

# 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**  
State Capitol, Room 300 NE and North Hearing Room  
Madison, Wisconsin  
December 17, 2009  
8:30 a.m.

## Open Session Minutes

<u>Summary of Significant Actions Taken</u>	<u>Page</u>
A. Approved certification of ES&S voting equipment	3
B. Authorized staff to promulgate rule changes in Chapters GAB 1, 6 and 9	3
C. Received a report from staff on improvements to the Campaign Finance Information System	5
D. Adopted the Final Staff Report and Recommendations on Early Voting as its Own	6

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

Absent: Judge Thomas Barland

Staff present: Kevin J. Kennedy, Jonathan Becker, Nathaniel E. Robinson, Shane Falk, Michael Haas, and Tommy Winkler.

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

Chairperson Brennan called the meeting to order at 8:30 a.m. in Room 300 Northeast.

### **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. 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. Moved by Judge Eich, seconded by Judge Cane.

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

Motion carried.

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

- A. Requests for Advice: One matter considered; one formal opinion issued.
- B. Investigations: 39 pending matters considered, with three settlement offers authorized; three matters closed; six matters referred to the Department of Justice; and 27 additional matters considered but still pending. The Board authorized four investigations involving the solicitation of state officers or employees for political contributions or services. The Board closed three matters involving the late filing of campaign finance reports. The Board closed one investigation into the use of official position in a matter in which an organization with which an official is associated had a financial interest.

**D. Reconvene in Open Session**

The Board reconvened in Open Session at 10:30 a.m. in the North Hearing Room of the State Capitol.

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

Absent: Judge Thomas Barland

Staff present: Kevin J. Kennedy, Jonathan Becker, Nathaniel E. Robinson, Shane Falk, Michael Haas, Tommy Winkler, Ross Hein, Edward Edney, Adam Harvell, James Malone, Barbara Hansen, Sarah Whitt, and Reid Magney

**E. Approval of Minutes of Previous Meeting**

MOTION: Approve the open session minutes of the November 2, 2009 meeting of the Government Accountability Board. Moved by Judge Cane, seconded by Judge Nichol. Motion carried unanimously.

## **F. Public Comment**

1. **Attorney Mike B. Wittenwyler**, representing Godfrey & Kahn S.C., urged the Board to delay action on Proposed GAB 1.90 – Regulation of Nonprofit Corporations Organized Solely for Political Activity (MCFL Corporations) until the U.S. Supreme Court rules in the Citizens United case.
2. **Diane Hermann-Brown** appeared on behalf of the City of Sun Prairie to urge the Board to make timely software updates to the Statewide Voter Registration System, long before the election cycle begins. She also thanked the Board for its efforts to work with clerks and municipalities, and invited Board members to attend the Wisconsin Clerks Association meeting in Green Bay on August 18, 19 and 20, 2010.

## **G. Approval of Electronic Voting Equipment**

Approval of Elections Systems and Software Voting System Components - Election Management System, AutoMark Accessible Ballot Marker, DS-200 Polling Place Tabulator, M650 Central Count Tabulator.

Elections Specialist Ross Hein made a presentation about programming changes to the DS-200 Polling Place Tabulator to address concerns expressed by members of the public and the Board at the November 9, 2009 meeting.

Discussion.

MOTION: To approve staff's five-point recommendation for the ES&S voting systems application to be used in Wisconsin, in compliance with the EAC certificate ESSUnity3200. Moved by Judge Nichol, seconded by Judge Cane. Motion passed unanimously.

## **H. Administrative Rules**

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

Staff Counsel Shane Falk updated the Board on the status of the Citizens United case heard by the United States Supreme Court, which involves the scope of regulation of political communications permitted by the Constitution. He said release of the Court's opinion will not occur until January 2010 at the earliest.

2. **GAB 6.03 Assistance By G.A.B. Staff (Technical Change)**
3. **GAB 9.03 Voting Procedure for Challenged Electors (Technical Change)**

Staff Counsel Shane Falk reviewed proposed changes to GAB 6.03, which amend statutory references that changed with the adoption of 2007 Act 1. He also

reviewed the proposed change to GAB 9.03, which removes references to lever voting machines.

MOTION: Pursuant to §§5.05(1)(f), 227.11(2)(a), 227.135, 227.14(4m), 227.15(1), and 227.16(2)(b), Wis. Stats., the Board formally approves the Statement of Scope, Notice of Proposed Order Adopting Rule, and Notice of Submittal to Legislative Council Clearinghouse for revisions to ch. GAB §§6.03 and 9.03, Wis. Adm. Code, and directs staff to proceed with promulgation of the rules. Staff shall take all other steps necessary to complete promulgation of the rules revising ch. GAB §§6.03 and 9.03, Wis. Adm. Code. Moved by Judge Cane, seconded by Judge Nichol. Motion passed unanimously.

**4. GAB 1.90 Regulation of Nonprofit Corporations Organized Solely for Political Activity (MCFL Corporations)**

Staff Counsel Shane Falk reviewed the background for this rule change and said staff understands that the Citizens United case may impact this rule. He recommended proceeding with publication of the scope statement while deferring final action until the Citizens United case has been resolved.

MOTION: The Board formally approves the Statement of Scope which may be published; however, further promulgation steps are deferred and staff is to return to the Board with the draft Notice of Proposed Order Adopting Rule, Notice of Submittal to Legislative Council Clearinghouse, and Notice of Hearing for the creation of ch. GAB §1.90, Wis. Adm. Code, after necessary guidance from the Citizens United decision is incorporated as appropriate. Moved by Judge Myse, seconded by Judge Eich. Motion carried unanimously.

**5. GAB 6.02 Registration statement sufficiency**

Staff Counsel Michael Haas reviewed the rule change, which clarifies the information that is required for a registration statement to be accepted by the filing officer, and the consequences of an incomplete filing.

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 approves the Notice of Proposed Rule to repeal and recreate s. GAB 6.02, Registration statement sufficiency, and directs staff to proceed with promulgation of the rule under the 30-day notice process. Moved by Judge Cane, seconded by Judge Nichol. Motion carried unanimously.

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

Staff Counsel Shane Falk reported to the Board that staff has begun promulgation of all but one of the rules acted upon by the Board since it has come into effect.

## **I. Legislation**

### **1. Summary of Recent Legislative Activity**

Director and General Counsel Kevin J. Kennedy reported to the Board on a number of bills and recent legislative hearings. He also discussed the federal Military and Overseas Voter Empowerment (MOVE) Act, which was recently signed into law. He said Wisconsin is one of 11 states (along with the District of Columbia) with September primaries, and would need a federal waiver from some of the Act's requirements.

MOTION: To authorize the Director and General Counsel to develop legislation to harmonize state law with the new federal requirements and proceed with an application for a waiver from some of MOVE's timing provisions if that is the best way to facilitate compliance with MOVE consistent with Wisconsin's election calendar. Moved by Judge Myse, seconded by Judge Cane. Motion carried unanimously.

### **2. Legislative Status Report**

Written summary was included in Board packet. No action was taken.

## **J. Report on Campaign Finance Information System**

Ethics & Accountability Division Administrator Jonathan Becker provided the Board with an update on improvements to the Campaign Finance Information System (CFIS). He said improvements include the elimination of occupation codes for campaign donors, and inclusion of a text description of the donor's occupation. One major change is the availability of an Excel spreadsheet, which is very much like the old Excel spreadsheets which many registrants were used to completing prior to the launch of CFIS. He also reported on the results of a user survey, in which 70 percent of all respondents thought the overall performance of the system was adequate to excellent. He said the staff wants greater CFIS user satisfaction, but was happy that 86 percent of respondents thought the service provided by G.A.B. staff was good to excellent.

## **K. Director's Report**

### **Elections Division Report – election administration**

Written report from Nathaniel E. Robinson was included in Board packet. Mr. Robinson gave an oral presentation focusing on what a tremendous year 2009 was for communication with clerks. He said the clerks' two main concerns are communications and training, and that both are being addressed by Board staff. SVRS IT Lead Sarah Whitt gave an oral interim report on the progress of the Retro HAVA Check process.

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

Written report from Jonathan Becker was included in Board packet. Mr. Becker gave an oral presentation highlighting staff's work in developing publications on campaign finance reporting and the new Excel spreadsheet for CFIS. He also reported that staff is now working on a new application for lobbying reporting with the Department of Enterprise Technology. He said the lessons learned with CFIS will guide this project, and that customers will be involved in its development.

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

Written report from Kevin J. Kennedy, Sharrie Hauge and Reid Magney was included in Board packet. Mr. Kennedy said the staff is preparing for an upcoming federal compliance audit regarding HAVA funds.

Mr. Kennedy provided the Board with an update regarding staff actions on the Crivitz School Board recall matter that was subject to administrative review.

Mr. Kennedy discussed the scheduling of the upcoming Board meeting. The consensus of the Board members was to hold the January 14, 2010 meeting at 10:00 a.m., with some members attending by teleconference.

Chairman Brennan called a recess at 12:15 p.m. The Board reconvened at 12:55 p.m.

### **L. Public Comment on Early Voting**

Elections Division Administrator Nathaniel E. Robinson summarized the Final Staff Report and Recommendations on Early Voting. Elections Specialist Ross Hein answered questions from the Board about how electronic voting equipment plays a role in early voting and absentee voting. Chairman Brennan opened the meeting to public comments.

1. **Dan Schneider** appeared on behalf of the United States Postal Service to offer the services of USPS with getting absentee or other early voting ballots to the electorate and back to local election officials.
2. **Andrea Kaminski**, Executive Director of the League of Women Voters of Wisconsin, appeared to support staff recommendations to streamline the in-person absentee voting process, and to keep in-person absentee voting available up until 5 p.m. the Monday before the election.
3. **Robert Ohlsen** appeared on behalf of the Dane County Clerk's Office to support Option C in the Early Voting Report and Recommendations. He said early voting has been pushed by the news media and the political parties, and suggested that mayors should initiate a program to encourage voters to go to the polls.

4. **Darlene K. Marcelle** appeared on behalf of the Brown County Clerk's Office to disagree with allowing in-person absentee voting until 5 p.m. Monday before the election. She said that 35 percent of the electorate voted early in Brown County and there were no lines on Election Day. During busy elections, poll workers don't have time to open all the absentee ballots and document everything in an orderly fashion.
5. **Ginny Graham** of Waukesha appeared to say that the single largest thing local clerks were crying out for is an earlier deadline for in-person absentee voting. She said voters will adjust to earlier deadlines.
6. **Richard Stadelman** appeared on behalf of the Wisconsin Towns Association to support a modified Option C. He emphasized the importance of keeping election administration at the town, village and city level.
7. **Kristine Schmidt** appeared on behalf of the City of Brookfield City Clerk's Office to support a Friday deadline for in-person absentee voting. She said Brookfield had 35 percent absentee voting, with two-thirds of those coming into the office, and she described the challenges clerks face in organizing the absentee materials.
8. **Andrew Davis** appeared on behalf of the Republican Party of Wisconsin with a letter from State Chairman Reince Priebus and Bob Spindell, chair of the party's Election Reform & Vote Fraud Committee. He said early voting presents inherent risks and costs that make it inappropriate and unnecessary at this time. He said the Board's top priority should be maintaining and improving the integrity of the vote.
9. **Thomas Neill** appeared on behalf of the City of Waukesha Clerk's Office to support moving the deadline for in-person absentee voting to the Friday before the election. He said Waukesha had approximately 10,000 absentee voters, of which 6,500 voted in the clerk's office, mostly the day before the election. He said that is too much of a burden for clerks.
10. **Mary Ann Hanson** of Brookfield appeared to comment on the Early Voting report. She said absentee voting should not be allowed to overwhelm the process. She said she does not support a pilot program for early voting in 2010 because of the importance of uniform laws. She also said all absentee ballots should be witnessed.
11. **Chris Astrella** appeared on behalf of the Town of Blooming Grove to support Option C with the exception of the Monday deadline. He said clerks need the time to get things done in preparation for Election Day, and that responsibility needs to be put back on the voters.
12. **Ardis Cerny** of Pewaukee appeared to testify against a proposed Early Voting Pilot Program. She said that state statutes say voting is a constitutional right while absentee voting is a privilege, and called early voting another privilege. She also urged the Board to give clerks time to do their job by moving the deadline for in-person absentee voting from Monday to Friday.

13. **Kim Bushey** appeared on behalf of Walworth County to testify in support of Option C, including eliminating the certificate of voter registration. She encouraged the Board to move the cutoff for in-person absentee voting to the Friday before the election.
14. **Barbara K. Goeckner** appeared on behalf of the Village of River Hills to testify in support of Option C, including eliminating the certificate of voter registration. In an emergency, a voter could be allowed to cast an in-person absentee ballot on Monday. She emphasized that all clerks' offices are different.
15. **Julee Helt** appeared on behalf of the Village of Waunakee to support true early voting, but noted that the village is not set up to handle it. She asked the board to move the deadline for in-person absentee voting to Friday before the election to give clerks time to do their jobs.

Chairman Brennan called a brief recess.

16. **Charlotte Rasmussen** appeared on behalf of the Wisconsin Federation of Republican Women to oppose a pilot program for early voting, saying it is not a fair way of electing someone because it is not uniform. She said a pilot program in April would be OK compared to November, and she also advocated moving the deadline for in-person absentee voting from Monday to Friday.
17. **Cari Burmaster** appeared on behalf of the City of Onalaska Clerk's Office to support Option C, however she supported moving the deadline for in-person absentee voting from Monday to Friday. She said voters will make different plans in reaction to the change. She added that people walk into polling places and think elves came in the night before to set everything up.
18. **Teri Lehrke** appeared on behalf of the City of La Crosse Clerk's Office to testify about the early voting report. She said La Crosse has not had too many problems with in-person absentee voting because she has the resources to handle the lines of people. She said her biggest frustration is with SVRS, which timed-out, and she asked that the system be upgraded. She also opposed the idea of a separate envelope for in-person absentee voting, and feared that two different envelopes would confuse poll workers.
19. **Neil Albrecht** appeared on behalf of the City of Milwaukee Election Commission in support of Option C, with two exceptions. The first is to use a complete application or a certificate envelope. With 31,000 people voting in-person absentee, the cost of envelopes is an issue, and it slows down counting. Second, he supports moving the deadline for in-person absentee voting from Monday to Friday. He also supported the use of an affidavit for in-person absentee voting with an excuse on Monday.

20. **Roxann Brue** appeared on behalf of the Village of Arlington, where 90 percent of the people vote at the polls. She said that for any clerk who doesn't have regular office hours, changing the deadline for in-person absentee voting from Monday to Friday won't disenfranchise voters because they don't have that opportunity.
21. **Jean DeMores** appeared on behalf of the City of St. Francis to support moving the deadline for in-person absentee voting from Monday to Friday. She also urged moving the deadline for mail absentee ballot requests from Friday to Thursday.
22. **Sherry Grant** appeared on behalf of the Village of Shorewood Clerk's Office to support moving the deadline for in-person absentee voting from Monday to Friday. She said if the Monday deadline is retained, it will continue to create significant financial burdens on municipal clerks.
23. **Vikki Zuehlke** appeared on behalf of the Village of Waterford to support moving the deadline for in-person absentee voting from Monday to Friday. She said her clerk's office was slammed with people coming in to vote, some of whom were going golfing the next day. She said the media educated voters they could vote until 5 p.m. Monday, and now they can educate them they can vote with an excuse until 5 p.m. Monday.
24. **Sara Ludtke** appeared on behalf of the Town of Middleton Clerk's Office to support moving the deadline for in-person absentee voting from Monday to Friday. She said she was prepared for Election Day, but not for the 350 people who came in to vote on Monday. She said that with clerks overworked on the Monday before Election Day, the chances of duplicate voting increases.
25. **Nan Kottke** appeared on behalf of the Marathon County Clerk's Office and the Wisconsin County Clerk's Association to support Option C with moving the deadline for in-person absentee voting from Monday to Friday. She said it is time for electors to take some responsibility for voting.
26. **Diane Hermann-Brown** appeared on behalf of the City of Sun Prairie Clerk's Office to support moving the deadline for in-person absentee voting from Monday to Friday. She said many of the people who vote on Monday are procrastinators, and cutting off voting at 5 p.m. Friday will still give voters 124 hours in which to vote. She also expressed concern with the slowness of SVRS on the Monday before the election.

## Discussion

Judge Myse asked whether the staff was not recommending true early voting because we do not have the capacity. Mr. Kennedy said that it is not just because of equipment issues, but because of staffing issues, especially in small municipalities. Judge Myse said the only practical way of moving to early voting is to have the security provision of having the ballot counted when cast, and if the voter errs, being able to correct it.

Judge Eich said he does not believe the report should be presented as a rejection of early voting.

Judge Nichol said he is concerned about unfunded mandates on local governments. He is also troubled about the integrity of the voting system because people under stress can make mistakes. He said we already have an early voting system, which is in-person absentee voting.

Mr. Kennedy asked the Board's thoughts on moving the deadline for in-person absentee voting from Monday to Friday. Mr. Robinson said staff has given the Board its best recommendation.

Judge Myse said he believes it compromises the integrity of the voting process if clerks do not have adequate time to prepare for Election Day. If it really does compromise the voting process, then we are weighing the integrity of the process versus the convenience of the voter.

Mr. Kennedy said that the only way the deadline will change is if the Board initiates it. He said the Legislature will not consider it if it only comes from the clerks.

**MOTION:** To amend the Final Staff Report and Recommendations to terminate in-person absentee voting at 5 p.m. the Friday before Election Day, and to allow it on Monday only by excuse, approve the report subject to revising the in-person absentee recommendation and supporting report language, and forward it to the Governor and Legislature as the Board's Report and Recommendations. Moved by Judge Myse, seconded by Judge Eich.

Discussion about what form the recommendation to the Legislature should take: an amended report that reflects the Board's changes or the staff report with a cover letter indicating the Board's differences with the report. Additional discussion about whether to wait until the Board has the opportunity to speak with members of the Legislature.

Judge Myse called the question. Motion passed unanimously.

## **M. Adjournment**

**MOTION:** To adjourn. Moved by Judge Nichol, seconded by Judge Eich. Motion passed unanimously. The Board adjourned at 4:45 p.m.

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The Government Accountability Board has scheduled its next meeting for Thursday, January 14, 2010 at the Government Accountability Board offices, 212 East Washington Avenue, Third Floor in Madison, Wisconsin beginning at 10:00 a.m. The meeting will be conducted by teleconference and will last no more than two hours.

December 17, 2009 Government Accountability Board meeting minutes prepared by:

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Reid Magney, Public Information Officer

December 29, 2009

December 17, 2009 Government Accountability Board meeting minutes certified by:

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Judge Gerald Nichol, Board Secretary

January 14, 2010