

State of Wisconsin\Government Accountability Board

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JUDGE MICHAEL BRENNAN
Chair

KEVIN J. KENNEDY
Director and General Counsel

WISCONSIN GOVERNMENT ACCOUNTABILITY BOARD
212 East Washington Avenue, Third Floor
Madison, Wisconsin
March 30 and 31, 2009
9:30 a.m.

Open Session Minutes
Monday, March 30, 2009

<u>Summary of Significant Actions Taken</u>	<u>Page</u>
A. Reaffirmed the Board's position on GAB 1.28, the "issue ad" rule.	2
B. Passed 13 motions finalizing the Board's review of former Elections and Ethics Boards formal opinions, rules, guidelines and internal operating procedures.	3, 4
C. Received a three-part report on election fraud in Wisconsin.	4
D. Authorized proceeding with promulgation of permanent administrative rule chapter GAB 4, relating to election observers.	4
E. Adopted and created administrative rule chapter GAB 22, relating to settlement offer schedules.	4
F. Amended and adopted administrative rule GAB 6.05, relating to electronic filing of campaign finance reports.	5
G. Approved the 2009 Ethics and Accountability Division legislative agenda.	5
H. Accepted a report on an early voting proposal for Wisconsin.	5
I. Adopted interim approvals of electronic voting system modifications, and gave the G.A.B. Director the authority to continue making approvals on an interim basis.	6

Present: Judge Michael Brennan, Judge William Eich, Judge Gerald Nichol, Judge Thomas Cane, Judge Victor Manian, and Judge Gordon Myse

Staff present: Kevin Kennedy, Jonathan Becker, Nat Robinson, Ed Edney, Shane Falk, Michael Haas, Barbara Hansen, Adam Harvell, Sharrie Hauge, Kyle Richmond, Steve Rossman and Tommy Winkler.

A. Call to order

Chairman Brennan called the meeting to order at 9:35 a.m.

B. Director's Report of Appropriate Notice of Meeting

The G.A.B. Director informed the Board that proper notice was given for the meeting.

C. Approval of Minutes of Previous Meeting

MOTION: Approve the minutes of the January 15, 2009, Government Accountability Board meeting. Moved by Nichol, seconded by Eich. Motion carried.

D. Public Hearing on GAB 1.28 Scope of Regulation

The Board heard comments from three speakers:

- Mike McCabe, Wisconsin Democracy Campaign
- Mike Wittenwyler, Wisconsin Association of Lobbyists
- Andrea Kaminski, Wisconsin League of Women Voters

MOTION: Reaffirm Board's position on GAB 1.28. Moved by Nichol, seconded by Myse.

Roll call vote:	Brennan:	Aye	Cane:	Aye
	Eich:	Aye	Manian:	Aye
	Myse:	Aye	Nichol:	Aye

Motion carried, 6-0.

E. Public Comment

1. **Paul Malischke**, Madison, appeared to comment about electronic voting systems and early voting. Materials related to this topic can be found on pages 171-189 and 201-210 of the G.A.B. meeting packet for the March 30-31, 2009 meeting.
2. **Mike McCabe**, Wisconsin Democracy Campaign, appeared to comment about the Campaign Finance Information System, and GAB 6.05, electronic filing of campaign finance reports. Materials related to this topic can be found on pages 14-59 and 146-156 of the G.A.B. meeting packet for the March 30-31, 2009 meeting.

The Chairman called a recess at 10:55 a.m. and the meeting reconvened at 11:15 a.m.

F. Demonstration and Report on Campaign Finance Information System (CFIS)

Jonathan Becker made a presentation to the Board and answered questions.

The Chairman called a recess for lunch at 12:00 noon. and the meeting reconvened at 12:38 p.m.

G. Report on Affirmation of Administrative Rules, Guidelines and Formal Opinions of former Elections and Ethics Boards
(Presented by Shane Falk)

MOTION: Amend section GAB 1.15(4) to remove sentence regarding postmark filing, delete section GAB 1.15(7), and direct staff to complete rule-making procedures to amend section GAB 1.15. Moved by Nichol, seconded by Myse. Motion carried.

MOTION: Reaffirm forms and form numbers in GAB 1. Moved by Eich, seconded by Nichol. Motion carried.

MOTION: Reverse the Board's May 5, 2008, affirmation of section GAB 1.41, decline to reaffirm GAB 1.41, and direct staff to seek deletion of GAB 1.41 from the Administrative Code. Moved by Myse, seconded by Eich. Motion carried.

MOTION: Reaffirm GAB 1.655. Moved by Myse, seconded by Eich. Motion carried.

MOTION: Decline to affirm all Ethics Boards opinions from 1978 through 1989. Moved by Nichol, seconded by Manian. Motion carried.

MOTION: Reverse the Board's February 25, 2008, reaffirmation of pre-1990 Ethics Board opinions. Moved by Eich, seconded by Nichol. Motion carried.

MOTION: Reaffirm section GAB 6.04 and direct staff to continue to review the rule and suggest necessary amendments. Moved by Cane, seconded by Nichol. Motion carried.

MOTION: Reaffirm section GAB 6.05. Moved by Nichol, seconded by Cane. Motion carried.

MOTION: Reaffirm sections GAB 6.03 and GAB 21.30, and direct staff to begin rulemaking procedures to amend GAB 6.03 to reference Section 5.05(6a), Wis. Stats. and chapters 5-12. Moved by Eich, seconded by Nichol. Motion carried.

MOTION: Reaffirm section GAB 6.02 and direct staff to suggest at a later meeting possible amendments to address the joint agency, timing for remedying the registration statement, Campaign Finance Information System, and threshold sufficiency issues. Moved by Cane, seconded by Eich. Motion carried.

MOTION: Reaffirm GAB 25 and direct staff to suggest amendments to update the forms and form numbers. Moved by Nichol, seconded by Cane. Motion carried.

MOTION: Reaffirm chapters GAB 15 and 16 in their entirety, and sections GAB 20.02, 20.03, 20.04, 20.05, 20.06, 20.07, 20.08, 20.09, and 20.10, and direct staff to suggest possible amendments to GAB 20 to address any necessary changes to accommodate investigation and confidentiality requirements of Section 5.05, Wis. Stats. Moved by Cane, seconded by Nichol. Motion carried.

MOTION: Direct the G.A.B. Director to send a letter to the Legislative Reference Bureau to address administrative rules that should be repealed and correct the G.A.B. office address in the administrative rules. Moved by Eich, seconded by Cane. Motion carried.

H. Report on Election Fraud

(Presented by Shane Falk, Michael Haas, and Milwaukee County Assistant District Attorney Bruce Landgraf)

The report included results of a staff survey of Wisconsin district attorneys regarding cases of voter fraud, a summary of a report from the Wisconsin Attorney General's office on Election Day observations from November 4, 2008, and a summary of Mr. Landgraf's work in Milwaukee County since 2005. The report was received for information. The Board took no action.

The Chairman called a recess at 2:11 p.m. and the meeting reconvened at 2:30 p.m.

I. Administrative Rules

(Presented by Shane Falk and Michael Haas)

1. GAB Chapter 4: Election Observers

MOTION: Pursuant to 5.05(1)(f), 7.41(5), 227.11(2)(a), 227.14(4m), 227.15(1), and 227.16-17, Wis. Stats., approve a Notice of Proposed Order Adopting Rule Recreating Chapter GAB 4, Notice of Submittal of Recreated Chapter GAB 4 to Legislative Council Clearinghouse, and Notice of Hearing of Recreated Chapter GAB 4, and direct staff to proceed with promulgation of the permanent rule. Moved by Eich, seconded by Nichol. Motion carried unanimously.

MOTION: Direct staff to take all other steps necessary to complete promulgation of the permanent rule recreating chapter GAB 4, Wis. Adm. Code. Moved by Eich, seconded by Nichol. Motion carried unanimously.

2. GAB Chapter 22: Settlement Offer Schedule

MOTION: Pursuant to 5.05(2m)(c)12., 5.05(1)(f), 227.11(2)(a), 227.14(4m), 227.15(1), and 227.16-17, Wis. Stats., approve a Notice of Proposed Order Adopting Rule Creating Chapter GAB 22, Notice of Submittal of Recreated Chapter GAB 22 to Legislative Council Clearinghouse, and Notice of Hearing of Chapter GAB 22, and direct staff to proceed with promulgation of this chapter of the Administrative Code. Moved by Nichol, seconded by Eich. Motion carried.

MOTION: Direct staff to take all other steps necessary to complete promulgation of chapter GAB 22, Wis. Adm. Code. Moved by Nichol, seconded by Eich. Motion carried.

3. GAB 6.05: Electronic Filing of Campaign Finance Reports

MOTION: Pursuant to 5.05(1)(f), 227.11(2)(a), 227.135, 227.14(4m), 227.15(1), and 227.16-17, Wis. Stats., approve the proposed Statement of Scope, Notice of Proposed Order Adopting Rule Amending GAB 6.05, Notice of Submittal of Amended GAB 6.05 to Legislative Council Clearinghouse, and Notice of Hearing of Amended GAB 6.05, with the following revision to section 6.05(5): “Each registrant who files a report in the electronic format specified by this rule shall also file a paper copy of that report. That paper copy of the report shall be signed by an individual authorized by the registrant to file and filed no later than the time prescribed by law for filing the report”, and direct staff to proceed with promulgation of this chapter of the permanent rule. Moved by Eich, seconded by Nichol. Motion carried.

MOTION: Direct staff to take all other steps necessary to complete promulgation of the permanent rule amending GAB 6.05, Wis. Adm. Code. Moved by Eich, seconded by Nichol. Motion carried.

J. Ethics and Accountability Legislative Agenda (Presented by Jonathan Becker)

MOTION: Approve the proposed Ethics and Accountability Division legislative agenda and direct staff to contact the Legislature, continue work on the confidentiality provisions, and make a general report back to the Board. Moved by Myse, seconded by Cane. Motion carried.

K. Early Voting Report (Presented by Nat Robinson, Ed Edney and Adam Harvell)

MOTION: Accept the early voting report and direct staff to seek public comments and solicit feedback from the public and legislators, and work with key legislators to implement early voting legislation. Moved by Myse, seconded by Eich. Motion carried.

L. Ethics Guidelines Review Process (Presented by Jonathan Becker)

By consensus the Board approved the proposed procedures for reviewing, revising, and creating guidelines.

M. Electronic Voting Systems Updates (Presented by Shane Falk)

MOTION: Direct staff to develop a process by which updates, engineering change orders, and other modifications to voting systems are reviewed and approved, returning to the Board at a future meeting with recommendations for action, including possible revision of the administrative code. Moved by Nichol, seconded by Myse. Motion carried.

MOTION: Ratify the interim approvals granted by the G.A.B. Director with regard to the Premier SSL certificates and ES&S AutoMARK Engineering Change Order, with permanent approval only upon a more thorough review following implementation of a developed procedure by which to process notifications of modifications to previously approved voting systems. Until the Board implements a developed procedure by which to process notifications of modifications to previously approved voting systems, the G.A.B. Director may continue to grant interim approvals as necessary and inform the Board of each approval at the first Board meeting following the granted request. Moved by Nichol, seconded by Myse. Motion carried.

The Chairman recessed the meeting at 5:08 p.m. until 9:00 a.m. the following morning.

Open Session Minutes
Tuesday, March 31, 2009

The Chairman called the meeting to order at 9:04 a.m., on Tuesday, March 31, 2009.

Hearing no objection, the Chairman took up Item P out of order.

P. Presentation by Brady Williamson on Observing Elections in Bangladesh

Brady Williamson made a presentation regarding his experience as an international observer of the recent election in Bangladesh and took questions. The presentation was for informational purposes to Board, staff and the public. The Board took no action.

N. Director's Report

1. Elections Division Report

(Presented by Nat Robinson and Anne Oberle)

The report was presented for informational purposes. The Board took no action.

The Chairman called a recess at 10:55 a.m. and the meeting reconvened at 11:11 a.m.

2. Ethics and Accountability Division Report

(Presented by Jonathan Becker and Tommy Winkler)

The report was presented for informational purposes. The Board took no action.

3. Office of the Director and General Counsel Report

(Presented by Kevin Kennedy and Sharrie Hauge)

The report was presented for informational purposes. The Board took no action.

O. Adjourn to closed session to consider written requests for advisory opinions and the investigation of possible violations of Wisconsin’s lobbying law, campaign finance law, and Code of Ethics for Public Officials and Employees; and confer with counsel concerning pending litigation.

MOTION: Move to closed session pursuant to Sections 5.05(6a), 19.85(1) (c), (g), (h), and 19.851 Wis. Stats., to consider written requests for advisory opinions, the investigation of possible violations of Wisconsin’s lobbying law, campaign finance law, and Code of Ethics for Public Officials and Employees; and confer with counsel concerning pending litigation. Moved by Eich, seconded by Nichol.

Roll call vote:	Brennan:	Aye	Cane:	Aye
	Eich:	Aye	Manian:	Aye
	Myse:	Aye	Nichol:	Aye

Motion carried.

Hearing no objection, the Chairman called a recess at 12:03 p.m. The Board reconvened in closed session beginning at 12:25 p.m.

Summary of Significant Actions Taken in Closed Session

- A. Requests for Advice: Three matters considered; one formal opinion issued.
- B. Investigations: Sixteen matters considered; six matters closed – including the adoption of a finding of no probable cause In the matter of Representative Michael Huebsch and In the matter of Representative Brett Davis and All Children Matter.

Judge Eich left the meeting at 2:35 p.m.

MOTION: Return to open session. Moved by Manian, second by Nichol. Motion carried 5-0.

The Board again discussed the May meeting date, and reached consensus that the meeting would be only one day and would occur on May 5.

Judge Myse left the meeting at 2:46 p.m.

Adjournment

MOTION: Adjourn the meeting. Moved by Cane, seconded by Nichol. Motion carried 4-0.

The meeting adjourned at 2:47 p.m.

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The next meeting of the Government Accountability Board is scheduled for 9:30 a.m., Tuesday, May 5, 2009 in the G.A.B. Conference Room, Third Floor, 212 East Washington Avenue, Madison, Wisconsin.

March 30 and 31, 2009 Government Accountability Board meeting minutes prepared by:



Kyle R. Richmond, Public Information Officer

April 6, 2009

Date

March 30 & 31, 2009 Government Accountability Board meeting minutes certified by:

Judge Gerald Nichol, Board Secretary

May 5, 2009

Date