

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

212 East Washington Avenue
Madison, Wisconsin
March 19, 2014
9:00 a.m.

Open Session Minutes

<u>Summary of Significant Actions Taken</u>	<u>Page</u>
A. Declined to Authorize Further Study of Electronic Poll Books	4
B. Discussed Alternative Campaign Fundraising Approaches	7
C. Adopted Board Per Diem Policy	9

Present: Judge Thomas H. Barland, Judge Harold Froehlich, Judge Elsa Lamelas, Judge Gerald Nichol, and Judge Timothy Vocke (by telephone)

Not Present: Judge Michael Brennan

Staff present: Kevin Kennedy, Jonathan Becker, Michael Haas, Shane Falk, Nathan Judnic, Sharrie Hauge, Ross Hein, David Buerger, Colleen Adams, Reid Magney, Pauline Shoemaker, and Ngozi Agbo

A. Call to Order

Judge Barland called the meeting to order at 9:04 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.

C. Minutes of February 25, 2014 Meeting

MOTION: Approve the minutes of the February 25, 2014 Board Meeting. Moved by Judge Nichol, seconded by Judge Vocke. Motion carried 5-0.

D. Personal Appearance for Public Comment

Karen McKim of Waunakee appeared on behalf of the Wisconsin Grassroots Network Election Integrity Action Team to comment on Agenda Item F regarding post-election audits. In addition to providing written testimony, she told Board Members the group believes that nothing in statutes prevents clerks from conducting voting equipment audits after each election, and that G.A.B. staff's position is counterproductive.

Judge Froehlich entered the meeting at 9:09 a.m.

Judge Lamelas asked Ms. McKim what kinds of audits she had in mind. She replied that many things can be done absent a full hand-recount, but did not offer specifics.

MaryAnn Hanson of Brookfield appeared on her own behalf to discuss Agenda Item E regarding electronic poll books. In addition to providing written testimony, she urged Board Members not to approve e-poll books out of concern for data security and minimal clerk interest in changing. Having one person run the e-poll book at a polling place would take away the two-party check and balance system now in place with two workers using printed poll books.

Judge Froehlich asked Ms. Hanson about electronic signatures. He noted that the Iowa product permits printing and then signing. She said a wet signature should absolutely be required to receive a ballot. She also raised issues about the security of electronic data.

Ardis Cerny of Pewaukee appeared on her own behalf to discuss Agenda Item E regarding electronic poll books. In addition to providing written testimony, she told Board Members that e-poll books are likely in our future, but should be put on the back burner in favor of more pressing issues. She listed a number of other issues she believes need to be addressed before e-poll books. She stated that her vote in an election was nullified by people who should not have voted. She presented the Board with a list of eight names of students who voted in the November 2012 election who she believes are not citizens.

Walt Hadcock of Mequon appeared on his own behalf to discuss Agenda Item E regarding electronic poll books. In addition to providing written testimony, he told Board Members about his professional background in information technology (including building the Tyme software used by banks and service in the Pentagon for 22 years) and his recommendations regarding the process for planning and estimating the cost of a project if the state were to develop its own e-poll book system.

Susan Maguire of Grafton appeared on her own behalf to discuss Agenda Item E regarding electronic poll books. In addition to providing written testimony, she told Board Members she is concerned about the potential loss of bi-partisan checks and balances at the polling place if e-poll books are used which are operated by one

person. She also stated concerns regarding cyber threats and misuse of laptops or tablets, preferring that any equipment would have e-poll book as a dedicated use for security and transparency. She also raised concerns about costs, such as machines, software, maintenance, training, future software upgrades, tech support.

Carol Boettcher of Cedarburg appeared on her own behalf to discuss Agenda Item E regarding electronic poll books. In addition to providing written testimony, she told Board Members she is a Chief Election Inspector in Cedarburg in Ozaukee County, and has concerns about e-poll books having a negative effect on two-party checks and balances and polling place security if the system is set up the night before an election and is not secured.

John Orth of Grafton appeared on his own behalf to discuss Agenda Item E regarding electronic poll books. He told Board Members he has 40 years of experience in the information technology field, and advocated the use of a federal ID card with biometric ID which could be used for electronic voting. He also discussed the need for realistic cost estimates, testing and validation, and the need to use both paper and electronic poll books at the start of any testing.

Mary Jo Walters of Madison appeared on her own behalf to discuss Agenda Item G regarding campaign finance fund-raising methods. She said she is an independent candidate for lieutenant governor and needs to use alternative methods such as crowd-funding to raise money.

Patty Logsdon of Franklin appeared on her own behalf to urge the Board to direct its resources toward proper training of poll workers rather than electronic poll books (Agenda Item E). She urged the Board to avoid complicating the current system with e-poll books. In addition to providing written testimony, she told Board Members she was an election observer who became an election inspector. In the past, she observed that poll workers seemed poorly trained and did not know the rules. She said she was disappointed in the level of training she received from the municipal clerk.

Peter G. Gilbert of Glendale appeared on his own behalf to discuss Agenda Item E regarding electronic poll books and his own experiences as an election observer since 2004. He noted that he saw quite a few inconsistencies, but also some good things too – even in Milwaukee. He described what he believed was a questionable voter registration by a man with a South Carolina driver license, as well as other irregularities.

In addition to speakers who appeared in person, the Board also received written comments from **Luonne Dumak of New Berlin** and **Ginny Graham of Waukesha** in opposition to electronic poll books (Agenda Item E). All written comments received are attached to these minutes.

E. Report on Electronic Poll Books

Elections Division Administrator Michael Haas introduced Elections Specialist David Buerger, who led the team of staff members who produced the report. He thanked the members of the public who appeared to comment on the report, especially those who provided written copies of their remarks.

Mr. Buerger presented an oral and written report, beginning on Page 7 of the March 2014 Board Meeting Materials. He said the majority of the report had already been presented to the Board at its December 2013 meeting, but that today's report contains new recommendations. The use of a single electronic poll book at polling locations is already specifically authorized in statutes, and staff is asking the Board to authorize continued research because the statutes require the Board to approve any system and clerks have requested permission to implement them. Municipal clerks may opt to use them, but they are not required. The staff wants the Board to establish standards to evaluate their approval and for their use. He noted that the Presidential Commission on Election Administration has endorsed the use of electronic poll books because they can be helpful in dealing with long lines on Election Day.

Judge Barland asked about electronic poll book security in light of spectacular breaches of electronic security in the federal government. He asked whether the Board should consider putting them on hold until we can have confidence in their security.

Mr. Buerger said further research on security would be a one of the tasks staff would perform, but also noted that voting equipment is not connected to electronic poll books. Staff requested authorization to continue so it can research what systems are out there and what security they have. He said the Board would need to approve any electronic poll book system before it could be used by a municipality.

Judge Barland asked what would happen in the event of an equipment failure.

Mr. Buerger directed him to Page 26 of the report to the sections on data and power backups. He said staff has not seen a high failure rate in existing systems, but acknowledged that clerks need to be prepared for a failure.

MOTION: Direct staff to solicit and review feedback on the recommendations presented in the report and to further develop procedures, standards and proposed legislative changes related to electronic poll books, and to report to the Board at a future meeting. Moved by Judge Nichol.

MOTION: Direct staff to conduct an analysis of all the costs of developing a custom electronic poll book solution for use in Wisconsin and to not accept applications for approval of any electronic poll book system until the Board has had an opportunity to consider this analysis. The study will include a cost comparison between an agency-developed system versus private sector systems. Moved by Judge Nichol.

Judge Froehlich seconded both motions and asked whether the Board will have a report that details the cost savings for electronic signatures versus hard copies. Mr. Buerger stated that could be included in the analysis.

Judge Lamelas stated she believes things should be kept simple, the current system is not broken, and there are no significant complaints concerning paper poll books. She said she is concerned about electronic security, and noted that there is not buy-in from the Legislature. She acknowledged that the statutes already specifically permit the use of electronic poll books at polling locations. She said the Board has to prioritize what it focuses on in coming years as the agency's funding will be an issue. Judge Lamelas asked the staff for a summary of all statutory duties of the G.A.B., and said the Board has not focused on its required duties yet. She said she could support the second motion to study the costs of a system.

Judge Barland said that the staff cannot analyze the costs of a system until it has explored the other options.

Judge Lamelas said that then she would have to vote against both motions.

Mr. Haas discussed the statutory language in Section 6.79 authorizing the use of electronic poll books, subject to the approval of the Board. He said that means the Legislature has given that directive and requirement to the Board. He agreed with Judge Lamelas that the G.A.B. has competing priorities, but said that staff routinely juggles many assignments, and clerks who wanted the option approached the staff about electronic poll books. Staff has the expertise to research whether that is a good idea, and is asking the Board for further direction and recommendations.

Judge Vocke said he has two issues – cost and the lack of security.

Judge Nichol asked whether those concerns could be addressed with the study. "How can we know if we can get a secure system if we don't study it," he asked. He compared electronic poll books to electronic voting equipment. He said the Board has an obligation to research the issue, and if it doesn't like what it sees, it can decide not to go further.

Judge Vocke said that while Judge Nichol's argument makes sense, he is still concerned about electronic security.

Director Kennedy said the Board has a responsibility to approve electronic poll book systems, but cannot do that without standards. Staff began the study because municipalities were specifically requesting permission to use them. He said the G.A.B. cannot allow a vendor to sell electronic poll books without establishing standards and requirements and obtaining Board approval of any system. He noted that the second motion regarding development of a Wisconsin system was included because other states have come to the conclusion it was more cost-effective to develop

their own systems. Staff recognizes that vendors have already been approaching clerks, and staff wants to give them information to effectively analyze options.

Judge Lamelas said she was not being critical of the staff, but believes the Board should hold off for a few years until more is known about electronic poll books and the agency’s funding is secure. She said the Board has to make sure it is meeting its legislative charges, and noted issues with the felon audit due to staff resources.

Judge Froehlich said Judge Lamelas raises good questions, noting the agency is about to enter into the budgetary process over the next two years with questions about continued federal funding. He asked how much time and effort will go into the study.

Judge Barland observed that four votes are necessary to pass the motions, noting there does not seem to be enough support.

Director Kennedy restated the motions, noting the amendment to explore all costs, including life cycle (replacement), maintenance, and comparisons of the costs and benefits of collecting a wet signature on paper poll books versus collecting an electronic signature.

Roll call vote:	Barland:	Aye	Vocke:	No
	Froehlich:	No	Lamelas:	No
	Nichol:	Aye		

Motion fails, two yes and three no.

Director Kennedy clarified that based on the vote, staff will not be devoting any significant resources to electronic poll book research.

Judge Barland said staff is not to proceed with any intensive efforts.

Director Kennedy said that if any municipality says it wants to adopt electronic poll books, it will be told that the Board determined that they are not a priority and will not be approved for the time being.

F. Report on Recommendations of the Presidential Commission on Election Administration

Elections Division Administrator Haas made an oral presentation based on a staff report starting on Page 187 of the March Meeting Materials. President Obama appointed the Presidential Commission on Election Administration after the 2012 election brought to light problems with long lines at polling places and other issues. Director Kennedy met with the Commission’s co-chairs and testified before the Commission, which singled out Wisconsin for kudos in its final report. The Commission made 19 recommendations, and the staff report details which seven of the recommendations have already been implemented in Wisconsin, which six would

require legislative changes, and which three could be done administratively. One of the three is electronic poll books, but that has been put on hold. Lead Elections Specialist Diane Lowe is looking at improving ballot usability. The third, which involves allocation of election resources, is something staff is looking at testing with a small group of clerks at the August Partisan Primary.

Judge Barland asked about the recommendation at the top of Page 195 regarding military voters. Mr. Haas said that refers to improving the usability of the MyVote Wisconsin website.

Judge Lamelas asked about a recommendation regarding audits of voting equipment on Page 195, and whether it would require a legislative change.

Director Kennedy discussed hand-count audits. There have been suggestions that before ballots are sealed at the end of the night they should be recounted by hand. The G.A.B. staff's position has been that since the machine has already tabulated the ballots, poll workers may not re-tabulate them. He said there are other ways to check the accuracy of voting equipment. He said there is authority to re-tabulate during the post-election canvass, if errors are discovered during the canvass. Mr. Haas said that in Section 7.08, the Legislature has directed the Board to conduct a voting equipment audit after each general election.

Judge Lamelas said the Commission is recommending an audit for every election, and we are doing it every few years. Director Kennedy said some states allow random audits before the canvass is certified. He noted that after the deadline for a recount, some groups have done their own "citizen audits" by hand-recounting ballots.

Elections Supervisor Ross Hein discussed the number of audits the Board does for each voting system. He said the presidential commission did not specify which data format should be used for audits. Mr. Hein said the G.A.B. does hand-count audits. There are other methods including scanning ballots and reading them using optical character recognition software, which is different than having the voting equipment read the ballots.

Director Kennedy said no Board action is required. The Legislative Reference Bureau is anticipating that legislators may want to draft legislation based on the presidential commission report, and has met with G.A.B. staff to review the report.

G. Report on Alternative Campaign Funding Sources

Campaign Finance Auditor / Ethics Specialist Colleen Adams made an oral presentation based on a written report beginning on Page 197 of the March Meeting Materials. She said the Ethics Division staff has been receiving requests from candidates and committees regarding use of alternative campaign funding sources such as text messaging, crowd-funding and Bitcoin currency. Staff has done research on these issues and believes these questions should be evaluated by the Board.

Judge Barland asked why the Board should be concerned. Ms. Adams said that if someone donates via text message, the donor may not be billed for 30 days and statutes require transfer of funds within 15 days.

Ethics Division Administrator Jonathan Becker said statutes allow donations by cash, check, credit card, or electronic funds transfer. Staff is concerned whether the Board considers text messaging part and parcel of credit card or electronic funds transfer. Ms. Adams said some committees considering using alternative sources did not realize the finer details of campaign finance law regarding agents or obtaining contributor information.

Judge Lamelas said it seems the staff is recommending electronic fundraising as long as there is compliance with existing statutes, and that they have not found any problems except with bitcoin.

Judge Barland asked what action the staff wants from the Board. Mr. Becker said staff is asking that the Board concur that statutes permit the use of campaign fundraising via text messaging and crowd-funding as long as the statutes are followed and required contributor information is obtained.

Judge Froehlich asked what could be done to prevent candidates from sending out mass text messages seeking contributions. Ms. Adams said the Federal Communications Commission prohibits text blasts without permission of the person receiving the message. She said most committees will not be using text message fundraising because of the high startup costs.

Judge Barland asked why the Board would get involved as long as committees are reporting the information that is required. Ms. Adams said a committee asked staff if a cell phone bill was a negotiable instrument under campaign finance law. Mr. Becker said staff wanted to defer to the Board.

Judge Lamelas said bitcoin is not worth spending any time on because people who are interested in it want to avoid regulation and taxation. She noted that bitcoins can change in value much like stock.

Mr. Becker said there is one legal twist with bitcoin: whether it is like an in-kind donation of a gift card, in that bitcoins are only accepted by some merchants. Judge Lamelas said the difference is that bitcoins change value, and are not like the set value of a gift card.

Judge Nichol said he has concerns with crowd-funding, based on reports he has heard about fraudulent crowd-funding. Ms. Adams said most crowd-funding companies prohibit political fund-raising, and the Federal Election Commission says it is up to the vendor to decide whether to allow it.

Judge Barland said he has not heard one of the Board members make a motion.

Mr. Becker said that absent a motion, if anyone asks about bitcoin the staff will say it is not permitted. If anyone wants to use text messaging, staff will say that is permitted, but the committee should make sure statutes are complied with and donor information is obtained that is required for reporting. Similarly, if anyone wants to use crowd-funding, staff will say that it is permitted, but the candidate or committee must be registered with the Board, comply with statutes, and obtain the required donor information.

H. Discussion of Board Member Per Diem Policy

Director Kennedy noted that a report from a Board subcommittee consisting of Judge Vocke and Judge Lamelas begins on Page 211 of the March Meeting Materials.

Judge Lamelas said she and Judge Vocke developed the policy for when Board Members qualify to receive a per diem payment based on a proposal from Judge Froehlich.

Judge Froehlich said the only concern he has with the proposed policy is the ability of a Board majority to waive a Board member's personal right to a per diem payment. Judge Lamelas said she has the right to waive her per diem, but the Board doesn't have the right to waive it for her.

Judge Nichol said that in the past when the Board has waived per diems, the members have been on the same page, but that doing it individually is OK.

Judge Lamelas suggested removing the last paragraph on Page 212, which states: "The Board may waive entirely or in part its statutory per diem payment, after considering such factors as the length of the meeting, preparation time required, and whether a per diem was approved for preparation time." She indicated that this then leaves the individual waiver as an option of each Board member.

Director Kennedy clarified that preparation for meetings could be a full or partial per diem.

Judge Lamelas said the amount of time spent in preparation for Board meetings is substantial. If there is a per diem for time preparing for a meeting, it should be a result of a motion adopted by the Board.

Judge Froehlich said there has to be some authority to approve this new concept of payment for preparation, and the Board has to be the final authority.

Director Kennedy said that if a Board Member thinks a per diem is necessary, he or she can make a motion at the meeting. He said staff has verified that Board Members can be paid a partial per diem.

MOTION: Accept the draft per diem policy with the last paragraph removed. Moved by Judge Froehlich, seconded by Judge Lamelas. Motion carried unanimously.

I. Legislative Status Report

Director Kennedy noted that of the 18 bills affecting the Board, 13 have passed and five are pending in the Assembly. Once all bills have passed, staff will develop a summary of the changes.

Discussion regarding when staff takes a position on legislation.

Judge Froehlich said the Legislative Status Report is great, but he would like to know who has authored the bills. Director Kennedy said that because some bills have many authors, staff will report on who is the main author of a bill. Judge Barland said the Board does not need a detailed legislative history.

J. Director's Report

Director Kennedy noted that the report on Page 270 of the March Meeting Materials discusses the deadline for applications for prospective Board Members, which is March 31. The Government Accountability Candidate Committee is scheduled to meet on April 8 to review applicants and make recommendations to the Governor. He said Judge Brennan has applied for another term, and that Judge Wright from Marquette County has also applied.

Judge Nichol asked whether there is any news about Senate confirmation hearings. Director Kennedy said he has heard nothing.

Judge Froehlich asked why the Board is involved in Twitter. Director Kennedy said there is a whole generation of voters and customers who look to social media services such as Twitter for news, and they prefer to get news from Twitter rather than visiting the Board's website. Mr. Haas said the Board has an elections specialist who focuses on voter outreach who manages the Twitter account as part of her duties. Staff Counsel Shane Falk noted that the voter outreach position is required by 2011 Wisconsin Act 23.

Judge Barland noted that the May Board Meeting mentioned on Page 271 of the March Meeting Materials is not a teleconference meeting. Director Kennedy said the Board may have a teleconference meeting in April to consider closed session matters.

Judge Lamelas thanked members of the public for their comments. Director Kennedy noted that MaryAnn Hanson had inquired prior to the meeting about how to send comments to Board Members. Staff advised her that the meeting materials packet

goes out the second Friday before the meeting, and if staff receives public comments after that we will forward them to the Board via email.

Judge Barland commented that it is a good practice for members of the public to submit written remarks in addition to their oral testimony, and that he absorbs more information that way.

K. Closed Session

Adjourn to closed session as required by statutes to deliberate on requests for advice under the Code of Ethics for Public Officials and Employees, lobbying law, and campaign finance law; to consider the investigation of possible violations of Wisconsin’s lobbying law, campaign finance law, and Code of Ethics for Public Officials and Employees; to confer with counsel concerning pending litigation; and to consider performance evaluation data of a public employee over which it 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 deliberate on requests for advice under the Code of Ethics for Public Officials and Employees, lobbying law, and campaign finance law; to consider 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 to consider employment, promotion and performance evaluation data of a public employee of the Board. Moved by Judge Nichol, seconded by Judge Lamelas.

Roll call vote: Barland:	Aye	Vocke:	Aye
Froehlich:	Aye	Lamelas:	Aye
Nichol:	Aye		

Motion carried unanimously. The Board recessed for lunch at 11:54 a.m. and convened in closed session at 1:00 p.m.

L. Adjourn

The Board adjourned in closed session at 4:01 p.m.

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The next meeting of the Government Accountability Board is scheduled for Wednesday, May 21, 2014, at the G.A.B. office, 212 E. Washington Ave., in Madison, Wisconsin at 9:00 a.m.

March 19, 2014 Government Accountability Board meeting minutes prepared by:

Reid Magney, Public Information Officer

March 24, 2014

March 19, 2014 Government Accountability Board meeting minutes certified by:

Judge Michael Brennan, Board Secretary

May 21, 2014

DRAFT

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JUDGE THOMAS H. BARLAND
Chair

KEVIN J. KENNEDY
Director and General Counsel

MEMORANDUM

DATE: For the April 17, 2014 Board Meeting

TO: Government Accountability Board Members

FROM: Kevin J. Kennedy
Director and General Counsel

Prepared and Presented by:
Michael Haas
Elections Division Administrator

SUBJECT: Nomination Paper Sufficiency Standards

Candidates for partisan office at the 2014 General Election may circulate nomination papers from April 15, 2014 until 5 p.m. on June 2, 2014. Given that the statutory filing deadline of June 1st falls on a Sunday, the deadline for circulating and filing nomination papers is extended to the following business day. Board staff requests the Board's guidance to resolve two issues which have recently arisen regarding the sufficiency of nomination papers, namely the standards for evaluating the legibility of printed names and the requirement for a proper circulator certification on the nomination papers. G.A.B. staff has issued the attached guidance and is seeking the Board's approval at this time in order to reduce uncertainty amongst clerks and candidates regarding potential challenges to nomination paper signatures.

I. Legibility of Printed Names

2013 Wisconsin Act 160 became effective March 29, 2014, establishing a requirement that all nomination papers include the printed name of the signer. A copy of Act 160 is attached, and the relevant language states that "In addition to his or her signature, in order for the signature to be valid, each signer of a nomination paper shall legibly print his or her name in a space provided next to his or her signature. . . ." The requirement is incorporated into the statutory provisions related to partisan, nonpartisan, and independent candidates, and similar language is inserted into Wis. Stat. §8.40 related to election petitions, such as recall or referendum petitions.

To address questions related to this requirement and to articulate a standard for reviewing the legibility of printed names, G.A.B. staff has posted the attached guidance on the agency website and distributed it to candidates and the legislative campaign committees. Evaluating the legibility of any writing is necessarily subjective and depends in part upon the individual reviewing the nomination papers. However, the attached guidance is

adopted from the standards used during the G.A.B.'s review of recall petitions in 2011 and 2012. The legibility of address information on nomination papers became a topic of significant debate and discussion at that time. Given the individualized nature of handwriting and printing, the attached guidance advises that if the filing officer can discern no part of the printed name, it should be deemed illegible and the signature should not be counted. Also, if the filing officer can discern a possible name, but may not be certain of the exact spelling of the name, the printed name is deemed legible and the signature may be counted if otherwise valid.

A second issue related to Act 160 is whether the printed name must be made by the signer or can be filled in by another person. In applying the statutes and administrative rules, the Board and staff has previously required that the individual signing a nomination paper must be the one to make the signature, but that other information such as the street address and date of signing could be completed by the circulator as well as the signer.

Chapter GAB 2, Wis. Adm. Code, more specifically governs the review of nomination papers and other election-related petitions. Section GAB 2.05(8) states that:

An elector shall sign his or her own name unless unable to do so because of physical disability. An elector unable to sign because of physical disability shall be present when another person signs on behalf of the disabled elector and shall specifically authorize the signing.

Act 160 did not repeal this section of the Administrative Code, and therefore it is the opinion of G.A.B. staff that the same logic applies to the signer's printed name, specifically that a signer must also legibly print his or her name unless unable to do so because of physical disability. The option to obtain assistance includes for the purpose of ensuring that the printed name is legible. Absent a physical disability that prevents an individual from legibly printing their name, the signer must print their own name.

II. Circulator Certification

Since 2006, Wisconsin Statutes have not required that circulators of nomination papers or other election-related petitions be residents of the State of Wisconsin, provided that they otherwise would be qualified electors of the State if they were residents. This statutory change was made by 2005 Wisconsin Act 451 to reflect a federal court ruling in *Frami v. Ponto*, 255 F. Supp. 2d 962 (2003). An attorney for a candidate recently pointed out to Board staff that the sample nomination paper form posted on the agency website did not contain language in the circulator's certification that was required by 2005 Wisconsin Act 451.

G.A.B. staff has revised the circulator's certification on its sample nomination paper forms that are posted on the website, and has advised candidates to include the updated language when reviewing nomination paper forms submitted by candidates. However, given that many candidates have already sought and received approval of their nomination paper forms from both the G.A.B. and local filing officers, it is the opinion of Board staff that signatures that are otherwise valid should not be struck because a

nomination paper does not contain the updated certification language. Any challenges to the certification of a circulator should be based upon the facts of whether the circulator is either a qualified elector of Wisconsin or would be a qualified elector of Wisconsin if they were a resident of the State.

III. Recommended Motions

Board staff recommends that the Board adopt the following motions:

1. The Board adopts the above analysis regarding the standards for evaluating the legibility of printed names on nomination papers and other election-related petitions and approves the attached guidance issued by Board staff related to that topic.
2. The Board adopts the above analysis regarding the required language in the certification of circulators of nomination papers and other election-related petitions and approves the attached guidance issued by Board staff related to that topic.

State of Wisconsin



2013 Assembly Bill 420

Date of enactment: **March 27, 2014**

Date of publication*: **March 28, 2014**

2013 WISCONSIN ACT 160

AN ACT to amend 8.10 (4) (b), 8.15 (2), 8.20 (5) and 8.40 (1) of the statutes; relating to: providing a printed name for signers of nomination papers and petitions.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 8.10 (4) (b) of the statutes is amended to read:

8.10 (4) (b) Only one signature per person for the same office is valid. In addition to his or her signature, in order for the signature to be valid, each signer of a nomination paper shall legibly print his or her name in a space provided next to his or her signature and shall list his or her municipality of residence for voting purposes, the street and number, if any, on which the signer resides, and the date of signing.

SECTION 2. 8.15 (2) of the statutes is amended to read:

8.15 (2) Only one signature per person for the same office is valid. In addition to his or her signature, in order for the signature to be valid, each signer of a nomination paper shall legibly print his or her name in a space provided next to his or her signature and shall list his or her municipality of residence for voting purposes, the street and number, if any, on which the signer resides, and the date of signing.

SECTION 3. 8.20 (5) of the statutes is amended to read:

8.20 (5) Only one signature per person for the same office is valid. In addition to his or her signature, in order for the signature to be valid, each signer shall legibly

print his or her name in a space provided next to his or her signature and shall list his or her municipality of residence for voting purposes, the street and number, if any, on which the signer resides, and the date of signing. Signers of each nomination paper shall reside in the same jurisdiction or district which the candidate named therein will represent, if elected.

SECTION 4. 8.40 (1) of the statutes is amended to read:

8.40 (1) In addition to any other requirements provided by law, each separate sheet of each petition for an election, including a referendum, shall have on the face at the top in boldface print the word "PETITION". Each signer of such a petition shall affix his or her signature to the petition, accompanied by his or her municipality of residence for voting purposes, the street and number, if any, on which the signer resides, and the date of signing. In addition, each signer shall legibly print his or her name in a space provided next to his or her signature. No signature is valid under this subsection unless the signer satisfies the requirements under this subsection.

SECTION 5. Initial applicability.

(1) This act first applies to nomination papers and petitions for which the initial circulation date is on or after the effective date of this subsection.

SECTION 5m. Effective date.

(1m) This act takes effect on January 8, 2014, or the day after publication, whichever is later.

* Section 991.11, WISCONSIN STATUTES: Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication."

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KEVIN J. KENNEDY
Director and General Counsel

MEMORANDUM

DATE: April 10, 2014

TO: Wisconsin County Clerks
Wisconsin Municipal Clerks
Milwaukee County Election Commission
City of Milwaukee Election Commission

FROM: Michael Haas
Elections Division Administrator

David Buerger
Elections Specialist

SUBJECT: Nomination Paper Standards and Review

Background

2013 Wisconsin Act 160, formerly Assembly Bill 420, has been signed into law and is now effective for all petitions and nomination papers whose initial circulation date is on or after March 29, 2014. Act 160 requires all nomination papers and other petitions to contain a space for the signer to legibly print his or her name. In order for a signature to be considered valid, the signer must legibly print his or her name in addition to the other requirements of Wisconsin law.

This new law required the addition of a new column to the standard nomination paper and petition templates (GAB-166 to GAB-174). As these forms required updating, Board staff also took the opportunity to update them to reflect existing case law as it pertains to the qualifications of circulators and the circulator's certification. Please note that the changes to these GAB forms are significant and filing officers should cease distributing the old forms immediately and advise any candidates seeking review of nomination paper forms of the changes. As explained below, however, G.A.B. staff is recommending that signatures should not be struck as invalid on nomination papers that do not contain the updated circulator certification language, given that the new nomination paper form was only recently posted to the G.A.B. website, after many candidates may have already received approval of their nomination paper forms.

As new information is now required on nomination papers and other election-related petitions, the process for reviewing these documents must also be changed to ensure that candidates and petitioners are submitting sufficient signatures. This memorandum provides guidance on how to evaluate the legibility of printed names, as well as responding to questions or potential

challenges related to a circulator's qualifications or certification. G.A.B. staff is issuing this guidance now because the circulation period begins April 15, 2014 for candidates for the fall elections, and staff will seek formal approval of this guidance at the Board's teleconference on April 17, 2014.

I. Printed Name Requirement

A. Standard of Review

Wisconsin Administrative Code GAB 2.05(3) requires a "facial" review of nomination papers and petitions by the filing officer. This means that the filing officer is only required to review the information presented on the face of the petition, without further investigation into the information provided. GAB 2.05(4) provides a presumption of validity to any information which appears on a nomination paper. GAB 2.05(5) also provides that where any required item of information is incomplete, the filing officer shall accept the information as complete if there has been "substantial compliance" with the law.

Articulating an exact standard for legibility is a challenging process given that determining the legibility of information inherently requires subjective judgments which may vary from person to person depending on their ability to decipher handwriting or printing with varying degrees of clarity. What is considered "legible" to one filing officer may not be "legible" to another. Given that inherent difficulty, the G.A.B. is attempting to ensure that election officials are comfortable applying this standard and that it is implemented uniformly.

The central issue is when does a printed name become so illegible that a review should determine that there is no legible printed name, and that therefore the presumption of validity is overcome and the signature is not counted. Based on reviewing and discussing numerous examples during the G.A.B. staff's review of nomination papers, as well as our experience with reviewing recall petitions in 2011 and 2012, Board staff believes the standard for reviewing the legibility of printed names can best be stated as follows:

1. If the filing officer can discern no part of the printed name, it should be deemed illegible and the signature should not be counted.
2. If the filing officer can discern a possible name, but may not be certain of the exact spelling of the name, the printed name is deemed legible and the signature may be counted if otherwise valid.
3. The filing officer is not required to consult extrinsic sources of information (voter registration records, telephone directories, etc.), but may do so if it assists the filing officer in discerning a possible name.

The above standards are intended to preserve the presumption of validity for the information contained on the petition, but also ensure that invalid signatures are not counted when there is absolutely no readable information to determine the name of the signer. This standard for legibility requires more than an unintelligible mark, but also provides filing officers with the flexibility to find a printed name to be legible even when 100% of the letters in that name cannot be determined.

The review standards described in this memorandum will govern only the filing officer's review. If signatures are subsequently challenged based on the legibility of the printed name, then the filing officer must consider all the evidence presented by both parties, and reject signatures where the challenger has met their burden of providing clear and convincing evidence that overcomes the presumption of validity. Wis. Admin. Code GAB 2.07(4).

B. Corrections by Affidavit

Wis. Admin. Code GAB 2.05(4) provides for correction of any errors in information contained on the petition, committed by either the signer or the circulator, upon an affidavit of the circulator, the candidate, or the person who signed the petition. The person giving the correcting affidavit shall have personal knowledge of the correct information.

Where a filing officer has determined that a printed name is illegible, the candidate should be afforded the opportunity to file correcting affidavits to provide legibly printed names which must be printed by the signer, unless assistance is provided as described below. Any correcting affidavits should be filed with the filing officer no later than three calendar days after the applicable due date for the petition.

C. Assisting Electors

Eligible electors may not always be physically capable of independently signing a petition or legibly printing their name or other information on the petition page. To facilitate access to the petitioning process, and pursuant to Section GAB 2.05(8), Board staff has determined that an elector who is unable to sign because of a physical disability may request and receive assistance in signing a nomination paper or petition. In the opinion of G.A.B. staff, the option of receiving such assistance extends to the ability to provide a legible printed name.

However, like the right to vote, the right to support a candidate or petition the government is not a transferrable right. As such the elector must be physically present where the petition is being signed and must affirmatively direct the assistant to sign on their behalf. The requirement that the elector be present and direct someone to complete the action applies to legibly printing the elector's name as well as signing the elector's name. Powers of attorney and guardians may assist a principal or ward, but may not independently sign or print a name on a nomination paper or petition on their behalf. Circulators may assist electors in signing or printing a name, but again, this assistance may only be provided at the affirmative direction of the elector. Circulators are encouraged to find a third party to serve as the assistant where possible to avoid the appearance of impropriety.

In applying the statutes and administrative rules, the Board and staff has previously required that the individual signing a nomination paper must be the one to make the signature, but that other information such as the street address and date of signing could be completed by the circulator as well as the signer.

II. Certification of Circulator

It has recently come to the attention of G.A.B. staff that the language in the Circulator Certification at the bottom of the Board's sample nomination paper form does not mirror the language required in the Statutes. The circulator's certification was missing a statement regarding the circulator's residency. The statutory certification language states that the circulator is a qualified elector of Wisconsin, or if not a qualified elector of Wisconsin, the circulator is a U.S. citizen age 18 or older who, if he or she were a resident of the state, would not be disqualified from voting for other reasons such as a felony conviction or incapacity. This language was required by a federal court decision holding that non-residents may circulate election petitions if they would otherwise be qualified to vote in Wisconsin. *Frami v. Ponto*, 255 F. Supp. 2d 962 (2003). 2005 Wisconsin Act 451 subsequently removed the residency requirement for circulators, resulting in new certification language.

G.A.B. staff recently posted new sample nomination paper forms on the agency website to include the updated circulator certification language, and has advised candidates to incorporate the language into their nomination papers. Local filing officers should also encourage candidates to use the revised form. However, given that many candidates have already sought and received approval of their nomination paper forms from both the G.A.B. and local filing officers, it is the opinion of Board staff that signatures that are otherwise valid should not be struck because a nomination paper does not contain the updated certification language. Any challenges to the certification of a circulator should be based upon the facts of whether the circulator is either a qualified elector of Wisconsin or would be a qualified elector of Wisconsin if they were a resident of the State.

Please note that the guidance contained in this memorandum reflects the consensus of G.A.B. staff. The Government Accountability Board will review this memorandum at its teleconference meeting of April 17, 2014, and will be asked to approve the staff's guidance. Any questions regarding this information may be directed to the G.A.B. Help Desk at **GAB@wi.gov** or (608) 261-2028.

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JUDGE THOMAS H. BARLAND
Chair

KEVIN J. KENNEDY
Director and General Counsel

MEMORANDUM

DATE: April 10, 2014

TO: Government Accountability Board Members
Wisconsin Municipal Clerks
Wisconsin County Clerks
City of Milwaukee Election Commission
Milwaukee County Election Commission

FROM: Kevin J. Kennedy
Director and General Council

PREPARED BY: Brian M. Bell, MPA
Elections and Ethics Specialist

SUBJECT: 2013-2014 Enacted Legislation Relevant to the G.A.B.

Following is a summary of the bills enacted by the State Legislature and signed into law by the Governor during the 2013-2014 legislative session related to elections, campaign finance, lobbying, and public records laws. These enacted laws represent the bills that G.A.B. staff monitored, and may not represent an exhaustive list of enacted laws that affect the responsibilities of the Board, G.A.B. staff, municipal and county clerks, or other election officials. The last item is a bill that has not yet been signed by the Governor but that staff has been monitoring and has no reason to believe will be vetoed.

While many bills are introduced by several co-authors and co-sponsors, this summary includes only the first author listed as introducing the bill. All of the laws listed below are effective on the day after the publication date, unless otherwise specified.

1. Assembly Joint Resolution 2: creation of a department of transportation, creation of a transportation fund, and deposit of funds into the transportation fund (second consideration). Introduced by Representative Ripp.

- The adoption of this joint resolution will require a statewide referendum.
- The referendum will occur with the November 4, 2014 General Election.

2. *Assembly Bill 24 (2013 Wisconsin Act 176): the method of recounting votes cast with automatic tabulating equipment. Introduced by Representative Thiesfeldt.*

- Boards of Canvassers may decide to conduct the recount of selected wards or election districts by hand or by automatic tabulating equipment, unless a court order specifies the recount method.

3. *Assembly Bill 89 (2013 Wisconsin Act 155): the method of reporting election returns by municipalities. Introduced by Representative Bernier.*

- Municipalities of 35,000 or more may combine election returns of a ward with an adjacent ward if:
 - the ward has a population of 20 or less
 - and the total population of the combined wards would not exceed that municipality's population range for wards.

4. *Assembly Bill 202 (2013 Wisconsin Act 177): certification of election observers. Introduced by Representative Pridemore.*

- Clerks and chief inspectors must designate observer areas at each polling place.
- There must be an observer area between three and eight feet of the table at which electors state their name and address to receive a voter number.
- There must be an observer area between three and eight feet of the registration table.
- Observers must print their name, sign, and date a log for that polling place.

5. *Assembly Bill 396 (2013 Wisconsin Act 159): absentee voting at residential care facilities. Introduced by Representative Bernier.*

- Clerks shall send two Special Voting Deputies (SVDs) to each community-based residential care facility, adult family home, and residential care apartment complex located in the municipality to conduct in-person absentee voting for occupants upon application by one or more qualified electors who are occupants of the facility, home, or complex, and there are at least five registered electors who are occupants.
- Clerks must post a notice of the visit at least five working days in advance.
- Clerks must also provide the public notice to a local news medium and to those news media who have filed a written request to receive such notices, at least five working days in advance.
- Municipalities that maintain a website must also post the notice online.
- SVDs must deliver ballot bags or containers of voted absentee ballots to the municipal clerk as soon as possible after visiting the facility and not later than 18 hours after the visit.

- When a retirement home not served by SVDs is on the same grounds as a facility that is, the clerk must obtain the names and addresses of the retirement home occupants and provide these names and addresses to the SVDs to verify which residents are eligible to cast their ballots with the SVDs.
- This law first applies to elections held after May 1, 2014.

6. *Assembly Bill 419 (2013 Wisconsin Act 178): counting votes for write-in candidates. Introduced by Representative Bernier.*

- Generally, election officials will count write-in votes only if there are no candidates certified to appear on the ballot.
- If there are certified candidates, election officials will only count write-ins for registered write-in candidates.
- Election officials shall count all write-in votes if a certified candidate dies or withdraws before the election (no process exists to withdraw except for death).

7. *Assembly Bill 420 (2013 Wisconsin Act 160): providing a printed name for signers of nomination papers and petitions. Introduced by Representative J. Ott.*

- Nomination papers or petitions must now include the signer's legible printed name next to their signature.
- The law first applies to nomination papers for which the initial circulation date is on or after the date of publication.

8. *Assembly Bill 565 (2013 Wisconsin Act 169): repealing the schedule of elections. Introduced by the Law Revision Committee.*

- This bill removes the schedule of election-related occurrences from the statutes.
- The Government Accountability Board will continue to provide a calendar of election-related events to the public.

9. *Assembly Bill 567 (2013 Wisconsin Act 171): access to public records (suggested as remedial legislation by the Legislative Reference Bureau). Introduced by the Law Revision Committee.*

- The law modifies the definition of a record to include electronically stored records.
- The law applies to every elective official who is a custodian of records, and defines elective official as an individual who holds an office regularly filled by a vote of the people.
- An individual may have access to records that contain their own personally identifiable information or that of someone they have authorization to act on behalf of to cover the exercise of a durable power of attorney.
- The law substitutes the term *copying* for *photocopying* to reflect other means of providing a copy of a record.

10. Assembly Bill 606 (2013 Wisconsin Act 174): the number of nomination paper signatures required for citywide offices in second class and third class cities. Introduced by Representative Thiesfeldt.

- The number of nomination paper signatures required for a candidate for a citywide aldermanic district in second and third class cities is now not less than 100 nor more than 200 electors.
- The signature requirement for all other citywide offices in second and third class cities remains at not less than 200 nor more than 400 electors.

11. Senate Bill 20 (2013 Wisconsin Act 147): residency of election officials. Introduced by Senator Lazich.

- Election inspectors serving at a polling place must be an elector of the county where the person serves.
- Chief inspectors must still be a qualified elector of the municipality.
- High school students must continue to meet the previous requirements.
- If the political parties do not submit a list of nominees, election inspectors from within the municipality shall have priority.
- The political parties may submit the list of nominees in any of three ways:
 - to the mayor, president, or chairperson of a municipality (previous law)
 - to the clerk or the clerk's agent
 - or they may deliver or mail the list to the office of the municipality.
- The clerk must then forward the list to the mayor, president, or chairperson of the municipality.
- County party chairpersons may submit lists of election inspector nominees within the City of Milwaukee.
- The county party chairperson shall sign the lists of nominees for the appointment of election inspectors.

12. Senate Bill 262 (2013 Wisconsin Act 179): labeling of duplicate ballots. Introduced by Senator Lazich.

- Election officials shall uniformly identify and number duplicate ballots in the portion of the ballot for official endorsement, in the manner prescribed by the G.A.B.

13. Senate Bill 264 (2013 Wisconsin Act 180): securing the ballot container. Introduced by Senator Lazich.

- Only the chief inspector and one other inspector, whose party affiliation is different from the chief inspector's party affiliation, if available, may secure the ballot container.

14. Senate Bill 265 (2013 Wisconsin Act 181): party representation for election officials serving at polling places. Introduced by Senator Lazich.

- Whenever two or more inspectors are required to perform a function within a polling place and both parties that are entitled to submit nominees have done so, the chief inspector must assign, insofar as practicable, an equal number of inspectors from the nominees of each party.
- The law does not specify how chief inspectors shall assign responsibilities when only one party or no party submits a list of nominees.
- The person who submits a list of election inspector nominees shall certify on that list that they contacted each nominee, and that each nominee agreed to serve as an election official.

15. Senate Bill 267 (2013 Wisconsin Act 182): recording the type of identifying document provided by an elector as proof of residence. Introduced by Senator Lazich.

- Election officials shall record the type of proof of residence document, the entity or institution that issued the document, and a number that applies to the individual, if such a number exists.
- Election officials shall record the last four digits of the number if the full number contains more than six digits, or the last two digits if the full number is six or fewer digits.
- The requirement to record the identifying number on the poll list is eliminated
- G.A.B. will add space on the voter registration form to enter this information and add these as required fields in the Statewide Voter Registration System (SVRS).
- The law also eliminates the exemption from the proof of residence requirement for those electors who register prior to the close of registration.
 - Military and permanently overseas voters are always exempt from the proof of residence requirement.
 - All other voters must always provide proof of residence to register to vote.

16. Senate Bill 324 (2013 Wisconsin Act 146): limiting the times for voting by absentee ballot in person. Introduced by Senator Grothman.

- This law limits in-person absentee voting during the in-person absentee ballot period to between the hours of 8 a.m. and 7 p.m., Monday through Friday.
- In-person absentee voting on weekends, holidays, or by appointment is prohibited.
- The limit applies only to statewide elections, which would currently include elections for any of the following offices: President of the United States, U.S. Senator, Representative in Congress, Governor, Lieutenant Governor, Attorney General, Secretary of State, State Treasurer, Superintendent of Public Instruction, and Justice of the State Supreme Court.
- This law first applies May 27, 2014.

17. Senate Bill 377 (2013 Wisconsin Act 148): reporting registration and voting statistics. Introduced by Senator Lazich.

- Clerks must report information regarding same-day voter registration audit postcards to the county clerk and to the G.A.B. at the earliest practicable time after, but no later than 90 days after, an election at which a state or national office is filled or a statewide referendum is held
- Clerks must report the number of audit postcards mailed, the number returned because the elector did not reside at the address given, the number of electors whose status changed from eligible to ineligible on the registration list because of the audit, and the number of individuals referred to the district attorney.
- Clerks must update the information on a monthly basis and submit the updated information to the county clerk and G.A.B.
- Municipal clerks must report election related statistics via an electronic report to the county clerk and directly to the G.A.B. (e.g., SVRS, Wisconsin Election Data Collection System, or the ElectionData website – similar to the Four-Year Maintenance postcard process).
- Municipal clerks must report suspected election frauds, irregularities, or violations of which the clerk has knowledge to the District Attorney for the county where the suspected activity occurred, and to the G.A.B, in the manner prescribed by the Board.
- The G.A.B. must submit an annual report to the Legislature regarding these reports in accordance with Wis. Stat. §13.172.
- Clerks must report the information regarding Election Day Registration verification postcards to the Board within 90 days of the 2014 General Election, and the G.A.B. must publish this information on its website.
- All other provisions of this law take effect January 1, 2016.

18. Senate Bill 548 (2013 Wisconsin Act 149): transferring responsibility over biennial updating of voter registration list to the Government Accountability Board. Introduced by Senator Lazich.

- The G.A.B. is responsible for mailing the Notice of Suspension of Registration forms to conduct voter list maintenance each biennium.
- Municipal clerks are responsible for changing the registration status of electors who request to continue their voter registration, and for processing undeliverable postcards.
- The G.A.B. will mail Notices of Suspension of Registration no later than June 15 following each general election.

19. Senate Bill 655 (2013 Wisconsin Act 153): various changes in the campaign finance and lobbying laws. Introduced by Senator Lazich.

- The registration threshold for referendum activity by groups or individuals changes from \$750 to \$2,500.
- The registration threshold for a committee, group, or individual, other than a candidate committee, that accepts contributions, incurs obligations, or makes disbursements changes from \$25 to \$300.
- Transfers between personal campaign committees count toward the 65 percent rule (from all committees), but not the 45 percent rule (from committees other than political party and legislative campaign committees).
- The limit that a corporation or association (also known as sponsoring organizations) may expend annually to solicit contributions to its separate segregated fund is the greater of \$20,000 or 20 percent of the amount of contributions to the separate segregated fund in the prior year.
- A conduit may redirect certain contributions to a sponsor (committee associated with the conduit) or to an administrative fund of the conduit under limited and specified conditions.
- This law excludes certain Internet activity from reporting under the campaign finance law by excluding this activity from the definitions of *contribution* and *disbursement*.
 - Certain Internet-related activity is still included in the definition of *disbursement* and is reportable (e.g., payment for certain Internet activity).
- This law excludes certain media coverage and communications to the public from reporting under the campaign finance law by excluding the activity from the definitions of *contribution* and *disbursement*.
 - The excluded media coverage does not apply to the cost of a news story that appears in a medium owned or controlled by a candidate, personal campaign committee of a candidate, support committee of a candidate, or a political party.
- The time for late reporting changes from 24 to 48 hours.
- The Campaign Finance Information System (CFIS) must allow electronic signatures.
 - A registrant that files a report in an electronic format may file a paper copy of the signature portion of the report.
 - The law eliminates the requirement for filing a hard copy of the report if the registrant files electronically.
- A lobbyist may personally make a contribution in the year of the candidate's election between the first day authorized by law for the circulation of nomination papers as a candidate (currently, April 15th) and the date of the general election.
 - A lobbyist may still only contribute to a candidate for legislative office during that time only if the Legislature has concluded its final floor period, and is not in special or extraordinary session.
 - Furnishing contributions to partisan candidates or officeholders is now always prohibited.

20. Assembly Bill 61 (not yet signed by Governor): modifying the duties of a county clerk; counties in which a board of election commissioners is required; and staffing of a board of election commissioners in populous counties. Introduced by Representative Bernier.

- Requires a board of election commissioners in municipalities over 500,000 population and counties over 750,000 population (increased from 500,000).
- The county clerk shall serve as the executive director of the county election commission (Milwaukee).
- This law removes the limit on the number of assistants the county clerk may appoint.