

State of Wisconsin\Government Accountability Board

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JUDGE THOMAS H. BARLAND
Chair

KEVIN J. KENNEDY
Director and General Counsel

Wisconsin Government Accountability Board

Risser Justice Center, 120 Martin Luther King, Jr. Boulevard

Madison, Wisconsin

March 22, 2011

9:30 a.m.

Open Session Minutes

<u>Summary of Significant Actions Taken</u>	<u>Page</u>
A. Approved Guiding Principals for Legislature in Moving Partisan Primary Date	2
B. Approved Recall Timetable and Guidelines	3
C. Approved Promulgation and Amendment of ch. GAB §1.28(3)(b)	5

Present: Judge Thomas H. Barland, Judge Gerald Nichol, Judge Gordon Myse, Judge Michael Brennan, Judge Thomas Cane, and Judge David Deininger

Staff present: Kevin Kennedy, Jonathan Becker, Nathaniel E. Robinson, Michael Haas, Sharrie Hauge, Diane Lowe, Sarah Whitt, Richard Bohringer, and Reid Magney

A. Call to Order

Chairperson Barland called the meeting to order at 9:30 a.m.

B. Director's Report of Appropriate Meeting Notice

Director and General Counsel Kevin Kennedy informed the Board that proper notice was given for the meeting. He also introduced Tiffany Schwoerer, who was recently promoted to a project-project position assisting with training, and Jo Futrell, who joined the Board staff in January as an election specialist focusing on accessibility for voters with disabilities.

C. Minutes of Previous Board Meetings

MOTION: Approve the amended minutes of the January 13, 2011 teleconference meeting of the Government Accountability Board. Moved by Judge Myse, seconded by Judge Brennan. Motion carried unanimously.

D. Recognition of Judge Myse

Kevin Kennedy presented Judge Myse with a plaque recognizing him for his exemplary service in ensuring and promoting public confidence in Wisconsin government as a member of the Government Accountability Board from 2008 to 2011, and serving as Board Chair in 2010. Judge Myse's term ends May 1, 2011, and he said he is not seeking re-nomination to a second term. Judge Myse stated that he appreciated the opportunity to serve on the Board and work with his colleagues on the Board as well as the staff.

E. Public Comment

Attorney Mike Wittenwyler of Madison appeared on his own behalf to discuss guidance for recall committees and incumbents regarding unlimited campaign contributions during the recall circulation period.

Discussion.

Paul Malischke of Madison appeared regarding the proposed online-assisted voter registration system, and asked that the system be open to people who have a Social Security number, but do not have a Wisconsin driver license or identification card.

Mary Ann Hanson of Brookfield appeared on her own behalf and asked questions regarding Administrative Rule GAB 1.28, and whether that affected her ability to communicate about her political beliefs.

John Washburn of Milwaukee appeared on his own behalf to discuss the destruction of election records and memory cards, and to urge the Board to do its own survey of clerks' practices regarding election records.

Dianne Herman-Brown of Sun Prairie appeared as President ~~on behalf~~ of the Wisconsin Municipal Clerks Association to express concerns about unfunded mandates and to encourage the Board to continue its use of clerk focus groups for their perspectives on changes in election procedures. She also spoke in support of continuing Election Day voter registration in Wisconsin.

F. Proposed Timetable for Moving Partisan (September) Primary

Elections Division Administrator Nathaniel E. Robinson introduced MOVE Act Elections Specialist Katie Mueller, who provided an oral and written report regarding recommendations for a new partisan primary date. The staff is not recommending a specific date, but is providing principles to guide the Legislature in choosing a new date that will comply with the Military and Overseas Voter Empowerment Act.

MOTION: Accept the staff report and endorse the four guiding principles in the written report for legislative consideration. In addition, that the Board direct staff to continue to work with the Legislature to develop a timetable for moving the September primary

consistent with federal requirements, while ensuring sufficient time for the Board and local election officials to certify candidates and prepare and deliver ballots. Moved by Judge Deininger, seconded by Judge Nichol.

Discussion.

MOTION: To amend the previous motion and recommend moving the partisan primary to the third or fourth Tuesday in July. Moved by Judge Cane.

Discussion.

Judge Cane withdrew the motion.

Motion carried unanimously.

The Board recessed at 10:44 a.m. and reconvened at 10:54 a.m.

G. Review Recall Timetable and Guidelines

Director Kennedy introduced Elections Specialist David Buerger and Campaign Finance Auditor Richard Bohringer to provide an oral and written report regarding the unprecedented number of recall efforts against Wisconsin state senators.

Discussion.

MOTION: Adopt staff's statutory and policy interpretations as outlined in the Board materials regarding the effective date for recall registration statements electronically filed on CFIS and the consequences for failure to provide a paper copy of the registration statement and statement of intent within 15 days of staff's request. Moved by Judge Myse, seconded by Judge Cane. Discussion. Motion carried unanimously.

Discussion.

MOTION: A qualified elector petitioner is specific to a recall registration and mandatory pursuant to §9.01(1) and (2)(d), Wis. Stats., and where a registered recall committee later files a subsequent recall registration with new and different qualified elector petitioners, the first and subsequent recall registrations are treated as separate and distinct recall registrations with separate 60-day circulation periods. Moved by Judge Myse, seconded by Judge Nichol. Discussion and a request by Judge Barland for staff to clarify the language. Motion carried unanimously.

Discussion.

MOTION: Adopt the March 3, 2011 memorandum from Kevin J. Kennedy titled "Circulation of recall petitions" as a formal campaign finance and ethics opinion of the

Board. Moved by Judge Deininger, seconded by Judge Nichol. Motion carried unanimously.

Discussion.

MOTION: Adopt the March 11, 2011 memorandum from Kevin J. Kennedy titled “Meaning of ‘Offer to File’ Recall Petition; Complete Dates Required for Each Individual Recall Petition Signature” as a formal elections opinion of the Board. Moved by Judge Myse, seconded by Judge Cane. Motion carried unanimously.

Discussion.

MOTION: Adopt the March 15, 2011 memorandum from Kevin J. Kennedy titled “Recall Expense Funds: Contribution Limits and Residual Recall Funds” as a formal campaign finance opinion of the Board. Moved by Judge Cane, seconded by Judge Myse. Motion carried unanimously.

Discussion.

The Board recessed for lunch at approximately 12:15 p.m. and reconvened at approximately 12:30 p.m.

Discussion.

MOTION: Affirm staff’s written ethics and use of government resources guidance found in the February 24, 2011 memorandum from Kevin J. Kennedy titled “Frequently Asked Questions: Recalls-Ethics/Use of Government Resources,” with clarification about activities on government time and property. Moved by Judge Cane, seconded by Judge Nichol. Motion carried unanimously.

H. Legislative Status Report

Staff Counsel Mike Haas provided an oral and written report. Staff has been responding to several legislative initiatives, including voter photo ID, which has generated many comments and e-mails from clerks. He said the date for the Partisan Primary and other issues may also be included in a larger election administration bill.

Discussion.

MOTION: That the Government Accountability Board go on record as supporting continuation of Election Day Registration in Wisconsin. Moved by Judge Deininger, seconded by Judge Brennan. Motion carried unanimously.

I. Administrative Rules

a. GAB 1.28 Relating to Scope of Campaign Finance Regulation

A written report from Staff Counsel Shane Falk was included in the Board packet. Staff Counsel Michael Haas made an oral presentation. On December 22, 2010, the Board adopted an Emergency Rule Order bringing ch. GAB §1.28 into conformity with a stipulation in *Club for Growth, Inc. v. Myse*, No. 10-CV-427, and with the representations that have been made to the Wisconsin Supreme Court, that the Board would not enforce the second sentence of GAB §1.28(3)(b). Staff now recommends that the Board authorize requesting two 60-day extensions of the emergency rule ch. §1.28(3)(b).

Discussion.

MOTION: Pursuant to §227.24(2), Wis. Stats., direct staff to request all permitted extensions of Emergency Rule ch. GAB §1.28(3)(b).

MOTION: Pursuant to §§5.05(1)(f), 227.11(2)(a), and 227.135, Wis. Stats., the Board approves the Statement of Scope found in the Board packet for the amendment of ch. GAB §1.28(3)(b), Wis. Admin. Code.

MOTION: The Board approves the Notice of Proposed Order Adopting Rule and Notice of Hearing Amending ch. GAB §1.28(3)(b).

MOTION: The Board directs staff to proceed with promulgation of rule ch. GAB §1.28(3)(b), subject to any new rule-making requirements that may be imposed by enactment of AB 8 (January 2011 Special Session).

All motions moved by Judge Nichol, seconded by Judge Cane. Discussion. Motions carried unanimously.

b. Status Report on Pending Administrative Rules

Staff Counsel Michael Haas discussed changes in administrative rulemaking proposed by the Governor, as well as other pending administrative rules.

J. Director's Report

Elections Division Report – election administration

A written report from Nathaniel E. Robinson was included in the Board packet. Mr. Robinson gave an oral presentation, and discussed staff preparations for the elections on February 15, April 5 and May 3, Four-Year Voter Record Maintenance, and the enhanced

online voter registration program. He noted the work of Lead Elections Specialist Diane Lowe in designing ballots for the special elections.

Ms. Lowe gave an oral presentation regarding the electronic canvass system. SVRS User Acceptance Testing Lead Ann Oberle gave an oral presentation regarding the Four-Year Voter Record Maintenance. SVRS Functional Team Lead Sarah Whitt gave an oral presentation regarding the online-assisted voter registration program.

The Board discussed Paul Malischke's suggestion that the online voter registration program be usable for persons who have a Social Security number, but not a driver license or state identification card. Consensus of the Board was not to limit the online-assisted voter registration program to persons with a driver license or state ID. Kevin Kennedy said staff would come back to the Board at its May meeting with a proposal.

Ethics and Accountability Division Report – campaign finance ethics, and lobbying administration

A written report from Ethics and Accountability Division Administrator Jonathan Becker was included in the Board packet. Mr. Becker presented an oral report. He discussed the yeoman's work the Ethics and Accountability Division staff has been doing while short-staffed. He also discussed the status of the January 2011 Continuing Reports, lobbying registrations, and the proposal to abolish matching funds for Supreme Court candidates in the Governor's budget.

Discussion.

Judge Myse asked about a recent critical report by a public interest group regarding the state's financial transparency and the Contract Sunshine website. Public Information Officer Reid Magney said that the report covered the state's entire transparency efforts, not just Contract Sunshine.

Office of Director and General Counsel Report – general administration

A written report from Kevin J. Kennedy, Sharrie Hauge and Reid Magney was included in the Board packet. Mr. Kennedy further discussed Contract Sunshine, and noted that the G.A.B. has improved the program significantly, and that there is now a high level of compliance by state agencies. Ms. Hauge noted that the Legislature gave the Board \$11,000 for the program, and the Board is spending more than that on Contract Sunshine.

Mr. Kennedy also noted that the Governor's proposed budget did not include making 20 of the Board's 26 project positions permanent. The Government Accountability Candidate Committee is scheduled to review applicants for the vacant Board seat on April 5, 2011.

Discussion.

K. 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, confer with counsel concerning pending litigation, and consider performance evaluation data of a public employee over whom the Board exercises responsibility.

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 Brennan, seconded by Judge Barland.

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

Motion carried.

Hearing no objection, Chairperson Barland called a recess at 3:08 p.m. The Board reconvened in closed session beginning at 3:15 p.m.

Summary of Significant Actions Taken in Closed Session:

- A. Investigations and Enforcement: Eighteen pending matters considered; 12 matters closed, one matter dismissed, no investigations authorized, one lawsuit authorized.
- B. Litigation: Six pending matters considered.

The Board recessed at 5:41 p.m., reconvened at 9:02 a.m. Wednesday, March 23, 2011 and returned to closed session, at the Government Accountability Board office. The Board adjourned in closed session at 11:46 a.m.

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The next regular meeting of the Government Accountability Board is scheduled for Tuesday, May 17, 2011, at the G.A.B. offices located at 212 East Washington Avenue, Third Floor, in Madison, Wisconsin beginning at 10 a.m.

March 22, 2011 Government Accountability Board meeting minutes prepared by:

Reid Magney, Public Information Officer

May 4, 2011

March 22, 2011 Government Accountability Board meeting minutes certified by:

Judge Gordon Myse, Board Secretary

May 17, 2011