



WISCONSIN LEGISLATIVE COUNCIL AMENDMENT MEMO

2003 Senate Bill 11

**Senate Substitute
Amendment 1 and Senate
Amendment 1 to Senate
Substitute Amendment 1**

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Senate Substitute Amendment 1 to Senate Bill 11 creates a new agency entitled the Government Accountability Board to regulate the election, lobby, or ethics laws of Wisconsin.

A. Government Accountability Board

1. Creation

The substitute amendment in effect combines the powers and duties of the current Elections Board and Ethics Board into a new entity entitled the Government Accountability Board (board). The new body consists of four persons nominated by the Governor, and appointed with the advice and consent of the Senate, and one person appointed by the Governor to represent each political party whose candidate for Governor, Attorney General, Secretary of State, or State Treasurer received at least 1% of the vote in the most recent general election. Each political party representative must be designated by the chief officer of the eligible party. Except for initial appointments, members will serve for four-year terms.

The members of the board who do not represent political parties will be appointed from nominations submitted to the Governor by a nominating committee consisting of:

- a. The Chief Justice of the Supreme Court.
- b. The Dean of the Marquette University Law School.
- c. The Dean of the University of Wisconsin Law School.

d. The Chief Officers of the Wisconsin Counties Association, the Wisconsin Towns Association, the League of Wisconsin Municipalities, the League of Women Voters of Wisconsin, the Wisconsin Newspaper Association, and the State Bar of Wisconsin.

The nominating committee also must convene and make recommendations to the Governor when vacancies occur in those positions filled by persons who are nominated by the Governor and appointed with the advice and consent of the Senate.

[See SECTIONS 10, 11, 50, 52, and 53 of the substitute amendment.]

2. Board Employees

The board is required to employ an executive director outside the classified service and is required to employ its own legal counsel. The board may appoint three division administrators. [See SECTIONS 6 and 120 of the substitute amendment.]

B. Enforcement Division

1. Creation

The substitute amendment creates an Enforcement Division which is attached to the board. An administrator, who will be appointed by the executive director of the board, with the advice and consent of the board, will direct and supervise the Enforcement Division. The administrator will serve a term of not less than four years nor more than six years. [See SECTION 51 of the substitute amendment.]

2. Powers and Duties of Enforcement Division

The Enforcement Division is required to investigate and prosecute alleged violations of laws administered by the board, including civil and criminal actions brought by the board, and must assist district attorneys and the Attorney General in prosecuting criminal actions referred to them by the Enforcement Division. The board must employ at least one full-time attorney and at least one full-time investigator within the Enforcement Division.

Generally, the Enforcement Division may, with or without approval of the board, investigate or prosecute any civil or criminal violation of election, lobby, or ethics laws in the name of the board. However, prior to commencing a criminal prosecution, the Enforcement Division must notify the district attorney for the county in which the violation is alleged to have occurred. If the district attorney notifies the Enforcement Division that a criminal prosecution will not be commenced, or the district attorney fails to commence a prosecution within 30 days after receiving notice from the Enforcement Division, the Enforcement Division may commence a criminal prosecution regarding that alleged violation.

The Enforcement Division may request assistance from the Department of Justice and may employ special counsel.

The Enforcement Division is bound by applicable laws, rules, formal opinions, and actions of the board, except that the Enforcement Division may nonacquiesce in any formal opinion or action of the board by publishing a notice of nonacquiescence in the Wisconsin Administrative Register. Following

publication of the notice, the Enforcement Division is not bound by the formal opinion or action in which nonacquiescence has been registered. The Enforcement Division may act upon a verified complaint, on its own motion, or upon direction of the board. If a complaint challenges the action of an election official or private person, the complainant must serve a copy of the complaint upon the official or private person and the official or private person will be a party in the proceeding. If the Enforcement Division finds that a violation has occurred it may impose a civil penalty. In conducting its proceedings, the Enforcement Division may make use of subpoenas and depositions.

A party aggrieved by an Enforcement Division decision may appeal to the board, which may affirm, modify, or reverse an order of the Enforcement Division. The Enforcement Division or a defendant may seek judicial review of the board's decision. [See SECTIONS 5, 7, and 12 of the substitute amendment.]

3. Budget Requests

All budget requests by the Enforcement Division must be submitted by the board to the Department of Administration without change except as concurred in by the Enforcement Division. [See SECTION 42 of the substitute amendment.]

C. Appropriations

In the first year of the 2003-05 Biennium, the substitute amendment appropriates approximately \$400,000 to the board and approximately \$275,000 to the Enforcement Division. In the second year of the biennium, these figures are increased to approximately \$1.8 million and \$400,000 respectively. In addition, a sum sufficient appropriation is provided for the employment and compensation of special counsel by the Enforcement Division. [See SECTIONS 75 and 76 of the substitute amendment.]

D. Forfeitures

The substitute amendment creates new forfeitures with respect to Ethics Code violations. A person who violates the provisions of the Ethics Code relating to financial disclosures, statements of economic interests, or honorariums, fees, and expenses may be required to forfeit not more than \$500. A person who violates any other provision of the Ethics Code may be required to forfeit not more than \$5,000. [See SECTION 72 of the substitute amendment.]

E. Effective Date and Interim Management

The provisions of the substitute amendment relating to the creation of the board and the Enforcement Division generally take effect on November 1, 2003. The remaining provisions generally take effect on May 1, 2004.

Further, the Director of the Legislative Council staff is required to serve as executive director of the board, without additional compensation for that service, until such time as the board initially appoints an executive director and the appointee qualifies to take office. The executive director of the Legislative Council staff is vested with full authority and responsibility to carry out all functions of the executive director of the board, the Enforcement Division, and the administrator of the Enforcement Division prior to appointment and qualification of the initial executive director, including the retention

and termination of all staff not transferred to the board that the board is authorized to employ under the substitute amendment. [See SECTIONS 130 (4) and 131 of the substitute amendment.]

F. Senate Amendment 1

Current law provides that a person may request a formal opinion from the Elections Board with respect to the person's authority or responsibilities under Wisconsin's election laws. No person acting in good faith upon a formal opinion issued to the person by the board will be subject to civil or criminal prosecution, if the material facts are as stated in the opinion request. Similarly, an individual may request an advisory opinion from the Ethics Board regarding the propriety of any matter regarding the application of Wisconsin's ethics or lobby laws. It is prima facie evidence of intent to comply with these laws when a person refers a matter to the board and abides by the board's advisory opinion, if the material facts are as stated in the opinion request.

Senate Amendment 1 provides that a person seeking advice as to the applicability of Wisconsin's election, ethics, or lobby laws must present the opinion request to the executive director of the board. The executive director may issue an opinion. Prior to issuing an opinion, the executive director may consult with the board, and, in the case of an opinion regarding Wisconsin's ethics or lobby laws, must not reveal any information to the board that would identify the requester of the opinion.

G. Legislative History

Senate Substitute Amendment 1, and Senate Amendment 1 to the substitute amendment, were introduced and adopted by the Senate Committee on Education, Ethics, and Elections on May 14, 2003 on a vote of Ayes, 7; Noes, 0. On the same date, the committee recommended passage of Senate Bill 11, as amended, on a vote of Ayes, 6; Noes, 1.

RS:tl;ksm