

*CORRESPONDENCE/Memorandum* \_\_\_\_\_ State of Wisconsin

**Date:** November 18, 2015  
**To:** Governor's Office  
**From:** Government Accountability Board  
**Subject:** Analysis of Assembly Bill 388 Relating to restructuring the Government Accountability Board as amended in the Assembly and the Senate and concurred in by the Assembly

1. Effect on Existing State Law

The legislation dismantles Wisconsin's nationally-acclaimed, nonpartisan agency responsible for administering and enforcing campaign finance, elections, ethics and lobbying law. The independent executive branch agency is replaced by two partisan Commissions (Elections Commission and Ethics Commission) controlled by legislative appointments.

The position of Director and General Counsel, currently held by Wisconsin's longest-tenured and nationally-recognized chief election official, is eliminated. The current positions of Elections Division Administrator and Ethics Division Administrator are replaced with Administrators appointed for a four-year term by the new Commissions, subject to Senate confirmation.

The new Commissions no longer have the authority to initiate investigations of alleged violations of campaign finance, elections, ethics and lobbying law. The Commissions may only respond to a sworn complaint. An investigation costing more than \$25,000 requires the Joint Committee on Finance to authorize release of additional funding.

Advice, opinions, and investigations of the Commissions continue to be shielded from public disclosure except under specific limited circumstances specified by law.

During legislative debate the findings of the nonpartisan Legislative Audit Bureau Reports 14-14 and 15-13 were mischaracterized and even falsified by legislative sponsors to support the legislation. The reality is the Government Accountability Board embraced the reports as a management tool and promptly addressed all the LAB recommendations.

2. Legislative Action in Previous Session

The Legislature created the Government Accountability Board as the first item of business in the 2007 legislative session, 2007 Wisconsin Act 1, following a widespread pattern of violations of state campaign finance and ethics laws by

legislators and legislative staff of both parties using state resources for political purposes. The Government Accountability Board replaced two agencies, the bipartisan State Elections Board and the State Ethics Board.

3. Policy Significance

The legislation has a profound effect on impartial, transparent administration and enforcement of campaign finance, elections, ethics and lobbying laws in Wisconsin. The partisan structure of the new commissions makes it significantly more likely that partisan considerations, rather than legal analysis and adherence to the policy decisions of the Legislature, will dictate the positions of individual Commission Members, and that the commissions will stalemate on critical administrative and enforcement decisions.

The legislation establishes close legislative control of the independent executive branch agencies that oversee legislative campaign activity, ballot qualification, recount and recall of legislative candidates, conflict of interest, personal financial disclosure and lobbying of the legislative branch. The legislation gives the Legislature, or at least its leadership in both houses, unprecedented control over the nomination and appointment of the Commission Members and chief administrative officers – to the virtual exclusion of the Governor. In addition the operation of the agency is subject to constant legislative oversight through a series of reporting requirements on agency operations.

The effective date of the bill will create significant administrative problems for the conduct of elections in the upcoming presidential election year. There are several significant events tied to the administration and conduct of elections that will be operated under separate leadership with the June 30, 2016 effective date. This includes the organization and conduct of the meeting of the Presidential Preference Selection Committee, which has already begun; the preparation, conduct and certification of the Presidential Preference Vote; the qualification for the ballot by candidates for the Fall elections; the administration and conduct of the Partisan Primary, only six weeks after the commissions begin operations; the qualification of presidential candidates for the November ballot; the selection of presidential electors; the administration and conduct of the November General and Presidential Election; and the preparation and conduct of the meeting of presidential electors. Quite simply, the effective date of this bill – roughly five months prior to a major federal/state election – is irresponsible, if not reckless, and could have major impacts on voters across the State of Wisconsin.

The legislation eliminates the “one-stop” service which the Government Accountability Board currently provides to by candidates for state and federal office, state public officials, lobbyists and campaign treasurers seeking information and guidance on the labyrinth of campaign finance, elections, ethics and lobbying regulations that impact them. Wisconsin residents will now be compelled to visit two offices or two separate websites for essential

information to run for public office, avoid conflicts of interest and comply with reporting requirements.

Local election officials will be subject to a new set of state regulators in the midst of their busiest election season in a four-year cycle. Local election officials rely on the daily contact and guidance provided by the current agency including information related to campaign finance and ethics. The Government Accountability Board is in the midst of rolling out a new statewide voter registration system (*WisVote*) and updating its voter information portal, *My Vote Wisconsin*, for the 2016 cycle. Full implementation of the Voter ID law begins with this election cycle as well. These projects could be subject to unnecessary and potentially catastrophic delay because of the change in the agency management structure, negatively affecting the work of county and municipal clerks and ultimately the services provided to voters.

Most importantly, public confidence in the administration and enforcement of campaign finance, elections, ethics and lobbying laws will be eroded with this sweeping restructure of the independent, nonpartisan agency that has successfully handled these duties in the midst of an unparalleled, challenging set of recall elections, a statewide recount during its tenure, statewide redistricting, and an exhaustive list of legislative changes that significantly impacted both divisions.

4. Administrative Significance

The disaggregation of the current agency into two separate commissions will create a costly redundancy of administrative support services. The loss of a high-level administrative and legal position will deprive the agencies of valuable personnel resources and experience essential to the conduct of the statutory duties of the new commissions. The uncertainty created by a new management structure will likely lead to a continued exodus of qualified personnel essential to the conduct of the statutory duties of the new commissions. The uncertainty during the bill debate phase has already prompted an exodus of high-level talented staff unwilling or unable to wait and see how this bill would affect their positions. All signs point to this trend continuing once this bill is signed.

The finances, files and websites of the Government Accountability Board will have to be allocated between the two commissions while maintaining access to historical records of the Government Accountability Board for both commissions. The space and assets of the Government Accountability Board will need to be allocated between the two commissions. Most importantly, administrative, legal and support staff will have to be allocated between the two commissions. All of this will have to be done in the midst of the presidential election cycle and the biennial budget preparation cycle. This will place extreme workload demands on agency staff, which will detract from their core missions and program responsibilities.

5. Fiscal Effect

The cost of setting up two separate commissions will significantly increase the fiscal impact to state taxpayers. Additionally, the agency is faced with retaining qualified personnel who have no job security beyond June 30, 2017. Twenty two of the 26 program positions in the Government Accountability Board's Elections Division are federal positions that expire on June 30, 2017. The administrative restructuring will sap the time, personnel and financial resources of the agency.

6. Laws/Experience in Other States

In 37 states the administration and enforcement of campaign finance, elections and lobbying is under the oversight of a single partisan elected or appointed Secretary of State. There have been several instances of malfeasance, misconduct or conflict of interest by these partisan officials. In 10 states citizen boards have oversight of campaign finance and elections. A few states split these duties with the Secretary of State in charge of elections and a citizen board overseeing campaign finance.

Wisconsin's structure is unique in that the staff is nonpartisan and the Board Members are trained decision makers who have earned the respect and trust of the citizenry because they were elected to judicial office. Nonpartisan public officials are part of the backbone of Wisconsin – city, county, school district, town and village governing bodies and chief administrative officers are elected nonpartisan officials. The members of the judiciary are all elected nonpartisan officials and legislative service agencies adhere scrupulously to their nonpartisan missions.

7. Summary and Recommendation

On behalf of the Government Accountability Board I strongly encourage the Governor to veto this legislation. If unwilling to fully veto this legislation, delaying the effective date until after the 2016 general election would be the responsible alternative. To paraphrase the language of the chief Assembly sponsor, this legislation is a stain on Wisconsin's longstanding and widely-praised tradition of fair, impartial, transparent administration and enforcement of campaign finance, elections, ethics and lobbying laws.

8. Prepared By

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