

Meeting of the Board

Monday, May 5, 2008

9:30 A.M.

Risser Justice Center, Room 150

120 Martin Luther King Jr. Blvd.

Madison, Wisconsin

Agenda
Open Session

		Page #
A. Call to order.	Judge Thomas Cane	
B. Director's report of appropriate notice of meeting.		
C. Approval of minutes.	Approve minutes of previous meeting. See attached minutes	1
D. Sign canvass of the April 1, 2008 Spring Elections.		
E. Public comment.		
<i>Break</i>		
F. Confidentiality of complaints and informal disposition of investigative actions		7
G. "Salting" - Permitting a candidate to include false entries among reported contributors to help identify improper use of contributor lists.		9
H. Lobbyists Making Contribution to Legislative Employee		
I. Proposed Administrative Rule Chapter 5: Ballot and Electronic Voting Equipment System Security		10
J. Proposed Administrative Rule Additions to Chapter 3: Voter Registration		57
K. Review of select Elections Board operating procedures, opinions and/or rules related to:		
1) Non-Resident Committees		77
2) Campaign Finance Recordkeeping and Reporting		79
3) Campaign Finance Registration		92
4) Ballots		95
5) Challenging Electors		98

The Government Accountability Board may conduct a roll call vote, a voice vote, or otherwise decide to approve, reject, or modify any item on this agenda.

- 6) **Observers** **106**
- 7) **Voting Equipment Approval** **108**

Break

L. Director's report.

Elections division report.

Ethics and accountability division report – campaign finance, state official financial disclosure, lobbying registration and reporting, contract sunshine.

113

Agency administration and legal issues – general administration and orders.

120

M. 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 compensation and performance of Legal Counsel pursuant and to the following statutes:

- | | |
|--------------------------------|---|
| 5.05 (6a) and
19.85 (1) (h) | [The Board's deliberations on requests for advice under the ethics code, lobbying law, and campaign finance law shall be in closed session], |
| 19.85 (1)(c) | [The Board may consider compensation and performance of certain employees over which it has jurisdiction] |
| 19.85 (1) (g) | [The Board may confer with legal counsel concerning litigation strategy], |
| 19.851 | [The Board's deliberations concerning investigations of any violation of the ethics code, lobbying law, and campaign finance law shall be in closed session], |

The Government Accountability Board has scheduled its next meeting for Monday, June 9, 2008 at the Risser Justice Center, Room 150, 120 Martin Luther King Jr. Blvd., Madison, WI

State of Wisconsin\Government Accountability Board

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JUDGE DAVID DEININGER
Chair

KEVIN J. KENNEDY
Director and General Counsel

WISCONSIN GOVERNMENT ACCOUNTABILITY BOARD

Room 150, Risser Justice Building
120 Martin Luther King, Jr. Blvd.
Madison, Wisconsin
March 26, 2008
9:30 a.m.

DRAFT

Not yet approved
by the Board

Open Meeting Minutes

<u>Summary of Significant Actions Taken</u>	<u>Page</u>
A. Approved proposed changes to Board's 2008 review schedule	2
B. Modified and reaffirmed three Ethics Board's opinions pertaining to State officials' representation of clients before a district attorney	2
C. Requested materials and staff recommendation on the issue of regulation of express advocacy; took no action on EIBd. 1.28	3
D. Declined to reaffirm administrative rule EIBd. 1.29	3
E. Reaffirmed 11 opinions and three informal opinions pertaining to the scope of campaign finance regulation	3
F. Reaffirmed one opinion and two administrative rules, and modified one opinion pertaining to coordination of campaign activity and independent expenditures	3
G. Reaffirmed six opinions and declined to reaffirm one opinion pertaining to use of government resources and state employee activity	3
H. Reaffirmed 10 opinions and one set of administrative rules pertaining to voter registration	3

Present: Judge David Deininger, Judge Michael Brennan, Judge Thomas Cane, Judge William Eich, Judge James Mohr, Judge Gerald Nichol

Staff present: Kevin Kennedy, Jonathan Becker, George Dunst, Sharrie Hauge, Kyle Richmond, Nat Robinson, Tommy Winkler

A. Call to order

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

B. Director Kevin Kennedy's report of appropriate notice of meeting

The Director reported that the meeting had been properly noticed.

C. Approval of minutes of the previous meeting

MOTION: Approve minutes of the February 25, 2008 meeting of the GAB.

Moved by Eich, seconded by Nichol. Motion carried.

D. Public Comment

1. **Patrick Fuller**, Wisconsin Assembly Chief Clerk, appeared to comment on the issue of legislative per diems.
2. **Deborah Goldberg**, Brennan Center for Justice, appeared to comment on item E.1., Scope of Campaign Finance Regulation. Ms. Goldberg also provided written testimony to the Board. Prior to Ms. Goldberg's testimony, Chair Deininger asked Director Kennedy to provide background on the topic of express advocacy.
3. **Mike McCabe**, Wisconsin Democracy Campaign, appeared to comment on item E.1., Scope of Campaign Finance Regulation. Mr. McCabe also provided written testimony to the Board.
4. **Shane Falk**, former Elections Board chair, appeared to comment on item E.1., Scope of Campaign Finance Regulation.
5. **Mike Wittenwyler** appeared to comment on item E.1., Scope of Campaign Finance Regulation.

Hearing no objections, the Chairman called a 25-minute lunch recess and reconvened the meeting at 12:15 p.m.

E. Proposed Review Schedule Revisions (Kevin Kennedy)

MOTION: Approve proposed review schedule revisions.

Moved by Nichol, seconded by Brennan. Motion carried.

The following segments (Items E.1.-3.) were presented to the Board by Jonathan Becker.

E.1.) State officials representing clients before district attorneys

MOTION: Amend the opinion 4 Op. Eth. Bd. 77 (1981) to remove the holding that a district attorney is a judicial officer.

Moved by Eich, seconded by Cane. Motion withdrawn.

MOTION: Modify 2008 Wis Eth Bd 1, 1998 Wis Eth Bd 3 and 4 Op. Eth. Bd. 77 (1981) by adding to each the following language:

The Government Accountability Board reviewed this opinion on March 26, 2008 as part of the review of Ethics Board opinions mandated in 2007 Wisconsin Act 1. The Board is not of the opinion that a District Attorney is a judicial office. The cases on which the Ethics Board opinion relies hold that a district attorney is a *quasi*-judicial office in the sense that it is a district attorney's duty to administer justice rather than to obtain a conviction and that a district attorney has discretion in charging and is not purely an administrative officer in that regard. Nor is there any evidence of a legislative intent to exclude district attorneys from the meaning of "department" at the time the statute was created.

In 1989 Act 31, in which the Legislature created the state prosecution system and made assistant district attorneys state employees, the definition of "department" was amended by the addition of the following sentence: "In the case of a district attorney, 'department' means the department of administration unless the context otherwise requires." Under §19.45 (7), the context requires that "department" for a district attorney means the district attorney's office. There is no discernable reason why the Legislature would intend that district attorneys' offices should be excluded wholesale from the prohibition on a state official representing persons before any department. There simply is no evidence that the Legislature intended this result when it amended the definition of "department" in 1989. Indeed, the 1989 Act created the state prosecution system and made assistant district attorneys state employees. If anything, the policy behind §19.45 (7) assumes even more importance since the act gave legislators a greater and more direct role in the operations of district attorney's offices than previously.

But that does not end the analysis. The Ethics Board opinion does not address the meaning of the statutory language which prohibits an official to represent a person for pay before a department or employee thereof. A criminal case is not before a district attorney; it is before the court. For this reason, the statute does not restrict an official to represent a person in a criminal matter once the court's jurisdiction is invoked (that is, once a complaint or a John Doe petition has been filed) even if such representation involves private discussions or negotiations and regardless whether the district attorney or the attorney general is prosecuting the matter. But the statute does apply if an official is meeting with a district attorney's office or with the attorney general's office before such time to negotiate a disposition because, prior to the filing of a criminal complaint, the matter is before the prosecuting authority and not the court.

Moved by Cane, seconded by Nichol. Motion carried.

E.1.) Scope of Campaign Finance Regulation

The Board deferred an action on administrative rule ElBd.1.28, but requested materials and recommendations from staff concerning so-called issue advocacy.

MOTION: Request staff to provide at a future meeting: a) Draft rule from the Brennan Center, b) Transcripts of pertinent advertisements from Supreme Court race, c) Analysis of the Board's statutory authority to promulgate rules in this area, and d) The constitutional limitations on regulation in this area.

Moved by Nichol, seconded by Eich. Motion carried.

MOTION: Decline to reaffirm administrative rule ElBd. 1.29.
Moved by Cane, seconded by Eich. Motion carried.

MOTION: Reaffirm opinions El.Bd. 74-4, El.Bd. 76-12, El.Bd. 76-16, El.Bd. 77-3, El.Bd. 79-2, El.Bd. 79-3, El.Bd. 79-4, El.Bd. 86-3 (amended), El.Bd. 00-02, El.Bd. 03-01, El.Bd. 06-01, and three informal opinions.
Moved by Eich, seconded by Nichol.

E.2.) Coordination of Campaign Activity and Independent Expenditures

MOTION: Modify opinion El.Bd 78-8, and reaffirm opinion El.Bd. 00-02 and administrative rules ElBd. 1.42 and ElBd. 1.50
Moved by Eich, seconded by Nichol. Motion carried.

E.3.) Use of Government Resources and State Employee Activity

MOTION: Reaffirm opinions El.Bd. 74-6, El.Bd. 76-12, El.Bd. 76-16, El.Bd. 78-12, El.Bd. 75-02, and El.Bd. 76-16, and decline to reaffirm El.Bd. 76-02.
Moved by Eich, seconded by Cane. Motion carried.

E.4.) Voter Registration (Kevin Kennedy)

MOTION: Reaffirm administrative rules El.Bd. 3.01, El.Bd. 3.02, El.Bd. 3.03, El.Bd. 3.04, El.Bd. 3.10, El.Bd. 3.11, El.Bd. 3.12, El.Bd. 3.13, El.Bd. 3.20, and El.Bd. 3.50, and opinions El.Bd. 76-10, El.Bd. 80-1 and El.Bd. 81-1.
Moved by Nichol, seconded by Cane. Motion carried.

The Chair noted for the record that the Board members had received opinion and rule summaries electronically and on paper, and that all formal opinions are on the GAB website. The Chair complimented staff for the timely manner in which rules and opinions are posted for GAB members' review.

F. Director's Report

Elections Division Report
(Presented by Nathaniel E. Robinson)

Report was made for informational purposes; the Board took no action.

Ethics and Accountability Division Report
(Presented by Jonathan Becker)

Report was made for informational purposes; the Board took no action.

Agency Administration and Legal Issues
(Presented by Kevin Kennedy)

MOTION: Authorize the Director or staff counsel to accept service when Board members are named in litigation.

Moved by Brennan, seconded by Eich. Motion carried.

G. Move to Closed Session

MOTION: Move to closed session pursuant to Sections 5.05(6a), 19.85(g), (h), and 19.851 Wis. Stats. to consider written requests for advisory opinions, the investigation of possible violations of Wisconsin's lobbying law, campaign finance law, and Code of Ethics for Public Officials and Employees, and to confer with counsel concerning strategy with respect to litigation in which the Board is, or is likely to become, involved.

Moved by Nichol, seconded by Eich.

Roll call vote:	Brennan:	Aye	Cane:	Aye
	Deiningner:	Aye	Eich:	Aye
	Mohr:	Aye	Nichol:	Aye

Motion carried, 6-0.

The Board went into closed session at 2:10 p.m.

Summary of Significant Actions Taken in Closed Session Meeting

- A. Requests for Advice: Four items considered; two formal opinions approved.
- B. Investigations: Three items considered; one item closed, two items pending.

MOTION: Adjourn the meeting.

Moved by Eich, seconded by Nichol. Motion carried.

The meeting was adjourned at 4:25 p.m.

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The next meeting of the Government Accountability Board is scheduled for 9:30 a.m., Monday, May 5, 2008, in Room 150 of the Risser Justice Center, 120 Martin Luther King Jr. Blvd., Madison, Wisconsin.

March 26, 2008 Government Accountability Board meeting minutes prepared by:



Kyle R. Richmond, Public Information Officer

April 2, 2008

Date

March 26, 2008 Government Accountability Board meeting minutes certified by:

Judge Gerald Nichol, Board Secretary

Date

State of Wisconsin\Government Accountability Board

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KEVIN J. KENNEDY
Director and General Counsel

MEMORANDUM

DATE: For May 5, 2008 meeting

TO: Members, Wisconsin Government Accountability Board

FROM: Jonathan Becker, Administrator, Division of Ethics and Accountability

SUBJECT: Confidentiality of complaints and informal disposition of investigative actions

There are two issues for the Board: (1) the extent to which staff may and should comment about the receipt of a complaint alleging a violation of the laws administered by the Board and (2) the extent to which the Board's open minutes should reflect the disposition of investigative matters handled informally in closed session. Two statutory provisions are pertinent. Section 5.05 (5s), *Wisconsin Statutes*, provides:

Records obtained or prepared by the board in connection with an investigation, including the full text of any complaint received by the board, are not subject to the right of inspection and copying under s. 19.35 (1), except as provided

The exceptions pertain generally to records made public in the course of a prosecution and any record of the action of the Board authorizing a complaint, referring a matter to a district attorney, finding that a complaint does not raise a reasonable suspicion that a violation of the law has occurred, or finding no probable cause.

The second pertinent statute is §12.13 (5), *Wisconsin Statutes*, which provides, with limited exceptions,

{N}o . . . member or employee of the board may disclose information related to an investigation or prosecution . . . or provide access to any record of the investigator, prosecutor, or the board that is not subject to access under s. 5.05 (5s) to any person other than an employee or agent of the prosecutor or investigator or a member, employee, or agent of the board prior to presentation of the information or record in a court of law.

Complaints. Plainly, the Board may not make a copy of a complaint available to the press or public. (I note that complaints relating to election administration are treated no differently than other complaints under the statute, except that such complaints may result in an administrative contested case hearing). Moreover, Board members and employees may not disclose information related to an investigation. The question is whether acknowledging receipt of a complaint, before the Board has acted to authorize an investigation, is disclosing information related to an investigation. It may not be but, on the whole, I believe the better policy is to not comment on whether or not the Board has received a complaint. Some complaints may lead to investigations, at which point information related to the complaint becomes information related to an investigation. The intent of the Legislature, as evidenced by §5.05 (5s), appears to be to

treat complaints as investigation records. Declining to acknowledge receiving a complaint avoids having to address follow-up questions; is a clear, easily-followed policy; and does not deny the public any particularly meaningful information.

General information about closed session matters. We have been indicating in open session minutes a general description of the Board's actions in closed session informally disposing of investigative matters. Section 5.05 (5s), *Wisconsin Statutes*, provides that a record of the action of the Board authorizing a complaint, referring a matter to a district attorney, finding that a complaint does not raise a reasonable suspicion that a violation of the law has occurred, or finding no probable cause is open to the public. The statute does not provide for a record to be open of any other action of the Board in connection with an investigation. In particular, the statute does not address instances in which the Board may dispose of matters in which there has been no complaint filed or matters the Board determines in its discretion not to pursue without making a formal finding. I believe these actions are not subject to the exceptions to the general prohibition on disclosing a record (such as closed session minutes) prepared by the Board in connection with an investigation.

Having said this, there is a case to be made that simply indicating that the Board has closed some number of matters, without specifying what those matters are, is not disclosing information about an investigation because there is no information that is tied to any specific investigation. Rather, it is simply a general description of Board activity and provides at least some information to the public about the Board's work.

I also note that we have been indicating the number of requests for advice the Board has addressed in closed session. This does not violate the confidentiality provisions pertaining to advisory opinions which prohibit making public the identity of a requester (§5.05 (6a)) and which provide that requests for advice and the Board's responses are generally not open to public inspection (§5.05 (5s) (f)). The confidentiality provisions do not apply to requests for advice relating to election matters. §5.05 (5s) (f) 2. c. and (6a).

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KEVIN J. KENNEDY
Director and General Counsel

MEMORANDUM

DATE: For May 5, 2008 meeting
TO: Members, Wisconsin Government Accountability Board
FROM: Jonathan Becker, Administrator, Division of Ethics and Accountability
SUBJECT: "Salting"

The issue for the Government Accountability Board is whether to permit a candidate to include false entries among reported contributors in order to help identify improper use of contributor lists by others.

Section 11.21 (5), *Wisconsin Statutes*, provides:

No information copied from [campaign finance] reports and statements may be sold or utilized by any person for the purpose of soliciting contributions from individuals identified in the reports or statements or for any commercial purpose.

A similar provision applies to reports filed with local filing officers. The penalty for violating these sections is \$500 for each violation and \$10 for each person solicited up to \$1,000 for each report from which persons are solicited.

With the Board's new electronic filing system, which should be operational before the end of the year, it will be easy for any individual anonymously to obtain the names and addresses of a candidate's contributors in an electronic format from which mailing labels may be easily created. "Salting" permits a candidate to include fake individuals in a report with addresses to which the candidate has access. Mail delivered to the fake individual at that address would indicate that the sender had improperly used the candidate's report. The Federal Elections Commission by rule permits "salting" for this purpose.

From a legal standpoint, the reporting of false information could violate the law. §11.27 (1), *Wisconsin Statutes*. Therefore, the Board should allow this only through an administrative rule or a change in the statutes. The number of false names submitted by a candidate should be limited and their identities submitted to the Board. We can build the electronic filing software to enable filers to identify the salted names, so that only Board staff would have access to that information, and the system would exclude the value of such contributions from a candidate's total dollar amounts. The cost for this would be \$12,688, which we should seek from the Legislature if we go forward with this.

On the whole, I recommend that we not take any action at this time. After talking with several legislators, I have not gotten the sense that improper use of campaign lists is perceived as a big issue. Moreover, I am told that lists are shared so often that it might be very difficult to determine who, if anyone, has used a list without permission. Finally, our consultants have indicated that adding a feature to the electronic filing system to permit salting will cost the same in the future as it would cost now.

State of Wisconsin \ Government Accountability Board

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JUDGE THOMAS CANE
Chairperson

KEVIN J. KENNEDY
Director and General Counsel

MEMORANDUM

DATE: For May 5, 2008 Meeting

TO: Members, Government Accountability Board

FROM: Kevin J. Kennedy, Director and General Counsel
Wisconsin Government Accountability Board

Presented to the Board by: Ross Hein
Elections Specialist

SUBJECT: Proposed Administrative Rules Relating to Ballot and
Electronic Voting System Security: ElBd Chapter 5

The Government Accountability Board Elections Division staff coordinated the development of rules relating to the security of ballots and electronic voting system security for election officials to follow during pre-election, Election Day and post-election procedures. The rules provide verification methods to ensure that ballots and electronic voting systems remain secure and tamper-free. A copy of the proposed rules accompanies this memorandum.

The issue of ballot and electronic voting system security is the focus of much attention as we head into the presidential election cycle. There are controversial legislative proposals that have been garnering attention in Congress. In addition, recent action by chief election officials in California, Florida and Colorado have raised concerns about the security of ballots and electronic voting systems that have been in use for the most recent elections.

Wisconsin has a wide array of voting equipment manufacturers that service different makes and models throughout the state. To ensure that the proposed rules are reasonable, clear and achievable, an ad-hoc committee was appointed, comprised of county and municipal clerks from throughout the state. Committee members represented jurisdictions of various sizes that use various types of electronic voting systems. A listing of the committee members is attached.

The ad-hoc committee met on three separate occasions: March 18, March 24 and April 14. After each meeting, staff notified all county and municipal clerks of the committee's recommended changes. Commentary was also received from the public at large. Each and every comment was thoroughly reviewed and ample consideration was given to suggested changes. Approximately 20 hours of meeting time was incurred and every detail of the rules was explored. The committee did an exceptional job and recommended substantive changes, including alterations in order to render the rules readable, usable and understandable. Staff thanks the committee for its hard work and dedication.

There have been numerous versions of proposed administrative rule EIBd Chapter 5 and a great deal of time and effort has been expended to assure the integrity and security of ballots and electronic voting systems. The security procedures originally adopted by the Elections Board in Wisconsin have echoed the requirements imposed in other states that have adopted security requirements. A number of individuals including local election officials have put forth suggestions for enhancing or scaling back the requirements since they were developed in 2006.

The proposed rules present a balance of ensuring security without overwhelming poll workers and local election officials with extensive documentation procedures. It is appropriate for the Board to act at this time to add the security requirements in the administrative code.

There remain two outstanding issues raised by John Washburn. The first relates to the destruction of ballots after the expiration of the retention deadlines set out in §7.23 (1), Wis. Stats. The second is the backup of election data from electronic voting equipment memory devices.

Agency staff has maintained that the law does not authorize anything other than the examination, copying, retention or destruction of election ballots. Original ballots may not be turned over to individuals, scholars or others after the mandatory retention deadline expires.

The statute provides election materials, including ballots, may be destroyed but makes no provision for other disposition. §7.23 (1)(intro), Wis. Stats. Wisconsin's public records law permits the examination and copying of election materials. For practical reasons, the right to inspection is limited when the materials are being used during the conduct of an election or recount. The custodian also has a duty to redact identifying information on election materials to protect the right to a secret ballot.

Mr. Washburn would like the Board to permit a custodian of election materials to be able to give the materials to others instead of destroying them. This is not a subject for this rule. If the Board wishes to address this request, staff recommends it be taken up at another meeting before the Fall elections.

The second question will require more information. The statute in question was created before the advent of DRE voting equipment. All Wisconsin ballots are backed up with a paper record, which is the official ballot for resolving election contests. There are a number of ways to back up the detachable memory devices used for optical scan and DRE voting equipment. However, cost is a factor to balance with a requirement to preserve election results.

The statute is not clear with respect to what must be preserved. §7.23 (1)(g), Wis. Stats. Data may be limited to the election results and not the underlying programming contained on the detachable memory units. At a minimum, local election officials may not clear memory devices until after the expiration of any recount or election contest deadline.

Staff has had discussions with the U. S. Department of Justice concerning what election materials must be preserved pursuant to the federal counterpart of the state statute. 42 U.S.C. 1974. The issue of preserving detachable memory units has not been tested in court. The direction suggested to staff is to maintain enough information to successfully recreate the conduct of the election.

Because of the variety of voting equipment programming s and ballot tabulation methods in the state, staff recommends it gather more information about the procedures and the costs for backing up the ballot tabulation programming unique to an election event. This will allow the

Board to provide direction to local election officials that preserves the integrity of the tabulation process in a cost effective manner.

Once the Board has more information on the backup processes available to local election officials, it can add direction on this issue to the proposed rules. This should not prevent the Board from moving forward with the ballot and voting equipment security rules package presented for approval at this meeting.

Recommendation:

Staff recommends that the Government Accountability Board adopt the following motion to begin promulgation of the proposed administrative rules EIBd Chapter 5, Ballot and Electronic voting System Security:

The Government Accountability Board directs staff to proceed with promulgation of the proposed administrative rules establishing procedures to ensure the security of ballots and electronic voting systems in Wisconsin.

Attachments:

- Revised EIBd Chapter 5, Ballot and Electronic Voting System Security
- §7.23, Wis. Stats.
- Comments from Paul Malischke
- Comments from John Washburn

Chapter ElBd 5

Ballot and Electronic Voting System Security (Revision 4/14/08)

ElBd 5.01 Ballot Security.

- (1) Within the requirements of s. 7.51 (3), Stats., the terms “secure” and “seal” shall be interpreted together to mean that the voted ballot container, must be secured in such a manner that no ballot may be removed, nor any ballot added, without visible evidence of interference or damage to that ballot container.
- (2) Within the requirements of s. 7.51 (3) (a), Stats., a ballot container shall be considered “sealed” or “locked,” only if no voted ballot may be removed or deposited into the container, and no other form of access to the ballots inside may be gained without leaving visible evidence of that entry or access into the container.

Ballot bags shall be sealed with a tamper-evident, serialized numbered seal. The serial number shall be recorded on the signed ballot container certification (EB-101) attached to the bag. Serial numbers of the seals shall be recorded on the Inspectors’ Statement (EB-104). Ballot boxes or containers shall have all potential openings secured in such a manner that no ballot may be removed, nor any ballot added without visible evidence of interference or damage to that ballot container. Ballot boxes or containers shall have attached a signed ballot container certification (EB-101).

- (3) A sealed ballot container shall not be considered “secured” unless it is stored in a manner in which access is limited only to the clerk of the election district or to authorized persons, and access to which is not available to any other person.
- (4) Whenever the custodian is required to open the ballot container and unseal the ballots as part of a central count proceeding, board of canvass proceeding, audit, recount, an appeal of a recount, or as part of a public records request under s. 19.35, Stats., before opening the container the custodian shall record in the minutes whether the container is sealed and shall record the serialized number of the seal. The custodian shall make a record of the entry and of the ballot review. Upon completion of the review, the custodian shall re-secure them in the manner provided in s. 7.51, Stats., unless destruction is authorized under s. 7.23, Stats.
- (5) Security of the ballots and the ballot container shall be maintained as provided under s. 7.51, Stats., until destruction of the ballots is conducted under s. 7.23, Stats. Destruction of the ballots authorized under s. 7.23, Stats., requires shredding, incineration, or some other form of obliteration of the ballots.
- (6) At the time of a recount, the serial numbers on the seals of the ballot container shall be compared with the serial numbers written on the signed ballot container certification (EB-101). All containers shall be compared in a recount. The ward numbers and the results of the serial number verification shall be recorded in the minutes of the recount.

- (7) The municipal clerk shall securely maintain all ballots from the time of receipt from the printer or county clerk through delivery to the polling place.

5.02 General Electronic Voting System Security Procedures

- (1) These procedures apply to all electronic tabulating voting equipment memory devices, including, but not limited to, prom packs, memory cards or any other removable memory devices that can be programmed or functioned to store and transfer ballot images or tabulation data.
- (2) Throughout the life of the electronic voting system, the municipal or county clerk shall maintain control of all memory devices in a secure manner at all times. With the agreement of the municipal clerk, the county clerk may store memory devices in a secure location. The municipal clerk shall secure all keys to the electronic voting equipment.
- (3) For each election there shall be a separate, written chain-of-custody record for each programmed memory device used with an electronic voting system. Each transfer shall be logged in the written chain-of-custody record.
- (4) Each programmed memory device shall have or be assigned a unique and permanent serial number. If the memory device does not have a permanent serial number affixed by the manufacturer, a clerk shall, if possible, affix a serial number or unique identifier.
- (5) The municipality shall use controlled, serialized seals that are tamper-evident and resistant to accidental breakage along with a written record of all seals and associated serial numbers.
- (6) For each election on the Inspectors' Statement (EB-104) the municipal clerk shall record which memory devices and serialized tamper-evident seals are assigned to particular voting stations or units.

5.03 Pre-election procedures

- (1) The clerk who has possession of the electronic voting systems or memory devices shall ensure the equipment and/or memory devices have been secured properly since the previous election.
- (2) Memory devices shall be programmed to print a list of the software and firmware versions of the electronic voting system on each beginning-of-election-day zero report.

For electronic voting systems that cannot accommodate this requirement, this information shall be recorded from the system start-up screen, either by municipal or county staff during the pre-election testing or by election inspectors on Election Day.

- (3) The records for the pre-election test, pre-recount test and Election Day reports must be maintained by the appropriate clerk.
- (4) Except when necessary to program, test, or operate the electronic voting and/or programming equipment, any point by which access can be gained to the system controls must be closed and locked or secured with a tamper-evident seal that can be tracked using a unique and permanent serial number. The appropriate clerk shall maintain a written record of such serial numbers.
- (5) Once a memory device is programmed, tested and delivered to the municipal clerk for the election, it shall be immediately and continuously maintained in a secure location with controlled access limited only to authorized users.

Upon insertion of memory device into its assigned unit, it shall be sealed against unauthorized access with a serialized, tamper-evident seal that can be tracked using a unique and permanent serial number. The municipal clerk shall record the serial numbers on the Inspectors' Statement (EB-104).

- (6) When applicable, for each election the municipal or county clerk shall obtain a signed "Certificate of Performance Compliance: Memory Device Security" from each voting equipment manufacturer that provides programming services, or memory devices to the municipality or county.
- (7) The municipality shall take reasonable precautions to ensure the security of the equipment between the time it leaves the possession of the clerk to be delivered to the polling place, and the time the chief inspector assumes possession at the polling place on Election Day.

5.04 Election day procedures

- (1) Before any ballots are cast on any unit, the integrity of the tamper-evident seals shall be verified by the chief election inspector. The chief election inspector shall verify that the tamper-evident seal serial number on the Inspectors' Statement (EB-104) matches the tamper-evident seal serial number contained on the electronic voting equipment. Any irregularity or discrepancy shall require further investigation prior to use of the equipment.
- (2) Once the polls have opened, ballot removal from an optical scan machine or paper roll removal or replacement on a Direct Recording Electronic (DRE) machine shall be conducted with at least two election inspectors (or other sworn election team members appointed by the municipal clerk) present. The removal process, names of the election inspectors or sworn election team members, and time must be recorded on the Inspectors' Statement (EB-104).
- (3) In post-election mode, election officials shall print the results report before breaking any seal on the equipment and before the removal of the memory device from the voting station or unit. If additional reports other than the results reports are required, these reports shall also be printed before breaking any seal on the equipment and before the removal of the memory device.

- (4) The chief election inspector shall compare the serial numbers of all security seals, then verify by initialing the Inspectors' Statement (EB-104). Any additional seals used during the election must also be recorded on the Inspectors' Statement (EB-104).
- (5) The memory device shall be secured in a separate, tamper-evident sealed container or envelope by the chief election inspector. The memory devices shall be promptly returned to the municipal or county clerk.
- (6) If results are transmitted by modem, the municipal clerk may access the memory device for transmission, but shall reseal the memory device in a secured envelope or container.
- (7) If removal of the memory device is not required, the device may remain sealed in the voting station or unit. The serial numbers of the security seals shall be verified and initialed on the Inspectors' Statement (EB-104).

5.05 Post election procedures

- (1) After each election, the clerk responsible for storing the voting equipment shall conduct an inspection to ensure all system access points are closed, locked and secured.
- (2) At each post-election meeting of the municipal board of canvassers, the members shall verify that the tamper-evident serial numbers from the voting equipment have been recorded on five Inspectors' Statements (EB-104) or 10% (whichever is greater) of the total statements, and have been initialed by the Chief Election Inspector. The county board of canvassers shall verify ten Inspectors' Statements. All statements (EB-104) shall be verified in a recount. Proper documentation shall be maintained.

5.15 Alternate Security Procedures

- (1) The Government Accountability Board recognizes the need for flexibility when implementing these procedures, and acknowledges that alternative means may be used to achieve and ensure an acceptable level of electronic voting equipment security.
- (2) The Board will consider requests from counties to implement alternative security procedures.
 - (a) The county clerk, or the municipal clerk through the county clerk, shall submit a written request to implement alternative security procedures to the Board's director and general counsel.
 - (b) The request shall describe the proposed security procedures in detail and include any documentation such as logs, flow charts and certification forms.

- (c) The director and general counsel may approve the use of alternative security procedures for one election cycle.
- (d) The Board shall review the director and general counsel's approval of any alternative security procedures and may authorize continued use.

7.23 Destruction of election materials.

(1) All materials and supplies associated with an election, except as provided in sub. (2), may be destroyed according to the following schedule:

(a) Except as provided in par. (am), unused materials after an election and the contents of the blank ballot box after a primary may be destroyed at a time and in a manner designated by the appropriate clerk.

(am) Unused ballots may be discarded or destroyed no earlier than the day after the latest day for the filing of a petition for a recount under s. 9.01 for any office on the ballots.

(b) Voting machine recorders essential for proper operation of voting machines may be cleared and reactivated 14 days after any primary and 21 days after any other election.

(c) Registration forms of electors whose registrations are changed to ineligible status under s. 6.50 (7) may be destroyed 4 years after the change, unless an elector becomes eligible again during that period.

(d) Except as provided in s. 11.21 (11) (a), financial reports may be destroyed 6 years after the date of receipt. Financial registration statements may be destroyed 6 years after termination of registration.

(e) Poll lists created at a nonpartisan primary or election may be destroyed 2 years after the primary or election at which they were created and poll lists created at a partisan primary or election may be destroyed 4 years after the primary or election at which they were created.

(f) Except as authorized in pars. (b) and (g), ballots, applications for absentee ballots, registration forms, or other records and papers requisite to voting at any federal election, other than registration cards, may be destroyed after 22 months.

(g) Detachable recording units and compartments for use with electronic voting machines may be cleared or erased 14 days after any primary and 21 days after any other election. Before clearing or erasing the units or compartments, a municipal clerk shall transfer the data contained in the units or compartments to a disk or other recording medium which may be erased or destroyed 22 months after the election to which the data relates.

(h) Ballots may be destroyed 30 days after any election. (i) Official canvasses may be destroyed 10 years after the election to which they relate.

(j) Election notices, and proofs of publication and correspondence filed in connection with such notices may be destroyed one year after the date of the election to which they relate.

(k) All other materials and supplies associated with an election may be destroyed 90 days after the election.

(2) If there is a demand for a recount, notice of an election contest or any contest or litigation pending with respect to an election, materials may be destroyed and recorders, units or compartments may be cleared or erased only by order of the judge in whose court litigation is pending or if no litigation is pending, by order of any circuit judge for the affected jurisdiction. Upon petition of the attorney general or a district attorney or U.S. attorney for the affected jurisdiction, a circuit judge for the affected jurisdiction may order that specified materials not be destroyed or that specified recorders, units or compartments not be cleared or erased as otherwise authorized under this subsection until the court so permits. The governor may by order permit the clearing of voting machine recorders on machines needed to conduct a special election prior to the time authorized under this subsection, unless there is a demand for recount, notice of an election contest or a contest or litigation pending, or a court of record orders that the recorders not be cleared.

History: 1973 c. 334; 1975 c. 85, 200; 1977 c. 394 s. 53; 1977 c. 427; 1979 c. 260 ss. 42, 94; 1979 c. 311, 328; 1983 a. 484 ss. 60 to 63, 174; 1985 a. 304 ss. 82, 143; 1987 a. 391; 2003 a. 265; 2005 a. 451.

March 9, 2008

To: Ross Hein
Re: Ballot Security Rule - Chapter 5
From: Paul Malischke

Thank you for sending me the comments from the clerks about Election Board Rule 5, concerning security of the ballots and memory cards. Here are my comments on ballot security. The reference numbers are to the draft version included with the agenda of the January 28, 2008 meeting of the GAB.

Add to the security rule the following as per my presentation to the GAB on January 28, 2008:

“Ballot containers shall be of a type specifically designed and marked for storing ballots. They shall not have been used for another purpose nor in a previous election.” Using inappropriate containers increases the chance that they will not be able to be properly sealed, or that people will not handle them in a secure fashion. Containers that have been used previously may have residue of tape, forms or markings that may lead observers to conclude they have been tampered with.

Add to the security rule “The municipality shall take reasonable precautions to assure the security of the voted ballots at the polling place in the event that the main ballot container becomes full. Such precautions may include providing a second container designed for that purpose.” Currently during November elections, the box under the tabulator gets filled, and then pollworkers try to figure out where to put the voted ballots.

Draft 5.01 (1) Several clerks requested changing the existing rule ELBD 5.01 that requires ballots to be bound inside the ballot container. The rule should adhere to statute 7.51 (3), which starts:

*“The inspectors shall place together all ballots **counted by them** which relate to any national, state or county office or any state, county or technical college district referendum and secure them together so that they cannot be untied or tampered with without breaking the seal. The secured ballots together with any ballots marked "Defective" shall then be secured by the inspectors in the ballot container in such a manner that the container cannot be opened without breaking the seals or locks, or destroying the container.”*

The clerk from Winnebago County pointed out that the binding inside the ballot container might not be required for optical scan ballots since they are not “*counted by them.*” This seems reasonable as long as the ballot container is secured.

Draft 5.01 (6) would institute a checking mechanism to ensure conformance to the security rule. This is needed given the past history of widespread disregard for the existing rule 5.01(1), (2), and (3) until I brought this to the attention of the SEB at their September 2007 meeting. By starting to build into the system more of these types of quality control mechanisms, Wisconsin can avoid dealing with nonconformance during pressure situations. Clerks commented that this check should be required only for a recount. A high-pressure recount is not a good time to discover that ballot security is not being maintained.

Two clerks mentioned that this check would not be practical for the County Board of Canvassers since the ballots are kept by the municipality. This is not in accord with statute 7.51(5)(b) which states in part *“The municipal clerk shall deliver the ballots, statements, tally sheets, lists, and envelopes for his or her municipality relating to any county, technical college district, state, or national election to the county clerk no later than 4 p.m. on the day following each such election”*. This item with statutory reference appears in the GAB’s 2007-8 calendar of events under the Clerk Information section of the GAB website.

Perhaps the rule should mention the above statute, and clarify the delivery of ballots that have both school district elections and county elections.

Draft 5.01 (7) states “Any unused ballots shall be recorded in the chain of custody document.” Since resources are limited, perhaps we can dispense with counting individual unused ballots.

However, it is important that the chain of custody be maintained until the ballots are delivered to their final location. Add the following wording: “The municipal clerk shall maintain a chain of custody for **voted** ballots until they are stored per this rule, or delivered to the school district clerk or county clerk per statute 7.51(5)(b). The chain of custody shall include a notation of time of receipt of any ballots that are not delivered immediately by the inspectors per statute 7.51(5)(a)4. The chain of custody shall include a notation of time and date of delivery to the school district or county clerk per 7.51(5)(b)”.

Statute 7.51(5)(a)4 reads *“The inspectors shall **immediately** deliver all ballots, statements, tally sheets, lists, and envelopes to the municipal clerk.”*

cc: Nat Robinson, Kevin Kennedy, John Washburn

Security of Electronic Voting System - Chapter 5

To: Ross Hein
Date: March 15, 2008
From: Paul Malischke

These comments on security rules are in addition to my letter of March 9, 2008. The reference numbers are to the draft version included with the agenda of the January 28, 2008 meeting of the GAB.

5.02(1) One clerk questioned the need to include the memory card for the Automark. It is extremely unlikely that anyone would try to disrupt our elections by targeting the Automark. In the interests of putting resources where they are most needed, the Automark should be exempt from all general requirements. This will reduce the workload for clerks and pollworkers. The Automark should be subject to only the following:

Upon acquisition, units and memory card serial numbers shall be inventoried.

The door to the memory card shall be locked between the pre-election test and the closing of the polls.

5.04(6) Several clerks commented that an additional tape is not needed or not possible. Delete this unless there is an explanation as to why it would be needed. The important thing is that the required tapes be printed at the polling place before seals are broken, particularly before any connection is made to the modem port (or any other electronic port). Once a modem connection is made, the transparency of the security of the tabulator is lost.

5.03(4)(a) One clerk mentioned that it would be difficult if not impossible to seal all the ports on the Accu-Vote optical scanner. If some equipment cannot meet these requirements, consider granting a one-year waiver until remedial action can be taken. ELBD 7 (Approval of Electronic Voting Systems) should be changed to require that vendors demonstrate that the equipment can meet the security rule.

The draft requires both a post-election inspection in 5.05(1) and (2) and a pre-election inspection in 5.03(1). This may be redundant. Eliminate 5.05 (1) and (2), and move some of the language to 5.03(1). Perhaps this inspection can be done during L&A testing in order to make efficient use of clerk's time. 5.03(1) would then read:

“The municipal clerk shall check the locks and security seals and compare to logs to verify seal numbers and who accessed the electronic voting systems or memory cards since the previous election. The inspection shall be documented in the written chain-of-custody record with the date.”

Consider adding this:

“Clerks shall take reasonable measures to ensure that contractors that print ballots or program memory cards are taking appropriate security precautions.”

Written Testimony of John Washburn

Government Accountability Board, May 5, 2008

I have two objections to the proposed administrative rules EIBd5. The first objection is the requirement to destroy ballots proposed in paragraph 5.01(5). The second objection is the absence of an instruction to the municipal and clerks to follow the requirements of WI Stats. 7.23(1)(g).

Destruction of Ballots

The proposed paragraph 5.01(5) reads [emphasis mine]:

*Security of the ballots and the ballot container shall be maintained as provided under s. 7.51, Stats., until destruction of the ballots is conducted under s. 7.23, Stats. Destruction of the ballots under s. 7.23, Stats., **requires shredding, incineration, or some other form of obliteration of the ballots.***

The proposed paragraph badly misstates the law. It is what the SEB staff desires, but it is not the law as written.

NOWHERE does 7.23 state that ballots or any election records shall be destroyed. WI stats 7.23 consistently says **MAY** be destroyed. For Mr. Dunst to claim otherwise is a contradiction of WI Chapter 19 in general and section 19.23 (donation to the Historical society of Wisconsin) in particular.

In only one place do the statues say **SHALL** destroy with regard to a ballot or any other election material. It is in WI 7.37(11):

*SPOILED BALLOTS. Any spoiled ballot returned to an inspector under s. 6.80 (2) (c) **shall** be immediately destroyed by one of the inspectors.*

Here is 7.23(1) in its entirety [emphasis mine]

7.23 Destruction of election materials. (1) All materials and supplies associated with an election, except as provided in sub. (2), **may** be destroyed according to the following schedule:

- (a) Any unused materials after an election and the contents of the blank ballot box after a primary **may** be destroyed at a time and in a manner designated by the appropriate clerk.
- (b) Voting machine recorders essential for proper operation of voting machines **may** be cleared and reactivated 14 days after any primary and 21 days after any other election.
- (c) Registration forms of electors whose registrations are changed to ineligible status under s. 6.50 (7) **may** be destroyed 4 years after the change, unless an elector becomes eligible again during that period.
- (d) Except as provided in s. 11.21 (11) (a), financial reports **may** be destroyed 6 years after the date of receipt. Financial registration statements may be destroyed 6 years after termination of registration.
- (e) Poll lists created at a nonpartisan primary or election **may** be destroyed 2 years after the primary or election at which they were created and poll lists created at a partisan primary or election may be destroyed 4 years after the primary or election at which they were created.
- (f) Except as authorized in pars. (b) and (g), ballots, applications for absentee ballots, registration forms, or other records and papers requisite to voting at any federal election, other than registration cards, **may** be destroyed after 22 months.
- (g) Detachable recording units and compartments for use with electronic voting machines **may** be cleared or erased 14 days after any primary and 21 days after any other election. Before clearing or erasing the units or compartments, a municipal clerk **shall** transfer the data contained in the units or compartments to a disk or other recording medium which may be erased or destroyed 22 months after the election to which the data relates.
- (h) Ballots **may** be destroyed 30 days after any election.
- (i) Official canvasses **may** be destroyed 10 years after the election to which they relate.
- (j) Election notices, and proofs of publication and correspondence filed in connection with such notices **may** be destroyed one year after the date of the election to which they relate.
- (k) All other materials and supplies associated with an election **may** be destroyed 90 days after the election.

Proposed paragraph 5.01(5) is a continuation of a poor policy promulgated in August, 2006 when I tried to obtain the 2004 ballots of the Village of Germantown for academic study. I filed a complaint in September 2006 with the legislature's Joint Committee for Review of Administrative Rules regarding the SEB sending out an email to every municipal and county clerk misinforming the clerks that Wisconsin statutes prohibits donations of election materials to the WI Historical Society. Wisconsin open records law includes original ballots as open records which may be available for donation to the Wisconsin Historical Society under WI Stats 19.23. Both the Historical Society and the State Election Boards have recognized that original ballots may be acquired and archived by the Historical Society. Attached is the record retention policy distributed by the State Election Board to municipal and county clerks which was published in 2007. Also attached is the general record retention policy distributed by the Wisconsin Historical Society. While the Historical Society has a routine policy of waving its opportunity to archive original ballots from an election, the Society clearly retains the

prerogative to archive any original ballots the Society would find to be of academic or historical interest. The proposed paragraph 5.01(5) prevents the Historical Society from carrying out the public policy entrusted to it by the legislature.

I propose that paragraph 5.01(5) be re-written as

Security of the ballots and the ballot container shall be maintained as provided under s. 7.51, Stats., until destruction of the ballots is conducted under s. 7.23, Stats. If contacted by the Wisconsin Historical Society original election ballots may be transferred to the Wisconsin Historical Society under s. 19.23. Unless contacted by the Wisconsin Historical Society, original election ballots may be destroyed. If the original ballots are to be destroyed, then the ballots shall be destroyed by shredding, incineration, or some other form of obliteration of the ballots.

This change permits the proper balancing of public policy to preserve records of historical interest with whatever public good the destruction of original election ballots serves. Thus, in the future, if ballots are desired for academic study or historical preservation, the interested parties can negotiate with the Wisconsin Historical Society in order to acquire the desired, original ballots. This protects the municipal and county clerks from direct requests from the public and insures frivolous or burdensome requests are first screen by the Historical Society.

Failure to Retain Records

Proposed rule 5.02 fails to instruct clerks to obey the 1989 law, WI Stats. 7.23(g) which requires backup copies the contents of removable memory cards be created. This failure puts municipal and county clerks in legal peril under both state law and Federal law (USC Title 42 chapter 20 SUBCHAPTER II Section 1974). The federal aspects are beyond the jurisdiction of the GAB, but the administrative rules to aid the municipal and county clerks obey state election law is within the jurisdiction of the GAB.

I propose that a paragraph 11 be added to rule 5.02 which reads:

EIBd 5.02(11) WI Stats. 7.23(g) requires that prior to the clearing of any data found on removable memory, the data on the removable memory shall be backed-up and retained for 22 months. The municipal clerk shall note in the written, chain-of-custody record the name and storage location of the file or disk which contains the data backup of the memory card which was created pursuant to WI Stats. 7.23(g). It is the recommendation of the Government Accountability Board that the backup of the memory cards be retained on a write-once, electronic medium such as a CD-ROM or DVD-ROM.

The statute cited, 7.23(1)(g) reads:

Detachable recording units and compartments for use with electronic voting machines may be cleared or erased 14 days after any primary and 21 days after any other election. Before clearing or erasing the units or compartments, a municipal clerk shall transfer the data contained in the units or compartments to a disk or other recording medium which may be erased or destroyed 22 months after the election to which the data relates.

This statute was passed in 1989. The records retention requirements of this statute are published by the Wisconsin State Elections Board (now the GAB). The first is the attached records retention policy published by the State Election Board in 1995. The second is the attached document of the finalized draft of the proposed security recommendations published by the State Election Board in 2006. Both documents state the contents of the memory cards are to be backed up and retained for 22 months pursuant to s. 7.23(1)(g). Neither document has been followed.

Washington county clerk, Brenda Jaszewski, has never made such backup; neither for the Diebold/Premier AccuVote Optical scanners nor for the Diebold/Premier TSx touch screens. This statutory violation is now formal complaint before this Board having been referred to the Board by the attorney General on February 4, 2008. Executive Director Susan Edman informs me that no backups of memory packs used by the Automark Ballot Marking Devices or the Optech IIIP Eagle scanners are made for any ward in the City of Milwaukee. Municipal Clerk Lamb of the Village of Lannon informs me he has never made a backup of memory packs for either the Optech IIIP Eagle or the SEQ-AVC Edge II touch screens used by the Village of Lannon.

Given that the past publications by the Wisconsin State Election Board have been ineffective in informing municipal and county clerks of the 20-year old requirements of 7.23(g), this statutory requirement for making backups needs to be expressly and prominently included in EIBd 5.02 with the addition of a paragraph 11.

The addition of paragraph 5.02(11) is required for a second reason.

City of Milwaukee Election Director, Sue Edman, claims there is no election data on the memory cards for the Automark ballot markers. If this is the case, then operation of the Automarks should be unaffected if the cards with no data are removed. The Automarks will not work in such a situation. The Automark, Optech IIIP, Diebold AccuVote, and other memory cards do contain data vital to the administration of an election using such equipment. The backup of this data is required by statute and has been for nearly 20 years. Ms. Edman and Ms. Jaszewski seem to think the statute, 7.23(g), confines the definition of data to candidate vote totals. This is not the case. There is a clear public interest in preserving the actual contents of the removable memory used by the election machinery to administer an election.

In the case the ES&S M100 optical scanners used in Taylor county the memory card contains the unique executable compiled for that particular election. Once that data is destroyed, there remains no record of how the scanner translated the meaning of a mark in location X into a vote for Candidate A. Similar election data is present on the removable memory cards for equipment from Sequoia and Premier. The data on the memory card contains the ballot definition files which impart meaning to marks on the page and touches to the screen. The hardware and firmware detect marks on the page and touches on the screen, but without the ballot definition files found on the memory card the firmware does know

the meaning of the marks (or touches). Should the ballot be rejected as over-voted? Should the ballot be segregated because there is a write-in? Should a vote accrue to Candidate A or Candidate B? It is the ballot definition files found on the removable memory cards which impart the meaning to marks on the page and touches on the screen need to answer these election administration questions.

Once the memory card is overwritten, the **only** record of how the scanner was instructed to interpreted marks and touches is gone. The whole point of the security requirements of the proposed rule 5.02 is to acknowledge the danger should the contents of the memory cards be altered or exchanged between the time the clerk downloads the ballot definition files and other election data and the time that election data is used to administer the election on election day. The backup of the memory cards is the only way the clerks can demonstrate that the election data such as ballot definition files did not contain mistakes or malicious code. Because the contents of the memory cards are what actually drive the behavior of and piece of election machinery on election day in a particular polling location, the legislature requires this vital election record be retained under s. 7.23(1)(g).

For a concrete example see the attached security logs from Washington County for a memory card used in the Village of Germantown. The election data downloaded to the memory card on August 26, 2006 was destroyed on October, 3, 2006. This election data is separate and distinct from the candidate vote totals and other such data added on September 12, 2006. It was for the preservation of this August 26, 2006 data that s. 7.23(1)(g) was designed to preserve.

I have had clerks post anonymously to me that clerks are not required to obey WI Stats. 7.23(g) because the WI SEB has not certified any voting equipment which provides this backup functionality as a well-documented feature. That may be true, but that is matter between the several clerks and GAB. The statutes are clear, unambiguous, and long standing. The backups of the memory cartridges SHALL be made. I find this claim hard to believe on technical grounds. I find it hard to believe that an application (e.g. UNITY, WinEDS, GEMS, BOSS, etc.) which can write data to the memory cards, read data from the memory cards cannot also transfer data from the memory card. Making backups may not be a well-documented feature, but I have trouble believing it is not a feature somewhere within the election management applications provided by the equipment vendors.

But, even if it such backups cannot be effected through the documented user interface of the election management software (UNITY, WinEDS, GEMS, BOSS, etc.) most of the memory devices are of standard design (e.g. PCMCIA) and a reader for the cards can be purchased at a local electronics store. For Diebold/Premier Accuvote OS a reader for the Epson 40-pin memory pack can be purchased from CropScan. If the neither the election management software nor such third party equipment purchases can bring the election system into compliance with the statutory requirements of 7.23(g) then the GAB may have no alternative but to consider the decertification of the non-compliant system.

On a practical note, the upcoming 2008 Presidential election is likely to be divisive; more so in Wisconsin as a swing state. The clerks will need this data backup to protect them from spurious claims of fraud.

Again I urge the GAB add the following paragraph to section 5.02.

EIBd 5.02(11) WI Stats. 7.23(g) requires that prior to the clearing of any data found on removable memory, the data on the removable memory shall be backed-up and retained for 22 months. The municipal clerk shall note in the written, chain-of-custody record the name and storage location of the file or disk which contains the data backup of the memory card which was created pursuant to WI Stats. 7.23(g). It is the recommendation of the Government Accountability Board that the backup of the memory cards be retained on a write-once, electronic medium such as a CD-ROM or DVD-ROM.

John Washburn's Comments 2.21.08

Dear Mr. Kennedy:

Please forward this written statement and the attached documents to the Government Accountability Board for inclusion in the discussion Monday on the proposed Administrative Rule ElBd 5.

Please find attached the administrative rules proposed by George Dunst.

Proposed rule 5.02 fails to instruct clerks to obey the 1989 law, WI Stats. 7.23(g). This failure puts municipal and county clerks in legal peril under both state law and Federal law (USC Title 42 chapter 20 SUBCHAPTER II Section 1974). The federal aspects are beyond the jurisdiction of the GAB but the administrative rules to aid the municipal and county clerks obey state election law is within the jurisdiction of the GAB.

I propose that a paragraph 11 be added to rule 5.02 which reads:

ElBd 5.02(11) WI Stats. 7.23(g) requires that prior to the clearing of any data found on removable memory, the data on the removable memory shall be backed-up and retained for 22 months. The municipal clerk shall note in the written, chain-of-custody record the name and storage location of the file or disk which contains the data backup of the memory card which was created pursuant to WI Stats. 7.23(g). It is the recommendation of the Government Accountability Board that the backup of the memory cards be retained on a write-once medium such as a CD-ROM or DVD-ROM.

The statute cited, 7.23(1)(g) reads:

Detachable recording units and compartments for use with electronic voting machines may be cleared or erased 14 days after any primary and 21 days after any other election. Before clearing or erasing the units or compartments, a municipal clerk shall transfer the data contained in the units or compartments to a disk or other recording medium which may be erased or destroyed 22 months after the election to which the data relates.

This statute was passed in 1989. The records retention requirements of this statute is published by the Wisconsin State Elections Board (now the GAB). The two documents in question are attached, but may also be found on the GAB web site at:

<http://elections.state.wi.us/docview.asp?docid=9124&locid=47>

<http://elections.state.wi.us/docview.asp?docid=2469>

According to Brenda Jaszewski not a single municipal clerk in Washington currently make these statutorily required backups; neither

for the Diebold/Premier AccuVote Optical scanners nor for the Diebold/Premier TSx touch screens. Executive Director Suesan Edman informs me that no backups of memory packs used by the Automark Ballot Marking Devices or the Optech IIIP Eagle scanners are made for any ward in the City of Milwaukee. Municipal Clerk Lamb of the Village of Lannon informs me he has never made a backup of memory packs for either the Optech IIIP Eagle or the SEQ-AVC Edge II touch screens used by the Village of Lannon.

Given that the past publications by the Wisconsin State Election Board have been ineffective in informing municipal and county clerks of the 20-year old requirements of 7.23(g), re-iterating this statutory requirement for making backups needs to be expressly included in ElBd 5.02 with the addition of a paragraph 11.

An example of the data not preserved under state and federal law is the data downloaded to the memory cards on August 26, 2006 as indicated on the attached chain of custody records for the memory cards used in the Village of Germantown for the September 12, 2006 election. Washington County Clerk, Brenda Jaszewski, admits that whatever data was downloaded to the memory cards on August 26, 2006 was destroyed on October 3, 2006 when the cards were cleared without creating the statutorily required backups.

City of Milwaukee Election Director, Sue Edman, claims there is no election data on the memory cards of the Automarks. If this is the case, then operation of the Automarks should be unaffected if the cards with no data are removed. The Automarks will not work in such a situation. The Automark memory cards do contain data vital to the administration of an election. The backup of this data is required by statute. Ms. Edman and Ms. Jaszewski seem to think the statute, 7.23(g), confines the definition of data to candidate vote totals.

This is not the case. There is a clear public interest in preserving the actual contents of the removable memory used by the election machinery to administer an election.

I have had clerks post anonymously to me that clerks are not required to obey WI Stats. 7.23(g) because the WI SEB has not certified any voting equipment which provides this backup functionality as a well-documented feature. That may be true, but that is matter between the several clerks and GAB. The statutes are clear, unambiguous, and long standing. The backups of the memory cartridges SHALL be made. I find the technical claim that an application (e.g. UNITY, WinEDS, GEMS, BOSS, etc.) which can write data to the memory cards, read data from the memory cards cannot also transfer data from the memory card. This may not be a well-documented feature, but I have trouble believing it is not a feature somewhere within the election management applications provided by the equipment vendors.

But, even if it such backups cannot be effected through the documented user interface of the election management software (UNITY, WinEDS,

GEMS, BOSS, etc.) most of the memory devices are of standard design (e.g. PCMCIA) and a reader for the cards can be purchased at a local electronics store. For Diebold/Premier Accuvote OS a reader for the Epson 40-pin memory pack can be purchased from CropScan. If the neither the election management software nor such third party equipment purchases can bring the election system into compliance with the statutory requirements of 7.23(g) then the GAB may have no alternative but to consider the decertification of the non-compliant system.

Again I urge the GAB add the following paragraph to section 5.02.

ElBd 5.02(11) WI Stats. 7.23(g) requires that prior to the clearing of any data found on removable memory, the data on the removable memory shall be backed-up and retained for 22 months. The municipal clerk shall note in the written, chain-of-custody record the name and storage location of the file or disk which contains the data backup of the memory card which was created pursuant to WI Stats. 7.23(g). It is the recommendation of the Government Accountability Board that the backup of the memory cards be retained on an write-once medium such as a CD-ROM or DVD-ROM.

Thank you for your time on this matter and if you have question you may call me on my cell phone at 414-375-5777.

In Liberty,

John Washburn

John Washburn's Comments 3.27.08

Dear Ross:

The first omission I see is the complete absence of the requirement that the municipal/county clerks make backups of the election data stored on the memory cartridges as required by the 1989 statute, WI Stats.

7.23(1)(g) <[http://nxt.legis.state.wi.us/nxt/gateway.dll/Statutes%20Related/Wisconsin%20Statutes/168/177?f=templates\\$fn=document-frame.htm\\$3.0\\$g=\\$uq=1\\$x=\\$up=1\\$nc=8571#LPTOC1.8](http://nxt.legis.state.wi.us/nxt/gateway.dll/Statutes%20Related/Wisconsin%20Statutes/168/177?f=templates$fn=document-frame.htm$3.0$g=$uq=1$x=$up=1$nc=8571#LPTOC1.8)> which reads [emphasis mine]:

7.23(1)(g) Detachable recording units and compartments for use with electronic voting machines may be cleared or erased 14 days after any primary and 21 days after any other election. Before clearing or erasing the units or compartments, a municipal clerk shall transfer the data contained in the units or compartments to a disk or other recording medium which may be erased or destroyed 22 months after the election to which the data relates.

Whether the election data on a memory card is proprietary, copyrighted, a trade secret, a security risk, or otherwise not an open record under chapter 19 is irrelevant. This is not an open records issue (chapter 19) but an election record (chapter 7) issue. The election data on the memory card (which is considerably more than candidate vote totals)

is an ELECTION record under chapter 7 and which WI Stats. 7.23(1)9g) requires be backed up and retained for 22 months. Currently, no clerk seems to be making these statutorily required backups. This put the clerks at peril under both state and federal statutes (title 42, sub-chapter 20 section 1974). Many New Hampshire clerks have discovered the federal aspect of this peril first hand by failing to secure or backup the memory cards from the New Hampshire primary which have now gone missing.

I will incorporate my comments on this subject in my written testimony for the May 2, 2008 meeting.

OTHER ELECTION MATERIALS

Cost of Elections

The following is breakdown of who is responsible and who pays for certain election-related costs.

COST OF ELECTIONS		
<i>Polling Places</i>	<i>Who's Responsible</i>	<i>Who Pays</i>
Establishing and changing polling places	Governing Body of Municipality	Municipality
<i>Notices</i>	<i>Who's Responsible</i>	<i>Who Pays</i>
Type A	Clerk of jurisdiction for offices in the notice	Jurisdiction
Type B	Clerk of jurisdiction for offices in the notice	Can be prorated proportionately if notice is combined with other jurisdictions
Type C	Clerk of jurisdiction for referenda in the notice	Jurisdiction
Type D	Municipal clerk	Municipality
Type E	Municipal clerk	Can be prorated proportionately if notice is combined with other jurisdictions
Polling Place Notices (i.e. Election Fraud Notices, Notice of Crossover Voting)	Municipal clerk	Municipality
<i>Supplies</i>	<i>Who's Responsible</i>	<i>Who Pays</i>
Absentee ballot mailing envelopes and postage	Municipal clerk	Municipality
Tally Sheets, Inspectors' Statements, Poll Lists, etc	-County clerk for state, federal and county offices -Municipal clerk for municipal offices -School district clerk for school district offices	Jurisdiction required to provide materials

<i>Ballots</i>	<i>Who's Responsible</i>	<i>Who Pays</i>
Paper	Clerk of jurisdiction for offices on the ballot	Jurisdiction
Optical Scan	-County clerk for state, federal and county offices -Municipal clerk for municipal offices -School district clerk for school district offices	Prorated proportionately among jurisdictions
<i>Labor</i>	<i>Who's Responsible</i>	<i>Who Pays</i>
Election Inspectors, Tabulators, Special Voting Deputies, Special Registration Deputies	Municipal clerk	Municipality for all regularly scheduled primaries and elections* <u>OR</u> Jurisdiction calling special election
Board of Canvassers, Tabulators	Clerk of jurisdiction requiring canvass	Jurisdiction requiring canvass
Messengers	Municipal clerk when delivering materials to county or school district	Municipality
	Clerk of county or school district when delivering materials back to municipality	Jurisdiction delivering materials
<i>Equipment</i>	<i>Who's Responsible</i>	<i>Who Pays</i>
Voting machines/systems, ballot boxes, voting booths, pens, pencils	Municipal clerk	Municipality
Set-up of machines (moving machines from one place to another)	Municipal clerk	Municipality
Maintenance of machines (making sure machines keep working or repairing when it breaks down)	Municipal clerk	Municipality
Preparation for electronic voting systems (programming)	Municipal clerk	Prorated proportionately among jurisdictions

Special Notes

When a county, school district, or special purpose district holds a special election *at any time other than a regularly scheduled election**, all costs of the election are the responsibility of the jurisdiction calling the special election (all costs of the ballots, supplies, notices and other materials, including the cost of the polling place and election inspector(s)). §§5.68(2), (5), 7.03(1)(bm), Wis. Stats.

*Regularly scheduled elections are the February spring primary, April spring election, September partisan primary, and November general election.

Destruction of Materials

The following chart is designed to assist clerks in determining when to destroy election materials. Materials and supplies associated with an election may be destroyed according to the following chart unless there is a recount, notice of an election contest, or any contest or litigation pending with respect to the election. For specific dates please see the *Calendar of Wisconsin Election and Campaign Events* from the State Elections Board. All materials and documentation associated with a federal election must be retained at least 22 months after the election.

Materials	Destruction Date
Contents of a blank ballot box	Designation of clerk*
Unused ballots and materials	Designation of clerk*
Voter Serial number slips	Designation of clerk*
	22 months after a federal election***
Detachable recording units from electronic voting equipment	14 days after a primary
	21 days after an election**
Ballots (state, county, local offices)	30 days after an election
Ballots (federal offices)***	22 months after a federal election
Applications for absentee ballots	90 days after an election
	22 months after the election for federal election ballots ***

Forms associated with the election such as tally sheets, Inspectors' Statements (EB-104), Declarations of Candidacy (EB-162), and nomination papers	90 days after an election
	22 months after a federal election***
Official canvass statements	10 years after an election
Registration lists	4 years after the election for which they were created
Cancelled registration applications	4 years after the cancellation
Election notices	1 year after the election
	22 months after the federal election***
Proofs of publication of notices and correspondence relative to publications	1 year after the election
	22 months after the federal election***
Campaign Registration Statements ⁺ , Notifications of Noncandidacy (EB-163)	6 years after termination by the registrant
Campaign finance reports	6 years after the date of receipt
Election Voting and Registration Statistics Reports (EB-190)	22 months after the election for which they were created

* The suggested destruction time is after the deadline for the filing of a recount (three business days after the canvass is completed).

** Before units can be cleared or erased, the information must be transferred to a disk or other recording medium and retained for 22 months.

*** Federal offices are President of the U.S., U.S. Senator and U.S. Representative in Congress.

⁺ Candidates who are exempt from filing campaign finance reports are not required to “terminate.” Campaign Registration Statements of these candidates may be destroyed if 6 years have passed since the candidate’s name has appeared on a ballot.

Electronic Conversion of Election Records

The legislature, in §7.23, Wis. Stats., established a schedule for the destruction of election materials, but it did not provide in that statute, or in any other elections statute, a schedule or timetable for the conversion of elections records from “hard-copy” to electronic format or to microfiche.

The statute that authorizes the conversion of hard copies, §19.21(4)(c), Wis. Stats., reads as follows:

(c) Any local governmental unit or agency may provide for the keeping and preservation of public records kept by that governmental unit through the use of microfilm or another reproductive device, optical imaging or electronic formatting. A local governmental unit or agency shall make such provision by ordinance or resolution. Any such action by a subunit of a local governmental unit or agency shall be in conformity with the action of the unit or agency of which it is a part. Any photographic reproduction of a record authorized to be reproduced under this paragraph is deemed an original record for all purposes if it meets the applicable standards established in §§16.61 (7) and 16.61, Wis. Stats. This paragraph does not apply to public records kept by counties electing to be governed by Chapter 228, Wis. Stats..

At its July 18, 2007 meeting, the State Elections Board formally adopted the recommendation that counties or municipalities who convert their elections or campaign finance records from paper or “hard-copy” to microfilm or electronic format must retain the “hard copies” of those records for at least two years after the election immediately following the creation of those records, or for that period of time requested by the district attorney for that county or whose jurisdiction includes that municipality.

DESTRUCTION OF ELECTION MATERIALS - s.7.23, Stats.

The following chart is designed to assist clerks in determining when to destroy election materials. Materials and supplies associated with an election may be destroyed according to the following chart unless there is a recount, notice of an election contest, or any contest or litigation pending with respect to the election. All materials and documentation associated with a federal election must be retained at least 22 months after the election.

MATERIALS	DESTRUCTION DATE
Contents of a blank ballot box	Designation of clerk*
Unused ballots and materials	Designation of clerk*
Voter serial number slips	Designation of clerk* - 22 months after the election for federal offices
Voting machine recorders	14 days after a primary; - 21 days after an election**
Detachable recording units on electronic voting equipment	14 days after a primary; - 21 days after an election***
Ballots (state, county, local offices)	30 days after election
Ballots (federal offices)****	22 months after election
Applications for absentee ballots (for federal election ballots)	90 days after the election 22 months after the election
Forms associated with the election such as tally sheets, inspectors' statements, and nomination papers	90 days after the election 22 months after the election for federal offices
Official Canvass Statements	10 years after the election
Registration and poll lists - Nonpartisan primaries and elections	2 years after the election for which they were created
Registration and poll lists - Partisan primaries and elections	4 years after the election for which they were created
Canceled Registration Cards	4 years after cancellation
Election Notices	1 year after the election 22 months after the election for federal offices
Proofs of publication and correspondence relative to publications	1 year after the election 22 months after the election for federal offices
Campaign Registration Statements	6 years after termination by the registrant
Campaign Finance Reports	6 years after the date of receipt

* The suggested destruction time is after the deadline for the filing of a recount petition (3 business days after the canvass is completed), if no recount is pending.

** The Governor may by order permit the clearing of voting machine recorders before this date if a special election is called.

*** Before units can be cleared or erased, the information must be transferred to a disk or other recording medium and retained for 22 months.

**** Federal offices are President of the United States, United States Senator, and Representative in Congress.

Prepared by State Elections Board, 132 E. Wilson St., Suite 200, P.O. Box 2973, Madison, WI 53701-2973, 608-266-8005
(Rev. 2/95)

- [Library-Archives](#) > [Local Government Records Program](#) > County Clerk Records Schedule

County Clerk General Records Schedule

To the best of our knowledge these retention periods comply with existing state laws as of 1994. It is recommended that local governments consult the latest federal and state regulations to ensure compliance with federal regulations that may be at variance with the schedule and to ensure compliance

Records Series	Retention	Authority	Notification
Administration			
Aid to immigration societies	CR + 7 years	s. 59.53 (17)	Notify
Apportionment maps	Until next apportionment	s. 59.03	Waived
Audit reports	CR + 7 years	n/a	Notify
Bank statements	CR + 7 years	s. 59.61 (3)	Waived
Bounty claims forwarded to DNR	CR + 1 year	s. 59.52 (4)	Waived
Claims paid by county and supporting papers	CR + 7 years or until audited: whichever is earlier	s. 59.52 (4)	Waived
Consolidation of counties: order for referendum or special election regarding	CR + 7 years	s. 59.08 (7)	Waived
County contribution to the mosquito control district	CR + 7 years	s. 59.701(15)	Waived
County officers: appointment of	CR + 7 years	s. 59.25 (2), 59.23 (1), 17.21 (6)	Waived
County orders uncalled for by the payee; list of	CR + 7 years	s. 59.64 (4)	Waived
County zoning ordinance: petition for amendment of	CR + 7 years	s. 59.69 (5)	Waived
Court commissioner: statement of all	CR + 7 years	s. 59.61 (3), 59.61 (1)	Waived

actions or proceedings			
Court costs and fees	CR + 7 years	s. 814.22 (2)	Waived
Crop reports by local assessors	CR + 3 years	s. 59.52 (4)	Notify
Detachment of farm land from cities, entry of judgment	CR + 7 years	s. 62.075 (5)	Waived
Equalization board proceedings or board of review	CR + 7 years	n/a	Notify
Farmland preservation agreements: application	CR + 7 years	s. 91.13 (1)	Waived
Forest products: notice of cutting forest products	CR + 7 years	s. 26.03 (1)(a)	Waived
Forfeiture: statements regarding the collection of and the payment to county treasurer	CR + 7 years	s. 778.15	Waived
Legislative documents, copies of	Retain until superseded by published statutes	s. 35.85 (11)	Waived
Metropolitan Transit Authority annual report	CR + 7 years	s. 66.94 (40)	Waived
Oaths of office: county officers	CR + 7 years	s. 59.23 (2), 59.52 (4)	Waived
Officers: town, city and village certified to county clerk	After date of expiration of term listed	s. 59.52 (4)	Notify
Official bonds: county officers	CR + 6 years	s. 59.17 (14)(b), 59.52 (4)	Waived
Payment vouchers and disbursement made by county treasury	CR + 7 years or until audited, whichever is earlier	s. 59.69 (4)	Waived
Publications fees	CR + 7 years	s. 985.065 (2)(d)	Waived

Removals from office; testimony and proceedings	CR + 7 years	s. 17.16 (8)(c)	Notify
Resignation of public officers	CR + 7 years	s. 17.01 (5), 17.01 (7)	Waived
Resolutions: agricultural use zoning ordinance	CR + 7 years	s. 91.73 (3)	Waived
School tuition claims for nonresidents	CR + 7 years	s. 121.77 (2)(a)	Waived
Town: order establishing a new town	CR + 7 years	s. 59.23 (k)	Notify
Town: record of any alteration of boundaries or organization of town	CR + 7 years	s. 59.23 (k)	Notify
Writs of certiorari top	CR + 7 years	s. 753.04	Waived
County Board			
County board committee proceedings	CR + 7 years	n/a	Notify
County board meeting notices	CR + 7 years	s. 59.11	Waived
County board ordinances	CR + 7 years	n/a	Notify
County board proceedings: original papers, resolutions and reports concerning	6 years after date of publication	s. 59.717 (1)	Notify
County board resolutions	CR + 7 years	s. 59.02 (1)	Notify
Statistical report of county clerk to county board top	CR + 2 years	n/a	Notify
Elections			
Absentee certificate-affidavit envelopes	90 days after date of local election and 22 months after Federal	s. 7.23	Waived

	election		
All other election materials and supplies	90 days after date of local election and 22 months after Federal election	s. 7.23 (1)(k)	Waived
Ballots, Federal	22 months after election	s. 7.23 (1)(f)	Waived
Ballots, non-Federal	30 days after election	s. 7.23 (1)(h)	Waived
Cancelled voter registration cards	4 years after cancellation	s. 7.23 (1)(c)	Waived
Certificate of election	CR + 7 years	s. 7.60 (6)	Waived
Certified lists of all candidates on file	90 days after date of local election and 22 months after Federal election	s. 7.08 (2)(a)	Waived
Detachable recording units	14 days for primary and 21 days after any other election-clear or erase after transfer to a disk or other recording medium	s. 7.23 (1)(g)	Waived
Disk or tape of election data	90 days after date of local election and 22 months after Federal election	s. 7.23 (1)(g)	Waived
Election notices (types A-E and special elections), proofs of publication and correspondence	1 year after date of local election and 22 months after Federal election, unless contested, then by court order	s. 7.23 (1)(j)	Waived
Election returns including inspector's statements, tally sheets, lists and	90 days after day of local election and 22 months after Federal	s. 7.23 (1), 7.51 (5)	Waived

envelopes	election		
Election supplies	90 days after date of local election and 22 months after Federal election	s. 7.10 (1)(a)	Waived
Electronic ballot tallies	90 days after day of local election and 22 months after Federal election	s. 7.23 (1)(g)	Waived
Federal elections records other than registration cards	22 months after day of election	s. 7.23 (1)(f)	Waived
Financial registration statements	6 years after date of termination of registrant	s. 7.23 (1)(d)	Waived
Financial campaign reports	6 years after date of receipt	s. 7.23 (1)(d)	Waived
Nomination papers for political party committee man or woman	90 days after date of election	s. 7.23 (k)	Waived
Nomination papers-- County offices, 1940 and after	90 days after election	s. 7.23 (k)	Waived
Nomination papers-- County offices, before 1940	n/a	n/a	Notify
Official canvasses including statements and determinations for local elections	10 years after date of election	s. 7.23 (1)(i)	Waived
Official canvasses: votes cast for state and national offices	10 years after date of election	s. 7.23 (1)(i)	Waived
Recount fee record	CR + 7 years	s. 9.01 (1)(ag) 4	Waived
Registration and poll lists; non-partisan elections, 1940 and after	2 years after election	s. 7.23 (1)(f)	Waived
Registration and poll	n/a	n/a	Notify

lists; non-partisan elections, before 1940			
Registration and poll lists; partisan elections, 1940 and after	4 years after election	s. 7.23 (1)(f)	Waived
Registration and poll lists; partisan elections, before 1940	n/a	n/a	Notify
Registration and voting statistics	90 days after date of local election and 22 months after Federal election	s. 6.275 (1)	Notify
Sample ballots top	22 months after federal election and 30 days after non-federal election	s. 5.66 (2)	Waived
Licenses			
Automobile registration lists	CR + 7 years	s. 341.17 (4)(a)	Waived
Dog license fee records, reports	3 years provided the records have been audited	s. 174.08	Waived
Dog licenses and tags: related records	CR + 2 years	s. 174.07	Waived
Dog licenses: town and municipal treasurers' records of licenses sold and issued	CR + 3 years	s. 59.52 (4)	Waived
Dogs: list of, kept in assessment district	CR + 2 years	s. 174.06 (7)	Waived
Hunting, trapping, fishing licenses and other approvals	CR + 3 years	s. 29.09, 29.09 (6)	Waived
License fee records: hunting, trapping, fishing	3 years provided the records have been audited	s. 29.09 (7)(a)	Waived
Livestock: claims for	CR + 7 years	s. 174.11 (1)	Waived

damage by dogs			
Marriage license applications and supporting papers	CR + 10 years	s. 59.52 (4)	Waived
Marriage license docket	CR+ 7 years	s. 765.20	Waived
Marriage license receipts and records	CR + 7 years	s. 59.07 (90) (Milw. Co. only), s. 765.15	Waived
Marriage of underage persons, consent of guardian	CR + 7 years	s. 765.02 (2)	Waived
Notice of stray animals	CR + 2 years	s. 170.02	Waived
Vehicles: applications for registration of top	CR + 7 years	s. 341.08 (5)	Waived
Public Lands and Roads			
Airport land: acquisition of, order and maps	CR + 7 years	s. 114.33 (6)	Notify
Award of compensation pursuant to relocation orders	CR + 7 years	s. 32.05 (7)(a)	Waived
Condemnation proceedings: assessments of benefits and damages made in	CR + 7 years	s. 27.065 (2)(b)	Waived
Condemnation proceedings: publication of final determination as a class 2 notice	CR + 7 years	s. 27.065 (6)(j)	Waived
County forest lands: easements; entry and withdrawal	CR + 7 years	s. 28.11 (4)(f), 28.11 (4)(d)	Waived
County forest road aids; maps	CR + 7 years	s. 86.315 (4)(a)	Waived

County highways; acquisition of land, order and map; construction, statements and payroll	CR + 7 years	s. 83.08 (1), 83.04 (4)	Waived
County highways; finding, determination, and declaration regarding controlled access	CR + 7 years	s. 83.027 (1)	Waived
County improvement notice	CR + 7 years	s. 27.065 (9)(a)	Waived
County park commissioners: appointment of	CR + 7 years	s. 27.02 (1)	Waived
County parks and parkways: final determination of damages and benefits; notice of appeal, liens against property, plans and specifications of contractors, special assessments	CR + 7 years	s. 27.065, (5)(6)(8)(9) (10)	Waived
District protection and rehabilitations, special assessments and changes	CR + 7 years	s. 33.32 (1)(c)	Waived
Drainage district: transfer to other jurisdiction, petition and resolution	CR + 7 years	s. 88.83 (4)	Waived
Flood works: petition for reports; notice of hearing	CR + 7 years	s. 87.04 (1), 87.07 (1)	Waived
Highway and road records, miscellaneous, before 1930	n/a	n/a	Notify
Highway jurisdiction maps	CR + 7 years	s. 86.302 (1)	Waived
Leasing of land	CR + 7 years	s. 24.39 (3)	Waived

under the U.S. flood control act of 1954			
Municipal power and water districts: resolutions of organization, public service commission reports, petitions, referendum results	CR + 7 years	s. 198.03, 198.04, 198.06	Waived
Notices to town assessors regarding lands sold and owned by county: copies	CR + 3 years	s. 59.52 (4)	Waived
Petitions and objections regarding establishment of public land, inland lake protection and rehabilitation district	CR + 7 years	s. 33.26 (1), 33.25 (1)	Waived
Protest of proposed zoning amendment in airport affected area	CR + 7 years	s. 59.69 (5)	Waived
Relocation orders	Retain latest revision for each project	s. 32.05 (1)(a)	Waived
Resolution redefining metro sewage district boundary	CR + 7 years	s. 66.888 (1)(d)	Waived
State trunk highways, county maps	CR + 7 years	s. 84.02 (12)	Notify
Streets and parkways: adoption of grades and alterations	CR + 7 years	s. 27.065 (3)	Waived
Town highways, petitions for immediate repair to culvert or bridge	CR + 7 years	s. 81.38 (3)	Waived
Town highways: appropriations;	CR + 7 years	s. 81.38 (1), 88.83 (4)	Waived

appeals to county board			
Zoning ordinance: adoption of top	CR + 7 years	s. 59.61 (5)	Waived
Social Services			
Aid: administration of and record of disbursements	CR + 7 years	s. 45.14 (2)	Waived
Aid: application for, hearing and review	CR + 7 years	s. 49.50 (8)(b) 1, 49.50 (9)(a)	Waived
Annual report: department of social services	CR + 7 years	s. 46.18 (10)	Waived
Audit by state Department of Health and Social Services and administrative review of general relief agency	CR + 7 years	s. 46.206 (1)(c), 46.208 (2)(m)	Waived
Audits of claim against county	CR + 7 years	s. 46.18	Waived
Bonds furnished by conservator of county hospital patient or county home resident or guardian for mentally ill patient	CR + 7 years	s. 880.295 (1)	Waived
Cemetery care funds	CR + 7 years	s. 157.11 (9g)(a) 2.	Waived
Clerk of Court for juvenile matters: appointment of	CR + 7 years	s. 48.04 (1)	Waived
Power of attorney for health care instrument	CR + 7 years	s. 155.30 (3)	Waived
Soldiers graves: record for the care of	CR + 7 years	s. 45.185 (2)	Waived
Veterans burials and record of financial assistance	CR + 7 years	s. 45.17	Waived

Veterans service commission: individual members' surety bond	CR + 7 years	s. 45.12 (2)	Waived
Wills, living top	CR + 7 years	s. 154.03 (2)	Waived
Taxes			
Apportionment of county taxes: record of	CR + 7 years	s. 70.63 (1)	Waived
Court certificates drawn on county treasurer	CR + 7 years	s. 66.081	Waived
Illegal tax certificates charged back to local tax districts	3 years after charging back	s. 59.52 (4)	Waived
Local assessors: reports detailing the work of	CR+ 7 years	s. 73.06 (5)	Waived
Notice of application for tax deed: affidavits related to	CR + 7 years	s. 75.12 (3)	Waived
Notices of application for taking of tax deeds and certification of non-occupancy, proofs of service and tax certificates filed	CR + 15 years	s. 59.52 (4)	Waived
Receipts from every county officer, employee, board, commission or other body collecting or receiving money on behalf of the county	CR + 7 years or until audited, whichever is earlier	s. 59.61 (1)	Waived
Receipts issued by treasurer: copies	CR + 4 years or until audited, whichever is earlier	s. 59.25 (3), 59.52 (4)	Waived
Service of notice on owner of record of original title	CR + 7 years	s. 75.28 (2)	Waived

Tax Appeals Commission: appeals to	CR + 7 years	s. 70.64 (6)	Waived
Tax Appeals Commission: notice of hearing	CR + 7 years	s. 70.64 (4)	Waived
Tax apportionment notices sent to local taxing districts: copies	CR + 3 years	s. 59.52 (4)	Waived
Tax apportionment: notices from Secretary of State	CR + 3 years	s. 59.52 (4)	Waived
Tax deeds	CR + 7 years	s. 75.16	N/A
Tax deeds: cancellation of	CR + 7 years	s. 75.23	Waived
Tax receipts	CR + 15 years	s. 59.52 (4)	Waived
Taxes levied on taxable property: statement of	CR + 7 years	s. 69.62	Waived
Woodland tax law: copy of DNR action - request to place under law top	CR + 7 years	s. 77.16 (9)	Waived
General			
Any record subject to litigation, claim, audit or other action	until permission to destroy obtained from corporation counsel	n/a	Waived
Cancelled checks	CR + 7 years	s. 59.52 (4)	Waived
Correspondence	CR + 3 years	n/a	Waived
Financial records top	n/a	n/a	Notify

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Security Recommendations for Electronic Voting Systems
adopted by the Wisconsin State Elections Board on June 23, 2006

Introduction and Scope

These recommendations apply to all memory devices, including, but not limited to, prom packs, memory cards or any other removable memory devices that can be programmed or function to store and transfer ballot images or tabulation data.

Nothing prohibits reuse of memory cards, though municipalities must comply with section 7.23(1) (g) Wis. Stats.: “Detachable recording units and compartments for use with electronic voting machines may be cleared or erased 14 days after any primary and 21 days after any election. Before clearing or erasing the units or compartments, a municipal clerk shall transfer the data contained in the units or compartments to a disk or other recording medium which may be erased or destroyed 22 months after the election to which the data relates.”

The Wisconsin State Elections Board recognizes the need for flexibility when implementing these recommendations, and acknowledges that alternative means may be used to achieve and ensure the same level of security. Therefore, the State Elections Board will consider requests from municipalities and counties to implement alternative security procedures.

General Statements

1. Throughout the life of the voting system, the municipal clerk shall maintain control of all memory cards and keep a separate, perpetual, written chain-of-custody record for each memory card used with a voting system. Memory cards shall be stored securely at all times and each access and transfer shall be logged in the record.

Upon the agreement of the municipal clerk, the county clerk may store memory cards in secure location. In this instance, both clerks must maintain a separate, perpetual, written chain-of-custody records for each memory card used with a voting system.

An additional written log shall record everyone who accesses the voting system. This log shall include the name of the person, the date and time the access begins, the purpose of the access, and the time the access ends. Such documentation does not apply to election day procedures.

The recommended, but not required, practice is that memory cards shall at no time be in the possession of a single individual. Regardless of compliance with this recommended practice, a separate, perpetual, written chain-of-custody record must be maintained for each memory card used with a voting system.

2. Each memory card shall have or be assigned a unique and permanent serial number. If the memory card does not have a permanent and fixed serial number affixed by the

manufacturer, a clerk may affix a label to the cards which contains the clerk's original signature.

3. The municipality shall use controlled, serialized seals that are tamper-resistant and resistant to inadvertent breakage along with a written log of all seals and associated serial numbers. The municipal clerk, or county clerk if applicable, should maintain a written log that records which memory cards and which serialized tamper-evident seals are assigned to which voting stations or units.
4. If applicable, the municipal and/or county clerk(s) shall maintain an additional written inventory of all keys that may be used to gain access to the voting systems. The municipal and/or county clerk(s) shall keep a perpetual, written chain-of-custody record for all such keys.
5. These procedures shall be followed for each election, recount, or for any other situation in which the voting system or memory cards must be accessed.

Pre-Election Procedures

6. The municipal clerk, or county clerk if applicable, shall check the locks and security seals and compare to the logs to verify who accessed the voting systems or memory cards since the previous election.
7. Memory cards shall, if possible, be programmed to print a list of the software and firmware versions of the voting system on each beginning-of-election-day zero report and end-of-day zero report. This information shall also be printed on any reports generated during the pre-election testing, including the public test.

For existing systems that cannot accommodate this requirement, this information may be recorded from the system start-up screen, either by municipal or county staff during the pre-election testing or by election inspectors during election day.

The records for both the pre-election test and election day reports must be maintained by the municipal or county clerk.

8. Except when necessary to program, test, or operate the system, each system must be closed and locked with a tamper-resistant seal which can be tracked using a unique and permanent serial number. Each input slot or access port, including serial or modem ports, must be closed and locked using a tamper resistant seal which can be recorded using a unique and permanent serial number.

Alternately, these slots or ports may be disabled, with written documentation of the dates and times maintained by the municipal or county clerk.

Any door by which access can be gained to the system controls must be closed and locked using a tamper-resistant seal which can be tracked using a unique and permanent

serial number. The municipal or county clerk shall maintain a written record of such serial numbers.

9. Once a memory card is programmed for the election, it shall be immediately inserted into its assigned unit and sealed against unauthorized access with a serialized, tamper-evident seal which can be tracked using a unique and permanent serial number. The voting station shall not be set into election mode until after the memory card is sealed inside.

Alternately, memory cards may be locked in a secure location with controlled access; written documentation of access to programmed memory cards must be maintained.

10. The municipality or county should obtain a signed "Certificate of Performance Compliance: Memory Card Security" from each vendor that provides voting systems, equipment, programming services, or memory cards to the municipality.

Election Day Procedures

11. On Election Day, before any ballots are cast on any unit, the integrity of the tamper-evident seals shall be verified by the chief election inspector before accessing compartments containing the memory card and unit power switch. The chief election inspector shall record this information on the Inspectors' Statement (EB-104) and chain-of-custody document for the memory card.
12. Once the polls have been opened on Election Day, ballot removal from an optical scan machine or paper roll removal or replacement on a Direct Recording Electronic (DRE) must be conducted with at least two election inspectors (or other sworn election team members appointed by the municipal clerk) present. The removal process, names of the election inspectors or sworn election team members, and time must be recorded on the Inspectors' Statement (EB-104).
13. In post-election mode, election officials must print the results report before the removal of the memory card from the voting stations or units. If additional reports other than the results reports are available, these reports must also be printed before the removal of the memory card.
14. One copy of the results report and the memory cards shall be secured in a separate, sealed container or envelope by the chief election inspector. The chief election inspector and two additional election inspectors shall sign their names across the seal of the secured envelope or container. The memory cards shall be promptly returned to the municipal clerk.

If results are transmitted by modem, the municipal clerk may access the memory card for transmission purpose, but must reseal and sign his or her name across the seal of the secured envelope or container. Before transmitting the results via modem, the clerk must print an additional results report from the system and record the transmission time on the Inspectors' Statement (EB-104).

As an alternate procedure, the memory cards may remain sealed in the voting stations or units. The numbers of the security seals shall be recorded on the Inspectors' Statement (EB-104).

Post-Election Procedures

15. After each election, the clerk responsible for storing the voting system shall conduct an inspection to ensure that each system is locked and secured. Written documentation shall note the date and time of the inspection and any applicable security seal numbers.
16. Prior to the next election or recount, the municipal clerk, or county clerk if applicable, shall inspect the security seals to ensure that each seal number matches the initial ending documentation from the previous election.

**CERTIFICATE OF PERFORMANCE COMPLIANCE:
MEMORY CARD SECURITY**

The undersigned supplier of voting system services certifies that documented procedures for assuring memory card security and chain of custody have been provided to the Wisconsin State Elections Board and have been utilized while the supplier had control or access the memory cards with the following serial numbers:

The undersigned further certifies that no codes, files, programs or language have been added to the memory card that deviate in any way from the approved version in escrow with the Wisconsin State Elections Board. The undersigned understands and agrees that any deviation from this agreement subjects the undersigned to: (1) de-certification of any or all voting systems or services provided by the undersigned supplier; (2) a rebate of full purchase price to all municipalities which have purchased said system; and (3) any applicable civil or criminal penalties that may be available to the purchaser of such services or the State Elections Board, including, but not limited to the election fraud provisions provided in section 12.13 Wis. Stats.

**Procedures for requesting approval from the State Elections Board for the use of
alternative security procedures**

1. Procedures shall be submitted in writing to the State Elections Board (SEB) and received by that office for approval no later than sixty (60) days before the election date. The SEB shall review the alternative procedures and shall either approve the procedures submitted or notify the designated election official of recommended changes.
2. Approved security procedures will remain in effect until the municipality requests, in writing, a revision or the SEB determines a change necessary.
3. Revision requests to previously filed security procedures shall clearly state which part of the procedures previously filed have been revised.
4. Alternative security procedures shall, at a minimum, detail:
 - a. Physical security of election equipment, software and firmware, and memory cards including but not limited to:
 - i. Locking mechanisms and seals;
 - ii. Chain-of-custody procedures and logs
 - iii. Equipment maintenance procedures
 - b. Verification security including but not limited to:
 - i. Pre-election verification of software and firmware versions
 - ii. Pre-election zero status

Receipt of a signed “Certificate of Performance Compliance: Memory Card Security” from each vendor that provides services to the municipality.

MEMORY CARD - CHAIN OF CUSTODY RECORD
 VILLAGE OF GERMANTOWN DIST 1

Memory Card Number: 67131-D1-A

DATE	TIME	TAMPER EVIDENT SEAL #	ACCESS / TRANSFER	BY
8/26/06	9:45am		Downloaded: put in Sec. Enulp	B. Jozwik Co. Clerk
9-1-06	10:55 am		Picked up County Clerk's office	C. Micka
9-6-06	1:00 p.m.		Broke seal to access card for Pre-Test	C. Micka
9-6-06	2:30 p.m.	Intab # 137572	Secured card in machine	C. Micka
9-12-06	8:18 PM		Sealed memory card in envelope	J. Nolter
9-12-06	9:22 PM		Clerk broke seal to Modern courts	C. Micka
9-12-06	9:50 PM		Clerk sealed memory card in machine	C. Micka
9-13-06	3:45 PM		Rec'd @ Co - Sealed	B. J. C.
10-3-06	1:00 PM		Broke seal & cleared card	aw

Cathy
- Weston

RETURN THIS FORM TO COUNTY CLERK WITH MEMORY CARD

State of Wisconsin\Government Accountability Board

Post Office Box 2973
17 West Main Street, Suite 310
Madison, WI 53701-2973
Voice (608) 266-8005
Fax (608) 267-0500
E-mail: gab@wi.gov
<http://elections.wi.gov>



KEVIN J. KENNEDY
Director and General Counsel

MEMORANDUM

DATE: For May 5, 2008 Meeting

TO: Members, Wisconsin Government Accountability Board

FROM: Kevin J. Kennedy, Director and General Counsel
Wisconsin Government Accountability

Prepared and Presented by: Nathan Judnic
Elections Specialist

SUBJECT: Proposed Additions to Chapter EIBd 3, Administrative Code
(Response to the Legislative Audit Bureau Reports)

The Legislative Audit Bureau (LAB) conducted statewide audits in September 2005 entitled "Voter Registration" and in November 2007 entitled "Compliance with Election Laws." Both audit reports recommended that the Board take steps to promulgate administrative rules in several key areas of election administration.

Taking into account the recommendations put forth in the LAB audit reports, staff has drafted rules designed to update and supplement Chapter EIBd 3 of the Administrative Code in the following major areas:

- Election officials' voter registration responsibilities;
- Voter verification postcards; and
- Statewide Voter Registration System (SVRS) data entry standards.

The proposed rules have been reviewed by staff members and are being presented to the Government Accountability Board during its May 5, 2008, meeting for informational purposes. Following the May 5, Board meeting, a small ad-hoc group of county and municipal clerks and other election officials will be convened in an advisory capacity. This approach is similar to the one used for obtaining input on the proposed ballot security rules. A final version of these proposed rules will be presented for the Board's consideration and approval before they are sent to the Legislature.

Action Requested:

No action is required at this time.

Attachments

- Proposed administrative rules supplementing Chapter EIBd 3
- Legislative Audit Bureau's 2005 and 2007 Recommendations

Proposed Administrative Rules for Chapter EIBd 3
Voter Registration

EIBd 3.01 Voter Registration

In this chapter:

- (5c) “Complete match” means a voter’s full name, date of birth, DOT-issued driver’s license number or DOT-issued identification card number or last 4 digits of Social Security number completely matches records maintained by the DOT or SSA.
- (5g) “DHFS” means the Wisconsin Department of Health and Family Services, Vital Records Office.
- (5n) “DMV ping notification letter” is the letter sent to voters following a HAVA check if a complete match of voter information does not occur.
- (5r) “DOC” means the Wisconsin Department of Corrections.
- (5w) “DOT” means the Wisconsin Department of Transportation.
- (6e) “HAVA” means the Help America Vote Act of 2002.
- (6m) “HAVA check” means the process by which a self-provider or provider submits a voter’s information through the SVRS to be matched against the DOT or the SSA records to validate the information provided by the voter.
- (6s) “HAVA check listing” means any SVRS generated report that displays the match results between a voter’s full name, date of birth, DOT-issued driver’s license number or DOT-issued identification card number or last 4 digits of Social Security number and records maintained by the DOT or the SSA.
- (7g) “Ineligible voter list” means a list based on information provided by the DOC containing all felons on probation, parole or extended supervision.
- (7r) “Ineligible voter matching” means the process by which a municipal clerk uses ineligible voter information provided by the DOC to determine if any ineligible voters are registered in his or her municipality.
- (14m) “Separation date” is the date on which an individual appearing on the ineligible voter list has his or her civil rights restored.
- (15m) “SSA” means the Social Security Administration.

[Section 3.01(16) is amended to read as follows:]

- (16) “Statewide Voter Registration System” (SVRS) is the election administration software application provided by the board to enable local election officials to register voters, track absentee voting and administer elections.
- (16m) “SVRS user” means any individual trained and authorized by the board to access the SVRS.
- (17g) “Wisconsin deceased matching” means the process by which a municipal clerk uses information provided by the DHFS to determine if any deceased voters are registered in his or her municipality.
- (17r) “Wisconsin voter match report” means the SVRS generated report used by a municipal clerk to view potential deceased and ineligible voter matches in a municipality.

ElBd 3.25 Voter Registration Duties

- (1) (a) The municipal clerk shall supervise elections and voter registration in the clerk’s municipality, by enforcing all applicable statutes and administrative rules that govern voter registration in Wisconsin.

(b) The municipal clerk shall ensure the official registration list maintained by the SVRS for the clerk’s municipality is an accurate reflection of the registered voters in the municipality.

(c) A self-provider or provider shall complete all required election administration and registration tasks within the SVRS as prescribed by the board.

(d) A relier shall assist the provider by providing required information about voter registration application forms, elections, primaries, special elections, referenda, contests for local offices, and candidate status in accordance with direction from the board, and in accordance with the terms of any memorandum of understanding in place between the provider and relier.
- (2) HAVA Check. Reliers, self-providers and providers shall perform the following duties necessary to properly conduct HAVA checks:
 - (a) Use the SVRS to initiate and complete a HAVA check upon entry of every new voter registration application form.
 - (b) Use the HAVA check listing to compare information provided by an applicant on the voter registration application form with information maintained by the DOT or the SSA.
 - (c) Resolve all voter match results that are not a complete match provided by the voter in accordance with instructions provided by the board.

(d) Contact voters who do not receive a complete match using the DMV ping notification letter, and resolve the matching issue by any means available.

(e) Train and inform election inspectors that voters may appear on the poll list as “ID Required” due to failing a HAVA check, and that those voters must show a form of proof of residence listed in s. 6.34(3) before being allowed to vote on election day.

(f) Update a voter’s status in the SVRS to indicate the voter presented the proper proof of residence at the polls and was issued a ballot.

(g) Report statistics and other information requested by the board regarding the HAVA check for voters in the municipality.

(3) Late Registration. (a) After close of registration the clerk shall allow a voter to register in the clerk’s office if the voter provides proof of residence and meets all other eligibility requirements.

(b) If the clerk registers a voter in the clerk’s office after the close of registration, the clerk shall issue a serially numbered certificate of registration to the voter that contains his or her full name and address. The clerk shall issue the original certificate to the voter and maintain a copy of the original in the clerk’s office. The clerk shall inform the voter to present the certificate to the election inspectors on election day.

(c) If a voter registration application form arrives in the municipal clerk’s office by mail, it must be postmarked no later than the close of registration for the current election to be considered a valid registration for that election.

(d) If a clerk receives a voter registration application form by mail that was postmarked after the close of registration for the current election, the municipal clerk shall treat the registration as invalid for the election and immediately notify the voter of his or her other registration options.

(e) Self-providers or providers shall enter the voter registration application forms into the SVRS, being sure to mark the record so the voter does not appear on the official registration list for the current election, but it will appear on the official registration list for the next election. The voter’s effective registration date shall be the day after the current election.

(f) When the board receives voter registration application forms by mail, board staff will immediately forward the applications to the appropriate self-provider or provider. Instructions for handling these forms will be included with each form or batch of forms that are forwarded.

(4) Election Day. (a) The clerk shall provide his or her election inspectors with the ineligible voter list and instruction sheet on how to use the list when registering voters on election day.

(b) The clerk shall take all steps necessary to ensure that the poll lists generated from the SVRS contain all properly registered voters in the municipality, and that the voter information contained on the poll list is true and correct.

(c) The clerk shall train the election inspectors and special registration deputies on what constitutes a valid and complete voter registration application form, and provide them with job aids, sample forms and any other tools that will assist them in the election day registration process.

(d) The clerk shall hold the election inspectors and special registration deputies accountable for voter registration application forms that are submitted on election day which are incomplete, illegible, or otherwise unable to be entered into the SVRS.

(5) Post-Election. (a) The SVRS user shall record voter participation into the SVRS by entering the unique voter registration number assigned to voters from the poll list.

(b) The SVRS user shall record the voter's polling location, and whether they voted at the polls or by absentee ballot in SVRS.

(c) The SVRS user shall enter election day voter registration application forms into the SVRS.

ElBd 3.27 Voter Information Updates and Revisions

(1) It is the municipal clerk's duty to ensure the official registration list maintained in the SVRS for the clerk's municipality is an accurate reflection of the registered voters in the municipality.

(2) (a) Whenever a municipal clerk receives an update to a voter's record, the self-provider or provider shall promptly update the voter's record within the SVRS and note the reason for the update in the status comment field.

(b) If a voter provides an update or revision to his or her voter record on election day, the self-provider or provider shall change the voter's record in the SVRS within 30 days of the election and note the reason for the update in the status comment field.

(3) (a) The board's staff may add voter registration application forms or update voter information in the SVRS based on information they receive. The board's staff may change a voter's status from eligible to ineligible based on information received.

(b) The board's staff shall make the appropriate notations to the voter's record within the SVRS in the status comment field and promptly notify the municipal clerk of the affected municipality by letter or electronic transmission.

(4) (a) The municipal clerk may obtain updated information from a voter through a telephone conversation provided the clerk is assured they are speaking to the voter that is requesting their record be updated. The municipal clerk may ask the voter questions to verify the identity of the voter that is requesting the update.

(b) Neither legal name nor voting address may be updated through a telephone conversation because the completion of a new voter registration application form is required.

- (5) (a) If a municipal clerk receives an update of voter information through a telephone conversation, the self-provider or provider shall update the voter's record in the SVRS as soon as practicable, using the status comment field to note the circumstances in which the update was made. The municipal clerk shall indicate the date and time of the telephone call, the name or initials of the individual that spoke with the voter on the telephone, and any other notes the municipal clerk feels are necessary to describe the request to update the voter's record.

(b) The municipal clerk may update the voter registration application form to reflect the updates made to the voter's record, indicating the date and time of the telephone call, name or initials of the individual that spoke with the voter, and any other notes the municipal clerk feels are necessary to describe the request to update the voter's record.

EIBd 3.28 SVRS Data Entry

- (1) SVRS users are responsible for the data entry of voter registration application forms and other information used to manage and administer elections at the state, county and municipal levels. SVRS users are ultimately responsible for the quality of data entered into the SVRS.
- (2) A municipality may enter into an agreement with another municipality or county to provide SVRS data entry and election administration services. The agreement shall be in writing and require the timely sharing of information between the two parties involved.
- (3) SVRS users shall comply with all data entry guidelines published in the SVRS Data Maintenance Standards document available electronically on the board's website and in hard-copy by request to the board.

EIBd 3.29 Data Quality

- (1) Data Quality Assurance Check. To help ensure accurate data entry of voter registration application forms, offices that employ any SVRS users shall formulate quality assurance check procedures. The quality assurance check procedures shall include:

(a) All voter registration application forms entered into the SVRS are reviewed by an individual other than the SVRS user that entered the voter registration application forms into the SVRS.

(b) The individual reviewing the voter registration application forms must be authorized to view a voter's registration information, knowledgeable of all voter registration application form requirements, and able to compare the form with the information that has been entered into the SVRS.

(c) If a discrepancy is discovered between the form and the information contained in the SVRS, an SVRS user is required to correct the necessary information and repeat the quality assurance check procedure.

(2) One-person Office Data Quality Assurance Check. If an office that employs an SVRS user is a one-person office:

(a) Arrangements shall be made that, on a monthly basis, all new voter registration application forms entered into the SVRS for the previous month shall be reviewed by a local election official, who shall be a registration deputy, election inspector or other similar official with knowledge of the requirements for voter registration application forms and authorized to view a voter's registration information.

(b) At the discretion of the SVRS user in the one-person office, they may call upon the individual described in subsection (2)(a) more often than on a monthly basis.

(c) All voter registration application forms received in the municipal clerk's office shall be reviewed before printing the poll list for the next election.

(3) To prevent duplicate registration records, SVRS users shall view all matches and link to an existing voter record when necessary.

(a) To properly match and link, SVRS users shall compare the following registration information contained on the voter registration application form with all potential matches in SVRS: first name, middle name or initial if applicable, last name, date of birth, DOT-issued driver's license number, DOT-issued identification card number and/or the last 4 digits of a Social Security number.

(b) Procedures for initiating the match and link process are contained in the training materials SVRS users receive during training courses. The procedures are also available electronically on the board's website, through the board's web-based election training system, and in hard-copy by request to the board.

(4) The board shall periodically conduct statewide duplicate voter registration audits and provide municipal clerks with the results. Procedures for correcting duplicate voter registrations are available electronically on the board's website, through the board's web-based election training system, and in hard-copy by request to the board.

(5) Prevention of invalid birthdates. When entering a voter's date of birth:

(a) SVRS users shall use the MM/DD/YYYY format regardless of what is provided on the voter registration application form.

(b) If the SVRS alerts an SVRS user that an applicant does not meet the minimum age requirement for voter registration, the municipal clerk shall notify the applicant and resolve the issue by any means available.

(c) Procedures for entering a voter's date of birth are contained in the training materials SVRS users receive during training courses. The procedures are also available electronically on the board's website, through the board's web-based election training system, and in hard-copy by request to the board.

(6) The board shall periodically conduct statewide voter date of birth audits and provide municipal clerks with the results. Procedures for correcting any date of birth issues are available electronically on the board's website, through the board's web-based election training system, and in hard-copy by request to the board.

(7) Address Validation. SVRS users are responsible for maintaining valid residential addresses for voting purposes in the SVRS.

(a) SVRS users shall validate the address provided on the voter registration application form against the residential addresses contained in the SVRS.

(b) If an address provided on the voter registration application cannot be validated because of a typographical error on the form or a clerical error in the SVRS, the municipal clerk shall resolve the discrepancy by any means available.

(c) If the voter provided an address that is not a residential address for voting purposes, the municipal clerk shall contact the voter and inform them of the address problem. If subsection 7(b) is not applicable, the clerk shall inform the voter that his or her voter registration application form has been denied in the clerk's municipality. If applicable, the municipal clerk may inform the voter of the municipality in which they reside, and instructions on how to register in the correct municipality.

(d) If the voter registration application form was submitted on election day and the municipal clerk believes election fraud may be involved, the clerk shall contact the district attorney of the county in which the voter attempted to register.

EIBd 3.30 Address Verification Postcards

(1) A first-class postcard shall be sent to electors who completed a voter registration application form on election day, completed a voter registration application form and submitted it by mail or completed a voter registration application form and submitted it to a special registration deputy.

(2) (a) The postcards are generated by the board, based on information entered into the SVRS indicating the method by which an elector registered.

(b) The postcards shall contain the voter's ward, aldermanic district, or both, as well as polling place. The postcards shall be marked to indicate that they should not be delivered to a forwarding address.

(c) The postcards are printed and mailed by the board no later than 10 days following the entry of information into the SVRS indicating the method of registration.

(d) The name and office address of the municipal clerk in the municipality where the elector has registered is contained in the return address of the postcards.

(e) The voter's unique voter registration number and an indication of the reason the postcard was generated and sent are printed on the postcard.

(3) Treatment of Returned Postcards. If a postcard is returned to the municipal clerk by the United States Postal Service (USPS) because the address contained on the postcard was undeliverable, the municipal clerk shall resolve each returned card and update the voter information contained in the SVRS, noting the reason for the change in the status comment field.

(4) Procedure. (a) The municipal clerk shall compare the address on the returned postcard with the original voter registration application form completed by the elector to discover typographical errors that may have contributed to the postcard being returned as undeliverable. If the address contained on the returned postcard and the address provided on the original voter registration application form do not match due to a typographical error, a self-provider, or a provider notified by his or her relier, shall update the address in the SVRS to match the voter registration application form noting the reason for the change in the status comment field.

(b) Immediately following the change to the voter's address information in the SVRS, the municipal clerk shall notify the board of the change. The municipal clerk will provide the board, the full name, address, name of municipality, and voter identification number of any voter updated in the SVRS under this section. The board will re-send a postcard with the updated voter address information no later than 10 days following notification from the municipal clerk.

(5) (a) If the address contained on the returned postcard, and the address provided on the original voter registration application match, and no other irregularities may have contributed to the card being returned as undeliverable are present, the self-provider or provider shall change the voter's status in the SVRS from active to inactive and note the reason for the change in the status comment field.

(b) The returned postcard shall be attached to the original voter registration application form, and retained in the municipal clerk's office for a minimum of four years from the date the voter's status was changed from active to inactive.

(c) If a postcard sent under 6.53(3) is returned as undeliverable, and the steps set forth in subsections (4) and (5) are followed, the municipal clerk shall mail the elector a notice of the change in status, and provide the name of the elector to the board and the district attorney of the county where the polling place is located.

(6) Post-Election Review. The board may conduct a post-election review of the address verification postcard process to ensure:

(a) The board staff is printing and mailing postcards within 10 days of information indicating method of registration entered into the SVRS, and

(b) Municipal clerks are treating returned postcards according to the procedures set out in this rule.

- (7) The board may compile results from the post-election review and take any corrective action deemed necessary.

ElBd 3.31 Transferring Registration

- (1) Elector Initiative. (a) If a voter changes residence within the state, the municipal clerk shall require the individual to complete a new voter registration application form.

(b) If the municipal clerk is aware the voter has been previously registered to vote, the clerk shall require the voter to provide the address where he or she was previously registered on the voter registration application form.

(c) The municipal clerk shall also train and inform the election inspectors and special registration deputies that a voter may transfer their registration on election day by completing a new voter registration application form, and providing the address where the voter was previously registered.

- (2) A municipal clerk shall allow a voter to change his or her name by completing a new voter registration application form indicating his or her former name and the name to which his or her registration should be transferred. A municipal clerk shall train the election inspectors and special registration deputies that a voter may change his or her name by providing the former name, and the name which his or her registration should be transferred, and writing the new name on the poll list. A municipal clerk shall train the election inspectors and special registration deputies that if a voter wishes to change his or her name and address on election day, the voter must complete a new voter registration application form.

- (3) Clerk Initiative. (a) If a municipal clerk acquires reliable information that a voter within the municipality has changed residence within the municipality, the municipal clerk may transfer the voter's registration to reflect the voter's new residence.

(b) The municipal clerk may update the voter's original voter registration application form to indicate a transfer of residence within the municipality.

(c) The self-provider or provider shall update the SVRS to reflect the transfer of residence within the municipality and note the change in the status comment field of the voter's record.

(d) The municipal clerk shall send a notice to the voter informing the voter of the change of residence and any other information such as a change in polling location that is applicable.

(e) The municipal clerk shall use best judgment when determining if information received regarding a voter's change in residence is reliable.

- (4) Door-to-Door and Mail Registration Canvass. (a) To assist in maintaining accurate voter information on the official registration list, and to promote new voter registration among non-registered residents, the municipal clerk may conduct door-to-door and mail registration canvasses within their municipality.
- (b) If a municipal clerk conducts either a door-to-door or mail registration canvass, it must encompass the entire municipality, and must be completed in a uniform manner.
- (c) A door-to-door canvass shall be conducted in a way to identify voters that no longer live at the residence for which the municipal clerk's records indicate, and to promote new registration of residents that are not registered at the time of the door to door canvass.
- (d) A mail registration canvass shall be completed in a way allowing the municipal clerk to verify that a voter continues to reside at the address within the municipality which they previously provided on their voter registration application form.
- (e) A mail canvass may be conducted in conjunction with a new voter registration drive initiated by the municipal clerk to inform non-registered residents of the registration process.

ElBd 3.32 Ineligible Voter Matching

- (1) General. (a) The provider or self-provider shall use the ineligible voter matching process in SVRS to comply with the Help America Vote Act of 2002.
- (b) Procedures for initiating the ineligible voter matching process are contained in the materials SVRS users receive during training courses. The procedures are also available electronically on the board's website, through the board's web-based election training system, and in hard-copy by request to the board.
- (2) Determination of Ineligibility. (a) The provider or self-provider shall initiate the ineligible voter matching process at least once per month, or more frequently if needed. If no new matches exist, the provider shall notify his or her relier that they will not receive a Wisconsin Voter Match Report for that month.
- (b) Clerks must exercise due care when determining if a match exists between information provided by an individual and the information in the SVRS provided by the DOC.
- (c) A provider shall send the Wisconsin voter match report to their reliers at least once per month, or more frequently if needed.
- (d) A self-provider shall use the information generated by the ineligible voter matching process to compare voter information against information provided by the DOC and determine if a match exists between voters registered in the municipality.
- (e) A relier shall use the Wisconsin voter match report to compare voter information against information provided by the DOC and determine if a match exists between voters registered in the municipality.

(f) A relier shall return to his or her provider the Wisconsin voter match report containing an indication of whether or not a match exists for every voter that appears on the report.

(g) Procedures for determining voter ineligibility are contained in the materials SVRS users receive during training courses. The procedures are also available electronically on the board's website, through the board's web-based election training system, and in hard-copy by request to the board.

(3) (a) If the municipal clerk determines there is a match between a currently registered voter and the results of the ineligible voter matching, the municipal clerk or the municipality's provider shall mark the voter's record in the SVRS and note the reason in the status comment field.

(b) The municipal clerk shall send the voter notice of his or her status change using the WI felon notification ineligible letter generated by the SVRS.

(c) If an individual who matches a record maintains that he or she is eligible to vote, the voter registration application form shall be marked "ineligible to vote per DOC." This individual's registration is challenged under s. 6.48. If the individual insists on voting, the ballot shall be challenged.

ElBd 3.33 Ineligible Voter List

(1) General. The municipal clerk shall use the ineligible voter list when conducting registration list maintenance, registering voters in person during late registration in the clerk's office, and before fulfilling a request to issue an absentee ballot to a voter. The municipal clerk shall use the ineligible voter list and the automated functions of the SVRS to identify ineligible voters in the clerk's municipality.

(2) Clerks shall exercise due care when determining if a match exists between information provided by an individual and the information provided on the ineligible voter list.

(3) During Late Registration. (a) If an individual appears at the office of the municipal clerk during the late registration period and wishes to register to vote, the municipal clerk shall ask the individual to provide his or her full name and date of birth.

(b) Once the individual has provided this information, the municipal clerk shall compare the individual's full name and date of birth with the ineligible voter listing.

(c) If there is no match between the information provided by the individual and the ineligible voter list, the clerk shall follow late registration procedures.

(4) (a) If the individual's full name and date of birth are identical to an entry on the ineligible voter list, and the individual's separation date is after election day, the clerk shall inform the individual that they are ineligible to vote.

(b) If an individual who matches a record on the ineligible voter list maintains that he or

she is eligible to vote, the voter registration application form shall be marked “ineligible to vote per DOC.” This individual’s registration is challenged under s. 6.48. If the individual insists on voting, the ballot shall be challenged.

- (5) Prior to issuing absentee ballots. (a) Before an absentee ballot is issued to an individual, the municipal clerk shall compare the full name and date of birth of the person requesting the ballot with the ineligible voter list to determine if the applicant is eligible to vote in the election for which the ballot is requested.

(b) If the individual’s full name and date of birth are identical to an entry on the ineligible voter list and the individual’s separation date is after election day, the ballot shall not be issued. The municipal clerk or the clerk’s provider shall mark the voter’s record in the SVRS so the ineligible voter does not appear on the poll list for the next election.

(c) The municipal clerk shall send the voter notice of the status change using the WI felon notification ineligible letter generated by the SVRS.

(d) If the individual who matches a record on the ineligible voter list maintains that he or she is eligible to vote, the municipal clerk shall mark “ineligible to vote per DOC” on the poll list. If the individual insists on voting, the absentee ballot shall be challenged.

EIBd 3.34 Wisconsin Deceased Matching

- (1) General. (a) The provider or self-provider shall use the Wisconsin deceased matching process in SVRS to comply with the Help America Vote Act of 2002.

(b) Procedures for completing the Wisconsin deceased matching process are contained in the materials SVRS users receive during training courses. The procedures are also available electronically on the board’s website, through the board’s web-based election training system, and in hard-copy by request to the board.

- (2) Determination of Ineligibility. (a) The provider or self-provider shall initiate the Wisconsin deceased matching process at least once per month, or more frequently if needed. If no new matches exist, the provider shall notify his or her relier that they will not receive a Wisconsin voter match report for that month.

(b) Clerks must exercise due care when determining if a match exists between information provided by an individual and the information in the SVRS provided by DHFS.

(c) A provider shall send the Wisconsin voter match report to his or her reliers at least once per month, or more frequently if needed.

(d) A self-provider shall use the information generated by the Wisconsin deceased matching process to compare voter information against information provided by the DHFS and determine if a match exists between voters registered in his or her municipality.

(e) A relier shall use the Wisconsin voter match report to compare voter information against information provided by the DHFS and determine if a match exists between voters registered in his or her municipality.

(f) A relier shall return to his or her provider the Wisconsin voter match report containing an indication of whether or not a match exists for every voter that appears on the report.

(g) Procedures for determining voter ineligibility are contained in the materials SVRS users receive during training courses. The procedures are also available electronically on the board's website, through the board's web-based election training system, and in hard-copy by request to the board.

(3) (a) If the municipal clerk determines there is a match between a currently registered voter and the results of the Wisconsin deceased matching process, the municipal clerk or the municipality's provider shall mark the voter's record in the SVRS accordingly and note the reason in the status comment field.

(b) If a voter appears at the polls on election day, and asserts that he or she has been removed from the poll list because they were incorrectly matched during the Wisconsin deceased matching process, election officials shall follow the challenged ballot procedures.

(c) The municipal clerk shall take appropriate measures to ensure the information in the SVRS provided by the DHFS is kept confidential and secure at all times.

(d) The municipal clerk shall take appropriate measures to ensure that any printed or electronic version of the information in the SVRS provided by the DHFS is used for the sole purpose of identifying deceased voters.

(e) The municipal clerk will be held accountable for the unauthorized disclosure or inappropriate use of confidential information contained in the SVRS provided by the DHFS in accordance with the DHFS disclosure policies.

EIBd 3.35 Provisional Ballots and the SVRS

(1) (a) Immediately following each election, the municipal clerk shall review the election records and determine if any provisional ballots were issued on election day per s. 6.97, Stats.

(b) If any provisional ballots were issued on election day, self-providers and providers shall immediately enter into the SVRS the full name of the voter to whom the provisional ballot was issued.

(c) The provider or self-provider shall also enter into the SVRS the provisional ballot number, the date of the election in which the ballot was issued, and an indication as to whether the provisional ballot was counted or not counted.

(2) (a) The provisional ballot information entered into the SVRS shall be displayed on a public access website maintained by the board.

(b) A voter issued a provisional ballot on election day may access the website to check the status of his or her provisional ballot.

(c) Municipalities that maintain their own public access website, or have a toll free phone number, may respond to requests or post similar information about provisional ballots, to assist voters to check the status of their provisional ballot. This procedure shall not be in lieu of entry of provisional ballot information into the SVRS.

EIBd 3.36 Post-Election Audit

(1) Single Vote Audit. (a) After each election, the municipal clerk shall perform an audit to ensure that no person has been allowed to vote more than once in his or her municipality. The automated functions of the SVRS shall be used to assist in completing this task.

(b) If a municipal clerk has good reason to believe that a person has voted more than once in an election following his or her post election audit, the clerk shall send the person a 1st-class letter informing the person that his or her status may be changed from eligible to ineligible status within seven days unless the person contacts the office to clarify the matter.

(c) A copy of the letter and of any subsequent information received from or about the individual shall be sent to the board and the district attorney for the county where the individual resides.

(2) Ineligible Voter Audit. (a) The board shall conduct an audit after every election to identify potential instances of voting by individuals that appear on the ineligible voter list.

(b) The board shall verify the initial findings of the audit with the DOC to ensure the individual was in fact ineligible on the date of the election.

(c) After the board receives confirmation of the matches from DOC, the board shall send the potential matches to the municipal clerk with instructions to verify that the ineligible individual voted in the election.

(d) The municipal clerk shall contact the board within 10 days with any corrections to the list of potential matches.

(e) After 10 days, the board shall send the final list of potential matches to the appropriate district attorney.

(f) If requested by the board, the municipal clerk shall provide copies of relevant election materials including poll lists, voter registration application forms and election inspector statements to the board and the appropriate district attorney.

ElBd 3.37 Revision of Registration List

- (1) The municipal clerk shall within 90 days following each general election, examine voter registration and voter participation records to identify each qualified elector who has not voted within the previous four years.
- (2) (a) Self-providers and providers may use the SVRS to identify qualified voters that have not voted within the previous four years. Self-providers and providers shall generate a letter from the SVRS notifying the voter that his or her registration will be suspended for failure to vote in the previous four years. The letter shall also notify the voter that they may apply for continuation of their registration by notifying the municipal clerk.

(b) If the municipal clerk does not receive an application for continuation of registration within 30 days of mailing the suspension letter, the self-provider or provider shall inactivate the voter's record in the SVRS.

ElBd 3.40 Registration in Office of the County Clerk

- (1) Any qualified elector may register at the office of the county clerk for the county in which the person's residence is located.
- (2) The county clerk shall have a sufficient supply of blank voter registration application forms to respond to a voter's request.
- (3) Prior to close of registration. (a) The county clerk shall allow a voter to register in his or her office before the close of registration regardless of the municipality in which the voter resides within the county. After the form has been entered into the SVRS, the county clerk shall forward all voter registration application forms to the appropriate self-provider municipality and relier municipality. The forms shall be sent within five days of receipt by the county clerk.

(b) If a voter registers in the office of the county clerk less than five days before the close of registration, the county clerk shall immediately forward the voter registration application form to the appropriate self-provider municipality and relier municipality after the form has been entered into the SVRS.
- (4) After close of registration. (a) The county clerk shall allow a voter to register in his or her office after the close of registration if the municipality in which the voter is registering is a relier of the county. The county clerk shall require proof of residence and enter the voter registration application form into the SVRS immediately after receipt, and forward the voter registration application form to the relier municipality immediately after the form is entered.

(b) If the county clerk registers a voter in his or her office after the close of registration, they shall issue a serially numbered certificate of registration to the voter that contains his or her full name and address. The county clerk shall place a letter "c" prior to the serial number issued on the certificate to indicate the voter registered at the county office after

the close of registration. The county clerk shall inform the voter to present the certificate to the election workers on election day. The county clerk shall forward a copy of the certificate of registration to the relier municipal clerk with the voter registration application form.

(c) The county clerk shall direct a voter to register in the office of the municipal clerk if the voter is registering in a municipality that is a self-provider in the county.

ElBd 3.41 Annexation and redistricting procedures within the SVRS system

- (1)
 - (a) If a municipality annexes or consolidates land, the self-provider or provider shall be notified by the municipality of the changes.
 - (b) The self-provider or provider shall update the SVRS to reflect new district information.
 - (c) Notice of new district information shall be sent to the affected voters by the clerk of the municipality gaining voters as a result of the annexation.
 - (d) The municipality losing voters as a result of an annexation shall send all hard-copy voter registration application forms of the affected voters to the municipality gaining voters as a result of the same annexation.
 - (e) The municipal clerk of the gaining municipality shall mark the voter registration application form to indicate the change in district information due to an annexation.
 - (f) Voters affected by annexation are not required to file a new voter registration application form.
- (2)
 - (a) If a redistricting of county supervisory districts takes place under s. 59.10, Stats., the county clerk or the board shall update the SVRS to reflect the new district information.
 - (b) A self-provider within a county that will redistrict county supervisory districts under s. 59.10, Stats. may choose to update the SVRS to reflect new district information for their municipality.
 - (c) Municipal clerks shall provide notice to all voters in the municipality affected by a redistricting of county supervisory districts. Notice for purposes of this subsection does not mean a first-class postcard or letter being sent to every affected voter.

Excerpts from Legislative Audit 2005 and 2007 Reports
(and the status of recommendations)

The complete reports can be accessed at:

2005 Audit: Voter Registration: <http://www.legis.wisconsin.gov/lab/reports/05-12Full.pdf>
2007 Audit: Compliance with Election Laws: <http://www.legis.wisconsin.gov/lab/reports/07-16Full.pdf>

LAB 2005 AUDIT REPORT

Recommendation #1 (page 28)

LAB recommends the Elections Board promulgate administrative rules, as required by s. 6.26(3), Wis. Stats., that The Government Accountability Board:

1) Specify procedures for appointing and revoking the appointments of special registration deputies; and

Status: Complete.

2) Establish training requirements and procedures to verify that all special registration deputies are properly instructed.

Status: Complete.

Recommendation #2 (page 38)

LAB recommends the Elections Board:

1) Specify procedures in administrative rules for sending address verification cards, validating returned cards, and forwarding questionable cards, including cards returned from addresses provided by mail-in registrants, to district attorneys; and

Status: The Board is currently sending address verification cards on behalf of all municipalities in the State. The accompanying rules address this recommendation.

2) Conduct post-election reviews to ensure that municipalities are sending cards consistently.

Status: The accompanying rules address this recommendation.

Recommendation #3 (page 48)

LAB recommends the Elections Board change the voter registration form so that registrants must certify that they are not currently serving a sentence, including probation or parole, for a felony conviction.

Status: Complete.

Recommendation #4 (page 53)

LAB recommends the Elections Board, in cooperation with local election officials, promulgate administrative rules specifying procedures for:

1) Detecting and preventing common data entry errors, such as duplicate registration records and invalid birthdates;

Status: The accompanying rules address this recommendation.

2) Revising and updating voter registration information; and

Status: The accompanying rules address this recommendation.

3) Automating the identification of improper registrations and illegal votes.

Status: The accompanying rules address this recommendation.

Recommendation #5 (page 53)

LAB recommends the Elections Board promulgate administrative rules to clarify the responsibilities of all local election officials in registering voters and, if authorized by statute, specify civil penalties for noncompliance.

Status: The accompanying rules address this recommendation.

Recommendation #6 (page 57)

LAB recommends the Elections Board:

1) Develop a training curriculum for municipal clerks that explains their roles and responsibilities in elections, including voter registration requirements; and

Status: Complete.

2) Ensure that municipal clerks have access to sufficient training opportunities, including Internet-based courses or courses offered through other organizations such as technical colleges or the University of Wisconsin System.

Status: Complete.

LAB 2007 Audit Report

Recommendation #1 (page 27)

LAB recommends the Elections Board and, after it is replaced, the Government Accountability Board request that municipal clerks obtain birth dates from voters during future elections and consider ways to more easily facilitate the collection of this information.

Status: Complete. However, we continue to request municipal clerks obtain birth dates.

Recommendation #2 (page 29)

LAB recommends either the Elections Board or the Government Accountability Board report to the Joint Legislative Audit Committee by March 31, 2008, on the status of efforts to match data in the statewide voter registration system with data maintained by the departments of Corrections, Health and Family Services, and Transportation, and to train clerks in how to use information obtained from the data matches.

Status: Complete. That report was submitted.

Recommendation #3 (page 34)

LAB recommends the Elections Board and, after it is replaced, the Government Accountability Board, indicate on each address verification card the reason the card was mailed to a registered voter.

Status: Complete.

Recommendation #4 (page 36)

LAB recommends either the Elections Board or the Government Accountability Board report to the Joint Legislative Audit Committee by March 31, 2008, on whether it believes the 30-day statutory deadline for entering into the statewide voter registration system all information obtained on Election Day should be extended.

Status: Complete.

Recommendation #5 (page 39)

LAB recommends either the Elections Board or the Government Accountability Board report to the Joint Legislative Audit Committee by March 31, 2008, on the status of efforts to improve processing times and enable the statewide voter registration system to process absentee ballots and suspend voter registrations.

Status: Complete.

Recommendation #6 (page 68)

LAB recommends either the Elections Board or the Government Accountability Board report to the Joint Legislative Audit Committee by March 31, 2008, on progress in promulgating administrative rules that are required by statutes and that we recommended in our 2005 evaluation, including rules that:

1) Describe training requirements for municipal clerks, special registration deputies, and other local election officials; and

Status: Complete.

2) Clarify the responsibilities of local election officials in registering voters.

Status: The accompanying rules address this recommendation.

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KEVIN J. KENNEDY
Director and General Counsel

MEMORANDUM

DATE: For May 5, 2008 Meeting

TO: Members, Wisconsin Government Accountability Board

FROM: Kevin J. Kennedy, Director and General Counsel

SUBJECT: Review of Certain Formal Opinions and Rules of the State Elections Board
Relating to Non-Resident Political Committees

This memorandum presents 2 formal opinions and 1 administrative rule of the State Elections Board presently in effect relating to non-resident political committees for review and reaffirmation by the Government Accountability Board (GAB).

Formal Opinions Related to Non-Resident Political Committees

Opinion EI.Bd 74-7

Nonresidents designating an agent in Wisconsin are not exempted from political registration and reporting. Certain transactions by nonresident committees and groups are not reportable if they can be segregated. Section 11.07(5), Stats., does not prevent the acceptance of a contribution from any unregistered individuals under s.11.07(1), Stats. (Issued to Raymond Majerus, August 28, 1974)

This opinion describes the registration and reporting requirements for non-residents. The opinion addresses non-resident committees and non-resident individuals. The reporting requirements for non-resident committees have been codified in §11.06 (3), Wis. Stats. These requirements have also been the subject of legislation in recent sessions including a change that was inadvertently repealed. 2005 Wisconsin Acts 176 and 177.

The opinion provides good direction for non-resident individuals. Staff recommends the Board reaffirm the opinion and add language directing readers to the revised statutory provisions.

Opinion EI.Bd. 75-3

A nonresident political committee is subject to the same registration and reporting requirements as a resident committee but may maintain its campaign depository outside of this state. The term "solicitation" as used in sec. 11.38(2), Stats., includes those activities which have as their sole purposes and which by their nature or manner result solely in the raising of funds. (Issued to M. Scott Cisney, November 19, 1975)

This opinion acknowledges a non-resident committee may use a financial institution located outside the state for its campaign depository account. It also reaffirms the opinion discussed above, Opinion EI.Bd 74-7. The opinion also contains clear direction on defining corporate

solicitation activities and reporting staff time with respect to administrative and solicitation expenses permitted by a corporation.

Staff recommends the Board reaffirm the opinion.

Administrative Rule Related to Non-Resident Political Committees

EIBd 1.10 Reporting by nonresident committees and groups.

Every nonresident committee or group as defined in s. 11.07 (6), Stats., acting in support of or in opposition to any candidate for state or local office, which makes or accepts contributions, incurs obligations or makes disbursements exceeding \$25 cumulatively in a calendar year within this state shall register both with the appropriate filing officer under s. 11.05 (1), Stats., and with the secretary of state under s. 11.07 (1), Stats.

History: Emerg. cr. 8-16-74; cr. Register, November, 1974, No. 227, eff.12-1-74.

This rule states the current registration requirements for non-resident committees and non-resident groups. A political group is an organization supporting or opposing a referendum. Staff recommends the Board reaffirm the rule, but direct staff to change the title to “Registration by nonresident committees and groups.” rather than “Reporting by nonresident committees and groups.”

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KEVIN J. KENNEDY
Director and General Counsel

MEMORANDUM

DATE: For May 5, 2008 Meeting

TO: Members, Wisconsin Government Accountability Board

FROM: Kevin J. Kennedy, Director and General Counsel

SUBJECT: Review of Certain Formal Opinions and Rules of the State Elections Board
Relating to Campaign Finance Recordkeeping and Reporting

This memorandum presents 13 opinions and 12 administrative rules of the State Elections Board presently in effect relating to campaign finance recordkeeping and reporting for review and reaffirmation by the Government Accountability Board (GAB).

Formal Opinions Related to Campaign Finance Recordkeeping and Reporting

Opinion EI.Bd. 74-9

A campaign worker may make an authorized disbursement exceeding \$25 in support of a candidate and receive subsequent reimbursement from the campaign fund by negotiable instrument if the disbursement is verified by a receipt. (Issued to James W. Mohr, Jr., September 19, 1974)

This opinion permits a campaign worker to make a disbursement on behalf of a committee from personal funds and receive reimbursement from the committee. The opinion requires the committee to maintain the receipt to support the payment to the campaign worker. The law on which the opinion is based has changed. All disbursements from the treasurer are required to be by negotiable instrument regardless of the amount. The reasoning of the opinion permits the use of a petty cash fund that is funded by a negotiable instrument. This is consistent with information set out in the *Campaign Finance and Bookkeeping Manual*.

Staff recommends the Board reaffirm the opinion and add language directing readers to the revised statutory provisions.

Opinion EI.Bd. 74-10(Rev)

The name and address of each contributor making a single contribution of \$10 or less need not be recorded by a campaign treasurer, but the treasurer is under a statutory duty to exercise a "good faith" effort to seek to obtain such information if he knows or has reasonable cause to believe that a contributor's aggregate contribution has or will exceed \$10. (Issued to James W. Mohr, Jr., September 19, 1974)

This opinion describes the duty of a treasurer to make a good faith effort to collect and maintain records of individuals who contribute to the committee. The reporting threshold has increased

from \$10 to \$20 since the opinion was issued. Staff recommends the Board reaffirm the opinion and add language informing readers of the revised reporting threshold.

Opinion El.Bd. 74-16

Out-of-pocket costs assumed by the host of a party held for political purposes are reportable if funds are raised at the party with the knowledge of the host. Such contributions may be made “in-kind” with the consent of a candidate’s treasurer. Certain costs of fund-raising events, although reportable, are excludable from disbursement limitations. An item donated for resale is reportable but only the net proceeds of the sale need be reported after the item is sold. (Issued to Kate Barbash, October 31, 1974)

This opinion provides detailed advice on reporting fundraising expenses. The advice remains authoritative with two caveats.

Staff advice on reporting the value of the use of a personal residence for a fundraiser has deviated from this opinion. Staff has advised registrants to report an estimated value for the one-time use of a personal residence for a fundraiser. This issue needs to be resolved by the Board. Staff believes it is a reasonable accommodation to adopt the reasoning of the Elections Board that use of a house has little merchantable value, particularly in light of the difficulty of assigning a value for that purpose.

The direction on reporting the resale of donated items has been changed by administrative rule. The rule captures the value of the donation as well as the value of the purchase as contributions. See ElBd 1.56, Wis. Admin. Code, which is presented for review below.

Opinion El.Bd. 74-17

A candidate’s personal traveling expenses or the personal expenses of his campaign workers are not reportable. If a candidate or worker is reimbursed for or provided with transportation by his committee or by another party, the actual cost is reportable. A gift of car tops is valued at the replacement cost at the time of transfer. (Issued to William P Vogel, October 31, 1974)

This opinion provides detailed advice on reporting personal out-of-pocket expenses and left-over campaign items. The advice remains authoritative. Staff recommends the Board reaffirm the opinion.

Opinion El.Bd. 75-5

Contributions received in the form of a check drawn on a joint checking account may be assumed to be from the signer of the check absent evidence to the contrary. Contributions received in the form of a check drawn on a partnership checking account may not be assumed to be from the signer of the check. The treasurer has a duty to ascertain the identity of the contributor in such instance. Reproduction of personal correspondence by means of a magnetic card typewriter constitutes reproduction by machine. An organization may, pursuant to sec. 11.29(1), Stats., send nomination papers to its members without reporting such activity. (Issued to Keith R. Clifford, December 19, 1975)

This opinion addresses issues that need to be updated to reflect current practices and technology. In the past several years individuals who make large contributions to statewide campaigns have exceeded the \$10,000 annual contribution limit for individuals. As a general practice the State Elections Board permitted those individuals who made excess contributions from marital funds to reallocate the contribution with the contributor’s spouse to stay within the contribution limit. The guidance provided in this opinion does not address this issue.

Staff recommends the Board revise the opinion to require the treasurer to affirmatively inquire whether the contribution is from the individuals listed on the joint account. The Board could require this inquiry for contributions in excess of \$100 because the recipient has to gather additional information about the contributor's occupation and employer. Staff also believes the contributor should be advised to designate on the memo portion of the check whether or not this is a joint contribution.

Staff recommends the opinion expand the scope of machine reproduced correspondence to include computer created correspondence that is prepared using mail-merge, tables, and search and replace functions to generate multiple pieces of substantially similar documents.

Opinion El.Bd. 76-01

Use of a hall or room without charge need not be reported as an in-kind contribution if the hall or room is also provided without charge to non-political organizations. (Issued to David M. Travis, February 18, 1976)

This opinion provides clear advice on reporting the use of facilities for a campaign event. The advice remains authoritative. Staff recommends the Board reaffirm the opinion. The initial discussion on expenditure limits is informative of issues raised before the *Buckley* decision invalidated spending limits.

The opinion on the website contains a page from a latter opinion. Staff will correct this to avoid confusion for readers.

Opinion El.Bd. 76-4

All statements and reports required by Ch. 11, Stats., to be verified may be sworn to before a town, village, city, or county clerk or their respective deputies, if any. (Issued to John C. Oestreicher, February 18, 1976)

The law has been changed so candidates and committee treasurers are no longer required to sign an oath when submitting registration statements and campaign finance reports. However, the law requires an oath for independent disbursements and on the application for a grant from the Wisconsin Election Campaign Fund. §§11.06 (7); 11.50 (20(a), Wis. Stats. Staff recommends the opinion be revised to reflect this change.

Opinion El.Bd. 76-13

Contributions: Use of charge card for contributions over \$50 is permissible where such use produces document identifying name of contributor and amount contributed. Sec 11.16(2). (Issued to Michael D. Regenfuss, August 25, 1976)

This opinion permits the use of a charge card to make a contribution. The advice remains authoritative. Staff recommends the Board reaffirm the opinion.

Opinion El.Bd. 77-9

Fund-raising by committee agents: Where circumstances indicate that one is collecting contributions as agent of a committee, he or she must inform the committee of each collected contribution within three days of its collection and transmit the contribution to the committee's treasurer within five days of its collection. S. 11.06(2), Stats. (Issued to Wm. Pharis Horton, November 17, 1977)

This opinion describes the responsibilities of individuals raising funds for a committee. The reasoning remains authoritative, but the law has changed since the opinion was issued. An agent now has 15 days to transmit the funds to the committee. §11.06 (4)(c), Wis. Stats. Staff

recommends the Board reaffirm the opinion and add language informing readers of the revised time frame for delivering funds to the committee.

Opinion El.Bd. 78-2

Multiple Candidate Committees. The personal campaign committee of a candidate seeking more than one office may ensure compliance with contribution limits by either a) separate bookkeeping and reporting or b) adherence to the lowest applicable contribution limit. Such committee may not claim the \$250 reporting exemption if its total activity, attributable to all offices sought, is over \$250. El.Bd. 1.02 Wis. Adm. Code, Sec 11.05(2r), Stats. (Issued to Mary Alice Sullivan, March 16, 1978)

This opinion describes the options for a candidate to comply with contribution limits when seeking more than one office. The guidance remains authoritative, but the law has changed since the opinion was issued. The exemption thresholds have increased from \$250 to \$1000. §11.05 (2r), Wis. Stats. Staff recommends the Board reaffirm the opinion and add language informing readers of the revised exemption thresholds.

Opinion El.Bd. 88-3

Independent insurance agents can establish a commission withholding system that will enable participating insurance companies to forward agents' contributions to an agents' PAC, without attributing any of those contributions, or the expenses of maintaining the system, to the participating insurance companies. Separate bookkeeping of each individual agent's contributions and pro-rata expenses must be maintained and reported. (Issued to Steven A. Reidich, October 5, 1988)

This opinion provides clear direction for a group of independent contractors acting in cooperation with corporations to ensure compliance with the restrictions, recordkeeping and reporting requirements of the campaign finance law. This is a good example of facilitating political participation while ensuring accountability. Staff recommends the Board reaffirm the opinion.

Opinion El.Bd. 00-01

Accepting Campaign Contributions by Credit Card on a Candidate's Personal Campaign Committee's Website: A registrant may use a commercial vendor to collect contributions from visitors to the registrant's website. The vendor may not exercise any discretion or control over the amount of the contribution or who receives the contribution. The registrant must obtain the information about the contributor to enable the registrant to comply with the disclosure requirements of the campaign finance law.

This opinion permits the use of a website to collect campaign contributions. The advice remains authoritative. This opinion harmonizes the application of the campaign finance law with technology driven fundraising practices. Staff recommends the Board reaffirm the opinion.

Opinion El.Bd. 01-01

Campaign Finance Implications of a Drawing held by a Political Committee in Connection with a Fund-raising Event: Registrants may use drawings as part of a solicitation to a fund-raising event, but must report all contributions raised in connection with the solicitation and the event, including the fair market value of any donated prize that is to be awarded as part of the drawing.

The opinion provides a thorough description and analysis of a fundraising event. The opinion provides authoritative guidance. Staff recommends the Board reaffirm the opinion.

Administrative Rules Related to Campaign Finance Recordkeeping and Reporting

EIBd 1.05 Reporting of disbursements.

Every withdrawal of funds except for internal transfers for investment purposes from the campaign depository account must be reported in accordance with ss. 11.06 and 11.20, Stats.

This rule accurately describes applicable campaign finance reporting requirements. Staff recommends the Board reaffirm the rule.

History: Cr. Register, June, 1976, No. 246, eff. 7-1-76.

EIBd 1.11 Reporting of joint fundraiser.

(1) Any personal campaign committee, political party committee, or legislative campaign committee which conducts a joint fundraiser under s. 11.16 (5), Stats., shall register with the appropriate filing officer by filing a supplemental schedule, Form EB-2JF, at the time of signing the escrow agreement with the candidate on whose behalf the joint fundraiser is conducted.

(2) The supplemental schedule, Form EB-2JF, shall identify the committees conducting the fundraiser, the candidates on whose behalf the joint fundraiser is conducted, the percentage of the net proceeds distributed to the candidate, and the escrow depository account. A copy of the escrow agreement shall be attached to form EB-2JF.

(3) The sponsors of the joint fundraiser shall prepare a regular campaign finance report, Form EB-2, or a public funding campaign finance report, Form EB-24, to report expenses qualifying for exclusion under s. 11.31 (6), Stats. The campaign finance report shall report all contributions and disbursements. The sponsors shall give a copy of the report to each candidate or committee receiving any share of the net proceeds from the fundraiser within 25 days after the fundraiser is held. The sponsors shall file the campaign finance report with the filing officer when the next campaign finance report is due under s. 11.20 (3) and (4), Stats. If the sponsors have not received and paid all the bills for the joint fundraiser by the time the sponsors file the first campaign finance report, the sponsors shall continue to file a regular campaign finance report as required until termination.

(4) The candidates or committees receiving any of the net proceeds from the joint fundraiser shall report on their regular campaign finance report their share of the net proceeds as a single contribution from the joint fundraiser, attaching a copy of the campaign finance report received from the sponsors. If any contributor to the joint fundraiser also makes an individual contribution to the candidate's campaign during the calendar year of the joint fundraiser, and the contributor's total contributions exceed \$20 in that period, the candidate who receives the additional contribution from the contributor shall report the additional contribution as an itemized contribution with the applicable information about the contributor under s. 11.06 (1) (a) and (b), Stats. The amount of any itemized contribution shall be subtracted from the reportable amount of the single contribution from the joint fundraiser.

History: Cr. Register, June, 1987, No. 378, eff. 7-1-87.

This rule accurately and thoroughly describes applicable campaign finance reporting requirements. Staff recommends the Board reaffirm the rule.

EIBd 1.15 Filing reports of late campaign activity.

(1) Any registrant required to file a special report of late campaign activity pursuant to ss. 11.12 (5), (6) and 11.23 (6), Stats., shall comply with the provisions of this section.

(2) A registrant required to file a special report disclosing the receipt of contributions from a single source, totaling \$500 or more cumulatively during the 15 day period immediately preceding a primary or an election, shall use Form EB-3 or use a format which is acceptable to the filing officer and which contains the information required by the board on Form EB-3.

(3) A registrant required to file a special report of late independent disbursement exceeding \$20 during the 15 day period immediately preceding a primary or an election shall use Form EB-7 or shall use a format which is acceptable to the filing officer and which contains the information required by the board on form EB-7.

(4) A special report of late campaign activity is timely filed when it is in the physical possession of the filing officer within the time prescribed for filing. Except as provided in sub. (6), any special report of late campaign activity also shall be treated as timely filed when it is mailed with the U.S. postal service, by first class mail, with sufficient prepaid postage, addressed to the appropriate filing officer, and postmarked not later than the date prescribed by law for the filing of such report.

(5) If the date on which a special report of late campaign activity is due is a Saturday, Sunday, or legal holiday, the special report shall not be due until the next business day.

(6) If a special report of late campaign activity is required to be filed on the day of or the day immediately preceding a primary or an election, the report is not timely filed unless it is actually received at the office of the appropriate filing officer before the close of business on that day, unless that day is a Saturday, Sunday, or legal holiday.

(7) If the filing officer for a special report of late campaign activity is the state elections board, a registrant filing the report on the day of or the day immediately preceding a primary or an election may file by sending a facsimile (FAX) copy by telecopier on the date, if the signed original of the report is received through the U.S. mail with a postmark not later than the date due.

History: Cr. Register, January, 1992, No. 433, eff. 2-1-92.

This rule accurately describes applicable campaign finance reporting requirements. Staff recommends the Board reaffirm the rule. The Board may want to consider whether to eliminate the option to treat a postmarked report of late campaign activity as timely filed given the electronic options available.

EIBd 1.20 Treatment and reporting of in-kind contributions.

(1) In this section:

(a) "Actual value" means the fair market value.

(b) "Authorized person" means a candidate, treasurer, agent, other person whom a candidate designates, or a person whom any other registrant designates to authorize a proposed in-kind contribution.

(c) "Contributor" means any individual or registrant who proposes to make an in-kind contribution.

(d) *“Date of contribution” means the time as of which the benefit, of the thing of value given or of the service performed, is conferred upon the candidate’s campaign or upon the registrant.*

(e) *“In-kind contribution” means a disbursement by a contributor to procure a thing of value or service for the benefit of a registrant who authorized the disbursement.*

(f) *“Registrant” has the same meaning as provided in s. 11.01 (18m), Stats.*

(2) *Before making an in-kind contribution to a candidate or other registrant, the prospective contributor shall notify an authorized person and obtain that person’s oral or written consent to the contribution.*

(3) *When an individual other than a registrant receives authorization to make an in-kind contribution, the authorized person shall obtain from the contributor, in writing: the contributor’s name and address and, where applicable, the contributor’s occupation and the name and address of his or her principal place of employment; the nature of the contribution, its actual value and the date of the contribution.*

(4) *When a registrant receives authorization to make an in-kind contribution, the registrant shall provide to the authorized person, in writing, before the closing date of the next campaign finance report in which the contribution is required to be listed: the registrant’s name and address; the nature of the contribution and its actual value; and the date of the contribution.*

(5) *If a contributor does not know the actual value of an in-kind contribution, the contributor shall give an authorized person a good-faith and reasonable estimate of the fair market value, before the closing date of the next campaign finance report in which the contribution is required to be listed. When the contributor receives bills or other statements reflecting the actual value of the in-kind contribution, the contributor shall immediately forward that information to an authorized person.*

(6) *An in-kind contribution shall be reported as received and accepted by the candidate or registrant on the date that the benefit, of the material supplied or the service performed, is conferred upon the candidate or other registrant.*

(7) *A candidate or registrant shall report the value of the in-kind contribution disclosed to him or her by the contributor. If a contributor estimates the fair market value, a candidate or registrant shall report the estimated value. After being informed of the actual value, by the contributor, a candidate or registrant shall report the actual value on the next campaign finance report.*

(8) *Without the proper authorization to make an in-kind contribution, a contributor may not make the proposed in-kind contribution unless the contribution qualifies as an independent expenditure under s. 11.06 (7), Stats., and under s. ElBd 1.42.*

9) *Any registrant who makes or receives an in-kind contribution shall report the contribution on Schedule 3–C of its campaign finance report.*

History: Cr. Register, January, 1992, No. 433, eff. 2–1–92.

This rule accurately describes applicable campaign finance reporting requirements. Staff recommends the Board reaffirm the rule. After the implementation of the Campaign Finance Information System (CFIS) later this year this rule should be revised to eliminate references to certain form numbers. This will be appropriate since form numbering will be addressed at the December Board meeting.

EIBd 1.26 Return of contribution.

(1) This rule is promulgated to clarify the treatment and reporting of returned contributions.

(2) The return of a contribution is not a disbursement subject to the limitations on disbursements in s. 11.31, Stats., and it is not a contribution subject to the limitations on contributions in s. 11.26, Stats.

(3) A candidate who applies for a grant from the Wisconsin election campaign fund and who returns a contribution that was deposited into the campaign depository shall report the returned contribution on either the Wisconsin election campaign fund campaign finance report, Form EB-24, or the campaign finance report, Form EB-2. The candidate shall make the report on the form that is due for the period when the contribution was returned. When the candidate reports on Form EB-24, the candidate shall report the returned contributions on both Schedule 2-A, DISBURSEMENTS, Schedule 2-D, EXCLUSIONS FROM SPENDING LIMITS, and Schedule 3-A, ADDITIONAL DISCLOSURE as a returned contribution. When the candidate reports on Form 2-A, the candidate shall report the returned contribution on both Schedule 2-A, DISBURSEMENTS, and Schedule 3-A, ADDITIONAL DISCLOSURE, as returned contribution.

(4) Any registrant and candidate who does not apply for a grant from the Wisconsin election campaign fund who returns a contribution that was deposited into the campaign depository shall report the returned contribution on the campaign finance report, Form EB-2, that is due for the period when the contribution was returned. The candidate shall report the returned contribution on both Schedule 2-A, DISBURSEMENTS, and Schedule 3-A, ADDITIONAL DISCLOSURE, as a returned contribution.

(5) Any registrant and candidate who returns a contribution that is not deposited into the campaign depository within 10 days of receipt is not required to report the returned, unaccepted contribution on a campaign finance report.

(6) A registrant who receives a return of contribution shall report it on the campaign finance report, Form EB-2, on Schedule 1-C, OTHER INCOME, and shall designate this as "return of contribution."

History: Cr. Register, March, 1975, No. 231, eff. 4-1-75; am. Register, September, 1978, No. 273, eff. 10-1-78; r. and recr. (3) to (5), cr. (6), Register, February, 1986, No. 362, eff. 3-1-86.

This rule accurately describes applicable campaign finance reporting requirements. Staff recommends the Board reaffirm the rule. However, staff should be instructed to revise the rule to correct a grammatical error in the third sentence of paragraph 2 where it uses the word "both" to refer to an action involving 3 entries. Form references in the paragraph also need to be corrected.

EIBd 1.30 Revocation of exemption from filing campaign finance reports.

(1) When a person, committee or group other than a committee or individual required to file an oath under s. 11.06 (7), Stats., who or which claims an exemption from filing campaign finance reports because the registrant will not receive contributions, make disbursements, or incur obligations in an aggregate amount in excess of \$1,000 in a calendar year and who or which does not anticipate accepting any contribution or contributions from a single source, other than contributions totaling no more than \$1,000 made by the candidate to his or her own campaign, exceeding \$100 in that year, the registrant shall lose the exemption when the registrant exceeds

the \$1,000 and \$100 limits, respectively. The registrant shall then inform the appropriate filing officer by filing either an amended campaign registration statement (Form EB-1) stating that the registrant is no longer eligible for exemption or by a letter filed with the filing officer or with the U.S. postal service by first class mail with sufficient prepaid postage, addressed to the appropriate filing officer, no later than the date on which the registrant exceeds the \$1,000 and \$100 limits. The registrant becomes subject to the applicable reporting requirements as of the date on which the registrant exceeds the \$1,000 and \$100 limits, including the requirement to report contributions received, disbursements made, and obligations incurred before the registrant exceeds the \$1,000 and \$100 limits.

(2) When any political party committee claims an exemption from filing campaign finance reports because the registrant has signed an indication on a registration statement that the committee will not accept contributions, make disbursements, or incur obligations in the aggregate in excess of \$1,000 in any calendar year and will not accept any contribution or contributions from a single source exceeding \$100 in that year, the registrant shall lose the exemption when the committee's financial activity exceeds the \$1,000 and \$100 limits, respectively. The committee shall then inform its filing officer by verified letter filed with the filing officer or with the U.S. postal service by first class mail with sufficient prepaid postage, addressed to the appropriate filing officer, no later than the date on which the registrant exceeds the \$1,000 and \$100 limits. The committee becomes subject to the applicable reporting requirements as of the date on which the registrant exceeds the \$1,000 and \$100 limits, including the requirement to report contributions received, disbursements made, and obligations incurred before the registrant exceeds the \$1,000 and \$100 limits.

(3) For purposes of qualifying for exempt status under s. 11.05 (2r), Stats., the transfer of party member dues from a state political party to a local party shall not be considered a contribution from a single source. A local political party shall not lose its exempt status because of transfers to it by the state party of party member dues in excess of \$100.

History: Emerg. cr. eff. 9-13-76; cr. Register, January, 1977, No. 253, eff. 2-1-77; r. and recr. Register, May, 1986, No. 365, eff. 6-1-86; emerg. am. (1), eff. 7-1-86; am. (1), Register, November, 1986, No. 371, eff. 12-1-86; cr. (3), Register, April, 1998, No. 508, eff. 5-1-98.

This rule accurately describes applicable campaign finance registration requirements. Staff recommends the Board reaffirm the rule.

EIBd 1.43 Referendum-related activities by committees; candidate-related activities by groups.

(1) As used in this rule, "committee-group" means any committee which acts in support of or opposition to a referendum, and any group which acts in support of or opposition to a candidate.

(2) Any committee-group may consolidate referendum-related and candidate-related activity by:

(a) Filing a duplicate consolidated registration statement or amending a previously filed registration statement with the appropriate filing officer or officers, indicating all candidates and referenda supported or opposed, or

(b) Filing duplicate consolidated financial disclosure reports, which indicate the specific purpose of each expenditure so as to differentiate between expenditures intended to influence referenda and expenditures intended to influence the election or defeat of a candidate.

(3) A committee-group which consolidates activity pursuant to this rule is subject to those limits on the receipt of contributions to which it would be subject if it were operating solely as a committee.

(4) A committee-group which consolidates activity pursuant to this rule must have a single treasurer and a single depository.

(5) Notwithstanding the above, any committee-group may separate referendum-related and candidate-related activity by filing separate registration statements, separate financial disclosure reports, and by maintaining a separate depository for each type of activity.

History: Cr. Register, January, 1978, No. 265, eff. 2-1-78.

This rule accurately describes applicable campaign finance registration and reporting requirements with one exception. Paragraph (2)(a) contains a requirement to list all candidates supported. This requirement has been removed from the law. Staff recommends the Board reaffirm the rule and direct staff to correct the discrepancy.

EIBd 1.46 Identification of individual contributors on campaign finance reports.

(1) The requirement contained in s. 11.06 (1) (a), Stats., to furnish the street address of a contributor who has made a contribution or contributions aggregating more than \$20 in a calendar year includes the municipality and state as well as the street address. A complete postal address is sufficient to meet the disclosure requirement contained in the statute.

(2) The requirement contained in s. 11.06 (1) (b), Stats., to furnish the occupation and principal place of business, if any, of each individual contributor whose cumulative contributions for the calendar year are in excess of \$100 refers to the contributor's occupation and the name of the employing entity of the contributor. The listing of a business address only does not comply with the disclosure requirement of the statute.

History: Cr. Register, February, 1985, No. 350, eff. 3-1-85.

This rule accurately describes applicable campaign finance reporting requirements. Staff recommends the Board reaffirm the rule.

EIBd 1.55 Reimbursement for campaign use of government vehicles.

Whenever a state or local government vehicle is used primarily for the purposes of campaigning in support of or in opposition to a candidate for national, state, or local office, there must be paid to the state treasurer or governing body of the local government a fee which is comparable to the commercial market rate for a similar vehicle or aircraft. The obligation, if any, to reimburse the state or local government shall be included on the campaign finance report covering the period during which the obligation was incurred.

History: Cr. Register, October, 1979, No. 286, eff. 11-1-79; r. and recr. Register, May, 1986, No. 365, eff. 6-1-86; emerg. am. eff. 7-1-86; am. Register, November, 1986, No. 371, eff. 12-1-86.

This rule appears to be inconsistent with the statute concerning use of government vehicles. §11.37, Wis. Stats.

11.37 Travel by public officers. (1) *No person may use any vehicle or aircraft owned by the state or by any local governmental unit for any trip*

which is exclusively for the purposes of campaigning in support of or in opposition to any candidate for national, state or local office, unless use of the vehicle or aircraft is required for purposes of security protection provided by the state or local governmental unit.

(2) *No person may use any vehicle or aircraft owned by the state or by any local governmental unit for purposes which include campaigning in support of or in opposition to any candidate for national, state or local office, unless the person pays to the state or local governmental unit a fee which is comparable to the commercial market rate for the use of a similar vehicle or aircraft and for any services provided by the state or local governmental unit to operate the vehicle or aircraft. If a trip is made in part for a public purpose and in part for the purpose of campaigning, the person shall pay for the portion of the trip attributable to campaigning, but in no case less than 50% of the cost of the trip. The portion of the trip attributable to campaigning shall be determined by dividing the number of appearances made for campaign purposes by the total number of appearances. Fees payable to the state shall be prescribed by the secretary of administration and shall be deposited in the account under s. 20.855 (6) (h). Fees payable to a local governmental unit shall be prescribed by the governing body of the governmental unit.*

The statute provides clear direction on the responsibilities for payment for use of government vehicles. Staff recommends the Board decline to reaffirm the rule.

EIBd 1.56 Commercial sales by political registrants.

(1) *When a registrant receives donated items for resale the proceeds from the resale transaction shall be reported in the following manner:*

- (a) The receipt of the item shall be reported in the registrant's campaign finance report as an in-kind contribution and as an in-kind expenditure at the fair market value of the donated item;*
- (b) The resale of the item shall be reported in the registrant's campaign finance report as a contribution from the purchaser in the amount paid by the purchaser.*
- (c) The registrant must make a good faith effort to accurately reflect the fair market value of the item in its campaign finance report.*

(2) *When a registrant sells an item which it has purchased for resale to raise funds for political purposes, the entire amount of the proceeds of the sale shall be reported in the registrant's campaign finance report as a contribution from the purchaser.*

(3) *The proceeds from the sale of food and beverage at a fundraiser by a registrant shall be reported in the registrant's campaign finance report as a contribution from the purchaser.*

(4) *When items are sold, including food and beverage, at a cost that is less than \$10.00, the registrant should report the proceeds of the sales as contributions, but they may be listed as "un-itemized contributions" in the campaign finance reports. A good faith effort does not require that records be kept of the identity of the purchaser of items where the cost is less than \$10.00.*

(5) *When a registrant disposes of tangible assets of the campaign by sale in a regular commercial transaction for fair market value, the proceeds of the sale shall be reported as "other income" in the registrant's campaign finance reports.*

History: Cr. Register, February, 1985, No. 350, eff. 3-1-85.

This rule accurately describes applicable campaign finance reporting requirements. Staff recommends the Board reaffirm the rule.

ElBd 1.60 Consulting services.

(1) (a) Expenditures for consulting services made by a candidate's committee, political action committee, or political party committee on behalf of more than one candidate shall be attributable to each candidate in proportion to, and shall be reported to reflect, the benefit reasonably derived, except as provided in par. (c). This rule shall not apply to independent expenditures made under s. 11.06 (7), Stats., and s. ElBd 1.42.

(b) An authorized expenditure for consulting services made by a candidate, candidate's committee, political action committee, or political party committee on behalf of another candidate shall be reported as an in-kind contribution to the candidate on whose behalf the expenditure was made, except that expenditures made by political party committees on behalf of that party's presidential candidates shall not be reportable and shall not count against that party's state or local candidates' applicable contribution limits under s. 11.26 (9) (a), Stats., and spending limits under s. 11.31 (2), Stats., and s. ElBd 1.44, except as provided in par. (c).

(c) Exceptions to pars. (a) and (b). Expenditures for rent, personnel, overhead, general administrative, fund-raising, and other costs of political party committees, which costs are incurred in the ordinary course of its day-to-day operations, need not be attributed to individual candidates, unless these expenditures are made on behalf of a clearly identified candidate and the expenditure can be directly attributed to that candidate.

(2) If a candidate, candidate's committee, political action committee, or political party committee, for itself or another, hires a consultant to work during a campaign period as that term is defined in s. 11.26 (17), Stats., the amount paid or incurred shall be presumed to be an expenditure on behalf of a candidate or candidates who receive assistance from the consultant. This presumption may be rebutted.

(3) Any expenditures for consulting services shall be valued at the fair market value of the item or services at the time of the contribution.

History: Emerg. cr. eff. 6-1-86; cr. Register, November, 1986, No. 371, eff. 12-1-86; correction in (2) made under s. 13.93 (2m) (b) 7., Stats., Register, August, 1999, No. 524.

This rule accurately describes applicable campaign finance reporting requirements. Staff recommends the Board reaffirm the rule.

ElBd 1.65 Opinion poll results.

(1) The term "overall cost" as used in s. 11.06 (12) (b), Stats., means the value of the opinion poll or voter survey results, as defined in s. 11.06 (12) (a) 4., Stats., as determined by the individual or committee which commissions the poll or survey.

(2) The transfer to a candidate or committee of the results of a poll or survey, other than by a sale, is an in-kind contribution to such candidate or committee and reportable on the candidate's or committee's campaign finance report due for the period during which the results are received.

(3) The value of the poll or survey equal to the applicable percentage of full value as provided in s. 11.06 (12) (b) through (f), Stats., is based on the reasonable costs incurred in conducting the poll or survey. These costs include the costs for staff salary or other compensation, rent,

telephones, poll lists, telephone calls, and computer use and supplies, and other reasonable and necessary items associated with creating the opinion results as defined in s. 11.06 (12) (a) 3., Stats.

This rule accurately describes applicable campaign finance reporting requirements. Staff recommends the Board reaffirm the rule.

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KEVIN J. KENNEDY
Director and General Counsel

MEMORANDUM

DATE: For May 5, 2008 Meeting

TO: Members, Wisconsin Government Accountability Board

FROM: Kevin J. Kennedy, Director and General Counsel

SUBJECT: Review of Certain Formal Opinions and Rules of the State Elections Board
Relating to Campaign Finance Registration

This memorandum presents 1 opinion and 3 administrative rules of the State Elections Board presently in effect relating to campaign finance registration for review and reaffirmation by the Government Accountability Board (GAB).

Formal Opinion Related to Campaign Finance Registration

Opinion El.Bd. 74-3

Federal authorization of spending limits which are in excess of those provided by state law in campaigns for U.S. congressman is not governing in determining compliance by Wisconsin candidates for national office. Federal spending limitations upon a candidate and members of his immediate family are consistent with state contribution limitations for these specific contributors. (Issued to Alan C. Cole, August 6, 1974)

This opinion is inconsistent with several U.S. Supreme Court cases. *Buckley v. Valeo* 424 U.S. 1 (1976) struck down spending limits. There are a number of decisions which bring in to question the state's authority to regulate federal campaign spending activity.

Staff recommends the Board decline to reaffirm the opinion.

Administrative Rules Related to Campaign Finance Registration

EIBd 1.02 Multiple candidacies.

(1) Any candidate seeking election to an office other than that indicated on a registration statement or that of the candidate's personal campaign committee must file an amended registration statement with the appropriate filing officer or officers indicating such change. Financial disclosure reports filed subsequent to such change must be filed with the filing officer for the office designated on the amended registration statement.

(2) When a candidate is simultaneously seeking election to more than one office, the candidate shall file duplicate consolidated registration statements indicating all offices sought and duplicate consolidated financial disclosure reports with the appropriate filing officers. The

personal campaign committee of such a candidate is responsible for ensuring compliance with the contribution limitation applicable to each office sought.

(3) Regardless of the number of offices sought, a candidate may not have more than one committee, treasurer and campaign depository account.

History: Cr. Register, June, 1976, No. 246, eff. 7-1-76; correction in (1) and (2) made under s. 13.93 (2m) (b) 5., Stats., Register, November, 1986, No. 371.

This rule accurately describes applicable campaign finance registration requirements for candidates seeking multiple offices. Staff recommends the Board reaffirm the rule.

EIBd 1.41 Mailing registration forms.

(1) Where a requirement is imposed for the filing of a registration statement no later than a certain date, the requirement may be satisfied either by actual receipt of the statement by the prescribed time for filing at the office of the filing officer, or by filing a report with the U.S. postal service by first class mail with sufficient prepaid postage, addressed to the appropriate filing officer, no later than the date provided by law for receipt of such report.

(2) In any case where the postal service is employed by a person subject to a registration requirement as the agent for transmittal of a statement, the burden is upon such person to show that a statement has been filed with the postal service.

(3) It is presumed until the contrary is established that the date shown by the postal service cancellation mark on the envelope containing the statement is the date that it was deposited in the mail.

History: Cr. Register, January, 1978, No. 265, eff. 2-1-78; corrections made under s. 13.93 (2m) (b) 1., Stats., Register, January, 1994, No. 457.

This rule is not consistent with the requirement that a candidate file a registration statement by the deadline for filing nomination papers in order to qualify for ballot status. §8.30 (2), Wis. Stats. Several court cases hold the failure to file nomination papers or other ballot access papers on time is fatal to ballot access. *State ex. rel. Ahlgrimm v. State Elections Board*, 82 Wis. 2d 585, 263 N.W. 2d 152 (1978)

This rule incorporates a provision from the statues dealing with filing campaign reports to treat a report as timely filed if it is postmarked by the filing deadline. §11.20 (10), Wis. Stats. This is an area that many would like to revise to require a report be postmarked at least 3 days before the deadline because of the delay in disclosure.

Staff recommends the rule be revised to make clear this does not apply to the ballot access deadline.

EIBd 6.02 Registration statement sufficiency.

(1) Any registration filed with a filing officer under s. 11.05, Stats., which is insufficient as to essential form, information or attestation shall be rejected by such officer and shall be promptly returned if possible to the proposed registrant indicating the nature of the insufficiency. The proposed registrant shall be informed that the attempted registration is not effective.

(2) Any registration statement filed with a filing officer under s. 11.05, Stats., which is insufficient or incomplete in some manner but substantially complies with law shall be accepted

by such officer who shall then promptly notify the registrant indicating the nature of the incompleteness or insufficiency. The registrant shall then have 15 days from the date of such notice to rectify the problem. If the incompleteness or insufficiency is not rectified by the registrant within 15 days from the date of the notice, the registration lapses and is not effective.

History: Emerg. cr. 8-9-74; cr. Register, November, 1974, No. 227, eff. 12-1-74.

This rule articulates direction for the treatment of incomplete reports by filing officers. Staff recommends the Board reaffirm the rule.

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KEVIN J. KENNEDY
Director and General Counsel

MEMORANDUM

DATE: For May 5, 2008 Meeting

TO: Members, Wisconsin Government Accountability Board

FROM: Kevin J. Kennedy, Director and General Counsel

SUBJECT: Review of Certain Formal Opinions of the State Elections Board Relating to Ballots

This memorandum presents 8 formal opinions of the State Elections Board presently in effect relating to ballots for review and reaffirmation by the Government Accountability Board (GAB).

Formal Opinions Related to Ballots

Opinion El.Bd. 76-09

Municipal clerks may not leave off the name of the ward when having ballots printed. Candidates may elect not to use their first or middle initials on nomination papers or ballots. Designations such as "Sr.," "Jr.," or "III" may be used on nomination papers or on ballots. (Issued to Harold C. Dobberpuhl, April 21, 1976)

The law has changed since this opinion was issued. The ward number or polling place designation may now be added after the ballots are printed. §5.55 Wis. Stats. The discussion about the use of designations remains authoritative. Staff recommends the Board reaffirm the opinion with language directing the reader to the statutory change.

Opinion El.Bd. 78-14

Dual nomination: When a candidate wins a partisan primary for an office for which he has filed nomination papers and a declaration of acceptance, and also wins, at the same primary, the party's nomination for another office by write-in votes, the candidate may not choose between the nominations, but must appear for that office for which nomination papers and a declaration of acceptance were filed. Sec. 8.03(1), 8.35(4)(b), Stats. (Issued to Fred W. Shaffer, August 17, 1978)

This opinion provides detailed analysis on multiple nominations. The analysis remains authoritative. Staff recommends the Board reaffirm the opinion.

Opinion El.Bd. 78-16

Form of name on ballot. A candidate other than a married person using a formal legal surname as a middle name is precluded from appearing on the ballot with full first and middle names. Sec 7.08(2)(a), 8.10(3), 8.20(2)(a), and 8.15(5), Stats. (Issued to Ralph Adam Fine, October 18, 1978)

This opinion was set aside in litigation. *Fine v. Elections Board*, 95 Wis. 2d 162, 289 N.W. 2d 823 (1980) The law has also been changed to permit the use of a middle name along with a first name. Staff recommends the Board decline to reaffirm this opinion.

Opinion EI.Bd. 78-17

Procedure for arrangement of names on ballots discussed. Sec. 5.60, 5.62, 5.64, 8.05, Stats. (Issued to Gail Procarione, December 14, 1978)

The law has changed since this opinion was issued. The statutes expressly require a redrawing of candidates' names after a non-partisan primary. The official vote for President, as well as the vote for Governor, determines the order of political parties and partisan candidates on partisan ballots. Staff recommends the Board decline to reaffirm this opinion.

Opinion EI.Bd. 79-1

The timely filing of a declaration of acceptance, as required under sec.8.15(4)(b), Stats, is a condition precedent to the right of a nominee to have his or her name appear on the official ballot. (Issued to Frank J. Bucaida, March 1, 1979)

The law has been changed to specifically provide the failure to file a Declaration of Candidacy by the filing deadline disqualifies a candidate from appearing on the ballot. §8.30 (4), Wis. Stats. The analysis remains authoritative. Staff recommends the Board reaffirm the opinion.

Opinion EI.Bd. 80-2

A candidate may not circulate nomination papers or be certified for placement on the ballot with a name which is generally viewed as a nickname unless that name is the candidate's actual legal name by birth or adopted by common law usage. (Issued to Marjorie M. Miller, June 19, 1980)

The law has been changed to specifically permit the use of nicknames on the ballot. §§5.02 (12m); 8.10 (2)(b); 8.15 (5)(a), Wis. Stats. The Elections Board addressed this issue on several occasions after the statutory change and determined, absent any evidence of an attempt to manipulate the electoral process, candidates are free to choose any form of their name, including nicknames, by which they want to appear on the ballot. EIBd Cpt. 2005-08. Staff recommends the Board decline to reaffirm the opinion and reaffirm the position articulated in EIBd Cpt 2005-08.

Opinion EI.Bd. 87-1

Election ballots are not public record but tally sheets and canvasses are: ss.7.51(3)(a) and (4), 7.53(2)(d), 7.54, 9.01(1)(b)3., 4., and 5m., 19.32(2), and 19.35(1)(a), Stats. (Issued to Dorothy Pacholczyk, May 21, 1987)

This opinion was set aside in litigation. *WITI-TV 6 v Milwaukee County Board of Election Commissioners*, Appeal No. 87-1815 The opportunity for the public to inspect ballots after the deadline for conducting a recount provides a means for evaluating the performance of voting equipment and election officials. Staff recommends the Board decline to reaffirm the opinion. The Board should consider clarifying access to ballots to protect secret ballots through administrative rules dealing with post election audits and review of election materials.

Opinion EI.Bd. 88-1

A recognized political party which does not run a candidate for president or whose candidate does not receive one percent of the state presidential vote at the presidential general election does not lose its ballot status. Ballot status of recognized political parties is determined by the ability of the party candidates to establish a minimum level of support by obtaining at least one percent of the vote for any statewide office at a gubernatorial general election. (Issued to Dennis Boyer, Esq., March 9, 1988)

This opinion provides detailed analysis on ballot access requirements for political parties. Staff recommends the Board reaffirm the opinion.

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KEVIN J. KENNEDY
Director and General Counsel

MEMORANDUM

DATE: For May 5, 2008 Meeting

TO: Members, Wisconsin Government Accountability Board

FROM: Kevin J. Kennedy, Director and General Counsel

SUBJECT: Review of Certain Administrative Rules of the State Elections Board Relating to Elector Challenges

This memorandum presents 6 administrative rules of the State Elections Board presently in effect relating to elector challenges for review and reaffirmation by the Government Accountability Board (GAB).

Administrative Rules Related to Elector Challenges

EIBd 9.01 Inspector making challenge.

Any inspector may challenge for cause any person offering to vote whom the inspector knows or suspects is not a qualified elector. An inspector has cause to challenge a person as being unqualified to vote if the challenging inspector knows or suspects that any one of the following criteria apply to the person being challenged: 1) the person is not a citizen of the United States; 2) the person is not at least 18 years of age; 3) the person has not resided in the election district for at least 10 days; 4) the person has a felony conviction and has not been restored to civil rights; 5) the person has been adjudicated incompetent; 6) the person has voted previously in the same election. If a person is challenged as unqualified by an inspector, the following procedure shall be followed:

(1) One of the inspectors shall administer the following oath or affirmation of veracity to the person: "You do solemnly swear (or affirm) that you will fully and truly answer all questions put to you regarding your place of residence and qualifications as an elector of this election."

(2) The inspector shall then ask only those of the following questions which are appropriate to test the person's qualifications based on the cause for the challenge:

(a) Are you a United States citizen?

(b) Are you at least 18 years of age?

(c) For at least the 10 days before this election, have you resided in, or been a resident of, the ward or election district from which you seek to vote?

(d) Are you currently disqualified from voting for any of the following reasons:

1. A felony conviction for which you are still serving probation or are on parole or extended supervision?
2. A judge's ruling that you are incapable of voting?
3. Having made a bet or wager on this election?
4. Having voted previously in this election?

(3) If the challenge is withdrawn by the inspector, the challenge procedure shall be halted, but a written record of the procedural steps taken, up to the withdrawal, shall be preserved in accordance with s. ElBd 9.05.

(4) If the challenge is not withdrawn by the inspector after the person offering to vote has answered the questions asked under sub. (2), one of the inspectors, before issuing the ballot, shall administer to the challenged elector the following oath or affirmation of eligibility: "You do solemnly swear (or affirm) that: you are 18 years of age; you are a citizen of the United States; you are now and for 10 days have been a resident of this ward except under s. 6.02 (2), Stats.; you have not voted at this election; you have not made any bet or wager or become directly or indirectly interested in any bet or wager depending upon the result of this election; you are not on any other ground disqualified to vote at this election."

(5) If the person challenged refuses to take the oath or affirmation of eligibility under sub. (4), the inspectors shall not issue a ballot to the person challenged.

(6) If the person challenged refuses to answer fully any relevant questions put to him or her by the inspector under sub. (2), or the answers to the questions given by the person indicate that the person does not meet the voting qualification requirements of ss. 6.02 and 6.03, Stats., the inspectors shall not issue a ballot to the person challenged.

(7) If the person challenged answers fully all relevant questions put to the elector by the inspector under sub. (2), takes the oath or affirmation of eligibility under sub. (4), fulfills the registration requirements, where applicable, and the answers to the questions given by the person indicate that the person meets the voting qualification requirements of ss. 6.02 and 6.03, Stats., the challenged elector shall be issued a ballot and the voting procedure under s. ElBd 9.03 shall be followed.

History: CR 02-071: cr. Register September 2002 No. 561 eff. 10-1-02.

EIBd 9.02 Elector making challenge in person.

Any elector may challenge for cause any person offering to vote whom the elector knows or suspects is not a qualified elector. Any elector who abuses the right to challenge under s. 6.925, Stats., may be subject to sanctions available to inspectors under s. 7.41 (3), Stats. An elector has cause to challenge a person as being unqualified to vote if the challenging elector knows or suspects that any one of the following criteria apply to the person being challenged: 1) the person is not a citizen of the United States; 2) the person is not at least 18 years of age; 3) the person has not resided in the election district for at least 10 days; 4) the person has a felony conviction and has not been restored to civil rights; 5) the person has been adjudicated incompetent; 6) the person has voted previously in the same election. If a person is challenged as unqualified by an elector, the following procedure shall be followed:

(1) One of the inspectors shall administer the following oath or affirmation of veracity to the challenging elector: "You do solemnly swear (or affirm) that you will fully and truly answer all questions put to you regarding the challenged person's place of residence and qualifications as an elector of this election."

(2) The inspector shall ask the challenger if he or she is an elector and then ask only those of the following questions which are appropriate to determine the qualifications of the challenged elector:

- (a) Why do you believe that the challenged elector is not a United States citizen?*
- (b) Why do you believe that the challenged elector is not at least 18 years of age?*
- (c) Why do you believe that the challenged elector has not, for at least the 10 days before this election, resided in, or been a resident of, the ward or election district from which he or she seeks to vote?*
- (d) For which of the following reasons, and why, do you believe the challenged elector is currently disqualified from voting:*

- 1. A felony conviction for which the challenged elector is still serving probation or is on parole or extended supervision?*
- 2. A judge's ruling that he or she is incapable of voting?*
- 3. Having made a bet or wager on this election?*
- 4. Having voted previously in this election?*

(3) One of the inspectors shall then administer the oath or affirmation of veracity to the challenged elector under sub. (1) and ask the challenged elector only the questions under s. ElBd 9.01 (2) which are appropriate to test the elector's qualifications based on the cause for the challenge.

(4) One of the inspectors shall then ask the challenging elector if he or she withdraws the challenge. If the challenge is withdrawn by the challenging elector, the challenge procedure shall be halted, but a written record of the procedure up to the withdrawal shall be preserved in accordance with s. ElBd 9.05.

(5) If the challenge is not withdrawn after the person offering to vote has answered the questions under s. ElBd 9.01 (2), one of the inspectors, before issuing the ballot, shall administer to the challenged elector the following oath or affirmation of eligibility: "You do solemnly swear (or affirm) that: you are 18 years of age; you are a citizen of the United States; you are now and for 10 days have been a resident of this ward except under s. 6.02 (2), Stats., you have not voted at this election; you have not made any bet or wager or become directly or indirectly interested in any bet or wager depending upon the result of this election; you are not on any other ground disqualified to vote at this election."

(6) If the person challenged refuses to take the oath or affirmation of eligibility under sub. (5), the inspectors shall not issue a ballot to the person challenged.

(7) If the person challenged refuses to answer fully any relevant questions put to him or her by the inspector under sub. (2), or the answers to the questions given by the person indicate that the person does not meet the voting qualification requirements of ss. 6.02 and 6.03, Stats., the inspectors shall not issue a ballot to the person challenged.

(8) If the person challenged answers fully all relevant questions put to the elector by the inspector under s. ElBd 9.01 (2), takes the oath or affirmation of eligibility under sub. (5), fulfills the registration requirements, where applicable, and the answers to the questions given by the person indicate that the person meets the voting qualification requirements of ss. 6.02 and 6.03, Stats., the challenged elector shall be issued a ballot and the voting procedure under s. ElBd 9.03 shall be followed.

History: CR 02-071: cr. Register September 2002 No. 561 eff. 10-1-02.

EIBd 9.03 Voting procedure for challenged electors.

Whenever the inspectors under ss. 6.92 to 6.94, Stats., determine to receive the vote of a person who has been challenged, they shall give the elector a ballot. Before giving the elector the ballot, the inspectors shall write on the back of the ballot the serial number of the challenged person corresponding to the number kept at the election on the registration or poll list, or other list maintained under s. 6.79, Stats. If lever or direct record voting machines are used in the municipality where the person is voting, the person's vote may be received only upon an absentee ballot furnished by the municipal clerk which shall have the corresponding serial number from the registration or poll list or other list maintained under s. 6.79, Stats., written on the back of the ballot before the ballot is deposited. The inspectors shall indicate on the voter list the reason for the challenge. The challenged ballots shall be counted under s. 5.85 or 7.51 (2) (c), Stats.

History: CR 02-071: cr. Register September 2002 No. 561 eff. 10-1-02.

EIBd 9.04 Challenging the absent elector.

The vote of any absent elector may be challenged for cause by an inspector or by an elector and the inspectors shall have all the power and authority given them under ss. EIBd 9.01 and 9.02 to hear and determine the legality of the ballot the same as if the ballot had been voted in person. One of the inspectors shall administer the following oath or affirmation of veracity to the elector challenging the absentee elector's ballot: "You do solemnly swear (or affirm) that you will fully and truly answer all questions put to you regarding the challenged person's place of residence and qualifications as an elector of this election"; and shall ask the challenger if he or she is an elector and then shall ask only those questions provided in s. EIBd 9.01 (2) which are appropriate to test the qualifications of the challenged elector.

History: CR 02-071: cr. Register September 2002 No. 561 eff. 10-1-02.

EIBd 9.05 Recording the challenge.

The inspectors shall make a written record of all challenges at the polling place, whether or not a ballot is issued to the challenged elector. The written record shall contain the name and address of the challenger; the name, address and serial number of the challenged elector; the cause for the challenge; the questions asked of the elector and the elector's responses to those questions. The written record also shall contain the questions asked of the challenger; the challenger's responses to those questions and whether or not the challenge was withdrawn. The record shall note whether or not the challenged elector took the oath or affirmation of eligibility.

History: CR 02-071: cr. Register September 2002 No. 561 eff. 10-1-02.

EIBd 9.06 Review by a board of canvassers.

The municipal board of canvassers may decide any challenge when making its canvass under s. 7.53, Stats. If the returns are reported under s. 7.60, Stats., a challenge may be reviewed by the county board of canvassers. If the returns are reported under s. 7.70, Stats., a challenge may be reviewed by the chairperson of the board or the chairperson's designee. The decision of any board of canvassers or of the chairperson or chairperson's designee may be appealed under s. 9.01, Stats. The standard for disqualification specified in s. 6.325, Stats., shall be used to determine the validity of challenged ballots.

History: CR 02-071: cr. Register September 2002 No. 561 eff. 10-1-02.

These administrative rules accurately reflect the law with respect to challenging the qualifications of electors at the polling place. The agency staff has developed a special form for use in the challenge procedure to ensure the process is followed, all required oaths are administered and all information is properly documented. EB-104c The use of the form is a separate topic in the chief inspector training and is addressed in the *Election Day Manual* available on the agency website: <http://elections.state.wi.us/docview.asp?docid=12848&locid=47>

The rules have one minor reference error. Since lever voting machines are no longer used in the state, the reference to them in EIBd 9.03 should be removed. Staff recommends the Board reaffirm the rules and direct staff to delete the reference to lever voting machines in EIBd 9.03.

Challenge Documentation

Name and Address of **Challenged** Elector:

Challenged Elector Voter number _____
(Fill in only if Part D is completed)

Identifying Challenge Participants

Name of Inspector Administering Oaths or Affirmations _____

1. Person Challenging Electors who are Present at the Polling place

(Check the box that applies and provide the information requested.)

Inspector (Who Is a Qualified Elector) *Making Challenge to an Elector who is Present at the Polling Place*

Name of Challenging Inspector _____ (Proceed to Part A.)
or

Name and Address of **Electors** *Making Challenge to an Elector who is Present at the Polling Place*

_____ (Proceed to Part A.)

2. Person Challenging Absentee Electors

(Check the box that applies and provide the information requested.)

Inspector (Who Is a Qualified Elector) *Making Challenge to An Absentee Elector*

Name of Challenging Inspector _____ (Complete Parts A & E.)
or

Name and Address of **Electors** *Making Challenge to An Absentee Elector*

_____ (Complete Parts A & E.)

Part A. Challenger

(Indicate the challenger's answers to your questions by checking "yes" or "no." Provide any other information requested.)

1. Oath (or Affirmation) of Truthfulness given by inspector to challenger:

"Do you solemnly swear (or affirm) that you will fully and truly answer all questions put to you regarding the challenged person's place of residence and qualifications as an elector of this election."

yes no

If "yes," proceed with challenge process. If "no," see the end of this section*.

2. Inspector asks challenger if they are a qualified elector of Wisconsin. (Only an elector may challenge.)

yes no

If "yes," proceed with challenge process. If "no," see the end of this section*.

3. Challenger gives reason for challenge using one of the following criteria that applies to the person being challenged:

- the person is not a citizen of the United States;
- the person is not at least 18 years of age;
- the person has not resided in the election district for at least 10 days;
- the person has a felony conviction and has not been restored to civil rights;
- the person has been adjudicated incompetent;
- the person has voted previously in the same election.

4. Inspector asks the following question(s) of challenger which are appropriate to determine the qualifications of the challenged elector:

Why do you believe that the challenged elector is not a United States citizen?

Why do you believe that the challenged elector is not at least 18 years of age?

- Why do you believe that the challenged elector has not, for at least the 10 days before this election, resided in, or been a resident of, the ward or election district from which he or she seeks to vote?
- For which of the following reasons, and why, do you believe the challenged elector is currently disqualified from voting:
 - A felony conviction for which the challenged elector is still serving probation or is on parole or extended supervision?
 - A judge's ruling that he or she is incapable of voting?
 - Having made a bet or wager on this election?
 - Having voted previously in this election?

Record Challenger's Answer(s)

***IF CHALLENGER REFUSES TO TAKE THE OATH (OR AFFIRMATION) OF VERACITY, IS NOT A QUALIFIED ELECTOR OF WISCONSIN, REFUSES TO GIVE A VALID REASON FOR CHALLENGE OR REFUSES TO PROVIDE INFORMATION TO SUPPORT THE CHALLENGE, THE CHALLENGE PROCESS IS TERMINATED AND THE ELECTOR IS ALLOWED TO VOTE.**

OTHERWISE:

5. *Proceed to Part B.*

Part B. Challenged Elector

(Indicate the challenged elector's answers to your questions by checking "yes" or "no.")

1. Oath (or Affirmation) of Truthfulness given by inspector to challenged elector:

"Do you solemnly swear (or affirm) that you will fully and truly answer all questions put to you regarding your place of residence and qualifications as an elector of this election."

yes no

If "yes," proceed with challenge process. If "no," see end of this section.*

2. Inspector asks challenged elector only those of the following questions which are appropriate to test the person's qualifications based on the cause for the challenge:

Are you a United States citizen? yes no

Are you at least 18 years of age? yes no

For at least the 10 days before this election, have you resided in, or been a resident of, the ward or election district from which you seek to vote? yes no

Are you currently disqualified from voting for any of the following reasons:

A felony conviction for which you are still serving probation or are on parole or extended supervision? yes no

A judge's ruling that you are incapable of voting? yes no

Having made a bet or wager on this election? yes no

Having voted previously in this election? yes no

***IF CHALLENGED ELECTOR REFUSES TO TAKE THE OATH (OR AFFIRMATION) OF VERACITY, REFUSES TO ANSWER ANY OF THE QUESTIONS IN PART B, OR THE ANSWERS GIVEN INDICATE THAT THE CHALLENGED ELECTOR DOES NOT MEET VOTING ELIGIBILITY REQUIREMENTS,**

THE CHALLENGED ELECTOR IS NOT GIVEN A BALLOT. INDICATE THE REASON FOR NOT ISSUING A BALLOT TO THE CHALLENGED ELECTOR IN THE BOX AT THE BOTTOM OF THIS PAGE.

OTHERWISE:

3. Proceed to Part C.

Part C. Opportunity to Withdraw Challenge

(Indicate the challenger's answer by checking "yes" or "no.")

Does challenger withdraw the challenge?

- Yes. (Challenge process is terminated, and elector is given a ballot.) No. (Proceed to part D.)
-

Part D. Oath (or Affirmation) of Eligibility

(Indicate the answers to your questions by checking "yes" or "no.")

1. Inspector administers oath (or affirmation) of eligibility to challenged elector:

"Do you solemnly swear (or affirm) that: you are at least 18 year of age; you are a citizen of the United States; you are now and for 10 days have been a resident of this ward except under s.6.02(2); you have not voted at this election; you have not made any bet or wager or become directly or indirectly interested in any bet or wager depending upon the result of this election; you are not on any other ground disqualified to vote at this election."

- yes no

If "yes," proceed with 2 and 3.

If "no," see end of this section*.

2. ***In municipalities that currently require voter registration:*** Is challenged elector registered?

- Yes No. (Elector must complete a registration form before ballot is given.)

3. If the challenged elector answered "yes" to question number 1 and has registered to vote (if applicable), the challenged elector is given a ballot. **Before issuing ballot to the challenged elector, inspectors must**

- Write the voter number of the challenged elector and "Section 6.95" on the back of the ballot,
 Write the voter number on the front of this form and on the voter list,
 Indicate the reason for the challenge on the voter list.

*IF CHALLENGED ELECTOR REFUSES TO TAKE THE OATH (OR AFFIRMATION) OF ELIGIBILITY OR REFUSES TO REGISTER (WHERE REQUIRED), THE ELECTOR MAY NOT BE GIVEN A BALLOT. INDICATE REASON FOR NOT ISSUING A BALLOT TO A CHALLENGED ELECTOR IN THE BOX AT THE BOTTOM OF THIS PAGE.

Part E. For Challenged Absentee Elector Only

(Indicate that the following procedures have been accomplished by checking the box next to each procedure.)

Before depositing absentee ballot of the challenged elector in ballot box, inspectors must

- Write the voter number of the challenged elector and "Section 6.95" on the back of the ballot,
 Write the voter number on the front of this form and on the voter list,
 Indicate the reason for the challenge on the voter list.
-

When Ballot Is NOT Issued to a Challenged Elector

(Indicate the reason for not issuing a ballot to a challenged elector by checking the appropriate box.)

- The challenged elector refused to take the oath or affirmation of eligibility under Part D.
 The challenged elector refused to answer fully any relevant questions put to him or her by the inspector under Part B.
 The answers to the questions given by the challenged elector indicate that they do not meet the voting qualification requirements of ss.6.02 and 6.03, Stats.

EB-104c (Rev. 3/2005) Inspector should attach this form to the Inspectors' Statement (EB-104)

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KEVIN J. KENNEDY
Director and General Counsel

MEMORANDUM

DATE: For May 5, 2008 Meeting

TO: Members, Wisconsin Government Accountability Board

FROM: Kevin J. Kennedy, Director and General Counsel

SUBJECT: Review of Certain Rules of the State Elections Board Relating to Polling Place Observers

This memorandum presents 1 administrative rule of the State Elections Board presently in effect relating to polling place observers for review and reaffirmation by the Government Accountability Board (GAB).

Administrative Rules Related to Polling Place Observers

EIBd 4.01 Election observers.

1) PURPOSE. The state elections board is empowered by s. 7.41, Stats., to authorize nonpartisan and bipartisan elector organizations not affiliated with a candidate to appoint election observers, in order to monitor compliance with election laws by local election officials. This rule codifies procedures for the authorization of these organizations and the performance of the election observers.

(2) AUTHORIZATION OF QUALIFIED ORGANIZATION.

(a) Only nonpartisan and bipartisan organizations of electors not affiliated with any candidate may be authorized to appoint election observers under this rule.

(b) Requests for authorization shall be submitted by an organization to the state elections board at least 45 days prior to the election. This requirement may be waived by the board.

(c) Authorizations under this section by the board shall be made in writing, at least 7 days prior to an election, and copies of the authorizations will be transmitted to the clerk of each municipality in which observers will serve. In addition, an organization authorized to appoint observers under this section shall file its appointments with the municipal clerk at least 4 days prior to the election, in the same manner as the appointments of poll watchers by candidates and political parties under s. 7.41, Stats., are filed. Prior to Election Day, the clerk shall notify the appropriate election workers in the municipality of the appointment of observers.

(3) PROCEDURES FOR MONITORING.

(a) On Election Day, election workers shall position observers appointed under this rule so that the observers can closely monitor proceedings at the polling place. Observers shall not interfere with the proceedings.

(b) Observers shall monitor the proceedings at the polling place for compliance with criteria and standards provided by the elections board, and shall note any variance from those criteria and standards on forms provided by the board. Observers shall transmit those forms to the board within 3 days after the election.

History: Emerg. cr. eff. 8-17-78; cr. Register, April, 1979, No. 280, eff. 5-1-79; corrections in (1) and (2) (c) made under s. 13.93 (2) (b) 7., Stats., Register, August, 1999, No. 524; corrections in (1) and (2) (c) made under s. 13.93 (2m) (b) 7., Stats., Register November 2005 No. 599.

Originally only candidates, political parties and non-partisan organizations approved by the Elections Board were permitted to be present at the polling place. The statutes on which this rule is based have been changed. §7.41, Wis. Stats.

Any individual other than a candidate has an absolute right to be present at the polling place to observe the conduct of the election as long as the individual does not interfere with, disturb or disrupt the operation of the polling place; engage in electioneering or the distribution of election-related materials; or distract election officials from carrying out their duties. §§5.35 (5), 7.37 (2), 7.41 (3), Wis. Stats. Even candidates may observe the counting and reconciliation process after the polls close. §7.51 (1), Wis. Stats.

The Board is authorized to promulgate rules regarding the proper conduct of individuals acting as observers including the interaction of observers with election inspectors and other election officials. §7.41 (5), Wis. Stats. Staff recommends the Board decline to reaffirm this rule and direct staff to commence the development of administrative rules that delineate the proper conduct of election observers at the polling place and other locations where voting is conducted or ballots are processed.

Staff would proceed by developing a set of rules for comment by local election officials and the public. The comments would be reviewed and vetted by a group of election officials and other interested individuals selected by the staff. The rules would be presented to the public for additional comment and the Board for approval before the September primary.

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KEVIN J. KENNEDY
Director and General Counsel

MEMORANDUM

DATE: For May 5, 2008 Meeting

TO: Members, Wisconsin Government Accountability Board

FROM: Kevin J. Kennedy, Director and General Counsel

SUBJECT: Review of Certain Rules of the State Elections Board Relating to Approval of Electronic Voting Equipment

This memorandum presents 3 administrative rules of the State Elections Board presently in effect relating to approval of electronic voting equipment for review and reaffirmation by the Government Accountability Board (GAB).

Administrative Rules Related to Approval of Electronic Voting Equipment

EIBd 7.01 Application for approval of electronic voting system.

(1) An application for approval of an electronic voting system shall be accompanied by all of the following:

- (a) A signed agreement that the vendor shall pay all costs, related to approval of the system, incurred by the board, its designees and the vendor.*
- (b) Complete specifications for all hardware, firmware and software.*
- (c) All technical manuals and documentation related to the system.*
- (d) Complete instruction materials necessary for the operation of the equipment and a description of training available to users and purchasers.*
- (e) Reports from an independent testing authority accredited by the national association of state election directors (NASED) demonstrating that the voting system conforms to all the standards recommended by the federal elections commission.*
- (f) A signed agreement requiring that the vendor shall immediately notify the board of any modification to the voting system and requiring that the vendor will not offer, for use, sale or lease, any modified voting system, if the board notifies the vendor that the modifications require that the system be approved again.*
- (g) A list showing all the states and municipalities in which the system has been approved for use and the length of time that the equipment has been in use in those jurisdictions.*

(2) The board shall determine if the application is complete and, if it is, shall so notify the vendor in writing. If it is not complete, the board shall so notify the vendor and shall detail any insufficiencies.

(3) If the application is complete, the vendor shall prepare the voting system for three mock elections, using offices, referenda questions and candidates provided by the board.

History: Cr. Register, June, 2000, No. 534, eff. 7-1-00.

ElBd 7.02 Agency testing of electronic voting system.

(1) The board shall conduct a test of a voting system, submitted for approval under s. ElBd 7.01, to ensure that it meets the criteria set out in s. 5.91, Stats. The test shall be conducted using a mock election for the partisan primary, a mock general election with both a presidential and gubernatorial vote, and a mock nonpartisan election combined with a presidential preference vote.

(2) The board may use a panel of local election officials and electors to assist in its review of the voting system.

(3) The board may require that the voting system be used in an actual election as a condition of approval.

History: Cr. Register, June, 2000, No. 534, eff. 7-1-00.

ElBd 7.03 Continuing approval of electronic voting system.

(1) The board may revoke the approval of any existing electronic voting system if it does not comply with the provisions of this chapter. As a condition of maintaining the board's approval for the use of the voting system, the vendor shall inform the board of all changes in the hardware, firmware and software and all jurisdictions using the voting system.

(2) The vendor shall, at its own expense, furnish, to an agent approved by the board, for placement in escrow, a copy of the programs, documentation and source code used for any election in the state.

(3) The electronic voting system must be capable of transferring the data contained in the system to an electronic recording medium, pursuant to the provisions of s. 7.23, Stats.

(4) The vendor shall ensure that election results can be exported on election night into a statewide database developed by the board.

(5) For good cause shown, the board may exempt any electronic voting system from strict compliance with ch. ElBd 7.

History: Cr. Register, June, 2000, No. 534, eff. 7-1-00.

These rules were prepared before the 2000 election. They served as a model for other states before and after the Help America Vote Act of 2002. However, as we have gained experience with the approval of several new voting systems in 2006, we can improve on the comprehensiveness of our testing and verification of all components of electronic voting systems.

The proposed security rules presented at this meeting are an essential element to improving our approach to election administration and fostering public confidence in the integrity of the election results. Those rules augment the rules in this chapter. Paul Malischke has offered a number of suggestions that merit consideration. His comments accompany this memorandum.

One key component in our approval process has been the requirement for qualification to national standards using an independent laboratory for testing. This program is now administered by the U.S. Election Assistance Commission (US EAC). The rules need to reflect that new systems must be certified by the US EAC program.

We also need to build in flexibility to address software and hardware upgrades. To date the US EAC program has not certified a single voting system component. Yet our local election officials need to add hardware components to make the processing of election results more efficient. We have been waiting since 2006 for the US EAC to approve some minor hardware changes that will allow Sequoia equipment users to combine results from the optical scan and DRE equipment electronically.

Staff recommends the Board reaffirm these rules and direct staff to commence the revision of the rules to address the concerns raised by local election officials, Mr. Malischke and the staff.

Staff would proceed by developing a set of rule changes for comment by local election officials and the public. The comments would be reviewed and vetted by a group of election officials and other interested individuals. The rules would be presented to the public for additional comment and the Board for approval before the September primary.

To: Government Accountability Board
Date: April 20, 2008
From: Paul Malischke
Re: Review of Rule EIBd 7
Application for approval of electronic voting system

This rule should undergo extensive review. GAB staff should investigate procedures from other states and recommend best practices.

Consider adding these items to the rule:

Vendor Requirements

Voting system vendors shall consign to the Government Accountability Board, on request, a working version of the components, including all hardware, software and firmware for the purposes of continuing analysis and testing. These components shall be maintained in working order by the vendor.

Vendors shall reveal whether they require exclusivity in ballot printing, ballot programming, servicing, and any other ongoing functions.

Vendors shall provide a list of all items for which they will charge customers, such as software licenses, ballot printing, ballot programming, supplies, training, maintenance, service training, parts, manuals, storing or reading records, etc.

Vendors shall provide information on the capability for ranked choice voting.

Procedures for the Government Accountability Board

The complete application shall be posted on the agency website. Complete instructional materials necessary for the operation of the equipment shall be made available in pdf version, and shall be posted on the GAB website. (Current rule states they must include this with the application.)

Tests conducted under 7.02 shall be open to the public and properly noticed. Ballots shall be available for the public to submit their own test deck. Detailed records shall be kept. Records shall include but not be limited to an electronic file of the machine programming for the various types of elections tested.

There shall be a public demonstration of the equipment.

GAB staff shall maintain a database of incidents and complaints from Wisconsin citizens about voting systems.

If the Board exempts any equipment from strict compliance per 7.03 (5), the exemption shall be temporary. The Board shall review the exemption annually. The exemption and the reasons shall be reported to the Assembly committee and Senate committee most involved with election administration.

Equipment shall be evaluated for its usability, including the reminders for undervoting. See page 12 of Government Accountability Office report GAO-08-425T which states “...explicit feedback to voters that a race has been undervoted and a prompt for voters to affirm their intent to undervote might help prevent many voters from unintentionally undervoting a race.”

Specific Equipment Requirements

Vendors must **demonstrate** the capability to meet the security requirements. (Currently not mentioned.)

Vendors must **demonstrate** the ability to store records per statute 7.23. (Current rule 7.03 (3) says they must be “capable”.) These records must be in a non-proprietary format.

Equipment must preserve secrecy of the ballot. (Currently not mentioned.)
In order to assure secrecy of the ballot, equipment shall not store paper records of votes sequentially.

No wireless communication components shall be allowed. Systems must be fully functional without being connected to the internet from the time of manufacture to the end of life. This includes ballot programming.

Stands for equipment, if included, must meet accessibility width and height requirements.

Equipment must support languages such as English, Hmong, and Spanish.

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JUDGE THOMAS CANE
Chair

KEVIN J. KENNEDY
Director and General Counsel

MEMORANDUM

DATE: April 30, 2008
TO: Members, Wisconsin Government Accountability Board
FROM: Kevin J. Kennedy, Director and General Counsel
Wisconsin Government Accountability Board

Prepared and Presented by: Nathaniel E. Robinson, Administrator
Elections Division

SUBJECT: Elections Division Activities

Elections Administration Update

Introduction

Since the March 26, 2008, Board Meeting, the Elections Division's efforts have mostly focused on the following initiatives.

1. Completion of the official canvass for the April 1 spring election.
2. Provided information and guidance to clerks on recounts.

Recounts

- A. School District Recounts
2 Recounts. No change in winners. All had differences of more than 1 vote.
- B. County Supervisor Recounts
14 Recounts. No change in winners.
 - Lafayette County Supervisor 3: 1 vote difference, 2 vote difference after recount. Same winner.
 - Lafayette County Supervisor 2: Tie. Broken by draw. Same tie after recount. Draw stands.
- C. Municipal Recounts
14 Recounts No change in winners.
 - 11 city recounts (10 Alderperson, 1 Municipal judge) City of Baraboo
Alderperson: Tie vote. Broken by draw. Tie after recount. Draw stands.

- 3 village recounts (Trustee).
- 1 town recount (sanitary district) Tie vote. Broken by draw. Same tie after recount. Draw stands.

3. Additional onsite accessibility assessments were conducted during the April 1 election.

Summary information

- 13 staff members participated.
- 64 polling location were visited.
- The list includes 32 counties, 22 cities, 16 villages and 17 towns.
- Staff covered the entire state from the east (Manitowoc) and west (La Crosse) counties on the east and west, to Bayfield and Rock counties in the north and south.

Site Selection Criteria

Locations were chosen for the following reasons:

- Compliant/concern from the community has been received.
- The LAB reviewed the polling pace survey in 2006 and mentioned it in their report.
- Randomly chosen.

Key Metrics

Training, technical assistance and public information/education initiatives to our customers, constituents and partners continued.

1. Training

Attachment # 1.

2. Public Information/Education

Attachment # 2.

Noteworthy Activities

- Continued to meet with the GAB Accessibility Advisors.
- Attended a training workshop on how to recruit and retain poll workers and election officials. Training sponsored the Election Center, held in Minneapolis.
- Expended significant numbers of hours working with a staff grant writing team to develop and submit a grant application for \$2 million dollars. The purpose of the grant is to improve election day data collection during the November 4, 2008 general election.

30-day Forecast

1. Continue to meet with the GAB Accessibility Advisors to finalize the draft accessibility survey.

2. Plan summer initiatives to achieve Help America Vote Act (HAVA) compliance with SVRS, and prepare clerks for the two fall elections.

Statewide Voter Registration System Update

Barbara A. Hansen, SVRS Project Director

Introduction

Since the last meeting of the Government Accountability Board, SVRS' focus was placed on the April 1 election and continuing with implementation of HAVA-required interfaces (felons and deceased data).

Milestones/Key Measurements

1. 2008 Spring Election Activities

- Clerks produced 3,983 poll books from SVRS for the April 1, 2008 Spring Election.
- The Help Desk staff fielded 125 calls on April 1. The "question of the day" involved answering questions about electioneering within 100 feet of polling sites.
- SVRS Specialists supported post-election activities as clerks wrapped-up entering Election Day Registrations and voter participation history in SVRS.
- On April 18, a felon identified by the SVRS post-election comparison as having illegally voted in the November 7, 2006 general election received a 6 month sentence to the House of Corrections in Milwaukee County Circuit Court. Gary W. Peel, of Cudahy, pleaded guilty to one charge of election fraud.

2. SVRS Application / 30 Day Forecast of Noteworthy Tasks

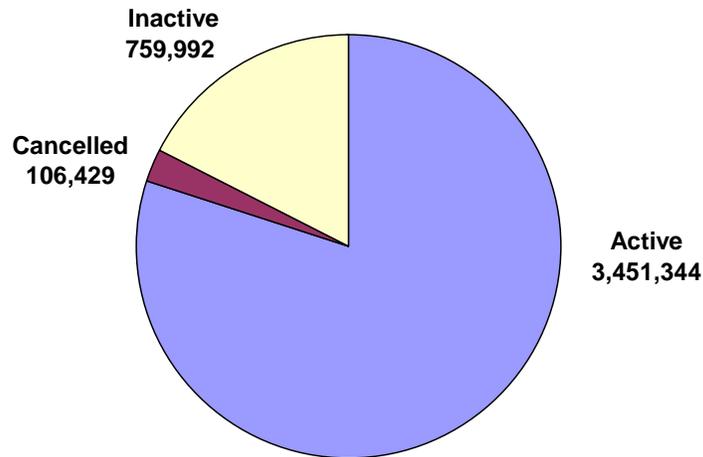
- Implementation of HAVA-required Interfaces: Preparations are underway for installing an upgrade into Production of SVRS version 6.4, SQL Server 2005, and the HAVA-required Interfaces. This is scheduled for sometime this summer. Final testing of Interfaces is nearing completion. GAB staff is working closely with DET in the preparations and testing. Barring any complications, we will remain on schedule.
- SVRS Completing Training Curriculum for Clerks: A demonstration of Interface functionality was presented to SVRS staff for feedback. The training will include an electronic component. A meeting with the SVRS Standards Committee, composed of municipal and county clerks, is planned for mid-May. Staff will pilot the Interface training curriculum for the Committee to receive their comments. In addition, staff will propose future defect corrections for the clerks' consensus.
- The Department of Administration, Division of Enterprise Technology staff is testing a new version of the software "middleware" that is being used to transfer files

between the SVRS and the Department of Transportation/Division of Motor Vehicles, The Department of Corrections, and the Department of Health and Family Services/Vital Records Office as part of the HAVA-required Interfaces.

- **Voter Comparison with Felon Records:** SVRS staff started the process to perform a comparison between voters' voting history and the felon list prepared by the Department of Corrections on Election Day for the February Presidential Preference and Spring Primary. The preliminary list yielded 96 based on last name, first name and date of birth. This list will be sent to the Department of Corrections for review before sending to the municipal clerks for validation that these voters indeed voted. The final list will be sent to the appropriate district attorneys.

Voter Registration Statistics by Status

Total Number of Registration Records in SVRS 4,317,765



Note: An Active Voter is one whose name will appear on the poll list. A Cancelled Voter is one who will not become active again, e.g. deceased person. An Inactive Voter is one who may become active again, e.g. convicted felon.

Action Items

No action is required of the Board at this time.

ATTACHMENT #1

GAB Election Division's Training Initiatives
3/26/2008-4/24/2008

Training Type	Description	Class Duration	Target Audience	Number of Classes (since 3/26/2008)	Number of Students (since 3/26/2008)
SVRS "Initial" Application and Election Management	Instruction in core SVRS functions – how to navigate the system, how to add voters, how to set up elections and print poll books.	16 hours	New users of the SVRS application software.	3 pending: Elkhorn, Green Bay, Port Washington. Additional classes scheduled on an "as needed" basis.	
SVRS "Advanced" Election Management	Instruction for those who have taken "initial" SVRS training and need refresher training or want to work with more advanced features of SVRS.	3 types of classes: Election Management; Absentee Process; Reports, Labels & Mailings; 4 hours each	Experienced users of the SVRS application software.	Classes to be scheduled prior to the fall elections.	
Voter Registration	Basic training in adding voter registration applications, searching for voters, updated voters.	3 hours	Municipal and county clerks, staff and temp workers who provide election support only.	The WBETS site is available to train temporary workers.	
Business Process	Instruction in voter registration and election management roles and responsibilities	3 hours	Municipal and county clerks and staff.	None pending.	
Absentee Workshops	Advanced training in using the absentee function of SVRS.	5 hours	Users of the SVRS application who use the absentee functionality.	1 pending: La Crosse wants to begin using absentee.	
Municipal Clerk	2005 Wisconsin Act 451 requires that all municipal clerks attend a state-	3 hours	1851 Municipal clerks; other staff.	None pending, non-compliant clerks and new clerk training to	1789 clerks completed training; 62 non-compliant.

ATTACHMENT #1

GAB Election Division's Training Initiatives
3/26/2008-4/24/2008

Training Type	Description	Class Duration	Target Audience	Number of Classes (since 3/26/2008)	Number of Students (since 3/26/2008)
Chief Inspector	sponsored training program at least once every 2 years. Instruction for new Chief Inspectors before they can serve as an election official for a municipality during an election.	3 hours	Election workers for a municipality.	13 classes held in late March in selected locations for clerks with emergency need for more inspectors.	120 trained.
Special Registration Deputy	2005 Wisconsin Act 451 allows a qualified elector of Wisconsin to be appointed as a Special Registration Deputy (SRD) for the purpose of registering electors of any municipality in Wisconsin during periods of open voter registration.	2 hours	Qualified electors in Wisconsin.	1 held for United Council members; 4 classes scheduled in Madison, UW Campus, West Bend and Stevens Point.	15
WisLine	Series of 10 programs designed to keep local government officers up to date on the administration of elections in Wisconsin.	80 minute conference call, hosted by the UW Extension, conducted by Elections Division staff.	Clerks and chief inspectors.	"Fall Elections-The Peculiarities and Differences" hosted on 4/15/2008	600 registered
WBETS	Web Based Election Training System. Still under development. Reference materials were made available to the clerks	Varies	County and municipal clerks and their staff.	Phase 1 of eLearning training plan close to completion; Phase 2 under discussion.	Site is available for clerks to train temp workers in date entry; relies are also able to access the

ATTACHMENT #1

GAB Election Division's Training Initiatives
3/26/2008-4/24/2008

Training Type	Description	Class Duration	Target Audience	Number of Classes (since 3/26/2008)	Number of Students (since 3/26/2008)
	in February; voter registration training made available to clerks 3/24/2008.				site upon request.
Interfaces	Instruction in the user of the interface functionality in SVRS to check death records, felon records, DOT records and duplicate records against voter records as part of HA VA compliance requirements.	In development.	All clerks (staff as determined by clerk).	Pilot of web-based training planned to be presented to the Standards Committee on May 14, 2008	Eventually 2000+
Other Activities	<ul style="list-style-type: none"> ➤ Molly and Adam attended a briefing in Washington DC sponsored by the Pew Charitable Trust regarding a \$2 million grant for developing a new data gathering project. ➤ Kevin, Nat, Barbara, Diane and Allison attended an Election Workshop in Minneapolis regarding poll worker recruitment, training and retention. 	1 day.	n/a	n/a	n/a
		2.5 days	n/a	n/a	n/a

ATTACHMENT #2

**GAB Elections Division
Communications Initiatives
March 26 – May 5, 2008**

Topic	Message	Media	Audience	Follow-up Activities
April 1 Spring Election Turnout Prediction	20 percent of voters expected to participate on Tuesday.	News release: 3/28/08	General public.	Analysis with various news media, including Milwaukee Journal Sentinel, AP, Wisconsin Radio Network, WTDY radio, and others. Posted to the website.
Polling place accessibility, Boards of Canvass, Special Registration Deputies, and SVRS interfaces	The Elections Division is preparing for summer activities to carry out the fall elections.	<i>Election Update:</i> 4/4/08	Municipal and county clerks.	Posted to the website.
Two GAB members resign	Board members resign to preserve legitimacy of future decisions.	News release: 4/8/08	General public, legislature, Governor's office, stakeholders	Interviews with Wisconsin State Journal, Milwaukee Journal Sentinel and others.
Wisconsin polling place accessibility	The Elections Division continues to monitor the accessibility of the state's polling places.	Memo to Director: 4/21/08	Division staff, Director, and Accessibility Advisors.	Continued reporting to the Joint Legislative Committee on Audit, the Legislative Audit Bureau, the Legislature and the news media.
Commendation for Madison and Milwaukee election officials	Wisconsin was well-represented at Election Center conference in Minneapolis.	Letters from Kevin Kennedy to mayors of Madison and Milwaukee: 4/21/08	Municipal partners of the Elections Division.	
Four former judges were nominated for Governor's consideration	The GAB will be back to full strength soon.	News release: 4/28/08	General public, legislature, Governor's office, stakeholders.	No follow-up is necessary.

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KEVIN J. KENNEDY
Director & Legal Counsel

MEMORANDUM

DATE: May 5, 2008 Meeting

TO: Members, Wisconsin Government Accountability Board

FROM: Kevin J. Kennedy, Legal Counsel
Wisconsin Government Accountability Board

Prepared by: Jonathan Becker, Administrator
Ethics and Accountability Division

SUBJECT: Ethics and Accountability Division Activities

Campaign Finance Update

Sharrie Hauge, Special Assistant to the Legal Counsel

Introduction

Under Chapter 11 of the Wisconsin State Statutes, the Campaign Finance Section administers the campaign finance reporting responsibilities, which includes:

- Auditing Campaign Finance reports for compliance;
- Notifying registrants of filing requirements;
- Administering the Wisconsin Election Campaign Fund Program; and,
- Creating a Campaign Finance Database to ensure public disclosure.

Key Metrics

1. **Audits**

Staff completed 23 audits this reporting period. One committee was terminated and 9 committees were put on "R" status. The committees on "R" status are no longer required to file campaign finance reports, however, they are required to be available to answer questions and resolve any violations prior to termination being granted.

2. **January 2008 Continuing Report**

The January 2008 Continuing report for all registrants (Candidates, PACs, Parties, Referendum Committees, Conduits and Corporations) was due in the GAB office on January 31, 2008. Of the 1250 registrants required to file, 1164 timely filed and 86 failed to file. On February 11, staff sent 10-day reminder notices to 32 Candidate committees, 20 PACs, 14 Corporations, 9 Parties, 7 Conduits and 1 Referendum.

On February 13, staff sent settlement offer letters to 3 candidate committees for failure to file their election-related report. As a result of the settlement offer letters, two committees filed their reports and paid their settlement offers. One settlement offer was waived because the committee's report was timely postmarked.

On March 7, staff sent 30-day reminder notices to the remaining 16 Candidate committees, 7 PACs, 5 Corporations, 5 Parties and 4 Conduits for the non-filing of their January continuing report.

On April 4, staff sent 45-day reminder notices and settlement offers to the remaining 1 Candidate committee, 3 PACs, 1 Corporation, 2 Parties and 2 Conduits for the non-filing of their January continuing report.

3. **2007 Annual Filing Fee**

Each individual, committee, group, or corporation that is registered with the Government Accountability Board whose spending exceeds a total of \$2,500 in any year, shall pay an annual filing fee of \$100. *This provision does not apply to candidates or personal campaign committees.* It does apply to PACs, Conduits, Corporations and Political Party committees. The \$100 filing fee was due on January 31, 2008 with the committees' January 2008 continuing report.

Of the approximately 328 registrants required to pay the 2007 filing fee 277 timely paid. On March 4, 2008 staff sent filing fee reminder notices to 51 committees.

Since the last Board meeting, an additional \$5,500 has been collected for the 2007 filing fee. There are nine outstanding filing fee registrants that staff needs to follow-up with. To date, \$41,500 has been collected for the 2007 annual filing fee.

4 **Pre-Primary Spring Report**

Staff sent **700** filing notices for the Pre-Primary Spring report. Notices were sent to 40 candidates and their treasurers, all conduits, political parties, and PACs. (For all non-candidate committees this is the only notice they receive to file the spring Primary and Election reports). The Pre-Primary report was due in the Elections Board office on February 11, 2008. This report covers activity from January 1, 2008 through February 4, 2008.

On February 15, 2008, staff sent four settlement offer notices to candidate committees for the non-filing of the election-related report. Two committees filed their reports and paid the settlement offers. One committee filed their report and went on exempt status. One settlement offer was waived because the committee's report was timely postmarked. All reports have been filed for this filing period.

5. **Pre-Election Spring Report**

On February 26, 2008, staff sent filing notices to 32 candidates and their treasurers on the spring ballot. The Pre-Election report is due in the Elections Board office on March 24, 2008. This report covers activity from February 5, 2008 through March 17, 2008.

On March 31, 2008, staff sent four settlement offer notices to candidate committees for the non-filing of the election-related report. Two committees filed a report of no activity and as a result the settlement offers were waived. One committee filed their report, requested termination, and paid the settlement offer amount. One committee filed their report, requested termination, and has offered to pay a reduced settlement offer amount which has been accepted. All reports have now been filed for this filing period.

Noteworthy Activities

1. **Campaign Finance Information System**

Project Accomplishments

Significant progress continues to be made in the implementation of the Campaign Finance Information System (CFIS).

The Contractor submitted a draft of the Functional Requirements Document (FRD) to the GAB. GAB staff and Contractor team members spent four days reviewing the document, making changes. The FRD is the document that *contractually* defines how the system should perform. Thus, if the GAB needs to assert a warranty claim, for example, we will go to the FRD and require the vendor to fix the system according to the specifications in that document. This phase of the project is on schedule.

The GAB team received “Segment 1” of the new system. This segment has functionality related to registering a committee and most of the GAB Administrative functions. This segment was received on schedule.

The Steering Committee approved four scope change orders:

1. Electronic transfer of transactions from Conduits to Committees (\$13,000).
2. Broadcast messaging module (\$0).
3. Create a registrant type of “Issue Ad Committees”; tracking contributions by source and tracking expenses related to elections and races (\$13,000).
4. Merging and unmerging contributor and payee records (\$16,500).

The GAB team has begun aspects of data conversion; preparing legacy electronic files received from registrants over the years for import into the new system. Initial steps have been made to convert registrant data from the existing SWEBIS system to the new system. These efforts are ahead of schedule.

The GAB team has begun to develop scripts and data for testing the application. These efforts are ahead of schedule.

All agencies engaged in major IT projects are required to submit a Dashboard report to the Division of Enterprise Technology monthly. On May 2nd, staff submitted its fourth CFIS Dashboard report. The report summarizes the schedule status, scope status, budget status and risk status of the project.

Looking Ahead

The Campaign Finance staff will be very busy over the next three months continuing to work on the Campaign Finance Information System project. The following activities in process are:

- Segment 2 of the system (transaction processing aspects) is scheduled for May 9th delivery.
- PCC will be in Madison to review a revised FRD the week of May 12th.
- Segment 3 of the system (audit and reports) is scheduled for June 6th delivery.
- Data conversion will begin (in earnest) in June, once the electronic files are prepared.
- User acceptance testing is scheduled for July.
- Writing content for Help screens and re-writing campaign finance treasurers' manuals will begin in August.

Additionally, Campaign Finance staff will be drafting notices for all registrants for the July 2008 Continuing reports.

Action Items

No action is required of the Board at this time.

Contract Sunshine Update

Tommy Winkler, Contract Sunshine Program Director

Introduction

Wisconsin's Contract Sunshine Act (2005 Act 410) calls for the creation and maintenance of an Internet site at which anyone may access information about every state contract, purchase, and solicitation of bids or proposals that involves an annual expenditure of \$10,000 or more. *Wisconsin Statutes* direct the Wisconsin Government Accountability Board to create and maintain this site. In enacting the Contract Sunshine Act, the Legislature's intention was to enhance citizens' confidence in the State's procurement process by providing a one-stop Internet location where citizens, the press, vendors, and others can learn about current procurement activities. The legislature intended that the Act provide potential vendors of goods and services with ready access to information about the State's purchases and confirm that the State's procurement programs are operating fairly and efficiently.

Key Metrics

- 14** The number of modifications and enhancements made to the Contract Sunshine application in the previous month. These system changes were made to address issues with the program's functionality and to more efficiently handle business processes related to state procurement.
- 257** The number of transactions reported by agencies to the Government Accountability Board using the Contract Sunshine website.

Noteworthy Activities

Sundial Software system developers completed modifications to the Contract Sunshine website and built new application functionality over a four week period. These system improvements were completed on April 25, 2008. Sundial Software and Government Accountability Board staff is in the process of testing the program's functionality after these changes were made in order to ensure the application meets the technical and business requirements. This testing will be completed in early May, 2008.

Looking Ahead

Government Accountability Board staff will continue to work with state agencies in beginning to report procurement information required under the Contract Sunshine Act using the Contract Sunshine application. GAB staff will meet with DOA personnel to train procurement staff in reporting information using the updated version of the program. After completing this training, correspondence will be sent to all agencies communicating the changes made to the current version of the application; the updated version of the application will be released for all agencies to use. It is staff's goal to have all agencies required to report information to the GAB under the Contract Sunshine law do so using the new website by the summer of 2008.

Action Items

No action is required of the Board at this time.

Financial Disclosure Update

Tommy Winkler, Financial Disclosure Program Director

Introduction

State officials and candidates file Statements of Economic Interests under Chapter 19 of Wisconsin Statutes. These statements are filed on an annual basis with the Government Accountability Board, and they are open for public inspection at the time they are filed. A statement identifies a filer's, and his or her immediate family's, employers, investments, real estate, commercial clients, and creditors. The idea is to identify which businesses and individuals an official is tied to financially. The focus is on identifying a filer's financial

relationships, not on identifying the individual's wealth. This information is entered into an online index that is managed by Government Accountability Board staff.

Key Metrics

- ~90%** The percentage of Statements of Economic Interests entered into the Eye on Financial Relationships online index in relation to the number of statements received by the GAB.
- 110** The remaining number of state public officials who still need to file a 2008 Statements of Economic Interests with the Government Accountability Board as of noon on April 28, 2008. The filing deadline for all state public officials required to file is 4:30 pm April 30, 2008.
- 1321** The number of annual Statements of Economic Interests filed with the Government Accountability Board as of noon on April 28, 2008.
- 1218** The number of annual Statements of Economic Interests processed by GAB staff into the Eye on Financial Relationships website for the public to view on our website through the Eye on Financial Relationships.

Noteworthy Activities

In 2008, staff significantly improved on the lag time in between receiving and entering Statements of Economic Interests into the online index in comparison to the 2007 annual filing. Improvements in system functionality and having a full staff during the filing period are cause for the improvement.

Looking Ahead

Government Accountability Board staff will evaluate the current Eye on Financial Relationships database in terms of data processing efficiency and accuracy relating to the 2008 filing period in early May. Staff will assess the business rules and system efficiency for processing Statements of Economic Interests. Based upon this analysis, recommendations will be made to the management team for system and process improvements for the 2009 annual filing.

Action Items

No action is required of the Board at this time.

Lobbying Update

Helena Huddleston, Administrative Services Manager

Introduction

Wisconsin has some of the most structured lobbying laws in the country. Lobbyists and organizations that employ lobbyists are governed under Chapter 13 of the *Wisconsin Statutes*. They are required to complete a Statement of Lobbying Activities and Expense Report every 6 months. The report for January – June is due July 31 and the report for July – December is due January 31. They are also required to report within 15 days of lobbying on a specific legislative and administrative proposal and topic.

In addition to the Statement of Lobbying Activity and Expense Reports managed by our agency, all state agencies are required to file Legislative Liaison reports to the Government Accountability Board (the ‘Board’) every 6 months. Key staff and agency officials who are authorized to effect legislation and administrative rule-making notify the Board of their annual salary and the percentage of time spent on lobbying matters.

Key Metrics

- 781** The number of principal lobbying organizations registered with the Government Accountability Board.
- 688** The number of lobbyists registered to lobby on behalf of one organization.
- 144** The number of lobbyists registered to lobby on behalf of more than one organization.
- 1,754** The number of individual authorizations of lobbyists representing a principal organization.

Noteworthy Activities

We have hired Katharine Lang, a current graduate student at the University of Wisconsin-Madison’s La Follette School of Public Affairs, as an intern to assist in administering the Lobbying program and prepare a quantitative and qualitative analysis of the lobbying information which will be filed by lobbyists and lobbying organizations for the period January thru June 2008.

Looking Ahead

Staff will be working on updating the database in preparation for the filing of Statements of Lobbying Activities and Expenditures due July 31.

Action Items

No action is required of the Board at this time.

State of Wisconsin\Government Accountability Board

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KEVIN J. KENNEDY
Director and General Counsel

MEMORANDUM

DATE: For the May 5, 2008 Meeting

TO: Members, Wisconsin Government Accountability Board

FROM: Kevin J. Kennedy, Director and General Counsel
Wisconsin Government Accountability Board

Prepared by: Kevin J. Kennedy, Director and General Counsel
Sharrie Hauge, Special Assistant to the Director

SUBJECT: Administrative Activities

Agency Organization

Introduction

This has been a very busy time since the last meeting. The primary administrative focus has been on filling two vacancies on the Board. Monitoring and certifying the April 1st Spring Non-Partisan election, completing the election statistics grant application along with continuing Joint Application Design (JAD) sessions for the campaign finance reporting application and the end of the legislative session has kept agency staff intensely focused. These substantive items are discussed in the Division reports.

Noteworthy Activities

1. Space Planning

We are making steady progress on finding new space. Staff has been working with the Department of Administration's Division of Facilities and the State Budget Office to get approval of our request.

On April 18, 2008, Bill Peterson from the Department of Administration's Division of Facilities notified staff that our space request had been approved by their Division; however, we are still waiting for approval from the State Budget Office. Once the State Budget Office approves our request, a Request for Proposal (RFP) will be issued to interested landlords. The timeline is listed below:

Post RFP	30-45days
Evaluate RFP	2-weeks
Negotiate Lease	2-weeks
Approval of Lease from Building Commission *	June or July

Build Space Out	60-90 days
-----------------	------------

* Because GAB is requesting over 10,000 square feet in privately-lease space, the Building Commission has to approve the lease.

Staff is working diligently to expedite the process and hope to move into our new location in October.

2. Staffing

Because of the hiring freeze for attorney positions, we had to get special permission from the State Budget Office to fill our two-attorney positions. One position is currently vacant and the other is George Dunst's position. He plans on retiring on August 2nd. We will submit the request to fill the positions by May 2, 2008.

Additionally, we are working on filling one vacant Elections Specialist, one vacant Trainer and three vacant Information Technology positions. We are also recruiting for a limited term employee to assist us in developing tools to improve disability accessibility at polling sites.

3. Presentations

On April 10, 2008 I participated in a feature presentation on Wisconsin Eye along with Andrea Kaminski of the League of Women Voters of Wisconsin. We talked about the issues from the April 1st Spring Election. On April 23, 2008, Jonathan Becker and I participated in a planning session with the Judicial College faculty. We are responsible for presenting a course on ethics for the annual judicial conference in August. I also made a presentation to the Association of Wisconsin Lobbyists on April 24, 2008.

4. Government Accountability Candidate Committee

Following the resignations of Judge Deininger and Judge Mohr on April 8, 2008, I set up a meeting of the Government Accountability Candidate Committee pursuant to §5.052, Wis. Stats. A letter was sent to a list of former judges soliciting interest in service on the Government Accountability Board. We received 20 applications, including five individuals who were not immediately eligible based on the Attorney General opinion.

The Committee met on April 28, 2008. After reviewing the applications, the Committee unanimously voted to nominate four former judges for the Governor's consideration for appointment to serve on the Board. The nominees are: Judge Thomas Barland, Judge Robert Haase, Judge Victor Manian and Judge Gordon Myse.

Looking Ahead

In the next month, we will be working diligently with the Division of Facilities staff to finalize the "draft" Request for Proposal for space so that we can issue it and the time clock starts ticking.

The staff will also be preparing for the June 9, 2008 meeting. There are a number of key subject areas for review including a discussion of campaign activity and contributions related to

lobbyists, lobbying guidelines, absentee voting, electioneering activity, campaign contributions, campaign spending and disclaimers on political communications.

The staff has a number of presentations for local election officials, legislative staff and outside groups including the State Bar Convention and the Municipal Attorneys Institute.

Once the new Board members are appointed, staff will provide them with an orientation on the subject matter under the Board's jurisdiction along with a briefing on some of the key issues pending for the Board's consideration. This will help prepare the new members for service.

I will continue to work on organizational matters including staff assignments, office space relocation and staff recruitment.

Action Items

1. None.