

Agenda Item E.

State of Wisconsin\Government Accountability Board

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JUDGE GERALD C. NICHOL
Chairperson

KEVIN J. KENNEDY
Director and General Counsel

MEMORANDUM

DATE: For the October 20, 2015 Meeting

TO: Members, Wisconsin Government Accountability Board

FROM: Kevin J. Kennedy, Director and General Counsel
Wisconsin Government Accountability Board

SUBJECT: Description of Agency Restructuring Legislation

Legislation to reorganize the Government Accountability Board into two separate bipartisan commissions effective June 30, 2016 has been introduced. 2015 Assembly Bill 388/2015 Senate Bill 294.

A joint public hearing was held on Tuesday, October 13, 2015. Testimony on the proposed legislation began shortly after 9:00 a.m. and concluded around 4:00 p.m. On Thursday, October 15, 2015 the Assembly Committee on Campaigns and Elections adopted an amendment and voted to recommend passage 6-3. The legislation is scheduled for action by the full Assembly on Wednesday, October 21, 2015.

A plain language summary of the legislation as amended accompanies this memorandum

This summary is provided for the Board's information and no action is required.

Government Accountability Board Reorganization 2015 Assembly Bill 388

Structure and Composition

The legislation creates an Elections Commission and an Ethics Commission, both consisting of 6 members. The 4 legislative leaders (Senate Majority Leader, Assembly Speaker, Senate Minority Leader and Assembly Minority Leader) each appoint a member to the Commissions. In addition the legislative leaders from each party submit a list of three individuals to the Governor to appoint 2 additional members, one from each party list to the Commissions.

The lists for the Elections Commission consist of former county or municipal clerks. The lists for the Ethics Commission are not restricted to any additional qualifications. If a political party other than the Democratic or Republican Parties obtain 10% of the vote for Governor, the chief officer of the state party may submit a list of three names from which the Governor appoints someone to serve on the Commissions.

Commissioners are appointed for 5-year terms subject to Senate confirmation. Commission members may not hold a state or local public office except reserve judge or be a lobbyist. The restrictions on political contributions, being members of political parties or an officer or employee of a political committee, and in the case of the Elections Commission, being an employee of a principal, are removed. Commissioners receive the same compensation as G.A.B. Members – currently \$454.11, equal to a reserve circuit court judge.

The chairperson of each commission is chosen by a two-thirds vote of the commission members and serves a two-year term.

Commissions shall meet at least 4 times per year and conduct meetings according to accepted parliamentary procedure.

Staffing

Each Commission selects an Administrator to run the agency. The Administrator serves a 4-year term ending on July 1, of an odd-numbered year and is subject to Senate confirmation. The Administrator may not have been a lobbyist or served in a partisan state or local office. The Administrator may select an Assistant Administrator. Both positions are unclassified. The Administrator may designate a Commission employee to serve as legal counsel.

The Administrator may serve upon appointment, but the appointment must be submitted to the Senate for confirmation within 45 days of appointment.

Commission staff are prohibited from becoming a candidate for state or partisan local office, making political contributions to state or local candidates and for 12 months before becoming employed or appointed make a contribution to a candidate for state or partisan local office.

The legislation eliminates the position of Legal Counsel of the Government Accountability Board, the current Director and General Counsel. All other staff and positions transfer to the new Commissions. The Secretary of the Department of Administration shall determine which FTE positions and which incumbent employees are transferred to each commission.

Powers – Both Commissions Unless Noted

Advice

Formal and informal opinions of the Elections Commission, including the identity of the individuals making the request or the organizations or governmental bodies on whose behalf the opinions are requested, are public. This is consistent with current law.

Formal and informal opinions of the Ethics Commission are subject to the same confidentiality provisions and exceptions applicable to opinions of the current Ethics and Accountability Division related to campaign finance, ethics or lobbying.

Within 2 months following the publication of a state or federal court decision that is binding on the commission and the state, the commission shall issue updated guidance or formal advisory opinions, commence rule-making or request an opinion from the attorney general on the applicability of the decision.

To have legal force and effect, each formal and informal advisory opinion must be supported by specific legal authority, the opinion shall include a citation to that legal authority along with an explanation why the authority is relevant to the conclusion of the opinion.

At each regular meeting of the commission, the administrator shall present to the commission for review any informal advisory opinions issued under the direction of the administrator that relate to recurring issues or issues of first impression for which no formal opinion has been issued. The commission may determine to issue a formal opinion adopting or modifying the informal opinion.

Any person requesting a formal opinion may request a public or private hearing before the commission to discuss the opinion and the commission shall grant the request. Note the private hearing option applies to Elections Commission opinions, which are public.

Any individual may request in writing, electronically or by telephone an informal opinion from the commission. The commission's designee shall provide a written response, a written reference to an applicable statute or law or a written reference to a formal advisory opinion or shall refer the request to the commission for review and issuance of a formal opinion.

Any individual may request in writing, electronically or by telephone a formal opinion from the commission or a review or modification of a formal opinion of the commission. The individual shall include all pertinent facts relevant to the matter. The commission shall publish the opinion on its website. In the case of a confidential opinion issued by the Ethics

Commission, it shall publish a redacted version of the opinion that complies with the applicable confidentiality provisions

If the commission declines to issue a formal opinion it may refer the matter to the attorney general or the standing legislative oversight committees.

No person acting in good faith upon a formal or informal opinion issued by the commission is subject to civil or criminal liability if the material facts are as stated in then opinion request.

Investigations

The Commissions may only investigate civil violations based on a sworn complaint. No commissioner or employee may file a complaint. No investigation may be based solely on an anonymous complaint. The Commissions are required to notify the subject of a complaint within 5 days of receipt of a complaint.

Before taking action on a complaint, other than dismissal, the Commissions shall provide the subject of a complaint with opportunity to file a written demonstration why no action should be taken by the Commission within 15 days of receipt of notice.

The current detailed provisions on the initiating, conducting and completing investigations remain in effect for both commissions including confidentiality provisions.

Current restrictions on commissioners, staff and agents for disclosing information about investigations does not change.

Enforcement

The provisions for delegating selected authority to the Director and General Counsel have been removed.

Civil actions by commissions are the sole means of enforcement of civil violations.

Records and Procedures

Records of investigations remain subject to the same confidentiality provision as under current law. The Legislative Audit Bureau continues to have access to investigation records as provided under current law. The Joint Committee on Finance has access to redacted investigation records sufficient to authorize additional funding.

Each year the commission shall adopt written policies and procedures in order to govern its internal operations and management. The commissions shall annually report the policies and procedures to the applicable standing committees of the legislature.

Each commission shall submit an annual report under s. 15.04 (1)(d) (rather than a biennial report) that describes the statutory duties of the administrator with a description of how

those duties are being fulfilled; the total number of investigations along with a description of the nature of each investigation.

Rulemaking

Certain permissive rulemaking is now mandatory. This includes rules for the administration of electronic voting equipment, development of a settlement offer schedule and attribution statements (disclaimers) on small items used in campaigns.

Funding

The current sum-sufficient funding for investigations is modified. Each Commission may spend up to \$25,000 on an investigation. Any request for additional funding for an investigation must be submitted to the Joint Committee on Finance (JCF) for passive review along with a redacted description of the nature of the investigation. If approved by JCF, the Department of Administration Secretary shall release the requested funding.

Commissions may accept payment by credit cards and add a processing surcharge.

Elections Commission

The Administrator of the Commission serves as the chief election officer of the state.

The Election Administration Council is eliminated.

Specific ability of staff to certify agency records is eliminated.

Elections commission staff, other than the Administrator and Assistant Administrator, no longer need to file a Statement of Economic Interests.

Ethics Commission

The commission shall give prompt notice of the contents of its rules to state public officials who will be affected by the rules.

Contract Sunshine disclosure responsibilities are handled by the Ethics Commission.

All Ethics Commission staff are required to file Statement of Economic Interest

The commission has a 30-day deadline for issuing redacted advisory opinions.

Transition and Effective Date

The terms of Government Accountability Board Members expire on June 30, 2016.

All employees transferred to the commissions have the same rights and status under subch. V of chapter 111 that they enjoyed at the G.A.B. They do not have to serve a probationary period.

The Secretary of the Department of Administration shall adopt an implementation plan before the first day of the 6th month beginning after publication of the act. The Director and General Counsel of the G.A.B. shall work in concert with the secretary of administration and commission members to ensure a smooth transition and shall participate in formulating the implementation plan.

The Secretary of the Department of Administration shall determine which assets and liabilities; property and records; contracts; rules, orders and formal opinions; and which pending matters shall be transferred to each commission.

Each commission shall, to the extent practicable within its respective responsibilities, implement the recommendations in LAB reports 14-14 and 15-13. The commissions shall report their progress to the legislature no later than December 31, 2016.

Commission members may serve prior to senate confirmation. The terms of one-half of the commission members expire on May 1, 2019. The other half will presumably expire on May 1, 2021. Appointments and confirmation may begin on the day after publication of the act. The initial appointees may serve before Senate confirmation.

The party of the initial chairperson of each commission shall be determined by lot. Following the initial two-year term, the chairperson shall rotate between the two major political parties.

(10.19.15)