
Meeting of the Board

Thursday, June 18, 2015
9:00 A.M.

Agenda
Open Session

Government Accountability Board Offices
212 East Washington Avenue, Third Floor
Madison, Wisconsin

Thursday, June 18, 2015

9:00 A.M.

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- A. Call to Order**
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- C. Minutes of Previous Meetings**
 - 1. April 29, 2015 Meeting** **3**
- D. Personal Appearances**
- E. Dominion Voting Equipment Approval** **14**
- F. Proposed Attorney General Opinion Request Related to Suspension of Lobbying Principal Registration** **64**
- G. Requests for Advice**
 - 1. Village of Rosendale – Municipal Court Withdrawal** **70**
 - 2. Malischke – Library On-Line Account as Proof of Residence** **117**
- H. Report on Voter ID Implementation** **123**
- I. Report on LAB Audit Follow-up** **125**

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.

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O. Closed Session

- | | |
|-----------------------------|---|
| 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) (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. |
| 19.85 (1) (c) | The Board may consider performance evaluation data of a public employee over which it exercises responsibility. |

The Government Accountability Board has scheduled its next meeting for Tuesday, September 1, 2015 at the Government Accountability Board offices, 212 East Washington Avenue, Third Floor in Madison, Wisconsin beginning at 9:00 a.m.

State of Wisconsin\Government Accountability Board

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JUDGE GERALD C. NICHOL
Chair

KEVIN J. KENNEDY
Director and General Counsel

Wisconsin Government Accountability Board

212 East Washington Avenue
Madison, Wisconsin
April 29, 2015
9:00 a.m.

Open Session Minutes

<u>Summary of Significant Actions Taken</u>	<u>Page</u>
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M. Approved Lobbying Forfeiture Settlement Schedule – 15-Day Reporting	8
N. Approved Guideline on Capitol Tours and Use of State Flag	9

Present: Judge Gerald C. Nichol, Judge Elsa Lamelas, Judge John Franke, Judge Harold Froehlich (in person), Judge Thomas Barland, and Judge Timothy L. Vocke (by telephone)

Staff Present: Kevin J. Kennedy, Jonathan Becker, Michael Haas, Ross Hein, Sharrie Hauge, Nathan Judnic, Matthew Giesfeldt, Reid Magney, Diane Lowe, Brian Bell, Michael Nelson and Molly Nagappala

A. Call to Order

Chairperson Nichol called the meeting to order at 9:02 a.m.

B. Director's Report of Appropriate Meeting Notice

Director Kevin J. Kennedy informed the Board that proper notice was given for the meeting.

C. Canvass of 2015 Spring Election

Judge Nichol signed the Statement of Canvass for the Spring 2015 Election.

D. Approval of Minutes of Previous Meetings

March 4-5, 2015 Meeting

March 13, 2015 Teleconference Meeting

March 18, 2015 Teleconference Meeting

March 25, 2015 Teleconference Meeting

April 10, 2015 Teleconference Meeting

MOTION: Approve the minutes of the March 4-5, March 13, March 18, March 25 and April 10, 2015 meetings of the Government Accountability Board. Moved by Judge Vocke, seconded by Judge Lamelas. Motion carried unanimously.

F. *In the Matter of Steve Peer and Boscobel Area School District, G.A.B. Case 2015 EL-8*

(This item was taken out of order.)

Staff Counsel Matthew Giesfeldt made an oral presentation based on a written draft Findings and Order provided to Board Members as an addendum to the April 2015 Board Meeting Materials. Mr. Steve Peer is a resident of the Boscobel Area School District who organized a petition drive to require the school board to hold a referendum on a resolution to borrow up to \$10 million for district school improvements. The school district's clerk rejected Mr. Peer's petition as insufficient, and Mr. Peer filed a complaint with the Government Accountability Board.

Mr. Peer appeared on his own behalf before the Board in person and discussed his complaint against the school district.

Attorney Timothy D. Fenner appeared on behalf of the Boscobel Area School District, described the reasons for the improvements and reviewed the clerk's reasons for rejecting the petition. He said Mr. Peer did not attach the district's resolution regarding the borrowing to the petition, and argued that failure amounted to misrepresentation.

Board Members questioned Attorney Fenner about the petition and the clerk's decision. They discussed at length the timing of the project, different methods of borrowing available to the district, when notice was provided to Mr. Peer that his petition was being rejected, whether Mr. Peer had misrepresented the purpose of the referendum, and whether having the district's resolution attached to the petition by clipboard satisfies the statutes.

Staff Counsel Giesfeldt said the clerk acted contrary to law in finding that the petition was insufficient, and that there was no legal requirement that the district's resolution be attached to the petition when it is submitted to the clerk.

Elections Division Administrator Michael Haas explained that the complaint was filed under WIS. STAT. §5.06, which requires the complaint to be filed with the G.A.B. before the matter can go to circuit court. Normally §5.06 complaints are decided by the Director and General Counsel in consultation with the Board Chair, but in this case the Director and Chair thought the matter should be reviewed by the entire Government Accountability Board. Either party may appeal the Board’s decision to circuit court.

MOTION: Amend the Findings and Order to strike paragraph 22. Moved by Judge Franke, seconded by Judge Froehlich. Motion carried unanimously.

MOTION: Adopt the recommendations of staff based upon the amended Findings and order that the Boscobel School District Board of Education shall promptly order its clerk to call a referendum in the manner provided under WIS. STAT. §67.05(6a), except that the question which appears on the ballot shall be "Shall the Boscobel Area School District borrow the sum of \$10,000,000.00 for energy efficiency projects and bus garage upgrade by issuing its general obligation promissory note under section 67.12(12) of the Wisconsin Statutes?" The Board orders that the Resolution shall not be effective unless adopted by a majority of the district electors voting in a referendum called by the Board of Education in accordance with WIS. STAT. §§67.05(6a), 67.12(12). Pursuant to WIS. STAT. §5.05(1)(e), the Board authorizes its Director and General Counsel to execute these Findings and Order. Pursuant to WIS. STAT. §5.06(8), parties may appeal this Order to circuit court within 30 days of issuance of the Order.

Moved by Judge Lamelas, seconded by Judge Franke.

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

E. Personal Appearances

Mary Ann Hanson of Brookfield appeared on her own behalf to discuss concerns about online voter registration, preservation of used absentee ballot envelopes for 22 months after an election and rules regarding the conduct of election observers. She expressed support for the staff recommendation on Agenda Item I regarding SVRS treatment of voters who have been adjudicated incompetent.

Director Kennedy, Judge Lamelas and Ms. Hanson briefly discussed ongoing administrative rulemaking that covers many of the subjects Ms. Hanson is concerned about, as well as the group of election observers she works with.

Manitowoc County Clerk Jamie Aulik of Manitowoc appeared to request that the Board revisit the development of standards for electronic poll books. He said 107 clerks have signed a letter requesting the Board to develop standards. He suggested that since voter ID is now in place, an electronic poll book system could scan voters’ IDs to provide greater accuracy in poll records.

Board Members and Clerk Aulik discussed issues regarding electronic poll books, including who would purchase them and what backups would be in place in the event of a failure.

Judge Nichol called a recess at 10:30 a.m. The Board reconvened at 10:46 a.m.

G. Elections Division Legislative Agenda

Elections Division Administrator Michael Haas and Ethics Specialist Brian Bell made an oral presentation based on a report starting on page 37 of the April 2015 Board Meeting Materials. Mr. Haas discussed the two major policy recommendations, online voter registration and membership in the Election Registration Information Center (ERIC). The Board has previously endorsed online voter registration. Mr. Bell also discussed the costs of joining ERIC.

Board Members and staff discussed the recommendations, as well as the number of states that currently have online voter registration, estimates of cost savings from online voter registration, and whether changes to voter registration records would be made automatically based on change of address information. Discussion also addressed problems with the Kansas Interstate Crosscheck program, whether there is support in the Legislature for joining ERIC, and how much more it would cost Wisconsin to access national address changes and death records if it did not join ERIC.

Board Members and Director Kennedy further discussed the merits of joining ERIC, pending legislation that would require Wisconsin to join the Kansas Interstate Crosscheck program, and the amount of staff time that would be involved. Director Kennedy said he does not believe Wisconsin should wait and be the last state to adopt new technology related to online voter registration, interstate data matching, and electronic poll books.

Judge Franke said he is willing to endorse online voter registration, but wanted a more lukewarm endorsement of joining ERIC. He suggested the Board encourage the Legislature to look at the benefits of participating in ERIC.

MOTION: Recommend to the Legislature that it should allow online voter registration and strongly consider the benefits of belonging to the Election Registration Information Center, and that the Board is not persuaded that the Kansas Interstate Crosscheck program is a good use of state time and resources. Moved by Judge Franke, seconded by Judge Vocke.

Judge Froehlich raised a question about whether online voter registration would only be for voters with a driver license or state identification card. Mr. Bell stated that online voter legislation in the past has required a valid driver license or ID card.

Motion carried.

Mr. Bell moved on to recommendations for minor policy changes.

Board Members and staff discussed the wording of the recommendations to the Legislature and whether to say the Legislature *could* or *should* consider changes to the statutes. Mr. Haas said the recommendations will be changed from *could* to *should*.

MOTION: Adopt recommendations of staff listed under minor policy initiatives on pages 40 to 46 of the Board materials. Moved by Judge Lamelas, seconded by Judge Barland. Motion carried unanimously.

MOTION: Adopt recommendations of staff listed under technical changes on pages 46 to 49 of the Board materials. Moved by Judge Lamelas, seconded by Judge Barland. Motion carried unanimously.

Board Members and staff discussed recommendations categorized as Legislative Policy Decisions, including the handling of over-voted ballots.

MOTION: Adopt recommendations of staff listed under legislative policy decisions on page 49 of the Board materials. Moved by Judge Franke, seconded by Judge Froehlich. Motion carried unanimously.

Judge Nichol called a recess at 12:02 p.m. for lunch. The Board reconvened at 12:41 p.m.

H. Voter ID Implementation

Elections Division Administrator Haas and Public Information Officer Reid Magney made an oral presentation based on a report starting on page 50 of the April 2015 Board Meeting Materials. Mr. Haas reviewed staff's efforts to implement voter photo ID for the upcoming special elections on May 19 and June 16 for school districts in Port Wing, Lake Geneva and Fennimore, in addition to a special election in Senate District 33 in July which the Governor has not called yet. Those efforts include revising manuals and other informational materials as well as the agency's website, conducting a training webinar for clerks, and reaching out to local media in areas where there will be special elections. Mr. Magney briefed Board Members about staff's efforts to re-launch the voter ID public education campaign, including cost estimates from the advertising agency KW2 for updating television and radio public service announcements and other elements of the campaign to reflect the current state of the law. Staff recommends these updates can be accomplished with existing funds this fiscal year, but any media campaign using the materials would likely cost several hundred thousand dollars, which would have to be appropriated by the Legislature.

Board Members and staff discussed the various elements of the campaign. Board Members expressed concern that no funds be spent on a statewide multimedia campaign without funding from the Legislature.

MOTION: Authorize staff to use existing budgetary resources to update the voter photo ID public education and outreach campaign and materials as outlined in the memorandum. Moved by Judge Franke, seconded by Judge Lamelas. Motion carried unanimously.

I. Report on SVRS Treatment of Voters Adjudicated Incompetent

Staff Counsel Giesfeldt and SVRS Trainer Michael Nelson made an oral presentation based on a written report starting on page 53 of the April 2015 Board Meeting Materials. Board staff requests that the Board determine whether the G.A.B. is either required or permitted to

maintain and disseminate information related to individuals who are ineligible to vote due to a court adjudication of incompetency. Staff recommends that the Board rely on its general statutory authority and responsibilities to convey to local election officials information that the agency collects regarding individuals who have been adjudicated to be incompetent to vote or whose right to vote has been restored following a previous adjudication of incompetency.

Board Members and staff discussed the report.

MOTION: Strike the words “and responsibility” from the second sentence of the proposed motion. Moved by Judge Franke, seconded by Judge Lamelas.

Board Members further discussed the motion. Judge Lamelas suggested language that the Board directs staff to consult with the Wisconsin Court System’s Circuit Court Access Program to see if a more efficient system of tracking adjudicated incompetent persons is available, and to not yet consult with the Legislature. Judge Franke said he would amend his motion.

MOTION: The Board concludes that the Statutes do not clearly mandate the responsibility for, or method of, the G.A.B. to collect information from probate courts related to the adjudication of individuals determined to be incompetent to vote. The Board finds that it has the general authority to maintain and promote the accuracy and currency of information in the Statewide Voter Registration System, including the voter eligibility status of individuals subject to court proceedings regarding competency to vote. The Board directs staff to continue to collect information provided by the probate courts regarding adjudications of incompetency and voting eligibility, and to disseminate that information to local election officials to determine whether an individual’s voter registration status should be altered in SVRS. The Board directs staff to consult with the Wisconsin Court System’s Circuit Court Access Program to see if a more efficient system is available to collect and disseminate information related to adjudications of incompetency and voting eligibility.

Moved by Judge Franke, seconded by Judge Lamelas. Motion carried unanimously.

J. Proposed Policy on Approval of Electronic Voting Equipment Engineering Change Orders (ECO) Duties Annotated

This item was placed on hold until after the next agenda item.

K. Administrative Rules: Status of Rules and Authorization of Scope Statements

Staff Counsel Giesfeldt made an oral presentation based on a memorandum starting on page 75 of the April 2015 Board Meeting Materials. He updated the Board on rulemaking and asked them to approve the statement of scope for technical college identification cards.

Board Members and staff discussed the background of the rule and the process for approval.

MOTION: Approve the Statement of Scope, Attachment 1, for a proposed emergency administrative rule regarding the use of technical college identification cards as acceptable forms of identification under WIS. STAT. §5.02(6m)(f) and 6.15(2)(bm). Pursuant to WIS. STAT. §§5.05(1)(f), 227.11(2)(a), 227.135, and Executive Order #50, staff shall take all necessary steps to draft the proposed rule and submit the draft language to the Governor for approval. Moved by Judge Lamelas, seconded by Judge Franke. Motion carried unanimously.

Staff Counsel Giesfeldt briefed the Board on other administrative rules in process, and asked the Board to approve the recommended motion.

MOTION: Pursuant to WIS. STAT. §§5.05(1)(f), 227.11(2)(a), 227.135, and Executive Order #50, staff shall take all necessary steps to draft Statements of Scope and submit such Statements to the Governor regarding the following proposed administrative rules:

- a. Procedures for Ethics and Elections Complaints
- b. Acceptable Proofs of Residence (Including Electronic)
- c. U.S. Citizen As Witness for Overseas Voter
- d. Procedures for Curbside Voting
- e. Definition of “Same Grounds” for Voting Purposes
- f. Synchronization of Certification Terms for Municipal Clerks, Special Registration Deputies, and Election Inspectors

Moved by Judge Lamelas, seconded by Judge Franke. Motion carried unanimously.

J. Proposed Policy on Approval of Electronic Voting Equipment Engineering Change Orders (ECO) Duties Annotated

Elections Supervisor Ross Hein made an oral presentation based on a memorandum starting on page 60 of the April 2015 Board Meeting Materials regarding updating procedures for approving engineering change orders for electronic voting equipment. The current procedures were approved in March 2010.

Mr. Hein and Board Members discussed the difference between *de minimis* changes and changes that are *significant but requiring only limited testing* of voting equipment. *De minimis* changes are minor, and are approved by the director after consulting with the Board Chair. By consensus, the Board agreed that the term *non-de minimis* should be used instead of *significant but requiring only limited testing*.

MOTION: Approve the interpretation and clarification of the Board’s 2010 policy as described in the memorandum relating to applications for approval of modifications to voting systems already approved for use in Wisconsin.

MOTION: Amend the Board’s delegation to the Director and General Counsel to authorize the Director and General Counsel “to accept, review, and exercise discretion, in consultation with the Board Chair, to approve applications for voting system modifications characterized as either *de minimis*, requiring no additional testing, or as *non-de minimis*, but requiring only limited testing, for voting systems previously approved for use in Wisconsin.”

Both motions made by Judge Lamelas, seconded by Judge Barland. Motions carried unanimously.

MOTION: Pursuant to WIS. STAT. §§5.05(1)(f), 227.11(2)(a), 227.135, and Executive Order #50, staff shall take all necessary steps to draft Statements of Scope and submit such Statements to the Governor regarding Applications for Approval of Modification to Voting Systems Previously Approved for Use in Wisconsin. Moved by Judge Lamelas, seconded by Judge Franke. Motion carried unanimously.

L. Approval of SVRS Related Contracts

Mr. Hein made an oral presentation based on a memorandum starting on page 96 of the April 2015 Board Meeting Materials regarding two matters requiring Board approval. The first is approval to post a request for bids for printing and mailing services to print and mail the Notices of Suspension of Registration which are statutorily required to be sent following the 2014 General Election. The estimated cost of this process is approximately \$30,000.

MOTION: Approve the posting of the Request for Bid for printing and mailing of the 2015 four-year voter maintenance notices. Moved by Judge Froehlich, seconded by Judge Barland. Motion carried unanimously.

Mr. Hein briefed Board Members on the second matter, a staff request for Board approval to enter into a three-year contract for an IT position that is subject to expire on April 30, 2015. The annual cost of the contract will be approximately \$218,400.

Board Members and staff discussed contracting for the agency's internal information technology team. Mr. Hein said it was imperative to move forward to ensure IT projects are completed on time.

MOTION: Approve the execution of a contract for the Business Intelligence Architect 3 IT contracted position to begin on May 1, 2015, for three years at an annual cost of approximately \$218,400 per year. Moved by Judge Franke, seconded by Judge Froehlich. Motion carried unanimously.

M. Proposed Lobbying Settlement Schedule – 15-Day Reporting

Ethics Division Administrator Jonathan Becker, Mr. Bell and Ethics & Lobbying Specialist Molly Nagappala made an oral presentation based on a memorandum starting on page 99 of the April 2015 Board Meeting Materials regarding a staff request for the Board to approve a lobbying settlement schedule for 15-day reporting violations. Wisconsin was the first state to require lobbying principals to report communications with lawmakers within 15 days of the contact. There is generally excellent compliance, but late filings occur occasionally. After having reviewed other forfeiture settlement schedules, staff reviewed the schedule for 15-day reporting to make it simpler.

Board Members and staff discussed the proposed settlement schedule.

MOTION: Adopt the forfeiture schedule for late 15-day lobbying effort reporting outlined in the staff memorandum. Moved by Judge Vocke, seconded by Judge Froehlich. Motion carried unanimously.

N. Proposed Guideline on Capitol Tours and Use of State Flag

Ethics Division Administrator Becker made an oral presentation based on a memorandum starting on page 100 of the April 2015 Board Meeting Materials regarding a request by the Senate and Assembly Chief Clerks that the Board issue a Guideline for legislators and their staffs addressing the provision of tours of the State Capitol and use of state flags purchased from office accounts. These issues have never been specifically addressed before.

Board Members and staff discussed the issue and agreed on the proposed guidance. Judge Froelich raised a new question of whether a legislator, but not other citizens, could purchase from private or campaign funds and flag flown over the capitol and use it to raise money. Mr. Becker recommended the Board approve the Guideline as proposed, and he will report at the next meeting on the new flag question raised by the Board.

MOTION: Approve the Guideline “State Capitol Tours and Use of State Flags.” Moved by Judge Froehlich, seconded by Judge Barland. Motion carried unanimously.

O. Report to Joint Legislative Audit Committee

Director Kennedy briefly reviewed with Board Members the chart starting on page 102 of the April 2015 Board Meeting Materials showing the G.A.B.’s progress in addressing recommendations of the Legislative Audit Bureau. No Board action was necessary.

P. Legislative Status Report

Mr. Bell made an oral presentation based on a memorandum starting on page 106 of the April 2015 Board Meeting Materials.

Q. Per Diem Payments

Board Members discussed per diem payments for attending Board meetings, as well as for preparation for meetings. Director Kennedy noted that the Board asked for more money for this line item in its budget request, but that it was not recommended in the Governor’s budget.

MOTION: Approve a full day’s per diem payment for preparation for the April 29, 2015 Board Meeting. Moved by Judge Vocke, seconded by Judge Froehlich. Motion carried unanimously.

R. Director’s Report

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

Written report from Division Administrator Becker and Division staff was included beginning on Page 112 of the April 2015 Board Meeting Materials. Mr. Becker said the report contains more information about filings and late-filers.

Elections Division Report – election administration

Written report from Division Administrator Haas and Division staff was included beginning on Page 124 of the April 2015 Board Meeting Materials. Mr. Haas directed the Board Members’ attention to the chart regarding complaints. Board Members and staff discussed the format of the report on complaints, especially the field for the date of the complaint, and which complaints have been closed. Staff will modify the reports to reflect the date a complaint was received rather than the date it was entered into the database, and will continue to list complaints after they have been closed.

Office of General Counsel Report – general administration

Written report from Kevin J. Kennedy, Sharrie Hauge and Reid Magney was included beginning on Page 144 of the April 2015 Board Meeting Materials.

R. Closed Session

Adjourn to closed session to consider written requests for advisory opinions and the investigation of possible violations of Wisconsin’s lobbying law, campaign finance law, and Code of Ethics for Public Officials and Employees; confer with counsel concerning pending litigation and consider performance evaluation data of a public employee of the Board.

MOTION: Move to closed session pursuant to WIS. STAT. §§5.05(6a), 19.85(1)(h), 19.85(1)(g), and 19.85(1)(c), to consider written requests for advisory opinions and the investigation of possible violations of Wisconsin’s lobbying law, campaign finance law, and Code of Ethics for Public Officials and Employees; confer with counsel concerning pending litigation; and consider performance evaluation data of a public employee of the Board. Moved by Judge Vocke, seconded by Judge Barland.

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

Motion carried unanimously. The Board recessed at 2:52 p.m. and convened in closed session at 3:07 p.m. The Board adjourned in closed session at 4:55 p.m.

Judge Barland left the meeting and did not participate in the closed session.

Summary of Significant Actions Taken in Closed Session:

- A. Complaints: Seven matters considered; two matters dismissed, two matters deferred, three settlement offers approved.
- B. Advice: One matter considered.
- C. Litigation: Three pending matters considered.

#####

The next regular meeting of the Government Accountability Board is scheduled for Thursday, June 18, 2015, at the Government Accountability Board offices, 212 East Washington Avenue, Third Floor, Madison, Wisconsin beginning at 9:00 a.m.

April 29, 2015 Government Accountability Board meeting minutes prepared by:

Reid Magney, Public Information Officer

May 7, 2015

April 29, 2015 Government Accountability Board meeting minutes certified by:

Judge Thomas Barland, Board Secretary

June 18, 2015

State of Wisconsin\Government Accountability Board

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JUDGE GERALD C. NICHOL
Chair

KEVIN J. KENNEDY
Director and General Counsel

MEMORANDUM

DATE: For the June 18, 2015, Board Meeting

TO: Members, Wisconsin Government Accountability Board

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

Prepared and Presented by:
Matthew Kitzman
Electronic Voting Systems Election Specialist
Government Accountability Board

SUBJECT: Dominion Voting Systems - Petition for Approval of Electronic Voting Systems
Dominion Democracy Suite 4.14-D & 4.14-DS Voting Systems

I. Introduction

Dominion Voting Systems (Dominion) is requesting that the Government Accountability Board (Board) approve the Democracy Suite 4.14-D (4.14-D) Voting System and the modified Democracy Suite 4.14-DS (4.14-DS) Voting System, for use in the State of Wisconsin. No electronic voting system may be utilized in Wisconsin unless the Board first approves the system. Wis. Stat. § 5.91 (see attached). The Board has also adopted administrative rules detailing the approval process. Wis. Admin. Code Ch. GAB 7 (see attached).

The 4.14-D is a federally tested and certified paper-based, optical scan voting system powered by Dominion's Democracy Suite Election Management System (EMS) platform. The 4.14-DS is a modification of the 4.14-D to allow for modeming of unofficial election night results. Both systems consist of five major components: the EMS; the ImageCast Precinct (ICP), an optical scan ballot counter; the ImageCast Central (ICC), an optical scan ballot counter for central count locations; the ImageCast Evolution (ICE), an optical scan ballot counter and Americans with Disabilities Act (ADA) compliant ballot marking device component; and the ICP Ballot Marking Device (ICP BMD-Audio), an accessibility option for the ICP optical scan ballot counter. The 4.14-DS also consists of the ImageCast Listener (ICL), a telecommunication system for uploading unofficial election night results.

II. Recommendation

Board staff recommends approval of the 4.14-D voting system and the 4.14-DS voting system for use in Wisconsin. Board staff's recommendations are located on pages 23-25, following the analysis of functional testing and road testing performed by Board staff.

III. Background

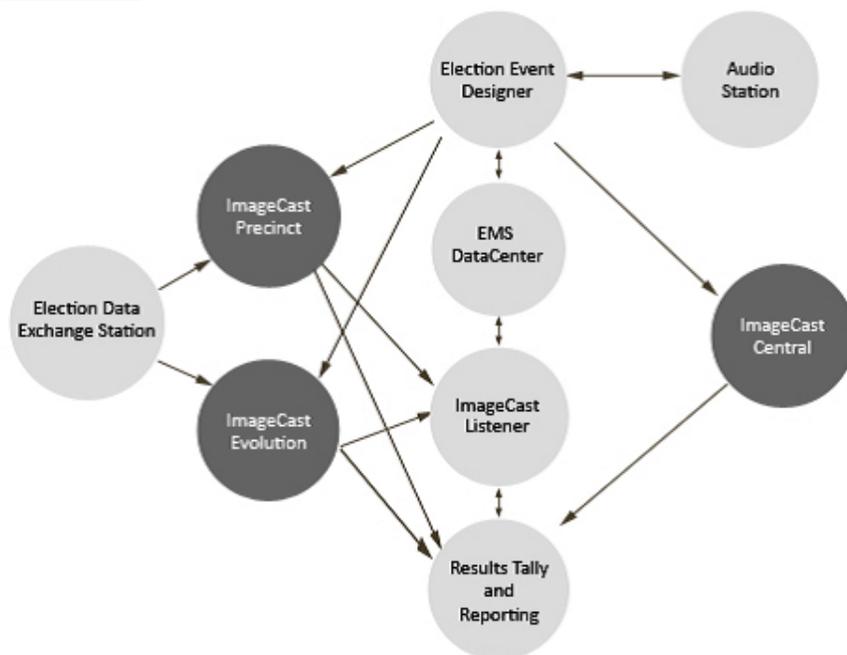
On March 16, 2015, Board staff received an application for approval of the 4.14-D & 4.14-DS voting systems. Dominion submitted complete specifications for hardware, firmware and related components to the voting systems. In addition, Dominion submitted technical manuals, documentation, and instruction materials necessary for the operation of the voting systems. At the same time, Dominion requested the Board approve the federally certified Democracy Suite 4.14-D voting system and the modified 4.14-DS voting system. On June 5, 2015, Board staff received an updated application for approval of the 4.14-D & 4.14-DS voting systems, removing the Democracy Suite Adjudication software, AIMS, and AutoMARK from the application.

The Voting System Test Laboratory (VSTL) responsible for testing 4.14-D, National Technical Systems (NTS), recommended that the U.S. Election Assistance Commission (EAC) certify the 4.14-D voting system. Dominion provided the NTS report to Board staff along with the Application for Approval. Voting systems submitted to the EAC for testing after December 13, 2007, are tested using the 2005 Voluntary Voting System Guidelines (VVSG 1.0). The EAC certified the Dominion Democracy Suite 4.14-D voting system on November 25, 2014, and issued certification number: DVS-DemSuite4.14-D.

4.14-DS is a modification to the federally certified 4.14-D. The modification provides support for modeming of unofficial election results from an ICE or ICP to the ICL through analog or wireless telecommunications networks. Numerous modifications to the 4.14-DS voting system were tested to VVSG 1.0 by NTS. The telecommunication component of the 4.14-DS received functional testing only.

Board staff scheduled voting system testing and demonstrations for the 4.14-D and 4.14-DS voting systems April 21-23, 2015 for functional testing and April 28-29, 2015 for road testing. A four-person team conducted these testing campaigns.

IV. System Overview



A. Hardware

Dominion submitted the following equipment for testing:

<i>Equipment</i>	<i>Hardware Version(s)/ Make and Model</i>	<i>Firmware Version</i>	<i>Type</i>
ImageCast Precinct (ICP)	320A, 320C	**4.14.17-US	Polling place scanner and tabulator
Ballot Marking Device (ICP-BMD Audio)	*HP Office Jet 7110		Accessibility add-on
ImageCast Central (ICC)	*Canon Scanner DR-X10C/G1130 *OptiPlex 9020/9030 Desktop	**4.14.17	Central count scanner and tabulator
ImageCast Evolution (ICE)	410A *External Monitor AOC 156LM00003	**4.14.21	Polling place scanner and tabulator w/ accessibility functionality
*Compact Flash Cards	*** <u>SanDisk Ultra:</u> SDCFHS-004G SDCFHS-008G <u>RiData:</u> CFC-14A RDF8G-233XMCB2-1 RDF16G-233XMCB2-1 RDF32G-233XMCB2-1 <u>SanDisk Extreme:</u> SDCFX-016G SDCFX-032G <u>SanDisk:</u> SDFAA-008G		Memory device for ICP and ICE tabulators.
*Modems	Verizon USB Modem Pantech UMW190NCD USB Modem MultiTech MT9234MU CellGo Cellular Modem E-Device 3GPUSUS AT&T USB Modem MultiTech GSM MTD-H5 Fax Modem US Robotics 56K V.92.		Analog and wireless modems for transmitting unofficial election night results.

* COTS devices used by the Democracy Suite Voting System.

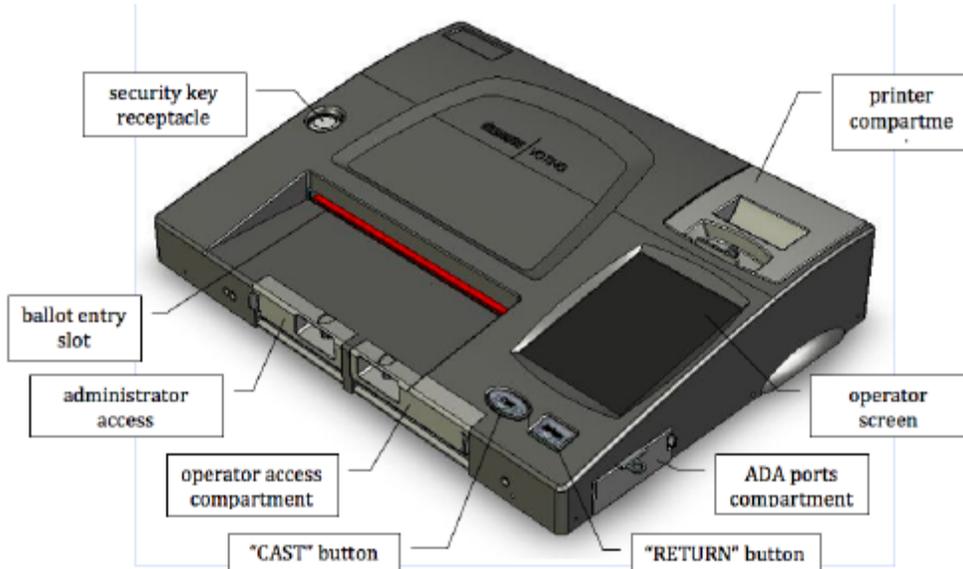
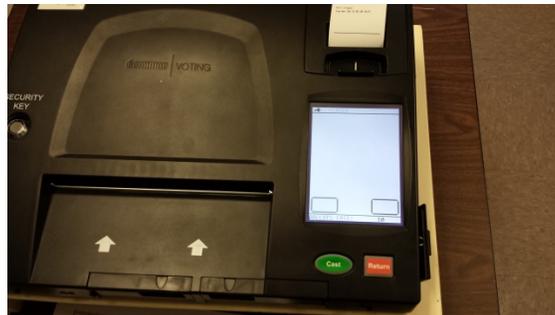
** Board staff visually inspected firmware versions on each piece of voting equipment.

*** Dominion recommended flash cards.

The following paragraphs describe the design of the 4.14-D and 4.14-DS hardware taken in part from Dominion technical documentation.

1. ImageCast Precinct

The ImageCast Precinct is a precinct-based optical scan ballot tabulator that is used in conjunction with ImageCast-compatible ballot storage boxes. The system is designed to scan marked paper ballots, interpret voter marks on the paper ballot, and safely store and tabulate each vote from the paper ballot. The ImageCast Precinct supports enhanced accessibility voting by connecting the interchangeable Sip-and-Puff device, Foot Pedals, or Audio Tactile Interface (ATI). The accessibility option is available via the ICP-BMD Audio, which is an audio only option. It utilizes a commercial off the shelf (COTS) HP Office Jet 7110 printer to mark the ballot.



2. ImageCast Central

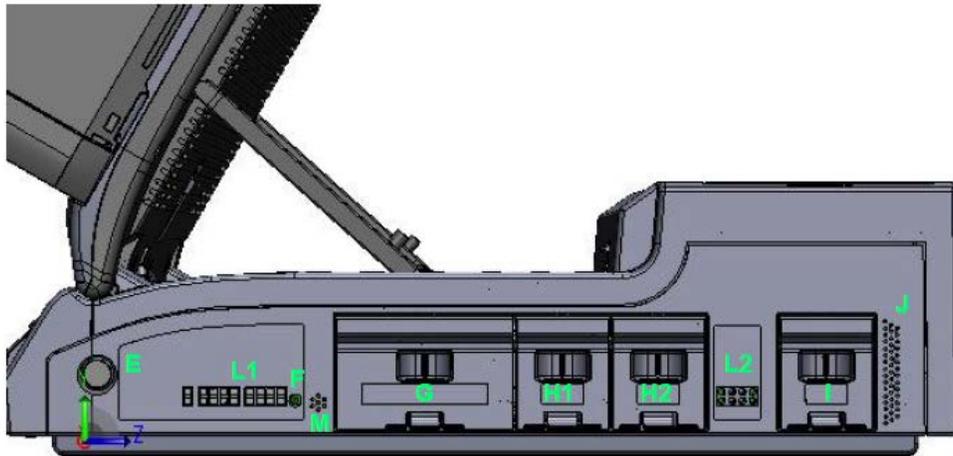
The ImageCast Central Count system is a high-speed, central ballot scan tabulator based on COTS hardware, coupled with a custom-made ballot processing software application. It is used for high-speed scanning and counting of paper ballots. The ICC system hardware consists of the following two COTS devices working together to provide accurate ballot processing functionality:

- Canon DR-X10C Scanner: Provides high-speed ballot scanning functionality, transferring the scanned images to the connected ImageCast Central Workstation.
- Canon DR-G1130 Scanner: Provides high-speed ballot scanning functionality, transferring the scanned images to the connected ImageCast Central Workstation.
- ImageCast Central Workstation: An all-in-one PC workstation used for ballot image and election rules processing. The workstation can be deployed in a stand-alone or networked configuration, allowing for automatic results transfers to the EMS Datacenter. The ImageCast Central workstation is COTS hardware which executes software for both image-processing and election rules application, such as “Vote for 2.”

3. ImageCast Evolution

The ImageCast Evolution employs a precinct-level optical scan ballot counter (tabulator) in conjunction with an external ballot box. This tabulator is designed to mark and/or scan paper ballots, interpret voting marks, communicate these interpretations back to the voter (either visually through the integrated LCD display and/or audibly via integrated headphones), and upon the voter’s acceptance, deposit the ballots into the secure ballot box. The tabulator also features binary input devices which permit voters who cannot negotiate a paper ballot to generate a synchronously human and machine-readable ballot from elector-input vote selections (ADA sessions). The supported binary input devices include a Sip and Puff device, Foot Pedals, and Audio Tactile Interface (ATI). The addition of the external monitor added in this modification allows for simultaneous ADA and ballot casting sessions. In this sense, the ImageCast Evolution acts as a ballot marking device. These devices are interchangeable and may be shared between the ICE and ICP units. Additionally, ballots marked by the ImageCast Evolution may be subsequently scanned on the ImageCast Precinct or the ImageCast Central if a recount is required.



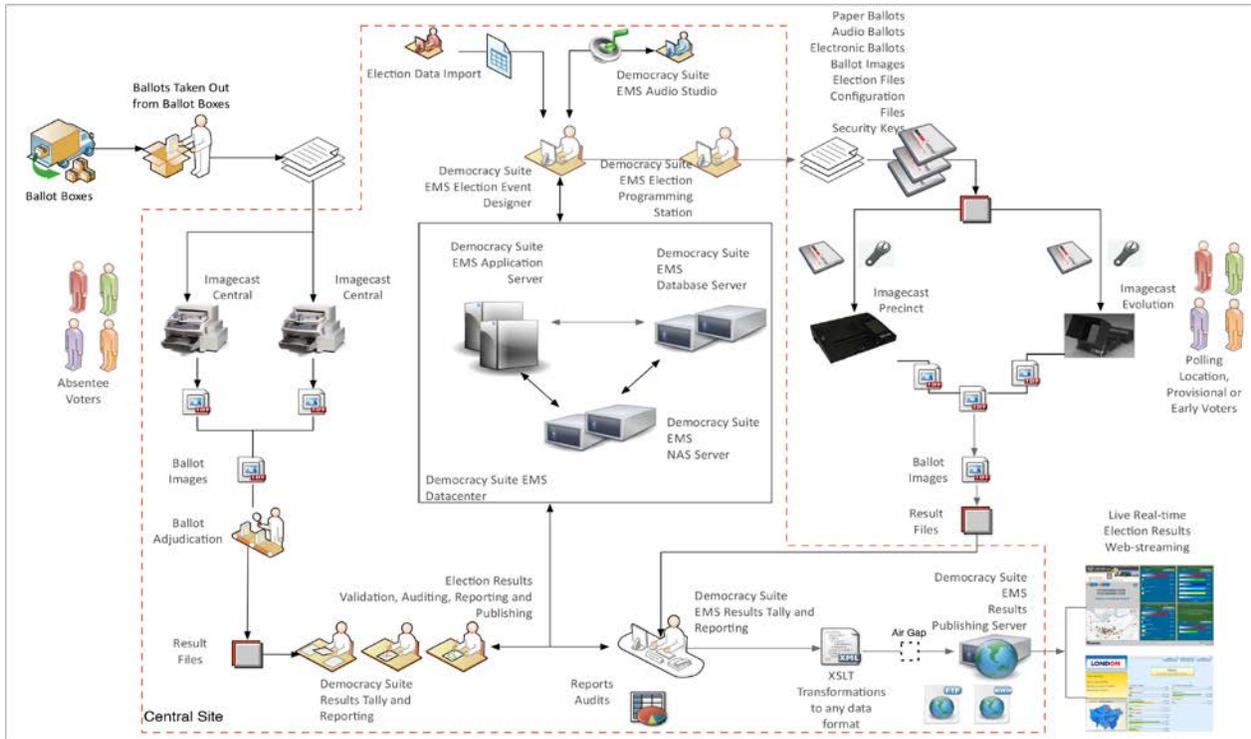


B. Software

The Democracy Suite Voting System offers a new software suite powered by the EMS set of applications, which integrates election administration functions into a unified application. Its intended use is to define an election and to create the files used by the Precinct, Central, Evolution, and Listener. The complete EMS software platform consists of client (end-user) and server (back-end) applications, which are itemized below.

<i>Software</i>	<i>Version</i>
Democracy Suite Election Management System (EMS)	4.14.37
<ol style="list-style-type: none"> 1. Election Event Designer 2. Results Tally and Reporting 3. Audio Studio 4. Data Center Manager 5. Election Data Translator 6. Application Server 7. Network Attached Storage Server 8. EMS File System Service 9. Database Server Application 	
ImageCast Listener	2.1.1.5301

*The EMS version brought for approval excluded any Adjudication or AIMS software components (which received approval by the EAC) due to scheduling of testing and limited practical uses of the Adjudication software in Wisconsin.



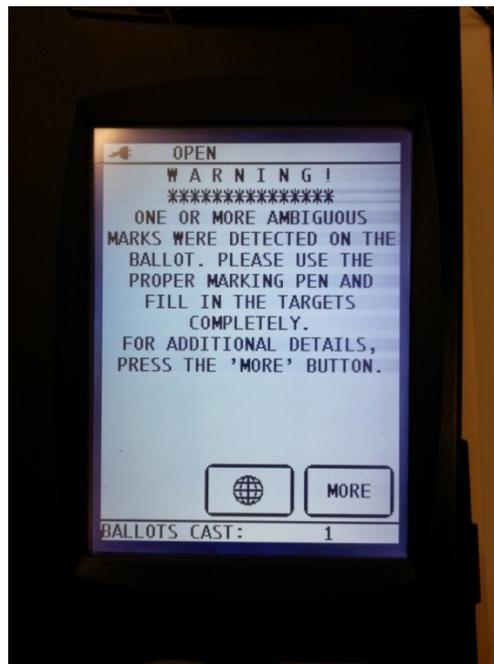
*System Map



* ImageCast Listener

The Democracy Suite EMS contains a new feature, which is called ambiguous mark technology. With past voting systems approved for use in Wisconsin, a mark was either read as a vote or not a vote. The Democracy Suite ambiguous mark technology allows for a third option in reading a mark, the ambiguous mark, which falls between the mark being read as a vote or not a vote. A mark is considered ambiguous when it is filled in between a set of percentages (e.g., 15-30

percent) that are programmed during the election set-up. When a mark falls within this range the voting equipment returns the ballot to the voter with a prompt advising the voter of the ambiguous mark. The ballot cannot be overridden or otherwise cast on the voting equipment until the ambiguous mark is corrected (either by erasing or further filling in the target area).



The percent of the target area that must be filled to trigger the ambiguous mark warning is set for each oval on the ballot and for the boxes where write-in names are placed on the ballot. The ovals and the write-in areas are programmed independently. During the testing campaign, staff tested the oval ambiguous mark threshold at 15-35 percent and the write-in ambiguous threshold at 12-35 percent, which represent the recommended settings established by Dominion. Furthermore, the ambiguous mark technology cannot be turned off; only minimized to a one percentage point difference (i.e., the lower limit can be set at 12 percent and the upper limit set at 13 percent). The system can be set-up to effectively turn off the ambiguous mark technology for the write-in boxes

by turning off the feature that detects marks in the write-in area. It is important to note that this is not turning off the ambiguous mark technology, but turning off the new Dominion write-in detection feature.

Dominion suggested and encouraged the G.A.B. to set a state standard for the ambiguous mark percentages, citing specifically the issues that may arise during a statewide recount if different standards are used by each county or municipality. Namely, if one county set their zone for 15-35 percent and another for 10-30 percent, voters, legislators, and the media may ask questions about why, all things being equal, a vote would count in one county and not in another.

Board staff conducted research on this ambiguous mark technology in order to determine whether a statewide standard was necessary and what that standard should be. The current VVSG 1.0 standard places the burden of determining at what point a piece of voting equipment should count a vote on the vendor. Board staff contacted Dominion and Election Systems and Software (ES&S) to inquire about the percentage thresholds on previously approved voting system. ES&S uses a complicated algorithm and pattern recognition system to determine mark recognition; therefore, Board staff is unable to determine a single percentage range through previously approved ES&S voting systems. Dominion's AccuVote voting system recognizes a valid mark as a vote when the reflectivity of the mark accounts for 32 percent of the target area, the oval. Board staff contacted each state listed on Dominion's fielded system report, which is a document accompanying the application and which provides a list of states that have approved or used the voting system. Florida uses the Democracy Suite voting system and set threshold range standards based on Dominion's recommended threshold ranges.¹ New Jersey uses the Democracy Suite voting system and set threshold range standards at Dominion's recommended threshold ranges. The recommended ranges Dominion provided to Board staff were different than the recommended ranges Florida indicates were provided to them.

V. Functional Testing

As required by GAB 7.02(1), Wis. Adm. Code, Board staff conducted three mock elections with each component of Democracy Suite 4.14 systems to ensure the voting systems conform to all Wisconsin requirements. The test elections included a partisan primary, a general election with both a presidential and gubernatorial vote, and a nonpartisan election combined with a presidential preference vote.

Board staff designed a test deck of 1,001 ballots using various configurations of votes over the three mock elections to verify the accuracy and functional capabilities of the Democracy Suite 4.14 voting systems. Test ballots were provided by Dominion and marked by Board staff. Each mock election included three wards. Board staff fed these ballots through the ICE, ICC, and ICP. The ballot marking device on the ICE was tested by marking 29-40 ballots with the accessibility option and onboard printer. Two ballots were marked separately by the ICP COTS printer, which was conducted outside of the normal test deck campaigns. The votes captured by the onboard ICE printer and external COTS printer on the ICP were verified by Board staff before being scanned and counted by the ICE, ICC, and ICP. Board staff was able to reconcile each mock election on each piece of voting equipment submitted for testing.

¹ Florida's Standard: ICP & ICC – Oval and Write-in ranges are 5-25 percent; ICE – Oval and Write-in ranges are 12-35 percent.

VI. Telecommunication Testing

At the May 21, 2013 Board meeting, pursuant to authority granted by Wis. Stat. § 5.91 and GAB Ch. 7, Wis. Adm. Code, and based upon the analysis and findings outlined in a staff memorandum, the Board adopted testing procedures and standards pertaining to modeming as detailed in the *Voting Systems Standards, Testing Protocols and Procedures Pertaining to the Use of Communication Devices in Wisconsin*, which are attached as Appendix 3. These rules apply to non-EAC certified voting systems, where the underlying voting system received EAC certification to either the VSS or VVSG 1.0, but any additional modeming component does not meet the VVSG 1.0.

At the same time, the Board directed staff to test non-EAC certified voting systems, where the underlying voting system received EAC certification to either the VSS or VVSG 1.0, but any additional modeming component does not meet the VVSG 1.0, to the criteria contained in the approved *Voting Systems Standards, Testing Protocols and Procedures Pertaining to the Use of Communication Devices in Wisconsin*. A properly submitted Wisconsin application for approval is required. Finally, at its May 21, 2013 meeting, the Board clarified that any modem approved in the future for use in Wisconsin must have been tested to the requirements contained in VVSG 1.0 or the most recent version of VSS currently accepted for testing and certification by the EAC. According to the NTS VSTL report, Dominion did not submit the 4.14-DS modem component for VVSG 1.0 testing, but instead requested that the modem receive functional testing only. Board staff proceeded with telecommunication testing despite the modeming component receiving functional testing only at the federal level.

In accordance with agency directives, Board staff conducted testing of the 4.14-DS voting system based on the *Voting Systems Standards, Testing Protocols and Procedures Pertaining to the Use of Communication Devices in Wisconsin* in three counties: Fond du Lac, Winnebago, and St. Croix, on April 28 and 29, 2015. All three counties were selected because of their interest in purchasing the new Dominion Democracy Suite Voting System, their location in the state, and the availability of clerks to participate during the testing dates. In consultation with each county clerk, Board staff selected three municipalities in each county to serve as locations for testing. The municipalities were selected in part because of the strength of the wireless networks in the community or lack thereof, the service providers used by each municipality, and the municipal clerk's willingness to host the testing team.

The wireless modem for the ICE and ICP is an external modem and communicates through the jurisdiction's wireless carrier. The analog modem for the ICE is external. The analog modem for the ICP is internal and communicates through the jurisdiction's dial-up connection via a landline modem. Each method transmits results to the ICL, a secure server at a central office location, such as the county clerk's office. A firewall provides a buffer between the network, where the server is located, and other internal virtual networks or external networks. The data that is transmitted is encrypted and it is digitally signed. The modem function may only be used after an election inspector has closed the polls and used a security token on the equipment and entered a password to access the control panel. The network is configured to only allow valid connections to connect to the Secure File Transfer Protocol (SFTP). The firewall further restricts the flow and connectivity of traffic.

The decision on whether the ICE or ICP includes an analog or wireless modem is made at the time of purchase, but can be easily changed at any time with the purchase of a new external modem, with exception of the internal analog modem for the ICP. The ICL and EMS supports modeming from a combination of methods in a jurisdiction. For example, a jurisdiction could have two sites with analog modems and three sites with wireless modems. Board staff successfully simulated such a setup as part of this test campaign. This voting system successfully handled simultaneous transmissions from both analog and wireless modems. Conversely, a jurisdiction could choose to purchase all analog modems or all wireless modems. Two factors that may impact a jurisdiction’s purchasing decision include the strength of service in the jurisdiction and whether the jurisdiction has an existing contract with a service provider. A jurisdiction could choose to have two different pieces of voting equipment transmit results via different methods at a polling location, analog and wireless. This configuration was simulated at eight of the nine road test locations. The ICL and EMS supports modeming through various service providers, which can be reviewed in the table below. During testing, the strength of service ranged from one dot (lowest indicator level) to three dots (highest indicator level). Election results packets were sent successfully at all service levels.²

Service Provider*	Wireless/ Analog	County
AT&T	Analog	Fond du Lac
Wisnet	Wireless	Fond du Lac
Frontier	Analog	Fond du Lac
Bertram	Wireless	Fond du Lac
CenturyLink	Analog	Fond du Lac
US Cellular	Wireless	Fond du Lac
Charter	Wireless/Analog	Winnebago
TDS	Wireless/Analog	Winnebago
TWC	Wireless/Analog	Winnebago
AT&T	Analog	St. Croix
Baldwin Telecomm	Wireless	St. Croix
Verizon	Wireless/Analog	St. Croix
Century Tele	Analog	St. Croix

* This is not an exhaustive list of service providers that can transmit via the ICL. It is expected that every service provider in Wisconsin will be able to successfully transmit results.

Four Board staff members conducted the test, with four representatives from Dominion and two representatives from Command Central in each county to provide technical support. Dominion provided the necessary equipment for the testing, including three ICEs; three ICPs; modems for each unit; a portable EMS environment; and an ICL for modeming results, which included a SFTP client, servers, and firewall. Two ICEs were programmed to transmit results wirelessly and one by analog modem. Two ICPs were programmed to transmit results by analog modem and one wirelessly. In each location, Dominion set up the portable EMS environment and ICL in a county office to receive test election results from each municipal testing location. In each municipal location, a Board staff member inserted a pre-marked package of 10-11 test ballots through the ICE and ICP to create an election results packet to transmit to the county office. A Board staff

² Neither the voting equipment modem function nor the ICL impacts the tabulation of official election results.

member was present at each county office to observe how the portable EMS environment and ICL handled the transmissions. Board staff was able to reconcile each road test packet with the printed results tape and the results which were transmitted by modem.

During road testing a functional test was conducted in the Town of Menasha and City of Fond du Lac to test the write-in recognition feature of the voting equipment. This feature allows for the voting equipment to recognize marks in the space where the voter indicates the name of their write-in candidate. Testing this feature caused a discrepancy in election total results due to some of the write-in test ballots not being read as anticipated. Results of the modem tests are provided in the tables below.

A. Fond du Lac County³

Municipality	Wireless/ Analog	Able to connect	Able to transmit	(Analog) Success rate <i>Connects/attempts</i>	(Wireless) Success rate <i>Connects/attempts</i>
City of Fond du Lac	Both	Yes	Yes	4/10 ⁴	8/10 ⁵
Town of Oakfield	Both	Yes	Yes	13/15 ⁶	16/19 ⁷
Town of Rosendale	Both	Yes	Yes	15/17 ⁸	17/17

B. Winnebago County⁹

Municipality	Wireless/ Analog	Able to connect	Able to transmit	(Analog) Success rate <i>Connects/attempts</i>	(Wireless) Success rate <i>Connects/attempts</i>
Town of Black Wolf	Both	Yes	Yes	14/14	16/16 ¹⁰
Town of Menasha	Both	Yes	Yes	2/6 ¹¹	10/10
Town of Oshkosh	Both	Yes	Yes	8/10 ¹²	13/16 ¹³

³ County receives results via a wireless signal.

⁴ City of Fond du Lac Analog: Card was programmed to dial area code, which wasn't required. In the ICP it is hardened and cannot be changed on-site. New card needed to be programmed.

⁵ City of Fond du Lac Wireless: Received "port protector" errors. Error requires modem to be unplugged and re-plugged into the ICE.

⁶ Town of Oakfield Analog: Port protector error.

⁷ Town of Oakfield Wireless: Sim card was not positioned in the modem correctly.

⁸ Town of Rosendale Analog: Tried to establish connection 3 times for each of the 2 failed attempts.

⁹ County receives results via a wireless signal.

¹⁰ Town of Black Wolf Wireless: One transmission took 4 minutes.

¹¹ Town of Menasha Analog: Card not programmed with the "1" at the beginning of the number. Since the ability to add a prefix creates a hard pause in the system when dialing it cannot be used to add a "1" to a number.

¹² Town of Oshkosh Analog: Two unsuccessful connection errors.

¹³ Town of Oshkosh Wireless: Two port protector errors and one miscellaneous error, which resulted in the system returning to the administrative menu.

C. St. Croix County¹⁴

Municipality	Wireless/ Analog	Able to connect	Able to transmit	(Analog) Success rate <i>Connects/attempts</i>	(Wireless) Success rate <i>Connects/attempts</i>
City of Hudson	Both	Yes	Yes	8/13 ¹⁵	6/6
Town of Emerald	Both	Yes	Yes	1/8 ¹⁶	1/1 ¹⁷
Village of Hammond	Analog	Yes	Yes	6/10 ¹⁸	N/A

VII. Public Demonstration

A public demonstration of the voting systems was held April 22, 2015, from 4:30 p.m. to 6:00 p.m. in Madison at the G.A.B. office. Members of the public were invited to use the voting system and provide their feedback. Four people attended the public demonstration, including two from organizations that advocate for interests of individuals with disabilities, one from the League of Women Voters, and one member of the Marathon County IT Department. The 4.14-DS modem component was not demonstrated for the public. Feedback from the public demonstration is included in Appendix 2.

VIII. Wisconsin Election Administration Council Demonstration

Six of the 19 appointed members of the Wisconsin Election Administration Council (WI-EAC) attended a Dominion demonstration of the voting systems on April 23, 2015 from 12:30 p.m. to 3:00 p.m. in Madison at the G.A.B. office. The WI-EAC is composed of municipal and county clerks, representatives of the disability community, and advocates for the interests of the voting public. The 4.14-DS modem component was not demonstrated for the WI-EAC members. Feedback from the WI-EAC is included in Appendix 1.

IX. Board Staff's Feedback

Neither the 4.14-D or 4.14-DS voting systems are compatible with other Dominion voting systems currently approved for use in Wisconsin. Municipalities using other Dominion voting systems will have to purchase new equipment included within this test. The following is a list of staff concerns regarding each component tested.

1. ICP

- i. The accessible component for the ICP is audio only with a COTS printer that would be set up in a separate accessible voting booth. The audio only set-up of the ICP could lead voters to cast blank ballots by mistake or feeling discouraged from voting because the process is not as intuitive compared to current accessible voting

¹⁴ County receives results via a single analog phone line.

¹⁵ City of Hudson Analog: Three errors due to phone line being plugged into the wrong port and two because of a busy signal because the County uses a single analog phone line to receive results with no rollover system.

¹⁶ Town of Emerald Analog: Seven failed attempt were due to busy signal because the County uses a single analog phone line to receive results with no rollover system.

¹⁷ Town of Emerald Wireless: Staff believed one successful submission was necessary.

¹⁸ Village of Hammond Analog: Four failed attempts were due to busy signal because the County uses a single analog phone line to receive results with no rollover system.

systems in use in Wisconsin, such as touchscreens or other visual displays. Also, voters may be unaware of the accessible voting option if they do not see a separate accessible system in the polling place like they may have used in the past.

- ii. The accessible component uses an ATI pad only, which will be difficult for individuals with dexterity issues. A “sip and puff” and pedals may be used, but those devices are not included and would have to be brought by the voter to the polls.
- iii. The ICP warnings are the same as those on the ICE, but unlike the ICE, the ICP warnings are normally displayed over multiple screens. This could lead to voter confusion or lack of clarity because the entire warning message is not displayed. A voter or election inspector would have to hit “more” on the ICP screen to move to the remaining parts of the warning message. Furthermore, when a ballot is ejected by the equipment due to a ballot issue and then fully removed from the ICP, the machine clears the warning message.
- iv. Photocopied ballots are accepted by the equipment. As long as the photocopy is of a high enough quality the photocopy will be accepted as long as it is of identical paper size (length, width, and ratio). The G.A.B. office copier, Kyocera TASKalfa 5500i, was used to make the copies with no additional altering of resolution or contrast from the current copier settings. During testing Board staff made four photocopies of the Nonpartisan Election ballot and one photocopy of the General Election ballot. For the Nonpartisan Election three photocopies were of lighter stock than the original ballot and one was heavier. One of the lighter stock copies was made on watermark paper. In each circumstance the equipment read the ballot and counted the votes. The one photocopy for the General Election was on lighter stock and read by the equipment.
- v. The number that is dialed when modeming in unofficial election night results is hard-coded into the elections set up.

2. ICC

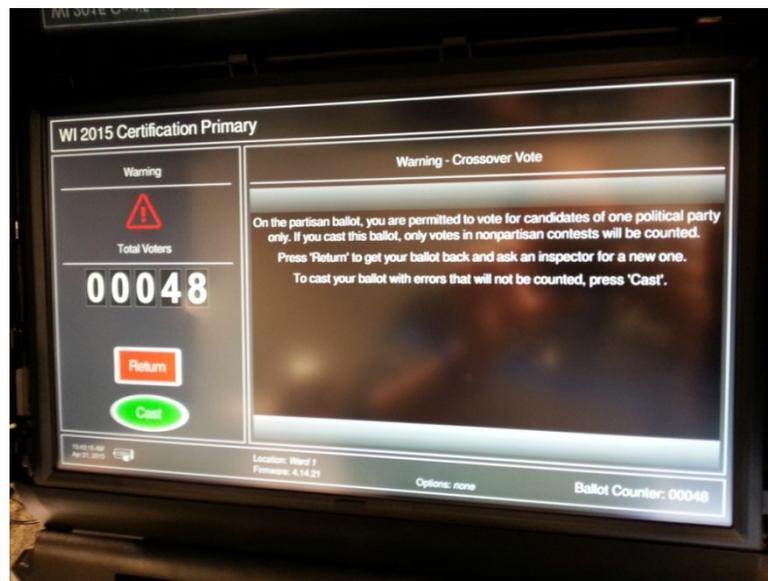
- i. Photocopied ballots are accepted by the equipment. As long as the photocopy is of a high enough quality the photocopy will be accepted as long as it is of identical paper size (length, width, and ratio). The G.A.B. office copier, Kyocera TASKalfa 5500i, was used to make the copies with no additional altering of resolution or contrast from the current copier settings. During testing Board staff made four photocopies of the Nonpartisan Election and one photocopy of the General Election. For the Nonpartisan Election three photocopies were of lighter stock than the original ballot and one was heavier. One of the lighter stock copies was made on watermark paper. In each circumstance the equipment read the ballot and counted the votes. The one photocopy for the General Election was on lighter stock and read by the equipment.

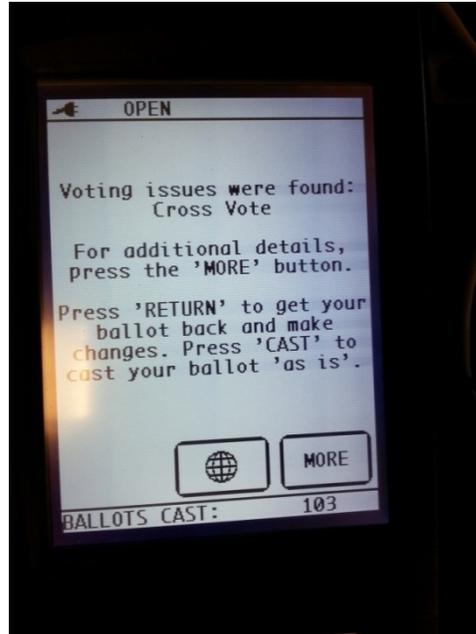
3. ICE

- i. The ICE took ballots filled out with red pen. In each of the three elections 2-4 ballots were marked with red ballpoint pen. In each election the ICE accurately tallied the votes for those candidates. No other piece of equipment tested in conjunction with the Democracy Suite Voting System was able to read red pen markings.
- ii. The accessible function requires election inspector intervention. In Wisconsin, election inspectors are trained not to inquire whether a voter requires or wants to utilize accessible voting equipment. Since the accessible component is part of the tabulating equipment an individual may receive a ballot, go over to the machine, insert the ballot, receive the prompt that the ballot is blank, and cast the blank ballot expecting an accessible component to appear on the screen. To use the accessible component on the ICE, the voter must communicate to an election inspector that they wish to use the accessible component. The election inspector must activate the accessible feature to permit the voter to make their selections using the ATI pad. When the voter has finished making their selections, the election inspector activates the accessible component for a second time to enable the ballot marking feature.
- iii. The accessible component uses an ATI pad only, which will be difficult for individuals with dexterity issues. A “sip and puff” and pedals may be used, but those items would traditionally have to be the property of the voter and brought by the voter to the polls.
- iv. If the municipality does not purchase the external monitor used during accessible voting sessions, other voters will not be able to place voted ballots into the equipment to be counted without risking the confidentiality and privacy of the voter using the primary screen accessibility component. This will require voted ballots to be placed in the auxiliary bin until the primary screen accessible voting session has ended and the voter has cast their ballot.
- v. The access door with the modem port must remain open during voting to allow for access to the accessible controller USB connection. The modem connection port is only operable when the polls are closed and the option to modem in results only appears in the utility menu when the polls are closed.
- vi. Removing a ballot that was rejected due to a ballot issue (i.e. overvoted, crossover, etc.) will clear the message.
- vii. Photocopied ballots are accepted by the equipment. As long as the photocopy is of a high enough quality the photocopy will be accepted as long as it is of identical paper size (length, width, and ratio). The G.A.B. office copier, Kyocera TASKalfa 5500i, was used to make the copies with no additional altering of resolution or contrast from the current copier settings. During testing Board staff made four photocopies of the Nonpartisan Election and one photocopy of the General Election. For the Nonpartisan Election three photocopies were of lighter stock than the original ballot and one was heavier. One of the lighter stock copies was made on watermark paper. In each circumstance the equipment read the ballot and counted the votes. The one photocopy for the General Election was on lighter stock and read by the equipment.

4. EMS

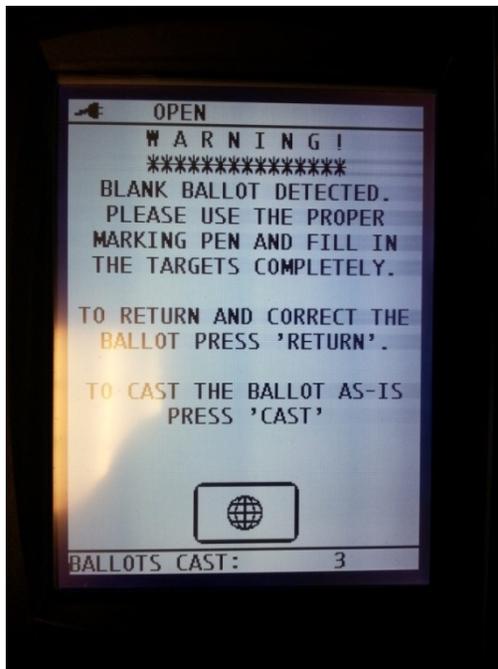
- i. The EMS allows for elections to be set up to permit write-ins to take precedence over ballot candidates in all circumstances.
- ii. The EMS allows for elections to be set up to not require ballots marked using the ICE on-board accessibility printer to be returned for review prior to casting the ballot.
- iii. The EMS allows for elections to be set up not to make a notification sound when a warning displays on the voting equipment.
- iv. The EMS allows for elections to be set up with ambiguous zone thresholds set by the individual programming the election for the ovals and write in boxes.
- v. Individual results reports are not readable without the EMS software.
- vi. The Ambiguous Mark Technology threshold ranges are adjustable each election during election set-up. Each county could effectively program elections with different thresholds, which would mean a vote that counts in one jurisdiction may not necessarily count in another when cast on the same type of voting equipment. This capability may result in additional remade or spoiled ballots due to stray marks, hesitation marks, or paper imperfections if the threshold range is not set correctly. This capability may also require altering the pre-election testing of voting equipment to account for a need to test the programmable ambiguous mark thresholds.
- vii. Crossover Vote Warning: Board staff believes the warning message indicating a voter has made a crossover vote is sufficient to allow the voter to understand the implications of casting or returning the ballot.





- viii. Blank Ballot Warning: Board staff believes the warning message indicating a voter has made a blank ballot is sufficient to allow for the voter to understand the implications of casting or returning the ballot.





X. Statutory Compliance

Wis. Stat. §5.91 establishes the following requirements which voting systems must meet to be approved for use in Wisconsin. Please see the below text of each requirement and staff’s analysis of the 4.14-D and 4.14-DS’s compliance with the standards.

§ 5.91 (1)
The voting system enables an elector to vote in secret.
Staff Analysis
The voting equipment has privacy screens or is designed to be placed in a voting booth.

§ 5.91 (3)
The voting system enables the elector, for all elections, except primary elections, to vote for a ticket selected in part from the nominees of one party, and in part from nominees from other parties and write-in candidates
Staff Analysis
The system meets this requirement.

§ 5.91 (4)
The voting system enables an elector to vote for a ticket of his or her own selection for any person for any office for whom he or she may desire to vote whenever write-in votes are permitted.
Staff Analysis
The system meets this requirement.

§ 5.91 (5)
The voting systems accommodate all referenda to be submitted to electors in the form provided by law.
Staff Analysis
The system meets this requirement.

§ 5.91 (6)
The voting system permits an elector in a primary election to vote for the candidates of the recognized political party of his or her choice, and the system rejects any ballot on which votes are cast in the primary of more than one recognized political party, except where a party designation is made or where an elector casts write-in votes for candidates of more than one party on a ballot that is distributed to the elector.
Staff Analysis
The system meets this requirement. The party preference is designed as a logic check instead of a contest in order to satisfy the requirement.

§ 5.91 (7)
The voting system enables the elector to vote at an election for all persons and offices for whom and for which the elector is lawfully entitled to vote; to vote for as many persons for an office as the elector is entitled to vote for; to vote for or against any question upon which the elector is entitled to vote; and it rejects all choices recorded on a ballot for an office or a measure if the number of choices exceeds the number which an elector is entitled to vote for on such office or on such measure, except where an elector casts excess write-in votes upon a ballot that is distributed to the elector.
Staff Analysis
The system meets this requirement.

§ 5.91 (8)
The voting system permits an elector at a General Election by one action to vote for the candidates of a party for President and Vice President or for Governor and Lieutenant Governor.
Staff Analysis
The system meets this requirement.

§ 5.91 (9)
The voting system prevents an elector from voting for the same person more than once, except for excess write-in votes upon a ballot that is distributed to the elector.
Staff Analysis
The system meets this requirement.

§ 5.91 (10)
The voting system is suitably designed for the purpose used, of durable construction, and is usable safely, securely, efficiently and accurately in the conduct of elections and counting of ballots.
Staff Analysis
The system meets this requirement.

§ 5.91 (11)
The voting system records and counts accurately every vote and maintains a cumulative tally of the total votes cast that is retrievable in the event of a power outage, evacuation or malfunction so that the records of votes cast prior to the time that the problem occurs is preserved.
Staff Analysis
The system meets this requirement. The voting equipment has an on-board battery, which lasts for 2 hours of continuous use in the event of a power outage. At 15 percent remaining power the system provides a low power warning and does not permit ballots to be fed into the equipment. The equipment can be overridden to allow for ballots to continue to be fed into the machine. From 15 percent to 10 percent remaining power the system beeps at each percentage point and election inspectors can print the election results tape and modem in unofficial election night results. Ballot images, election set-up, and tabulations results are stored on the compact memory cards.

§ 5.91 (12)
The voting system minimizes the possibility of disenfranchisement of electors as the result of failure to understand the method of operation or utilization or malfunction of the ballot, voting system, or other related equipment or materials.
Staff Analysis
The voting system meets this requirement. The system has the ability to provide ample warnings and notifications to electors. The warnings messages and notifications observed contain detailed information. (i.e. when an overvote is detected the warning message informs the voter of an overvote and the contest it was cast in.)

§ 5.91 (13)
The automatic tabulating equipment authorized for use in connection with the system includes a mechanism which makes the operator aware of whether the equipment is malfunctioning in such a way that an inaccurate tabulation of the votes could be obtained.
Staff Analysis
The voting system meets this requirement.

§ 5.91 (14)
The voting system does not use any mechanism by which a ballot is punched or punctured to record the votes cast by an elector.
Staff Analysis
The voting system meets this requirement.

§ 5.91 (15)
The voting system permits an elector to privately verify the votes selected by the elector before casting his or her ballot.
Staff Analysis
All pieces of voting equipment in this system are digital tabulators. Electors can visually verify their votes prior to inserting the ballot into the equipment. The ICE and ICP may be configured to allow or require an on-screen or audio review of the machine's tabulation for one ballot or all ballots prior to being cast or counted. If the on-screen or audio review is not set-up the system will accept a ballot and count it without the opportunity for review.

§ 5.91 (16)
The voting system provides an elector the opportunity to change his or her votes and to correct any error or to obtain a replacement for a spoiled ballot prior to casting his or her ballot.
Staff Analysis
All pieces of voting equipment in this system are digital tabulators. Electors can visually verify their votes prior to inserting the ballot into the equipment. The ICE and ICP may be configured to allow or require an on-screen or audio review of the machine's tabulation for one ballot or all ballots prior to being cast or counted. If the on-screen or audio review is not set-up the system will accept a ballot and count it without the opportunity for review.

§ 5.91 (17)
Unless the ballot is counted at a central counting location, the voting system includes a mechanism for notifying an elector who attempts to cast an excess number of votes for a single office the ballot will not be counted, and provides the elector with an opportunity to correct his or her ballot or to receive a replacement ballot.
Staff Analysis
The system allows for the election configuration to reject all overvoted ballots, without the opportunity for the voter to override.

§ 5.91 (18)
If the voting system consists of an electronic voting machine, the voting system generates a complete, permanent paper record showing all votes cast by the elector, that is verifiable by the elector, by either visual or nonvisual means as appropriate, before the elector leaves the voting area, and that enables a manual count or recount of each vote cast by the elector.
Staff Analysis
This system is not a DRE; therefore, the requirement is not applicable. Voter filled out ballots are stored in the ballot box and each ballot image is saved to the compact flash cards with the election set-up and tabulation results.

The Help America Vote Act of 2002 (HAVA) also provides the following applicable requirements that voting systems must meet:

HAVA § 301(a)(1)(A)
The voting system shall: (i) permit the voter to verify (in a private and independent manner) the votes selected by the voter on the ballot before the ballot is cast and counted; (ii) provide the voter with the opportunity (in a private and independent manner) to change the ballot or correct any error before the ballot is cast and counted (including the opportunity to correct the error through the issuance of a replacement ballot if the voter was otherwise unable to change the ballot or correct any error); and (iii) if the voter selects votes for more than one candidate for a single office – (I) notify the voter that the voter has selected more than one candidate for a single office on the ballot; (II) notify the voter before the ballot is cast and counted of the effect of casting multiple votes for the office; and, (III) provide the voter with the opportunity to correct the ballot before the ballot is cast and counted
HAVA § 301(a)(1)(C)
The voting system shall ensure that any notification required under this paragraph preserves the privacy of the voter and the confidentiality of the ballot.
HAVA § 301(a)(3)(A)
The voting system shall— (A) be accessible for individuals with disabilities, including nonvisual accessibility for the blind and visually impaired, in a manner that provides the same opportunity for access and participation (including privacy and independence) as other voters

Staff Analysis

The system meets these requirements. However, the system does not provide a suitable option for individuals with dexterity issues, without the voter bringing additional equipment to the polls. The accessible option requires the use of an ATI, without a touchscreen option, and requires significant time to complete. The accessible voting option requires involvement by the election inspector at multiple stages of the voting process. Mandatory election inspector involvement could lead to a real or perceived inability to vote or verify votes in a private and independent manner.

XI. Conclusion

To determine whether a voting system should be approved for use in Wisconsin, the following recommendations are based upon three goals.

1. Can the voting system successfully run a transparent, fair, and secure election in compliance with Wisconsin Statutes?

Staff's Response: Yes. The 4.14-D and 4.14-DS accurately completed the mock elections and were able to accommodate the voting requirements of the Wisconsin election process. As the 4.14-D is the base voting system for the 4.14-DS, the 4.14-DS also meets this goal.

2. Does the system enhance access to the electoral process for individuals with disabilities?

Staff's Response: This system does not enhance access to the electoral process for individuals with disabilities over previously approved voting systems in Wisconsin. The scope and degree of accessibility from previously approved voting systems declines with the 4.14-D & 4.14-DS. The accessible options with the 4.14-D & 4.14-DS do not include a touchscreen option, and provide limited accessibility for individuals with dexterity issues. The system requires mandatory election inspector involvement during accessible voting. The all-in-one accessible and tabulating equipment may also confuse voters, and result in blank ballots being cast mistakenly. However, the system meets ADA requirements.

3. Does the voting system meet Wisconsin's statutory requirements?

Staff's Response: Yes. The 4.14-D complies with all applicable state and federal requirements. As the 4.14-D is the base voting system for the 4.14-DS, the 4.14-DS also meets this goal.

XII. Recommendations

1. Board staff recommends approval of the Dominion Democracy Suite 4.14-D Voting System and components set forth above. This voting system accurately completed the three mock elections and was able to accommodate the voting requirements of the Wisconsin election process. Additionally, Board staff recommends approval of the Dominion Democracy Suite 4.14-DS Voting System and components set forth above. These recommendations are based on the VSTL report provided by NTS and on this voting system's successful completion of functional and telecommunication testing

according to Wis. Stat. §5.91, G.A.B. 7.02, and the *Voting Systems Standards, Testing Protocols and Procedures Pertaining to the Use of Communication Devices in Wisconsin*.

2. Board staff recommends that as a continuing condition of the Board's approval, that Dominion may not impose customer deadlines contrary to requirements provided in Wisconsin Statutes, as determined by the Board. In order to enforce this provision, local jurisdictions purchasing Dominion equipment shall also include such a provision in their respective purchase contract or amend their contract if such a provision does not currently exist.
3. Board staff recommends that as a continuing condition of the Board's approval, that this system must always be configured to include the following options:
 - a. Automatically reject all overvoted ballots, without the option to override.
 - b. Store election set-up, results, and ballot images on both compact memory cards. Each memory card must be retained, with the data intact, for the required retention period. If a jurisdiction transfers the data from the memory cards to a digital storage device after the recount period they must transfer all files from both memory cards into two separate files.
 - c. Prohibit the use of the Write-In Preference feature, which causes write-in votes to always count over a ballot candidate.
 - d. Provide an audible warning tone and visual warning message when a crossover, overvote, blank, or ambiguous ballot is fed into the voting equipment.
 - e. Return a marked ballot to the voter for review prior to casting the ballot when ballots are marked using the ICE on-board marking device system.
 - f. The ambiguous mark threshold ranges must be set per Dominion's recommendation, which are 15-35 percent for the oval and 12-35 percent for the write-in box. The Board retains the discretion to alter these ranges.
 - g. Capture digital ballot images of all ballots cast by the system.
4. Board staff recommends election inspectors shall continue to check the main bin and review all ballots for validly cast write-ins at the close of the polls at every election.
5. Board staff recommends election inspectors shall remake all absentee ballots automatically rejected by the voting equipment so that the ballot count is consistent with total voter numbers.
6. Board staff recommends clerks and election inspectors shall ensure that external modems are secured prior to, during, and after every election.
7. Board staff recommends election inspectors shall enable an on-screen review of the ballot on the ICE for every ballot marked using the on-board ballot marking device.
8. As part of US EAC certificate: DVS-DemSuite4.14-D, only equipment included in this certificate are allowed to be used together to conduct an election in Wisconsin. Previous systems that were approved for use by the former Elections Board and the G.A.B. are not compatible with the new Dominion voting system, and are not to be used together

with the equipment seeking approval by the Board, as this would void the US EAC certificate. If a jurisdiction upgrades to 4.14-D, they need to upgrade each and every component of the voting system to the requirements of what is approved herein. Likewise, if a jurisdiction upgrades to 4.14-DS, they need to upgrade each and every component of the voting system to the requirements of what is approved herein. The EAC certification includes the AutoMARK in the certification, but that option was not brought for approval in Wisconsin. Therefore, municipalities may not use an AutoMARK as a ballot marking device for ballots that will be fed into a 4.14-D or 4.14-DS piece of equipment.

9. Board staff recommends that as a condition of approval, Dominion shall abide by applicable Wisconsin public records laws. If, pursuant to a proper public records request, the customer receives a request for matters that might be proprietary or confidential, customer will notify Dominion, providing the same with the opportunity to either provide customer with the record that is requested for release to the requestor, or shall advise Customer that Dominion objects to the release of the information, and provide the legal and factual basis of the objection. If for any reason, the customer concludes that customer is obligated to provide such records, Dominion shall provide such records immediately upon customer's request. Dominion shall negotiate and specify retention and public records production costs in writing with customers prior to charging said fees. In absence of meeting such conditions of approval, Dominion shall not charge customer for work performed pursuant to a proper public records request, except for the "actual, necessary, and direct" charge of responding to the records request, as that is defined and interpreted in Wisconsin law, plus shipping, handling, and chain of custody.

XIII. Proposed Motions

MOTION: The Government Accountability Board adopts the staff's recommendations for approval of the Dominion Voting System's Application for Approval of Democracy Suite 4.14-D Voting System in compliance with US EAC certificate DVS-DemSuite4.14-D, including the conditions described in the memorandum.

MOTION: The Government Accountability Board adopts the staff's recommendations for approval of the Dominion Voting System's Application for Approval of Democracy Suite 4.14-DS Voting System, which is a modification of the EAC approved 4.14-D voting system, US EAC certificate DVS-DemSuite4.14-D, including the conditions described in the memorandum.

Attachments

- ✓ Appendix 1: Wisconsin Election Administration Council Feedback
- ✓ Appendix 2: Public Demonstration Feedback
- ✓ Appendix 3: *Voting Systems Standards, Testing Protocols and Procedures Pertaining to the Use of Communication Devices in Wisconsin*
- ✓ Wisconsin Statutes § 5.91
- ✓ Wisconsin Administrative Code GAB 7
- ✓ US_EAC Grant of Certification
- ✓ US_EAC Certificate of Conformance

APPENDIX 1: Wisconsin Election Administration Council’s Feedback

These comments were provided via a structured feedback form.

1. How would you rate the functionality of the equipment?

Very Poor	Poor	Fair	Good	Excellent
			5	

- Write in’s go into separate bin.
- Thought the ICE was very user friendly screen, easy to read being bigger, like the write in feature as described.
- Excellent write-in feature if voter does not complete oval or does not complete a name in write-in section.
- A negative is the non-ability to use colored ballots.
- I like larger display.

2. How would you rate the accessible features?

Very Poor	Poor	Fair	Good	Excellent
	1	4		

- Handicap—pushing buttons might be problem.
- Problem with handicapped voting—ATI.
- The controller would be more difficult for an individual to control. Touch screen would be much better. Cumbersome takes a long time to complete. Directions are not clear.
- No touchscreen ability.
- Against the ability to allow programming for ballot (from accessible device) to drop directly into ballot box without coming back to voter.
- Would like to see a touch screen option.
- Concerned about comments made about ATI.

3. Rate your overall impression of the system.

Very Poor	Poor	Fair	Good	Excellent
		1	4	

- Good overall, like paper ballots.
- Very excited to get another equipment option.
- Not sure if it’s worth an additional \$4,000 to have visual handicapped voting option if not used regularly.

APPENDIX 2: Public Demonstration Feedback

These comments were provided via a structured feedback form.

1. How would you rate the functionality of the equipment?

Very Poor	Poor	Fair	Good	Excellent
			1	1

- Would have to actually set it up and take it down to really be able to evaluate it.

2. How would you rate the accessible features?

Very Poor	Poor	Fair	Good	Excellent
			1	

- Instructions somewhat confusing.
- What if you choose not to vote in all categories?
- Prior instruction would be helpful.

3. Rate your overall impression of the system.

Very Poor	Poor	Fair	Good	Excellent
			1	1

- After use it became more clear and easier to use.
- Seems to offer many great features.

APPENDIX 3: Voting System Standards, Testing Protocols and Procedures Pertaining to the Use of Communication Devices

PART I: PROPOSED TESTING STANDARDS

Applicable VVSG Standard

The modem component of the voting system or equipment must be tested to the requirements contained in the most recent version or versions of the Voluntary Voting System Guidelines (VVSG) currently accepted for testing and certification by the U.S. Election Assistance Commission (EAC). Compliance with the applicable VVSG may be substantiated through federal certification by the EAC, through certification by another state that requires compliance with the applicable VVSG, or through testing conducted by a federally certified voting system test laboratory (VSTL) to the standards contained in the applicable VVSG. Meeting the requirements contained in the VVSG may substantiate compliance with the voting system requirements contained in Section 301 of the Help America Vote Act of 2002 (HAVA).

Access to Election Data

Provisions shall be made for authorized access to election results after closing of the polls and prior to the publication of the official canvass of the vote. Therefore, all systems must be capable of generating an export file to communicate results from the election jurisdiction to the Central processing location on election night after all results have been accumulated. The system may be designed so that results may be transferred to an alternate database or device. Access to the alternate file shall in no way affect the control, processing, and integrity of the primary file or allow the primary file to be affected in any way.

Security

All voting system functions shall prevent unauthorized access to them and preclude the execution of authorized functions in an improper sequence. System functions shall be executable only in the intended manner and order of events and under the intended conditions. Preconditions to a system function shall be logically related to the function so as to preclude its execution if the preconditions have not been met.

Accuracy

A voting system must be capable of accurately recording and reporting votes cast. Accuracy provisions shall be evidenced by the inclusion of control logic and data processing methods, which incorporate parity, and checksums, or other equivalent error detection and correction methods.

Data Integrity

A voting system shall contain provisions for maintaining the integrity of voting and audit data during an election and for a period of at least 22 months thereafter. These provisions shall include protection against:

- the interruption of electrical power, generated or induced electromagnetic radiation
- ambient temperature and humidity
- the failure of any data input or storage device
- any attempt at an improper data entry or retrieval procedure

Reliability

Successful Completion of the Logic and Accuracy test shall be determined by two criteria

- The number of failures in transmission
- and the accuracy of vote counting

The failure or connectivity rate will be determined by observing the number of relevant failures that occur during equipment operation. The accuracy is to be measured by verifying the completeness of the totals received.

PART II: TEST PROCEDURES AND PROTOCOLS

Overview of Telecommunication Test

The telecommunication test focuses on system hardware and software function and performance for the transmission of data that is used to operate the system and report election results. This test applies to the requirements for Volume I, Section 6 of the EAC 2005 VVSG. This testing is intended to complement the network security requirements found in Volume I, Section 7 of the EAC 2005 VVSG, which include requirements for voter and administrator access, availability of network service, data confidentiality, and data integrity. Most importantly, security services must restrict access to local election system components from public resources, and these services must also restrict access to voting system data while it is in transit through public networks. Compliance with Section 7, EAC 2005 VVSG shall be evidenced by a VSTL report submitted with the vendor's application for approval of a voting system.

In an effort to achieve these standards and to verify the proper functionality of the units under test, the following methods will be used to test each component of the voting system:

Wired Modem Capability Test Plan

Test Objective: To transfer the results from the tabulator to the Election Management System via a wired network correctly.

Test Plan:

1. Attempt to transmit results prior to the closing of the polls and printing of results tape
2. Set up a telephone line simulator that contains as many as eight phone lines
3. Perform communication suite for election night reporting using a bank with as many as seven analog modems:
 - a. Connect the central site election management system to the telephone line simulator and connect the modems to the remaining telephone line ports
 - b. Setup the phone line numbers in the telephone line simulator
 - c. Use the simulated election to upload the election results
 - i. Use at least eight tabulators in different reporting units
 - ii. Use as many as two tabulators within the same reporting units
 - d. Simulate the following transmission anomalies
 - i. Attempt to upload results from a tabulating device to a computer which is not part of the voting system
 - ii. Attempt to upload results from a non-tabulating device to the central site connected to the modem bank
 - iii. Attempt to load stress by simulating a denial of service (DOS) attack or attempt to upload more than one polling location results (e.g., ten or more polling locations)

Wireless Capability Test Plan

Test Objective: To transfer the results from the tabulator to EMS via a wireless network correctly.

Test Plan:

1. Attempt to transmit results prior to the closing of the polls and printing of results tape.
2. Perform wireless communication suite for election night reporting:
 - a. Use the simulated election to upload the election results using wireless transfer to the secure FTP server (SFTP)
 - b. Use at least eight tabulators in different reporting units
 - c. Use as many as two tabulators within the same reporting unit
3. Simulate the following transmission anomalies
 - a. Attempt to upload results from a tabulating device to a computer which is not part of the voting system
 - b. Attempt to upload results from a non-tabulating device to the SFTP server
 - c. Attempt to load stress by simulating a denial of service (DOS) attack or attempt to upload more than one polling location results (e.g., ten or more polling locations)
 - d. If possible, simulate a weak signal
 - e. If possible, simulate an intrusion

Test Conclusions for Wired and Wireless Transmission

- System must be capable of transferring 100 percent of the contents of results test packs without error for each successful transmission.
- Furthermore, system must demonstrate secure rate of transmission consistent with security requirements.
- System must demonstrate the proper functionality to ensure ease of use for clerks on election night.
- System must be configured such that the modem component remains inoperable until after the official closing of the polls and printing of one (1) copy of the results tape.

PART III: PROPOSED SECURITY PROCEDURES

Staff recommends that as a condition of purchase, any municipality or county which purchases this equipment and uses modem functionality must also agree to the following conditions of approval.

1. Devices which may be incorporated in or attached to components of the system for the purpose of transmitting tabulation data to another data processing system, printing system, or display device shall not be used for the preparation or printing of an official canvass of the vote unless they conform to a data interchange and interface structure and protocol which incorporates some form of error checking.
2. Any jurisdiction using a modeming solution to transfer results from the polling place to the central count location may not activate the modem functionality until after the polling place closes.
3. Any municipality using modeming technology must have one set of results printed before it attempts to modem any data.
4. Any municipality purchasing and using modem technology to transfer results from the polling location to the central count location must conduct an audit of the voting equipment after the conclusion of the canvass process.
5. Default passwords provided by Dominion to county/municipality must be changed upon receipt of equipment.

6. Counties must change their passwords after every election.

PART IV: CONDITIONS FOR APPROVAL (VENDOR)

Additionally, staff recommends that, as a condition/continuing condition of approval, Dominion shall:

1. Reimburse actual costs incurred by the G.A.B. and local election officials, where applicable, in examining the system (*including travel and lodging*) pursuant to state processes.
2. Configure modem component to remain inoperative (incapable of either receiving or sending transmissions) prior to the closing of the polls and the printing of tabulated results.

5.91 Requisites for approval of ballots, devices and equipment. No ballot, voting device, automatic tabulating equipment or related equipment and materials to be used in an electronic voting system may be utilized in this state unless it is approved by the board. The board may revoke its approval of any ballot, device, equipment or materials at any time for cause. No such ballot, voting device, automatic tabulating equipment or related equipment or material may be approved unless it fulfills the following requirements:

- (1) It enables an elector to vote in secrecy and to select the party for which an elector will vote in secrecy at a partisan primary election.
- (3) Except in primary elections, it enables an elector to vote for a ticket selected in part from the nominees of one party, and in part from the nominees of other parties, and in part from independent candidates and in part of candidates whose names are written in by the elector.
- (4) It enables an elector to vote for a ticket of his or her own selection for any person for any office for whom he or she may desire to vote whenever write-in votes are permitted.
- (5) It accommodates all referenda to be submitted to the electors in the form provided by law.
- (6) The voting device or machine permits an elector in a primary election to vote for the candidates of the recognized political party of his or her choice, and the automatic tabulating equipment or machine rejects any ballot on which votes are cast in the primary of more than one recognized political party, except where a party designation is made or where an elector casts write-in votes for candidates of more than one party on a ballot that is distributed to the elector.
- (7) It permits an elector to vote at an election for all persons and offices for whom and for which the elector is lawfully entitled to vote; to vote for as many persons for an office as the elector is entitled to vote for; to vote for or against any question upon which the elector is entitled to vote; and it rejects all choices recorded on a ballot for an office or a measure if the number of choices exceeds the number which an elector is entitled to vote for on such office or on such measure, except where an elector casts excess write-in votes upon a ballot that is distributed to the elector.
- (8) It permits an elector, at a presidential or gubernatorial election, by one action to vote for the candidates of a party for president and vice president or for governor and lieutenant governor, respectively.
- (9) It prevents an elector from voting for the same person more than once for the same office, except where an elector casts excess write-in votes upon a ballot that is distributed to the elector.
- (10) It is suitably designed for the purpose used, of durable construction, and is usable safely, securely, efficiently and accurately in the conduct of elections and counting of ballots.
- (11) It records correctly and counts accurately every vote properly cast and maintains a cumulative tally of the total votes cast that is retrievable in the event of a power outage, evacuation or malfunction so that the records of votes cast prior to the time that the problem occurs is preserved.
- (12) It minimizes the possibility of disenfranchisement of electors as the result of failure to understand the method of operation or utilization or malfunction of the ballot, voting device, automatic tabulating equipment or related equipment or materials.

- (13) The automatic tabulating equipment authorized for use in connection with the system includes a mechanism which makes the operator aware of whether the equipment is malfunctioning in such a way that an inaccurate tabulation of the votes could be obtained.
- (14) It does not employ any mechanism by which a ballot is punched or punctured to record the votes cast by an elector.
- (15) It permits an elector to privately verify the votes selected by the elector before casting his or her ballot.
- (16) It provides an elector with the opportunity to change his or her votes and to correct any error or to obtain a replacement for a spoiled ballot prior to casting his or her ballot.
- (17) Unless the ballot is counted at a central counting location, it includes a mechanism for notifying an elector who attempts to cast an excess number of votes for a single office that his or her votes for that office will not be counted, and provides the elector with an opportunity to correct his or her ballot or to receive and cast a replacement ballot.
- (18) If the device consists of an electronic voting machine, it generates a complete, permanent paper record showing all votes cast by each elector, that is verifiable by the elector, by either visual or nonvisual means as appropriate, before the elector leaves the voting area, and that enables a manual count or recount of each vote cast by the elector.

Chapter GAB 7

APPROVAL OF ELECTRONIC VOTING EQUIPMENT

GAB 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.

GAB 7.02 Agency testing of electronic voting system.

- (1) The board shall conduct a test of a voting system, submitted for approval under s. [GAB 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.

GAB 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. [GAB 7](#).



U. S. ELECTION ASSISTANCE COMMISSION
VOTING SYSTEM TESTING AND CERTIFICATION PROGRAM
1335 East West Highway, Suite 4300
Silver Spring, MD 20910

November 25, 2014

Ian Piper
Director, Federal Certification
Dominion Voting Systems
1201 18th St., Suite 210
Denver, CO 80202

Sent via mail and e-mail

Re: Agency Decision – Grant of Certification

Dear Ian Piper,

As required under §5.9 of the EAC's Voting System Testing and Certification Program Manual, Dominion Voting Systems and NTS Huntsville have provided the necessary documentation for the Democracy Suite 4.14-D voting system verifying that 1) the trusted build has been performed, 2) software has been deposited in an approved repository, 3) system identification tools are available to election officials, and 4) signed a letter stating, under penalty of law, that you have:

1. Performed a trusted build consistent with the requirements of §5.6 of the EAC's Certification Manual;
2. Deposited software consistent with §5.7 of the EAC's Certification Manual;
3. Created and made available system identification tools consistent with §5.8 of the EAC's Certification Manual (a copy and description of the system identification tool developed must be provided with the letter); and
4. Upon a final decision to grant certification, the manufacturer accepts the certification and all conditions placed on the certification.

Based on the review of the documentation above and the fact that Dominion Democracy Suite 4.14-D successfully completed conformance testing to the 2005 Voluntary Voting System Guidelines (2005 VVSG), the Voting System Testing & Certification Program Director has recommended EAC certification of this system.

I have reviewed all of the documentation and concur with the Program Director's recommendation. As such, I hereby grant EAC Certification to Dominion Democracy Suite to the 2005 Voluntary Voting System Guidelines.

The EAC certification number issued for this system is: **DVS-DemSuite4.14-D**. In addition, a Certificate of Conformance shall be provided to Dominion Voting Systems as evidence of the EAC certification of the Democracy Suite 4.14-D. The Certificate of

Conformance shall be provided to Dominion Voting Systems no later than five business day from the date of this letter, and it shall be posted on the EAC's Web site.

As stated in §5.11 of the EAC's Certification Manual, the EAC certification and certificate apply only to the specific voting system configuration(s) identified, submitted, and evaluated under the Certification Program. Any modification to the system not authorized by the EAC shall void the certificate.

If you have any questions or need further information, please do not hesitate to contact Brian Hancock or Jessica Myers at your earliest convenience. I thank you in advance for your time and attention to this matter and congratulate on this achievement.

Sincerely,

A handwritten signature in blue ink, appearing to read "Alice P. Miller".

Alice P. Miller
Chief Operating Officer and Acting Executive Director
Decision Authority

Cc: Brian Hancock, U.S. Election Assistance Commission
Frank Padilla, NTS Huntsville



United States Election Assistance Commission



Certificate of Conformance

Dominion Voting Systems Democracy Suite 4.14-D

The voting system identified on this certificate has been evaluated at an accredited voting system testing laboratory for conformance to the 2005 *Voluntary Voting System Guidelines (2005 VVSG)*. Components evaluated for this certification are detailed in the attached Scope of Certification document. This certificate applies only to the specific version and release of the product in its evaluated configuration. The evaluation has been verified by the EAC in accordance with the provisions of the *EAC Voting System Testing and Certification Program Manual* and the conclusions of the testing laboratory in the test report are consistent with the evidence adduced. This certificate is not an endorsement of the product by any agency of the U.S. Government and no warranty of the product is either expressed or implied.

Product Name: Democracy Suite

Model or Version: 4.14-D

Name of VSTL: NTS Huntsville

EAC Certification Number: DVS-DemSuite4.14-D

Date Issued: 11/25/2014

*Chief Operating Officer & Acting Executive Director
U.S. Election Assistance Commission*

Scope of Certification Attached

Manufacturer: *Dominion Voting*
System Name: *Democracy Suite 4.14-D*
Certificate: *DVS-DemSuite4.14-D*

Laboratory: *NTS Huntsville*
Standard: *VVSG 1.0 (2005)*
Date: *November 25, 2014*



Scope of Certification

This document describes the scope of the validation and certification of the system defined above. Any use, configuration changes, revision changes, additions or subtractions from the described system are not included in this evaluation.

Significance of EAC Certification

An EAC certification is an official recognition that a voting system (in a specific configuration or configurations) has been tested to and has met an identified set of Federal voting system standards. An EAC certification is **not**:

- An endorsement of a Manufacturer, voting system, or any of the system's components.
- A Federal warranty of the voting system or any of its components.
- A determination that a voting system, when fielded, will be operated in a manner that meets all HAVA requirements.
- A substitute for State or local certification and testing.
- A determination that the system is ready for use in an election.
- A determination that any particular component of a certified system is itself certified for use outside the certified configuration.

Representation of EAC Certification

Manufacturers may not represent or imply that a voting system is certified unless it has received a Certificate of Conformance for that system. Statements regarding EAC certification in brochures, on Web sites, on displays, and in advertising/sales literature must be made solely in reference to specific systems. Any action by a Manufacturer to suggest EAC endorsement of its product or organization is strictly prohibited and may result in a Manufacturer's suspension or other action pursuant to Federal civil and criminal law.

System Overview:

The Dominion Democracy Suite 4.14-D Voting System is a modification to the certified Democracy Suite 4.14-B Voting System. The full Dominion Democracy Suite 4.14-B Voting System description can be found in the EAC Certificate of Conformance dated January 7, 2014.

The Dominion Democracy Suite 4.14-D Voting System includes the modifications listed below:

1. Introduction of a new optional Adjudication application that allows review of voter intent on a ballot by ballot basis from the ImageCast Central device utilized during either absentee voting or post-voting activity phases.

2. In the EMS EDT module, added support for Cross-Over rule for Open Primaries into the spreadsheet.
3. In the EMS EED module:
 - a. Added the ability to override global settings for visual elements on the level of contest.
 - b. Added the ability to print graphics on selected contests in the candidate cell next to the candidate name.
 - c. Added the ability to generate a printer calibration sheet.
 - d. Added the ability to render crop marks on the ballot.
 - e. Added basic control of the layout and content of Write-in cells.
 - f. Extended election files for ICP with list of audio languages per Ballot Manifestation. Support for languages without textual representation, i.e. audio-only languages (Navajo)
 - g. Added new Office Type Party Preference.
 - h. Added ability to render Party Preference Contests on ballot.
 - i. Added ability to pass Party Preference Contest Information to tabulators via election files.
 - j. Added support for Undeclared Open Primaries into election files for tabulators.
 - k. Added ability to apply Cross-Over rule to Elector Groups.
 - l. Added support for creation of audio for Electoral Groups.
4. In the EMS RTR module:
 - a. Added the ability to manage reporting profiles.
 - b. Added ability to import/export reporting profiles.
 - c. Added ability to handle Party Preference Contest results.
 - d. Added support for Undeclared Open Primary voting rules.
5. Across the system, added support for Open Primary elections.
6. Updated Dominion logos used in the applications.
7. In the ICP application:
 - a. Changes in program code for accessing thresholds in the battery voltage table.
 - b. Added support for languages without textual representation (i.e., Navajo).
 - c. Added Open Primary including the Pick-A-Party variant as required for WI
 - d. Added support for Open Primaries including a DCF option to group per election group on the report tape.
 - e. Added DCF option to format Zero Totals tape separate from Results tape format.
8. In the ICE application:
 - a. Modified override default configuration. Override functionality enables improved configurability in the following ways: new translation adding, translation files overriding, and static audio files overriding.
 - b. Added MBS (Machine Behavioral Settings) options to report multiple write-in positions separately on zero reports and results reports, to provide Total Cast and Total Voters on the results transfer report, and to support an optional external COTS display for accessible voting sessions.
 - c. Improved presentations of voting rule error messages.
 - d. Added three additional languages to the install package: Hindi, Khmer, and Thai.

- e. Added the ability to allow unit to scan and cast marked ballots while ballot selections are being made concurrently during an independent accessible voting session, using the ATI and the external COTS display.
- f. Added the ability to enable an external monitor in the diagnostics menu.
- g. Added additional options to the Print Head Servicing feature: frequency of print head cleaning, and number of servicing routines in the cleaning procedure.
- h. In the ICE configuration, added an optional external COTS display to present the ballot image and the voter's selections during an accessible voting session.
- i. Added a new main LCD panel.
- j. The following logos were updated: Boot Startup Logo, Linux Startup Logo, Application Startup Logo, Verification Screen (displays the new logo and a new monochrome hourglass widget.)
- k. For open primaries, added ability to respond to cross-over ballot errors. New MBS options introduced:
 - Show/hide Non-Partisan contests on the reports.
 - Show/hide Elector Groups on the reports.
- l. For open primaries, improvements were made to the Ballot Review function, where if there are no votes on entire Open Primary ballot, for the contest that belongs to an Elector Group, report it as "NO VOTES CAST."
- m. Support for Party Preference rule in Standard and AVS voting sessions.
- n. Added ability to report Party Preference Contest on the tape.
- o. For support of audio notification when voting error occurs in Standard voting session, added MBS option to enable/disable audio, and added MBS option for volume adjustment.
- p. Modified listing of audio languages at the beginning of an AVS session to presented according to 'global order' from EMS. The default audio language is always listed first.

9. In the ICC configuration:

- a. Added the Canon DR-G1130 scanner.
- b. Added the ability to apply Open Primary voting rules (e.g. Stop on Cross Votes).

10. In the EMS Standard Server configuration, added a hardware RAID controller to improve the performance of that computer configuration utilizing the following parameters:

- Raid 1 (system partition) = (2) 1 TB mirrored drives. One disk needed for recovery.
- Raid 10 (data partition) = (4) 1 TB striped drives. Two disks needed for recovery.

The Dominion Voting Systems Democracy Suite 4.14-D System is a paper-based optical scan voting system. The certified system consists of four major components:

1. The Election Management System (EMS)
2. ImageCast Evolution (ICE) precinct scanner with optional ballot marking capabilities
3. ImageCast Precinct (ICP) precinct scanner
4. ImageCast Central (ICC) central count scanner

The Dominion Voting System Technical Data Package was the source for much of the summary information that follows in this section.

Election Management System

The Dominion Voting Systems Democracy Suite 4.14-D EMS consists of eleven components running as either a front-end/client application or as a back-end/server application. Below is a list and brief description of each.

- Democracy Suite 4.14-D EMS Election Event Designer client application - integrates election definition functionality and represents a main pre-voting phase end-user application.
- Democracy Suite 4.14-D EMS Results Tally and Reporting client application – integrates election results acquisition, validation, tabulation, reporting and publishing capabilities and represents a main post-voting phase end-user application.
- Democracy Suite 4.14-D EMS Audio Studio client application - represents an end-user helper application used to record audio files for a given election project. As such, it is utilized during the pre-voting phase of the election cycle.
- Democracy Suite 4.14-D EMS Data Center Manager client application - represents a system level configuration application used in EMS back-end data center configuration.
- Democracy Suite 4.14-D EMS Application Server application - represents a server side application responsible for executing long running processes, such as rendering ballots, generating audio files and election files.
- Democracy Suite 4.14-D EMS Network Attached Storage (NAS) Server application – represents a server side file repository for election project file based artifacts, such as ballots, audio files, reports, log files, and election files.
- Democracy Suite 4.14-D EMS Database Server application - represents a server side RDBMS repository of the election project database which holds all the election project data, such as districts, precincts, candidates, contests, ballot layouts, tabulators, vote totals, and poll status.
- Democracy Suite 4.14-D EMS Election Data Translator (EDT) – Exports and Imports data in a format suitable for rapid interaction with Election Event Designer (EED).
- Democracy Suite 4.14-D EMS Adjudication – Represents the server and client components responsible for adjudication, including report and generation of adjudicated result files from ImageCast Central tabulators.
- Democracy Suite 4.14-D EMS Adjudication Service – Represents a server side application which provides ballot information, such as contests, candidates and their coordinates from EMS to the Adjudication application.
- Democracy Suite 4.14-D EMS File System Service – A stand-alone services that runs on client machines, enabling access to low level operating system API for partitioning CF cards and reading raw partition data on the ICP CF card.

The EMS platform was tested in two deployable physical hardware configurations:

EMS Express hardware configuration - all EMS software components were installed on a single physical PC or laptop. This is a stand-alone configuration.

EMS Standard hardware configuration - the EMS server components were installed on a single physical server, in addition to the Local Area Network (LAN) switch devices, while the EMS client components were installed on one or more physical PCs or laptops. In this configuration, all system components were interconnected in a client-server local LAN environment.

- The ImageCast Evolution (ICE) Precinct Ballot tabulator. It employs a precinct-level optical scan ballot counter (tabulator) in conjunction with an external ballot box. This tabulator is designed to mark and/or scan paper ballots, interpret voting marks, communicate these interpretations back to the voter (either visually through the integrated LCD display and/or audibly via integrated headphones), and upon the voter's acceptance, deposit the ballots into the secure ballot box. The tabulator also features binary input devices which permit voters who cannot negotiate a paper ballot to generate a synchronously human and machine-readable ballot from elector-input vote selections (ADA sessions). The supported binary input devices include a Sip and Puff device, Foot Pedals, and Audio Tactile Interface (ATI). The addition of the external monitor added in this modification allows for simultaneous ADA and ballot casting sessions. In this sense, the ImageCast Evolution acts as a ballot marking device. These devices are interchangeable and may be shared between the ICE and ICP units. Additionally, ballots marked by the ImageCast Evolution may be subsequently scanned on the ImageCast Precinct or the ImageCast Central if a recount is required.
- ImageCast Precinct (ICP) precinct scanner The ImageCast Precinct is a precinct-based optical scan ballot tabulator that is used in conjunction with ImageCast-compatible ballot storage boxes. The system is designed to scan marked paper ballots, interpret voter marks on the paper ballot, and safely store and tabulate each vote from the paper ballot. Like the ImageCast Evolution, the ImageCast Precinct also supports enhanced accessibility voting which is enabled by connecting the interchangeable Sip-and-Puff device, Foot Pedals, or Audio Tactile Interface (ATI).
- ImageCast Central (ICC) central count scanner. The ImageCast Central Count system is a high-speed, central ballot scan tabulator based on Commercial off the Shelf (COTS) hardware, coupled with a custom-made ballot processing software application. It is used for high-speed scanning and counting of paper ballots. The ICC system hardware consists of the following two COTS devices working together to provide accurate ballot processing functionality:
 - Canon DR-X10C Scanner: Provides high-speed ballot scanning functionality, transferring the scanned images to the connected ImageCast Central Workstation.
 - Canon DR-G1130 Scanner: Provides high-speed ballot scanning functionality, transferring the scanned images to the connected ImageCast Central Workstation.
 - ImageCast Central Workstation: An all-in-one PC workstation used for ballot image and election rules processing. The workstation can be deployed in a stand-alone or networked configuration, allowing for automatic results transfers to the EMS Datacenter. The ImageCast Central workstation is COTS hardware which executes software for both image-processing and election rules application, such as "Vote for 2."

Language capability: This voting system supports: Alaska Native, Aleut, Athabaskan, Chinese, English, Eskimo, Filipino, French, Hindi, Japanese, Khmer, Korean, Spanish, Thai, and Vietnamese. Additionally, the following Native American languages are supported: Apache, Jicarilla, Keres, Navajo, Seminole, Towa, Ute, and Yuman.

Components Included:

This section provides information describing the components and revision level of the primary components included in this Certification.

System Component	Software or Firmware Version	Hardware Version	Operating System or COTS	Comments
ImageCast Precinct	4.14.17-US	320A	uClinux	
ImageCast Precinct	4.14.17-US	320C	uClinux	
ImageCast Evolution	4.14.21	410A	Ubuntu linux	
ImageCast Central	4.14.17	Canon DR-X10C Canon DR-G1130	COTS	Windows 7 Professional x64
Democracy Suite election management system	4.14.37	N/A (application software)	Windows Server 2008 R2	
Adjudication	2.4.1.3201	N/A (application software)	Windows 7 Professional x64 or Windows Server 2008 R2	
Server Hardware		Dell PowerEdge T620	Windows Server 2008 R2	Processor: Intel Xeon E5-2620 2.0 GHz, Memory: 2x 4GB 1333MHz DDR3, Hard Drive Capacity: 2x 500GB
Client Hardware		Dell Precision T1700	Windows 7 Professional	Intel Core i5- 4570@3.2GHz, 8GB RAM, 500 GB HD
Client Hardware		DELL Latitude e6540	Windows 7 Professional x64	Intel Core i7- 4810MQ@2.8GHz, 8GB RAM, 500GB HD
ICC Workstation Hardware		DELL Optiplex 9020 All in One	Windows 7 Professional x64	Intel Core i7- 4770S@3.1GHz, 8GB RAM, 500 GB HD
ICC Workstation Hardware		DELL Optiplex 9030 All in One	Windows 7 Professional x64	Intel Core i5- 4590S@3.0GHz 8GB RAM, 500 GB HD
NAS disk array		Rocstor Guardian 4RM	COTS	4TB or 8TB size
ICE external LCD monitor		AOC	E1649FWU	

System Component	Software or Firmware Version	Hardware Version	Operating System or COTS	Comments
Additional data storage		Rocstor Commander 2UE or Hawker HX	COTS	500GB or 1TB
iButton (SHA-1) with USB Reader/Writer		USB R/W: DS9490R# with DS1402-RP8+ iButton: DS1963S	COTS	MAXIM/Dallas Semiconductor
LCD monitor		DELL 1909W or DELL N445N or Soyo 18.5" wide LCD or Samsung 23" wide LCD	COTS	
Audio Adapter		Soundwave 7.1 USB Audio Adapter	COTS	
PCI Software	Soundwave 7.1		COTS	
USB software	Soundwave 7.1 USB		COTS	For audio adapter
Network switch		5-Port Switch: D-Link DES-1105	COTS	Also can use DGS-108 if 8-port needed
Mouse		Dell or Microsoft	COTS	With rollerball
Keyboard		Kensington, Microsoft, or IBM	COTS	USB enabled
Compact Flash Reader/Writer		SanDisk or GGI Gear	COTS	
Accessible Tactile Interface (ATI)		1.10		
Headphones		Cyber Acoustics	COTS	Cyber Acoustics ACM-70
eSATA PCI card		SIIG, Inc	COTS	eSATA II PCIe Pro Card
Sip and Puff		Origin Instruments	COTS	Origin Instruments AirVoter
Disposable Sip and Puff Mouthpieces		Origin Instruments	COTS	Origin Instruments AC-310
Footswitch Pair		Kinesis	COTS	#971
Compact Flash cards		SanDisk Extreme; Sandisk, or RiData	COTS	SanDisk SDCFX-016G, SDCFX-032G RiData CFC-14A, RDCF8G-233XMCB2-1, RDCF16G-233XMCB2-1, RDCF32G-233XMCB2-1
Machine Tape rolls			COTS	Available from Dominion Voting
Tamper Evident Seals			COTS	Available from Dominion Voting
Ballot Privacy Sleeves		Various lengths to fit the ballot		Available from Dominion Voting

System Component	Software or Firmware Version	Hardware Version	Operating System or COTS	Comments
Machine cleaning kit		For ImageCast Precinct, Evolution, and Central		Available from Dominion Voting

System Limitations

This table depicts the limits the system has been tested and certified to meet.

Characteristic	Limiting Component	Limit	Comment
Ballot positions	The ballot	462	Standard Configuration
Precincts in an election	EMS	1000	Standard Configuration
Contests in an election	EMS	4000	Standard Configuration
Candidates/Counters in an election	EMS	40000	Standard Configuration
Candidates/Counters in a precinct	Tabulator	462	Standard Configuration
Candidates/Counters in a tabulator	Tabulator	10000	Standard Configuration
Ballot Styles in an election	Tabulator	4000	Standard Configuration
Contests in a ballot style	Tabulator	156	Standard Configuration
Candidates in a contest	EMS	462	Standard Configuration
Ballot styles in a precinct	Tabulator	5	Standard Configuration
Number of political parties	Tabulator	30	Standard Configuration
“vote for” in a contest	Tabulator	30	Standard Configuration
Supported languages in an election	Tabulator	5	Standard Configuration
Number of write-ins	The ballot	462	Standard Configuration
Ballot positions	The ballot	462	Express Configuration
Precincts in an election	EMS	250	Express Configuration
Contests in an election	EMS	250	Express Configuration
Candidates/Counters in an election	EMS	2500	Express Configuration
Candidates/Counters in a precinct	Tabulator	462	Express Configuration
Candidates/Counters in a tabulator	EMS	2500	Express Configuration
Ballot Styles in an election	EMS	750	Express Configuration
Contests in a ballot style	Tabulator	156	Express Configuration
Candidates in a contest	EMS	231	Express Configuration
Ballot styles in a precinct	Tabulator	5	Express Configuration
Number of political parties	Tabulator	30	Express Configuration
“vote for” in a contest	Tabulator	30	Express Configuration
Supported languages in an election	Tabulator	5	Express Configuration
Number of write-ins	The ballot	462	Express Configuration

Functionality

2005 VVSG Supported Functionality Declaration

Feature/Characteristic	Yes/No	Comment
Voter Verified Paper Audit Trails		
VVPAT	N/A	
Accessibility		

Feature/Characteristic	Yes/No	Comment
Forward Approach	YES	
Parallel (Side) Approach	YES	
Closed Primary		
Primary: Closed	YES	
Open Primary		
Primary: Open Standard (provide definition of how supported)	YES	
Primary: Open Blanket (provide definition of how supported)	YES	
Partisan & Non-Partisan:		
Partisan & Non-Partisan: Vote for 1 of N race	YES	
Partisan & Non-Partisan: Multi-member (“vote for N of M”) board races	YES	
Partisan & Non-Partisan: “vote for 1” race with a single candidate and write-in voting	YES	
Partisan & Non-Partisan “vote for 1” race with no declared candidates and write-in voting	YES	
Write-In Voting:		
Write-in Voting: System default is a voting position identified for write-ins.	YES	
Write-in Voting: Without selecting a write in position.	NO	
Write-in: With No Declared Candidates	YES	
Write-in: Identification of write-ins for resolution at central count	YES	
Primary Presidential Delegation Nominations & Slates:		
Primary Presidential Delegation Nominations: Displayed delegate slates for each presidential party	YES	
Slate & Group Voting: one selection votes the slate.	YES	
Ballot Rotation:		
Rotation of Names within an Office; define all supported rotation methods for location on the ballot and vote tabulation/reporting	YES	Equal time rotation
Straight Party Voting:		
Straight Party: A single selection for partisan races in a general election	YES	
Straight Party: Vote for each candidate individually	YES	
Straight Party: Modify straight party selections with crossover votes	YES	
Straight Party: A race without a candidate for one party	YES	
Straight Party: “N of M race (where “N”>1)	YES	
Straight Party: Excludes a partisan contest from the straight party selection	YES	
Cross-Party Endorsement:		
Cross party endorsements, multiple parties endorse one candidate.	YES	
Split Precincts:		
Split Precincts: Multiple ballot styles	YES	
Split Precincts: P & M system support splits with correct contests and ballot identification of each split	YES	
Split Precincts: DRE matches voter to all applicable races.	N/A	
Split Precincts: Reporting of voter counts (# of voters) to the precinct split level; Reporting of vote totals is to the precinct level	YES	
Vote N of M:		
Vote for N of M: Counts each selected candidate, if the maximum is not exceeded.	YES	
Vote for N of M: Invalidates all candidates in an overvote (paper)	YES	

Feature/Characteristic	Yes/No	Comment
Recall Issues, with options:		
Recall Issues with Options: Simple Yes/No with separate race/election. (Vote Yes or No Question)	YES	
Recall Issues with Options: Retain is the first option, Replacement candidate for the second or more options (Vote 1 of M)	NO	
Recall Issues with Options: Two contests with access to a second contest conditional upon a specific vote in contest one. (Must vote Yes to vote in 2 nd contest.)	NO	
Recall Issues with Options: Two contests with access to a second contest conditional upon any vote in contest one. (Must vote Yes to vote in 2 nd contest.)	NO	
Cumulative Voting		
Cumulative Voting: Voters are permitted to cast, as many votes as there are seats to be filled for one or more candidates. Voters are not limited to giving only one vote to a candidate. Instead, they can put multiple votes on one or more candidate.	NO	
Ranked Order Voting		
Ranked Order Voting: Voters can write in a ranked vote.	NO	
Ranked Order Voting: A ballot stops being counting when all ranked choices have been eliminated	NO	
Ranked Order Voting: A ballot with a skipped rank counts the vote for the next rank.	NO	
Ranked Order Voting: Voters rank candidates in a contest in order of choice. A candidate receiving a majority of the first choice votes wins. If no candidate receives a majority of first choice votes, the last place candidate is deleted, each ballot cast for the deleted candidate counts for the second choice candidate listed on the ballot. The process of eliminating the last place candidate and recounting the ballots continues until one candidate receives a majority of the vote	NO	
Ranked Order Voting: A ballot with two choices ranked the same, stops being counted at the point of two similarly ranked choices.	NO	
Ranked Order Voting: The total number of votes for two or more candidates with the least votes is less than the votes of the candidate with the next highest number of votes, the candidates with the least votes are eliminated simultaneously and their votes transferred to the next-ranked continuing candidate.	NO	
Provisional or Challenged Ballots		
Provisional/Challenged Ballots: A voted provisional ballots is identified but not included in the tabulation, but can be added in the central count.	YES	
Provisional/Challenged Ballots: A voted provisional ballots is included in the tabulation, but is identified and can be subtracted in the central count	NO	
Provisional/Challenged Ballots: Provisional ballots maintain the secrecy of the ballot.	YES	

Feature/Characteristic	Yes/No	Comment
Overvotes (must support for specific type of voting system)		
Overvotes: P & M: Overvote invalidates the vote. Define how overvotes are counted.	YES	Overvotes cause a warning to the voter and can be configured to allow voter to override.
Overvotes: DRE: Prevented from or requires correction of overvoting.	N/A	
Overvotes: If a system does not prevent overvotes, it must count them. Define how overvotes are counted.	YES	If allowed via voter override, overvotes are tallied separately.
Overvotes: DRE systems that provide a method to data enter absentee votes must account for overvotes.	N/A	
Undervotes		
Undervotes: System counts undervotes cast for accounting purposes	YES	
Blank Ballots		
Totally Blank Ballots: Any blank ballot alert is tested.	YES	Precinct voters receive a warning; both precinct and central scanners will warn on blank ballots.
Totally Blank Ballots: If blank ballots are not immediately processed, there must be a provision to recognize and accept them	YES	Blank ballots are flagged. These ballots can be manually examined and then be scanned and accepted as blank; or precinct voter can override and accept.
Totally Blank Ballots: If operators can access a blank ballot, there must be a provision for resolution.	YES	Operators can examine a blank ballot, re-mark if needed and allowed, and then re-scan it.
Networking		
Wide Area Network – Use of Modems	NO	
Wide Area Network – Use of Wireless	NO	
Local Area Network – Use of TCP/IP	YES	Client/server only
Local Area Network – Use of Infrared	NO	
Local Area Network – Use of Wireless	NO	
FIPS 140-2 validated cryptographic module	YES	
Used as (if applicable):		
Precinct counting device	YES	ImageCast Precinct and Evolution
Central counting device	YES	ImageCast Central

State of Wisconsin \ Government Accountability Board

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JUDGE GERALD C. NICHOL
Chairperson

KEVIN J. KENNEDY
Director and General Counsel

MEMORANDUM

DATE: For the June 18, 2015 Board Meeting

TO: Members, Wisconsin Government Accountability Board

FROM: Jonathan Becker, Administrator
Division of Ethics and Accountability

SUBJECT: Attorney General Opinion Request

In its December 2014 Audit Report 14-14, the Legislative Audit Bureau (“LAB”) recommended that the G.A.B. staff “comply with s. 13.68 (6), Wis. Stats., by prohibiting principals that have not filed timely semiannual expense statements from allowing lobbyists to lobby on their behalf or request that the Legislature modify this provision[.]” WIS. LEGISLATIVE AUDIT BUREAU, GOVERNMENT ACCOUNTABILITY BOARD REPORT 14-14, 64 (Dec. 2014).

The text of the statute is as follows:

SUSPENSION FOR FAILURE TO FILE A COMPLETE EXPENSE STATEMENT. If a principal fails to timely file a complete expense statement under this section, the board may suspend the privilege of any lobbyist to lobby on behalf of the principal. Upon failure of a principal to file the required expense statement, the board shall mail written notices to the principal and to any lobbyist for whom a written authorization has been filed under s. 13.65 to act as a lobbyist for the principal informing them that unless the principal files the delinquent statement within 10 business days after the date of mailing the notices, no lobbyist may lobby on behalf of the principal. The privilege of any lobbyist to lobby on behalf of the principal shall be restored immediately upon filing the delinquent statement. The notices shall be sent by certified mail to the last-known addresses of the principal and lobbyist. Any principal or lobbyist who is aggrieved by a suspension of lobbying privileges under this subsection may request a hearing under s. 227.42 regarding the suspension.

The Board has never suspended a lobbyist’s privilege to lobby as permitted by this statute, but the Board has achieved 100% compliance with the lobbying law’s filing requirements, albeit some principals file late. The staff’s concern has been that the statute may infringe the due process clauses and free speech protections of the U.S. and Wisconsin Constitutions by requiring the Board to suspend an organization’s ability to petition the Legislature without a prior hearing.

The LAB acknowledged staff's concern but noted that the Board has never asked the Legislature to change the statute. Before undertaking that process, staff believes seeking the advice of the Attorney General as to whether staff's concern is justified seems the appropriate course of action.

A draft opinion request accompanies this memorandum.

Proposed Motion: The Government Accountability Board directs staff to submit the proposed request for a formal opinion to Wisconsin Attorney General.

State of Wisconsin \ Government Accountability Board

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JUDGE GERALD C. NICHOL
Chairperson

KEVIN J. KENNEDY
Director and General Counsel

Via Hand Delivery

June XX, 2015

The Honorable Brad Schimel, Attorney General
Wisconsin Department of Justice
State Capitol, Room 114 East
Madison, Wisconsin 53702

Opinion Request: Constitutionality of WIS. STAT. §13.68(6)

Dear Attorney General Schimel:

I write on behalf of the Government Accountability Board ("G.A.B." or "Board") to ask your opinion as to whether WIS. STAT. §13.68(6) is constitutional. The statute provides that if a lobbying principal¹ fails to file a timely and complete six-month expense report, the Board may suspend any lobbyist's privilege to lobby on behalf of that principal. The Board may suspend such lobbying privileges immediately upon failure to file and without a hearing.

The Board questions the constitutionality of WIS. STAT. §13.68(6) because the statute implicates a principal's constitutional rights to free speech and procedural due process under both the United States Constitution and the Wisconsin Constitution. *See* U.S. CONST. amend. I; amend. IV, and amend. XV, §1; *see also* Wis. Const. art. I, §§1, 3; *see also* *County of Kenosha v. C & S Management, Inc.*, 223 Wis. 2d 372, 393 (1999) (holding that the language of the due process clause in the Wisconsin Constitution differs from the language of the due process clause in the United State Constitution, but the "two provide identical procedural due process protections.").

The text of the statute is as follows:

SUSPENSION FOR FAILURE TO FILE A COMPLETE EXPENSE STATEMENT. If a principal fails to timely file a complete expense statement under this section, the board may suspend the privilege of any lobbyist to lobby on behalf of the principal. Upon failure of a principal to file the required expense statement, the board shall mail written notices to the principal and to any lobbyist for whom a written authorization has been filed under s. 13.65 to act as a lobbyist for the principal informing them that unless the principal files the delinquent statement within 10 business days after the date of mailing the notices, no lobbyist may lobby on behalf of the principal. The privilege of any lobbyist to lobby on behalf of the principal shall be restored immediately upon filing the delinquent statement. The notices shall be sent by certified mail to the last-known addresses of the principal and lobbyist.

¹ A "principal" is defined as "any person who employs a lobbyist. If an association, corporation, limited liability company or partnership engages a lobbyist, an officer, employee, member, shareholder or partner of the association, corporation, limited liability company or partnership shall not be considered a principal." WIS. STAT. §13.62(12).

Any principal or lobbyist who is aggrieved by a suspension of lobbying privileges under this subsection may request a hearing under s. 227.42 regarding the suspension.

The Board has never suspended a lobbyist's privilege to lobby as permitted by this statute, but the Board has achieved 100% compliance with the lobbying law's filing requirements, albeit some principals file late. Nevertheless, in a December 2014 Audit Report 14-14, the Legislative Audit Bureau ("LAB") recommended that the G.A.B. staff "comply with s. 13.68(6), Wis. Stats., by prohibiting principals that have not filed timely semiannual expense statements from allowing lobbyists to lobby on their behalf or request that the Legislature modify this provision[.]" WIS. LEGISLATIVE AUDIT BUREAU, GOVERNMENT ACCOUNTABILITY BOARD REPORT 14-14, 64 (Dec. 2014).

The plain language of the statute does not require the Board to act as the LAB suggested; the Board has discretionary authority only. "The board *may* suspend the privilege of any lobbyist to lobby upon behalf of the principal." WIS. STAT. §13.68(6) (emphasis added). This discretionary language of the statute is inconsistent with the LAB's directive that the G.A.B. is required to impose lobbyist suspensions.

The Board's concern is that the statute may infringe the due process clauses and free speech protections of the U.S. and Wisconsin Constitutions by permitting the Board to suspend an organization's ability to petition the Legislature without a prior hearing.

ANALYSIS

1. Wisconsin's Statutes Regulating Lobbying—a First Amendment Right—are Generally Constitutional Because They Survive a Strict Scrutiny Analysis of the State's Compelling Interest and the Minimal Imposition Upon Free Speech.

The Board accepts that Wisconsin's statutes that regulate lobbying are generally constitutional. Lobbying is a First Amendment-protected² right, and it is a right that governments may regulate. *See United States v. Harris*, 347 U.S. 612, 614-17 (1954) (confirmed Congress's right to require registration of lobbying); *see also Regan v. Taxation with Representation*, 461 U.S. 540, 552 (1983) (Blackmun, J., concurring) (declaring for the first time, albeit in a concurring opinion, that "lobbying is protected by the First Amendment."). Lobbying is also embodied in the Fourteenth Amendment. *NAACP v. Alabama*, 357 U.S. 449, 469 (1958) (The "freedom to engage in association for the advancement of beliefs and ideas [, which] is an inseparable aspect of the 'liberty' assured by the . . . Fourteenth Amendment."). Curtailments of the freedoms of speech and to engage in association are subject to the "closest" judicial scrutiny. *NAACP v. Alabama*, 357 U.S. at 460-61; *see also Barker v. Wisconsin Ethics Board*, 841 F. Supp. 255 (W.D. Wis. 1993) (holding that the standard of review of a law that prohibited lobbyists from furnishing personal services to a campaign is "rigorous" because the law directly prohibited constitutionally protected speech). Strict scrutiny only renders a right-curtailling law constitutional if the law

² Any reference to an "Amendment" in this analysis may refer to both the United States Constitution and the Wisconsin Constitution, if not specifically distinguished. Both constitutions protect the same rights at issue. The freedoms of speech and of association are protected by the First Amendment of the United States Constitution and Article I, Section 3 of the Wisconsin Constitution. Due process is protected by the Fifth and Fourteenth Amendments of the United States Constitution and Article I, Section 1 of the Wisconsin Constitution. *See County of Kenosha v. C & S Management, Inc.*, 223 Wis. 2d at 393.

advances a compelling governmental interest. *Barker*, 841 F. Supp. at 259. It is a compelling governmental interest to prevent government corruption. *Id.* Thus, the Board does not question that Wisconsin's reporting requirements for lobbying are generally constitutional insofar as they help prevent government corruption.

2. WIS. STAT. §13.68(6) is Unconstitutional Because it Permits the Board to Violate a Principal's Procedural Due Process Rights.

Although Wisconsin's lobbying laws are generally constitutional, WIS. STAT. §13.68(6) appears to give the Board discretion to unconstitutionally deprive a principal of its First Amendment right to lobby by circumventing a principal's procedural due process rights.

a. A Principal's Right to Lobby is a Liberty Interest Protected by the Fifth and Fourteenth Amendments to the United States Constitution.

The right to lobby, as a right to speech and a right to freely associate, is a constitutionally-protected liberty interest based on the First Amendment. *See NAACP v. Alabama*, 357 U.S. at 469. Laws that curtail First Amendment rights, regardless of the severity of the curtailment, invoke procedural due process rights. *Goss v. Lopez*, 419 U.S. 565, 575-76 (1975) (citation omitted); *see also Board of Regents of State Colleges v. Roth*, 408 U.S. 564, 581 (1972) (The "First Amendment, applicable to the States by reason of the Fourteenth Amendment, protects the individual against state action when it comes to freedom of speech and of press and the related freedoms guaranteed by the First Amendment; and the Fourteenth protects 'liberty' and 'property[.]'"). WIS. STAT. §13.68(6) permits the Board to deprive a principal of a First Amendment-protected right to lobby, which invokes that principal's Fifth and Fourteenth Amendment rights.

b. The Board May Not Restrict a Principal's Liberty Interest Unless it First Affords the Principal Minimal Procedural Due Process Requirements.

Any government-imposed deprivation of life, liberty (such as the right to lobby), or property must be preceded by notice of the intended deprivation and the opportunity for a hearing "appropriate to the nature of the deprivation." *Goss*, 419 U.S. at 578-79 (citing *Mullane v. Central Hanover Trust Co.*, 339 U.S. 306, 313 (1950)); *State v. I, A Woman-Part II*, 191 N.W.2d 897, 903, 53 Wis.2d 102 (1971). The nature of the deprivation may permit simultaneous notice and hearing, and the nature of the deprivation may also permit informal hearings. *Goss*, 419 at 579. However, regardless of the form of the notice and hearing, the notice and hearing must precede deprivation of the fundamental right. *Id.*; *I, A Woman-Part II*, 191 N.W.2d at 903. WIS. STAT. §13.68(6) permits the Board to deprive a principal of the right to lobby immediately upon notice but without first providing any kind of hearing. A hearing is required only upon the request of a principal after the Board imposes the deprivation.

c. Any Exceptions to Procedural Due Process are Not Applicable to WIS. STAT. §13.68(6).

Under certain circumstances, a government may deprive a fundamental right without first providing basic due process requirements. *Parratt v. Taylor*, 451 U.S. 527, 539 (1981). First,

due process's notice and hearing requirements are not necessary if: a) quick action is necessary: or b) meaningful pre-deprivation notice and hearing are impractical and the government may satisfy due process requirements soon after the initial deprivation. *Parratt*, 451 U.S. at 539. Second, due process's pre-deprivation hearing requirements are not necessary if the government temporarily imposes upon a proprietary, not fundamental, right, *and* the government provides a hearing before a final deprivation occurs. *Id.*; *see also Phillips v. Commissioner*, 283 U.S. 589, 596-97 (1931). Given that WIS. STAT. §13.68(6) invokes fundamental rights, these exceptions do not apply, and due process must be accorded.

3. WIS. STAT. §13.68(6) is Unconstitutional Because it Permits the Board to Impose Prior Restraint upon a Principal's Constitutionally Protected Free Speech.

Statutory restraints on constitutionally-protected speech prior to the speech's dissemination are prohibited. *Freedman v. Maryland*, 380 U.S. 51, 60-61; *Near v. Minnesota*, 283 U.S. 697, 722 (1931); *see also I, A Woman-Part II*, 191 N.W.2d at 902-03 ("The statute, to the extent that it permits the issuance of an ex parte interlocutory order prior to a determination of the merits in an adversary judicial proceeding [regarding a First Amendment right], is unconstitutional."). Like the statute in *I, A Woman*, WIS. STAT. §13.68(6) permits the Board to restrict constitutionally-protected speech before the speech is actually made. Such restriction constitutes an unconstitutional prior restraint.

REQUEST FOR OPINION

The Department of Justice has the authority to issue opinions on questions of law to provide direction for agency actions. WIS. STAT. §165.015(1). Pursuant to this authority, the Board seeks a formal Attorney General opinion to assist in its effort to properly administer WIS. STAT. §13.68(6).

The Board is concerned that if it effectively suspended a principal's right to lobby, as WIS. STAT. §13.68(6) permits, such suspension would deprive the principal of procedural due process rights and would constitute an unconstitutional prior restraint of free speech. This concern rests upon the above analysis of the constitutional protections implicated by the statute. The Board has directed staff to request an opinion of the Attorney General as to whether WIS. STAT. §13.68(6) is constitutional before the Board proceeds to either administer the statute as written or request that the Legislature change the statute. We appreciate your consideration of this request.

Sincerely,

Government Accountability Board+



Kevin J. Kennedy
Director and General Counsel

State of Wisconsin \ Government Accountability Board

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JUDGE GERALD C. NICHOL
Chairperson

KEVIN J. KENNEDY
Director and General Counsel

MEMORANDUM

DATE: For the June 18, 2015 Board Meeting

TO: Members, Wisconsin Government Accountability Board

FROM: Kevin J. Kennedy, Director and General Counsel

Prepared and Presented by:

Nathan W. Judnic
Staff Counsel

SUBJECT: Request for Advisory Opinion – Village of Rosendale

Introduction

On June 2, 2015, Director and General Counsel, Kevin Kennedy received a phone call from Attorney Steven Sager who represents the Village of Rosendale, followed by an email dated the same day which requested an advisory opinion of the Board. The emailed opinion request, as well as the large attachment of supporting documents Attorney Sager provided follows this memorandum. Also attached to this memorandum for the Board's review, is a draft opinion letter prepared by the Board staff in response to Attorney Sager's request.

Background

In 2009, the Village of Rosendale passed a local ordinance establishing a multi-jurisdictional municipal court (Lakeside Municipal Court), which serves 15 municipalities in Fond du Lac and Green Lake counties. In conjunction with the establishment of the Lakeside Municipal Court, the Village of Rosendale entered into an intergovernmental agreement (along with the other municipalities) with the Village of North Fond du Lac to provide the necessary resources for the newly established multi-jurisdictional municipal court. The intergovernmental agreement allows a 'member' municipality to withdraw from the agreement upon providing 180 days of notice to the other 'member' municipalities. Based on information provided by Attorney Sager, in December 2014, the Rosendale Village Board voted to separate from the Lakeside Municipal Court; provided notice of this intent to separate to all other 'member' municipalities on January 2, 2015; and informed all other 'member' municipalities of the Village's intent to have their own municipal court begin functioning on July 1, 2015.

On January 22, 2015, the Interim Director for the Office of Judicial Education with the Wisconsin Supreme Court, Karla Baumgartner, first questioned whether the proper procedures were being followed by the Village in withdrawing from the Lakeside Municipal Court and establishing the

Village of Rosendale Municipal Court. Subsequent correspondence between Attorney Sager and Judge Robert J. Wirtz, Fourth Judicial District Chief Judge discuss at length the Village's contention that they have complied with the requirements of Wis. Stat. ch. 755 and the provisions of the intergovernmental agreement related to withdrawal from the court. Judge Wirtz, by Supreme Court Rule 70.21(15m) and Wis. Stat. § 755.01 is charged with certifying any new municipal courts in the Fourth Judicial District. Judge Wirtz expressed similar concerns that the proper procedures for withdrawing and establishing a new municipal court have not been followed. In one of Judge Wirtz's letters to Attorney Sager dated March 5, 2015, he cites a Board opinion from 2011 which supports the argument that once an officeholder has been elected to a position, their office should not be 'cancelled by legislative action.' Finally, on May 1, 2015, Judge Wirtz issued a letter to Attorney Sager expressly stating that the Village of Rosendale may not operate a municipal court separate from their participation in the Lakeside Municipal Court, and that anyone who attempts to operate a separate court will be subject to sanctions.

On June 2, 2015, Attorney Sager requested an opinion of the Board as to whether proper procedures have been followed with respect to the Village of Rosendale withdrawing from a current multi-jurisdictional municipal court arrangement with other municipalities to pursue its own separate municipal court under Wis. Stat. ch. 755. Additionally, Attorney Sager cites the Board's December 2011 opinion related to the timing for the abolishment of municipal courts, and asks the Board to review this opinion in the context of the current facts provided and offer an opinion as to its relevance here, if any.

Discussion

After a thorough review of the facts provided by Attorney Sager and the applicable statutes, the Board staff believes the ultimate question of whether the Village of Rosendale has complied with the requirements of Wis. Stat. ch. 755 to withdraw from the Lakeside Municipal Court and establish its own municipal court must be answered by Judge Wirtz, not the G.A.B. By Supreme Court rule and by statute, Judge Wirtz is charged with certifying that the Village has complied with the applicable provisions of Wis. Stat. ch. 755.

The Board staff does however believe the Board's statutory authority and jurisdiction permit a narrow opinion on issues raised that could impact candidates, office holders and Wisconsin electors. The Board's December 2011 opinion (2011 GAB 03: issued to the Tenth District Court Administrator, Scott K. Johnson) on the timing for abolishing a municipal court took a similar approach. The Board was concerned that the abolishment of a municipal court after a Type A notice (notice of election) has been published could be perceived as an attempt by the municipal governing body to take action based on particular candidates who are or are not pursuing the office. Additionally, the Board was concerned that abolishing an office while a person was currently holding the office deprived the officeholder of a position he/she had been duly elected to and deprived the voters of their choice for that office. The Board believed any action to abolish an office while inhabited should not be effective until the full term of that officeholder had expired.

The Board staff believes this is still good policy when municipalities are contemplating the abolishment of a local office like a municipal court. However, the abolishment of a municipal court does not appear to be the issue here based on the information provided by Attorney Sager. The Board staff's understanding, is that the Lakeside Municipal Court will continue, with or without the Village of Rosendale's participation. The municipal judge who was elected in the 2015 Spring Election will remain municipal judge, and the voters who duly elected him to this

position will not be deprived of their choice. Therefore reliance on the Board’s December 2011 opinion to support the proposition that the Village of Rosendale cannot withdraw from the Lakeside Municipal Court and establish its own court because there is a current office holder with an unexpired term, is misplaced.

Whether the Village of Rosendale is able to provide proper notice of the election for municipal judge for its own municipal court (if allowed) is yet to be determined. The Board staff believes the Board should advise the Village of the importance of providing notice of any election for municipal judge to prospective candidates and electors, consistent with the Board’s 2011 opinion and election statutes. The Board staff also believes it is important to advise the Village that proper procedures for electing an individual to fill the office of municipal judge should be followed if the court is allowed to operate (the materials provided by Attorney Sager suggested that a preliminary plan to fill the seat may have included looking at write-in votes cast by Village of Rosendale electors in the 2015 Spring Election contest for the Lakeside Municipal Court to obtain the winner).

Conclusion

As set forth above, the Board staff believes the larger, more pressing question of proper procedures under Wis. Stat. ch. 755 must be left to Judge Wirtz. The Board staff believes a more narrow opinion, focused on issues that could impact candidates, officeholders and Wisconsin electors is appropriate. The draft opinion following this memorandum attempts to accomplish both of these propositions.

Recommendations

- 1) Direct staff to issue a formal advisory opinion to Attorney Steven Sager, representing the Village of Rosendale, which is consistent with the “Draft” opinion letter attached to this memorandum.
- 2) Direct staff to send a copy of the final version of the formal advisory opinion to Judge Robert J. Wirtz, Chief Judge, Fourth Judicial District.
- 3) Publish a final version of the formal advisory opinion on the Board’s website within 10 days of Board approval.

State of Wisconsin\Government Accountability Board

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JUDGE GERALD C. NICHOL
Chair

KEVIN J. KENNEDY
Director and General Counsel

June _____, 2015

Attorney Steven P. Sager
Sager & Colwin Law Offices, S.C.
201 Marr St.
Fond du Lac, WI 54935
Counsel for Village of Rosendale

Re: Request for Opinion – Village of Rosendale Municipal Court

Sent via email only: ssager@sagerlaw.com

Dear Attorney Sager:

This letter is in response to your email dated June 2, 2015, following up on a brief conversation we had earlier that same day. Your email, on behalf of the Village of Rosendale, requests an opinion of the Government Accountability Board (herein after referred to as “G.A.B.” or “Board”) as to whether proper procedures have been followed with respect to the Village withdrawing from a current multi-jurisdictional municipal court arrangement with other municipalities to pursue its own separate municipal court under Wis. Stat. ch. 755. Additionally, your email cites an opinion issued by the Board in December, 2011 related to the timing for abolishment of municipal courts, and you ask the Board to review this opinion in the context of the facts you have provided and offer an opinion as to its relevance here, if any.

The Board’s authority to issue advisory opinions is set forth in Wis. Stat. § 5.05(6a). This authority is limited to requests for opinions on the propriety of matters under Wis. Stat. chs. 5 to 12, subch. III of ch. 13 and subch. III of ch. 19. As part of this administrative function, the Board shall review requests for advisory opinions regarding Wisconsin’s elections and election campaign laws, and may issue a formal written or electronic advisory opinion to the person making the request. Wis. Stat. § 5.05(6a). The Board’s deliberations and actions on your request, as well as any records obtained in connection with your request are open to the public. Wis. Stat. §§ 5.05(6a), 5.05(5s)(f)2.c.

After a review of the materials included with your opinion request and the specific issues you have raised, the Board believes its statutory authority and jurisdiction only permit a narrow opinion on issues that could impact candidates, office holders and Wisconsin electors. The broad issue of whether all proper procedures contained in Wis. Stat. ch. 755 have been followed to withdraw from the Lakeside Municipal Court and establish the Municipal Court for the Village

of Rosendale is a question for the chief judge of the Fourth Judicial District to decide, not the G.A.B. Wis. Stat. § 755.01(1).

2011 Johnson Opinion (2011 GAB 03)

On December 15, 2011, the Board issued an opinion to Tenth District Court Administrator Scott K. Johnson on the topic of timing for abolishment of municipal courts (hereinafter referred to as the “Johnson opinion”)¹. While the Johnson opinion discussed Wis. Stat. ch. 755 (titled Municipal Court), the crux of the opinion was focused on the timing of an abolishment of a municipal court in relation to the Type A notice (notice of election, governed by Wis. Stat. ch. 10). For regularly scheduled Spring Elections, the Type A notice must be published by municipalities on the fourth Tuesday in November preceding the election for which the municipal judge office would appear on the ballot. The Johnson opinion concluded that a municipality must either complete the abolishment of a municipal court prior to the Type A notice being published for the next Spring election at which the office is on the ballot or ensure that any abolishment of a municipal court is not effective until the term for which the municipal judge has been elected expires. For reasons set forth in the Johnson opinion, the Board believes such deadlines and policies are necessary to provide proper notice of an election to prospective candidates and electors and also ensure that current officeholders are not deprived of their ability to hold the office for which they have been elected.

Based on the facts provided to the Board, the Johnson opinion does not appear to be directly on point, as there is no abolishment of a municipal court proposed. It would appear that the Lakeside Municipal Court would remain intact once the Village of Rosendale terminates its intergovernmental agreement and the successful candidate would remain in office as municipal judge, thus not depriving the officeholder of the seat. Whether the Village of Rosendale is able to provide proper notice of the election for municipal judge to prospective candidates and electors once a new court is established is yet to be determined. The Board would advise, consistent with the Johnson opinion, that the Type A notice is an important step in the election cycle. In instances of a special primary or special election for municipal office, the municipal clerk shall publish the Type A notice at least 40 days prior to the election event. Wis. Stat. § 10.06(3)(f). The Board advises that any plan (as referenced in some of the materials provided to the Board) to certify a candidate the Village of Rosendale Municipal Court that received write-in votes for the Lakeside Municipal Court is not consistent with the election statutes, and is not an advisable option for filling the office if and when the court is certified.

Advice

Based upon the above opinion, the G.A.B. advises:

- 1) Certification as to compliance with applicable statutory requirements for withdrawal from a multijurisdictional court arrangement and establishment of a single municipal court is the statutory responsibility of the chief judge of the Fourth Judicial District, not the G.A.B. The Board advises that the Village of Rosendale should comply with all applicable requirements contained in Wis. Stat. ch. 755 in order to obtain certification from the chief judge.

¹ The letter opinion issued to Mr. Johnson was converted into a formal opinion of the Board, titled 2011 GAB 03. This opinion, which mirrors the reasoning contained in the letter is available electronically here:
http://www.gab.wi.gov/sites/default/files/opinions/31/gab_2011_03_pdf_85129.pdf

- 2) The Johnson opinion issued by the Board in December 2011 is distinguishable from the facts presented in this matter to the extent that no abolishment of a municipal court appears to be proposed by the Village of Rosendale. Therefore the Board's concern which was present in the Johnson opinion as to the deprivation of an officeholder's right to office and the elector's right to have their elected officials serve do not appear to be the case here.

- 3) Should the Village of Rosendale establish its own municipal court, consistent with the Johnson opinion and applicable election statutes, it should comply with all notice requirements to inform prospective candidates and electors of the election for municipal judge.

I hope this information is helpful, but please feel free to contact the G.A.B. if you have any additional questions.

Sincerely,

Government Accountability Board



Kevin J. Kennedy
Director and General Counsel

From: Kennedy, Kevin - GAB
To: Judnic, Nathan - GAB
Subject: FW: Attached Image Rosendale Municipal Court
Date: Friday, June 05, 2015 3:48:03 PM
Attachments: [4725_001.pdf](#)

From: Steve Sager [<mailto:ssager@sagerlaw.com>]
Sent: Tuesday, June 02, 2015 2:57 PM
To: Kennedy, Kevin - GAB
Cc: 'Duane Ciske'
Subject: FW: Attached Image Rosendale Municipal Court

Dear Mr. Kennedy: This will follow our brief conversation this afternoon. The attachments should give you the "time-line" of where the Village is with regard to its withdrawal from the intragovernmental agreement and intention to proceed with its own/separate Municipal court under Chap 755. Unfortunately as you will see from the attached materials, initially Mr. Jon Bellows objected to Rosendales creating or continuing with its court (via Judge Jaye, I think). We then proceeded to correspond with the Chief Judge of our District, Judge Robert Wirtz. In our opinion (the Village Board, President Ciske and I) are of the opinion that Rosendale did follow proper procedure and should proceed with its own Court. A new municipal ordinance to that effect was approved in January of this year, but the actual adoption has been deferred because of the opinions of Judge Wirtz. That ordinance can be adopted at a special Board meeting this month if we can get the " go ahead".

Judge Wirtz refers to your opinion of December 15, 2011 in his letter to me of March 5, bottom of the first and start of the second page. In my opinion this reference is not correct and your letter opinion is distinguishable from our current situation. An opinion based on the materials and facts of the Lakeside Municipal Court and Rosendale is requested so Rosendale can proceed. I understand your Board will be meeting June 18, on behalf of the Village of Rosendale, an opinion on "our facts" is respectfully requested so we can provide that to the Judge and start the Rosendale Municipal Court.

Very truly yours,

Steven P. Sager, Village of Rosendale Attorney

Sager & Colwin Law Offices, S.C.
(920)921-1320

From: imagerunner@sagerlaw.com [<mailto:imagerunner@sagerlaw.com>]
Sent: Tuesday, June 02, 2015 2:44 PM
To: Steve
Subject: Attached Image

ORDINANCE NUMBER 114

AN ORDINANCE

TO ESTABLISH A MUNICIPAL COURT FOR THE VILLAGES OF NORTH FOND DU LAC, ROSENDALE, CAMPBELLSPORT, BRANDON, FAIRWATER, OAKFIELD, THE CITY OF FOND DU LAC AND THE TOWNS OF RIPON, EMPIRE, TAYCHEEDAH AND OSCEOLA IN FOND DU LAC COUNTY AND THE CITIES OF BERLIN, GREEN LAKE, MARKESAN AND PRINCETON IN GREEN LAKE COUNTY.

The Village Board of the Village of Rosendale does hereby ordain:

SECTION 1 – Ordinance Number 109 is repealed in its entirety and a new ordinance is created to read as follows:

(1) Court Established. Pursuant to the authority granted by Chapter 755 of the Wisconsin Statutes there is hereby created and established a Municipal Court to be designated “Lakeside Municipal Court”, serving the Villages of North Fond du Lac, Rosendale, Campbellsport, Brandon, Fairwater, Oakfield, the City of Fond du Lac, and the Towns of Ripon, Empire, Taycheedah and Osceola in Fond du Lac County and the Cities of Berlin, Green Lake, Markesan and Princeton in Green Lake County, said court to become operative and functional after each member of Lakeside Municipal Court passes a copy of this ordinance.

(2) Municipal Judge.

- (a) **Qualifications.** The Joint court shall be under the jurisdiction of and presided over by a Municipal Judge, who resides in one of the municipalities.
- (b) **Oath and Bond.** The Judge shall, after election or appointment to fill a vacancy, take and file the official oath as prescribed in Wis. Stats. §757.02(1), and at the same time, the Judge shall execute and file an official bond with the clerk of the municipality in an amount of \$1,000. The judge shall not act until the oath and bond have been filed as required by Wis. Stats. §19.01(4)(c) and the requirements of Wis. Stats. §755.03(2) have been complied with.
- (c) **Salary.** The salary of the Municipal Judge shall be fixed by the Village Board of North Fond du Lac and shall be in lieu of fees and costs. No salary shall be paid to the Judge for any time during which such judge has not executed and filed the official bond or official oath as required by Wis. Stats. §755.03 and filed pursuant to Wis. Stats. §19.01(40)(c).

(3) Elections.

- (a) **Term.** The Municipal Judge shall be elected at large in the spring election for a term of four years commencing on May 1. All candidates for the position of Municipal Judge shall be nominated by nomination papers as provided in Wis. Stats. §8.10 and selection at a primary election if such is held as provided in Wis. Stat. §8.11. The state election board shall serve as the filing officer for the candidates.
- (b) **Electors.** Electors in all municipalities that are parties to the agreement shall vote for the judge.
- (c) **Vacancy.** Any vacancy occurring in the office of Municipal Judge shall be filled pursuant to state law.

(4) Jurisdiction. The Municipal Court shall have jurisdiction over incidents occurring upon or after passage as provided in Article VII, §14 of the Wisconsin Constitution, Wis. Stats. §755.045 and 755.05, and as otherwise provided by State Law. In addition, it shall have exclusive jurisdiction over actions in which the municipalities seek to impose forfeitures for violations of municipal ordinances, resolutions and by-laws.

The Municipal Judge may issue civil warrants to enforce matters under the jurisdiction of the Municipal Court under §755.045(2), §66.122 and §66.123, Wis. Stats.

Court authority to impose alternative juvenile dispositions and sanctions.

1. For a juvenile adjudged to have violated an ordinance, a court is authorized to impose any of the dispositions listed in §938.343 and 938.344, Wis. Stats., in accordance with the provisions of those statutes.
2. For a juvenile adjudged to have violated an ordinance who violates a condition of a dispositional order of the court under §938.343 or 938.344, Wis. Stats., the municipal court is authorized to impose any of the sanctions listed in §938.355(6)(d) Wis. Stats., in accordance with the provisions of those statutes.
3. This section is enacted under the authority of §938.17(2)(cm), Wis. Stats.

(5) Municipal Court.

- (a) Hours. Lakeside Municipal Court shall be open as determined by order of the Municipal Judge.
- (b) Employees. The Judge shall, in writing, appoint such an Administrator, clerks, deputy clerks, and assistants as are authorized by the Village Board of North Fond du Lac. Their salaries shall be fixed by the Village Board of North Fond du Lac.
- (c) Location. The Municipal Judge shall keep his/her office at a location provided by the Board of Trustees of the Village of North Fond du Lac and shall hold court at locations agreed to by members of Lakeside Municipal Court. The Municipal Judge may issue process and perform ministerial functions any place in the State of Wisconsin.

(6) Collection of Forfeiture and Costs. The Municipal Judge may impose punishment and sentences as provided by Wis. Stats. Chapters 800 and 938 and as provided in ordinances of the municipalities that are parties to the agreement. All forfeitures, fees, assessments, surcharges and costs shall be paid to the treasurer of the Village of North Fond du Lac in accordance with state statute. At such time, the Municipal Court shall report to the treasurer the title, nature of offense and total amount of judgments imposed in actions and proceedings in which such monies are collected.

(7) Contempt of Court. The Municipal Judge, after affording an opportunity to the person accused to be heard in defense, may punish for contempt as provided in Wis. Stats. §800.12, and may impose a forfeiture or a jail sentence in accordance with state statute.

(8) Stipulations and Deposits.

- (a) Deposits for ordinance violations. The Municipal Judge shall establish and submit to the Town or Village Boards or City Councils of the member municipalities for approval in accordance with §800.03(3), Wis. Stats., a schedule of deposits for violations of each ordinances, resolutions and bylaws.
- (b) Deposits for Traffic and Boating violations. The deposit schedule established by the Wisconsin Judicial Conference and the procedures set forth in Chapters 23 and 345, Wis. Stats., shall apply to stipulations and deposits for violations of traffic regulations enacted in accordance with §345.27 and boating regulations enacted in accordance with §30.77, Wis. Stats.
- (c) Stipulations and Deposits in Lieu of Court Appearance. Persons cited for violations of the member municipalities ordinances, resolutions or bylaws or violations of traffic or boating regulations for which a deposit has been established, shall be permitted to make a stipulation of no contest and a deposit in lieu of court appearance as provided in §800.03, §800.04, §800.09 Wis. Stats., unless personal appearance is required.

SECTION 2 – All ordinances or parts of ordinances contravening or inconsistent with the provisions of this ordinance are hereby repealed.

SECTION 3 – This ordinance shall take effect and be in full force and effect from and after its passage by the municipalities that are party to the agreement and publication or posting as required by law.

Adopted this ____ day of _____, 2009



President or Chairman

Attest: _____
Clerk

Posted: _____

**Intergovernmental Agreement for North Fond du Lac
to Provide Services for Lakeside Municipal Court
to the Villages of North Fond du Lac, Rosendale, Brandon,
Campbellsport, Fairwater and Oakfield, the City of Fond du Lac, and
the Towns of Ripon, Empire, Taycheedah and Osceola in Fond du Lac
County and the Cities of Berlin, Green Lake, Markesan and Princeton
in Green Lake County**

I. PREAMBLE

This Intergovernmental Agreement is entered into, pursuant to Section 66.0301 of the Wisconsin Statutes, by the Villages of North Fond du Lac, Rosendale, Campbellsport, Brandon, Fairwater, Oakfield, the City of Fond du Lac, and the Towns of Ripon, Empire, Taycheedah and Osceola in Fond du Lac County and the Cities of Berlin, Green Lake, Markesan and Princeton in Green Lake County (together, the "municipalities") for the provision of Municipal Court services by North Fond du Lac to the Villages of North Fond du Lac, Rosendale, Campbellsport, Brandon, Fairwater, Oakfield, the City of Fond du Lac, and the Towns of Ripon, Empire, Taycheedah and Osceola in Fond du Lac County and the Cities of Berlin, Green Lake, Markesan and Princeton in Green Lake County.

II. SERVICES TO BE PROVIDED FOR MUNICIPAL COURT BY THE VILLAGE OF NORTH FOND DU LAC

A. Personnel

The Village of North Fond du Lac shall employ sufficient staff to perform the Municipal Court Services required by the Agreement.

III. RESPONSIBILITIES OF MEMBER MUNICIPALITIES

- A. Each member municipality shall provide to the Village of North Fond du Lac electronic data in a form compatible with the Village of North Fond du Lac's computer software.
- B. Each member municipality will provide court security for the times during which its own cases are being heard.
- C. Member Municipalities shall cooperate in the collection of forfeitures by the court.
- D. The City of Fond du Lac, for its own convenience elects to hold court in its offices located at 126 North Main Street. To that end, the City agrees to provide appropriate facilities for the judge to use while court is being held including, but not limited to an appropriate court room with furnishings including a bench of suitable decorum. The Towns of Empire and Taycheedah will also use the facilities at 126 North Main Street in the City of Fond du Lac.

IV. FINANCES

- A. Each member municipality agrees that the Village of North Fond du Lac may retain court fees as allowed by the State of Wisconsin to offset operating expenditures for each citation disposed of by the court including those cases that are dismissed. The Village of North Fond du Lac shall keep an accurate record of the cases that are dismissed or otherwise disposed and collect the court fee allowed by the State of Wisconsin from the municipalities on a quarterly basis. No court fees shall be collected from member municipalities in cases where a forfeiture has been assessed against a defendant and the municipal court has been unable to collect said forfeiture.

- B. It is agreed that funds in excess of operating expenses will be retained by the Village of North Fond du Lac and that any expenditures exceeding expenses will be absorbed by the Village of North Fond du Lac.
- C. Member municipalities shall be responsible for sharing in capital expenditure (expenditures over \$2,000 as defined by Village of North Fond du Lac policy) through a formula determined by the municipalities' caseload as a percentage of overall caseload for the preceding full calendar year. For example, capital expenses incurred in 2008 will be divided based on documented case load from 2007. For illustrative purposes, statistics from calendar year 2007 are as follows:

	<u>2008</u>	<u>%</u>
North Fond du Lac	850	9
Town of Ripon	1540	16
Village of Rosendale	1992	21
City of Fond du Lac	4461	47
Village of Campbellsport	360	3
Village of Brandon	115	1
Village of Fairwater	72	1
Village of Oakfield	81	1
Town of Empire	0	0
Town of Taycheedah	12	1
Town of Osceola	31	1
City of Berlin	no data available	
City of Green Lake	no data available	
City of Markesan	no data available	
City of Princeton	no data available	

- The Village of North Fond du Lac agrees to notify members of any anticipated capital expenditures for the court by September 1 of the year preceding the necessary expenditure.
- D. All forfeitures collected by the municipal court for the member municipalities shall be turned over to the municipalities in a timely fashion.
 - E. Lakeside Municipal Court will vigorously attempt to collect all outstanding fines and forfeitures through all legal means including Indigency hearings, commitments, tax intercept programs, collections, and wage assignment (when available). Each municipality has the right to pursue other available means of collections.

V. LOCATION

- A. The offices of the municipal judge and administrative functions shall be located in the Village of North Fond du Lac as provided for by the Village of North Fond du Lac Board of Trustees.
- B. Court locations shall be as established by the Joint Ordinance creating Lakeside Municipal Court and adopted by all member municipalities.
- C. The City agrees that holding municipal court in its own jurisdiction is the most cost effective manner of operation for the City. To that end, the City of Fond du Lac agrees to provide the municipal judge with adequate space to conduct court, pre-trials and other court related activities as needed by the court to perform its court functions and activities in the City.

VI. COURT REVIEW COMMITTEE

A. Composition

The Court Review Committee shall be composed of fifteen (15) members appointed by each member municipality. Each of these individuals may, at their discretion, appoint a designee to serve in their place or absence, except that the municipal judge, court staff, and members of the police department shall not be appointed to serve on the committee.

B. Officers

On the first of the semi-annual meetings, the membership shall elect from its members a Chairperson to preside at its meetings, a Vice Chair to act in the absence of the Chair and shall designate a recording Secretary.

C. Meetings

1. Regular and Special.

The Court Review Committee shall hold semi-annual meetings at a place and time to be fixed by the Court Review Committee for the purpose of overseeing the functions of the Municipal Court. Special meetings may be held whenever called by its Chair, or on written request of two (2) members, or upon the written direction of the City Council, Town Board or Village Board. The Clerks of the Municipalities and the members of the Court Review Committee shall be notified at least seven (7) days prior to any regular or special meeting. The Court Review Committee shall keep a written record of its proceedings.

2. Quorum. A majority of the members of the Court Review Committee shall constitute a quorum for all purposes.

D. Required Votes

In order for a motion to be adopted or for any recommendations to be made to the Village of North Fond du Lac, a simple majority vote of all members of the Court Review Committee is required.

E. By-Laws

The Court Review Committee shall adopt rules, policies, and/or by-laws as it deems necessary for its control, management, and governance and for the regulation of its business and proceedings. Upon the request of any Court Review Committee member, such rules, policies and/or by-laws may be subject to approval by the Village and Town Boards and City Councils.

F. Cooperation With Administrative Review Board

The Village of North Fond du Lac shall cooperate with the Court Review Committee.

G. Purpose

The purpose of the Court Review Committee will be to review the operations of the court and as needed, make recommendations for its improvement.

VII. INITIAL TERM AND AUTOMATIC EXTENSION

The Agreement shall commence upon adoption by all entities of the Lakeside Municipal Court and remain in effect for a period of two (2) years. This Agreement shall automatically renew for additional one year periods, except that any party may with 180 days written notice, provide notice of termination of its participation in this Agreement and thereby the municipal court. Notice of termination must be in writing, and delivered by personal service or by certified mail, return receipt requested, the clerk of the other municipalities.

Except for a notice of termination by the Village of North Fond du Lac, the Agreement shall automatically renew for an additional one year period for those parties who do not provide a notice of termination as described above.

VIII. TERMINATION UPON BREACH

Any party may terminate its participation in this Agreement upon the substantial breach by any other party of any of the provisions of this Agreement, if the terminating party has provided written notice to the other parties of the existence of the breach, and the breaching party has failed to correct or remedy the breach within 30 days of the receipt of the notice.

Adopted this ____ day of _____ 2009.

Municipality



President or Chairman

Attest:

Clerk

CIRCUIT COURT
BRANCH V
Judge Robert J. Wirtz

KATHRYN A. HORN, RMR, CRR
COURT REPORTER

FOND DU LAC COUNTY
SECOND FLOOR
CITY-COUNTY GOVERNMENT CENTER
160 S. MACY STREET
FOND DU LAC, WISCONSIN 54935

CHRIS A. BATES, TRIAL CLERK
TELEPHONE 920-929-7053

May 1, 2015

Steven P. Sager
Sager & Colwin Law Offices, S.C.
201 South Marr Street
P. O. Box 2068
Fond du Lac, WI 54936-2068

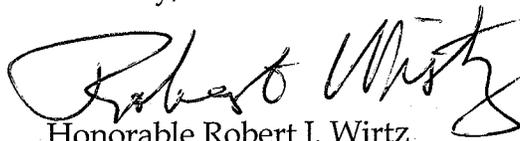
RE: Village of Rosendale Municipal Court

Dear Attorney Sager:

As a follow-up to my last letter I am sending this additional letter to make clear my decision about the Village of Rosendale's attempt to operate a municipal court:

1. Supreme Court Rule 70.19 and 70.20 authorize the Chief Judge to establish various directives and rules to address the administration of courts including municipal courts.
2. The Village of Rosendale may not operate a municipal court separate from their participation in the Lakeside Municipal Court.
3. Attempts to operate Rosendale Municipal Court by anyone separate from the Lakeside Municipal Court, of which they are a part, will be subject to sanctions.
4. The Village of Rosendale's attempt to operate a court at a location, an office, and at hours different than that done in the context of Lakeside Municipal Court will be subject to sanctions.

Sincerely,



Honorable Robert J. Wirtz
Chief Judge, Fourth Judicial District

RJW/ks

Cc: Jon J. Bellows
Lakeside Municipal Court

CIRCUIT COURT
BRANCH V
Judge Robert J. Wirtz

KATHRYN A. HORN, RMR, CRR
COURT REPORTER

FOND DU LAC COUNTY
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CHRIS A. BATES, TRIAL CLERK
TELEPHONE 920-929-7053

April 30, 2015

Attorney Steve Sager
P.O. Box 2068
Fond du Lac, WI 54936-2068

Re: Village of Rosendale Municipal Court

Dear Attorney Sager:

I received your letter of April 28th, 2015, regarding Rosendale Municipal Court/Lakeside Municipal Court.

Mr. Zahn will not be acknowledged as the Judge of Rosendale Municipal Court. The Rosendale Municipal Court will not be certified for the following reasons:

- 1) For all of the reasons outlined in my earlier letters of March 25, March 5, and April 1.
- 2) Rosendale Municipal Court is not a separate entity in a Municipal Court established under Chapter 755 of the Wisconsin Statutes. Rosendale is a participant in the Lakeside Municipal Court by virtue of Rosendale's passage of an ordinance becoming part of the Lakeside Municipal Court. Rosendale Municipal Court is not a separate stand alone entity authorized, sanctioned or recognized under Chapter 755 of the Wisconsin Statutes.
- 3) Chapter 755.01 allows for a municipality to create a municipal court subject to the superintending authority of the Supreme Court and the Chief Judge of the Judicial Administrative District.
- 4) Reading Chapter 755.01(1) through (4) as a whole, it is clear that municipal judges elected to their office serve until the end of their term, vacancies in the office are filled under the procedure set forth in Chapter 8.50 of the Wisconsin Statutes, and municipal judges elected under Chapter 755 shall be nominated by filing nomination papers under section 8.10 of the Wisconsin Statutes.

5) Rosendale's withdrawal from the Lakeside Municipal Court is an act of abolishment of its participation in the Lakeside Municipal Court. While Rosendale's position appears to be that they are not abolishing any court, and therefore don't need certification from the Chief Judge for the 4th Judicial District their actions in withdrawing from the Lakeside Municipal Court begs a question. What entity remains after Rosendale withdraws from the Lakeside Municipal Court? In Rosendale, nothing.

6) Rosendale never established a municipal court. Therefore, there is no entity that exists to which Rosendale may elect a judge. If Rosendale decides to withdraw from the multiparty Lakeside Municipal Court, that withdrawal is an act of abolishment of their participation in the court. Rosendale may not then elect a person to: a) a municipal court that was never sanctioned or certified as an entity unto itself, and b) was not a person who was nominated according to Wisconsin's election laws Chapter 8.

7) If Rosendale wanted to have a separate election for a judge for a Rosendale Municipal Court, they had to comply with the election laws so as not to disenfranchise voters. While Mr. Zahn may have been "elected" as Rosendale views it by his write-in victory, the issue is whether that election was properly noticed by the clerk and the Elections Board, and voters in Rosendale were given a chance to take out nomination papers themselves for the position of Municipal Court Judge. Rosendale's actions withdrawing from Lakeside's Municipal Court in an untimely manner prevented voters in Rosendale from properly holding an election for people within the municipality of Rosendale who may have wanted to run for that position.

For all the foregoing reasons, the Court will not certify, sanction or acknowledge Rosendale's operation of its Municipal Court.

Sincerely,



Honorable Robert J. Wirtz
Circuit Court, Branch V

RJW/csm

Cc: Jon Bellows, District Court Administrator
Lakeside Municipal Court

SAGER & COLWIN LAW OFFICES, S.C.

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JOHN J. SCHNEIDER (1913-1970)
KENNETH E. WORTHING (1905-1982)
RAYMOND R. COLWIN (1917-1985)

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PHONE: (920) 921-1320

FAX: (920) 921-8557

April 28, 2015

Honorable Robert J. Wirtz
Chief Judge District Four
160 S. Macy Street
Fond du Lac, WI 54935

Re: Village of Rosendale/Municipal Court

Dear Judge Wirtz:

This is a follow up on our several exchanges of correspondence and materials with regard to the Village of Rosendale and its withdrawal from the "Lakeside Municipal Court" based upon the provisions of the Intra-Governmental Agreement of 2009. We have carefully considered your letters of February 25, March 5, and April 1, the responses by me on behalf of the Village, the provisions of Chapter 755, and the legal principles to properly commence the Village of Rosendale Municipal Court acting independently of the Intra-Governmental Agreement.

Since your last correspondence to the Village of April 1, 2015, the Village and I, as their counsel, has considered the issues and procedures in order that the Village proceed with its July 1, 2015 withdrawal from the Intra-Governmental Agreement and the commencement date for the independently functioning Rosendale Municipal court. As noted as follows, the Village and I are of the opinion that the Village Municipal Court was certified under the specific provisions of §755 in 1998 and does not need to repeat those.

The Village of Rosendale electorate, by write-in candidacy at the April 7 election, voted for Mr. James Zahn as municipal judge. The vote tally between Mr. Zahn and Judge Jaye was 73 to 67. Mr. Zahn will be taking his oath of office. We had attempted to arrange for him to attend the "judge school" that is offered next week and were advised by Attorney Karla Baumgartner that we could not register Judge Zahn because the Rosendale Municipal Court was not "certified" by you. You had mentioned in your most recent letter that the issue of Judge Jaye not being a resident of the municipality is a concern of yours, and we definitely agree and feel that the proper procedure is to proceed with Judge Zahn effective July 1, 2015. Because there is some time sensitivity to this part of the request, we would ask that you at least provide a "decision" that would allow Mr. Zahn to attend the judge school, pending some ultimate resolution of any apparent conflict with the position of the Village and yours thus far.

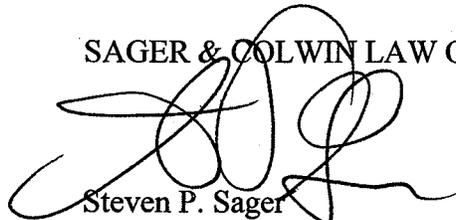
As you know, the Village of Rosendale, through its Board, had determined that, for a multitude of reasons, the Village no longer wished to be a party to the Intra-Governmental Agreement between the other municipalities in the Lakeside Municipal Court. The 'withdrawal' provisions to do that were specifically noted in that agreement. In December, the Village Board adopted a resolution and according to the terms of the Intra-Governmental Agreement properly notified all parties to the Intra-Governmental Agreement that it would be withdrawing from the Lakeside Municipal Court on July 1, 2015. As you know from previous materials provided, the Village adopted its original municipal court ordinance to be effective March 1, 1998, and before then received certification from the then chief judge of the district as to comply with the "certification requirements" of §§755.09, 755.10, 755.11, and 755.15. It is our opinion that there is no need or provision for "recertification" under the current circumstances. The Village never intended to abolish its court that had been established, it merely is withdrawing from the Intra-Governmental Agreement and continuing independently with its Rosendale Municipal Court effective the date of the withdrawal from the Intra-Governmental Agreement.

It appears that I may have been a bit overbroad when in my letters for the Village there was reference to certification or approval. In hindsight, there should have been no "reason" to do that since the statute requirements for your "certification" only relate to the specific sections, §§755.09, 755.10, 755.11, and 755.17. As I review those, each has been or could be complied with. The statute does not provide for any overall "approval" or certification by the Chief Judge. We believe the Village has been complying with those sections and will continue to do those with its independent court.

Since it is the Village's position that it has not abolished the Lakeside Court and is merely withdrawing as contemplated, we are of the opinion that your decisions, which are directed to that effect, and conclusion, while respected by the Village, are in our opinion inconsistent and as noted above - not required. This letter is to advise you that the village will be proceeding with its independently operated municipal court on July 1, 2015. If you still do not agree with this, I think the proper procedure is for the Rosendale Court to proceed, with Judge Zahn, and then Mr. Bellows or Attorney Baumgartner can advise you of procedures for "eventual court review" of the position of the Village versus the "decisions" you have made until now.

Respectfully Submitted,

SAGER & COLWIN LAW OFFICES, S.C.



Steven P. Sager
Attorney for the Village of Rosendale

SPS/tk

cc: Jon J. Bellows
Duane Ciske, Village Board President, Village of Rosendale

CIRCUIT COURT
BRANCH V
Judge Robert J. Wirtz

KATHRYN A. HORN, RMR, CRR
COURT REPORTER

FOND DU LAC COUNTY
SECOND FLOOR
CITY-COUNTY GOVERNMENT CENTER
160 S. MACY STREET
FOND DU LAC, WISCONSIN 54935

CHRIS A. BATES, TRIAL CLERK
TELEPHONE 920-929-7053

April 1, 2015

Attorney Steve Sager
P.O. Box 2068
Fond du Lac, WI 54936-2068

Re: Village of Rosendale/Municipal Court

Dear Attorney Sager:

This letter is a follow-up to your March 16th, 2015 letter which added a couple points to Rosendale's earlier proposal for withdrawal from the Lakeside Municipal Court. Those additional points are: 1) Judge Jerry Jaye would continue as judge of Rosendale Municipal Court until the conclusion of his term, April 2019 (assuming he is elected as judge of the Lakeside Municipal Court) and; 2) the administrative and clerical functions that relate to Rosendale's participation in the intra-governmental agreement for the Lakeside Municipal Court would be separated from that court and operated independently by Rosendale.

As I noted in my earlier letter in March, I'm required by Supreme Court rules to "certify" any municipal court to be operated within this district. As Chief Judge of the 4th Judicial District I cannot certify the Village of Rosendale's request for their municipal court for the following reasons:

1) I start with the proposition that Rosendale is abolishing its participation in the Lakeside Municipal Court. Lakeside Municipal Court is an entity. Various municipalities are part of it. Rosendale does not have a municipal court which is part of the Lakeside Municipal Court entity. As such, Rosendale's termination from the intra-governmental agreement is an abolishment of their participation in the Lakeside Municipal Court. I believe the abolishment procedures apply. Rosendale does not have a separate court which it will withdraw from the Lakeside Municipal Court.

2) Rosendale joined the Lakeside Municipal Court through an intra-governmental agreement. The municipal judge of the Lakeside Municipal Court is up for election April, 2015 and his term ends in 2019. I agree with the opinions and general position of the State of Wisconsin Government Accountability Board that in order to eliminate a municipal court, notice of abolishment or withdrawal from the municipal court entity must be done in time for the Type A notices for Spring elections to be filed by the municipal clerks. That is done on the fourth Tuesday in November. It is done then so that candidates may take out nomination papers in December and file them by the first Tuesday in January preceding the Spring election in April. The point of that timing is that the integrity of the election process for municipal judge is not tampered with by municipal legislation to alter municipal court judicial elections. Put another way, municipalities should not be able to disenfranchise the will of municipal voters where the voting process is outlined in statute.

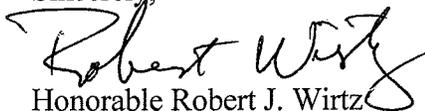
3) Wisconsin Statute 8.28 generally provides that an individual holding office must be a resident or inhabitant of the jurisdiction in which he or she serves. The intra-governmental agreement entered into for the Lakeside Municipal Court requires that the municipal judge reside in one of the municipalities. Presumably if Rosendale has its own municipal court the municipal judge would need to be a resident of Rosendale. I believe that Judge Jerry Jaye is not a resident of Rosendale. That is problematic.

4) Chapter 755 of the Wisconsin Statutes grants municipalities the right to operate a municipal court. 755.01(4) grants municipalities the right to enter into intra-governmental agreements. That statute also provides that "upon entering into or discontinuing such an agreement the contracting municipalities shall each transmit a certified copy of the ordinance or bylaw effecting or discontinuing the agreement to the appropriate filing officer under Statute 11.02(3e) and to the Director of State Courts". While I don't believe that other municipalities within the Lakeside Municipal Court may hold up the Rosendale request to withdrawal from the Lakeside Municipal Court, I do believe that that section requires that Rosendale transmit their withdrawal to the appropriate filing officer and Director of State Courts in such time that elections can be noticed and held. Further, Chapters 755.09, 755.11 and 755.12 generally provide for the keeping of records. I believe that when cessation of a municipal court occurs under Chapter 755, that the records of the municipal court are transmitted back to the municipal clerk for the particular jurisdiction. Additionally, the judge who presided over that municipal court no longer has jurisdiction. That cessation of duties by that judge can only be done at the end of his or her term. The statutes read as a whole seem to contemplate that the judge's jurisdiction terminates at the end of his term and records are transferred to the particular municipal clerk.

In your letter of March 16th, 2015, you indicate that the Village of Rosendale essentially wishes to keep Judge Jaye as a municipal judge for the Village of Rosendale but that the Village of Rosendale would work out with Lakeside Municipal Court in North Fond du Lac the transfer of various records. I don't believe this hybrid approach is permissible for the reasons noted above. The records of the municipal court would remain with the municipal court. If the court ceases to function, those records would be transmitted to the Rosendale Municipal Court. Either the judge/court is terminated and the records transmitted to the local clerk, or both the judge/court and the records remain in Lakeside Municipal Court. However, the court cannot cease until the end of a judge's term and that must be done as noted above in sufficient time for the electors to properly vote in a new judge. That can't happen in this case. The election is this April, 2015 and nomination papers can no longer be taken out nor notices published by the clerk.

For all the foregoing reasons, the stand alone Rosendale Municipal Court as suggested will not be certified.

Sincerely,

A handwritten signature in black ink that reads "Robert Wirtz". The signature is written in a cursive style with a large, sweeping initial "R".

Honorable Robert J. Wirtz
Circuit Court, Branch V

RJW/csm

SAGER & COLWIN LAW OFFICES, S.C.

STEVEN P. SAGER
DAVID J. COLWIN
TERRENCE J. GAFFNEY (also licensed in IL)
MARTIN J. DE VRIES
JANE L. KIRKEIDE

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PHONE: (920) 921-1320

FAX: (920) 921-8557

March 16, 2015

Honorable Robert J. Wirtz *[Hand Delivered]*
Chief Judge District Four
160 S. Macy Street
Fond du Lac, WI 54935

Re: Village of Rosendale/Municipal Court

Dear Judge Wirtz:

This will follow up your letter of March 5, 2015 regarding the Lakeside Municipal Court and Rosendale's request for your certification of its independent court.

I have carefully considered your letter and the concerns raised with my client and we respectfully disagree. Rosendale is neither abolishing its court, nor is it likely disenfranchising the Rosendale electorate with the judicial selection process (the latter possibly to be clarified with a potential write-in candidate from the Rosendale municipal election this April). Aside from that, I believe Rosendale has a proposal that will clear the way to your certification of its court.

- Assuming "Judge Jerry Jaye" is elected as judge to the Lakeside Municipal Court, Rosendale would be willing to continue with Judge Jaye as judge of the Rosendale Municipal Court until the conclusion of his term/April 2019 election.
- As provided in the Intra-Governmental Agreement, the administrative/clerical functions that relate to Rosendale's participation, pursuant to that agreement, would be separated from that court and operated independently. As you know, that separation notice has been given and we will be contacting North Fond du Lac to work out the details.

Please consider this in respect to your letter and analysis of March 5. If there is any need for follow up or clarification, please let us know.

Sager & Colwin Law Offices, S.C.
March 16, 2015
Page 2

Respectfully Submitted,

SAGER & COLWIN LAW OFFICES, S.C.

Steven P. Sager
Attorney for the Village of Rosendale

SPS/tk

cc: Jon J. Bellows
Duane Ciske, Village Board President, Village of Rosendale
[Dictated and Read]

CIRCUIT COURT
BRANCH V
Judge Robert J. Wirtz

KATHRYN A. HORN, RMR, CRR
COURT REPORTER

FOND DU LAC COUNTY
SECOND FLOOR
CITY-COUNTY GOVERNMENT CENTER
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CHRIS A. BATES, TRIAL CLERK
TELEPHONE 920-929-7053

March 5, 2015

Steven P. Sager
Sager & Colwin Law Offices, S.C.
201 South Marr Street
P. O. Box 2068
Fond du Lac, WI 54936-2068

RE: Village of Rosendale Municipal Court

Dear Attorney Sager:

I have reviewed your correspondence to Jon Bellows, District Court Administrator, and to me with regard to the Village of Rosendale's proposal to withdraw from the Lakeside Municipal Court and create Rosendale Municipal Court.

It's my understanding that the Village of Rosendale has given notice to the Lakeside Municipal Court they intend to withdraw from the Inter-Governmental Agreement and commence their own "stand alone" Village of Rosendale Municipal Court. I understand that the Village wishes to proceed as quickly as possible so the Village may be ready for an April 2016 election. I understand it's the Village's intent to continue with the joint Inter-Governmental Court (Lakeside Municipal Court) until June 30th, 2015.

As Chief Judge of the 4th Judicial District, I am charged under Supreme Court Rule 70.21(15m) with certifying a new municipal court. I have reviewed Wis. Stats. 755.01, SCR 70.21, and the Government Accountability Board's opinion and checklist for municipal court abolition and elections. I cannot certify the Rosendale Municipal Court as requested. I understand the Village of Rosendale does not believe that it is abolishing the Rosendale Municipal Court; rather it's just simply reconstituting it and having it serve separately and stand alone from the Inter-Governmental Agreement that is the Lakeside Municipal Court now in North Fond du Lac. However, 755.01(2), provides that a governing body may by ordinance abolish a municipal court... at the end of any term for which the judge has been elected or appointed. I believe that the purpose of that statute is that a court and judge sit for the term for which they were elected. Any legislative or municipal action taken to change a judicial seat while a judge is sitting in a municipal court essentially disenfranchises the voters who elected that judge for that particular term. To put a finer point on the policy issue, I believe that the Government Accountability

March 5, 2015
Attorney Sager
Page Two

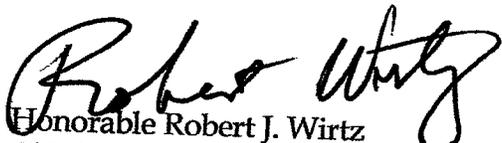
Board's opinion letter of December 15th, 2011, reiterates the State Elections Board's opinion on the subject that publically elected officeholders and candidates who have been duly elected should not have their office cancelled by legislative action. It isn't about the particular officeholder but it is about giving effect to the will of the electors as to the office held.

Beyond policy issues 755.01(2) is clear that no abolishment may occur before a term ends. I believe that the Village of Rosendale must follow the checklist as outlined by the Director of State Courts office with regard to abolition of a municipal court. I believe that requires discontinuation of Rosendale's participation in the Inter-Governmental Agreement (Lakeside Municipal Court) at the conclusion of the term of the presently sitting officeholder, Judge Jerry Jaye. 755.01(2) requires conclusion at the end of a term.

I understand that the Village of Rosendale does not believe that they are abolishing a municipal court and that they are simply maintaining a municipal court as a stand alone court not part of the Lakeside Municipal Court. While Rosendale is not completely abolishing the court so that it no longer exists, they are nonetheless essentially abolishing the office of the municipal judge presently held by someone who was duly elected by the voters. I believe the purpose of 755.01(2) is to maintain the will of the voters as to the officeholder elected for the particular office of municipal judge. To allow otherwise would be to allow a municipality by ordinance to override the will of the voters and to thwart by legislative action a duly elected officeholder. That is the practical effect of what Rosendale is requesting.

I believe the Village of Rosendale may not to effectuate their withdrawal from the Lakeside Municipal Court until the conclusion of the present municipal judge's term. Please advise if you wish me to review any other matters.

Sincerely,


Honorable Robert J. Wirtz
Chief Judge, Fourth Judicial District

RJW/ks

Cc: Jon J. Bellows
Director of State Courts Office
Lakeside Municipal Court

Steve Sager

From: Traci Krupp <tkrupp@sagerlaw.com>
Sent: Monday, March 09, 2015 12:55 PM
To: 'Steve Sager'
Subject: MAIL - Rosendale - ltr from Judge Wirtz
Attachments: 3377_001.pdf

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March 5, 2015

Honorable Robert J. Wirtz *[Hand Delivered]*
Chief Judge District Four
160 S. Macy Street
Fond du Lac, WI 54935

Re: Village of Rosendale/Municipal Court

Dear Judge Wirtz:

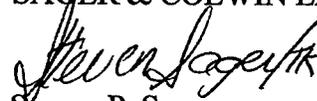
As a brief supplement to my previous submission, I want to add some additional comments to the concerns about the election process and voter disenfranchisement.

Certainly there is no "guarantee" regarding the continuation of a term for an elected official. That term can be interrupted for a number of personal factors, such as early retirement, death or disability, etc. My client and I discussed an interesting question about the "direction" provided in an election process by the voters of the Village of Rosendale. By way of example, what if there was a write-in candidate for the Rosendale municipal court which clearly "showed" the intention of the Village electorate for the municipal judge? I understand the "outcome" of that write-in candidate versus Judge Jaye would of course not carry over to the other municipalities, but it would clearly show the intentions of the Rosendale electorate. I think this example is a distinction that Chapter 755, the cited statutes, and the GAB opinions do not contemplate when there is a 15 municipality (as in this case) inter-governmental agreement on a municipal court. In fact, with the write-in example, the voters' intentions could clearly be frustrated by voters in another municipality. I am sure that is why the inter-governmental agreement does not require, or even mention, this sort of scenario.

In addition to the other points made, I think this furthers the Village's request for your certification.

Respectfully Submitted,

SAGER & COLWIN LAW OFFICES, S.C.


Steven P. Sager

Attorney for the Village of Rosendale

SPS/tk

cc: Jon J. Bellows

Duane Ciske, Village Board President, Village of Rosendale

[Dictated and Read]

CIRCUIT COURT
BRANCH V
Judge Robert J. Wirtz

KATHRYN A. HORN, RMR, CRR
COURT REPORTER

FOND DU LAC COUNTY
SECOND FLOOR
CITY-COUNTY GOVERNMENT CENTER
160 S. MACY STREET
FOND DU LAC, WISCONSIN 54935

CHRIS A. BATES, TRIAL CLERK
TELEPHONE 920-929-7053

February 25, 2015

Steven P. Sager
Sager & Colwin Law Offices, S.C.
201 South Marr Street
P. O. Box 2068
Fond du Lac, WI 54936-2068

RE: Rosendale Municipal Court Proposal

Dear Mr. Sager:

I received your letter of February 19th, 2015, with regard to requested changes to the Village of Rosendale Municipal Court and withdrawal from the combined Lakeside Municipal Court.

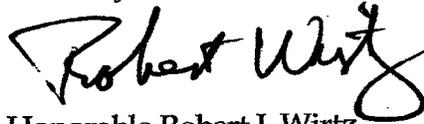
As you have pointed out, one of my obligations as Chief Judge for the Fourth Judicial District is to approve or certify the municipal court which the Village of Rosendale proposes. I reviewed the exhibits you attached to your letter. Some of those documents were signed by James Westphal. I understand that Mr. Westphal may not presently be the President of the Village of Rosendale. However, I wish to convey to you a potential conflict I see in this process and ask for your assistance in addressing it.

As you know, I was in private practice from 1984 through 1999. During that time period I believe I probably did some work for James Westphal and/or the Village of Rosendale. I can't tell you from memory specifically what I did, when I did it, or the nature and extent of that work. However, I would probably recognize Mr. Westphal and I know who he is. While the Village of Rosendale's joinder into the combined Lakeside Municipal Court was done after I did any work for Mr. Westphal or the Village of Rosendale, I nonetheless feel that I should point out this potential area of concern. You or your clients may feel that my past relationship may appear to some people to be problematic in now passing judgment on whether the Village of Rosendale is correctly implementing a municipal court. I certainly had nothing to do with the Village of Rosendale's entry into the Lakeside Municipal Court, however, I probably have done work for Mr. Westphal or the Village in the distant past.

February 25, 2015
Attorney Sager
Page Two

Please contact your clients and let me know whether they have any objection to me making a decision in this matter or whether they wish to waive the potential appearance of partiality. I certainly understand they may have opinions on the subject. If they wish me to step aside I will find an alternative.

Sincerely,

A handwritten signature in black ink that reads "Robert Wirtz". The signature is written in a cursive style with a large, stylized initial "R".

Honorable Robert J. Wirtz
Chief Judge, Fourth Judicial District

RJW/ks

Cc: Jon J. Bellows

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February 19, 2015

Honorable Robert J. Wirtz
Chief Judge District Four
160 S. Macy Street
Fond du Lac, WI 54935

Re: Village of Rosendale/Municipal Court

Dear Judge Wirtz:

I am the attorney for the Village of Rosendale. In December of this year, the Village Board of Rosendale voted to separate from the current municipal court that involves the Village and several other area municipalities.

Currently the Village is part of an Inter-Governmental Agreement with those municipalities, dated 2009, a copy of which is attached as Exhibit A (I don't have a copy with the adoption dates or clerk's signature). The most recent Village court Ordinance dated 2009 is attached and labeled Exhibit B (the same applies on the dating and signature).

The Inter-Governmental Agreement, Article VII provides for the withdrawal of a member municipality upon giving 180 days notice to the other municipalities (after the initial two (2) year term which of course has elapsed). The Village gave each municipality that notice on January 2, 2015 so that the independent Village of Rosendale Municipal Court would begin to function July 1, 2015.

In the last several weeks, the Village (and I) have been contacted by Jon Bellows, District Court Administrator for District Four about the Rosendale Municipal Court. Mr. Bellows expressed concern that the Village was not following the proper procedures in withdrawing from the current joint court. I have carefully reviewed the current Inter-Governmental Agreement, the Village Ordinance, Wisconsin Statutes, Chapter 755, and statutes cited within 755. Mr. Bellows expressed opinions: 1) that each of the municipalities that are party to the Inter-Governmental Agreement need to adopt an ordinance regarding Rosendale's withdrawal, and 2) that Wis. Stats. Chapter 755 would not allow the creation of an independent municipal court for the Village until 2019. The former opinion apparently relates to the reference in 755.01(4) that states "upon entering. . . or discontinuing such an agreement. . . each shall transmit a copy of the ordinance. . . to the. . . filing officer". The latter opinion is in part based upon Attorney Carla Baumgartner's opinion to Judge Jerry Jaye dated January 22 (Exhibit C attached), the attachment dated December 15, 2011, and the "checklist" on "Abolishmnet of Municipal Court" (Exhibit D attached).

apply at the end of the "checklist", "partial abolition/contraction" and deals with outstanding fees, warrants, tax intercepts, or drivers license suspensions. Again, nothing here prohibits Rosendale's action and proposed independent municipal court.

- Finally, any "election" issues are handled simply as if there was a vacancy in the "Rosendale Municipal Court". When the court begins on July 1, 2015, the appointed judge sits until nomination papers are filed in 2015 for a "Rosendale" Judicial election in April 2016.

When I discussed this with Mr. Bellows last week, he said that he could not make any decision on the Village of Rosendale Municipal Court since he was not an attorney, and suggested that I bring this matter directly to you for your review and opinion/decision. Ultimately of course the statute requires your approval as well.

I am sending a copy of this to Mr. Bellows. If you feel further input, clarification, or information is needed, or other issues need to be addressed, please let me know. With your preliminary approval, the Village would like to proceed with its court and need to do a fair amount of administrative/organizational work in the near future. We appreciate your attention.

Respectfully Submitted,

SAGER & COLWIN LAW OFFICES, S.C.


Steven P. Sager
Attorney for the Village of Rosendale

SPS/tk

Enclosures

cc: Jon J. Bellows (without enclosures)
Duane Ciske, Village Board President, Village of Rosendale

[Dictated and Read]

Steve Sager

From: Karla Baumgartner <Karla.Baumgartner@wicourts.gov>
Sent: Thursday, January 22, 2015 11:13 AM
To: Jerry Jaye
Cc: Jon Bellows
Subject: Abolishing a Municipal Court
Attachments: RA re municipal court abolishment 12.15.11 final_1.pdf; Abolishment of Municipal Court.docx

Hi Jerry,

Sorry it has taken me so long to get back to you.

I don't believe that Rosendale is following the proper procedure for withdrawing from the current Joint Court and establishing a single municipality court. I have attached two documents that discuss the proper procedures and timing for abolishing single or joint municipal courts. The first is a letter from the GAB and the second is a checklist from the Chief Judge's' & DCA's *Municipal Court Reference Manual*.

I am copying DCA Jon Bellows on this email so he can weigh in on this issue as well.

Karla Baumgartner

Atty. Karla J. Baumgartner
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Fax (608) 267-0500
E-mail: gab@wisconsin.gov
<http://gab.wi.gov>



JUDGE THOMAS BARLAND
Chair

KEVIN J. KENNEDY
Director and General Counsel

December 15, 2011

Scott K. Johnson
Tenth District Court Administrator
4410 Golf Terrace, Suite 150
Eau Claire, WI 54701

Re: Timing for Abolishment of Municipal Courts

Dear Mr. Johnson:

This letter is in response to your inquiry from May 18, 2011, by which you sought a formal opinion from the Government Accountability Board.

General Information

Pursuant to §5.05, Wis. Stats., the Government Accountability Board (G.A.B.) is responsible for administering laws relating to elections and election campaigns (chs. 5-12, subch. III of ch. 13, or subch. III of ch. 19). As part of this administrative function, the G.A.B. shall review requests for advisory opinions regarding Wisconsin's elections and election campaign laws, and may issue a formal written or electronic advisory opinion to the person making the request.

Facts

You have submitted a request for a formal opinion on behalf of two municipalities in the 10th Judicial District, the Village of New Auburn and the Village of Star Prairie. As stated in your correspondence, both New Auburn and Star Prairie elected municipal judges in April of 2011, but are now seeking to abolish their municipal courts pursuant to Wis. Stats. §755.01(2). The facts applicable to the nomination of each judge are slightly different. New Auburn utilizes the nomination paper distribution method, but no potential candidates circulated nomination papers, and a new municipal judge was instead elected as a write-in candidate with five votes. In Star Prairie, nomination is conducted by a caucus system. A candidate was nominated, filed a declaration of candidacy, and was placed on the election ballot. This candidate was then elected with a total of 74 votes. You indicate that the New Auburn Village Board is postponing abolishment until the current judge's term has ended, but that Star Prairie is seeking immediate abolishment of its municipal court, after the election and prior to the end of the current incumbent's term. }

Question

You ask whether or not there is a specific time frame or date by which a municipality must accomplish abolishment of their municipal court pursuant to Wis. Stat. §755.01(2).

Discussion

Wis. Stats. §755.01(2) provides: “The governing body may by ordinance or bylaw abolish the municipal court as part of a consolidation under s. 66.0229 or at the end of any term for which the judge has been elected or appointed.” Under Wis. Stats. §755.02, a municipal judge’s term begins on May 1 of the year of the judge’s election, and spans 4 years “unless a different term, not exceeding 4 years nor less than 2 years, is provided by charter ordinance enacted under s. 66.0101.” Prior to the enactment of 2009 Act 402, the default term for a municipal judge was two years. A charter ordinance changing the term cannot take effect until the end of the current judge’s term.

Pursuant to the above language in §755.01(2), Stats., it is clear that, except as part of a municipal consolidation, the effective date of abolishing a municipal court cannot occur until after the term has ended. The remaining questions are when must the municipality’s action to abolish the court be completed and when is the effective date of that abolishment?

While individuals may declare their candidacies at any time, several dates are significant in triggering the official start of the Spring Election cycle for local candidates. Under Wis. Stats. §10.06 (3)(a), municipal clerks publish the Type A notice for a Spring Election on the fourth Tuesday of November preceding the Spring Election. Under Wis. Stats. §8.10 (2), candidates in municipalities using nomination papers may begin to circulate papers for offices to be filled at the Spring Election on December 1 and must file the nomination papers on the first Tuesday in January prior to the Spring Election. Pursuant to Wis. Stats. §8.05 (1), in towns and villages using the caucus system, the governing body determines the date of the caucus between December 1 and January 1, and the caucus must be held between the first and last Tuesdays in January.

It is the opinion of the Government Accountability Board (Board) that a municipality must complete action to abolish a municipal court prior to the time the Type A notice is published on the fourth Tuesday in November. The legislature established a specific election procedure in Wisconsin Statutes Chapters 5-10, beginning with publication of the Type A “Notice of Election.” This notice informs the public and all potential candidates that an election is going to take place, the offices that will be voted upon and filled at the election, and the timetable for candidates to circulate nomination papers and to file nomination papers. Even in the case of a caucus system, where nomination papers are not used, the Type A notice informs the public and potential candidates of the offices to be voted upon and filled at the Spring Election.

Candidates campaign for office in reliance on the official announcement in the Type A notice that the office will be on the ballot. Whether or not candidates initiate or conduct campaigns after that date, to abolish the office after the Type A notice has been published would

compromise the integrity of the elections process by creating the perception that the governing body may be taking the action based on the particular candidates who are or are not pursuing the office. } 110

In 2006, the State Elections Board addressed a similar issue in an informal opinion. The Board advised that the office of coroner should not be abolished after the date for filing nomination papers, to take effect at the end of the current term. The Board's reasoning also applies to your inquiry:

The Elections Board and its staff have a natural bias in favor of conducting elections for offices that have been noticed and for which nomination papers have been filed...The Board's staff does not believe that the legislature intended that an election for a publicly noticed office for which candidates have duly campaigned and qualified by nomination paper may be cancelled at any time after nomination papers have been filed or even after the first day for circulation of nomination papers.

The Elections Board staff applied similar reasoning in previous informal opinions issued in 1999 and 2001, finding that, in the absence of more specific statutory provisions, its interpretation more closely followed the edict in §5.01, Stats., to construe the statutes to "give effect to the will of the electors." In this way, the governing body eliminates any perception that it might attempt to manipulate the process and take an electoral decision away from the voters after the public has received notice that the office will be on the upcoming ballot.

The Board hereby adopts the S.E.B.'s reasoning, and further concludes that as of the date of publishing a Type A notice listing the office of municipal court judge, a municipality shall not take action to abolish a municipal court which is effective prior to the end of the term for the individual chosen at that election, whether as a registered or a write-in candidate. A municipality may adopt an ordinance to abolish a municipal court on or after a Type A notice has been published for that office; however, the effective date of the abolishment shall not occur prior to the end of the term of the individual that is elected at the Spring Election that follows the Type A notice.

The Board acknowledges that there are no appellate court decisions specifically addressing the facts in your request and that there may be facts which convince a court that an office could be abolished after the Type A notice is published, such as when the municipality has accomplished all but final passage of the ordinance to abolish the office. In the interests of certainty and uniform guidance, however, the Board believes it is more consistent with the legislative intent and also the better practice for municipalities to complete actions to abolish a municipal court prior to the Type A notice publication date, if the municipality intends to no longer elect the office at the Spring Election following the publication date of a Type A notice. Any action taken to abolish a municipal court after the publication date of the Type A notice shall not be effective until the end of the term for the office elected at the Spring Election following that Type A notice.

Advice

Based upon the above opinion, the Government Accountability Board advises:

- 1) Regarding the Village of New Auburn, the term of the write-in candidate elected in April of 2011 must be completed before abolishment of the office can become effective. New Auburn may begin the action of abolishing the court, by ordinance or bylaw, which must be completed before the Type A Notice is published for the next Spring Election at which the office would be on the ballot.
- 2) Regarding the Village of Star Prairie, any abolishment of the municipal court will not be effective until the end of the term of the municipal judge elected in April of 2011. The Village may begin the action of abolishing the court, by ordinance or bylaw, which must be completed before the Type A Notice is published for the next Spring Election at which the office is on the ballot.

I hope this information is helpful, but please feel free to contact us if you have any additional questions.

Sincerely,

Wisconsin Government Accountability Board



Kevin J. Kennedy
Director and General Counsel

Abolishment of Municipal Court Chief Judge/ DCA Checklist

Purpose: Chapter 755 provides that certain actions must be taken when a municipal court ceases to operate. This checklist is intended to help the chief judge make sure that all necessary actions are taken when a municipal court within their district is abolished.

Name of municipal court: _____

Type of municipality: _____ City _____ Town _____ Village

Type of court: _____ single municipality _____ joint municipal court

If joint municipal court, list all municipalities participating in joint court:

If joint municipal court, will any participating municipalities continue to operate a single municipality or joint municipality court? Yes / No

List all municipalities planning to continue operating a single municipality or joint municipality court and the name of the planned municipal court:

Judicial Administrative District _____

Note: If governing municipality falls into two Judicial Administrative Districts, see 755.001(2).

ACTIONS REQUIRED/QUESTIONS TO ASK	Requirement Met
GENERAL SINGLE MUNICIPALITY COURT:	
Did the municipality abolish the municipal court by ordinance or bylaw? 755.01(2) Comments:	
Is the municipality abolishing the municipal court at the end of the term for which the judge has been elected or appointed? 755.01(2) Comments:	

<p>Was official action to abolish the municipal court done prior to the circulation of nomination papers as required by opinion of the GAB? Comments:</p>	
<p>Did the municipal court transmit a certified copy of the ordinance or bylaw discontinuing the municipal court to the county clerk or board of election commissioner of the county having the largest portion of the population in the jurisdiction served by the judge under 11.02(3e) and to the director of state courts? Comments:</p>	
<p>Are there any pending or appealable cases? If so, they shall be identified and separated when those records and files are transferred to circuit court. 755.14 Comments:</p>	
<p>Are there any pending warrants on open or appealable cases? If so, they shall be withdrawn by the municipal court before transfer to circuit court. Comments:</p>	
<p>Are there any outstanding bail monies associated with pending or appealable cases? If so, those moneys shall be associated with each pending or appealable case before transfer to circuit court. Comments:</p>	
<p>Did the municipal court deliver to the municipal clerk, within 10 days of the court's abolishment date, the court records, books of account, case files, moneys and bonds belonging to the court? 755.12 Comments:</p>	

COLLECTIONS SINGLE MUNICIPALITY COURT:	
<p>Are there any closed cases where outstanding forfeitures/surcharges/fees remain unpaid? If so, those moneys should be collected by the municipality prior to the abolishment date of the court. If not collected or if only partially collected by the municipality an updated account of the forfeitures/surcharges/fees shall be transferred to circuit court for collection.</p> <p>755.14 Comments:</p>	
<p>Are there any pending warrants for failure to pay forfeitures/surcharges/fees? If so, they shall be dismissed by the municipal court prior to the abolishment date of the court. The Circuit Court judge may reissue them at the judge's discretion.</p> <p>Comments:</p>	
<p>Have any outstanding forfeitures/surcharges/fees be submitted to tax intercept by the municipal court? If so, those tax intercept postings shall be withdrawn by the municipal court prior to the abolishment date of the court. The Circuit Court may reissue tax intercept at its discretion.</p> <p>Comments:</p>	
<p>Have any outstanding forfeitures/surcharges/fees been submitted for driver license suspension by the municipal court? If so, an updated account of those driver license suspensions shall be transferred to circuit court for future action.</p> <p>Comments:</p>	

ACTIONS REQUIRED/QUESTIONS TO ASK	Requirement Met
GENERAL JOINT MUNICIPALITY COURT	
(Total Abolition):	
<p>Did each of the municipalities participating in the joint court abolish the municipal court by ordinance or bylaw?</p> <p>755.01(2) Comment:</p>	

<p>Are the municipalities abolishing the municipal court at the end of the term for which the judge has been elected or appointed? 755.01(2) Comments:</p>	
<p>Was official action to abolish the municipal court done prior to the circulation of nomination papers as required by opinion of the GAB? Comments:</p>	
<p>Did each participating municipal court transmit a certified copy of the ordinance or bylaw discontinuing the municipal court agreement to the county clerk or board of election commissioner of the county having the largest portion of the population in the jurisdiction served by the judge under 11.02(3e) and to the director of state courts? 755.01(4) Comments:</p>	
<p>Are there any pending or appealable cases? If so, they shall be identified and separated by municipality when those records and files are transferred to circuit court. 755.14 Comments:</p>	
<p>Are there any pending warrants on open or appealable cases? If so, they shall be withdrawn by the municipal court before transfer to circuit court. Comments:</p>	
<p>Are there any outstanding bail monies associated with pending or appealable cases? If so, those moneys shall be associated with each pending or appealable case before transfer to circuit court. Comments:</p>	

<p>Did the municipal court deliver to the municipal clerks of the respective municipalities, within 10 days of the court's abolishment date, the court records, books of account, case files, moneys and bonds associated with those municipalities belonging to the court? 755.12 Comments:</p>	
<p>Were those court records, books, files, monies and bonds separated according to applicable municipality and delivered to the appropriate municipal clerk? 755.12 Comments:</p>	
<p>Did the municipal clerk, upon receipt of the court records, books of account and case files of a municipal court which has ceased to operate dispose of them by delivering them to the appropriate clerk of circuit court? 755.12 Comments:</p>	
<p>COLLECTIONS JOINT MUNICIPALITY COURT (Total Abolition):</p>	
<p>Are there any closed cases where outstanding forfeitures/surcharges/fees remain unpaid? If so, those moneys should be collected by the municipality prior to the abolishment date of the court. If not collected or if only partially collected by the municipality an updated account of the forfeitures/surcharges/fees shall be transferred to circuit court for collection. 755.14 Comments:</p>	
<p>Are there any pending warrants for failure to pay forfeitures/surcharges/fees? If so, they shall be dismissed by the municipal court prior to the abolishment date of the court. The Circuit Court judge may reissue them at the judge's discretion. Comments:</p>	
<p>Have any outstanding forfeitures/surcharges/fees been submitted to tax intercept by the municipal court? If so, those tax intercept postings shall be withdrawn by the municipal court prior to the abolishment date of the court. The Circuit Court may reissue tax intercept at its discretion. Comments:</p>	

<p>Have any outstanding forfeitures/surcharges/fees be submitted for driver license suspension by the municipal court? If so, an updated account of those driver license suspensions shall be transferred to circuit court for future action.</p> <p>Comments:</p>	
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ACTIONS REQUIRED/QUESTIONS TO ASK	Requirement Met
GENERAL JOINT MUNICIPALITY COURT (Partial Abolition/Contraction):	
<p>Did each of the municipalities participating in the joint court abolish/modify the municipal court by ordinance or bylaw? 755.01(2) Comment:</p>	
<p>Are the municipalities abolishing /modifying the municipal court at the end of the term for which the judge has been elected or appointed? 755.01(2) Comments:</p>	
<p>Was official action to abolish/modify the municipal court done prior to the circulation of nomination papers as required by opinion of the GAB? Comments:</p>	
<p>Did each participating municipal court transmit a certified copy of the ordinance or bylaw discontinuing/modifying the municipal court agreement to the county clerk or board of election commissioner of the county having the largest portion of the population in the jurisdiction served by the judge under 11.02(3e) and to the director of state courts? 755.01(4) Comments:</p>	
<p>Are there any pending or appealable cases for those municipalities no longer participating in the court? If so, they shall be identified and separated by the applicable municipality when those records and files are transferred to circuit court. 755.14 Comments:</p>	

<p>Are there any pending warrants on open or appealable cases for those municipalities no longer participating in the court? If so, they shall be withdrawn by the municipal court before transfer to circuit court. Comments:</p>	
<p>Are there any outstanding bail monies associated with pending or appealable cases for those municipalities no longer participating in the court? If so, those moneys shall be associated with each pending or appealable case before transfer to circuit court. Comments:</p>	
<p>Did the municipal court deliver to the municipal clerks of the respective municipalities not longer participating in the court, within 10 days of the court's abolishment date, the court records, books of account, case files, moneys and bonds associated with those municipalities belonging to the court? 755.12 Comments:</p>	
<p>Were those court records, books, files, monies and bonds separated according to applicable municipality and delivered to the appropriate municipal clerk? 755.12 Comments:</p>	
<p>Did the municipal clerk, upon receipt of the court records, books of account and case files of a municipal court which has ceased to operate dispose of them by delivering them to the appropriate clerk of circuit court? 755.12 Comments:</p>	
<p>COLLECTIONS JOINT MUNICIPALITY COURT (Partial Abolition/Contraction):</p>	
<p>Are there any closed cases where outstanding forfeitures/surcharges/fees remain unpaid for those municipalities no longer participating in the court? If so, those moneys should be collected by the municipality prior to the abolishment date of the court. If not collected or if only partially collected by the municipality an updated account of the forfeitures/surcharges/fees shall be transferred to circuit court for collection. 755.14 Comments:</p>	

<p>Are there any pending warrants for failure to pay forfeitures/surcharges/fees for those municipalities no longer participating in the court? If so, they shall be dismissed by the municipal court prior to the abolishment date of the court. The Circuit Court judge may reissue them at the judge's discretion.</p> <p>Comments:</p>	
<p>Have any outstanding forfeitures/surcharges/fees been submitted to tax intercept by the municipal court for municipalities no longer participating in the court? If so, those tax intercept postings shall be withdrawn by the municipal court prior to the abolishment date of the court. The Circuit Court may reissue tax intercept at its discretion.</p> <p>Comments:</p>	
<p>Have any outstanding forfeitures/surcharges/fees be submitted for driver license suspension by the municipal court for municipalities no longer participating in the court? If so, an updated account of those driver license suspensions shall be transferred to circuit court for future action.</p> <p>Comments:</p>	

CHAPTER 755

MUNICIPAL COURT

755.001 Definitions.
 755.01 Option of municipality.
 755.02 Term.
 755.03 Oath and bond.
 755.04 Salary.
 755.045 Jurisdiction.
 755.05 Territorial jurisdiction.
 755.06 Sessions of court.
 755.09 Office, where kept.
 755.10 Employees.

755.11 Records.
 755.12 Delivery of books to municipal clerk.
 755.13 Books demanded by municipal clerk.
 755.14 Duty of clerk on receipt of books.
 755.15 Pending actions triable by court which receives books.
 755.16 Continuance on vacancy; notice of trial.
 755.17 Municipal court decorum and facilities.
 755.18 Municipal judge and court clerk training.
 755.19 Municipal court commissioners.
 755.21 Collection.

755.001 Definitions. In this chapter:

- (1) “Judge” means municipal judge.
- (2) “Judicial administrative district” means the judicial administrative district having the largest portion of the population in the jurisdiction served by the judge.
- (3) “Records” mean all of the records subject to [SCR chapter 72](#).

History: 1977 c. 305; 2009 a. 402.

755.01 Option of municipality. (1) There is created and established in and for each city, town and village, a municipal court designated “Municipal Court for the (city, town or village) of (name of municipality)”. A municipal court created under this subsection is a coequal branch of the municipal government, subject to the superintending authority of the supreme court, through the chief judge of the judicial administrative district. A court shall become operative and function after January 1, 2011, when the city council, town board, or village board adopts an ordinance or bylaw providing for the election of a judge and the operation and maintenance of the court, receives a certification from the chief judge of the judicial administrative district that the court meets the requirements under ss. [755.09](#), [755.10](#), [755.11](#), and [755.17](#), and provides written notification to the director of state courts of the adoption of the ordinance or bylaw. A permanent vacancy in the office of municipal judge shall be filled under s. [8.50 \(4\) \(fm\)](#). Any municipal court established under this section is not a court of record. The court shall be maintained at the expense of the municipality. The municipal governing body shall determine the amount budgeted for court maintenance and operations. The budget of the municipal court shall be separate from, or contained on a separate line item from, the budget or line items of all other municipal departments.

(2) The governing body may by ordinance or bylaw abolish the municipal court as part of a consolidation under s. [66.0229](#) or at the end of any term for which the judge has been elected or appointed. The governing body may not abolish the municipal court while an agreement under sub. (4) is in effect.

(3) A municipality may establish as many branches of municipal court as it deems necessary.

(4) Two or more cities, towns or villages of this state may enter into an agreement under s. [66.0301](#) for the joint exercise of the power granted under sub. (1), except that for purposes of this subsection, any agreement under s. [66.0301](#) shall be effected by the enactment of identical ordinances by each affected city, town or village. Electors of each municipality entering into the agreement shall be eligible to vote for the judge of the municipal court so established. If a municipality enters into an agreement with a municipality that already has a municipal court, the municipalities may provide by ordinance or resolution that the judge for the existing municipal court shall serve as the judge for the joint court until the end of the term or until a special election is held under s. [8.50 \(4\) \(fm\)](#). Each municipality shall adopt an ordinance or bylaw

under sub. (1) prior to entering into the agreement. The contracting municipalities need not be contiguous and need not all be in the same county. Upon entering into or discontinuing such an agreement, the contracting municipalities shall each transmit a certified copy of the ordinance or bylaw effecting or discontinuing the agreement to the appropriate filing officer under s. [11.02 \(3e\)](#) and to the director of state courts. When a municipal judge is elected under this subsection, candidates shall be nominated by filing nomination papers under s. [8.10 \(6\) \(bm\)](#), and shall register with the filing officer specified in s. [11.02 \(3e\)](#).

History: 1977 c. 187 s. 94; 1977 c. 305; Stats. 1977 s. 755.01; 1985 a. 89, 304; 1987 a. 389; 1989 a. 274; 1997 a. 208; 1999 a. 150 s. 672; 1999 a. 182; 2001 a. 109; 2009 a. 402.

755.02 Term. The judges shall be elected at large for a term of 4 years unless a different term, not exceeding 4 years nor less than 2 years, is provided by charter ordinance enacted under s. [66.0101](#). The term shall commence on May 1 of the year of the judge’s election.

History: 1977 c. 187 s. 94; 1977 c. 273, 305, 447; Stats. 1977 s. 755.02; 2009 a. 402.

755.03 Oath and bond. (1) The judge shall, after election or appointment, take and file the official oath as prescribed in s. [757.02 \(1\)](#) and at the same time execute and file an official bond in an amount to be fixed by the governing body. The governing body shall pay the costs of the bond. No judge may act as such until he or she has complied with the requirements of sub. (2).

(2) Within 10 days after a municipal judge takes the oath, the judge shall file the oath and bond with the clerk of the city, town or village where the judge was elected or appointed. If the municipal judge is elected under s. [755.01 \(4\)](#), the judge shall file copies of the oath and bond with each applicable municipal clerk. The judge shall file a certified copy of the oath with the office of director of state courts within the 10–day time period after the judge takes the oath.

History: 1977 c. 187 s. 94; 1977 c. 305; Stats. 1977 s. 755.03; Sup. Ct. Order, 88 Wis. 2d xiii (1979); 1983 a. 192; 1985 a. 89, 304; 2009 a. 402.

755.04 Salary. The governing body shall fix a salary for the judge. The salary may be increased by the governing body before the start of the 2nd or a subsequent year of service of the term of the judge, but shall not be decreased during a term. The salary of a municipal judge who is designated or appointed under s. [8.50 \(4\) \(fm\)](#) or [800.06](#) shall be determined by contract between the municipality and the judge. The judge may not serve until the contract is entered into. Salaries may be paid annually or in equal installments as determined by the governing body, but no judge may be paid a salary for any time during the term during which the judge has not executed and filed his or her official bond or official oath, as required by s. [755.03](#).

History: 1977 c. 187 s. 94; 1977 c. 305 s. 64; Stats. 1977 s. 755.04; 1985 a. 304; 2009 a. 402.

755.045 MUNICIPAL COURT

Updated 13–14 Wis. Stats. 2

755.045 Jurisdiction. (1) A municipal court has exclusive jurisdiction over an action in which a municipality seeks to impose forfeitures for violations of municipal ordinances of the municipality that operates the court, except as follows:

(a) If the action is transferred under s. 800.035 (5) (c) or 800.05 (3) to a court of record.

(b) If equitable relief is demanded the plaintiff shall bring the action in a court of record.

(c) Whenever the municipal court of a 1st class city in any county having a population of 500,000 or more is not in session, the circuit court has concurrent jurisdiction to hear municipal court cases.

(2) A municipal judge may issue civil warrants to enforce matters which are under the jurisdiction of the municipal court, as provided in ch. 800. Municipal judges are also authorized to issue inspection warrants under s. 66.0119.

(3) A municipal judge may order the payment of restitution for violations of ordinances that prohibit conduct that is the same as or similar to conduct prohibited by state statute punishable by fine or imprisonment or both. The judge shall use the restitution procedure under s. 800.093.

History: 1977 c. 187 s. 94; 1977 c. 305; Stats. 1977 s. 755.045; 1979 c. 32 s. 92 (17); 1985 a. 179; 1989 a. 261; 1991 a. 40; 1999 a. 150; 2009 a. 402.

755.05 Territorial jurisdiction. Every judge has statewide jurisdiction as authorized by this chapter and ch. 800.

History: 1977 c. 187 s. 94; 1977 c. 305 s. 64; Stats. 1977 s. 755.05; 1985 a. 89; 2009 a. 402.

755.06 Sessions of court. The municipal court shall be open daily or as determined by the judge and approved by the governing body.

History: 1977 c. 187 s. 94; Stats. 1977 s. 755.06; 1983 a. 192 s. 303 (4); 2009 a. 402.

755.09 Office, where kept. (1) The governing body of the city, village, or town shall provide the judge with an office or appropriate work space other than at a place prohibited under sub. (2).

(2) No judge may keep his or her office or hold court in any tavern, or in any room in which intoxicating liquors are sold, or in any room connecting with a tavern or room in which intoxicating liquors are sold.

History: 1977 c. 187 s. 94; 1977 c. 305 s. 64; Stats. 1977 s. 755.09; 1997 a. 27; 2009 a. 402.

755.10 Employees. (1) Except as provided in sub. (2), the judge shall in writing appoint the personnel that are authorized by the council or board. The council or board shall authorize at least one clerk for each court. Except as provided in sub. (2), the hiring, termination, hours of employment, and work responsibilities of the court personnel, when working during hours assigned to the court, shall be under the judge's authority. Their salaries shall be fixed by the council or board. The clerks shall, before entering upon the duties of their offices, take the oath provided by s. 19.01 and give a bond if required by the council or board. The cost of the bond shall be paid by the municipality. Oaths and bonds of the clerks shall be filed with the municipal clerk.

(2) In the municipal court located in the city of Milwaukee the court administrator shall in writing appoint the personnel that are authorized by the council or board. In the municipal court located in the city of Milwaukee the hiring, termination, hours of employment, and work responsibilities of the court personnel, when working during hours assigned to the court, shall be under the court administrator's authority.

History: 1977 c. 187 s. 94; Stats. 1977 s. 755.10; 1983 a. 192 s. 303 (4); 2009 a. 402; 2011 a. 260 s. 80.

755.11 Records. Every judge shall file and keep together all records in an action separate from all other records. The judge shall store all records in the office of the court clerk or in another appropriate facility designated by the council or board. Access to the records shall be restricted to court personnel except as authorized by the judge or by law. Nothing in this section is intended

to restrict the ability of counsel or parties to read the records. The purchase or implementation of any electronic records management system used by the court shall be approved by the judge.

History: 1977 c. 187 s. 94; Stats. 1977 s. 755.11; 1983 a. 192 s. 303 (4); 2009 a. 402.

755.12 Delivery of books to municipal clerk. When a municipal court ceases to operate, the court records, books of account, case files, moneys and bonds belonging to the court shall be delivered to the municipal clerk within 10 days after the vacancy occurs by the person who is in possession. If the municipal court was established under s. 755.01 (4), the person shall separate the court records, books, files, moneys and bonds according to the municipalities involved and deliver them to the appropriate municipal clerk.

History: 1977 c. 187 s. 94; Stats. 1977 s. 755.12; 1985 a. 89; 1995 a. 224.

755.13 Books demanded by municipal clerk. If any materials which should be delivered to the municipal clerk under s. 755.12 are not delivered within the time specified, the municipal clerk shall demand their delivery and may by action compel delivery.

History: 1977 c. 187 ss. 94, 135; Stats. 1977 s. 755.13.

755.14 Duty of clerk on receipt of books. (1) When the municipal clerk receives the court records, books of account and case files of a municipal court which has ceased to operate, he or she shall within 10 days dispose of them as follows:

(a) Deliver them to the clerk of the circuit court of that county if the municipality in which the municipal court was located was within one county.

(b) Deliver the case files of the pending and appealable cases to the clerk of circuit court of the county where the court held office and certified copies of the court records for the past 12 months to the clerk of circuit court of every county in which the municipality lies, if the municipality in which the municipal court was located is in more than one county.

(2) For any pending or appealable cases, the bail shall be delivered along with the case file to the proper clerk of court. Any other moneys received under sub. (1) shall be delivered to the municipal treasurer as provided in s. 800.10 (2).

History: 1977 c. 187 s. 94; 1977 c. 305 s. 65; 1977 c. 449 s. 497; Stats. 1977 s. 755.14; 1979 c. 32 s. 92 (17); 1981 c. 317 s. 2202; 1993 a. 246; 1995 a. 224.

755.15 Pending actions triable by court which receives books. When any action is pending before a judge at the time his or her office becomes vacant and his or her books and records have been delivered to the circuit court, it may try the action and enter judgment as though the action was begun before it.

History: 1977 c. 187 s. 94; 1977 c. 305 s. 64; 1977 c. 449 s. 497; Stats. 1977 s. 755.15; 2009 a. 402.

755.16 Continuance on vacancy; notice of trial. All actions before any judge undetermined or appealable when his or her office becomes vacant are continued until the expiration of 10 days from the time when his or her books and records were delivered to the circuit court. The court shall give 3 days' notice to the parties to the action.

History: 1977 c. 187 s. 94; 1977 c. 305 s. 64; 1977 c. 449 s. 497; Stats. 1977 s. 755.16; 2009 a. 402.

755.17 Municipal court decorum and facilities. (1) A municipal judge shall wear a black robe while presiding in a municipal court except when exceptional circumstances exist.

(1m) The clerk of the municipal court shall be attired in appropriate clothing and may not, while performing municipal court functions, wear anything that implies or indicates that he or she is a law enforcement officer.

(2) The governing body of the city, village, or town shall provide a courtroom for a municipal court, which shall be in an adequate facility. The courtroom shall be in a public building if a suitable public building is available within the municipality and shall be located in an area separate from the police department by design or signage. The courtroom shall be designed and furnished

3 Updated 13–14 Wis. Stats.**MUNICIPAL COURT 755.21**

to create and promote the proper atmosphere of dignity and decorum for the operation of the court.

(3) All personnel employed by the court shall be located in an area separate and distinct from the police department by design or signage.

(4) Every municipal court shall have a telephone number or extension separate from the telephone number or extension of any other governmental department.

History: 1977 c. 305; 2009 a. 402.

755.18 Municipal judge and court clerk training.

(1) Municipal court clerks and judges shall participate in a program of continuing education as required by the supreme court.

(2) Municipalities shall bear the cost of programs under sub. (1) provided by the court. All moneys collected by the supreme court under this section shall be deposited in s. 20.680 (2) (i).

(3) This section does not apply to a municipal judge appointed under s. 8.50 (4) (fm) nor to a former municipal judge or former circuit judge to whom cases are assigned under s. 800.06 during the 6-month period following the date on which the judge receives his or her initial assignment.

History: 1983 a. 27; 1985 a. 304; 2009 a. 402.

755.19 Municipal court commissioners. (1) APPOINTMENT.

First class cities may create the office of municipal court commissioner. The municipal court commissioner shall be an attorney licensed to practice in this state and shall complete annual educational credits consistent with supreme court requirements for municipal judges. The common council shall establish the number of positions and set the term, the additional qualifications and the compensation for the office. The presiding judge of the municipal court shall be the appointing authority and may terminate the employment of a municipal court commissioner at will and without cause. The municipal court commissioner shall be supervised by the judge whose cases the commissioner is hearing. Each municipal court commissioner shall take and file the official oath in the office of the clerk of the municipal court of the 1st class city for which appointed before performing any duty of the office.

(2) **POWERS AND DUTIES.** Under the supervision of a municipal judge, a municipal court commissioner may do all of the following:

(a) Under ss. 800.035 and 800.095 (1), conduct initial appearances and receive noncontested forfeiture pleas, order the revocation or suspension of driving privileges and impose forfeitures,

impose community service and restitution according to the schedule adopted by the municipal court where appointed, and issue dispositional and sanction orders pursuant to ch. 938.

(b) Issue warrants for those who do not appear as scheduled or as summoned.

(c) Conduct hearings on warrant returns.

(d) Schedule indigency hearings.

(e) Make a finding on the indigency of defendants.

(f) Enforce alternative judgments for failure to comply with court orders.

(g) Conduct court proceedings and exercise any power authorized by statute.

(3) **NEW HEARINGS AND APPEALS OF MUNICIPAL COURT COMMISSIONER RULINGS.** A motion for a new hearing or appeal of a contested ruling by a municipal court commissioner shall be filed with the municipal court no later than the 20th day after the commissioner makes the ruling. The motion shall be heard by the supervising municipal judge under the procedure consistent with the procedure adopted by the judicial district on motions to reopen judgments before the municipal court. Nothing in this subsection shall be construed as altering the time periods for filing a notice of appeal from a final judgment or filing a motion of relief from judgment.

History: 1997 a. 27; 2009 a. 402.

755.21 Collection. The governing body or court may contract with a collection agency for the collection of unpaid forfeitures, assessments, and surcharges under s. 66.0114 (1) (a). Collection under this section may not begin until the court refers the case to the collection agency. The contract shall provide that the collection agency shall be paid from the proceeds recovered by the collection agency. For each violation for which a forfeiture, assessment, or surcharge is imposed, the municipal court shall determine the amount to be distributed to each entity under s. 66.0114 (1) (bm) and (3) (b) and (c) as follows:

(1) Calculate the percentage of the total violation amount to which the entity is entitled before the collection agency is paid.

(2) Subtract from the amount collected for the violation the amount paid to the collection agency to collect the violation amount.

(3) Multiply the remainder under sub. (2) by the percentage under sub. (1).

History: 2003 a. 140; 2005 a. 305; 2009 a. 402.

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JUDGE GERALD C. NICHOL
Chair

KEVIN J. KENNEDY
Director and General Counsel

MEMORANDUM

DATE: For the June 18, 2015, Board Meeting

TO: Members, Wisconsin Government Accountability Board

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

Prepared by:

Matthew Giesfeldt, Staff Counsel

SUBJECT: WIS. STAT. §5.05(6a) Informal Advisory Opinion Request:
Proof of Residence Issued by Library System

I. Informal Opinion Request

On May 23, 2015, Mr. Paul Malischke sent an email to the Government Accountability Board ("G.A.B." or "Board") HelpDesk email account. Mr. Malischke asked whether he could use a webpage within his personal LINKcat account, a tool used by the South Central Library System ("SCLS"), as an acceptable form of proof of residence pursuant to WIS. STAT. §6.34(3)(a)11. That statute provides that "[a] check or other document issued by a unit of government" may be used to establish proof of an elector's residence if the document contains the elector's "current and complete name," and "current and complete residential address[.]" WIS. STAT. §6.34(3)(a), (b).

The LINKcat webpage created by a library system for an individual contains the individual's current and complete address, and Mr. Malischke seeks advice as to whether individuals may use that webpage as proof of residence when registering to vote. Based upon existing guidance and previous Board decisions, the consensus of Board staff is that displaying a printout or electronic version of a LINKcat account page with the elector's current and complete name and address does satisfy the requirement to provide proof of residence during the voter registration process. This memorandum outlines the legal analysis supporting the recommendation of Board staff.

II. Analysis

Generally, electors must present proof of residence to register to vote. WIS. STAT. §§6.27, 6.34(2). Electors prove residence by presenting an identifying document, which must include the following information: "[a] current and complete name, including both the given and family name[.]" and "[a] current and complete residential address, including a numbered street address, if any, and the name of a municipality." WIS. STAT. §6.34(3)(b). An identifying document may

come in one form out of a statutory list of 11 possibilities, including “[a] check or other document issued by a unit of government.” WIS. STAT. §6.34(3)(a)11.

The Board’s existing guidance regarding acceptable forms of proof of residence generally mimics the statutory language. Specifically, the Board has said that “[a] check or other document issued by a unit of government” and “[p]ublic high school, technical college, and public university correspondence and documents, . . . [and b]illing statements and collection notices from a governmental entity” are examples of documents that may be used to provide proof of residence.¹ However, the Board’s guidance is clear that these examples do not represent a comprehensive list of acceptable documents.² Staff has consistently advised that the clause “other document issued by a unit of government” includes a wide variety of documents which are delivered or published by an agency of a federal, state, or local unit of government that is authorized to produce the document.

The judicial branch has not more specifically clarified the phrase “other document issued by a unit of government,” as to either the type or the form of the document that may be used as proof of residence, as neither the Wisconsin Supreme Court nor the Wisconsin Court of Appeals have published any decisions on the issue.

A. LINKcat Webpage as a Document Issued by a Unit of Government.

An individual’s LINKcat webpage qualifies as a “document issued by a unit of government” and therefore as an acceptable proof of residence document, provided it contains the elector’s full name and address. *See* WIS. STAT. §§6.34(3)(a)11, (b).

1. The LINKcat Webpage is a “Document.”

According to Mr. Malischke, the LINKcat webpage for an individual contains account information related to the individual’s use of the library system, including all information required for a proof of residence document under WIS. STAT. §6.34(3)(b). The LINKcat webpage lists the account information which may be printed out, but it is generally not sent by the library system as a separate piece of printed correspondence or otherwise produced in paper form, even though it may be displayed online.

As with other examples of “other documents issued by a unit of government,” the statutes do not specifically state whether a LINKcat webpage may constitute an acceptable proof of residence document. Neither the election statutes nor Chapter 990 of the Wisconsin Statutes mention “document” or otherwise define what the term means. The term “document” is defined in the Uniform Commercial Code broadly to include written statements that are not oral, but that

¹ *See* Proof of Residence for Voter Registration Guideline, WIS. GOV’T ACCOUNTABILITY BD., available at http://www.gab.wi.gov/sites/default/files/publication/154/proof_of_residence_guide_pdf_90585.pdf; *see also* List of Possible Proof of Residence Documents, WIS. GOV’T ACCOUNTABILITY BD., available at http://www.gab.wi.gov/sites/default/files/publication/154/list_and_pictures_of_possible_por_documents_9_12_p_48731.pdf; *see also* Michael Haas, *Revised Guidance – Proof of Residence Now Required for All Voter Registrations*, 4-5 (April 11, 2014), available at http://www.gab.wi.gov/sites/default/files/memo/20/clerk_communication_re_new_por_requirement_v_3_pdf_56179.pdf.

²*See, supra*, note 1.

definition applies to transactions which are subject to the Uniform Commercial Code, not to voter registration procedures. WIS. STAT. §405.102(1)(f).

The Merriam-Webster Dictionary defines “document” as “an official paper that gives information about something or that is used as proof of something” and “a computer file that contains text that you have written.” MERRIAM-WEBSTER DICTIONARY, <http://www.merriam-webster.com/dictionary/document> (2015).

The Board, in its previous policy decisions regarding electronic forms of proof of residence, did not specifically define “document” except to state that electronic versions of the enumerated forms of proof of residence may be presented to clerks. *See Clerk Communication Regarding Use of Electronic Documents for Proof of Residence (August 28, 2012 Ruling of the Government Accountability Board)*, at 2 (Aug. 29, 2012).³ This appears to be the most relevant Board precedent addressing the essential requirements of a proof of residence document and it did not construe the term “document” to exclude a LINKcat webpage. Apart from the issue of the electronic form, which is discussed below, the focus of the Board and its staff has been on whether the item produced as proof of residence contains the required information and, if it does, it qualifies as a document.

Given that the LINKcat webpage includes the current and complete name and address of the individual listed on the account, staff recommends that the Board interpret the webpage to be a “document” as that term is used in WIS. STAT. §6.34(3)(a)11.

2. The South Central Library System is a “Unit of Government.”

Chapter 43 of the Wisconsin Statutes governs municipal and county public library systems as well as the creation and operation of multi-jurisdictional public library systems, which are consortiums of libraries that join together to provide certain services and to share library resources. Municipal and county libraries are agencies of the sponsoring local government and must conform to the policies and provisions enumerated in Chapter 43. *See* WIS. STAT. §§43.05, 43.09, 43.15. Public libraries are funded by local, county and state resources. WIS. STAT. §§43.12, 43.24, 43.52.

Several specific factors support the conclusion that the South Central Library System (SCLS) is a unit of government for purposes of issuing a proof of residence document. SCLS is a multicounty federated public library system created pursuant to WIS. STAT. §§43.15(4) and 43.19. *See* SUMMARY OF GOVERNANCE STRUCTURE, SCLS, <http://www.scls.info/committees/governance-summary.html> (Aug. 2014). It is funded, in part, through state and county aid. *See, e.g., South Central Library System (SCLS) Budget Notes 2015, available at* <http://www.scls.info/plans/index.html>.⁴ SCLS has entered into agreements with the Madison Public Library to share resources and structure as contemplated in Chapter 43, Wisconsin Statutes. *See, e.g., STATUTORY RESOURCE SERVICES AGREEMENT FOR 2016, available at* <http://www.scls.info/plans/index.html>. Finally, Board staff’s conclusion regarding the status

³ Available at http://www.gab.wi.gov/sites/default/files/memo/20/clerk_memo_electronic_proof_of_residence_8_29_12_p_36039.pdf.

⁴ SCLS is also funded by the South Central Library System Foundation, “a 501(c)(3) foundation that serves the entire system.” South Central Library System Foundation: ABOUT, <http://www.scls.info/foundation/about/index.html> (June 7, 2013) (last visited June 5, 2015).

of SCLS as a unit of government is supported by SCLS’s human resources and finance coordinator, Ms. Kerrie Goeden, who confirmed via telephone on June 5, 2015, that SCLS considers itself a unit of government, funded and organized much like a public college or university.

The statutes do not provide any additional guidance on this issue. Chapter 990, Wisconsin Statutes, does not mention “unit of government” or otherwise define what such term means. *See* WIS. STAT., Ch. 990. “Governmental unit” and “local governmental unit,” or variations thereof, are defined in other chapters of the Wisconsin Statutes, but the definitions are limited to specific contexts and do not specifically include library systems. *See, e.g.*, WIS. STAT. §§16.957(1)(k), 23.09(19)2., 23.0917(4m)3., 45.72(1), 196.374(1)(g)

For the foregoing reasons (SCLS was created and is governed under Chapter 43 of the Wisconsin Statutes; SCLS is funded publically; SCLS considers itself a unit of government), staff recommends that the Board consider SCLS a “unit of government” as that term is used in WIS. STAT. §6.34(3)(a)11.

3. SCLS “Issues” the LINKcat Account.

The LINKcat account webpage is “issued by” SCLS, as such term is used in WIS. STAT. §6.34(3)(a)11.

Factually, SCLS *issues* its LINKcat account webpage: First, individuals may not create their own LINKcat account; they must go to a SCLS library and a librarian or other employee will set up the account for the individual. Second, SCLS issues an account number to the individual with the LINKcat account. The individual cannot create the account number independently—SCLS generates that account number, which is viewable on the account webpage. *See* Ethics and Accountability Division Administrator’s LINKcat account page, which follows this memorandum as “Attachment 1.” Finally, the LINKcat account page does not appear easily recreated—it is a specific webpage that contains information that only SCLS may provide, such as the date that the person joined LINKcat, the account number, and the expiration date of the LINKcat account. *See* Attachment 1.

Legally and conceptually, SCLS appears to *issue* its LINKcat account: First, Chapter 990, Wisconsin Statutes, does not define the term “issue” as a verb. *See* WIS. STAT., Ch. 990. Second, the term “issued by” appears 788 times in the Wisconsin Statutes, most often to describe a document or other thing rendered or created by the issuing entity. This is the same type of relationship found between SCLS and the LINKcat account in question. Finally, the Merriam-Webster Dictionary defines the verb, “issue” as “the act of officially making something available or giving something to people to be used.” MERRIAM-WEBSTER DICTIONARY, <http://www.merriam-webster.com/dictionary/document> (2015).

For the foregoing reasons, which generally show that SCLS produces the LINKcat for LINKcat users, staff recommends that the Board finds that the LINKcat account webpage in question is “issued by” SCLS, as that term is used in WIS. STAT. §6.34(3)(a)11.

B. LINKcat Account Document May be Provided as Proof of Residence in Electronic Format.

Prior to the November 2012 General Election, the Board unanimously adopted a policy interpreting WIS. STAT. §6.34 “to include electronic documents displayed on electronic devices which may be used for registration purposes. It shall not be the responsibility of municipalities to provide devices or internet access to facilitate this process.” *Wisconsin Government Accountability Board August 28, 2012, Open Session Minutes*, at 5 (Aug. 25, 2012).⁵ Board staff informed clerks of this policy adoption in a memorandum, stating, “Electronic versions of [the documents described in WIS. STAT. §6.34(3)(a)] may be presented to election officials as proof of residence on smartphones, tablets, or other electronic devices.” *Clerk Communication Regarding Use of Electronic Documents for Proof of Residence (August 28, 2012 Ruling of the Government Accountability Board)*, at 2 (Aug. 29, 2012).⁶

Given that the statutory language of WIS. STAT. §6.34(3) does not prescribe the physical form of the proof of residence document, as well as the Board’s previous guidance related to similar electronic documents, staff recommends the Board find that an individual’s LINKcat account webpage may be presented electronically as proof of residence while registering to vote, provided the electronic document includes the individual’s current and complete name and address. *See* WIS. STAT. §§6.34(3)(a)11., (b).

III. Recommendation and Proposed Motions

For the forgoing reasons, G.A.B. staff recommends that the Board issue an informal advisory opinion that a LINKcat account page that contains a person’s full name and current address is an acceptable form of proof of residence under WIS. STAT. §6.34(3)(a), (b). In addition, this analysis and conclusion should extend to any online account data produced by a public library system with the same circumstances analyzed herein.

Recommended Motion: Pursuant to WIS. STAT. §5.05(6a), the Government Accountability Board finds that a webpage from a public Wisconsin library system online account may be used as a proof of residence document under WIS. STAT. §6.34(3)(a)11. if it is issued by the library system and contains all of the required information under WIS. STAT. §6.34(3)(b).

⁵ Available at http://www.gab.wi.gov/sites/default/files/event/74/10_23_12_open_session_agenda_and_board_materials_p_17443.pdf.

⁶ Available at http://www.gab.wi.gov/sites/default/files/memo/20/clerk_memo_electronic_proof_of_residence_8_29_12_p_36039.pdf.

Visit the Library's Home Page

- Mobile
- Help
- Databases
- Don't Miss Lists
- New This Week
- Newspapers
- OverDrive

Attachment #1

JONATHAN BECKER's account → Your Personal Details

To make changes to your record please contact the library.

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Card number: [REDACTED]

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JUDGE GERALD C. NICHOL
Chair

KEVIN J. KENNEDY
Director and General Counsel

MEMORANDUM

DATE: For the Board Meeting of June 18, 2015

TO: Members, Wisconsin Government Accountability Board

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

Prepared and Presented by:
Michael Haas
Elections Division Administrator

SUBJECT: Implementation of Voter Photo ID Requirement

Board staff has continued to update and make available information and resources for voters and local election officials regarding the implementation of the Voter Photo ID requirement. This memorandum summarizes the status of staff's ongoing efforts in partnership with local clerks and other organizations.

The first elections conducted under the Photo ID Law following completion of the litigation which challenged the requirement were special school district referendums in Bayfield County and Walworth County on May 19, 2015. G.A.B. staff had reached out to municipal and county clerks involved in those special elections to assist in preparing election inspectors and voters. Feedback provided by those clerks indicated that election inspectors and voters adjusted well to the requirement and no major issues arose. A small number of voters appeared at the polls without an acceptable photo identification and, rather than casting a provisional ballot or retrieving their photo ID before voting, simply declined to vote.

The photo ID requirement will also be implemented in other upcoming special elections, including the first election of village officers in the new Village of Somers in Kenosha County on June 9, 2015; a referendum election in the Fennimore Community School District in Grant County on June 16, 2015; the special election for the 33rd State Senate District in Waukesha County (primary on June 23, 2015 and election on July 21, 2015); and a special election to fill an aldermanic vacancy in the City of Milwaukee (primary on July 21, 2015 and election on August 18, 2015).

In preparation for those special elections, the Elections Administration and Training teams spent a significant amount of time reviewing and revising G.A.B. manuals, forms, and guidance to clerks. The revisions to the main G.A.B. manuals have been completed and published, and staff continues to update training resources which will be used in preparing election officials for the 2016 election cycle.

Public Information Officer Reid Magney also continues to reach out to local media outlets in the areas where special elections are taking place to discuss the return of the photo ID requirement and resources available to voters. Clerks involved in the special elections which have taken place reported that they appreciated the attention which the media has given to the issue.

The staff team responsible for the Statewide Voter Registration System (SVRS) and the MyVote Wisconsin website has completed necessary updates to accommodate the photo ID requirement. Staff has implemented changes to SVRS and to MyVote Wisconsin which were developed in the fall of 2014 and published updated instructions for SVRS users and electors using MyVote Wisconsin. The SVRS Modernization Teams also continues to work to ensure that the SVRS modernization project includes all necessary features to enforce the photo ID requirements.

Board staff continues to work with KW2, the agency which developed and produced the *Bring it to the Ballot* campaign, to update the public service announcements, videos, printed materials and the website, in accordance with the plan approved by the Board at its April 2015 meeting. The project is on schedule and on budget. The updates focus on including references to the new petition process used by the Division of Motor Vehicles (DMV) to assist individuals who request a photo ID for voting but do not have a birth certificate available.

Staff also met with a representative of the DMV for a comprehensive discussion regarding the new petition process, to coordinate the efforts of both agencies, and to reestablish lines of communications for addressing policy issues and circumstances of individual voters. A common theme of both the DMV and the G.A.B. is that voters without a photo ID should take steps now to obtain one, so that they are prepared before elections occur. This is especially true for individuals who do not have a birth certificate available because the process of obtaining records necessary for DMV to issue a photo ID may take an extended period of time. To that end, Voter Services Specialist Meagan McCord Wolfe is making presentations regarding the photo ID requirement and working with clerks and community organizations to achieve a broader distribution of information and resources to individuals who do not have an acceptable photo ID and may need assistance in obtaining one.

This summary is provided for the Board's information and no action is required.

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JUDGE GERALD C. NICHOL
Chairperson

KEVIN J. KENNEDY
Director and General Counsel

MEMORANDUM

DATE: For the June 18, 2015 Meeting

TO: Members, Wisconsin Government Accountability Board

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

Prepared by Elections Division Staff
Presented by: Michael Haas, Elections Division Administrator

SUBJECT: Update Regarding Legislative Audit Bureau Recommendations

This memorandum provides an update regarding the efforts of Board staff to implement the recommendations made by the Legislative Audit Bureau (LAB) in its audit report regarding the G.A.B. which was issued in December 2014. Board staff has continued to make progress in completing the few remaining items which had not been completed at the time of the April 15, 2015 report to the Joint Legislative Audit Committee.

Attached is the updated Status Report summarizing each recommendation and the status of the agency's efforts in implementing the recommendations. There are only two updates made to the report which was provided at the Board's meeting of April 29, 2015. Implementation of Recommendations 5 and 9 were "In progress" at that time and are now listed as "Completed." As a result, with the exception of ongoing work related to administrative rules, Board staff considers all of the 35 recommendations in the audit report to be either completed or to require additional legislative action (Item 34 relates to the agency's biennial report to the Legislature which will be submitted on or before October 15, 2015).

The actions of G.A.B. staff and local election officials to complete work related to Recommendations 5 and 9 are detailed below.

Recommendation 5, Page 29 of LAB Report

Review the records of the deceased individuals LAB identified and determine whether any of these individuals' votes were inappropriately cast in FY 2012-13 elections.

Discussion

A. Introduction

As part of its audit report, the Legislative Audit Bureau (LAB) recommended that the Government Accountability Board (G.A.B.) “review the records of the deceased individuals [we] identified and determine whether any of these individuals’ votes were inappropriately cast in FY 2012-13 elections.”

The LAB identified 88 individuals for further review, including:

1. Fifty-five deceased voters for whom SVRS provided insufficient information to determine when clerks issued and received absentee ballots.
2. Twenty-nine deceased voters who died after clerks issued absentee ballots but before clerks received completed absentee ballots, thus indicating that the individuals may have completed the issued ballots before they died.
3. Four deceased voters who may have died before clerks issued them absentee ballots.

In response to the recommendation, the G.A.B. conducted an initial review of the identified deceased individuals in March, 2015. The review revealed that 4 of the 88 deceased voters had votes mistakenly attributed to them in SVRS and required no further action. The remaining 84 cases still required further investigation based on a review of available election records that could help determine who cast the ballot. G.A.B. staff has completed a follow-up investigation of the remaining 84 cases with the assistance of county and municipal clerks. This memorandum summarizes the second phase of the G.A.B.’s investigation regarding the remaining 84 deceased individuals.

B. Methodology

The G.A.B. contacted a total of 33 counties regarding the 84 cases and then followed up by contacting eight jurisdictions based upon the response from the counties and the availability of election records.

During the initial investigation G.A.B. staff determined that the absentee ballot certificate envelope (GAB-122) was the most reliable evidence to determine whether the deceased individual was the person who cast an absentee ballot. The signature on the GAB-122 could be compared with signatures on the voter registration form (GAB-131) or absentee ballot request form (GAB-121) to help determine who cast the ballot. Since counties frequently retain the certificate envelope on behalf of municipalities after an election, G.A.B. staff contacted each county in which a deceased person appeared to have voted to determine whether the county clerk still had the absentee ballot certificate envelopes for each election in question. Pursuant to Wis. Stat. 7.23, certificate envelopes may be destroyed 22 months after a federal election and 90 days after other elections.

Based upon the responses of county clerks, Board staff contacted municipal clerks regarding the cases in which the county clerk still retained the absentee ballot certificate envelope. G.A.B. staff requested that the municipality obtain the certificate envelope from the county and compare the signature with either the voter registration form or the absentee ballot request form. To ensure that the comparison was completed and documented, Board staff created a signature comparison form for each case and asked the municipal clerk to make a determination on whether the signatures were similar or different. The form also requested that municipal clerks confirm the dates that the absentee ballot was issued and returned because some of that information was missing from SVRS. Municipal clerks completed the signature comparison form and returned it to G.A.B. staff, along with a copy of the absentee ballot certificate envelope and the registration form or absentee ballot request form used in the comparison.

C. Findings

All of the counties responded to the staff's request to locate election records but, because the record retention deadline defined in Wis. Stat. §7.23 had passed for the elections identified in the audit, only eight counties still retained envelopes for ten deceased voters. In those ten cases, one municipality did not have voter registration forms available because the clerk had already destroyed those records, and therefore signature comparisons were able to be made for nine of the ten voters. Municipal clerks indicated that all nine of the deceased voters appear to be the individuals that cast the absentee ballot. In instances where the signatures looked slightly different, clerks indicated on the signature comparison form that there had previously been significant differences between the voter registration signature and more recent years when the voter cast an absentee ballot. Other significant clerk observations were that one individual voted in person in the clerk's office and that another person was in the hospital at the time that they returned their absentee ballot, providing additional evidence of the voter's identity.

In six of the nine cases, the clerk received the ballot before the voter's death but the individual died before the date of the election. In three of the nine cases the voter died before his or her ballot was received by the clerk. In one of those cases the SVRS data indicated that the ballot was returned several weeks after the voter's death, but the clerk indicated that the SVRS data had been entered incorrectly, as the date that the ballot was certified by the voter was one week before the voter's death. In two of the three cases, the ballot was received only a few days after the voter's death, which would account for the time taken for the ballot to reach the clerk. Finally, municipal clerks repeatedly emphasized that it often takes an extended period of time to be notified of deaths in their municipalities. Because obituaries for some individuals do not always appear in a local newspaper or clerks may not see them, it is common for a month or longer to pass before the death is identified in SVRS from records obtained by the Department of Health Services (DHS). These records are provided by DHS on a monthly basis.

Below is a table that summarizes these findings:

Voter	Municipality	Election	Date Ballot Sent	Date Ballot Returned	Date of Death
1	Village of Oregon	2012 PRESIDENTIAL	10/29/2012	10/29/2012	11/3/2012
2	Village of Oregon	2012 PRESIDENTIAL	10/29/2012	11/2/2012	11/3/2012
3	City of Stevens Point	2012 PRESIDENTIAL	9/17/2012	10/29/2012	10/11/2012
4	Town of Gale	2012 PRESIDENTIAL	9/23/2012	10/17/2012	10/23/2012
5	Town of Necedah	2012 PRESIDENTIAL	9/14/2012	11/6/2012	10/14/2012
6	Town of Stanley	2012 PARTISAN PRIMARY	6/27/2012	7/11/2012	8/11/2012
7	Village of Wonewoc	2012 PRESIDENTIAL	10/30/2012	10/31/2012	11/5/2012
8	Village of Germantown	2012 PRESIDENTIAL	9/20/2012	9/27/2012	10/2/2012
9	Village of Germantown	2013 SPRING PRIMARY	1/31/2013	2/11/2013	2/10/2013

D. Conclusions

Based upon the review of available election records, G.A.B. staff can conclude only that there was sufficient evidence to confirm that in nine of the 84 cases, the deceased individuals submitted their own ballots. The nine cases represent 100 percent of the instances where the election records still exist and a signature comparison could be made. None of the municipal clerks indicated potential fraudulent voting activity for the nine deceased individuals. There are not enough election materials to determine who submitted ballots for the remaining 75 individuals since the counties no longer have the absentee ballot certificate envelopes for the elections under review.

In sum, the investigation by G.A.B. staff has concluded that four of 88 votes identified by the LAB were mistakenly attributed to the identified voter; nine of the 88 voters were confirmed to have cast their ballots by comparing signatures on available election materials; and the remaining 75 voters could not be investigated further because of the lack of election materials necessary to make a signature comparison. Given these findings and the lack of available documentation to resolve the remaining cases, Board staff recommends that no further action be taken in this investigation.

Recommendation 9, Page 32 of LAB Report

Review information for the individuals LAB identified whose voter registration records may have been erroneously inactivated and ensure that the relevant clerks have notified the individuals.

The LAB requested that the G.A.B. review information for six individuals whose voter registration records may have been erroneously inactivated as a result of potential matches in SVRS between

the voter records and felon records, either because the voter and the felon were not the same person and were erroneously confirmed by clerks, or because the individual had been convicted of a misdemeanor instead of a felony. The audit report expressed concern that the municipal clerks may have failed to send a letter to the six individuals indicating that their voter registration record was marked as inactive and they were therefore ineligible to vote. The LAB recommended that G.A.B. staff ensure that the relevant clerks have notified the six individuals.

Upon further investigation, Board staff determined two of the voter records had been inactivated in SVRS prior to the felon match being confirmed by the clerk, and therefore the clerk was not required to notify the individual again that he or she was not eligible to vote. In one of the six cases, the voter record was correctly marked as inactive because it matched the data from the felon record. In one of the six cases the municipal clerk had already reactivated the voter record after the LAB had reviewed the SVRS data and before Board staff requested follow up action by the clerk.

In the remaining two cases, Board staff requested that the appropriate municipal clerk mail a letter to the last address known for the individual and request a response so that the clerk could verify whether the person still resided in the municipality and was eligible as a resident to vote in that jurisdiction. Those letters were mailed in early April. G.A.B. staff followed up with the clerks several times to determine if any voter contact had been made and was advised that the individuals had not responded.

Should the individuals confirm that they still reside in the same municipality, staff has advised the municipal clerks to mark their voter records as active. However, to date no responses from these individuals have occurred which would seem to indicate that they do not reside at the same addresses and their voter record statuses should remain inactive. Those voters would need to register again if they wish to vote in the future. Absent any further questions from the municipal clerks involved, Board staff considers its involvement in these cases to be complete.

This memorandum is provided for the Board's information and no action is required. Board staff will also provide this update to the Joint Legislative Audit Committee and to the Legislative Audit Bureau.

Status Report on LAB Recommendations

Recommendation #	LAB Page #	GAB Page #	LAB Recommendation	Status
1	22	14	Promulgate administrative rules that prescribe the contents of training that municipal clerks must provide to election inspectors and special voting deputies.	In progress
2	22	1	Report to the Joint Legislative Audit Committee by April 15, 2015, on the status of its efforts to implement this recommendation.	Completed
3	26	2	Regularly monitor Statewide Voter Registration System records to identify and then contact clerks who have not mailed letters to registrants whose personally identifiable information did not match information held by other agencies.	Legislative Action Required
4	26	1	Report to the Joint Legislative Audit Committee by April 15, 2015, on the status of their efforts to implement this recommendation.	Completed
5	29	5	Review the records of the deceased individuals LAB identified and determine whether any of these individuals' votes were inappropriately cast in FY 2012-13 elections.	Completed
6	29	6	Review Statewide Voter Registration System records after each election in order to identify and investigate instances in which votes were cast in the names of individuals who died before Election Day.	Legislative Action Required
7	29	1	Report to the Joint Legislative Audit Committee by April 15, 2015, on the status of their efforts to implement these recommendations.	Completed
8	32	3	Regularly monitor Statewide Voter Registration System records to contact clerks who have not mailed letters to individuals whose voter registration records have been inactivated because of ongoing felony sentences.	Legislative Action Required
9	32	4	Review information for the individuals LAB identified whose voter registration records may have been erroneously inactivated and ensure that the relevant clerks have notified the individuals.	Completed
10	32	1	Report to the Joint Legislative Audit Committee by April 15, 2015, on the status of their efforts to implement these recommendations	Completed
11	33	7	Complete in a timely manner the statutorily required reviews to identify individuals with ongoing felony sentences who may have voted.	Completed
12	33	8	Report to the Government Accountability Board on any actions taken by district attorneys against the 33 individuals who may have voted while serving felony sentences.	Completed
13	33	8	Work with the Department of Corrections to improve the accuracy of information regarding individuals serving felony sentences, including by ensuring that individuals convicted of misdemeanors are not erroneously included in the information that is electronically provided to the Statewide Voter Registration System.	Completed
14	33	1	Report to the Joint Legislative Audit Committee by April 15, 2015, on the status of their efforts to implement these recommendations.	Completed
15	34	14	Promulgate administrative rules that specify the responsibilities of clerks for maintaining voter registration records in the Statewide Voter Registration System.	In progress
16	34	1	Report to the Joint Legislative Audit Committee by April 15, 2015, on the status of its efforts to implement this recommendation.	Completed
17	49	9	Present to the Government Accountability Board for its approval written procedures specifying penalty amounts to assess on campaign finance entities that do not pay their annual filing fees by January 31.	Completed
18	49	1	Report to the Joint Legislative Audit Committee by April 15, 2015, on the status of their efforts to implement this recommendation.	Completed

Status Report on LAB Recommendations

Recommendation #	LAB Page #	GAB Page #	LAB Recommendation	Status
19	52	9	Adhere to the Government Accountability Board's February 2008 penalty schedule for assessing penalties on campaign finance entities that do not file statutorily required campaign finance reports on time.	Completed / New schedule adopted
20	52	10	Report to the Government Accountability Board at least quarterly on all campaign finance reports that were not submitted on time, whether a penalty was assessed for each late report, the amount of each assessed penalty, and the amount of each penalty that was paid and unpaid.	Completed
21	52	1	Report to the Joint Legislative Audit Committee by April 15, 2015, on the status of their efforts to implement these recommendations.	Completed
22	54	9	Adhere to the Government Accountability Board's February 2008 penalty schedule when assessing penalties for campaign contributions in violation of statutory limits.	Completed / New schedule adopted
23	54	10	Track centrally all penalties assessed for violations of campaign finance contribution limits and use the information to report to the Government Accountability Board at least quarterly on all violations of campaign finance contribution limits, whether a penalty was assessed for each violation or a written warning was provided in lieu of a penalty, the amount of each assessed penalty, and the amount of each penalty that was paid and unpaid.	Completed
24	54	12	Report to the Joint Legislative Audit Committee by April 15, 2015, on the status of their efforts to implement these recommendations.	Completed
25	56	11	Publish on the Government Accountability Board's website summaries of all confidential advisory opinions issued related to compliance with campaign finance laws.	Completed
26	56	1	Report to the Joint Legislative Audit Committee by April 15, 2015, on the status of their efforts to implement this recommendation.	Completed
27	59	12	Determine whether to revoke the existing licenses of lobbyists who are delinquent in paying state taxes or court-ordered child or family support payments.	Completed
28	59	1	Report to the Joint Legislative Audit Committee by April 15, 2015, on the status of their efforts to implement this recommendation.	Completed
29	64	9	Adhere to the Government Accountability Board's February 2008 penalty schedule when assessing penalties.	Completed / New schedule adopted
30	64	10	Track centrally all penalties assessed for violations of lobbying laws, all penalties waived and the reasons for waiving them, and all written warnings provided in lieu of assessing penalties and the reason for each written warning and use the information to report to the Government Accountability Board at least quarterly on the number of violations of each lobbying law, whether a penalty was assessed for each violation, the amount of each assessed and waived penalty, and the amount of each penalty that was paid and unpaid.	Completed
31	59	12	Prohibit principals that have not filed timely semiannual expense statements from allowing lobbyists to lobby on their behalf or request that the Legislature modify this provision.	Completed
32	59	1	Report to the Joint Legislative Audit Committee by April 15, 2015, on the status of their efforts to implement these recommendations.	Completed
33	65	13	Include in the weekly reports to the Legislature while the Legislature is in session all statutorily required information about lobbying activities or request that the Legislature modify statutes to allow these reports to exclude information that is publicly available on the Eye on Lobbying website.	Completed
34	65	13	Include in the biennial reports to the Legislature all statutorily required information.	Will complete

Status Report on LAB Recommendations

Recommendation #	LAB Page #	GAB Page #	LAB Recommendation	Status
35	65	1	Report to the Joint Legislative Audit Committee by April 15, 2015, on the status of their efforts to implement these recommendations.	Completed
36	67	11	Publish on the Government Accountability Board's website summaries of all confidential advisory opinions issued related to compliance with lobbying laws.	Completed
37	67	1	Report to the Joint Legislative Audit Committee by April 15, 2015, on the status of their efforts to implement this recommendation.	Completed
38	73	13	Develop written policies for granting individuals extensions to the deadline for filing statements of economic interests and comply with statutes by setting forth in writing the reasons for granting each extension.	Completed
39	73	13	Promptly notify the Department of Administration and the employing agency when an individual does not file a statement of economic interests on time.	Completed
40	73	11	Track centrally how often they assess penalties on individuals who have not filed statements of economic interests on time and the amounts of the assessed penalties and use this information to report to the Government Accountability Board at least quarterly on the extent to which statements were not filed on time, whether a penalty was assessed for each violation, the amount of each penalty assessed, and the amount of each penalty that was paid and unpaid.	Completed
41	73	9	Adhere to the Government Accountability Board's February 2008 penalty schedule when assessing penalties on individuals who do not file statements of economic interests on time.	Completed / New schedule adopted
42	73	14	Present to the Government Accountability Board for its approval policies indicating when staff should not attempt to collect penalties that have been assessed on individuals who do not file statements of economic interests on time.	Completed
43	73	1	Report to the Joint Legislative Audit Committee by April 15, 2015, on the status of their efforts to implement these recommendations.	Completed
44	87	17	Present to the Government Accountability Board for its approval written policies for considering complaints filed with the Ethics and Accountability Division and the Elections Division.	Completed
45	87	17	Maintain complete, centralized information about all complaints received and inquiries undertaken, including the resolution of these issues.	Completed
46	87	17	Report regularly to the Government Accountability Board on the status and resolution of all inquiries.	Completed
47	87	1	Report to the Joint Legislative Audit Committee by April 15, 2015, on the status of their efforts to implement these recommendations.	Completed
48	92	15	Promulgate all required administrative rules.	In progress
49	92	16	Remove from the Administrative Code the eight rules that are not in effect because it did not vote to adopt them.	In progress
50	92	16	Require its staff to report to it regularly on the status of efforts to promulgate administrative rules and remove from the Administrative Code rules that are not in effect.	Completed
51	92	1	Report to the Joint Legislative Audit Committee by April 15, 2015, on the status of its efforts to implement these recommendations, including a schedule for promulgating each statutorily required administrative rule.	Completed

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JUDGE GERALD C. NICHOL
Chair

KEVIN J. KENNEDY
Director and General Counsel

MEMORANDUM

DATE: For the June 18, 2015 Board Meeting

TO: Members, Wisconsin Government Accountability Board

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

Prepared and presented by:
Matthew Giesfeldt, Staff Counsel

SUBJECT: Promulgation of Administrative Rules

I. Status of Promulgation Progress:

The Government Accountability Board (“G.A.B.” or “Board”) has authorized staff to promulgate 16 various rules (or sets of rules) and to remove rules from the administrative code that are no longer in effect. A table summarizing the status of promulgation of these rules follows this memorandum as “Attachment 1.”¹

In addition to Attachment 1, the following summarizes recent noteworthy progress regarding certain administrative rules for the Board’s information and consideration:

A. Technical College ID Emergency Rule in Effect

On May 15, 2015, the Board’s emergency rules, WIS. ADMIN. CODE GAB §§10.01 and 10.02, went into effect upon publication in the *Wisconsin State Journal*. These emergency rules permit the use of Wisconsin Technical College System identification cards for voting purposes. The Board enacted GAB §§10.01 and 10.02 as emergency rules so that the rules would be in effect for two special elections that took place on May 19, 2015. A copy of the certified version of these rules follows this memorandum as “Attachment 2.”

¹ The table also reflects one rule, #19, that staff seeks Board authorization to promulgate at the Board’s June 18, 2015, meeting.

B. Tech School ID Permanent Rule Ready for Legislative Council Clearinghouse

Staff has prepared the analysis and final draft of permanent rules, WIS. ADMIN. CODE GAB §§10.01 and 10.02, which follow this memorandum as “Attachment 3.” With Judge Nichol’s approval, staff submitted Attachment 3 to the Legislative Council Clearinghouse (“Clearinghouse”) on June 8 2015. The Clearinghouse will review the Analysis and Proposed Rules on or before June 28, 2015, so that staff may submit the same to the Governor and Legislature for final approval.

C. Removal of Rules No Longer In Effect

At its April 29, 2015, meeting, the Board directed staff to contact the Legislature Reference Bureau (“LRB”) to attempt to remove certain G.A.B. rules from the Administrative Code that should no longer be in effect pursuant to 2007 Wisconsin Act 1 (“Act 1”). Act 1 provided that the Board had to reaffirm any Elections Board or Ethics Board rule as a G.A.B. rule if such rule was to remain in effect after the merger of the Elections and Ethics Boards into the G.A.B. If the Board took no action on a particular rule within a statutory review period or explicitly declined to reaffirm a rule, such rule would not survive the Elections and Ethics Boards merger. In 2008 and 2009, the Board reaffirmed many rules, but either specifically declined to reaffirm or took no action on rules §§1.29, 1.41, 1.55, 20.01, 21.01, 21.04, and chs. 4, 5. Such rules erroneously remain published in the Administrative Code today. The Board directed staff to work with the LRB to remove these rules. The draft of the letter follows this memorandum as “Attachment 4.” Staff will submit this letter to the LRB shortly.

II. Board Action Requested:

A. Delegation of Authority to Approve Drafted Scope Statements and Proposed Rules

The Board may delegate some, but not all, of its specific responsibilities to the Director and General Counsel. WIS. STAT. §5.05(1)(e). On December 10, 2007, the Board designated Kevin J. Kennedy as Wisconsin’s chief election official pursuant to WIS. STAT. §5.05(3)(g). In addition to its statutory delegation authority, the Board has previously authorized the Director and General Counsel to take other quasi-judicial, litigious, and administrative actions, including the authority to make a finding that a proposed rule does not have an economic impact, pursuant to Executive Order #50, IV.8. Similarly, staff now requests the Board to delegate other authority to the Director and General Counsel related to the promulgation of administrative rules.

G.A.B. staff requests that the Board delegate its authority to approve published statements of scope and draft language of administrative rules to Director Kennedy with consultation with the Board Chair. After the entire Board authorized staff to begin to promulgate emergency rules GAB §§10.01 and 10.02 related to the use of Wisconsin Technical College System identification cards as proof of identification, the Board delegated its authority to review and approve language of those proposed emergency

rules to Director Kennedy and Board Chair. Such delegation permitted staff to promptly take all necessary steps to promulgate those rules efficiently and before the May 19, 2015, special elections. Similarly, G.A.B. staff now asks the Board to delegate authority to the Board Chair and Director Kennedy to approve staff progress on administrative rules *after* the Board initially authorizes promulgation. Specifically, staff requests that the Board delegate its authority as described in the fourth and sixth steps of the promulgation process, as described below:

Administrative Rule Promulgation Process

First, the Board must authorize staff to draft a Statement of Scope for a proposed rule. WIS. STAT. §227.135.

Second, staff must submit a proposed Statement of Scope to the Governor for consideration and approval. WIS. STAT. §227.135(2); 2011 Executive Order #50, II.5.

Third, staff must publish the governor-approved Statement of Scope in the Administrative Register within 30 days of receipt of the Governor's written approval. WIS. STAT. §227.135(2); Executive Order #50, II.5, II.9.

Fourth, *the Board may approve* the Statement of Scope after it has been published in the Administrative Register for at least ten days, and no staff member may work on drafting the rule until the Board approves the Statement of Scope. WIS. STAT. §§227.135(2).

Fifth, staff may draft the language and required analysis of the proposed rule. WIS. STAT. §§227.137, 227.14.

Sixth, *the Board may approve* the language and required analysis of the proposed rule, and the staff may then submit such language and analysis to the Legislative Council Rule Clearinghouse for review. WIS. STAT. §227.15.

Seventh, if required, staff may hold a public hearing on the proposed rule. WIS. STAT. §§227.16, 227.17, 227.18.

Eighth, after holding any required public hearing, staff may make necessary revisions and submit the proposed rule and analysis in final draft form to the Governor for approval. WIS. STAT. §227.185; Executive Order #50, V.1.

Ninth and finally, staff may submit a Governor-approved final draft rule to the Legislature for final approval. WIS. STAT. §227.19.

Staff requests that the Board delegate its authority in the fourth and sixth steps of the promulgation process, as described above. Such delegation will permit staff to work efficiently on the high volume of rulemaking work. Such delegation does not deprive

the Board of oversight of the process, given that, under this request, the Board will still initially authorize staff to commence the promulgation process, and staff will continue to keep the Board apprised of all steps in the promulgation progress. The Board may also direct staff to return the final proposed rule for the Board's consideration following any public hearing.

B. Approve Statements of Scope

Staff may not commence work on drafting an administrative rule until the Board approves the rule's Statement of Scope. WIS. STAT. §§227.135(2). The Board may not consider and approve a Statement of Scope until the Statement of Scope has been published in the Wisconsin Administrative Register for at least ten (10) days. *Id.* Staff submitted two Statements of Scope, SS-045-15 and SS-045-15, for publication in the Wisconsin State Register on May 4, 2015, and both Statements were published on May 11, 2015. See <https://docs.legis.wisconsin.gov/code/register/2015/713A3/register#ss>. Staff requests that the Board approve the following two Statements of Scope so that staff may commence work drafting the rules:

1. SS-045-15:

The Board proposes to promulgate WIS. ADMIN. CODE GAB Ch. 13, *relating to* training for election inspectors and special voting deputies. The Statement of Scope, SS-045-15, follows this memorandum as "Attachment 5."

2. SS-046-15:

The Board proposes to repeal and recreate WIS. ADMIN. CODE GAB Ch. 7, *relating to* approval of election voting equipment in accordance with WIS. STAT. §§5.40(2), 5.76, 5.77, 5.905, 5.91, and 7.23(1)(g). The Statement of Scope, SS-046-15, follows this memorandum as "Attachment 6."

C. Authorize Staff to Promulgate Additional Administrative Rules

1. Conformity with WIS. STAT. §6.97(3)(b)

WIS. ADMIN. CODE GAB §3.04(2) currently provides that a person who casts a provisional ballot may provide a driver's license number to the municipal clerk "on the day following the day of the election," then the person's ballot may be counted. This rule does not reflect current law, as WIS. STAT. §6.97(3)(b) was amended in 2011 to provide that a voter who casts a provisional ballot may provide the required information to the municipal clerk no later than 4 p.m. on the *Friday* after the election. Staff requests that the Board authorize it to initiate the promulgation process to amend WIS. ADMIN. CODE GAB §3.04(2) to conform this rule with current law.

2. Commercial-Off-The-Shelf Equipment for Voting Systems ("COTS")

Voting equipment manufacturers continue to use more Commercial-Off-The-Shelf (“COTS”) components in their voting systems. Current statutes and administrative rules do not permit the use of COTS components because such provisions only permit the use of voting systems approved by the G.A.B. Currently, the G.A.B. only approves voting systems, not potential COTS components that could be compliant with those voting systems. If the G.A.B. developed policies and procedures for the use of COTS components in voting systems, the agency could continue to protect the safety and validity of electronic voting while permitting clerks to more easily and efficiently maintain voting system equipment.

Staff recommends that the Board direct staff to investigate proposed standards and procedures for the use and approval of Commercial-Off-The-Shelf (“COTS”) components in voting systems. Staff also recommends that the Board authorize staff to initiate the promulgation process to amend WIS. ADMIN. CODE GAB Ch. 7 to prescribe the policies and procedures for the approval and use of COTS components in voting systems, and staff recommends that such provisions should allow for unmodified COTS components to be replaced with like-kind items upon written concurrence from the voting system vendor and the G.A.B.

D. Direct Staff on Whether to Promulgate Rule Permitting Use of Stickers on Student IDs

On November 15, 2011, the Joint Committee for Review of Administrative Rules (“JCRAR”) directed the G.A.B. to promulgate a rule that would clarify that accredited universities and colleges which issue an identification card for voting purposes may use an adhesive sticker to affix certain required information on the identification card, including the cardholder’s signature, the issuance date, and the expiration date. A copy of the previously-approved Statement of Scope for this rule follows this memorandum as “Attachment 7.” JCRAR made this directive after the Board adopted a policy that stickers may be affixed to college identification cards and such cards would still comply with the provisions of 2011 Wisconsin Act 23 (the “Photo ID Law”). The Board adopted this policy after colleges and universities raised the issue of whether they could issue stickers to students to render the students’ identification cards compliant with the Photo ID Law.

G.A.B. staff never promulgated the rule because the Photo ID Law was judicially stayed in several court cases. In April 2015, the U.S. Supreme Court denied certiorari in *Frank v. Walker*, Case No. 11-CV-1128, the case challenging the Photo ID Law. This denial effectively lifted any stays on the Photo ID Law, rendering it the law of the State.

In the years following the enactment of the Photo ID Law, and especially since the U.S. Supreme Court denied certiorari, the G.A.B. staff have not received any other questions from colleges and universities about whether they may affix stickers onto student identification cards and maintain compliance with the Photo ID Law. Instead, colleges

and universities seem to have adapted their procedures to issue cards compliant with the Photo ID Law without the use of stickers.

Currently, the plaintiffs in *Frank v. Walker* still have a motion pending before Judge Adelman seeking a permanent injunction that, if granted as requested, would render the Photo ID Law unconstitutional as applied to certain classes of individuals (veterans, technical college students, and voters with out-of-state driver's licenses).

For the foregoing reasons, staff recommends that the Board direct staff to cease any promulgation on an administrative rule to permit the use of stickers on student identification cards and to advise JCRAR of the Board's decision to no longer promulgate this rule. Further, staff recommends that the Board revisit this issue if interested groups petition the Board to consider it.

III. Recommendations and Proposed Motions

A. Delegation of Authority

Recommended Motion: Pursuant to WIS. STAT. §§5.05(1)(e), 5.05(1)(f), 227.13, 227.135, 227.15, 227.24, 2011 Executive Order #50, and its previous delegation of authority granted at its meeting on January 13, 2015, the Government Accountability Board delegates the following authority to its Director and General Counsel, upon consultation with the Board Chair:

1. To review and approve a Statement of Scope that has been published in the Wisconsin Administrative Register for not less than ten (10) days, permitting G.A.B. staff to commence work on the draft of the administrative rule(s) that is the subject of the Statement of Scope.
2. To review and approve proposed draft language and analysis of a permanent administrative rule(s), permitting staff to submit such proposed language and analysis to the Legislative Council Rules Clearinghouse and, if necessary, conduct a public hearing on the proposed rule(s).

The Director and General Counsel shall consult with the Board Chair to determine whether Board members should be polled or a special meeting conducted before action is taken. The Director and General Counsel shall also report, at the Board meeting immediately following action on the delegated authority, the specifics of the action taken, the basis for taking the action and the outcome of that action.

B. Approve Statements of Scope

Recommended Motion: Pursuant to WIS. STAT. §§5.05(1)(f), 227.11(2)(a), 227.135, and 2011 Executive Order #50, the Government Accountability Board approves the following Statements of Scope so that staff may commence work on drafting the rules described therein:

1. SS-045-15 (“Attachment 5”)
2. SS-046-15 (“Attachment 6”)

C. Promulgate Administrative Rule: Conformity with WIS. STAT. §6.97(3)(b)

Recommended Motion: Pursuant to WIS. STAT. §§5.05(1)(f), 227.11(2)(a), 227.135, and Executive Order #50, Government Accountability Board directs staff to take all necessary steps to draft a Statement of Scope and submit such Statement to the Governor to amend WIS. ADMIN. CODE GAB §3.04(2) to be consistent with WIS. STAT. §6.97(3)(b) regarding the deadline for providing proof of identification after casting a provisional ballot.

D. Promulgate Administrative Rule: COTS Components in Voting Systems

Recommended Motion: The Board:

1. Authorizes G.A.B. staff to investigate proposed standards and procedures for the use and approval of Commercial-Off-The-Shelf (“COTS”) components in voting systems;
2. Directs G.A.B. staff to present these proposed standards and procedures to the Board at its next regularly scheduled Board meeting, and staff shall include with these proposals provisions that allow for an unmodified COTS component to be replaced with a like-kind item upon written concurrence from the voting system vendor and the G.A.B.; and
3. Directs G.A.B. staff, pursuant to WIS. STAT. §§5.05(1)(f), 227.11(2)(a), 227.135, and Executive Order #50, to take all necessary steps to draft a Statement of Scope and submit such Statement to the Governor to amend WIS. ADMIN. CODE GAB Ch. 7 to include rules that prescribe the G.A.B. policies and procedures for the approval and use of Commercial-Off-The-Shelf (“COTS”) components in voting systems.

E. Stickers on Student Identification Cards

Recommended Motion: The Government Accountability Board vacates its November 9, 2011, authorization for the use of stickers or labels affixed to student identification cards to satisfy photo identification requirements of 2011 Wisconsin Act 23, and the Board directs staff to advise the Joint Committee for Review of Administrative Rules of the Board’s decision to vacate its previous authorization on this matter.

State of Wisconsin\Government Accountability Board

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JUDGE GERALD C. NICHOL
 Chair

KEVIN J. KENNEDY
 Director and General Counsel

ATTACHMENT 1: Status of Administrative Rules

#	Proposed Rule:	Board Directive to Promulgate:	Status:
1	Use of Technical College IDs for Voting Purposes	November – December 2011	<ul style="list-style-type: none"> • Statement of Scope drafted • Statement of Scope submitted to the Governor (3/30/15) • Statement of Scope published in the Administrative Register (4/13/15) • Board approved Statement of Scope (4/29/15) • Judge Nichol approved language and analysis of proposed emergency rule (5/6/15) • Staff submitted language and analysis of proposed emergency rule to the Governor (5/7/15) • The Governor provided written approval of language and analysis of emergency rule (5/12/15) • Staff submitted emergency rule to <i>Wisconsin State Journal</i> for publication (5/12/15) • Emergency rule published in <i>Wisconsin State Journal</i> (5/15/15); emergency rule in effect with publication • Staff submitted certified copy of emergency rule to Legislative Reference Bureau for publication in Administrative Register (5/13/15) • Staff submitted emergency rule to Assembly and Senate chief clerks for distribution to the Legislature (5/13/15) • Emergency rule published in Administrative Register (5/18/15); <i>available at</i> https://docs.legis.wisconsin.gov/code/register/2015/713A3/register#emr_effect • Draft of permanent rule submitted to Judge Nichol June 4, 2015 • Judge Nichol approved rule on June 6, 2015 • Staff submitted proposed rulemaking order to Legislative Council Rules Clearinghouse on June 8, 2015 • Staff submitted Fiscal Estimate & Economic Impact Analysis to Legislative Council Rules Clearinghouse on June 9, 2015
2	Contents of Training that Municipal Clerks Must Provide to Election	January 13, 2015	<ul style="list-style-type: none"> • Statement of Scope drafted • Statement of Scope submitted to the Governor (4/14/15) • Statement of Scope published in Administrative Register (5/11/15); <i>available at</i>

	Inspectors and Special Voting Deputies		https://docs.legis.wisconsin.gov/code/register/2015/713A2/register
3	Standards for Determining Validity of Votes Cast with Electronic Voting Equipment	January 13, 2015	<ul style="list-style-type: none"> • Staff completed first draft of Statement of Scope in 2013 • Staff proposes to combine this rule with #5(Ballot security), and use only one Statement of Scope and one promulgation process to amend and create rules within in WIS. ADMIN. CODE GAB Ch. 5.
4	Security, Review, and Verification of Software Used with Electronic Voting Equipment	January 13, 2015	<ul style="list-style-type: none"> • Statement of Scope drafted • Statement of Scope submitted to the Governor (4/9/2015) • Statement of Scope published in Administrative Register (5/11/15); <i>available at</i> https://docs.legis.wisconsin.gov/code/register/2015/713A2/register
5	Ballot Security and Interpreting WIS. STAT. §§5.84, 5.86, 5.87, 5.905, 5.91, 7.23, 7.51, and 9.01	January 13, 2015	<ul style="list-style-type: none"> • Staff completed first draft of Statement of Scope in 2013 • Staff proposes to combine this rule with #4 (Validity of Votes Cast with Electronic Voting Equipment), and use only one Statement of Scope and one promulgation process to amend and create rules within in WIS. ADMIN. CODE GAB Ch. 5.
6	Administer Statutory Requirements for Electronic Voting Systems	January 13, 2015	<ul style="list-style-type: none"> • Staff has commenced drafting the Statement of Scope
7	Election Notices that Clerks Must Use to Inform Public About Elections	January 13, 2015	<ul style="list-style-type: none"> • Staff has commenced drafting the Statement of Scope
8	Responsibilities of Clerks for Maintaining Records in the Statewide Voter Registration System	January 13, 2015	<ul style="list-style-type: none"> • Staff has not commenced work on the Statement of Scope
9	Conduct and Regulation of Election Observers to Monitor Compliance with Election Laws by Local Officials	January 13, 2015	<ul style="list-style-type: none"> • Scope statement drafted • Scope statement submitted to the Governor (5/18/15)
10	Procedures for Ethics and Elections Complaints	April 29, 2015	<ul style="list-style-type: none"> • Board authorized staff to initiate promulgation process (4/29/15) • Staff has commenced drafting the Statement of Scope

11	Acceptable Proofs of Residence (Including Electronic)	April 29, 2015	<ul style="list-style-type: none"> • Board authorized staff to initiate promulgation process (4/29/15) • Scope statement drafted • Scope statement submitted to the Governor (6/2/15)
12	U.S. Citizen as Witness for Overseas Voter	April 29, 2015	<ul style="list-style-type: none"> • Board authorized staff to initiate promulgation process (4/29/15) • Staff has not commenced work on the Statement of Scope
13	Procedures for Curbside Voting	April 29, 2015	<ul style="list-style-type: none"> • Board authorized staff to initiate promulgation process (4/29/15) • Staff has not commenced work on the Statement of Scope
14	Definition of "Same Grounds" for Voting Purposes in WIS. STAT. §6.875(3)(b)	April 29, 2015	<ul style="list-style-type: none"> • Board authorized staff to initiate promulgation process (4/29/15) • Staff has not commenced work on the Statement of Scope
15	Synchronization of Certification Terms for Municipal Clerks, Special Registration Deputies, and Election Inspectors	April 29, 2015	<ul style="list-style-type: none"> • Board authorized staff to initiate promulgation process (4/29/15) • Scope statement drafted • Scope statement submitted to the Governor (6/2/15)
16	Applications for Approval of Modification to Voting Systems Previously Approved for Use in Wisconsin	April 29, 2015	<ul style="list-style-type: none"> • Board authorized staff to draft scope statement (4/29/15) • Staff has not commenced work on the Statement of Scope
17	Removal of Rules No Longer In Effect	January 13, 2015	<ul style="list-style-type: none"> • Staff drafting correspondence to Legislative Reference Bureau to remove rules no longer in effect pursuant to 2007 Wisconsin Act 1
18	Deadline for Receipt of Documents Filed by Fax	N/A	<ul style="list-style-type: none"> • Staff seeks Board authority to initiate the promulgation process (6/18/15)
19	Amend GAB §3.04(2) to comply with WIS. STAT. §6.97(3)(b)	N/A	<ul style="list-style-type: none"> • Staff seeks Board authority to initiate the promulgation process (6/18/15)
20	Use of Stickers on College Identification Cards for Voting Purposes	(Initial) November – December 2011	<ul style="list-style-type: none"> • Staff completed first draft of Statement of Scope submitted draft to the Board on May 15, 2012 • The Board has not directed staff to continue the promulgation process for this rule

**GOVERNMENT ACCOUNTABILITY BOARD
EMERGENCY RULE**

The statement of scope for these rules, SS 038-15, was approved by the Governor on April 3, 2015, published in Register No. 712A2 on April 13, 2015, and approved by the Government Accountability Board on April 29, 2015.

This emergency rule was approved by the Governor on May 12, 2015.

ORDER

The Government Accountability Board adopts the following emergency rule *to create* GAB, ch. 10, *relating to* the use of technical college system student identification cards for voting.

FINDING OF EMERGENCY

The Government Accountability Board finds that an emergency exists and that these rules are necessary for the immediate preservation of the public peace and welfare.

The Government Accountability Board finds that such emergency rules are necessary to clarify how voters must comply with the photo identification requirements in WIS. STAT. §§5.02(6m) and 6.79(2) for the May 19, and June 9, 2015, special elections and any other special or regularly scheduled elections that may occur shortly thereafter.

ANALYSIS BY THE GOVERNMENT ACCOUNTABILITY BOARD

Statutes interpreted:

WIS. STAT. §§5.02(6m), 5.02(16c), 6.15(2)(bm), 6.79(2) and 39.30(1)(d).

Statutory authority:

WIS. STAT. §§5.05(1), 5.05(6a), 227.10(1) and 227.26(2).

Explanation of agency authority:

WIS. STAT. §5.05(1) provides that the Government Accountability Board (“G.A.B.” or “Board”) has “the responsibility for the administration of chs. 5 to 12, other laws relating to elections and election campaigns, subch. III of ch. 13, and subch. III of ch. 19.” The G.A.B. may “[p]romulgate rules under ch. 227 applicable to all jurisdictions for the purpose of interpreting or implementing the laws regulating the conduct of elections . . . or ensuring their proper administration.” WIS. STAT. §5.05(1)(f).

The photo identification requirement is found in chapters 5 and 6 of the Wisconsin Statutes. *See* 2011 Wisconsin Act 23. The G.A.B. has the statutory authority to promulgate emergency rules to ensure the proper administration of elections.

On November 15, 2011, the Joint Committee for Review of Administrative Rules (“JCRAR”) ordered the G.A.B., pursuant to WIS. STAT. §§227.10(1) and 227.26(2), to promulgate an emergency rule to allow for the use of technical college system student identification cards to meet the photo identification requirements of 2011 Wisconsin Act 23, which was enacted on May 25, 2011. The G.A.B. could not comply with JCRAR’s order until the U.S. Supreme Court denied certiorari on the judicial challenges to the photo identification requirements. The G.A.B. may now comply with JCRAR’s order.

Related statute or rule:

WIS. STAT. §§5.02(6m), 5.02(16c), 6.15(2)(bm), 6.79(2)

Plain language analysis:

2011 Wisconsin Act 23 created the requirement that electors present an acceptable form of photo identification as a condition of obtaining a ballot. 2011 Wisconsin Act 23 also created the list of documents that qualify as identification for purposes of voting. These rules clarify that an identification card issued by an institution in the Wisconsin Technical College System is an acceptable form of photo identification for voting if the card is unexpired or remains unexpired for no more than 2 years, and contains the date of issuance and the student’s signature and photo. These conditions are identical to the requirements for acceptable photo identification cards issued by other accredited educational institutions.

Summary of, and comparison with, existing or proposed federal regulation:

The 2002 federal Help America Vote Act (HAVA), 52 USC §15301 et seq., contains a provision requiring states to receive identification from individuals who register to vote for the first time, by mail. HAVA §303 (b)(2)(A)(i)(I). The HAVA requirement relates to voter registration. The State photo identification requirement relates to receiving a ballot. The federal requirement simply refers to “current and valid photo identification.” The federal requirement does not describe specific types of acceptable photo identification.

Comparison with rules in adjacent states:

Illinois: Illinois does not require voters to present photo identification to receive a ballot if the voter is already registered to vote.

Iowa: Iowa does not require voters to present photo identification to receive a ballot if the voter is already registered to vote.

Michigan: Michigan requires voters to present photo identification to receive a ballot and vote, but voters may also sign an affidavit attesting that the voter is not in possession of photo

identification. Michigan permits voters to use student identification from either a high school or an accredited institution of higher education to present at the polls to receive a ballot. Michigan's community college system is accredited, and students in those colleges may use their college photo identification cards for voting purposes.

Minnesota: Minnesota does not require voters to present photo identification to receive a ballot if the voter is already registered to vote.

Summary of factual data and analytical methodologies:

At its meeting on November 9, 2011, the Board determined that a Wisconsin Technical College System institution is accredited under WIS. STAT. §39.30 (1)(d), and therefore, an elector may use an identification card issued by such an institution for voting purposes if the card also meets the requirements of WIS. STAT. §5.02(6m). The Board made this determination with advice from G.A.B. staff regarding the accepted rules of statutory interpretation, starting with the plain language of the statute. WIS. STAT. §39.30 (1)(d) defines an "accredited" institution as an "institution accredited by a nationally recognized accrediting agency . . . or, if not so accredited, is a nonprofit institution of higher education whose credits are accepted on transfer by not less than 3 institutions which are so accredited, on the same basis as if transferred from an institution so accredited." The Board also considered information regarding the legislative history of 2011 Wisconsin Act 23. The Board did not consider potential public policy reasons when determining whether applicable statutes permitted the use of Wisconsin Technical College System student identification cards for voting purposes.

Analysis and support documents used to determine effect on small business or in preparation of economic impact analysis:

The Board anticipates that this rule will have minimal or no economic or fiscal impact on specific business, business sectors, public utility rate payers, or the State's economy as a whole because the rule does not impose any requirements, fiscal or otherwise, on businesses or with regard to public utility rates.

Fiscal estimate:

The Board finds that this rule will have minimal or no fiscal impact. The rule does not impose any requirements on Wisconsin Technical College System institutions that may issue identification cards to students. The rule only clarifies that Wisconsin Technical College System students may use their identification cards for voting purposes if those cards meet the photo identification requirements in WIS. STAT. §5.02(6m).

Effect on small business:

The Board finds that the rule will have no economic impact on small businesses, as that term is defined in WIS. STAT. §227.114(1).

Agency contact person:

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Staff Counsel
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Place where comments are to be submitted and deadline for submission:

Written comments may be submitted at the public hearings, by regular mail, fax, or email to the contact named above. Hearing dates and the comment submission time are to be determined.

Written comments may also be submitted to the Board using the Wisconsin Administrative Rules website at <http://adminrules.wisconsin.gov>.

TEXT OF RULE

SECTION 1: GAB 10.01 is created to read:

GAB 10.01 **Definitions.** In this chapter:

(1) “Student identification card” means a document or card that:

- (a) Is unexpired;
- (b) Contains the date of issuance;
- (c) Contains the signature of the student to whom it is issued;
- (d) Contains a photograph that reasonably resembles the student to whom it is issued;
- (e) Contains an expiration date indicating that the card expires no later than 2 years after the date of issuance; and
- (f) Is issued to a student who establishes that the student is enrolled at the college that issued the card on the date that the card is presented.

(2) “Technical college” means a college that is a member of and governed by the Wisconsin Technical College System.

SECTION 2: GAB 10.02 is created to read:

GAB 10.02. **Wisconsin Technical College System student identification cards for voting.** A student identification card issued by a technical college is an acceptable form of identification under s. 5.02(6m)(f), Wis. Stat., and may be presented by an elector obtaining a ballot pursuant to ss. 6.15(2)(bm), 6.15(3), 6.18, 6.79(2), 6.82, 6.86(1), 6.86(2), 6.87, 6.875(6), and 6.97, Wis. Stat.

SECTION 3: Effective date.

In accordance with s. 227.24, emergency rules GAB §§10.01 and 10.02 shall take effect upon publication in the *Wisconsin State Journal* and shall remain in effect for a period of 150 days thereafter unless otherwise amended or repealed or unless the Government Accountability Board promulgates an identical permanent rule.

Dated: May 12, 2015.

A handwritten signature in black ink that reads "Kevin J. Kennedy". The signature is written in a cursive, flowing style.

KEVIN J. KENNEDY
Director and General Counsel
Government Accountability Board

Proposed Rule
Government Accountability Board
WIS. ADMIN. CODE GAB Ch. 10

The statement of scope for these rules, SS 038-15, was approved by the Governor on April 3, 2015, published in Register No. 712A2 on April 13, 2015, and approved by the Government Accountability Board on April 29, 2015.

The emergency rule, EmR1515, was approved by the Governor on May 12, 2015. EmR1515 was effective on May 15, 2015, upon publication in the *Wisconsin State Journal*. EmR1515 was published in Register No. 713A3 on May 18, 2015.

ANALYSIS BY THE GOVERNMENT ACCOUNTABILITY BOARD

Statutes interpreted:

WIS. STAT. §§5.02(6m), 5.02(16c), 6.15(2)(bm), 6.79(2) and 39.30(1)(d).

Statutory authority:

WIS. STAT. §§5.05(1), 5.05(6a), 227.10(1) and 227.26(2).

Explanation of agency authority:

WIS. STAT. §5.05(1) provides that the Government Accountability Board (“G.A.B.” or “Board”) has “the responsibility for the administration of chs. 5 to 12, other laws relating to elections and election campaigns, subch. III of ch. 13, and subch. III of ch. 19.” The G.A.B. may “[p]romulgate rules under ch. 227 applicable to all jurisdictions for the purpose of interpreting or implementing the laws regulating the conduct of elections . . . or ensuring their proper administration.” WIS. STAT. §5.05(1)(f).

The photo identification requirement is found in chapters 5 and 6 of the Wisconsin Statutes. *See* 2011 Wisconsin Act 23. The G.A.B. has the statutory authority to promulgate emergency rules to ensure the proper administration of elections.

On November 15, 2011, the Joint Committee for Review of Administrative Rules (“JCRAR”) ordered the G.A.B., pursuant to WIS. STAT. §§227.10(1) and 227.26(2), to promulgate an emergency rule to allow for the use of technical college system student identification cards to meet the photo identification requirements of 2011 Wisconsin Act 23, which was enacted on May 25, 2011. The G.A.B. could not comply with JCRAR’s order until the U.S. Supreme Court denied certiorari on the judicial challenges to the photo identification requirements. The G.A.B. may now comply with JCRAR’s order.

Related statute or rule:

WIS. STAT. §§5.02(6m), 5.02(16c), 6.15(2)(bm), 6.79(2)

Plain language analysis:

2011 Wisconsin Act 23 created the requirement that electors present an acceptable form of photo identification as a condition of obtaining a ballot. 2011 Wisconsin Act 23 also created the list of documents that qualify as identification for purposes of voting, including a student identification card issued by an accredited educational institution which meets certain criteria. These rules clarify that an identification card issued by an institution in the Wisconsin Technical College System is an acceptable form of photo identification for voting if the card is unexpired or remains unexpired for no more than 2 years, and contains the date of issuance and the student's signature and photo. These conditions are identical to the requirements for acceptable photo identification cards issued by other accredited educational institutions.

Summary of, and comparison with, existing or proposed federal regulation:

The 2002 federal Help America Vote Act (HAVA), 52 USC §15301 et seq., contains a provision requiring states to receive identification from individuals who register to vote for the first time, by mail. HAVA §303 (b)(2)(A)(i)(I). The HAVA requirement relates to voter registration. The State photo identification requirement relates to receiving a ballot. The federal requirement simply refers to "current and valid photo identification." The federal requirement does not describe specific types of acceptable photo identification.

There is currently ongoing litigation involving 2011 Wisconsin Act 23, but such litigation does not impact the substance of the proposed rules. *See Frank v. Walker*, Civil Action No. 2:11-cv-01128 (LA) (E.D. Wis.).

Comparison with rules in adjacent states:

Illinois: Illinois does not require voters to present photo identification to receive a ballot if the voter is already registered to vote.

Iowa: Iowa does not require voters to present photo identification to receive a ballot if the voter is already registered to vote.

Michigan: Michigan requires voters to present photo identification to receive a ballot and vote, but voters may also sign an affidavit attesting that the voter is not in possession of photo identification. Michigan permits voters to use student identification from either a high school or an accredited institution of higher education to present at the polls to receive a ballot. Michigan's community college system is accredited, and students in those colleges may use their college photo identification cards for voting purposes.

Minnesota: Minnesota does not require voters to present photo identification to receive a ballot if the voter is already registered to vote.

Summary of factual data and analytical methodologies:

At its meeting on November 9, 2011, the Board determined that a Wisconsin Technical College System institution is accredited under WIS. STAT. §39.30 (1)(d), and therefore, an elector may use an identification card issued by such an institution for voting purposes if the card also meets the requirements of WIS. STAT. §5.02(6m). The Board made this determination with advice from G.A.B. staff regarding the accepted rules of statutory interpretation, starting with the plain language of the statute. WIS. STAT. §39.30 (1)(d) defines an “accredited” institution as an “institution accredited by a nationally recognized accrediting agency . . . or, if not so accredited, is a nonprofit institution of higher education whose credits are accepted on transfer by not less than 3 institutions which are so accredited, on the same basis as if transferred from an institution so accredited.” The Board also considered information regarding the legislative history of 2011 Wisconsin Act 23. The Board did not consider potential public policy reasons when determining whether applicable statutes permitted the use of Wisconsin Technical College System student identification cards for voting purposes.

Analysis and support documents used to determine effect on small business or in preparation of economic impact analysis:

The Board anticipates that this rule will have minimal or no economic or fiscal impact on specific business, business sectors, public utility rate payers, or the State’s economy as a whole because the rule does not impose any requirements, fiscal or otherwise, on businesses or with regard to public utility rates.

Fiscal estimate:

The Board finds that this rule will have minimal or no fiscal impact. The rule does not impose any requirements on Wisconsin Technical College System institutions that may issue identification cards to students. The rule only clarifies that Wisconsin Technical College System students may use their identification cards for voting purposes if those cards meet the photo identification requirements in WIS. STAT. §5.02(6m).

Effect on small business:

The Board finds that the rule will have no economic impact on small businesses, as that term is defined in WIS. STAT. §227.114(1).

Agency contact person:

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(608) 264-9319 (fax)
matthew.giesfeldt@wisconsin.gov

Place where comments are to be submitted and deadline for submission:

Written comments may be submitted at the public hearings, by regular mail, fax, or email to the contact named above, no later than June 29, 2015.

Written comments may also be submitted to the Board using the Wisconsin Administrative Rules website at <http://adminrules.wisconsin.gov>.

How to obtain a copy of the rules:

A copy of the full rule, including the analysis, fiscal estimate, and economic impact analysis, may be obtained from the G.A.B. at no charge. Requests for such copies may be made to the contact named above.

TEXT OF PROPOSED RULE

SECTION 1: GAB 10.01 is created to read:

GAB 10.01 **Definitions.** In this chapter:

(1) “Student identification card” means a document or card that:

- (a) Is unexpired;
- (b) Contains the date of issuance;
- (c) Contains the signature of the student to whom it is issued;
- (d) Contains a photograph that reasonably resembles the student to whom it is issued;
- (e) Contains an expiration date indicating that the card expires no later than 2 years after the date of issuance; and
- (f) Is issued to a student who establishes that the student is enrolled at the college that issued the card on the date that the card is presented.

(2) “Technical college” means a college that is a member of and governed by the Wisconsin Technical College System.

SECTION 2: GAB 10.02 is created to read:

GAB 10.02. **Wisconsin Technical College System student identification cards for voting.** A student identification card issued by a technical college is an acceptable form of identification under s. 5.02(6m)(f), Wis. Stat., and may be presented by an elector obtaining a ballot pursuant to ss. 6.15(2)(bm), 6.15(3), 6.18, 6.79(2), 6.82, 6.86(1), 6.86(2), 6.87, 6.875(6), and 6.97, Wis. Stat.

SECTION 3: Effective date.

In accordance with s. 227.22(2), GAB §§10.01 and 10.02 shall take effect on the first day of the month commencing after the date on which the rules are published in the code as required under s. 35.93(2)(c)1.

Attachment 3

SECTION 4: Chapter title.

GAB Chapter 10 of the Wisconsin Administrative Code is created and entitled: “Voter Identification.”

State of Wisconsin\Government Accountability Board

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JUDGE GERALD C. NICHOL
Chair

KEVIN J. KENNEDY
Director and General Counsel

June [], 2015

Wisconsin Legislative Reference Bureau
c/o Attorney Bruce Hoesly
Bruce.hoesly@legis.wisconsin.gov,
Attorney Gordon M. Malaise
Gordon.Malaise@legis.wisconsin.gov,
Attorney Michael Duchek
Michael.Duchek@legis.wisconsin.gov
One East Main Street, Suite 200
Madison, Wisconsin 53703

Re: Removal of Administrative Rules No Longer In Effect

Dear Attorneys Hoesly, Malaise, and Duchek:

On behalf of the Government Accountability Board (“Board”), I seek your assistance to remove from certain administrative rules from Wisconsin Administrative Code. It is the Board’s position that certain rules, by statute, are no longer in effect and should be removed from the Administrative Code administratively and not through the formal promulgation process.

The Board was created by 2007 Wisconsin Act 1 (“Act 1”), which merged the State Elections Board and State Ethics Board into the singular Government Accountability Board. A copy of Act 1 is attached for your convenience. Act 1 prescribed the procedure for the Board to reaffirm and re-promulgate rules from the two former agencies into rules for the one singular agency. *See* 2007 Wisconsin Act 1, §§209(2)(e), and (3)(e). Upon the inception of the agency, the Board either explicitly declined to reaffirm or took no action to reaffirm WIS. ADMIN CODE GAB §§1.29, 1.41, 1.55, 20.01, 21.01, 21.04, and chs. 4, 5.

Act 1 provides as follows:

Within one year after the initiation date, the board shall hold one or more public hearings on the question of reaffirmation of each rule that has been promulgated Except as authorized by this paragraph, every rule promulgated by the [ethics and elections] board that is in effect on the effective date of this paragraph remains in effect until its specified expiration date or until the end of the 365-day period beginning on the initiation date, whichever is earlier, unless that board amends or repeals

the rule, effective on an earlier date, or unless that board specifically votes to reaffirm the rule. . . . Any action by the board to amend or repeal a rule shall be in accordance with subchapter II of chapter 227 of the statutes. The board may extend the expiration date of any rule . . . for not more than 3 months in order to afford time for additional review, but no such extension or renewal of an extension may extend the expiration date of any rule or order by more than 6 months in all.

Act 1, §§209(2)(e), and (3)(e).

If the Board did not reauthorize a rule, that rule is no longer in effect. Act 1 provides that a rule “remains in effect . . . until its specific expiration date or until the end of the 365-day period . . . unless that board specifically votes to reaffirm the rule.” Act 1, §§209(2)(e), and (3)(e) (emphasis added).

On December 17, 2008, the Board extended its schedule for review of administrative rules for three months. Kyle R. Richmond, *Wisconsin Government Accountability Board December 17, 2008, Open Session Minutes*, at 4 (Dec. 17, 2008).¹ During the Board’s initial and extended review periods, the Board explicitly declined to reaffirm several administrative rules,² including:

- WIS. ADMIN CODE GAB §1.29;³
- WIS. ADMIN CODE GAB §1.41;⁴
- WIS. ADMIN CODE GAB §1.55;⁵ and
- WIS. ADMIN CODE GAB §4.01.⁶

¹ Available at http://www.gab.wi.gov/sites/default/files/event/12_17_08_openmeetingminutes_pdf_14069.pdf.

² This correspondence refers to all rules as “GAB” rules, but prior to Act 1, each rule cited was, in reality, either the corresponding Elections Board rule or the corresponding Ethics Board rule that was in effect at the time of its reaffirmation or non-reaffirmation.

³ Kyle R. Richmond, *Wisconsin Government Accountability Board, March 26, 2009, Open Session Minutes* (Mar. 26, 2009), available at http://www.gab.wi.gov/sites/default/files/event/03_26_08_openmeetingminutes_pdf_13805.pdf (hereinafter, “*March 26, 2009, Minutes*”).

⁴ Kyle R. Richmond, *Wisconsin Government Accountability Board March 30 and 31, 2009, Open Session Minutes* (March 30-31, 2009) available at http://www.gab.wi.gov/sites/default/files/event/03_30_31_09_openmeetingminutes_pdf_24766.pdf (“**MOTION:** Reverse the Board’s May 5, 2008, affirmation of section GAB 1.41, decline to reaffirm GAB 1.41, and direct staff to seek deletion of GAB 1.41 from the Administrative Code. Moved by Myse, seconded by Eich. Motion carried.”) (hereinafter “*March 30-31, 2009, Minutes*”).

⁵ Kyle R. Richmond, *Wisconsin Government Accountability Board, May 5, 2008, Open Session Minutes* (May 5, 2008) available at http://www.gab.wi.gov/sites/default/files/event/05_05_08_openmeetingminutes_pdf_15882.pdf (hereinafter, “*May 5, 2008, Minutes*”).

⁶ *May 5, 2008, Minutes*.

The Board also explicitly reaffirmed many administrative code provisions, including WIS. ADMIN CODE GAB §§1.06, 1.10, 1.11, 1.15, 1.20, 1.26, 1.28, 1.30, 1.32, 1.33, 1.385, 1.39, 1.43, 1.44, 1.46, 1.56, 1.60, 1.65, 1.655, 1.70, 1.75, 1.85, 1.855, 1.95, 3.01, 3.02, 3.03, 3.04, 3.10, 3.11, 3.12, 3.13, 3.20, 3.50, 6.02, 6.03, 6.04, 6.05, 7.01, 7.02, 7.03, 9.01, 9.04, 9.05, 9.06, 11.01, 11.02, 11.03, 11.04, 11.05, 20.02, 20.03, 20.04, 20.05, 20.06, 20.07, 20.08, 20.09, 20.10, 21.30, and Chs. 15 and 16.⁷

The Board took no action on WIS. ADMIN CODE GAB §§20.01, 21.01, 21.04, and chs. 4, 5.⁸

Pursuant to Act 1, the following rules should be removed from the Administrative Code because the Board either explicitly declined to reaffirm them or the Board took no action to reaffirm them: **WIS. ADMIN CODE GAB §§1.29, 1.41, 1.55, 4.01, 20.01, 21.01, 21.04, and chs. 4, 5.** Therefore, on behalf of the Board, we respectfully request that the Legislative Reference Bureau remove these rules from the Administrative Code at its earliest convenience.

Please do not hesitate to contact me to discuss any questions or concerns that you may have. I may be reached at matthew.giesfeldt@wi.gov or (608) 266-2094.

Sincerely,

Government Accountability Board

Matthew W. Giesfeldt
Staff Counsel

Enclosure

⁷ See *May 5, 2008, Minutes*; *March 26, 2009 Minutes*; *March 30-31, 2009, Minutes*; Kyle R. Richmond, *Wisconsin Government Accountability Board June 9, 2008, Open Session Minutes* (June 9, 2008), available at http://www.gab.wi.gov/sites/default/files/event/06_09_08_openmeetingminutes_pdf_69248.pdf (hereinafter, “*June 9, 2009, Minutes*”); Kyle R. Richmond, *Wisconsin Government Accountability Board August 27 and 28, 2008, Open Session Minutes* (Aug. 27-28, 2008), available at http://www.gab.wi.gov/sites/default/files/event/08_27_28_08_openmeetingminutes_pdf_20925.pdf (hereinafter, “*August 27-28, 2008, Minutes*”); Kyle R. Richmond, *Wisconsin Government Accountability Board October 6, 2008, Open Session Minutes* (Oct. 6, 2008), available at http://www.gab.wi.gov/sites/default/files/event/10_06_08_openmeetingminutes_pdf_15912.pdf (hereinafter, “*October 6, 2008, Minutes*”); Kyle R. Richmond, *Wisconsin Government Accountability Board November 11, 2008, Open Session Minutes* (Nov. 11, 2008), available at http://www.gab.wi.gov/sites/default/files/event/11_11_08_openmeetingminutes_pdf_43114.pdf (hereinafter, “*November 11, 2008, Minutes*”);

⁸ See, *supra*, note 7.

**STATEMENT OF SCOPE
PURSUANT TO WIS. STAT. § 227.135
GOVERNMENT ACCOUNTABILITY BOARD**

Rule No.: GAB Ch. 13

Relating to: Training for Election Inspectors and Special Voting Deputies

Rule Type: Permanent

1. **Finding/nature of emergency (Emergency Rule only):** N/A
2. **Detailed description of the objective of the proposed rule:**

WIS. STAT. §7.315(1)(a) provides that the Government Accountability Board (“G.A.B.” or “Board”) shall promulgate administrative rules that prescribe the contents of training that municipal clerks must provide to election inspectors and special voting deputies. G.A.B. staff previously included and continues to include information proscribing the contents of training for election inspectors and special voting deputies in election manuals provided to municipal clerks. The Board proposes to enact GAB Ch. 13, which will a) codify information already provided to municipal clerks, and b) afford the Legislature the opportunity to determine if the proposed provisions will enhance G.A.B.’s authority to administer and oversee the clerks’ trainings.

3. **Description of the existing policies relevant to the rule, new policies proposed to be included in the rule, and an analysis of policy alternatives:**

Existing policy:

The G.A.B. prescribes the contents of training that municipal clerks must provide to election inspectors and special voting deputies in its Election Manual. WIS. GOV’T ACCOUNTABILITY BD., ELECTIONS DIV., ELECTION ADMINISTRATION MANUAL FOR WISCONSIN ELECTION OFFICIALS (Aug. 2014), pp. 125, 127-28, 131-32, 195, available at <http://gab.wi.gov/clerk/education-training/election-day-manual> (hereafter, “MANUAL”). The Election Manual provides that municipal clerks must train election inspectors and special voting deputies to understand Election Day duties and absentee voting in nursing homes, retirement homes, and adult care facilities. MANUAL, p. 125, 127-28, 132; *see also, generally*, WIS. GOV’T ACCOUNTABILITY BD., ABSENTEE VOTING IN RESIDENTIAL CARE FACILITIES AND RETIREMENT HOMES (Oct. 2014).

Proposed policy:

The Board seeks to codify an existing policy (already described in the Election Manual) in the Administrative Code pursuant to WIS. STAT. §7.315(1)(a); *see also, generally*, MANUAL.

Alternatives:

If the Board does not promulgate rules as provided in WIS. STAT. §7.315(1)(a), the G.A.B. will not be compliant with that statute, which provides that the Board “shall, by rule, prescribe the contents of the training that municipal clerks must provide” to election inspectors and special voting deputies.

In contrast, if the Board promulgates rules as provided in WIS. STAT. §7.315(1)(a), it will be compliant with that statute. Further, the proposed rules are substantively identical to the information already contained in the Election Manual, so no substantive changes in Board policy are proposed. *See generally*, MANUAL.

4. Detailed explanation of statutory authority for the rule (including the statutory citation and language):

WIS. STAT. §7.315(1)(a) provides that the “board shall, by rule, prescribe the contents of the training that municipal clerks must provide to inspectors, other than chief inspectors, to special voting deputies appointed under s. 6.875, and to special registration deputies appointed under ss. 6.26 and 6.55 (6).” The Board seeks to promulgate this rule under this authority.

5. Estimate of the amount of time that state employees will spend developing the rule and of other resources necessary to develop the rule:

15 hours.

6. List with description of all entities that may be affected by the proposed rule:

The rules will affect municipal clerks, election inspectors, and special voting deputies, but only to the extent that the procedures already guiding training of the election inspectors and special voting deputies will now be codified in this rule in addition to being available in the Election Manual.

7. Summary and preliminary comparison with any existing or proposed federal regulation that is intended to address the activities to be regulated by the proposed rule:

The Help America Vote Act (“HAVA”) provides that States shall use funds provided under HAVA to perform various federal election-related functions, including training election officials, poll workers, and election volunteers. 42 U.S.C. §§ 15301(b)(1)(D), 15421(b)(2). HAVA also provides that State plans for administering federal elections must include information about how the “State will provide for programs for voter education, election official education and training, and poll worker training which will assist the State” in administering uniform and nondiscriminatory elections. 42 U.S.C. § 15404(a)(3). Finally, HAVA also provides funds to states to “support training in the use of voting systems and technologies[.]” 42 U.S.C. § 15461(c)(1)-(2).

The proposed rules are consistent with these federal provisions, and such rule would help the G.A.B. further effectuate these federal requirements.

8. Anticipated economic impact of implementing the rule (note if the rule is likely to have a significant economic impact on small businesses):

The anticipated economic impact from the implementation of the proposed order is minimal to none. There may be some minimal impact on local officials who may obtain the information in the rule from both the Administrative Code and the Election Manual, but the rule will not affect small businesses.

Contact person: Matthew Giesfeldt
(608) 266-2094, matthew.giesfeldt@wisconsin.gov



Kevin J. Kennedy
Director and General Counsel
Government Accountability Board

April 14, 2015
Date Submitted

**STATEMENT OF SCOPE
PURSUANT TO WIS. STAT. § 227.135
GOVERNMENT ACCOUNTABILITY BOARD**

Rule No.: GAB 7 Electronic Voting Systems

Relating to: Approval of Electronic Voting Equipment in Accordance with WIS. STAT. §§5.40(2), 5.76, 5.77, 5.905, 5.91, and 7.23(1)(g)

Rule Type: Permanent

1. Finding/nature of emergency (Emergency Rule only):

N/A

2. Detailed description of the objective of the proposed rule:

The Government Accountability Board’s (“G.A.B.” or “Board”) rules on electronic voting equipment, promulgated pursuant to WIS. STAT. §§ 5.05(1)(f) and 5.93, have become outdated due to technological advances. Further, such rules have also become outdated due to heightened public concerns regarding the security of electronic voting systems and the procedures in place to determine their compliance with Wisconsin Statutes. The rules on electronic voting equipment were first promulgated in 2000, so the Board proposes to repeal and re-create Chapter GAB 7 so that such rules are appropriate and applicable with current modes and practices.

3. Description of the existing policies relevant to the rule, new policies proposed to be included in the rule, and an analysis of policy alternatives:

Existing policy: Chapter GAB 7 was originally published in 2000. It was only amended once in 2008, and such amendment was not substantive in nature. Chapter GAB 7 currently establishes a number of criteria for approval of an electronic voting system. The chapter does not include guidelines to address technological and policy issues present in recent years. Such issues include the approval of engineering change orders and the approval of new components for use with equipment that, before the introduction of new components, was federally certified and approved for use in Wisconsin.

Proposed policy: In recent elections, voters, citizens, clerks, and G.A.B. staff members have raised concerns regarding the security of electronic voting systems. The Board proposed to initiate a comprehensive review of the existing Chapter GAB 7 to determine whether more specific standards would address recent developments in voting equipment technology and testing. With this review, the Board proposed to revise and re-create Chapter GAB 7 to ensure that all systems

are protected by necessary safeguards to ensure they remain tamper-free and meet new testing criteria that reflect the enhanced technology currently available. Further, the Board proposed to review Chapter GAB 7 to ensure that voting equipment would also be compliant with Wisconsin's public records law.

Alternatives: As an alternative to repealing and recreating Chapter GAB 7, the Board could do nothing, leaving those rules unchanged.

Pros: Such alternative would free more time for G.A.B. staff members to attend to other duties and tasks of the agency.

Cons: Such alternative would perpetuate the existing, out-of-date, measures regarding the testing and approval of the various electronic voting systems that are increasingly available. Further, as technology continues to advance, the appropriateness and applicability of Chapter GAB 7 worsen. Actual and perceived problems regarding the testing and approval of electronic voting systems will likely become more egregious.

4. Detailed explanation of statutory authority for the rule (including the statutory citation and language):

Wis. STAT. §5.05(1)(f) expressly authorizes the Board to promulgate rules under Chapter 227 of the Wisconsin Statutes “for the purpose of interpreting or implementing the laws regulating the conduct of elections or election campaigns or ensuring their proper administration.”

Wis. STAT. §5.93 expressly authorizes the Board to “promulgate reasonable rules for the administration of this [Electronic Voting Systems] subchapter.”

Wis. STAT. §227.11(2)(a) expressly authorizes the Board to promulgate rules to interpret the provisions of statutes that the Board enforces or administers.

5. Estimate of the amount of time that state employees will spend developing the rule and of other resources necessary to develop the rule:

300-350 hours.

6. List with description of all entities that may be affected by the proposed rule:

This rule will affect manufacturers and vendors of electronic voting equipment, as well as county and municipal election officials.

7. Summary and preliminary comparison with any existing or proposed federal regulation that is intended to address the activities to be regulated by the proposed rule:

The Help America Vote Act of 2002 (“HAVA”) establishes a process for testing electronic voting systems by accredited laboratories and certification by the federal Elections Assistance Commission. States may adopt the testing results and certification guidelines used by the Commission. Current administrative rules and Board procedures rely on the federal testing and certification process. The Board supplements the federal process with functional testing to ensure that voting systems comply with Wisconsin election laws and infrastructure. Federal procedures are functionally consistent with current Board processes and practices.

8. Anticipated economic impact of implementing the rule (note if the rule is likely to have a significant economic impact on small businesses):

The anticipated economic impact from the implementation of the proposed rule is minimal to none. Equipment manufacturers and vendors are already required to pay all costs related to the Board’s testing and approval of electronic voting equipment. The proposed rule would incorporate current procedures used by equipment manufacturers and the Board as part of the testing and approval protocols. The proposed rule would not have a significant economic impact on small businesses.

Contact person: Matthew W. Giesfeldt
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Kevin J. Kennedy
Director and General Counsel
Government Accountability Board

April 9, 2015
Date Submitted

Statement of Scope
Government Accountability Board
Use of Stickers on Photo Identification Cards

Subject

Creates new section of GAB Chapter 10 and clarifies that accredited universities and colleges which issue an identification card for voting purposes may use an adhesive sticker to affix certain required information on the identification card, including the cardholder's signature as well as the issuance and expiration dates of the card.

Objective of the Rule

The proposed rule implements a directive from the Joint Committee for the Review of Administrative Rules (JCRAR). The directive requires the Government Accountability Board (G.A.B.) to promulgate an emergency rule specifying that adhesive stickers may be used to affix certain required information to identification cards issued by accredited institutions for the purpose of voting.

Emergency Rule Authority

The agency is authorized to promulgate the rule as an emergency rule because it has been directed to do so by the Joint Committee for the Review of Administrative Rules pursuant to Wis. Stats. §§227.10 (1), 227.26 (2).

Permanent Rule

The agency plans to promulgate this rule as both an emergency rule and a permanent rule. This scope statement is submitted in support of both the emergency rule and the permanent rule.

Policy Analysis

Sections 5.02(6m)(f), Stats., describes one of the acceptable forms of identification that may be used to obtain an election ballot as follows:

An unexpired identification card issued by a university or college in this state that is accredited, as defined in s. 39.20(1)(d), that contains the date of issuance and signature of the individual to whom it is issued and that contains an expiration date indicating that the card expires no later than 2 years after the date of issuance if the individual establishes that he or she is enrolled as a student at the university or college on the date that the card is presented.

Section 5.02(16c), Stats., further provides that an acceptable form of proof of identification must contain the cardholder's name and photograph.

At its meetings of September 12, 2011 and November 9, 2011, the G.A.B. adopted motions to permit accredited universities and colleges to use stickers on identification cards as a means of complying with the provisions of Section 5.02, Stats. The Board's determination was made in response to inquiries from several public and private institutions indicating that current student identification cards would not comply with the requirements of the law and that they wished to consider using stickers to affix information to existing cards as a cost-effective method of providing voter-compliant proof of identification.

The Board's analysis applied judicially accepted rules of statutory interpretation. It looked first to the plain language of the statute, which requires that identification cards must "contain" certain data. In the absence of an applicable statutory definition of college or university, the Board relied on commonly used dictionary definitions of the term "contain" which include "to have within" and "include." The Board determined that permitting the cardholder's signature and the issuance and expiration dates of the card to be affixed by an adhesive sticker with sufficient security and verification safeguards would comply with the provisions of Section 5.02, Stats.

The proposed rule would specify that stickers affixed to compliant identification cards (1) must be tamper-evident so that removal of the sticker would make it unusable; (2) must not obscure other information on card; (3) must include an indication that it was issued by the institution such as a school logo or identifier; (4) must be affixed by personnel of the institution; and (5) may contain only the cardholders signature and the issuance and expiration dates of the card.

On November 15, 2011, the Joint Committee for the Review of Administrative Rules adopted a motion finding that the G.A.B.'s action regarding the use of stickers on student identification cards is a statement of policy that meets the definition of a rule pursuant to Chapter 227 of the Wisconsin Statutes.

The alternative to promulgating this rule is to restrict the options for accredited institutions to comply with the statutory requirements regarding photo identification cards and to require that all data be included as part of the originally-produced card at a higher cost to the institutions.

Statutory Authority

The Board issued its determination pursuant to its responsibility and authority to issue advisory opinions under Section 5.05(6a), Stats., and to conduct voter education under Section 5.05(12), Stats. However, given the directive of JCRAR, Section 5.05(1)(f) Stats., provides explicit authority for the G.A.B. to promulgate rules to ensure the proper administration of elections. Section 227.11(2)(a), Stats., provides clear authority for the G.A.B. to promulgate rules to ensure the proper administration of statutes under its jurisdiction, which includes laws related to the administration of elections.

Comparison with Federal Regulations

Federal law does not address or establish standards or rules for the issuance of photo identification cards for the purposes of obtaining an election ballot.

Entities Affected by the Rules

Accredited institutions desiring to issue photo identification cards to be used for voting purposes, as well as potential holders of such cards will be affected by this rule. Local election officials and poll workers who review identification cards as part of the voting process will also be affected by this rule. The rule does not impact businesses, private economic sectors or public utility ratepayers.

Economic Impact

The rule will have minimal or no impact on the governmental entities impacted by the rule, except to the extent that public universities or colleges desire to use adhesive stickers as a means of producing photo identification cards to be used for voting. The rule would clarify the options available for accredited institutions in issuing such cards.

Estimate of Time Needed to Develop the Rules

40 hours.

Approval by the Governor

This Statement of Scope was approved by the Governor in writing on January 13, 2012.

State of Wisconsin \ Government Accountability Board

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JUDGE GERALD C. NICHOL
Chairperson

KEVIN J. KENNEDY
Director and General Counsel

MEMORANDUM

DATE: For the June 18, 2015 Board Meeting

TO: Members, Wisconsin Government Accountability Board

FROM: Kevin J. Kennedy, Director and General Counsel

Prepared and Presented by:
Ross Hein, Elections Supervisor

SUBJECT: Requests for Approval of IT Related Contracts

Pursuant to the revised delegation of authority approved by the Board at its meeting of March 4, 2015, the following two purchasing requests are submitted for the Board's consideration and approval:

1. FY 16 Approval for Contracted Information Technology (IT) Services

At the beginning of each fiscal year, Board staff is required to authorize the continuation of IT work through a process called Continued Appropriateness, as required by the Department of Administration's (DOA) State IT contracting processes. This process is required for annual expenditures of services over \$50,000. G.A.B. staff is requesting Board approval to authorize the continuation of IT contractors for FY 16 per the Board's delegation of contract authority which requires pre-approval from the Board for purchases from a statewide contract over \$100,000. All IT contractor rates of pay are determined by the position classification as established by the DOA rate card.

The G.A.B.'s IT efforts for the Elections Division are funded primarily through federal funds granted through the Help America Vote Act (2002) and Federal Voting Assistance Program EASE grant, while the Ethics & Accountability Division's IT work is funded by General Purpose Revenue funds and revenue generated through the Division's Lobbying program.

Contracted IT staff provide critical services to both divisions to ensure that all IT applications are maintained and functional, while making continuous enhancements and necessary modifications. It is imperative to authorize the continuation of IT work in order to complete development of major IT projects (such as SVRS modernization, MyVote Wisconsin 2.0, and SEI online application) on schedule and according to required design and functional elements. Failure to continue these IT contracts would, to a large degree, bring the agency's services to a halt.

G.A.B. staff has secured funds to pay for all IT contracts in FY 16. For the five Election Division IT contractors, staff anticipates expending \$929,760. For the one Ethics and Accountability IT contractor staff anticipates expending \$156,000.

Recommended Motion:

MOTION: Authorize the continuation of IT contracts in FY 16 for the G.A.B.'s six IT contract positions.

2. Approval to Enter into Contract

G.A.B. staff is requesting Board approval to enter into two separate three-year contracts for IT positions that will expire on August 8, 2015 and October 14, 2015. The annual cost of each contract will not exceed \$200,000, and the Board's delegation of contract authority requires pre-approval from the Board for purchases from a statewide contract over \$100,000.

For the past three years, the contracted positions have been filled by members of the G.A.B.'s contractor IT Team dedicated to Elections Division IT applications. These contractors have made significant contributions to numerous IT applications including maintenance and modernization of MyVote Wisconsin, SVRS, Felon Audits and numerous other IT-related initiatives.

Funding has been budgeted and secured for these contracted positions for the next biennium from federal funds provided through the Federal Voting Assistance Program's EASE grant and the Help America Vote Act (HAVA). Contracted IT positions can be terminated by the agency at any point throughout the contract as needed, although at minimum this position will likely be necessary throughout FY16-17 to complete SVRS modernization and MyVote Wisconsin enhancements.

Staff requests approval to enter into the three-year contracts at the same rate as provided in the contract that expires on the above specified dates. The IT contracted positions are both classified as a Database Architect-3. Funding rates and IT classifications are established through the State of Wisconsin purchasing and procurement processes.

Recommended Motion:

MOTION: Approve the execution of two IT contracts for the Database Architect-3 positions.

State of Wisconsin \ Government Accountability Board

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JUDGE GERALD C. NICHOL
Chairperson

KEVIN J. KENNEDY
Director and General Counsel

MEMORANDUM

DATE: For the June 18, 2015 Board Meeting

TO: Members, Wisconsin Government Accountability Board

FROM: Kevin J. Kennedy – Director and General Counsel

Prepared and Presented by:
Brian M. Bell, MPA – Ethics and Accountability Specialist

SUBJECT: Legislative Status Report

NEW LEGISLATION

1. *Assembly Bill 240 and Senate Bill 161: Electioneering at a retirement home or residential care facility.*

Sponsors: Majority. Under current law, no person may engage in electioneering in or near a retirement home or residential care facility while special voting deputies are present at the home or facility. Under this bill, no candidate or candidate's agent may engage in electioneering within 100 feet of a retirement home or residential care facility during any day on which a municipality schedules special voting deputies to be present at the home or facility.

Senate: Public hearing held on May 28, 2015.

2. *Assembly Bill 230: requiring a municipal judge to be a licensed Wisconsin attorney.*

Sponsors: Bipartisan. Beginning on January 1, 2016, this bill requires a person seeking to be elected or appointed as a municipal judge to be an attorney licensed to practice in this state and a member in good standing of the State Bar of Wisconsin.

PREVIOUS LEGISLATION – CHANGE IN STATUS

3. *Senate Joint Resolution 32 and Assembly Joint Resolution 38: the right to vote (first consideration).*

Sponsors: Minority. This constitutional amendment, proposed to the 2015 legislature on first consideration, provides that every qualified elector of this state shall have the fundamental right to vote in any public election held in the election district in which the elector resides.

4. ***Assembly Bill 21 and Senate Bill 21: state finances and appropriations constituting the executive budget act of the 2015 legislature.***

Sponsors: Majority. This bill is the "executive budget bill" under section 16.47 (1) of the statutes. It contains the governor's recommendations for appropriations for the 2015-2017 fiscal biennium.

Joint Committee on Finance: The Joint Committee on Finance held an executive session on the G.A.B. budget on May 21, 2015.

5. ***Assembly Bill 58 and Senate Bill 47: responding to a request for an absentee ballot.***

Sponsors: Bipartisan. Under this bill, a municipal clerk who receives a request for an absentee ballot by mail, electronic mail, or facsimile transmission must respond to the request no later than one business day after receiving the request.

Assembly: Assembly Substitute Amendment 1 offered by Representative Horlacher. The amendment addresses the relationship between Wis. Stats. §§6.86 and 7.15. Assembly Substitute Amendment 1 offered by Representative Horlacher. **Executive session held on May 19, 2015. The Committee adopted Assembly Substitute Amendment 1 by a vote of 7-0. The committee recommended passage as amended by a vote of 8-0.**

Senate: Senate Substitute Amendment 1 offered by Senator Harsdorf. The amendment addresses the relationship between Wis. Stats. §§6.86 and 7.15. The Senate Committee on Elections and Local Government held a public hearing on April 9, 2015. The committee held an executive session on April 16, 2015. The committee approved Senate Substitute Amendment 1 by a vote of 5-0. The committee recommended passage as amended by a vote of 5-0. The Senate adopted Senate Substitute Amendment 1 and passed the bill as amended by a voice vote.

6. ***Assembly Bill 79 and Senate Bill 71: allowing municipal clerks to register voters on Election Day.***

Sponsors: Bipartisan. Under current law, election inspectors may register electors to vote at a polling place on Election Day. In addition, a municipality may provide, by adopting a resolution, that an inspector's registration duties may be performed by special registration deputies appointed by the municipal clerk or board of election commissioners.

Under this bill, an inspector's registration duties may be performed by the municipal clerk, if the clerk is not a candidate listed on the ballot, or by special registration deputies appointed by the municipal clerk or board of election commissioners, without the municipality first adopting a resolution to allow the procedure.

Senate: Public hearing held on April 9, 2015 by the Committee on Elections and Local Government. Senate Amendment 1 offered by Senator Gudex. **Adoption of Senate Amendment 1 and passage as amended recommended by the Committee.**

7. ***Assembly Bill 124 and Senate Bill 96***: fees for election recounts.

Sponsors: Bipartisan. This bill provides that, if the difference between the votes cast for the leading candidate and those cast for the petitioner, or the difference between the affirmative and negative votes cast on the referendum question, is less than 10 if 4,000 or fewer votes are cast or not more than 0.25 percent of the total votes cast for the office or on the question if more than 4,000 votes are cast, the petitioner does not pay for the recount. Under any other circumstance, the petitioner pays the actual cost of performing the recount. However, if the recount overturns the result of the election or referendum, the petitioner receives a refund of the recount fees. No recount in Wisconsin history has changed the outcome of a contest when the original margin was more than 0.125 percent. Therefore, the 0.25 percent threshold for a free recount is double the largest original margin in Wisconsin history of a successful recount.

Assembly: Executive session held on May 19, 2015. The committee recommended passage by a vote of 5-3.

Senate: the Senate Committee on Elections and Local Government held a public hearing on April 9, 2015. The committee held an executive session on April 16, 2015. The committee recommended passage by a vote of 3-2. **Senate Substitute Amendment 1 offered by Senator Miller. Senate Amendment 1 introduced by Senator Miller. Senate Substitute Amendment tabled by a vote of 19-14. Senate Amendment 1 tabled by voice vote. Senate Bill 96 was approved by a voice vote.**

8. ***Assembly Bill 164 and Senate Bill 121***: various election law changes.

Sponsors: Bipartisan. This bill makes several changes to election laws and addresses several concerns identified by the Wisconsin County Clerks Association in their 2015-2016 Legislative Objectives:

- The bill requires that a write-in candidate must file a registration statement no later than noon on the Friday before the election to be a registered write-in candidate.
- The bill provides that the board of canvassers need not reconvene if the municipal clerk certifies that he or she has received no provisional or absentee ballots from the time that the board of canvassers completed the initial canvass and 4 p.m. on the Friday after the election.
- The bill would require electors to submit a petition to pass an ordinance or resolution (direct legislation) at least 70 days from the date on which the council or board must act.
- The bill removes language related to an elector affixing a sticker to a ballot.
- Under current law, if a school board election is held in conjunction with a state, county, municipal, or judicial election, the school board election must take place at the same polling place, and the municipal election hours apply. This bill provides that a school board referendum held in conjunction with a state, county, municipal, or judicial election is subject to the same procedures.

Assembly: Assembly Amendment 1 offered by Representative Bernier. Executive session held on May 19, 2015. Assembly Amendment 1 offered by Representative Bernier. The committee recommended adoption of Assembly Amendment 1 by a vote of 8-0. The committee recommended passage as amended by a vote of 7-0.

Senate: Senate Amendment 1 offered by Senator LeMahieu. Executive Session held on June 3, 2015. Senate Amendment 1 was approved by a vote of 5-0. The Senate Committee on Elections and Local Government recommended passage as amended by a vote of 5-0.

9. *Assembly Bill 175 and Senate Bill 151*: communications by members of the Legislature.

Sponsors: Bipartisan. Currently, with certain exceptions, no person who is elected to state or local office and who becomes a candidate for national, state, or local office may use public funds for the cost of materials or distribution of 50 or more pieces of substantially identical material distributed during the period beginning on the first day for circulation of nomination papers as a candidate (or certain other dates for candidates who do not file nomination papers) and ending on the date of the election at which the person's name appears on the ballot, or on the date of the primary election at which the person's name so appears if the person is not nominated at the primary.

This bill provides that this prohibition does not apply to the cost of materials or distribution of a communication made by a member of the legislature to an address located within the legislative district represented by that member during the 45-day period following declaration of a state of emergency by the governor affecting any county in which the district is located if the communication relates solely to the subject of the emergency.

Assembly: The Committee on Campaigns and Elections held a public hearing on May 19, 2015. Assembly Amendment 1 offered by Representative Vorpagel, which would apply the exception to all state and local elected officials.

10. *Senate Bill 137*: publication of certain legal notices on an Internet site maintained by a municipality.

Sponsors: Majority. Under this bill, a municipality that opts to post a legal notice in lieu of publication may, instead of posting the notice in three public places, post the notice in one public place and publish the notice on the municipality's Internet site.

Senate: Public hearing held on May 28, 2015. Executive Session held on June 3, 2015. The Senate Committee on Elections and Local Government recommended passage by a vote of 3-2.

PREVIOUS LEGISLATION – NO STATUS CHANGE

11. Assembly Joint Resolution 1 and Senate Joint Resolution 2: Election of chief justice (second consideration).

Sponsors: Majority. This constitutional amendment, to be given second consideration by the 2015 Legislature for submittal to the voters in a statewide constitutional referendum in April 2015, was first considered by the 2013 legislature in 2013 Senate Joint Resolution 57, which became 2013 Enrolled Joint Resolution 16. The amendment directs the Supreme Court to elect a chief justice for a term of two years.

Senate Joint Resolution 2: Passed by the Senate by a vote of 17-14; passed by the Assembly by a vote of 62-34-2-1 (Aye – Nay – Paired – Not voting). Enrolled as 2015 Senate Joint Resolution 2. This referendum question was approved on the 2015 Spring Election ballot statewide.

12. Assembly Joint Resolution 8 and Senate Joint Resolution 12: An advisory referendum on an amendment to the U.S. Constitution.

Sponsors: Minority. This resolution places a question on the November 2016 ballot to ask the people if Congress should propose an amendment to overturn *Citizens United v. FEC*.

13. Assembly Bill 9 and Senate Bill 6: Legislative Audit Bureau access to documents maintained by state agencies and authorizing the Government Accountability Board to provide investigatory records to the Legislative Audit Bureau.

Sponsors: Bipartisan. These bills clarify LAB authority to have access to all state agency documents by providing that LAB also has specific access to state agency documents that relate to agency expenditures, revenues, operations, and structure that are confidential by law. In addition, the bill requires GAB to provide investigatory records to LAB to the extent necessary for LAB to carry out its duties.

Joint Legislative Audit Committee: Public hearing held on January 21, 2015. Executive session held on January 22, 2015. The committee recommended passage of both bills unanimously.

Senate Bill 6: Passed by the Senate by voice vote; passed by the Assembly by voice vote. The Governor signed Senate Bill 6 into law as 2015 Wisconsin Act 2.

14. Assembly Bill 55 and Senate Bill 27: shareholder objections to corporate political expenditures.

Sponsors: Minority. Current law defines "disbursement," for purposes relating to campaign financing, to include a purchase, payment, loan, or gift made for political purposes; an authorized expenditure from a campaign depository account; and a payment for a broadcast or print communication to the general public for a political purpose.

This bill requires corporations to give written notice to their shareholders before making disbursements, as defined under current campaign finance law. The corporation is required to give only one notice for each corporate fiscal year. The notice must include a form that the shareholder may complete and return to the corporation to object to any disbursement during the applicable fiscal year.

The bill requires a corporation, within three months after the end of its fiscal year, to calculate the total value of its expenditures for disbursements made during the fiscal year. If an objecting shareholder returns the objection form to the corporation (opts out) within 30 days after the date stated on the corporation's notice, the corporation must, within four months after the end of its fiscal year, do all of the following: 1) pay the objecting shareholder an amount determined by multiplying the total value of corporate expenditures for disbursements by the objecting shareholder's percentage of ownership in the corporation; and 2) provide the objecting shareholder with the corporation's calculation of the total value of its expenditures for disbursements made during the fiscal year, along with information related to the calculation.

15. Assembly Bill 63: the presidential preference date.

Sponsors: Minority. This bill would move the date of the Presidential Preference Election from the Spring Election to coincide with the Spring Primary.

16. Assembly Bill 68 and Senate Bill 43: John Doe proceedings and providing a penalty.

Sponsors: Majority. This bill imposes a six-month time limit on a John Doe proceeding. This limit may be extended for additional six-month periods if a majority of judicial administrative district chief judges find good cause for each extension. This bill also provides that the same finding is required to add specified crimes to the original complaint. The vote of each judge must be available to the public. Finally, under this bill, records reflecting the costs of John Doe investigations and proceedings are a matter of public record, temporary or permanent reserve judges are excluded from presiding over John Doe proceedings, and special prosecutors may be appointed to assist the district attorney in a John Doe proceeding only under certain conditions.

Senate: A public hearing was held on March 11 and an executive session held on March 12 by the Senate Committee on Judiciary and Public Safety. The committee recommend passage by the committee by a vote of 3-2.

17. Assembly Bill 80: review by state agencies of administrative rules and enactments and an expedited process for repealing rules an agency no longer has the authority to promulgate.

Sponsors: Majority. This bill would require state agencies to file a report by March 31 of each odd-numbered year to the Joint Committee for Review of Administrative Rules identifying the following:

- Rules for which the authority to promulgate has been eliminated or restricted.
- Rules that are obsolete or that have been rendered unnecessary.

- Rules that are duplicative of, superseded by, or in conflict with another rule, a state statute, a federal statute or regulation, or a court ruling.

The report must also include 1) a description of the agency's actions, if any, to address each rule listed in the report and, if the agency has not taken any action to address a rule listed in the report, an explanation for not taking action; 2) a description of the status of each rule listed in the previous year's report not otherwise listed; and 3) if the agency determines that there are no such rules to list, a statement of that determination.

Assembly: Report passage recommended by the Committee on State Affairs and Government Operations by a vote of 8-5. AB-80 was passed by the Assembly by a voice vote.

18. Assembly Bill 130: tribal identification cards.

Sponsors: Bipartisan. This bill provides that identification cards issued by an American Indian tribe or band must be accepted as sufficient proof of identity for the purpose of any law that requires a person to present identification. This bill was prepared for the Joint Legislative Council's Special Committee on State-Tribal Relations.

19. Assembly Bill 176: reporting of the principal place of employment of certain individuals who make political contributions.

Sponsors: Majority. Currently, with limited exceptions, each registrant under the campaign finance law must file periodic reports with the appropriate filing officer or agency specified by law. The reports must contain specified information, including the occupation and the name and address of the principal place of employment of each individual contributor whose cumulative contributions for the calendar year exceed \$100 in amount or value. Under this bill, the report must indicate the occupation of each individual contributor whose cumulative contributions for the biennium are in excess of \$500.

20. Assembly Bill 189: authorizing Wisconsin to enter into agreements to share information related to the registration and voting of electors.

Sponsors: Majority. This bill requires the chief election officer to enter into the Interstate Voter Registration Data Crosscheck Program, an agreement with a group of states to share data and information related to the registration and voting of electors in this state and the other participating states for the purpose of maintaining this state's statewide voter registration list.

21. Senate Bill 58: legislative and congressional redistricting.

Sponsors: Minority. This bill creates a new procedure for the preparation of legislative and congressional redistricting plans. The bill directs the Legislative Reference Bureau (LRB) to draw redistricting plans based upon standards specified in the bill and establishes a Redistricting Advisory Commission to perform certain tasks in the redistricting process. The bill also makes various other changes to the laws governing redistricting.

Proposals		Sponsors		Assembly		Senate		Relating Clause	
(LRB#)									
AJR-01 (1001)	Majority								election of chief justice (second consideration)
SJR-02 (0644)	Majority		Enrolled SJR2	Enrolled SJR2					election of chief justice (second consideration)
AJR-08 (1145)	Minority								An advisory referendum on an amendment to the U.S. Constitution
SJR-12 (1420)	Minority								An advisory referendum on an amendment to the U.S. Constitution
AB-09 (1157)	Bipartisan		Passed by Committee						Legislative Audit Bureau access to documents maintained by state agencies and authorizing the Government Accountability Board to provide investigatory records to the Legislative Audit Bureau
SB-06 (0937)	Bipartisan		2015 WI Act 2	2015 WI Act 2					Legislative Audit Bureau access to documents maintained by state agencies and authorizing the Government Accountability Board to provide investigatory records to the Legislative Audit Bureau
AB-21 (1474)	Majority								state finances and appropriations, constituting the executive budget act of the 2015 legislature
SB-21 (1576)	Majority								state finances and appropriations, constituting the executive budget act of the 2015 legislature
AB-55 (1515)	Minority								Shareholder objections to corporate political expenditures
SB-27 (0977)	Minority								Shareholder objections to corporate political expenditures
AB-58 (1593)	Bipartisan		Passed by Committee						Responding to a request for an absentee ballot
SB-47 (0341)	Bipartisan					Passed by Senate			Responding to a request for an absentee ballot
AB-63 (1516)	Minority								the presidential preference primary date
AB-68 (0524)	Majority								John Doe proceedings and providing a penalty
SB-43 (1716)	Majority					Passed by Committee			John Doe proceedings and providing a penalty
AB-79 (0828)	Bipartisan								allowing municipal clerks to register voters on election day
SB-71 (1696)	Bipartisan					Passed by Committee			allowing municipal clerks to register voters on election day
AB-80 (1270)	Majority		Passed by Assembly						review by state agencies of administrative rules and enactments and an expedited process for repealing rules an agency no longer has the authority to promulgate.
SB-58 (0889)	Minority								legislative and congressional redistricting
AB-124 (1151)	Bipartisan		Passed by Committee						fees for election recounts
SB-96 (1873)	Bipartisan								fees for election recounts
AB-130 (0927)	Bipartisan								tribal identification cards
AB-164 (2071)	Bipartisan		Passed by Committee						various election law changes
SB-121 (1578)	Bipartisan					Passed by Committee			various election law changes
AB-175 (1879)	Bipartisan								communications by members of the legislature
SB-151 (2171)	Bipartisan								communications by members of the legislature

Proposal (LRB#)	Sponsors	Assembly	Senate	Relating Clause
AB-176 (2055)	Majority			reporting of the principal place of employment of certain individuals who make political contributions
AB-189 (1711)	Majority			authorizing Wisconsin to enter into agreements to share information related to the registration and voting of electors
AB-199 (1852)	Majority			publication of certain legal notices on an Internet site maintained by a municipality
SB-137 (2070)	Majority		Passed by Committee	publication of certain legal notices on an Internet site maintained by a municipality
SJR-32 (0870)	Minority			the right to vote (first consideration)
AJR-38 (2134)	Minority			the right to vote (first consideration)
AB-240 (2334)	Majority			electioneering at a retirement home or residential care facility
SB-161 (1810)	Majority			electioneering at a retirement home or residential care facility
AB-230 (2137)	Bipartisan			requiring a municipal judge to be a licensed Wisconsin attorney

State of Wisconsin \ Government Accountability Board

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JUDGE GERALD C. NICHOL
Chair

KEVIN J. KENNEDY
Director and General Counsel

MEMORANDUM

DATE: For the June 18, 2015 Board Meeting

TO: Members, Wisconsin Government Accountability Board

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

Prepared by: Jonathan Becker, Brian Bell, Richard Bohringer, Adam Harvell,
Kyle Kundert and Molly Nagappala
Ethics and Accountability Division

SUBJECT: Ethics and Accountability Division Program Activity

Campaign Finance Update

Richard Bohringer, Adam Harvell, Kyle Kundert, Molly Nagappala and Brian Bell
Campaign Finance Auditors

January Continuing 2015 Campaign Finance Reports

The filing deadline for the January 2015 report was 2/2/2015, and all non-exempt committees were required to file. 14 committees had not filed as of 4/16/2015, when materials were prepared for the last board meeting. A list of those 14 committees is attached. The committees that have not been resolved will be presented to the board separately for further action.

Upcoming Campaign Finance Reports

The next regular report is the July Continuing 2015, due on July 20, 2015 from all non-exempt committees. Because of the special election for the 33rd Senate District, there are three special election reports due: A pre-primary report due on 6/15, a pre-election report due on 7/13, and a post-election report, for candidates only, on 8/20/15. Committees required to file the pre-election report on 7/13 must also file their July Continuing 2015 report a week early, on 7/13.

Campaign Finance Audits

A summary of campaign finance audits and penalties for 2015 is included below. This report is generated from our new audit tracking database. Information from 2015 audits will be added as issues are resolved and settlements are paid.

- Pending Transactions – Approximately 35 committees had saved transactions from 2014 in the CFIS database but never filed those transactions on any report. Staff began contacting those committees on 5/12/2015, and all but one committee has resolved their pending transactions.

- Cash Balances– Several dozen committees had cash balance discrepancies of \$100 or more during 2014. Staff began contacting those committees on 5/29.
- Termination Audits – 63 committees applied for termination in 2014. Twelve committees were originally contacted with outstanding issues. Only 1 committee remains on our outstanding list.

Lobbying Update
 Molly Nagappala and Brian Bell
 Ethics and Accountability Specialists

First SLAE of the 2015-2016 Legislative Session due by July 31, 2015

The deadline for the next Statement of Lobbying Activities and Expenditures (SLAE) Report is Friday, July 31, 2015 for the January to June 2015 reporting period, and will include considerable activity related to lobbying on the State Budget. Staff conducted a webinar at 1:00 p.m. on May 27, 2015 on how to complete the SLAE. The webinar was conducted live, recorded, and then will be posted on the G.A.B. website so it can be viewed at the convenience of any Eye On Lobbying user.

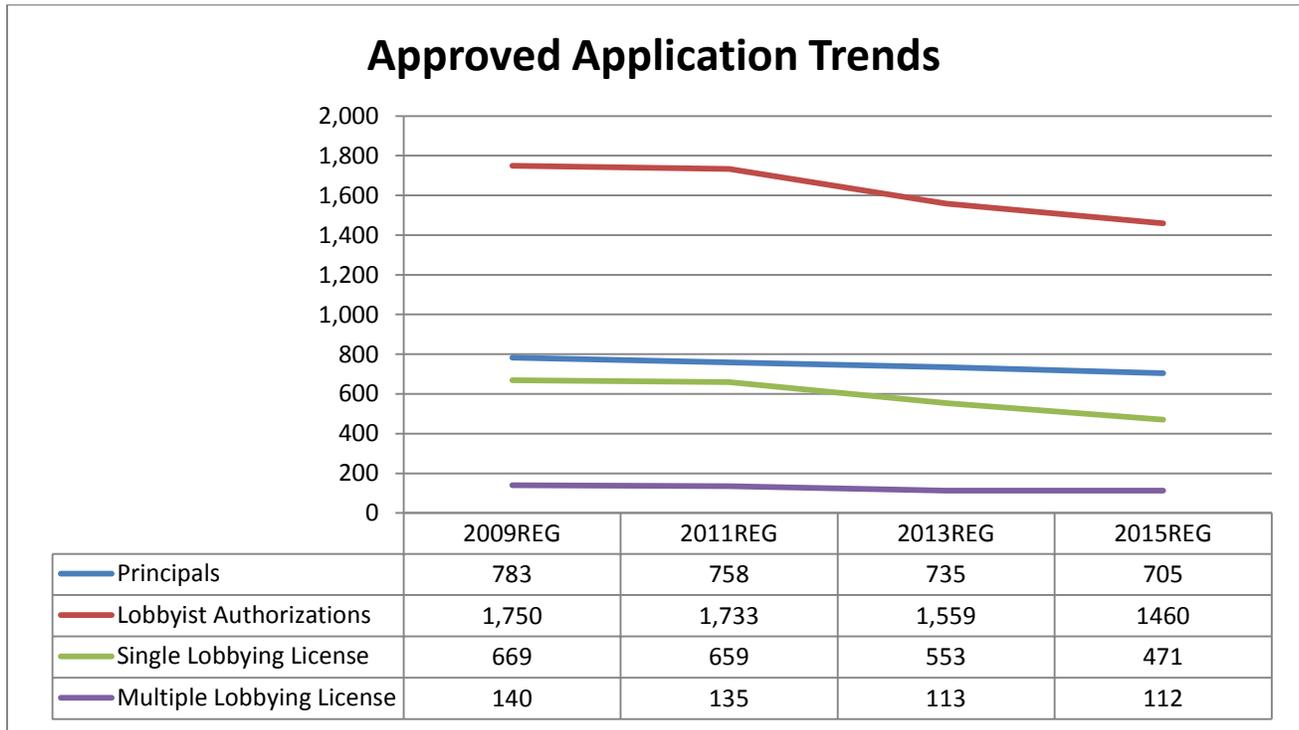
2015-2016 Legislative Session Registration and Licensing

On December 1, 2014, the Eye on Lobbying website enabled the start of principal registration, lobbyist licensing, and lobbyist authorization for the upcoming 2015-2016 legislative session. While we continue to see additional registrations and licensing applications throughout the budget process, we have observed a continued decline in the number of principal registrations, lobbyist licenses (both single and multiple), and lobbyist authorizations. Both economic austerity measures by past lobbying principals, and wider margins between the majority and minority in each house of the State Legislature, are likely contributing factors. The following tables and graphs provide a summary of licensure, registration, and authorization applications and revenue as of June 1, 2015.

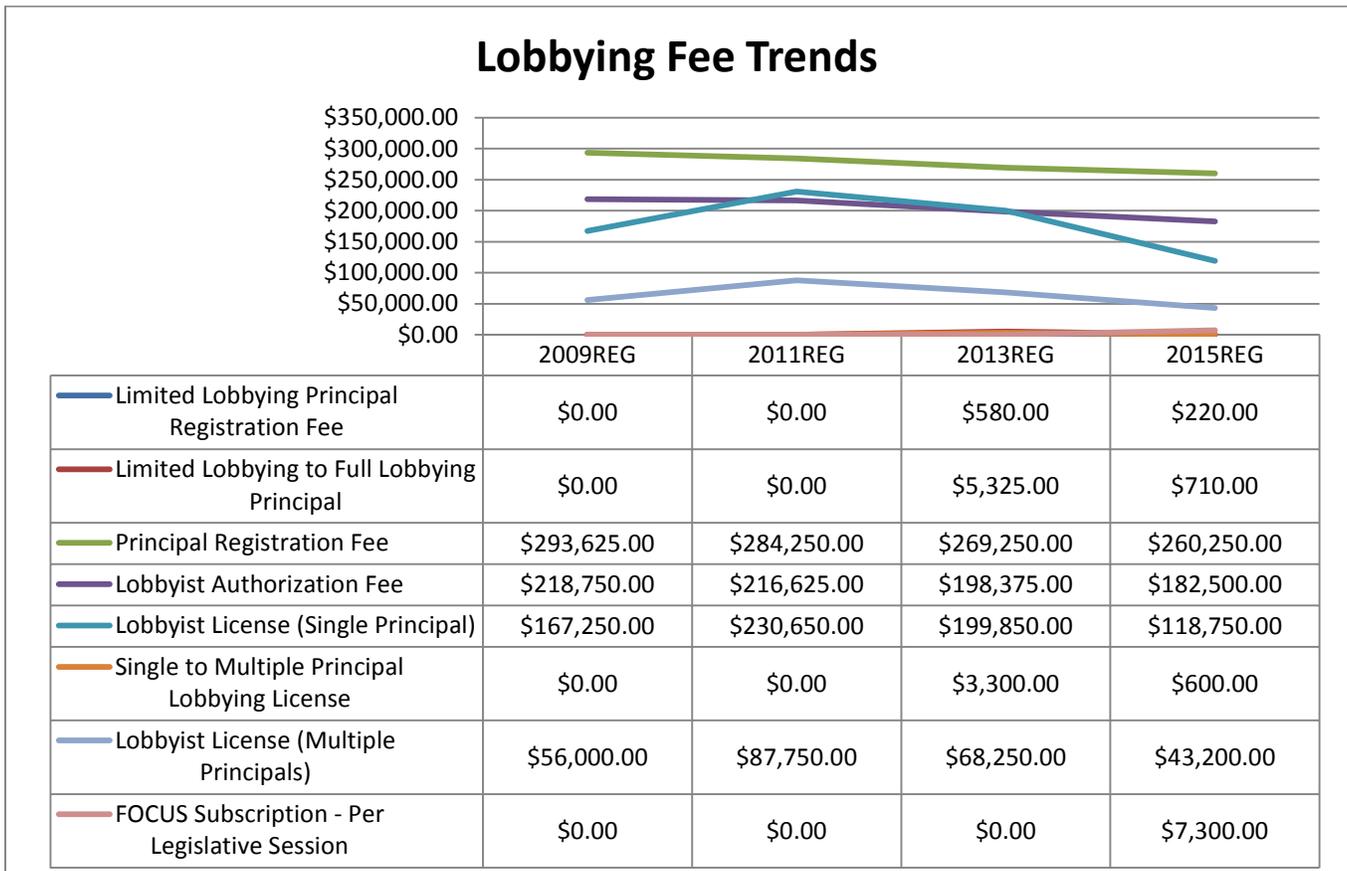
2015-2016 Legislative Session

Fee Type	Fees Paid	Fee Amount	Total Paid
Limited Lobbying Principal Registration Fee	11	\$20.00	\$220.00
Limited Lobbying to Full Lobbying Principal Amendment	2	\$355.00	\$710.00
Principal Registration Fee	694	\$375.00	\$260,250.00
Lobbyist Authorization Fee	1,460	\$125.00	\$182,500.00
Lobbyist License (Single Principal)	475	\$250.00	\$118,750.00
Single to Multiple Principal Lobbying License Amendment	4	\$150.00	\$600.00
Lobbyist License (Multiple Principals)	108	\$400.00	\$43,200.00
Focus Subscription	73	\$100.00	\$7,300.00
		Total	\$613,530.00

Lobbying Fee Applications by Legislative Session



Lobbying Fee Revenue by Legislative Session



Financial Disclosure Update

Adam Harvell
Campaign Finance Auditor and Ethics Specialist

Statements of Economic Interests

More than 2,300 statements were sent out by early January, with most forms due on April 30, 2015. As of June 4, 2015, 2,371 SEIs have been sent out, and 2,370 have been returned. One official has paid a \$50 forfeiture, and several former officials have had their forfeiture waived. A summary is attached. The one official who has not filed will be presented to the Board for further action.

Upcoming Events

Investment Board Quarterly Reports for the 2nd quarter of 2015 will be mailed out at the end of June and due by 7/31/2015. Legislative Liaison reports for all state agencies for the first half of 2015 will also be mailed out at the end of June and due by 7/31/2015.

Gubernatorial Appointments

New appointments continue to be processed on an ongoing basis. Tasks include securing statements of economic interests from all appointees and referring copies of their statements to the Senate for future confirmation hearings.

Ethics, Complaints and Investigations Update

Jonathan Becker, Division Administrator

Division staff continues to answer questions from legislators, legislative staff, and the public on various provisions of the State Ethics Code. Division staff intake numerous complaints from various parties and deal with them appropriately according to the Division's standard procedures. Division staff continues to devote time to assist on investigations and the resolution of complaints when called upon by the Division Administrator and/or the Director and General Counsel. Efforts to improve the complaints and investigations process are addressed in a separate report regarding the LAB audit recommendations.

Audit Settlements Summary – 4/1/2015 to 6/4/2015

Total settlements paid for 2015 for Campaign Finance: \$2,855.00
 Total settlements paid for 2015 for Ethics: \$50.00

Late Filing Fee Settlements:

Audit_ID	2015-211
In the matter of	Sawyer County - Lac Courte Oreilles Democratic Party
Additional Comments	Paid w/ 2 checks: Party check \$100; personal check from Treasurer \$200
Committee ID	0300185
Audit Category	Late Filing Fee (CF)
Reporting Period	2015 January Continuing (CF)
Status Reason	Paid Settlement
Settlement Paid:	\$200.00

Audit_ID	2015-5
In the matter of	DLCC Wisconsin PAC
Additional Comments	lmtc / elizabeth
Committee ID	0501491
Audit Category	Late Filing Fee (CF)
Reporting Period	2015 January Continuing (CF)
Status Reason	Paid Settlement
Settlement Paid:	\$200.00

Late Reporting Settlements:

Audit_ID	2015-189
In the matter of	Friends of Brian Barton
Additional Comments	Filed 2/16/2015 - Assessed forfeiture and sent letter
Committee ID	0105632
Audit Category	Late CF Report (CF)
Reporting Period	2015 Spring Pre-Primary
Status Reason	Paid Settlement
Settlement Paid:	\$150.00

Audit_ID	2015-195
In the matter of	Republican Party of Rock Co
Additional Comments	Warning letter 3/27 - Penalty letter 4/22
Committee ID	0300168
Audit Category	Late CF report (CF)
Reporting Period	2015 January Continuing (CF)
Status Reason	Paid Settlement
Settlement Paid:	\$150.00

Audit_ID	2015-197
In the matter of	WI Nurses PAC (WIN PAC)
Additional Comments	Warning letter 3/27 - Penalty letter 4/22
Committee ID	0500369
Audit Category	Late CF report (CF)
Reporting Period	2015 January Continuing (CF)
Status Reason	Paid Settlement
Settlement Paid:	\$150.00

Audit_ID	2015-204
In the matter of	WI Nurse Midwives
Additional Comments	Warning letter 3/27 - Penalty letter 4/22 filed no activity report, with settlement agreement and check on 5/18/15
Committee ID	0900133
Audit Category	Late CF report (CF)
Reporting Period	2015 January Continuing (CF)
Status Reason	Paid Settlement
Settlement Paid:	\$150.00

Cash Balance Discrepancies 2013:

Audit_ID	2015-210
In the matter of	Steineke for Assembly
Additional Comments	\$210 cash balance discrepancy between ending balance of January 2013 report and beginning balance of July 2013 report. Adjusted January 2013 report with unitemized expense.
Committee ID	0104713
Audit Category	Incomplete Report /Cash Balance (CF)
Reporting Period	2013 Calendar Year (CF)
Status Reason	Paid Settlement
Settlement Paid:	\$121.00

Audit_ID	2015-213
In the matter of	La Crosse County Republican Party
Additional Comments	Settlement for \$506.22 Cash Balance Discrepancy
Committee ID	0300096
Audit Category	Incomplete Report /Cash Balance (CF)
Reporting Period	2013 Calendar Year (CF)
Status Reason	Paid Settlement
Settlement Paid:	\$151.00

Audit_ID	2015-214
In the matter of	Friends of Julie Lassa
Additional Comments	For \$1047.21 Cash Balance Discrepancy, reduced by Board for mitigating circumstances.
Committee ID	0103147
Audit Category	Incomplete Report /Cash Balance (CF)
Reporting Period	2013 Calendar Year (CF)
Status Reason	Paid Settlement
Settlement Paid:	\$50.00

Audit_ID	2015-215
In the matter of	Mary Williams for 87th District Assembly
Additional Comments	For \$7032.53 cash balance discrepancy from Fall 2012.
Committee ID	0104128
Audit Category	Incomplete Report /Cash Balance (CF)
Reporting Period	2013 Calendar Year (CF)
Status Reason	Paid Settlement
Settlement Paid:	\$803.00

Late Filing of Statement of Economic Interests:

Audit_ID	2015-219
In the matter of	Gableman, Michael - Supreme Court Justice
Additional Comments	SEI Filed 5/27/2015 - 6/2/2015 - Per Alec, clerk, \$50 late fee is on the way
Committee ID	
Audit Category	Late SEI filing (E)
Reporting Period	2015 SEI Filing (E)
Status Reason	Paid Settlement
Settlement Paid:	\$50.00

State of Wisconsin\Government Accountability Board

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JUDGE GERALD C. NICHOL
Chairperson

KEVIN J. KENNEDY
Director and General Counsel

MEMORANDUM

DATE: For the June 18, 2015 Meeting

TO: Members, Wisconsin Government Accountability Board

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

Prepared by Elections Division Staff and Presented by:

Michael Haas
Elections Division Administrator

SUBJECT: Elections Division Update

Since its last Update (April 29, 2015), the Elections Division staff has focused on the following tasks:

1. General Activities of Election Administration Staff

A. Report on Political Parties that Qualify for Wisconsin Ballot Status thru 2016

After each general election, Government Accountability Board (G.A.B.) staff reviews the results of the election to determine which political parties will lose, gain or retain ballot status for the next two-year election cycle. Wis. Stat. § 5.62(1)(b)1., provides:

“...every recognized political party listed on the official ballot at the last gubernatorial election whose candidate for any statewide office received at least 1% of the total votes cast for that office and, if the last general election was also a presidential election, every recognized political party listed on the ballot at that election whose candidate for president received at least 1% of the total vote cast for that office shall have a separate primary ballot or one or more separate columns or rows on the primary ballot as prescribed in par. (a) and a separate column on the general election ballot in every ward and election district. An organization which was listed on the ballot as “independent” at the last general election and whose candidate meets the same qualifications shall receive the same ballot status upon petition of the chairperson and secretary of the organization to the board requesting such status and specifying their party name, which may not duplicate the name of an existing party. A petition under this subdivision may be filed no later than 5 p.m. on April 1 in the year of each general election.”

Recognized Political Parties Listed on the November 4, 2014 General Election Ballot

The recognized political parties listed on the official ballot at the November 4, 2014 General Election were the Democratic, Republican and Constitution Parties. The Republican and Democratic Parties each fielded a gubernatorial candidate. The Republican candidate received 52.26% and the Democratic candidate received 46.59% of the total votes cast, which qualifies the parties for ballot status thru 2016, with the party receiving the most votes appearing first on a partisan ballot.

The Constitution Party did not field a gubernatorial candidate, but Constitution Party candidates for the statewide offices of Secretary of State and State Treasurer garnered 1.11% and 1.22%, respectively, of the total votes cast for those offices. The Constitution Party retains its ballot status and follows the Republican and Democratic Parties in order of appearance on a partisan ballot.

Candidates Listed as “Independent” on the November 4, 2014 General Election Ballot

Seven independent candidates appeared on the ballot for statewide offices, each listing a Statement of Principle as provided by Wis. Stat. § 8.20(2)(a).

<u>Number of Candidates</u>	<u>Statement of Principle</u>
5	Libertarian
1	Wisconsin Green Party
1	Peoples Party

Only independent candidates listed as “Libertarian” and “Wisconsin Green Party” received at least 1% of the total votes cast for statewide offices:

	<u>Governor/ Lt. Governor</u>	<u>Attorney General</u>	<u>Secretary of State</u>	<u>State Treasurer</u>
Libertarian		3.02	2.54	2.31
Wisconsin Green Party				2.88

Due to the percentage of votes cast for the office of Attorney General, the Libertarian Party will be listed after the Constitution Party followed by the Wisconsin Green Party. Judge Barland certified the parties who have qualified for ballot status and the order in which they will appear on December 1, 2014. On January 22, 2015, the Libertarian Party petitioned for ballot status as required by Wis. Stat. § 5.62(1)(b)1. The Wisconsin Green Party is expected to petition by the end of June 2015.

Ballot Status Parties and Order for 2015-2016

- Republican Party
- Democratic Party
- Constitution Party
- Libertarian Party
- Wisconsin Green Party

B. Spring 2015 Election

The results of the Spring Election were certified by Judge Nichol at the Board meeting on April 29, 2015. Certificates of Election were issued immediately.

C. State Senator, District 33 Special Election:

On May 5, 2015, the Governor issued Executive Order #159 calling a special election in the 33rd State Senate District. The current officeholder, Senator Paul Farrow, was elected to the office of Waukesha County Executive at the April 7, 2015 Spring Election. The Governor received Senator Farrow's written resignation, effective July 17, 2015, on May 1.

Senator Farrow was re-elected to his senate seat at the November 2014 General Election. When a member of the legislature is elected to another office after the commencement of his or her term of office, and the term of the new office commences prior to the end of the legislator's term of office, the governor may call a special election to fill the seat of the legislator in anticipation of a vacancy, upon receipt of a written resignation from the legislator which is effective on a date not later than the date of the proposed special election. Wis. Stat. § 8.50(4)(e).

The special election is scheduled for July 21, 2015. The primary, if required, will be conducted on June 23 and nomination papers are due in the G.A.B. office on May 26, 2015.

D. Upcoming Local Special Elections

June 9, 2015	Village of Somers - First Village Election
June 16, 2015	Fennimore Community School District Referendum
July 21, 2015	City of Milwaukee Alderperson Special Primary
August 18, 2015	City of Milwaukee Special Election

2. Voter Registration Statistics

The following statistics summarize statewide voter registration activity year-to-date as of June 5, 2015:

Category	Voters
Active Voter Registrations	3,475,118
Inactive Voter Registrations	1,159,105
Cancelled Voter Registrations	447,256
HAVA Checks Processed In 2015	30,173
Merged Voter Registrations Processed In 2015	23,131

3. Voter Data Requests

The following statistics summarize voter data requests as of June 11, 2015:

Fiscal Year	Total Number of Requests	Requested Files Purchased	Percentage of Requests Purchased	Total Revenue
FY2015 to date	665	410	61.65%	\$228,906.25
FY2014	371	249	67.12%	\$125,921.25
FY2013	356	259	72.75%	\$254,840.00
FY2012	428	354	78.04%	\$127,835.00

As more fully described in the May 21, 2014 Division Update, G.A.B. staff launched an online application for processing common requests for voter data, on April 25, 2014. Staff has received positive feedback from individuals and organizations requesting voter data, as well as from local clerks who may direct requestors of localized data to the site. Since the launch of **BADGER Voters** (<http://BADGERVoters.gab.wi.gov>) in April 2014, the site has processed about 789 requests and 476 purchased data files, generating approximately \$261,000 of revenue and reducing agency costs by over \$170,600. Staff continues to study potential enhancements to the website that could result in improved customer service and greater efficiencies. As of June 15, 2015, the BADGER Voters site has resulted in a net benefit of approximately \$383,000 for the G.A.B. The initial development costs were less than \$50,000.

4. WEDCS and SVRS Data Quality

A. WEDCS Reporting

Board staff concluded efforts to seek municipal and county clerk compliance with several reporting requirements following the 2015 Spring Primary and the 2015 Spring Election. Staff made numerous and repeated contacts with clerks, their providers (if relier municipalities), and county clerks to attempt to get all reports completed.

The GAB-190NF Election Administration and Voting Statistics Report for the 2015 Spring Primary was due to be entered into the Wisconsin Elections Data Collection System (WEDCS) by March 17, 2015. All municipalities have completed these reports. The GAB-190NF Election Administration and Voting Statistics Report for the 2015 Spring Election was due to be entered into WEDCS by May 7, 2015. The Town of Plymouth (Juneau County) was the only municipality that did not complete this report.

Once all reports were complete, Board staff began reconciling data between the total votes recorded in SVRS, the total voters reported in WEDCS, and the total votes for the Justice of the Supreme Court in the Canvass Reporting System. Staff then followed up with clerks to resolve any discrepancy of three or more votes or a difference of one percent or more within any reporting unit. After this reconciliation is complete, the WEDC statistics will be posted on the G.A.B. website here: <http://www.gab.wi.gov/publications/statistics/gab-190/April-2015>.

The GAB-191 Election-Specific Cost Report must be completed by each municipality and county, and is due within 60 days of the election. For the 2015 Spring Election, the GAB-191

is due to be entered into WEDCS by June 7, 2015. There are currently 1,682 out of 1,924 completed reports entered into WEDCS, as of June 2, 2015.

B. SVRS and Special Elections

Individual checklists are not created for special elections nor do the G.A.B. staff run data quality maintenance queries for special elections. Board staff does monitor SVRS activity of municipalities affected by special elections to track the status of SVRS election-related tasks.

5. Voting Equipment Testing and Demonstration

A. Voting System Applications

An application for approval of the Election Systems & Software (ES&S) Unity 3.4.1.0 and Unity 3.4.1.1 voting systems was received on March 20, 2015. Board staff has scheduled functional testing of the systems, a public demonstration, and a meeting of the Wisconsin Election Administration Council (WI-EAC) on July 15-17, 2015 at the G.A.B. office. Telecommunication testing for the Unity 3.4.1.1 analog modem capability is scheduled for July 22-24, 2015 in Douglas, Eau Claire, and Marathon Counties. G.A.B. staff plan to present staff's recommendation concerning the approval of the ES&S Unity 3.4.1.0 and Unity 3.4.1.1 voting systems at the September Board meeting.

An application for approval of Engineering Change Order (ECO) 918 for the ES&S EVS 5300 voting system was received on March 26, 2015. This ECO is a *de minimis* change to the end of life modem of the DS200. Director and General Counsel Kennedy, in consultation with Board Chair Nichol, approved the ES&S ECO 918 application. The approval letter was identical in substance to the draft correspondence presented to the Board at its meeting of April 29, 2015.

B. Electronic Poll Book Demonstration

Board members and staff were invited by the Brown County Clerk to attend an electronic poll book product demonstration by Election Systems and Software (ES&S) on May 28, 2015. Board Chair Nichol, Director and General Counsel Kevin Kennedy, and Elections Specialist David Buerger attended. Approximately 75 local election officials were in attendance including several county clerks. In addition to listening, Board staff served as a resource during the presentation, answering questions regarding the testing and approval process and how electronic poll books could be used within the existing statutory framework. Another demonstration is scheduled for July 8 in Sun Prairie and Board members are invited to attend.

While no municipality or vendor has requested approval of an electronic poll book system at this time, there appears to be a significant level of interest from some clerks in having this as an option for the 2016 election cycle as evidenced by Manitowoc County Clerk Aulik's presentation at the April Board meeting of a letter signed by over 100 clerks requesting the Board to develop standards for electronic poll books. Pursuant to the Board's March 2014 directive, staff has not proceeded with any intensive efforts regarding electronic poll books and continues to advise election officials that the Board has

determined that electronic poll books are not a priority and will not be approved for the time being. Board staff expects continuing interest among local election officials in having the option to use electronic poll books. The Board may wish to consider whether circumstances have sufficiently changed since its directive to warrant revisiting that decision.

C. Dominion & ES&S Voting System Demonstration

G.A.B. staff members Matthew Kitman and David Buerger attended a voting equipment demonstration by Dominion and ES&S in Sauk County on May 13, 2015. Staff members were able to see how demonstrations and sales pitches of voting systems are conducted at the county and municipal level. Staff was able to provide feedback and clarification to vendors and clerks regarding state requirements that would have otherwise been incorrect or unclear. The vendors provided additional details concerning potential upcoming applications for new voting systems or modifications to existing systems.

6. The AccessElections! Accessibility Compliance Program

A. Development of Polling Place Accessibility Reporting System

Staff completed work with the IT team to finalize an online portal that provides local election officials with electronic access to their audit reports. The system has been launched and reports have been transmitted to municipal clerks covering two prior elections. Staff continues to monitor the system to ensure that local election officials can effectively use the system to understand and remedy accessibility problems identified during site visits. Feedback about the system has been positive with several clerks specifically expressing appreciation for the inclusion of photos taken onsite to help identify and explain problems.

B. Ongoing Accessibility Compliance Efforts

Staff continues to coordinate with municipal clerks to ensure that accessibility problems uncovered during previous audits are resolved as quickly and cost-effectively as possible. The new reporting system has been used to transmit 278 audit reports to local election officials. Staff has received and reviewed 20 plans of action designed to correct problems identified during site visits. Deadlines for submitting plans of action are set at 60 days from receipt of the report, and staff works with local election officials to ensure that problems are addressed in a timely manner.

In addition, staff arranged for the shipment of 85 grant-funded accessibility supplies to 24 municipalities in response to documented needs. Several accessibility-related items, such as page magnifiers and signature guides, have been restocked due to continued demand, while the polling place signage inventory will continue to be liquidated.

7. Education/Training/Outreach/Technical Assistance

Following this memorandum as Attachment 1 is a summary of information on core and special election administration training recently conducted by G.A.B. staff. Following the Spring

Election, the training team and elections specialists are currently focusing on updating and distributing information related to the implementation of the photo identification requirement for special elections which will occur over the next several months. The status of the photo ID implementation plan is summarized further under a separate agenda of the Board materials.

8. GIS (Geographic Information Systems) Update

Board staff continued to process changes to ward, school, supervisory, sanitary, or municipal boundaries that take place throughout the State of Wisconsin, as well as acquiring any of these data types directly from local municipal or county land information departments.

Board staff continues to work with the State Agency Geospatial Information Committee (SAGIC) as well as continued involvement with the Wisconsin Land Information Association to assist in state agency acquisition of local land information data. Continued involvement with SAGIC as well as other land information groups throughout Wisconsin helps to facilitate and develop partnerships and more efficient data acquisition of spatial information. Accurate GIS data is essential to ensuring accurate ballot assignment within SVRS.

9. IT Projects

Several IT projects are in progress for the Elections Division:

A. SVRS Updates

There were no updates to SVRS implemented during this reporting period.

B. SVRS Modernization

Design and development continue on the SVRS Modernization project. GAB staff and IT staff have made significant progress with business requirements and software build. The internal deadline for software build completion is June 24, 2015. Then GAB staff will conduct several rounds of Module-Specific testing, Integrated testing, and Quality Assurance testing from July through November.

C. Voter Felon Audit

On June 3, 2015, board staff performed the post-election felon audit for the 2015 Spring Election. Nine potential matches with voters were identified, and were reviewed by Department of Corrections staff. After their review, seven records remained; these have now been assigned to municipal clerks for their review. As of the time of this report, no referrals have been made for the April 7, 2015 Spring Election.

Now that the backlog of felon audits for previous elections has been completed, Board staff has discussed a protocol for determining whether a felon audit should be completed for local special elections going forward. Staff recommends that the felon audit process will be completed after each regular election and any special elections for which the Board certifies election results (state and federal offices), but not after local special elections. Staff requests any feedback the Board wishes to offer regarding this approach.

D. Canvass Reporting System

Board staff will be providing support for the June 23, 2015 Special Primary and the July 21, 2015 Special Election for the Thirty-Third Senate District. State Senate District 33 is entirely within Waukesha County. Waukesha County uses the G.A.B. Canvass Reporting System reports to post unofficial election night results.

E. Four-Year Voter Record Maintenance

No later than June 15 following each general election, Wisconsin Statute §6.50(1) directs the Government Accountability Board to examine voter registration records for each municipality and identify each elector who has not voted within the previous four years if qualified to do so during that entire period. The G.A.B. is required to mail a Notice of Suspension of Registration to the elector. This process of updating the registration list is commonly referred to as “four-year maintenance,” and it requires that a mailing be sent every two years. The Request for Bid for printing and mailing services for this process was posted April 30, 2015. The contract was awarded to Horizon Concept. On May 22, 2015, Board staff sent Horizon Concepts the list of 97,981 voters to be sent Notices of Suspension of Registration postcards. The total cost for printing the postcards is \$2,236.00. The cost of postage will be determined when the cards are mailed on June 15, 2015.

On June 15, 2015 the postcards will be mailed to voters. A voter who wishes to remain registered must return an Application for Continuation of Registration within 30 days. If a voter’s postcard is returned as undeliverable, the voter’s registration record will be inactivated. After 30 days, on August 15, 2015, if the voter has not sent an Application for Continuation of Registration, or the voter’s postcard was not returned undeliverable, the voter’s registration will be inactivated.

Staff conducted a training webinar for municipal clerks regarding the 2015 Four-Year Voter Record Maintenance process on June 3. Updated training materials were posted on the G.A.B. website.

F. Adjudicated Incompetents Ineligible List

In accordance with the Board directive of the April 29 meeting, staff continues to collect information provided by Wisconsin probate courts regarding adjudications of incompetency and voting eligibility. Staff has completed the design and development of a searchable electronic list of all persons who have been adjudicated incompetent by a Wisconsin court and are ineligible to vote pursuant to Wisconsin Statute 6.03 (1) (a), as well as those who have subsequently had their right to vote restored. This list was made available for local election officials’ use on June 3, 2015 for the purpose of voter list maintenance.

Also per Board directive, staff consulted with the Wisconsin Court System’s Circuit Court Access Program (“CCAP”) to see if a more efficient electronic system is available to collect and disseminate information related to adjudications of incompetency and voting eligibility. Staff Counsel Matthew Giesfeldt spoke with Attorney Sara Ward-Cassady from

the Court System’s administrative offices who indicated that CCAP does not have a searchable field regarding an adjudication of eligibility or ineligibility to vote within guardianship proceedings. Such information may be present in CCAP files, but only as part of scanned documents from the court proceedings not searchable in any way. Further, not every county submits the scanned documents to CCAP. Thus, there is currently no way for CCAP to extract information about voting eligibility from its database of guardianship adjudications.

10. G.A.B. Customer Service Center

The Help Desk staff is supporting over 2,000 active SVRS users, the public, and election officials. The Help Desk is continuing to maintain the two training environments utilized in the field to facilitate remote SVRS training and accessibility tablets utilized in polling place surveys. Staff is monitoring state enterprise network and data center changes and status, assisting with processing data requests, and processing voter verification postcards. Help Desk staff also have been serving on various project teams such as the STAR project, SVRS Modernization and MyVote Wisconsin teams and continue to maintain and update G.A.B. clerk contact and Listserve lists.

Staff assisted with testing SVRS and system improvements, coordinating and assisting with upgrade projects instituted by the Department of Administration (DOA) and administering G.A.B. Exchange email system. Staff is assisting DOA with Firewall, VLAN and security updates in the G.A.B. environment at the datacenter. Staff facilitated the migration of G.A.B. staff computer accounts from the SASI domain to the Accounts domain.

Overall, the majority of inquiries the G.A.B. Help Desk received from clerks during this period were regarding the following: providing assistance with preparing for special elections, voter proof of residence, logging into the CRM system for ineligible lists and logging into the Canvass Reporting System, absentee processing, producing SVRS reports, and related election processes. Help Desk staff assisted clerks with configuring and installing SVRS and WEDCS (GAB-190) on new computers. Staff also assisted clerks with the installation of the new SVRS security certificates that expired on June 7, 2015. The Help Desk also continued to field a variety of calls from voters and the public, candidates and political committees, lobbyists, and public officials.

	<u>G.A.B. SVRS Help Desk Call Volume</u> (608-261-2028)	<u>Front Desk Call Volume</u> (608-266-8005)
April 2015	1,067	755
May 2015	301	246
To June 4, 2015	60	55
Total Calls for Reporting Period	1,428	1,001

11. Voter Outreach Services

Since the G.A.B.'s launch of its Facebook and Twitter accounts in April of 2012 the number of people the agency is able to reach through social media continues to grow.

The G.A.B. Facebook account currently has over 1,100 likes (people following the page). On average, each post reaches a viral audience of 500 additional people, with the more popular posts generating an additional reach of up to 10,000 people. G.A.B. staff typically publishes two or more posts daily on Facebook during the six to eight weeks before an election. The posts around election time can generate an even broader reach with some posts reaching more than 20,000 facebook users. During the periods of time between elections, the frequency of posts decreases to around three per week.

The G.A.B. Twitter account currently has over 1,500 followers. Additional statistics for reach and viral impact are not available for Twitter. However, a number of news media sources "re-tweet" G.A.B. posts regularly. Because of these "re-tweets" each G.A.B. post reaches additional Twitter users, beyond the 1,000 followers. G.A.B. staff typically publishes two or more posts daily on Twitter during the six to eight weeks before an election. During periods of time between elections, the frequency of posts decreases to around three per week.

The current focus of other voter outreach efforts is the re-implementation of the photo ID requirement. Staff is developing an approach that relies on the assistance of local election officials and community organizations to disseminate information regarding the ID requirement. Staff has also begun to make presentations to various groups regarding the Photo ID Law and the importance of applying for a photo ID well in advance of the 2016 election cycle.

12. Complaint Processing and Tracking

Elections Division staff has continued to process and resolve complaints related to the actions of local election. A status report regarding pending and resolved complaints will be included in the Board Members' meeting folders.

ATTACHMENT #1

GAB Election Division's Training Initiatives
4/30/15 – 6/17/15

Training Type	Description	Class Duration	Target Audience	Number of Classes	Number of Students
Election Administration & SVRS Training Webinar Series	Series of 8 - 12 programs designed to keep local government officers up to date on the administration of elections in Wisconsin.	45 – 120 minute webinar conference hosted by Elections Division staff.	County and municipal clerks, chief inspectors, poll workers, special registration deputies and school district clerks.	6/3/2015: Four-Year Voter Maintenance	50 – 400 per webinar; posted to website for clerks to use on-demand.
Other	<ul style="list-style-type: none"> Board staff presented election administration and SVRS information on the following dates to clerks attending Wisconsin Municipal Clerks Association District Meetings: 5/1/2015: Districts 6&7 in Grand Chute; 5/5/2015: District 3 in Black River Falls; 5/6/2015: District 5 in Lake Geneva. Board staff completed updating the Election Day Manual, Election Administration Manuals forms and other materials to reflect the provisions of the voter photo ID law. 				

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JUDGE GERALD C. NICHOL
Chairperson

KEVIN J. KENNEDY
Director and General Counsel

MEMORANDUM

DATE: For the June 18, 2015 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, Chief Administrative Officer
Reid Magney, Public Information Officer

SUBJECT: Administrative Activities

Agency Operations

Introduction

The primary administrative focus for this reporting period has been STAR Project preparations, financial services activity, procuring goods and services, contract sunshine administration, recruiting staff, communicating with agency customers and developing legislative and media presentations.

Noteworthy Activities

1. STAR Project

The State Transforming Agency Resources (STAR) Project is a statewide project that will consolidate multiple outdated human resource, procurement and financial business IT systems into one efficient, transparent and modern enterprise-wide system.

Release 1 of the STAR project which includes financial and procurement is scheduled to go live on July 1, 2015. The financial staff (Sharrie, Julie and Mike) has been heavily involved in preparing for Release 1. In May, the financial staff worked more than 150 hours on STAR-related tasks. Staff finalized user acceptance testing of the PeopleSoft ERP system, is currently validating conversion data, and attending (22-24) all-day financial and procurement training classes scheduled during May, June and July. Staff is required to attend training in order to understand their roles and functions of the new system. The financial staff is also responsible for ensuring all agency users attend instructor-led training or they will provide training to G.A.B. users on the functions of the new system.

Weekly, Sharrie participates in Deployment Coordinator Checkpoint meetings to ensure G.A.B. is ready for go-live. Financial staff also participates in weekly webinars, change network meetings and financial meetings to prepare for go-live.

In addition to Release 1 activities, the financial staff is working simultaneously on preparing for Release 2, the Budget and Human Resources component of the system. Staff has been validating employee information and conversion data in preparation for Release 2 in January 2016.

Staff is also working on Fiscal Year 2015 close-out in the old system and preparing for the budget upload in the new system for Fiscal Year 2016; however, FY-16 purchase orders will need to be completed manually in the old-system prior to July 1 and then converted to People Soft after July 1.

The STAR Project has become very labor intensive and will continue to require dedicated G.A.B. staff resources to ensure a successful transition to the new enterprise-wide system. Staff will continue to keep the Board apprised as the STAR project moves forward.

2. Financial Services Activity

- Financial staff has been tracking time worked on the next rounds of voting equipment testing, the costs of which are reimbursable from each equipment vendor. For example, ES&S was recently billed for agency staff salary and fringe benefit costs related to the ECO 918 testing project.
- The G.A.B. is still on track to fully expend the 2010 federal HAVA 261 accessibility grant allotment of \$201,091 well before the September 30 federal fiscal year-end expiration date. States are required to expend each allotment year's funds within five years of receipt, or forego unspent program monies. Only one federal grant allotment year remains of \$199,998 from the 2011 federal year, and no further allotments are expected for this federal accessibility program. All Federal Cash Management reports for the Section 261 accessibility program expenditures and revenues were reviewed and reconciled each month.
- Our agency was required to lapse \$40,200 before fiscal year-end, and an entry was prepared and booked against the voter ID training appropriation to record this lapse in WiSMART during May. Staff also compiled financial information for a potential ERIC grant application.
- Financial staff has finalized user acceptance testing of the PeopleSoft ERP system, is currently validating conversion data, and attending financial and procurement training classes scheduled during May, June and July. In addition to the ERP conversion, staff members have been testing output from the new WiSMART report writer software. This is a replacement of the current vendor's software as of the end of this fiscal year, and user testing of this new mainframe report writer is currently focused on the larger state agencies.

- Several staff members conducted a physical inventory of our office and computer equipment, and then compiled valuations for annually reporting to the SCO-Risk Management unit. These valuations will later be used to charge our agency for property insurance coverage.
- Staff claimed reimbursements of \$7,346 for both April and May Federal Voting Assistance Program (FVAP) grant expenditures, then prepared journal entries to record revenues receivable, and coordinated the accounting for incoming wire transfers with Department of Administration Treasury staff. Staff has again followed up on the \$200,686 outstanding receivable from the U.S. Election Assistance Commission for the Election Data Collection grant final expenditures. EAC staff recently acknowledged the request, but has asked for additional information before they will process our reimbursement.
- General ledger accounts for both federal and state payroll and travel balance sheet liabilities were analyzed each month to facilitate the reconciliation of these 50 ledger account balances. Journal entries to correct any balance sheet account coding errors were prepared and booked. Quarter-end journal entries were also prepared and booked to reclassify purchasing card expenditure object codes and to properly allocate federal monthly interest earnings and mixed usage server costs to their appropriate federal or state programs. Monthly DOA General Service Billing charges were audited prior to payments being processed, while rent and utility cost allocations were updated for recent payroll funding changes, in compliance with federal Office of Management and Budget (OMB) regulations. A refund from a DOA overbilling of desktop and laptop support charges is still outstanding, so additional follow-up is necessary.

3. Procurements

Since the previous Board meeting, the bid for Four Year Maintenance was posted. The vendor Horizon Concepts was awarded the bid and a purchase order was produced. A new DSLR camera and accessories for production of training materials was also purchased. Articulate Storyline software licenses were also purchased in preparation for training users on the modernized SVRS system. A contract and purchase order was finalized for Knupp & Watson & Wallman (KW2) for a Voter ID campaign. Adobe Acrobat licenses were purchased for Ethics Division staff. A purchase order was created for Jigar Patel, an IT Contractor, through the end of fiscal year 2015.

4. Contract Sunshine

Since the April Board meeting, the certification process for the January to March 2015 period was complete. All 38 agencies required to report qualified purchases returned the certification. The Contract Sunshine administrator is also working with the STAR project program staff to test the process of uploading data to Contract Sunshine from PeopleSoft. Currently, select state agencies upload files generated with Purchase Plus, which is an application that will be eliminated with the implementation of the STAR project. Staff also coordinated fixes for technical problems associated with the website.

5. Staffing

Currently, we have an Office Operations Associate vacancy and have begun recruitment efforts.

6. Communications Report

Since the April 29, 2015, Board meeting, the Public Information Officer (PIO) has engaged in the following communications activities in furtherance of the G.A.B.'s mission:

Voter ID Public Information Campaign: The PIO has organized several meetings with staff, the KW2 advertising agency, the Division of Motor Vehicles and community group leaders related to updating the Bring It to the Ballot public information campaign and re-launching our public outreach efforts. Meetings with the vendor have focused on modifications to the BringIt.wi.gov website for mobile devices and changes to the informational video about how to get a free state ID card for voting. Meetings with community group leaders have focused on ways the agency can empower community groups to educate the public and assist people in need of ID cards. Projects are on budget and on schedule for completion by the end of June.

Online: As the agency's webmaster, the PIO managed regular updates to the website, reworked the web page for voter ID and created a new web page for electronic poll books.

Media: Inquiries and interview requests have ebbed in the aftermath of the Spring Election, however, special elections, a voting rights lawsuit against the Board, and other issues have generated several calls and emails. Between April 21 and May 31, the PIO logged 58 media and general public phone calls and 117 media email contacts.

Public Records: The G.A.B. received two significant new public records requests between and April 21 and May 31, 2015, one of which was withdrawn after the requester was directed to the state's Open Book website. Work continues on fulfilling earlier requests.

Other: The PIO spent significant time in May assisting the Director and General Counsel with the Government Accountability Candidate Committee meeting arrangements

7. Meetings and Presentations

During the time since the April 29, 2015, Board meeting, Director Kennedy has been participating in a series of agency-related meetings and working with agency staff on several projects. The primary focus of the staff meetings has been on budget and legislative activities.

On May 5, 2015, Director Kennedy and Milwaukee City Election Commissioner Stephanie Findley spoke to a group of African-American fraternities and sororities as part of a "Day at the Capitol." The purpose of the session was to examine current and proposed legislation dealing with elections laws and changes that affect constituents' ability to fully engage and participate in the voting process.

On May 6, 2015, Director Kennedy and Staff Counsel Matt Giesfeldt attended a meeting of the Public Records Attorneys Group. Agency counsel regularly participates in these quarterly meetings to stay apprised of issues related to public records and open meetings.

On May 15, 2015, the Government Accountability Candidate Committee met to select at least two nominees to fill the vacancy that will be created by the expiration of Judge Thomas Barland's term on May 1, 2015. The Committee consists of Court of Appeals Judges from each of the four appellate districts, Judge Joan Kessler (District 1), Judge Paul Reilly (District 2), Judge Lisa Stark (District 3) and Judge Joanne Kloppenburg (District 4). The Committee submitted four names to the Governor for consideration for appointment to serve on the Government Accountability Board: Judge James Kieffer, Brookfield, Waukesha County; Judge Edward Leineweber, Lone Rock, Richland County; Judge Victor Manian, Glendale, Milwaukee County; and Judge Daniel Moeser, Madison, Dane County. Judge Barland continues to serve until a successor is appointed by the Governor.

On May 19-20, 2015, Elections Supervisor Ross Hein and Director Kennedy participated in the State Certification Testing of Voting Systems National Conference in Seattle. They made a presentation on Addressing Outside Challenges to Voting System Certification. The conference is for a working group of election officials who are directly involved in certifying voting systems.

Ross Hein also participated in the National Association of State Elections Directors (NASSED) voting systems subcommittee meeting which preceded the national conference. Ross has also been appointed as one of two NASSED representatives on the Technical Guidelines Development Committee (TGDC) of the U.S. Elections Assistance Commission. The Committee reviews proposed federal guidelines for certification of electronic voting systems.

As the budget deliberations wind down, legislative committee activity has increased. Mike Haas (accompanied by Brian Bell and Reid Magney) testified at a hearing of the Assembly Committee on Campaigns and Elections on May 19, 2015. The hearing focused on legislation directing the G.A.B. to participate in the Interstate Voter Crosscheck (Kansas) Program. 2015 Assembly Bill 189. A copy of the agency testimony can be found at: <http://www.gab.wi.gov/publications/testimony/assembly-elections-ab-189>

The Senate Committee on Elections and Local Government met on May 28, 2015. Mike Haas (accompanied by Brian Bell) testified at a hearing which focused on electioneering at retirement homes and residential care facilities. 2015 Senate Bill 161. On June 3, 2015 Brian Bell and Director Kennedy attended the Committee's executive session.

On May 27, 2015, Meagan Wolfe, Director Kennedy, Reid Magney and Mike Haas met with Sandy Drew to provide an overview of agency support for voter identification informational efforts. Ms. Drew is a former employee of the State Elections Board who works with a number of Dane County groups who are interested in assisting individuals obtain the necessary photo identification required to vote. Agency staff has made it a priority to identify and work with groups who can reach out to voters who may lack the necessary photo ID required to vote.

On May 28, 2015, Judge Nichol and Director Kennedy attended a demonstration of electronic poll books organized by Brown County Clerk Sandy Juno. David Buerger, one of the agency's election specialists, also observed the demonstration. Both Mr. Buerger and Director Kennedy answered questions for clerks about the approval process for the use of electronic poll books. About 75 local election officials attended the two sessions.

On May 29, 2015, Director Kennedy submitted an application for a grant from the Pew Charitable Trusts to assist the state in paying for a required voter outreach mailing if Wisconsin joins the Electronic Registration Information Center (ERIC). Legislation is being developed by the standing committee chairs to require Wisconsin participation in ERIC and possibly the Kansas project described earlier. In order to be poised to participate, Judge Nichol and Director Kennedy believed it wise to submit the application since the deadline was June 1, 2015.

On June 5, 2015, Director Kennedy did an extended interview with Milwaukee Public Radio, WUWM, describing the agency's outreach efforts with community groups to assist voters in obtaining the necessary photo ID required to vote.

Delegated Authority

An application for approval of Engineering Change Order (ECO) 918 for the ES&S EVS 5300 voting system was received on March 26, 2015. This ECO is a de minimis change to the end of life modem of the DS200. Director and General Counsel Kennedy, in consultation with Board Chair Nichol, approved the ES&S ECO 918 application. The approval letter was identical in substance to the draft correspondence presented to the Board at its meeting of April 29, 2015.

Looking Ahead

The next Board meeting is scheduled for Tuesday, September 1, 2015. The meeting will be held in the agency offices, beginning at 9:00 a.m.

Action Items

None.