

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 TIMOTHY L. VOCKE
Chair

KEVIN J. KENNEDY
Director and General Counsel

Wisconsin Government Accountability Board

212 East Washington Avenue
Madison, Wisconsin
October 22, 2013
9:00 a.m.

Open Session Minutes

<u>Summary of Significant Actions Taken</u>	<u>Page</u>
A. Reaffirm Approval Conditions for ES&S Unity 3400 and 3401 Systems	2
B. Approve Dominion Voting Systems Ballot Station 4.6.4D and Memory Card Device for the AccuVote-OS	4
C. Approve Staff Interpretation of Election Inspector Nomination Statute	5

Present: Judge Timothy L. Vocke, Judge Gerald C. Nichol, Judge Michael Brennan, Judge Thomas H. Barland, Judge Thomas Cane and Judge David G. Deininger

Staff present: Kevin Kennedy, Jonathan Becker, Michael Haas, Shane Falk, Nathan Judnic, Sharrie Hauge, Sherri Ann Charleston, Diane Lowe, Zach Robinson, Brian Bell and Reid Magney

A. Call to Order

Judge Vocke called the meeting to order at 9:02 a.m.

B. Director's Report of Appropriate Meeting Notice

Director and General Counsel Kevin Kennedy informed the Board that proper notice was given for the meeting.

C. Minutes of Previous Meetings

August 13, 2013 Meeting
September 25, 2013 Meeting
October 2, 2013 Meeting

MOTION: Approve the Open Session minutes of the meetings of August 13, September 25 and October 2, 2013. Moved by Judge Deininger, seconded by Judge Barland. Motion carried unanimously.

D. Personal Appearances from Members of the Public

Brown County Clerk Sandy Juno of Green Bay appeared to discuss agenda Item E4. Clerk Juno was joined by **Aaron Frailing** of her staff, and both provided oral and written testimony. Clerk Juno asked the Board to provide Brown County with an exemption from the certification requirements for ES&S Unity 3400 and 3401 systems that specify the software must run on hardened computers, and not be connected to the county's existing network. Brown County is planning to purchase one of the voting systems, but does not want to spend additional funds for new computers. She said Brown County has never had a computer security breach, and described the requirement to purchase separate computers as an unfunded mandate.

Discussion. Judge Cane asked for their response to the staff memorandum.

Mr. Frailing said that neither of the solutions proposed by staff are applicable to Brown or any other county for the Unity 3401 system, which uses modems to transmit unofficial results on election night. He said Brown County would need at least two computers, a server and a firewall to comply.

Judge Vocke asked if Brown County is currently using an unhardened system. Mr. Frailing said they are. Judge Vocke asked if there were any disadvantages to using a hardened system other than money. Clerk Juno and Mr. Frailing said the additional cost could range from \$15,000 to \$25,000, beyond which there would have to be changes to administrative procedures, such as the use of thumb drives to transfer election night results from the hardened system to the county's network for publication on the website, as well as setting off work space in the office.

Further discussion of reasons for hardening and how many other counties are in the same situation. Mr. Frailing said La Crosse and Jefferson counties are in similar situations.

Karen McKim of Waunakee appeared on behalf of the Wisconsin Grassroots Network Election Integrity Action Team. She suggested the Board could grant an exemption to requirements for hardened computer system if the county agreed to additional paper ballot and hand count post-election auditing. She said post-election auditing is a deterrent to election tampering.

E. Voting Equipment Certification Issues

4. Request Regarding ES&S Unity 3.4.0.0/1 System Requirements

(This item was taken out of order.)

Elections Specialist Sherri Ann Charleston presented a verbal and written report located on page 52 of the October Board Meeting materials regarding Brown County's request for an exemption from requirements to have a hardened computer system for the ES&S Unity 3.4.0.0/1 systems. She said the staff has several concerns, including that the U.S. Election Assistance Commission requires hardening. The system must stand alone, and not be connected to other county processes so it cannot be accessed by anyone outside or inside county government in ways that cannot be detected. The system contains not only election results, but is also used to program ballots and voting equipment. While the results could be tampered with, information could also be inadvertently erased. Ms. Charleston said the Unity 3.4.0.0/1 systems have not been tested on open computer systems, and that granting an exception for Brown County would effectively void the certification. She said she spoke to the vendor, and was advised hundreds of other jurisdictions use the software on hardened systems.

Judge Barland asked whether the Board has imposed new requirements that no one would have been aware of at the time they purchased voting equipment. Ms. Charleston said the requirement for hardened equipment has been in place, and that any system approved by the US-EAC would have such a requirement. She said the county was aware, or should have been aware, of the requirement. She said ES&S gave the county a quote for the equipment, after which they began an inventory of their IT infrastructure and determined they would need extra equipment. Judge Barland commented that the county should have known about the requirement for a hardened system.

Ms. Charleston said that Dane County has already moved ahead to purchase the Unity 3.4.0.1 system, including a server and a hardened system. Jefferson County has also purchased a hardened system, though they already had a server.

Director Kennedy asked about steps the G.A.B. would have to take to test individual non-hardened systems in each county. Ms. Charleston said if the Board allowed open systems, each would be different. She also said G.A.B. staff does not have the expertise to test security on open systems. Director Kennedy noted that if the Board left it to counties to self-certify security of open systems, it would be abdicating its responsibility.

Judge Brennan asked about firewall security. Ms. Charleston said that while intrusion from outside is an issue, staff is particularly concerned about intrusion from within, not necessarily due to malicious intent, but from haphazard, unintentional activities that could damage the system.

Staff Counsel Shane Falk said that the 2002 and 2005 Voluntary Voting System Guidelines require a hardened system, and that any system coming before the Board will have that requirement.

Further discussion of hardware requirements for the system.

Clerk Juno stated that Brown County began looking at ES&S's DS200 ballot tabulators five years ago, and thought they had telecommunications/modem capabilities. She said

she thought the guidelines were voluntary, and was surprised to learn of requirements for a hardened system. Nobody told them they had to do something different, she said.

Judge Deininger asked about the projected cost of Brown County's system. Clerk Juno said the county had bonded for \$600,000. Judge Deininger noted that the cost for additional computers would add 4 percent to the cost.

Further discussion of hardening requirements and the county's ability to run other software on the computers.

MOTION: Reaffirm the Board's previously granted approval of the Unity 3.4.0.0 and the conditional approval of the Unity 3.4.0.1., including all previously stated conditions and requirements. Moved by Judge Deininger, seconded by Judge Brennan. Motion carried unanimously.

3. Dominion Voting Systems Request for Approval of Ballot Station 4.6.4D and Memory Card Device for the AccuVote-OS

(This agenda item was taken out of order.)

Donna Serwas appeared on behalf of Dominion Voting Systems to discuss the request for approval. She said the existing equipment certified in 2006 needs to be upgraded, including a security update in the touchscreen and the software. In addition, the upgrade fixes a bug that sometimes affected whether audio files for the touchscreen were automatically transferred to the voting equipment, or whether they had to be transferred manually. She also described a new memory card, which does not require a battery so there is no chance of losing data.

Discussion of details of the upgrade. Ms. Charleston said staff found no problems when it retested the equipment.

MOTION: Adopt staff's recommendation for approval of Dominion Voting's Application for Approval of BallotStation 4.6.4D and the AccuVote Memory Device for use in the AccuVote-OS to be sold or used in Wisconsin, including the conditions described in the memorandum on Page 46 and 47 of the Board materials. Moved by Judge Cane, seconded by Judge Barland. Motion carried unanimously.

1. Report on Approval of Elections Systems & Software and Dominion Voting Systems Engineering Change Orders

Ms. Charleston provided an oral and written report, found on pages 22 and 23 of the Board meeting materials, for information only. Based upon staff's analysis and recommendation, Director Kennedy has approved Engineering Change Orders for:

- Dominion Voting Systems, Updated Digital Certificate for GEMS 1.18.24 Software

- Election Systems and Software, Engineering Change Orders for De Minimis Changes to ES&S DS200 Tabulator

2. Report on Prime III Voting System Pilot Program

Ms. Charleston presented an oral and written report, found on page 35 of the Board meeting materials, regarding staff's efforts to implement a pilot program for testing the Prime III Voting System. She said staff has sent the developer three sample files so they can modify their system to present results that can be read by Wisconsin's canvass system. Additionally, staff is working to identify a location for the pilot program. Judge Cane asked about the number of pilot locations. Ms. Charleston said the staff would like 10 to 15 polling places, but it depends on the size of the county or municipality chosen.

F. Election Inspector Nomination Process

Elections Division Administrator Michael Haas said that political parties have not often exercised their ability to nominate election inspectors, but are becoming more active. He introduced Lead Elections Specialist Diane Lowe, who presented an oral and written report on two issues staff wanted to bring to the Board's attention. Ms. Lowe said this is the time of year when parties begin assembling lists to give to municipalities so they can appoint election inspectors. Municipalities make appointments in December of odd-numbered years for two-year terms. She said statutes are clear about to whom the parties submit nominees – the city mayor, village president or town chairperson – but in most cases they are submitted to the municipal clerk, who may be more accessible than the city mayor, village president or town chair. On some occasions, municipalities have not honored the nominations if they are given to the clerk, she said.

Judge Cane asked where the ambiguity is in statutes. Ms. Lowe said it is in practice, because the parties are used to dealing with the clerks. She said the second issue is that statutes say that in the City of Milwaukee, nominations are to be made by the committeeman or committeewoman of the aldermanic district party. However, staff has found that political parties are no longer organized at that level, and that nominations come from county parties.

Discussion.

MOTION: Approve staff's application of Wis. Stat. §7.30(4) to require that political party lists of election inspector nominees be submitted to the head of the municipal governing body in municipalities other than the City of Milwaukee. In addition, the Board affirms the staff's analysis above and its conclusion that Wis. Stat. §7.30(4) permits a political party that is not organized at the aldermanic or municipal level in the City of Milwaukee to submit its list of election inspector nominations through the chair of its Milwaukee County committee, and that the submission shall contain the signature of the committee chairperson. Moved by Judge Nichol, seconded by Judge Cane. Motion carried unanimously.

Judge Vocke called a recess at 10:34 a.m. The Board resumed at 10:45 a.m.

Division Administrator Haas introduced Zach Robinson to the Board. Mr. Robinson was recently hired as a Geographic Information Systems (GIS) Elections Specialist. Previously, he was a limited-term employee, and worked on redistricting issues in the Statewide Voter Registration System.

G. Legislative Status Report

Director Kennedy and Elections Data Manager Brian Bell made a verbal and written report. Director Kennedy reviewed the Legislature's upcoming schedule. He said a number of election-related bills are ready to go, and may be approved before the holidays.

Discussion regarding statutes and court cases regarding the definition of a serious crime and removal from office as implicated by an Assembly Joint Resolution to amend the Wisconsin Constitution regarding recalling state officials.

H. Director's Report

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

Written report from Division Administrator Jonathan Becker and Division staff was included beginning on Page 85 of the Board meeting packet.

Elections Division Report – election administration

Written report from Division Administrator Mike Haas and Division staff was included beginning on Page 89 of the Board packet.

Office of General Counsel Report – general administration

Written report from Kevin Kennedy, Sharrie Hauge, and Reid Magney was included beginning on Page 105 in the Board packet.

Judge Cane said that because the Director's Report contained no recommendations for action, Board approval was not needed.

I. 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), 19.85(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 Barland, seconded by Judge Deininger.

Roll call vote: Barland:	Aye	Brennan:	Aye
Cane:	Aye	Deininger:	Aye
Nichol:	Aye	Vocke:	Aye

Motion carried unanimously. The Board recessed at 11:02 a.m. and convened in closed session at 11:14 a.m.

M. Adjourn

The Board adjourned in closed session at 1:33 p.m.

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The next regular meeting of the Government Accountability Board is scheduled for Tuesday, December 17, 2013. The meeting will be held at the Government Accountability Board offices in Madison, Wisconsin beginning at 9:00 a.m.

October 22, 2013 Government Accountability Board meeting minutes prepared by:

/s/

Reid Magney, Public Information Officer

November 8, 2013

October 22, 2013 Government Accountability Board meeting minutes certified by:

/s/

Judge Michael Brennan, Board Secretary

December 17, 2013