

# State of Wisconsin\Government Accountability Board

212 East Washington Avenue, 3<sup>rd</sup> Floor  
Post Office Box 7984  
Madison, WI 53707-7984  
Voice (608) 266-8005  
Fax (608) 267-0500  
E-mail: [gab@wisconsin.gov](mailto:gab@wisconsin.gov)  
<http://gab.wi.gov>



JUDGE MICHAEL BRENNAN  
Chair

KEVIN J. KENNEDY  
Director and General Counsel

## Wisconsin Government Accountability Board

212 East Washington Avenue, Third Floor  
Madison, Wisconsin  
August 10, 2009  
9:30 a.m.

### Open Session Minutes

<u>Summary of Significant Actions Taken</u>	<u>Page</u>
A. Adopted Wisconsin's 2009-2014 Election Administration Plan and directed distribution to the Joint Committee on Finance	3
B. Adopted guideline 245 regarding public service announcements	4
C. Approved promulgation of amendments to GAB 1, Campaign Finance	5
D. Approved Statement of Scope GAB 4, Election Observers	5
E. Approved promulgation of GAB 13 – Training of Election Officials	5
F. Adopted 2010 Board meeting schedule	6

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

Staff present: Kevin Kennedy, Jonathan Becker, Nathaniel E. Robinson, Kyle Brown, Shane Falk, Michael Haas, Barbara Hansen, David Buerger, Sharrie Hauge, Tommy Winkler, and Reid Magney

### **A. Call to Order**

Chairperson Brennan called the meeting to order at 9:36 a.m.

### **B. Director's Report of Appropriate Meeting Notice**

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

### **C. Approval of Minutes of Previous Meetings**

MOTION: Approve the minutes of the June 22, 2009, and July 1, 2009 meetings of the Government Accountability Board. Moved by Judge Nichol moved, seconded by Judge Eich. Motion carried unanimously.

### **D. Public Comment**

1. **State Representative Samantha Kerkman**, Genoa City, appeared on behalf of herself to comment on the Board's support of 2009 Assembly Bill 322, legislation that would allow economic interest statements to be posted on the Internet. Representative Kerkman said she does not have a problem with filling out the economic interest statement itself and having it available to the public through the current system of getting the requestor's identity. However, because of harassment she and her family have been receiving at home, she is concerned about the information being available on the Internet.
2. **Attorney Mike B. Wittenwyler** of Madison, representing himself, appeared on proposed changes to administrative regulations on conduits, GAB 1.85(7). He questioned whether the regulation applies to conduits which give money to local candidates, citing a lack of statutory authority based on a governor's veto of language in 1986.
3. **Ardis Cerny**, Pewaukee, appeared on behalf of herself to comment on the 2009-2014 Election Administration Plan. She said voter ID should be included in the plan because 60 percent of the public supports it. She said the Board should investigate technology that would allow photo ID cards of voters to be scanned at the polls, which would bring up the voter's registration information for the poll workers, which would create a "fast lane" for voters. She also asked questions about the HAVA Check Ping letters, and suggested using the Statewide Voter Registration System at the polls to check names and addresses.
4. **Mary Ann Hanson**, Brookfield, appeared on her own behalf to comment on the HAVA Check Ping letters and the 2009-2014 Election Administration Plan. She cited a Milwaukee Journal Sentinel story saying people who do not respond to the Ping letters will not lose their voting rights, and said she believes there should be consequences if letter recipients do not make an effort to contact the Board. She said she is happy to see attention given to voter integrity and fraud in the plan, as well as clarifying the definition of residency. She encouraged the Board to make that more consistent.
5. **Annette Kuglitsch**, Waukesha, appeared on her own behalf to comment on the 2009-2014 Election Administration Plan. She questioned what the role of the Wisconsin Election Administration Council (WI-EAC) was in approving or recommending the plan to the Board. She questioned why voter ID, which WI-EAC voted to include in the Plan, was not in the Final Draft Plan staff recommended to the Board. She expressed concern that making it easier for people to vote opens up the possibility of voter fraud.
6. **John Washburn**, Germantown, appeared on his own behalf to comment on the 2009-2014 Election Administration Plan and compliance with Chapters 6 and 7 of Wisconsin

state statutes. He said election officials who do not comply with election laws should be prosecuted, and complained that past complaints he's filed have "fallen into a black hole."

7. **Beverly Maddrell**, Madison, appeared on her own behalf to comment on the 2009-2014 Election Administration Plan, and about voter fraud. She expressed a concern about the cost of the Plan to taxpayers and to municipalities. She commended the staff for considerable changes to the Plan about addressing voter fraud, but criticized the omission of voter ID from the plan.
8. **Clerk Diane Hermann-Brown**, Sun Prairie, appeared on behalf of the City of Sun Prairie and the Wisconsin Municipal Clerks Association to comment on the 2009-2014 Election Administration Plan. She said the Plan being proposed is a living, adaptable Plan, which will help clerks administer elections. She cautioned that elements of the Plan not become unfunded mandates, and reminded the Board that local clerks wear many hats, and do not always have enough time for election administration.
9. **Gina Gretsch**, Delafield, appeared on behalf of the City of Delafield and the Wisconsin Municipal Clerks Association to comment on the 2009-2014 Election Administration Plan. She said the Board needs to keep in mind the great diversity of clerks and election resources across the state when it considers election-related changes, and that some polling places do not have electricity and running water, not to mention Internet access. She also mentioned the issue of unfunded mandates, and said she is opposed to punishing clerks for failure to do certain things when they do not have adequate funding.
10. **Richard Stadelman**, Shawano, appeared on behalf of the Wisconsin Towns Association to comment on the 2009-2014 Election Administration Plan. He said Wisconsin's system of municipal-based elections enhances voter turnout, and that proximity to the polling place is just as important as handicapped accessibility. He called the Plan a blueprint for the future, but does not believe every single goal in the Plan is achievable because of costs and balancing priorities. He also said that clerks favor voter ID requirements because they feel responsible for the integrity of the election.

Chairman Brennan called a recess at 12:18 p.m.

**E. Proposed State Election Administration Plan**  
(Presented by Nathaniel E. Robinson and David Buerger)

Nathaniel E. Robinson made a presentation to the Board on Wisconsin's 2009-2014 Election Administration Plan. He outlined the genesis of the Plan, starting with requests from electors, clerks and local officials for changes in the way Wisconsin conducts elections. The Plan came together starting April 16 with a meeting of the Wisconsin Election Administration Council ("WI-EAC"), from which staff developed a draft plan, reviewed by WI-EAC on June 17. On June 22 the Board instructed staff to submit the draft plan to the Legislature and the public for a 30-day comment period. Staff met with 15 of the 16 members of the Joint Committee on Finance. WI-EAC met again July 28 to

review public comments and make a recommendation to the Board. Nat Robinson explained one of WI-EAC's recommendations, to include the study of Voter ID, was not included in the final plan because it is something the Legislature has already passed three times, and which the Governor has vetoed three times. The voter ID issue is an old issue. The 2009-2014 Election Administration Plan is about going forward. It focuses on new initiatives and reforms that have a high probability of strategically improving and advancing election administration in Wisconsin.

Discussion.

MOTION: To amend that portion of the Plan on pages 13 and 14 to say that "in studying the methodologies to increase voter access, we must study the security provisions each would entail." Moved by Judge Myse, seconded by Judge Barland. Motion carried unanimously.

MOTION: To accept the proposed Plan, subject to amendments in writing and made today. Moved by Judge Myse, seconded by Judge Eich.

Discussion.

AMENDMENT: To indicate in the cover letter that the Board considered Voter ID and decided not to include it in the Plan because it is not an appropriate use of Help America Vote Act funds, and it is a policy decision that is in the province of the Legislature. Moved by Judge Cane, accepted as friendly amendment by Judge Myse and Judge Eich.

MOTION: To accept the proposed Plan, subject to amendments in writing and made today, and direct that the cover letter indicate consideration of Voter ID and the Board's decision not to include it in the Plan because it is not appropriate for HAVA funding, and it is a policy decision that is in the province of the Legislature. Motion carried unanimously.

## **F. Proposed Guidelines**

(Presented by Jonathan Becker)

Jonathan Becker updated the Board on four proposed guidelines the staff has been working on: Charitable solicitations, GAB 231; Public service announcements, GAB 245; Campaign fundraising, GAB 249; and Campaign contributions, GAB 250. He asked the Board to adopt one of the guidelines today, GAB 245.

MOTION: To adopt GAB 245, guidelines for public service announcements. Moved by Judge Nichol, second by Judge Myse.

MOTION: To amend GAB 245 to provide that beginning on the day for circulating nomination papers for an election for a governmental office for which a state official may be a candidate, the official should not permit the use of his or her name or image or office

in a “public service announcement.” Moved by Judge Myse, seconded by Judge Eich. Motion to amend and adopt as amended carried unanimously.

## **G. Legislation**

### **1. Legislative Status Report (Presented by Kevin J. Kennedy)**

Kevin Kennedy led a discussion about a legislative proposal that would allow Economic Interest Statements to be posted online, along with other legislative proposals. No action was taken by the Board.

## **H. Administrative Rules**

(Presented by Shane Falk and Mike Haas)

### **1. Status Report on Administrative Rule Defining Scope of Regulated Activity, GAB 1.28 (Issue Ad Regulation)**

Shane Falk updated the Board on the status of a U.S. Supreme Court case (Citizens United v. FEC) on this issue and the potential impact of the case on the G.A.B.’s proposed rule.

### **2. GAB Chapter 1, Campaign Finance - Scope Statement for Proposed Corrections**

Shane Falk discussed the proposed changes, and noted that they do not include conduits and local committees, which will come back to the Board at a later time.

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., the Board formally approve the attached Statement of Scope, Notice of Proposed Order Adopting Rule, Notice of Submittal to Legislative Council Clearinghouse, and Notice of Hearing for revisions to Chapter GAB 1, Wis. Adm. Code, and directs staff to proceed with promulgation of the rules. And staff shall take all other steps necessary to complete promulgation of the rules revising Chapter GAB 1, Wis. Adm. Code. Moved by Judge Cane, second by Nichol. Motion carried unanimously.

### **3. GAB Chapter 4, Election Observers, Scope Statement**

Mike Haas discussed the rule on election observers, which formalizes an emergency rule put into place for the 2008 elections.

MOTION: Pursuant to §§5.05(1)(f) and 227.11(2), Wis. Stats., the Board formally approves the attached Statement of Scope, and directs staff to proceed with promulgation of the repeal and recreation of GAB 4. Moved by Judge Nichols, second by Myse. Motion carried unanimously.

#### 4. GAB Chapter 22 – Proposed Settlement Offer Schedule

Shane Falk updated the Board on a public hearing held July 28, at which none of the four people attending offered comments on the proposed rule. No action required.

#### 5. GAB Chapter 13 – Training of Election Officials

Mike Haas discussed the rule, which specifies the training requirements for election inspectors and special voting deputies. The rule will be adopted 30 days following publication unless there is a petition for a public hearing.

MOTION: Pursuant to §§5.05(1)(f) and 227.11(2)(a), Wis. Stats., the Board formally approves the attached Notice of Proposed Rule, and direct staff to proceed with the promulgation of GAB 13. Moved by Judge Myse, second by Judge Eich. Motion carried unanimously.

#### 6. Status Report on Pending Administrative Rules

Shane Falk informed the Board that summer legal clerk Kyle Brown has been instrumental in helping to reduce the backlog of work related to administrative rule revisions.

Chairperson Brennan said he thinks Brown's work has been top notch. The Board concurred and directed that its appreciation be noted in the minutes.

#### I. Report on July Continuing Report Campaign Finance Filings

Written report was included in Board packet. Given time constraints, an oral presentation was not given.

### **J. Director's Report**

#### Elections Division Report – election administration

Written report from Nathaniel E. Robinson was included in Board packet. Given time constraints, an oral presentation was not given.

#### Ethics and Accountability Division Report – campaign finance, state official financial disclosure, lobbying registration and reporting, contract sunshine

Written report from Jonathan Becker was included in Board packet. Given time constraints, an oral presentation was not given.

#### Office of General Counsel Report – general administration

Written report from Kevin J. Kennedy and Sharrie Hauge was included in Board packet. Given time constraints, an oral presentation was not given.

### **K. Proposed 2010 Board Meeting Schedule**

Kevin Kennedy asked the Board whether it wanted to approve the 2010 meeting schedule this month. There was discussion about whether to have some two-day meetings to allow for greater discussion of issues.

MOTION: To accept the proposed schedule of meetings for 2010. Moved by Judge Myse, second by Judge Eich. Motion carried unanimously.

### **J. Closed Session**

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 §§5.05(6a), 19.85(1)(h), 19.851, 19.85(1)(g), and 19.85(1)(c), 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 and consider performance evaluation data of a public employee of the Board. Moved by Judge Cane, seconded by Judge Eich.

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

Motion carried.

Hearing no objection, the Chairman called a recess at 2:50 p.m. The Board reconvened in closed session beginning at 3:10 p.m.

### **Summary of Significant Actions Taken in Closed Session:**

- A. Requests for Advice: Three matters considered; one formal opinion issued.
- B. Investigations: Eleven pending matters considered; five closed; two settlement offers authorized.
- C. Eight campaign finance matters considered.

####

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

August 10, 2009 Government Accountability Board meeting minutes prepared by:

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Reid Magney, Public Information Officer

August 14, 2009

August 10, 2009 Government Accountability Board meeting minutes certified by:

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Judge Gerald Nichol, Board Secretary

Oct. 5, 2009