills for reporting to GAB.

## **Hearing Procedure**

Under current law, the Ethics Board is authorized to hold a hearing to determine whether or not a person has violated the state's lobbying laws or the Code of Ethics for Public Officials. If the Ethics Board determines, based on evidence presented at the hearing, that a violation of the state's lobbying laws or the Code of Ethics for Public Officials has occurred, the Ethics Board may make one or more of the following recommendations:

- In the case of a state public official outside the classified service, a recommendation that the state public official be censured, suspended, or removed from office or employment. Such recommendation would have to be made to the appropriate appointing authority who could censure, suspend, or take action to remove the official from office or employment.
- In the case of a state public official in the classified service, a recommendation that the state public official be disciplined or discharged under state law. Such recommendation would have to be made to the appropriate appointing authority.
- In the case of a legislator, a recommendation that the legislator be censured, suspended, or removed from office. Such recommendation would have to be made to the appropriate house.
- In the case of a justice or judge, a recommendation that the justice or judge be reprimanded, censured, suspended or removed from office. Such recommendation would have to be sent to the Supreme Court and to the presiding officer of each house of the Legislature.
- In the case of a state public official liable to impeachment, a recommendation that the official be removed from office. Such recommendation would have to be referred to the Assembly.

Under the bills, GAB would not have the authority to conduct hearings into whether or not a person violated laws under its administration. The bills would also eliminate the express statutory authority to recommend that public officials be reprimanded, censured, suspended, or removed from office.

### **Political Influence Violations**

Under current law, no state public official or candidate for state public office may, to or for the benefit of a candidate, a political party, any person who is subject to a campaign finance registration requirement, or any person making a communication that contains a reference to a clearly identified state public official holding an elective office or to a candidate for state public office: (a) directly or by means of an agent, give, or offer or promise to give, or withhold, or offer or promise to withhold, his or her vote or influence; (b) promise to take or refrain from taking official action with respect to any proposed or pending matter in consideration of, or upon condition that, any other person make or refrain from making a political contribution; or (c) provide or refrain from providing any service or other thing of value.

Under current law, if the Ethics Board receives a complaint alleging a political influence violation, the Ethics Board must, within 30 days after receipt of the complaint, either authorize an investigation of the allegations contained in the complaint or dismiss the complaint. If the Ethics Board dismisses the complaint, with or without investigation, the Ethics Board must promptly notify the party complaining in writing. Upon receiving notification of the dismissal, the party complaining may then file the complaint with the Attorney General, the district attorney for the

county where a violation is alleged to occur or the district attorney for a county that is adjacent to that county. The Attorney General or district attorney may then investigate the allegations contained in the complaint and commence a prosecution.

The bills would delete this complaint procedure for allegations of political influence violations. Under the bills, a person alleging political influence violations could file a complaint either with GAB or the appropriate district attorney.

### **Authority of Individual District Attorneys to Enforce State Election Laws**

Under current law, any voter may file a petition alleging such facts as are within his or her knowledge to indicate that an election official has failed or is failing to comply with any law regulating the conduct of elections or election campaigns or proposes to act in any manner inconsistent with such a law, and requesting that an action be commenced for injunctive relief, a writ of mandamus (a court order to a government official to perform mandatory or purely ministerial duties correctly) or prohibition or other such legal or equitable relief as may be appropriate to compel compliance with the law. The petition must be filed with the district attorney of the county where the violation or proposed action inconsistent with state election laws occurs or is proposed to occur. The district attorney may then commence the action or dismiss the petition. If the district attorney declines to act upon the petition or if the district attorney fails to act upon the petition within 15 days of the date of filing, the petitioner may file the same petition with the Attorney General, who may then commence the action.

Under the bills, the district attorney having jurisdiction to receive such a petition would be the district attorney either: (a) for the county in which the election official resides; or (b) for the county in which the election law violation occurred or may occur, if the election official is a nonresident of the state.

### **Enforcement of Campaign Finance Laws in Local Races**

Under current law, local clerks and boards of election commissioners must notify the district attorney (or the Attorney General under certain circumstances), in writing, of any facts within their knowledge or evidence in their possession, including errors or discrepancies in reports or statements and delinquencies in filing which may be grounds for civil action or criminal prosecution under Wisconsin campaign finance laws. Local clerks and boards of election commissioners are further required to transmit a copy of such notification to the Elections Board. The district attorney or the Attorney General must advise the relevant local clerk or board of election commissioners in writing at the end of each 30-day period of the status of such matter until the time of disposition.

Under the bills, district attorneys and GAB would have to work together in receiving, investigating, and prosecuting any such referral from local clerks and boards of election

commissioners. Under the bills, a county board of election commissioners would no longer have independent authority to bring civil forfeiture actions for campaign finance violations.

### **Attorney General Enforcement of Lobbying Laws**

*Attorney General Authority.* Under current law, the Attorney General, at the request of the Ethics Board, may commence a civil action to require forfeitures and license revocations for any lobbying law violation for which a civil penalty is applicable. Further, the Attorney General may, upon information, commence a criminal action for any lobbying law violation for which a criminal penalty is applicable.

Under the bills, these provisions would be deleted.

### **County of Prosecution in Civil Proceedings**

Under current law, a civil action must generally be brought: (a) in the county where the claim arose; (b) in the county where the real or tangible personal property, or some part thereof, which is the subject of the claim, is situated; (c) in the county where a defendant resides or does substantial business; or (d) if (a) through (c) do not apply, then in any county designated by the plaintiff. Under current law, a court may at any time, upon its own motion, the motion of a party or the stipulation of the parties, change the county in which the civil proceeding is being prosecuted: (a) in the interest of justice; or (b) for the convenience of the parties or witnesses.

Under the bills, in a civil action to impose a forfeiture on a state resident for a violation of state election laws (including campaign finance), state lobbying laws, or the Code of Ethics for Public Officials, or for a violation of any other law arising from or in relation to the official functions of the defendant or any matter that involves elections, ethics, or lobbying regulation, the civil action would have to be heard in circuit court for the county where the defendant resides. A person other than a natural person (such as a corporation) would be considered to reside within a county if the person's principal place of operation was located within that county. Under the bills, for these types of cases, the case could only be moved to another county for prosecution consistent with the rules for changing courts in a criminal trial: only the defendant would be authorized to move the civil case to another county on the ground that an impartial trial could not be had in the county.

### **County of Prosecution in Criminal Proceedings**

Under current law, criminal actions must generally be tried in the county where the crime was committed.

Under the bills, in a criminal action for a violation of state election laws (including campaign finance), state lobbying laws, or the Code of Ethics for Public Officials, or for a violation of any other law arising from or in relation to the official functions of the defendant or for any matter that

involves elections, ethics, or lobbying regulation, the criminal action would have to be tried in circuit court for the county where the defendant resides (if the defendant is a resident of the state). A person other than a natural person (such as a corporation) would be considered to reside within a county if the person's principal place of operation was located within that county.

## **Investigation Records**

The following records of GAB would be open to public inspection and copying as a public record: (a) any record of Board action authorizing the filing of a civil complaint; (b) any record of Board action referring a matter to a district attorney or other prosecutor for investigation or prosecution; (c) any record containing a finding that a complaint does not raise a reasonable suspicion that a violation of the law has occurred; or (d) any record containing a finding, following an investigation, that no probable cause exists to believe that a violation of the law has occurred.

Other records obtained or prepared by GAB in connection with an investigation, including the full text of any complaint received by GAB, would generally not be subject to the right of inspection and copying as a public record under s. 19.35(1) of the statutes, except that: (a) the Board would be required to permit inspection of records that were distributed or discussed in the course of a meeting or hearing by the Board in open session; (b) investigatory records of the Board could be made public in the course of a prosecution; (c) the Board would be required to provide information from investigation and hearing records pertaining to the location of individuals and assets of individuals requested by the Department of Workforce Development or a county child support agency, under child and spousal support, establishment of paternity, and medical liability support programs; and (d) any person who is the subject of a civil investigation could authorize GAB to release investigation records pertaining to that person if the records were available by law to the individual.

Except as specifically authorized by law, no investigator, prosecutor, employee of an investigator or prosecutor, or member or employee of GAB could verbally disclose information related to an investigation or prosecution under state election laws (including campaign finance), state lobbying laws, or the Code of Ethics for Public Officials, or provide access to any record of the investigator, prosecutor, or the Board that is not subject to public access to any person other than an employee or agent of the prosecutor or investigator or a member, employee, or agent of GAB prior to presentation of the information or record in a court of law. Any individual violating this prohibition could be fined not more than \$10,000 or imprisoned for not more than nine months or both.

Under current law, Ethics Board records associated with an investigation are not open for public inspection nor are they subject to public disclosure unless: (a) the records are made public in the course of a hearing by the Board to determine if a violation of the lobbying laws or the ethics code has occurred; (b) the records are made public in the course of a prosecution referred to a district attorney or to the Attorney General; or (c) the information from investigation and hearing records pertains to the location of individuals and assets of individuals requested by the Department



of Workforce Development or a county child support agency, under child and spousal support, establishment of paternity, and medical liability support programs.

### **Advisory Opinions**

Any individual, either personally or on behalf of an organization or governmental body, would be permitted to make a written or electronic request of GAB for an advisory opinion regarding the propriety of any matter to which the person is or may become a party (under state elections laws including campaign finance, state lobbying laws, and the Code of Ethics for Public Officials). Likewise, any appointing officer, with the consent of the prospective appointee, could request of the Board an advisory opinion regarding the propriety of any matter to which the prospective appointee is or may become a party (under state election laws including campaign finance, state lobbying laws, and the Code of Ethics for Public Officials). The Government Accountability Board would be required to review a request for an advisory opinion and would be permitted to issue a formal written or electronic advisory opinion to the person making the request. The Board's deliberations and actions upon such requests would have to be in meetings not open to the public. No person acting in good faith upon an advisory opinion issued by GAB could be subject to criminal or civil prosecution for so acting, if the material facts were as stated in the opinion request. To have legal force and effect, each advisory opinion issued by GAB would have to be supported by specific legal authority under a statute or other law, or by specific case or common law authority. Each advisory opinion would have to include a citation to each statute or other law and each case or common law authority upon which the opinion is based, and would have to specifically articulate or explain which parts of the cited authority were relevant to the Board's conclusion and why they were relevant.

The Government Accountability Board could authorize its legal counsel to issue an informal written advisory opinion or to transmit an informal advisory opinion electronically on behalf of GAB, subject to such limitations as the Board would deem appropriate. Every informal advisory opinion would have to be consistent with applicable formal advisory opinions issued by GAB. If the Board disagreed with an informal advisory opinion that had been issued on behalf of the Board, the Board could withdraw the opinion or issue a revised advisory opinion. No person acting after the date of the withdrawal or issuance of the revised advisory opinion would be exempted from prosecution for relying on the opinion if the opinion upon which the person's action was based had been withdrawn or revised in relevant degree.

No member or employee of GAB could make public the identity of the individual requesting a formal or informal advisory opinion or of individuals or organizations mentioned in the opinion.

Any person receiving a formal or informal advisory opinion who disagreed with the opinion could request a public or private hearing before the Board to discuss the opinion. The Government Accountability Board would be required to grant a request for a public or private hearing to discuss such an opinion. After hearing the matter, the Board could reconsider its opinion and could issue a revised opinion to the person.

Under current law, individuals and appointing officers are permitted comparable rights to request an advisory opinion regarding the state's lobbying laws and the Code of Ethics for Public Officials.

Under current law, it is prima facie evidence of intent to comply with the state's lobbying laws and Code of Ethics for Public Officials when a person refers a matter to the Ethics Board and abides by the Ethics Board's advisory opinion. As indicated above, under the bills no person acting in good faith upon an advisory opinion issued by GAB could be subject to criminal or civil prosecution for so acting, if the material facts were as stated in the opinion request. This latter standard is comparable to the standard that exists under current law for relying on an Elections Board formal opinion.

Current law permits the Ethics Board to authorize its Executive Director to issue advisory opinions in its stead where delay is of substantial inconvenience or detriment to the requesting party. Under the bills, GAB would be authorized to have its legal counsel issue informal written advisory opinions and would specifically provide a mechanism for the Government Accountability Board to set such informal opinions aside.

Finally, under current law, the Ethics Board cannot be required by a requester to meet to review an advisory opinion if the requester disagrees with the Board's opinion.

Under current law, any interested person may make written request to the Elections Board to issue a formal opinion with respect to the person's authority or responsibilities under state election laws (including campaign finance). The Elections Board must, within 15 days, advise the person requesting an opinion whether or not a formal opinion will be issued. If a formal opinion will be issued, it must be issued within 30 days of the request.

## **Board Staff**

*General Provisions.* Under current law, the Elections Board may employ both an Executive Director outside of the classified service and legal counsel. Current law also provides that the Executive Director of the Elections Board must serve as the chief election officer of the state. In addition, the Ethics Board appoints an Executive Director outside the classified service. Both executive directors are currently assigned to Executive Salary Group 4 (ESG 4). Beginning April 1, 2007, the annual salary range for a position assigned to ESG 4 is \$72,644 to \$112,600. As with the Elections Board, the Ethics Board also has a full-time attorney under current law.

As described below under the section on transitional and technical provisions, the bills would transfer all current positions and most incumbent employees of the Elections Board and the Ethics Board to the new Government Accountability Board. The current executive directors of the Elections and Ethics Boards would not be transferred under the provisions of the bills.

Under the provisions of 2005 Wisconsin Act 25, the Elections Board is authorized 16.0 full-time equivalent (FTE) employees and the Ethics Board is authorized 5.75 FTE. The bills would further require the newly-created Board to employ a legal counsel outside of the classified service to perform legal and administrative functions for the Government Accountability Board. While the new Board would be required to designate an employee to serve as the chief election officer of the state, the Board would not have to designate its new legal counsel as the chief election officer.

The bills would delete the executive director positions for the Elections and Ethics Boards under current law and replace them with: (a) an ESG 6 legal counsel position which would provide both legal and administrative services to GAB; and (b) two division administrators which would ultimately be assigned ESG levels by the Joint Committee on Employment Relations. Beginning April 1, 2007, the annual salary range for a position assigned to ESG 6 is \$84,733 to \$131,337.

*Other Duties of the Legal Counsel.* The Board's legal counsel would be required to: (a) call a meeting of the Government Accountability Candidate Committee (GACC) whenever a vacancy occurred on the Government Accountability Board; and (b) assist GACC in the performance of its functions.

The Government Accountability Board would be authorized to delegate to its legal counsel the authority to: (a) intervene in a civil action or proceeding for the purpose of enforcing the laws regulating the conduct of elections or election campaigns or ensuring their proper administration; (b) issue an order requiring a local election official to comply with state election laws; (c) exempt a polling place from accessibility requirements; (d) permit a municipality to use paper ballots and voting booths for a specific election; (e) approve an electronic data recording system for maintaining poll lists; or (f) reject an individual's nomination to serve as an election official (as provided under state law), subject to such limitations as GAB would deem appropriate.

Under current law, the Elections Board has the authority to delegate these powers to its Executive Director, not to its legal counsel. The bills would narrow the authority of staff to intervene in civil actions only (as opposed to civil and criminal actions), for the purpose of enforcing the laws regulating the conduct of elections or election campaigns or ensuring their proper administration.

In addition, under current law, the Elections Board has the authority to delegate to its Executive Director the power to: (a) issue a subpoena; (b) apply for a search warrant; and (c) sue for injunctive relief, a writ of mandamus or prohibition, or other such legal or equitable relief to enforce any law regulating the conduct of elections or election campaigns or ensure its proper administration. Under the bills, the Government Accountability Board would not have the authority to delegate these latter powers to staff.

*Duties of the Administrator of the Elections Division.* Duties associated with the administration of elections that are the responsibility of the Executive Director of the Elections

Board under current law would become the responsibilities of the administrator of the Elections Division under the bills.

*Duties of the Administrator of the Ethics and Accountability Division.* The Government Accountability Board could authorize this administrator to compromise and settle categories of civil offenses, which the Board could agree to compromise and settle without a formal investigation, in the name of the Board if the alleged offenses by an offender, in the aggregate, did not involve payment of more than \$1,000.

*Limitations on Board Staff and Board Retained Special Investigators and Special Counsel.* No individual who served as an employee of the Board, and no individual retained by the Board as a special investigator or special counsel could, while so employed or retained or for 12 months after ceasing to be employed or retained, become a candidate for state or local office. A filing officer for candidacy filings would be required to decline to accept nomination papers or a declaration of candidacy from any individual who was disqualified on this ground.

No individual who served as an employee of GAB, and no individual retained by GAB as a special investigator or special counsel could make a campaign finance contribution to a candidate for state or local office either: (a) for a period 12 months prior to being so employed or retained (for partisan office contributions); or (b) while so employed or retained by GAB.

### **Transitional and Technical Provisions**

*Transfer of the Current Duties and Responsibilities of the Elections Board and the Ethics Board.* The bills would eliminate the Elections Board and the Ethics Board as separate state agencies, effective the first day of the seventh month after enactment of the bill, and would provide that the responsibility of these boards to administer and enforce the state's election laws, lobbying laws, and the Code of Ethics for Public Officials would become the responsibility of the new Government Accountability Board. The bill would also renumber many of the two Boards' current appropriations to a newly-created appropriations structure for the Government Accountability Board to reflect these changes.

*Initial Administrative Staff Provisions.* The Director of the Legislative Council staff would be required to serve as legal counsel to the Government Accountability Board, without additional compensation for such service, until such time as the Board initially appointed a legal counsel to the Board and the appointee qualified to take office. The Director of the Legislative Council staff would be vested with full authority and responsibility to carry out all functions of the legal counsel to the Government Accountability Board, the Divisions in GAB, and the Administrators of the divisions prior to appointment and qualification of the initial legal counsel, including the retention and termination of all staff not transferred to the Board that the Board is authorized to employ under the act.

*Transitional Funding.* Effective the day after publication of the act (and prior to the first day of the seventh month beginning after publication of the act), the new Government Accountability Board would be authorized to expend moneys from its new GPR-funded general program operations biennial appropriation for the purpose of meeting, employing staff, and preparing to assume its full authority and responsibilities. The bills would further provide that \$155,400 GPR be placed in the Joint Committee on Finance's GPR-supplemental appropriation [s. 20.865(4)(a)] in 2006-07, to potentially supplement GAB's GPR-funded general program operations appropriation for the purpose of meeting, employing staff, and preparing to assume its full authority and responsibilities. These funds could be released to GAB, as needed, under s. 13.10 of the statutes to fund these expenditures during 2006-07.

During the six-month transition period after publication of the act, the Elections and Ethics Boards would continue to operate with existing staff and budgeted expenditure authority. If passage of the 2007-09 budget bill were delayed, as with other state agencies, the Elections and Ethics Boards could continue to operate under budgeted 2006-07 staffing and expenditure levels.

Effective the first day of the seventh month beginning after publication of the act, the Elections Board's and Ethics Board's appropriations would be deleted, in particular, the Boards': (a) GPR-funded general program operations appropriations; (b) PR-funded general program operations appropriations; and (c) PR-funded materials and services appropriations.

Effective July 1, 2007 (and until passage of the 2007-09 biennial budget act which would replace these provisions), the three primary appropriations for the Government Accountability Board would be budgeted funding as identified in the following table. If GAB was to become fully operational (and the Elections and Ethics Boards were to cease to exist) prior to enactment of the 2007-09 biennial budget act, the identified funding would permit GAB to operate until passage of the budget act. The provided funding is based on adjusted base and standard budget adjustment calculations as identified by the Elections and Ethics Boards in their 2007-09 agency budget requests. The provided funding also budgets for 12 meetings a year of the Government Accountability Board.

**Government Accountability Board 2007-09 Funding**

<u>Appropriation</u>	<u>Fund</u>	<u>2007-08</u>	<u>2008-09</u>
General program operations; general purpose revenue	GPR	\$1,338,200	\$1,340,300
General program operations; program revenue	PR	448,700	448,700
Materials and services	PR	35,200	35,200

Effective the first day of the seventh month following enactment of the bill, the unencumbered balances in the Elections and Ethics Boards' PR-funded general program operations

appropriations and PR-funded materials and services appropriations would be transferred to GAB's PR-funded general program operations and materials and services appropriations.

Effective July 1, 2007, the bills would repeal the Elections Board's GPR-funded biennial voting system transitional assistance appropriation. This appropriation has been utilized by the Elections Board to provide assistance to counties and municipalities in eliminating punch card voting systems. During 2005-07, the appropriation has gone unfunded.

The bills would delete statutory language requiring the Elections Board to provide reimbursement to those municipalities that incurred costs to adjust their poll hours to begin at 7 a.m. for those elections held after April 29, 2006 (and filed a claim for reimbursement with the Board). The bills, however, do not delete the GPR-funded sum sufficient appropriation under the Elections Board that provides reimbursement for these municipal claims. Instead, the bills renumber the sum sufficient appropriation under GAB. [The apparent intent of the drafters of the bills was to retain this sum sufficient appropriation and the associated reimbursement obligation under GAB.]

*Transitional Staffing.* Effective the first day of the seventh month following enactment of the bill, all full-time equivalent positions at the Elections Board and the Ethics Board would be transferred to the new Government Accountability Board. Further, all incumbent employees in the Elections Board and the Ethics Board, except the current executive director for each board, would also be transferred to the Government Accountability Board. The bill further specifies that: (a) all persons transferred would retain the same rights and employee status they held prior to the transfer; and (b) no employee who had attained permanent status in his or her classified position would be required to serve a new probationary period. The bills would also direct the transfer of all assets and liabilities, tangible personal property, contracts, rules and orders and all pending matters from the current boards to the Government Accountability Board.

*Rules and Orders.* Within one year after the date of the initial meeting of the Government Accountability Board, the Board would be required to hold one or more public hearings on the question of reaffirmation of each rule that had been promulgated and each order that had been issued by the Elections and Ethics Boards and that were in effect on that date. Every rule promulgated by the Elections and Ethics Boards that was in effect on the first day of the seventh month following enactment of the bill would remain in effect until its specified expiration date or until the end of the 365 day period beginning on the date of the initial meeting of the Government Accountability Board, whichever was earlier, or unless the Government Accountability Board specifically voted to reaffirm the rule.

Every order issued by the Elections Board and Ethics Board that was in effect on the first day of the seventh month following enactment of the bill, would remain in effect until its specified expiration date or until the end of the 365 day period beginning on the date of the first meeting of the Government Accountability Board, whichever was earlier, unless the Government Accountability Board modified or rescinded the order, effective on an earlier date, or unless the

Government Accountability Board specifically voted to reaffirm the order. Any action by the Government Accountability Board to amend or repeal a rule would have to be in accordance with state statute. The Government Accountability Board could extend the expiration date of any rule or order for not more than three months in order to afford time for additional review, but no such extension or renewal of an extension could extend the expiration date of any rule or order by more than six months in all.

*Formal Opinions.* Within one year after the date of the initial meeting of the Government Accountability Board, the Board would be required to hold one or more public hearings on the question of reaffirmation of each formal opinion that had been issued by the Elections and Ethics Boards and that had not been withdrawn or modified. Every formal opinion issued by the Elections and Ethics Boards that had not been withdrawn or modified on the date of the initial meeting of the Government Accountability Board would remain in effect until the end of the 365 day period beginning on the date of that meeting unless the Government Accountability Board withdrew or modified the opinion on an earlier date, or unless the Government Accountability Board specifically voted to reaffirm the opinion on an earlier date. The Government Accountability Board could extend the period of effectiveness of any formal opinion for not more than three months in order to afford time for additional review, but no such extension or renewal of an extension could extend the period of effectiveness of any opinion by more than six months in all. If an Ethics Board opinion was confidential, the Government Accountability Board would be required to hold a hearing on the question of reaffirmation of the summary of the opinion that had been published.

*Review of Guidelines.* Within one year after the date of the initial meeting of the Government Accountability Board, the Board would be required to hold one or more public hearings for the purpose of reviewing the question of reaffirmation of each current guideline that had been issued by the Ethics Board. Generally, guidelines provide direction to assist individuals in complying with state ethics and lobbying laws. The review would be required to address the extent to which the guidelines were consistent with relevant law. The Government Accountability Board would be required to withdraw each guideline at the end of the 365 day period beginning on the date of the initial meeting of the Government Accountability Board, unless the Board chose to withdraw or revise the guideline at an earlier date or unless the Board specifically voted to reaffirm the current text of the guideline as issued prior to the end of that period. The Government Accountability Board could extend the circulation period of any guideline for not more than three months in order to afford time for additional review, but no such extension or renewal of an extension could extend the circulation period of a guideline by more than six months in all.

*Review of Internal Operating Procedures.* During the 365 day period beginning on the date of the initial meeting of the Government Accountability Board, the Board would be required to review all internal operating procedures of the Elections and Ethics Boards in effect on the date of the Board's initial meeting that affect the manner in which the Boards interrelate with persons who are not employees of the Boards. The review would be required to specifically address the degree to which employees are authorized to perform their functions without direct supervision of or approval of the Board. During the pendency of the review, no employee of the Government

Accountability Board could make any change in an internal operating procedure under review unless the Government Accountability Board first held a public hearing concerning the proposed change and the Government Accountability Board specifically approved the change.

### **Nonseverability**

If a court found that any portion of the act was unconstitutional, then the act would be void in its entirety, except that invalidation would not revive any law that was repealed by the act nor revive any administrative body that was in existence prior to enactment of the act.

### **Effective Dates**

The provisions of the bills would generally take effect on the first day of the seventh month, beginning after publication.

The following provisions would take effect on the day after publication: (a) Government Accountability Candidate Committee (GACC) provisions; (b) provisions affecting members of the Government Accountability Board; (c) transition provisions for the Government Accountability Board; (d) provisions affecting and creating the new legal counsel for the Government Accountability Board; (e) provisions creating the Board's new divisions; (f) provisions creating the Board's new division administrators; (g) creation of a GPR biennial general program operations appropriation under GAB; (h) nonseverability clause; and (i) funding provided to the Joint Committee on Finance's GPR supplemental appropriation to provide funding for GAB to hold meetings, employ staff, and prepare to assume its full authority and responsibilities under the act during 2006-07.

Effective July 1, 2007, the bills would: (a) create the 2007-09 chapter 20 schedule for GAB; and (b) delete the voting system transitional assistance appropriation. The voting system transitional assistance appropriation has been utilized by the Elections Board to provide assistance to counties and municipalities in eliminating punch card voting systems.

### **FISCAL EFFECT**

The bills would provide \$155,400 GPR to the Joint Committee on Finance's GPR-supplemental appropriation in 2006-07, to supplement the Government Accountability Board's GPR-funded general program operations appropriation to provide funding to hold meetings, employ staff, and permit GAB to prepare to assume its full authority and responsibilities under the act.

In addition, effective July 1, 2007 (and until repealed by passage of the 2007-09 biennial budget act), the bills would provide GPR funding totaling \$1,338,200 GPR in 2007-08 and \$1,340,300 in 2008-09 to GAB. This GPR funding would include funding for an estimated 12 board meetings annually. Effective July 1, 2007 (and until repealed by passage of the 2007-09 biennial budget act), the bills would also provide PR funding totaling \$483,900 annually during



2007-09. Should GAB become fully functional and the Ethics and Elections Boards be repealed prior to enactment of the 2007-09 biennial budget act, this funding would permit GAB to carry out its statutory responsibilities. To the extent that the Elections and Ethics Boards continue to operate and carry out current law responsibilities after July 1, 2007, utilizing current law staffing and expenditure authority, the necessity for GAB to utilize its 2007-09 expenditure authority under the bills would be reduced.

In order to effectuate the provisions of the bills, the state may incur moving expenses and the possible merger of separate computer systems. It is unclear whether additional funding would be required to retain GAB Legal Counsel at an Executive Salary Group (ESG) 6 level, and GAB division administrators at ESG levels to be set by the Joint Committee on Employment Relations. In addition, it is unclear how frequently the new Board would meet, and whether additional funding would be needed to address transitional and ongoing meeting costs. Apart from the possibility of utilizing either base funding or some of the funding placed in the Joint Finance Committee's appropriation in 2006-07 to address these costs, these possible costs are not specifically addressed.

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