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Meeting of the Board

Tuesday, September 1, 2015  
9:00 A.M.

Agenda  
Open Session

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

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**Tuesday, September 1, 2015**

**9:00 A.M.**

**Page**

- A. Call to Order**
- B. Director’s Report of Appropriate Meeting Notice**
- C. Minutes of Previous Meetings**
  - 1. June 18, 2015 Meeting** **3**
  - 2. July 13, 2015 Meeting** **13**
- D. Personal Appearances**
- E. ES&S Voting Equipment Approval** **16**
- F. Microsoft Licenses for SVRS Modernization (WisVote) / Overview** **60**
- G. Report on E-Poll Book Survey** **69**
- H. MyVote Wisconsin Design Contract** **78**
- I. Window for Lobbyists Contributions in a Presidential Campaign** **80**
- J. Request for Waivers of SEI Requirement** **91**
- K. Administrative Rules** **114**

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.

<b>L.</b>	<b>Legislative Status Report</b>	<b>147</b>
<b>M.</b>	<b>Proposed 2016 Government Accountability Board Meeting Schedule</b>	<b>164</b>
<b>N.</b>	<b>Per Diem Payments</b>	<b>Oral</b>
<b>O.</b>	<b>Director's Report</b>	
	<b>1. Ethics Division Report – campaign finance, ethics, and lobbying administration</b>	<b>169</b>
	<b>2. Elections Division Report – election administration</b>	<b>177</b>
	<b>3. Office of General Counsel Report – general administration</b>	<b>188</b>

**P. 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, October 20, 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  
June 18, 2015  
9:00 a.m.

### Open Session Minutes

<u>Summary of Significant Actions Taken</u>	<u>Page</u>
C. Approved Minutes of Previous Meeting	2
E. Approved Certification of Dominion Voting Systems Equipment	3
F. Approved Request for Attorney General Opinion	4
G. Approved Advice Regarding Municipal Court Withdrawal and Proof of Residence	4
J. Approved Drafting of Administrative Rule Scope Statements	6
K. Approved IT Related Contracts	7

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

Staff Present: Kevin J. Kennedy, Jonathan Becker, Michael Haas, Ross Hein, Sharrie Hauge,  
Nathan Judnic, Matthew Giesfeldt, Reid Magney, Brian Bell, Matthew Kitzman,  
David Buerger

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

Chairperson Nichol called the meeting to order at 9:00 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, and reviewed supplemental materials in Board Member's folders.

## C. Approval of Minutes of Previous Meeting

**April 29, 2015**

Director Kennedy informed members that draft minutes were unclear regarding Board action on administrative rules, so staff has suggested changes which are included in the supplemental folders.

**MOTION:** Approve the amended minutes of the April 29, 2015 meeting of the Government Accountability Board. Moved by Judge Barland, seconded by Judge Vocke. Motion carried unanimously.

## D. Personal Appearances

**Karen McKim of Waunakee** appeared on behalf of the Wisconsin Election Integrity Action Team to discuss post-election auditing and certification of voting equipment. She said she supports certification of the Dominion voting equipment on the agenda because it creates digital images of ballots which can be used for post-election audits without unsealing bags of paper ballots. She invited Board Members to a demonstration July 20 in Madison of software to assist in post-election audits developed for her group.

**Marian Matthews of Madison** appeared on behalf of the League of Women Voters of Dane County to discuss voter ID education. She said approximately 9,000 Dane County registered voters may not have an acceptable photo ID, and the League is concerned that in the absence of a robust publicity campaign, those voters will go to the polls and be unable to vote.

Board Members and Ms. Matthews discussed the source of that estimate (Dane County Clerk) and the status of possible funding from the Legislature to buy airtime for a public education campaign.

**Colleen Adams of Green Bay** appeared on behalf of Wisconsin Voices to discuss the need for voting modernization, including electronic poll books and online voter registration. She urged the Board to act this year to develop standards for e-poll books so clerks may purchase them for the 2016 elections.

**Sheboygan County Clerk John Dolson** appeared to encourage the Board to take action on e-poll books. He said many clerks attended a recent vendor demonstration in Green Bay, and are interested in implementing e-poll books as a way to minimize human error in the voting process.

**Brown County Clerk Sandy Juno** appeared to discuss e-poll books, and said that her research confirms G.A.B. staff findings on the subject last year. She said members of the Legislature from Brown County and elsewhere have expressed interest in the technology, and want to know how soon it can be implemented.

Board Members and Clerk Juno discussed e-poll book demonstrations and support among clerks for the technology.

**Fond du Lac County Clerk Lisa Freiberg** appeared to comment in support of agenda item E, Dominion Voting Equipment Approval. She said her county is ready to purchase the system if the Board approves its use in Wisconsin.

Judge Barland and Clerk Freiberg discussed the system's adequacy in providing privacy for disabled voters. Clerk Freiberg said privacy screens are available for that purpose.

**Dana LaTour of Denver, Colo.** appeared along with **Nick Ikonomakis** on behalf of Dominion Voting Systems to discuss the company's application for certification of its Dominion Democracy Suite 4.14-D and 4.14-DS voting systems. Ms. LaTour described the paper-based optical scan system.

Ms. LaTour and Board Members discussed the system, including other states where it has been certified, the ambiguous mark technology feature and accessible voting features.

## **E. Dominion Voting Equipment Approval**

Elections Division Administrator Michael Haas and Elections Specialist Matthew Kitzman made an oral presentation based on a written report beginning on page 14 of the June 2015 Board Meeting Materials. Based on feedback from the Board, Mr. Haas promised that future technical materials would include a glossary of acronyms.

Mr. Kitzman reviewed the report, explaining that the 4.14-D and the 4.14-DS versions of the equipment are exactly the same except that the latter has modem capabilities which are not certified by the U.S. Election Assistance Commission. G.A.B. staff conducted field tests on the modem version to ensure performance. Mr. Kitzman reviewed the staff's proposed recommendations regarding approval.

Board Members and staff discussed voter privacy, security of modem devices, ambiguous mark technology, and a write-in preference feature that staff recommends be deactivated. They also discussed the programming of voting equipment, which is the responsibility of counties. Some counties program their own equipment while others rely on a vendor.

Director Kennedy discussed the current system under which the state sets standards and approves electronic voting equipment, compared with the 1980s when vendors were in control. He also discussed audits and other steps the state takes to ensure public confidence in electronic voting systems.

Judge Barland inquired about negative feedback from the Election Administration Council regarding accessibility features of the Dominion system. Mr. Kitzman said the system meets the minimum standards of the Americans with Disabilities Act, but it does not use a touchscreen for accessibility like other systems used in Wisconsin do, which may have influenced the feedback.

Judge Nichol called a 10-minute recess at 11:05 a.m., to be followed by a demonstration by the vendor. The Board reconvened following the demonstration at 11:56 a.m.

**MOTION:** Adopt 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 beginning on page 14 of the June 2015 Board Meeting Materials. Moved by Judge Froehlich, seconded by Judge Vocke. Motion carried unanimously.

**MOTION:** Adopt 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 2015 Board Meeting Materials. Moved by Judge Froehlich, seconded by Judge Vocke. Motion carried unanimously.

## **F. Proposed Attorney General Opinion Request Related to Suspension of Lobbying Principal Registration**

Ethics Division Administrator Jonathan Becker and Staff Counsel Matthew Giesfeldt made a brief oral presentation based on a memorandum starting on page 64 of the June 2015 Board Meeting Materials regarding a request for an Attorney General opinion on whether it is constitutional for the Board to suspend the licenses of an organization’s lobbyists for failure to file a timely semiannual expense report. The request comes because of a recommendation from the Legislative Audit Bureau that the Board utilize this statutory provision, which staff is concerned may infringe on due process and free speech protections in the U.S. and Wisconsin Constitutions.

**MOTION:** Direct staff to submit the proposed request for a formal opinion to the Wisconsin Attorney General. Moved by Judge Vocke, seconded by judge Franke. Motion carried unanimously.

## **G. Requests for Advice**

### **1. Village of Rosendale – Municipal Court Withdrawal**

Staff Counsel Nathan Judnic made an oral presentation based on a memorandum starting on page 70 of the June 2015 Board Meeting Materials. The Village of Rosendale requested an opinion from Director Kennedy regarding withdrawal from Lakeside Municipal Court and establishment of its own municipal court.

Board Members extensively discussed the draft opinion and instructed staff to eliminate certain sentences they determined were unnecessary.

**MOTION:** Direct staff to issue a formal advisory opinion to Attorney Steven Sager, representing the Village of Rosendale, which is consistent with the draft opinion as amended by the Board; further, 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; and, publish a final version of the formal advisory opinion on the Board’s website within 10 days of Board approval. Moved by Judge Barland, seconded by Judge Lamelas. Motion carried unanimously.

## **2. Paul Malischke – Library Online Account as Proof of Residence**

Staff Counsel Giesfeldt made an oral presentation based on a memorandum starting on page 117 of the June 2015 Board Meeting Materials. Paul Malischke requested an opinion of staff regarding whether a webpage generated by the South Central Library System showing his LINKcat account could be used as a proof of residence document for voter registration.

Board Members and staff discussed the opinion request. Mr. Malischke stated that he wanted a clarification because he is a special registration deputy, as are librarians. He said using the library account information as proof of residence would help people register to vote.

**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). Moved by Judge Vocke, seconded by Judge Barland. Motion carried unanimously.

Judge Nichol called a recess at 12:28 p.m. for lunch. The Board reconvened at 1:03 p.m. Judge Froehlich was not present for the remainder of the meeting.

## **H. Report on Voter ID Implementation**

Division Administrator Haas made an oral presentation based on a written report starting on page 123 of the June 2015 Board Meeting Materials. He described recent special elections at which voter ID requirements were in effect and said implementation has gone smoothly for the most part.

Board Members and staff discussed the earlier comments from the League of Women Voters regarding the number of registered voters in Dane County who may not have a driver license or state ID card. They discussed the current lack of funding for a statewide public education campaign about voter ID, and whether the Board should make a request of the Legislature. Director Kennedy said the Legislature has been informed that if they wish to have a campaign, now is the time to consider it. He said the Board's other option would be to make an emergency funding request later.

The Board took no action.

## **I. Report on LAB Audit Follow-up**

Division Administrator Haas made an oral presentation based on a written report starting on page 125 of the June 2015 Board Meeting Materials. He noted that the Legislative Audit Bureau made 35 substantive recommendations, and by its April meeting the Board had addressed all but two. He described staff's work to review the status of 88 deceased voter records identified by LAB as well as the status of six voters whose records were inactivated as the result of a felon match. Mr. Haas recognized the work of SVRS Specialists Mai Choua Thao, Peter James, Jodi Kitts and Robert Mate in completing the reviews. Mr. Haas said the staff considers the 35 recommendations to be either completed or to require additional

legislative action, and that information will be passed along to the Joint Committee on Legislative Audit.

## **J. Administrative Rules**

Staff Counsel Giesfeldt made an oral presentation based on a memorandum starting on page 133 of the June 2015 Board Meeting Materials. He updated the Board on rulemaking and asked them to delegate authority to Director Kennedy and Judge Nichol as Board Chair to approve scope statements previously published in the Administrative Register and to review and approve draft language and analysis of permanent rules prior to submission to the Legislative Council Rules Clearinghouse.

**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.

Moved by Judge Vocke, seconded by Judge Barland. Motion carried.

**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”)

Moved by Judge Barland, seconded by Judge Vocke. Motion carried.

**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.

Moved by Judge Lamelas, seconded by Judge Franke. Motion carried.  
Mr. Giesfeldt discussed the proposed administrative rule regarding the use of “commercial, off-the-shelf” components in conjunction with approved voting systems.

Board Members and staff discussed the types of equipment such as power cords and monitors which could be purchased less expensively at retail for used with voting systems. Staff wishes to investigate the feasibility of permitting this. Based on Board Member concerns, Mr. Haas suggested deleting language from the proposed motion regarding submission of a scope statement to the Governor

**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 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.

Moved by Judge Franke with the phrase about submitting the scope statement to the Governor deleted, seconded by Judge Barland. Motion carried.

Mr. Giesfeldt discussed the final action on administrative rules regarding stickers on student ID cards. The Joint Committee for Review of Administrative Rules directed the Board to promulgate a rule on the use of stickers, but staff has received no requests from universities to use stickers. Staff recommends vacating its authorization of stickers.

**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.

Moved by Judge Vocke, seconded by Judge Franke. Motion carried.

## **K. Approval of IT Related Contracts**

Elections Supervisor Ross Hein made an oral presentation based on a memorandum starting on page 165 of the June 2015 Board Meeting Materials regarding two matters requiring Board approval.

Mr. Hein said staff requests Board approval for contracted information technology services in fiscal year 2016. The contracts cover five election division contractors and one ethics division contractor.

Board Members and staff discussed the IT contracting process, under which the state determines the rate of pay, as well as the status of current IT projects on which contractors are working. Director Kennedy explained that the agency has federal funds for election-related IT projects through the coming biennium, but will likely reduce the number of contractors after that.

**MOTION:** Authorize the continuation of IT contracts in FY 16 for the G.A.B.'s six IT contract positions, and approve the execution of two IT contracts for Database Architect-3 positions. Moved by Judge Barland, seconded by Judge Vocke. Motion carried.

## **L. Legislative Status Report**

Ethics Specialist Brian Bell made an oral presentation based on a memorandum starting on page 167 of the June 2015 Board Meeting Materials.

## **M. Per Diem Payments**

**MOTION:** Approve a half-day's per diem payment for preparation for the June 18, 2015 Board Meeting. Moved by Judge Vocke, seconded by Judge Franke. Motion carried unanimously.

## **N. 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 176 of the June 2015 Board Meeting Materials.

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

Written report from Division Administrator Haas and Division staff was included beginning on Page 184 of the June 2015 Board Meeting Materials. Mr. Haas directed the Board Members' attention to items discussing electronic poll book demonstrations, the voter felon audit, Four-Year Voter List Maintenance, and staff's findings regarding the unsuitability of CCAP to track cases involving persons who have been adjudicated incompetent.

Judge Nichol said electronic poll books should be on the September 2015 agenda so the Board can consider whether to set standards. Board Members and staff discussed the issue of whether there is now enough interest among clerks to justify investment of Board resources to set poll book standards.

**MOTION:** Put electronic poll books on the Board’s agenda for September and direct staff to update the 2014 memorandum to provide information about products, problems that would have to be addressed and legislative issues. Moved by Judge Franke, seconded by Judge Vocke.

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

Motion failed to receive four affirmative votes.

Judge Lamelas said she would prefer the staff to direct resources to implementation of voter photo ID in 2016. Judge Barland said he supports moving forward with online voter registration and is not opposed to the concept of electronic poll books, but expressed concern about legislative reaction on electronic poll books. He urged staff to see how legislators feel about the issue.

Director Kennedy said that based on his communications with members of the Legislature’s standing committees on elections, they think the Board should be moving forward on electronic poll books. Judge Lamelas expressed interest in getting additional, comprehensive feedback from clerks before revisiting the issue. Judge Barland agreed. Director Kennedy said he would take that as direction from the Board to gather more information from clerks.

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

Written report from Kevin J. Kennedy, Sharrie Hauge and Reid Magney was included beginning on Page 195 of the June 2015 Board Meeting Materials.

**O. 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), 19.851, 19.85(1)(g), and 19.85(1)(c), to consider written requests for advisory opinions and the investigation of possible violations of Wisconsin’s lobbying law, campaign finance law, and Code of Ethics for Public Officials and Employees; confer with counsel concerning pending litigation; and consider performance evaluation data of a public employee of the Board. Moved by Judge Barland, seconded by Judge Lamelas.

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

Motion carried unanimously. The Board recessed at 3:06 p.m. and convened in closed session at 3:20 p.m. The Board adjourned in closed session at 5:55 p.m.

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

- A. Complaints: Five matters considered; two matters dismissed, one matter deferred, two settlement offers approved.
- B. Personnel: One matter considered.
- C. Litigation: One pending matter considered.

The Board was unable to complete its closed session agenda due to time, and scheduled a special closed session meeting to complete its work for Monday, July 13, 2015, beginning at 10 a.m.

####

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

June 18, 2015 Government Accountability Board meeting minutes prepared by:

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Reid Magney, Public Information Officer

July 1, 2015

June 18, 2015 Government Accountability Board meeting minutes certified by:

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Judge Thomas Barland, Board Secretary

September 1, 2015

# State of Wisconsin\Government Accountability Board

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JUDGE GERALD C. NICHOL  
Chair

KEVIN J. KENNEDY  
Director and General Counsel

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## Wisconsin Government Accountability Board

212 East Washington Avenue  
Madison, Wisconsin  
July 13, 2015  
10:00 a.m.

### Open Session Minutes

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

Staff Present: Kevin J. Kennedy, Jonathan Becker, Michael Haas, Ross Hein, Sharrie Hauge,  
Nathan Judnic, Matthew Giesfeldt, Reid Magney

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

Chairperson Nichol called the meeting to order at 10:01 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, and reviewed supplemental materials in Board Member's folders.

#### **C. Minutes of Previous Meeting**

Director Kennedy informed members that draft minutes of the June 18, 2015 open session meeting had been sent to them by email, and would be on the agenda for approval on September 1, 2015. He said staff is still reviewing draft minutes of that meeting's closed session, which would be sent soon.

#### **D. Per Diem Payments**

Judge Vocke said that because the materials for this meeting were part of the June 18 agenda, he did not believe a separate per diem for meeting preparation was necessary. The Board agreed by consensus.

## E. Director's Report

### Office of General Counsel Report – general administration

Director Kevin J. Kennedy briefed the Board about a new report provided to them, Impediments Faced by Elderly Voters and Voters with Disabilities, which includes the result of the past two years of accessibility audits and summarizes activities with the Accessibility Advisory Committee. The report has been distributed to members of the Legislature, and will be released to clerks and the public this month.

Board Members and staff briefly discussed accessibility audits and absentee voting in nursing homes.

## F. 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), 19.851, 19.85(1)(g), and 19.85(1)(c), to consider written requests for advisory opinions and the investigation of possible violations of Wisconsin's lobbying law, campaign finance law, and Code of Ethics for Public Officials and Employees; confer with counsel concerning pending litigation; and consider performance evaluation data of a public employee of the Board. Moved by Judge Barland, seconded by Judge Lamelas.

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

Motion carried unanimously. The Board recessed at 10:09 a.m. and convened in closed session at 10:10 a.m. The Board adjourned in closed session at 4:00 p.m.

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

- A. Complaints: 14 matters considered; seven matters dismissed, one settlement offer approved, three civil actions authorized, two matters no action, one matter closed.
- B. Personnel: One matter considered.
- C. Requests for Advice: One matter considered.
- D. Litigation: Eight pending matters considered.

#####

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

July 13, 2015 Government Accountability Board meeting minutes prepared by:

\_\_\_\_\_  
Reid Magney, Public Information Officer

July 14, 2015

July 13, 2015 Government Accountability Board meeting minutes certified by:

\_\_\_\_\_  
Judge Thomas Barland, Board Secretary

September 1, 2015



# State of Wisconsin\Government Accountability Board

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JUDGE GERALD C. NICHOL  
Chair

KEVIN J. KENNEDY  
Director and General Counsel

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## MEMORANDUM

**DATE:** For the September 1, 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:** Election Systems & Software (ES&S)  
Petition for Approval of Electronic Voting Systems  
Unity 3410 & Unity 3411 Voting Systems

### **I. Introduction**

Election Systems and Software is requesting that the Government Accountability Board (Board) approve the federally certified Unity 3.4.1.0 (3410) voting system and the modified Unity 3.4.1.1 (3411) 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). Because the testing and approval process involves terminology which is technical and may be unfamiliar, a glossary of terms and acronyms is included in Appendix 2, which is attached.

The Unity 3410 is a federally tested and certified paper-based, digital optical scan voting system powered by ES&S's Unity platform, which is a modification to the previously Board approved Unity 3.4.0.0 and Unity 3.2.0.0 voting systems. The Unity 3411 is a modification of the Unity 3410, to allow for analog landline modeming of unofficial election night results. Both systems consist of four major components: the Unity Election Management Software applications (EMS); the Digital Scan 200 (DS200), a digital optical scan tabulator; the AutoMARK, an Americans with Disabilities Act (ADA) compliant ballot marking device; and the Model 100 (M-100), an optical scan tabulator. The Unity 3411 also consists of a telecommunication system for uploading unofficial election night results from a polling location to a central site, typically the county office. The telecommunication system consists of an analog landline modem and necessary Unity telecommunication software and server components.

## **II. Recommendation**

Board staff recommends approval of the Unity 3410 and Unity 3411 voting systems for use in the State of Wisconsin. Board staff's recommendations are located on pages 17-19, following the analysis of functional testing and telecommunication testing performed by Board staff.

## **III. Background**

On March 24, 2015, Board staff received an application for approval of the Unity 3410 and Unity 3411 voting systems. ES&S submitted complete specifications for hardware, firmware, and related components to the voting systems. In addition, ES&S submitted technical manuals, documentation, and instructional materials necessary for the operation of the voting systems. ES&S requested that the Board approve the federally certified Unity 3410 voting system and the modified Unity 3411 voting system. On June 30, 2015, ES&S retracted the request for approval of the Digital Scan 850 (DS850) with the Unity 3410 and Unity 3411. A revised application was received without the request for approval of the DS850.

The Voting System Test Laboratory (VSTL) responsible for testing the Unity 3410, National Technical Systems (NTS), recommended that the U.S. Election Assistance Commission (EAC) certify the Unity 3410 voting system. ES&S 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 ES&S Unity 3.4.1.0 voting system on April 4, 2014 and issued certification number: ESSUnity3410.

The Unity 3411 is a modification to the federally certified Unity 3410. The modification provides support for analog landline modeming of unofficial election results from a DS200 to the EMS through analog telecommunication networks. The modifications include an analog landline modem to the DS200 and the necessary software to interface with the EMS. Modifications to the Unity 3411 voting system were tested to the VVSG 1.0 by NTS. NTS notes provided ES&S with one Notice of Anomaly in the TDP, which ES&S corrected prior to NTS's final report on the Unity 3411.

Board staff scheduled voting system testing and demonstrations for the Unity 3410 and Unity 3411 voting systems on July 15-17, 2015 for functional testing and on July 22-24, 2015 for telecommunication testing. A four-person staff team conducted the testing campaigns.

ES&S did not submit a redacted technical data package (TDP) as required by the agency application; however, a full unredacted TDP was submitted. ES&S asserted that the materials are not a "record" under current Wisconsin public records laws. Wis. Stat. § 19.32(2). ES&S further requested, due to the time and expense of redacting the documentation, that the requirement be waived. Board staff proceeded with testing of the Unity 3410 and Unity 3411 voting systems and provided a letter to ES&S indicating that their application was incomplete and placing ES&S on notice concerning the implications for failing to supply a redacted TDP. A redacted TDP is requested from the vendor as part of the application for approval in the event that a public records request is made by an individual to the G.A.B. or a Wisconsin jurisdiction for the specifications of the voting system. Board staff requests a redacted TDP to assist in the timely completion of public record requests, and to prevent copyrighted and trademarked materials from mistakenly being

disclosed. Staff has advised ES&S of potential issues which may arise if a redacted TDP is not submitted, but the omission does not affect the performance, testing, or evaluation of the voting systems.

#### IV. System Overview



\*Certification trail of the Unity 3410.

\*\*Unity 3411 is a modification to Unity 3410, both tested to VVSG 1.0.

The following paragraphs describe the design of the Unity 3410 and Unity 3411 hardware taken in part from ES&S technical documentation.

##### 1. DS200

The DS200 is a digital scanner and paper ballot tabulator used primarily as a precinct counting system to tabulate paper ballots at the polling place. Each DS200 can process ballots for up to ten reporting units. After the voter makes a selection with a marker, or a ballot marking device, the ballot is inserted into the DS200 for immediate tabulation. The precinct optical scanner tabulates votes and feeds inserted ballots into an attached secured storage bin.

The DS200 includes a 12.1 inch touch screen display to provide feedback to the voter on the disposition of his or her ballot. If any errors or irregularities (overvote/crossover vote/blank ballot) are identified, the voter has the ability to return the ballot for review, or instruct the DS200 to read it as-is. Both sides of the ballots are scanned using a high-resolution image-scanning device, and the votes and ballot images of an election are stored on an external USB flash drive. The flash drive with the election results and ballot images can be removed and transported to the central tabulation location. The DS200 does not store any ballot data, election totals or election images in its internal memory.

The DS200 includes an internal thermal printer for the printing of zero reports at the opening of the polls, status reports, log reports, and polling place totals upon the official closing of the polls. The DS200 has the option for an internal landline modem to transmit totals to the central accumulation site for results consolidation after the polls are closed. The modem functionality is only supported with the Unity 3411 release.

##### 2. M-100

The M-100 is an optical precinct ballot scanner and tabulator. Voters make their selections and then insert their ballots directly into the M-100 at the polling place. As soon as a voter inserts the ballot, the scanner tabulates votes, sorts the ballot, and then feeds it into the attached ballot storage bin. The M-100 includes a small screen display to provide feedback to the voter on the disposition of their ballot, but the screen is not large enough to accommodate the entire warning message without scrolling to the next page. If any errors or irregularities (overvote /crossover) are

identified, the M-100 offers the voter the opportunity to reject or accept the ballot. Both sides of the ballots are scanned using a high-resolution image-scanning device. The M-100 tabulates the votes and produces a printed report of the vote count together with report data stored on a battery backed-up memory card. The memory card with the results can be removed and transported to the central tabulation location.

### 3. AutoMARK

The AutoMARK Voter Assist Terminal (VAT) is comprised of a color touch screen monitor and integral ballot printer. To use the device, the voter inserts a pre-printed blank ballot into the input tray of the device. The mechanism draws in the ballot and scans a preprinted bar code on the ballot to determine which form of ballot has been inserted. The AutoMARK then displays a series of menu-driven voting choices on its screen. The voter uses the touch screen or key pad provided to make voting selections. The AutoMARK stores these choices in its internal memory.

When the voter has completed the selection process, the AutoMARK provides a summary report for the voter to review his or her choices, and the AutoMARK marks the ballot using its built-in printer. The print mechanism is a duplex device and can print both sides of the ballot. When the printing of the ballot is completed, the AutoMARK feeds the ballot back to the voter. Once the ballot has been marked and is provided to the voter, the AutoMARK clears its internal memory and the paper ballot is the only lasting record of the voting selections made. The voter may visually confirm his or her selections, or the ballot may be re-inserted into the AutoMARK and the voter selections summary report will provide an audio summary for voters with visual impairments. The voter proceeds to enter the ballot into optical scan voting equipment for tabulation or a secured ballot box to be hand tabulated by inspectors after the polls close.

Overvotes and crossover votes cannot occur on this equipment and a voter is warned about undervotes prior to the completion of voting. The AutoMARK generates audio voting instructions that guide a visually impaired voter through the election sequence. The voter wears headphones to hear the spoken instructions. The voter makes his or her selections by pressing on a specially designed switch panel. The voter can adjust the volume and the screen may be “blacked out” to deactivate the LCD screen, to provide enhanced privacy. The voter may adjust the tempo (speed) of the audio instructions and the AutoMARK accommodates a sip-and-puff device for voters who do not have use of their hands. The AutoMARK can be programmed in multiple languages, although languages other than English are not currently required in most Wisconsin municipalities. The City of Milwaukee is subject to a Spanish language requirement under Section 203 of the Voting Rights Act and the AutoMARK accommodates that requirement.

Unity 3.4.1.0

1. Hardware

ES&S submitted the following equipment for testing:

<i>Equipment</i>	<i>Hardware Version(s)/ Make and Model</i>	<i>Firmware Version</i>	<i>Type</i>
DS200	1.2, 1.2.3, 1.3	1.7.0.0	Digital Optical Precinct Tabulator
AutoMARK*	1.0, 1.1, 1.3	1.3.2907	ADA compliant Ballot Marking Device
M-100*	1.3	5.4.4.5	Optical Precinct Tabulator

\* No testing was performed on the AutoMARK or M-100 by Board staff because no modifications were made to the components of the AutoMARK, M-100, or the EMS software related to programming or tabulation.

2. Software

The Unity 3410 is powered by a set of EMS applications. The intended use is to define an election and to create the files used by the DS200, AutoMARK, and M-100. The complete EMS software platform consists of client (end-user) and server (back-end) applications, which are itemized below. Unity 3410 operates on Windows 7, which is an upgrade from previous Unity systems. Previous systems operated on Windows XP, but Microsoft no longer provides support or patches for Windows XP.

ES&S submitted the following software for testing:

<i>Software</i>	<i>Version</i>
Audit Manager*	7.5.2.0
Election Data Manager	7.8.2.0
ESS Image Manager	7.7.2.0
Hardware Programming Manager	5.9.0.0
Election Reporting Manager	7.9.0.0
AIMS*	1.3.257
ES&S Log Monitor Service	1.1.0.0
VAT Previewer*	1.3.2907

\*No change was made from the previously approved Unity 3400 and 3401 voting systems.

Unity 3.4.1.1

1. Hardware

ES&S submitted the following equipment for testing:

<i>Equipment</i>	<i>Hardware Version(s)/ Make and Model</i>	<i>Firmware Version</i>	<i>Type</i>
DS200	1.2, 1.2.3, 1.3	1.7.1.0	Digital Optical Precinct Tabulator
AutoMARK*	1.0, 1.1, 1.3	1.3.2907	ADA compliant Ballot Marking Device
M-100*	1.3	5.4.4.5	Optical Precinct Tabulator
Multi-Tech Socket Modem	MT5600SMI		DS200 embedded modem

\* No testing was performed on the AutoMARK or M-100 by Board staff because no modifications were made to the components of the AutoMARK, M-100, or the EMS software related to programming or tabulation.

2. Software

The Unity 3410 is powered by a set of EMS applications. The intended use is to define an election and to create the files used by the DS200, AutoMARK, and M-100. The complete EMS software platform consists of client (end-user) and server (back-end) applications, which are itemized below. The Unity 3411 voting system is designed to use the EMS, the DS200, and commercial off-the-shelf (COTS) items to allow analog landline modeming of unofficial election night results. Unity 3410 operates on Windows 7, which is an upgrade from previous Unity systems. Previous systems operated on Windows XP, but Microsoft no longer provides support or patches for Windows XP.

ES&S submitted the following software for testing:

<i>Software</i>	<i>Version</i>
Audit Manager*	7.5.2.0
Election Data Manager	7.8.2.0
ESS Image Manager	7.7.2.0
Hardware Programming Manager	5.9.1.0
Election Reporting Manager	7.9.1.0
AIMS*	1.3.257
ES&S Log Monitor Service	1.1.0.0
VAT Previewer*	1.3.2907
Cerberus FTP Server	6.0.7.1
IPSwitch WS_FTP 12	12.4.1
Kiwi Syslog Server	9.4.1

\*No change was made from the previously approved Unity 3400 and 3401 voting systems.

## **V. Functional Testing**

As required by Wis. Admin. Code 7.02(1), Board staff conducted three mock elections with each component of the Unity 3410 and Unity 3411 voting 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. Each mock election included three wards. A partisan special election was placed on the nonpartisan election ballot and a nonpartisan special election was placed on the partisan primary ballot to test whether the voting equipment could account for two separate elections on the same ballot.

Board staff designed a test deck of 914 ballots using various configurations of votes over the three mock elections to verify the accuracy and functional capabilities of the Unity 3410 and Unity 3411 voting systems. 897 test ballots were provided by ES&S and marked by Board staff. 17 test ballots were provided by ES&S and marked by ES&S according to the specifications provided to ES&S by Board staff.<sup>1</sup> Board staff fed the ballots from each of the three elections through a different DS200. The nonpartisan election combined with a presidential preference vote and the general election with both a presidential and gubernatorial vote were fed into the 1.3 version of the DS200. The partisan primary was fed into the 1.2 version of the DS200. Board staff was able to reconcile the three mock elections on each DS200 submitted for testing.

## **VI. Telecommunication Testing**

Board staff conducted testing of the Unity 3411 voting system based on the *Voting Systems Standards, Testing Protocols and Procedures Pertaining to the Use of Communication Devices in Wisconsin* which the Board adopted on May 21, 2013. Staff conducted testing in three counties: Douglas, Eau Claire, and Marathon on July 22-24, 2015. All three counties were selected because of their interest in purchasing the new ES&S Unity voting systems, their location in the state, or 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, or the municipal clerk's willingness to host the testing team and process.

The analog modem for the DS200 is an internal modem and communicates through an analog landline network at the polling location to 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 used a key to open a panel on the DS200, closed the polls, and entered a password. The network is configured to only allow valid connections to connect to the Secure File Transfer Protocol (SFTP) server. The firewall further restricts the flow and connectivity of traffic.

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<sup>1</sup> These 17 ballots were testing the threshold at which the DS200 indicates a mark should count as a vote, which is a mark .2 by .03 inches in any orientation.



\*The entire server/county set-up



\*The modem/IP switches

The Unity 3411 system supports modeming of unofficial election night results through various service providers, which can be reviewed in the table below.

Service Provider	County
Charter	Douglas
CenturyLink	Douglas
AT&T	Eau Claire
Frontier	Eau Claire
CenturyLink	Eau Claire
Charter	Marathon
TDS	Marathon
Frontier	Marathon

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

Four Board staff members conducted the telecommunication tests, with two representatives from ES&S in each county to provide technical support. ES&S provided the necessary equipment for testing, including three DS200s with analog modems and a portable EMS environment, which included a SFTP client, two servers, and a firewall for modeming. In each county, ES&S set up the portable EMS environment in a county office to receive test election results from each municipal testing location.<sup>2</sup> In each municipal location, a Board staff member inserted a pre-marked package of 10 to 14 test ballots through a DS200 to create an election results packet to transmit to the county office. A Board staff member was present at each county office to observe how the portable EMS environment handled the transmissions. Board staff was able to reconcile each telecommunication test with the printed results tape and the modemed-in results.

To transmit election night results from a DS200, after the polls close, an election inspector selects the modem results button on the DS200 and is prompted to enter a password and verify the number the DS200 will dial. Once the inspector verifies or inputs a number to dial, the modem is activated by the system. If not successful immediately, the DS200 will make up to 20 attempts to connect to the server, by dialing the number programmed, before timing out. Failed modem attempts can

<sup>2</sup> ES&S traveled to each county and municipality the week prior to the telecommunication testing to check the analog phone lines in each county and municipal location chosen for testing.

occur with analog landline modeming when multiple municipal locations are attempting to modem results simultaneously to a single county office with only one analog landline connected to receive results; if the municipal location only has one analog landline and a fax was attempting to come in; or if the quality of the analog lines between the municipality and county is inadequate. During a single attempt to connect a failed connection message will display on the screen and “Dial Error: Connect Script Failed” will be printed on the tape. If 20 connection attempts are made during a single modeming attempt, the DS200 will display a message that the modem attempt failed and “ERROR: Modem Setup Failed” will be printed on the tape.

Once election results have successfully been submitted to the county, the DS200 will display a message indicating that the results have been successfully sent and a “Modem Transfer Success” message will be printed on the tape. Once the results have successfully been sent to the county the modem is deactivated by the voting equipment. The following table summarizes the results of the transmission tests.

1. Douglas County<sup>3</sup>

Municipality	Able to connect	Able to transmit	Successful Transmission rate* <i>Connects/attempts</i>	Total Connection Attempts**
Village of Lake Nebagamon	Yes	Yes	11/11	19
Village of Solon Springs	Yes	Yes	8/10	26
Village of Superior	Yes	Yes	10/10	25

2. Eau Claire County<sup>4</sup>

Municipality	Able to connect	Able to transmit	Successful Transmission rate* <i>Connects/attempts</i>	Total Connection Attempts**
City of Eau Claire	Yes	Yes	10/10	41
Town of Drammen	Yes	Yes	9/12	63
Village of Fall Creek	Yes	Yes	9/11	73

3. Marathon County

Municipality	Able to connect	Able to transmit	Successful Transmission rate* <i>Connects/attempts</i>	Total Connection Attempts**
Town of Knowlton	Yes	Yes	10/10	11
Town of Wausau	Yes	Yes	10/10	11
Village of Edgar	Yes	Yes	6/11	118 <sup>5</sup>

\*This is the total number of times a Board staff member pressed the modem results button on the DS200.

\*\*This is the total number of times that the DS200 tried to connect to the server to deliver a packet of results. A single modem attempt makes a maximum of 20 connections.

<sup>3</sup> A single analog phone line was used to receive modemed results from the three municipalities. Therefore, some of the total connection attempts could be due to multiple signals coming in at the same time.

<sup>4</sup> A single analog phone line was used to receive modemed results from the three municipalities. Therefore, some of the total connection attempts could be due to multiple signals coming in at the same time.

<sup>5</sup> ES&S conducted a diagnostic of the Village of Edgar phone line to determine the reason for the excessive connection attempts and limited successful results. That report is attached.

## **VII. Public Demonstration**

A public demonstration of the voting systems was held July 16, 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 systems and provide their feedback on the systems and, specifically, the DS200. Three members of the public attended the public demonstration. One individual was a cameraman from Channel 15 News. Reid Magney conducted a short interview with Channel 15 News concerning the Unity system. Feedback from the public demonstration is included in Appendix 1.

## **VIII. Wisconsin Election Administration Council Demonstration**

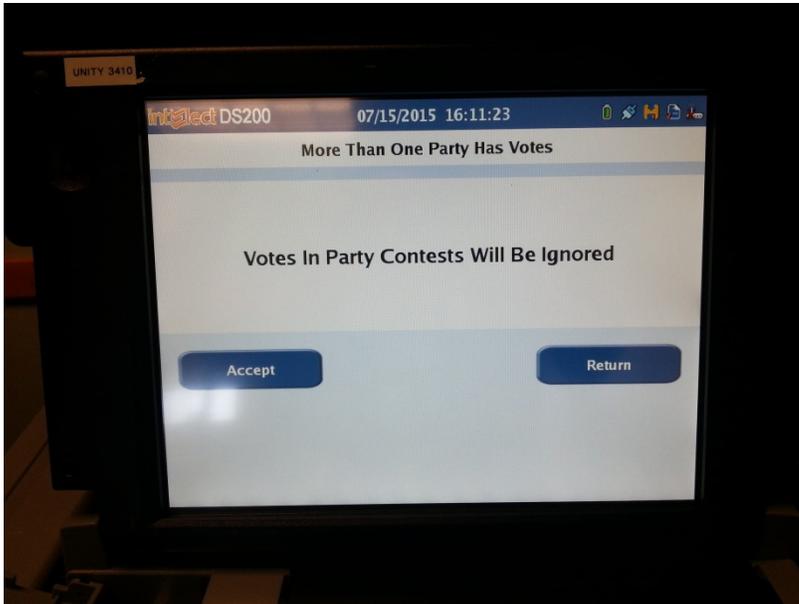
Only 3 of the 19 appointed members of the Wisconsin Election Administration Council (WI-EAC) were planning to attend the ES&S demonstration of the Unity 3410 and Unity 3411 voting systems on July 17, 2015 from 12:30 p.m. to 3:00 p.m. in Madison at the G.A.B. office. Due to several factors, including low member turnout and the minimal changes between the Unity 3410/Unity 3411 and the previously approved Unity 3400/3401, Board staff cancelled the scheduled WI-EAC meeting on July 15, 2015. All WI-EAC members were informed by email of the cancellation and a notice of cancellation was posted on July 16, 2015. The WI-EAC is composed of municipal and county clerks, representatives of the disability community, and advocates for the interests of the voting public. WI-EAC members were given the opportunity to provide written comments to Board staff on the Unity 3410 and Unity 3411 voting systems or to attend the public demonstration on July 16, 2015. No comments were provided.

## **IX. Board Staff's Feedback**

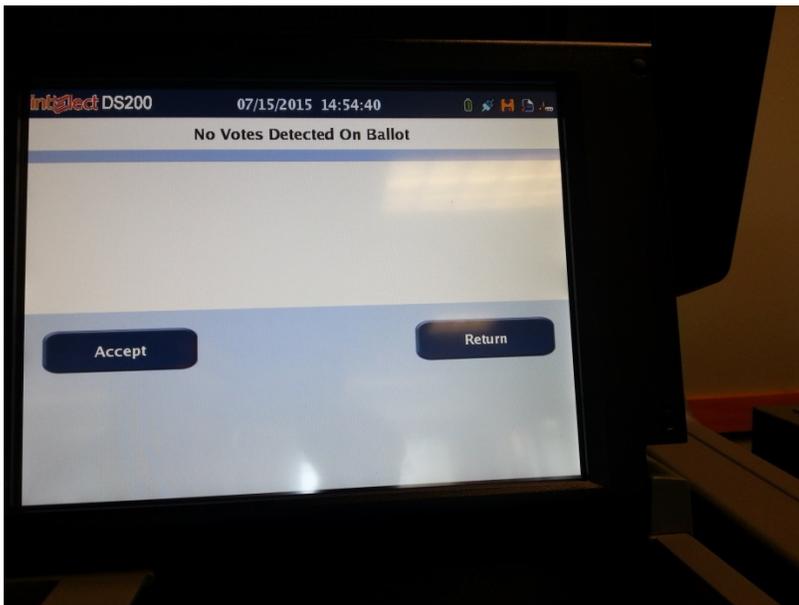
The following is a list of staff concerns and feedback regarding each component of the Unity 3410 and Unity 3411 voting systems, including equipment that was not required to be tested during this campaign.

1. The DS200 tallied ballots marked with red pen. In each of the three elections 2-4 ballots were marked with red ballpoint pen. In each election, the DS200 accurately tallied the votes for those candidates. The previously approved Unity 3400 and 3401 voting systems did not accurately tally ballots filled out with red pen. Other previous voting systems approved in the State of Wisconsin were not designed to read red pen.
2. Photocopied ballots are accepted by the equipment if the photocopy is of a high enough quality and uses 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 two photocopies of the nonpartisan election, which was an 8½ by 14 ballot. In each circumstance the equipment read the ballot and tallied the votes.
3. Removing a ballot that was rejected due to a ballot issue (i.e. overvoted, crossover, etc.) will clear the warning message.
4. The standard for a readable mark by the Unity 3410 or Unity 3411 voting system is a mark that is .2 inches by .03 inches; however, the ballots Board staff requested ES&S mark below the standard read as a valid mark approximately 75% of the time.

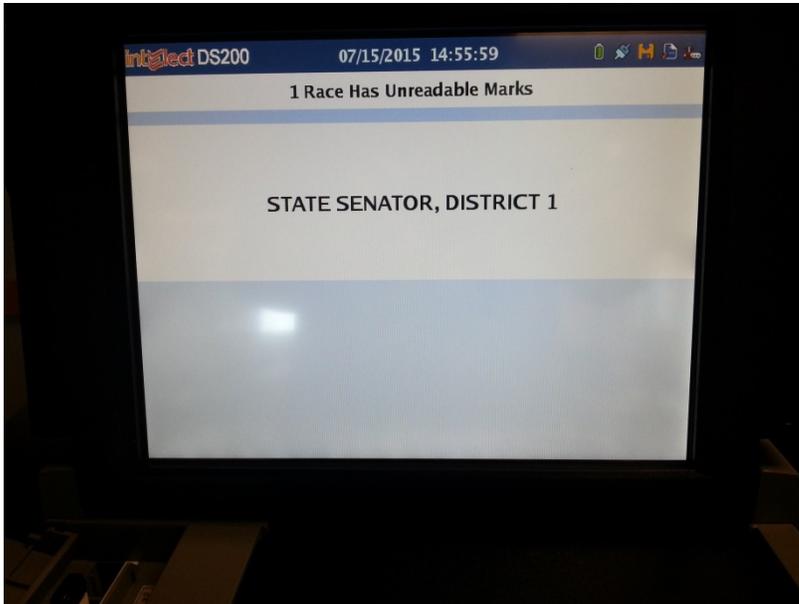
5. Crossover Vote Warning: Board staff believes the warning message indicating a voter has made a crossover vote is sufficient to allow the voter to understand the implications of accepting or returning the ballot.



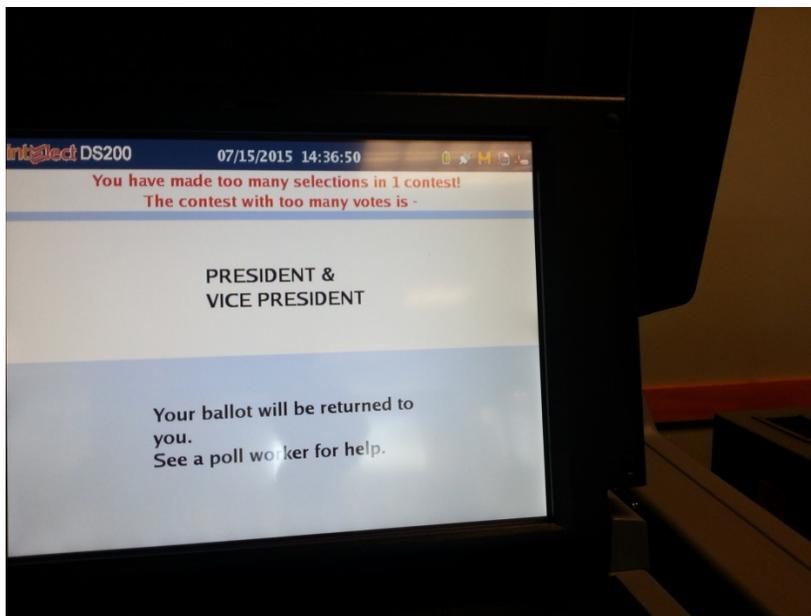
6. Blank Ballot Warning: Board staff believes the warning message indicating a voter has made a blank ballot is sufficient to allow for the voter to understand the implications of accepting or returning the ballot.



7. Marginal Mark Ballot Warning: The Unity 3410 and Unity 3411 provide a warning when a marginal mark is detected on the ballot. Ballots containing marginal marks cannot be overridden by the voter or election inspector.



8. Overvote Ballot Warning: The EMS can be programmed to automatically reject ballots with overvotes, as is required by Wisconsin law. However, if more than one overvote is on a single ballot, the warning message will inform the voter they have placed an overvote in two or more contests at the top of the display screen in red, but it will only display the first overvoted contest in the contest display area in the middle of the screen in black.



**X. Statutory Compliance**

Wis. Stat. §5.91 provides the following requirements 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 Unity 3410 and Unity 3411’s compliance with the standards.

<b>§ 5.91 (1)</b>
The voting system enables an elector to vote in secret.
Staff Analysis
The systems meet this requirement.

<b>§ 5.91 (3)</b>
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 systems meet this requirement.

<b>§ 5.91 (4)</b>
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 systems meet this requirement.

<b>§ 5.91 (5)</b>
The voting systems accommodate all referenda to be submitted to electors in the form provided by law.
Staff Analysis
The systems meet this requirement.

<b>§ 5.91 (6)</b>
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 systems meet this requirement.

<b>§ 5.91 (7)</b>
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 systems meet this requirement.

<b>§ 5.91 (8)</b>
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 systems meet this requirement.

<b>§ 5.91 (9)</b>
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 electors.
Staff Analysis
The systems meet this requirement.

<b>§ 5.91 (10)</b>
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 systems meet this requirement.

<b>§ 5.91 (11)</b>
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 systems meet this requirement.

<b>§ 5.91 (12)</b>
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 systems meet this requirement.

<b>§ 5.91 (13)</b>
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 systems meet this requirement.
<b>§ 5.91 (14)</b>
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 systems meet this requirement.
<b>§ 5.91 (15)</b>
The voting system permits an elector to privately verify the votes selected by the elector before casting his or her ballot.
Staff Analysis
The systems meet this requirement.
<b>§ 5.91 (16)</b>
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
The systems meet this requirement. Electors may review their ballots prior to placing them into the tabulators. Ballots marked by the AutoMARK Ballot Marking Device can be reviewed prior to placing the marked ballot into a tabulator.
<b>§ 5.91 (17)</b>
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 the ballot or to receive a replacement ballot.
Staff Analysis
The systems meet this requirement.
<b>§ 5.91 (18)</b>
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
The systems do not contain a DRE; therefore, the requirement is not applicable. A voter's marked ballot is stored in the ballot box and each ballot image is saved to the memory device 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:

<b>HAVA § 301(a)(1)(A)</b>
<p>The voting system shall:</p> <ul style="list-style-type: none"> <li>(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;</li> <li>(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</li> <li>(iii) if the voter selects votes for more than one candidate for a single office –             <ul style="list-style-type: none"> <li>(I) notify the voter that the voter has selected more than one candidate for a single office on the ballot;</li> <li>(II) notify the voter before the ballot is cast and counted of the effect of casting multiple votes for the office; and,</li> <li>(III) provide the voter with the opportunity to correct the ballot before the ballot is cast and counted</li> </ul> </li> </ul>
<b>HAVA § 301(a)(1)(C)</b>
<p>The voting system shall ensure that any notification required under this paragraph preserves the privacy of the voter and the confidentiality of the ballot.</p>
<b>HAVA § 301(a)(3)(A)</b>
<p>The voting system shall—</p> <ul style="list-style-type: none"> <li>(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</li> </ul>
<b>Staff Analysis</b>
<p>The systems meet these requirements. The accessible voting device is the AutoMARK, which is a currently approved piece of voting equipment in the State of Wisconsin in other voting systems.</p>

**XI. Conclusion**

To determine whether a voting system should be approved for use in the State of 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 Unity 3410 and Unity 3411 accurately completed the three mock elections and was able to accommodate the voting requirements of the Wisconsin election process.

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

Staff's Response: This system uses the previously approved AutoMARK. It maintains the same level of access to the electoral process for individuals with disabilities as other voting systems that utilize the AutoMARK as the system's accessible component.

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

Staff's Response: Yes. The Unity 3410 and Unity 3411 complies with all applicable state and federal requirements.

## **XII. Recommendations**

1. Board staff recommends: approval of the ES&S Unity 3410 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 ES&S Unity 3411 voting system and components set forth above. This voting system accurately completed the additional required telecommunication testing required in Wisconsin for modems. These recommendations are based on the VSTL report provided by NTS, on the Unity 3410 and Unity 3411 voting systems' successful completion of functional and telecommunication testing according to Wis. Stat. §5.91 and 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: as a continuing condition of the Board's approval, that ES&S 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 ES&S 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: as a continuing condition of the Board's approval, that these systems must always be configured to include the following options:
  - a. Automatically reject all overvoted ballots, without the option to override.
  - b. Provide a visual warning message, or query, when a crossover, overvote, blank, or marginal ballot is fed into the voting equipment.
  - c. Capture digital ballot images of all ballots cast on the systems.
4. Board staff recommends: election inspectors shall remake all absentee ballots automatically rejected by the voting equipment, which do not have an option to override, so that the ballot count is consistent with total voter numbers.
5. Board staff recommends: voters shall spoil and fill out a new ballot or an election inspector shall remake ballots received at the polls on election day that are automatically rejected by the voting equipment, which do not have an option to override, so that the ballot count is consistent with total voter numbers.

6. Board staff recommends: election inspectors shall continue to check the main bin and review all ballots for validly cast write-in votes at the close of the polls at every election.
7. As part of EAC certificate: ESSUnity3410, 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 ES&S voting system, and are not to be used together with the equipment seeking approval by the Board, as this would void the EAC certificate, unless the previous equipment is listed above. If a jurisdiction upgrades to the Unity 3410, it needs to upgrade each and every component of the voting system to the requirements approved in the EAC certificate and herein. Likewise, if a jurisdiction upgrades to the Unity 3411, it needs to upgrade each and every component of the voting system to the requirements approved in the Unity 3410 base system and herein. Despite the DS850 central count tabulator being approved by the EAC in certificate ESSUnity3410, ES&S chose not to pursue approval of the DS850 in the State of Wisconsin. Municipalities that use the Unity 3410 or Unity 3411 will not be allowed to use a DS850 as part of this approval.
8. Board staff recommends: as a condition of approval, ES&S shall abide by applicable Wisconsin public records laws. If, pursuant to a proper public records request, a municipality receives a request for matters that might be proprietary or confidential, the municipality will notify ES&S, providing the request with the opportunity to either provide the municipality with the record that is requested for release to the requestor, or to advise the municipality that ES&S objects to the release of the information, and provide the legal and factual basis of the objection. If for any reason, the municipality concludes that it is obligated to provide such records, ES&S shall provide such records immediately upon the municipality's request. ES&S shall negotiate and specify retention and public records production costs in writing with municipalities prior to charging said fees. In absence of meeting such conditions of approval, ES&S shall not charge municipalities for work performed pursuant to a proper public records request, except for the "actual, necessary, and direct" charge of responding to the public records request, as defined and interpreted in Wisconsin law, plus shipping, handling, and chain of custody.

### **XIII. Proposed Motion**

**MOTION:** The Government Accountability Board adopts the staff's recommendations for approval of the Election Systems and Software's Application for Approval of Unity 3.4.1.0 voting system, EAC certificate ESSUnity3410, including the conditions described above.

**MOTION:** The Government Accountability Board adopts the staff's recommendations for approval of the Election Systems and Software's Application for Approval of Unity 3.4.1.1 voting system, which is a modification of the EAC approved Unity 3.4.1.0, EAC certificate ESSUnity3410, including the conditions described above.

#### Attachments

- ✓ Appendix 1: Public Demonstration Feedback
- ✓ Appendix 2: Glossary of Terms and Acronyms for Voting Systems
- ✓ Wisconsin Statutes § 5.91
- ✓ Wisconsin Administrative Code GAB 7
- ✓ Poll Site Phone Line Testing – Village of Edgar
- ✓ US-EAC Unity 3410 Certificate of Conformance
- ✓ US-EAC Unity 3410 Grant of Certification



**APPENDIX 1: 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			

- Staff recommendations for the DS200 for different versions are inconsistent. Even though the base tabulator is the same model, DS200, this version is not programmed to meet the requirements established by the Board in December 2009: *“As part of state approval, the DS200 is required to be configured to reject all overvote or cross party votes automatically, and the voter will not be provided the opportunity to ‘accept’ a ballot that contains these marking errors. Ballots that contain no valid votes (blank ballot) will provide a query to either ‘accept’ or ‘return’ the ballot.”* These same requirement should be imposed for the DS200 version now under consideration. The quote above is from page 5 of the document at [http://www.gab.wi.gov/sites/default/files/page/ess\\_board\\_memo\\_12\\_17\\_09\\_pdf\\_11455.pdf](http://www.gab.wi.gov/sites/default/files/page/ess_board_memo_12_17_09_pdf_11455.pdf). In the presidential primary in April, a vote for more than one candidate for president is an overvote, regardless of whether both candidates are in the same party. This situation should be covered by statute 5.85 (2) (b) 1, which requires overvoted ballots to be remade. This usually applies only to absentee ballots, since the voter can correct in person ballots. (The word “crossover” does not appear in the statutes.)

**2. How would you rate the accessible features?**

Very Poor	Poor	Fair	Good	Excellent
	1			

- Does not offer any improved features. Too high for someone in a wheelchair to easily insert ballot. For someone visually impaired, there is no audio feedback (as there is on the Optech Eagle) to signal good or bad ballot.

**3. Rate your overall impression of the system.**

Very Poor	Poor	Fair	Good	Excellent
	1			

- The goal should be to keep overvotes and crossovers to the level of the Optech Eagle, 0.11% (see memo cited above). Statute 5.91(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.”*



**APPENDIX 2: Glossary of Terms and Acronyms for Voting Systems**

ADA	Americans with Disabilities Act	A Federal act passed in 1990, which addresses civil rights issues and prohibits discrimination based on disability.
AIMS	AutoMARK Information Management System	Software designed to create the AutoMARK ballot layout.
COTS	Commercial Off The Shelf	Hardware or software that is readily available to the public.
DOS	Denial of Service	A cyber-attack meant to make a machine or network resource unavailable to its intended users.
EAC	United States Elections Assistance Commission	An independent agency created by the Help America Vote Act in 2002. The agency serves as a resource on election administration and is the federal agency responsible for adopting guidelines for the approval of voting systems, as well as the certification of voting systems to those adopted standards.
EMS	Election Management System	A set of programs that allow for the set-up, reporting, and configuration of elections.
ES&S	Election Systems & Software	A voting systems vendor.
HAVA	Help America Vote Act	An act passed by Congress in 2002 to reform the voting process in the United States. It was meant to address voting systems and voter access issues that were identified following the 2000 presidential election.
LCD	Liquid Crystal Display	A technology used in flat panel displays that use light crystals to reflect light. Traditionally used in smaller computer screens, the technology allows for displays to be much thinner than previous technologies.
NTS	National Technical Systems	A company authorized by the EAC to test voting systems to the current standards and guidelines of the EAC.
SFTP	Secure File Transfer Protocol	A method of transferring files between computers over a secure data network.
SNP	Sip-and-Puff	An assistive technology used to send signals to a device using air pressure by inhaling or exhaling through a tube.
TDP	Technical Data Package	A technical description of something that is adequate for supporting the production, engineering, and logistics of the hardware or software.
VAT	Voter Assist Terminal	A piece of voting equipment designed for use by individuals who are unable or do not want to personally mark a ballot.

VSTL	Voting System Test Laboratories	An independent, non-federal laboratory qualified to test voting systems to Federal standards. Section 231(b) of the Help America Vote Act.
VSS	Voting System Standards	A set of standards for voting systems adopted by the Federal Election Commission in 2002. This adoption was an update to the 1990 standards adopted by the Federal Election Commission.
VVSG	Voluntary Voting System Guidelines	The successor to the VSS, a set of guidelines adopted by the U.S. Election Assistance Commission for the certification of voting systems. The National Institute of Standards and Technology is the primary body for the drafting of these standards.
WI-EAC	Wisconsin Elections Administration Council	An independent committee in Wisconsin composed of municipal and county clerks, representatives of the disability community, and advocates for the interests of the voting public. The Council provides feedback to the G.A.B. regarding voting systems brought for approval in the State of Wisconsin.

**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](#).



## C. QUICK CHECKLIST

Print this checklist off as a guide for each test

### Central Office

- Unity system set up w/ test election
  - All data lines used plugged into certified modem.
- Analog Phone line(s) tested
  - Active **Y**\_\_ **N**\_\_
  - Correct voltages/Amperages **Y**\_\_ **N**\_\_
  - Line Noise **Y**\_\_ **N**\_\_
- DS200 setup with line simulator
  - Send in results

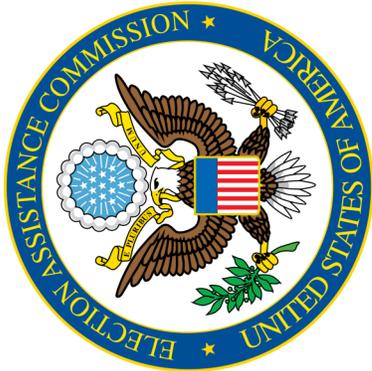
### Polling Place

- Analog Phone line(s) tested
  - Active **Y****X** **N**\_\_
  - Correct Voltages/Amperages **Y**\_\_ **N****X**\_\_
  - Line Noise **Y****X** **N**\_\_
- DS200 setup
  - Plugged into correct phone jack **Y****X** **N**\_\_
  - Send in results
    - Listen w/ Fluke
    - Check results

	Range	Actual
On Hook DCV	24~50VDC	46
Off Hook DCV	5~15VDC	7.1
Loop Current	23~35ma	39
On Hook ACV T to R	less than .5 VAC	47.4
On Hook ACV T to G	less than .5 VAC	-.21
On Hook ACV R to G	less than .5 VAC	49.6

Customer Confidential – Contains product information or procedures that derive independent economic value. Approved for customer use only.





United States Election Assistance Commission



## Certificate of Conformance

**ES&S Unity 3.4.1.0**  
Election Systems & Software

The voting system identified on this certificate has been evaluated at an accredited voting system testing laboratory for conformance to the *2002 Voting System Standards (2002 VSS)*. 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 ad-duced. 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: Unity \_\_\_\_\_

Model or Version: Version 3.4.1.0 \_\_\_\_\_

Name of VSTL: NTS \_\_\_\_\_

EAC Certification Number: ESSUnity3410 \_\_\_\_\_

Date Issued: April 4, 2014 \_\_\_\_\_

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

Scope of Certification Attached



**Manufacturer:** Election Systems & Software  
**System Name:** Unity 3.4.1.0  
**Certificate:** ESSUnity3410

**Laboratory:** Wyle Laboratories  
**Standard:** VSS 2002  
**Date:** April 4, 2014



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## Scope of Certification

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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:

ES&S Unity 3.4.1.0 is a paper-based, digital scan voting system made up of the Election Management System (EMS), Vote Tabulation Devices, Polling Place American Disability Act (ADA) Devices, and Central Count Digital Scanners. The system has the following components: AutoMARK Information System (AIMS), Audit Manager (AM), Election Data Manager (EDM), Hardware Programming Manager (HPM), ES&S Ballot Image Manager (ESSIM), Election Reporting Manager (ERM), Log Monitor Service, and VAT Previewer. The system can be setup to support one or more of the following hardware components: DS200 Precinct Tabulator, Model 100 Precinct Tabulator, AutoMARK Voting Assist Terminal, Model 650 Central Tabulator, and DS850 Central Tabulator.

The ES&S Technical Data Package was the source for much of the information in this document.

### **DS200 Precinct Tabulator**

The DS200 is a digital scan paper ballot tabulator designed for use at the polling place level. After the voter marks a paper ballot, their ballot is inserted into the unit and immediately tabulated. The tabulator uses a high-resolution image-scanning device to image the front and rear of the ballot simultaneously. The resulting ballot images are then decoded by a proprietary recognition engine.

### **Model 100 Precinct Tabulator**

The Model 100 is a precinct-based, voter-activated paper ballot tabulator that uses Intelligent Mark Recognition (IMR) visible light scanning technology to detect completed ballot targets. The Model 100 is designed to alert voters of overvotes, undervotes and blank ballots. It accepts ballots inserted in any orientation. Once the ballot is scanned by the Model 100, it is passed to the integrated ballot box.

### **AutoMARK Voter Assist Terminal (VAT)**

The AutoMARK VAT assists voter with disabilities by marking optical scan ballots. The AutoMARK VAT includes two user interfaces to accommodate voters who are visually or physically impaired and voters who are more comfortable reading and/or hearing instructions or choices in an alternative language. The AutoMARK is equipped with a touch screen and keypad. The touch screen interface includes various colors and effects to prompt and guide the voter through the ballot marking process. Each key had both Braille and printed text labels designed to indicate function and a related shape to help the voter determine its use.

### **Model 650 Central Tabulator**

The Model 650 is a high-speed and optical scan central ballot counter. During scanning, the Model 650 prints a continuous audit log to a dedicated printer and can print results directly from the scanner to another printer. The M650 can transfer results to a Zip Disk that officials use to generate results using Election Reporting Manager. The M650 is capable of sorting write-ins, blanks, overvotes and illegal ballots.

### **DS850 Central Tabulator**

The DS850 is a high-speed and digital scan central ballot counter. During scanning, the DS850 prints a continuous audit log to a dedicated audit log printer and can print results directly from the scanner to a second connected printer. The scanner saves results internally and to results collection media that officials can use to format and print results from a PC running Election Reporting Manager. The DS850 has an optimum throughput rate of up to 365 ballots per

minute and uses cameras and imaging algorithms to image the front and back of a ballot, evaluate the results and sort ballots into discrete bins to maintain continuous scanning.

### **AutoMark Information System (AIMS)**

AIMS is a windows-based election management system software application used to define election parameters for the VAT including functionality to import election definition files produced by the Unity EMS and create VAT flash memory cards.

### **VAT Previewer**

The VAT Previewer is an application within the AIMS program that allows the user to preview audio text and screen layout prior to downloading election-day media for the AutoMARK.

### **Audit Manager (AM)**

The AM utility provides security and user tracking for Election Data Manager and ES&S Ballot Image Manager. Audit Manager runs in the background of the other Unity programs and provides password security and a real-time audit log of all user inputs and system outputs. Election coders use Audit Manager to set Unity system passwords and track user activity.

### **Election Data Manager (EDM)**

The EDM is the entry point for the Unity Election Management System. Election Data Manager is a single-entry database that stores precinct, office, and candidate information. Data entered for an initial election is stored to a re-usable database to be recalled and edited for all elections that follow. Election Data Manager is used in conjunction with other Unity software to format and print ballots, program ballot scanning equipment, and produce Election Day reports.

### **ES&S Ballot Image Manager (ESSIM)**

The ESSIM uses ballot style information created by Unity Election Data Manager to display the ballots in a what you see is what you get design interface. Users can apply typographic formatting (font, size, attributes, etc.) to individual components of the ballot. Text and graphic frames can also be added to the ballot.

### **Hardware Programming Manager (HPM)**

The HPM uses the election specific database created with Election Data Manager and ES&S Ballot Image Manager to program the appropriate media for ES&S tabulation devices. Hardware Programming Manager converts the ballot layout data into the format required for each ES&S tabulator. HPM then writes this data to the appropriate media required; a USB flash drive for the DS200 and DS850, a PCMCIA card for the Model 100, a CF card for the AutoMark or a Zip disk for Model 650 tabulators.

### **Election Reporting Manager (ERM)**

ERM generates paper and electronic reports for election workers, candidates, and the media. Jurisdictions can use a separate ERM installation to display updated election totals on a monitor as ballot data is tabulated, and send results reports directly to media outlets. ERM supports accumulation and combination of ballot results data from all ES&S tabulators. Precinct and accumulated totals reports provide a means to accommodate candidate and media requests for totals and are available upon demand. High-speed printers are configured as part of the system accumulation/reporting stations- PC and related software.

### **Log Monitor Service**

The Log Monitor Service is a Windows Service that runs in the background of any active ES&S Election Management software application to monitor the proper functioning of the Windows Event Viewer. The Log Monitor Service closes any active ES&S software application if the system detects the improper deactivation of the Window Event Viewer.

### **Certified System before Modification:**

Election Systems & Software Unity 3.2.1.0

Certificate ID: ESSUnity3210

Election Systems & Software Unity 3.4.0.0

Certificate ID: ESSUnity3400

### **Anomalies and/or Additions addressed in Unity 3.4.1.0:**

The Unity 3.4.1.0 provided upgrades from the Unity 3.4.0.0 to the following system hardware and components:

1. Election Management System (EMS)- Software Upgrades and introduction of Texas Audit Log Printer
  - a. Election Data Manager
  - b. ES&S Ballot Image Manager
  - c. Hardware Programming Manager
  - d. Election Reporting Manager
  - e. Log Monitor Service
2. Vote Tabulation Devices- Software and Hardware Upgrades
  - a. DS200
3. Central Count Digital Scanners- Software Upgrades
  - a. DS850

### **Tested Marking Devices:**

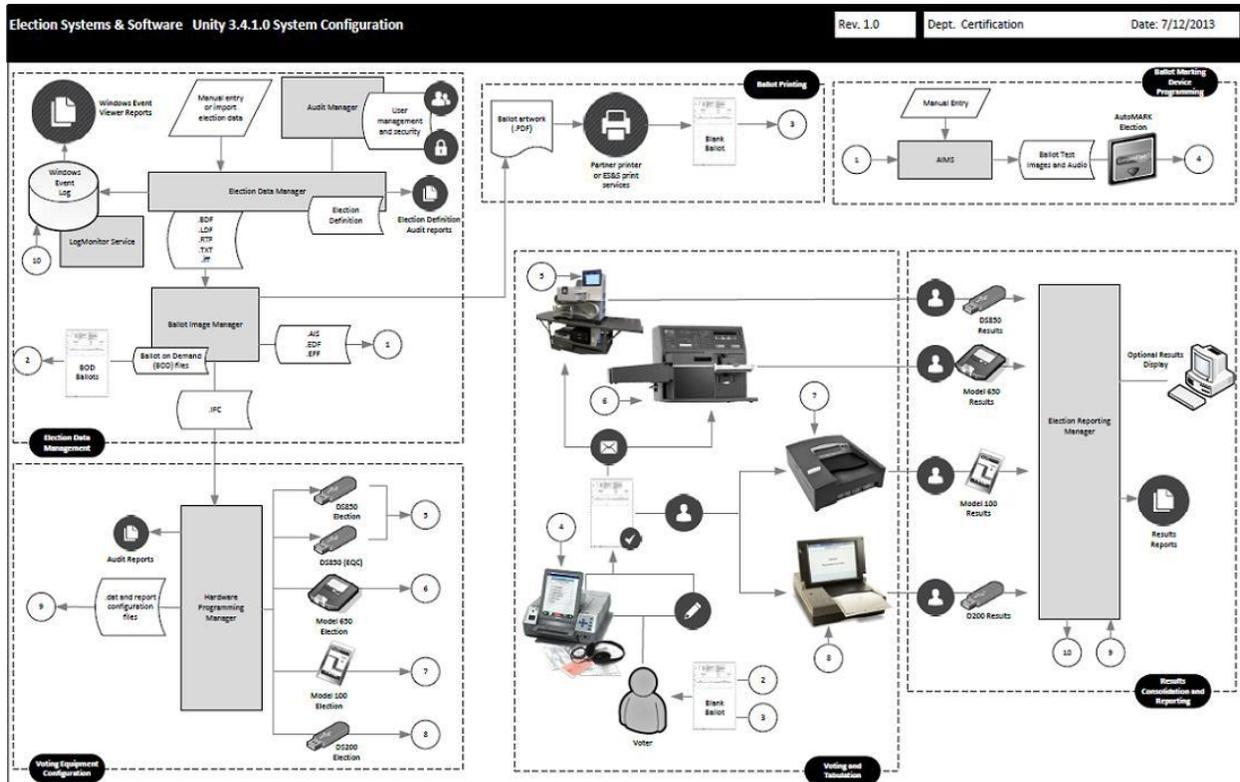
- BIC Grip Roller

## Language capability:

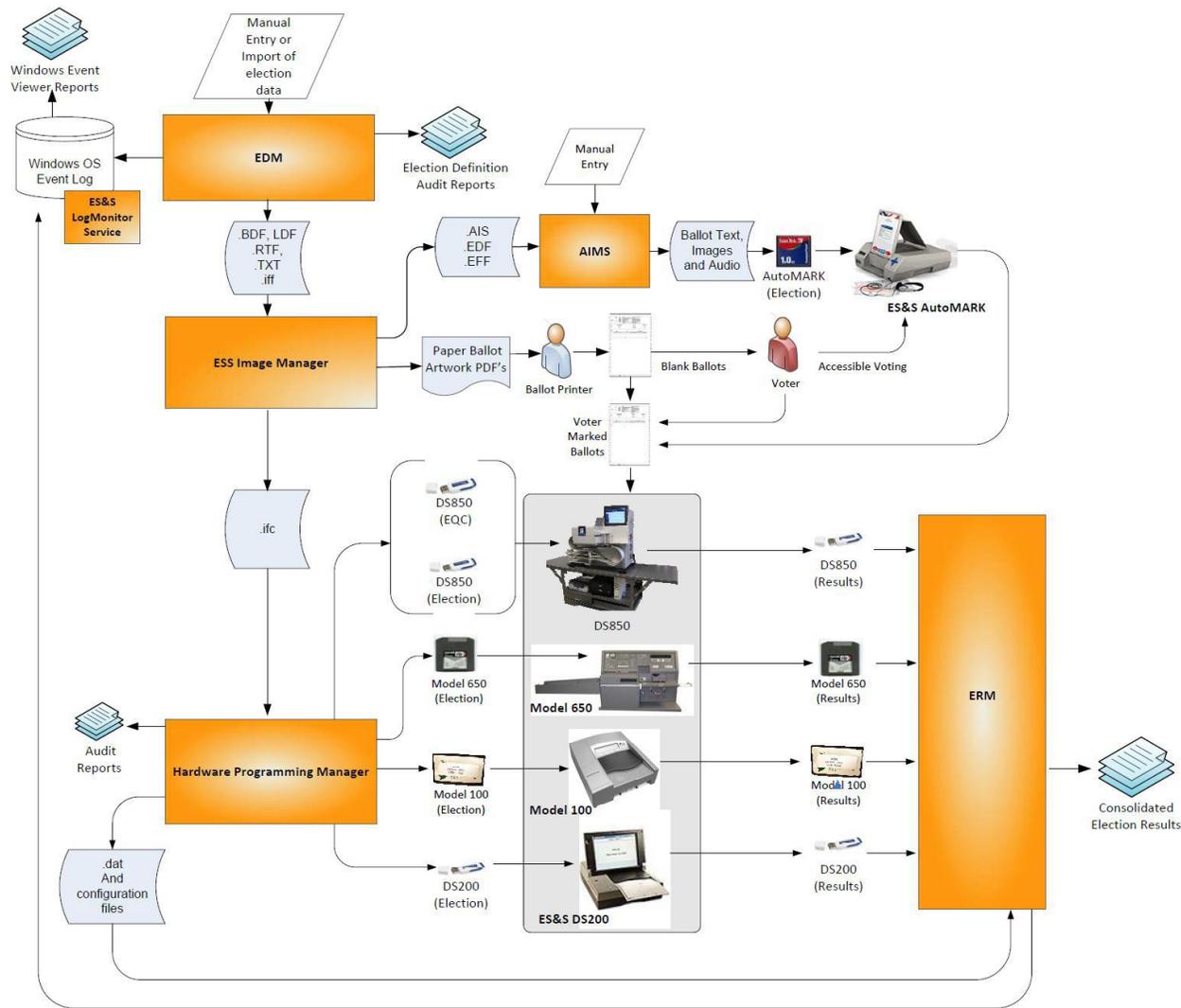
System supports English and Spanish.

## Components Included:

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



System Configuration Diagram



**System Overview Diagram**

System Component	Software or Firmware Version	Hardware Version	Operating System or COTS	Comments
AM	7.5.2.0			EMS
EDM	7.8.2.0			EMS
ESSIM	7.7.2.0			EMS
HPM	5.9.0.0			EMS
ERM	7.9.0.0			EMS
LogMonitor Service	1.1.0.0			EMS
AIMS	1.3.257			EMS
VAT Previewer	1.3.2907			EMS
Model 100	5.4.4.5	1.3		Precinct Tabulator
DS200	1.7.0.0	1.2, 1.2.3.0, 1.3		Precinct Tabulator
Model 650	2.2.2.0	1.1, 1.2		Central Tabulator
AutoMARK VAT A100	1.3.2907	1.0		Voter Assist Terminal
AutoMARK VAT	1.3.2907	1.1, 1.3		Voter Assist

System Component	Software or Firmware Version	Hardware Version	Operating System or COTS	Comments
A200				Terminal
DS850	2.9.0.0	1.0		Central Tabulator
Ballot Box		1.3, 1.4		Plastic Ballot Box
Ballot Box		1.0, 1.1, 1.2		Metal Box with/without Diverter
<b>COTS Components</b>				
Client PC		Dell OptiPlex 3010	Windows 7 Professional SP1	
Server PC		Dell PowerEdge T110 II	Windows Server 2008 R2 Sp1	
Ballot on Demand Printer		OKI C9650		
Report Printer		HP LaserJet 4050N		
Headphones		Avid FV 60		
Dell OptiPlex		760, GX110	Windows XP SP3 or Vista, QNX 4.22A	
Dell Keyboard		Model L100		
Dell Mouse		Model XN966, Model DHY933		
ACER Monitor		Model AL1716		
Dell Precision		T3500	Windows 7, Linux	
CPU Intel Inside Zenon DELL			Linux 6.2.5	
Logitech keyboard		Y-ST39		
Microsoft Intellimouse		1.3A PS/2 compatible		
Corsair Orbit PC				
WhiteSanport 17" Monitor		H996 BBM		
Logitech keyboard		Y-SG13		
Microsoft Intellimouse		1.2A PS/2 compatible		
Acer LCD Monitor		AL1716		

## System Limitations

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

Characteristic	Limiting Component	Limit	Comment
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Characteristic	Limiting Component	Limit	Comment
Maximum precincts allowed in an election	HPM/ERM (ballot sequence code)	2900(1639 if using paper ballot coded by precinct)	Limited by the ballot sequence code
Maximum precinct included per poll (reporting limit)	ERM	1900	
Maximum candidate/counters	ERM	21000	
Maximum candidates	HPM	9900	
Maximum contest allowed in an election	ERM	Depends on election(limited by 21,000 maximum counters)	
Maximum candidates/counters allowed per precinct	ERM Import	1000	
Maximum ballot styles allowed per precinct		99	
Maximum ballot styles allowed per election	HPM(ballot sequence code)	5500(1639 if using paper ballot coded by style)	
Maximum contests allowed per ballot style	HPM	200 or number of positions on a ballot	
Maximum precincts allowed per ballot style	HPM	1500	
Maximum candidates(ballot choices) allowed per contest	HPM	175	
Maximum count for any precinct element	ERM report (ERM results Import)	500,000 (65,550 from any tabulator media)	
Maximum number of parties allowed	HPM	18	
Maximum 'Vote for' per contest	HPM	90	
Maximum districts of a given type		40	
<b>Ballot Target Limits</b>			
<b>Ballot Size (ovals per inch Left or Right)</b>		<b>Positions per Column x Row</b>	
8 ½ x 11" (4 ovals per inch)		36 rows x 3 columns = 108/side	
8 ½ x 14" (3 ovals per inch)		36 rows x 3 columns = 108/side	
8 ½ x 14" (4 ovals per inch)		48 rows x 3 columns = 144/side	
8 ½ x 17" (3 ovals per inch)		41 rows x 3 columns = 123/side	
8 ½ x 17" (3 ovals per inch)		45 rows x 3 columns = 135/side	

Characteristic	Limiting Component	Limit	Comment
8 ½ x 17" (4 ovals per inch)		60 rows x 3 columns = 180/side	
8 ½ x 19" (3 ovals per inch)		51 rows x 3 columns = 153/side	
8 ½ x 19" (4 ovals per inch)		68 rows x 3 columns = 204/side	

### Component Limitations

#### Paper Ballot Limitations:

1. The paper ballot code channel, which is the series of black boxes that appear between the timing track and ballot contents, limits the number of available ballot variations depending on how a jurisdiction uses this code to differentiate ballots. The code can be used to differentiate ballots using three different fields defined as: Sequence (available codes 1-26,839), Type(available codes 1-30) or Split(available codes 1-40).
2. If Sequence is used as a ballot style ID, it must be unique election-wide and the Split code will always be 1. In this case the practical style limit would be 26,000.
3. If Sequence is used as a precinct ID, the number of styles allowed in a precinct is limited to 1200 (30 types x 4 splits).

#### DS200 Limitations:

1. An ES&S DS200 coded for Election Day counting will support no more than 18 precincts.
2. Limits to a maximum of 40 ballot styles in a single absentee precinct for an election coded by style. If the election definition includes more than 40 ballot styles, additional precincts must be defined and ballots must be separated into groups for processing.
3. All ballots must be the same size and same target position capacity.
4. Results network transmission is not supported from an early voting station.
5. The ES&S DS200 configured for an early vote station does not support precinct level results reporting. An election summary report of tabulation vote totals is supported.
6. Arrow-style ballot targets are not supported.

#### Model 100 Limitations:

1. Supports a maximum of 18 Election Day Precincts or 450 early voting precincts.
2. The PC Card is limited to 18 precincts. No more than 18 precincts should be assigned to a Model 100 polling place from HPM.
3. Limited to a maximum of 40 ballot styles in a single absentee precinct for an election coded by style. If the election definition includes more than 40 ballots style, additional absentee precincts must be defined and ballots must be separated into groups for processing.
4. Supports a maximum of 200 contests per ballot style.
5. All ballots must be the same size and same target position capacity.
6. An early voting station does not support ballots coded "By Style."
7. An early vote station will only support a maximum limit of 450 precincts. This limit is due to the limited memory capacity of both the PCMCIA card and the internal memory of the Model 100 precinct tabulator.
8. Results network transmission is not supported from an early voting station.
9. Default precinct reporting is not supported by an early voting station.

#### Model 650 Limitations:

1. Supports a maximum of 3750 candidates or counters for any election.
2. Supports a maximum of 100 ballot styles for a single absentee precinct in a by-style election. If the election definition includes more styles, additional absentee precincts must be defined and ballots must be separated into groups for processing.
3. All ballots must be the same size and have same target position capacity.
4. Arrow style ballot targets are not supported.
5. Supports only one ballot input orientation.
6. The Model 650 can interpret a maximum of 1499 office group codes in an election definition. (An “office group” is defined as the collection of one or more contests (including rotation) that always appear together on any ballot style.). This limitation restricts the number of precincts allowed in an election if precinct only” offices are defined (District Type PRC) because each „precinct only” office always appears in a different office group.

#### DS850 Limitations

1. All ballots must be the same size and have same target position capacity.

#### AutoMark Limitations

1. ES&S AutoMARK capacities exceed all documented limitations for the ES&S election management, vote tabulation and reporting system. For this reason, Election Management System and ballot tabulator limitations define the boundaries and capabilities of the AutoMARK system as the maximum capacities of the ES&S AutoMARK are never approached during testing.
2. The AutoMARK recognizes ballot content by the code channel. If the Sequence code is used for Ballot Style ID and the election definition has more than one precinct that uses a specific ballot style, the AutoMARK will not determine which precinct the ballot is associated with. The user should not define ballot style names in the election definition that imply precinct.

#### Election Data Manager Limitations

1. In both open and closed primary elections, operational procedures to define the election in EDM must be strictly followed.
2. The user must input the Party Preference (or Pick Contest) title as “Party Preference” in the Office Title box in the Add Office Information window.
3. When the election is an open primary with a party preference race, a crossover party must be added using the Parties option under the County menu.
4. Rotation positions are limited to 99 candidates. This limit does not apply to positions that float and do not change candidate order.
5. The maximum number of languages supported is 13.
6. The ability to delete parties under the **County** and **Election** menu is not supported.
7. In a primary election, the system does not support displaying the contest(s) from another party’s ballot if a third party in the election has candidates in that contest.

#### Ballot Image Manager Limitations

1. Requires the installation of Open Type fonts for assurance that screen displays of the ballot match the printed ballot.
2. The user must manually assign column number or position for straight party candidates in HPM.

#### Ballot On Demand Limitations

1. Requires a specified Oki printer.
2. Batch ballot printing is not reflected in reports.
3. Batch ballot serial numbers are not supported with multi-page ballots.

#### Hardware Programming Manager Limitations

1. Supports no more than 18 parties for a single election. This limit is reduced to 12 parties, counting "nonpartisan" as a party, for an Open Primary election that uses two page ballots with the second page containing only non-partisan contests. Party/partisan contents CANNOT flow between pages in an Open Primary
2. When coding an election for an Open primary, the user cannot include (in total voting) the crossover party listed in the Description box in the Election Specifications window. The party type displays in the numbered description box, but the user should clear the Include check box next to the crossover party types.
3. When coding an election for an open primary, the party preference contests must be identified as nonpartisan.
4. Supports a maximum of 31 statistical party counters.
5. **Change/Add Polling Place:** A polling place may be identified to contain all precincts in the election.+A1+A1Polling places are limited to a maximum of 80 precincts assigned with the following exception: Model 100 and DS200 scanners are limited to supporting a maximum of 18 precincts per polling place.
6. **Ballot Styles:** In an Open Primary, the number of contest associated with any party (or "nonpartisan" designation) within a ballot style cannot exceed 70. For an Open Primary election, this limitation replaces the 200 contest limit.
7. **Districts:** A district is identified by a code that contains 7 positions but is constructed of a 3 position District Type code and a 4 position District code within the type. There are a limit of 19 District Types and 39 Districts for any given type except for the „PRC“ district type. The „PRC“ district type is used in an election where virtually all precincts have one or two unique precinct specific contests. When the „PRC“ district type is active, the District code is designated by the 4 position precinct ID code. The number of precincts that can use this code is a function of the election content and limited by the M650. A precinct can be associated with a maximum of 39 districts.
8. **Candidates:** The maximum number of candidate rotations per contest is 140. This includes candidate position sets where candidate order is not changed, but use alternate position numbers.

#### Election Reporting Manager Limitations

1. Election Reporting Manager requires a minimum monitor screen resolution of 800x600
2. Serve650 continues to run after ERM is stopped via the Windows Task Manager. If the ERM task is ended, Serve650 must also be canceled, or the PC rebooted.
3. Mixed equipment within a single SPP file is not supported. Each equipment type must have its own SPP file.
4. Dynamic Precinct Reports are not supported when updating results from iVotronic Audit Data.
5. Generating a District Canvass Report without first properly creating a .DST file can result in inaccurate totals reports and inconsistent report formatting.

6. When retrieving election data from DS200 tabulators; ERM supports a maximum of 1900 precincts for an „All Precincts Included“ Poll.
7. ERM Database Create allows 1600 Precincts Per Ballot Style.
8. There is a limit of 3510 precincts in the precincts counted/not counted display.
9. There is a limit of 3000 precincts in the precincts counted/not counted scrolling display.
10. Contest/Precinct selection pop up display limited to 2,900 contests/precincts.
11. Non-English characters are not supported in ERM.
12. Maximum page size for reports is 5,000 pages.

**AutoMARK Information Management System (AIMS) Limitations**

1. If the number of precincts imported from Election Data Manager exceeds 840, an election administrator must manually configure the code channel for precinct number 840 within AIMS. Code channel information for all other precincts imports properly

## Functionality

### 2005 VVSG Supported Functionality Declaration

Feature/Characteristic	Yes/No	Comment
Voter Verified Paper Audit Trails		
VVPAT	No	
Accessibility		
Forward Approach	Yes	
Parallel (Side) Approach	No	
Closed Primary		
Primary: Closed	Yes	
Open Primary		
Primary: Open Standard (provide definition of how supported)	Yes	
Primary: Open Blanket (provide definition of how supported)	No	
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.	Yes	
Write-in: With No Declared Candidates	Yes	

Feature/Characteristic	Yes/No	Comment
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	No	
Slate & Group Voting: one selection votes the slate.	No	
Ballot Rotation:		
Rotation of Names within an Office; define all supported rotation methods for location on the ballot and vote tabulation/reporting	Yes	
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.	No	
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.	No	
Vote for N of M: Invalidates all candidates in an overvote (paper)	No	
Recall Issues, with options:		
Recall Issues with Options: Simple Yes/No with separate race/election. (Vote Yes or No Question)	Yes	

Feature/Characteristic	Yes/No	Comment
Recall Issues with Options: Retain is the first option, Replacement candidate for the second or more options (Vote 1 of M)	Yes	
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 <sup>nd</sup> 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 <sup>nd</sup> 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		

Feature/Characteristic	Yes/No	Comment
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	Yes	
Provisional/Challenged Ballots: Provisional ballots maintain the secrecy of the ballot.	Yes	
Overvotes (must support for specific type of voting system)		
Overvotes: P & M: Overvote invalidates the vote. Define how overvotes are counted.	Yes	
Overvotes: DRE: Prevented from or requires correction of overvoting.	No	
Overvotes: If a system does not prevent overvotes, it must count them. Define how overvotes are counted.	Yes	
Overvotes: DRE systems that provide a method to data enter absentee votes must account for overvotes.	No	
Undervotes		
Undervotes: System counts undervotes cast for accounting purposes	Yes	
Blank Ballots		
Totally Blank Ballots: Any blank ballot alert is tested.	Yes	
Totally Blank Ballots: If blank ballots are not immediately processed, there must be a provision to recognize and accept them	Yes	
Totally Blank Ballots: If operators can access a blank ballot, there must be a provision for resolution.	Yes	
Networking		
Wide Area Network – Use of Modems	No	
Wide Area Network – Use of Wireless	No	
Local Area Network – Use of TCP/IP	No	
Local Area Network – Use of Infrared	No	
Local Area Network – Use of Wireless	No	
FIPS 140-2 validated cryptographic module	No	
Used as (if applicable):		
Precinct counting device	Yes	
Central counting device	Yes	





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

April 4, 2014

Steve Pearson  
Election Systems and Software  
11208 John Galt Blvd  
Omaha, NE 68137

**Sent via e-mail**

**Re: Agency Decision- Grant of Certification**

Dear Steve Pearson,

As required under §5.9 of the EAC's Voting System Testing and Certification Program Manual, Election Systems and Software and NTS have provided the necessary documentation for the Unity 3.4.1.0 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 Election Systems and Software Unity 3.4.1.0 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. The system was tested to the 2005 VVSG, but is a modification to the 2002 Voting System Standards (2002 VSS) certified Unity 3.4.0.0 system, it can only be certified to the 2002 VSS.

I have reviewed all of the documentation and concur with the Program Director's recommendation. As such, I hereby grant EAC Certification to Election Systems and Software Unity 3.4.1.0 to the 2002 Voting System Standards.

The EAC certification number issued for this system is: ESSUnity3410. In addition, a Certificate of Conformance shall be provided to Election Systems and Software as evidence of the EAC certification of the Unity 3.4.1.0. The Certificate of Conformance shall be provided to Election Systems and Software no later than five business days 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 Megan Dillon 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

# State of Wisconsin\Government Accountability Board

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JUDGE GERALD C. NICHOL  
Chairperson

KEVIN J. KENNEDY  
Director and General Counsel

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## MEMORANDUM

**DATE:** For the September 1, 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:

Ross Hein  
Elections Supervisor

**SUBJECT:** Request to Purchase Software Licenses for the WisVote Project

Government Accountability Board staff is requesting Board approval to purchase software licenses for Microsoft's Dynamics CRM product in the amount of \$489,024. This software will be used for the modernization of the Statewide Voter Registration System (SVRS), which will now be called WisVote and is scheduled to be released for use by local election officials in early 2016. SVRS modernization has been an ongoing agency project for the last several years, involving a significant amount of time and attention from much of the Elections Division and the agency's team of IT developers. Updates regarding this project have been provided to the Board in the Elections Division Update, and it has been a project included in the last several agency budgets.

As the new WisVote system nears completion, it is now necessary to purchase the user licenses necessary to roll out the system to the approximately 2,000 WisVote users, who are county and municipal clerks and their staffs. This memorandum provides background regarding the WisVote project and outlines the components of the requested license purchase.

### **Background: Brief History and Development of SVRS**

The Statewide Voter Registration System (SVRS) was first established in Wisconsin in 2005, in response to new Federal requirements in the Help America Vote Act of 2002. The SVRS software was a commercial off the shelf (COTS) package called AESM purchased from Accenture LLP through a Request for Proposal process. The software license for AESM was purchased for \$1.5 million, with an additional \$652,604 in customization costs to adapt the package for Wisconsin, as well as ongoing maintenance costs of approximately \$400,000 per year.

The AESM system was based on a county voter registration system developed in the late 1990s. Accenture upgraded the system to the newer technologies available in 2003 and added additional

features to allow it to work as a statewide and not just countywide system. Development of the system encountered delays, causing several other states to terminate their contracts with Accenture. Accenture reportedly employed over 100 IT developers working on the system in an attempt to complete it on time.

The system was ultimately delivered to Wisconsin in 2005 but suffered from serious flaws and countless bugs. In the initial roll-out of the system, only voter registration features were functional, with absentee ballot tracking and election management features added on as they became usable. Several critical features of the system were never developed or functioned as specified in the contract, resulting in a contract settlement with Accenture in 2007. With the settlement, Accenture gave G.A.B. staff a perpetual license for the AESM product with full access to modify the source code as needed to maintain the system, as well as returning monies paid by the G.A.B. for features that had not been developed.

G.A.B. subsequently established an internal IT development team to support the SVRS system going forward. The initial IT team consisted of a lead architect (formerly employed by Accenture with deep expertise in the AESM software) as well as a contracted software developer and database administrator. In 2009, with the assistance of the Department of Administration's Division of Enterprise Technology (DET), staff issued a Request for Information (RFI) to determine if there were IT companies available to take over support of the existing AESM software, or if another COTS statewide voter registration package was available that could meet Wisconsin's needs. The system required several critical updates at that time (such as supporting the upcoming redistricting process as well as updates to system software that was becoming outdated). Unfortunately the RFI process did not produce sufficient results to recommend moving forward with a Request for Proposal process.

G.A.B. instead expanded its internal IT development team, bringing on a new IT Lead (formerly employed by DET) and several additional contracted developers. The new IT team was able to successfully update SVRS to be able to implement the redistricting process. The IT team began using Dynamics CRM to develop new IT functionalities instead of modifying SVRS directly. Dynamics CRM is a customer relationship management software program that can be customized by an organization to meet their needs. Initially used primarily by the private sector, in recent years it has been adopted for use by public agencies to manage data and workflow processes. The Wisconsin Department of Agriculture, Trade and Consumer Protection as well as the Wisconsin Department of Administration use Dynamics CRM for new application development, as well as many other government customers nationwide. The G.A.B. first used Dynamics CRM in February 2012 to create a new provisional ballot tracking system to comply with the Photo ID law (Provisional ballot tracking was one of the features of SVRS that did not function properly requiring the tracker to be created in Dynamics CRM). In April 2012 it was used to produce the printable felon lists that clerks are required to have in polling places. Dynamics CRM was used again for the post-election Voter Felon Audit in February 2014.

After the successful use of Dynamics CRM for several projects, the G.A.B.'s IT Lead recommended rewriting the entire SVRS system using Dynamics CRM and retiring the AESM product. During 2013 and 2014, staff worked to conceptualize how SVRS could be improved by developing it in Dynamics CRM. Actual development of the new system in Dynamics CRM began on July 1, 2014. Based upon clerks' experiences utilizing Dynamics CRM to complete several statutory requirements and other feedback from clerks, it is clear that the more intuitive

interface of Dynamics CRM can address several of the current Statewide Voter Registration Systems deficiencies and improve election administration for both clerks and G.A.B. staff.

### **Objectives of License Purchase**

G.A.B. staff has identified three critical goals for WisVote that serve as the strategic vision for this project – improved usability for clerks, reduced cost to the G.A.B., and creating a stable and supportable system. Using Dynamics CRM as the foundation of WisVote will allow staff to achieve all three goals.

#### 1. **Improved Usability**

Many clerks have provided feedback over the years to express their dissatisfaction with the current SVRS system. In short, it is functional but often inefficient and “clunky” and its performance is progressively deteriorating. In many instances, SVRS requires the clerk to take several distinct steps in a very specific sequence in order to complete a single task. Many clerks must rely on the voluminous printed SVRS User Manual to complete tasks, or have G.A.B. staff walk them through processes by phone. G.A.B. staff dedicates significant time at each election to perform extensive tracking to ensure that clerks are completing all the required steps in the election set-up, administration, and follow up, many of which are complicated and not obvious to the user, making them frequently forgotten. Printing documents from SVRS, such as reports, letters, and poll books can be significant stumbling blocks for many clerks.

With WisVote, the goal is to streamline tasks, and in many cases, eliminate steps entirely by automating tasks. WisVote is specifically tailored to Wisconsin’s statutes and election processes. The unused clutter of SVRS which may apply to election administration in other states has been removed, and the screens and features of WisVote only include items that are relevant to Wisconsin clerks. Dynamics CRM allows clerks to print or save documents directly through their web browser, similar to most websites.

Dynamics CRM includes a host of standard features that come with the base software to make the system easy to use. Microsoft also invests significant resources into research and development for the Dynamics CRM product. By using Dynamics CRM as the base software for WisVote, G.A.B. can leverage Microsoft’s extensive testing for ease of use and constant updates based on the latest findings regarding user behavior and preferences.

Since the inception of SVRS, staff has been collecting feedback from clerks regarding its performance and their desired improvements, which has informed the development of WisVote. Over the past month, G.A.B. staff convened a Clerk Review Committee to review the design of WisVote to date, and to provide specific feedback on ways to make the system even better. Overall, feedback from the review committee has been positive and many of the clerk suggestions will be implemented immediately in Phase 1 of WisVote. Additionally staff presented WisVote to a group of over 300 clerks at the Wisconsin Municipal Clerks Association meeting in La Crosse on August 19, 2015. Feedback received from clerks was very positive and at many times elicited applause from the crowd regarding the improved ease of use of the WisVote system. Clerks will also be involved in the testing of WisVote, where even more feedback can be collected to improve the clerk experience in the new system. (*See Addendum A: Clerk Review Committee Overview*)

2. Reduced Cost

Dynamics CRM provides a base of standard features that allows IT staff to develop the system much more quickly and with fewer developers than building a system from scratch. These standard features include a security model, audit logging, customizable tables and screens, and customizable business rules and workflows that make development and maintenance more efficient. For comparison, Accenture spent 3-5 years creating the AESM software with upwards of 100 developers during its peak development stages. G.A.B. staff are developing WisVote in two years with five IT staff.

Once WisVote is complete, less on-going IT support will be necessary. Dynamics CRM includes tools to easily update screens or change business rules and workflows without having to complete new development. Because it will not be necessary to devote as many IT resources to the statewide voter registration and election management system, staff anticipates **resulting savings of at least \$175,000 per year and possibly as much as \$300,000 per year.**

The current SVRS system relies on the Citrix product to deliver the system to users over the Internet through a secure tunnel. Citrix adds considerable overhead to the system, requiring 56 total servers, compared to Dynamics CRM, which is fully web-based and will require only 17 servers. The current datacenter costs for server hosting, storage and backup of the 56 SVRS servers is \$18,370 per month. In comparison, the WisVote datacenter costs are projected to be only \$4,460 per month, **resulting in a savings of \$13,910 monthly, or \$166,922 annually.** The following chart summarizes the hosting cost savings of the proposed new WisVote environment compared to the current SVRS environment:

	<b>SVRS Monthly Cost</b>	<b>WisVote Monthly Cost</b>	<b>Monthly Savings</b>	<b>Annual Savings</b>	<b>3-Year Savings</b>
Server Hosting	\$14,732.58	\$3,455.76	\$11,276.82	\$135,321.84	\$405,965.52
Data Storage & Backup	\$3,637.00	\$1,003.59	\$2,633.41	\$31,600.92	\$94,802.76
<b>Total</b>	<b>\$18,369.58</b>	<b>\$4,459.35</b>	<b>\$13,910.23</b>	<b>\$166,922.76</b>	<b>\$500,768.28</b>

Training costs are expected to be significantly reduced with the commencement of WisVote. Current SVRS training requires a team of two G.A.B. staff members (usually an SVRS Trainer and an SVRS Specialist) to travel to various regions throughout the state, providing training to groups of new clerks in numbers ranging from 12 to 18. The SVRS training program consists of two days of Basic SVRS training and an optional three-quarter day of Absentee tracking.

While the new clerk training plan for WisVote is still being developed, the WisVote system has been designed to automate many of the steps for voter management and election management. Fewer steps results in a more intuitive process, reducing the number of exercises that will be required in order to provide the clerks with an adequate training experience. Instead of requiring the training team to spend three nights on the road, with WisVote the teams will likely only spend one night on-location, and in some cases maybe none at all. The reduction in time spent on the road will significantly impact training costs. Reduced travel and training time also directly benefits clerks, requiring less time out of the office and reduced travel costs that are absorbed by local governments.

The in-person training will be supplemented with online E-Learning tools to provide additional information and hands-on experiences for clerks, further reducing the requirements for the in-person

training. E-Learning components will consist of video tutorials and hands-on simulations of clerk tasks within WisVote. These tutorials will be available to all clerks at any time allowing clerks to complete training at their convenience without interrupting office work. G.A.B. staff plans on implementing/rolling out WisVote in early 2016. Additional information on the deployment plans will be made available in future board meetings.

Utilizing Dynamics CRM will also reduce program staff costs. The staff time required to conduct ongoing election tracking and monitoring, provide phone support, and lead regular in-person training sessions is costly to the G.A.B.

### 3. Stable and Supportable System

The technology infrastructure of the current SVRS database is not as stable and supportable as it once was or as it should be going forward, creating increasing risk each year that the system remains in use.

SVRS relies upon old versions of system software that are now being sunsetted by Microsoft, meaning that Microsoft support is no longer available. Support for Windows Server 2003 ends in 2015, and Microsoft will no longer be releasing security patches for this product, leaving the SVRS servers more vulnerable to attack. Lack of support also means that Microsoft cannot provide any assistance in the event of system failures or other problems. Also, other software associated with SVRS, such as SQL Server Reporting Services and .NET framework, is equally out of date, creating similar risks. State IT standards and best practices require that state agency IT systems use current and supported system software. Upgrading SVRS to current versions of the system software would be both costly and high risk due to the complexity and outdated quality of the AESM software itself, and would essentially require a re-write of the system code.

Clerks have continuously reported that the system is too slow. This is largely due to a combination of design issues and outdated technology. A 2008 analysis of the SVRS code identified major design changes that would need to be made in order to improve performance. Yet making any significant changes to the existing code base introduces risk to the entire system. Code that controls a particular set of features may be spread throughout the system, sometimes duplicated and triplicated, requiring changes be made meticulously and in many different places. Making changes to one area of the system may impact other seemingly unrelated areas of the system. Certain portions of the code are considered “untouchable” by the developers for the purpose of making changes, due to their impact on other functions and the overall system, as well as the age of the code and programming languages used. In other words, any time a change is made to SVRS, staff needs to conduct full regression testing of the entire system to make sure unrelated functions were not affected by the change. Because the current system contains so much functionality, full regression testing is time-consuming. Clerks and staff frequently identify problems after changes are implemented, regardless of the thorough testing process.

The lack of ability to update the system is particularly problematic when statutes change or new requirements arise. As new requirements have arisen, they have largely been implemented outside of SVRS, using tools like Dynamics CRM that are much easier to update and maintain.

**Cost of Licenses**

Dynamics CRM licensing includes several components. Server licenses are required for the specific servers that will be running the Dynamics CRM application. G.A.B. will need to purchase two server licenses for the new WisVote environment that will be running the Dynamics CRM software. Although there will be 17 servers in the new WisVote environment, G.A.B. will only need to pay for two specific licenses that will be used on the CRM application servers. The other servers will be used for maintaining the database and for other functions such as maintaining and securing user access and load balancing for performance. Client access licenses (CAL) are required for the users to access the system. CAL's for the users to access the system are available per device (i.e. computer) that accesses the system, or per user that accesses the system. User CAL's allow a given user to access the system from multiple devices, and are more expensive. Device CAL's are less expensive and allow multiple users to access the system using the same device.

Most SVRS users only access the system from a single device (their computer) so the device CAL is sufficient to meet the needs of clerks who use the system. Device CAL's also better facilitate counter service where multiple users may be using a single computer. Staff projects that 2,000 device CAL's will be needed to allow all users to access the system. Due to the improved usability and reduced training requirements for WisVote as compared to SVRS, it is possible that additional licenses may be needed in the future if significant numbers of SVRS reliers choose to become self-providers. Additional device CAL's can be purchased if this occurs.

Server and client access licenses for Dynamics CRM automatically include three years of Software Assurance through Microsoft. Software Assurance provides the G.A.B. with access to Microsoft Support, if problems with the software arise. It also provides G.A.B. with ongoing access to all new versions of Dynamics CRM that are released during the 3-year Software Assurance period. Microsoft generally releases a new version of Dynamics CRM every other year, taking into account user feedback, the latest data from their research and development, and the latest changes in web-based technologies.

This is particularly critical given the rate of change being experienced with web browsers. Browsers such as Chrome and Firefox are releasing updates several times a year. Many features in older web-based applications are not supported by newer browsers which could inhibit clerks' ability to perform tasks in WisVote if it is not kept current. Using a tool like Dynamics CRM allows Microsoft to keep up with the latest browsers rather than requiring G.A.B. IT staff to diagnose issues with browser capability and to rewrite the application every two to three years. Software Assurance helps ensure that the new WisVote system can be used for years to come. It is recommended that Software Assurance be renewed in 2018 to further extend the life of WisVote and decrease future costs. Further, as part of the initial contracting process, Microsoft now requires customers to purchase Software Assurance for Dynamics CRM.

The following chart describes the licenses and costs being requested in this memo:

	<b>Quantity</b>	<b>Unit Price</b>	<b>Total Cost</b>
Dynamics CRM Server License and 3-Year Software Assurance	2	\$5,002.00	\$10,004.00
Dynamics CRM Device CAL and 3-Year Software Assurance	2000	\$239.51	\$479,020.00
<b>Total</b>			<b>\$ 489,024.00</b>

### **Overview of the New WisVote System**

Staff will provide the Board with a brief demonstration of the WisVote system. (*See Addendum B: Step by Step Task Comparisons: SVRS vs. WisVote*)

### **Conclusion**

SVRS is reaching the end of its useful life and the development of WisVote using Dynamics CRM will enable election officials in Wisconsin's decentralized system to continue administering elections into the foreseeable future. The modernization of SVRS into the new WisVote system is a critical step in providing clerks with the tools they need to serve Wisconsin voters, and in ensuring the G.A.B.'s ability to effectively administer Wisconsin's election laws. Modernizing the system will save money and lower IT risks for the G.A.B. over time, and can be accomplished while federal funds are still available to the G.A.B. Using Dynamics CRM allows staff to modernize the system efficiently using existing IT resources and within a short period of time, which would not be possible without a tool such as Dynamics CRM. The costs of Dynamics CRM are recouped in only a few years through cost savings in server hosting and IT staff. Purchase of the Dynamics CRM server and user licenses is a necessary and critical step to complete development and implementation of WisVote. The G.A.B.'s financial team has sufficiently budgeted for the purchase of these licenses using federal funds.

### **Proposed Motion**

**Motion:** The Government Accountability Board approves the purchase of software licenses for Microsoft's Dynamics CRM product in the amount of \$489,024.00.



## Clerk Review Committee Overview

### Scope:

38 clerks were invited to participate in 20 webinar/teleconference sessions covering 10 different topics or features of the new WisVote system. A demonstration was provided at the beginning of each session followed by an open discussion including questions and suggestions for improvement.

### Results:

The majority of the questions raised by clerks were answered with descriptions of functionality already addressed in the development of WisVote. Of the suggestions made by the clerks which were not already in production:

- 78 suggestions were made which related to the specific functionality which was demonstrated during the sessions
  - 26 of these are being included in the Phase I plan to be included with the initial roll-out of WisVote in January, 2016
  - 52 of these are being considered to determine their feasibility and, if they may be included, when can they be implemented (e.g. Phase II?)
- 22 suggestions relating to the general functionality of WisVote are being considered to determine feasibility and whether they can be included in the Phase I plan
- Additional suggestions relating to topics not specifically covered in the sessions was turned over to the respective teams to determine feasibility and whether they can be included in the Phase I plan

Some of the comments received from clerks:

“...The system looks so much improved and streamlined over the existing SVRS. I’m looking forward to working in WisVote!” Great job everyone at GAB!!!”

“...I see a lot of positive things with the new system.”

“...The team that has worked on the new system has done a great job ....You have really addressed the functionality and automation that is critical in maintaining elections and voter records so there isn’t much for us to suggest or improve!!! Bravo to all of you!!!! “

“...It seems great strides have been in the reports portion of the former SVRS. Looking forward to it!”  
“I like the new SVRS!!! It has great enhancements...little things can make a BIG difference.”



## Step by Step Task Comparisons: SVRS vs. WisVote

### Example 1: Generate Ballot Styles

#### Steps in SVRS:

1. Check Milestone 3 (open the Election, click on the Events tab, check the Milestone to confirm all contest & candidates have been added).
2. Expand the Election in the menu and select Ballot Styles.
3. Click the link in Quick Tasks to Generate Ballot Styles.
4. Check Milestone 4 (open the Election, click on the Events tab, check the Milestone indicating ballot styles have been created).

NOTE: Failing to take any of these steps will prohibit the printing of absentee labels and/or the printing of voters in the poll book.

#### Steps in WisVote

0. No steps are necessary. Ballot styles are automatically added based on the contests (these are also automatically added by the system) included in the election. If any additional contests are added that change the ballot style, the system will automatically generate them again based on the new information.

### Example 2: Inherit an Election

#### Steps in SVRS

1. Review Polling Place Assignment Plans (PPAP) and Reporting Unit Plans (RUP). (If a usable plan is not found, create a new one.)
2. Click Elections in the Menu.
3. Click Create Setup Election.
4. Follow the directions on the Election Setup Wizard, including:
  - a. Select the option to inherit the election
  - b. Select the desired election
  - c. Select the PPAP & RUPs to be used
5. Open the Election and check Milestone 2 (this must be done before contests & candidates may be added).
6. Add Contests & Candidates

#### Steps in WisVote

1. Add Candidates. (No other steps are necessary. The election is automatically added to the Elections list for the county or municipality. The Election Plan is automatically selected based on the Election type (e.g. General Election; Spring Election; etc.) and contests (except for referenda & special office elections) are already programmed into the election.

NOTE: The election plan, which replaces the PPAP and RUP, is automatically chosen based on the election type. End users will complete a one time set-up by assigning their polling places to their reporting units. They can edit their election plans as they change over time in an easily accessible place.



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JUDGE GERALD C. NICHOL  
Chairperson

KEVIN J. KENNEDY  
Director and General Counsel

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## MEMORANDUM

**DATE:** For the September 1, 2015 Board Meeting

**TO:** Members, Wisconsin Government Accountability Board

**FROM:** Kevin J. Kennedy, Director and General Counsel

Prepared and Presented by:  
David Buerger and Jennifer Webb – Elections Specialists

**SUBJECT:** Electronic Poll Book Survey

### I. Background

In July 2013 Director Kevin Kennedy assembled a team to research and prepare for the potential use of electronic poll books in Wisconsin. The team was also charged with recommending standards for approval of electronic poll books pursuant to Wis. Stat. § 6.79(1m). The initial research report was presented to the Board at its December 2013 meeting. Board staff presented the final report at the March 2014 meeting with two recommendations. First, that the Board direct staff to continue to research and develop standards for approval of electronic poll books pursuant to Wis. Stat. § 6.79(1m); and second that the staff should conduct an analysis of the costs and benefits of developing in-house a custom electronic poll book system for use in Wisconsin. Both motions failed and Director Kennedy noted that based on the decision of the Board, staff would not devote any significant resources to further electronic poll book research.

At the April 2015 meeting, Manitowoc County Clerk Jamie Aulik appeared to request that the Board revisit the development of standards for electronic poll books and presented a letter signed by 107 municipal and county clerks requesting the same. At the June 2015 meeting, both voter advocates and election officials spoke in support of developing standards for the approval of electronic poll books for use in Wisconsin. During the Elections Division report the Board discussed the growing clerk interest in having the Board develop standards for certification and approval of electronic poll books. A motion to direct staff to develop standards for consideration at the September meeting failed, but the Board directed staff to survey the clerks to determine their level of support for development of standards and the actual use of electronic poll books, if approved. This memorandum summarizes the survey results.

## II. Survey Design

Board staff developed a nine-question survey for municipal and county clerks to ascertain their support for electronic poll books. The key survey questions were:

1. Do you support having the G.A.B. develop standards and procedures for the use of electronic poll books?
2. Are you interested in having the option to use electronic poll books in your municipality?
3. Have you attended or viewed a demonstration of an electronic poll book system?
4. Are you interested in learning more about electronic poll books?

The survey began on July 31, 2015 with a Clerk Communication posted to the agency website requesting that Wisconsin's 1853 municipal clerks and 72 county clerks provide their input.

## III. Survey Results

Final survey results summarized in this memorandum were collected on August 17, 2015. As of that date there were 806 total responses to the survey with at least one respondent in each county in Wisconsin except Menominee County. Respondents included 25 county clerks and 781 municipal clerks. See Addendum A for a map illustrating the municipalities who responded to the survey. Below is brief summary of the results of the survey.

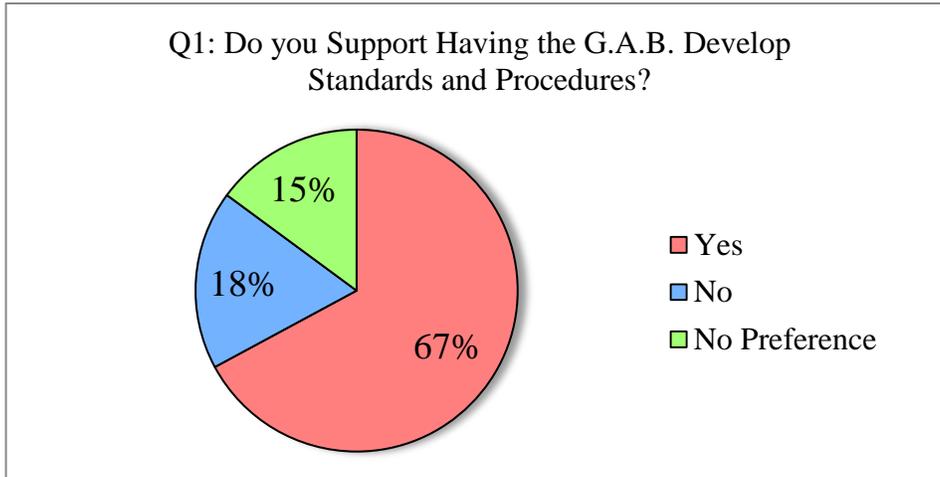
Q1: Do you Support Having the G.A.B. Develop Standards and Procedures for the Use of Electronic Poll Books?			Q2: Are you Interested in Having the Option to Use Electronic Poll Books in your Municipality?		
	#	%		#	%
Yes	541	67%	Yes	468	58%
No	145	18%	No	236	29%
No Preference	120	15%	No Preference	102	13%
Total	806		Total	806	

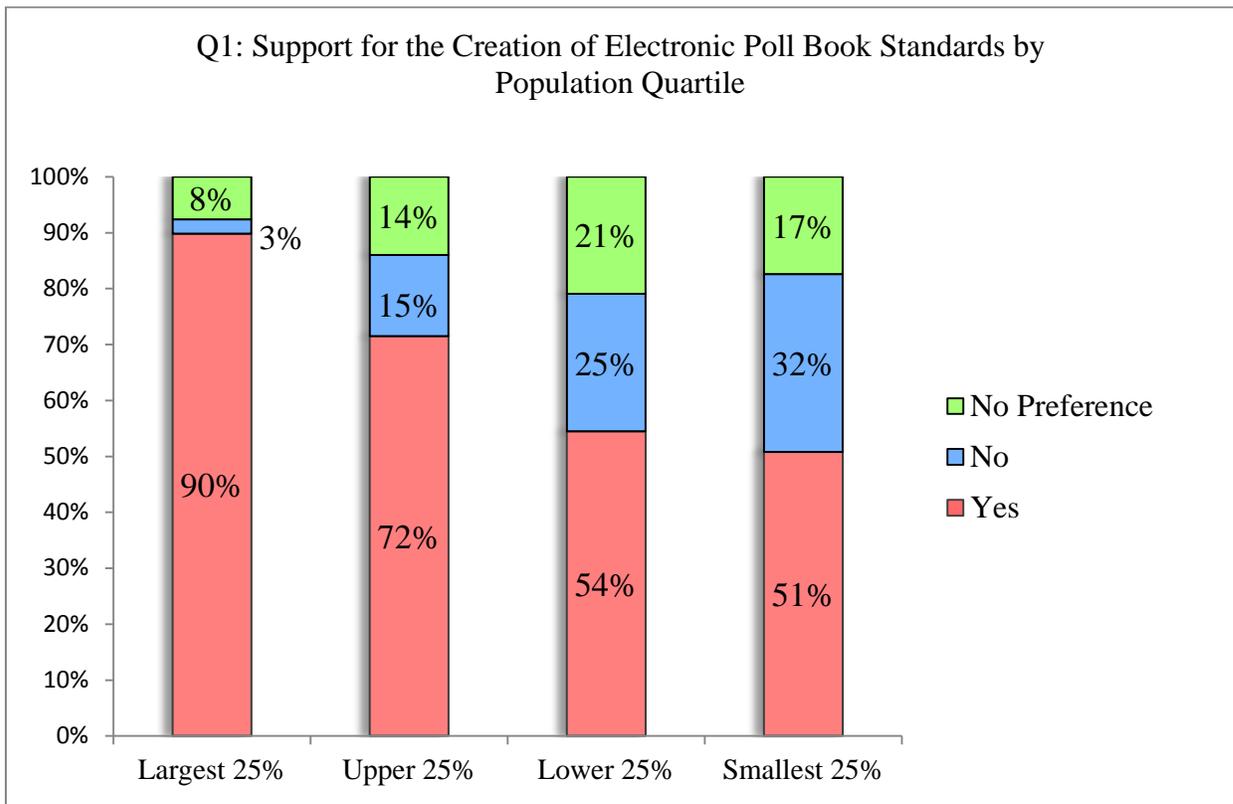
Q3: Have you Attended or Viewed a Demonstration of an Electronic Poll Book System?			Q4: Are you Interested in Learning More About Electronic Poll Books?		
	#	%		#	%
Yes	156	19%	Yes	621	77%
No	650	81%	No	185	23%
Total	806		Total	806	

IV. Analysis

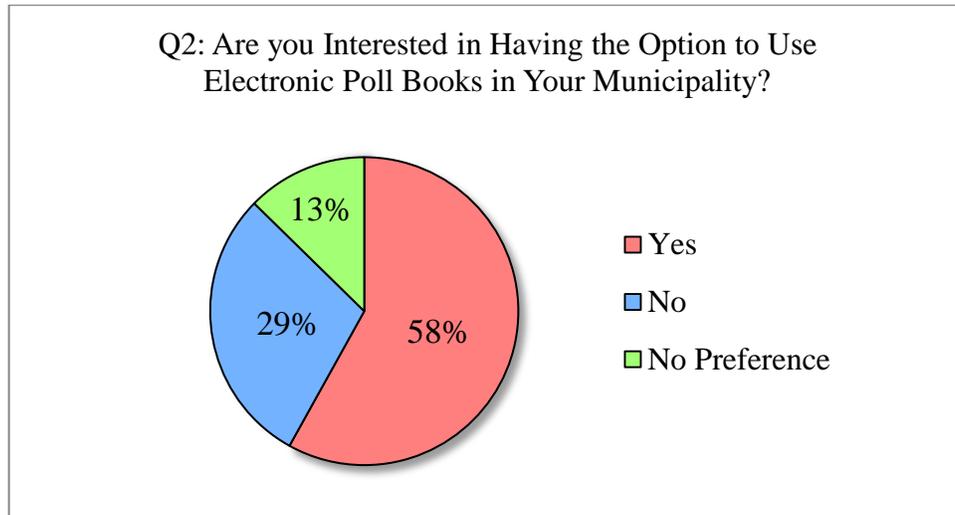
Overall, respondents are in favor (67%) of having the G.A.B. develop standards and procedures for the use of electronic poll books. See Addendum B for a map illustrating how each municipality responded to Question 1.



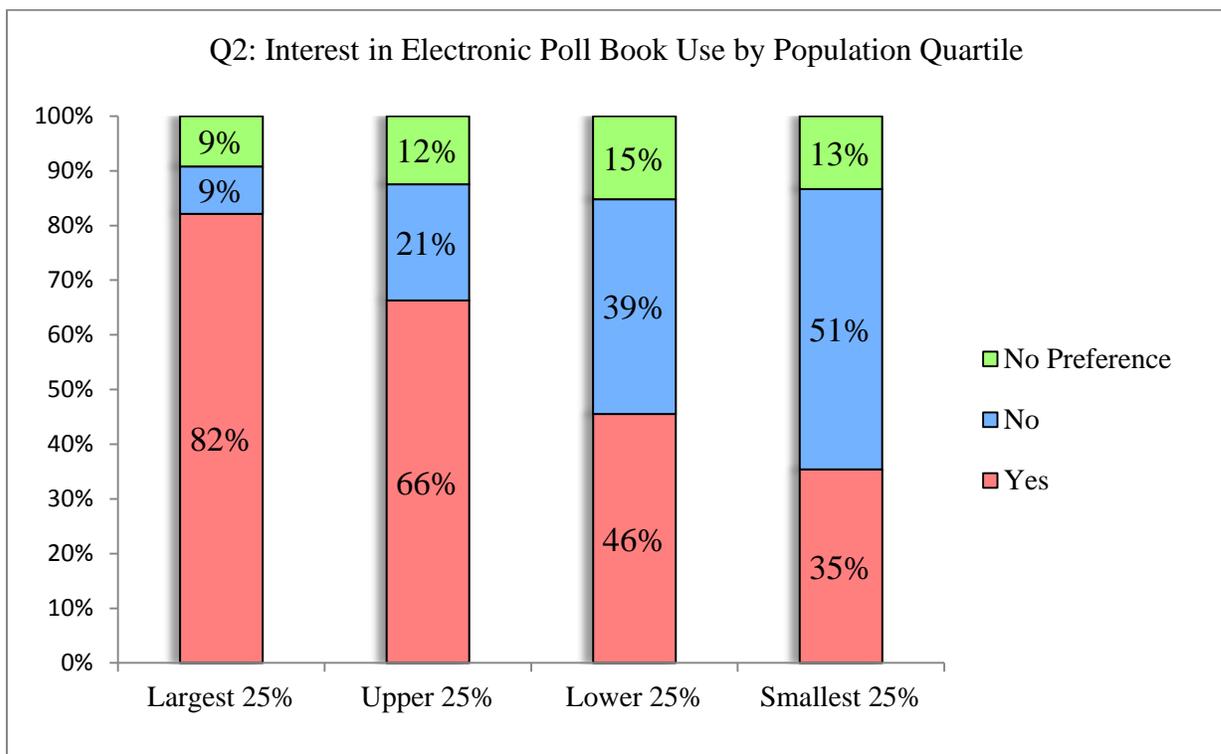
Clerks responding in support represent municipalities ranging from the smallest to the largest municipalities, including one township of 39 residents. Those who were opposed (18%) or indifferent (15%) also covered municipalities of every size; however, there was a noticeable trend of diminishing support in less populated municipalities.



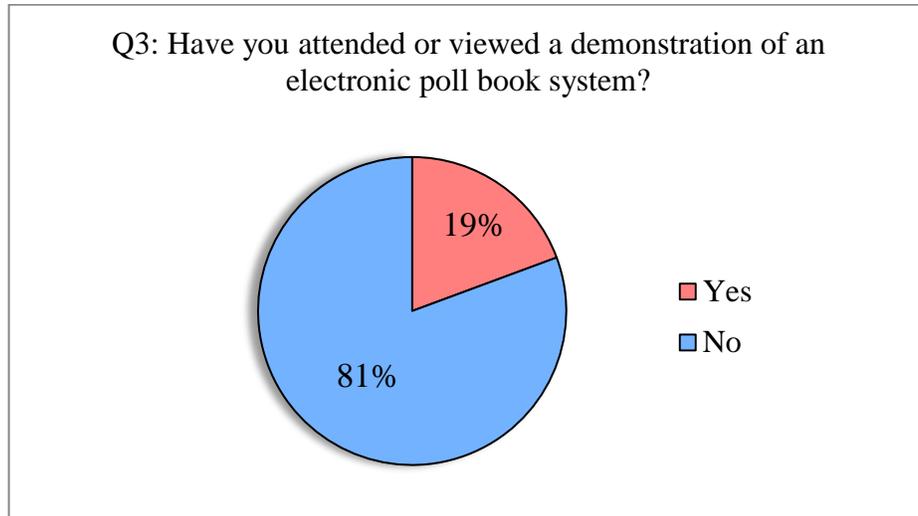
The majority of respondents are interested in the option of using electronic poll books (58%). Those municipalities which expressed interest in the use of electronic poll books serve approximately 3.2 million of Wisconsin's estimated 5.7 million residents (56%) and operate 1,963 of Wisconsin's approximately 2,700 polling places (73%). See Addendum C for a map illustrating how each municipality responded to Question 2.



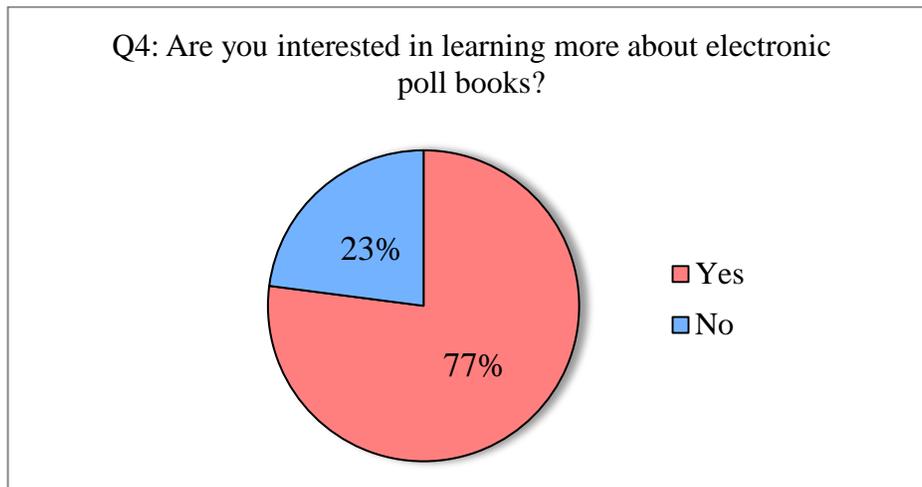
There were significantly more clerks not interested in using electronic poll books (29%) than those opposed to development of standards and procedures (18%), which suggests that some clerks support the G.A.B. allowing the option of using electronic poll books even though their own municipality may not wish or cannot afford to use such a system. There was also a similar decline in interest by the size of the municipality.



The overwhelming majority of respondents have not attended or viewed a demonstration of an electronic poll books system (81%).



A similar amount of respondents also indicated they were interested in learning more about electronic poll books (77%).



The fact that interest in learning more about electronic poll books is higher (77%) than support for development of standards (67%) or interest in using electronic poll books (58%) suggests that at least some election officials who responded that they do not support development of standards or do not have interest in using electronic poll books at this time may be open to reconsidering their opinion.

Respondents were given the opportunity to provide comments or suggestions at the end of the survey. The raw responses were reviewed by staff and consolidated where feedback was similar. The top five comments were:

1. No Internet/Phone/Computer Access
2. Positive Comments/Support
3. Poll Worker Concerns

4. Cost Concerns
5. Interested in More Information

The most common feedback received from respondents was the concern that electronic poll books require an internet connection or a computer at the polling place to function. This is an erroneous assumption. Internet connectivity is an optional feature of electronic poll books that may enhance its capabilities, but is not required for use.

As for poll worker concerns, the other states surveyed in the original electronic poll book research report indicated that there was some initial resistance to the use of electronic poll books, primarily from those with limited experience with computers. But after some small group training classes focused on teaching basic computer proficiency most poll workers quickly became comfortable with the new technology and now would never want to go back to the prior paper-based system.

Cost is a common concern and unfortunately not one that the G.A.B. can directly address as election budgets are a local issue and prices are set by the vendor depending on a number of factors. Anecdotally, other states have reported significant savings through use of electronic poll books, primarily through the elimination of the time-consuming chore of individually entering into the statewide voter registration system each voter's participation in the election and any associated Election Day registrations. However, at this time Board staff is unaware of any studies that could further quantify these savings. Each interested municipality would need to examine its own historical costs for these tasks and compare that to the vendor's quoted price to determine if an electronic poll book system would be cost-effective to implement.

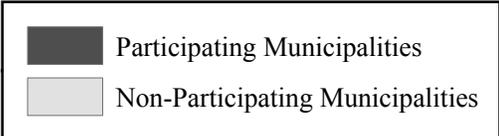
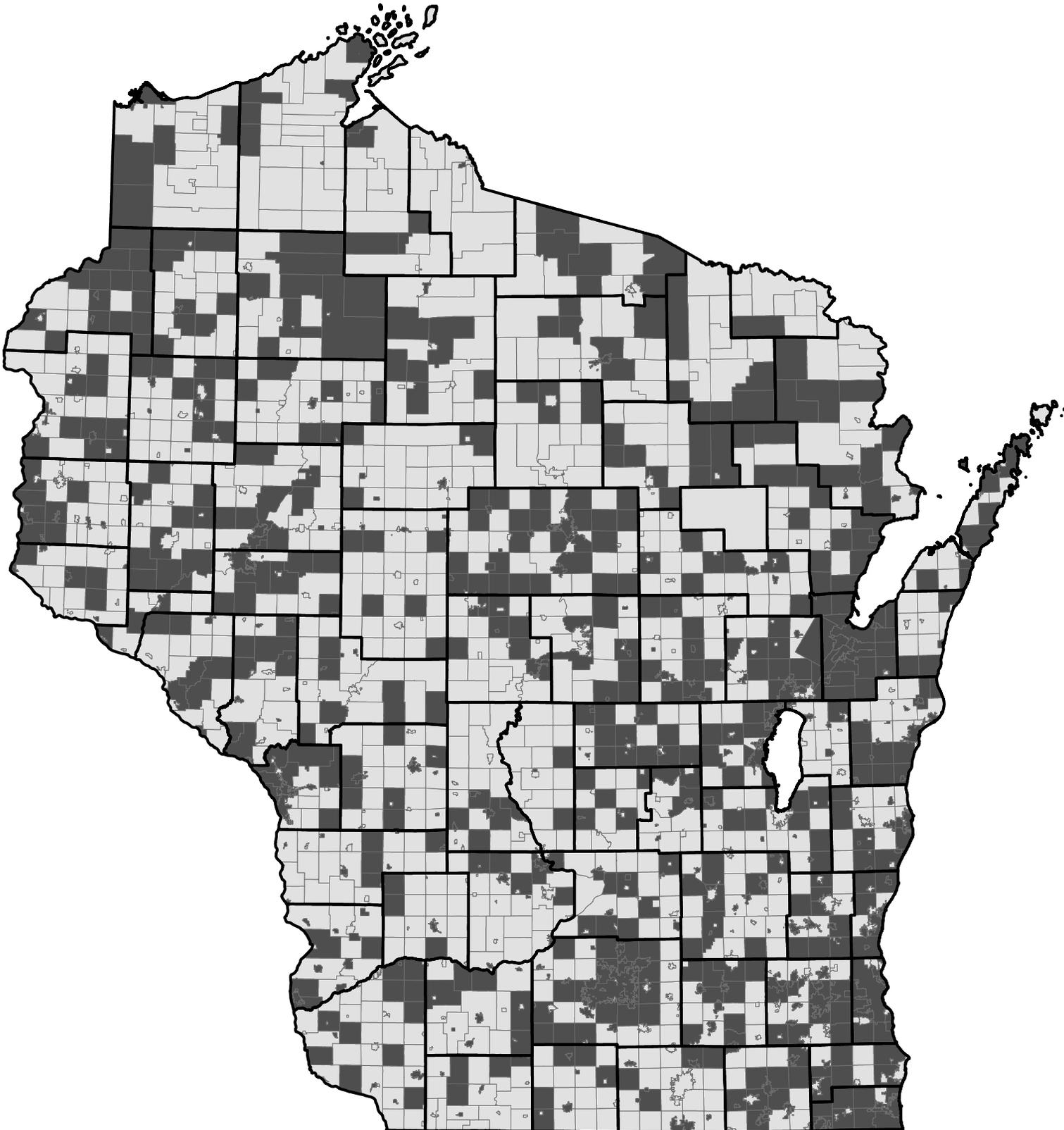
#### V. Next Steps

No specific Board action is requested by staff at this time. If the Board wishes to direct staff to develop standards and procedures for approval of electronic poll books, staff would recommend the Board also direct staff to develop a pilot program for the 2016 election cycle. A pilot program would help Board staff further refine the draft standards and could help identify potential technological, administrative, and legal challenges prior to a full municipal or county-level implementation. Interested vendors could be paired with interested municipalities to implement an electronic poll book system on a limited scale prior to final approval. Pilot programs have been successfully used in other states such as Minnesota and California to develop standards for approval and would help limit the risk otherwise present with a full-scale implementation of new technology in a busy election cycle.

#### VI. Attachments

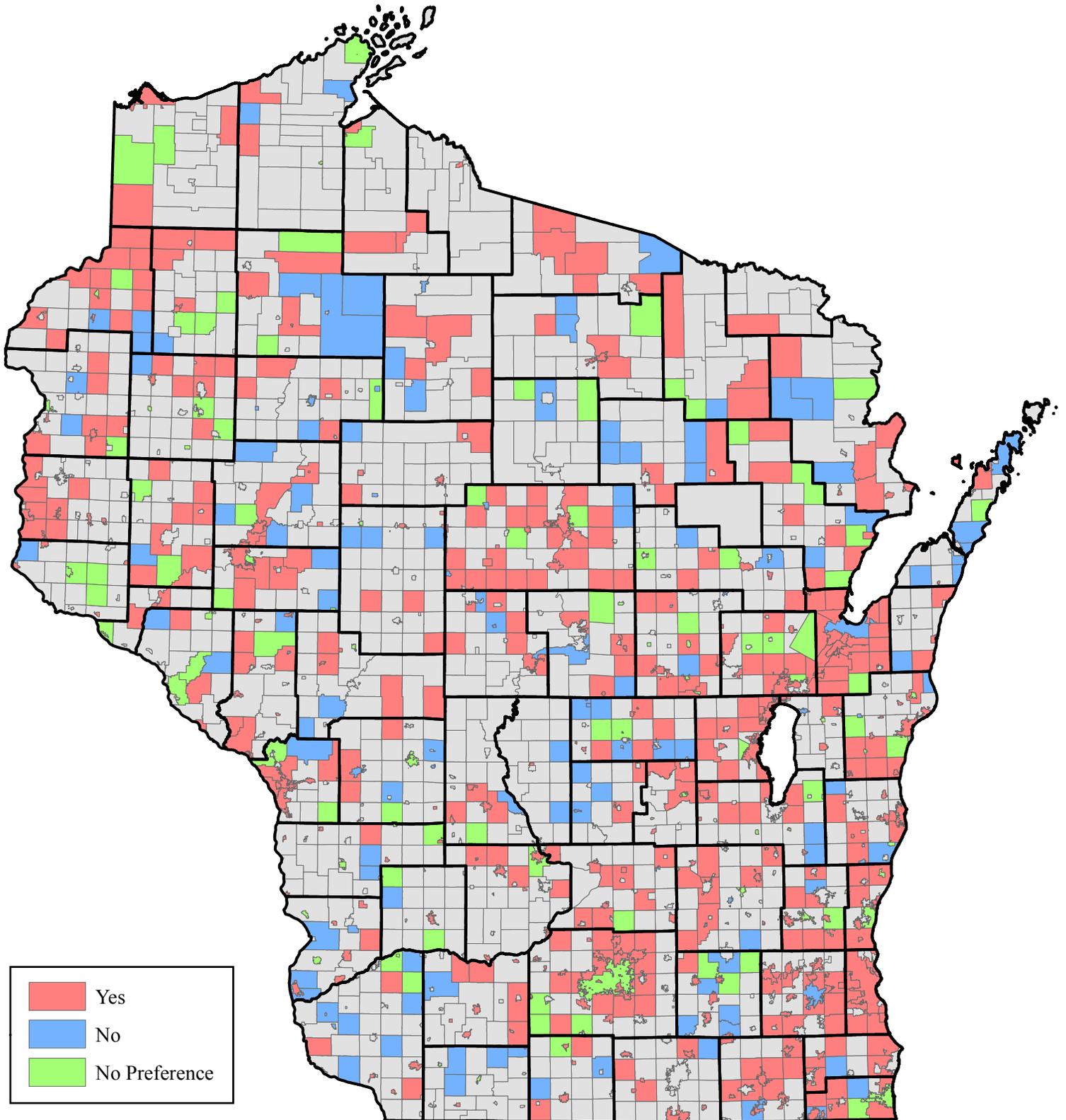
- Addendum A – Survey Response Map by Municipality
- Addendum B – Response Map for Question 1: Support for the Development of Standards by Municipality
- Addendum C – Response Map for Question 2: Interest in Using Electronic Poll Books by Municipality

### Survey Response Map by Municipality



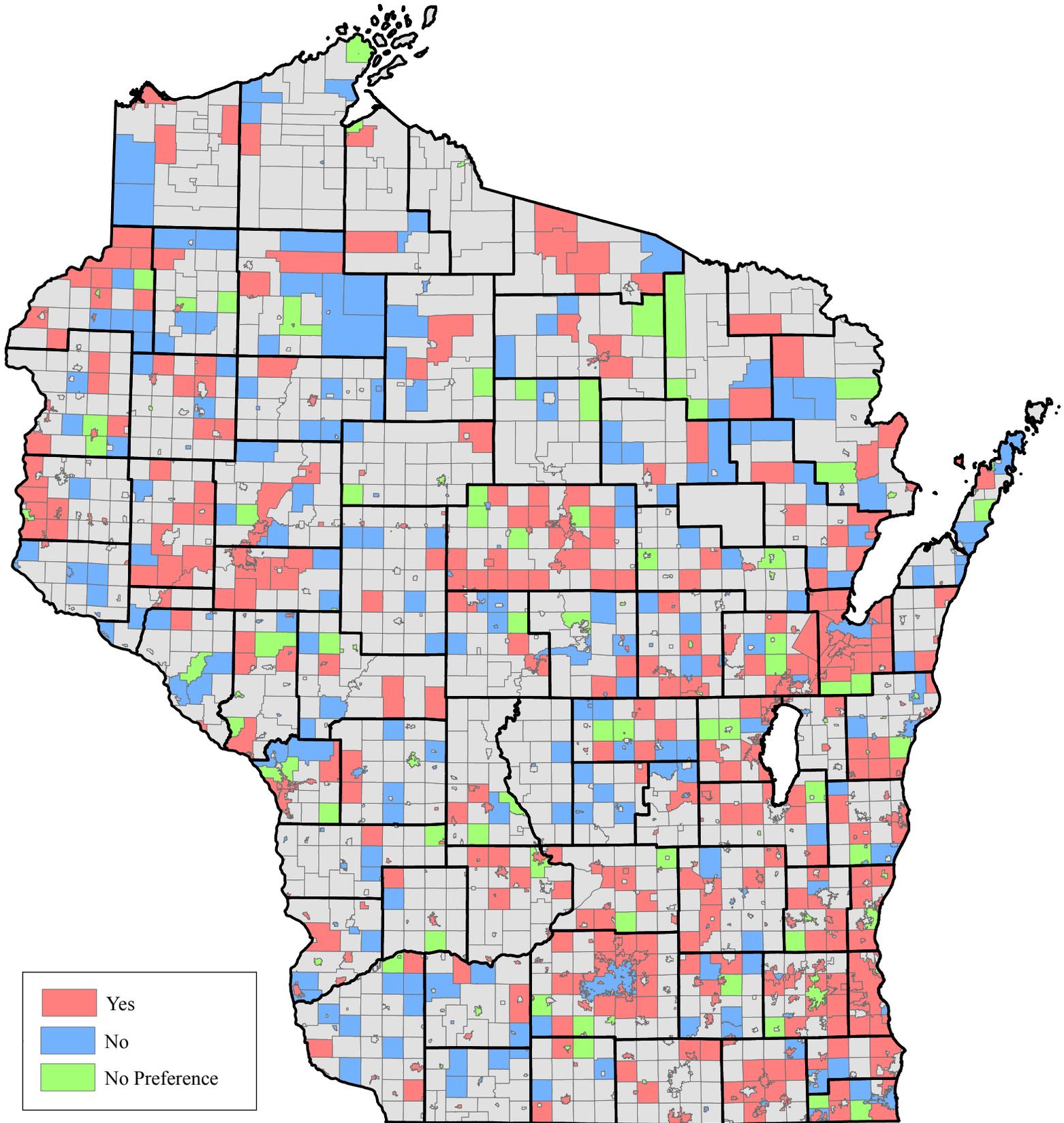


### Response Map for Question 1: Support for the Development of Standards by Municipality





### Response Map for Question 2: Interest in Using Electronic Poll Books by Municipality





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Chairperson

KEVIN J. KENNEDY  
Director and General Counsel

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## MEMORANDUM

**DATE:** For the September 1, 2015 Board Meeting

**TO:** Members, Wisconsin Government Accountability Board

**FROM:** Kevin J. Kennedy, Director and General Counsel

Prepared and Presented by:  
Michael Haas, Elections Division Administrator

**SUBJECT:** MyVote Wisconsin 2.0 Request for Proposal

Pursuant to the Government Accountability Board's policy regarding agency procurement of services, Board staff is requesting approval to issue a Request for Proposal to complete the design and development of the G.A.B.'s MyVote Wisconsin website ([myvote.wi.gov](http://myvote.wi.gov)). MyVote Wisconsin was developed and launched by the G.A.B. in 2012 after the agency received a competitive grant from the Federal Voting Assistance Program (FVAP) of the U.S. Department of Defense in the amount of approximately \$1.9 million.

The purpose of the grant and the website were to improve the voting experience for military and overseas electors, specifically by facilitating the delivery and return of absentee ballots. MyVote Wisconsin permits military and overseas electors to request absentee ballots electronically and to receive an absentee ballot via the website. The ballot must still be printed and mailed back to the appropriate municipal clerk. Data collected over the last two election cycles has demonstrated that MyVote Wisconsin has reduced the time it takes for a ballot to be delivered to and returned by military and absentee electors, cutting the overall transmission time roughly in half.

The website also permits all qualified electors to initiate the voter registration process online, although the paper application and original signature must still be delivered to the municipal clerk. Finally, MyVote Wisconsin provides all voters with important election information, including their past voting history, clerk contact information, the offices and candidates that will appear on their ballot, polling place locations, and their current elected representatives.

The MyVote Wisconsin website was developed in a short period of time so that it would be functional for the 2012 fall election cycle. It has been a successful innovation which improves services to voters and creates efficiencies for municipal clerks. Board staff has solicited input from clerks and users of the website to identify areas in which the functions and look of the website could be improved. Over the past year, staff has conducted intensive usability sessions both internally and with voters and members of the public. Those sessions have been invaluable in pinpointing exactly how voters use the website and the areas in which they are most likely to stumble or become frustrated in completing actions related to voter registration or absentee ballots.

Board staff has analyzed the results of its usability sessions and developed solutions focused on making MyVote Wisconsin easier to navigate. Staff created a comprehensive set of business requirements as well as paper prototypes of the entire revised website to serve as the basis for IT development of the new features and functions of the website. Further development of MyVote Wisconsin 2.0 has been placed on the back burner while staff and the IT team focus on completing the modernization of the Statewide Voter Registration System.

The goal of the Request for Proposal would be to retain a vendor to develop a look and feel for the website, including colors, fonts, and other layout and design elements. The vendor would then complete the code for the entire website. This would be a collaborative process where the vendor would need to develop the site on the G.A.B.'s voter registration system platform so that Board staff can perform in-house maintenance on the site after it is completed and launched. MyVote Wisconsin will need to be compatible with the new WisVote database so that it can be "plugged" into the new WisVote database and it is anticipated that the G.A.B. IT team will provide the required back-end database flows to ensure full functionality. The Request for Proposal would also include the development and coding of mobile versions of MyVote Wisconsin.

There are sufficient federal grant funds from FVAP remaining to retain an outside vendor to complete the development of MyVote 2.0, and it is a manageable task to separate from the other projects being completed by the agency's IT team. The project grant funds expire on November 30, 2016 and due to SVRS modernization (WisVote) and related IT phases of that project, the G.A.B. IT team does not have sufficient IT resources to successfully complete the redesign of MyVote prior to the 2016 General Election cycle. The Request for Proposal process takes several months, and staff recommends initiating that process so that the project can be completed in time to be used in the 2016 elections and before the grant funds expire.

**Recommended Motion:**

The Board authorizes the posting of a Request for Proposal related to the development and coding of the updated MyVote Wisconsin website, including a mobile version of the website, to be compatible with the agency's voter registration system database. The Board directs staff to post a Request for Proposal consistent with the project scope described above.

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JUDGE GERALD C. NICHOL  
Chairperson

KEVIN J. KENNEDY  
Director and General Counsel

**DATE:** For the September 1, 2015 Board Meeting

**TO:** Members, Wisconsin Government Accountability Board

**FROM:** Kevin J. Kennedy  
Director and General Counsel

Prepared by: Jonathan Becker, Administrator  
Division of Ethics and Accountability

**SUBJECT:** Lobbyist contributions to partisan elected state officials running for President

## Introduction

The Ethics and Accountability Division staff has received inquiries from lobbyists about their ability to make campaign contributions to a state elected official currently running for President. The staff seeks direction from the Board as to when the ‘window’ opens for lobbyists to make contributions to this current state elected official. The statute and prior opinions adopted by the Board have addressed offices in which a set date for the circulation of nomination papers occurs, thus opening the ‘window’ for lobbyist contributions. Under Wisconsin law, several categories of candidates running for President, however, do not circulate nomination papers which creates the ambiguity discussed below.

## Statutory Backdrop

Wisconsin’s lobbying law, WIS. STAT. §13.625 (1) (c) provides, in relevant part, that no lobbyist may:

Except as permitted in this subsection, personally make a campaign contribution, as defined in s. 11.01 (6), to a partisan elective state official for the purpose of promoting the official's election to any national, state, or local office . . . or to the official's or candidate's personal campaign committee. A lobbyist may personally make a campaign contribution to a partisan elective state official or candidate for partisan elective state office or to the personal campaign committee of the official or candidate in the year of a candidate's election between the first day authorized by law for the circulation of nomination papers as a candidate at a general election or special election and the day of the general election or special election.

(Emphasis added). In 1992 and 1993, the Ethics Board formally opined that the lobbying law’s restriction on campaign contributions clearly applied to a state legislator running for Congress. 1992 Wis. Eth. Bd. 25; 1993 Wis. Eth. Bd. 09. In a 1997 formal opinion, the Ethics Board specifically found that the restriction on lobbyist contributions to a state legislator running for U.S. Congress was not preempted by federal law, and therefore advised the member of the

legislature that contributions could only be accepted from a lobbyist between the first day for circulation of nomination papers and the date of the general election in the year of the Congressional race. 1997 Wis. Eth. Bd. 09, ¶14 (attached). The Government Accountability Board adopted all three of these opinions at its July 15, 2009 meeting.

Application of the restriction is fairly straightforward in instances of a state elected official running for Congress. WIS. STAT. §8.15 specifies that the first day for circulating nomination papers for a partisan primary election (held on the 2<sup>nd</sup> Tuesday in August) is April 15 in the year of the general election for that office (held on the Tuesday after the first Monday in November in even-numbered years).

Application of the restriction in the case of a state elected official running for President is less clear. That is because most (but not all) presidential candidates do not need to circulate nomination papers to be placed on the ballot. Moreover, a presidential preference vote is not a primary election and a candidate is not required to circulate nomination papers to appear on that ballot either if chosen by the Presidential Preference Selection Committee.

#### Presidential candidates

In each year of a Presidential Election the state chairperson of each recognized political party in Wisconsin may certify to the Government Accountability Board that the party will participate in the Presidential Preference Primary. Only those parties whose candidate for governor at the last election received at least 10% of the total vote cast for that office (generally the Republican and Democratic Parties) may participate. Certification must be made no later than Tuesday, December 8, 2015. WIS. STAT. § 8.12(1)(a). Independent candidates for President do not appear on the Presidential Preference ballot.

The candidates for each of the recognized political parties which have filed the certificate to participate in the Presidential Preference Primary are named by a Presidential Preference Selection Committee whose composition is specified by statute. The Presidential Preference Selection Committee meets on Tuesday, January 5, 2016. WIS. STAT. § 8.12(1)(b). The names of these candidates, and any other candidates they select, are certified for ballot placement to the Government Accountability Board no later than Friday, January 8, 2016. WIS. STAT. § 8.12(1)(b).

Any person seeking the presidential nomination by the national convention of a political party certified to participate in the Presidential Preference Primary who was *not* selected by the Committee may circulate a petition to submit to the Government Accountability Board to have their name appear on the Presidential Preference ballot. The first day for circulating this petition is January 5, 2016, and the last day for filing the petition is no later than Tuesday, January 26, 2016. WIS. STAT. § 8.12(1)(c). The petition must contain at least 1,000 and not more than 1,500 signatures of qualified electors in each of the 8 congressional districts of the state for a total of at least 8,000 signatures.

The names of candidates for President and Vice President for political organizations that have obtained ballot status are placed on the General Election ballot when their names are certified to the Government Accountability Board by the state or national chairperson no later than Tuesday, September 6, 2016. WIS. STAT. § 8.16(7).

Political organizations that have not attained ballot status may file a Petition for Ballot Status with the Government Accountability Board. The first day for circulating this petition is January 1, 2016, and the deadline for filing this petition is April 1, 2016. WIS. STAT. § 5.62(2)(a). This petition must contain valid signatures of at least 10,000 Wisconsin electors, including at least 1,000 signatures of electors residing in each of at least 3 different congressional districts. WIS. STAT. § 5.62(2). If the Board finds the petition to be sufficient, the political organization may have its candidates for President and Vice President printed on the General Election ballot. The names of candidates for President and Vice President are selected by the organization's nominating committee or convention and placed on the General Election ballot when the committee certifies their names to the Government Accountability Board no later than Tuesday, September 6, 2016.

Independent candidates for President and Vice President circulate and file nomination papers. The first day for circulating nomination papers is July 1, 2016, and the deadline for filing with the Government Accountability Board is Tuesday, August 2, 2016. WIS. STAT. § 8.20(8)(am). The nomination papers must contain at least 2,000 and no more than 4,000 signatures of Wisconsin electors. Independent candidates appear on the November General Election ballot only.

### Question

The question the Board must decide is: what is the first day authorized by law for the circulation of nomination papers (contribution 'window' opens) as a candidate at a general election in the case of a presidential candidate?

An argument could be made that the statute creates no lobbyist contribution 'window' at all, thus prohibiting all contributions from lobbyists to a state elected official running for President as a major party candidate. WIS. STAT. § 13.625 (1) (c) begins with the qualifier, "Except as permitted in this subsection...". A triggering event for the 'window' to open does not exist for a major party candidate running for President – a first day to circulate nomination papers. This result could be seen as quite extreme and a potential infringement upon a lobbyist's right to free speech. While reasonable restrictions, such as a 'window' for contributions have been upheld based on a legitimate concern over corruption or the appearance of corruption, an outright ban on contributions would not likely withstand the same scrutiny. Therefore the Board staff believes some lobbyist contribution 'window' should be available in this instance.

Alternatively, the first day for a major party candidate circulating anything for ballot placement is January 5, 2016. That would be by a major party candidate *not* selected by the Presidential Preference Selection Committee. But that is a petition for the "primary" not nomination papers for the general election. WIS. STAT. § 8.12(1)(c).

Finally, independent candidates for President and Vice President must circulate and file nomination papers. The first day for circulating nomination papers is July 1, 2016. WIS. STAT. § 8.20(8)(am). A reasonable reading of the lobbying law would be that a lobbyist may make a personal campaign contribution to a partisan state elected official running for President beginning July 1 in the year of the presidential election. This is because it is at least the day for *some* presidential candidates to circulate nomination papers, even if it is not required for a major party candidate. (Interestingly, the date for Congressional candidates is April 15).

### Considerations

The lobbying law does not account well for the statutory scheme of ballot access requirements for presidential candidates. When the Legislature revised the lobbying law earlier this year it did not address the issue and the issue had not previously arisen. The public policy behind the lobbying law restriction appears to be to prohibit contributions to state elected officials while the Legislature is in active session but to open up a window for contributions when campaigning season officially begins with individuals officially seeking candidacy.

From a textual standpoint, the “best” position might be to say that the window opens July 1, 2016, because that is the first day for at least some presidential candidates to begin to circulate nomination papers to qualify for the presidential ballot. From a public policy standpoint, the Board’s position could be that the window opens January 5, 2016, because that is when those candidates’ campaigning for the “primary vote” officially kicks off.

Ultimately, this is a statutory language problem and a reasonable position is to say that it is an issue that the Legislature should resolve.

### Recommendation

Staff makes no specific recommendation; however a decision by the Board is requested so that lobbyists, candidates and the public are provided with a consistent answer as the 2016 election presidential cycle progresses.

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**1997 Wis Eth Bd 9**  
**LOBBYING LAW**

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While serving as a member of Wisconsin's legislature, a candidate for Congress may accept a campaign contribution from a lobbyist or lobbying organization for the purpose of promoting the legislator's candidacy for election to Congress only during the year of the Congressional election between June 1 and the date of the general election and only if the Wisconsin Legislature has concluded its final floorperiod and is not in special or extraordinary session. (September 5, 1997)

Facts

- ¶1. This opinion is based upon these understandings:
- a. You write on behalf of a member of the Legislature.
  - b. The legislator is considering becoming a candidate for Congress.

Questions

- ¶2. The Ethics Board understands your questions to be:
1. What restrictions, if any, does the lobbying law impose on a member of the Legislature accepting campaign contributions from lobbying principals and lobbyists for the legislator's election to Congress?
  2. Do state laws prohibit transferring funds from a candidate's campaign committee for state office to the candidate's campaign committee for federal office?
  3. May a campaign committee for a candidate for state office make a contribution to a candidate for federal office?

Discussion

¶3. We will address your first question. Your other questions do not raise issues covered by laws administered by the Ethics Board. We refer you to the State of Wisconsin Elections Board and the Federal Election Commission for answers to those questions.

¶4. With certain qualifications, Wisconsin's lobbying law permits a lobbyist or an organization that employs a lobbyist to make a campaign contribution to a partisan elective state official "for the purpose of promoting the official's election to any national, state or local office" only in the year of a candidate's election between June 1 and the day of the general election.<sup>1</sup> See 1992 Wis Eth Bd 25. The restraints on a lobbyist's furnishing a campaign contribution to a Wisconsin legislator or his or her personal campaign committee also restrains the legislator's and campaign committee's acceptance of the lobbyist's contribution.

¶5. There is nothing in the statute's language or history that suggests, even remotely, that it applies to some legislators but not to those running for federal office or those with a federal campaign committee.<sup>2</sup> In considering the

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<sup>1</sup> Section 13.625(1)(c) and (2), *Wisconsin Statutes*, provides, in pertinent part:

**13.625 Prohibited practices. (1)** No lobbyist may:

(c) Except as permitted in this subsection, *make a campaign contribution*, as defined in s. 11.01 (6), *to a partisan elective state official for the purpose of promoting the official's election to any national, state or local office . . . or the official's or candidate's personal campaign committee*. A campaign contribution to a partisan elective state official or candidate for partisan elective state office or his or her personal campaign committee may be made in the year of a candidate's election between June 1 and the day of the general election, except that:

1. A campaign contribution to a candidate for legislative office may be made during that period only if the legislature concluded its final floorperiod, and is not in special or extraordinary session.

2. A campaign contribution by a lobbyist to the lobbyist's campaign for partisan elective state office may be made at any time.

**(2)** No principal may engage in the practices prohibited under sub. (1) (b) and (c). This subsection does not apply to the furnishing of transportation, lodging, food, meals, beverages or any other thing of pecuniary value which is also made available to the general public.

(Emphasis added).

<sup>2</sup> A "personal campaign committee," is defined in the statute to refer to a campaign committee established for the purpose of influencing any election in Wisconsin other than an election for national office. Section 13.62(11t), *Wisconsin Statutes*, provides:

matter in 1990, the Wisconsin Legislature amended the lobbying law, in 1989 Wisconsin Act 338, to apply the lobbying law's restrictions explicitly to campaign contributions to partisan elected officials running for non-state offices. The Legislative Reference Bureau's analysis of 1989 Assembly Bill 611, which was enacted as 1989 Wisconsin Act 338, states that the bill:

Extends the prohibition [on furnishing campaign contributions to any candidate for elective state office except during the period from June 1 to the day of the general election] to apply to partisan elective state officials for the purpose of promoting the officials' election to national, state or local office.

The legislature apparently determined that the need to protect against actual and apparent undue influence that can arise from lobbyists' and their employers' furnishing campaign contributions to legislators at the same time they are trying to influence those legislators on matters before the legislature is paramount. Once the campaign period begins on June 1, lobbying principals may contribute to the candidates of their choice for national office to the full extent permitted under campaign finance laws. Thus, as we have said on two prior occasions, the lobbying law's restriction clearly applies to a state legislator running for Congress. 1993 Wis Eth Bd 9; 1992 Wis Eth Bd 25.

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**13.62 (11t)** "Personal campaign committee" has the meaning given in s. 11.01(15).

Section 11.01(15), *Wisconsin Statutes*, provides:

**11.01 (15)** "Personal campaign committee" means a committee which is formed or operating for the purpose of influencing the election or reelection of a candidate, which acts with the cooperation of or upon consultation with the candidate or the candidate's agent or which is operating in concert with or pursuant to the authorization, request or suggestion of the candidate or the candidate's agent.

Section 11.01(1), *Wisconsin Statutes*, provides:

**11.01 (1)** "Candidate" means every person for whom it is contemplated or desired that votes be cast at any election held within this state, other than an election for national office . . . .

The definition of campaign committee to apparently exclude a committee established for a campaign for federal office does not appear to have significance for the reasons we discuss in the text, *infra*. Moreover, as we understand it, a personal campaign committee is, in essence, a candidate's agent for receiving and disbursing campaign contributions. To the extent this is so, a contribution made to a campaign committee is also a contribution to the candidate.

¶6. We note, as we have in the past, that an ambiguity arises as a result of the statute's referral to definitions of "candidate" and "campaign contribution" found in Chapter 11, *Wisconsin Statutes*. 1992 Wis Eth Bd 25. Section 13.62(5g), *Wisconsin Statutes*, provides that "candidate" "has the meaning given under s. 11.01(1)." Moreover, §13.625(1)(c) refers to campaign contributions "as defined in s. 11.01(6)." Section 11.01(1) provides:

"Candidate" means every person for whom it is contemplated or desired that votes be cast and any election held within this state, *other than an election for national office*, whether or not the person is elected or nominated, and who either tacitly or expressly consents to be so considered.

(Emphasis added).

A "contribution" is defined in §11.01(6) as anything of value "made for political purposes." Section 11.01(16), provides:

An act is for "political purposes" when it is done for the purpose of influencing the election or nomination for election of any individual to *state or local office*, for the purpose of influencing the recall from or retention in office of an individual holding a *state or local office*, or for the purpose of influencing the outcome of any referendum.

(Emphasis added).

¶7. It has been suggested that §13.625's references to Chapter 11 could be read to restrict a lobbyist's ability to make a campaign contribution only to candidates for state or local office (since only such contributions are "contributions" within the definition) and to make such contributions only in the year in which an individual is a candidate for state or local office (since only such individuals are "candidates" within the definition). That suggested reading of the statute would result in nonsensical text and surplusage of language -- results to be avoided in statutory interpretation.<sup>3</sup>

¶8. Read literally, §13.625(1)(b) would permit a lobbyist to make a campaign contribution [that is, a contribution to promote a candidacy for *state or local office*] to a candidate for "*national office*." Read literally,

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<sup>3</sup> See, e.g., *State v. Pham*, 137 Wis. 2d 31 (1987) (statutes should be interpreted to avoid absurd or unreasonable results); *Green Bay Broadcasting v. Green Bay Authority*, 116 Wis. 2d 1 (1983) (in construing a statute, every word, clause and sentence should be given a construction that will not render it surplusage).

§13.625(1)(c) would provide that a lobbyist may make a campaign contribution [that is, a contribution to promote a candidacy for *state or local office*] for the purpose of promoting an official's election to "*national office*." This reading is oxymoronic and would make all references to national office mere surplusage. We do not believe that reading comports with legislative intent. Clearly, the statute's references to the definitions in Chapter 11 were intended to be references to the general language describing the indicia of candidacy and the characteristics of contributions. The clear legislative intent is to permit a lobbyist to make campaign contributions to a partisan elective state official to promote the official's candidacy for a federal office only between June 1 and the day of the general election during the year in which the official stands for election to the federal office. 1992 Wis Eth Bd 25.

¶9. We also note that the Federal Election Commission has opined that the federal campaign finance law preempts the lobbying law's restrictions on campaign contributions from lobbyists and principals to candidates for federal office. (FEC Advisory Opinion 1993-25). That law provides:

The provisions of this Act, and of rules prescribed under this Act supersede and preempt any provision of State law with respect to election to Federal office.

2 United State Code §453. However, a conference committee report states:

It is the intent of the conferees that any State law regulating the political activities of State and local officers and employees is not preempted or superseded by the amendments to title 5, United States Code, made by this legislation.

S. Conf. Rep. No. 93-1237, 93d Cong., 2d Sess. *See also* 120 Cong. Rec. 34386 (Oct. 8, 1974).

As a result of this legislative history, the courts have said that the preemption language must be narrowly construed. *E.g.*, *Weber v. Heaney*, 995 F.2d 872 (8<sup>th</sup> Cir. 1993); *Stern v. General Electric Co.*, 924 F.2d 472 (2d Cir. 1991).

¶10. In three cases, the courts have held that federal law does not preempt state restrictions on campaign contributions to candidates for federal office. *Stern v. General Electric Co.*, *supra* (no preemption of New York law restricting corporations from making campaign contributions); *Reeder v. Kansas City Board of Police Commissioners*, 733 F.2d 543 (8<sup>th</sup> Cir. 1984) (no preemption of Missouri law prohibiting police department employees to make political contributions); *Pollard v. Board of Police Commissioners*, 665

S.W.2d 333 (Mo. 1984 (en banc), cert. den., 473 U.S. 907 (1985) (no preemption of Missouri law prohibiting police department employees to make political contributions).<sup>4</sup>

¶11. In two cases, the courts have held that federal law does preempt state restrictions. *Teper v. Miller*, 82 F.3d 989 (11<sup>th</sup> Cir. 1996) ( federal law preempts Georgia law prohibiting state legislators from accepting any campaign contributions during legislative session);<sup>5</sup> *Weber v. Heaney, supra* (federal law preempts Minnesota law permitting federal candidates to accept voluntary spending limits and accept state funding).

¶12. Because the courts have not been uniform in their decisions, unless or until a court rules that the federal campaign finance law preempts Wisconsin's lobbying law, we cannot concur with the Federal Election Commission's opinion.

¶13. Finally, we note that §13.625(1)(c)1., *Wisconsin Statutes*, provides:

**13.625(1)(c) 1.** A campaign contribution to a candidate for legislative office may be made during that period [in the year of a candidate's election between June 1 and the day of the general election] only if the legislature concluded its final floorperiod, and is not in special or extraordinary session.

The statute does not define "legislative office." However, elsewhere the statute uses the word "legislative" to refer to the Wisconsin legislature.<sup>6</sup>

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<sup>4</sup> In addition, Wisconsin's Attorney General, in a letter dated January 26, 1994, sent to the Federal Election Commission while the Commission still had its opinion under consideration, has said that federal law does not conflict with or preempt Wisconsin's lobbying law, citing *Kansas City Bd. of Police Com'rs, supra*, and *Pollard v. Board of Police Com'rs, supra*.

<sup>5</sup> In *Teper*, one judge of the three judge panel dissented, stating that the state's regulation was not of candidates for federal office but of legislators as legislators.

<sup>6</sup> See s.13.62(8) and (8m), *Wisconsin Statutes*. Section 13.62(8) provides:

**13.62 (8)** "Legislative action" means the development, drafting, introduction, consideration, modification, adoption, rejection, review, enactment or defeat of any bill, resolution, amendment, report, nomination, administrative rule or other matter by the legislature or by either house or any committee, subcommittee, joint or select committee thereof, or by a legislator or employe of the legislature acting in an official capacity. "Legislative action" also means the action of the governor in approving or vetoing any bill or portion thereof, and the action of the governor or any agency in the development of a proposal for introduction in the legislature.

Section 13.62(8m) provides:

Thus, the most reasonable interpretation of §13.625(1)(c)1. is that the restriction pertains only to candidates for the Wisconsin legislature, not candidates for the United States Senate or House of Representatives. Nonetheless, we recommend, as a matter of good public policy, that a legislator running for federal office not accept campaign contributions except in accordance with the restriction contained in this part of the statute.

Advice

The Ethics Board advises:

¶14. That while serving as a member of Wisconsin's legislature, a candidate for Congress may accept a campaign contribution from a lobbyist or lobbying organization for the purpose of promoting the legislator's candidacy for election to Congress only during the year of the Congressional election between June 1 and the date of the general election and only if the Wisconsin Legislature has concluded its final floorperiod and is not in special or extraordinary session.

WR980

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**13.62 (8m)** "Legislative employe" means a member or officer of the legislature, an individual employed under s. 13.20 or an employe of a legislative service agency, as defined in s. 16.70(6).



# State of Wisconsin \ Government Accountability Board

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JUDGE GERALD C. NICHOL  
Chairperson

KEVIN J. KENNEDY  
Director and General Counsel

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## MEMORANDUM

**DATE:** For September 1, 2015 Board meeting

**TO:** Members, Wisconsin Government Accountability Board

**FROM:** Jonathan Becker  
Ethics and Accountability Division Administrator

Prepared and Presented by:  
Adam Harvell  
Ethics Specialist

**SUBJECT:** Statement of Economic Interests Waiver Request from John Zeratsky  
and John Horning

### John Zeratsky:

John Zeratsky is a new member of the Moraine park Technical College Board as of July 1, 2015. He is requesting a waiver from reporting for section #3, Commercial Customers, Clients, and Tenants, and section #6, Officers and Directors.

Mr. Zeratsky details his request in the attached materials. His request for waiver on section #3 cites the number of customers, difficulty in preparing the data, and possible business harm from disclosure. His request for waiver on section #6 covers a committee that is part of the business he has already reported under section #2.

Waiver standards and instructions are included in the materials. For Mr. Zeratsky, the request under section #3 seems to meet the Board's approved standards for waiver. For the request under section #6, it isn't even clear that Mr. Zeratsky is required to report this information, because the committee is a sub-unit of a business that he has already reported on in section #2. Staff is bringing this to the Board to make sure that interpretation is valid.

### John Horning:

John Horning is a Board Member of the Wisconsin Housing & Economic Development Authority. He is requesting a waiver for section #3, Commercial Customers, Clients, and Tenants.

Mr. Horning's request is included with his SEI as well. He cites a large number of clients, the fact that the clients are mostly individuals, and the fact that there is no easy way to separate the business entities from the individuals in their client list.

For Mr. Horning, the request under section #3 seems to meet the Board's approved standards for waiver.

Recommendation:

The Board should grant Mr. Zeratsky's request for waiver, and instruct staff to send notice informing him of that fact.

The Board should grant Mr. Horning's request for waiver, and instruct staff to send notice informing him of that fact.

Wisconsin Government Accountability Board  
Madison, WI 53703  
Attn: Adam Harvell

RECEIVED  
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GOVERNMENT  
ACCOUNTABILITY BOARD

July 15, 2015

Dear Mr. Harvell,

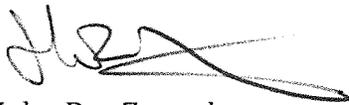
Per our discussions related to my recent appointment to the Moraine Park Technical College board, I am requesting a waiver from disclosure of information under Part A, Section 3.

I am a 15% shareholder in a sub S family business, National Rivet, in Waupun, WI. National Rivet has over 1000 active customers and well over 100 of them have sales of over \$10,000. Our accounting system isn't structured to easily report activity based on a certain sales threshold and would require custom programming to do so. Additionally, disclosing the names of key customers could provide a competitive advantage to others in the fastener business, if made available. Finally, none of our customers account for over 12% of annual net sales.

So, to reiterate, I am requesting a waiver from reporting based on the excessive burden of preparing the information and on potential business harm from doing so.

In addition, I am requesting a waiver of disclosure under Part A, 1(b) for my participation on the pension review committee of the National Rivet/Shaler Joint Employees Retirement Plan. This a Defined Benefit retirement plan serving over 125 present & past employees of my Family's Company. National Rivet. I sit on the pension committee, however we establish investment guidelines and rely on RW Baird to manage the plan and make daily decisions about its investments. Additionally, I do not have and claim to the plans assets, beyond my benefit upon retirement.

Thank you for your consideration of my waiver requests. I believe you will find them to be reasonable, under the circumstances. If you need additional Information, please do not hesitate to contact me.



John Bur Zeratsky  
N5602 County Road A  
Green Lake, WI 54941



## Harvell, Adam - GAB

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**From:** Bur Zeratsky <bur@nationalrivet.com>  
**Sent:** Wednesday, July 22, 2015 2:20 PM  
**To:** Harvell, Adam - GAB  
**Subject:** Re: Your request for waiver on your statement of economic interests

Adam,

Thank you for your response.  
Based on your information, I believe a request for a waiver under section 6 would be appropriate.

Thank you.

John Bur Zeratsky

Sent from my iPhone

On Jul 22, 2015, at 12:29 PM, Harvell, Adam - GAB <[Adam.Harvell@wisconsin.gov](mailto:Adam.Harvell@wisconsin.gov)> wrote:

Mr. Zeratsky,

We have received your statement of economic interests and your request for waiver from reporting your clients under section #3. We will take your request to our Board at their next meeting on September 1<sup>st</sup>. If they deny your request for waiver, we will notify you and ask you to update your SEI within 21 days. Until then we will treat your SEI as filed on time and complete.

I did have a question about your request for waiver on Part A, section 1(b). You requested a waiver about participation on the pension review committee. Section 1(b) isn't asking for your participation on any committees, it's asking about investment securities you own. You gave us a financial statement titled National Rivet Employee's 401(k) Savings Plan. Is that the same as the pension plan you're talking about? If you have given us a list of investment securities, you've satisfied the requirements for section 1(b), and you don't need to request a waiver.

Normally, your participation as an officer on a committee would be reported under Section #6, Officers and Directors. Do you want to request a waiver under section 6, so you don't have to report your involvement with that committee?

Thanks,  
Adam

Adam Harvell  
Campaign Finance Auditor and Ethics Specialist  
WI Government Accountability Board, Ethics Division  
212 E Washington Avenue, Third Floor  
Madison, WI 53703  
608-267-9252  
[adam.harvell@wi.gov](mailto:adam.harvell@wi.gov)



February 27, 2015

RE: Request for waiver of Commercial Customers, Clients, and Tenants list

Dear Government Accountability Board,

I am writing to request a waiver of section 3. Commercial Customer, Clients, and Tenants for two reasons. First, is our duty of privacy to our clients. Shorewest Realtors, Heritage Title Services, and Wisconsin Mortgage have privacy policies that state we will not share any client information without their consent. As a financial services company, we are very limited on what we can disclose.

The second reason, is that we don't specifically track if a client is a company, non-profit, or other organization. Most of our clients are individuals or families either selling or purchasing a residential property. We represent them as their real estate agent or title insurance provider. Occasionally we have an investor or business entity sell/purchase a property or a title policy, however those are not separately classified. To create a list would be an onerous task. It would be a manual process that would require a dedicated employee working several days to pull 11,691 real estate closing files and over 7,400 title policies to determine the structure of the client entity and whether we received more than \$10,000 from them in the calendar year.

Thank you for your consideration of this request. If additional information about this request is needed, please feel free to contact me at 262-289-6207 or [jphorning@shorewest.com](mailto:jphorning@shorewest.com).

Sincerely,

John P Horning



# State of Wisconsin \ Government Accountability Board

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JUDGE THOMAS H. BARLAND  
Chairperson

KEVIN J. KENNEDY  
Director and General Counsel

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## Standards for waiver of financial disclosure requirements

### Introduction

Wisconsin's Code of Ethics for State Public Officials requires approximately 2,500 state officials to file a Statement of Economic Interests on an annual basis. Wis. Stats. §§19.43 and 19.44. In general, the requirement applies to all state elected officials, top agency management, legislative service agency employees, and all gubernatorial appointments requiring Senate confirmation, as well as to candidates for state elective office.

The purpose of financial disclosure is twofold: (1) To give the public confidence that a state official is not acting in matters in which the official has a personal financial interest; and (2) To annually make an official think about the official's economic ties so that the individual may avoid conflicts.

Nonetheless, Wis. Stat. § 19.43 (8) provides that the Government Accountability Board may waive any financial disclosure requirement:

**19.43 (8)** On its own motion or at the request of any individual who is required to file a statement of economic interests, the board may extend the time for filing or waive any filing requirement if the board determines that the literal application of the filing requirements of this subchapter would work an unreasonable hardship on that individual or that the extension of the time for filing or waiver is in the public interest. The board shall set forth in writing as a matter of public record its reason for the extension or waiver.

The Board adopts and will apply the following considerations on a case-by-case basis in determining whether or not to grant a waiver of any disclosure requirement.

### *The position held by the official requesting a waiver.*

- Elected officials – Because such individuals generally exercise broad powers and in choosing whether or not to run for office an individual can take financial disclosure requirements into consideration, the Board will closely scrutinize whether it will grant a waiver.
- Full-time appointed officials – Because top management officials also exercise broad powers, albeit in narrower areas than elected officials, the Board will closely scrutinize whether it will grant a waiver.

- Part-time appointed officials – Part-time officials do not exercise the broad powers that elected and full-time officials do. They generally oversee Boards with limited jurisdiction and are more likely than full-time officials to have other jobs and active business interests. Such individuals’ service on state boards is a public service for which they receive little remuneration and, if disclosure would interfere with an individual’s perceived ability to carry on the individual’s private economic endeavors, it could lead to an unwillingness to serve.
- Employees with limited decision making power – Some agencies, such as the G.A.B., the Wisconsin Economic Development Corporation, the Legislative Audit Bureau, and the Wisconsin Housing and Economic Development Authority, require all employees, or all non-clerical employees, to file a statement. These employees may have relatively little control over regulatory and financial matters, and waiver may present less of a threat to the public interest.
- For any official, the Board will weigh heavily the relationship between the official’s governmental duties and the nature of the economic interests that the official does not want to disclose.

***The importance of confidentiality with respect to the economic interest sought to be protected.***

- While the Code of Professional Conduct does not prohibit an attorney from disclosing clients on a Statement of Economic Interests lawyers are justifiably sensitive to this, especially with respect to clients where the official’s representation is not generally known. The Board will give great weight to this concern. Countervailing considerations to granting a waiver are: (1) whether a client engages in activity related to the official’s regulatory responsibilities; and (2) the extent to which the official’s representation is known to others.
- For a start-up business or in a competitive business situation, the disclosure of customers may be detrimental. The Board will give weight to this consideration, but the harm claimed should not be simply speculative.
- It is unlikely that a relationship with non-Wisconsin entities could present a conflict of interest situation for an official. This appears to be recognized by Wis. Stat. §19.44 (1) (b) which provides that an ownership interest in a company not doing business in Wisconsin is not required to be disclosed. The Board will give great weight to this factor.
- The Board will give great weight to confidentiality requirements imposed by other sources of law.

***The number of interests an official has.***

- If an official has a great many interests to report, reporting may create a heavy administrative burden on the official. Moreover, it may be that no particular customer, client, or business interest is important if an official has very many such interests. The Board will consider this as a factor in determining whether to grant a waiver.

## Conclusion

The Board believes that waivers should be granted cautiously and rarely. No one is compelled to be a state public official – it is always voluntary and the reporting requirements should be known up front. On the other hand, it would be unfortunate if the reporting requirements discouraged an individual from entering public service or had a detrimental effect on an official's economic standing.

The Board views the above considerations as part of a sliding scale of factors. An applicant for waiver should be able to show that undue hardship is not simply speculative. And a requester should establish a showing of hardship by clear and convincing evidence.

When the Board grants a waiver, it will condition it on the requirement that an official recuse himself or herself from any matter that involves or impacts the entity that has not been disclosed whether or not a statutory conflict would otherwise exist.



# 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 September 1, 2015 Board Meeting

**TO:** Members, Wisconsin Government Accountability Board

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

**SUBJECT:** Promulgation of Administrative Rules

### **I. Status of Promulgation Progress:**

The Government Accountability Board (“G.A.B.” or “Board”) has authorized staff to promulgate 18 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.”

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

#### **A. Removal of Rules No Longer In Effect**

On June 29, 2015, staff sent the Legislative Reference Bureau (“LRB”) a letter describing how 2007 Wisconsin Act 1 renders certain administrative rules no longer in effect due to the Board’s actions (or inactions) in 2008 and 2009. A copy of that letter follows this memorandum as “Attachment 2.” On June 30, 2015, LRB’s Mr. Bruce Hoesly responded, indicating that “[b]ased on the information provided, we will remove the listed provisions from the GAB code pursuant to 2007 Act 1, as quoted in the letter.” Email from Bruce Hoesly, Legislative Reference Bureau Attorney, to Matthew Giesfeldt, G.A.B. Staff Counsel (June 30, 2015). A copy of that email and the subsequent email exchanges between the LRB and staff follow this memorandum as “Attachment 3.”

Mr. Hoesly provided staff with proofs of the published versions of the administrative code with the applicable rules removed.

On July 8, 2015, staff sent Mr. Hoesly a letter confirming that the proposed proofs are acceptable and represent the legally accurate versions of the GAB Administrative Code.

A copy of that letter follows this memorandum as “Attachment 4.” The online version of GAB’s Administrative Code now reflects the changes requested in the Board’s June 29, 2015 letter (Attachment 2). No further action or updates on this issue will be made in the future.

B. Technical College ID Emergency Rule in Effect

As noted at the Board’s June 18, 2015, meeting, 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*, and the emergency rule remains in effect for 150 days (October 12, 2015) or until promulgation of the equivalent permanent rule.

C. Technical College ID Permanent Rule Submitted to the Governor

Staff submitted the proposed rule with requisite analysis to the Legislative Council Rules Clearinghouse on June 9, 2015. Subsequently, staff received the Clearinghouse Comments, a copy of which follows this memorandum as “Attachment 5.” Upon consideration of the Clearinghouse Comments, staff revised the proposed rule and sent it, along with the Economic Impact Analysis, to the Governor for approval on July 15, 2015. A copy of the proposed rule follows this memorandum as “Attachment 6,” a copy of the Economic Impact Analysis follows this memorandum as “Attachment 7,” and a copy of the correspondence to the Governor follows this memorandum as “Attachment 8.” On August 29, 2015, the Governor approved the draft of the proposed rule. The approval letter follows this memorandum as “Attachment 9.”

D. Staff’s Administrative Rulemaking Process Guide

Although the Legislative Council produces two publications on administrative rulemaking (Administrative Rules Procedure Manual<sup>1</sup> and Wisconsin Legislator Brief Book on Administrative Rulemaking<sup>2</sup>), neither publication clearly defines the administrative rulemaking process specific to this agency. Using those publications and other applicable laws, staff produced an Administrative Rulemaking Process guide that describes the specific procedures applicable to the G.A.B. to help guide staff working on administrative rulemaking in the future. A copy of the Administrative Rulemaking Process Guide follows this memorandum as “Attachment 10.”

**II. Continued Progress:**

As you are aware, former Staff Counsel Matt Giesfeldt was assigned to shepherd the Board’s administrative rules through the, at times, tedious rulemaking process. The remaining members of the legal team and the management team are committed to

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<sup>1</sup> Available at [http://lc.legis.wisconsin.gov/media/1221/14adminrules\\_manual.pdf](http://lc.legis.wisconsin.gov/media/1221/14adminrules_manual.pdf).

<sup>2</sup> Available at [http://docs.legis.wisconsin.gov/misc/lc/briefing\\_book/ch05\\_admrules.pdf](http://docs.legis.wisconsin.gov/misc/lc/briefing_book/ch05_admrules.pdf).

building on the progress made recently. As always, updates on this process will be provided to the Board on a regular basis.



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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"> <li>• Statement of Scope drafted</li> <li>• Statement of Scope submitted to the Governor (3/30/15)</li> <li>• Statement of Scope published in the Administrative Register (4/13/15)</li> <li>• Board approved Statement of Scope (4/29/15)</li> <li>• Judge Nichol approved language and analysis of proposed emergency rule (5/6/15)</li> <li>• Staff submitted language and analysis of proposed emergency rule to the Governor (5/7/15)</li> <li>• The Governor provided written approval of language and analysis of emergency rule (5/12/15)</li> <li>• Staff submitted emergency rule to <i>Wisconsin State Journal</i> for publication (5/12/15)</li> <li>• Emergency rule published in <i>Wisconsin State Journal</i> (5/15/15); <b>emergency rule in effect with publication</b></li> <li>• Staff submitted certified copy of emergency rule to Legislative Reference Bureau for publication in Administrative Register (5/13/15)</li> <li>• Staff submitted emergency rule to Assembly and Senate chief clerks for distribution to the Legislature (5/13/15)</li> <li>• Emergency rule published in Administrative Register (5/18/15); <i>available at</i> <a href="https://docs.legis.wisconsin.gov/code/register/2015/713A3/register#emr_effect">https://docs.legis.wisconsin.gov/code/register/2015/713A3/register#emr_effect</a></li> <li>• Draft of permanent rule submitted to Judge Nichol June 4, 2015</li> <li>• Judge Nichol approved rule on June 6, 2015</li> <li>• Staff submitted proposed rulemaking order to Legislative Council Rules Clearinghouse on June 8, 2015</li> <li>• Staff submitted Fiscal Estimate &amp; Economic Impact Analysis to Legislative Council Rules Clearinghouse on June 9, 2015</li> <li>• Rules Clearinghouse submitted Report to G.A.B. staff</li> <li>• Staff reviewed Report and incorporated suggested changes into draft of rule</li> <li>• Staff submitted draft of final rule to the Governor (7/15/15)</li> <li>• Governor approved draft of final rule (8/19/15)</li> </ul>

2	Contents of Training that Municipal Clerks Must Provide to Election Inspectors and Special Voting Deputies	January 13, 2015	<ul style="list-style-type: none"> <li>• Statement of Scope drafted</li> <li>• Statement of Scope submitted to the Governor (4/14/15)</li> <li>• Statement of Scope published in Administrative Register (5/11/15); <i>available at</i> <a href="https://docs.legis.wisconsin.gov/code/register/2015/713A2/register">https://docs.legis.wisconsin.gov/code/register/2015/713A2/register</a></li> <li>• Board approved Statement of Scope (6/18/15)</li> <li>• Staff has commenced drafting the rule</li> </ul>
3	Standards for Determining Validity of Votes Cast with Electronic Voting Equipment	January 13, 2015	<ul style="list-style-type: none"> <li>• Staff completed first draft of Statement of Scope in 2013</li> <li>• Staff has commenced drafting the Statement of Scope</li> </ul>
4	Approval of Electronic Voting Equipment in Accordance with WIS. STAT. §§5.40(2), 5.76, 5.77, 5.905, 7.23(1)(g) (Electronic Voting Systems, GAB Ch. 7)	January 13, 2015	<ul style="list-style-type: none"> <li>• Statement of Scope drafted</li> <li>• Statement of Scope submitted to the Governor (4/9/2015)</li> <li>• Statement of Scope published in Administrative Register (5/11/15); <i>available at</i> <a href="https://docs.legis.wisconsin.gov/code/register/2015/713A2/register">https://docs.legis.wisconsin.gov/code/register/2015/713A2/register</a></li> <li>• Board approved Statement of Scope (6/18/2015)</li> <li>• Staff has commenced drafting the rule</li> </ul>
5	Ballot Security and Interpreting WIS. STAT. §§5.84, 5.86, 5.87, 5.905, 5.91, 7.23, 7.51, and 9.01 (Ballot and Electronic Voting System Security, GAB Ch. 5)	January 13, 2015	<ul style="list-style-type: none"> <li>• Staff completed first draft of Statement of Scope in 2013</li> <li>• Staff has completed the new draft of the Statement of Scope to submit to the Governor</li> </ul>
6	Administer Statutory Requirements for Electronic Voting Systems	January 13, 2015	<ul style="list-style-type: none"> <li>• Staff has commenced drafting other Statements of Scope that cover these requirements</li> </ul>
7	Election Notices that Clerks Must Use to Inform Public About Elections	January 13, 2015	<ul style="list-style-type: none"> <li>• Staff has completed the first draft of the Statement of Scope</li> </ul>
8	Responsibilities of Clerks for Maintaining	January 13, 2015	<ul style="list-style-type: none"> <li>• Staff has completed the first draft of the Statement of Scope</li> </ul>

	Records in the Statewide Voter Registration System		
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"> <li>• Statement of Scope drafted</li> <li>• Statement of Scope submitted to the Governor (5/18/15)</li> </ul>
10	Procedures for Ethics and Elections Complaints	April 29, 2015	<ul style="list-style-type: none"> <li>• Staff has drafted the Statement of Scope</li> </ul>
11	Acceptable Proofs of Residence (Including Electronic)	April 29, 2015	<ul style="list-style-type: none"> <li>• Statement of Scope drafted</li> <li>• Scope statement submitted to the Governor (6/2/15)</li> </ul>
12	U.S. Citizen as Witness for Overseas Voter	April 29, 2015	<ul style="list-style-type: none"> <li>• Staff has commenced drafting the Statement of Scope</li> </ul>
13	Procedures for Curbside Voting	April 29, 2015	<ul style="list-style-type: none"> <li>• Staff has commenced drafting the Statement of Scope</li> </ul>
14	Definition of "Same Grounds" for Voting Purposes in WIS. STAT. §6.875(3)(b)	April 29, 2015	<ul style="list-style-type: none"> <li>• Staff has commenced drafting the Statement of Scope</li> </ul>
15	Synchronization of Certification Terms for Municipal Clerks, Special Registration Deputies, and Election Inspectors	April 29, 2015	<ul style="list-style-type: none"> <li>• Statement of Scope drafted</li> <li>• Scope statement submitted to the Governor (6/2/15)</li> <li>• Senator Lazich contacted staff to discuss a possible statutory change as an alternative to the proposed rule (7/3/2015)</li> </ul>
16	Applications for Approval of Modification to Voting Systems Previously Approved for Use in Wisconsin	April 29, 2015	<ul style="list-style-type: none"> <li>• Staff has commenced drafting the Statement of Scope</li> </ul>
17	Removal of Rules No Longer In Effect	January 13, 2015	<ul style="list-style-type: none"> <li>• Staff sent letter to Legislative Reference Bureau requesting to remove administrative rules no longer in effect (6/29/2015)</li> <li>• Legislative Reference Bureau informed staff that it will work</li> </ul>

			<p>to remove rules no longer in effect (6/30/2015)</p> <ul style="list-style-type: none"> <li>Legislative Reference Bureau approved proposed proofs of changes to the GAB sections of the Code, removing the sections as required by 2007 Wisconsin Act 1 (7/8/15)</li> </ul>
18	Deadline for Receipt of Documents Filed by Fax	June 18, 2015	<ul style="list-style-type: none"> <li>Staff has commenced drafting the Statement of Scope</li> </ul>
19	Amend GAB §3.04(2) to comply with WIS. STAT. §6.97(3)(b)	June 18, 2015	<ul style="list-style-type: none"> <li>Staff has drafted the Statement of Scope</li> </ul>

# State of Wisconsin\Government Accountability Board

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JUDGE GERALD C. NICHOL  
Chair

KEVIN J. KENNEDY  
Director and General Counsel

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Via Email Only

June 29, 2015

Wisconsin Legislative Reference Bureau  
c/o Attorney Bruce Hoesly  
[Bruce.hoesly@legis.wisconsin.gov](mailto:Bruce.hoesly@legis.wisconsin.gov)  
Attorney Gordon M. Malaise  
[Gordon.Malaise@legis.wisconsin.gov](mailto:Gordon.Malaise@legis.wisconsin.gov)  
Attorney Michael Duchek  
[Michael.Duchek@legis.wisconsin.gov](mailto: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 (“G.A.B.” or “Board”), I seek your assistance to remove certain administrative rules from the 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).<sup>1</sup> During the Board’s initial and extended review periods, the Board explicitly declined to reaffirm several administrative rules,<sup>2</sup> including:

- WIS. ADMIN CODE GAB §1.29;<sup>3</sup>
- WIS. ADMIN CODE GAB §1.41;<sup>4</sup>
- WIS. ADMIN CODE GAB §1.55;<sup>5</sup> and
- WIS. ADMIN CODE GAB §4.01.<sup>6</sup>

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,

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<sup>1</sup> Available at [http://www.gab.wi.gov/sites/default/files/event/12\\_17\\_08\\_openmeetingminutes\\_pdf\\_14069.pdf](http://www.gab.wi.gov/sites/default/files/event/12_17_08_openmeetingminutes_pdf_14069.pdf).

<sup>2</sup> 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.

<sup>3</sup> 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](http://www.gab.wi.gov/sites/default/files/event/03_26_08_openmeetingminutes_pdf_13805.pdf) (“March 26, 2009, Minutes”).

<sup>4</sup> 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](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.”) (“March 30-31, 2009, Minutes”).

<sup>5</sup> 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](http://www.gab.wi.gov/sites/default/files/event/05_05_08_openmeetingminutes_pdf_15882.pdf) (“May 5, 2008, Minutes”).

<sup>6</sup> *May 5, 2008, Minutes*.

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.<sup>7</sup>

The Board took no action on WIS. ADMIN CODE GAB §§20.01, 21.01, 21.04, and chs. 4, 5.<sup>8</sup>

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 G.A.B. staff to discuss any questions or concerns that you may have. You may contact G.A.B. staff counsel Matthew Giesfeldt at [matthew.giesfeldt@wi.gov](mailto:matthew.giesfeldt@wi.gov) or (608) 266-2094.

Sincerely,

**Government Accountability Board**



Kevin J. Kennedy  
Director and General Counsel

Enclosure

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<sup>7</sup> 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](http://www.gab.wi.gov/sites/default/files/event/06_09_08_openmeetingminutes_pdf_69248.pdf) (“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](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](http://www.gab.wi.gov/sites/default/files/event/10_06_08_openmeetingminutes_pdf_15912.pdf) (“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](http://www.gab.wi.gov/sites/default/files/event/11_11_08_openmeetingminutes_pdf_43114.pdf) (“November 11, 2008, Minutes”).

<sup>8</sup> See, *supra*, note 7.



**Giesfeldt, Matthew - GAB**

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**From:** Hoesly, Bruce <Bruce.Hoesly@legis.wisconsin.gov>  
**Sent:** Tuesday, June 30, 2015 8:46 AM  
**To:** Giesfeldt, Matthew - GAB; Malaise, Gordon - LEGIS; Duchek, Michael - LEGIS  
**Cc:** Kennedy, Kevin - GAB; Kreye, Joseph A - LEGIS; Kuczenski, Tracy - LEGIS  
**Subject:** RE: Correspondence from G.A.B. Dir. Kennedy

Based on the information provided, we will remove the listed provisions from the GAB code pursuant to 2007 Act 1, as quoted in the letter.

We will publish the updated code in the end of July Register and will forward you proofs of the modified chapters 1 and 20 for your approval.

Bruce

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**From:** Giesfeldt, Matthew - GAB [<mailto:Matthew.Giesfeldt@wisconsin.gov>]  
**Sent:** Monday, June 29, 2015 4:01 PM  
**To:** Hoesly, Bruce; Malaise, Gordon; Duchek, Michael  
**Cc:** Kennedy, Kevin - GAB  
**Subject:** Correspondence from G.A.B. Dir. Kennedy

Attorneys Hoesly, Malaise, and Duchek,  
Please see the attached correspondence from Kevin Kennedy, director and general counsel at the Government Accountability Board.

As the letter states, you may contact me with any concerns, questions, or follow-up.

Thank you,

**Matthew W. Giesfeldt**

Staff Counsel

Wisconsin Government Accountability Board

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P.O. Box 7984

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(608) 266-2094

(608) 264-9319 (fax)

[Matthew.giesfeldt@wisconsin.gov](mailto:Matthew.giesfeldt@wisconsin.gov)

## Giesfeldt, Matthew - GAB

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**From:** Hoesly, Bruce <Bruce.Hoesly@legis.wisconsin.gov>  
**Sent:** Tuesday, June 30, 2015 8:58 AM  
**To:** Giesfeldt, Matthew - GAB  
**Subject:** RE: Correspondence from G.A.B. Dir. Kennedy

I missed ch. 21 in the chapters that will be modified per the letter. Sorry.

Bruce

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**From:** Giesfeldt, Matthew - GAB [<mailto:Matthew.Giesfeldt@wisconsin.gov>]  
**Sent:** Monday, June 29, 2015 4:01 PM  
**To:** Hoesly, Bruce; Malaise, Gordon; Duchek, Michael  
**Cc:** Kennedy, Kevin - GAB  
**Subject:** Correspondence from G.A.B. Dir. Kennedy

Attorneys Hoesly, Malaise, and Duchek,  
Please see the attached correspondence from Kevin Kennedy, director and general counsel at the Government Accountability Board.

As the letter states, you may contact me with any concerns, questions, or follow-up.

Thank you,

**Matthew W. Giesfeldt**

Staff Counsel

Wisconsin Government Accountability Board

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## Giesfeldt, Matthew - GAB

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**From:** Hoesly, Bruce <Bruce.Hoesly@legis.wisconsin.gov>  
**Sent:** Tuesday, June 30, 2015 9:05 AM  
**To:** Giesfeldt, Matthew - GAB  
**Subject:** RE: Correspondence from G.A.B. Dir. Kennedy

You currently have the following note at the beginning of GAB 20. Do you want it to remain?

Also, we will site 2007 Act 1 in the Registers list of Affected rules for our authority for making these rule removals. Am I correct that the authority for GAB 21 is section 209 (3) (e) and 209 (2) (e) for the remaining chapters?

Bruce

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**From:** Giesfeldt, Matthew - GAB [<mailto:Matthew.Giesfeldt@wisconsin.gov>]  
**Sent:** Monday, June 29, 2015 4:01 PM  
**To:** Hoesly, Bruce; Malaise, Gordon; Duchek, Michael  
**Cc:** Kennedy, Kevin - GAB  
**Subject:** Correspondence from G.A.B. Dir. Kennedy

Attorneys Hoesly, Malaise, and Duchek,

Please see the attached correspondence from Kevin Kennedy, director and general counsel at the Government Accountability Board.

As the letter states, you may contact me with any concerns, questions, or follow-up.

Thank you,

**Matthew W. Giesfeldt**

Staff Counsel

Wisconsin Government Accountability Board

212 East Washington Ave., Third Floor

P.O. Box 7984

Madison, Wisconsin 53707-7984

(608) 266-2094

(608) 264-9319 (fax)

[Matthew.giesfeldt@wisconsin.gov](mailto:Matthew.giesfeldt@wisconsin.gov)

## Giesfeldt, Matthew - GAB

---

**From:** Hoesly, Bruce <Bruce.Hoesly@legis.wisconsin.gov>  
**Sent:** Wednesday, July 01, 2015 8:06 AM  
**To:** Giesfeldt, Matthew - GAB  
**Subject:** RE: Correspondence from G.A.B. Dir. Kennedy

Thanks matt.

I'm putting the proofs in Inter D mail today.

Bruce

---

**From:** Giesfeldt, Matthew - GAB [<mailto:Matthew.Giesfeldt@wisconsin.gov>]  
**Sent:** Tuesday, June 30, 2015 4:51 PM  
**To:** Hoesly, Bruce  
**Subject:** RE: Correspondence from G.A.B. Dir. Kennedy

Hi Bruce,

Thanks so much for your help with this, Bruce.

To go out of order with your questions: yes, Act 1, §209(3)(e) is for former *Ethics* Board rules, and §209(2)(e) is for former *Elections* Board rules.

---

And, with regard to the note at the beginning of GAB 20 (**Chapter GAB 20 has been superseded by s. 5.05 (2m), Wis. Stat., and is no longer effective, except for complaints alleging a violation of election laws by a local election official under s. 5.06, Wis. Stat.**), we understand that to still be accurate, even considering Act 1. Further, the Board plans to promulgate a repeal and recreation of Ch. 20 soon, so at that point, we can remove the note so that we can make the rules clearer about the substance to which they apply, but for now, it makes sense to leave it in.

Thanks, Bruce.  
Matt

**From:** Hoesly, Bruce [<mailto:Bruce.Hoesly@legis.wisconsin.gov>]  
**Sent:** Tuesday, June 30, 2015 9:05 AM  
**To:** Giesfeldt, Matthew - GAB  
**Subject:** RE: Correspondence from G.A.B. Dir. Kennedy

You currently have the following note at the beginning of GAB 20. Do you want it to remain?

Also, we will site 2007 Act 1 in the Registers list of Affected rules for our authority for making these rule removals. Am I correct that the authority for GAB 21 is section 209 (3) (e) and 209 (2) (e) for the remaining chapters?

Bruce

---

**From:** Giesfeldt, Matthew - GAB [<mailto:Matthew.Giesfeldt@wisconsin.gov>]  
**Sent:** Monday, June 29, 2015 4:01 PM  
**To:** Hoesly, Bruce; Malaise, Gordon; Duchek, Michael

**Cc:** Kennedy, Kevin - GAB

**Subject:** Correspondence from G.A.B. Dir. Kennedy

Attorneys Hoesly, Malaise, and Duchek,

Please see the attached correspondence from Kevin Kennedy, director and general counsel at the Government Accountability Board.

As the letter states, you may contact me with any concerns, questions, or follow-up.

Thank you,

**Matthew W. Giesfeldt**

Staff Counsel

Wisconsin Government Accountability Board

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# State of Wisconsin\Government Accountability Board

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<http://gab.wi.gov>



JUDGE GERALD C. NICHOL  
Chair

KEVIN J. KENNEDY  
Director and General Counsel

---

Via Interdepartmental Mail

July 8, 2015

Wisconsin Legislative Reference Bureau  
c/o Attorney Bruce Hoesly  
[Bruce.hoesly@legis.wisconsin.gov](mailto:Bruce.hoesly@legis.wisconsin.gov)  
One East Main Street, Suite 200  
Madison, Wisconsin 53703

Re: Removal of Administrative Rules No Longer In Effect

Dear Attorney Hoesly:

Thank you for all of your help as we work to remove certain administrative rules no longer in effect after the Government Accountability Board ("G.A.B." or "Board") did not reaffirm those rules in 2009. We have reviewed the proofs you sent on June 30, 2015, for WIS. ADMIN. CODE GAB Chs. 1, 20, and 21. We do not recommend any additional changes from the proofs, and they are ready to publish, and you may keep the Note<sup>1</sup> at the beginning of Ch. 20. Director Kennedy initiated the proofs cover page with approval to publish, and that proofs cover page and the proofs themselves are enclosed with this correspondence.

Please do not hesitate to contact me to discuss any questions or concerns that you may have. You may reach me at [matthew.giesfeldt@wi.gov](mailto:matthew.giesfeldt@wi.gov) or (608) 266-2094.

Sincerely,

**Government Accountability Board**

A handwritten signature in black ink, appearing to read "Matthew Giesfeldt".

Matthew Giesfeldt  
Staff Counsel

Enclosures

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<sup>1</sup> "GAB 20 has been superseded by s. 5.05 (2m), Wis. Stat., and is no longer effective, except for complaints alleging a violation of elections laws by a local election official under s. 5.06, Wis. Stat."





## WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

**Scott Grosz**  
*Clearinghouse Director*

**Terry C. Anderson**  
*Legislative Council Director*

**Margit Kelley**  
*Clearinghouse Assistant Director*

**Jessica Karls-Ruplinger**  
*Legislative Council Deputy Director*

### CLEARINGHOUSE RULE 15-047

#### Comments

**[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Legislative Reference Bureau and the Legislative Council Staff, dated December 2014.]**

#### 1. Statutory Authority

In the statutory authority section of the rule summary, the agency should omit “5.05 (6a)” from the cited statutes because that subsection relates to advisory opinions and does not grant rule-making authority. In addition, the agency might consider also citing to s. 227.11 (2) (a), Stats., for rule-making authority. If s. 227.11 (2) (a), Stats., is cited, the authority provided by that statutory section should also be explained in the explanation of agency authority. [s. 1.02 (2m), Manual.]

#### 2. Form, Style and Placement in Administrative Code

a. The proposed rule should include an introductory clause that reads: “The Government Accountability Board proposes an order to create ch. GAB 10, relating to the use of Wisconsin technical college system identification cards for voting purposes.”. [s. 1.02 (1), Manual.]

b. In the statutes interpreted section of the rule summary, the agency might consider including all the statutory sections that are cited in s. GAB 10.02.

c. The text in SECTIONS 1, 2, and 4 should be combined into a single section, with the following treatment clause: “SECTION 1. Chapter GAB 10 is created to read:”. In SECTION 1, the chapter title should appear first, followed by the contents of ss. GAB 10.01 and 10.02. The chapter title should be centered and written in solid capital letters. [s. 1.05 (2) (a), Manual.]

d. In s. GAB 10.01 (1) (intro.), “satisfies all of the following” should be inserted after “that”. In addition, s. GAB 10.01 (1) (a) to (d) should end in periods, rather than semicolons, and, in s. GAB 10.01 (1) (e), a period should replace “; and”. [s. 1.03 (3) and (4), Manual.]

e. SECTION 3 should be numbered SECTION 2, and it should read as follows: “SECTION 2. EFFECTIVE DATE. This rule shall take effect on the first day of the month following publication in the Wisconsin Administrative Register as provided in s. 227.22 (2) (intro.), Stats.”. [s. 1.02 (4), Manual.]

#### **4. Adequacy of References to Related Statutes, Rules and Forms**

a. Throughout the rule summary, references to statutes should be formatted as “s. \_\_\_\_, Stats.”, or, if multiple sections are referenced, “ss. \_\_\_\_, Stats.”. [s. 1.07 (2), Manual.]

b. In the summary of federal regulation section of the rule summary, should “52 USC § 15301 et seq.” be replaced with “52 USC § 20901 et seq.”?

c. In s. GAB 10.02, the following changes should be made: (1) “Stats.” should replace “Wis. Stat.” in both instances; (2) “6.15 (2) (bm) and (3)” should replace “6.15 (2) (bm), 6.15 (3)”; and (3) “6.86 (1) and (3)” should replace “6.86 (1), 6.86 (2)”. [s. 1.07 (2), Manual.]

#### **5. Clarity, Grammar, Punctuation and Use of Plain Language**

a. In the explanation of agency authority section of the rule summary, the word “emergency” should be omitted in the second paragraph. The proposed rule is not an emergency rule. In addition, in the discussion of the JCRAR action, the agency should explain that the emergency rule was promulgated and that the proposed rule is a permanent rule.

b. The plain language analysis section of the rule summary describes the requirements that a technical college system identification card must satisfy in order to be used for voting. That description should explain all of the six requirements in s. GAB 10.01 (1).

c. In s. GAB 10.01 (1), “student identification card” is defined by listing the requirements that the document must satisfy. The requirements are from s. 5.02 (6m) (f) and (16c), Stats. However, s. 5.02 (16c), Stats., contains an additional requirement that is not explicitly included in the list in s. GAB 10.01 (1), which a requirement that the document contain “the name of the individual to whom the document was issued”. Why is that requirement not explicitly included in the list? Does the board consider the reference to a signature in s. GAB 10.01 (1) (c) sufficient to capture the name requirement?

d. In ss. GAB 10.01 (2) and 10.02 (title), “Technical College System” should not be capitalized. [ss. 1.01 (4) and 1.05 (2) (b), Manual.]

e. In s. GAB 10.02, the period after “10.02” in the section number should be omitted.

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

The Government Accountability Board proposes an order to create ch. GAB 10, relating to the use of Wisconsin technical college system identification cards for voting purposes.

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:**

ss. 5.02(6m), 5.02(16c), 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), 6.97 and 39.30(1)(d), Stats.

**Statutory authority:**

ss. 5.05(1), 5.05(6a), 227.10(1), 227.11(2)(a), and 227.26(2), Stats.

**Explanation of agency authority:**

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.” s. 5.01(5), Stats. 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.” s. 5.05(1)(f), Stats. The G.A.B. “may promulgate rules interpreting the provisions of any statute enforced or administered by the agency, if the agency considers it necessary to effectuate the purpose of the statute[.]” s. 227.11(2)(a), Stats. Consistent with that authority, the proposed rules interpret ss. 5.02(6m), 5.02(16c), 6.15(2)(bm), and 6.79(2), Stats., clarifying the Board’s finding that a Wisconsin Technical College System is an accredited institution for the purposes of issuing a student identification card for voting.

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 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 ss. 227.10(1) and 227.26(2), Wis. Stats., 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. The G.A.B. promulgated an emergency rule, EmR1515, effective on May 15, 2015, and the G.A.B. now seeks to promulgate EmR1515's permanent counterpart.

**Related statute or rule:**

ss. 5.02(6m), 5.02(16c), 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), 6.97 and 39.30(1)(d), Stats.

**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 a) is unexpired; b) contains the date that the card was issued; c) contains the name of the student to whom the card was issued; d) contains the signature of the student to whom the card was issued; e) contains a photograph of the student to whom the card was issued; f) contains an expiration date indicating that the card will expire no later than two years after the card was issued; and g) is issued to a student who establishes that he or she is enrolled at the college that issued the card on the date that the student uses the card for voting purposes. 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:**

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 s. 39.30 (1)(d), Stats., 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 s. 5.02(6m), Stats. 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. An "accredited" institution" is define 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." s. 39.30 (1)(d), Stats. 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 s. 5.02(6m), Stats.

### **Effect on small business:**

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

**Agency contact person:**

Matthew Giesfeldt  
Staff Counsel  
212 East Washington Avenue, Third Floor  
P.O. Box 7984  
Madison, Wisconsin 53707-7984  
(608) 264-9319 (fax)  
[matthew.giesfeldt@wisconsin.gov](mailto: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: Chapter GAB 10 is created to read:

CHAPTER GAB 10

VOTER IDENTIFICATION

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

- (1) “Student identification card” means a document or card that satisfies all of the following:
  - (a) Is unexpired.
  - (b) Contains the date of issuance.
  - (c) Contains the name of the student to whom it is issued.
  - (d) Contains the signature of the student to whom it is issued.
  - (e) Contains a photograph that reasonably resembles the student to whom it is issued.
  - (f) Contains an expiration date indicating that the card expires no later than 2 years after the date of issuance.
  - (g) 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.

**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), Stats., and may be presented by an elector obtaining a ballot pursuant to ss. 6.15(2)(bm) and (3), 6.18, 6.79(2), 6.82, 6.86(1) and (2), 6.87, 6.875(6), and 6.97, Stats.

SECTION 2: Effective date.

This rule shall take effect on the first day of the month following publication in the Wisconsin Administrative Register as provided in s. 227.22 (2) (intro.), Stats.



## ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

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1. Type of Estimate and Analysis

Original    Updated    Corrected

---

2. Administrative Rule Chapter, Title and Number

WIS. ADMIN. CODE GAB, Ch. 10

---

3. Subject

The use of technical college system student identification cards for voting.

---

4. Fund Sources Affected

GPR    FED    PRO    PRS    SEG    SEG-S

5. Chapter 20, Stats. Appropriations Affected

N/A

---

6. Fiscal Effect of Implementing the Rule

No Fiscal Effect    Increase Existing Revenues    Increase Costs  
 Indeterminate    Decrease Existing Revenues    Could Absorb Within Agency's Budget  
 Decrease Cost

---

7. The Rule Will Impact the Following (Check All That Apply)

State's Economy    Specific Businesses/Sectors  
 Local Government Units    Public Utility Rate Payers  
 Small Businesses (if checked, complete Attachment A)

---

8. Would Implementation and Compliance Costs Be Greater Than \$20 million?

Yes    No

---

9. Policy Problem Addressed by the Rule

Clarification of WIS. STAT. §6.15 as applied to technical college system identification cards for voting

---

10. Summary of the businesses, business sectors, associations representing business, local governmental units, and individuals that may be affected by the proposed rule that were contacted for comments.

Members of the Wisconsin Technical College System

---

11. Identify the local governmental units that participated in the development of this EIA.

N/A

---

12. Summary of Rule's Economic and Fiscal Impact on Specific Businesses, Business Sectors, Public Utility Rate Payers, Local Governmental Units and the State's Economy as a Whole (Include Implementation and Compliance Costs Expected to be Incurred)

The Board finds that the proposed rule will have no economic impact on small businesses.

---

13. Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule

The proposed rule clarifies that a WTCS student identification card is included in the description of student identification cards that may be used as acceptable identification in order to receive a ballot.

On November 9, 2011, the Board made a determination that a Wisconsin Technical College System institution is accredited under WIS. STAT. §39.30 (1)(d).<sup>1</sup> Based on that determination, the Board directed G.A.B. staff to include WTCS student identification cards as an acceptable form of identification for voting in its training and educational materials as part of the agency's responsibility to administer the voter identification law pursuant to WIS. STAT. §5.05 (1); *see also* Section 144(1) of 2011 Wisconsin Act 23

---

<sup>1</sup>In 2011, the Board analyzed the Photo ID Law to determine that an unexpired WTCS student identification card met the statutory definition found in WIS. STAT. §5.02(6m)(f). The Board determined that WTCS institutions are accredited under WIS. STAT. §39.30(1)(d). In making this determination, the Board considered advice from G.A.B. staff regarding the accepted rules of statutory interpretation, starting with the plain language. The Board also considered G.A.B. staff information regarding the legislative history of the applicable statutes. In making its determination, the Board did *not* consider whether permitting the use of WTCS student identification cards was good public policy.

## ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

("[T]he government accountability board shall conduct a public informational campaign for the purpose of informing prospective voters of the voter identification requirements of this act.").

### Alternatives:

The alternative to promulgating this rule is to significantly restrict the number of electors who may use a student identification card in order to receive a ballot and to create potential confusion for clerks and voters regarding acceptable forms of voter identification on Election Day. The Board originally addressed this issue because G.A.B. staff raised a question about legislative intent as it was developing its implementation approach to training local election officials and educating the public on the voter identification requirement. The issue will again be raised and need to be clarified as the May 19, 2015 special elections approach.

---

#### 14. Long Range Implications of Implementing the Rule

Wisconsin Technical College System students may use student identification cards that meet the requirements of WIS. STAT. §6.15.

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#### 15. Compare With Approaches Being Used by Federal Government

N/A

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#### 16. Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota)

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.

---

#### 17. Contact Name

Matthew W. Giesfeldt

---

#### 18. Contact Phone Number

608 266-2094

---

This document can be made available in alternate formats to individuals with disabilities upon request.

## ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

### ATTACHMENT A

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1. Summary of Rule's Economic and Fiscal Impact on Small Businesses (Separately for each Small Business Sector, Include Implementation and Compliance Costs Expected to be Incurred)

N/A

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2. Summary of the data sources used to measure the Rule's impact on Small Businesses

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.

---

3. Did the agency consider the following methods to reduce the impact of the Rule on Small Businesses?

- Less Stringent Compliance or Reporting Requirements
- Less Stringent Schedules or Deadlines for Compliance or Reporting
- Consolidation or Simplification of Reporting Requirements
- Establishment of performance standards in lieu of Design or Operational Standards
- Exemption of Small Businesses from some or all requirements
- Other, describe:

N/A

---

4. Describe the methods incorporated into the Rule that will reduce its impact on Small Businesses

N/A

---

5. Describe the Rule's Enforcement Provisions

Anyone may file an elections-related complaint with the G.A.B. pursuant to WIS. STAT. §5.06.

---

6. Did the Agency prepare a Cost Benefit Analysis (if Yes, attach to form)

Yes     No

---



# State of Wisconsin\Government Accountability Board

212 East Washington Avenue, 3<sup>rd</sup> Floor  
Post Office Box 7984  
Madison, WI 53707-7984  
Voice (608) 266-8005  
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E-mail: [gab@wisconsin.gov](mailto:gab@wisconsin.gov)  
<http://gab.wi.gov>



JUDGE GERALD C. NICHOL  
Chair

KEVIN J. KENNEDY  
Director and General Counsel

---

Via Email Only: [SBOAdminRules@wisapps.wi.gov](mailto:SBOAdminRules@wisapps.wi.gov)

July 15, 2015

The Honorable Scott Walker, Governor  
115 East Capitol  
Madison, WI 53702

Re: Submission of proposed WIS. ADMIN. CODE GAB Ch. 10 pursuant to WIS. STAT.  
§227.185 and Executive Order #50

Dear Governor Walker:

Pursuant to Executive Order #50, §V, ¶¶1-2, the Government Accountability Board (“G.A.B.” or “Board”) respectfully submits to you the following for your consideration:

1. Proposed Rule WIS. ADMIN. CODE GAB Ch. 10, with its Analysis, Reference to Applicable Forms, and Fiscal Estimates, which are attached immediately following this correspondence.
2. Economic Impact Analysis, which is attached immediately following this correspondence.
3. The Legislative Council Rule Clearinghouse report completed under WIS. STAT. §227.15, which is attached immediately following this correspondence.
4. The Board’s response to the Legislative Council Rule Clearinghouse report completed pursuant to WIS. STAT. §227.19(3)(d), which is as follows:

The Government Accountability Board accepted the recommendations in the Legislative Council Rule Clearinghouse Report in whole.

No hearing was required for this proposed rule, as the Board undertook the promulgation process at the direction of the Joint Committee for Review of Administrative Rules. *See* WIS. STAT. §227.16(2)(d).

Please respond with written approval or to address any concerns at your earliest convenience so that the Board may work to promulgate this permanent rule before the corresponding emergency rule, now in effect, expires this fall.

Thank you for your time and consideration in this matter.

Sincerely,

**Government Accountability Board**

A handwritten signature in black ink that reads "Kevin J. Kennedy". The signature is written in a cursive style with a large, stylized 'K' and 'J'.

Kevin J. Kennedy  
Director and General Counsel

cc: Via Email: [adminrules@wisconsin.gov](mailto:adminrules@wisconsin.gov)  
Via Email: Attorney Katie Ignatowski ([katie.ignatowski@wi.gov](mailto:katie.ignatowski@wi.gov))

Enclosures



**SCOTT WALKER**  
**OFFICE OF THE GOVERNOR**  
**STATE OF WISCONSIN**

P.O. Box 7863  
MADISON, WI 53707

August 19, 2015

Kevin Kennedy  
Director and General Counsel  
Wisconsin Government Accountability Board  
212 E. Washington Ave., 3<sup>rd</sup> Floor  
P.O. Box 7984  
Madison, WI 53707-7984

**RE: Permanent Rule creating GAB 10 relating to the use of Wisconsin technical college system identification cards for voting purposes**

Dear Director Kennedy,

I hereby approve the proposed rule creating Chapter GAB 10 of the Wisconsin Administrative Code submitted on July 15, 2015 pursuant to Wisconsin Statutes § 227.185. You may submit the proposed rule to the legislature pursuant to Wisconsin Statutes § 227.19(2).

Sincerely,

A handwritten signature in black ink, appearing to be "S. Walker", written over a light blue horizontal line.

Scott Walker  
Governor



## State of Wisconsin\Government Accountability Board

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KEVIN J. KENNEDY  
 Director and General Counsel

July 2015

GOVERNMENT ACCOUNTABILITY BOARD  
 Administrative Rulemaking Process Guide

Step:	Description:	Authority:	Provide to Admin. Rules Website <sup>1</sup> and Gov.? <sup>2</sup>
1	Board authorizes staff to draft a Statement of Scope for a proposed rule.	Wis. STAT. §§5.05(1)(f), 227.135	--
2	Staff drafts proposed Statement of Scope.	Wis. STAT. §§5.05(1)(f), 227.135(1), 227.24(1)(e)	--
3	Staff electronically submits <sup>3</sup> proposed Statement of Scope to the Governor for consideration and approval.	Wis. STAT. §227.135(2); 2011 Executive Order #50, §II, ¶5	Yes
4	Staff receives Governor's approval of Statement of Scope in writing.	Wis. STAT. §227.135(2); 2011 Executive Order #50, §II, ¶5	Yes
5	Staff submits Governor-approved Statement of Scope to the Legislative Reference Bureau <sup>4</sup> for publication in the Administrative Register within 30 calendar days of receipt of Governor's written approval; staff also sends Statement of Scope to Secretary of the Department of Administration. <sup>5</sup>	2011 Executive Order #50, §II, ¶9	Yes
6	Statement of Scope is published in the Administrative Register for at least ten (10) days.	Wis. STAT. §227.135(2)	Yes
7	Board approves Statement of Scope after it has been published in the Administrative Register for at least ten (10) days.	Wis. STAT. §227.135(2)	--
8	Before initiating the preparation of the Economic Impact Analysis, Staff reviews Statement of Scope to determine whether it has changed in any meaningful way while being developed, and shall submit revised Statement of Scope to the Governor if any such changes occurred.	2011 Executive Order #50, §IV, ¶2	--

<sup>1</sup> Email to [Adminrules@Wisconsin.gov](mailto:Adminrules@Wisconsin.gov). WIS. LEGISLATIVE COUNCIL, ADMINISTRATIVE RULES PROCEDURES MANUAL, p. 23, Rule 2.003 (Dec. 2014) (hereinafter, "MANUAL").

<sup>2</sup> Email to [SBOAdminRules@wisapps.wi.gov](mailto:SBOAdminRules@wisapps.wi.gov). 2011 Executive Order #50; MANUAL, p. 23.

<sup>3</sup> Email to [SBOAdminRules@wisapps.wi.gov](mailto:SBOAdminRules@wisapps.wi.gov). See 2011 Executive Order #50, §I, ¶4; §II, ¶1.

<sup>4</sup> Email to [Admin-Code-Register@legis.wi.gov](mailto:Admin-Code-Register@legis.wi.gov). MANUAL, p. 23, Rule 2.001(2).

<sup>5</sup> Emailing to [SBOAdminRules@wisapps.wi.gov](mailto:SBOAdminRules@wisapps.wi.gov) satisfies the G.A.B.'s duty to send to the Department of Administration. 2011 Executive Order #50, §I, ¶4.

9	Staff drafts language of proposed rule.	Wis. STAT. §§227.135(2), 227.137, 227.14	--
	Staff drafts analysis of proposed rule. Analysis includes a place to submit comments and a deadline for submitting those comments.	Wis. STAT. §227.14(2)	--
	Staff drafts fiscal estimate of proposed rule.	Wis. STAT. §227.14(4m)	--
10	Staff solicits information and advice from entities and individuals that may be affected by proposed rule by 1) posting proposed language on Wis. Admin website, 2) accepting comments for at least 14 calendar days (if little or no economic impact), or at least 30 days (if moderate impact), or at least 60 days (if significant impact)	2011 Executive Order #50, §IV, ¶¶1, 3.	Yes
11	Staff prepares Economic Impact Analysis for proposed rule with information obtained from entities and individuals that may be affected by the rule and with local governmental units that respond to G.A.B.'s solicitation for information, unless rule will not have an economic impact.	Wis. STAT. §§227.137(2), (3); 2011 Executive Order #50, §IV, ¶¶1, 4, 8.	--
	Economic Impact Analysis includes determination as to whether the proposed rule would adversely affect in a material way the economy, a sector of the economy, productivity, jobs, or the overall economic competitiveness of the state.	Wis. STAT. §227.137(3)(e); 2011 Executive Order #50, §IV, ¶1, 5.	--
12	If the Board intends to establish an advisory committee, the Board must provide <sup>6</sup> a list of members to the Governor prior to establishing the committee (recommended if the EIA indicates that the rule will have a significant economic impact).	Wis. STAT. §227.13; 2011 Executive Order #50, §III, ¶1; §IV, ¶6.	Yes
13	Staff prepares notice of submission of proposed rule to Rules Clearinghouse.	Wis. STAT. §§227.14(4m), 227.17	--
14	Staff provides proposed final draft of proposed rule and Economic Impact Analysis to Legislative Council Rules Clearinghouse, <sup>7</sup> Governor/Secretary of DOA, <sup>8</sup> and Legislature. <sup>9</sup>	Wis. STAT. §227.137(4); 2011 Executive Order #50, §IV, ¶1	Yes
	Staff submits, to Legislative Reference Bureau for publication in Administrative Register, notice of submission of proposed rule to Rules Clearinghouse.	Wis. STAT. §§227.14(4m), 227.17	Yes
	Staff submits proposed rule to the Small Business Regulatory Review Board if rule may have an economic impact on small businesses.	Wis. STAT. §227.14(2g)	Yes
15	Staff submits revised Economic Impact Statement to Governor if there is a significant change in economic impact.	Wis. STAT. §227.137(4); 2011 Executive Order #50, §IV, ¶9.	Yes
16	Staff coordinates with Department of Administration to complete review and report if the Economic Impact Analysis indicates that the rule will cost \$20,000,000+ for	Wis. STAT. §§227.137(3)(c), 227.137(6), 227.19(2); 2011 Executive Order #50, §IV, ¶11.	Yes

<sup>6</sup> Email to [AdministrativeRules@wisconsin.gov](mailto:AdministrativeRules@wisconsin.gov).

<sup>7</sup> Email to: [Clearing.House@Legis.wisconsin.gov](mailto:Clearing.House@Legis.wisconsin.gov).

<sup>8</sup> Email to [SBOAdminRules@wisapps.wi.gov](mailto:SBOAdminRules@wisapps.wi.gov). See 2011 Executive Order #50, §I, ¶4; §IV, ¶1.

<sup>9</sup> Via chief clerks of both houses: [Patrick.Fuller@legis.wisconsin.gov](mailto:Patrick.Fuller@legis.wisconsin.gov), [Jeff.Renk@legis.wisconsin.gov](mailto:Jeff.Renk@legis.wisconsin.gov).

	implementation and compliance. Staff may not submit a report to the Legislature until DOA provides this report to the agency, if required.			
17	Within 20 days of receipt of rule and Economic Impact Analysis, Rules Clearinghouse provides staff with advisory and technical review report.		WIS. STAT. §227.15	Yes
18	Staff publishes notice <sup>10</sup> of public hearing at least ten (10) days prior to the hearing (if hearing required); <sup>11</sup> staff also provides such notice to Legislative Reference Bureau, and to Legislators. <sup>12</sup> Staff is also required to take whatever steps it deems necessary to convey notice to interested persons.		WIS. STAT. §§227.16, 227.17(2), (3), 227.18; MANUAL, Rule 2.04(3), Rule 2.04(4).	Yes
	Staff holds public hearing, if required. Hearing may not occur until staff receives Rules Clearinghouse review report. Hearing to give interested parties a change to be heard and to have influence over final form of rule.		WIS. STAT. §§227.15(1), 227.16; <i>HM Distributors of Milwaukee v. Dept. of Agri.</i> , 55 Wis. 2d 261, 268 (1972)	--
Alt. 18	Alt. 18.a.	If staff uses 30-day notice procedure instead of a public hearing, staff must provide notice to the Legislative Reference Bureau for publication in the Administrative Register.	WIS. STAT. §227.16(2)(e)	Yes
	Alt. 18.b.	If staff receives a petition within 30 days of publication, staff may not proceed with proposed rule until it holds a public hearing.	MANUAL, Rule 2.05(3)	Yes
		If staff does not receive a petition within 30 days of publication of the notice, staff may submit the proposed rule to the Governor for approval.	MANUAL, Rule 2.05(4)	Yes
19	Staff prepares final draft of rule, with analysis and fiscal estimate.		WIS. STAT. §§227.14(1), (2), 227.15(7); 2011 Executive Order #50, §V, ¶1.	--
20	Staff submits final draft of rule to Governor within 30 days after the public comment period.		WIS. STAT. §227.185; 2011 Executive Order #50, §V, ¶1; MANUAL, Rule 2.09(1)	Yes
21	Governor provides written approval of final draft of rule to staff.		WIS. STAT. §227.185; 2011 Executive Order #50, §V, ¶4	Yes
22	Staff prepares report for Legislature, with the proposed rule, the rule summary, reference to applicable forms, the fiscal estimate, any statement from SBRRB, the economic impact analysis, any DOA report, any energy impact report from PSC,		WIS. STAT. §227.19(3)	--

<sup>10</sup> Staff must provide notice to every member of the Legislature who has filed a request for notice in writing with the LRB. Staff may receive a list of the names and addresses of those legislators from LRB upon request. MANUAL, Rule. 2.04(3).

<sup>11</sup> Hearing not required if: 1) proposed rule brings an existing rule into conformity with a statute that has been changed or enacted or with a controlling judicial decision. WIS. STAT. §227.16(2)(b); 2) proposed rule is adopted as an emergency rule. WIS. STAT. §227.16(2)(c), and MANUAL, Rule 2.12; 3) proposed rule is being promulgated as directed by JCRAR under WIS. STAT. §227.26(20)(b). WIS. STAT. §227.16(2)(d), and MANUAL, Rule 2.06; 4) proposed rule published under the 30-day notice procedure in WIS. STAT. §227.16(2)(e). MANUAL, Rule 2.05; or 5) proposed rule consists of one or more forms that impose a requirement that meets the definition of a rule. WIS. STAT. §227.23.

<sup>12</sup> Staff must provide notice to every member of the Legislature who has filed a request for notice in writing with the LRB. Staff may receive a list of the names and addresses of those legislators from LRB upon request. MANUAL, Rule. 2.04(3).

	the Rules Clearinghouse report, statement of the basis and purpose of proposed rule, summary of public comments, list of persons who appeared or registered for or against the proposed rule, any changes to the rule summary or fiscal estimate, response to recommendations from Rules Clearinghouse, final regulatory flexibility analysis for a rule that impacts small business, any changes to any energy impact report, any DOA report on housing, any response to any SBRRB report.		
23	Staff prepares notice to chief clerk of each house of the legislature when the rule is in final draft form.	WIS. STAT. §227.19(2)	--
	Staff prepares notice of submission of rule to the Legislature.	WIS. STAT. §227.19(2)	--
	Staff records on each rule jacket the date of any agency public hearing held regarding the proposed rule.	MANUAL, Rule 3.02(1)	--
24	Staff submits notice, report, and rule to Legislature in triplicate. <sup>13</sup>	WIS. STAT. §227.19(2); MANUAL, Rule 3.02(1)	Yes
	Staff submits, to the Legislative Reference Bureau for publication in the Administrative Register, notice of submission of rule to the Legislature.	WIS. STAT. §227.19(2)	Yes
25	Presiding officer directs each chief clerk to refer the rule jackets to one standing committee in each house.	WIS. STAT. §227.19(2)	--
26	Committee reviews the rule. Committee may request modifications of a proposed rule. Committee may object to a proposed rule if there is an absence of statutory authority, emergency relating to public health/safety/welfare, failure to comply with legislative intent, contrary to state law, change in circumstances since enactment of the law, arbitrary and capricious or imposing undue hardship.	WIS. STAT. §227.19(4)	--
27	When committee finishes review, rule referred to JCRAR. JCRAR review lasts 30 days, but may be extended. JCRAR will consider any committee objections, may make its own objections, <sup>14</sup> may seek modifications, and may approve part/whole of the rule. G.A.B. may not promulgate the rule until JCRAR non-concurs in any objection or concurs in the approval.	WIS. STAT. §227.19(5)	--
28	When promulgated, staff files a certified copy of the rule and a Microsoft Word version of the rule with the Legislative Reference Bureau for incorporation in the Administrative Code and publication in the Administrative Register.	WIS. STAT. §§227.20, 227.21, 227.22; MANUAL, Rule 3.02(4)	Yes
29	Legislative Reference Bureau publishes rule in administrative register, and rule is effective upon first day of the month commencing after publication.	WIS. STAT. §227.22	Yes

<sup>13</sup> Via chief clerks of both houses: [Patrick.Fuller@legis.wisconsin.gov](mailto:Patrick.Fuller@legis.wisconsin.gov), [Jeff.Renk@legis.wisconsin.gov](mailto:Jeff.Renk@legis.wisconsin.gov).

<sup>14</sup> If JCRAR objects, then it must take executive action within 30 days regarding introduction of a bill in each house to support the objection. WIS. STAT. §227.19(5)(e).

# State of Wisconsin \ Government Accountability Board

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JUDGE GERALD C. NICHOL  
Chairperson

KEVIN J. KENNEDY  
Director and General Counsel

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## MEMORANDUM

**DATE:** For the September 1, 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 Joint Resolution 48: establishing competitive election criteria for redistricting the legislature (first consideration).*

**Sponsors: Minority.** This proposed constitutional amendment, proposed to the 2015 legislature on first consideration, defines demographic and political standards for the drawing of legislative districts and establishes criteria for the drawing of legislative districts. Following the canvass of the general election in each year that is divisible by ten, the amendment requires the superintendent of public instruction to determine the mean percentage of the vote received by candidates of the two major political parties for certain statewide offices in the prior decade and to certify those mean percentages to the legislature.

2. *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 for SB 161 held on May 28, 2015.

Assembly: Public hearing for AB 240 held on August 19, 2015.

3. ***Assembly Bill 251: various changes regarding administrative rules and rule-making procedures; time limits for emergency rules; and making an appropriation.***

**Sponsors: Majority.** The bill makes various changes regarding the rule-making procedures established under current law. Significant changes regarding those procedures are described below.

***Role of Office of Business Development and Small Business Regulatory Review Board; impacts on small businesses***

The bill requires scope statements for proposed rules, and proposed rules in final draft form, to be submitted to OBD instead of to the governor. Following either submission, the bill requires the OBD to make a determination as to the agency's authority to promulgate the proposed rule and report its determination to the governor, who may then approve or reject the statement of scope or proposed rule as under current law.

The bill also requires proposed rules that under current law must be submitted to the SBRRB to instead be submitted to the OBD. Following the submission, the OBD must make a determination as to whether the proposed rule may have an economic impact on small businesses, and if the OBD so determines, the OBD must submit the proposed rule to the SBRRB for an assessment of the extent of the economic impact.

The bill makes changes regarding the duties of the SBRRB, including requiring the SBRRB to determine whether a proposed rule will have any economic impact on small businesses. The bill requires any determination, notice, or report that the SBRRB is required to submit to an agency to be submitted within 45 days after receipt of the proposed rule from the OBD, except that the bill allows the SBRRB and the agency to extend that time by mutual agreement. The bill also makes other changes regarding the requirements for agencies to complete initial and final regulatory flexibility analyses for proposed rules.

***Scope statements; preliminary public hearing and comment period on scope statements***

Current law prohibits an agency head from approving a scope statement until at least ten days after publication of the scope statement in the register. The bill eliminates that prohibition.

The bill requires an agency, following approval of a scope statement by the governor, to submit to the LRB a notice of a preliminary public hearing and comment period to allow for public comment and feedback on the scope statement. The agency must hold the preliminary public hearing no sooner than the third day after publication of the notice in the register. The preliminary public hearing and comment period under the bill is in addition to the public hearing required under current law for certain rules.

***Passage of bill required for certain rules***

The bill provides that if an economic impact analysis, a revised economic impact analysis, or an independent economic impact analysis for a proposed rule indicates that \$10 million or more in implementation and compliance costs are reasonably expected to be incurred by or

passed along to businesses, local governmental units, and individuals over any two-year period as a result of the proposed rule, the agency proposing the rule must stop work on the proposed rule and do one of the following:

1. Submit a request for JCRAR to introduce a bill authorizing promulgation of the proposed rule, which JCRAR may introduce in its discretion. The agency may resume the rule-making procedure for the proposed rule upon enactment of such a bill.
2. Modify the proposed rule to address the implementation and compliance costs of the proposed rule. If a revised economic impact analysis, as approved by the secretary of revenue, prepared following the modification indicates that \$10 million or more in implementation and compliance costs are not reasonably expected to be incurred by or passed along to businesses, local governmental units, and individuals over a two-year period as a result of the proposed rule, the agency may then resume the rule-making procedure for the proposed rule.
3. Withdraw the proposed rule.

***Independent economic impact analyses; duties of secretary of revenue***

The bill allows the secretary of revenue, or his or her designee (secretary), or a co-chairperson of JCRAR, after an agency submits a copy of an economic impact analysis for a proposed rule to the legislature, but before the proposed rule is submitted to the OBD for final approval, to request that an independent economic impact analysis be prepared for the proposed rule. If the secretary requests an independent economic impact analysis, the request must be submitted to the Department of Administration (DOA), which must then contract for the preparation of the independent economic impact analysis. If a co-chairperson of JCRAR requests an independent economic impact analysis, the co-chairperson must contract for the preparation of the independent economic impact analysis. The person preparing the independent economic impact analysis must complete the independent economic impact analysis within 60 days after contracting with DOA or the co-chairperson and must include most of the same information and analysis that is required for an economic impact analysis prepared by an agency. If an independent economic impact analysis is requested for a proposed rule, an agency may not submit the proposed rule to the OBD for final approval until the agency receives the completed independent economic impact analysis.

Upon completion of an independent economic impact analysis, the person preparing the analysis may submit a request to DOA or JCRAR, whichever is applicable, for reimbursement of its actual and necessary costs of completing the analysis. DOA must assess the agency that is promulgating the proposed rule, in the case of a request by the secretary, for the costs of the independent economic impact analysis. In the case of a request by a co-chairperson of JCRAR, the legislature must pay the costs of the independent economic impact analysis.

In addition, the bill allows JCRAR, when a proposed rule is before JCRAR for final review, to request an independent economic impact analysis for the proposed rule. If JCRAR requests an independent economic impact analysis at that time, the analysis must similarly be completed

within 60 days after JCRAR contracts for the analysis, and JCRAR's review period is extended to the 10th working day following receipt by JCRAR of the completed analysis.

The bill also requires the secretary to do all of the following:

1. Review and approve each initial economic impact analysis prepared by an agency, including by reviewing the economic data and analyses used by the agency in preparing the analysis. If the secretary determines that the agency's analysis does not accurately gauge the economic impact of a proposed rule, the secretary must recommend any modifications to the economic impact analysis that the secretary considers necessary and direct the agency to prepare a revised economic impact analysis for the proposed rule. An agency may not submit a proposed rule to the OBD for final approval unless the secretary has approved the agency's initial or revised economic impact analysis. The secretary may approve an economic impact analysis only upon determining that the economic impact analysis accurately gauges the economic impact of the proposed rule.
2. Provide training to agencies on appropriate data collection and methods of analysis for purposes of preparing economic impact analyses of proposed rules.
3. Attend JCRAR hearings and present testimony on proposed rules that he or she determines will have an economic impact on specific businesses, business sectors, public utility ratepayers, local governmental units, regulated individuals and entities, or the state's economy as a whole.

#### ***Approval of germane modifications to proposed rules***

Current law permits an agency to make a germane modification to a proposed rule at certain points during the legislative review process. Under the bill, if an agency makes a germane modification to a proposed rule at any time during the legislative review process, the agency must also submit that modification to the governor for approval. The governor, in his or her discretion, may approve or reject the modification. If the governor does not approve the modification, the agency may not promulgate the proposed rule, except that the agency may resubmit the proposed rule to the legislature without the modification.

#### ***Statements of policy and interpretations***

Under current law, if JCRAR determines that a statement of policy or an interpretation of a statute meets the definition of a rule, it may direct the agency to promulgate the statement or interpretation as an emergency rule within 30 days after JCRAR's action.

Under the bill:

1. The OBD has the same power as JCRAR to direct an agency to promulgate a statement of policy or interpretation of a statute as an emergency rule.

2. JCRAR or the OBD must, if requiring the agency to promulgate the statement or interpretation as an emergency rule, also require the agency to promulgate the statement or interpretation as a permanent rule, using the permanent rule-making procedure.
3. JCRAR or the OBD may, in addition to, or instead of, requiring the agency to promulgate the statement or interpretation as a permanent or emergency rule, prohibit the agency from implementing or enforcing the statement of policy or interpretation until the statement or interpretation is promulgated as a rule or until any such prohibition is rescinded.

### *Emergency rules*

Finally, the bill modifies JCRAR's authority under current law to extend the effective period of an emergency rule so that JCRAR may grant only a single extension of up to 120 days and only before the last floor period of the biennial legislative session. The bill also permits JCRAR, within 30 days before the last floor period of the biennial legislative session, to extend the effective period of an emergency rule for a period not to extend beyond March 31 of the following year. JCRAR may, if applicable, grant both types of extensions for a particular emergency rule.

4. ***Assembly Bill 265: public financing of campaigns for the office of justice of the supreme court, making appropriations, and providing penalties.***

**Sponsors: Minority.** This bill creates a democracy trust fund under which eligible candidates for the office of justice of the supreme court may receive public grants derived from general purpose revenues to finance their campaigns. Candidates who meet the requirements outlined in the bill are eligible to receive “seed money” funded through a tax refund check-off. Public financing benefits for eligible candidates are \$100,000 in the spring primary and \$300,000 in the spring election. The benefits are subject to a biennial cost of living adjustment. The bill also imposes several limitations and penalties for various violations.

5. ***Senate Bill 201: political disbursements and obligations by corporations, cooperative associations, and labor organizations and the scope of regulated activity and reporting of certain activity under the campaign finance law.***

**Sponsors: Minority.** With certain exceptions, this bill imposes additional registration and reporting requirements on any person who, within 60 days of an election, makes any mass communication, including an electronic communication, a mass distribution, or a mass telephoning, that includes a reference to a clearly identified candidate at that election. In addition, the bill requires a person who becomes subject to a registration requirement by making such a communication to report, upon registration, the information that would have been required to be reported if the person had been registered with respect to any obligation incurred or disbursement made for the purpose of making such a communication prior to registration. The bill however, does not require registration and reporting if the communication is made by a corporation, cooperative, or nonpolitical voluntary association and is limited to the corporation's, cooperative's, or association's members, shareholders, or subscribers. The change in the scope of reportable activity under the bill also applies to

contribution and disbursement (spending) limitations and restrictions by causing reportable "contributions," "obligations," and "disbursements" to include the cost of all reportable communications.

The bill also requires a special report by any campaign finance registrant who makes or incurs an obligation to make a mass communication that becomes reportable under the bill within 60 days of a primary or other election in an amount greater than \$500 cumulatively since the date of the registrant's last report. The special report must be made within 24 hours after the date that disbursements or obligations that exceed \$500 cumulatively are made or incurred and must include the information that would otherwise be reported on the registrant's next regular report in the form prescribed by Government Accountability Board.

The bill also increases several penalties for violations of registration and reporting requirements.

6. ***Senate Bill 208: authorization for electors to vote in the primary of more than one political party.***

**Sponsors: Minority.** This bill permits a voter in a partisan primary to "split tickets," designating the candidate of his or her choice for each office, including the offices of governor and lieutenant governor, regardless of party affiliation. The bill also allows a voter to vote for independent candidates for one or more state offices in a partisan primary, in addition to party candidates for one or more state or county offices. Under the bill, a voter may still vote for only one candidate for each office. The voting procedure at the general election and other partisan elections is unaffected by the bill. The bill initially applies to voting at the 2016 partisan primary election.

7. ***Assembly Bill 288: authorizing electors to vote in the primary of more than one political party.***

**Sponsors: Minority.** This bill permits a voter in a partisan primary to "split tickets," designating the candidate of his or her choice for each office, including the offices of governor and lieutenant governor, regardless of party affiliation. The bill also allows a voter to vote for independent candidates for one or more state offices in a partisan primary, in addition to party candidates for one or more state or county offices. Under the bill, a voter may still vote for only one candidate for each office. The voting procedure at the general election and other partisan elections is unaffected by the bill. The bill initially applies to voting at the 2016 partisan primary election.

8. ***Senate Bill 220: allowing 16- and 17-year-olds to preregister to vote.***

**Sponsors: Minority.** This bill allows a person age 16 or 17 to preregister to vote. Under this bill, a person who is age 16 or 17 but is otherwise a qualified elector may preregister to vote. A person who preregistered to vote may not vote in any election unless they are age 18 or older on election day. A person who preregistered may vote by absentee ballot if they will be age 18 or older on election day. For purposes of the official registration list, "elector" means any U.S.

citizen age 16 or older who has registered or preregistered and will be eligible to vote on or before the date of the next election. However, a registration list prepared for use as a poll list may not contain the name of any person who preregistered to vote unless the person will be age 18 or older on election day.

9. *Assembly Bill 293: political disbursements and obligations by corporations, cooperative associations, and labor organizations and the scope of regulated activity and reporting of certain activity under the campaign finance law.*

**Sponsors: Minority.** With certain exceptions, this bill imposes additional registration and reporting requirements on any person who, within 60 days of an election, makes any mass communication, including an electronic communication, a mass distribution, or a mass telephoning, that includes a reference to a clearly identified candidate at that election. In addition, the bill requires a person who becomes subject to a registration requirement by making such a communication to report, upon registration, the information that would have been required to be reported if the person had been registered with respect to any obligation incurred or disbursement made for the purpose of making such a communication prior to registration. The bill, however, does not require registration and reporting if the communication is made by a corporation, cooperative, or nonpolitical voluntary association and is limited to the corporation's, cooperative's, or association's members, shareholders, or subscribers.

The change in the scope of reportable activity under the bill also applies to contribution and disbursement (spending) limitations and restrictions by causing reportable "contributions," "obligations," and "disbursements" to include the cost of all reportable communications. The bill also requires a special report by any campaign finance registrant who makes or incurs an obligation to make a mass communication that becomes reportable under the bill within 60 days of a primary or other election in an amount greater than \$500 cumulatively since the date of the registrant's last report. The special report must be made within 24 hours after the date that disbursements or obligations that exceed \$500 cumulatively are made or incurred and must include the information that would otherwise be reported on the registrant's next regular report in the form prescribed by Government Accountability Board.

Under current law, violators of registration and reporting requirements are subject to a forfeiture (civil penalty) of not more than \$500 for each violation. In addition, any person who is delinquent in filing a report is subject to a forfeiture of not more than \$50 or 1 percent of the annual salary of the office for which a candidate is being supported or opposed, whichever is greater, for each day of delinquency. Intentional violators of the registration requirements and persons who intentionally file false reports or statements may be fined not more than \$1,000 or imprisoned for not more than six months, or both, if the violation involves less than \$100 in amount or value, and may be fined not more than \$10,000 or imprisoned for not more than three years and six months, or both, if the violation involves more than \$100 in amount or value.

10. **Senate Joint Resolution 47:** providing for an advisory referendum on the question of adopting a nonpartisan system for redistricting.

Sponsors: Minority. This joint resolution calls for an advisory referendum on the question of whether the legislature should adopt a nonpartisan system for redistricting of legislative and congressional districts in this state. The referendum would be held at the 2016 general election.

PREVIOUS LEGISLATION – CHANGE IN STATUS

11. **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. The bill was passed by the Legislature and signed into law by the Governor as 2015 Act 55 on July 13, 2015.

12. **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 to AB 58 offered by Representative Horlacher. The amendment addresses the relationship between Wis. Stats. §§6.86 and 7.15. Executive session held on May 19, 2015. The Assembly Committee on Campaigns and Elections adopted Assembly Substitute Amendment 1 by a vote of 7-0. The committee recommended passage as amended by a vote of 8-0. **The Committee also scheduled a public hearing and executive session regarding SB 47 for August 19, 2015.**

Senate: Senate Substitute Amendment 1 to Senate Bill 47 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.

13. **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 recommended passage by the committee by a vote of 3-2.

**Assembly: A public hearing was held on May 14 and an executive session held on August 19 by the Assembly Committee on Judiciary. The committee recommended passage by a vote of 5-3.**

*14. 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.

**Assembly: Senate Bill 71 passed by a voice vote by the Assembly on June 9, 2015.**

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. Passed by a voice vote on June 9, 2015. Enacted as 2015 Wisconsin Act 39.**

*15. 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.

**Senate: Public hearing held on June 2, 2015.**

**16. 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. **The Assembly passed Senate Bill 96 by a voice vote on June 9, 2015.**

**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. The Senate passed Senate Bill 96 as amended by a voice vote on May 6, 2015. **Enacted as 2015 Wisconsin Act 36.**

**17. 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 governing body of a town or village may hold a caucus between January 2 and January 21.
- 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 Bill 121 passed by the Assembly by a voice vote on June 9, 2015.**

**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. **Senate Amendment 1 adopted and passed as amended by a voice vote on June 9, 2015. Enacted as 2015 Wisconsin Act 37.**

18. **Assembly Bill 199 and 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.

**Assembly: Public hearing held by June 16, 2015 by the Assembly Committee of Urban and Local Affairs.**

**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. **The Senate passed Senate Bill 137 by a voice vote on June 9, 2015.**

#### PREVIOUS LEGISLATION – NO STATUS CHANGE

19. **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.

*20. 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*.

*21. 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.

*22. 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.

*23. Senate 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.

*24. 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.

Assembly: Public hearing held on May 27, 2015.

*25. 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.

*26. 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.

Assembly: Public hearing held on May 19, 2015.

*27. 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.

28. *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.

29. *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.

30. *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 Vorpapel, which would apply the exception to all state and local elected officials.

Proposals		Assembly		Senate		Relating Clause	
Proposal (LRB#)	Sponsors	Assembly	Senate	Assembly	Senate	Relating Clause	Relating Clause
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	2015 WI Act 55	2015 WI Act 55			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	Passed by Committee				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	2015 WI Act 39	2015 WI Act 39			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	2015 WI Act 36	2015 WI Act 36			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	2015 WI Act 37	2015 WI Act 37			various election law changes	
AB-175 (1879)	Bipartisan					communications by members of the legislature	
SB-151 (2171)	Bipartisan					communications by members of the legislature	

Proposals		Sponsors		Assembly		Senate		Relating Clause	
(LRB#)									
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 Senate		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
AB-251 (1046)	Majority								various changes regarding administrative rules and rule-making proceedings; time limits for emergency rules; and making an appropriation
AB-265 (1267)	Minority								public financing of campaigns for the office of justice of the supreme court, making appropriations, and providing penalties
SB-201 (1146)	Minority								political disbursements and obligations by corporations, cooperative associations, and labor organizations and the scope of regulated activity and reporting of certain activity under the campaign finance law
AJR-48 (2145)	Minority								establishing competitive election criteria for redistricting the legislature (first consideration)
SB-208 (0011)	Minority								authorization for electors to vote in the primary of more than one political party
AB-288 (0707)	Minority								authorizing electors to vote in the primary of more than one political party
SB-220 (2652)	Minority								allowing 16- and 17-year-olds to preregister to vote
AB-293 (2661)	Minority								political disbursements and obligations by corporations, cooperative associations, and labor organizations and the scope of regulated activity and reporting of certain activity under the campaign finance law
SJR-47	Minority								providing for an advisory referendum on the question of adopting a nonpartisan system for redistricting

Enacted Legislation

Proposal (LRB#)	Act #	Sponsors	Relating Clause
AJR002 ( -0989 )		Bipartisan	relating to: creation of a department of transportation, create of a transportation fund, and deposits of funds into the transportation fund (second consideration).
AB024 ( -0623 )	176	Bipartisan	relating to: the method of recounting votes cast with automatic tabulating equipment.
AB040 ( -1561 )	20	Majority	relating to: state finances and appropriations, constituting the executive budget act of the 2013 legislature.
SB324 ( -3044 )	146	Majority	relating to: limiting the times for voting by absentee ballots in person.
AB085 ( -1340 )	14	Bipartisan	relating to: changing the compensation structure by which a Milwaukee County supervisor may be paid, changing the term length of a Milwaukee County supervisor, affecting the right of an annuitant under the Milwaukee County Employee's Retirement System to be rehired by Milwaukee County, limiting the authority of Milwaukee County to enter into certain intergovernmental agreements, removing and clarifying some authority of the Milwaukee County board, increasing and clarifying the authority of the Milwaukee County executive, deleting obsolete statutory references, and requiring a referendum.
AB089 ( -1442 )	155	Bipartisan	relating to: the method of reporting election returns by municipalities.
AB202 ( -1527 )	177	Majority	relating to: certification of election observers.
SB020 ( -0931 )	147	Bipartisan	relating to: residency of election officials.
SB262 ( -0472 )	179	Majority	relating to: labeling of duplicate ballots.
AB396 ( -3066 )	159	Majority	relating to: absentee voting at residential care facilities.
AB419 ( -3400 )	178	Bipartisan	relating to: counting votes for write-in candidates.
AB420 ( -0776 )	160	Majority	relating to: providing a printed name for signers of nomination papers and petitions.
AB565 ( -3702 )	169	Majority	relating to: repealing the schedule of election occurrences.
AB567 ( -3705 )	171	Bipartisan	relating to: access to public records (suggested as remedial legislation by the Legislative Reference Bureau).
AB606 ( -3742 )	174	Majority	relating to: the number of nomination paper signatures required for city-wide offices in second class and third class cities.
AB613 ( -2666 )		Bipartisan	relating to: modifying the duties of a county clerk; the counties in which a board of election commissioners is required; and staffing of a board of election commissioners in populous counties.
SB548 ( -4100 )	149	Majority	relating to: transferring responsibility over biennial updating of voter registration list to the Government Accountability Board.
SB377 ( -2889 )	148	Majority	relating to: reporting registration and voting statistics.
SB264 ( -0115 )	180	Majority	relating to: securing the ballot container.
SB265 ( -0123 )	181	Majority	relating to: party representation for election officials serving at polling places.
SB267 ( -0471 )	182	Majority	relating to: recording the type of identifying document provided by an elector as proof of residence.
SB655 ( -4285 )	153	Majority	relating to: various changes in the campaign finance and lobbying laws.



# State of Wisconsin\Government Accountability Board

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KEVIN J. KENNEDY  
Director and General Counsel

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## MEMORANDUM

**DATE:** For the September 1, 2016 Board Meeting

**TO:** Members, Wisconsin Government Accountability Board

**FROM:** Kevin J. Kennedy, Director and General Counsel

**SUBJECT:** Proposed 2016 Government Accountability Board Meeting Dates

The attached schedule lists, in bold type, proposed meeting dates for the Government Accountability Board in 2016. The proposed meeting dates are presented to enable Board Members to coordinate Board meetings with Members' 2016 travel and work plans.

I have set out a list of proposed meeting dates beginning in January, 2016. There are seven suggested meeting events including one teleconference meeting in January. I have placed them in the context of other events on the agency calendar. I have also listed a proposed date for the January 2017 teleconference meeting.

I generally defaulted to Tuesdays because of our past experiences. Monday meetings presented preparation challenges for staff and Board Members expressed a satisfaction with Tuesday meetings. The January 12, 2016 and January 10, 2017 meetings are important for resolving ballot access challenges and meeting certification deadlines for primary elections. In addition, the Board is required to select new officers and review its delegation of authority to the Director and General Counsel at the January meeting.

The proposed meeting schedule is designed to fit in with other agency tasks, including election events and filing deadlines. There is flexibility to schedule special meetings if required. I have changed the proposed schedule to add more meetings in the spring of 2016. I anticipate legislative initiatives that may require consideration by the Board.

In some cases, depending on the number and/or complexity of the issues, the Board may consider holding short teleconference calls between in-person meetings. Also, the Board may wish to consider holding some of its 2016 meetings in venues other than Madison.

**Proposed Motion:** The Government Accountability Board adopts the proposed 2016 meeting schedule presented by the Director and General Counsel as modified by Board discussion.



# **Government Accountability Board Proposed 2016 Meeting Dates**

Seven (7) Proposed Meeting Dates  
(1 Teleconference Meeting)

**Tuesday, January 12, 2016 (Teleconference)**

**Tuesday, March 1, 2016**

**Tuesday, April 26, 2016**

**Friday, June 10, 2016**

**Tuesday, August 30, 2016**

**Tuesday, October 18, 2016**

**Tuesday, December 13, 2016**

## **January 2016**

*Tuesday, January 5, 2016* – Presidential Preference Selection Committee Meeting

*Tuesday, January 5, 2016* – Nomination Paper Filing Deadline for Spring Election

*Friday, January 8, 2016* – Deadline for Filing Statements of Economic Interests and Ballot Access Challenges for Spring Elections

## **Tuesday, January 12, 2016 - Proposed Government Accountability Board Meeting - Teleconference Meeting**

*Tuesday, January 12, 2016* – Deadline for certifying candidates for spring primary election ballot

*Tuesday, January 26, 2016* – Deadline for Presidential Candidates to Submit Nomination Petitions for Presidential Preference Vote

*Tuesday, January 26, 2016* – Deadline for Presidential Candidates to Submit Withdrawal for Presidential Preference Vote

## **February 2016**

*Monday, February 1, 2016* - Deadline for Filing Semi-Annual Continuing Campaign Finance Reports

*Monday, February 1, 2016* - Deadline for Filing Semi-Annual Lobby Reports

*Monday, February 8, 2016 - Deadline for Filing Spring Pre-Primary Campaign Finance Reports*

***Tuesday, February 16, 2016 – Spring Primary Election***

## **March 2016**

**Tuesday, March 1, 2016 - Proposed Government Accountability Board Meeting**

*Tuesday, March 1, 2016 – Deadline for Certifying Spring Primary Election Results*

*Monday, March 28, 2016 - Deadline for Filing Spring Pre-Election Campaign Finance Reports*

## **April 2016**

***Tuesday, April 5, 2016 – Presidential Preference Vote and Spring Election***

**Tuesday, April 26, 2016 - Proposed Government Accountability Board Meeting**

*Monday, May 2, 2016 – Deadline for Filing Statements of Economic Interests – Annual Filers*

## **May 2016**

**No Meeting Proposed**

*Monday, May 16, 2016 – Deadline for Certifying Spring Election Results*

## **June 2016**

*Wednesday, June 1, 2016 – Deadline for Filing Nomination Papers*

*Monday, June 6 2016 – Deadline for Filing Challenges to Nomination Papers*

**Friday, June 10, 2016 - Proposed Government Accountability Board Meeting**

*Friday, June 10, 2016 - Deadline for certifying candidates for partisan primary election ballot*

## **July 2016**

**No Meeting Proposed**

*Wednesday, July 20, 2016* - Deadline for Filing Semi-Annual Continuing Campaign Finance Reports

## **August 2016**

*Monday, August 1, 2016* - Deadline for Filing Semi-Annual Lobby Reports

*Monday, August 1, 2016* - Deadline for Filing Partisan Pre-Primary Campaign Finance Reports

***Tuesday, August 9, 2016 – Partisan Primary Election***

**Tuesday, August 30, 2016 - Proposed Government Accountability Board Meeting**

## **September 2016**

**No Meeting Proposed**

*Thursday, September 15, 2016* – Agency Budget Due to Department of Administration

## **October 2016**

*Tuesday, October 4, 2016* – Presidential Electors Nominating Convention

**Tuesday, October 18, 2016 - Proposed Government Accountability Board Meeting**

*Monday, October 31, 2016* – Deadline for Filing Fall Pre-Election Campaign Finance Reports

## **November 2016**

**No Meeting Proposed**

***Tuesday, November 8, 2016 – Presidential and General Election***

## **December 2016**

*Thursday, December 1, 2016* –Deadline for Certifying Presidential and General Election Results

*Thursday, December 1, 2016* – First Day to Circulate Nomination Papers for Spring Elections

**Tuesday, December 13, 2016 Proposed Government Accountability Board Meeting**

*Monday, December 19, 2016 – Meeting of Presidential Electors*

## **January 2017**

*Tuesday, January 3, 2017– Nomination Paper Filing Deadline for Spring Election*

*Friday, January 6, 2017 – Deadline for Filing Statements of Economic Interests and Ballot Access Challenges for Spring Elections*

### **Tuesday, January 10, 2017 - Proposed Government Accountability Board Meeting - Teleconference Meeting**

*Tuesday, January 10, 2017 – Deadline for certifying candidates for spring primary election ballot*

*Tuesday, January 31, 2017- Deadline for Filing Semi-Annual Continuing Campaign Finance Reports*

*Tuesday, January 31, 2017 - Deadline for Filing Semi-Annual Lobby Reports*

# State of Wisconsin \ Government Accountability Board

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JUDGE GERALD C. NICHOL  
Chair

KEVIN J. KENNEDY  
Director and General Counsel

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## MEMORANDUM

**DATE:** For the September 1, 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

#### July Continuing 2015 Campaign Finance Reports

All active, non-exempt committees were required to file the July 2015 report by July 20, 2015. As of August 20, 1402 reports have been filed. There are still 23 committees that have not yet filed the report. Of the 7 candidate committees that have not filed, there is only 1 incumbent legislator (Romaine Quinn (R) – Rice Lake) still outstanding. The remaining committees are 6 political parties, 7 PACs, and 3 conduits.

#### Assembly District 99 Special Election Campaign Finance Reports

The primary to fill the 99<sup>th</sup> District Assembly seat will take place on September 1, and the general election on September 29. Pre-primary reports will be due August 24, and pre-election reports will be due on September 21.

#### Campaign Finance Audits

Besides following up on late reports and late filing fees, staff has been working on the following audits during 2015:

- Pending Transactions – In March, staff identified 44 committees with transactions from calendar year 2014 saved in CFIS but not filed and not visible to the public. These unfiled transactions were sometimes duplicates of transactions that had been reported in other reporting periods, and sometimes transactions that had not been filed on any report. All 44

committees have resolved their pending transactions, and no penalties were assessed.

- **Cash Balance Audit** – In May and June, staff examined all committees' 2014 reports, and sent letters to 117 committees with cash balance discrepancies of \$100 or more. As of August 14, 82 committees have resolved their cash balance issues with no penalty. Three committees have paid settlements totaling \$934.00. Two committees have terminated and had their penalty waived. 30 committees are still outstanding. A number of committees requested extensions, but the final deadline for correcting reports with no penalty is August 31.
- **Employer Info Audit** – In June, staff evaluated all committees' 2014 reports, and contacted 35 committees with missing employer information from contributions over \$100. As of August 17, all committees have resolved their employer audit issues with no penalty.
- **Lobbyist Contribution Audit** – In June, staff evaluated all committees' 2014 reports, and identified 34 lobbyists who had potentially contributed to partisan candidates outside of the statutory window. As of August 21, all but two individuals have resolved their issues. Nine individuals paid forfeitures, two individuals required to pay forfeitures were given extensions and the remaining individuals resolved their issues without penalty. Staff also evaluated FEC reports filed by State Senators Grothman and Leibham during their 2014 campaigns for Congress. No illegal contributions from lobbyists were identified.

### **Lobbying Update**

Molly Nagappala and Brian Bell  
Ethics and Accountability Specialists

#### New State Agency Legislative Liaison Reporting System

In mid-June, staff began a project to modernize state agency legislative liaison reporting. Currently, these liaisons use paper to report their activities on January 31 and July 31 every year for the preceding six-month period. It has long been a desire of staff and the liaisons themselves to phase out paper filing and create an online reporting mechanism on par with what private sector lobbyists and principals do on the Eye On Lobbying website. Staff is about midway through this process, with plans to review draft prototypes for the new reporting system in late August, to complete testing and training materials in September, and to launch by the end of October. This timeline will give agencies three months to become familiar with the system before the next reporting deadline of January 31, 2016.

#### Statements of Lobbying Activities and Expenditures (SLAEs): January 2015 – June 2015

These filings were due on Friday, July 31, 2015. As of August 19, 2015, one (1) principal SLAE remains outstanding. Staff has been making regular attempts to contact organizations and encourage them to certify their reports, while making clear the consequences of delayed filing. To the best of our knowledge, the outstanding principal represents an extremely small amount of lobbying, both in dollars and in hours. Overall, staff is pleased with the level of timely SLAE filing for this reporting period.

Filing Date	Reports Filed	Number of Days Late
Filed On-Time (or within 2-day grace period)	690	N/A
08/03/2015	11	3 Days Late
08/04/2015	3	4 Days Late
08/05/2015	4	5 Days Late
08/06/2015	2	6 Days Late
08/10/2015	1	10 Days Late
8/12/2015	1	12 Days Late

Also included at the end of this report is a summary of the 10 most lobbied bills in the January-June 2015 reporting period, as well as the top 10 principals with respect to expenditures and hours.

#### Stealth Lobbying Audit

Staff has noticed a significant increase this legislative session of principals failing to register and lobbyists failing to become licensed and/or authorized. Three principals failed to register themselves and to authorize a lobbyist; one principal failed to register, to license their lobbyist, and to authorize the lobbyist; one principal failed to license and authorize its lobbyist; and one principal failed to authorize its lobbyist. All are now in compliance. Staff is currently seeking forfeitures according to the schedule adopted by the Board in 2008.

#### FOCUS Publicity Efforts

The new and improved version of FOCUS launched on December 1, 2014. On July 20, 2015, Eye On Lobbying website users received an email from the Ethics Division highlighting the benefits of a FOCUS subscription and encouraging users to sign up if they had not already. This outreach was successful in adding a modest number of new subscribers to the rolls, and staff is optimistic that interest in the service will continue to increase as the Legislature moves into its fall session.

Staff continues to assist the public, lobbying principals and lobbyists regarding access to public information on the website as well as policy and reporting requirement questions from the lobbying community.

#### 2015-2016 Legislative Session Registration and Licensing Continues

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 anticipate additional registrations and licensing applications to be filed throughout the session, we have observed a continuation of the trend of 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 provide a summary of licensure, registration, and authorization applications and revenue as of August 17, 2015.

**2015-2016 Legislative Session**

<b>Fee Type</b>	<b>Fees Paid</b>	<b>Fee Amount</b>	<b>Total Paid</b>
Limited Lobbying Principal Registration Fee	14	\$20.00	\$280.00
Limited Lobbying to Full Lobbying Principal Amendment	4	\$355.00	\$1,420.00
Principal Registration Fee	714	\$375.00	\$267,750.00
Lobbyist Authorization Fee	1,513	\$125.00	\$189,125.00
Lobbyist License (Single Principal)	507	\$250.00	\$126,750.00
Single to Multiple Principal Lobbying License Amendment	4	\$150.00	\$600.00
Lobbyist License (Multiple Principals)	109	\$400.00	\$43,600.00
Focus Subscription	80	\$100.00	\$8,000.00
		<b>Total</b>	<b>\$637,525.00</b>

**2013-2014 Legislative Session**

<b>Fee Type</b>	<b>Fees Paid</b>	<b>Fee Amount</b>	<b>Total Paid</b>
Limited Lobbying Principal Registration Fee	29	\$20.00	\$580.00
Limited Lobbying to Full Lobbying Principal Amendment	15	\$355.00	\$5,325.00
Principal Registration Fee	718	\$375.00	\$269,250.00
Lobbyist Authorization Fee	1,587	\$125.00	\$198,375.00
Lobbyist License (Single Principal)	571	\$350.00	\$199,850.00
Single to Multiple Principal Lobbying License Amendment	11	\$300.00	\$3,300.00
Lobbyist License (Multiple Principals)	105	\$650.00	\$68,250.00
		<b>Total</b>	<b>\$744,930.00</b>

**Financial Disclosure Update**

Adam Harvell  
 Campaign Finance Auditor and Ethics Specialist

Statements of Economic Interests

As of August 20, 2,448 statements have been filed for calendar year 2015. All data entry has been completed for the annual statements due April 30th.

State Agency Six Month Legislative Liaison Reports

Government Accountability Board staff work to follow up and process legislative liaison reports that were sent to 97 state agencies and boards required to file such a report with the G.A.B. under Chapter 13, *Wisconsin Statutes*. All state agencies are required to file a liaison report that identifies those agency officials who make lobbying communications with state officials, the percentage of their overall work time spent making such communications, and the official's annual salary.

Reports covering activity from January 1 to June 30, 2015 were due on or before July 31, 2015.

As of August 24, one report is still outstanding.

State of Wisconsin Investment Board Quarterly Transaction Reports

Staff sent out 56 quarterly financial disclosure reports to State Investment Board members and employees at the end of June. The 2015 second quarter reports were due on or before July 31, 2015. All copies of the reports were received timely and delivered to the Legislative Audit Bureau for their review and analysis.

Gubernatorial Appointments

New appointments continue to be processed on an ongoing basis, to 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. An update on active complaints is included in a separate report.



# Government Accountability Board

## State of Wisconsin

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FOR IMMEDIATE RELEASE:  
August 21, 2015

FOR MORE INFORMATION, CONTACT:  
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## G.A.B. Releases Lobbying Report for First Six Months of 2015

MADISON, WI – Lobbying of the Wisconsin Legislature increased in the first six months of 2015 – when the state’s budget is being debated – compared to the same period in 2013, according to a new report from the Government Accountability Board.

Overall, lobbying organizations reported spending \$18.5 million, a 9 percent increase from the \$17.2 million spent during the first six months of 2013. However, lobbying activity remained below the \$23.9 million spent in the 2011 budget period.

While lobbying spending increased, the number of hours spent lobbying lawmakers declined slightly, from 124,857 in 2013 to 123,522 in 2015. Efforts are down significantly from 2011, when lobbyists reported 165,743 hours communicating with lawmakers.

“In the last several years we have seen lobbying activities in Wisconsin ebb with the slow economy,” said Jonathan Becker, Ethics & Accountability Division administrator for the Board. “This session the Legislature passed two bills affecting organized labor (right-to-work and prevailing wage) and as a result we saw higher reports of lobbying activity by business and labor organizations. There was also significant lobbying about the new Milwaukee Bucks arena. ”

The report on the first six months of 2015 analyzes the activities of 718 registered lobbying principals (organizations and companies that communicated with the legislature) and 598 licensed lobbyists (individuals paid to lobby on behalf of principals). The number of lobbying principals is again growing compared to the same period in 2013-2014 when there were 674 lobbying principals and 605 lobbyists. That compares to 778 lobbying principals and 803 lobbyists in 2011-2012.

The totals for the first half of 2015 do not include lobbying activities in the special session called in July to finish the budget bill and consider Milwaukee Bucks arena funding and a 20-week abortion ban. While the dollars and hours spent lobbying in July 2015 will not be reported until January 2016, the public can still view timely information about who was trying to influence the Legislature on those bills by visiting the Eye on Lobbying website (<http://lobbying.wi.gov>).

"Wisconsin has a strong lobbying law which requires extensive, real-time reporting so the public can easily learn who is trying to influence legislation and how much they're spending," said Kevin J. Kennedy, director and general counsel of the Government Accountability Board. "The Eye on Lobbying website allows the public to keep track of lobbying activities at the Capitol without leaving home."

The Top 10 Lobbying Organizations, as ranked by dollars spent, in the first six months of 2015 were:

1. Milwaukee Bucks, 208 hours, \$482,496
2. Wisconsin Hospital Association Inc. (WHA), 2,755 hours, \$378,816
3. Wisconsin Manufacturers & Commerce, 2,765 hours, \$348,733
4. Wisconsin Infrastructure Investment Now Inc., 2 hours, \$329,180
5. Wisconsin Property Taxpayers Inc., 2,909 hours, \$283,339
6. Americans for Prosperity, 565 hours, \$268,715
7. Wisconsin Farm Bureau Federation, 1,188 hours, \$232,892
8. Wisconsin Counties Association, 2,366 hours, \$192,108
9. Wisconsin Realtors Association, 1,563 hours, \$182,674
10. AT&T Wisconsin, 578 hours, \$180,839

Lobbyists spent 48,543 hours working on the state's fiscal 2015-2017 budget, with medical assistance services and long-term care services as the top two budget subjects. Becker noted that 24,165 hours, nearly one-quarter of lobbyists' time in 2015, was spent lobbying on issues before any related bills were introduced. Lobbyists report this under "[Topics](#)" on the lobbying website. Once a bill is introduced, lobbyists report their activities by bill number.

### **Most-Lobbied Bills**

Of the 21,019 hours spent lobbying actual bills, three bills regarding wages and unions were the most-lobbied bills in the first six months of 2015. AB 32 dealt with prevailing wages, SB 44 with right-to-work and SB 49 with prevailing wages. Of the three, only SB 44 was enacted into law; however, prevailing wage reforms were included in the 2015-17 budget. Lobbyists reported spending 5,575 combined hours on those three bills, compared to 987 hours for the fourth most-lobbied bill, SB 179, the bill banning abortions after 20 weeks, which was enacted.

These are the rest of the 10 most-lobbied bills (**enacted bills in bold**):

5. Assembly Bill 61 – right-to-work.
- 6. Assembly Bill 143 – regulating transportation network companies.**
7. Assembly Bill 253 – ratification of the Interstate Medical Licensure Compact.
- 8. Assembly Bill 113 – operating farm equipment on highways.**
9. Assembly Bill 177 – limiting the foods that may be purchased under FoodShare.
10. Senate Bill 1 – school and school district accountability reports.

By law, any organization that compensates someone who lobbies state government on five or more days in a six-month period must register and file reports with the Government Accountability Board, which posts them online in a searchable database. Organizations report their lobbying activities two ways: real-time reports within 15 days of when they begin to lobby on a specific bill or issue, and six-month reports detailing the hours and dollars spent lobbying. The first six-month reports for the current session were due July 31, 2015.

The public can view real-time reports on the lobbying website by clicking the “[What Are They Lobbying About?](#)” link.

The public can use the Eye on Lobbying website to search the lobbying database and run three basic reports showing total lobbying expenditures, sorted by the amount of money spent, numbers of hours spent, or alphabetically by the name of the lobbying principal. In addition, the G.A.B. staff has produced several custom reports, including lobbying summaries and detailed lists of which bills and subjects received the most lobbying effort. These reports are available on the G.A.B. website: <http://gab.wi.gov/publications/reports/lobbying/2015-6-month-lobbying-summary>.

[Under Wisconsin law](#), lobbyists are generally forbidden to give meals, entertainment or other gifts to state lawmakers, and campaign donations are limited to specific windows of time outside the normal legislative session.

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The Government Accountability Board is responsible for administration and enforcement of campaign finance, elections, ethics and lobbying laws in Wisconsin. The Board is made up of six non-partisan, former judges and is supported by an agency of non-partisan staff members.



# State of Wisconsin\Government Accountability Board

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JUDGE GERALD C. NICHOL  
Chairperson

KEVIN J. KENNEDY  
Director and General Counsel

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## MEMORANDUM

**DATE:** For the September 1, 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 (June 18, 2015), the Elections Division staff has focused on the following tasks:

### **1. General Activities of Election Administration Staff**

#### A. Special Primary and Election - Senate District 33,

The Special Primary in Senate District 33 was held on June 23, 2015, and the Special Election was conducted on July 21, 2015. Judge Nichol certified the results of the primary and election on July 1, 2015 and July 31, 2015, respectively. Four candidates filed nomination papers; three Republicans and one Democrat.

#### B. Special Election - Assembly District 99

On July 29, 2015 Governor Walker issued Executive Order #171 calling a special election to fill the vacancy in Assembly District 99 caused by the resignation of Chris Kapenga, who was elected to the office of State Senator in Senate District 33 Special Election. The Assembly District 99 Special Election is set for September 29, 2015. Four Republican candidates qualified for the ballot. The primary will be conducted on September 1, 2015.

C. Local Special Elections

July 21, 2015	City of Milwaukee Alderperson Special Primary
August 18, 2015	City of Milwaukee Alderperson Special Election
October 13, 2015	Randall Joint 1 School District Referendum
November 3, 2015	Tigerton School District Referendum
“	Boscobel School District Referendum
“	Potosi School District Referendum
“	Tomorrow River School District Referendum
“	City of Hudson Municipal Alderperson Election
“	Town of Polk Referendum
“	Town of Greenville Referendum
“	Village of Germantown Referendum
“	Town of Windsor Incorporation Referendum

2. **Voter Registration Statistics**

The following statistics summarize statewide voter registration activity year-to-date as of August 20, 2015:

<b>Category</b>	<b>Voters</b>
<b>Active Voter Registrations</b>	3,383,514
<b>Inactive Voter Registrations</b>	1,242,988
<b>Cancelled Voter Registrations</b>	455,182
<b>HAVA Checks Processed In 2015</b>	33,277
<b>Merged Voter Registrations Processed In 2015</b>	24,111

3. **Voter Data Requests**

The following statistics summarize voter data requests as of August 18, 2015:

<b>Fiscal Year</b>	<b>Total Number of Requests</b>	<b>Requested Files Purchased</b>	<b>Percentage of Requests Purchased</b>	<b>Total Revenue</b>
<b>FY2016 to date</b>	27	11	40.74%	\$25,625.00
<b>FY2015</b>	679	418	61.56%	\$242,801.25
<b>FY2014</b>	371	249	67.12%	\$125,921.25
<b>FY2013</b>	356	259	72.75%	\$254,840.00
<b>FY2012</b>	428	354	78.04%	\$127,835.00

Since the launch of **BADGER Voters** (<http://BADGERVoters.gab.wi.gov>) in April 2014, the site has processed about 830 requests and 494 purchased data files, generating approximately \$299,680 of revenue and reducing agency costs by over \$178,500. Staff continues to study potential enhancements to the website that could result in improved customer service and greater efficiencies. As of August 18, 2015, the BADGER Voters site has resulted in a net benefit of approximately \$430,124 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 Special Primary and Special Election for State Senate District 33. 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 Special Primary State Senate 33 was due to be entered into the Wisconsin Elections Data Collection System (WEDCS) by July 23, 2015. All municipalities have completed these reports. The GAB-190NF Election Administration and Voting Statistics Report for the 2015 Special Election State Senate 33 is due to be entered into WEDCS by August 20, 2015. There is currently one incomplete report from the Town of Lisbon.

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 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 WEDCS statistics will be posted on the G.A.B. website.

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 was due to be entered into WEDCS by June 7, 2015. All municipalities have completed this reporting requirement.

##### **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. Electronic Voting Systems and Equipment**

##### **A. ES&S Voting System Application**

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 24, 2015. Board staff conducted functional testing of the systems on July 15-17, 2015 at the G.A.B. office.

Telecommunication testing for the Unity 3.4.1.1 analog modem capability was conducted on July 22-24, 2015 in Douglas, Eau Claire, and Marathon Counties. The results and recommendations of the testing campaigns are included in a separate report in the Board materials.

B. ES&S ExpressVote Issue

Board staff received information that an issue was discovered by the State of Maryland with the ExpressVote ballot marking device in the EVS 5200 and 5300 voting systems. The issue involves the digital signature, which is algorithmic code made for security purposes, when creating the memory device to be used with the ExpressVote equipment. Specifically, the digital signature was not being made correctly, which resulted in the creation of a defective memory device. The memory device will not load the data from the memory device to the ExpressVote because the voting system does not recognize the digital signature on the memory device. The specific error does not affect any tabulation or marking functions of the voting system. The specific error does not create a security concern because the error causes the memory device to be unusable.

ES&S was made aware of the problem and has provided Board staff with a technical bulletin with a method to check whether the digital signature has been created properly when the memory device is made. Board staff has communicated this issue and the fix with the county clerks in Kenosha County and Waukesha County, which are the only two counties that currently use or plan to use the ExpressVote. Verification of the digital signature's creation is a relatively easy procedure and both counties understand the process for doing so. In the meantime, ES&S plans to fix the issue with the digital signature and submit the fix for testing and certification to the US-EAC this summer. ES&S plans to submit the fix for approval to the G.A.B. in September 2015. Since this type of issue is not specifically tested by the current Wisconsin testing procedures, Board staff will be developing a modified testing procedure to test the fix and the underlying issue.

C. Purchase of New Voting Systems

Several counties have or are in the process of purchasing or leasing new voting systems before the end of the year. Each county plans on conducting training in the Fall for clerks and election inspectors. A couple of county clerks have extended invitations to G.A.B. staff to attend the training. Milwaukee County and Waukesha County will be using the Electionware 5.3.0.0 voting system, with DS200s. Milwaukee County will continue to use the AutoMARK as the accessible device. Waukesha County will be using the ExpressVote as the accessible device. Fond du Lac County, Green County, and Winnebago County will be using the Democracy Suite 4.14-DS voting system, with ImageCast Evolution. Fond du Lac County and Green County will not be purchasing the secondary monitor for the Evolution, and will utilize the primary monitor for accessible voting needs. Approximately half of the municipalities in Winnebago County will not be purchasing the secondary monitor for the Evolution, and will utilize the primary monitor for accessible voting needs. Green County will be leasing the voting system, including equipment, software, and maintenance for an eight year period.

## **6. The AccessElections! Accessibility Compliance Program**

### **A. 2014-2015 Impediments to Voting Report**

On July 3, 2015, Board staff filed the Impediments to Voting Report covering the 2014-2015 biennium with the Wisconsin State Legislature. The board is required to create this report by §5.25(4)(d), Wisconsin Statutes. The report was also transmitted to the Governor's Office and the chairs of the elections committees for both the Senate and Assembly. Hard copies were made available for members of both election committees and the report was posted on the agency website for review by local election officials and the public.

As noted in the previous biennial report, the Board's accessibility audit program has been recognized as a model for other states to emulate. In January 2014, the Presidential Commission on Election Administration released a report that addressed common challenges faced by voters and local election officials across the nation and identified best practices to remedy these problems. The bipartisan committee included a recommendation in their report that "states should survey and audit polling places to determine their accessibility," and cited the G.A.B. audit program as a "model." The report also recognized the Polling Place Accessibility Survey used to conduct all audits as a comprehensive tool for local election officials.

During this reporting period, 2014-2015, Board staff focused on conducting on-site compliance reviews of polling places and updating municipal clerk training resources to incorporate accessibility-related materials. Over the course of seven elections, 808 on-site reviews were conducted by Board staff or representatives of the agency. On average, audits conducted during this period identified 4.9 accessibility issues at each polling place to be addressed by the municipality, with over 40 percent of the problems able to be resolved by posting required election notices and marking accessible entrances. Board staff reported results from these on-site reviews to each municipality and provided guidance and resources to facilitate compliance with the Americans with Disabilities Act (ADA) and the Help America Vote Act of 2002 (HAVA).

At the time of this report, polling place accessibility audits have been conducted in 1,507 of Wisconsin's 1,853 municipalities, in all 72 counties in the state. The results of the audits from the 2014-2015 biennium have identified 1,652 findings that are considered high severity, meaning that these problems represent a barrier that, in and of itself, would be likely to prevent a voter with a disability from entering a polling place and casting a ballot privately and independently. In addition to those high severity findings, auditors have also reported 924 medium severity issues and 1,394 low severity issues, or conditions that add extra burdens to voting that are not faced by voters without disabilities.

The Government Accountability Board is required to consult with appropriate advocacy groups representing the elderly and disabled populations in the preparation of this report. Board staff met regularly with the Accessibility Advisory Committee in 2014 and 2015 to identify issues of concern with the disability community and to assist in evaluating polling place accessibility. The Committee partnered with the agency to increase the effectiveness and scope of public outreach efforts designed to ensure that elderly voters and voters with

disabilities can participate in the electoral process. Particular focus was paid to voters who reside in residential care facilities or nursing homes with informational packets provided to these facilities to confirm that both facility staff and residents understand the voting process. The Committee also partnered with the Board to create training materials for local election officials and poll workers that focused on the importance of accessible polling places.

**B. Deployment 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 four 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.

**C. 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 214 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 491 grant-funded accessibility supplies to 116 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.

**D. Photo ID Law Public Outreach Meeting**

Board staff is in the process of finalizing details for a public outreach meeting concerning the photo ID law for members of the Accessibility Advisory Committee and other advocacy groups for elderly voters and people with disabilities. The meeting will be held on September 23, 2015 and will consist of three main segments. Board staff will provide an overview of the law while incorporating information about how the law may impact voters represented by these groups. This presentation will be followed by a question and answer session and a workshop designed to explain all of the public outreach materials that are available for groups to use for public education purposes.

**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 during the remainder of the year. Staff is also developing plans for training of local election officials for the 2016 election cycle.

## **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 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. Statewide Voter Registration System (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. GAB staff has conducted several rounds of Module-Specific testing, Integrated testing, and Quality Assurance testing. Staff also conducted a series of webinars with a group of municipal and county clerks to demonstrate the new system and solicit feedback regarding it and suggestions for future development. The updated SVRS will be known as WisVote.

### **C. Voter Felon Audit**

As determined at the June Board meeting, staff is now conducting the Voter Felon Audit for any special elections for which the Board certifies election results. With this in mind, on July 30, 2015, board staff performed the post-election felon audit for the 2015 State Senate 33<sup>rd</sup> Primary Election. No potential matches were identified.

Staff will be conducting the 2015 State Senate 33<sup>rd</sup> Election (July 21, 2015) Voter Felon Audit the last week of August.

### **D. Canvass Reporting System**

Board staff provided 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 used the G.A.B. Canvass Reporting System reports to post unofficial election night results successfully.

**E. Four-Year Voter Record Maintenance**

On August 1, 2015, as required by Wis. Stats. §6.50(2r) the Board published the 2014-2015 voter record maintenance statistics. Below are the statistics required to be published under the new statutory provision.

<b>Voter Maintenance Statistics</b>	
<b>Wis. Stats. §6.50 (2r)</b>	<b>Total</b>
(a) The number of notices mailed.	97,981
(b) The number of notices that were returned to the board as undeliverable.	25,179
(c) The number of notices that were returned requesting continuation of registration.	9,610
(d) The number of notices that were returned requesting cancellation of registration.	26
(e) The number of notices that were returned with an indication that the named elector is deceased.	342
(f) The number of notices that were not returned.	63,186
(g) The number of electors who received notices and whose status changed from eligible (active) to ineligible (inactive).	83,070

Many clerks were still receiving and processing postcards on August 1, 2015. Therefore, updated statistics will be posted to the agency website on August 31, 2015. The updated statistics will be provided in the Elections Division Update for the October 20<sup>th</sup> Board meeting.

**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 WisVote, setting up the UAT environment 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. data and file storage from the old VM file server to the new Isilon File Services system.

Overall, the majority of inquiries the G.A.B. Help Desk received from clerks during this period were regarding the following: clerks processing Four Year maintenance postcards and getting logged in to process the cards in Dynamics CRM. Provided 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)
June 2015	295	315
July 2015	675	498
To August 20, 2015	190	187
<b>Total Calls for Reporting Period</b>	<b>1,160</b>	<b>1,000</b>

## 11. Voter Outreach Services

As part of the G.A.B.'s photo ID outreach efforts to voters, staff has made several presentations to voter groups in Wisconsin. The approach has been to talk primarily with audiences comprised of representatives from community organizations that work with voters. G.A.B. staff has found that it is most effective to focus our outreach efforts on training representatives of voter organizations. The representatives then bring the information back to their organizations where they can train organization staff and volunteers who will be conducting outreach to voters. In the past few months the G.A.B. has held the following training events:

Milwaukee, WI. In July G.A.B. staff held a photo ID training event for community leaders in Milwaukee. The meeting was well attended with about 15 community organizations represented. Staff was able to provide training on voting and photo ID, engage in a lengthy question and answer, distribute a packet of training materials to attendees, and distribute print materials such as posters and brochures on the photo ID law.

Madison, WI. In early August G.A.B. staff presented at a photo ID event at the City of Madison Central Library. The event was sponsored by a voter advocacy coalition. There were representatives from at least 10 community organizations in attendance. Staff was able to provide training on voting and photo ID, engage in a question and answer, distribute a packet of training materials to attendees, and distribute print materials such as posters and brochures on the photo ID law.

Minocqua, WI. G.A.B. staff was invited to present at an event at the Minocqua Library for the Northwood's League of Women Voters in mid-August. The League also invited six or six other politically diverse organizations to co-sponsor the event. There were more than 60 attendees, all of whom were involved in various voter outreach efforts in

northern Wisconsin. Staff was able to provide training on voting and photo ID, engage in a question and answer, distribute a packet of training materials to attendees, and distribute print materials such as posters and brochures on the photo ID law.

Staff has also been working with vendors to update the Bring It to the Ballot public education and outreach campaign. As of late August, all the videos, TV and radio ads, and printed materials had been updated with new information about how to get a free state ID card for voting. Additionally, the mobile version of the BringIt.wi.gov website for mobile devices was in final testing.

## **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  
7/19/15 – 8/31/15

Training Type	Description	Class Duration	Target Audience	Number of Clerks
Training Classes and Presentations	<ul style="list-style-type: none"> <li>• Board staff conducted Election Data and SVRS Database Report Workshops at the Clerks Institute in Green Bay on July 14, 2015 and July 28, 2015.</li> <li>• Board staff organized a Clerk Review Committee in July/early August to demonstrate and review the design of WisVote to date, and to provide feedback to staff on ways to make the system better. The Clerk Review Committee consisted of 20 webinar sessions.</li> <li>• Board staff presented election administration and SVRS topics to the Wisconsin Municipal Clerks Association 35<sup>th</sup> Conference in La Crosse on August 19, 2015</li> </ul>	<ul style="list-style-type: none"> <li>• 2 – 3 Hours</li> <li>• 1 Hour</li> <li>• 3 Hours</li> </ul>	<ul style="list-style-type: none"> <li>• County and Municipal Clerks who work in SVRS</li> <li>• Municipal Clerks who work in SVRS</li> <li>• Municipal Clerks</li> </ul>	<ul style="list-style-type: none"> <li>• 35 – 65</li> <li>• Maximum 7</li> <li>• 350</li> </ul>



# State of Wisconsin\Government Accountability Board

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JUDGE GERALD C. NICHOL  
Chairperson

KEVIN J. KENNEDY  
Director and General Counsel

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## MEMORANDUM

**DATE:** For the September 1, 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 October 1, 2015. The financial staff (Sharrie, Julie and Mike) has been heavily involved in preparing for Release 1. In June and July, the financial staff worked more than 250 hours on STAR-related tasks. Financial staff has been attending end-to-end walkthroughs of each PeopleSoft module's workflow, and has been lab testing each related module's test scripts in preparation for go-live. Any testing errors were communicated to subject matter experts.

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.

The STAR Project continues to be 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. However, given the two financial staff resignations (the primary users of the system), the transition will be much more difficult. Not only will new, inexperienced staff have to learn the financial roles and responsibilities of the agency, but they will also have to be trained and role mapped to use the STAR system. Staff will continue to keep the Board apprised as the STAR project moves forward.

## 2. Financial Services Activity

- Staff calculated and booked the fourth fiscal quarter payroll adjusting entries to properly allocate salaries and fringe benefits between federal and state programs, replaced the fully-expended N261 reporting category with the final O261 reporting category and processed staffing changes in the payroll system.
- Financial staff has also been tracking time worked on the next rounds of voting equipment testing, the costs of which are reimbursable from each equipment vendor. For example, Dominion was billed for \$10,351 of agency staff salary and fringe benefit costs related to the Demo Suite testing project, while the ES&S reimbursement check was received and booked for the ECO 918 testing.
- The G.A.B. fully expended the 2010 federal HAVA 261 accessibility grant allotment of \$201,091 by the end of July, 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. Staff met with Accessibility Elections Specialist Richard Rydecki on the remaining budget for Section 261 grant funds. All Federal Cash Management reports for the Section 261 accessibility program expenditures and revenues were reviewed and reconciled each month as of the fiscal year-end.
- 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.

Remaining budget authority for several appropriations was closely monitored during these past several weeks, and all fiscal year-end general ledger entries were prepared and timely posted, including the biennial GPR reimbursement of SVRS hosting and modernization costs.

- Staff reviewed and approved final year-end Form 78 – Appropriation Certifications for accuracy and completeness, after reconciling back to internal accounting files. Other completed fiscal year-end work included filing appointment of reconciler forms with the Department of Administration (DOA), and processing final payments of FY-15 purchase orders and other expenditures posted during month 13.
- Staff claimed reimbursements of \$34,839 for both June and July Federal Voting Assistance Program (FVAP) grant expenditures, then prepared journal entries to record revenues receivable, coordinated the accounting for incoming wire transfers with Department of Administration Treasury staff, and followed up on a late payment from the feds. Staff also met with Elections Voter Services Specialist Meagan Wolfe on the remaining budget for FVAP grant funds. Also reported to DOA was the typical FVAP segregated revenue overdraft amount as of fiscal year-end, along with an explanation as to how it is covered by a federal accounts receivable.
- Staff has been working with the U.S. Election Assistance Commission (EAC) to satisfy any remaining reporting requirements which are holding up the \$200,686 outstanding receivable from the EAC for the Election Data Collection grant final expenditures. EAC staff asked for additional information before they would process our reimbursement. A conference call will be scheduled to discuss the remaining loose ends.
- General ledger accounts for both federal and state payroll and travel balance sheet liabilities were analyzed each month as of the fiscal year-end 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 long-outstanding refund from a DOA overbilling of desktop and laptop support charges was finally received and credited to the proper federal and state funds.
- Budget-to-actual operating results for the fourth-fiscal quarter ending June 30 were summarized and communicated to management. A copy of the fourth quarter financial statement is in the supplemental Board meeting folder for the Board's information.

3. Procurements

Procurement staff closed out open purchase orders for IT contractors and office copy machines. The purchase order for KW2 for the Voter ID Campaign was rolled over to FY16 to pay for the remaining work on that contract. New purchase orders were written for all IT contractors, as well as office copy machines. Voter ID materials were ordered and printed from DOA publishing. Those materials are in the process of being distributed around the state. Toner and maintenance kits were purchased to fix two printers that were non-functioning. These printers will be used when the IT contractors move to the main office. Other miscellaneous office supplies and paper were purchased to maintain operations.

4. Contract Sunshine

Since the June Board meeting, the certification process for the April to June 2015 period was complete. Of the 38 agencies required to report qualified purchases, 37 returned the certification in a timely manner. 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.

5. Staffing

Accountant Michael Lauth resigned from his position on August 7. He accepted a transfer opportunity with the WI Partnership Program at the UW-School of Medicine and Public Health. Mike's invaluable contributions to this agency over the past four years will be greatly missed.

Staff Counsel Matthew Giesfeldt resigned from his position on August 7. He accepted a transfer opportunity with the State Public Defenders Office. While Matthew only worked in the agency for four-months, his enthusiasm and contributions will also be missed.

Financial Specialist Julie Nischik resigned from her position on August 26. Julie managed the agency's accounts payable/accounts receivable process, procurement and the Contract Sunshine program. Julie accepted a position in the private sector as a junior business analyst with Cognosante, a consulting company that was hired by the Department of Health Services to develop business requirements for the Medicaid system in Wisconsin. Julie's invaluable contributions to this agency over the past three years will be greatly missed.

In addition to the three-vacancies above, we have an Elections Specialist vacancy. Staff has begun recruitment efforts to fill these vacancies.

Our new Office Operations Associate, Nicole Woodards, began her employment at the G.A.B. on August 24. She will provide program assistance to the Elections Division and its training program.

6. Communications Report

Since the June 18, 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 continued to oversee efforts to update the Bring It to the Ballot public information campaign and re-launch our public outreach efforts. As of late August, all the videos, TV and radio ads, and printed materials had been updated with new information about how to get a free state ID card for voting. Additionally, the mobile version of the BringIt.wi.gov website for mobile devices was in final testing. The PIO has held preliminary meetings with media representatives about relaunching the campaign.

**Online:** As the agency's webmaster, the PIO managed regular updates to the website, worked closely with vendors on the mobile version of the BringIt website, and has begun helping the Elections Division upgrade its training website for clerks and poll workers.

**Media:** Media inquiries and interview requests have remained steady due to interest in voter ID, proposed changes to the Board, special elections, lobbying activity reports, the latest Legislative Audit Bureau report and other issues. Between June 1 and September 21, the PIO logged 136 media and general public phone calls and 251 media email contacts.

**Public Records:** The G.A.B. received several public records requests in June related to the IRS, and all of those have been fulfilled. Small requests are being fulfilled rapidly, but fulfilling other large, complex requests has been slowed with the recent departure of Staff Counsel Giesfeldt, who had been assigned to assist with them.

**Other:** The PIO spent significant time in August assisting the Director and General Counsel in drafting the agency's response letter to the Legislative Audit Bureau's report on confidential complaints and investigations.

7. Meetings and Presentations

During the time since the June 18, 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 litigation and legislative activities.

On June 23, 2015, Elections Supervisor Ross Hein led a staff delegation to the County Clerks summer symposium in Oshkosh. Training Coordinator Allison Coakley and Elections Specialist David Buerger also made presentations to the County Clerks.

From June 23 to June 25, 2015, Director Kennedy and Elections Division Administrator Mike Haas attended the summer meeting of the National Association of State Election Directors (NASED) in Cleveland, Ohio. Director Kennedy and Brad King, Co-Director of the Indiana Board of Elections, presented a review of election related litigation for NASED members.

On June 26, 2015, Director Kennedy attended a meeting of State Election Directors in Cleveland, Ohio organized by the Pew Charitable Trusts to discuss election technology issues. The work of the Government Accountability Board staff on e-poll books was mentioned by several state directors who found it valuable in examining the applicability of e-poll books in their states.

On July 8, 2015, Director Kennedy, Elections Division Administrator Mike Haas, Election Specialists David Buerger, Matt Kitzman and Jennifer Webb attended a demonstration of e-poll books by Elections Systems and Software organized by the Dane County Clerk. There were also several county and municipal election officials in attendance.

On July 15, 2015, Director Kennedy and Staff Counsel Matt Giesfeldt attended a CLE program on Technology in the Courtroom organized by the Department of Justice. On July 29, 2015, Director Kennedy and Staff Counsel Nate Judnic attended the Open Government Summit organized by Attorney General Schimel. Agency counsels regularly participate in these CLE programs as well as programs related to public records and open meetings.

Judge Nichol, Judge Vocke, Election Specialist Diane Lowe and Director Kennedy attended a legislative meeting in Plymouth on July 17 organized by the Wisconsin County Clerks Association. Several municipal and county clerks made presentations on the Election Day responsibilities of county and municipal clerks. Diane Lowe and Kevin Kennedy provided the state election perspective for Election Day and post-election activities. There were also a few legislators and legislative aides in attendance.

On July 20, 2015, Election Specialist David Buerger and Director Kennedy attended an evening meeting in Madison of the Election Integrity Network on automated post-election audits using scanned ballot images.

Director Kennedy participated in a series of media interviews on the future structure of the Government Accountability Board. These included a July 22, 2015 interview for the Wisconsin Public television program Here and Now which aired on July 24 and 26, 2015, as well as a July 23, 2015 interview for Capitol City Sunday on WKOW-TV which aired on July 26, 2015.

On July 24, 2015, Director Kennedy along with Division Administrators Mike Haas and Jonathan Becker made a presentation to several international visitors from Central and South America. Participants included public officials and journalists from the Dominican Republic, Ecuador, El Salvador, Honduras and Venezuela. The International Institute of Wisconsin arranged the meeting on behalf of the U.S. State Department. Public Information Officer Reid Magney facilitated the event for the agency.

On July 30, 2015 Director Kennedy taped a Wisconsin Newsmakers interview with Steve Walters for Wisconsin Eye on the future of the Government Accountability Board. The full 30-minute interview can be found here:

<https://www.youtube.com/watch?v=roxAhasnrJE&index=7&list=PLEPOzQE-zFk9WZNggcOF91S1WnqKW0S9U>

On August 12, 2015 Director Kennedy, Mike Haas, Jonathan Becker, Sharrie Hauge and Reid Magney participated in an exit conference with State Auditor Joe Chrisman and his staff to discuss the Audit Bureau's draft of its report on "Complaints Considered by the Government Accountability Board." Based on that feedback, LAB provided staff with a final draft of the audit report on August 17. Staff gave LAB the G.A.B.'s formal response letter on August 18. LAB released its audit the morning of August 20, which found no major problems with the staff and Board's handling of complaints. LAB made two minor recommendations, which are consistent with the agency's existing practices. A copy of LAB report 15-13 is available here: <http://legis.wisconsin.gov/lab/reports/15-13full.pdf>

Director Kennedy was one of several national experts on election data who presented at a day and half conference in Washington DC. The U.S. EAC Election Data Summit was held on August 12-13, 2015. The program can be viewed at: [http://www.eac.gov/eac\\_election\\_data\\_summit\\_%E2%80%94\\_how\\_good\\_data\\_can\\_help\\_elections\\_run\\_better/](http://www.eac.gov/eac_election_data_summit_%E2%80%94_how_good_data_can_help_elections_run_better/)

On August 19, 2015, Director Kennedy led a staff delegation to the Wisconsin Municipal Clerks Association (WMCA) Summer Conference in La Crosse. Elections Supervisor Ross Hein along with elections specialists Diane Lowe and Marianne Griffin and SVRS trainer Juanita Borton made presentations about conducting a municipal canvass, voter ID and the new WisVote voter registration application.

Elections Division Administrator Mike Haas and Director Kennedy attended a hearing and executive session of the Assembly Committee on Campaigns and Elections on August 25, 2015. The hearing focused on 2015 Senate Bill 47 relating to responding to a request for an absentee ballot and 2015 Assembly Bill 240 relating to electioneering at a retirement home or residential care facility.

### **Personnel**

The agency has had significant staff turnover in the past 30 days. In addition to staff counsel Matt Giesfeldt leaving for a position with the State Public Defender, the agency administration team lost its accountant Mike Lauth and financial specialist Julie Nischik.

### **Delegated Authority**

An application for approval of Engineering Change Order (ECO) 1822 for the ES&S EVS 5.2.0.0 and EVS 5.3.0.0 voting systems was received on August 17, 2015. This ECO is a de minimis modification to allow for the ExpressVote Rolling Kiosk to be used as a voting booth for the ExpressVote ballot marking device. Director and General Counsel Kennedy, in consultation with Board Chair Nichol, approved the ES&S ECO 1822 application.

In addition Director Kennedy consulted with Judge Nichol concerning the disposition of a complaint regarding the conduct of the Village of Frederic clerk in handling rejected absentee ballots and reopening the official canvass following the Spring 2015 election. Judge Nichol agreed with the proposed staff resolution.

### **Looking Ahead**

The next Board meeting is scheduled for Tuesday, October 20, 2015. The meeting will be held in the agency offices, beginning at 9:00 a.m.

**Action Items**

None.