

Meeting of the Board

Thursday, September 4, 2014

Agenda
Open Session

9:00 A.M.

Board Room, Agency Offices

212 East Washington Avenue Third Floor

Madison, Wisconsin

Thursday, September 4, 2014

9:00 A.M.

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A. Call to Order	
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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.

K. Director's Report

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L. Closed Session

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| 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. |

The Government Accountability Board has scheduled its next meeting for Tuesday, October 28, 2014 at the Government Accountability Board offices, 212 East Washington Avenue, Third Floor in Madison, Wisconsin beginning at 9:00 a.m.

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.

State of Wisconsin\Government Accountability Board

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JUDGE THOMAS H. BARLAND
Chair

KEVIN J. KENNEDY
Director and General Counsel

Wisconsin Government Accountability Board
Joint Committee on Finance Hearing Room, 412 East
State Capitol
Madison, Wisconsin
June 10, 2014
9:00 a.m.

Open Session Minutes

<u>Summary of Significant Actions Taken</u>	<u>Page</u>
A. Approved May 2014 Open Session Minutes	1
B. Approved 17 staff recommendations to grant and deny ballot access to candidates for the Partisan Primary	2
C. Approved three staff recommendations on compliance review appeals.	7
D. Approved staff report on ballot access issues.	8
E. Adopted campaign finance guidelines for lobbyists furnishing	9
F. Approved per-diem payments for meeting preparations	10

Present: Judge Thomas Barland, Judge Harold Froehlich, Judge Michael Brennan, Judge Elsa Lamelas, Judge Gerald C. Nichol, and Judge Timothy L. Vocke.

Staff Present: Kevin J. Kennedy, Jonathan Becker, Michael Haas, Ross Hein, Sharrie Hauge, Shane Falk, Nathan Judnic, Pauline Shoemaker, Diane Lowe, and Reid Magney

A. Call to Order

Chairperson Barland called the meeting to order at 9:01 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.

C. Approval of Minutes of Previous Meeting

MOTION: Approve the minutes of the May 21, 2014 meeting of the Government Accountability Board. Moved by Judge Vocke, seconded by Judge Froehlich. Motion carried unanimously.

D. Ballot Access Challenges

Director Kennedy introduced Lead Elections Specialist Diane Lowe, who made an oral presentation based on a written memorandum titled “Ballot Access for the 2014 General Election” which was included in the June 2014 Board Meeting Materials.

Staff Counsels Shane Falk and Nathan Judnic and Legal Intern Pauline Shoemaker reviewed the complaints filed as challenges to ballot access for the following candidates and presented recommendations based upon the staff’s analysis of the complaints and the responses. Each matter was considered and decided separately by the Board after providing an opportunity for the parties to make oral presentations and reviewing the staff’s recommendations.

1. G.A.B. Case No. EL 14-04 -- Frederick P. Kessler Complaint against Ollie Dombrow, Democratic Candidate for the 12th Assembly District

There were no personal appearances.

MOTION: Accept staff recommendation to approve challenge to 178 signatures and dismiss the remainder of the complaint, verify 60 valid signatures, and deny ballot status for Candidate Dombrow and direct staff to prepare and issue a Findings and Order consistent with this motion. Moved by Judge Vocke, seconded by Judge Lamelas. Motion carried. Judge Brennan abstained.

2. G.A.B. Case No. EL 14-05 -- Joel Gratz Complaint against Russell Goodwin, Republican Candidate for 12th Assembly District

Joel Gratz appeared on his own behalf. Candidate Russell Goodwin did not appear.

MOTION: Accept staff recommendation to deny challenges to 3 signatures at page 13, line 6, page 14, line 7, and a duplicate challenge to page 9, line 6, sustain challenges to 150 signatures identified in the Challenge Worksheet, verify a total of 156 valid signatures, deny ballot access, and direct staff to prepare and issue Findings and Order consistent with this motion. Moved by Judge Lamelas, seconded by Judge Vocke. Motion carried unanimously.

3. G.A.B. Case No. EL 14-06 -- Joel Gratz Complaint against Steve Gulasky, Democratic Candidate for the 42nd Assembly District

Joel Gratz appeared on his own behalf. Candidate Steve Gulasky did not appear.

MOTION: Accept staff recommendation to sustain challenges to 17 signatures on pages 1 and 17 missing election date and office title, deny challenge to incorrect election date on page 13 because the candidate substantially complied with the date requirement of Wis. Stat. § 8.15(5)(a), sustain challenge to 3 duplicate signatures on page 24, line 7, page 1, line 8, and page 12, line 1, deny challenge to circulation dates on pages 11, 13, 16, 19-21, 25, and 30 because the candidate substantially complied

with the date requirement of Wis. Stat. § 8.15(4)(a), verify 187 signatures, deny ballot access, and direct staff to prepare and issue Findings and Order consistent with this motion. Moved by Judge Vocke, seconded by Judge Brennan. Motion carried unanimously.

4. G.A.B. Case No. EL 14-09 -- Jennifer Toftness Complaint against Justin Krueger, Democratic Candidate for the 3rd Assembly District

There were no personal appearances.

MOTION: Accept staff recommendation and verify a total of 197 signatures (209 original signatures minus 12 signature challenges accepted: 11 signatures outside of district and 1 duplicate signature), dismiss the remainder of the complaint, and deny ballot status to Candidate Krueger and direct staff to prepare and issue a Findings and Order consistent with this motion. Moved by Judge Lamelas, seconded by Judge Brennan. Motion carried unanimously

5. G.A.B. Case No. EL 14-10 -- RPW/Joe Fadness Complaint against William C. Thompkins III, Restoring Responsibility and Power Candidate for the 21st Senate District

There were no personal appearances.

MOTION: Accept staff recommendation to deny challenges to pages 2-22, 25-42, 44-54, 56, and 58-59 containing 357 signatures because the candidate substantially complied with the address requirements of Wis. Stat. § 8.15(a) and (b); sustain challenge to the total signature count for page 7 and affirm that page only contains 5 valid signatures but offset this with the one additional signature from page 17 leaving the initial determination of verified signatures at 401; deny challenges to signatures on page 50, line 9 and page 54 line 9 because the signature date may be determined by other dates on the page pursuant to Wis. Adm. Code GAB § 2.05(15)(a); sustain challenges to 3 signatures at page 15, line 10, page 22, line 4 and page 48, line 6 because the signatory address or municipality cannot be determined in violation of Wis. Stat. § 8.15(2) and Wis. Adm. Code GAB § 2.05(12); sustain challenges to 2 signatures at page 59, lines 9-10 because the electors reside outside the 21st State Senate District in violation of Wis. Stat. § 8.15(3); verify a total of 396 valid signatures; deny ballot access; and direct staff to prepare and issue Findings and Order consistent with this motion. Moved by Judge Nichol, seconded by Judge Brennan. Motion carried unanimously.

6. G.A.B. Case No. EL 14-11 -- Jennifer Toftness Complaint against Mandela Barnes, Democratic Candidate for the 11th Assembly District

Jennifer Toftness appeared on her own behalf. Attorney Rebecca Mason appeared on behalf of Representative Barnes, who also appeared.

MOTION: Accept staff recommendation to sustain the challenge to Candidate Barnes' address on pages 1-6 and page 1 of the supplemental papers, striking 20

signatures, including the candidate's personal signature, deny challenge of missing circulator municipality, sustain challenge to 6 out-of-district signatures on page 13, lines 5-6, page 14, line 5, and page 21, line 6-8; sustain legibility challenge of 3 signatures at page 19, line 1, page 21, line 9, and page 28, line 2, deny 4 legibility challenges at page 14, line 4, page 15, line 2, page 17, line 1, and page 29, line 10, sustain challenge of signer with felony conviction; verify 204 signatures, grant ballot access for Candidate Barnes, and direct staff to prepare and issue Findings and Order consistent with this motion. Moved by Judge Vocke, seconded by Judge Nichol. Motion carried unanimously.

7. **G.A.B. Case No. EL 14-12 -- Thad Nation Complaint against Sara Lee Johann, Democratic Candidate for the 10th Assembly District**

There were no personal appearances.

MOTION: Accept staff recommendation and verify a total of 211 signatures (238 original signatures plus 5 signatures that should have been deemed legibly printed by Board staff during 1st and 2nd review, plus 4 signatures that the date can be determined by other signatures on the page, plus 1 signature that the address can be determined by other signatures on the page, minus 37 signature challenges accepted: 33 signatures outside of district, 2 missing, incomplete or illegible addresses, and 2 signatures with P.O. Box numbers), dismiss the remainder of the complaint, and grant ballot status to Candidate Johann and direct staff to prepare and issue a Findings and Order consistent with this motion. Moved by Judge Nichol, seconded by Judge Brennan. Motion carried unanimously.

8. **G.A.B. Case No. EL 14-13 -- Joel Gratz Complaint against Kathy Bernier, Republican Candidate for the 68th Assembly District**

Joel Gratz appeared on his own behalf. Representative Bernier did not appear.

MOTION: Accept staff recommendation to deny challenges to pages 20 and 34 containing 11 total signatures because the challenger did not present evidence to meet the clear and convincing burden of proof pursuant to Wis. Adm. Code GAB § 2.07(3)(a) and (4); sustain challenges to the 4 signatures at page 7, lines 7-10 because they are dated after the date of the circulator's certification in violation of Wis. Adm. Code GAB § 2.05(14); sustain challenges to 3 signatures at page 6, lines 7-9 because the signatory address or municipality cannot be determined in violation of Wis. Stat. § 8.15(2) and Wis. Adm. Code GAB § 2.05(12); deny challenges to 4 signatures at page 2, line 8, page 5, lines 6 and 8 because an address is present and page 5, line 9 because the P.O. Box is fully within the district as permitted by Wis. Adm. Code GAB § 2.05(12); deny the challenges to 91 signatures because a legibly printed name is present and sustain the challenge to 1 signature at page 14, line 10 because the second name entry is not legibly printed in violation of 2013 Wisconsin Act 160; verify a total of 282 valid signatures; grant ballot access; and direct staff to prepare and issue Findings and Order consistent with this motion. Moved by Judge Vocke, seconded by Judge Nichol. Motion carried unanimously.

9. G.A.B. Case No. EL 14-14 -- Sheila Cochran Complaint against Gary George, Democratic Candidate for the 4th Congressional District

Sheila Cochran did not appear. Timothy John and Corey Daniels appeared on behalf of Candidate Gary George.

MOTION: Accept staff recommendation to deny challenges to 7 circulators with felony convictions, deny challenges to incorrect notary dates, deny challenges to circulator insufficiencies on pages 139-14-3, 146, and 150-152, verify 1391 signatures, grant ballot access for Candidate George, and direct staff to prepare and issue Findings and Order consistent with this motion. Moved by Judge Brennan, seconded by Judge Lamelas. Motion carried unanimously.

10. G.A.B. Case No. EL 14-15 -- RPW/Joe Fadness Complaint against Jeremy Ryan, Republican Candidate for the 1st Congressional District

Lane Ruhland appeared on behalf of the Republican Party of Wisconsin./Joe Fadness. Candidate Jeremy Ryan appeared on his own behalf.

MOTION: Accept staff recommendation to deny challenges to all pages for alleged misrepresentation and fraud because the challenger has not presented sufficient evidence to meet the clear and convincing burden of proof; sustain challenges to the signatures found at page 2, line 1 (invalidating the duplicate signature at page 36, line 10), page 22, line 4, page 26, line 6, page 36, line 3, page 47, line 5, page 56, line 1, page 59, line 9, page 67, line 5, page 71, lines 4-5, page 77, line 6, page 79, line 1 for the reasons stated above; deny all other challenges; verify a total of 1,100 valid signatures; grant ballot access; and direct staff to prepare and issue Findings and Order consistent with this motion. Moved by Judge Vocke, seconded by Judge Nichol. Motion carried.

Judge Barland called a recess at 10:45 a.m., and the Board reconvened at 10:56 a.m.

11. G.A.B. Case No. EL 14-16 -- Jim Macken Complaint against Frank Lasee, Republican Candidate for the 1st Senate District

Attorney Rebecca Mason appeared on behalf of the Democratic Party of Wisconsin and Jim Macken. Attorney Eric McLeod appeared on behalf of Sen. Lasee.

MOTION: Accept staff recommendation to accept the declaration of candidacy filed by Candidate Lasee as valid, verify a total of 581 signatures, dismiss the complaint in its entirety, and grant ballot status to Candidate Lasee and direct staff to prepare and issue a Findings and Order consistent with this motion. Moved by Judge Vocke, seconded by Judge Froehlich. Motion carried unanimously

12. G.A.B. Case No. EL 14-17 -- Joel Gratz Complaint against Isaac Weix, Republican Candidate for the 92nd Assembly District

Joel Gratz appeared on his own behalf. Candidate Isaac Weix did not appear.

MOTION: Accept staff recommendation to verify a total of 285 signatures, dismiss the complaint in its entirety, grant ballot status to Candidate Weix and direct staff to prepare and issue a Findings and Order consistent with this motion. Moved by Judge Nichol, seconded by Judge Vocke. Motion carried unanimously.

13. G.A.B. Case No. EL 14-18 -- Joel Gratz Complaint against Michael LaForest, Green Party Candidate for the 47th Assembly District

Joel Gratz appeared on his own behalf. Candidate Michael LaForest did not appear.

MOTION: Accept staff recommendation to deny challenges to the signatures on all 29 pages (containing 284 signatures) due to the designation of “Green Party” in the heading; sustain challenges to pages 6, 13-17 and 19-22 (containing 100 signatures) because the candidate did not substantially comply with the heading and certification of circulator legal requirements; sustain challenges to 9 signatures at page 1, lines 8 and 10, page 4, lines 1, 3, 5, page 12, line 3, page 15, lines 1-2, page 29, line 7 because the address is outside the 47th State Assembly District but deny challenges to the signature at page 11, line 10 because the address falls within the district; deny the duplicate challenge to the signature at page 29, line 7; deny the challenge to the signature at page 3, line 10 because the challenger has not met the clear and convincing burden of proof; deny the challenges to the 10 signatures at page 9, lines 1-10 because the circulator’s municipality of residence is known from the heading; verify a total of 175 valid signatures, deny ballot access, and direct staff to prepare and issue Findings and Order consistent with this motion. Moved by Judge Vocke, seconded by Judge Nichol. Motion carried unanimously.

14. G.A.B. Case No. EL 14-19 -- Michael Basford Complaint against Brett Hulsey, Democratic Candidate for Governor

Michael Basford did not appear. Representative Hulsey appeared on his own behalf.

MOTION: Accept staff recommendation and sustain the challenge as to 57 signatures collected by 1 circulator with a felony conviction, dismiss the challenge to 3 other circulators with felony convictions, dismiss the challenge to the signers’ municipality entries, verify 2,074 signatures, grant ballot access for Candidate Hulsey, and direct staff to prepare and issue Findings and Order consistent with this motion. Moved by Judge Nichol, seconded by Judge Froehlich. Motion carried unanimously.

Judge Barland called a recess at 12:00 p.m., and the Board reconvened at 12:08 p.m.

15. G.A.B. Case No. EL 14-19 -- Shae Sortwell Complaint against Eric Wimberger, Republican Candidate for the 90th Assembly District

The Board delayed action on this item until after lunch.

16. G.A.B. Case No. EL 14-21 -- Joel Gratz Complaint against David Scott Espeseth, Republican Candidate for the 7th Assembly District

Joel Gratz appeared on his own behalf. Craig Summerfield appeared on behalf of Candidate Scott Espeseth..

MOTION: Accept staff recommendation to verify a total of 400 signatures and grant ballot status to Candidate Espeseth. Moved by Judge Lamelas, seconded by Judge Vocke. Motion carried unanimously.

17. G.A.B. Case No. EL 14-22 -- Laura Manriquez Complaint against Jocasta Zamarripa, Democratic Candidate for the 8th Assembly District

Laura Manriquez appeared on her own behalf. Joel Gratz appeared on behalf of Representative Zamarripa.

MOTION: Dismiss the complaint because the Board does not have a timely filed, signed verified complaint. Moved by Judge Vocke, seconded by Judge Brennan. Motion carried unanimously.

E. Personal Appearances from Members of the Public

(This item was taken out of order to accommodate members of the public in attendance.)

Ardis Cerny of Pewaukee appeared on her own behalf seeking clarification of Admin. Rule GAB Chapter 4 -Election Observers. She asked whether observers would be able to challenge a voter based on the form of proof of residence documentation provided during the Election Day registration process. She said observers need the ability to challenge a voter in real time without causing a disruption at the polls, and she wanted to know whether an observer could ask about the type of proof of residence document used and whether it has a number on it (in the same way an observer may ask that a voter repeat his or her name at the check-in table). She asked for direction prior to the August 12 Partisan Primary.

Mary Ann Hanson of Brookfield appeared on her own behalf and distributed to Board members an opinion article from the May 29, 2014 *Wall Street Journal* titled “Hack the Vote: The Perils of the Online Ballot Box.” She also commented on Admin. Rule GAB Chapter 4 Election Observers, saying the review process has been a positive and healthy thing. She expressed concern that a final rule needs to be in place prior to the August 12 Partisan Primary.

Judge Barland called a recess for lunch at 12:50 p.m. The Board resumed the meeting at 1:23 p.m.

D. Ballot Access Challenges (continued)

15. G.A.B. Case No. EL 14-19 -- Shae Sortwell Complaint against Eric Wimberger, Republican Candidate for the 90th Assembly District

There were no personal appearances.

MOTION: Accept staff recommendation to deny the challenges to the candidate's address, office title, and circulated pages; deny the circulation sufficiency challenge to pages 16-18 and 25 and the circulator's signature at page 11, line 8, sustain challenge to 6 duplicate signatures at page 14, lines 5 and 8, page 21, line 9, and page 24, lines 3-4 and 6, sustain challenge to 7 addresses outside the district at page 4, lines 2, 6, and 7, page 16, line 6, page 19, lines 4 and 6, and page 22, line 4, sustain the challenge to 3 addresses that appear not to exist at page 9, line 3, page 11, line 10, and page 21, line 1, sustain 4 challenges to signers with felony convictions, deny challenge to 12 remaining individuals with felony convictions, verify 216 signatures, grant ballot access, and direct staff to prepare and issue Findings and Order consistent with this motion. Moved by Judge Lamelas, seconded by Judge Nichol. Motion carried unanimously.

F. Staff Report on Ballot Access Procedures and Ballot Access Issues

Compliance Review Appeals

1. G.A.B. Case No. EL 14-03 -- Gary Kauther, Candidate for the 25th Senate District

Ms. Shoemaker made an oral presentation based on the written memo on Ballot Access for the 2014 General Election.

MOTION: Accept staff recommendation to find Candidate Kauther's nomination papers in substantial compliance, include 8 signatures originally struck, add 48 supplemental signatures, verify 415 valid signatures, and grant ballot access for Candidate Kauther. Moved by Judge Brennan, seconded by Judge Vocke. Motion carried unanimously.

2. G.A.B. Case No. EL 14-08 -- Marcia Mercedes Perkins, Candidate for Governor

Staff Counsel Falk made an oral presentation based on the written memo on Ballot Access for the 2014 General Election.

MOTION: Accept staff recommendation to dismiss Candidate Perkin's compliance review complaint in its entirety and deny ballot status to Candidate Perkins for her failure to comply with the requirement to include legible printed names of each signer of her nomination papers; however, even if this requirement was waived, the Board finds that Candidate Perkins nomination papers only contain 1,855 valid signatures and are insufficient in number for ballot access. Moved by Judge Vocke, seconded by Judge Brennan. Motion carried unanimously.

3. G.A.B. Case No. EL 14-07 -- Craig Krueger, Candidate for the 25th Assembly District

Staff Counsel Judnic made an oral presentation based on the written memo on Ballot Access for the 2014 General Election.

MOTION: Accept staff recommendation to dismiss Candidate Krueger’s complaint in its entirety and deny ballot status to Candidate Krueger for the reasons referenced in the staff memorandum. Moved by Judge Vocke, seconded by Judge Nichol. Motion carried unanimously.

With all ballot access challenges and compliance review appeals completed, Director Kennedy asked the Board to certify the August 2014 Partisan Primary ballot along with Independent candidates for the November 2014 General Election.

MOTION: Affirm ballot status for all those candidates listed in the memorandum on Ballot Access for the 2014 Partisan Primary along with Independent candidates for the General Election who have met or exceeded the minimum valid signatures and have filed all necessary ballot access documents, as well as those approved earlier in the meeting. Moved by Judge Vocke, seconded by Judge Nichol. Motion carried unanimously.

Judge Barland said the Board needs to discuss with the Legislature enlarging the working period the Board and staff have to approve or disapprove ballot access. He noted that staff worked through the weekend and until 3 a.m. the day of the meeting in preparation. He strongly urged the Board to consider proposing legislation to enlarge the time period, and said the present schedule is not reasonable.

Director Kennedy said staff has already raised the issue with key legislative staff members, and they have indicated it is a good time to consider such requests.

The Board and staff discussed the efforts that were required to receive and process more than 300 nomination papers in a short period of time, as well as to deal with challenges and compliance review appeals.

Judge Barland also noted the need to work through a better definition for the requirement that nomination paper signers must also “legibly print” their names for a signature to be considered valid. Director Kennedy said there has been a lot of give and take on that issue, and staff will continue its discussions with legislative staff.

G. Administrative Rules

Proposed Changes to GAB Chapter 4, Election Observers

Elections Division Administrator Michael Haas made an oral presentation based on a written report starting on page 21 of the June 2014 G.A.B. Meeting Materials. He discussed recent legislative committee hearings on the rule and said he hopes to have the rule in place in time for the August 12 Partisan Primary.

Director Kennedy said the Board may need to have a relatively short teleconference sometime in the coming month to finish work on the rule. No Board action is required.

H. Proposed Guidance on Lobbyists Furnishing

Ethics and Accountability Division Administrator Jonathan Becker made an oral presentation based on a written report starting on page 30 of the June 2014 G.A.B. Meeting Materials. He said staff has collected feedback on proposed guidelines from the regulated community and incorporated them where appropriate. One commenter requested legal citations within the guideline documents, and Mr. Becker agreed to provide legal citations within the guidelines along with providing a separate legal addendum with statutory citations. He asked the Board to adopt the guidelines and the frequently-asked-questions document with the understanding that the staff may make minor adjustments based on experience.

The Board and staff discussed staff providing the Board with any changes made, as well as the format of the legal addendum.

MOTION: Adopt the guidelines “Campaign Fundraising” and “Campaign Contributions and Activities by Lobbyists and Lobbying Principals” as well as a frequently-asked-questions document about lobbyist campaign contributions on pages 35 to 41 of the June 2014 G.A.B. Meeting Materials, with staff to report on any minor changes at the next Board meeting. Moved by Judge Froehlich, seconded by Judge Lamelas. Motion carried unanimously.

I. Board Member Per-Diems

Judge Vocke raised the issue of per-diem payments for Board members for time spent in preparation prior to the meeting. Members said they spent a great deal of time preparing for this meeting.

MOTION: Authorize payment of one day’s per-diem for meeting preparation in addition to the per-diem for today’s meeting. Moved by Judge Vocke, seconded by Judge Froehlich. Motion carried unanimously.

J. 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; and confer with counsel concerning pending litigation.

MOTION: Move to closed session pursuant to §§5.05(6a), 19.85(1)(h), 19.851, 19.85(1)(g), and 19.85(1)(c), to consider written requests for advisory opinions and the investigation of possible violations of Wisconsin’s lobbying law, campaign finance law, and Code of Ethics for Public Officials and Employees; confer with counsel concerning

pending litigation; and consider performance evaluation data of a public employee of the Board. Moved by Judge Brennan, seconded by Judge Froehlich.

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

Motion carried unanimously. The Board recessed at 2:27 p.m. and convened in closed session at 2:37 p.m. The Board adjourned in closed session at 4:21 p.m.

The next regular meeting of the Government Accountability Board is scheduled for Tuesday, August 26, 2014, at the Government Accountability Board offices, 212 East Washington Avenue, Third Floor, Madison, Wisconsin beginning at 9 a.m.

June 10, 2014 Government Accountability Board meeting minutes prepared by:

Reid Magney, Public Information Officer

June 12, 2014

June 10, 2014 Government Accountability Board meeting minutes certified by:

Judge Timothy Vocke, Board Secretary

September 4, 2014

State of Wisconsin\Government Accountability Board

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JUDGE THOMAS H. BARLAND
Chair

KEVIN J. KENNEDY
Director and General Counsel

Wisconsin Government Accountability Board

212 East Washington Avenue
Madison, Wisconsin
July 21, 2014
1:30 p.m.

Open Session Minutes

<u>Summary of Significant Actions Taken</u>	<u>Page</u>
A. Selection of Board Secretary	1
B. Approved Changes to GAB Chapter 4, Election Observers	2
C. Set New Date for August Meeting	4
D. Approved Per Diem Payment	5

Present: Judge Gerald Nichol in person. By telephone, Judge Thomas H. Barland, Judge Harold Froehlich, Judge John Franke, Judge Elsa Lamelas, Judge Timothy Vocke.

Staff Present: Kevin Kennedy, Jonathan Becker, Michael Haas, Shane Falk, Nate Judnic, Ross Hein, Sharrie Hauge, and Reid Magney

A. Call to Order

Judge Barland called the meeting to order at 1:33 p.m. and welcomed Judge John Franke, the newest Board Member.

B. Director's Report of Appropriate Meeting Notice

Director and General Counsel Kevin Kennedy informed the Board that proper notice was given for the meeting. Several members of the public were present at the meeting.

C. Selection of Board Secretary

Director Kennedy said the position of Board Secretary is vacant due to Judge Brennan's term expiring. The selection of Board Secretary was done by lot. Judge Nichol drew Judge Vocke's name to be G.A.B. Secretary for the remainder of 2014.

D. Personal Appearances

Andrea Kaminski of Madison appeared on behalf of League of Women Voters of Wisconsin to comment on agenda item E, the proposed changes to GAB Chapter 4, Election Observers. She said the League agrees with the G.A.B. staff recommendation to not be able to take photos at the polling place because they believe observers with cameras can be intimidating.

Discussion.

Ardis Cerny of Pewaukee appeared on her own behalf to discuss the 2014 Legislative Updates webinar presented to clerks, the proposed election observer rules, and procedures for documenting a registering voter's proof of residence.

Mary Ann Hansen of Brookfield appeared on her own behalf to object to the proposed observer rules regarding distance from the voter. In the case of special voting deputies in nursing homes, observers should be able to see and hear the entire process.

Discussion.

Annette Kuglich of Waukesha appeared on her own behalf to comment on training of clerks and election inspectors regarding voter registration and acceptable proof of residence documents. She said she supports allowing election observers to use cameras so she can document her interactions with the chief inspector when there are differences of opinion.

Discussion.

Rock County Clerk Lori Stottler appeared on behalf of Rock County to comment on the proposed election observer rules. She expressed concerns about the capabilities of professional cameras in the hands of media and election observers to record confidential information on voter registration documents.

Greg Jones of Fitchburg appeared on behalf of the Dane County NAACP to comment on the proposed election observer rules. He said cameras and video could have a serious chilling effect on first-time voters.

Discussion.

E. Administrative Rules

Proposed Changes to GAB Chapter 4, Election Observers

Elections Division Administrator Michael Haas gave an oral presentation based on a written report starting on page 3 of the July 21, 2014 Special Meeting Materials. He discussed the history of previous administrative rules on election observers, including that the Board approved a final version of GAB 4 last year and sent it to the Legislature, which held two committee hearings this year. The chairs of the two legislative oversight committees suggested 12 changes, which have been incorporated in the proposed rule. One of those changes is to delete language regarding the use of still and video cameras by observers, which is a concern to the Board staff for a number of reasons, including that chief election inspectors at each polling place would have to make decisions about whether an observer's use of a camera was disruptive. Staff recommends the Board approve the revised rule in order to complete its promulgation, but convey to the Legislature that it does not agree with the changes regarding cameras.

Discussion.

Judge Lamelas said she shares the staff's concerns about cameras. Judge Nichol said he is not in favor of cameras in polling places. Judge Barland said he also shares the concern about cameras because of the potential for intimidation. Judge Vocke said that while he is sensitive to the issue of intimidation, many groups of people are photographed in public and it does not disrupt our business. Judge Froehlich said he agrees with Judge Vocke and said we should try it to see whether it disrupts the voting process.

MOTION: Approve the revised Chapter GAB 4 Election Observers, and direct staff to forward the proposed rule to the Legislature. The Board also directs staff to convey to the Legislature that the majority of the Board does not agree with the requested changes to the proposed rule which would permit the use of still and video cameras by election observers, but that the Board agrees to amend the provisions regarding cameras in order to complete the promulgation of the administrative rule. Moved by Judge Froehlich, seconded by Judge Vocke.

Discussion.

Judge Franke said he believes the use of cameras is fraught with difficulty, and reviewed several possible options the Board could take to deal with the situation.

Director Kennedy discussed the current state of the observer rule.

Judge Vocke offered a friendly amendment to the motion, to say that two of the six members disagree with the rest about cameras.

Judge Franke said the Legislature has every right to decide the camera issue, but the G.A.B. has the responsibility to promulgate rules on observers. He said he is uncomfortable with the Board passing something it does not agree with.

Judge Vocke suggested eliminating the language that says the Board does not agree with the changes regarding cameras. Judge Froehlich agreed. Judge Barland said the Board either supports the proposed rule or it does not.

MOTION: Withdraw the previous motion and substitute just the first sentence: Approve the revised Chapter GAB 4 Election Observers, and direct staff to forward the proposed rule to the Legislature. Moved by Judge Froehlich, seconded by Judge Vocke.

Further discussion.

Judge Franke asked about observers' right to hear voters. Mr. Haas said statutes say observers have the right to hear a voter state his or her name and address, and if the voter cannot be heard, the election inspector can repeat it.

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

Motion failed 2-4.

Further discussion. Judge Franke said he would like to reinstate the prohibition on cameras in the rule.

MOTION: Amend revised Chapter GAB 4 Election Observers to reinstate the stricken language from Section 4.02(18) regarding cameras. Moved by Judge Franke, seconded by Judge Lamelas.

Discussion. Judge Lamelas said the Board's message to the Legislature should be that we accept all changes in the rule except those on the use of cameras during the voting process.

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

Motion carried, 4-2.

The Board discussed whether to add language allowing voters to take pictures of themselves or family members, but took no action.

MOTION: Direct staff to forward revised Chapter GAB 4 Election Observers with changes to the Legislature. Moved by Judge Nichol, seconded by Judge Froehlich.

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

Motion carried unanimously.

F. Proposed August Meeting Date Change

Director Kennedy proposed a new meeting date of September 4 due to Board Member scheduling conflicts on August 26.

After discussion, the consensus of the Board is to move the August Regular Meeting to September 4.

Director Kennedy also discussed the need to schedule a special teleconference meeting to consider closed session matters in August.

Judge Froehlich became disconnected from the teleconference.

Consensus of the Board is to hold the special meeting at 1:30 p.m. Monday, August 11, 2014.

G. Per Diem

MOTION: Approve paying Board Members an additional half-day per diem for preparation for today’s meeting. Moved by Judge Vocke, seconded by Judge Nichol.

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

Motion carried.

H. Closed Session

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

MOTION: Move to closed session pursuant to §§5.05(6a), 19.85(1)(h), 19.851, 19.85(1)(g), and 19.85(1)(c), to deliberate on requests for advice under the Code of Ethics for Public Officials and Employees, lobbying law, and campaign finance law; to consider the investigation of possible violations of Wisconsin’s lobbying law, campaign finance law, and Code of Ethics for Public Officials and Employees; and confer with counsel concerning

pending litigation, and to consider employment, promotion and performance evaluation data of a public employee of the Board. Moved by Judge Vocke, seconded by Judge Nichol.

Judge Froehlich rejoined the teleconference at 4:03 p.m.

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

Motion carried unanimously.

The Board took a brief recess and convened in closed session at 4:08 p.m.

I. Adjourn

The Board adjourned in closed session at 5:23 p.m.

#####

The next regular meeting of the Government Accountability Board is scheduled for Thursday, September 4, 2014, at the G.A.B. office, 212 E. Washington Ave., in Madison, Wisconsin beginning at 9:00 a.m.

July 21, 2014 Government Accountability Board meeting minutes prepared by:

/s/

Reid Magney, Public Information Officer

August 7, 2014

July 21, 2014 Government Accountability Board meeting minutes certified by:

/s/

Judge Timothy Vocke, Board Secretary

September 4, 2014

State of Wisconsin\Government Accountability Board

212 East Washington Avenue, 3rd Floor
Post Office Box 7984
Madison, WI 53707-7984
Voice (608) 266-8005
Fax (608) 267-0500
E-mail: gab@wisconsin.gov
<http://gab.wi.gov>



JUDGE THOMAS H. BARLAND
Chair

KEVIN J. KENNEDY
Director and General Counsel

Wisconsin Government Accountability Board

212 East Washington Avenue
Madison, Wisconsin
August 11, 2014
1:00 p.m.

Open Session Minutes

Present: Judge Gerald Nichol in person. By telephone, Judge Thomas H. Barland, Judge Harold Froehlich, Judge John Franke, Judge Elsa Lamelas, and Judge Timothy Vocke.

Staff Present: Kevin Kennedy, Jonathan Becker, Michael Haas, Shane Falk, and Reid Magney

A. Call to Order

Judge Barland called the meeting to order at 1:10 p.m.

Judge Barland wished Staff Counsel Shane Falk the best of his luck in his new position in private practice. Other Board Members also expressed their gratitude for Mr. Falk's service and wished him well.

B. Director's Report of Appropriate Meeting Notice

Director and General Counsel Kevin Kennedy informed the Board that proper notice was given for the meeting. No members of the public were present at the meeting.

C. Closed Session

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

MOTION: Move to closed session pursuant to §§5.05(6a), 19.85(1)(h), 19.851, 19.85(1)(g), and 19.85(1)(c), to deliberate on requests for advice under the Code of Ethics for Public Officials and Employees, lobbying law, and campaign finance law; to consider

the investigation of possible violations of Wisconsin’s lobbying law, campaign finance law, and Code of Ethics for Public Officials and Employees; and confer with counsel concerning pending litigation, and to consider employment, promotion and performance evaluation data of a public employee of the Board. Moved by Judge Nichol, seconded by Judge Vocke.

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

Motion carried unanimously.

The Board convened in closed session at 1:14 p.m.

D. Adjourn

The Board adjourned in closed session at 2:41 p.m.

####

The next regular meeting of the Government Accountability Board is scheduled for Thursday, September 4, 2014, at the G.A.B. office, 212 E. Washington Ave., in Madison, Wisconsin beginning at 9 a.m.

August 11, 2014 Government Accountability Board meeting minutes prepared by:

/s/

Reid Magney, Public Information Officer

August 18, 2014

August 11, 2014 Government Accountability Board meeting minutes certified by:

/s/

Judge Timothy Vocke, Board Secretary

September 4, 2014

State of Wisconsin\Government Accountability Board

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JUDGE THOMAS H. BARLAND
Chair

KEVIN J. KENNEDY
Director and General Counsel

MEMORANDUM

DATE: For the September 4, 2014, Board Meeting

TO: Members, Wisconsin Government Accountability Board

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

Prepared and Presented by:
David Buerger
Elections Specialist
Government Accountability Board

SUBJECT: Election Systems and Software (ES&S)
Petition for Approval of Electronic Voting Systems
EVS 5.2.0.0 and EVS 5.3.0.0

I. Introduction

Election Systems and Software (ES&S) is requesting the Government Accountability Board (Board) approve the EVS 5.2.0.0 and EVS 5.3.0.0 voting systems for sale and use in the State of Wisconsin. No electronic voting equipment may be offered for sale or utilized in Wisconsin unless the Board first approves it. 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).

A. EVS 5.2.0.0

EVS 5.2.0.0 is a federally tested and certified paper based, digital scan voting system powered by the ElectionWare software platform. It consists of six major components: an election management system (EMS) server; an EMS client (desktop and/or laptop computer) with election reporting manager (ERM) software; the ExpressVote, an Americans with Disabilities Act compliant vote capture device for a polling place; the AutoMARK, an Americans with Disabilities Act compliant ballot marking device for a polling place; the DS200, a polling place scanner and tabulator; and the DS850, a scanner and tabulator for a central count location.

B. EVS 5.3.0.0

EVS 5.3.0.0 is a federally tested modification to the EVS 5.2.0.0 voting system. The modification provides support for modeming of unofficial election results from a DS200

to a Secure File Transfer Protocol (SFTP) server through public analog or wireless telecommunications networks after the polls close on Election Day. EVS 5.3.0.0 lacks federal certification. The underlying voting system (EVS 5.2.0.0) is federally certified.

II. Recommendation

Board staff is recommending approval of both the EVS 5.2.0.0 and EVS 5.3.0.0 for sale and use in Wisconsin. Detailed recommendations are listed on pages 20 and 21, following the analysis of functional testing performed by Board staff.

III. Background

On July 2, 2014, Board staff received an Application for Approval of EVS 5.2.0.0. ES&S submitted complete specifications for hardware, firmware, and software related to the voting system. In addition, ES&S submitted technical manuals, documentation, and instruction materials necessary for the operation of EVS 5.2.0.0. At the same time, ES&S requested Board staff approve the EVS 5.3.0.0 voting system. The Application for Approval of EVS 5.3.0.0 was received by Board staff on July 3, 2014. In addition, ES&S submitted technical manuals, documentation, and instruction materials necessary for the operation of EVS 5.3.0.0.

A. EVS 5.2.0.0

The Voting System Test Laboratory (VSTL) responsible for testing EVS 5.2.0.0, National Technical Systems (NTS), recommended that the U.S. Election Assistance Commission (EAC) certify ES&S EVS 5.2.0.0. ES&S provided the NTS report to Board staff along with the Application for Approval of EVS 5.2.0.0. Voting systems submitted to the EAC for testing after December 13, 2007, are tested using the 2005 Voluntary Voting System Guidelines (VVSG). The EAC certified ES&S EVS 5.2.0.0. on July 2, 2014, and issued certification number **ESSEVS5200**.

Board staff scheduled voting system evaluations and demonstrations for EVS 5.2.0.0 July 7-9, 2014. A four-person team conducted this test campaign.

i. Hardware

ES&S submitted the following equipment for testing:

<i>Equipment</i>	<i>Hardware Version(s)</i>	<i>Firmware Version</i>	<i>Type</i>
DS200	1.2.1 1.2.3 1.3	2.12.00	Polling Place Digital Scanner and Tabulator
DS850	1.0	2.10.00	Central Count Digital Scanner and Tabulator
AutoMark Voter Assist Terminal (VAT)	1.0 1.1 1.3	1.86.00	Ballot Marking Device
ExpressVote	1.0	1.4.00	Universal Vote Capture Device

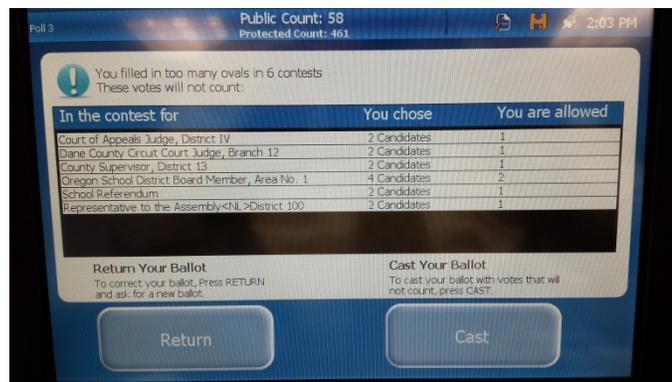
The following paragraphs describe the design of the EVS 5.2.0.0 hardware taken in part from ES&S technical documentation.

1. DS200

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 back of the ballot simultaneously. The resulting ballot images are then processed by a proprietary mark recognition engine. After the paper ballot is read by the scanner it is deposited into an integrated secured storage bin. The ballot images are stored on a USB flash drive that can be removed. This USB flash drive may be taken to the municipal clerk’s office or other central office where the ballot images may be downloaded to be stored for future review, if needed. The DS200 does not store any images or data in its internal memory.

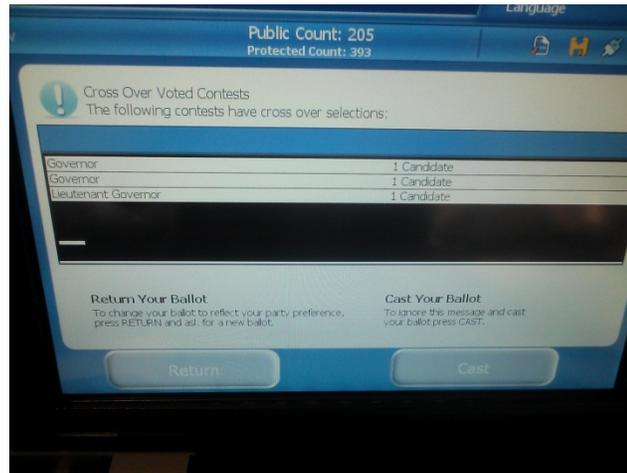
The DS200 features a 12-inch touchscreen display to provide feedback to the voter on the disposition of his or her ballot.

- If the ballot is scanned and accepted by the machine, a message appears that states the ballot has been cast.
- If the ballot contains an overvote, a message appears that identifies the contests with overvotes. The message also tells the voter that these votes will not count.



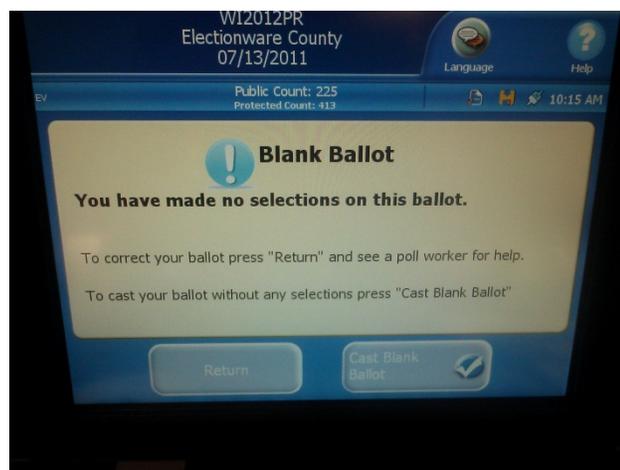
The voter has the ability to return the ballot for review or instruct the machine to accept the ballot and read it as it has been cast. There are instructions above the “Return” button that direct the voter to press “Return” if they wish to correct their ballot. The voter is instructed to ask for a new ballot. There are instructions above the “Cast” button that direct the voter to press “Cast” if they wish to submit their ballot with votes that will not count.

- If the ballot contains crossover votes, a message appears that identifies the contests with crossover votes.



The voter has the ability to return the ballot for review or instruct the machine to accept the ballot and read it as it has been cast. There are instructions above the “Return” button that direct the voter to press “Return” if they wish to change their ballot to reflect their party preference. The voter is instructed to ask for a new ballot. There are instructions above the “Cast” button that direct the voter to press “Cast” if they wish to ignore this message and submit their ballot.

- If the ballot contains no votes, a message appears that states the ballot is blank. The voter is instructed to press “Return” to correct their ballot. They are told to see a poll worker for help. The voter is instructed to press “Cast Blank Ballot” to submit their ballot without any selections.



The screen shots above illustrate the manufacturer’s default configuration. The manufacturer may also set the configuration to automatically reject all ballots with overvotes or crossover votes, which permits the voter to correct the error by remaking his or her ballot. This ensures that electors do not mistakenly process a ballot on which a vote for one candidate or all candidates will not count. The

automatic rejection configuration of the DS200, however, creates issues for processing absentee ballots because no voter is present to correct the error.

The DS200 includes an internal thermal printer for the printing of the zero reports, log reports, and polling place totals upon the official closing of the polls.

2. DS850

The DS850 is a high-speed, digital scan ballot tabulator designed for use by election officials at the central count level. Ballots are brought to the scanner and scanned in batches. The DS850 can scan and count up to 300 ballots per minute. It uses cameras and imaging systems to read the front and back of each ballot, evaluate the result, and sort each ballot into trays based on the result to maintain continuous scanning and tabulating. Multiple criteria can be used to segregate ballots for review, including overvotes, crossover votes and blank ballots. Ballots segregated in this fashion are not counted and may need to be remade by the election inspectors. Election officials use a 14-inch touchscreen display to program these features of the DS850. During this process, the DS850 prints a continuous audit log to a dedicated audit log printer. Reports are printed from a second connected printer. The DS850 saves voter selections and ballot images to an internal hard disk and exports results to a USB flash drive for processing with the Election Reporting Manager (ERM).

3. AutoMARK Voter Assist Terminal

The AutoMARK VAT is an electronic ballot marking device primarily designed for use by voters who are visually or physically impaired. It features a touchscreen display and integral printer.

Voters insert a blank paper ballot in the machine and have several options to make candidate selections. They may touch the screen or use an integrated keypad. The display includes various colors and effects to guide the voter. The voter may adjust the display contrast and text size in order to read the screen. Each key on the pad has both Braille and printed text labels designed to indicate function and a related shape to help the voter determine its use. Alternatively, voters may also use headphones to hear a recorded list of the instructions and candidates for each contest and then make selections by touching the screen, touching the keypad, touching a two position switch, or through a sip/puff device. The voter may adjust the volume and tempo of the audio. The AutoMARK VAT stores the choices in its internal memory. It can be programmed in multiple languages, although languages other than English are not currently required in most Wisconsin municipalities. The machine provides a summary report for the voter to review his or her choice before the ballot is marked by the built-in printer. The print mechanism is a duplex device and can print on both sides of a ballot. When the printing of the ballot is completed, the machine feeds the ballot back to the voter.

Overvotes and crossover votes cannot occur on this equipment and a voter is warned about undervotes prior to the completion of voting.

Once the ballot has been marked and is provided to the voter, the AutoMARK VAT 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 machine and the voter selections summary report will provide an audio summary for voters with visual impairments. The voter proceeds to enter the ballot into the DS200 or a secured ballot box to be hand tabulated by election inspectors after the polls have closed. Ballots marked using the AutoMARK also may be tabulated using the DS850.

4. ExpressVote

The ExpressVote is an electronic vote capture device designed for use by all electors. It features a touchscreen display and integrated thermal printer.

Voters insert a blank paper activation card in the machine. This is the ballot. Voters have several options to make candidate selections. They may touch the screen or use the moveable keypad provided. The display includes various colors and effects to guide the voter. The voter may adjust the display contrast and text size in order to read the screen. Each key on the pad has both Braille and printed text labels designed to indicate function and a related shape to help the voter determine its use. Alternatively, voters may also use headphones to hear a recorded list of the instructions and candidates for each contest and then make selections by touching the screen, touching the keypad, touching a two-position switch, or through a sip/puff device. The voter may adjust the volume and tempo of the audio. The ExpressVote stores the choices in its internal memory. It can be programmed in multiple languages, although languages other than English are not currently required in most Wisconsin municipalities. The machine provides a summary report for the voter to review his or her choices before the ballot is printed. Only the voter's choices are printed on the ballot. The phrase "No Selection" appears under any contest in which the elector did not vote.

Overvotes and crossover votes cannot occur on this equipment and a voter is warned about undervotes prior to the completion of voting.

Once the ballot has been marked and is provided to the voter, the ExpressVote 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 machine and the voter selections summary report will provide an audio summary for voters with visual impairments. The voter proceeds to enter the ballot into the DS200 or a secured ballot box to be hand tabulated by election inspectors after the polls have closed. Ballots marked using the ExpressVote also may be tabulated using the DS850.

The ExpressVote is not a tabulator. As tested, it is a ballot marking device similar to the AutoMARK.

ii. Software

EVS 5.2.0.0 offers a new software suite powered by ElectionWare, which integrates election administration functions into a unified application. Its intended use is to define an election and to create the files used by the DS200, DS850, ExpressVote, AutoMARK, and ERM.

The software components used during this test campaign were as follows:

<i>Software</i>	<i>Version</i>
ElectionWare	4.6.0.0
Election Reporting Manager (ERM)	8.11.00
ES&S Event Logging Service (ELS)	1.5.5.0
ExpressVote Previewer	1.4.0.0
ExpressPass Application*	1.1.0.0
Removable Media Service (RMS)	1.4.5.0
VAT Previewer	1.8.6.0

Board staff visually verified the software version numbers for each component of the EVS 5.2.0.0 by checking the component's configuration display.

* Please note that the ExpressPass application software is used to pre-print activation cards for the ExpressVote with ballot style information such as a code for Ward 1 ballots and a different code for Ward 2 ballots. If blank activation cards are used in these situations, a poll worker or voter will be prompted to select the correct ballot style upon inserting the activation card. Board staff observed ES&S staff pre-print activation cards for this test campaign using this application and the ExpressPass printer. Board staff used a small number of pre-preprinted activation cards as part of the ExpressVote ballot test deck.

This feature worked as designed. However, the ExpressPass application is not federally certified by the EAC. NTS determined it to be outside of the scope of certification, but NTS did review the source code for 2005 VVSG compliance. The ExpressPass printer is not in the scope of certification. NTS tested the equipment to ensure that it functions as stated in the technical data package for this voting system. No other testing was performed on this equipment. ES&S states that these products do not required federal certification. These products are described as ancillary products available to a jurisdiction who may purchase the system. These products are not required for the ExpressVote to function and if not approved, election inspectors will need to activate each ballot on the ExpressVote.

Because it lacks EAC certification and is not a component that can be approved pursuant to the Board's current protocols, the ExpressPass application software is not included in staff's recommendation of approval of EVS 5.2.0.0 and EVS 5.3.0.0.

A. EVS 5.3.0.0

EVS 5.3.0.0 is a modification to EVS 5.2.0.0 (U.S. EAC#ESSEVS5200). The modification provides support for modeming of unofficial election results from a DS200 to a Secure File Transfer Protocol (SFTP) server through public analog or wireless telecommunications networks. All modifications of the system were tested to the 2005 VVSG by NTS.

At its May 21, 2013, meeting, pursuant to authority granted in Wis. Stat. § 5.91 and Wis. Adm. GAB Code Ch. 7, and based upon the analysis and findings outlined in a staff memorandum, the Board adopted testing procedures and standards pertaining to modeming and communication as detailed in the *Voting Systems Standards, Testing Protocols and Procedures Pertaining to the Use of Communication Devices in Wisconsin*, which are attached as Appendix 3. These rules apply to non- EAC certified voting systems, where the underlying voting system received EAC certification to either the 2002 Voting System Standards (VSS) or 2005 VVSG, but any additional modeming component does not meet the 2005 VVSG.

At the same time, the Board directed staff to test non- EAC certified voting systems, where the underlying voting system received EAC certification to either the 2002 or 2005 VVSG, but any additional modeming component does not meet the 2005 VVSG, to the criteria contained in the approved *Voting Systems Standards, Testing Protocols and Procedures Pertaining to the Use of Communication Devices in Wisconsin*. A properly submitted Wisconsin application for approval is required. Finally, at its May 21, 2013 meeting, the Board clarified that any modem hereafter approved for use in Wisconsin must have been tested to the requirements contained in the most recent version or versions of the VVSG or VSS currently accepted for testing and certification by the EAC.

In accordance with these directives, Board staff conducted testing of EVS 5.3.0.0 in three counties: Rock, Jefferson and Marathon on July 10, 14, and 16, 2014, respectively. Rock and Marathon counties were selected because each county served as a field test location for ES&S Unity 3.4.0.1 in 2013. Jefferson County was selected in part due to its proximity to G.A.B. headquarters in an effort to minimize the amount of time Board staff were in travel status. In consultation with each county clerk, Board staff selected three municipalities in each county to serve as locations for testing.¹ The municipalities were selected in part because of the strength of the wireless networks in the community or lack thereof and the municipal clerk's willingness to host the test team.

¹ Rock County: City of Janesville, Town of Avon, Town of Harmony
Jefferson County: City of Jefferson, City of Fort Atkinson, Village of Johnson Creek
Marathon County: City of Mosinee, Village of Stratford, Town of Hewitt

The modem in the DS200 communicates with the jurisdiction's wireless carrier or a dial-up connection through landline modem to transmit results to a secure server at a central office location such as the county clerk's office. Wireless transmissions rely on public networks from one of these three service providers: AT&T, Sprint, and Verizon. The server hosts a secure file transfer commercial off the shelf software package. A firewall provides a buffer between the network segment, where the server is located, and other internal virtual networks or external networks. The data that is transmitted is encrypted and it is digitally signed. The modem function may only be used after an election inspector has closed the polls and entered a password to access the control panel. The network is configured to only allow valid connections to connect to the SFTP. The firewall further restricts the flow and connectivity of traffic.

The decision on whether the DS200 includes an analog or wireless modem is made at the time of purchase. The EMS supports modeming from a combination of methods in a jurisdiction. For example, a jurisdiction could have two sites with analog modems and three sites with wireless modems. Board staff successfully simulated such a setup as part of this test campaign. This voting system successfully handled simultaneous transmissions from both types of modems. Conversely, a jurisdiction could choose to purchase all analog modems or all wireless modems. Some of the factors that may impact this decision include the strength of service in the jurisdiction and whether the jurisdiction has an existing contract with one of the three service providers. The EMS supports modeming through a combination of service providers. During this test campaign, Board staff successfully transmitted results in each county using AT&T in one municipality, Sprint in another municipality, and Verizon in a third municipality. During this test campaign, the strength of service ranged from zero bars (lowest indicator level) to five bars (highest indicator level). Election results packets were sent successfully at all service levels.

EVS 5.3.0.0 also features a Regional Results program. This stand-alone application allows for the transmission of unofficial election results from a regional location to a central office utilizing a wireless network provided by AT&T, Sprint, or Verizon. Board staff observed this process in Jefferson County. The Regional Results application allows election media containing results from different polling places to be read and then securely transferred to a server at a central office location such as the county clerk's office.

Neither the DS200 modem function nor the Regional Results program impact the tabulation of official election results.

i. Hardware

ES&S submitted the following equipment for testing:

<i>Equipment</i>	<i>Hardware Version(s)</i>	<i>Firmware Version</i>	<i>Type</i>
DS200	1.2.1 1.2.3 1.3	2.13.00	Polling Place Digital Scanner and Tabulator
DS850	1.0	2.10.00	Central Count Digital Scanner and Tabulator
AutoMark Voter Assist Terminal (VAT)	1.0 1.1 1.3	1.86.00	Ballot Marking Device
ExpressVote	1.0	1.4.00	Universal Vote Capture Device

ii. Software

The software components used during this test campaign were as follows:

<i>Software</i>	<i>Version</i>
ElectionWare	4.7.0.0
Election Reporting Manager (ERM)	8.12.00
ES&S Event Logging Service (ELS)	1.5.5.0
ExpressVote Previewer	1.4.0.0
ExpressPass Application	1.1.0.0
Removable Media Service (RMS)	1.4.5.0
VAT Previewer	1.8.6.0
Regional Results	1.1.0.0

IV. Functional Testing

A. EVS 5.2.0.0

As required by GAB 7.02(1), Board staff conducted three mock elections with each component of EVS 5.2.0.0 to ensure the voting system conforms to all Wisconsin requirements: a partisan primary, a general election with both a presidential and gubernatorial vote, and a nonpartisan election combined with a presidential preference vote.

Board staff designed a test deck of more than 1,000 ballots using various configurations of votes over the three mock elections to verify the accuracy and functional capabilities of the EVS 5.2.0.0. A three-person team of Board staff transferred the markings on the test deck spreadsheet for each mock election to blank ballots provided by ES&S for a total of about 900 ballots. Board staff fed these ballots through both the DS200 and DS850. The ExpressVote was tested by marking 30 ballots with the equipment for each of the three mock elections for a total of 90 ballots. The AutoMARK was tested by marking 30 ballots across all hardware configurations of the equipment for each of the three mock elections for a total of 90 ballots. The votes captured by the ExpressVote and ballots marked with the AutoMARK were verified by Board staff before being scanned and counted by the DS200 and DS850. Board staff determined the results produced by each tabulator matched the expected results from the test plan.

B. EVS 5.3.0.0

Board staff conducted functional testing of EVS 5.3.0.0 in three counties (Rock, Jefferson, and Marathon) based on the *Voting Systems Standards, Testing Protocols and Procedures Pertaining to the Use of Communication Devices in Wisconsin*. A four-person team of Board staff conducted this testing campaign. Two representatives from ES&S were on hand in each county to provide technical support. ES&S also provided four (4) DS200s equipped with modems, three with wireless modems and one with an analog modem; and a portable EMS environment, which included a SFTP client, firewall, and ERM software. In each location, ES&S set up the portable environment in a county office to receive test election results from each municipal testing location. In each location, Board staff inserted a pre-marked package of 15 test ballots through the DS200 to create an election results packet to send to the county office. Board staff conducted the test in each municipality. A Board staff member also was present at the county office to observe how the portable EMS environment handled the transmissions.

i. Rock County

On July 10, 2014, Board staff conducted tests on the EVS 5.3.0.0 modem component in three municipalities: City of Janesville, Town of Harmony, and Town of Avon. ES&S conducted pre-testing of the EVS 5.3.0.0 modem component in Rock County July 8, 2014. A DS200 equipped with a wireless modem was tested in all three municipalities. Additionally, a DS200 equipped with an analog modem was tested in the Town of Avon. Board staff were able to transmit election results from each of the three municipalities using wireless modems and, in the case of the Town of Avon, using both DS200s – the one equipped with a wireless modem and the one equipped with an analog modem.

Municipality	Type of Modem	Signal Strength
City of Janesville	Wireless – Verizon	2-3 bars
Town of Harmony	Wireless – Sprint	0-1 bars
Town of Avon	Wireless – AT&T	2 bars
Town of Avon	Analog	Connected

After seven successful transmissions during the first half of the test script, the analog modem was no longer able to connect to the county office. Based on experiences during the testing of the ES&S Unity 3.4.0.1 analog modems in 2013, Board staff and on-site ES&S staff determined this issue was due in part to the quality of the analog phone line. Board staff experienced no other anomalies.

ii. Jefferson County

On July 14, 2014, Board staff conducted tests on the EVS 5.3.0.0 modem component in three municipalities: City of Fort Atkinson, City of Jefferson, and Village of Johnson Creek. ES&S conducted pre-testing of the EVS 5.3.0.0 modem component in Jefferson County July 9, 2014. Board staff successfully completed the test script with no anomalies.

Municipality	Type of Modem	Signal Strength
City of Fort Atkinson	Wireless – AT&T	0-1 bar
City of Jefferson	Wireless – Verizon	3 bars
Village of Johnson Creek	Wireless – Sprint	3-4 bars
Village of Johnson Creek	Analog	Connected

iii. Marathon County

On July 16, 2014, Board staff conducted tests on the EVS 5.3.0.0 modem component in three municipalities: City of Mosinee, Town of Hewitt, and Village of Stratford. ES&S conducted pre-testing of the EVS 5.3.0.0 modem component in Marathon County July 15, 2014. Board staff successfully completed the test script with no anomalies.

Municipality	Type of Modem	Signal Strength
City of Mosinee	Wireless – Sprint	0 bars
Town of Hewitt	Wireless – AT&T	3-5 bars
Village of Stratford	Wireless – Verizon	3-4 bars
Village of Stratford	Analog	Connected

V. Public Demonstration

A public demonstration of the EVS 5.2.0.0 was held July 8, 2014, from 4:30 p.m. to 6:00 p.m. in Madison at the G.A.B. office. Members of the public were invited to use the voting system and provide comment. Ten people attended the public demonstration, with the majority of the attendees being either individuals with disabilities or representatives of organizations that

advocate for the interests of individuals with disabilities. The EVS 5.3.0.0 modem component was not demonstrated for the public. Comments from the public demonstration are included in Appendix 1.

VI. Wisconsin Election Administration Council Demonstration

Seven of the 18 appointed members of the Wisconsin Election Administration Council (WI-EAC) attended an ES&S demonstration of the EVS 5.2.0.0 on July 9, 2014, from 1:00 p.m. to 3:00 p.m. in Madison at the G.A.B. office. The WI-EAC is composed of municipal and county clerks, representatives of the disability community, and advocates for the interests of the voting public. The modeming component of the EVS 5.3.0.0 was discussed during this meeting of the WI-EAC. However, this feature was not demonstrated at the WI-EAC meeting. Comments from the WI-EAC are included in Appendix 2.

VII. Board Staff's Feedback

The EVS 5.2.0.0 and EVS 5.3.0.0 voting systems are not compatible with other ES&S voting systems currently approved for sale and use in Wisconsin. Municipalities using other ES&S voting systems will have to either upgrade older versions of firmware or purchase equipment included within this test. The following is a list of staff concerns regarding each piece of equipment tested in this campaign.

1. AutoMARK VAT

- i. The AutoMARK does not arguably provide absolute privacy and independence for voters with disabilities, especially voters with dexterity or motor disabilities, as voters may need assistance inserting the ballot, removing the ballot and placing the ballot in the ballot box or tabulator. However, it does provide substantial compliance with these objectives.

2. DS200

- i. Although there were no errors with the tabulation of the test deck ballots by the DS200, there were some instances in which the DS200 did not read a marked test deck ballot. Upon visual inspection, ES&S staff determined some of the ballots printed by ES&S were skewed. As such, the timing marks and other notations on the ballot which help guide the scanner and tabulator were not read by the DS200. Board staff transferred the votes on skewed ballots to ballots that appeared to be printed on center. The remarked ballots were scanned and tabulated correctly.
- ii. The DS200 was able to correctly read marks in pencil, black pen, blue pen, red pen, and green pen as well as using markers provided by the ES&S.
- iii. The ability of the DS200 to capture digital ballot images automatically may provide a more cost-effective alternative to groups requesting to conduct post-election audits of the vote by review of the paper ballots.

- iv. Write-in votes in the DS200 ballot bin are marked with a small pink circle and depending on the ballot box used, may or may not be separated into a separate write-in bin. This voting system can be easily configured to capture ballot images of ballots with write-ins and store them on the external USB flash drive, which would permit write-in votes to be easily verified within the ElectionWare EMS. However, this would not replace the need for inspectors to manually inspect each ballot to detect write-in votes where the voter did not fill in the target area next to the write-in line.
- v. The DS200's ballot input slot may be difficult for individuals with certain types of disabilities to insert a ballot without assistance due to the height and location of ballot input slot. However, it meets the requirements of the Americans with Disabilities Act.
- vi. There were a few occasions where a ballot jam occurred while inserting the ballot into the DS200. An error message is displayed on the touch screen directing the voter to contact a poll worker and there is also an audio alert notifying the voter. The ballot is returned back to the voter and can be reinserted to be counted.
- vii. Ballots marked with a party preference choice selection only, but no individual votes in the partisan primary, are accepted with no feedback provided to the voter on the disposition of their ballot. The DS200 reads this marking as a contest.
- viii. With the approval of ES&S Unity 3.2.0.0 Rev 3 in 2012, the Board has required ES&S to configure the DS200 to automatically reject overvoted ballots with no opportunity for the voter to override and to automatically reject crossover ballots with no opportunity for the voter to override. This condition was also applied to the DS200 approved for sale and use in Wisconsin as part of ES&S Unity 3.4.0.0 in 2013 and ES&S Unity 3.4.0.1 in 2014. The DS200 tested as part the EVS 5.2.0.0 and EVS 5.3.0.0 voting systems is powered by upgraded firmware, which includes more detailed messages to voters on the disposition of overvoted and crossover voted ballots. Board staff directed ES&S to configure the mock partisan primary election to display these messages. However, Board staff did not fully test this function. Board staff returned many of the overvoted and crossover voted ballots rather than casting them. Thus, it is unclear if the DS200 would accurately tabulate these ballots. The mock presidential preference and general elections were configured to automatically reject overvoted and crossover voted ballots. Additionally, Wis. Stat. § 5.85(2)(b) 1. requires election inspectors to make a true duplicate ballot of all overvoted ballots. Also, Board staff guidance to election inspectors in municipalities using the DS200 is to remake all ballots with crossovers. This is done either by the voter marking a new ballot or the election inspectors feeding a blank ballot through the tabulator since voter intent cannot be determined. ES&S confirms the DS200 may be configured to automatically reject overvoted ballots, but offer the voter a return or cast option for crossover voted ballots.
- ix. Board staff experienced no issues with the wireless modem component. However, questions remain over the reliability of the wired modem component

because of the uncertainty over the quality of analog phone lines. Board staff would recommend any purchasing entity choosing the wired modem option test their analog line and the DS200 prior to each election. These tests should include line specification and quality tests along with operation verification testing of the DS200.

3. DS850

- i. Severely torn or ripped ballots may jam the machine. During this test campaign, some ballots torn or ripped by Board staff were processed with no issues by the DS200, but not processed by the DS850 due to the location of the tear or rip and the way ballots move through the DS850. These ballots would need to be remade by poll workers.
- ii. Board staff found that the DS850 may be more sensitive than the DS200. Some ballot marks in colored ink were read by the DS200, but not the DS850. Ballots not read by the DS850 are pushed to a separate tray for further inspection by election inspectors. In these situations, these ballots would need to be remade by poll workers .

4. ExpressVote

- i. Voters who attended the public demonstration were initially confused on how to use this kiosk. Upon deployment, election inspectors should be prepared to explain how to use the kiosk.
- ii. The process to access a specific ballot style in jurisdictions with multiple wards with different contests is cumbersome unless the ExpressPass application and printer is used to pre-print a ballot style code on the ballot.
- iii. The processing speed of the kiosk is an improvement over the AutoMARK. It also generates less noise than the AutoMARK terminal.
- iv. The movable keypad makes the kiosk more accessible than the AutoMARK terminal.
- v. There are no instructions at the end of the voting session that advise the voter must deposit the ballot with their choices into the DS200 or a ballot box. Voters may think the print out is their receipt and walk out of the polling place.
- vi. Deciding who a voter voted for is not an issue because the printed ballot lists only candidates who received votes. Moreover, the design of the ballot eliminates ambiguity and stray marks, and therefore has the potential to increase the accuracy of vote tabulation. Additionally, the format of the ballot could aid election inspectors in counting ballots quickly and efficiently in a hand recount situation.

- vii. To ensure a private voting session, election inspectors need to take great care in how they situate this kiosk in the polling place to avoid situations in which people passing by an occupied kiosk may be able to view an elector's choices. This feedback is not unique to this kiosk. It applies generally to all voting technology.

VIII. 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 EVS 5.2.0.0 and EVS 5.3.0.0's compliance with the standards.

§ 5.91 (1)
The voting system enables an elector to vote in secret.
Staff Analysis
The ES&S voting systems meet this requirement by allowing a voter to vote a paper ballot in the privacy of a voting booth or at the accessible voting station without assistance.

§ 5.91 (3)
The voting system enables the elector, for all elections, except primary elections, to vote for a ticket selected in part from the nominees of one party, and in part from nominees from other parties and write-in candidates
Staff Analysis
The ES&S voting systems allow voter to split their ballot among as many parties as they wish during any election that is not a partisan primary.

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

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

§ 5.91 (6)
The voting system permits an elector in a primary election to vote for the candidates of the recognized political party of his or her choice, and the system rejects any ballot on which votes are cast in the primary of more than one recognized political party, except where a party designation is made or

where an elector casts write-in votes for candidates of more than one party on a ballot that is distributed to the elector.
Staff Analysis
The ES&S voting systems can be configured to always reject crossover votes without providing an opportunity for the voter to override. It is recommended that the Board continue to require this configuration due to potential voter confusion over the error message and voter's ability to submit a ballot upon which no votes will be counted. Additionally, staff recommends that these voting systems be configured to automatically reject all improper ballots, excluding blank votes, without giving the voter the option to override.

§ 5.91 (7)
The voting system enables the elector to vote at an election for all persons and offices for whom and for which the elector is lawfully entitled to vote; to vote for as many persons for an office as the elector is entitled to vote for; to vote for or against any question upon which the elector is entitled to vote; and it rejects all choices recorded on a ballot for an office or a measure if the number of choices exceeds the number which an elector is entitled to vote for on such office or on such measure, except where an elector casts excess write-in votes upon a ballot that is distributed to the elector.
Staff Analysis
The ES&S voting systems meet these requirements with one exception: where the elector casts excess write-in votes in addition to voting for a named candidate. All currently-certified systems will interpret this scenario as an overvote and reject such ballots and require the voter to make the necessary revisions to the ballot. To meet this requirement, election procedures require election inspectors to inspect all ballots for write-in votes that may not be properly counted and separated into the proper receptacle by the voting system; this ensures all ballots are properly accounted for.

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

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

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

Staff Analysis
The ES&S voting systems meet this requirement.

§ 5.91 (11)
The voting system records and counts accurately every vote and maintains a cumulative tally of the total votes cast that is retrievable in the event of a power outage, evacuation or malfunction so that the records of votes cast prior to the time that the problem occurs is preserved.
Staff Analysis
The ES&S voting systems meet this requirement.

§ 5.91 (12)
The voting system minimizes the possibility of disenfranchisement of electors as the result of failure to understand the method of operation or utilization or malfunction of the ballot, voting system, or other related equipment or materials.
Staff Analysis
The ES&S voting systems meet this requirement if it is configured to automatically reject all overvote and crossover ballots like other optical scan systems currently in use in Wisconsin. Staff recommends that these voting systems be configured to automatically reject all improper ballots, excluding blank votes, without giving the voter the option to override.

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

§ 5.91 (14)
The voting system does not use any mechanism by which a ballot is punched or punctured to record the votes cast by an elector.
Staff Analysis
The ES&S voting systems do not use any such mechanism to record votes.

§ 5.91 (15)
The voting system permits an elector to privately verify the votes selected by the elector before casting his or her ballot.
Staff Analysis
The ES&S voting systems meet this requirement.

§ 5.91 (16)
The voting system provides an elector the opportunity to change his or her votes and to correct any error or to obtain a replacement for a spoiled ballot

prior to casting his or her ballot.
Staff Analysis
The ES&S voting systems meet this requirement.

§ 5.91 (17)
Unless the ballot is counted at a central counting location, the voting system includes a mechanism for notifying an elector who attempts to cast an excess number of votes for a single office the ballot will not be counted, and provides the elector with an opportunity to correct his or her ballot or to receive a replacement ballot.
Staff Analysis
The ES&S voting systems meet this requirement if it is configured to automatically reject all overvoted and crossover ballots like other optical scan systems currently in use in Wisconsin. Staff recommends that these voting systems be configured to automatically reject all improper ballots, excluding blank votes, without giving the voter the option to override.

§ 5.91 (18)
If the voting system consists of an electronic voting machine, the voting system generates a complete, permanent paper record showing all votes cast by the elector, that is verifiable by the elector, by either visual or nonvisual means as appropriate, before the elector leaves the voting area, and that enables a manual count or recount of each vote cast by the elector.
Staff Analysis
Since the ES&S voting systems presented for approval require paper ballots to be used to cast votes, this requirement does not apply.

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

HAVA § 301(a)(1)(A)
<p>The voting system shall:</p> <ul style="list-style-type: none"> (i) permit the voter to verify (in a private and independent manner) the votes selected by the voter on the ballot before the ballot is cast and counted; (ii) provide the voter with the opportunity (in a private and independent manner) to change the ballot or correct any error before the ballot is cast and counted (including the opportunity to correct the error through the issuance of a replacement ballot if the voter was otherwise unable to change the ballot or correct any error); and (iii) if the voter selects votes for more than one candidate for a single office – <ul style="list-style-type: none"> (I) notify the voter that the voter has selected more than one candidate for a single office on the ballot; (II) notify the voter before the ballot is cast and counted of the effect of casting multiple votes for the office; and, (III) provide the voter with the opportunity to correct the ballot before the ballot is cast and counted

HAVA § 301(a)(1)(C)
The voting system shall ensure that any notification required under this paragraph preserves the privacy of the voter and the confidentiality of the ballot.
HAVA § 301(a)(3)(A)
The voting system shall— (A) be accessible for individuals with disabilities, including nonvisual accessibility for the blind and visually impaired, in a manner that provides the same opportunity for access and participation (including privacy and independence) as other voters
Staff Analysis
The ES&S voting systems meet these requirements.

IX. Conclusion

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

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

Staff’s Response: Yes. The EVS 5.2.0.0 accurately completed the mock elections and was able to accommodate the voting requirements of the Wisconsin election process. Because the EVS 5.2.0.0 is the base voting system for the EVS 5.3.0.0, the EVS 5.3.0.0 also meets this goal.

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

Staff’s Response: With the addition of the ExpressVote, the EVS 5.2.0.0 and EVS 5.3.0.0 voting systems enhance access to the electoral process for individuals with disabilities over previously approved ES&S voting systems.

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

Staff’s Response: Yes. The EVS 5.2.0.0 complies with all applicable state and federal requirements. However, staff recommends that the system be configured to automatically reject all improper ballots, excluding blank ballots, without giving the voter the option to override. As the EVS 5.2.0.0 is the base voting system for the EVS 5.3.0.0, the EVS 5.3.0.0 also meets this goal.

X. Recommendations

1. Board staff recommends approval of ES&S voting system EVS 5.2.0.0 and components set forth in the tables on pages 2 and 7 above, except for the ExpressPass Application. 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 ES&S voting system EVS 5.3.0.0 and components set forth in the tables on pages 9 and 10 above, except for the ExpressPass Application. This recommendation is based on the VSTL report provided by NTS and on this voting system successfully completing a functional test according to the *Voting Systems Standards, Testing Protocols and Procedures Pertaining to the Use of Communication Devices in Wisconsin*.

2. Board staff recommends that as a continuing condition of the Board's approval, that 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. Purchasing entities are reminded Wis. Stats. 5.85(2)(b) 1. requires all overvoted ballots to be remade. The voting system shall be configured to automatically reject these ballots with no opportunity for the voter to override.
4. Board staff does **not** recommend ExpressPass application software as part of the Board's approval. These products are not required for the ExpressVote to function, lacks EAC certification, and is not a component that can be approved pursuant to the Board's current protocols.
5. Board staff recommends that as a continuing condition of the Board's approval, that this system must always be configured to include the following options:
 - a. Automatic rejection of crossover ballots with no opportunity for the voter to override.
 - b. Automatic rejection of all improper ballots except blank ballots.
 - c. Digital ballot images to be captured for all ballots tabulated by the system.
6. Board staff recommends election inspectors shall remake all absentee ballots automatically rejected so that the ballot count is consistent with total voter numbers.
7. As part of US EAC certificate: ESSEVS5200, only equipment included in this certificate are allowed to be used together to conduct an election in Wisconsin. Previous versions 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 US EAC certificate. If a jurisdiction upgrades to EVS 5.2.0.0, they need to upgrade each and every component of the voting system to the requirements of what is approved herein. Likewise, if a jurisdiction upgrades to EVS 5.3.0.0, they need to upgrade each and every component of the voting system to the requirements of what is approved herein.
8. Board staff recommends that as a condition of approval, ES&S shall abide by applicable Wisconsin public records laws. If, pursuant to a proper public records

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

XI. Proposed Motion

MOTION: The Government Accountability Board adopts the staff's recommendations for approval of the ES&S voting system's Application for Approval of EVS 5.2.0.0 in compliance with US EAC certificate ESSEVS5200 including the conditions described above and the ES&S voting system's Application for Approval of EVS 5.3.0.0 including the conditions described above.

Attachments

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

APPENDIX 1: Wisconsin Election Administration Council’s Feedback

These comments were provided via a structured feedback form.

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

Very Poor	Poor	Fair	Good	Excellent
		1	2	2

- Like the DS200. Scan is “fast.” Voter sees if there is an overvote or undervote. The ExpressVote is good. It could replace the AutoMark.
- Seems to be user friendly. ExpressVote has the ability for specific functions for the diversity of voters.
- Very impressed with the ExpressVote. It is faster than the AutoMark. DS200 has a bigger screen.
- This equipment is light years ahead of our existing Eagles, but I do have some concern they are light years behind modern technology. It would be nice to know what a certification and purchase of this new option would be “guaranteed” a 10-year or more life span, but as fast as technology is moving...
- ExpressVote much quicker and easier to use.
- DS200 does not function well for certain people with disabilities because it is too high for people who use mobility devices. I have this feedback many times over the years on the piece of equipment. It could be easily fixed with a shorter collection box underneath.

2. How would you rate the accessible features?

Very Poor	Poor	Fair	Good	Excellent
		2		2

- Good
- The ExpressVote would require special setup, which could be an issue in small elections
- As someone not in need or challenged for this need, I don’t feel qualified to rate. I will say I like the ExpressVote’s weight, load time and functionality. It takes one minute and 57 seconds to vote on the AutoMark, compared to one minute and 7 seconds on the ExpressVotes. That’s a plus. I like that.
- DS200 does not function well for certain people with disabilities because it is too high for people who use mobility devices. I have this feedback many times over the years on the piece of equipment. It could be easily fixed with a shorter collection box underneath.
- Functionally, the AutoMark is slow and the cost of the ink is high which means in the field on Election Day that some clerks will not turn on the machine. It is hard to insert and remove the ballot from the AutoMark.

- For Express Vote: Some find the screen too sensitive. The removable keypad is great. The fact there is no ink to put in is great. I am not a fan of the different sized ballot because a clerk might be able to identify who voted a particular ballot if there are only one or a few people with disabilities who vote. The write-in component was okay when I tried the audio version, but it took me some time to catch on how to put in a space between the first and last names. Overall, I like the ExpressVote.
- DS850 is much too high
- ExpressVote touchscreen and audio is great, but at times a bit sensitive. AutoMARK is slow and not sensitive enough. I do like the ability to change contrast and zoom.

3. Rate your overall impression of the system.

Very Poor	Poor	Fair	Good	Excellent
			3	2

- Like the screen of the DS200. Like having a paper ballot in case of a recount. ExpressVote would not have to print so many ballots, use only as needed.
- Seems to comply with requirements and standards. ExpressVote is next generation but really isn't a huge difference from the AutoMark.
- I am satisfied with this system although I am more satisfied by digital analog and wireless modem capability. Very pleased G.A.B. is testing and considering certification of that this month. Cost is always the primary consideration for municipalities. Voter trust and security is my primary consideration and I'm completely satisfied ES&S meets that measure.

APPENDIX 2: Public Demonstration Feedback

These comments were provided via a structured feedback form.

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

Very Poor	Poor	Fair	Good	Excellent
		4	4	2

- The ExpressVote is good
- DS200 needs to tell voter what to do. Example: if the ballot is rejected, tell the voter to seek help. The paper ballot needs to tell the voter to turn it over because most of them won't and will miss races.
- The ExpressVote screen is very sensitive, which was problematic for me to use based on my physical disability.
- Voters with physical disabilities may not be able to use the ExpressVote touchpad. For another voter it picked up not his fingerpad heat but where he leaned on the screen. For my voter, she tried to print and the message for help didn't make it clear enough. She had to start over once the poll person came to help. The "more" to read more options was missed by both voters. Where is the "Help" button for the voter with a disability who is in the booth alone and has these or other issues? Is he/she expected to come all the way out to seek help? Can this booth be placed closer to the poll workers if that is the case?

2. How would you rate the accessible features?

Very Poor	Poor	Fair	Good	Excellent
	1	4	1	4

- DS200 is way too high. I could not reach to deposit my ballot. I needed assistance to record my ballot.
- The only drawback of the AutoMARK is that the keypad is stationary. I like the movable touchpad on the other machine. The touchscreen works well. It is not too sensitive.
- I like the blank screen function option on the ExpressVote
- I did not know that I had to put my hand to the side of the ExpressVote machine and not on the screen in order to touch the candidate to vote.
- The AutoMARK seemed a little more inaccessible due to the button pad being non-movable.
- I would like to see a more accessible keypad for writing in votes, but overall very impressed.
- ExpressVote touchpad was okay for my voter with a developmental disability in terms of touch and getting the machine to record correct person. Not so for the voter with a physical disability. Is that a motion sensor at the top? What does it do? Might

some voters give up if they aren't tripping the sensor to activate the machine? I think a "Help" button is needed and increasing the size of some buttons.

3. Rate your overall impression of the system.

Very Poor	Poor	Fair	Good	Excellent
	1	4	3	3

- If you are going to spend the money, the machine should be accessible. I think you should know better than to approve this machine.
- Keep what works!
- The ExpressVote is a welcome change to accessible voting.
- Keep the classic.
- I liked the ExpressVote pad that I could put in my lap to vote. I could use it easily.
- I like the ExpressVote better than the AutoMARK because it doesn't separate out people with disabilities. It is a bit faster than the AutoMARK.
- I'm glad to another option. My voter balks at getting help and speaking to strangers, and when she got the error when trying to print she just stood there. As is I think voters who have a disability would need some help with this one [ExpressVote]. Not sure what the headphones do but are they speaking the names? If so, can the voter adjust the rate of speed? Will languages offered include more than English and Spanish? Was there a message that directed the voter with what to do with her printed ballot? If so, I missed it and asked as worker. My voter may not walk it over the first time or two without the machine telling her.
- Voters might think that the ballot card printed by the ExpressVote is a receipt, and walk out without putting the ballot card into the DS200. G.A.B. will need to include this in their current ballot layout improvement initiative. Perhaps only one office should appear per screen. Perhaps all candidates for one office should appear on the same page, so there is no need for a "More" button. G.A.B. should develop guidelines for pre-election logic and accuracy testing of the ExpressVote. Perhaps this should include taking ballot cards that the ExpressVote has printed, and inserting them back into the ExpressVote to see if it reads the bar code correctly. Perhaps L&A should include a deck (separate from handmarked ballots) from the ExpressVote that are counted by the DS200. For post-election auditing, there may need to be some audits specific to the ballot cards printed by the ExpressVote. Using the ExpressVote is a new way of filling out and counting ballots, both for Wisconsin and the manufacturer. A cautious approach is indicated.

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

PART I: PROPOSED TESTING STANDARDS

Applicable VVSG Standard

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

Access to Election Data

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

Security

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

Accuracy

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

Data Integrity

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

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

Reliability

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

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

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

PART II: TEST PROCEDURES AND PROTOCOLS

Overview of Telecommunication Test

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

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

Wired Modem Capability Test Plan

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

Test Plan:

1. Attempt to transmit results prior to the closing of the polls and printing of results tape
2. Set up a telephone line simulator that contains as many as eight phone lines
3. Perform communication suite for election night reporting using a bank with as many as seven analog modems:
 - a. Connect the central site election management system to the telephone line simulator and connect the modems to the remaining telephone line ports
 - b. Setup the phone line numbers in the telephone line simulator
 - c. Use the simulated election to upload the election results

- i. Use at least eight tabulators in different reporting units
- ii. Use as many as two tabulators within the same reporting units
- d. Simulate the following transmission anomalies
 - i. Attempt to upload results from a tabulating device to a computer which is not part of the voting system
 - ii. Attempt to upload results from a non-tabulating device to the central site connected to the modem bank
 - iii. Attempt to load stress by simulating a denial of service (DOS) attack or attempt to upload more than one polling location results (e.g., ten or more polling locations)

Wireless Capability Test Plan

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

Test Plan:

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

Test Conclusions for Wired and Wireless Transmission

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

PART III: PROPOSED SECURITY PROCEDURES

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

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

PART IV: CONDITIONS FOR APPROVAL (VENDOR)

Additionally, staff recommends that, as a condition/continuing condition of approval, ES&S shall:

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

tronic voting machines are used, the board of canvassers shall perform the recount using the permanent paper record of the votes cast by each elector, as generated by the machines.

(2) Any candidate, or any elector when for a referendum, may, by the close of business on the next business day after the last day for filing a petition for a recount under s. 9.01, petition the circuit court for an order requiring ballots under sub. (1) to be counted by hand or by another method approved by the court. The petitioner in such an action bears the burden of establishing by clear and convincing evidence that due to an irregularity, defect, or mistake committed during the voting or canvassing process the results of a recount using automatic tabulating equipment will produce incorrect recount results and that there is a substantial probability that recounting the ballots by hand or another method will produce a more correct result and change the outcome of the election.

(3) A court with whom a petition under sub. (2) is filed shall hear the matter as expeditiously as possible, without a jury. The court may order a recount of the ballots by hand or another method only if it determines that the petitioner has established by clear and convincing evidence that due to an irregularity, defect, or mistake committed during the voting or canvassing process the results of a recount using automatic tabulating equipment will produce incorrect recount results and that there is a substantial probability that recounting the ballots by hand or another method will produce a more correct result and change the outcome of the election. Nothing in this section affects the right of a candidate or elector aggrieved by the recount to appeal to circuit court under s. 9.01 (6) upon completion of the recount.

History: 1979 c. 311; 1987 a. 391; 2005 a. 92, 451; 2007 a. 96.
Cross-reference: See also ch. GAB 7, Wis. adm. code.

5.905 Software components. (1) In this section, “software component” includes vote-counting source code, table structures, modules, program narratives and other human-readable computer instructions used to count votes with an electronic voting system.

(2) The board shall determine which software components of an electronic voting system it considers to be necessary to enable review and verification of the accuracy of the automatic tabulating equipment used to record and tally the votes cast with the system. The board shall require each vendor of an electronic voting system that is approved under s. 5.91 to place those software components in escrow with the board within 90 days of the date of approval of the system and within 10 days of the date of any subsequent change in the components. The board shall secure and maintain those software components in strict confidence except as authorized in this section. Unless authorized under this section, the board shall withhold access to those software components from any person who requests access under s. 19.35 (1).

(3) The board shall promulgate rules to ensure the security, review and verification of software components used with each electronic voting system approved by the board. The verification procedure shall include a determination that the software components correspond to the instructions actually used by the system to count votes.

(4) If a valid petition for a recount is filed under s. 9.01 in an election at which an electronic voting system was used to record and tally the votes cast, each party to the recount may designate one or more persons who are authorized to receive access to the software components that were used to record and tally the votes in the election. The board shall grant access to the software components to each designated person if, before receiving access, the person enters into a written agreement with the board that obligates the person to exercise the highest degree of reasonable care to maintain the confidentiality of all proprietary information to which the person is provided access, unless otherwise permitted in a contract entered into under sub. (5).

(5) A county or municipality may contract with the vendor of an electronic voting system to permit a greater degree of access to

software components used with the system than is required under sub. (4).

History: 2005 a. 92.

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.

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(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.

History: 1979 c. 311; 1983 a. 484; 1985 a. 304; 2001 a. 16; 2003 a. 265; 2005 a. 92; 2011 a. 23, 32.

Cross-reference: See also ch. GAB 7, Wis. adm. code.

5.92 Bond may be required. Before entering into a contract for the purchase or lease of an electronic voting system or any ballots, voting devices, automatic tabulating equipment or related equipment or materials to be used in connection with a system, any municipality may require the vendor or lessor to provide a performance bond with a licensed surety company as surety, guaranteeing the supply of additional equipment, parts or materials, provision of adequate computer programming, preventive

maintenance or emergency repair services, training of election officials and other municipal employees or provision of public educational materials for a specified period, or guaranteeing the security of the computer programs or other equipment or materials to be utilized with the system to prevent election fraud, or such other guarantees as the municipality determines to be appropriate.

History: 1979 c. 311.

Cross-reference: See also ch. GAB 7, Wis. adm. code.

5.93 Administration. The board may promulgate reasonable rules for the administration of this subchapter.

History: 1979 c. 311; 1985 a. 332 s. 251 (1).

Cross-reference: See also ch. GAB 7, Wis. adm. code.

5.94 Sample ballots; publication. When an electronic voting system employing a ballot that is distributed to electors is used, the county and municipal clerk of the county and municipality in which the polling place designated for use of the system is located shall cause to be published, in the type B notices, a true actual-size copy of the ballot containing the names of offices and candidates and statements of measures to be voted on, as nearly as possible, in the form in which they will appear on the official ballot on election day. The notice may be published as a newspaper insert. Municipal clerks may post the notice if the remainder of the type B notice is posted.

History: 1979 c. 311; 2001 a. 16.

5.95 Elector information. The board shall prescribe information to electors in municipalities and counties using various types of electronic voting systems to be published in lieu of the information specified in s. 10.02 (3) in type B notices whenever the type B notice information is inapplicable.

History: 1979 c. 311.

Unofficial Text (See Printed Volume). Current through date and Register shown on Title Page.

Chapter GAB 7

APPROVAL OF ELECTRONIC VOTING EQUIPMENT

GAB 7.01 Application for approval of electronic voting system.
GAB 7.02 Agency testing of electronic voting system.

GAB 7.03 Continuing approval of electronic voting system.

Note: Chapter EIBd 7 was renumbered chapter GAB 7 under s. 13.92 (4) (b) 1., Stats., and corrections made under s. 13.92 (4) (b) 7., Stats., Register April 2008 No. 628.

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.

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

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 non-partisan election combined with a presidential preference vote.

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

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

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

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.

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



United States Election Assistance Commission



Certificate of Conformance

ES&S EVS 5.2.0.0

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

Product Name: EVS

Model or Version: 5.2.0.0

Name of VSTL: NTS Huntsville

EAC Certification Number: ESSEVS5200

Date Issued: 7/2/2014

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

Scope of Certification Attached

Manufacturer: Election Systems & Software
System Name: EVS 5.2.0.0
Certificate: ESSEVS5200

Laboratory: NTS Huntsville
Standard: VVSG 1.0(2005)
Date: July 2, 2014



Scope of Certification

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

Significance of EAC Certification

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

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

Representation of EAC Certification

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

System Overview:

ES&S EVS 5.2.0.0 is comprised of the ExpressVote, AutoMARK Voter Assist Terminal (AutoMARK A100, A200 & A300), DS200 Precinct Digital Scanner (DS200), DS850 high-speed Central Count Digital Scanner, ElectionWare, Election Reporting Manager (ERM), ES&S Event Log Service, Removable Media Service (RMS), ExpressVote Previewer and VAT Previewer.

- The ExpressVote is a universal vote capture device designed for all voters, with independent voter-verifiable paper record that is digitally scanned for tabulation. This system combines paper-based voting with touch screen technology. The ExpressVote includes a mandatory vote summary screen that requires voters to confirm or revise selections prior to printing the summary of ballot selections using the internal thermal

printer. Once printed, ES&S ballot scanners process the vote summary card. The ExpressVote can serve all voters, including those with special needs, allowing voters to cast ballots autonomously. ES&S has fully integrated the ExpressVote with the existing suite of ES&S voting system products.

- AutoMARK Voter Assist Terminal enables voters who are visually or physically impaired and voters more comfortable reading or hearing instructions and choices in an alternative language to privately mark optical scan ballots. The AutoMARK supports navigation through touchscreen, physical keypad or ADA support peripheral such as a sip and puff device or two position switch.
- DS200 digital scanner is a paper ballot tabulator designed for use as a polling place scanner. After the voter makes their selections on their paper ballot, their ballot is inserted into the unit for immediate tabulation. Both sides of the ballot are scanned at the same time using a high-resolution image-scanning device that produces ballot images.
- The DS850 is a high-speed, digital scan central ballot counter that uses cameras and imaging algorithms to capture voter selections on the front and back of a ballot, evaluate results and then sort ballots into discrete bins without interrupting scanning. A dedicated audit printer generates a continuous event log. Machine level reports are produced from a second, laser printer. The scanner saves voter selections and ballot images to an internal hard disk and exports results to a USB Memory stick for processing with Election Reporting Manager.
- ElectionWare integrates the election administration functionality into a unified application. Its intended use is to define an election and create the resultant media files used by the ExpressVote, DS200 tabulator, AutoMARK™ Voter Assist Terminal (VAT), the DS850 Central Ballot Scanner, and Election Reporting Manager (ERM). An integrated ballot viewer allows election officials to view the scanned ballot and captured ballot data side-by-side and produce ballot reports.
- ES&S Event Log 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 ES&S Event Log Service closes any active ES&S software application if the system detects the improper deactivation of the Windows Event Viewer.
- The ExpressVote Previewer is an application within the EMS program that allows the user to preview audio text and screen layout prior to burning Election Day media for the ExpressVote.
- The VAT Previewer is an application within the EMS program that allows the user to preview audio text and screen layout prior to burning Election Day media for the AutoMARK™.
- Removable Media Service (RMS) is an application that runs in the background of the EMS client workstation and supports the installation and removal of election and results media.
- Election Reporting Manager (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 the results' reports directly to the media outlets.

ERM supports accumulation and combination of ballot results data from all ES&S tabulators. Precinct and accumulated total 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.

Mark definition:

ES&S' declared level mark recognition for the DS200 and DS850 is a mark across the oval that is 0.2" long x 0.03" wide at any direction.

Tested Marking Devices:

Bic Grip Roller Pen

Language capability:

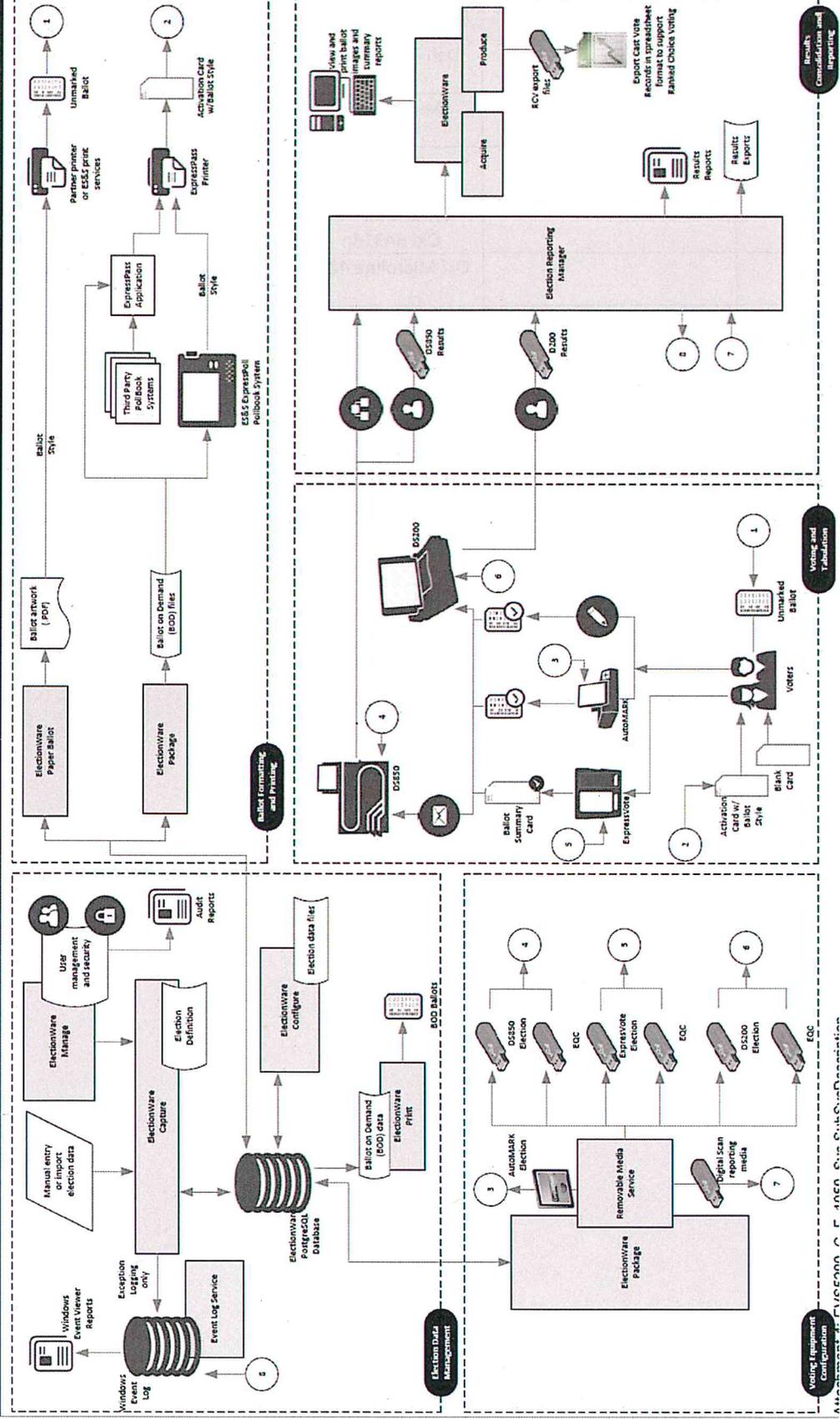
EVS 5.2.0.0 supports English, Spanish, Chinese, Korean and Japanese ballot languages.

Components Included:

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

System Component	Software or Firmware Version	Hardware Version	Operating System or COTS	Comments
ExpressVote	1.4.0.0	1.0		Vote Capture Device
DS200	2.12.0.0	1.2.1, 1.2.3, 1.3		Precinct Digital Scanner
AutoMARK A100	1.8.6.0	1.0		ADA Ballot Marking Device
AutoMARK A200	1.8.6.0	1.1, 1.3		ADA Ballot Marking Device
AutoMARK A300	1.8.6.0	1.3		ADA Ballot Marking Device
DS850	2.10.0.0	1.0		Central Count Scanner, high-speed
Ballot Box Hardware		1.2, 1.3		Plastic ballot box
Ballot Box Hardware		1.0, 1.1, 1.2		Metal ballot box with/without diverter
Election Ware	4.6.0.0			
Election Reporting Manager (ERM)	8.11.0.0			
ES&S Event Log Service	1.5.5.0			
VAT Previewer	1.8.6.0			
Removable Media Service	1.4.5.0			
EMS Reporting Workstation		Dell Optiplex 980		

System Component	Software or Firmware Version	Hardware Version	Operating System or COTS	Comments
EMS Server		Dell PowerEdge T710		
EMS reporting Laptop		Dell Latitude E6410		
Ballot on Demand Printer		C9650		
DS850 Report Printer		OKI B430dn & Oki B431dn		Laser report printer
DS850 Audit Printer		Oki Microline 420		Dot Matrix Printer
Headphones		Avid FV-060		
USB Flash Drive		Delkin 512MB		
USB Flash Drive		Delkin 4GB		
USB Flash Drive		Delkin 8 GB		
USB Flash Drive		Delkin 1 GB		
USB Flash Drive		Delkin 2 GB		
Compact Flash		Delkin Devices 1.0 GB capacity		



System Limitations

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

System Characteristic	Boundary or Limitation	Limiting Component
Max. precincts allowed in an election	9900	ERM
Max. count for any precinct element	500,000 (65,500 from any tabulator media)	ERM report (ERM results import)
Max. candidates allowed per election	Depends on election content (limited by 21,000 maximum counters) ¹	ERM
Max. contests allowed in an election	Depends on election content (limited by 21,000 maximum counters) ²	ERM
Max. counters allowed per precinct	Limits candidates and contests assigned to a precinct to 1,000 ³	ERM
Max. contests allowed per ballot style	200 or number of positions on ballot	N/A
Max. candidates (ballot choices) allowed per contest	175	ERM (database create)
Max. number of parties allowed	General election: 75 Primary election: 20 (including nonpartisan party)	ERM (database create)
Max. 'vote for' per contest	98	ERM (database create)
Ballot formats	All paper ballots used in an election must be the same size and contain the number of response rows.	Ballot scanning equipment
Max. Ballot Styles	9900	ERM
Max. District Types/Groups	20	ERM
Max. districts of a given type ⁴	40	ERM
Supported Languages	<ul style="list-style-type: none"> • English • Spanish • Chinese • Korean • Japanese 	System Configuration

¹ Calculation of the number of counters must include a minimum of 4 counters for each contest, 3 overhead (overvote, undervote, precincts counted) and at least 1 candidate. Additional contest candidates each add a counter. If some precincts are defined as Absentee, a fourth overhead counter (absentee precincts counted) must be added to each contest. The number of statistical counters (Ballots Cast, Registered voters) must be added to the contest counters to determine the total counters.

² Example of maximum contest calculation if all contests had 2 candidates (5 counters each, 3 overhead counters + 2 candidates) and there were 10 statistical counters (i.e. Ballots Cast-Total, Republican, Democratic, Libertarian, Nonpartisan and Registered Voters-Total, Republican, Democratic, Libertarian, Nonpartisan. $(21000-20)/5 = 4196$ or $(\text{counter limit} - \text{statistics} \times 2)/\text{number of counters/contest} = \text{number of contests}$.

³ Contest counters are calculated as indicated in footnote 1, but two counters must be added for each statistical counter defined for the precinct. There are a minimum of 3 statistic counters assigned to each precinct (six added counters), "Ballots Cast," "Registered Voters" and "Ballots Cast Blank."

⁴ Excludes the Precinct Group which contains all precincts.

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.

DS200

1. The ES&S DS200 configured for an early vote station does not support precinct level results reporting. An election summary report of tabulated vote totals is supported.

AUTOMARK Voter Assist Terminal

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

ElectionWare

1. ElectionWare capacities exceed the boundaries and limitations documented for ES&S voting equipment and election reporting software. For this reason, ERM and ballot tabulator limitations define the boundaries and capabilities of ElectionWare system.

ExpressVote

1. ExpressVote 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 ExpressVote system as the maximum capacities of the ES&S ExpressVote are never approached during testing.

Election Reporting Manager (ERM)

1. Election Reporting Manager requires a minimum monitor screen resolution of 800x600.
2. ERM Database Create allows 1600 Precincts per Ballot Style.
3. There is a limit of 3510 precincts in the precincts counted/not counted display.
4. There is a limit of 3000 precincts in the precincts counted/not counted scrolling display.
5. Contest/Precinct selection pop up display limited to 3000 contests/precincts.

6. Non-English characters are not supported in ERM. This has to do with the creation of the XML results file out of ERM.
7. ERM's maximum page size for reports is 5,000 pages.

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	Yes	
Closed Primary		
Primary: Closed	Yes	
Open Primary		
Primary: Open Standard (provide definition of how supported)	Yes	
Primary: Open Blanket (provide definition of how supported)	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	
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	

Feature/Characteristic	Yes/No	Comment
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	It is possible to list the number of voters.
Vote N of M:	Yes	
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	
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 nd contest.)	No	
Recall Issues with Options: Two contests with access to a second contest conditional upon any vote in contest one. (Must vote Yes to vote in 2 nd contest.)	No	Overtured - US District Court 7/29/03: CA Election Code sect. 11383
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	

Feature/Characteristic	Yes/No	Comment
Ranked Order Voting: The total number of votes for two or more candidates with the least votes is less than the votes of the candidate with the next highest number of votes, the candidates with the least votes are eliminated simultaneously and their votes transferred to the next-ranked continuing candidate.	No	
Provisional or Challenged Ballots		
Provisional/Challenged Ballots: A voted provisional ballots is identified but not included in the tabulation, but can be added in the central count.	Yes	
Provisional/Challenged Ballots: A voted provisional ballots is included in the tabulation, but is identified and can be subtracted in the central count	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	DS200
Central counting device	Yes	DS850

Baseline Certification Engineering Change Order's (ECO)

This table depicts the ECO's certified with the voting system:

Change ID	Date	Component	Description	Inclusion
ECO 901	6/23/14	DS850	Datawin firmware change for the bus controller, main motor controller, input tray motor controller, and output motor controller	Non-De Minimis Optional
ECO 910	6/23/14	Steel Ballot Box	Deflector flap needed to guide ExpressVote cards around chute in steel ballot box in conjunction with the DS200	Non-De Minimis Optional
ECO 912	6/02/2014	DS850	Second source UPS for DS850	De Minimis Optional
ECO 913	6/23/14	DS200	Second source battery for DS200	Non De Minimis Optional
ECO 1456	6/23/14	ExpressVote	Second source battery for ExpressVote	Non De Minimis Optional
ECO 1500	6/23/14	ExpressVote	Add scuff pads to housing and increase allowable flatness to kickstand	De Minimis
ECO 1516	6/23/14	ExpressVote	Added new InnoDisk	De Minimis
ECO 1530	6/23/14	DS200	Plastic change to enhance a better fit	De Minimis Optional
ECO 1587	6/23/14	ExpressVote	Updated BOM and drawings to match manufacturer production	De Minimis

Change ID	Date	Component	Description	Inclusion
ECO 1609	6/23/14	DS200 Carry Case	Replaced DS200 mounting rail on carry case	De Minimis Optional

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KEVIN J. KENNEDY
Director and General Counsel

MEMORANDUM

DATE: For the September 4, 2014 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

SUBJECT: Government Accountability Board's 2015-2017 Biennial Budget Request

On Wednesday, July 9, 2014, staff received Major Budget Policies and Budget instructions for preparing its 2015-2017 biennial budget request. Most agencies are required to hold their overall fiscal year GPR budgets to fiscal year 2013-15 levels. The GPR base budget for 2015 is \$2,503,600. The federal base budget for 2015 is \$2,777,900. In addition to zero growth for the 2015-2017 biennium agencies were reminded that under 2013 Wisconsin Act 20, Section 9252 (1)(a), many agencies were required to lapse or transfer, from PR or GPR appropriations, a total of \$38.3 million annually to the General fund in the 2013-15 biennium. This lapse requirement was extended to include fiscal year 2015-16 by 2013 Wisconsin Act 142, Section 44m. The Government Accountability Board's portion of the lapse is \$40,200. The budget submission is due to the State Budget Office and the Legislative Fiscal Bureau on September 15, 2014.

The 2015-2017 agency budget request is designed to maintain the agency general program revenue (GPR) funded operations. GPR funding is the money that comes directly from state tax revenues.

The agency base budget consists of 14.30 FTE (full time equivalent employees), 5.0 Project FTE through June 2015 funded from GPR, plus fringe benefits, LTE/Board member per diems, supplies and services and permanent property for a total of \$2,503,600. It also funds 3.45 positions from its lobbying program revenue (PR) budget which the base is \$465,100 for salaries, fringe benefits and supplies and services. It also funds 26 Project positions from its federal HAVA appropriation through June 30, 2015 which the base is \$2,777,900 for salaries, fringe benefits, supplies and services and local assistance. A table summarizing the agency's expenditure history by its three main funding sources (GPR, PR and Federal funding) is attached.

The proposed budget contains five decision items. They are described below.

Decision Item 4001 – Create 22 Permanent Federal FTE Elections Positions

Staff recommends the Board authorize a budget request to create 22 Permanent Federally Funded FTE positions to replace most of the federally funded project positions within the agency that will expire on June 30, 2015. The agency currently has 26 authorized federally funded project positions. Project positions can be authorized for appointments of up to four years. Sixteen of those positions are filled with current employees. We are currently recruiting for six additional positions. Staff does not recommend filling the remaining four vacant positions.

In addition to the temporary project positions, the Elections Division has four permanent GPR funded staff including the Division Administrator. In order to meet current administrative responsibilities the agency also has funded several temporary services staff; however, that need fluctuates between given years.

As Federal and State laws governing elections administration continue to grow in number and complexity, Wisconsin's local election officials rely on Board staff to fulfill its statutory duties to provide election administration education, training and technical support. These activities include assisting with interpreting and administering election laws; onsite and webinar training; creating election-related manuals and other guidance and resources; and training and assisting with the technical aspects of working within the Statewide Voter Registration System, Canvass Reporting System, and other IT systems to manage elections, print poll lists and compile and report election results and voter participation data.

In addition to this assistance to municipal and county clerks and election inspectors, the federally-funded positions develop, maintain, and update various IT functions and systems, assist candidates in filing ballot access documents; review and process nomination papers and other election petitions; manage the agency's voting equipment approval process and polling place accessibility program; and communicate with voters and organizations regarding election procedures and voter rights and responsibilities.

Election Administration is a complex area that requires dedicated staff who are knowledgeable about many federal and State election laws, who are proficient and technically skilled in both basic and complex computer systems and software applications, and who have excellent research skills and the ability to communicate effectively both verbally and in writing in a variety of settings. Agency personnel must also be capable of working under strict deadlines, in the public spotlight, and under stressful conditions.

Significant funds and time are devoted to training and developing seasoned Election Specialists, trainers, technical and support staff. Each election has its own uniqueness in terms of the issues which arise as well as the scope and level of intensity, and the expectations and needs of local election officials, candidates, voters, and the public. New staff gain experience in the full-range of the election process only by working through a four-year cycle which includes both a Gubernatorial and a Presidential election.

Staff proposes to request permission to convert 22 federallyfunded project positions to permanent positions starting July 1, 2015 – June 30, 2017. The expiration of the position authority on June 30, 2015 was originally tied to the end of a biennium. However, the agency needs these positions permanently to continue to provide essential agency services. The

agency’s management of its programs and federal funds indicates we will have enough HAVA federal funds through the next biennium. The elimination of four positions constitutes a 15% reduction in the number of federally funded positions and a 9% reduction in overall agency staff positions.

While we estimate that there are sufficient federal funds to carry all 22 positions for the next biennium, the agency needs to document the need for eventually converting all of the Elections Division project positions to permanent GPR positions effective July 1, 2017. Even though that time frame is outside of the scope of the 2015-17 biennium, we need to ask for permanent GPR position authority in advance. If our request is not approved, on July 1, 2017, we will have depleted the remainder of our federal funding and be forced to rely on the existing 4.0 FTE in the Elections Division.

The base funding cost for 22 FTE positions is approximately \$958,500 in salaries and fringe benefits in FY16 and \$958,500 in salaries and fringes benefits in FY17.

Proposed Motion: The Board directs staff to include the creation of 22 Permanent Federal FTE in its 2015-17 biennial budget request, and ask to convert the 22 Permanent Federal FTE to 22 Permanent GPR FTE effective July 1, 2017.

Decision Item 4002 – Increased Costs for Board Member Per Diems and Meeting Expenses

Staff recommends the Board authorize a request for additional funding for Board Member per diems and Board meeting expenses to reflect the increased cost of conducting Board meetings.

The agency budget for Board Member per diems is currently \$28,300. This amount covers meeting expenses for six one-day, in-person meetings annually, which includes: per diems, travel expenses, meal reimbursements and board meeting preparations. The average cost per meeting is \$4,130 (see chart below). This does not include any per diem payments for meeting preparation which can be eight hours or more.

Meeting	# Days	# Board Members	Daily Per Diem	Per Diem Cost Per Meeting
	1	6	\$455	\$2,730

	# of Meetings	* Meeting Expenses	Total
1-day meeting	1	\$1,400	\$1,400

* Meeting Expenses include: Board materials (photocopying, mailing); travel expenses, meal reimbursements

TOTAL \$4,130

The agency also has six scheduled canvass signings per biennium, along with as many as six additional canvass meetings for recounts and special elections. Historically, the agency has not paid a per diem for canvass signings because the canvass was signed by a Madison-area based Board Member. However, there is now only one Board Member based in Madison and he may not be available to sign the canvass.

Since the Board member per diem rates have increased and the frequency of meetings has increased, additional funding is needed. Staff anticipates expenses for six additional meetings annually along with funding for Board Member meeting preparation, some of which will be telephone conference calls. While the telephone conference call meetings will not result in travel expenses, the agency needs to factor in additional meeting expenses when in-person meetings last more than one day. The agency also needs to factor in possible expenses for canvass signings. Staff believes the agency should budget for six additional days of per diems annually to cover Board Member meeting preparation and canvass signings.

The annual increase needed for six additional meetings would be \$24,780. The increase for six additional per diems for meeting preparation and canvass signings is \$16,380. Over the course of the biennium, the amount needed would be \$82,320.

Proposed Motion: The Board directs staff to include an additional \$41,160 in its base budget request annually to cover increase costs for Board meeting expenses including per diem payments.

Decision Item 4003 – Increase Agency Webmaster Position to 100%

Staff recommends the Board authorize a request for additional funding for a .25 full time equivalent (FTE) permanent position.

The agency currently has authority for 17.75 FTE permanent positions funded by a combination of GPR (14.30 FTE) and program revenue generated by lobby fees (3.45 FTE). The three-quarter time (.75 FTE) position has presented challenges because it is difficult to recruit an individual to accept a .75 FTE position, particularly because all positions in the agency are professional level positions except the individual who handles receptionist and Board organizational responsibilities.

The three-quarter time position was initially held by an ethics specialist at the former State Ethics Board. After the G.A.B. was established, management determined that the individual holding a high level administrative support position wished to reduce her hours to three-quarter time. This enabled management to increase the hours of the ethics specialist to full time.

This was particularly helpful for two reasons. After the merger of the two boards, the person providing financial and human resource management for the former Ethics Board was assigned to the administrative services section of the agency. That person had performed some program responsibilities in the areas of ethics and lobbying. The part-time ethics specialist could take up those duties along with assisting with campaign finance program responsibilities, an area not administered by the former State Ethics Board.

In the past year the person holding the high level administrative support position was unable to work even half-time due to medical issues. When she left the agency, management determined the best use of the position was to recruit an individual to manage the agency website and external communications. Much of this work was being done by an individual funded with federal money and lobby revenue. As a result, that person transferred to the vacant three-quarter time position.

For the balance of this fiscal year, the agency can provide federal funding for an additional 25% for the individual to work on HAVA (federal) projects. However, the agency needs for website management and external communications are for a full time person. The agency website is at the heart of agency operations. It is also becoming increasingly more complex with the addition of more voter and agency client services. In order to ensure retention of the current individual or to facilitate recruitment if the person leaves, the position needs to be full time.

Funding for the additional 25% for this position would be \$20,570 in salary and fringe costs annually. There would be no additional support costs.

# Hours	Hourly Rate	Annual	Fringe	TOTAL
522	\$ 28.34	\$ 14,792	\$ 5,778	\$ 20,570

Proposed Motion: The Board directs staff to request authorization for a .25 FTE funded with GPR in the amount of \$20,570 in FY16 and \$20,570 in FY17.

Decision Item 4004 – Funding for Biennial Updating of Voter Registration List

2013 Wisconsin Act 149 transfers responsibility for biennial updating of the voter registration list from municipal clerks to the Government Accountability Board.

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

In the past, the G.A.B. has paid for these mailings with federal HAVA funds. This saved costs for municipalities who were required to do the mailings. Given the depletion of our HAVA funds in FY-17, we anticipate the cost to administer this legislation will be approximately \$102,900, which includes printing and postage for 300,000 postcards.

Proposed Motion: The Board directs staff to request \$102,900 in GPR funds for the printing and postage of 300,000 postcards in FY17.

Decision Item 4005 – Address Ethics Division/Lobbying Program IT Needs

Staff requests the Board authorize a request for additional GPR funding of \$176,800 annually for the ongoing Ethics Division/Lobbying Program IT needs.

Since lobbying fees will be cut effective January 2015 and lobbying fee income has fallen; we do not receive enough revenue or have budget authority to continue funding a full-time IT contractor that supports the Ethics Division’s non-CFIS software applications and

infrastructure. The Ethics Division currently receives its IT assistance from an in house contracted resource, but cannot continue to fund this position without additional funding.

IT Resources	Hourly Rate	FY16	FY17
Contracted Solution Architect	\$85	\$176,800	\$176,800

The Ethics Division needs to modernize many of its applications to lower technology costs as well as improve internal processes to reduce administrative costs. The Eye on Lobbying website is almost complete, but needs continual care and feeding. The Statement of Economic Interest (SEI) system is in need of modernization. Right now many hours of staff time are used to process each year’s statements. The software that is used by the system is not supported by the vendor. The complaint tracking system and the advice database also need to be upgraded.

The administration of the Government Accountability Board’s lobbying program has been funded for many years through lobbying fees. Those fees are set out in Wis. Stat. §13.75. At present, those fees are: principal registration, \$375; lobbyist license to represent one principal, \$350; lobbyist license to represent multiple principals, \$650; and authorization fee for each of a principal’s lobbyists, \$125. The lobbyist license fees were raised to their current levels for two legislative sessions to help finance the rebuilding of the Board’s Eye on Lobbying website and will revert to \$250 and \$400, respectively, on January 1, 2015.

For the first time ever, staff does not expect to generate enough fees to fully finance the lobbying program if we were to continue to pay for IT resources out of this appropriation. This is the result of a sharp decline in the number of principals that have registered and lobbyists who have become licensed and authorized this past session. The numbers have fallen from the 2011-12 legislative session to the 2013-14 legislative session as follows: principal registrations have fallen from 758 to 735; lobbyist licenses have fallen from 794 to 666, and lobbyist authorizations have fallen from 1,733 to 1,559. This has led to a decline in revenues from \$819,275 in the 2011-12 legislative session to \$733,240 in the 2013-14 legislative session. Moreover, as indicated, the four-year increase in lobbyist license fees enacted by the Legislature beginning with the 2011-12 session will sunset on December 31, 2014.

The Board’s projected budget authorization from lobbying funds is \$465,200 in FY 15 and \$465,100 in FY 16 – a total of \$925,300. Based on current numbers of registrations, licenses, and authorizations, together with the reversion of licensing fees to their lower level, we project generating \$649,690 in lobbying revenue in the two year 2015-16 legislative session.

The costs of administering the lobbying program are not decreasing, and, indeed, are increasing. In particular, we see a need to fund IT services to maintain and enhance the lobbying website on a continuing basis and to support the Division’s IT infrastructure.

Moreover, lobbying fees may only be used in the administration of the lobbying law. The Ethics division’s IT needs go well beyond its Eye on Lobbying website application. The Board desperately needs to update its system for tracking and recording the filing of Statements of Economic Interests and provide the capability for on-line filing. Currently, many hours of staff time are devoted simply to data entry of the information submitted by

public officials. In addition, the Division's databases for tracking investigations and advice are carryovers from the Ethics Board which merged with the Elections Board to form the GAB in 2008. Neither database operates on current technology.

Proposed Motion: The Board directs staff to request \$176,800 GPR in FY16 and \$176,800 GPR in FY17 in its supplies and services line to fund a full-time IT contractor to support the Ethics Division's IT infrastructure.

Funding for Implementation of Voter Identification

The current agency budget contains authorization and funding for 5.0 FTE GPR project positions to implement voter identification requirements. Utilization of this funding is subject to approval by the Joint Legislative Committee on Finance. Staff is not recommending any proposal to implement voter ID requirements as part of the agency budget proposal. These positions will be removed from the agency base budget.

If the federal courts uphold the current 2011 Wisconsin Act 23 provisions as interpreted by the Wisconsin Supreme Court this summer, the Legislature will have to address voter ID funding needs. At that point funding may be better directed at clerk training and implementing a voter information campaign with media. It is likely a court decision will occur after January 1, 2015. This will be in the period when the Legislature is developing the 2015-2017 budget. The agency will be in a better position to recommend a proposed funding amount along with a plan for the effective use of the funds to meet the objectives of the voter identification law.

Attachment: Agency Expenditure History by Funding Source

G.A.B. Expenditure History Per Fiscal Year

Funding Source	Expenditure Types	FY-11 (July 2010- June 2011)	FY-12* (July 2011- June 2012)	FY-13** (July 2012- June 2013)	FY-14 (July 2013- June 2014)
GPR	Salaries	890,959	1,017,011	1,021,938	915,476
	LTE's & Per Diems	34,354	47,250	43,933	36,137
	Fringe	412,416	353,042	375,195	361,157
	Supplies & Services	1,143,569	1,833,777	1,813,942	909,118
	Fixed Assets	0	0	0	6,400
	Local Assistance	572	0		0
TOTAL GPR		2,481,870	3,251,080	3,255,008	2,228,288
PR	Salaries	179,221	171,604	149,208	169,959
	LTE's	237	0	0	1,000
	Fringe	83,255	70,309	60,145	67,979
	Supplies & Services	172,227	130,379	126,808	200,648
	Fixed Assets	0	0	0	0
	Local Assistance	0	0	0	0
TOTAL PR		434,940	372,292	336,161	439,586
Fed	Salaries	621,936	670,392	636,145	773,326
	LTE's	207,216	2,211	13,669	3,885
	Fringe	343,694	302,988	275,442	346,522
	Supplies & Services	1,314,234	1,429,241	964,534	1,373,541
	Fixed Assets	0	0	0	0
	Local Assistance	11,664	9,365	70,315	86,783
TOTAL Fed		2,498,744	2,414,197	1,960,105	2,584,057

* An increase in spending for FY-12 was due to the implementation of Voter Photo ID, the recall process and the agency required lapse

** An increase in spending for FY-13 was due primarily because of Voter Photo ID and the agency required lapse

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JUDGE THOMAS H. BARLAND
Chair

KEVIN J. KENNEDY
Director and General Counsel

MEMORANDUM

DATE: For the September 4, 2014 Board Meeting

TO: Members, Wisconsin Government Accountability Board

FROM: Kevin J. Kennedy, Director and General Counsel
Prepared by Jonathan Becker

SUBJECT: Request for Waivers Relating to Statements of Economic Interests

The Government Accountability Board has received three requests for waivers of the requirement that an official required to file a Statement of Economic Interests identify certain customers or clients from which the official's business received \$10,000 or more of income in the preceding year or for which the official was an authorized representative or agent on a specified date (December 31 of the preceding year or as of the date of appointment or nomination). Wis. Stat. §19.44 (1) (a) and (f). Wis. Stat. §19.43 (8) provides that the Board may waive any filing requirement if the Board determines that "the literal application of the filing requirements would work an unreasonable hardship on that individual or . . . is in the public interest." The Board is required to set forth in writing as a matter of public record its reason for any waiver. I am attaching the Statements of Economic Interests under separate cover.

Mitti Den Herder

Ms. Herder is the Vice Chancellor of Academic Affairs at UW-Platteville. Her husband owns companies that provide the wholesale distribution of telecommunications and cable services among other things. She has stated that they have over 2,000 customers that have paid the companies \$10,000 or more in 2013.

Mark Jinkins

Mr. Jinkins is an attorney and a member of the Optometry Examining Board. He requested a waiver last year arguing that as attorney he could not be required to identify his clients. The Board determined that Supreme Court Rule 20:1.6(c)(5) did not prohibit a lawyer from disclosing the identity of clients in order to comply with Wis. Stats. §§19.43 and 19.44 but that staff inform Mr. Jinkins that he could request a waiver. (A 2013 memo and a record of the Board's action is attached.) Mr. Jinkins then filed his Statement indicating that he had no clients to report because he had not received the threshold amount of income from any client. Mr. Jinkins requests a waiver again because he apparently disagrees with the Board's earlier legal conclusion.

John Franke

Judge Franke is an attorney and a member of the Government Accountability Board. He has requested a partial waiver of the requirement that he disclose those of his law firm's clients whose interests are entirely unrelated to the G.A.B.'s responsibilities.

Each of the officials who have requested a waiver has been invited to appear before the Board at its September 4, 2014 meeting.

State of Wisconsin \ Government Accountability Board

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JUDGE TIMOTHY VOCKE
Chairperson

KEVIN J. KENNEDY
Director and General Counsel

MEMORANDUM

DATE: For the August 13, 2013 Board meeting

TO: Members, Government Accountability Board

FROM: Jonathan Becker, Administrator
Prepared by: Assistant Staff Counsel Jonathan Paliwal

SUBJECT: Possible Conflict Between the Requirements of Financial Disclosure Contained within the Code of Ethics for Public Officials and the Confidentiality Requirements Set Forth in the *Rules of Professional Conduct for Attorneys*

QUESTION PRESENTED: Does Supreme Court Rule 20:1.6(c)(5) prohibit a lawyer who is also a state official to disclose the name of a client from which the official derived substantial income in order to comply with §§19.43 and 19.44, Wis. Stats.?

ANSWER: Complying with Ethics Code disclosure requirements is not in conflict with a lawyer's obligations of confidentiality under the Code of Professional Conduct.

ANALYSIS:

Introduction

In Wisconsin, under the "Code of Ethics for Public Officials and Employees" public officials are required to submit financial disclosures that name businesses and other organizations from which the official has received substantial income. §§ 19.43, 19.44, Wis. Stats. This has been the law of the state since 1978.

Quite commonly, state officials come from the ranks of the legal profession. Wisconsin, like all states, administers a professional code of responsibility. Since 1988, the Wisconsin Supreme Court has regulated the state bar according to the *Rules of Professional Conduct for Attorneys* which are themselves based on the American Bar Association's *Model Rules of Professional Conduct*. Contained within the Wisconsin *Rules* is Supreme Court Rule 20:1.6. S.C.R. ch. 20:1.6 governs the cornerstone of the attorney-client relationship: confidentiality.

Over the course of the last 30 years, these two ethical considerations, financial revelations of public officials versus potential disclosure of client confidences, have at times butted up against one another. S.C.R. § 20:1.6(a) provides:

- (a) A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, except for disclosures that are impliedly authorized in order to carry out the representation, and except as stated in pars. (b) and (c).

But, importantly, S.C.R. § 20:1.6(c)(5) provides:

(c) A lawyer may reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary:

* * *

(5) to comply with other law or a court order.

The question is whether this language encompasses complying with the Code of Ethics for State Public Officials.

History

The Wisconsin Court of Appeals first addressed the apparent conflict between the Ethics Code and the Code of Professional Responsibility in 1983. In *Debardeleben v. Ethics Board*, the court reversed an ethics board order imposing a forfeiture on Arthur Debardeleben for violating the disclosure requirement for public officials and employees. 112 Wis.2d 324 (Wis. Ct. App. 3rd Dist. 1983). Debardeleben was an attorney who was also a former appointee to the Board of Regents of the University of Wisconsin system who had asked that the Ethics Board waive the requirement that he disclose any clients who had paid his law partnership \$1000 or more during 1978. *Id.* 325-26. The Board refused to grant the waiver based on the conclusion that a client's identification was not within the scope of attorney-client privilege. *Id.* at 326. Finding this conclusion in error, the Court decided for Debardeleben noting that the Ethics Board abused its discretion under the disclosure statutes. *Id.* In particular, the court noted

The board's implementation of sec. 19.44(1)(f) must also fail because it conflicts with the Wisconsin Supreme Court's regulation of the practice of law. *State ex rel. Reynolds v. Dinger*, 14 Wis.2d 193, 206, 109 N.W.2d 685, 692 (1961). The power to regulate the practice of law is constitutionally vested in the judicial branch of government. Wis. Const. art. VII, § 2; see also *State ex rel. State Bar of Wisconsin v. Keller*, 16 Wis.2d 377, 381, 114 N.W.2d 796, 798, reh'g denied, 16 Wis.2d 390, 116 N.W.2d 141 (1962). In the exercise of this power, the supreme court has required attorneys to keep their clients' identities confidential. There is good reason for the requirement. Legal advice can be prophylactic as well as remedial. As any experienced attorney in private practice knows, many clients would not seek legal advice in advance of a problem or effect changes that require legal assistance without the confidentiality requirement.

Id. at 327-28.

For good measure, the court added that it doubted the intent of the legislature was to compel attorneys to disclose client identities at the discretion of the ethics board since no clear indication of legislative intent was apparent in regards to enforcement of sec. 19.44(1)(f), Stats. *Id.* at 328.

The Rules after *Debardeleben*

In 1983, the ABA replaced its *Code of Professional Responsibility* with a new set of ethical standards, the *Model Rules of Professional Conduct*. The Wisconsin Supreme Court, in February of 1984, appointed a committee, chaired by Madison attorney Daniel Hildebrand, to review the ABA *Model Rules* and make recommendations concerning the adoption, in whole or

in part, of the *Model Rules* as it might deem advisable. After numerous meetings the committee filed its report with the court on January 2, 1985 with a supplemental filed on January 24th, 1985. These recommendations were published in the November issue of the *Wisconsin Bar Bulletin* along with a request for written comments from interested persons. See 57 WIS.BAR.BULL. 11, at 60 (1984). The court adopted *The Rules of Professional Conduct*, made effective on January 1, 1988 after publication in the August 1987 *Wisconsin Bar Bulletin*, but not before having considered further comments and recommendations subsequent to public hearing. In the Matter of the Amendment of Supreme Court Rules: SCR Chapter 20; Code of Professional Responsibility; SCR 11.01, 11.05, 11.08, 13.03, 13.04, 21.02, and 21.05; Modification of SCR Chapter 31: Continuing Legal Education, 139 Wis.2d xiii (1988).

Because the court's deliberations on a rule change are held in private there is no record of official reasons for a rule change. Documents that were created by justices or court personnel in the course of the court's decision-making processes, such as personal notes, drafts or internal court memoranda/communications are not accessible to the public. This type of communication falls within the category of internal, deliberative communications. To the extent that such documents even exist, the public interest in disclosure of such items is outweighed by the damage to the public arising from the disclosure of documents generated by an appellate court as part of its decision-making process. Any request for disclosure of this type of material cannot be granted, so besides the resulting rule itself, there is only the committee's report and the comments that were offered to the court to offer any insight into the changes that were made. As for what became of the confidentiality rules for Wisconsin's attorneys in 1988, this presented little problem since the result was clear, but for subsequent changes that occurred during the next round of rule changes in 2007, the situation becomes murkier.

The New 1988 Rules

Rule 1.6 concerning Confidentiality of Information was by far the most controversial provision in the drafting and debate stages and, as a result, the rule that was most likely to be amended as each state put its own gloss on its version of the *Model Rules*. See 2 Geoffrey C. Hazard Jr. & W. William Hodes, *THE LAW OF LAWYERING*, §AP4:103 at 1259-60 (Aspen Law & Business, 2d ed. 1996 Supp. 1998). In contrast to the ABA's earlier *Code of Professional Responsibility*, the text of the rule makes no allowance for disclosures "required by law".³ Only in the comments did the new *Rules* admit for the possibility, averring that "a lawyer may be obligated or permitted by other provisions of law to give information about a client. Whether another provision of law supersedes Rule 1.6 is a matter of interpretation beyond the scope of these Rules, but a presumption should exist against such a supersession." MODEL RULES OF PROFESSIONAL CONDUCT Rule 1.6 cmt. Disclosures Otherwise Required or Authorized (1983).

The Code of Professional Responsibility Review Committee sought to rectify this omission by proposing the addition of 1.6(b)(4) to the Wisconsin version of the *Model Rules* which would have read "A lawyer may reveal such information to the extent that the lawyer reasonably believes necessary to comply with other law." 57 WIS.BAR.BULL. 11, at 64 (1984). No additional comments were suggested in the original proposal.

Without mentioning *Debardeleben*, but almost certainly aware of that case's outcome, the State of Wisconsin Ethics Board wrote to the Supreme Court "concerned that your rules pertaining to lawyers' confidences harmonize with that statute administered by the

Wisconsin's Ethics Board that calls upon [various state officials] to identify businesses and other organizations from which they have derived substantial income." Letter from Thomas S. Smith, Chairman, State of Wisconsin Ethics Board, to the Justices of the Wisconsin Supreme Court (Sept. 12, 1985) in Rule G-84-06, Petition to Amend S.C.R. Ch.20 (on file with clerk's office). And to remove all doubt that the statutes the Legislature had directed the Board to administer applied to Wisconsin attorneys, the Board recommended that the court "modify" proposed Rule 1.6 by adding to that rule a new paragraph (c):

(c) This rule does not excuse a public official or employee from the requirement of sec. 19.44(l)(e) and (f), Stats., to identify a body politic organization or lobbyist from which the public official or employee received \$1,000 or of income.

The Board then cited the identical persuasive authority that the *Debardeleben* court declined to follow when the court noted that "conclusions of courts in other jurisdictions concerning their financial disclosure laws or the attorney-client privilege do not determine what a Wisconsin attorney may do." *Id.* at 326-327. And, "above all else" the Board requested "a definitive answer to the question of whether proposed Rule 1.6, of necessity, conflicts with sec. 1944(l)(e) and (f), Stats." Letter from Thomas S. Smith, Chairman, State of Wisconsin Ethics Board, to the Justices of the Wisconsin Supreme Court (Sept. 12, 1985) in Rule G-84-06, Petition to Amend S.C.R. Ch.20 (on file with clerk's office).

This recommendation prompted a letter from the Chairmen of the Code of Professional Responsibility Review Committee, Mr. Hildebrand, in which he declared that the Board's modifications were "unnecessary" and "inappropriate." (Sept. 19, 1985) in Rule G-84-06, Petition to Amend S.C.R. Ch.20 (on file with clerk's office). Mr. Hildebrand's concerns were several. Namely:

- 1) Rule 1.6(b)(4) as proposed already stated that a lawyer may reveal such information as a lawyer reasonably believes is necessary to comply with other law. *Id.* If "§19.44 is singled out, the status of Rule 1.6 with regard to other laws would be somewhat difficult to determine." *Id.*
- 2) That the present confidentiality rule, Sup.Ct.R. 20.22(2)(b) permits a lawyer to reveal confidences or secrets when "required by law." *Id.* Thus the committee sought to maintain continuity; and, it "appeared" that there had been no problem obtaining §19.44 compliance in this regard. *Id.*
- 3) And, because the legislature changes its statutes at times, there would be the added complication of the rules governing attorneys having to be kept current with the statutes. *Id.*

In 1987, the Wisconsin Supreme Court issued orders for the repeal of the Supreme Court Rules Chapter 20 – *Code of Professional Responsibility* and for its recreation as the amended *Rules of Professional Conduct for Attorneys*. 139 Wis.2d xiii, xv. The court also ordered that "the Comments to the American Bar Association Model Rules of Professional Conduct and the Committee Comments of the Code of Professional Responsibility Review Committee are not adopted but shall be printed for information purposes." *Id.* When the newly recreated Chapter 20 was published, there was no "required by law" provision as had been recommended by the committee (the comments did contain the ABA's "comply with other law" language);

however, the Ethics Board's request was definitively answered. *See* 60 WIS. BAR. BULL 8, at 19 (1987). The court added S.C.R. ch. 20:1.6(d) which read:

(d) This rule does not prohibit a lawyer from revealing the name or identity of a client to comply with the ss. 19.43 and 19.44, Stats. 1985-86, the code of ethics for public officials and employees.

S.C.R. (1988).

Thus, it became clear that one could no longer say that the Supreme Court required attorneys to keep their clients' identities confidential in regards to sections 19.43 and 19.44. *Id.* at 328.

The Current 2007 Rules

Chapter 20 was once again repealed and recreated following nearly the exact same set of circumstances as in 1988. The ABA adopted changes to its code which trickled down to the states who in turn adopted in part or whole the changes the ABA had suggested. Once again, the Wisconsin Supreme Court appointed a committee (The Wisconsin Ethics 2000 Committee) chaired by attorney Daniel Hildebrand to propose amendments to the Supreme Court Rules. The court adopted the new and current chapter 20 and it went into effect July 1, 2007. Sup. Ct. Order. No. 04-07, 293 Wis.2d xv. The committee proposed this change to 1.6:

The proposal contains the distinctive exception to the duty of confidentiality that is in the current rule, arising in certain cases involving client crimes and frauds. The proposal adopts the model rule exceptions for compliance with a court order to testify and also for disclosures that "comply with other law." Because of the later exception, the committee proposes deletion of the current reference to §§ 19.43 and 19.44, Stats.

Rule Petition 04-07, *In the Matter of the Amendment of Supreme Court Rules Chapter 20 Rules of Professional Conduct for Attorneys*, filed July 29, 2004 by the Wisconsin Ethics Committee, at 7, on file with the clerk's office, <http://wicourts.gov/scrules/0407.htm>.

The Court adopted this proposal. Sup. Ct. Order. No. 04-07, 293 Wis.2d xv. Sup.Ct.R. 20:1.6(d) was excised and S.C.R. 20:1.6(c)(5) was added thus incorporating the language from the comments that a lawyer may reveal information relating to the representation of a client "to comply with other law or a court order."

CONCLUSION:

Because S.C.R. 20:1.6 no longer specifically cites §§19.43 or 19.44, the Supreme Court has created some ambiguity. However, the history of changes to the Code of Professional Responsibility, leaves little room for doubt that it cannot be read to provide shelter for attorneys who do not wish to disclose significant sources of income should they seek to become public officials. For 19 years, the *Rules of Professional Conduct* made explicit reference to only two statutes and those were, in fact, the ethics statutes requiring disclosure. Although they have been removed from the *Rules*, all indications are that this was because the Court viewed the previous *Rules* as being too narrow in only accounting for §§19.43 and 19.44 as opposed to

now embracing “other law or court order”. On both occasions of amending chapter 20 in Wisconsin, the Chairmen of the Code of Professional Responsibility Review Committee admitted as much. Hildebrand, *supra*.

In summary, lawyers are not excused from the reporting requirements of the Ethics Code simply because they are lawyers. There may be anomalous circumstances where the disclosure of a client’s identity might prove an embarrassment to the client or would otherwise not be in the public interest; but, even here the statutes allow for the Government Accountability Board to waive that aspect of the filing requirement. *See* §19.43(8), Wis. Stats. In the absence of these exceptional circumstances, attorney-client confidentiality is no impediment to full compliance with the state of Wisconsin’s financial disclosure laws.

Footnotes

- 1) Supreme Court Rule 20.21(4): Ethical Consideration. The attorney-client privilege is more limited than the ethical obligation of a lawyer to guard the confidences and secrets of the client. This ethical precept, unlike the evidentiary privilege, exists without regard to the nature or source of information or the fact that others share that knowledge. A lawyer should endeavor to act in a manner which preserves the evidentiary privilege; for example, he or she should avoid professional discussions in the presence of persons to whom the privilege does not extend. A lawyer owes an obligation to advise the client of the attorney-client privilege and timely to assert the privilege unless it is waived by the client.
- 2) Supreme Court Rule 20.22(2)(b): A lawyer may reveal confidences or secrets when permitted under disciplinary rules or required by law or court order.
- 3) MODEL RULES OF PROFESSIONAL CONDUCT Rule 1.6 (1983): Confidentiality of Information
 - a. A lawyer shall not reveal information relating to representation of a client unless the client consents after consultation, except for disclosures that are impliedly authorized in order to carry out the representation, and except as stated in paragraph (b).
 - b. A lawyer may reveal such information to the extent the lawyer reasonably believes necessary:
 1. to prevent the client from committing a criminal act that the lawyer believes is likely to result in imminent death or substantial bodily harm; or
 2. to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, to establish a defense to a criminal charge or civil claim against the lawyer based upon the conduct in which the client was involved, or to respond to allegations in any proceeding concerning the lawyer’s representation of the client.

From open session minutes of August 13, 2013 meeting:

Reconciling Ethics Code Disclosure Requirements with Attorneys' Code of Professional Responsibilities

Ethics and Accountability Division Administrator Jonathan Becker made a verbal and written presentation, which is included on page 91 of the August Board Meeting materials. He said state public officials are required to file Statements of Economic Interests, which include disclosure of the official's or immediate family members' sources of income of \$1,000 or more. If the official or family member has a 10 percent or greater ownership interest in a business, then all business sources of income of \$10,000 or more must be disclosed. Many state public officials are attorneys, and some object to disclosing the names of clients for confidentiality reasons. Mr. Becker described a series of changes in Wisconsin Supreme Court rules over the years, and said staff believes the current state of the law requires disclosure by attorneys.

Discussion. Judge Vocke said he served on a judicial committee that worked on the revision of Supreme Court rules, and that he believes attorney-client confidentiality is sacrosanct. Mr. Becker said attorneys never need to disclose the names of individuals, only organizations that are clients. He said the Board could allow attorneys who have an objection to appeal to the Board.

MOTION: Endorse staff's interpretation of SCR 20:1.6(c)(5) as it applies to the Ethics Code disclosure requirements, as described in the staff memo on page 91 of the August Board Meeting materials, except that an attorney may apply to the Board for a waiver when the attorney believes disclosure could create jeopardy for a client. Moved by Judge Cane, seconded by Judge Nichol. Motion carried on a voice vote.

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JUDGE THOMAS H. BARLAND
Chair

KEVIN J. KENNEDY
Director and General Counsel

MEMORANDUM

DATE: For the September 4, 2014 Board Meeting

TO: Members, Wisconsin Government Accountability Board

FROM: Michael Haas
Elections Division Administrator

Allison Coakley
Training Coordinator

SUBJECT: Implementation of Election-Related Legislation and Manual Revisions

Earlier this year, Governor Walker signed 19 new laws which impact election administration law, policies, and procedures. As part of the 2014 legislation implementation process, Board staff utilized a team approach to analyze the procedural and technological changes required by the new legislation, develop staff recommendations on internal and external changes that needed to be made, determine guidance to be issued to local election officials and the public, and establish a timeline for implementation. As part of this process, Board staff recently completed extensive updates of the *Election Day*, *Election Administration*, *Absentee Voting in Residential Care Facilities and Retirement Homes*, and *SVRS Training Manuals* to reflect those changes and in the process also updated other guidance. Board staff also removed references in the manuals to the Voter Photo ID Law, pending resolution of the appeal of the federal court decision to the 7th Circuit Court of Appeals.

The *Election Day Manual*, a comprehensive guide to the Election Day duties of chief inspectors, poll workers, special registration deputies, tabulators and greeters, expanded by 25 pages to 174. The majority of the updates were made in the “Electors” and “Election Day Issues” chapters. The “Electors” chapter provides detailed information about voter qualifications, Election Day registration, proof of residence requirements, issuing ballots and the voting process. Staff developed a step-by-step procedure for election inspectors to follow for using the ineligible voter list and more detail was added to the acceptable forms of proof of residence section. The election observers section in the “Election Day Issues” chapter was expanded to incorporate significant legislative requirements and procedural changes. Staff also created or updated several forms due to these new requirements.

The *Election Administration Manual* provides clerks with guidance on their array of duties before, during and after an election. The manual increased by 40 pages to 248. Two new chapters were written and added to the manual: “MyVote Wisconsin” which provides information and instruction about the website designed to provide Wisconsin residents with general and election-specific information, and “Wards, Districts, Reporting Units and Annexations,” designed to give clerks a more thorough understanding of wards and reporting

units and the impact of annexations on their ward plan. Both the “Electors” and “Election Day Issues” chapters were updated in a manner similar to that outlined above for the *Election Day Manual*.

The *Absentee Voting in Residential Care Facilities Manual* was revised to provide expanded guidance on the appointment, duties and responsibilities of Special Voting Deputies (SVDs), and the processes they must follow when administering absentee voting in certain care facilities prior to an election. A new form was developed to allow a voter in such a facility to decline to vote in an election and remain on the indefinitely confined or calendar year list. The manual will be distributed to clerks, SVDs, election observers, facility administrators and other interested members of the public for feedback and will be available for clerks and SVDs to reference well before absentee voting in care facilities begins on October 13, 2014.

Finally, the *SVRS Training Manual* was updated to reflect new features in the SVRS system. Several modifications were made to SVRS and other G.A.B. IT systems as a result of recent legislative changes, which required updates to several chapters of the *SVRS Training Manual*. The most significant changes to the SVRS system relate to the proof of residency data fields. These technological updates, as well as new business processes regarding proof of residency for voter registration, necessitated substantial changes to the “Voter” and “Voter Applications” chapters. Additional changes were made to the “Post-Election Activities” and “Provisional Ballot Tracker” chapters which also address several processes related to the proof of residency requirement.

The updated manuals represent Board staff’s efforts to balance presenting information in a clear and understandable format while accurately describing the changes to election laws due to legislative activity this year. The analysis and implementation of new legislation was a project involving the entire Elections Division staff and required a significant commitment of time and resources in the midst of the agency’s regular priorities such as the processing of nomination papers and challenges, conducting training of local election officials, and preparing for the fall election cycle.

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

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KEVIN J. KENNEDY
Director and General Counsel

MEMORANDUM

DATE: For the September 4, 2014 Board Meeting

TO: Members, Wisconsin Government Accountability Board

FROM: Kevin J. Kennedy, Director and General Counsel

SUBJECT: Proposed 2015 Government Accountability Board Meeting Dates

The attached schedule lists, in bold, underscored type, proposed meeting dates for the Government Accountability Board in 2015. The proposed meeting dates are presented to enable Board Members to coordinate the Board meetings with Members' 2015 travel and work plans.

I have set out a list of proposed meeting dates beginning in January, 2015. There are eight 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 2016 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 13, 2015 and January 12, 2016 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 late winter and spring of 2015. 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 2015 meetings in venues other than Madison.

Proposed Motion: The Government Accountability Board adopts the proposed 2015 meeting schedule presented by the Director and General Counsel as modified by Board discussion.

Government Accountability Board Proposed 2015 Meeting Dates

Eight (8) Proposed Meeting Dates
including 1 Teleconference Meeting

Tuesday, January 13, 2015 (Teleconference)

Tuesday, February 24, 2015

Tuesday, April 14, 2015

Tuesday, May 19, 2015

Tuesday, June 23, 2015

Tuesday, September 1, 2015

Tuesday, October 20, 2015

Tuesday, December 15, 2015

January 2015

Tuesday, January 6, 2015 – Nomination Paper Filing Deadline for Spring Election

Friday, January 9, 2015 – Deadline for Filing Statements of Economic Interests and Ballot Access Challenges for Spring Elections

**Tuesday, January 13, 2015 - Proposed Government Accountability Board Meeting
Teleconference Meeting**

Tuesday, January 13, 2015 – Deadline for certifying candidates for spring primary election ballot

Monday, February 2, 2015 - Deadline for Filing Semi-Annual Continuing Campaign Finance Reports

Monday, February 2, 2015 - Deadline for Filing Semi-Annual Lobby Reports

February 2015

Monday, February 9, 2014 - Deadline for Filing Spring Pre-Primary Campaign Finance Reports

***Tuesday, February 17, 2015* – Spring Primary Election**

Tuesday, February 24, 2015 - Proposed Government Accountability Board Meeting

March 2015

Tuesday, March 3, 2015 – Deadline for Certifying Spring Primary Election Results

Monday, March 23, 2014 - Deadline for Filing Spring Pre-Election Campaign Finance Reports

April 2015

Tuesday, April 7, 2014 – Spring Election

Tuesday, April 14, 2015 - Proposed Government Accountability Board Meeting

Tuesday, April 30, 2014 – Deadline for Filing Statements of Economic Interests – Annual Filers

May 2015

Wednesday, May 15, 2015 – Deadline for Certifying Spring Election Results

Tuesday, May 19, 2015 - Proposed Government Accountability Board Meeting

June 2015

Tuesday, June 23, 2015 - Proposed Government Accountability Board Meeting

July 2015

No Meeting Proposed

Monday, July 20, 2015 - Deadline for Filing Semi-Annual Continuing Campaign Finance Reports

Wednesday, July 31, 2015 - Deadline for Filing Semi-Annual Lobby Reports

August 2015

No Meeting Proposed

September 2015

Tuesday, September 1, 2015 - Proposed Government Accountability Board Meeting

October

Tuesday, October 20, 2015 - Proposed Government Accountability Board Meeting

November 2015

No Meeting Proposed

December 2015

Monday, December 1, 2015 – First Day to Circulate Nomination Papers for Spring Elections

Tuesday, December 15, 2015 Proposed Government Accountability Board Meeting

January 2016

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

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

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

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KEVIN J. KENNEDY
Director and General Counsel

MEMORANDUM

DATE: For the September 4, 2014 Meeting

TO: Members, Wisconsin Government Accountability Board

FROM: Kevin J. Kennedy, Director and General Counsel

SUBJECT: Board Member Per Diem Authorization

On March 19, 2014, the Board adopted an expense reimbursement and per diem authorization policy. A copy of the policy accompanies this memorandum. The policy statement reflects formatting and process changes added by staff. The substance of the policy statement reflects the action taken by the Board at its March 19, 2014 meeting.

In order to ensure the Board is permitted to take action to authorize per diem payments for meeting preparation, I have included an agenda item to conform with the open meetings law. Wis. Stat. ss. 19.81 et seq.

The Board has not taken action to authorize per diem payments for meeting preparation for the August 11 or September 4 meetings. If the Board wishes to authorize payments for meeting preparation for those two meetings, the proposed motion should be modified to reflect the dates for the preparation payment.

Proposed Motion: The Government Accountability Board directs staff to submit Board Member per diem payments for the August 11, 2014 and September 4, 2014 meetings.

Board Member Expenses and Per Diem Payments

Expenses

Government Accountability Board members are reimbursed for actual and necessary expenses incurred in the performance of their duties at the applicable state rate.

Per diem

Wisconsin statutes direct that Board members receive a per diem payment for each day in which they are actually and necessarily engaged in the performance of their duties. Wis. Stat. § 15.07(5).

Preparation for meetings:

Preparation for meetings is an actual and necessary performance of duty. Payment of a full or partial per diem for preparation for a meeting requires approval of the Board.

Attendance at meetings:

Board members are paid a per diem in the sum provided by law for each meeting attended in person or by telephone.

Signing of an election canvas:

Any member required to sign an election canvas pursuant to Wis. Stat. § 7.70 or other provision of law, is acting in the actual and necessary discharge of duty. A member may be reimbursed for expenses and per diem in full or in part, depending on distance traveled and total time required to fulfill this duty.

Meetings and hearings attended on behalf of the GAB:

A Board member who attends a meeting or legislative hearing on behalf of the GAB in the performance of duty as a Board member shall be reimbursed expenses and paid the statutory per diem in full or in part, as appropriate.

Individual Waiver

An individual member may waive reimbursement for expenses or per diem payments in full or in part. The member shall inform the Director and General Counsel or his designee of any waiver.

Adopted on March 19, 2014

State of Wisconsin \ Government Accountability Board

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JUDGE THOMAS H. BARLAND
Chair

KEVIN J. KENNEDY
Director and General Counsel

MEMORANDUM

DATE: For the September 4, 2014 Board Meeting

TO: Members, Wisconsin Government Accountability Board

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

Prepared by: Jonathan Becker, Colleen Adams, Brian Bell, Richard Bohringer,
Adam Harvell, and Molly Nagappala
Ethics and Accountability Division

SUBJECT: Ethics and Accountability Division Program Activity

Campaign Finance Update

Richard Bohringer, Colleen Adams, Adam Harvell, Molly Nagappala and Brian Bell
Campaign Finance Auditors

Legislative Changes and Court Decisions

Staff is making a number of updates to campaign finance guidelines and manuals based on 2013 Act 153 in April and May. The *Barland II* case, final injunction still pending, means that manuals for PACs and Independent Disbursement committees are waiting to be finalized. Other guidelines and manuals will be completed shortly.

January Continuing 2014 Reports

All non-exempt registrants were required to file the January Continuing 2014 report by January 31, 2014. Six committees paid a \$125 fee for late reports, and 11 have been administratively suspended for failure to file.

July Continuing 2014 Reports

All non-exempt registrants were required to file the July Continuing 2014 report by July 21, 2014. Late filers have received notices by email, phone, and mail. Nineteen committees are still outstanding.

Fall Pre-Primary 2014 Campaign Finance Reports

All candidates on the ballot in August were required to file a fall pre-primary report on August 4, 2014. Six candidates that were on the Primary ballot failed to file the report on time. Three filed their report on August 11, 2014, one day before the Primary. One was filed on August 15 (3 days after the Primary), and 2 candidates have not yet filed. All 6 candidates were sent letters regarding their late reports. The 3 filed prior to the Primary received a notice only (\$0 penalty), and the 3 that were not filed by the date of the Primary received notice to file

the missing report and pay a settlement offer of \$125. Staff will continue to follow-up with the late filers.

Upcoming Campaign Finance Reports

The next report due for committees active for the November election is the Fall Pre-Election 2014 report due October 27, 2014. Notices for this filing will be sent in early October.

Campaign Finance Audits

Staff has run a number of audits based on 2013 activity.

- Candidate committees in the fall 2013 special elections for Assembly have been audited for failure to file late reports for contributions of \$500 or more. Three committees were contacted, and two have paid forfeitures of \$125 each. One committee is still outstanding.
- Staff audited all committees to verify they provided employment information for contributors of more than \$100. Six committees were contacted; five have amended their report to provide the missing information. One committee is still outstanding.
- An audit of all lobbyist contributions in 2013 has been run. Twenty-three lobbyists were contacted about possible violations. Fifteen have been cleared, usually because of mistaken identity or a misattributed contribution from a spouse. Five have paid forfeitures, and three are still outstanding.
- Starting in May, staff contacted all committees with pending (saved but not filed) transactions in CFIS, and all committees with cash balance discrepancies of \$100 or more in 2013. Most committees have amended past reports to fix the discrepancies, and staff continues to follow up with committees with outstanding questions.

Other audits may be triggered by complaints or from issues discovered by staff review of reports on their face. G.A.B. staff continues to work with our software vendor and our in-house IT staff to automate the audits we conduct.

Campaign Finance Training

Staff continues to add more campaign finance webinars to the G.A.B website, with another webinar for conduits conducted on August 28, 2014. This brings the total amount of webinars conducted by staff to six since April 2014.

In order to evaluate the webinar training program and understand the training needs of committees, staff launched a survey to all registered committees in July 2014. Questions for committees included how helpful they thought the webinars were, what other trainings they would like, and the format of future trainings. The survey was voluntary and committees had over a week to respond. While the response rate was low (only 26 committees), feedback on the helpfulness of the webinar training series was overwhelming positive. Staff is planning to conduct more trainings based on the responses from the survey.

Lobbying Update

Molly Nagappala and Brian Bell
Ethics and Accountability Specialists

Statement of Lobbying Activities and Expenditures (SLAE) Reports — January – June 2014

As of August 21, 2014, all registered principals have submitted their January 2014 – June 2014 SLAEs. The principal that was the latest in filing, Rehabilitation for Wisconsin In Action Inc.,

will likely be subjected to a yet-to-be-determined forfeiture, as their report was 20 days overdue and reflected significant expenditures of time and money.

Statement of Lobbying Activities and Expenditure Report Summaries — January – June 2014

Brian Bell has created a number of summaries for the lobbying activity completed thus far in the 2013-2014 session, including the ranking of principals by the amount of time and money spent, as well as the most lobbied bills. His data management expertise has been a big help to the Division. These summaries are available on the G.A.B. website here:

<http://gab.wi.gov/publications/reports/lobbying>. An 11-page report summarizing the lobbying activity during the 2013-2014 Legislative Session to date follows this division update as an attachment.

Eye on Lobbying Website Project Update

Kavita Dornala has been working on creation of the new Focus subscription service and continues to make excellent progress. On August 20, 2014, Kavita and staff spent the day at the Pyle Center to hone in on exact language changes and to refine the flow of the signup process. We are optimistic that Focus may be rolled out to the lobbying community by October or November 2014.

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.

Lobbying Registration and Reporting Information

G.A.B. staff continues to process 2013-2014 lobbying registrations, licenses, and authorizations and will continue to do so throughout the session. The months of July and August have seen a modest spike in lobbyist licensure and principal registrations, presumably due to attempts to influence the upcoming session’s budget. After an audit showed that some limited lobbying principals had overspent the \$500 limit in 2013, a small number of principals had to adjust their registration from limited lobbying to full lobbying. The table below provides processing performance and revenue statistics related to the 2013-2014 session to date.

2013-2014 Legislative Session: Lobbying Registration by the Numbers (Data Current as of August 21, 2014)			
Fee Type	Cost	Number	Revenue
Principal Registration Fee	\$375.00	708	\$265,500.00
Limited Lobbying Principal Registration Fee	\$20.00	27	\$540.00
Limited Lobbying to Full Lobbying Principal Amendment	\$355.00	15	\$5,325.00
Lobbyist Authorization Fee	\$125.00	1559	\$194,875.00
Lobbyist License (Single Principal)	\$350.00	561	\$196,350.00
Lobbyist License (Multiple Principals)	\$650.00	105	\$68,250.00
Single to Multiple Principal Lobbying License Amendment	\$300.00	8	\$2,400.00
TOTAL FEES PAID			\$733,240.00

Financial Disclosure Update
Colleen Adams and Adam Harvell
Campaign Finance Auditors and Ethics Specialists

Statements of Economic Interests

We have received all annual statements due by April 30, 2014. With a handful of exceptions, staff entered all reports into our SEI database in preparation for next year's filing.

Governor 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.

State of Wisconsin Investment Board Quarterly Transaction Reports

Staff sent out 54 quarterly financial disclosure reports to State Investment Board members and employees at the beginning of June. The 2014 first quarter reports are due on or before July 31, 2014. Once received, copies of the reports were delivered to the Legislative Audit Bureau for their review and analysis.

6 Month Legislative Liaison Reports

Government Accountability Board staff work to follow up and process legislative liaison reports that were sent to 101 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 through June 30, 2014 were due on or before July 31, 2014, and have all been received.

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.

State of Wisconsin
Government Accountability Board

Total Lobbying Expenditures
2013-2014 Legislative Session
through December 31 2014

Total Lobbying Expenditures: page 1
Total Time Spent Lobbying: page 2
Biggest Spenders (by dollars) page 3
Biggest Spenders (by hours) page 5
Most Lobbied Bills: page 7
Most Lobbied Budget Bill Subjects: page 10
Topics, Minor Effort and No Lobbying Communication: page 11

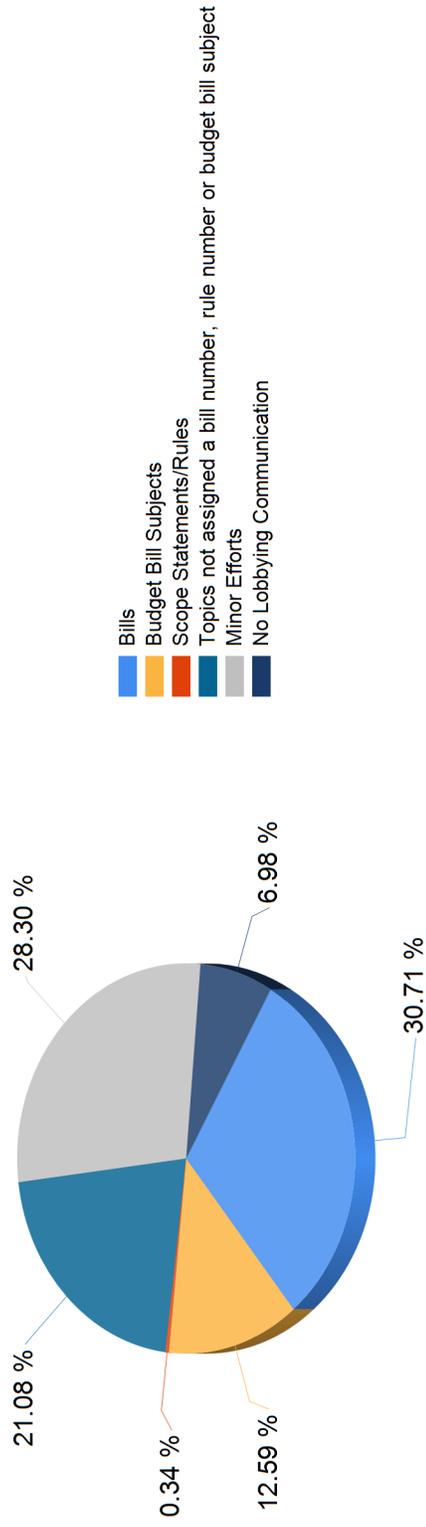
This report provides a measure of the lobbying activity directed toward specific proposals that were before Wisconsin's legislature during the 2013-2014 legislative session. Each of the organizations that employed lobbyists in Wisconsin during the 2013-2014 legislative session has reported to the Government Accountability Board the number of hours and dollars it spent on lobbying-related efforts. Each also provided the Government Accountability Board with its estimate of the portion of its lobbying efforts associated with specific proposals.

The number of hours of lobbying-related activity reported for each proposal is derived from each lobbying organization's estimate of the hours it devoted to lobbying on that proposal during each 6 month reporting period within the 2013-2014 legislative session. True totals may be slightly greater for some proposals because an organization did not have to report time it devoted to a proposal if the time amounted to less than 10% of its total lobbying effort.

Due to the rounding of percentages and the formulas used to generate this report, all totals are accurate within a margin of +/- 1.

	<u>January-June 2013</u>	<u>July-December 2013</u>	<u>January-June 2014</u>	<u>July-December 2014</u>	<u>Session-to-date</u>
TOTALS:					
Hours:	124,857	93,904	93,779		312,540
Dollars:	\$16,954,849	\$14,774,092	\$14,255,374		\$45,984,315
CONTRACT LOBBYISTS AND THEIR RESEARCH STAFF:					
Hours:	44,463	33,229	32,773		110,465
Dollars:	\$8,653,629	\$8,453,351	\$8,262,200		\$25,369,180
IN-HOUSE LOBBYISTS AND THEIR RESEARCH STAFF:					
Hours:	80,394	60,675	61,007		202,075
Dollars:	\$6,814,775	\$5,496,855	\$5,436,017		\$17,747,646
ALL OTHER LOBBYING EXPENSES:					
Dollars:	\$1,486,445	\$823,887	\$557,157		\$2,867,488

2013-2014 Legislative Session Focus on Lobbying Interests



2013-2014 Legislative Session Lobbying

Effort in Hours by Subject Area

Lobbying Subject	Hours	Percentage
Bills	106,276	30.71%
Budget Bill Subjects	43,558	12.59%
Scope Statements/Rules	1,183	0.34%
Topics not assigned a bill number, rule number or budget bill subject	72,972	21.08%
Minor Efforts	97,948	28.30%
No Lobbying Communication	24,149	6.98%
	346,086	100.00%

The 15 organizations who spent the greatest number of DOLLARS lobbying

Wisconsin Property Taxpayers Inc

	January-June 2013	July-December 2013	January-June 2014	July-December 2014	Session-to-date
Hours:	3,070	2,157	2,314		7,541
Dollars:	\$232,955	\$446,714	\$482,893		\$1,162,562

Wisconsin Hospital Association Inc (WHA)

	January-June 2013	July-December 2013	January-June 2014	July-December 2014	Session-to-date
Hours:	2,636	2,348	1,723		6,707
Dollars:	\$323,506	\$278,171	\$261,539		\$863,216

Wisconsin Manufacturers & Commerce

	January-June 2013	July-December 2013	January-June 2014	July-December 2014	Session-to-date
Hours:	2,595	2,520	2,640		7,755
Dollars:	\$294,823	\$294,561	\$261,322		\$850,707

Wisconsin Counties Association

	January-June 2013	July-December 2013	January-June 2014	July-December 2014	Session-to-date
Hours:	2,901	2,169	2,019		7,089
Dollars:	\$292,206	\$192,682	\$177,767		\$662,656

Wisconsin Insurance Alliance

	January-June 2013	July-December 2013	January-June 2014	July-December 2014	Session-to-date
Hours:	457	365	319		1,141
Dollars:	\$357,167	\$145,390	\$109,705		\$612,263

AT&T Wisconsin

	January-June 2013	July-December 2013	January-June 2014	July-December 2014	Session-to-date
Hours:	789	516	430		1,736
Dollars:	\$200,124	\$184,648	\$176,007		\$560,779

Wisconsin Farm Bureau Federation

	January-June 2013	July-December 2013	January-June 2014	July-December 2014	Session-to-date
Hours:	644	698	1,221		2,564
Dollars:	\$155,954	\$153,235	\$242,146		\$551,335

Wisconsin Medical Society

	January-June 2013	July-December 2013	January-June 2014	July-December 2014	Session-to-date
Hours:	2,041	1,463	913		4,417
Dollars:	\$229,611	\$169,083	\$96,892		\$495,587

City of Milwaukee

	January-June 2013	July-December 2013	January-June 2014	July-December 2014	Session-to-date
Hours:	2,199	2,014	1,502		5,715
Dollars:	\$172,174	\$162,551	\$120,145		\$454,870

Wisconsin Automobile and Truck Dealers Association, Inc

	January-June 2013	July-December 2013	January-June 2014	July-December 2014	Session-to-date
Hours:	807	651	742		2,201
Dollars:	\$151,635	\$124,597	\$145,965		\$422,197

League of Wisconsin Municipalities

	January-June 2013	July-December 2013	January-June 2014	July-December 2014	Session-to-date
Hours:	1,370	1,017	873		3,259
Dollars:	\$156,895	\$152,097	\$112,637		\$421,629

Wisconsin Realtors Association

	January-June 2013	July-December 2013	January-June 2014	July-December 2014	Session-to-date
Hours:	1,178	1,357	1,699		4,233
Dollars:	\$139,442	\$129,544	\$148,965		\$417,950

Wisconsin Association of School Boards Inc

	January-June 2013	July-December 2013	January-June 2014	July-December 2014	Session-to-date
Hours:	1,887	1,333	1,558		4,778
Dollars:	\$150,212	\$116,649	\$131,553		\$398,414

Wisconsin Bankers Association

	January-June 2013	July-December 2013	January-June 2014	July-December 2014	Session-to-date
Hours:	1,235	1,054	900		3,189
Dollars:	\$136,793	\$120,512	\$101,845		\$359,151

National Federation of Independent Business

	January-June 2013	July-December 2013	January-June 2014	July-December 2014	Session-to-date
Hours:	742	678	838		2,257
Dollars:	\$113,810	\$119,292	\$104,615		\$337,717

The 12 organizations who spent the greatest number of HOURS lobbying

Wisconsin Manufacturers & Commerce

	January-June 2013	July-December 2013	January-June 2014	July-December 2014	Session-to-date
Hours:	2,595	2,520	2,640		7,755
Dollars:	\$294,823	\$294,561	\$261,322		\$850,707

Wisconsin Property Taxpayers Inc

	January-June 2013	July-December 2013	January-June 2014	July-December 2014	Session-to-date
Hours:	3,070	2,157	2,314		7,541
Dollars:	\$232,955	\$446,714	\$482,893		\$1,162,562

Wisconsin Independent Businesses Inc

	January-June 2013	July-December 2013	January-June 2014	July-December 2014	Session-to-date
Hours:	2,557	2,470	2,306		7,333
Dollars:	\$74,238	\$68,484	\$63,200		\$205,923

Wisconsin Counties Association

	January-June 2013	July-December 2013	January-June 2014	July-December 2014	Session-to-date
Hours:	2,901	2,169	2,019		7,089
Dollars:	\$292,206	\$192,682	\$177,767		\$662,656

Wisconsin Hospital Association Inc (WHA)

	January-June 2013	July-December 2013	January-June 2014	July-December 2014	Session-to-date
Hours:	2,636	2,348	1,723		6,707
Dollars:	\$323,506	\$278,171	\$261,539		\$863,216

City of Milwaukee

	January-June 2013	July-December 2013	January-June 2014	July-December 2014	Session-to-date
Hours:	2,199	2,014	1,502		5,715
Dollars:	\$172,174	\$162,551	\$120,145		\$454,870

State Bar of Wisconsin

	January-June 2013	July-December 2013	January-June 2014	July-December 2014	Session-to-date
Hours:	1,793	1,866	1,527		5,185
Dollars:	\$102,524	\$117,079	\$98,032		\$317,636

Wisconsin Association of School Boards Inc

	January-June 2013	July-December 2013	January-June 2014	July-December 2014	Session-to-date
Hours:	1,887	1,333	1,558		4,778
Dollars:	\$150,212	\$116,649	\$131,553		\$398,414

Wisconsin Medical Society

	January-June 2013	July-December 2013	January-June 2014	July-December 2014	Session-to-date
Hours:	2,041	1,463	913		4,417
Dollars:	\$229,611	\$169,083	\$96,892		\$495,587

Wisconsin Realtors Association

	January-June 2013	July-December 2013	January-June 2014	July-December 2014	Session-to-date
Hours:	1,178	1,357	1,699		4,233
Dollars:	\$139,442	\$129,544	\$148,965		\$417,950

AFSCME Council 11

	January-June 2013	July-December 2013	January-June 2014	July-December 2014	Session-to-date
Hours:	1,466	1,235	809		3,509
Dollars:	\$99,813	\$116,315	\$57,350		\$273,478

Wisconsin League of Conservation Voters (WLCV)

	January-June 2013	July-December 2013	January-June 2014	July-December 2014	Session-to-date
Hours:	1,572	904	891		3,367
Dollars:	\$83,841	\$28,446	\$50,865		\$163,153

The 10 most lobbied bills

Senate Bill 1 2013 Regular Session

Relating to: regulation of ferrous metallic mining and related activities, procedures for obtaining approvals from the Department of Natural Resources for the construction of utility facilities, making an appropriation, and providing penalties. (FE)

Hours:	January-June 2013	July-December 2013	January-June 2014	July-December 2014	Session-to-date
	2,732	22	0		2,754

Senate Bill 509 2013 Regular Session

Relating to: operation of agricultural vehicles on highways and providing a penalty. (FE)

Hours:	January-June 2013	July-December 2013	January-June 2014	July-December 2014	Session-to-date
		24	2,654		2,678

Senate Bill 349 2013 Regular Session

Relating to: local regulation of nonmetallic mining; local regulation of air quality; local regulation of water quality; local regulation of the use of explosives in mining, quarrying, and related activities; highway use contracts by local governments; and local regulation of borrow sites and material disposal sites for transportation projects of the Department of Transportation. (FE)

Hours:	January-June 2013	July-December 2013	January-June 2014	July-December 2014	Session-to-date
		1,750	411		2,161

Assembly Bill 19 2013 Regular Session

Relating to: torts and personal injury trusts. (FE)

Hours:	January-June 2013	July-December 2013	January-June 2014	July-December 2014	Session-to-date
	784	342	971		2,097

Senate Bill 302 2013 Regular Session

Relating to: high capacity well approvals. (FE)

Hours:	January-June 2013	July-December 2013	January-June 2014	July-December 2014	Session-to-date
		961	1,127		2,088

Assembly Bill 139 2013 Regular Session

Relating to: the duty of physicians to inform patients of treatment options. (FE)

Hours:	January-June 2013	July-December 2013	January-June 2014	July-December 2014	Session-to-date
	1,193	757	43		1,993

Assembly Bill 711 2013 Regular Session

Relating to: various changes to the worker's compensation law, granting rule-making authority, and making an appropriation. (FE)

Hours:	January-June 2013	July-December 2013	January-June 2014	July-December 2014	Session-to-date
			1,944		1,944

Senate Bill 286 2013 Regular Session

Relating to: the student information system, a school and school district accountability system, low-performing schools and school districts, and charter school contracts. (FE)

Hours:	January-June 2013	July-December 2013	January-June 2014	July-December 2014	Session-to-date
		839	1,048		1,887

Senate Bill 300 2013 Regular Session

Relating to: copayments, deductibles, or coinsurance for oral chemotherapy and injected or intravenous chemotherapy. (FE)

Hours:	January-June 2013	July-December 2013	January-June 2014	July-December 2014	Session-to-date
	0	496	943		1,439

Assembly Bill 200 2013 Regular Session

Relating to: the law governing repair, replacement, and refund under a motor vehicle warranty.

Hours:	January-June 2013	July-December 2013	January-June 2014	July-December 2014	Session-to-date
	848	316	166		1,330

The 12 most lobbied budget bill subjects

Health Services: Medical Assistance and Related Programs -- Benefits

January-June 2013	July-December 2013	January-June 2014	July-December 2014	Session-to-date
Hours: 5,145	98	118		5,361

Public Instruction: Choice, Charter and Open Enrollment

January-June 2013	July-December 2013	January-June 2014	July-December 2014	Session-to-date
Hours: 4,245	21	14		4,280

Public Instruction: General School Aids and Revenue Limits

January-June 2013	July-December 2013	January-June 2014	July-December 2014	Session-to-date
Hours: 2,616	41	48		2,705

Health Services: Medical Assistance and Related Programs -- Administration

January-June 2013	July-December 2013	January-June 2014	July-December 2014	Session-to-date
Hours: 1,720	106	71		1,897

General Provisions

January-June 2013	July-December 2013	January-June 2014	July-December 2014	Session-to-date
Hours: 1,603	136	0		1,739

Agriculture, Trade and Consumer Protection

January-June 2013	July-December 2013	January-June 2014	July-December 2014	Session-to-date
Hours: 1,304	8	40		1,352

Transportation: Departmentwide

January-June 2013	July-December 2013	January-June 2014	July-December 2014	Session-to-date
Hours: 1,135	29	12		1,176

University of Wisconsin System

January-June 2013	July-December 2013	January-June 2014	July-December 2014	Session-to-date
Hours: 1,125	23	8		1,156

Employee Trust Funds

January-June 2013	July-December 2013	January-June 2014	July-December 2014	Session-to-date
Hours: 1,036	9	32		1,077

Natural Resources: Environmental Quality

January-June 2013	July-December 2013	January-June 2014	July-December 2014	Session-to-date
Hours: 865	125	0		990

Health Services: Other Health Programs & Departmentwide

	January-June 2013	July-December 2013	January-June 2014	July-December 2014	Session-to-date
Hours:	946	21	13		980

Building Commission

	January-June 2013	July-December 2013	January-June 2014	July-December 2014	Session-to-date
Hours:	786	106	76		968

TOPICS OF LOBBYING COMMUNICATION (not assigned a bill or clearinghouse rule number)

	January-June 2013	July-December 2013	January-June 2014	July-December 2014	Session-to-date
Hours:	30,222	25,951	16,799	0	72,972

MINOR LOBBYING EFFORT (effort that accounted for less than 10% of an organization's total lobbying time)

	January-June 2013	July-December 2013	January-June 2014	July-December 2014	Session-to-date
Hours:	29,709	32,365	35,874	0	97,948

NO LOBBYING COMMUNICATION

	January-June 2013	July-December 2013	January-June 2014	July-December 2014	Session-to-date
Hours:	8,195	8,305	7,649	0	24,149

State of Wisconsin\Government Accountability Board

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JUDGE THOMAS H. BARLAND
Chair

KEVIN J. KENNEDY
Director and General Counsel

MEMORANDUM

DATE: For the September 4, 2014 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 (May 21, 2014), and in addition to processing nomination papers and ballot access challenges for the Board's June 10, 2014 meeting, the Elections Division staff has focused on the following tasks:

1. General Activities of Election Administration Staff

A. Partisan Primary Ballot Review

Party candidates for the August 12, 2014 Partisan Primary were certified on June 10, 2014, and independent candidates were certified on July 3, 2014. Soon after, county clerks began sending Partisan Primary ballot proofs for G.A.B. staff review.

For the Partisan Primary, a new ballot review procedure was instituted which required review by two separate Elections Specialists. This procedure was put in place to address complaints from clerks and ballot printers that ballot review was not consistent and the detail of review varied between Elections Specialists. Though the two-person process improved the consistency of review, it also slowed the process. The process became even more protracted due to the failure of some clerks to make all the corrections indicated, resulting in two or three submissions of the same ballot. The number of multiple reviews of the same ballot became unwieldy and difficult to track.

The two-person procedure will also be used for the November General Election. However, once staff has indicated what corrections must be made, the county clerk will be responsible for ensuring those corrections are made. Additional submissions of the same ballot will not be accepted.

B. Partisan Primary Issues

- **Misunderstanding of Purpose of Partisan Primary**

Staff received the usual contacts from voters who either did not understand voting at the Partisan Primary or feel their rights have been impinged by the constraints of having to vote in only one party's primary election. There were many attempts by voters to sidestep this requirement by writing candidates of one party onto the ballot of another. Despite staff's training efforts, the lack of understanding by election officials regarding the purpose of the primary and its procedures continues to be a concern.

- **Recent Legislation**

2013 Act 178 sets out the circumstances in which write-in votes are required to be counted: If there is a certified ballot candidate for an office in a party, only votes for registered write-in candidates may be counted. If there is no certified ballot candidate or one or more ballot candidates have died, all write-in votes must be counted. Although the legislation is intended to decrease the number of write-in votes election inspectors must count, the result has been confusion and misunderstanding.

2013 Act 179 provides for uniformity of labeling original and duplicate ballots. A ballot that will not be accepted by optical scan equipment due to damage or overvote must be duplicated onto a new ballot that will be accepted by the voting equipment. In the case of an overvote, the overvoted office is marked to reflect voter intent if intent can be determined. Otherwise the overvoted office is left blank. Act 179 requires ballots to contain a space in the endorsement section where the reason for duplication and a common serial number can be recorded on the original ballot and the duplicate ballot. Although the duplication process has been required by statute for many years, it is evident that many inspectors have never employed it due to the ability of most optical scanners to override a ballot that the equipment rejects. Staff has found explaining this process of duplicating or "remaking" ballots and its purpose quite challenging.

- **Securing the Ballot Container**

2013 Act 180 requires the ballot container to be sealed by the chief inspector (CI) and another inspector whose party affiliation is different than that of the CI. The CI and the inspector both sign the Ballot Container Certificate (GAB-101). Despite our extensive outreach in the fall of 2013 with respect to the political parties' right to submit nominations for election inspectors, which is the only way an inspector is appointed by party affiliation, municipal clerks still ask if they must "assign" party affiliation to their inspectors. In addition, some inspectors nominated by the political parties objected to the requirement to note their party affiliation on documents required to be signed by inspectors of both parties. In one case, a longtime and skilled inspector has told the municipal clerk that he is likely to stop serving as an inspector because of the requirement to document his party affiliation.

C. Partisan Primary County Canvasses

Canvass reports began arriving electronically on August 18th, with the majority (42) arriving on August 19th. All canvasses were submitted by August 25th, although Milwaukee County's canvass needed to be amended on August 26th to include votes for a registered write-in candidate. Two petitions for recount were received. A petition for the recount of Assembly District 87 was filed on August 20, 2014, by Republican candidate, Michael Bub. The recount commenced on August 22nd and concluded on August 26, 2014, with the recount results indicating that James Edming won the election by 19 votes rather than 17 votes as indicated by the initial official canvass. A petition for the recount of Senate District 17 was filed on August 22, 2014 by Democratic candidate, Pat Bomhack. The recount began on August 25, 2014.

Judge Nichol certified the canvass for all offices not subject to recount on August 26, 2014.

D. Fall Election Preparations

Along with SVRS staff, Election Administration staff also created the Elections Division Readiness Tracker, an electronic task manager for SVRS, election administration and the IT staff to view and update election related tasks. The tracker has multiple "views" allowing staff and management to monitor the status of nearly 100 assigned tasks ranging from pre-election to post-election reporting requirements.

Staff set up the 2014 November General Election in SVRS and has begun entering contests and candidates. 2014 General Election setup began earlier than in prior years. The earlier start will assist clerks in preparing absentee ballots in time for the deadline to send them out to military and overseas voters pursuant to federal law, and to all electors with a request on file pursuant to state law.

SVRS staff has begun the process of updating the procedures for obtaining school board referenda. Staff is currently working with the Department of Public Instruction (DPI) to obtain copies of referenda text from school districts and county clerks. The partnership with DPI should streamline the receipt and entrance of school board referenda in SVRS and help ensure ballot quality.

E. Ballot Improvement Continues

Staff continues to work with clerks, ballot preparers and printers to harmonize various perspectives regarding ballot design and implement improvements. With the input of several ballot preparers, staff has drafted basic standards and font size guidelines to begin making ballots more uniform across the state. This effort will be assisted by the expertise of Dana Chisnell, an authority on ballot and election materials design, who was retained to work with the G.A.B. for a short time this summer.

In working with ballot preparers, staff has gained a clearer understanding about the challenges printers face when laying out a ballot, and how much one company's

philosophy and mechanical methods may differ from another printer. Regardless of differing ideas and opinions, all parties are committed to the evolution of ballots and producing the best product possible.

2. Clerks' Election Administration Workload Concerns Task Force

Board staff has continued to implement the Board directives resulting from recommendations of the Clerk Concerns Task Force. Staff continues to work toward developing model agreements between SVRS providers and reliers to outline alternate models of workload-sharing.

3. Voting Equipment Testing and Demonstration

The Voting Equipment Team conducted a test campaign for Election Systems and Software's (ES&S) EVS 5.2.0.0 and EVS 5.3.0.0 from July 7-16, 2014. A public demonstration was held July 8. The Wisconsin Election Administration Council convened July 9 for a demonstration from an ES&S representative. A complete report summarizing the performance of these voting systems and Board staff recommendations regarding approval for sale and use in Wisconsin is included separately in the meeting materials.

There are no other applications for approval of voting systems pending at this time. However, two vendors – Hart InterCivic and Dominion Voting – have contacted Board staff to discuss Wisconsin's approval process for voting systems. Board staff anticipates receiving an application from at least one of these vendors before the end of the year.

4. The AccessElections! Accessibility Compliance Program

A. Polling Place Audits for the August 12th Partisan Primary

For the 2014 Partisan Primary, 152 polling places were audited. Thirteen temporary workers were hired and trained to conduct onsite accessibility compliance audits in 135 municipalities in Barron, Buffalo, Chippewa, Dane, Dunn, Iowa, Pepin, Pierce, Polk, and Sheboygan counties. The Partisan Primary marked the first election where an updated version of the Polling Place Accessibility Survey was used. Board staff deployed the new survey after changes were made to increase the clarity and specificity of the data collected out in the field. A small workgroup consisting of members from the Accessibility Advisory Committee and the in-house accessibility team developed and approved the new version of the survey. Board staff worked with the IT team to deploy the new survey to the tablet computers that auditors use out in the field.

B. Public Education and Outreach Materials

G.A.B. staff continues to create informational material to better serve voters with disabilities and produce materials for use by clerks and poll workers. Board staff is in the process of finalizing a partnership agreement with the Wisconsin Disability Vote Coalition to produce public education materials for voters with disabilities. The project will consist of three main components; updating and printing *Voting in*

Wisconsin: A Guide for Citizens with Disabilities, the creation and distribution of informational packets for voters and staff at community-based residential care facilities, and a local election official and poll worker training video. The projects should be completed in conjunction with public outreach and education efforts for the General Election in November.

C. Analysis of Accessibility Audit Results

Staff has finalized and mailed all audit reports for the spring election cycle. Since June 2014, staff has received and processed 112 plans of action for polling places audited during recent elections. Staff will continue to process plans of action received from municipalities audited during previous elections and for audits conducted during the 2014 spring election cycle.

D. 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. In addition, staff arranged for the distribution of 364 grant-funded accessibility supplies to 81 municipalities in response to documented needs. Staff continues to work with the agency IT Development Team to automate multiple aspects of the AccessElections! Compliance Audit administrative process. This effort includes finalizing and implementing revisions to sections of the electronic version of the 2009 Polling Place Accessibility Survey in order to increase data quality and accuracy.

E. Accessibility Advisory Committee Meeting

Staff met with the Accessibility Advisory Committee on June 17th at the agency offices. Seven of the nine member organizations were represented at this meeting with Board staff and management also participating. Staff provided updates on the polling place audit program, recent legislative changes, accessible voting equipment approval and discussed the development of a public outreach program for the General Election in November.

5. 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.

6. GIS Update

The G.A.B. staff continues to work with local Land Information Departments in acquiring updated ward boundaries to account for any recent annexations. The G.A.B. staff is working with municipal and county clerks to improve receipt of annexation ordinances. The Department of Administration (DOA) is continuing to send a quarterly list of all annexation ordinances it receives from municipalities.

7. IT Projects

Several IT projects are in progress for the Elections Division:

A. SVRS Updates

SVRS version 8.6 was installed on June 20, 2014 and included mandatory updates to SVRS to accommodate new legislation enacted in 2014. Most changes involved how Proof of Residence information is captured in SVRS. The update also included several routine bug fixes and an improvement to the time it takes to process voter applications in SVRS. G.A.B. received several notes of thanks from clerks for the performance improvement. No further updates to SVRS are planned at this time in order to allow IT and program staff to focus on SVRS Modernization as well as election readiness tasks.

B. SVRS Modernization

The SVRS and IT staff have been organized into teams to work on different modernization topics to allow for work to be done concurrently. The designated topics in SVRS currently being worked on by the teams are Elections, Absentee and Voter. Each team is developing the overall design for their functional area as well as developing all the critical business rules and use cases that the IT team can use to build the new system. Staff hopes to accomplish as much development in 2014 as possible to allow time in early 2015 for testing and deployment of the new system. The new modernized SVRS is scheduled to go live in the fall of 2015.

C. MyVote Wisconsin

MyVote version 1.8 was installed on June 12, 2014 and included mandatory updates to My Vote to accommodate new legislation enacted in 2014. It also included a revision of the downloadable ballot used by UOCAVA voters to better accommodate the Partisan Primary.

Nationally-recognized elections usability specialist Dana Chisnell came on-site at the G.A.B. office July 21-25, 2014. She provided training to staff in how to conduct usability sessions with members of the public to gather information on how easy or difficult it is to perform certain tasks on the MyVote Wisconsin site. Staff and Ms. Chisnell conducted seven in-person usability sessions with members of the general public in the Madison area, as well five remote sessions with citizens in other areas of Wisconsin as well as one overseas voter. She also assisted staff in summarizing and analyzing the data collected in the session to develop priorities for how to improve MyVote. Staff is now looking at ways to address those design priorities. Further usability studies will likely be done with different voter groups to continue to gather information on how MyVote can be improved.

D. Voter Felon Audit

Board Staff completed the statutorily required post-election comparison of voters with the list of persons who were under Department of Corrections (DOC) supervision for a felony conviction for the 16 statewide elections from February 2012 through April 2014. All matches were sent to municipal clerks for verification and review on or before June 20, 2014. So far, for the 16 elections audited from February 2012 through April 2014, 273 potential matches were identified and 33 names have been referred to district attorneys.

The newly developed automated tracking tool used to perform the Voter Felon Audit is in place and ready to be used for the 2014 Partisan Primary Election. Clerks have 30 days from the Primary to complete entering into SVRS new registrations and voter participation. Board staff will perform the Voter Felon Audit for the 2014 Partisan Primary after the clerks have completed the voter updates in SVRS. Staff is preparing a webinar and a communication to clerks formally introducing the Voter Felon Audit tracking tool to those clerks who have not yet received a referral from a previous election.

E. Canvass Reporting System

An update to the Canvass Reporting System (CRS) was installed on July 17, 2014. The update included several report fixes and updates requested by clerks. The fixes installed were requested by clerks who use the CRS on election night to report unofficial results.

On August 12, 2014 at 11 p.m., a technical issue with CRS was reported to G.A.B. staff. Clerks who were entering election night results into the system could not see a candidate listed in the race for Lieutenant Governor in the Republican Party. Clerks could continue to enter vote totals for all the other races, and none of the data entered in the Republican Lieutenant Governor's race prior to 11 p.m. was lost. The G.A.B. IT team immediately began working to identify the issue and fix the problem. The problem was fixed within 90 minutes of the glitch being reported.

The source of the problem was related to how the election setup in the Statewide Voter Registration System (SVRS) interacts with the Canvass Reporting System. In order to facilitate the delivery of online absentee ballots to military and overseas voters in the November General Election, the contest and candidate setup in SVRS for the General Election had begun. The office of Lieutenant Governor in the General Election is not a separate contest in SVRS in the November General Election because those candidates run on a ticket with the candidates for Governor. Because the candidate for Lieutenant Governor in the Republican Party was running unopposed in the August Primary, that candidate had already been added as a running mate to the contest for Governor in the November Election in SVRS. This was the first time that the IT system had encountered this electoral situation which caused a glitch when a regularly scheduled update of SVRS information to CRS occurred at 11 p.m. on Election Night.

As a result, clerks were unable to enter data for one candidate in one contest for approximately 90 minutes beginning at 11 p.m. on the evening of the Partisan Primary. The glitch did not affect entering totals for any other race, although clerks typically do not finalize results until all races are entered. G.A.B. staff was in contact with the clerks using the system for election night reporting and promptly advised them when the problem was fixed.

The permanent IT solution to the election night issue will be installed in CRS after all results for the 2014 Partisan Primary are certified in CRS.

8. Voter Registration Statistics

The following statistics summarize statewide voter registration activity year-to-date as of August 18, 2014:

Active Voter Registrations	3,377,742
Inactive Voter Registrations	1,203,304
Cancelled Voter Registrations	415,256
HAVA Checks Processed In 2014	63,252
Merged Voter Registrations Processed In 2014	6,635

9. Voter Data Requests

The following statistics summarize voter data requests as of August 22, 2014:

Fiscal Year	Total Number of Requests	Requested Files Purchased	Percentage of Requests Purchased	Total Revenue
FY2015 to date	79	49	62.03%	\$37,190.00
FY2014	371	249	67.12%	\$125,921.25
FY2013	356	259	72.75%	\$254,840.00
FY2012	428	354	78.04%	\$127,835.00

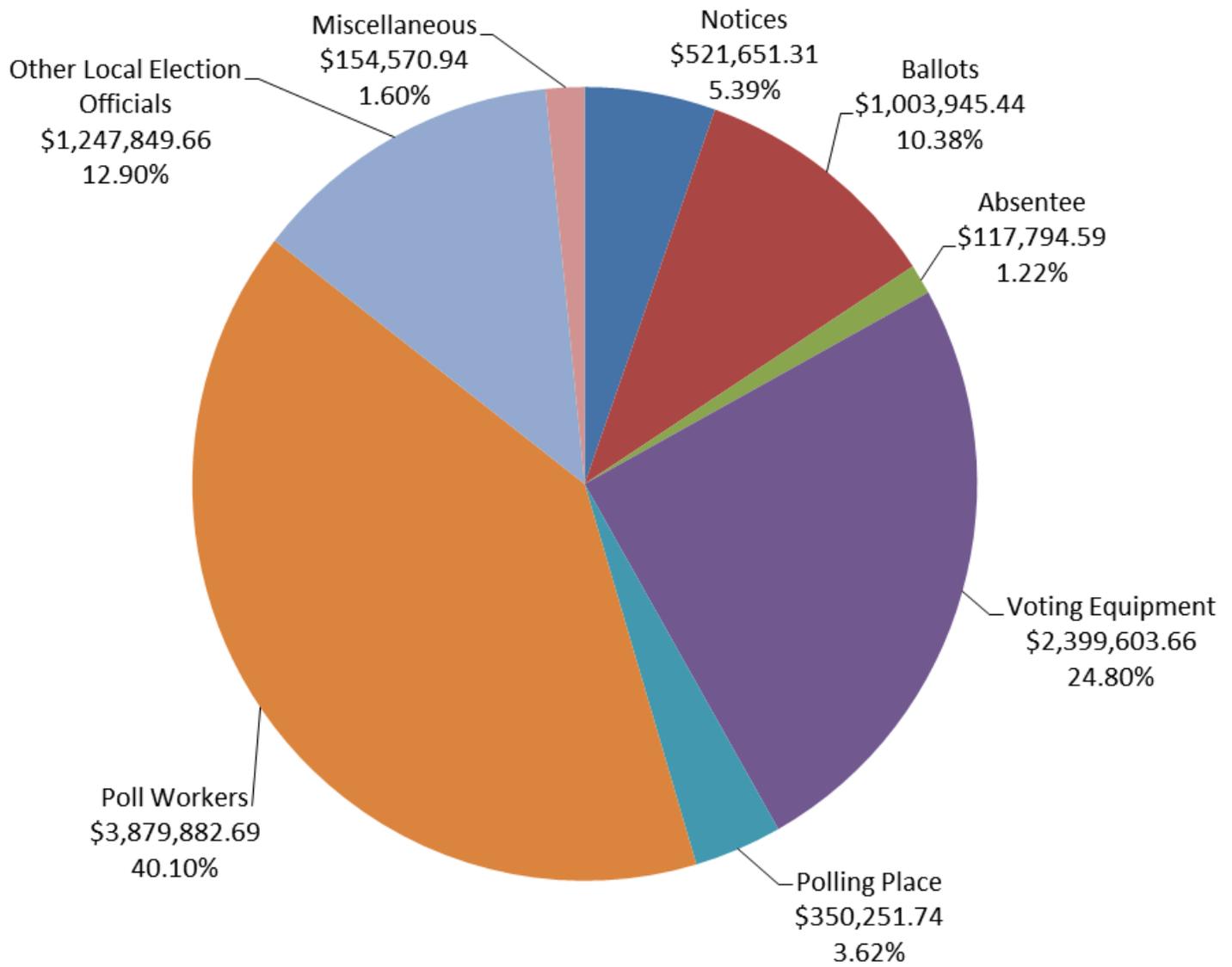
As more fully described in the May 21, 2014 Division Update, G.A.B. staff launched **BADGER Voters** (<http://BADGERVoters.gab.wi.gov>), an online application for processing common requests for voter data, on April 25, 2014. This new website allows candidates, political parties, and the public to request SVRS voter data online, including voter participation based on jurisdiction or district, participation in a particular election or elections, or absentee voter information. Data request customers can submit their requests, make payments online, and download the completed file from this new website. Staff has received positive feedback from individuals and organizations requesting voter data, as well as from local clerks who may direct parties who request localized data to the site.

10. 2014 Spring Election Statistics and Cost Reports

Municipal and county clerks completed the required statistics and cost reporting for the 2014 Spring Election, using the newly standardized GAB-190NF and GAB-191 forms. A

statewide summary of both reports is provided below. The complete reports are available on the G.A.B. website: <http://gab.wi.gov/publications/statistics/gab-190/April-2014>. Reports from previous elections are available here: <http://gab.wi.gov/publications/statistics/gab-190>. Municipal clerks are required to complete the GAB-190F for the 2014 Partisan Primary, and enter the information into WEDCS by September 11, 2014

2014 Spring Election Cost Summary	
Notices	\$521,651.31
Ballots	\$1,003,945.44
Absentee	\$117,794.59
Voting Equipment	\$2,399,603.66
Polling Place	\$350,251.74
Poll Workers	\$3,879,882.69
Other Local Election Officials	\$1,247,849.66
Miscellaneous	\$154,570.94
Total Costs	\$9,675,550.03



2014 Spring Election Costs Comparison

2014 Spring Election Statistics

Question		Statewide Total	
Registered Voters	3,037,455		
Late Registrants	24,379		
Election Day Registrants	23,172		
Total Ballots	505,729		
Total Voters	506,566		
Paper Ballots	44,809	8.86%	Of ballots cast
Optical Scan Ballots	398,702	78.84%	
DRE	59,955	11.86%	
Auto-Mark	4,281	0.85%	
Total Election Inspectors	23,122	4.56%	Of electors
16-17	32	0.14%	Of election inspectors
18-25	172	0.74%	
26-40	766	3.31%	
41-60	4,544	19.65%	
61-70	9,293	40.19%	
71+	8,116	35.10%	
Provisional - No DL	14		
Provisional - No POR	2		
Counted	4		
Rejected	4		
Absentee Issued	67,917	13.43%	Of ballots cast
Absentee In-Person	14,021	20.64%	Of absentee ballots issued
AbsenteeNotReturned	11,625	17.12%	
AbsenteeUndeliverable	2,189	3.22%	
ReceivedByElectionDay	51,568	75.93%	
ReceivedByFriday	1,512	2.23%	
Absentee Counted	49,292	72.58%	
AbsenteeRejectd	819	1.21%	
Absentee late	212	0.31%	
FWAB Received	10		
FWAB Counted	9		
FWAB Rejected	2		
FWAB late	0		
MilitaryIssued	238	0.05%	Of ballots cast
MilitaryUnreturned	147	61.76%	Of military absentee ballots issued
MilitaryUndeliverable	23	9.66%	
MilitaryByElectionDay	58	24.37%	
MilitaryByFriday	12	5.04%	
MilitaryCounted	61	25.63%	
MilitaryLate	3	1.26%	

11. G.A.B. Customer Service Center

The G.A.B. SVRS Help Desk is supporting over 2,000 active SVRS users, the public, and election officials. The Service Center is continuing to upgrade and maintain the two training environments utilized in the field that are now utilizing a virtual training server located at the data center to facilitate remote SVRS training. Staff is monitoring state enterprise network and data center changes and status, assisting with processing data requests, and processing voter verification postcards.

Overall, the majority of inquiries the G.A.B. Help Desk received from clerks during this period related to assistance with preparing for the Fall Primary in SVRS; logging into the CRM system for ineligible lists and canvassing; printing ineligible voter lists; tracking absentee and provisional ballots; printing poll books; absentee processing; producing SVRS reports; and related election processes. A technical issue that continues during this period consisted of clerks experiencing browser compatibility issues between SVRS and the latest version of Internet Explorer and Firefox browsers, which the Help Desk staff continues to resolve on an individual basis. The “End of support” for Windows XP is still resulting in an unusual number of municipalities replacing computers for SVRS. Help Desk staff assisted clerks with configuring and installing SVRS and WEDCS (GAB-190) on new computers.

Public and elector inquiries were primarily from the Wisconsin electorate which had questions about absentee voting, the 28 day registration window, “Where to vote” questions, Election Day Registration requirements, acceptable proof of residence documents, sample ballot and other election-related inquiries.

Calls for this period also consisted of campaign finance reporting issues, lobbyist reporting and the Statements of Economic Interests filing. The Ethics Division’s CFIS and Lobbying systems also generated an amount of call traffic prior to the filing deadlines.

Help Desk staff have been serving on various project teams such as the Records Retention Taskforce; the Clerks Concerns Committee; and the SVRS Modernization and MyVote Wisconsin teams. Staff assisted with testing SVRS and system improvements. Staff has also been administering the SANS Security Awareness training program instituted by DOA for data security awareness.

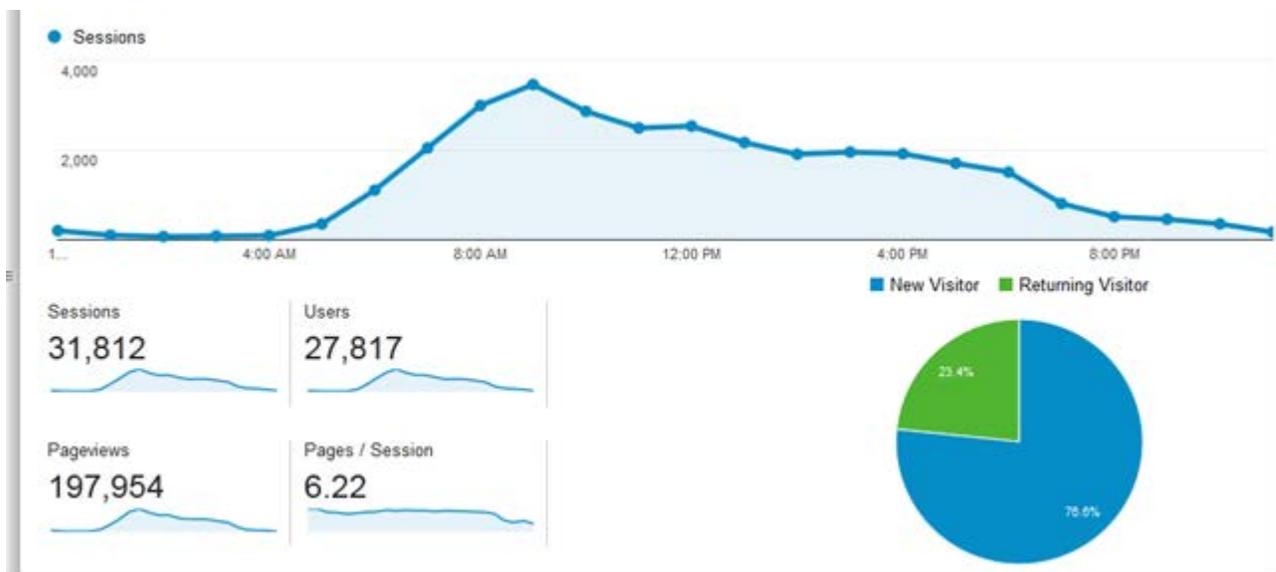
G.A.B. SVRS Help Desk Call Volume (608-261-2028)

May 2014	621
June 2014	855
July 2014	1,044
August 21, 2014	1,063
Total Calls for Reporting Period	3,583

G.A.B. Front Desk Call Volume
 (608-266-8005)

May 2014	342
June 2014	440
July 2014	836
Total Calls for Reporting Period	1,618

The graph below illustrates visitor traffic to the MyVote Wisconsin website for the day of the Fall Partisan Primary. Election Day had 27,817 visitors looking up election-related materials. The high point was 3,452 visitors between 8:00 and 9:00 am. Just over 33% of the visitors, or 10,932, were using a smart phone device to access MyVote Wisconsin.



Below is a summary of the pages visited on MyVote Wisconsin. Average time of visit was 5.5 minutes.

Page Title	Pageviews	% Pageviews
1. Voter Search	65,448	 33.06%
2. Wisconsin Voter Information	60,915	 30.77%
3. My Voter Profile	22,770	 11.50%
4. Address Search	12,778	 6.46%
5. What's on My ballot?	12,245	 6.19%
6. My Voting History	6,314	 3.19%
7. Where Do I Vote?	5,839	 2.95%
8. Information About Voting	4,202	 2.12%
9. Search Provisional Ballot Status	3,158	 1.60%
10. Register to vote	1,669	 0.84%

12. Voter Outreach Services

Since the G.A.B.'s launch of its Facebook and Twitter accounts in April of 2012 the number of people the agency is able to reach through social media continues to grow.

The G.A.B. Facebook account currently has over 1,000 likes (people following the page). On average, each post reaches a viral audience of 300 additional people, with the more popular posts generating an additional reach of over 1,000 people. G.A.B. staff typically publishes two or more posts daily on Facebook during the six to eight weeks before an election. During periods of time between elections, the frequency of posts decreases to around three per week.

The G.A.B. Twitter account currently has over 1,350 followers. Additional statistics for reach and viral impact are not available for Twitter. However, a number of news media sources "re-tweet" G.A.B. posts regularly. Because of these "re-tweets" each G.A.B. post reaches additional Twitter users, beyond the 1,350 followers. G.A.B. staff typically publishes two or more posts daily on Twitter during the six to eight weeks before an election. During periods of time between elections, the frequency of posts decreases to around three per week.

13. Voter ID Cases and Status

G.A.B. staff continues to monitor developments in the litigation regarding the Voter Photo ID Law. The Wisconsin Supreme Court recently found that the requirement complied with the Wisconsin Constitution. In the federal court cases, the Seventh Circuit

Court of Appeals will hold oral arguments on September 12, 2014 regarding the federal district court's ruling, and will subsequently issue an decision on the appeal and whether the photo ID requirement will be in place for the General Election. Staff work to implement the requirement is halted due to the federal district court decisions.

14. Program Audit

Elections Division staff continues to respond to miscellaneous remaining questions and requests for documentation from the Legislative Audit Bureau.

15. Staffing Change

The agency was unable to fill two vacant Elections Specialist positions after completion of the recruitment process. The Division re-posted those two vacancies and is completing that recruitment process as well as the recruitment for two additional Elections Specialist positions, the Voting Equipment Specialist position and the position recently vacated by Jason Fischer.

Jason left the agency in early August to take a position with the Department of Health Services. In addition to his regular Election Administration duties, he was a lead organizer for the Division's "Back to Basics" initiative leading up to the 2012 fall election cycle, and he took an active role in voting equipment testing campaigns, including leading the most recent effort which is to be reviewed at this Board meeting.

ATTACHMENT #1

GAB Election Division's Training Initiatives
5/22/2014-9/3/2014

Training Type	Description	Class Duration	Target Audience	Number of Classes	Number of Students
SVRS "Initial" Application and Election Management/HAVA Interfaces	Instruction in core SVRS functions – how to navigate the system, how to add voters, how to set up elections and print poll books.	16 hours	New users of the SVRS application software.	3	45
SVRS "Advanced" Election Management	Instruction for those who have taken "initial" SVRS training and need refresher training or want to work with more advanced features of SVRS.	2 types of classes: Absentee Process; Reports, Labels & Mailings; 4 hours each	Experienced users of the SVRS application software.	3	34
Municipal Clerk	2005 Wisconsin Act 451 requires that all municipal clerks attend a state-sponsored training program at least once every 2 years.	3 hours	All Municipal clerks are required to take the training; other staff may attend.	3	40
Chief Inspector	Instruction for new Chief Inspectors before they can serve as an election official for a municipality during an election.	3 hours	Election workers for a municipality.	10	380

ATTACHMENT #1

GAB Election Division's Training Initiatives
5/22/2014-9/3/2014

Training Type	Description	Class Duration	Target Audience	Number of Classes	Number of Students
Election Administration & SVRS Training Webinar Series	Series of 8 - 12 programs designed to keep local government officers up to date on the administration of elections in Wisconsin.	45 - 120 minute webinar conference hosted by Elections Division staff.	Clerks and chief inspectors; campaign treasurers and candidates.	2014 Legislative Updates webinar 7/9/2014; 2014 SVRS Legislative Updates webinar 7/16/2014; SVRS Preparing for the November Election 8/27/2014	50 - 200 per webinar; posted to website for clerks to use on-demand.
WBETS	Web Based Election Training System. Still under development. Reference materials were made available to the clerks in February; voter registration training made available to clerks 3/24/2008.	Varies	County and municipal clerks and their staff.	Phase 1 of eLearning training plan completed; Phase 2 under discussion.	Site is available for clerks to train temp workers in data entry; reliers are also able to access the site upon request.
Other	<ul style="list-style-type: none"> • Board staff gave SVRS and election administration presentations to municipal clerks attending the Wisconsin Municipal Clerks Association summer conference on August 22, 2014 in Rothschild. District 8 in Rhinelander. • Board staff conducted SVRS and election administration 				

ATTACHMENT #1

GAB Election Division's Training Initiatives
5/22/2014-9/3/2014

Training Type	Description	Class Duration	Target Audience	Number of Classes	Number of Students
	<p>presentations to members of the League of Wisconsin Municipalities on June 26, 2014 in Manitowoc.</p> <ul style="list-style-type: none"> • Board staff updated County Clerks on new legislation at the WCCA summer conference on July 24, 2014 in Wisconsin Rapids. • Board staff conducted SVRS election data classes at the Wisconsin Clerks Institute for relier and self-providers of SVRS on July 15 & 29, 2014, 				

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JUDGE THOMAS H. BARLAND
Chair

KEVIN J. KENNEDY
Director and General Counsel

MEMORANDUM

DATE: For the September 4, 2014 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 on preparing information for the Legislative Audit Bureau's Agency Audit, planning for the 2015-17 biennial budget, 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. Legislative Audit Bureau Agency Audit Status

Staff continues to respond to inquiries from the Legislative Audit Bureau analysts about the agency's programs and staffing. The auditors expect to have their research and audit report complete soon. The anticipated date is the end of summer 2014.

2. 2015-2017 Biennial Budget Preparations

A full summary of budget preparation activity is under Agenda Item G.

3. STAR Project

The State Transforming Agency Resources (STAR) Project is a state-wide project that will consolidate multiple outdated human resource, procurement, and financial business IT systems into one efficient, transparent, and modern enterprise-wide system.

Several years ago, the state embarked on a project called IBIS with the intent of addressing the State's multitude of non-integrated financial, HR, and payroll systems, and looking for a more cost efficient and effective way of doing the State's business. During that project, the State selected PeopleSoft as the Enterprise-wide Resources Planning, or ERP, system to replace many of our systems to increase efficiency and reduce costs across State agencies. The STAR Project is building upon the work started with IBIS, and is working with Accenture to implement this modernized system over the next 18 months.

The system that the STAR Project will implement includes PeopleSoft functionality as well as Oracle Business Intelligence capability, and planning and budgeting capability from Hyperion. As an integrated system, there are many "modules" of capability within each of the Finance, Procurement, and HR/Payroll functional areas, and they pass information across modules to help reduce duplication of data entry, ensure consistent data, enable comprehensive and analytical reporting, and even enable setup of workflow to support approval processes.

The new systems will be implemented in two releases. Finance, Procurement and supporting Business Intelligence will be implemented first and is scheduled for July of 2015. The HR/Payroll, Budgeting, and supporting Business Intelligence for HR will be implemented, or "go live," in January of 2016.

Our agency will be using the STAR system so it is important that agency staff is prepared for the new system. In preparing for the new system and new business processes, the STAR Project Change Management team has developed a communication plan, a training strategy, and an approach to ensuring agency readiness.

Starting with agency readiness, each agency has a change agent from the agency, and an agency readiness liaison on the STAR Project team. The change agent (Sharrie Hauge) and the agency readiness liaison work together to help the agency get ready for the STAR implementation and keep track of agency progress towards readiness.

This is accomplished through maintaining consistent communications with staff and training staff on the new application. The change agent is responsible for specific tasks associated with the integration and interfacing of the systems, configuration management, reporting, and data conversion. The change agent reports the G.A.B.'s readiness on a monthly basis and works with agency staff to ensure tasks are completed. The financial services staff is the primary staff directly involved in Release 1 (finance – accounts payable/receivable and procurement). The rest of the agency will be involved in Release 2 where the HR and payroll system will change.

4. Financial Services Activity

- Staff calculated and booked the third and fourth fiscal quarter payroll adjusting entries, to properly allocate salaries and fringe benefits between federal and state programs; calculated and booked the I.T. service time adjusting entries, to properly allocate outside professional service costs between federal and state programs; and effected several payroll funding changes in the payroll system, to account for federal employee assignment changes, to replace the fully-expended H251 reporting category with the next 2518 requirements payments reporting category, and for staffing transfers between programs. All timesheets were converted over to an hours and minutes format, to better correlate with PTAWeb, the state's payroll and time reporting system.
- Staff reviewed and approved final year-end Form 78 – Appropriation Certifications for accuracy and completeness, after reconciling back to internal accounting files. Other fiscal year-end work completed includes: filing appointment of reconciler forms with the Department of Administration (DOA); final payments of FY-14 purchase orders and other expenditures posted during month 13; processing the lapse plan ledger transaction documents; manually approving fringe benefit journal vouchers; along with preliminary GAAP and CAFR fiscal year-end reporting work.
- Staff claimed reimbursements of \$23,647 for May, June, and July Federal Voting Assistance Program grant expenditures, then coordinated the accounting for incoming wire transfers with Department of Administration Treasury staff and prepared journal entries to record revenues receivable. Staff worked with federal contracting staff on resolving an approval error on their end, and then re-submitted one of the voucher claims. Financial staff timely filed the quarterly SF 425 Report with the U.S. Department of Defense, due June 30 for this federal aid grant, reporting \$1,072,607 (56 percent) of the \$1,919,864 grant expended since its inception in March 2012. 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.
- Financial staff reviewed and reported the annual property value inventory of insurable equipment owned by the agency in addition to researching and answering questions of the State Budget Office about the residual ledger balance in the transferred-out Election Campaign Fund, which was eliminated by 2011 Act 32. DOA also requested and received a compilation of historical service costs paid to DOA for GPR, PR (federal and state), and/or segregated federal charges, for purposes of updating the federal funds participation rates for the state's share of excessive balances and/or lapses when they arise.
- Year-end journal entries were prepared and booked to reclass 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 are being monitored for erroneous

desktop/laptop charges, while rent and utility cost allocations were updated for recent payroll funding changes.

- General ledger accounts for both federal and state payroll and travel balance sheet liabilities were analyzed each month, to facilitate the reconciliation of these 50 ledger account balances. Journal entries were prepared and booked to correct any balance sheet account coding errors. Staff also attended payroll and travel balance sheet cleanup training sessions, in anticipation of the PeopleSoft general ledger conversion.
- Financial staff worked with DOA-Treasury to change the general ledger coding for the electronic receipt of federal voter data list sales via the new e-payment application. The new reporting category was switched from H251 to 2518, now that H251 became fully expended during June. Some receipts in FY15 were reclassified as a result of this funding change. This new system provides for both electronic check and debit/credit card options as payment in lieu of paper checks for SVRS voter data lists.
- Financial staff worked with DOA-Treasury personnel on switching the fully-expended M261 reporting category over to the next N261 federal allotment year within the Federal Cash Management system and Purchase Plus, so as to continue receiving federal reimbursements of our Section 261 accessibility program expenditures. This is the second-to-last federal funds allotment year available to our agency. Monitored the final expenditures of the 2009 Federal Section 261 voting accessibility funds allotment of \$201,645, processed change orders, and liquidated encumbrances to officially close out this M261 ledger year three months before the federal fiscal year September 30th expiration date. The accounting has now been fully transitioned to the next federal fiscal year 2010 allotment of \$201,091. Thereafter, only one federal grant allotment year remains, specifically \$99,998 from the 2011 federal year. No further allotments are expected for this federal program. All Federal Cash Management (FCM) system reports for accessibility expenditures & revenues were also reviewed and tied out each month.
- Staff wrote new FY-15 purchase orders, and entered the new FY-15 operating budgets into the QuickBooks accounting software.
- Cumulative labor and ancillary costs of \$7,000 are reimbursable from ES&S for the current round of equipment testing on Unity versions 5110, 5200, and 5300. Both ES&S and Dominion have previously reimbursed the G.A.B. for all equipment testing costs per the cost recovery agreement. These cash receipts are accounted for as refunds of expenditure and allocated amongst several ledger accounts.
- The program to reimburse municipalities for accessible voting equipment will be sunsetting August 31 and the financial services unit is processing final requests for reimbursement, as presented before that date. The remaining cash balance will be re-purposed as HAVA 251 requirements.

- The Legislative Audit Bureau (LAB) requested and received a sampling of federal time sheets for review, along with answers about expending our agency's state match requirements, in conjunction with their current audit.
- Financial staff attended an Office of Management and Budget training webinar on the Federal Funding Accountability & Transparency Act hosted by the states of Rhode Island and Massachusetts, whereby subawards of \$25,000 must be reported to the federal government each month.
- Budget-to-actual operating results for the fiscal year ended June 30 were summarized and communicated to management. The federal programs in aggregate finished up the year under budget, while each of the state programs was under budget except for the required cash lapse plan.
- Financial staff assisted the elections division with processing candidate nomination papers, including nights and that weekend, in order to meet the statutory due date.

5. Procurements

Temporary Staff: In order to assist with processing the nomination papers for the fall election, five Program Assistant I temporary staff were hired for a week. As part of the August primary election Accessibility audit, 13 Program Assistant II temporary staff were hired and trained to conduct surveys of polling places throughout the state.

IT purchasing: Expiring SSL certificates were renewed for various G.A.B. websites including accesselections.gab.wi.gov, electiontraining.gab.wi.gov, lobbying.wi.gov, and lobbyinguat.wi.gov. Various annual software subscriptions were renewed for maintenance of our IT applications. A software subscription was also purchased to facilitate management of the shared H:\ files. A new tablet computer was procured for Director Kennedy to facilitate his out of office work.

Other purchasing: With the start of the new fiscal year, purchase orders were created for all the current IT staff, as well as for the copy machines in the office. The procurement staff also attended training on the state's new purchasing card website, Wisbuy. This site offers online purchasing of statewide contract materials, and is a one stop site for multiple vendor purchases. A new ISDN phone was purchased for the Front Desk, to improve call transfers to staff, especially during high traffic times such as Election Day. Newly updated or created G.A.B. forms were translated from English to Spanish and Hmong, including GAB-131, GAB-119 and GAB-123.

6. Contract Sunshine

Since the May Board meeting, the certification process for the April to June 2014 period was completed. All 37 agencies required to report qualified purchases returned the certification. The next certification period ends September 30, 2014. The Contract Sunshine administrator is also working with the STAR project program staff to begin

integrating 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.

7. Staffing

Currently, we have four vacant Elections Specialist positions we are recruiting for and a vacant attorney position.

8. Communications Report

Since the May 21, 2014, Board meeting, the Public Information Officer (PIO) has engaged in the following communications activities in furtherance of the G.A.B.'s mission:

Online: As the agency's webmaster, the PIO oversaw maintenance of the website and development of new sections, including pages for SVRS Manuals and Recounts.

Media: The Board has been in the news recently on several major stories: the filing deadline for 2014 Fall Elections; appeals of the Voter Photo ID Law ruling in *Frank v. Walker*, the *Barland II* decision; the Fall Partisan Primary Election; the July 2014 Continuing Report deadline for campaign finance reports; and the Board's amicus brief in the *O'Keefe* lawsuit in the 7th Circuit Court of Appeals. The PIO coordinated interviews with journalists for Director Kennedy and Division Administrators. He also gave multiple interviews when they were not available. Between May 1 and August 15, the PIO responded to more than 850 contacts from news media and the public for information and interviews.

Public Records: The agency has received nine public records requests between May 1 and August 15, 2014.

Other: The PIO has been involved in projects related to the Legislative Audit Bureau's ongoing audit of the G.A.B.

9. Meetings and Presentations

During the time since the June 10, 2014, Board meeting, Director Kennedy has been participating in a series of meetings and working with agency staff on several projects. The primary focus of the staff meetings has been on preparations for the fall elections, working with the Legislative Audit Bureau (LAB), implementation of new legislation and work on several pending legal proceedings. Agency staff continues to engage with LAB staff to assist them in gathering information as part of the audit. Elections Division staff was also active in a series of training meetings with municipal clerks along with preparations for the August 12, partisan primary. Director Kennedy and staff counsel also consulted with the Department of Justice on several pending cases.

On June 19, 2014, agency staff participated in a program in Sun Prairie to provide select legislators and legislative staff with an insight into the use of technology in administering elections. Elections Division Administrator Mike Haas and Director Kennedy worked with representatives of the National Conference of State Legislatures (NCSL) and Diane Hermann-Brown, the Sun Prairie city clerk, to plan the all-day meeting. NCSL has a grant from the MacArthur Foundation to develop these workshops.

On June 24, 2014, Director Kennedy led a team of agency staff to the annual meeting of the Wisconsin County Clerks Association (WCCA) Summer Conference in Wisconsin Rapids. Allison Coakley, the agency training coordinator, organized the presentations. David Buerger, Diane Lowe and Meagan McCord Wolfe presented to the clerks on a variety of topics including new legislation, canvass reporting, preparations for the fall elections and military and overseas voting deadlines.

On June 29 and 30, 2014, Director Kennedy attended a meeting of the Elections Performance Index (EPI) working group in Chicago. The EPI collects a number of statistical measures to evaluate several categories of performance of election administration at the state level across the country. Wisconsin has consistently performed at the top of the Index. University of Wisconsin-Madison political science professor Barry Burden is part of the working group along with several other academic advisors.

On July 17, 2014, the staff conducted an orientation for new Government Accountability Board member, John Franke. Judge Franke was appointed for a six-year term expiring on May 1, 2020 by Governor Walker to replace Judge Michael Brennan.

On July 21, 2014, Sharrie Hauge, Ross Hein and Director Kennedy attended a high-level agency leadership briefing on the STAR Project. The State Transforming Agency Resources (STAR) Project is a state agency enterprise information technology project, which is designed to replace existing accounting, finance, procurement and human resources systems with a single integrated package over the next several years. The DOA-driven project requires a significant commitment of agency resources. Sharrie Hauge is the agency lead on the project.

On August 4, 2014, Director Kennedy taped a discussion with Steve Walters on Wisconsin Eye. The program focused on the top ten things for voters to know for the August 12 partisan primary election. The program can be viewed at:
<http://www.wiseye.org/Programming/VideoArchive/EventDetail.aspx?evhdid=8951>

On August 8 and August 14, 2014, Director Kennedy was interviewed for the Wisconsin Public Television program *Here and Now*. The first show focused on the most important information for voters to know for the August 12 partisan primary election. The second show described the procedures for conducting a recount in anticipation of possible congressional and legislative district recounts following the partisan primary elections.

In the week and days preceding the partisan primary, Director Kennedy participated in various radio shows to answer questions about the election. This included a half hour call-in show on Wisconsin Public Radio, the *Joy Cardin Show*.

Director Kennedy spent most of the day of the partisan primary on August 12, 2014 observing polling places in Sheboygan County. This provided an opportunity to see how the revised election observer procedures were being implemented. The clerks and poll workers expressed a sincere appreciation that someone from the G.A.B. took the time to see how things were working on the front lines.

On August 20 and 21, 2014, Director Kennedy participated in a meeting with election officials and representatives of motor vehicle agencies from around the country in San Francisco. The meeting was organized by the Pew Charitable Trusts as part of its election initiatives. The meeting explored opportunities and efficiencies between election officials and motor vehicle agencies through increased awareness and cooperation. This follows up on an earlier meeting in March of this year.

Ross Hein attended the Election Center's Annual Conference in San Francisco on August 20-22, 2014. Ross is one of four agency staff with a Certified Election and Registration Administrator (CERA) certification. Attendance at the meeting enabled Ross to maintain his certification.

Ross Hein and Director Kennedy also participated in the meeting of the National Association of State Election Directors (NASSED) on August 22-24, 2014. Ross participated on a panel of state election officials focusing on *On-line Elections Management Systems*. Ross covered our Badger Voters site, which automates our data request process and allows customers to generate quotes, voter data and pay online. He also discussed our online ballot delivery system for military and overseas electors and the G.A.B accessibility audit process, where auditors use tablets on Election Day to evaluate and measure accessibility compliance. Director Kennedy led a panel on recent litigation related to election administration.

On August 22, 2014, Elections Division Administrator Mike Haas led a team to the Wisconsin Municipal Clerks Association (WMCA) Annual Conference in Rothschild. Allison Coakley and David Buerger joined Mike in making a series of presentations on recent election law changes including changes in election observation practices, handling write-in votes and absentee voting in residential care facilities and retirement homes.

On August 26, 2014, Director Kennedy and the Partners in Giving team attended the fall kick-off for the 2014 campaign. The agency team is led by Julie Nischik, Zach Robinson and Colleen Adams.

The agency bade adieu to two key staff members since the last meeting. Jason Fischer, an elections specialist who had worked on the election administration team since joining the agency in 2012, left for a permanent position in state government with the Department of Health Services. Jason was a diligent employee who established an excellent working relationship with our local election official partners. In 2012, Jason

led the *Back-to-Basics* initiative for the fall elections. He was also one of our key employees working on voting equipment certification activities for the agency.

Jason was a HAVA funded employee. As our other HAVA funded employees reach the end of their current appointment on June 30, 2015, the agency could lose more key staff. We have sufficient federal funding for the next 2-year cycle (July 2015 - June 2017), but will need legislative authorization to keep the positions filled.

Shane Falk, staff counsel since October 2008, left the agency for private practice in August. Shane exemplifies all that is great about the people who work at the Government Accountability Board. He is a dedicated public servant who put the public and the agency first in his professional life. His contributions to the agency as staff counsel for the past six years have been critical to steering us through some extraordinarily challenging times. His keen legal mind and passionate commitment to the core mission of the agency will be sorely missed.

Looking Ahead

The next Board meeting is scheduled for Tuesday, October 28, 2014. The meeting will be held in the agency offices, beginning at 9:00 a.m.

Action Items

Continue to work with the Legislative Audit Bureau to provide information needed for the agency audit. Complete the agency's 2015-17 biennial budget submission. Continue preparations for the November 4, 2014 general election.