

Meeting of the Board

Monday, November 9, 2009 - 9:30 A.M.

Agenda
Open Session

Risser Justice Center

Room 150, 120 Martin Luther King, Jr. Blvd

Madison, Wisconsin

Monday, November 9, 2009

9:30 A.M.

- A. Call to Order**
- B. Director's Report of Appropriate Meeting Notice**
- C. Approval of Minutes of Previous Meeting**
 - 1. October 5, 2009 Meeting – Open Session**
- D. Public Comment (Limit of 5 minutes per individual appearance)**

Break

- E. Approval of Electronic Voting Equipment**
 - 1. Demonstration of Elections Systems and Software Voting System Components – Election Management System, AutoMark Accessible Ballot Marker, DS-200 Polling Pace Tabulator, M650 Central Count Tabulator**
 - 2. Approval of Elections Systems and Software Voting System Components**
- F. Administrative Rules**
 - 1. Status Report on Administrative Rule Defining Scope of Regulated Activity, GAB 1.28 (Issue Ad Regulation)**
 - 2. GAB Chapter 5 Ballot and Electronic Voting System Security**
 - 3. Status Report on Pending Administrative Rules**

G. Legislation

- 1. Summary of Recent Legislative Activity**
- 2. Legislative Status Report**

H. Report on Campaign Finance Information System

I. Director's Report

Elections Division Report – election administration.

Ethics and Accountability Division Report – campaign finance, state official financial disclosure, lobbying registration and reporting.

Office of General Counsel Report – general administration

Break

J. Closed Session

- | | |
|--------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 5.05 (6a) and
19.85 (1) (h) | The Board's deliberations on requests for advice under the ethics code, lobbying law, and campaign finance law shall be in closed session. |
| 19.85 (1) (g) | The Board may confer with legal counsel concerning litigation strategy. |
| 19.851 | The Board's deliberations concerning investigations of any violation of the ethics code, lobbying law, and campaign finance law shall be in closed session. |
| 19.85 (1) (c) | The Board may consider performance evaluation data of a public employee over which it exercises responsibility. |

The Government Accountability Board has scheduled its next meeting for Monday, December 14, 2009 at the Government Accountability Board offices, 212 East Washington Avenue, Third Floor in Madison, Wisconsin beginning at 9:30 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.

ITEM C

Approval of Minutes of
Previous Meeting

State of Wisconsin\Government Accountability Board

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JUDGE MICHAEL BRENNAN
Chair

KEVIN J. KENNEDY
Director and General Counsel

DRAFT

Not yet
approved by
the Board

Wisconsin Government Accountability Board

212 East Washington Avenue, Third Floor
Madison, Wisconsin
October 5, 2009
9:30 a.m.

Open Session Minutes

<u>Summary of Significant Actions Taken</u>	<u>Page</u>
A. Accepted an interim report on Early Voting	3
B. Directed Staff to Develop Guidelines for Identification and Reporting Requirements for Electronic Communications and Use of Electronic Technology for Political Purposes.	4
C. Directed staff to reexamine proposed language and recommend changes to ensure absentee ballot security in Chapter GAB 5.	5

Present: Judge Michael Brennan, Judge William Eich, Judge Gerald Nichol, Judge Thomas Cane, Judge Thomas Barland, and Judge Gordon Myse

Staff present: Kevin Kennedy, Jonathan Becker, Nathaniel E. Robinson, Shane Falk, Michael Haas, Barbara Hansen, David Buerger, Ross Hein, Sharrie Hauge, Tommy Winkler, and Reid Magney

A. Call to Order

Chairperson Brennan called the meeting to order at 9:36 a.m.

B. Director's Report of Appropriate Meeting Notice

G.A.B. Director Kevin Kennedy informed the Board that proper notice was given for the meeting.

C. Approval of Minutes of Previous Meetings

MOTION: Approve the minutes of the August 10, 2009 meeting of the Government Accountability Board. Moved by Judge Nichol, seconded by Judge Eich. Motion carried unanimously.

D. Public Comment

1. **John Washburn** of Germantown appeared on behalf of himself to comment on proposed changes to Chapter GAB 5. He expressed concern that proposed language would make destruction of voted ballots mandatory when Ch. 19.23 Wis. Stats. allows any record to be turned over to the Wisconsin State Historical Society.
2. **Mary Lou Diehl** of Madison, representing herself and Paul Malischke, appeared to comment on testing of new election equipment and regarding changes to Chapter GAB 5. She read a letter from Mr. Malischke asking that testing of new equipment be halted until the Board updates its rules on testing of equipment, and proposing language for the administrative rule regarding security of ballots and voting equipment. Also Chapter GAB 7 regarding voting systems approval.
3. **Mary Ann Hanson** of Brookfield appeared on her own behalf to comment on the HAVA Check process. She expressed concern about the number of people who did not respond to post cards and letters mailed by the Board and said voters should take responsibility for updating their information.
4. **Annette Kuglitsch** of Waukesha appeared on her own behalf to comment on Early Voting. She urged the Board not to rush into a plan for Early Voting and expressed concern that if in-person absentee voting is streamlined to eliminate the certificate envelope, there will be no way to challenge absentee votes when they are counted at the polls.
5. **Ardis Cerny** of Pewaukee appeared on behalf of herself to comment on why she believes voter fraud is an important issue. She cited a book by columnist John Fund of the Wall Street Journal, as well as a column by Mr. Fund regarding the 2004 election in Milwaukee. She also urged the Board to discontinue the Special Registration Deputy program.
6. **Diane Hermann-Brown** of Sun Prairie appeared on behalf of the City of Sun Prairie and the Wisconsin Municipal Clerks Association. She commended G.A.B. staff for attending clerks meetings and listening sessions throughout the state. She supported the proposed changes to Chapter GAB 5. She expressed concern that the Early Voting initiative not create unfunded mandates for municipalities, especially during tight budget times. She also urged the Board not to let municipalities opt out of using the Statewide Voter Registration System. She also commented on the recent testing of Election Systems & Software's election equipment.

7. **Gina Gretsch** of Delafield appeared on behalf of the City of Delafield and the Wisconsin Municipal Clerks Association to comment on the Early Voting initiative. She urged the Board to get rid of the Special Registration Deputy program.
8. **Maribeth Witzel-Behl** of Madison appeared on behalf of the City of Madison Clerk's Office and the Wisconsin Municipal Clerks Association to say the association appreciates the G.A.B.'s recent efforts to communicate with clerks. She also commented on the Early Voting initiative and streamlined in-person absentee voting.
9. **Andrea Kaminski** of Madison appeared on behalf of the League of Women Voters of Wisconsin Education Fund to comment on assertions made earlier about the 2004 election in Milwaukee made by John Fund. She said many claims about voter fraud in a report from the Milwaukee Police Department were debunked prior to release of the MPD Report.

Chairman Brennan called a recess at 10:50 a.m.

E. Status Report on Early Voting Initiative

(Presented by Nathaniel E. Robinson and Edward Edney)

Elections Division Administrator Nathaniel E. Robinson introduced a presentation by Training Officer Edward Edney about the Early Voting Initiative. Mr. Edney reported that after the November 2008 election there were reports from clerks, the public and the news media about problems with in-person absentee voting, including long lines for voters and additional workload for clerks. He said the staff decided to study ways to improve the process by studying Early Voting best practices from other states to see if they might possibly work in Wisconsin. The staff conducted listening sessions in eight locations around Wisconsin to gather feedback from election officials and voters. The sessions were attended by more than 500 people. He said that based on the feedback received, the staff is preparing recommendations for the Board's November meeting, and a draft of those recommendations should be available by October 15. He said the staff is exploring recommendations for Early Voting, as well as ways to streamline the existing in-person absentee voting process. He noted that any change would require action by the Legislature.

Discussion

Board members raised issues about ballot security with streamlined in-person absentee voting. Mr. Robinson said the report for the November Board meeting will include an analysis of security with each of the options.

F. Proposed Guidance

1. Disclaimers on Electronic Communications

(Presented by Shane Falk)

Staff Attorney Shane Falk made a presentation to the Board about issues raised by paid and unpaid Internet communications by candidates and committees using web sites including Facebook, Twitter and YouTube. He said the Board should consider issues raised by applying older statutes and rules to new technology, and cited the State of Florida's attempts to enforce outdated statutes and rules, which are being challenged in court. He said most candidates and committees are using a variety of Internet social networking web sites, which are relatively free, but are often maintained by paid staff. He said the law requires political communications to carry a disclaimer saying who paid for them. Some candidates' social media sites include a disclaimer while others do not, and that on some services such as Twitter and Google Adwords advertising, the length of the message is very short: 140 characters for Twitter and 64 characters for Google Adwords, and there may not be space for a disclaimer. He noted that the statutes include an exemption for disclaimers on small printed materials, such as pins.

Ethics Division Administrator Jonathan Becker also said there are issues with having paid staff members who monitor Internet blog sites and make campaign-related comments on those sites, which raises questions about whether those communications should carry disclaimers. Falk said staff requested the Board's direction to research and address identification and reporting requirements for electronic communications and the use of electronic technology for political purposes.

Discussion

MOTION: To direct staff to develop a guideline for comment and further consideration by the Board addressing identification and reporting requirements for electronic communications and the use of electronic technology for political purposes. Moved by Judge Nichol, seconded by Judge Myse. Motion carried unanimously.

Chairman Brennan called a recess at 12:15 p.m.

G. Legislation

1. Summary of Recent Legislative Activity

(Presented by Kevin J. Kennedy)

Director and General Counsel Kevin Kennedy led a discussion about 2009 Assembly Bill 322, which would delete the requirement that an individual identify himself or herself in order to view a Statement of Economic Interest (SEI). Passage of this bill would allow the G.A.B. to post SEIs on the agency web site. The bill has been reported out of committee with two amendments. One amendment would put restrictions on Internet disclosure of customers of a business or the address of income-producing real estate owned by an official. A second amendment would

eliminate any public disclosure of information about real property owned by a judge or a judge's spouse.

Mr. Kennedy also discussed proposed legislation which would change electronic reporting requirements for the Campaign Finance Information System.

H. Administrative Rules

1. GAB Chapter 5 (Security of Ballots and Electronic Voting Systems) (Presented by Michael Haas and Ross Hein)

Staff Attorney Haas led a discussion about changes to Chapter GAB 5 dealing with security of absentee ballots and absentee voting materials. Based on feedback from the ad-hoc committee that helped develop the rule and the Wisconsin Election Administration Council, staff believes the rule should not be too prescriptive because of different facilities and staffing levels in municipalities around the state. The simplified statement would direct local officials to take all steps necessary to secure absentee ballots and absentee voting materials during the period of absentee voting leading up to Election Day. There were concerns from clerks about the practicality of suggestions for a chain-of-custody log, as well as whether inadvertent gaps in the log could be the basis for challenging ballots.

Discussion

MOTION: To set the matter over to the November meeting and direct staff to reexamine proposed language and recommend changes to ensure absentee ballot security. Moved by Judge Myse, seconded by Judge Eich. Motion carried unanimously.

2. Status Report on Pending Administrative Rules (Presented by Shane Falk)

Shane Falk updated the Board on the status of the Citizens United case heard by the United States Supreme Court, which involves the scope of regulation of political communications permitted by the Constitution. The Court held oral arguments on an additional issue related to the review of Austin and the prohibition of corporate spending for a political purpose. He said that if the ban on corporate spending is lifted, there may likely still be disclosure requirements for corporate expenditures.

I. Report on Campaign Finance Information System (Presented by Jonathan Becker)

Jonathan Becker led a discussion about changes staff is making to the Campaign Finance Information System, based on feedback received from users of the system and Legislators at recent hearings. The whole purpose of the system is disclosure, which is helped greatly by electronic filing. Electronic filing provides immediate access to the

information, as well as the ability to analyze information across candidates and committees. Unfortunately there have been problems with the system used for filing reports, which staff is working to address. While there were numerous problems in January 2009, there were far fewer problems in July 2009, when only 23 registrants had varied issues filing. Board staff is working with the vendor to redesign the system's user interface, and has engaged staff from the Department of Enterprise Technology to look at the system's architecture to ensure it is up to date and designed optimally. The goal is for changes to be ready in time to allow extensive user testing before the January 2010 filing deadline.

Discussion

Judge Nichol noted criticism from frustrated Legislators and said Board staff handled it well. He asked about accusations that information in the system is inaccurate. Mr. Becker said the system was designed to convert previously filed campaign finance reports so users would have access to data from the entire 2008 election cycle. Unfortunately, the old data were in a variety of different formats, which created difficulties for conversion to the new system. That old information has been removed from the system to avoid confusion caused by the converted data. Also, there were discrepancies between the account balances reported by registrants and those calculated by the system. The errors were in the information reported by registrants. Finally, the Government Accountability Board was listed in some reports as the source of campaign funds. This was due to an error in private vendor software used by some committees to track contributions, not problems with CFIS.

Judge Barland said there is a perception in the Legislature that the system is not good. He said the idea of testing is good, and Legislative staff can help test the system. Mr. Becker reported that large political action committees, campaigns and party committees have not reported problems with the system because they have professional staff doing the work, but many candidates have volunteer treasurers who only deal with the system twice a year, which makes it difficult.

J. Resolution of Ethics Division Enforcement Matters

(Presented by Jonathan Becker)

Jonathan Becker said the agency could do a better job of communicating information about enforcement. Much happens in closed session, and there are draconian restrictions on what staff can say about enforcement actions. Ethics Specialist Tommy Winkler put together a summary of all the Board's enforcement actions since it was organized in January 2008, which was included in the Board materials. Mr. Becker stated that the Board has been tough but fair on violators, which he believes is having a direct and positive impact on compliance with statutes and regulations.

K. Director's Report

Elections Division Report – election administration

Written report from Nathaniel E. Robinson was included in Board packet. Mr. Robinson gave an oral presentation, and discussed efforts to improve the quality of the SVRS. He also discussed the Special Registration Deputies, saying the G.A.B. is administering a program enacted by the Legislature. He informed the Board of the upcoming visit of Ms. Gineen Bresso Beach, Chair of the U.S. Election Assistance Commission.

Ethics and Accountability Division Report – campaign finance, state official financial disclosure, lobbying registration and reporting

Written report from Jonathan Becker was included in Board packet. Mr. Becker said that all but 11 committees have filed their July Continuing Reports.

Office of General Counsel Report – general administration

Written report from Kevin J. Kennedy, Sharrie Hauge and Reid Magney was included in Board packet. Ms. Hauge said there has been a great deal of activity with procurement lately. Mr. Kennedy highlighted a presentation in Stevens Point on judicial elections and his work with the Pew Charitable Trusts, which is working on Voter Registration Modernization issues.

L. 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; and confer with counsel concerning pending litigation and consider performance evaluation data of a public employee of the Board. Moved by Judge Cane, seconded by Judge Eich.

Roll call vote: Brennan:	Aye	Cane:	Aye
Eich:	Aye	Barland:	Aye
Myse:	Aye	Nichol:	Aye

Motion carried.

Hearing no objection, the Chairman called a recess at 3:15 p.m. The Board reconvened in closed session beginning at 3:35 p.m.

Summary of Significant Actions Taken in Closed Session:

- A. Requests for Advice: Three matters considered; three informal opinions issued.
- B. Investigations: Six pending matters considered with one settlement offer authorized; four investigations authorized; eleven additional matters considered and legal action authorized.

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The next meeting of the Government Accountability Board is scheduled for 9:30 a.m. Monday, November 9, 2009 in Room 150 in the Risser Justice Center, 120 Martin Luther King, Jr. Boulevard, Madison, Wisconsin.

October 5, 2009 Government Accountability Board meeting minutes prepared by:

Reid Magney, Public Information Officer

October 6, 2009

October 5, 2009 Government Accountability Board meeting minutes certified by:

Judge Gerald Nichol, Board Secretary

November 9, 2009

ITEM E

Approval of Electronic Voting Equipment

The Government Accountability Board (Board) received a request from Election Systems and Software (ES&S) to have certain electronic voting equipment and election management software approved for use in Wisconsin. Before any voting system may be approved for use in Wisconsin, the system must be certified by the United States Election Assistance Commission (US-EAC). The US-EAC certification for this voting system is: **ESSUnity3200**.

As part of the Board's testing process, Board staff conducted three mock elections on the equipment, using the election management software component to set up the election. The mock elections offer an opportunity for staff to perform functional testing to ensure the system conforms to the Wisconsin requirements. The Wisconsin Election Administration Council (WI-EAC), which is made up of municipal and county clerks, representatives of the disability community, and community advocates, participated in a demonstration by the manufacturer and evaluated the equipment.

A public demonstration was provided and the public was allowed the opportunity to test the system and provide comment. Following the testing and demonstration of the ES&S voting system, staff determined the voting system accurately marks, processes and tabulates ballots and meets the statutory requirements for approval. Observations provided by staff, WI-EAC Members and the public identify practical concerns with the voting equipment. These concerns are similar to the limitations of current systems used in Wisconsin.

Staff recommends the Board's approval of the ES&S voting system.

State of Wisconsin \ Government Accountability Board

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JUDGE MICHAEL BRENNAN
Chairperson

KEVIN J. KENNEDY
Director and General Counsel

MEMORANDUM

DATE: For the November 9, 2009, Board Meeting

TO: Members, Wisconsin Government Accountability Board

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

Prepared and Presented by:
Ross Hein, Election Specialist
Voting Equipment Certification Coordinator

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

Introduction

On July 27, 2009, the Government Accountability Board (Board) staff received a request from Election Systems and Software (ES&S) to have electronic voting equipment approved for use in Wisconsin. No electronic voting equipment may be utilized in Wisconsin unless the Board approves it. Wis. Stats. § 5.91. The Board has adopted administrative rules that detail the approval process. Wis. Admin. Code Ch. GAB 7. The complete text of § 5.91 and GAB 7 are attached. GAB 7.01(1)(e) requires all electronic voting equipment approved for use be certified by the Federal government. The United States Election Assistance Commission (US-EAC) is the Federal agency responsible for accrediting electronic voting equipment according to the Voting Systems Standards (VSS) / Voluntary Voting System Guidelines (VVSG).

Board staff scheduled voting equipment evaluation and demonstrations for ES&S during the week of September 28, 2009. ES&S submitted the following equipment for testing:

Equipment	Firmware Version	Type
Unity Election Management System	3.2.0.0	Election Management Software
intElect DS200	1.3.10.0	Precinct Optical Scan Ballot Counter
M650	2.2.2.0	Central Count Optical Scan Ballot Counter
AutoMark Voter Assist Terminal (VAT)	1.0 1.1 1.3.1 with Print Engineering Board 1.65 1.3.1 with Print Engineering Board 1.70	Ballot Marking Device

The former State Elections Board approved the Unity Election Management Suite, version 3.0.1.0, AutoMARK electronic ballot marking device, version 1.2 and the M650 version 2.1.2.0 at its January 18, 2006 meeting. The majority of the equipment tested in September was upgraded to the above equipment that are currently approved for use. However, the DS200 is a new precinct-based optical scan voting system now offered by ES&S.

ES&S submitted its testing application to the US-EAC on March 19, 2007. As such, the system was tested against the 2002 Voting System Standards. Only systems submitted to the US-EAC for testing after December 13, 2007, are tested using the 2005 Voluntary Voting System Guidelines. All of the systems, products and versions submitted for approval have been qualified under the 2002 Federal Voting System Standards.

ES&S submitted complete specifications for hardware, firmware and software related to the systems to G.A.B. staff. In addition, ES&S submitted technical manuals, documentation and instruction materials necessary for the operation of the equipment. The Voting System Test Laboratory responsible for testing the ES&S systems, iBeta Quality Assurance, recommended the US-EAC to certify ES&S Unity 3.2.0.0. iBeta provided that the acceptance requirements of the Federal Election Commission 2002 Voting System Standards have been met as demonstrated in testing. ES&S provided the iBeta report to the Board along with the application for approval of electronic voting equipment.

Voting Equipment Evaluation

As part of the review process, Board staff examined the ES&S application along with the manuals, specifications, documents, reports and instructions necessary for the operation of the equipment. As required by GAB 7.02(1), staff conducted three mock elections with each component of the voting system: a partisan primary, a general election with both a presidential and gubernatorial vote, and a nonpartisan election combined with a presidential preference vote. The mock elections offered an opportunity for staff to perform functional testing to ensure the system conforms to all Wisconsin requirements.

Staff tested the four separate hardware configurations for the ES&S AutoMARK independently, creating 100 test ballots with each hardware configuration for the three separate mock elections, totaling 1,200 ballots. The AutoMARK-marked ballots were tabulated by the optical scan equipment and verified by staff. For the optical scan systems, the DS200 and M650, staff tested each voting system by feeding 300 pre-marked ballots into the scanner for each separate mock election, for a total of 900 ballots per system. Staff determined the results produced by the optical scan system matched the staff's test plan.

Following the mock elections, the Wisconsin Election Administration Council (WI-EAC), which is made up of municipal and county clerks, representatives of the disability community, and community advocates, participated in a demonstration by the manufacturer and evaluated the equipment. An evening public demonstration of the voting system was also conducted September 30, 2009, and members of the public were able to provide comment. Below is a description and assessment of the equipment including any concerns staff and the WI-EAC may have regarding the approval of the equipment.

Election Systems and Software: Unity Election Management Suite v. 3.2.0.0

The Unity Election Management System (EMS) supports a jurisdiction's election needs by creating and maintaining a central database of election information, formatting and printing ballots on demand, programming election equipment and collecting and reporting of election results.

The Unity 3.2.0.0 includes:

- Election management system election preparation software:
 - Election Data Manager v. 7.8.1.0,
 - ES&S Ballot Image Manager v. 7.7.1.0,
 - Hardware Programming Manager v. 5.7.1.0,
 - AutoMARK Information Management System (AIMS) v. 1.3.157.
- Audit Manager v. 7.5.2.0;
- Election Reporting Manager v. 7.5.4.0;
- Pre-vote hardware: Ballot-on-Demand COTs printer;

Board Staff's Feedback

- The Unity Election Management System was used successfully to program each of the four hardware versions of the AutoMARK Voter Assist Terminal, the M650 and the DS200 optical scan ballot counter. ES&S demonstrated within Unity how to create the election / ballots for each given election. After the equipment counted the ballots, ES&S demonstrated the tabulation of the election results within Unity. ES&S also demonstrated the maintenance of the results by transferring the election data (programming, ballot definition and results) to a flash drive or the computer's hard drive. Staff visually verified the version numbers for each component of the Unity 3.2.0.0 EMS by checking the component's configuration display.
- As part of EAC certification for the system, the US-EAC requires all election programming and results reporting to use a "hardened system" for the Unity EMS and AIMS. A "hardened system" is a computer that contains only the Unity EMS and / or AIMS program and is used only for programming and results reporting. No other program or application is permitted on the unit.

Wisconsin Election Administration Council's Feedback

- No component of the ES&S voting system seeking State approval may be used with any of the previously approved voting systems. This would require different programming and ballots for jurisdictions that have combined systems and increase the overall cost to administer elections because you will need to have two separate databases to program the equipment and tabulate the results.
- A WI-EAC member thought it would be beneficial to have election officials do ballot layout and programming of the voting systems rather than the voting equipment manufacturer, so it is closer to Wisconsin election practices.

Election Systems and Software, AutoMARK Voter Assist Terminal (VAT), versions 1.0, 1.1, 1.3.1 ((Print Engineering Board (PEB)1.65)), 1.3.1 (PEB 1.70)

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

When the voter has completed the selection process, the VAT provides a summary report for the voter to review his or her choices, and the AutoMARK VAT marks the ballot using its built-in printer. The print mechanism is a duplex device and can print both sides of the ballot. When the printing of the ballot is completed, the VAT feeds the ballot back to the voter. Once the ballot has been marked and

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 VAT and the voter selections summary report will provide an audio summary for voters with visual impairments. The voter proceeds to enter the ballot into an optical scan voting system or a secured ballot box to be hand tabulated by election inspectors after the polls have closed.

Overvotes and crossover votes cannot occur on this equipment and a voter is warned about undervotes prior to the completion of voting. The AutoMARK VAT generates audio voting instructions that guide a visually impaired voter through the election sequence. The voter wears headphones to hear the spoken instructions. The voter makes his or her selections by pressing on a specially designed switch panel. The voter can adjust the volume and the screen may be “blacked out” to deactivate the LCD screen, to provide enhanced privacy. The voter may adjust the tempo (speed) of the audio instructions and the VAT accommodates a sip-puff device. The VAT can be programmed in multiple languages, although languages other than English are not currently required.

Board Staff’s Feedback

- Staff tested the four separate hardware configurations for the ES&S AutoMARK independently, creating 100 test ballots for each hardware configuration for the three separate mock elections, totaling 1,200 ballots. The AutoMARK-marked ballots were tabulated by the optical scan equipment and verified by staff. Each hardware version of the AutoMARK VAT produced accurate results and matched the test decks created by staff.
- Although there were no errors with the physical marking of the test ballot by the VAT and the systems produced accurate results, there were some instances in which the system produced error messages that would require intervention by an election inspector. The messages displayed by the systems during testing were “paper misfeed,” “error while printing” and “ballot not recognized.” These errors generally occurred less than 5 times for every 100 ballots processed. The ballot was reinserted and correctly marked by the system. On one occasion, during testing of the AutoMARK version 1.3.1, PEB 1.65 for the Presidential Preference mock election, the system frequently provided the message “error while printing” and occurred approximately in 15% of all ballots tested. ES&S believed the errors were caused from a dirty read-head which caused the system to produce the “error while printing” notification. Another system with the same make and model was sent overnight by ES&S. A further testing of the system provided error-free results.
- The AutoMARK VAT does not seem to provide full 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.
- For the Partisan Primary, voters are unable to skip to other parties without triggering an undervote warning.

Wisconsin Election Administration Council’s Feedback

- The AutoMARK device requires the voter to manually handle the paper ballot to verify or cast the official paper ballot. The device also requires a voter to place the voted ballot into a ballot box or counter. Individuals with a variety of motor disabilities may not be able to verify and cast ballots independently.
- The AutoMARK does not allow a voter to re-verify a write-in candidate, so a voter with vision impairments would not be able to verify the entire ballot if they cast write-in votes.

- If the zoom in/out button is pressed multiple times, the ballot is cancelled and comes out blank. The zoom in/out is not an option on all screens.
- Not only a point of concern about the AutoMARK, but all voting systems review should meet the current accessibility standards as defined by the US-EAC in the 2005 Voluntary Voting System Guidelines (VVSG). The ES&S system has been certified to the 2002 Voting System Standards.
- It takes longer to cast a ballot on the AutoMARK than manually marking the ballot with a marking device.
- Navigating the keypad is not instructive when casting a vote for a write-in candidate.
- Difficulty to read the screen with bi/tri focals and at times had to “punch” the screen to select a candidate. At one time it took three different ballot orientations before the system would accept the ballot.
- If the voter wants to vote for only one candidate, the voter has to scroll through the entire ballot before getting to the desired office.
- Of the members of the WI-EAC rating the AutoMARK systems, ten members provided their overall impression of the system on a scale of 1 to 5, 1 representing the evaluator “loved it,” 5 representing “It’s not for me.” The mean score for the AutoMARK VAT is 2.5.

Election Systems and Software, intElect DS200 precinct optical scan ballot counter, firmware version 1.3.10.0

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

The system includes a large touch screen display to provide feedback to the voter on the disposition of their ballot. If any errors or irregularities (overvote / crossover vote) are recognized, the voter has the ability to return the ballot for review, or instruct the system to read it as-is. Both sides of the ballots are scanned using a high-resolution image-scanning device, and the votes and ballot images of an election are stored on an external USB flash drive. The flash drive can be removed and transported to the central tabulation location. The DS200 does not store any ballot data, election totals or election images in its internal memory. Results may not be “modemed-in” from the DS200 to a central location as the newer federal guidelines prohibit the use of modems to assist in the accumulation of election results.

Board Staff’s Feedback

- Staff tested the DS200 by feeding 300 pre-marked ballots into the scanner for each separate mock election, for a total of 900 ballots. Staff determined the results produced by the DS200 were accurate and matched the test plan.
- Write-in votes for the DS200 ballot bin are indicated by a small pink circle and are not separated into a separate write-in bin. The ballot bin for a M100 optical scan voting system, currently approved for use in Wisconsin, may be used with the DS200 and will separate write-in votes to a separate compartment. Because all ballot images for the DS200 are stored on the external USB flash drive, write-in votes may be sorted within the Unity EMS for hand tabulation.

- Due to the configuration of this component (height and location of ballot input slot), it may be difficult for individuals with certain types of disabilities to insert a ballot without assistance.
- 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 and there is an audio alert notifying the voter. The ballot is returned back to the voter and is reinserted to be counted.

Wisconsin Election Administration Council's Feedback

- The DS200 requires increased voter interaction compared to previous optical scan versions. There is a screen that requires a voter if they overvoted an office or cross-party voted, to manually push on the screen to determine if the ballot should be accepted as is, or returned to the voter correct the error. The screen is very high and someone in a wheelchair might not be able to see the screen and leave the polling place without knowing the error. A voter who is visually impaired will not see the screen notification and someone who has a motor disability may find it difficult to push the screen based on the location and height of the system.
- The party selection is designated on the screen of the DS200 within a partisan primary when an overvote occurs, taking away the secrecy of the ballot. In addition, if a voter casts a defective ballot (overvote), the office is identified on the screen of the system and could jeopardize full privacy.
- The ballot is not returned automatically to the voter when an overvote or crossover vote occurs. The voter is provided the opportunity to accept the ballot as-is, or the voter may choose to have the ballot returned to the voter. However, the system does not sufficiently explain the effect of the error. If the voter chooses to accept the ballot, the office that is overvoted or the entire crossvoted ballot will not be counted.
- The DS200 does not allow election night results to be “modemed-in” to the central location where results are tabulated. Requires all flash drives to be physically delivered to the central location.
- The report printed by election officials before the polls open does not provide lines for the election inspectors to sign and certify.
- The DS200 does not separate write-in votes into a separate write-in bin and requires more time to locate all write-in votes.
- The DS200 does not accommodate multiple ballot sizes and the auxiliary ballot bin is too small.
- Of the members of the WI-EAC casting a vote, four members voted in favor of approving this system for use in Wisconsin, with no negative votes. Four members did not cast a vote and two were undecided.

Public Comment

- The DS200 does not provide sufficient notice to the voter if he or she selects too many candidates for an office (overvote). The voter is told on the screen which races they have voted twice in and then has the option of hitting either “accept” or “return.” The instructions do not convey that if the voter chooses to “accept” the ballot, the overvoted offices will not be counted.

Election Systems and Software, M650 central count optical scan ballot counter, firmware version 2.2.2.0

The Model 650 central-count systems uses green light sensors to process optical scan ballots at high speeds that have either been marked by hand by a voter or by ballot marking equipment. Ballots will be placed in a secured ballot container and delivered to the central location for tabulation. As the ballots are counted at a central location, voters are not provided the opportunity to correct ballot errors made at the polling place. The scanner saves election results to a zip disk in order to make a permanent record of the election.

Board Staff's Feedback

- The Model 650 was able to process and accurately tabulate the optical scan ballots used in the mock election portion of the testing.

Wisconsin Election Administration Council's Feedback

- Of the members of the WI-EAC casting a vote, one member voted in favor of approving the Model 650 for use in Wisconsin, with no negative votes.

Analysis

To determine whether a voting system should be approved for use in Wisconsin, the following recommendations are based upon three goals. First, does the voting system meet Wisconsin's statutory requirements? Second, can the voting system successfully run an open, fair and secured Wisconsin election? Third, does the system enhance access to the electoral process for individuals with disabilities?

§ 5.91, Wis. Stats. provides the following requirements voting systems must meet to be approved for use in Wisconsin:

§ 5.91 (1)
The voting system enables an elector to vote in secret.
Staff Analysis
The ES&S voting system meets this requirement.
§ 5.91 (2)
The voting system enables an elector to vote a straight party ticket.
Staff Analysis
The ES&S voting system meets this requirement.
§ 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 system meets this requirement.
§ 5.91 (4)
The voting system enables an elector to vote for a ticket of his or her own selection for any person for any office for whom he or she may desire to vote whenever write-in votes are permitted.
Staff Analysis

The ES&S voting system meets this requirement.
§ 5.91 (5)
The voting systems accommodate all referenda to be submitted to electors in the form provided by law.
Staff Analysis
The ES&S voting system meets this requirement.
§ 5.91 (6)
The voting system permits an elector in a primary election to vote for the candidates of the recognized political party or independent candidates 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 or independent candidate 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 system meets this requirement.
§ 5.91 (7)
The voting system enables the elector to vote at an election for all persons and offices for whom and for which the elector is lawfully entitled to vote; to vote for as many persons for an office as the elector is entitled to vote for; to vote for or against any question upon which the elector is entitled to vote; and it rejects all choices recorded on a ballot for an office or a measure if the number of choices exceeds the number which an elector is entitled to vote for on such office or on such measure, except where an elector casts excess write-in votes upon a ballot that is distributed to the elector.
Staff Analysis
The voting system meets 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 for 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 system meets this requirement.
§ 5.91 (9)
The voting system prevents an elector from voting for the same person more than once, except for excess write-in votes upon a ballot that is distributed to the elector.
Staff Analysis
The ES&S voting system meets this requirement.
§ 5.91 (10)
The voting system is suitably designed for the purpose used, of durable construction, and is usable safely, securely, efficiently and accurately in the conduct of elections and counting of ballots.

Staff Analysis
The ES&S voting system meets this requirement.

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

Staff Analysis
The ES&S voting system meets 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
<p>The ES&S voting system meets this requirement. For the DS200, concerns were stressed regarding the overvote or crossover vote notification that prompts the voter to either “accept” or “reject” the ballot but does not convey to the voter the effects of doing so. For optical scan voting systems currently in use, if a voter overvotes or crossvotes the ballot, the system will reject the ballot and the election inspector stationed at the equipment will explain the effect of the error to the voter and in most cases the voter will re-make the ballot; there is no explanation provided by the system.</p> <p>The poll worker must examine a paper printout to determine the reason the ballot was returned to the voter. If the DS200 is approved, it is recommended as normal protocol, that an election official be present and able to support the voting system if error notices are provided to a voter. Staff requested ES&S to investigate if the system could provide notice to the voter explaining the effect of overvotes or crossvotes. It was determined that such change would require an alteration to the current version seeking approval, as this specific component is hard coded within the system and would need to be properly vetted through the testing and approval process.</p>

§ 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 system meets this requirement.

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

Staff Analysis
The ES&S voting system meets this requirement.

§ 5.91 (15)
The voting system permits an elector to privately verify the votes selected by the elector before casting his or her ballot.

Staff Analysis
The ES&S voting system technically meets this requirement. Many of the concerns stressed by the WI-EAC and by the public address the inconveniences presented by the systems; however, the ES&S voting system would function similarly to other voting

systems currently approved.

§ 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 system meets 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 system meets this requirement.

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

(A) be accessible for individuals with disabilities, including nonvisual accessibility for the blind and visually impaired, in a manner that provides the same opportunity for access and participation (including privacy and independence) as other voters

Staff Analysis

The ES&S voting system meets these requirements. However, concerns were stressed regarding the accessibility and privacy of the AutoMARK and the DS200 optical scan system, that the entire voting process is not completely accessible. There are approximately 1,000 AutoMARK units used in polling places to provide accessible means to the disabled voters and the upgrades would supplement these systems if the jurisdiction determined to upgrade their entire system.

The AutoMARK voting systems for which approval is being sought, do not change the degree of accessibility currently provided by previously approved AutoMARK systems. Accessibility was determined by the former Elections Board to apply to the act of voting, not the insertion or removal of the ballot into the marking device and placing the ballot into the ballot box or optical scan voting system.

All of the systems, products and versions submitted for approval have been qualified under the 2002 Federal Voting System Standards. The system was tested against the 2002 VSS. Voting applications received by the US-EAC after December 13, 2007, are tested to the 2005 Voluntary Voting System Guidelines (VVSG). However, no voting equipment manufacturer currently approved for use in Wisconsin has made application to be tested under the 2005 VVSG and it is difficult to say when that would occur.

It has been nearly four years since any new ES&S voting equipment technology has been approved for use in Wisconsin. It has taken time for the US-EAC to get its testing certification process rolled out and issuing certified voting systems. Many of the voting systems used in Wisconsin, both optical scan and central count voting systems, have been in use since the 1990's and there are questions how long these systems will last. It is not a question of voting system accuracy that is driving the new approval request.

These voting systems produce verifiable and accurate results, but instead, the availability of parts for the old systems may require the acquisition of new voting systems. Some of the parts are becoming obsolete and it is unknown how long manufacturers will be able to provide maintenance services for the voting systems currently in use. There are municipalities seeking upgrades to their voting systems and some are looking to purchase new voting equipment altogether. However, as the ES&S systems seeking approval may only be used together and may not be used with previously approved systems, it is unknown how many jurisdictions would purchase these systems. Regardless, approval by the Board would provide ES&S customers the opportunity to upgrade voting systems that are currently in use and purchase new voting equipment technology.

Conclusion

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

Staff's Response: Yes.

2. Can the voting system successfully run an open, fair and secured Wisconsin election in compliance with Wisconsin Statutes?

Staff's Response: Yes. Each system accurately completed the mock elections and was able to accommodate the voting requirements of the Wisconsin election process.

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

Staff's Response: This system does not enhance access to the electoral process for individuals with disabilities, and neither does it reduce or mitigate access for disabled voters. The current scope and degree of accessibility remains substantially the same.

Board Staff's Concerns

- The voting systems upgrades will not be compatible with other ES&S precinct-based optical scan voting equipment currently approved for use in Wisconsin.
- During testing of the AutoMARK voting system, staff experienced errors for approximately 5% of all ballots generated by staff. These errors did not involve the accuracy of marking the ballot.
- Due to the configuration of the DS200 (height and location) it may be difficult for individuals with certain disabilities to insert a ballot without assistance.
- As voting equipment results are not permitted be "modemed-in" under the new voting equipment guidelines, many municipalities would need to change its process for tabulating the election results. This may create delays in how quickly unofficial results are made available to the public as flash drives will need to be delivered in person to the central tabulation site.
- This system does not measurably enhance access to the electoral process for individuals with disabilities, and neither does it reduce or mitigate access for disabled votes. The current scope and degree of accessibility remains substantially the same.

Recommendation

1. Board staff recommends approval of these ES&S voting systems. Each system accurately completed the mock elections and was able to accommodate the voting requirements of the Wisconsin election process. In addition, these systems include accessibility features which enhance independence and privacy throughout the voting process.
2. Board staff recommends that as a condition of the Board's approval, that ES&S may not impose deadlines contrary to requirements provided in Wisconsin statute, as determined by the Board. In order to enforce this provision, local jurisdictions purchasing ES&S equipment should include a provision in their respective purchase contract ensuring ES&S does not require submission election related data before it is practically available.

Board staff has received complaints from our partners, the Wisconsin county and municipal clerks regarding some ballot coding and printing deadlines imposed by ES&S. In most cases, the concerns expressed are that ES&S requires election information and data prior to deadlines imposed by Wisconsin statute. This is frustrating for many clerks and produces added stress during an already hectic time.

3. As part of EAC certificate: **ESSUnity3200**, only systems 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 are not compatible with the new ES&S voting system, and are not to be used together with the equipment versions seeking approval by the Board, as this would void the US-EAC certificate.
4. **Unity EMS 3.2.0.0 may only program the M650 central count optical scan ballot counter, firmware version 2.2.2.0, the M650 central count optical scan ballot counter, firmware version 2.2.2.0 and AutoMARK Voter Assist Terminal (VAT), versions 1.0, 1.1, 1.3.1 ((Print Engineering Board (PEB)1.65)), 1.3.1 (PEB 1.70).**

Proposed Board Motion

The Government Accountability Board approves staff's four-point recommendation for the ES&S voting systems application to be used in Wisconsin, in compliance with EAC certificate: ESSUnity3200.

Attachments

- ✓ Wisconsin Administrative Code, GAB, Chapter 7
- ✓ Section 5.91, Wisconsin Statutes
- ✓ US-EAC Scope of Certification
- ✓ US-EAC Certificate of Conformance



Scope of Certification

Manufacturer: **Election Systems and Software Inc. (ES&S)**

Product : **Unity 3.2.0.0 Voting System**

Laboratory: **iBeta Quality Assurance** Certificate: **ESSUnity3200** Standard: **VSS 2002** Date: **07/21/2009**

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

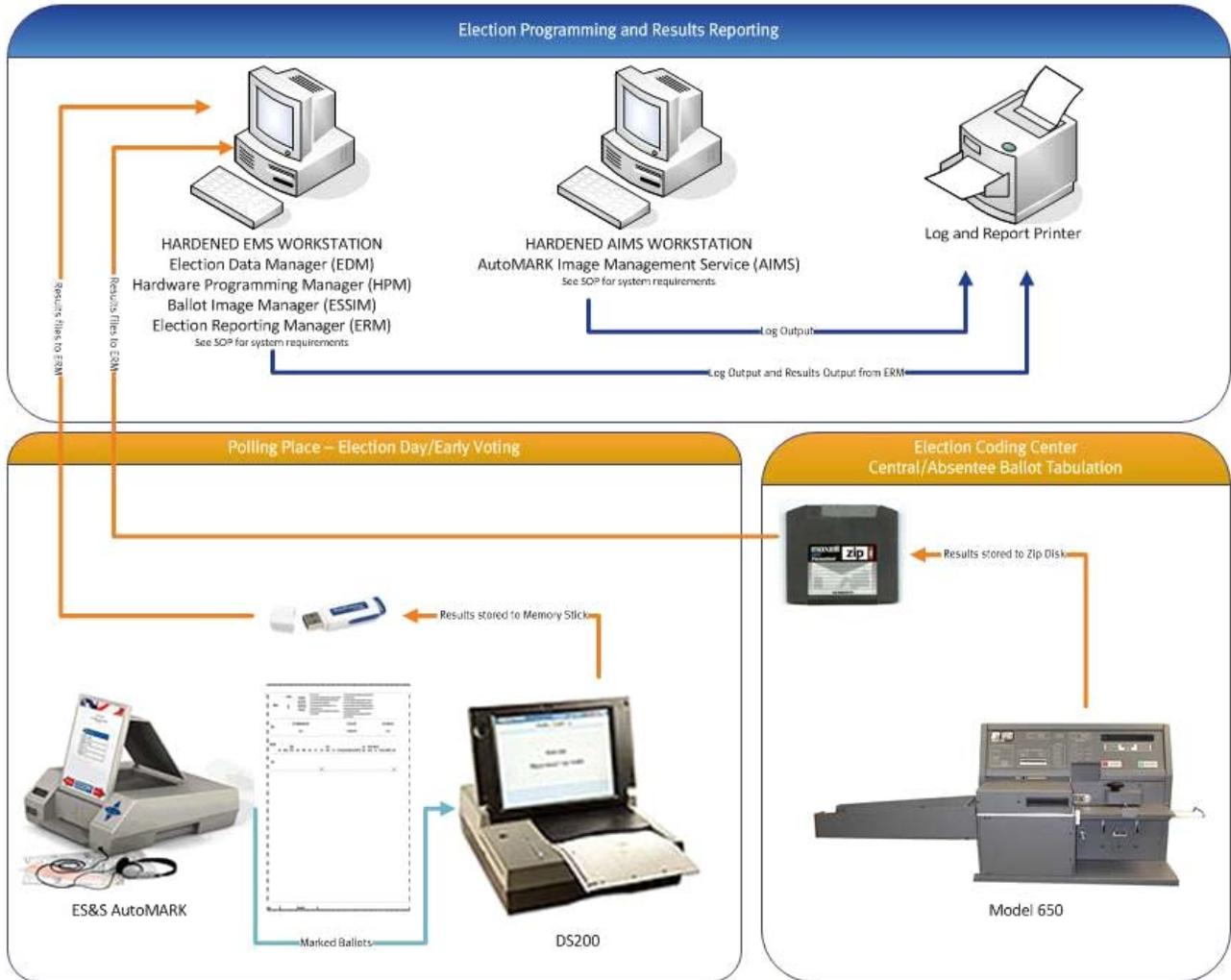
Manufacturers may not represent or imply that a voting system is certified unless it has received a Certificate of Conformance for that system. Statements regarding EAC certification in brochures, on Web sites, on displays, and in advertising/sales literature must be made solely in reference to specific 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.

Language capability:

In addition to English, the voting system has the capability of presenting the ballot, ballot selections, review screens and instructions in Spanish.

Components Included:

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



System Component	S/W or F/W Revision	H/W Revision	Evaluated Operating System or COTS	Comments
DS200	Firmware v. 1.3.10.0	Hardware v. 1.2.0 v. 1.2.1	Linux Kernel 2.6.16.27	
Model M650	Firmware v. 2.2.2.0	Hardware v. 1.1 v. 1.2	QNX Kernel 4.25	
AutoMark Model A100-00	1.3.2906	Rev. 1.0 Printer Engine Board (PEB) 1.65 Single Board Computer (SBC) 1.0	WinCE 5.0.1400	

<i>System Component</i>	<i>S/W or F/W Revision</i>	<i>H/W Revision</i>	<i>Evaluated Operating System or COTS</i>	<i>Comments</i>
AutoMark Model A200-00	1.3.2906	Rev. 1.1 Printer Engine Board (PEB) 1.65 Single Board Computer (SBC) 2.0	WinCE 5.0.1400	
AutoMark Model A200-00	1.3.2906	Rev. 1.3.1 Printer Engine Board (PEB) 1.65 Single Board Computer (SBC) 2.5	WinCE 5.00.19	
AutoMark Model A200-00	1.3.2906	Rev. 1.3.1 Printer Engine Board (PEB) 1.70 Single Board Computer (SBC) 2.5	WinCE 5.00.19	
Ballot Prep and Central Count				
Election Data Manager	v. 7.8.1.0	-----	See Below	
Event Log Monitor	v.1.0.0.0	-----	See Below	
ES&S Ballot Image Manager (ESSIM)	v. 7.7.1.0	-----	See Below	
Audit Manager (AM)	v. 7.5.2.0	-----	See Below	
Hardware Programming Manager (HPM)	v. 5.7.1.0	-----	See Below	
Election Reporting Manager (ERM)	v. 7.5.4.0	-----	See Below	
Desktop	-----	Dell GX260 computer desktop with monitor, keyboard & mouse	Dell	PC, 1 GHz or faster processor, 512 MB RAM, 40 GB hard drive, 48x CD-ROM or DVD drive, 3.5-inch drive, Super VGA (800x600) or higher resolution video adapter and monitor, appropriate drivers
Laptop	-----	Dell Latitude 600, Model #PP05L	Dell	Intel Pentium Processor 1400 MHz 587 MHz 1.00 GB Ram
Windows	XP Professional, 2002 SP 3	-----	Microsoft Corporation	
Zip Drive	-----	Z250USBPCMBP	lomega	

<i>System Component</i>	<i>S/W or F/W Revision</i>	<i>H/W Revision</i>	<i>Evaluated Operating System or COTS</i>	<i>Comments</i>
San Disk Reader/Writer	-----	Image mate CF Models #SDDR-91 & #SDDR-92	SanDisk	
Printer	-----	HP LaserJet Inkjet Printer HP4050N	HP	
Visual Studio	6.5 SP5	-----	Microsoft Corporation	
Codebase	6.5 rev 3	-----	Sequiter	
Crystal Reports	9.0	-----	Seagate	
Xerces XML Parser	2.7	-----	Apache	
RM/Cobol	v.11.01	-----	Cobol	
Adobe Acrobat Standard	V9	-----	Adobe	
Adobe Type Manager Light	None	-----	Adobe	
Adobe Type Basics	none	-----	Adobe	
Anti Virus	2009 for Windows XP Pro	-----	Norton	
AIMS				
AIMS (Automark information Management System)	v. 1.3.157	Dell Optiplex GX270 computer desktops with monitor, keyboard & mouse (AIMS)	-----	PC, 2.2 GHz Pentium 4 minimum, 256 MB memory minimum, 20 GB hard drive minimum, CD-ROM, USB port, Flash memory card drive.
MS Excel	V 5	-----	Microsoft	
Drivers	Not specified	-----	ScanDisk	
.NET Framework	Not specified	-----	Microsoft	
Anti Virus	2009 for Windows XP Pro	-----	Norton	

System Limitations

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

Characteristic	Limiting Component	Limit	Comment
Maximum Precincts in Election	HPM/ERM	2900	
Maximum Contests in Election		Depends on Content	
Maximum Candidates/ Counters in Election	ERM	21,000	M650 max of 3,750
Maximum Candidates/ Counters in Precinct	ERM Import	1,000	
Maximum Ballot Styles in Election	HPM	5,000	
Maximum Contests in a Ballot Style	HPM	1,100	
Maximum Candidates in a Contest	HPM	175	
Maximum Count for any Precinct Element	ERM	999,000	65,535 on import
Maximum Ballot Styles in a Precinct	HPM	5,000	DS200 40 ballot styles max
Maximum Number of Parties	HPM	18	
Maximum Vote For in Contest	HPM	90	

DS200 Unique

#	Limitation
1	Does not support more than 30 type codes, 40 split codes, and 1639 sequence codes
2	An early vote station will support a maximum of 9999 precincts.
3	An early vote station will not be able to use a modem to transmit totals
4	An early vote station will not be able print a precinct by precinct report by default

Model M650 Unique

#	Limitation
1	Ballots must be fed in one particular direction
2	Does not support more than 100 ballot styles for a single absentee precinct.

Functionality

2002 VSS Supported Functionality Declaration Unity 3.2.0.0

Feature/Characteristic	Yes/No	Comment
<i>Voter Verified Paper Audit Trails</i>		
VVPAT		
<i>Accessibility (vol. 1. sect. 2.2.7)</i>		
Forward Approach	Yes	
Parallel (Side) Approach		
<i>Closed Primary (vol. 1. sect. 2.2.8.2)</i>		
Primary: Closed	Yes	
<i>Open Primary (vol. 1. sect. 2.2.8.2)</i>		
Primary: Open Standard (provide definition of how supported)	Yes	
Primary: Open Blanket (provide definition of how supported)	Yes	
<i>Partisan & Non-Partisan: (vol. 1. sect. 2.2.8.2)</i>		
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	

Feature/Characteristic	Yes/No	Comment
Partisan & Non-Partisan “vote for 1” race with no declared candidates and write-in voting	Yes	
<i>Write-In Voting: (vol. 1. sect. 2.2.8.2)</i>		
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	
<i>Primary Presidential Delegation Nominations & Slates: (vol. 1. sect. 2.2.8.2)</i>		
Primary Presidential Delegation Nominations: Displayed delegate slates for each presidential party		
Slate & Group Voting: one selection votes the slate.		
<i>Ballot Rotation: (vol. 1. sect. 2.2.8.2)</i>		
Rotation of Names within an Office; define all supported rotation methods for location on the ballot and vote tabulation/reporting	Yes	
<i>Straight Party Voting: (vol. 1. sect. 2.2.8.2)</i>		
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	
<i>Cross-Party Endorsement: (vol. 1. sect. 2.2.8.2)</i>		
Cross party endorsements, multiple parties endorse one candidate.	Yes	
<i>Split Precincts: (vol. 1. sect. 2.2.8.2)</i>		
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.		
Split Precincts: Reporting of voter counts (# of voters) to the precinct split level; Reporting of vote totals is to the precinct level	Yes	We can list # of voters.
<i>Vote N of M: (vol. 1. sect. 2.2.8.2)</i>		
Vote for N of M: Counts each selected candidate, if the maximum is not exceeded.	Yes	
Vote for N of M: Invalidates all candidates in an overvote (paper)	Yes	
<i>Recall Issues, with options: (vol. 1. sect. 2.2.8.2)</i>		
Recall Issues with Options: Simple Yes/No with separate race/election. (Vote Yes or No Question)		
Recall Issues with Options: Retain is the first option, Replacement candidate for the second or more options (Vote 1 of M)		
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.)		

Feature/Characteristic	Yes/No	Comment
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.)		Overtured - US District Court 7/29/03: CA Election Code sect. 11383
<i>Cumulative Voting (vol. 1. sect. 2.2.8.2)</i>		
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.		
<i>Ranked Order Voting (vol. 1. sect. 2.2.8.2)</i>		
Ranked Order Voting: Voters can write in a ranked vote.		
Ranked Order Voting: A ballot stops being counting when all ranked choices have been eliminated		
Ranked Order Voting: A ballot with a skipped rank counts the vote for the next rank.		
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		
Ranked Order Voting: A ballot with two choices ranked the same, stops being counted at the point of two similarly ranked choices.		
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.		
<i>Provisional or Challenged Ballots (vol. 1. sect. 2.2.8.2)</i>		
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	
<i>Overvotes (vol. 1. sect. 4.4.4) Must support for specific type of voting system</i>		
Overvotes: P & M: Overvote invalidates the vote. Define how overvotes are counted.	Yes	
Overvotes: DRE: Prevented from or requires correction of overvoting.		
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.		
<i>Undervotes (vol. 1. sect. 4.4.4)</i>		
Undervotes: System counts undervotes cast for accounting purposes	Yes	

Feature/Characteristic	Yes/No	Comment
<i>Blank Ballots (vol. 1. sect. 2.4.3.3, 3.2.5.1.2, 3.2.5.1.3, & 4.4.4)</i>		
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	
<i>Display/Printing Multi-Lingual Ballots (vol. 1. sect. 2.3.1.3.1.a)</i>		<i>Must support one</i>
Spanish	Yes	
Alaska Native (Other Group specified)		
Aleut		
Athabascan		
Eskimo		
Native (Other Group Specified)		
Chinese		
Filipino		
Japanese		
Korean		
Vietnamese		
Apache		
Cent/So American		
Cheyenne		
Chickasaw		
Choctaw		
Navajo		
Other Tribe-Specified		
Paiute		
Pueblo		
Seminole		
Shoshone		
Sioux		
Tohono O'Odham		
Tribe not specified		
Ute		
Yaqui		
Yuman		
<i>Demonstrates the voting system capability to handle the designated language groups. (vol. 1. sect. 2.3.1.3.1.a)</i>		
Default language (English),	Yes	
Secondary language using a Western European font		
Ideographic language (such as Chinese or Korean),		
Non-written languages requiring audio support		



United States Election Assistance Commission



Certificate of Conformance

ES&S Unity 3.2.0.0
Election Systems & Software

The voting system identified on this certificate has been evaluated at an accredited voting system testing laboratory for conformance to the *2002 Voting System Standards (2002 VSS)*. Components evaluated for this certification are detailed in the attached Scope of Certification document. This certificate applies only to the specific version and release of the product in its evaluated configuration. The evaluation has been verified by the EAC in accordance with the provisions of the *EAC Voting System Testing and Certification Program Manual* and the conclusions of the testing laboratory in the test report are consistent with the evidence produced. This certificate is not an endorsement of the product by any agency of the U.S. Government and no warranty of the product is either expressed or implied.

Product Name: Unity _____

Model or Version: _____ Version 3.2.0.0

Name of VSTL: iBeta Quality Assurance _____

EAC Certification Number: ESSUnity3200 _____

Date Issued: July 21, 2009 _____

Executive Director, U.S. Election Assistance Commission

Scope of Certification Attached

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. ElBd 7.01, to ensure that it meets the criteria set out in s. 5.91, Stats. The test shall be conducted using a mock election for the partisan primary, a mock general election with both a presidential and gubernatorial vote, and a mock nonpartisan election combined with a presidential preference vote.

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

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

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

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.

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:

5.91(1)

(1) It enables an elector to vote in secrecy and to select the party or the independent candidates for whom an elector will vote in secrecy at a partisan primary election.

5.91(2)

(2) Except at a primary election, it enables an elector to vote a straight party ticket, but the automatic tabulating equipment counts the vote of an elector who casts a vote for a candidate for an office outside the straight party ticket for that office only.

5.91(3)

(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.

5.91(4)

(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.

5.91(5)

(5) It accommodates all referenda to be submitted to the electors in the form provided by law.

5.91(6)

(6) The voting device or machine permits an elector in a primary election to vote for the candidates of the recognized political party or the independent candidates 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 or independent candidate 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.

5.91(7)

(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.

5.91(8)

(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.

5.91(9)

(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.

5.91(10)

(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.

5.91(11)

(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.

5.91(12)

(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.

5.91(13)

(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.

5.91(14)

(14) It does not employ any mechanism by which a ballot is punched or punctured to record the votes cast by an elector.

5.91(15)

(15) It permits an elector to privately verify the votes selected by the elector before casting his or her ballot.

NOTE: Sub. (15) is created eff. 1-1-06 by 2003 Wis. Act 265.

5.91(16)

(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.

NOTE: Sub. (16) is created eff. 1-1-06 by 2003 Wis. Act 265.

5.91(17)

(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.

NOTE: Sub. (17) is created eff. 1-1-06 by 2003 Wis. Act 265.

5.91(18)

(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.

NOTE: Sub. (18) is created eff. 1-1-06 by 2005 Wis. Act 92.

ITEM F

Administrative Rules

State of Wisconsin \ Government Accountability Board

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JUDGE MICHAEL BRENNAN
Chairperson

KEVIN J. KENNEDY
Director and General Counsel

MEMORANDUM

DATE: For the November 9, 2009 Meeting

TO: Members, Wisconsin Government Accountability Board

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

Prepared and Presented by:

Shane W. Falk, Staff Counsel

SUBJECT: Status of Rule GAB 1.28

Current Status:

This Memorandum is for informational purposes only and no immediate action is requested. Staff agreed to periodically update the Board on matters affecting the ability to move forward with the rule-making process for GAB 1.28.

As the Board is aware, the U.S. Supreme Court has not yet issued its decision in Citizens United v. FEC. The Board directed staff to suspend rule-making until such time as the U.S. Supreme Court releases its decision in Citizens United v. FEC. Upon the release, the Board directed staff to present a Memorandum summarizing the decision and any implications to the pending revisions to GAB 1.28, or any Wisconsin statutes.

Recent Activity:

For informational purposes only, staff is providing the text of Senator Feingold's statement on the floor of the Senate on October 21, 2009. It directly relates to the U.S. Supreme Court's pending decision in Citizens United v. FEC and the Court's consideration of prohibitions of corporate expenditures in the political arena.



Statement of U.S. Senator Russ Feingold on Citizens United v. FEC

As Prepared for Delivery

Wednesday, October 21, 2009



Mr. President, I want to thank the Senator from Arizona for all the work he has done over many years to improve our campaign finance system. We have been partners in this effort for over a decade, and there is no one in this body whom I admire more than John McCain.

In early September, Senator McCain and I had the opportunity to walk across the street to the Supreme Court and hear the oral argument in the *Citizens United* case. It was a morning of firsts: The first case that Justice Sonia Sotomayor has heard since the Senate confirmed her nomination to become only the third woman to sit on our nation's highest court. And the first oral argument that Solicitor General Elena Kagan has done since becoming the first woman to hold that important position in our government.

And it was the first time since the Tillman Act was passed in 1907 prohibiting spending by corporations on elections, and the Taft-Hartley Act in 1947 clarified and strengthened that prohibition, that a majority of the Court has suggested it is prepared to hold that Congress and the many state legislatures that have passed similar laws have violated the Constitution. Such a decision could have a truly calamitous impact on our democracy.

Until a few months ago, no one had any idea that the *Citizens United* case would potentially become the vehicle for such a wholesale uprooting of the principles that have governed the financing of our elections for so long. The case started out as a simple challenge to the application of Title II of the law that Senator McCain and I sponsored, the Bipartisan Campaign Reform Act of 2002. The issue was whether the provisions of BCRA relating to so-called issue ads could constitutionally be applied to a full length feature film about then-presidential candidate Hillary Clinton. The movie was to be distributed solely as video on demand.

Yet at the end of its last term, instead of deciding the case on the basis of the briefs and arguments submitted by the parties early this year, the Court reached out and asked for supplemental briefing on whether it should overturn its decisions in *McConnell v. FEC*, the case that upheld BCRA in 2003, and *Austin v. Michigan Chamber of Commerce*, a 1991 decision that upheld a state statute prohibiting corporate funding of campaign ads expressly advocating the election or defeat of a candidate. That set the stage for the recent special session to hear reargument in the case. And now we await the Court's verdict on whether these longstanding laws will be in jeopardy.

I certainly hope the Court steps back from the brink. A decision to overturn the *Austin* decision would open the door to corporate spending on elections the likes of which this nation truly has never seen. Our elections would become like NASCAR races – underwritten by companies. Only in this case, the corporate underwriters wouldn't just be seeking publicity, they would be seeking laws and policies that the candidates have the power to provide.

We were headed well down that road in the soft money system that BCRA stopped. It may seem like a long time ago, but hundreds of millions of dollars were contributed by corporations and unions to the political parties between 1988 and 2002. The system led to scandals like the White House coffees and the sale of overnight stays in the Lincoln Bedroom. The appearance of corruption was well documented in congressional hearings and fully justified the step that Congress took in 2002 – prohibiting the political parties from accepting soft money contributions.

Before BCRA was passed, corporations were making huge soft money donations. They were also spending money on phony issue ads. That's what Title II was aimed at. But what they were not doing was running election ads that expressly advocated the election or defeat of a candidate. That has been prohibited in this country for at least 60 years, though it is arguable that the Tillman Act in 1907 prohibited it forty years before that. So it is possible that the Court's decision will not just take us back to a pre-McCain-Feingold era, but back to the era of the robber baron in the 19th century. That result should frighten every citizen of this country. The Court seems poised to ignite a revolution in campaign financing with a stroke of its collective pen that no one contemplated even six months ago.

Mr. President, while I have disagreed with many Supreme Court decisions, I have great respect for that institution and for the men and women who serve on the Court. But this step would be so damaging to our democracy and is so unwarranted and unnecessary that I must speak out. That is why Senator McCain and I have come to the floor today.

To overrule the *Austin* decision in this case, the Court would have to ignore several time-honored principles that have served for the past two centuries to preserve the public's respect for and acceptance of its decisions. First, it is a basic tenet of constitutional law that the Court will not decide a case on constitutional grounds unless absolutely necessary, and that if there is no choice but to reach a constitutional issue, the Court will decide the case as narrowly as possible.

This is the essence of what some have called "judicial restraint." What seems to be happening here though is the antithesis of judicial restraint. The Court seems ready to decide the broadest possible constitutional question – the constitutionality of all restrictions on corporate spending in connection with elections in an obscure case in which many far more narrow rulings are possible.

The second principle is known as *stare decisis*, meaning that the Court respects its precedents and overrules them only in the most unusual of cases. Chief Justice John Roberts, whom many believe to be the swing justice in this case, made grand promises of what he called "judicial modesty," when he came before the Senate Judiciary Committee in 2005. Respect for precedent was a key component of the approach that he asked us to believe he possessed. Here's what he said:

I do think that it is a jolt to the legal system when you overrule a precedent. Precedent plays an important role in promoting stability and evenhandedness. It is not enough -- and the court has emphasized this on several occasions -- it is not enough that you may think the prior decision was wrongly decided. That really doesn't answer the question, it just poses the question. And you do look at these other factors, like settled expectations, like the legitimacy of the court, like whether a particular precedent is workable or not, whether a precedent has been eroded by subsequent developments. All of those factors go into the determination of whether to revisit a precedent under the principles of *stare decisis*.

Talk about a jolt to the legal system. It's hard to imagine a bigger jolt than to strike down laws in over 20 states and a federal law that has been the cornerstone of the nation's campaign finance system for 100 years. The settled expectations that would be upset by this decision are enormous. And subsequent developments surely have not shown that the *Austin* decision is unworkable. Indeed, the Court relied on it as recently as 2003 in the *McConnell* case and even cited it in the *Wisconsin Right to Life* decision just two years ago, written by none other than Chief Justice Roberts. To be sure, there are justices on the Court who dissented from the *Austin* decision when it came down and continue to do so today. But if *stare decisis* means anything, a precedent on which so many state legislatures and the American people have relied should not be cast aside simply because a few new justices have arrived on the Court.

Third, the courts decide cases only on a full evidentiary record so that all sides have a chance to put forward their best arguments and the court can be confident that it is making a decision based on the best information available. In this case, precisely because the Supreme Court reached out to pose a broad constitutional question that had not been raised below, there is no record whatsoever to which the Court can turn. None. And the question here demands a complete record because the legal standard under prevailing

First Amendment law is whether the statute is designed to address a compelling state interest and is narrowly tailored to achieve that result. My colleagues may recall that when we passed the McCain-Feingold bill, a massive legislative record was developed to demonstrate the corrupting influence of soft money. And the facial constitutional challenge to that bill led to months of depositions and the building of an enormous factual record for the court. None of that occurred here. And furthermore, the over 20 states whose laws would be upheld if *Austin* is overruled were given no opportunity to defend their legislation and show whatever legislative record had been developed when their statutes were enacted.

Instead, the Court seems to be ready to rely on its intuition, its general sense of the political process. From what I observed at oral argument, that intuition is sorely lacking. One justice blithely asserted that the 100-year-old congressional decision to bar corporate expenditures must have been motivated by the self-interest of members of Congress as incumbent candidates, ignoring the fact that the modern Congress prohibited soft money contributions even though the vast majority of those contributions were used to support incumbents. Another justice opined that it was paternalistic for Congress to be concerned about corporations using their shareholders' money for political purposes, even though most Americans invest through mutual funds and have little or no idea what corporations their money has actually gone to.

For the Court to overrule *Austin* and *McConnell* in this case would require it to reject these three important principles of judicial modesty. It would amount to the unelected branch of government reaching out to strike down carefully considered and longstanding judgments of the most democratic branch. It would be, in my view, a completely improper exercise of judicial power.

Let me discuss for a moment the consequences of this decision. A fundamental principle of our democracy is that the people elect their representatives. Each citizen gets just one vote. Our system of financing campaigns with private money obviously gives people of means more influence than average voters, but Congress over the years has sought to provide some reasonable limits and preserve the importance of individual citizens' votes. One of the most important and longstanding limits is that only individuals can contribute to candidates or spend money in support of or against candidates. Corporations and unions are prohibited from doing so, except through their PACs, which themselves raise money only from individuals. The Supreme Court may very well be about to change that forever.

According to a 2005 IRS estimate, the total net worth of U.S. corporations was \$23.5 trillion, and after tax profits were nearly \$1 trillion. During the 2008 election cycle, Fortune 100 companies alone had profits of \$605 billion. That's quite a war chest that may be soon unleashed on our political system. Just for comparison, spending by candidates, outside groups, and political parties on the last presidential election totaled just over \$2 billion. Federal and state parties spent about \$1.5 billion on all federal elections in 2008. PACs spent about \$1.2 billion. That usually sounds like a lot of money, but it's nothing compared to what corporations and unions have in their treasuries. So we are talking here about a system that could very easily be completely transformed by corporate spending in 2010.

Does the Supreme Court really believe that the First Amendment requires the American people to accept a system where banks and investment firms, having just taken our country into its worst economic collapse since the Great Depression, can spend millions upon millions of dollars of ads directly advocating the defeat of those candidates who didn't vote to bail them out or want to prevent future economic disaster by imposing strict new financial services regulations? Because that is where we are headed. Is the Court really going to say that oil companies that oppose action on global warming are constitutionally entitled to spend their profits to elect candidates who will oppose legislation to address that problem?

The average winning Senate candidate in 2008 spent \$8.5 million. The average House winner spent a little under \$1.4 million. A single major corporation could spend three or four times those amounts without causing even a smudge on its balance sheet. Mr. President, this is not about the self-interest of legislators who will undoubtedly fear the economic might that might be brought against them if they vote the wrong way. This is about the people they represent, who live in a democracy, and who deserve a political system where their views and their interests are not drowned out by corporate spending.

At the oral argument last month, one justice seemed to suggest that it is perfectly acceptable for a tobacco company to try to defeat a candidate who wants to regulate tobacco, and to use its shareholders' money to do so. This is the system that the Supreme Court may bequeath to this country if it doesn't turn back. Some will say that corporate interests already have too much power, and that members of Congress listen to the wishes of corporations instead of their constituents. I won't defend the current system, but I will say -- imagine how much worse things would be in a system where every decision by a member of Congress that contradicts the wishes of a corporation could unleash a tsunami of negative advertising in the next election. In light of the immense wealth that a corporation can bring to bear on such a project, I frankly wonder how our democracy would function under such a system. We are talking about a political system where corporate wealth rules in a way that we have never seen in our history.

Once again, I thank my friend from Arizona for his friendship and his courage. We will continue to fight for a campaign finance system that allows the American people's voices to be heard.

State of Wisconsin \ Government Accountability Board

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JUDGE MICHAEL BRENNAN
Chairperson

KEVIN J. KENNEDY
Director and General Counsel

MEMORANDUM

DATE: For the Meeting of November 9, 2009

TO: Members, Wisconsin Government Accountability Board

FROM: Kevin J. Kennedy
Director and General Counsel

Prepared and Presented by:
Michael Haas, Staff Counsel

SUBJECT: Administrative Code Chapter GAB 5, Security of Ballots and Electronic Voting Equipment

A. Recommendation Motion:

Approve the attached revised version of proposed administrative rule Chapter GAB 5, related to security of ballots and electronic voting equipment.

B. Background Summary

After extensive discussion at its October 5, 2009 meeting, the Board directed staff to reexamine specific provisions which were discussed and, if appropriate, recommend alternative language. This memorandum summarizes previous Board action regarding this rule and the three issues which were the primary subjects of public comments and Board discussion at the October meeting, and outlines recommended policy decisions as part of the Board's approval of the rule.

To address those three issues, staff recommends the following:

1. That the Board adopt revised language addressing security of absentee ballots and absentee ballot materials during the absentee voting period, included as the underlined provisions in §§5.01(1)(a) and 5.02 of the attached proposed rule.
2. That the Board retain existing language in §5.01(7) which refers to the maintenance of ballots until their destruction and defines means of destruction, but that Board staff continue to research whether relevant statutes prohibit the release of voted ballots as an alternative to destruction or retention by local election officials, and return to the Board with a recommended policy determination.
3. That the Board retain existing language in the proposed rule regarding security of electronic voting systems.

C. Procedural Status

Over the past two years, Board staff has been working to draft revisions to the administrative rules relating to the security of ballots and electronic voting systems, with the input of municipal and county clerks and members of the public. The repeal and recreation of existing Chapter GAB 5 is necessary to update the requirements for ensuring that ballots and electronic voting systems remain secure and tamper-free. The new version of the rule attempts to address issues related to the security of ballots and electronic voting systems, and to balance security concerns with the costs and resources needed for compliance.

Board staff created an ad hoc committee of local election officials to assist in the drafting and review of the proposed rule. The Board gave preliminary approval to a draft rule at its meeting of May 8, 2008, and the Board held a public hearing regarding the proposed rule on November 11, 2008. Staff considered the input and recommendations received at that hearing, as well as subsequent written comments which were submitted. In response to both public input and to issues arising from the increased popularity of in-person absentee voting, staff proposed that the Board add language to the proposed rule addressing the security of absentee ballots and absentee voting materials at the Board's October 5, 2009 meeting, after vetting the proposed language with the ad hoc clerk committee and members of the Wisconsin Election Administration Council (WI-EAC).

The Board's consideration of the final rule language prior to its submission to the Legislature prompted additional public comments. Those comments included not only feedback from the G.A.B. committee members about the absentee ballot language, but also Mr. John Washburn's concerns regarding the Board's interpretation of statutes pertaining to the destruction of voted ballots, and Mr. Paul Malischke's requests for additional provisions pertaining to the security of electronic voting systems. The Board postponed action on the proposed rule and directed staff to reexamine the issues raised at the October meeting and suggest any necessary changes to the rule.

The rule now being proposed by staff is identical to that considered at the Board's October meeting, except for new language addressing security of absentee ballots and absentee voting materials. Attached to this memorandum are several documents that are relevant to each of the issues outlined below, and which include:

1. Revised version of Chapter GAB 5, Ballot and Electronic Voting System Security.
2. Summary of comments related to the new proposed language regarding absentee ballot security.
3. Memorandum from Paul Malischke dated October 26, 2009 addressing the new proposed absentee ballot language and requesting additional provisions related to the security of electronic voting systems.
4. Form GAB-124, which is the absentee ballot log used to track the status of absentee ballots.

5. Form GAB-125, which is the certificate used to transmit absentee ballots from the municipal clerk to the chief inspector.
6. Email messages from John Washburn dated February 21, 2008 and October 1, 2009, related to §(7) of the proposed rule and the Board staff's interpretation of statutes pertaining to the destruction of voted ballots.

D. Security of Absentee Ballots

Following the Board's October 5, 2009 meeting, staff consulted with members of the ad hoc Chapter 5 committee and the WI-EAC to refine the provisions regarding the security of absentee ballots during the absentee voting period. The end result is the new language contained in §§5.01(1)(a) and 5.02 of the attached proposed rule. Those provisions state:

5.01(1)(a) "Absentee voting materials" include un-voted and voted absentee ballots, completed absentee ballot applications, certificate envelopes, carrier envelopes and containers containing ballots, absentee ballot logs, and chain-of-custody logs.

5.02(2) Local election officials shall take reasonable and necessary steps to secure absentee ballots and absentee voting materials during the period of absentee voting. Prior to the start of the absentee voting period, the clerk or board of election commissioners shall create written policies and procedures for securing absentee ballots and absentee voting materials, taking into consideration available resources, staffing, and facilities. The policies and procedures shall address security of and access to absentee voting materials during and after office hours, documenting on the absentee ballot log those absentee ballots that are delivered to and returned by voters, and documenting the secure delivery of absentee ballots to the polling place or board of absentee ballot canvassers. The policies and procedures shall be made available to the board upon its request.

This proposed language would require each municipality to adopt written procedures governing the handling of absentee ballots during the absentee voting process and addressing specific key points. Board staff believes that this approach is not only acceptable to most municipal clerks, but also is the most appropriate alternative given the local administration of elections and the necessity of tailoring specific procedures to the resources, staffing, and facilities available to each municipality. As with many election administration issues, the proposed language attempts to promote statewide consistency on important procedural steps while recognizing that clerks need flexibility in their direct administration of elections.

Attached is a summary of comments submitted by members of the ad hoc committee and WI-EAC who reviewed the new proposed language regarding absentee ballot security. The feedback falls into two categories. Some clerks replied that the proposed requirement to create written procedures is acceptable and would not be an inconvenience as it would involve simply documenting on paper what they already do. Other clerks, while fewer in number, felt strongly that the proposed language is unnecessary. To

address questions and concerns that were raised, staff communicated additional background and points regarding the proposed language, which are expanded upon here in support of staff's recommendation to the Board to approve the provisions related to absentee ballot security.

1. The impetus for the Board to address absentee ballot security came from several sources, including calls received around the last two statewide elections; public comments during the course of promulgating this rule, as well as in legislative hearings, G.A.B. meetings, and in G.A.B. listening sessions on early voting; and conversations with other states dealing with similar concerns. G.A.B. Director and General Counsel Kevin Kennedy directed that staff address the issue while finalizing Chapter 5 of our administrative rules.
2. The statutes contain gaps in the treatment of absentee ballots, from the time they are received from the printer through their delivery to the polling place or central count location. Staff's main objective is to help local election officials address that gap in a way that is practical, that respects the wide variety of circumstances under which municipalities operate, and that would be least disruptive to current practices. We hope to provide additional protection to a clerk whose procedures are questioned, as well as to provide a reasonable basis for the Board to evaluate any complaints by establishing consistent expectations for all municipalities.
3. G.A.B. staff and the Board recognize that most clerks as a matter of routine do a very good job of securing absentee ballots. For those municipalities the only impact of the proposed rule would be to put down on paper what is already occurring. For that relatively minor effort staff believes there can be real benefits both in the improved consistency and thoroughness of the procedures related to absentee ballots, and in the public's confidence in the absentee voting process. Written procedures can serve as a training aide as well as a checklist for the clerk and others handling absentee ballots, can document procedures for municipal staff to follow in the clerk's absence, and can promote continuity so that a new clerk does not need to reinvent the wheel upon taking office.
4. G.A.B. staff is also aware that some clerks are not as thorough or careful about establishing and following best practices, or that face challenges due to available staffing, resources, and facilities. Whatever the municipality's circumstances, the details of handling absentee ballots should be a deliberate part of election planning. Requiring a written policy will ensure that clerks address basic questions such as who handles absentee ballots, where they are stored and kept secure during office hours and at night, and how they are transported for counting. In the rare case that a municipality is paying insufficient attention to the security of absentee ballots, then the new language would prompt them to do so, and that would be a situation the Board has an interest in correcting.
5. Some concerns were raised about whether the G.A.B. "mistrusts" local election officials, or is catering to a public perception that is faulty. As with other policy matters considered by the Board, this decision is not a question of trust but rather of developing sound public policy. The Board has often given considerable weight to the views and concerns of local election officials. Numerous policy decisions have turned on the remarks and recommendations of municipal and county clerks. However, the Board need not simply ignore concerns raised by some members of the public that absentee ballot security warrants closer scrutiny, as public confidence in election administration and results is a valid consideration in maintaining a fair and open system.

Documenting procedures that should already be in place serves the goal of maintaining public confidence in elections throughout changing trends such as the increased use of in-person absentee voting.

6. It is always a challenge to find the correct balance between statewide uniformity and local control of election procedures, particularly where the statutes are silent on the specifics. Earlier versions of the absentee ballot provisions were criticized by some clerks as being too specific and unwisely took a one-size-fits-all approach. After considering such feedback, staff is presenting language that does not require 1850 municipalities to implement identical absentee ballot security measures given available resources, staffing, and facilities, as well as the disparities in the volume of absentee voting.

7. G.A.B. staff is prepared to share sample policies or develop a checklist of steps that should be addressed in written policies. However it is appropriate for local clerks to develop their own specific documents as Board staff cannot determine who has access to secure rooms, closets, or cabinets, or other relevant local factors.

8. Questions were also raised as to whether a written policy would be considered a public record. While municipalities should rely on the opinion of their own attorney regarding public records issues, staff does not believe there is a blanket exception in the public records law that would exclude release of the written policy. It may be possible that some portion of a written policy might be redacted pursuant to the public records law, or that details of the policy would be worded so as not to jeopardize the security of ballots. A written policy would not be expected to identify where a key is located or the combination to a safe where ballots are stored, for example. In addition, part of the value of a written policy would be to demonstrate to the public that adequate procedures have been established. Financial auditors routinely recommend establishing written policies for the handling of money even when there is no hint of any error or impropriety, and voters are likely to appreciate that a municipality takes as much care with their vote as with their funds.

In addition to the input of local election officials, Board staff also considered the attached written comments submitted by Paul Malischke regarding absentee ballot security. To clarify for the Board his remarks and suggestions regarding tracking and transporting absentee ballots, attached are copies of two G.A.B. forms. GAB-124 is an absentee ballot log clerks and inspectors use to document the status of absentee ballots, from delivery to the voter to recording of the ballot. It illustrates one of the tools clerks are expected to use in tracking and securing absentee ballots. GAB-125 is the carrier certification signed by both the clerk and the receiving chief inspector when ballots are delivered for counting. Section 6.88(1), Wis. Stats., specifically mandates use of the GAB-125 and therefore the requirement is not restated in the rule as requested by Mr. Malischke.

Based upon all of the above considerations, Board staff recommends adoption of the new language addressing security of absentee ballots and absentee voting materials as part of its approval of the proposed rule.

E. Maintenance and Destruction of Voted Ballots

The second significant issue discussed during the Board’s October review of the proposed rule was John Washburn’s concern regarding destruction of voted ballots, which is related to, but not the focus of, proposed Chapter 5. While the staff recommends that the Board not alter current language in the proposed rule, staff does intend to continue researching the statutes in question and return to the Board with a recommendation for a definitive Board position regarding the options for disposing of voted ballots.

As Mr. Washburn’s two attached emails explain, §5.01(7) of the proposed rule states as follows:

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

Section 7.51, Wis. Stats., governs handling of all ballots by the election inspectors after they have been processed and counted, and delivery of ballots back to the clerk. (Which is the reason that Subsections (3) through (7) of the proposed rule, while providing further definition and clarification of the §7.51 security provisions, would not apply to absentee ballots during the absentee voting period.) Section 7.51(5)(b), Wis. Stats., does state: “Each clerk shall retain ballots, statements, tally sheets, or envelopes received by the clerk until destruction is authorized under s. 7.23(1).” This statutory language is very similar to that of §5.01(7) of the proposed rule.

Mr. Washburn’s objection is that proposed §5.01(7) implies that destruction of voted ballots is the only option other than the clerk indefinitely retaining them, which he asserts is contrary to §7.23, Stats., as well as the Public Records Law and statutes related to the State Historical Society’s right to take possession of historically significant state or local records.

The relevant provisions of §7.23 state as follows:

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

....

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

....

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

....

(1)(h) Ballots may be destroyed 30 days after any election.

Mr. Washburn argues that the use of “may” in the above statutory provisions is permissive and therefore clerks may, or may not, choose to destroy voted ballots after the required retention period. Board staff, however, has interpreted §7.23 to mean that the only permissible disposition of ballots is either retention by the clerk using the security provisions of §7.51, or destruction of the ballots under §7.23. This interpretation is consistent with the language of §7.51(5)(b), Wis. Stats., which provides that each clerk shall retain ballots until destruction is authorized under §7.23(1), Wis. Stats. This interpretation is also supported by the statements in §§7.23(1)(f) and (1)(h) that voted ballots may be destroyed, while §7.23(1)(am) permits unused ballots to be discarded or destroyed. G.A.B. staff has provided advice to clerks consistent with its interpretation, which Mr. Washburn contends deprives potential researchers, the State Historical Society, and the public from obtaining access to voted ballots after they are no longer serve an election purpose and are no longer required to be retained.

While the focus of §5.01(7) of the proposed rule is on the method of destruction, the first sentence is arguably ambiguous as to whether clerks can release ballots from their custody for any purpose other than to destroy them. However, §7.51(5)(b), Wis. Stats., arguably establishes a statutory requirement of retention or destruction, as has been the Board’s policy. At its October meeting, Board members requested clarification from staff as to its interpretation of §7.23, Stats., and its application in §5.01(7) of the proposed rule. In order to provide the Board with a thorough and definitive analysis, staff believes further research is still required into the intent of §7.23 and its interplay with the Public Records Law and the statutes authorizing the State Historical Society to take title and custody of records held by local officials which the Society deems to be of permanent historical significance.

Staff recommends that the Board approve the proposed rule with the existing language of §5.01(7). Whatever interpretation is ultimately adopted by the Board can be accommodated either by the application of the existing language or an amendment to either Chapter 5 or other rules.

E. Security of Electronic Voting Systems

Finally, at the October Board meeting and on page 2 of his attached memorandum, Paul Malischke requested additional provisions regarding the security of electronic voting equipment and systems. Specifically, Mr. Malischke believes the proposed rule should contain stricter language to ensure that computers used for election purposes should be “hardened” work stations, meaning that they are to be used for no other purpose and shall not be linked to any other computer network or the Internet. He also proposes language to ensure that access to electronic equipment is limited.

As stated at the October meeting, Board staff has not incorporated Mr. Malischke’s requests into the draft rule. While they may be laudable and preferred practices, staff believes it is not practical for the G.A.B. to mandate that municipalities purchase computers to serve as hardened work stations or adopt Mr. Malischke’s other proposals

given the technological limitations or challenges that may exist in some Wisconsin communities.

Staff recommends approval of proposed Chapter 5 without the inclusion of the additional security provisions for electronic voting systems requested by Mr. Malischke.

Chapter GAB 5

BALLOT AND ELECTRONIC VOTING SYSTEM SECURITY

GAB 5.01 Ballot security. (1) In this section:

- (a) “Absentee voting materials” include un-voted and voted absentee ballots, completed absentee ballot applications, certificate envelopes, carrier envelopes and containers containing ballots, absentee ballot logs, and chain-of-custody logs.
- (b) “Ballot” has the meaning given in s. 5.02 (1e), Stats.
- (c) “Board” means the government accountability board.
- (d) “Certificate of performance compliance” means the document provided by voting equipment vendors certifying that the equipment complies with the performance requirements of s. 5.91, Stats.
- (e) “Chain-of-custody” means the recorded movement and location of programmed memory devices used with electronic voting systems from the time of delivery of said devices to the municipal clerk or board of election commissioners until the devices are no longer in use.
- (f) “Custodian” means the election official who is authorized by chs. 5 to 12 to take possession and control of the ballots from the time of delivery of the ballots to the clerk or board of election commissioners until destruction of the ballots is authorized under s. 7.23, Stats.
- (g) “Electronic voting system” has the meaning given in s. 5.02(4m), Stats.
- (h) “Firmware” means the computer software stored in read-only memory or programmable read-only memory.
- (i) “Memory device” means any prom pack, memory card, or any other removable memory device that functions or may be programmed to store and transfer ballot images or tabulation data
- (j) “Modem” means a device for transmitting data between two computers over telephone or other communication lines.
- (k) “Results report” means the print-out of voting data by a piece of electronic voting equipment.
- (l) “Software” has the meaning given in s. 5.905(1), Stats.

- (2) Local election officials shall take reasonable and necessary steps to secure absentee ballots and absentee voting materials during the period of absentee voting. Prior to the start of the absentee voting period, the clerk or board of election commissioners shall create written policies and procedures for securing absentee ballots and absentee voting materials, taking into consideration available resources, staffing, and facilities. The policies and procedures shall address security of and access to absentee voting materials during and after office hours, documenting on the absentee ballot log those absentee ballots that are delivered to and returned by voters, and documenting the secure delivery of absentee ballots to the polling place or board of absentee ballot canvassers. The policies and procedures shall be made available to the board upon its request.
- (3) Within the requirements of s. 7.51(3), Stats., the terms “secure” and “seal” shall be interpreted together to mean that the voted ballot container must be closed in such a manner that no ballot may be removed, nor any ballot added, without visible evidence of interference or damage to the ballot container.
- (4) (a) Within the requirements of s. 7.51(3) (a), Stats., a ballot container shall be considered “sealed” or “locked,” only if no ballot may be removed from or deposited into the container, and no other form of access to the ballots inside may be gained without leaving visible evidence of that entry or access into the container.
- (b) Ballot bags shall be sealed with a tamper-evident, serialized numbered seal. The serial number shall be recorded on the signed ballot container certification attached to the bag. Serial numbers of the seals also shall be recorded on the inspectors’ statement. Ballot boxes or containers shall have all potential openings secured in such a manner that no ballot may be removed, nor any ballot added, without visible evidence of interference or damage to that ballot container. Ballot boxes or containers shall have attached a signed ballot container certification.
- (5) A sealed ballot container shall not be considered “secured” unless it is stored in a manner in which access to the container is limited only to the clerk of the election district, board of election commissioners, or to persons authorized by the clerk or the board of election commissioners, and access to which is not available to any other person.
- (6) Whenever the custodian is required to open the ballot container and unseal the ballots as part of a central count proceeding under s. 5.86, Stats., board of canvass proceeding under Ch. 7, Stats., audit of electronic voting equipment after an election under s. 7.08(6), Stats., recount or an appeal of a recount under s. 9.01, Stats., or as part of a public records request under s. 19.35, Stats., before opening the container the custodian shall record in

the minutes of the proceeding whether the container is sealed and shall record the serialized number of the seal. The custodian shall make a record of the entry and of the ballot review. Upon completion of the review, the custodian shall re-secure the ballots in the manner provided in s. 7.51, Stats., unless destruction is authorized under s. 7.23, Stats.

- (7) Security of the ballots and the ballot container shall be maintained as provided under s. 7.51, Stats., until destruction of the ballots is conducted under s. 7.23, Stats. Destruction of the ballots authorized under s. 7.23, Stats., requires shredding, incineration, or some other form of obliteration of the ballots.
- (8) At the time of a recount, the serial numbers on the seals of the ballot container shall be compared with the serial numbers written on the signed ballot container certification. All containers shall be compared in a recount. The ward numbers and the results of the serial number verification shall be recorded in the minutes of the recount.
- (9) The municipal clerk or board of election commissioners shall securely maintain all ballots from the time of receipt from the printer or county clerk through delivery to the polling place.

Note: The ballot container certification is form GAB-101. Copies of GAB-101 can be obtained by calling (608) 266-8005 or from the following web address: <http://elections.state.wi.us/docview.asp?docid=1914&locid=47>.

Note: The inspectors' statement is form GAB-104. Copies of GAB-104 can be obtained by calling (608) 266-8005 or from the following web address: <http://elections.state.wi.us/docview.asp?docid=14376&locid=47>.

5.02 General Electronic Voting System Security Procedures

- (1) The procedures under this section apply to all electronic tabulating voting equipment memory devices.
- (2) Throughout the life of the electronic voting system, the municipal or county clerk shall maintain control of all memory devices in a secure manner at all times. With the agreement of the municipal clerk or board of election commissioners, the county clerk or county board of election commissioners may store memory devices in a secure location. The municipal clerk or board of election commissioners shall secure all keys to the electronic voting equipment.
- (3) For each election, there shall be a separate, written chain-of-custody record for each programmed memory device used with an electronic

voting system. Each transfer shall be logged in the written chain-of-custody record.

- (4) Each programmed memory device shall have or be assigned a unique and permanent serial number. If the memory device does not have a permanent serial number affixed by the manufacturer, a clerk shall, if possible, affix to the device a serial number or unique identifier.
- (5) The municipality shall use controlled, serialized seals that are tamper-evident and resistant to accidental breakage along with a written record of all seals and associated serial numbers.
- (6) For each election, the municipal clerk shall record on the inspectors' statement which memory devices and which serialized tamper-evident seals are assigned to particular voting stations or units.

Note: The inspectors' statement is form GAB-104. Copies of GAB-104 can be obtained by calling (608) 266-8005 or from the following web address: <http://elections.state.wi.us/docview.asp?docid=14376&locid=47>.

5.03 Pre-election procedures

- (1) The clerk who has possession of the electronic voting systems or memory devices shall ensure that the equipment and memory devices have been secured properly since the previous election.
- (2)
 - (a) Memory devices shall be programmed to print a list of the software and firmware versions of the electronic voting system on each beginning-of-election-day zero report under s. 5.84(2), Stats.
 - (b) For electronic voting systems that cannot accommodate this requirement, the software and firmware information shall be recorded from the system start-up screen, either by municipal or county staff during the pre-election testing under s. 5.84(1), Stats., or by election inspectors on election day under s. 5.84(2), Stats.
- (3) The records for the pre-election test under s. 5.84, Stats., pre-recount test under s. 5.90, Stats., and election day reports under ss. 7.51 and 7.53, Stats., must be maintained by the appropriate clerk or board of election commissioners.
- (4) Except when necessary to program, test, or operate the electronic voting or programming equipment, any point by which access may be gained to the system controls shall be closed and locked or secured with a tamper-evident seal that may be tracked using a unique and permanent serial

number. The appropriate clerk shall maintain a written record of the serial numbers required by this subsection.

- (5) (a) After a memory device is programmed, tested, and delivered to the municipal clerk for the election, it shall be immediately and continuously maintained in a secure location with controlled access limited only to users authorized by the clerk or board of election commissioners.

(b) Upon insertion of a memory device into its assigned unit, it shall be sealed against unauthorized access with a serialized, tamper-evident seal that may be tracked using a unique and permanent serial number. The municipal clerk or board of election commissioners shall record the serial numbers on the inspectors' statement.
- (6) When applicable, for each election the municipal or county clerk or board of election commissioners shall obtain a signed "Certificate of Performance Compliance: Memory Device Security" from each voting equipment manufacturer that provides programming services or memory devices to the municipality or county.
- (7) The municipality shall take reasonable precautions to ensure the security of the equipment between the time it leaves the possession of the clerk or board of election commissioners to be delivered to the polling place, and the time the chief inspector assumes possession at the polling place on election day.

Note: The inspectors' statement is form GAB-104. Copies of GAB-104 can be obtained by calling (608) 266-8005 or from the following web address: <http://elections.state.wi.us/docview.asp?docid=14376&locid=47>.

5.04 Election-day procedures

- (1) Before any ballots are cast on any piece of voting equipment, the integrity of the tamper-evident seals shall be verified by the chief election inspector verifying that the tamper-evident seal serial number on the inspectors' statement matches the tamper-evident seal serial number contained on the electronic voting equipment. Any irregularity or discrepancy between the two numbers shall be reconciled before using the equipment.
- (2) After the polls have opened, ballot removal from an optical scan machine or paper roll removal or replacement on a direct recording electronic machine shall be conducted with at least two election inspectors or other sworn election team members appointed by the municipal clerk or board of election commissioners present. The removal process, the names of the election inspectors or sworn election team members, and the time of removal shall be recorded on the inspectors' statement.

- (3) After the polls have closed, election officials shall print a results report before breaking any seal on the equipment and before the removal of the memory device from any piece of voting equipment. If additional reports other than the results reports are required, these reports shall also be printed before breaking any seal on the equipment and before the removal of the memory device.
- (4) The chief election inspector shall compare the serial numbers of all security seals, then verify by initialing the inspectors' statement. Any additional seals used during the election shall also be recorded on the inspectors' statement.
- (5) The memory device shall be secured in a separate, tamper-evident sealed container or envelope by the chief election inspector. The memory devices shall be promptly returned to the municipal or county clerk or board of election commissioners.
- (6) If vote results are transmitted by modem, the municipal clerk or board of election commissioners may access the memory device for transmission of those results, but shall reseal the memory device in a secured envelope or container.
- (7) If removal of the memory device is not required, the device may remain sealed in the voting equipment. The serial numbers of the security seals shall be verified and initialed on the inspectors' statement.

Note: The inspectors' statement is form GAB-104. Copies of GAB-104 can be obtained by calling (608) 266-8005 or from the following web address: <http://elections.state.wi.us/docview.asp?docid=14376&locid=47>.

5.05 Post election procedures

- (1) After each election, the clerk or board of election commissioners responsible for storing the voting equipment shall conduct an inspection to ensure all system access points are closed, locked, and secured.
- (2) At each post-election meeting of the municipal board of canvassers, the members shall verify that the tamper-evident serial numbers from the voting equipment have been recorded on five inspectors' statements or 10% of the total statements, whichever is greater, and have been initialed by the chief election inspector. The county board of canvassers shall verify ten inspectors' statements. All inspectors' statements shall be verified by the appropriate board of canvassers in a recount. The board of canvassers shall document actions taken pursuant to this subsection in the meeting minutes.

Note: The inspectors' statement is form GAB-104. Copies of GAB-104 can be obtained by calling (608) 266-8005 or from the following web address: <http://elections.state.wi.us/docview.asp?docid=14376&locid=47>.

5.06 Alternate Security Procedures

- (1) The board recognizes the need for flexibility when implementing the procedures under this chapter, and acknowledges that alternative means may be used to achieve and ensure an acceptable level of electronic voting equipment security.
- (2) The board shall consider requests from counties to implement alternative security procedures as follows:
 - (a) The county clerk, or the municipal clerk or board of election commissioners through the county clerk or county board of election commissioners, shall submit a written request to implement alternative security procedures to the board's director and general counsel.
 - (b) The request shall describe the proposed security procedures in detail and include any documentation such as logs, flow charts, and certification forms.
 - (c) The director and general counsel may approve the use of alternative security procedures for one election cycle.
 - (d) The board shall review the director and general counsel's approval of any alternative security procedures and may authorize continued use of those procedures past the election cycle authorized by the director and general counsel.

Comments Received Regarding Proposed Chapter GAB 5
Absentee Ballot Security Provisions

Members of the ad hoc Chapter GAB 5 Committee and the WI-EAC provided the comments regarding the proposed provisions governing security of absentee ballots and absentee voting materials. The following comments were delivered when G.A.B. staff solicited input regarding the revised absentee ballot security provisions but prior to providing additional background and rationale supporting the proposed language:

1. I think this is reasonable. It allows us to continue with our current procedures and the only thing this really requires is that we put into writing what we are doing. I can support this. Mike Hoppenrath, City of Watertown Clerk
2. Seems reasonable and workable to me. Thanks for changing! Sue Peck, Village of Marshall Clerk/Treasurer
3. Having been a member of that advisory committee and following review of the wording I would be supportive of the proposed rule. It is flexible and it should be a simple task for each municipality to create a simple policy. Bruce P. Strama, Taylor County Clerk
4. Thank you for soliciting our input. My first reaction to the rule as written is that I believe all Clerk's secure absentee ballots and absentee voting materials on a routine basis to the best of their ability.

It is the Clerk's Statutory duty to conduct a fair and equitable Election and securing ballots/voting materials is included with this duty.

I don't believe that there are sufficient fact findings to prove that there is negligence on the Clerk's part with the security of absentee ballots/voting materials during an Election cycle to warrant a written rule. I further believe that if we have a written policy regarding our ballot/voting materials security then we could receive a public records request for this policy and this could compromise the very "security" of these materials that we are trying to protect. The policy would need to include such items as personnel, location of ballots, routine procedures etc. and this information could be used by the public for fraudulent reasons.

With that being said I respectfully ask that if a policy is required by the GAB then I think the GAB should provide the Clerk's with criteria and/or outline of how this task should be accomplished.

I think this would be a huge task for Clerk's and with the time limitations to perform all of our Clerk duties and Election responsibilities it would be nice to have a draft compiled for our use.

Thank you. Sue L. Strands Fond du Lac City Clerk

5. Thank you for the opportunity to respond to the proposed change to the administrative rules regarding security of ballots and electronic voting systems. I am wondering, though, what precipitated the need for the change? Are there cases of fraudulent activities in the clerks' offices or is it just someone's thinking that the clerk could mishandle ballots on purpose? Is there such mistrust of our elected/appointed clerks that the only way we can be sure that elections are run properly is to have a procedure in writing? Honestly, this is getting out of hand. I believe all clerks take an oath to support the constitution of the United States and the constitution of the State of Wisconsin and will faithfully discharge the duties of the office. So Help Me God. Does this oath somehow leave out security of ballots and other election materials?

If each municipal clerk has to submit a written procedure, there will be 1850 different, or slightly different versions. Wouldn't it be better for GAB to outline what they are expecting, something that is workable for all? It seems to me that a guideline would make far more sense than each individual devising a plan.

Again, thank you for soliciting comments. As I stated in the opening paragraph, I am most interested to learn what caused the need for the change. I would appreciate you taking a moment to let me know. Robert Ohlsen, Dane County Clerk

6. I have been a municipal clerk for over 26 years. I have NEVER lost an absentee ballot nor have I ever been accused of such. My office has a cement vault. My absentee ballots have ALWAYS been stored in the cement vault and I am the only one with a key to it. We are adding on to our municipal building and I will be getting a new office. In the new office is a brand new cement vault – bigger than the old one. This is where we keep our election equipment, ballots and absentee ballots – all very secure. Many times, the voter sees me take their ballot to the vault before they even leave my office. They know it's being treated securely.

To have a written procedure on how to handle absentee ballots seems so ridiculous to me. I don't even have a written procedure on how to handle thousands and thousands of dollars that go through my hands at tax collection time. We've never had a problem there either.

To ask us to write a procedure because "*Doing so would help to document that the municipality has given thought to the security of absentee ballots*" is insulting. Of course we've thought about the security of ballots – that's one of the reasons listed for a new and bigger VAULT in my new office.

Like Bob Ohlsen, I'd like to know where this request came from and why. When is it all going to stop ?? What happened to trust? Audrey Rue, Town of Brigham Clerk

Audrey,

Please don't take this rule so personally. This is not to insinuate that anyone is lax or irresponsible. But, just because you are responsible and you take the issue seriously, doesn't mean all clerks take the same precautions or even similar precautions. Some municipalities also don't have the advantage of a cement vault. Interest in the security of elections is high. There is a need to be able to show that election officials at least think about this and written procedures are the best way to do that.

The rule is not meant to offend anyone. Thank you for your comments; they will be taken into consideration just like all the others.

Diane M. Lowe
Lead Elections Specialist, CERA
Government Accountability Board, Elections Division

Diane – I would prefer to answer a questionnaire on the process we use and have GAB determine if there's a problem. This would be similar to the "Handicap Accessibility" questionnaire. At least all responses would be in a consistent format.

To write a procedure really does nothing as you have no proof that one follows it. And like Bob said, you'll get 1800 different procedures that someone is going to have to read.

It is hard not to take this rule personally (tho I won't). But to punish all for the lax attitude of some gets old. Maybe a well written questionnaire would better identify those that don't have a good process in place. Maybe even "surprise audits" looking for the absentee ballots would not be a bad idea – have you thought about that ?

Thank You for your response – I do appreciate it. Audrey Rue, Town of Brigham Clerk/Treasurer

7. Let me start by saying I do not deal with the absentee voting process they way municipal clerks do, so I don't mean to over simplify the GAB's request, but I'm not quite sure why there is so much dispute about this issue. The GAB is not asking anyone to conform to certain procedures, they simply want people to put their procedures in writing. I'm sure we all have "policies" or practices in place for all the things we do and maybe they aren't written down, but how difficult is it to put them to paper.

This doesn't appear to be nearly as difficult as it was to develop the entire ballot/voting equipment security procedures that everyone is required to follow. The GAB is giving everyone plenty of latitude in letting you determine how you handle your absentee voting process--just write down what you do. Am I missing something? Are they asking for more than that? Sue Ertmer, Winnebago County Clerk

8. I am not a clerk so do not have the same perspective as they do, but this seems like reasonable language and reasonable direction to me. Alicia Boehme, Advocacy Specialist. Disability Rights Wisconsin

In order to respond to the questions and concerns received in the above messages, Board staff provided additional information and background regarding the proposed absentee ballot security language, an abbreviated listing of the explanation contained in the body of the Board memorandum. The following additional responses were then received:

1. Nicely put. I believe the suggested rules are flexible enough that all clerks could adhere to them. Kathy Nickolaus, Waukesha County Clerk
2. If GAB can provide a "sample" written policy for absentee voting procedures as mentioned in your memo...it would be greatly appreciated. Marilyn K. Bhend, Town of Johnston Clerk
3. Very well said--thanks for putting it in such plain language for everyone. Sue Ertmer, Winnebago County Clerk
4. This really helps clarify the issue. I was receiving a lot of questions and comments of concern as well. It would have been nice if this information would have been provided to the clerks before they began making comments.

I think we need to all work better towards that goal.

I have some comments I will be forwarded on to you as well - they are reflective of the clarification you just made. I believe if they would have had the full information they may not have been as harsh. Diane J. Hermann-Brown, Sun Prairie City Clerk

To: Michael Haas
From: Paul Malischke
Date: Oct 26, 2009
Subject: Security of Absentee Ballots and Election Management Systems

Page 1 of 2

Absentee Ballot Security

Throughout most of its seven pages, the proposed security rule is very specific. Absentee ballots should also have specific minimum security rules. Please consider adding the following bullet points:

- When voted absentee ballots are unattended for lengthy periods, including overnight, they shall be placed in a locked container that protects against loss or damage.
- The clerk shall institute reasonable security precautions during periods in which absentee voting and processing of returned ballots occurs.
- During transport to the polling place, voted absentee ballots in the certificate envelopes shall be securely sealed in a carrier envelope which has form GAB-125 attached. The persons sealing, transporting to the polling place, and receiving at the polling place shall sign, print their name, and write the time on the GAB-125.
- Failure to follow these security requirements shall not cause an absentee ballot to be ruled as insufficient, improperly executed, or defective, unless otherwise specified by statute.

Comment #1: This does not require maintaining a separate log of these activities.

Comment #2: The transport clause is based upon statute 6.88 (1)

6.88 Voting and recording the absentee ballot.

(1) When an absentee ballot arrives at the office of the municipal clerk, or at an alternate site under s. 6.855, if applicable, the clerk shall enclose it, unopened, in a **carrier envelope which shall be securely sealed** and endorsed with the name and official title of the clerk, and the words "This envelope contains the ballot of an absent elector and must be opened in the same room where votes are being cast at the polls during polling hours on election day or, in municipalities where absentee ballots are canvassed under s. 7.52, stats., at a meeting of the municipal board of absentee ballot canvassers under s. 7.52, stats.".

Comment #3: The current version of GAB-125 contains lines for the clerk's name, signature, time of delivery; and the chief inspector's signature and time received.

Comment #4: GAB shall update GAB-125 carrier envelope to reflect the above additions.

Security of Election Management Systems

Please add specifications for security of the Election Management Systems (EMS). There is nothing in the rule about this crucial part of the election system. According to the EAC glossary, such a system “defines, develops and maintains election databases, performs election definitions and setup functions, format ballots, count votes, consolidates and report results, and maintains audit trails.”

Add the following, which is similar to Iowa rule 22.60 (2).

- For security purposes, computers used to prepare ballots and voting equipment programs or to compile and report election results shall not be used for any other function and shall not be linked to any computer network or to the Internet.
- Access shall be limited to persons specified by the clerk in a written security policy. The level of access shall be included in a written security policy.
- The creation of generic or shared user IDs is specifically prohibited.
- Each user shall be granted only the level of access specifically required by the user’s job.

The ES&S system currently under GAB evaluation has a certificate from the US-EAC that calls for a “Hardened EMS workstation.” During the public demonstration, and at the WI-EAC meeting, this was described as a computer that has no other software, and is not connected to the Internet.

I wrote about this for the May 5, 2008 GAB meeting. At the November 11, 2008 public hearing on this rule, I presented corroborating documentation from the US-EAC, the Election Technology Council, Premier Elections Solutions, and seven states.

The GAB should consider providing implementation assistance to the approximately 25 counties that have EMS systems.

FROM:

Name of Municipal Clerk

Name of Municipality (example: "Town of Smith")

County, **WISCONSIN**

Signature of Municipal Clerk

Date

Time of delivery to polling place
(indicate a.m. or p.m.)

THIS ENVELOPE CONTAINS THE BALLOTS OF ABSENTEE ELECTORS AND MUST BE OPENED IN THE SAME ROOM WHERE VOTES ARE BEING CAST AT THE POLLS DURING POLLING HOURS ON ELECTION DAY OR, IN MUNICIPALITIES WHERE ABSENTEE BALLOTS ARE CANVASSED UNDER S.7.52, STATS., AT A MEETING OF THE MUNICIPAL BOARD OF ABSENTEE BALLOT CANVASSERS UNDER S.7.52, STATS.

TO:

Chief Inspector

(signature of chief inspector receiving absentee ballots)

Date

Time ballots received at
polling place (indicate
a.m. or p.m.)

Name of Municipality, Wisconsin

Name of Polling Place

Address of Polling Place

Wards, Aldermanic District(s)

From: Kennedy, Kevin - GAB [Kevin.Kennedy@Wisconsin.gov]
Sent: Thursday, February 21, 2008 11:03 AM
To: john@washburnresearch.org; Dunst, George - GAB; Robinson, Nathaniel E - GAB
Cc: Knies, Helmut M - WHS; malischke@yahoo.com; Rdreps@gklaw.com; wise@wispolitics.com; Hein, Ross D - GAB
Subject: RE: Proposed Rule EB 5

Mr. Washburn,

Thank you for sending your information. This matter will not be discussed at the February 25, 2008 Government Accountability Board meeting. We have decided to put this matter on the March 26, 2008 meeting so we can address the comments received from municipal clerks along with your concerns and those raised by Mr. Malischke at our January meeting. We will share with you any information we receive. Under separate cover I will provide you and Mr. Malischke with a summary of the clerks' comments that Ross has put together.

We will also follow up with you as we develop a proposal for the March meeting.

When contacting us please send your information to Ross Hein with copies to Nat Robinson and myself. You do not need to copy Diane Lowe or George Dunst.

Thank you.

Kevin J. Kennedy
Director and General Counsel
Wisconsin Government Accountability Board
608-266-8005
kevin.kennedy@wi.gov

From: John Washburn [mailto:john@washburnresearch.org]
Sent: Thursday, February 21, 2008 6:22 AM
To: Dunst, George - GAB; Kennedy, Kevin - GAB
Cc: Knies, Helmut M - WHS; malischke@yahoo.com; Rdreps@gklaw.com; wise@wispolitics.com; Lowe, Diane - GAB
Subject: Proposed Rule EB 5

Dear Mr. Dunst and Kennedy:

Please forward this written statement and attachments to the Government Accountability Board for the inclusion in the February 25, 2008 meeting.

Please find attached the proposed administrative rules EIBd Chapter 5. I call your attention to

I call your attention to paragraph 5.01(5) of the proposed administrative rules which reads:
Security of the ballots and the ballot container shall be maintained as provided under s. 7.51, Stats., until destruction of the ballots is conducted under s. 7.23, Stats. Destruction of the ballots under s. 7.23, Stats., requires shredding, incineration, or some other form of obliteration of the ballots.

First, this proposed rule brazenly misstates the law. The applicable portions of WI Stats 7.23 read [emphasis mine]:

- 7.23(1)(am) Unused ballots **may be** discarded or destroyed no earlier than the day after the latest day for the filing of a petition for a recount under s. 9.01 for any office on the ballots.
- .23(1)(f) Except as authorized in pars. (b) and (g), **ballots**, applications for absentee ballots, registration forms, or other records and papers requisite to voting at any federal election, other than registration cards, **may be** destroyed after 22 months.
- 7.23(1)(h) Ballots **may be** destroyed 30 days after any election.

The proposed administrative rule should read:

Security of the ballots and the ballot container shall be maintained as provided under s. 7.51, Stats., until destruction of the ballots is conducted under s. 7.23, Stats. If the custodian defined under s.7.24 of the ballots decides to destroy the ballots, then the destruction of the ballots authorized under s. 7.23, Stats., requires shredding, incineration, or some other form of obliteration of the ballots.

The administrative rule as proposed by Mr. Dunst serves no compelling state interest and eviscerates the vital public interest under s. 19.23. WI Stats. 19.23(1) reads:

19.23(1) Any public records, in any state office, that are not required for current use may, in the discretion of the public records board, be transferred into the custody of the historical society, as provided in s. 16.61.

Unless Mr. Dunst is making the argument that election records are not open records, then s. 19.23 applies to ballots as well as to the minutes of the Government Accountability Board. As you and Mr. Dunst are aware I have sought the preservation of election ballots over the past two years for any of the following three objectives:

- 1) Academic study of optical and infrared scanners using actual ballots marked by actual voters as proposed by staff the Askew School of Public Administration of the Florida State University. (The emails from August 2006 and the complaint before the Joint Committee are attached)
- 2) Transfer of the November 2, 2004 election records (including ballots) to the Wisconsin Historical Society because of the historic significance of that particular election.
- 3) Academic study of the feasibility of the sort and weight method of counting ballots. (See attached paper: How to Count Thousands of Paper Ballots by Hand). Actual empirical data using real ballots marked by real ballots would be a useful study.

The administrative rule as proposed by Mr. Dunst thwarts each of endeavors and destroys the significant public interest served by the preservation of election records for historical and academic study such as these. This overstepping of the statutory bounds was the subject of a complaint before the Wisconsin Legislature's Joint Committee for Review of Administrative Rules when Ms. Lowe of the WI SEB mis-informed every municipal and county clerk in the state via a mass email. At that time it was decided to table the complaint because the WI SEB was to be dissolved and the new Government Accountability Board would be reviewing these administrative rules and re-issuing them under the authority of the GAB. I was informed by the staff of Assemblyman LeMahieu to take the matter up with the GAB when they promulgate the rules on ballot retention and destruction. That time is now.

Again I would urge the GAB to bring the proposed administrative within the scope of the statutes and to preserve the significant public interest provided by the selective preservation of election ballots. Administrative rule EIBd 5.01(5) should be amended to read:

Security of the ballots and the ballot container shall be maintained as provided under s. 7.51, Stats., until destruction of the ballots is conducted under s. 7.23, Stats. If the custodian defined under s.7.24 of the ballots decides to destroy the ballots, then the destruction of the ballots authorized under s. 7.23, Stats., requires shredding, incineration, or some other form of obliteration of the ballots.

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

P.S.

The studies proposed by FSU School of Public Administration are:

- 1) A survey of how actual voters mark real ballots; e.g. types of marks used and kinds of marking instruments used.
- 2) How do different marks (e.g. X's, Checks, filled circles, donuts, etc.) affect the accuracy of scanners?
- 3) How accurately are ballots tallied if marks used are the same but the inks and marking instruments vary?
- 4) Given a same set of voter marked ballots, how do changes in the calibration settings of the scanner affect the accuracy of the scanner; i.e. with the same ballots and different calibrations, how different are the machine tallied results?
- 5) How is accuracy affected given the same calibration but with ballots of different water content; e.g. What is the effect of humidity on ballot scanning accuracy.
- 6) How badly damaged may the edge of ballot be and still not jam? This is because unlike Wisconsin, many states require unused ballots be track, counted and reconciled. Because of this the ballots are numbered on a removable, perforated stub. How fine and what are the specifications needed for the perforation in order to not interfere with the proper operation of the scanner?
- 7) How badly damaged and or stained (e.g. flooding or coffee) can a ballot be and still be read accurately by a scanner?

Surprisingly, after thirty years of use in the field none of these property of optical scanners have been tested outside the context of an actual election. I think it is in the public interest that such test be conducted sometime which is NOT an actual election.

The historical significance of the November 2, 2004 ballots exists if for no other reason than that election is still part of an open investigation by a Joint Task Force organized by US Attorney Steven Biskupic and then DA Michael McCann. The task force has promised the City of Milwaukee Election Commission that the investigation will close and a final report of the findings of the Joint Task force will be published this year.

No virus found in this outgoing message.

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Version: 7.5.516 / Virus Database: 269.20.8/1289 - Release Date: 2/20/2008 10:26 AM

No virus found in this incoming message.

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Version: 7.5.516 / Virus Database: 269.20.9/1292 - Release Date: 2/21/2008 4:09 PM

From: John Washburn [john@washburnresearch.org]
Sent: Thursday, October 01, 2009 6:22 PM
To: Haas, Michael R - GAB
Cc: Magney, Reid - GAB; Kennedy, Kevin - GAB; Robinson, Nathaniel E - GAB; Falk, Shane - GAB
Subject: Comment on 5.01(8)

Attachments: Proposed Rule EB 5-20080221.pdf

Dear Mr. Haas:

I see the meeting materials are up and the staff of the GAB **again** not included my comments on GAB rule501(8) for presentation to the Board for discussion. ([google the GAB site for Brazenly](#))

In order to reiterate my past comments on proposed rule GAB 5.01(5) [now proposed rule GAB 5.01(8)], I have attached an email from February 2008 on the topic. I was informed this written comment would be included in the discussion materials for an upcoming meeting which discusses GAB 5.

That has yet to happen.

The staff has failed to include this February email on the topic of GAB 5.01(8) [then GAB 5.01(5)] as part of the meeting materials for EACH of the following meetings where GAB 5 was discussed:

- May 5, 2008
- November 11, 2008, and now the meeting for
- October 5, 2009.

Since, the staff has failed to present this material to the Board for more than one year (and for three relevant meeting), I would ask that you distribute the attached February 2008 email as an addendum to the meeting materials for the October 5, 2009.

A year is plenty of time to present relevant materials to the Board.

Further, presenting to the Board with only the staff position on a matter and suppressing opposing comments deceives the Board by denying them the information upon which to make a sound decision. Please and finally include this opposing comment within the meeting materials for the meeting this Monday.

As for the inconvenience an addendum represents, it is an inconvenience of your own design.

In Liberty,
 John Washburn

-----Original Message-----

From: Haas, Michael R - GAB [mailto:Michael.Haas@wisconsin.gov]

Sent: Tuesday, September 29, 2009 1:52 PM

To: 'john@washburnresearch.org'

Cc: Magney, Reid - GAB; Kennedy, Kevin - GAB; Robinson, Nathaniel E - GAB; Falk, Shane

- GAB
Subject: RE: August 2007 complaint

Mr. Washburn:

I am writing for two reasons. First, to get back to you regarding the outstanding complaint you asked us to track down, which was the subject of the referral from the Attorney General's office last year. I am attaching an email chain between you and Elections Division Administrator Nathaniel Robinson verifying that you had withdrawn the complaint you filed with the G.A.B.. pertaining to the actions of the Washington County Clerk. We are providing the Attorney General's office with our file documents. I believe this resolves your inquiries about the complaints you filed with our office, but please let me know if you have any additional questions regarding their status.

Second, as you may have already seen in the agenda packet for next week's meeting, the Board will be finalizing language for our proposed new version of Chapter 5 of the administrative rules related to security of ballots and electronic voting systems. I am attaching our memo to the Board and the proposed rule, which includes new language related to absentee voting materials. After considering comments at the public hearing and subsequently, Board staff is recommending more specific clarification of the rules regarding security of absentee voting materials. While this proposed rule is in the last stages prior to submission to the Legislature, we are soliciting feedback regarding this new language. If you have any input you would like to share prior to the meeting on Monday, we can take it into consideration in our presentation to the Board. You may direct any comments to my email address.

As always, we appreciate your interest in issues involving the Government Accountability Board.

Mike Haas

Michael Haas
Staff Counsel
Wisconsin Government Accountability Board
608-266-0136
michael.haas@wi.gov

E-mail message checked by Spyware Doctor (6.1.0.447) Database version: 6.13370
<http://www.pctools.com/en/spyware-doctor-antivirus/>

No virus found in this incoming message.

Checked by AVG - www.avg.com

Version: 8.5.409 / Virus Database: 270.13.115/2403 - Release Date: 09/29/09 17:56:00

State of Wisconsin \ Government Accountability Board

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<http://gab.wi.gov>



JUDGE MICHAEL BRENNAN
Chairperson

KEVIN J. KENNEDY
Director and General Counsel

MEMORANDUM

DATE: For the November 9, 2009 Meeting

TO: Members, Wisconsin Government Accountability Board

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

Prepared and Presented by:

Shane W. Falk, Staff Counsel

SUBJECT: Status Report on Pending Administrative Rule-Making

This Status Report is for informational purposes only and no immediate action is requested. Following this cover page is a brief status of pending rule-making resulting from past actions of the Government Accountability Board. All administrative rules identified in this summary reference permanent rule-making. Please note that there are several additional rules not addressed in this status report that the Board has affirmed, but for which the staff has identified the need for additional review and revision. The staff will present recommendations at subsequent meetings regarding those involved rules.

STATUS REPORT ON PENDING ADMINISTRATIVE RULE-MAKING

Revise 1.10

Relating to: Registration by Nonresident Committees and Groups

Status: Board original action on May 5, 2008. Scope statement approved at August 10, 2009 meeting, which must be submitted to the Legislative Reference Bureau and then can begin rule-making process to revise title of 1.10. Likely will complete with 30 day notice rule-making, which will not require a public hearing before submittal to legislature (unless someone petitions for a hearing.)

Revise 1.15

Relating to: Filing Reports of Late Campaign Activity (Postmarked Reports)

Status: Board original action on March 30, 2009. Scope statement approved at August 10, 2009 meeting, which must be submitted to the Legislative Reference Bureau and then can begin rule-making process to remove two references to postmarked reports. Likely will complete with 30 day notice rule-making, which will not require a public hearing before submittal to legislature (unless someone petitions for a hearing.)

Revise 1.20

Relating to: Treatment and Reporting of In-Kind Contributions

Status: Board original action on May 5, 2008. Scope statement approved at August 10, 2009 meeting, which must be submitted to the Legislative Reference Bureau and then can begin rule-making process to remove a reference to an old form, Schedule 3-C, that is no longer necessary due to the implementation of CFIS. Likely will complete with 30 day notice rule-making, which will not require a public hearing before submittal to legislature (unless someone petitions for a hearing.)

Create 1.21

Relating to: Treatment of Joint Account Contributions

Status: Board original action on June 9, 2008. Scope statement approved at August 10, 2009 meeting, which must be submitted to the Legislative Reference Bureau and then can begin rule-making process to create a rule addressing treatment of contributions from joint accounts. Will return to Board with draft rule. Likely will complete with 30 day notice rule-making, which will not require a public hearing before submittal to legislature (unless someone petitions for a hearing.)

Revise 1.26

Relating to: Return of Contribution

Status: Board original action on May 5, 2008. Scope statement approved at August 10, 2009 meeting, which must be submitted to the Legislative Reference Bureau and then can begin rule-making process to correct grammatical error. Likely will complete with 30 day notice rule-making, which will not require a public hearing before submittal to legislature (unless someone petitions for a hearing.)

Revise 1.28

Relating to: Scope of Regulated Activity; Election of Candidates

Status: Board original action January 15, 2009. Legislative Council review complete. Public hearing held on March 30, 2009. Legislative Report complete and filed with legislature, but was recalled by the Board pending the Supreme Court decision for Citizens United v. FEC. Supplemental oral arguments for Citizens United v. FEC were held by the U.S. Supreme Court on September 9, 2009 and a decision is anticipated before the end of 2009.

Revise 1.43

Relating to: Referendum-related activities by committees; candidate-related activities by groups.

Status: Board original action on May 5, 2008. Scope statement drafted for August 10, 2009 meeting and then can begin rule-making process to remove 1.43(2)(a) as the law no longer requires listing all candidates supported and s. 11.05(4), Stats., allows one registration statement. Likely will complete with 30 day notice rule-making, which will not require a public hearing before submittal to legislature (unless someone petitions for a hearing.)

Revise 1.85 and 1.855

Relating to: Conduit Registration and Reporting Requirements; Contributions from Conduit Accounts

Status: Board original action on October 6, 2008. Scope statement approved at August 10, 2009 meeting, which must be submitted to the Legislative Reference Bureau and then can begin rule-making process to harmonize certain portions of these rules with current law and new CFIS system. Likely will complete with 30 day notice rule-making, which will not require a public hearing before submittal to legislature (unless someone petitions for a hearing.)

Create 1.90

Relating to: MCFL Organization Registration and Reporting Requirements

Status: Board original action August 27, 2008. Must draft scope statement and then begin rule-making process to codify formal opinions regarding registration and reporting requirements of MCFL organizations. Will return to Board with draft rule. Will likely have to hold public hearing, so following submittal to Legislative Council will hold public hearing and then submittal to legislature before publication.

Revise Chapter 3

Relating to: Voter Registration, HAVA Checks

Status: Board original action August 27, 2008. Must draft scope statement and then begin rule-making process to make further revisions to Chapter 3 regarding voter registration and HAVA checks. Likely will complete with 30 day notice rule-making, which will not require a public hearing before submittal to legislature (unless someone petitions for a hearing.)

Repeal and Recreate Chapter 4

Relating to: Election Observers

Status: Board original action on August 27, 2008. Final draft of Chapter 4 approved March 30, 2009 based upon comments from emergency rule proceedings, but must submit scope statement to the Legislative Reference Bureau before submitting final version to Legislative Council for review. Thereafter, will hold public hearing and then submittal to legislature before publication.

Repeal and Recreation of Chapter 5

Relating to: Security of Ballots and Electronic Voting Systems

Status: Board original action on May 5, 2008. Legislative Council review complete. Public Hearing held November 11, 2008 and some additions may be necessary. The Legislative Report for Chapter 5 will be submitted after the Board considers an additional provision to the chapter at the October 5, 2009 and now November 9, 2009 meetings. These additions resulted from public comments. Once the additions are approved by the Board, the Legislative Report will be submitted to the legislature. Thereafter, publication.

Revise 6.02

Relating to: Registration Statement Sufficiency.

Status: Board original action on March 30, 2009. Scope statement submitted for publication. Draft rule must be presented to Board and then can continue rule-making process to clarify sufficiency standards. Likely will complete with 30 day notice rule-making, which will not require a public hearing before submittal to legislature (unless someone petitions for a hearing.)

Revise 6.03

Relating to: Assistance by Government Accountability Board Staff

Status: Board original action on March 30, 2009 Must draft scope statement and then begin rule-making process to update statutory citations with new statutes post 2007 Act 1. Likely will complete with 30 day notice rule-making, which will not require a public hearing before submittal to legislature (unless someone petitions for a hearing.)

Revise 6.04

Relating to: Filing Documents by FAX or Electronic Means

Status: Board original action on March 30, 2009. Scope statement submitted for publication. Draft rule must be presented to Board and then can continue rule-making process to clarify electronic filing requirements. Likely will complete with 30 day notice rule-making, which will not require a public hearing before submittal to legislature (unless someone petitions for a hearing.)

Revise 6.05

Relating to: Filing Campaign Finance Reports in Electronic Format

Status: Board original action on March 30, 2009. Scope statement published. Legislative Council Report back June 25, 2009. Need to make revisions suggested by Legislative Council and publish Notice of Hearing. Thereafter, submittal to legislature.

Revise Chapter 7

Relating to: Approval of Electronic Voting Equipment

Status: Board original action on May 5, 2008. Division Administrator Robinson establishing a committee to make recommendations. Must draft scope statement and then begin rule-making process. Will require public hearing, so following submittal to Legislative Council will have public hearing before submittal to legislature.

Revise 9.03

Relating to: Voting Procedures for Challenged Electors

Status: Board original action on May 5, 2008. Must draft scope statement and then begin rule-making process to remove a reference to lever voting machines. Likely will complete with 30 day notice rule-making, which will not require a public hearing before submittal to legislature (unless someone petitions for a hearing.)

Creation of Chapter 13

Relating to: Training Election Officials

Status: Board original action on January 28, 2008. Rule in draft form and ready for submittal to Legislative Council for review. Board approved draft rule at the August 10, 2009 meeting, so must now submit to Legislative Council for review. Thereafter, if not doing 30 day notice rule-making, will need public hearing and then submittal to legislature before publication.

Repeal 21.01, 21.04 and Revise 20.01

Relating to: 21.01—filing of all written communications and documents intended for former Ethics Board

21.04—transcripts of proceedings before former Ethics Board

20.01—procedures for complaints before former Elections Board

Status: Board original action on January 28, 2008. Legislative Council review complete. No public hearing necessary as processing as 30 day notice rule-making and no petition for public hearing was filed. These rules are ready for completion of legislative report and submittal to legislature. Thereafter, publication.

Creation of Chapter 22

Relating to: Settlement of Certain Campaign Finance, Ethics, and Lobbying Violations

Status: Board original action on June 9, 2008. Final draft of Chapter 22 approved March 30, 2009. Submitted to Legislative Council and report has been returned. Revisions made and Notice of Public Hearing published. Public Hearing held July 28, 2009 and reviewed by Board at the August 10, 2009 meeting. Must complete submission to legislature before publication.

ITEM G

Legislation

State of Wisconsin\Government Accountability Board

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



KEVIN J. KENNEDY
Director and General Counsel

MEMORANDUM

DATE: For the November 9, 2009 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

SUBJECT: Significant Legislative Activity

Introduction

The Legislative Status Report provides a tracking of the key pieces of legislation monitored by the agency staff. This memorandum discusses recent legislative activity on items of particular note for the agency.

2009 Assembly Bill 65, 2009 Senate Bill 40

This legislation providing for the public financing of campaigns for Supreme Court Justice is scheduled for a hearing before the Legislative Joint Committee on Finance on Tuesday, November 2, 2009. The Assembly Bill was voted out of Committee with "passage recommended" on a 4-3 vote. The Senate Bill was voted out of Committee with "passage recommended" on a 3-2 vote.

Under current law a candidate for Supreme Court Justice may be eligible for grant of up to \$97,031 for the general election. To qualify the candidate must win nomination in a primary if required, raise a minimum of \$ in contributions, not loans of \$100 or less from individuals between July 1st preceding the election and the date of a primary if required.

Under the proposed legislation, a candidate for the office of justice of the supreme court may qualify for public financing from the Democracy Trust Fund to finance a campaign in a primary or election by receiving qualifying contributions from at least 1,000 separate contributors who are electors of this state in amounts of not less than \$5 nor more than \$100 in an aggregate amount of at least \$5,000 but not more than \$15,000. A candidate who accepts public financing may also accept "seed money" contributions from Wisconsin electors in amounts of \$100 or less, subject to aggregate limitations, and may contribute personal funds in specified amounts during

specified periods. In order to qualify for a public financing benefit for the primary, a candidate at the spring primary must have an opponent who qualifies to have his or her name appear on the ballot at the primary, and in order to qualify for a public financing benefit for the spring election, a candidate at the election must have an opponent who qualifies to have his or her name appear on the ballot at the election. A candidate who accepts a public financing benefit may not accept any contributions other than qualifying and seed money contributions and contributions from personal funds within the limitations permitted. Public financing benefits for eligible candidates are \$100,000 in the spring primary and \$300,000 in the spring election.

The source of funding for the Democracy Trust Fund created in the legislation is \$2 from an increased voluntary income taxpayer check off, from the current \$1 to \$3. If the income tax check off does not generate sufficient funds for the Democracy Trust Fund, the balance needed to fund Supreme Court campaigns is drawn from GPR funding.

2009 Senate Bill 236

This legislation permits campaign finance registrants to file a paper campaign finance report rather than filing in an electronic format. Under current law, any registrant with campaign receipts of more than \$20,000 in a campaign period – 2 years in an assembly campaign, 4 years in a state senate campaign – is required to file reports in an electronic format specified by the G.A.B. This legislation is a response to the frustration experienced by candidates with the CFIS tool. Supporters argue many volunteer treasurers will not be computer savvy enough to file campaign finance reports electronically and this would discourage prospective candidates from running for public office. The down side is registrants raising a large amount of money, with skilled staff would not be required to provide campaign finance information electronically. It would be difficult to get the information available to the public in a searchable format in a timely manner. The legislation was reported out of the Senate Committee with “passage recommended” on a 5-0 vote.

2009 Assembly Bill 494

Representative Corey Mason has introduced legislation that would permit campaign finance registrants subject to the requirement to file electronic reports to use either a web-based system developed by the G.A.B. or file their report in a delimited electronic format such as an Excel spreadsheet. This legislation is also a response to the frustration experienced by candidates with the CFIS tool. It has been referred to the Assembly Committee on Elections and Campaign Reform.

Military and Overseas Voter Empowerment (MOVE) Act

On October 28, 2009, President Obama signed the National Defense Authorization Act for Fiscal Year 2010, H.R. 2647. The legislation contains the provisions of the Military and Overseas Voter Empowerment (MOVE) Act. MOVE is largely an amendment to the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) to address a number of perceived problems with overseas absentee voting. Key among those perceived problems is that military and overseas voters are disenfranchised by lengthy mailing delays. The MOVE Act requires states to

take a number of steps to address these problems including providing the option of electronic methods to transmit and receive election materials overseas (not including voted ballots).

The MOVE Act, S. 1415 was originally introduced by Senator Charles Schumer (D-NY) on July 8, 2009, in response to recent studies¹ which showed that military and overseas voters were experiencing significant challenges voting from overseas ranging from never receiving a ballot to having their ballots rejected at the polling place or arriving after the applicable deadline. The bill quickly gained momentum and was incorporated into the broader National Defense Authorization Act for Fiscal Year 2010, H.R. 2647, as amendment SA 1764 on July 23, 2009, and passed both houses of Congress. The law is effective for the next set of Federal elections in 2010.

The MOVE Act requires a number of significant changes be implemented by the State to better accommodate UOCAVA voters:

1. Electronic Transmission of Voting Materials

The MOVE Act requires that all states provide an electronic transmission option to UOCAVA voters for the following materials: (1) voter registration, (2) absentee ballot applications, and (3) the absentee ballot itself. Wisconsin currently permits electronic transmission in all of the above situations. However, the statutes do not currently require election officials to honor the voter's request. Wisconsin would need to pass legislation that would require election officials to send these materials to the elector electronically if so requested.

2. Electronic Means of Communication with Electors

The Act also requires that the State designate an email address and/or fax number where requests for the above voting materials can be received. This email address and/or fax number needs to be printed on all informational and instructional materials that accompany the absentee balloting materials. Like all the requirements of the MOVE Act, this responsibility can be delegated to the local jurisdictions that actually administer absentee voting. There is also the option for each jurisdiction to list its own contact information rather than having a central contact point with the State. This requirement is likely best addressed through administrative rule-making rather than statutory change.

3. Indication of Preference to Receive Voting Materials by Electronic Means

To facilitate the use of the above means of electronic communication, the MOVE Act requires that the State establish a procedure by which the UOCAVA elector can indicate their preference to receive their materials by either mail or electronic methods. The simplest way to accomplish this objective would be modify the Application for Absentee Ballot to include a place for the elector to indicate if they wish to have their ballot sent to them via fax or email and to provide the associated email address or fax number. Another option to indicate a preference for electronic communication earlier in the process would be to create a web-based form that an

¹ PEW Center on the States, *No Time to Vote*, (January 2009); US Senate Rules Committee, *Hearing on Problems for Military and Overseas Voters*, (May 2009).

elector could fill out to request either a voter registration form or absentee ballot application be sent to them electronically.

4. Privacy Protections for Electors

The MOVE Act requires that the “identity and other personal data” of a UOCAVA elector be protected throughout the absentee process. H.R. 2647 § 584(2). This requirement is in direct conflict with Wis. Stat. §6.89 which requires the name, address and date of absentee application of all absent electors be placed on a list and available to the public. To comply with the MOVE Act Wisconsin would need to pass legislation to amend §6.89 to make UOCAVA absentee voters confidential.

5. 45-Day Transmission Deadline for Absentee Ballots

One of the most significant requirements of the MOVE Act is that absentee ballots be transmitted (via mail or electronic means) no later than 45 days before the election to all UOCAVA electors who have a valid absentee application on file for that election. Wisconsin law currently requires that absentee ballots be transmitted no later 30 days before a September primary or November general election and no later than 21 days before all other elections. Due to the date of Wisconsin’s primary election and the subsequent ballot generation window required, it is not possible to comply with this requirement unless Wisconsin’s primary was changed to an earlier date.

However, the MOVE Act does provide for an exemption from this requirement in the event that the State’s primary election date prohibits the State from complying. This exemption is not automatic however, and must be applied for before each election. This application for exemption must also specifically detail the steps being taken to ensure that UOCAVA electors will be able to receive ballots and submit them back to the State in the time allowed. Furthermore, the exemption is at the discretion of the Presidential designee, so there is no guarantee that Wisconsin would receive the exemption for any given election.

6. Tracking Absentee Ballots

Another major requirement of the MOVE Act is that the State provide a free-access system by which a UOCAVA elector may determine whether their absentee ballot has been received by the appropriate State election official. The MOVE Act is not unique in this requirement. The Absentee Ballot Track and Confirm Act, H.R. 2510, is also pending which would require a similar tracking system for all absentee ballots.

A possible solution would be to modify Wisconsin’s current public access system, Voter Public Access (VPA), to provide this information. However, not all absentee ballots are tracked in the Statewide Voter Registration System (SVRS), which is the source for the data provided on VPA. Therefore, in order to comply with this requirement, the G.A.B. would also need to require election officials to track all absentee ballots through SVRS. In addition to the technical resources required to modify VPA, this possible solution would also require significant training to SVRS users who are not currently tracking absentee ballots through the system.

An alternative would be to circumvent SVRS entirely and create a separate web-based tracking system for absentee ballots.

7. Expanded Use of the Federal Write-In Absentee Ballot

Currently, the Federal Write-In Absentee Ballot (FWAB) is only accepted for the general election. The MOVE Act seeks to expand that to include special, primary and run-off elections for Federal office. This would require a legislative change to Wis. Stat. §6.25(1) which currently only allows the FWAB at the general election.

8. Elimination of Certain Technical Absentee Requirements

The MOVE Act also seeks to remove some of the more onerous technical requirements imposed on overseas voters. The MOVE Act specifically prohibits rejection of voter registrations, absentee ballot applications, or ballots for failure to meet the following requirements: (1) Notarization requirements, (2) Restrictions on paper type, weight, or size, and (3) Restrictions on envelope type, weight or size.

It is the first category that may apply to Wisconsin. Wisconsin is one of only eight states that currently require a witness or notary for absentee voting. While Wisconsin does not actually require a notary, just an adult U.S. Citizen witness, it seems possible that this is the sort of requirement that the MOVE Act seeks to prohibit. If so, Wisconsin would need to pass legislation to either specifically exempt UOCAVA voters from the witness requirement, or possibly eliminate the witness requirement entirely. Staff has received mixed messages about Congressional intent on the witness/notary distinction.

In a recent discussion with a representative of the Federal Voting Assistance Program (FVAP) in the Department of Defense, I was advised the provision does not apply to the witness requirement. FVAP is working on a complete legal analysis of the legislative requirements. Once we have the opportunity to review the analysis we can determine if this issue needs to be addressed legislatively.

9. UOCAVA Statistics

To assist future study of UOCAVA voting the MOVE Act also requires that States track the number of ballots transmitted and received from UOCAVA electors. This provision should not require any further changes for Wisconsin as that data is already captured through the Election Voting and Registration Statistics Report (GAB-190). However, the Act does allow for the Presidential Designee to require "such other data as determined appropriate" so there may be a need in the future to update the GAB-190 to capture that additional data.

10. Elimination of the Use of a Single Application for All Subsequent Elections

Currently UOCAVA requires that a State provide an absentee ballot to an elector for two consecutive general elections subsequent to the original application if the elector so requests. This often led to absentee ballots being sent to old addresses, particularly for military voters who

were frequently redeployed and did not update their address with local election officials. This requirement is repealed in the MOVE Act.

11. State Election Administration Plan Updates

As part of on-going implementation and review, the MOVE Act requires that States include in their State Plan how the State will be addressing the requirements of the MOVE Act. The G.A.B. included language in our State Plan addressing the MOVE Act's requirements. When the Plan was approved by the Joint Committee on Finance, Wisconsin met this requirement.

The MOVE Act conflicts with several existing Wisconsin statutory provisions and election administration business practices. In order to comply with the MOVE Act, the G.A.B. would have to request legislative action, modify existing procedures, promulgate administrative rules, modify the Voter Public Access system and apply for a waiver from some of MOVE's timing provisions before each federal election. These actions will be necessary before the Federal elections of 2010.

LEGISLATIVE STATUS REPORT

November 9, 2009 Meeting

Assembly Bills

Assembly Bill 2

Introduced by Representatives Pocan, Zigmunt, Barca, Benedict, Berceau, Bernard Schaber, Black, Clark, Danou, Fields, Grigsby, Hraychuck, Hubler, Jorgensen, Krusick, Mason, Molepske Jr., Nelson, Parisi, Pasch, Pope-Roberts, Radcliffe, Richards, Roys, Seidel, Sheridan, Shilling, Sinicki, Smith, Van Akkeren, A. Williams and Young. Cosponsored by Senators Wirch, Coggs, Hansen, Lassa, Lehman, Miller, Robson and Sullivan.

Relating to: state procurement of contractual services.

Status: Passed the Assembly. Referred to Senate Committee on Small Business, Emergency Preparedness, Technical Colleges, and Consumer Protection. Public hearing held on 4/1/09. Senate amendment 1 recommended by committee.

Assembly Bill 39

Introduced by Representatives Kessler, Soletski, Pocan, Hubler, Turner, Richards, A. Williams, Hebl, Berceau, Roys, Black, Grigsby, Barca and Pasch. Cosponsored by Senators Lehman, Coggs and Plale.

Relating to: the authorization for municipalities to establish satellite stations for purposes of conducting voter registration and absentee voting and granting rule-making authority.

Status: Referred to Assembly Committee on Elections and Campaign Reform. Public Hearing on 4/21/09.

Assembly Bill 42

Introduced by Representatives Gottlieb, Kaufert, Ballweg, Bies, Brooks, Cullen, Davis, Gunderson, Lothian, Meyer, Mursau, Murtha, Nass, Nygren, A. Ott, Petrowski, Roth, Strachota, Van Roy and Ripp. Cosponsored by Senators Harsdorf, Olsen, Cowles and Schultz.

Relating to: acceptance of certain political contributions by certain elective state officials, officials elect, and committees and providing a penalty.

Status: Referred to Assembly Committee on Elections and Campaign Reform. Assembly refused to suspend rules to withdraw from committee.

Assembly Bill 62

Introduced by Representatives Kessler, Soletski, Hubler, Cullen, Hilgenberg, Black, Berceau, Benedict, Danou, Pope-Roberts, Hixson and Parisi. Cosponsored by Senators Sullivan, Risser and Lehman.

Relating to: venue for elections and ethics enforcement actions.

Status: Referred to Assembly Committee on Judiciary and Ethics. Public hearing held on 4/21/09. Passage recommended by committee on Judiciary and Ethics. Referred to Assembly Committee on Rules.

Assembly Bill 63

Introduced by Representatives Dexter, Hebl, Cullen, Zigmunt, Sherman, Barca, Hintz, Black, Hilgenberg, Mason, Toles, Hixson, Pope-Roberts, Pocan and Kaufert. Cosponsored by Senators Erpenbach, Kreitlow, Ellis, Vinehout, Hansen, Risser, Lehman, Holperin, Harsdorf, Carpenter, Cowles and Robson.

Relating to: the scope of regulated activity under the campaign finance law.

Status: Referred to Assembly Committee on Elections and Campaign Reform. Assembly substitute amendment 1 offered by Representative Dexter. Public hearing held on 5/27/09. Representative Smith added as a coauthor.

Assembly Bill 65

Introduced by Representatives Hintz, Hilgenberg, Smith, Garthwaite, Benedict, Roys, Hebl, Staskunas, Turner, Parisi, Cullen, Jorgensen, Richards, Zepnick, Pocan, Pope-Roberts, Clark, Shilling, Hubler, Black, Berceau, Grigsby, Molepske Jr. and Kessler. Cosponsored by Senators Kreitlow, Taylor, Lehman, Erpenbach, Miller, Risser, Lassa, Hansen, Wirch, Vinehout, Schultz and Sullivan.

Relating to: public financing of campaigns for the office of justice of the Supreme Court, making appropriations, and providing penalties.

Status: Referred to Assembly Committee on Elections and Campaign Reform. Public hearing held on 5/27/09. Senator Ellis added as a cosponsor. Referred to Assembly Committee on Joint Finance.

Assembly Bill 75

Introduced by Joint Committee on Finance, by request of Governor Doyle.

Relating to: state finances and appropriations, constituting the executive budget act of the 2009 Legislature.

Status: Referred to the Joint Committee on Finance, the Joint Survey Committee on Tax Exemptions, and the Joint Survey Committee on Retirement Systems. Public hearings held by Joint Committee on Finance. Assembly substitute amendment 1 offered. Passage as amended recommended by Joint Committee on Finance. Referred to calendar on 6/08/09. Passed with partial veto and published on 6/29/09. 2009 Wisconsin Act 28. Partial vetoes referred to Assembly Committee on Rules.

Assembly Bill 104

Introduced by Representatives Spanbauer, Ballweg, Bies, Gunderson, Kaufert, Kestell, Petersen, Ripp, Strachota, and Townsend. Cosponsored by Senators Harsdorf, Lehman, Cowles, Olsen, Kedzie, Leibham and Hopper.

Relating to: reporting of information by nonresident registrants under the campaign finance law.

Status: Referred to Assembly Committee on Elections and Campaign Reform.

Assembly Bill 117

Introduced by Representatives Kaufert, Bies, Brooks, Roth, Van Roy, Townsend, Lothian and Mursau. Cosponsored by Senators Cowles, Ellis and A. Lasee.

Relating to: withholding of pay of certain state elected officials and prohibiting the reimbursement of certain legislator expenses; acceptance of certain political contributions by certain elective state officials and committees; deadlines for the transmittal of the Building Commission's long-range state building program recommendations and the delivery of the governor's biennial budget message; submission of a report on the timeliness of the submittal of agency biennial budget requests; legislative consideration of biennial budget bill; operation of legislature before passage of biennial budget bill; and providing a penalty.

Status: Referred to Joint Committee on Finance.

Assembly Bill 120

Introduced by Representatives Vos, Montgomery, Nygren, Suder, Gundrum, Kramer, Huebsch, Kestell, Kerkman, LeMahieu, Petersen, Cullen, Murtha, J. Ott, Townsend, Mursau, Gunderson, Spanbauer, Bies, Strachota, Kleefisch, Van Roy, Lothian, Petrowski and Honadel. Cosponsored by Senators Grothman, Cowles, Hopper, Darling, Leibham and Lazich.

Relating to: providing the public with information on state agency operations expenditures and state agency contracts and grants.

Status: Referred to Assembly Committee on State Affairs and Homeland Security.

Assembly Bill 145

Introduced by Representatives Kessler, A. Williams and Turner. Cosponsored by Senator Taylor.

Relating to: legislative review of municipal ward, supervisory district, aldermanic district, and certain school district election district plans.

Status: Referred to Assembly Committee on State Affairs and Homeland Security. Assembly substitute amendment offered by Representative Kessler.

Assembly Bill 163

Introduced by Representatives Berceau, Roys, Zepnick, Hilgenberg and Smith. Cosponsored by Senators Taylor and Plale.

Relating to: allowing certain political signs on rental premises.

Status: Referred to Assembly Committee on Elections and Campaign Reform. Public hearing held on 4/21/09.

Assembly Bill 168

Introduced by Representatives Zipperer, Vukmir, Kramer, Davis, Gundrum, Kerkman, Kestell, Kleefisch, Knodl, LeMahieu, Lothian, Montgomery, Murtha, Nass, Nygren, J. Ott, Petersen, Roth, Spanbauer, Strachota, Suder, Townsend, Van Roy, Vos and Ziegelbauer. Cosponsored by Senators Leibham, Kanavas, Cowles, Darling, Hopper, Lazich and Schultz.

Relating to: preparation and legislative consideration of a biennial budget bill; making executive sessions of the Joint Committee on Finance relating to the biennial budget bill

available in real time for viewing by the public on the legislature's Internet Web site; and reporting of certain information by lobbying principals.

Status: Referred to Joint Committee on Finance

Assembly Bill 169

Introduced by Representative Zipperer. Cosponsored by Senator Kanavas.

Relating to: the number of nomination paper signatures required for school board candidates in certain school districts.

Status: Referred to Assembly Committee on Elections and Campaign Reform. Public hearing held on 4/21/09.

Assembly Bill 245

Introduced by Representatives Black, Clark, Brooks, Smith, Hilgenberg, Ziegelbauer, Berceau, Pope-Roberts, Hebl, Benedict, Bies and Pocan. Cosponsored by Senators Lassa, Schultz, Lehman and Carpenter.

Relating to: service by a former member of the legislature as a lobbyist.

Status: Referred to Assembly Committee on Judiciary and Ethics. Public hearing held on 06/02/09. Assembly executive action taken.

Assembly Bill 249

Introduced by Representatives Young, Grigsby, A. Williams, Richards, Black, Roys, Jorgensen, Pasch, Mason, Pope-Roberts and Toles. Cosponsored by Senators Coggs, Risser, Taylor and Hansen.

Relating to: deceptive election practices; voter intimidation, suppression, and protection; granting rule-making authority; and providing penalties.

Status: Referred to Assembly Committee on Elections and Campaign Reform.

Assembly Bill 304

Introduced by Representatives Soletski, Bies, Berceau, Brooks, Mursau, A. Ott, Spanbauer, Van Roy and Zigmunt. Cosponsored by Senators A. Lasee and Cowles.

Relating to: ineligibility of convicted felons for licensure as lobbyists.

Status: Referred to Assembly Committee on Judiciary and Ethics. Public hearing held on 6/30/09. Assembly substitute amendment 1 offered by Representative Soletsk. Referred to Assembly Committee on Rules.

Assembly Bill 322

Introduced by Representatives Black, Hebl, Turner, Jorgensen and Clark.

Relating to: identification of individuals who examine statements of economic interests filed with the Government Accountability Board.

Status: Referred to Assembly Committee on Judiciary and Ethics. Public hearing held on 6/30/09. Assembly amendment 1 offered by Representative Vos. Assembly amendment 2 offered by committee on Judiciary and Ethics. Referred to Assembly Committee on Rules.

Assembly Bill 327

Introduced by Representatives Schneider, A. Williams, and Hraychuck.

Relating to: contributions by state contractors, grantees, or loan recipients and their officers and substantial owners to certain elective state officials.

Status: Referred to Assembly Committee on Elections and Campaign Reform.

Assembly Bill 330

Introduced by Representatives Turner, Bies, Cullen, Hebl, Hilgenberg, Kessler, Milroy, Molepske Jr., Roys, Schneider, Vruwink, Young and Zepnick. Cosponsored by Senators Coggs, Erpenbach, Holperin, Lehman, Olsen, Taylor and Vinehout.

Relating to: requirements for electors who vote by absentee ballot.

Status: Referred to Assembly Committee on Elections and Campaign Reform. Public hearing held on 9/15/09. Assembly amendment 1 offered by Representative Turner.

Assembly Bill 353

Introduced by Representatives Grigsby, Schneider, Parisi, Hilgenberg, Pocan, Young, Pasch, Roys, Black, Turner, Fields, Kessler, Berceau, A. Williams, Toles, Sinicki, Pope-Roberts and Zigmunt. Cosponsored by Senators Taylor, Coggs, Miller and Risser, by request of Restore the Vote Wisconsin NOW Coalition.

Relating to: restoring the right to vote to certain persons barred from voting as a result of a felony conviction and changing the information required on voter registration forms.

Status: Referred to Assembly Committee on Corrections and the Courts. Public hearing held on 8/27/09.

Assembly Bill 388

Introduced by Representatives Pope-Roberts, Berceau, Black, Hixson, Hebl, Zigmunt, Clark, Kessler, Molepske Jr., Parisi and Kaufert. Cosponsored by Senators Erpenbach, Ellis, Carpenter, Lehman, Holperin, Schultz, Risser, Harsdorf, Vinehout, Sullivan and Kapanke.

Relating to: campaign financing, designations for the Wisconsin election campaign fund by individuals filing state income tax returns, creating a nonrefundable individual income tax credit for contributions to the Public Integrity Endowment, candidate time on public broadcasting television stations and public access channels, staffing of the Government Accountability Board; providing exemptions from emergency rule procedures; granting rule-making authority; making appropriations; and providing penalties.

Status: Referred to Assembly Committee on Elections and Campaign Reform.

Assembly Bill 406

Introduced by Representatives Kessler, Berceau and Pasch. Cosponsored by Senators Coggs, Hansen and Kreitlow.

Relating to: challenging the ballots of electors at polling places.

Status: Referred to Assembly Committee on Elections and Campaign Reform. Assembly amendment 1 offered by Representative Kessler.

Assembly Bill 454

Introduced by Representatives Smith, Stone, Hilgenberg, A. Williams, Jorgensen and Vruwink. Cosponsored by Senators Taylor, Lehman and Kedzie.

Relating to: information concerning independent candidates for partisan office that appears on the ballot at elections.

Status: Referred to Assembly Committee on Elections and Campaign Reform.

Assembly Bill 494

Introduced by Representatives Mason, Vos, Sherman, Kestell, Roys, Gunderson, Berceau, LeMahieu, Pope-Roberts, A. Williams, Clark, Townsend, Nerison, Brooks, Jorgensen and Grigsby. Cosponsored by Senators Risser, Darling, Holperin and Taylor.

Relating to: the methodology for filing campaign finance reports in electronic format.

Status: Referred to Assembly Committee on Elections and Campaign Reform.

AB 532 (10.30.09)

Assembly Joint Resolutions

Assembly Joint Resolution 2

Introduced by Representatives Sherman, Vruwink and Soletski. Cosponsored by Senators Carpenter and Holperin.

Relating to: eliminating the spring election (first consideration).

Status: Referred to Assembly Committee on Elections and Campaign Reform. Assembly substitute amendment offered by Representative Sherman.

Assembly Joint Resolution 6

Introduced by Representatives Kessler and A. Williams.

Relating to: fixing the size of the legislature and gubernatorial appointment of Supreme Court justices (first consideration).

Status: Referred to Assembly Committee on Elections and Campaign Reform.

Assembly Joint Resolution 11

Introduced by Representatives Schneider, Kaufert and Suder. Cosponsored by Senators S. Fitzgerald and Schultz.

Relating to: status of seats of legislators on ordered military duty and appointment of temporary acting legislators for legislators performing ordered military duty (first consideration).

Status: Referred to Assembly Committee on Elections and Campaign Reform.

Assembly Joint Resolution 26

Introduced by Representative Schneider

Relating to: terms of office for members of the senate and assembly (first consideration).

Status: Referred to Assembly Committee on Elections and Campaign Reform. Public hearing held on 9/15/09.

Assembly Joint Resolution 29

Introduced by Representatives Kessler, Staskunas, Hilgenberg, Hintz and A. Williams.
Cosponsored by Senator Lehman.

Relating to: establishing competitive election criteria for redistricting the legislature (first consideration).

Status: Referred to Assembly Committee on Elections and Campaign Reform.

Assembly Joint Resolution 39

Introduced by Representatives Mason, Pasch, Soletski, Fields and Roys. Cosponsored by Senator Taylor.

Relating to: the age of qualified electors for state and local elections (first consideration).

Status: Referred to Assembly Committee on State Affairs and Homeland Security.

Assembly Joint Resolution 51

Introduced by Representatives Nygren, Vos, Kerkman, Vukmir, Gunderson, Kestell, Strachota, Kramer, Meyer, Roth, Pridemore, Mursau, Kaufert, Newcomer, Bies, Friske, Gundrum, Nass, Tauchen, Townsend, Knodl, Petersen, Ballweg, Lothian, LeMahieu and M. Williams. Cosponsored by Senators Leibham, Lazich, S. Fitzgerald, Grothman, A. Lasee, Darling, Kedzie and Schultz.

Relating to: state sovereignty.

Status: Referred to Assembly Committee on State Affairs and Homeland Security.
Representative Petrowski added as a coauthor.

Assembly Joint Resolution 63

Introduced by Representatives Kessler, Black, Grigsby, Turner and A. Williams.
Cosponsored by Senator Taylor.

Relating to: excluding incarcerated, disenfranchised felons from the enumeration of population for apportionment and redistricting of legislative, county, and certain other district offices (first consideration).

Status: Referred to Assembly Committee on State Affairs and Homeland Security.
Public hearing held on 9/15/09.

AJR 91 (10.30.09)

Senate Bills

Senate Bill 8

Introduced by Senators Wirch, Coggs, Hansen, Lassa, Lehman, Miller, Robson and Sullivan. Cosponsored by Representatives Pocan, Zigmunt, Barca, Benedict, Berceau, Bernard Schaber, Black, Clark, Danou, Fields, Grigsby, Hraychuck, Hubler, Jorgensen, Krusick, Mason, Molepske Jr., Nelson, Parisi, Pasch, Pope-Roberts, Radcliffe, Richards, Roys, Seidel, Sheridan, Shilling, Sinicki, Smith, Van Akkeren, A. Williams and Young.

Relating to: state procurement of contractual services.

Status: Referred to Senate Committee on Small Business, Emergency Preparedness, Technical Colleges, and Consumer Protection.

Senate Bill 40

Introduced by Senators Kreitlow, Taylor, Sullivan, Miller, Risser, Erpenbach, Wirch, Lassa, Lehman, Hansen, Vinehout, and Schultz. Cosponsored by Representatives Hintz, Hilgenberg, Smith, Garthwaite, Benedict, Roys, Hebl, Staskunas, Turner, Parisi, Cullen, Jorgensen, Richards, Zepnick, Pocan, Pope-Roberts, Clark, Shilling, Hubler, Black, Berceau, Grigsby, Molepske Jr. and Kessler.

Relating to: public financing of campaigns for the office of justice of the Supreme Court, making appropriations, and providing penalties.

Status: Referred to Senate Committee on Judiciary, Corrections, Insurance, Campaign Finance Reform, and Housing. Public hearing held on 5/27/09. Referred to Senate Joint Committee on Finance on 9/08/09 by committee on Senate Organization, pursuant to Senate Rule 41(1) (e). Senator Ellis added as a coauthor.

Senate Bill 43

Introduced by Senators Erpenbach, Kreitlow, Ellis, Vinehout, Hansen, Risser, Lehman, Holperin, Harsdorf, Carpenter, Cowles and Robson. Cosponsored by Representatives Dexter, Hebl, Cullen, Zigmunt, Sherman, Barca, Hintz, Black, Hilgenberg, Mason, Toles, Hixson, Pope-Roberts, Pocan, Kaufert and Berceau.

Relating to: the scope of regulated activity under the campaign finance law.

Status: Referred to Senate Committee on Judiciary, Corrections, Insurance, Campaign Finance Reform, and Housing. Senate substitute amendment 1 offered by Senator Erpenbach. Public hearing held on 5/27/09. Report adoption of Senate Substitute

Amendment 1 recommended on 9/17/09 by committee on Judiciary, Corrections, Insurance, Campaign Finance Reform, and Housing. Report passage as amended recommended on 9/17/09 by committee on Judiciary, Corrections, Insurance, Campaign Finance Reform, and Housing. Available for scheduling.

Senate Bill 68

Introduced by Senators Harsdorf, Lehman, Cowles, Olsen, Kedzie, Leibham and Hopper. Cosponsored by Representatives Spanbauer, Ballweg, Bies, Gunderson, Kaufert, Kestell, Petersen, Ripp, Strachota and Townsend.

Relating to: reporting of information by nonresident registrants under the campaign finance law.

Status: Referred to Senate Committee on Judiciary, Corrections, Insurance, Campaign Finance Reform, and Housing.

Senate Bill 92

Introduced by Senators Leibham, Kanavas, Cowles, Darling, Hopper, Lazich and Schultz. Cosponsored by Representatives Zipperer, Vukmir, Davis, Gundrum, Kerkman, Kestell, Kleefisch, Knodl, Kramer, LeMahieu, Lothian, Montgomery, Murtha, Nass, Nygren, J. Ott, Petersen, Roth, Spanbauer, Strachota, Suder, Townsend, Van Roy, Vos and Ziegelbauer, Brooks.

Relating to: preparation and legislative consideration of a biennial budget bill; making all meetings of the Joint Committee on Finance relating to the biennial budget bill available in real time for viewing by the public on the legislature's Internet Web site; and reporting of certain information by lobbying principals.

Status: Referred to Senate Committee on Ethics Reform and Government Operations.

Senate Bill 179

Introduced by Representatives Kessler, Soletski, Hubler, Cullen, Hilgenberg, Black, Berceau, Benedict, Danou, Pope-Roberts, Hixson and Parisi. Cosponsored by Senators Sullivan, Risser and Lehman.

Relating to: deceptive election practices; voter intimidation, suppression, and protection; granting rule-making authority; and providing penalties.

Status: Referred to Senate Committee on Labor, Elections and Urban Affairs. Public hearing held on 9/02/09.

Senate Bill 199

Introduced by Senators Leibham, Lazich, Carpenter, Darling, Grothman, Harsdorf, Hopper, Kanavas, Kedzie, A. Lasee, Olsen, Plale, Schultz and Sullivan. Cosponsored by Representatives Stone, Vukmir, Bies, Brooks, Davis, Gundrum, Honadel, Huebsch, Kaufert, Kerkman, Kestell, Kramer, LeMahieu, Lothian, Meyer, Montgomery, Murtha, Nass, A. Ott, J. Ott, Petersen, Pridemore, Spanbauer, Strachota, Suder, Tauchen, Townsend, Van Roy, Vos and Zipperer. Representative Petrowski added as a cosponsor.

Relating to: requiring certain identification in order to vote at a polling place or obtain an absentee ballot, verification of the addresses of electors, absentee voting procedure in certain residential care apartment complexes and adult family homes, and the fee for an identification card issued by the Department of Transportation.

Status: Referred to Senate Committee on Labor, Elections and Urban Affairs.

Senate Bill 217

Introduced by Senators A. Lasee and Cowles. Cosponsored by Representatives Soletski, Bies, Berceau, Brooks, Mursau, A. Ott, Spanbauer, Van Roy and Zigmunt.

Relating to: ineligibility of convicted felons for licensure as lobbyists.

Status: Referred to Senate Committee on Ethics Reform and Government Operations. S. Senate substitute amendment 1 offered by Senator A. Lasee.

Senate Bill 221

Introduced by Senators Erpenbach, Ellis, Carpenter, Lehman, Holperin, Schultz, Risser, Harsdorf, Vinehout and Sullivan. Cosponsored by Representatives Pope-Roberts, Berceau, Black, Hixson and Hebl.

Relating to: campaign financing, designations for the Wisconsin election campaign fund by individuals filing state income tax returns, creating a nonrefundable individual income tax credit for contributions to the Public Integrity Endowment, candidate time on public broadcasting television stations and public access channels, staffing of the Government Accountability Board; providing exemptions from emergency rule procedures; granting rule-making authority; making appropriations; and providing penalties.

Status: Referred to Senate Committee on Judiciary, Corrections, Insurance, Campaign Finance Reform, and Housing. Representative Bernard Schaber added as a cosponsor.

Senate Bill 227

Introduced by Joint Legislative Council.

Relating to: interim successors for legislators, meetings of the legislature and legislative committees, and temporary seat of government for the legislature.

Status: Referred to Senate Committee on Small Business, Emergency Preparedness, Technical Colleges, and Consumer Protection.

Senate Bill 236

Introduced by Senators Hansen, Ellis, A. Lasee, Vinehout, Risser, Kedzie, Carpenter, Schultz, Wirch, Erpenbach, Cowles and Kapanke. Cosponsored by Representatives Ziegelbauer, Roth, Schneider, Kessler, Brooks, Berceau, Nass, Toles, Ballweg, Vos and Nerison.

Relating to: electronic filing of campaign finance reports.

Status: Referred to Senate Committee on Ethics Reform and Government Operations. Public hearing held on 10/21/09. Available for scheduling.

Senate Bill 240

Introduced by Senators Taylor, Miller, Coggs and Risser. Cosponsored by Representatives Grigsby, Schneider, Parisi, Young, Pasch, Roys, Hilgenberg, Black, Pocan, Turner, Fields, Kessler, Berceau, A. Williams, Toles and Sinicki.

Relating to: restoring the right to vote to certain persons barred from voting as a result of a felony conviction and changing the information required on voter registration forms.

Status: Referred to Senate Committee on Labor, Elections and Urban Affairs. Public Hearing held on 10/13/09.

Senate Bill 272

Introduced by Senators Coggs, Hansen and Kreitlow. Cosponsored by Representatives Kessler, Berceau and Pasch.

Relating to: challenging the ballots of electors at polling places.

Status: Referred to Senate Committee on Labor, Elections and Urban Affairs.

Senate Bill 350

Introduced by Senators Kanavas, Carpenter, Lazich, Hopper, Darling, Leibham and Schultz. Cosponsored by Representatives Kramer, Petersen, Davis, Knodl, Vos, Zipperer, Huebsch, Townsend, Strachota, Gunderson and J.Ott.

Relating to: an optional identification requirement for voting in elections.

Status: Referred to Senate Committee on Labor, Elections and Urban Affairs.

SB 373 (10.30.09)

Senate Joint Resolutions

Senate Joint Resolution 9

Introduced by Senator Carpenter. Cosponsored by Representatives Berceau, Vos and Spanbauer.

Relating to: providing for an advisory referendum on the question of restoring the annual adjustment of the motor vehicle fuel tax rate in this state.

Status: Referred to Senate Committee on Transportation, Tourism, Forestry, and Natural Resources.

Senate Joint Resolution 42

Introduced by Senator Taylor. Cosponsored by Representatives Kessler, Black, Grigsby, Turner and A. Williams.

Relating to: excluding incarcerated, disenfranchised felons from the enumeration of population for apportionment and redistricting of legislative, county, and certain other district offices (first consideration).

Status: Referred to Senate Committee on Judiciary, Corrections, Insurance, Campaign Finance Reform, and Housing.

Senate Joint Resolution 49

Introduced by Senators Carpenter, Holperin, Jauch and Taylor. Cosponsored by Representatives Sherman, Vruwink, and Soletski.

Relating to: eliminating the spring election (first consideration).

Status: Referred to Senate Committee on Labor, Elections, and Urban Affairs.

SJR 53 (10.30.09)

ITEM H

Report on Campaign Finance Information System

State of Wisconsin \ Government Accountability Board

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JUDGE MICHAEL BRENNAN
Chairperson

KEVIN J. KENNEDY
Director and General Counsel

DATE: For the November 9, 2009 Board meeting

TO: Government Accountability Board

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

SUBJECT: Campaign Finance Information System -- Performance and Functionality

The Campaign Finance Information System ("CFIS") continues to come under legislative criticism. At a committee hearing on a Senate bill that would permit all filers to file on paper, Senators continued to express concern about the difficulty and time-consuming nature of using CFIS to file campaign finance reports. Unfortunately, the entire focus was on filing and no attention was paid to the fact that the system leads to immediate, timely public disclosure of campaign finance information that is accessible to all citizens of the state via the internet.

We have a timetable from our vendor, PCC Technology Group, to complete all requested functionality changes and upgrades by the end of this year. As outlined in my previous memo, these changes include:

Occupation codes will no longer be used.

Removal of the employer search and match data entry .

Removal of the contributor search and match data entry.

Making the Excel spreadsheet more user-friendly.

Removal of validation on non-required field.

Improvements in the Upload Process.

Displaying all comments on the system generated reports.

Improving the Public Search functionality.

PCC has agreed to make these changes for approximately \$24,000, reduced from an initial price tag of \$104,000.

We have decided to postpone redesign of the application's user interface because of the risk of trying to do too much in a short time-frame and because of cost. Staff feels it is advisable to receive a full assessment of the system's architecture and programming from the Division of Enterprise Technology before putting more money into these latter changes. That assessment is currently underway.

ITEM I

Director's Report

State of Wisconsin\Government Accountability Board

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JUDGE MICHAEL BRENNAN
Chair

KEVIN J. KENNEDY
Director and General Counsel

MEMORANDUM

DATE: For the November 9, 2009, Meeting

TO: Members, Wisconsin Government Accountability Board

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

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

SUBJECT: Elections Division Activities

Election Administration Update

Introduction

Since the Government Accountability Board's October 5, 2009, meeting, the Elections Division has focused on the following tasks:

Noteworthy Election Administration Activities

1. The 2009-2014 Election Administration Plan was approved by the Wisconsin Legislative Joint Committee on Finance (JCF) on a 13-1 vote on Tuesday, October 13, 2009. The Plan was forwarded to the United States Election Assistance Commission on Friday, October 16, 2009, for publishing in the Federal Register for 30 days, after which, the Plan is approved. The JCF made no changes to the Plan.
2. There have been several recalls of note that are either completed or pending:
 - A. State
 - Representative Jeff Wood, Assembly District 67. Several inquiries into recall process and number of signatures required on a recall petition. Representative Wood took office in January 2009. Therefore, he is not eligible to be recalled until January 2010.

- Representative Ted Zigmunt, Assembly District 2. Several inquiries into recall process and number of signatures required on a recall petition. Representative Zigmunt took office in January 2009; therefore, he is not eligible to be recalled until January 2010.

B. Monroe County

A sufficient number of petitions for recall were filed with the Monroe County Clerk to recall eight county board supervisors. Seven incumbents were successfully unseated. There is one recount pending. The County Board Chair faces a recall election on November 3.

C. Price County

A recall election for the office of Price County Sheriff was held on August 25. The incumbent was unseated.

3. Type A Notice of the 2010 Spring Election

The Type A Notice is a notice to electors announcing an upcoming election and provides the following information: The date of the election, the date of the primary (if required), the offices up for election and the current incumbents, the first day to circulate nomination papers, and the filing deadline for ballot access documents.

The Government Accountability Board (Board) is required to produce a Type A Notice that includes all state offices up for election. For the Spring 2010 election, the offices to be elected are Court of Appeals Judge, Districts I, II and IV and various circuit court judges numbering 44. The Notice is statutorily required to be delivered to all County Clerks no later than November 15, and the Notice is required to be published by the County Clerks no later than the 4th Tuesday in November. Upon receipt of the Notice and prior to publication, each County Clerk adds county offices that may be up for election in the county. The County Clerks are also instructed to provide the Municipal Clerks in their respective counties with a copy of the Type A Notice.

The Type A Notice for the 2010 Spring Election has been constructed, checked by the State Courts staff, and proofed by Board staff. The statutory deadline for the Board to deliver the Type A Notice to County Clerks is November 15. County Clerks must publish the notice no later than the fourth Tuesday in November. In order to allow for timely printing in weekly newspapers, we plan to send the Type A Notice to all County Clerks via email on November 2, 2009.

Sending the Type A Notice early is not without some risk of a resignation occurring, resulting in that office being up for election in the spring. The accompanying memo therefore, will contain the following caveat: "If a Circuit Court Judge or Court of Appeals Judge in District III resigns on or before December 1, 2009, that office will be up for election at the 2010 Spring Election. If a vacancy occurs during this period, Board staff will contact the affected County Clerks with an amended Type A Notice."

4. Notifications of NonCandidacy

Incumbent candidates who do not intend to seek re-election to the seat they currently hold are encouraged to file a Notification of Noncandidacy no later than 5:00 p.m. on the 2nd Friday preceding the deadline for filing ballot access documents. This year, that date is December 25. Since the Board's offices will be closed that day, the deadline becomes the next business day, December 28. If an incumbent fails to file a Notification of Noncandidacy in a timely fashion, and does not file ballot access documents, the filing deadline for other candidates to file ballot access documents for the office is extended three business days. The extension is not granted to the incumbent. Reminder letters will be mailed to all incumbents the last week in November 2009.

5. Staff is analyzing the impact of the recently-approved Federal MOVE Act on Wisconsin to determine if any legislative changes are necessary, and what needs to be done to request a waiver.

6. Collaboration with Clerks for Strengthening the Clerk/GAB Partnership

A. Clerk Communications

The County and Municipal Clerk ad hoc Advisory Committee on Communications initially met in August to flesh out a protocol to improve and streamline electronic communication between the Board and County and Municipal Clerks. The initial meeting was followed by eight "Listening Sessions" conducted around the state to solicit feedback and suggestions from Clerks. The ad hoc Advisory Committee met again in September to review the information gleaned from the listening sessions and developed a communications protocol that became effective October 1, 2009.

B. Training Committee

Many Clerks and election inspectors are confused about training requirements, frequency of training, availability of training and terms associated with training. Using the model of the Clerk Communication Committee, a similar ad hoc committee of County and Municipal Clerks met October 15 to brainstorm about training opportunities and options. Seven Listening Sessions are scheduled between November 10 and 19. The ad hoc Committee will meet again on December 2 to develop a concise explanation of training requirements and plan for future training options.

C. Consistent Answers Committee

There have been some complaints from Clerks about receiving different answers to the same question, depending on the specialist asked. Although we know that "shopping for answers" has always been a problem, we do want to ensure that all specialists are on the same page when imparting information. A staff committee to address this concern has been assembled, and a recommendation has been presented to the Division Administrator and Director and General Counsel for review.

D. Website Committee

A website committee is working on building a new, better organized, easier to navigate website. Once the overhaul is completed, the public and all of the Board's customers and constituents will be better served by this improved communication tool. The website committee hopes for a finished product by the end of the year.

7. During the visit by Gineen Bresso Beach, Chairperson of the U. S. Election Assistance Commission, Wisconsin shared a copy of the Guidance that staff developed and provided to Clerks on the conduct of elections during a possible H1N1 pandemic. Chair Beach had asked all states to send a copy of their respective H1N1 Flu Contingency Plans. Wisconsin's Government Accountability Board was the first state to submit our Plan that was shared with Clerks on September 18, 2009.
8. Education, Training and Technical Assistance continues to be provided to Clerks who are preparing for special school district and local special elections, and referenda in November. Continuous education, training and technical assistance is also being provided on an ongoing basis to Clerks to help prepare for the 2010 Elections. As can be seen from our attached Training Grid, the need for and requests for education, training and technical assistance are steadily increasing.
9. Elections Division Staff, including the Division Administrator participated in the following key meetings with our Clerk Customers and Partners:

A. October 2, 2009

Staff made presentations at the Wisconsin Municipal Clerks Association's District IV and District VI meetings held in Plymouth, WI and Rice Lake, WI, respectively.

B. October 13, 2009

Staff make presentation at the Wisconsin Towns Association Conference in Stevens Point.

C. October 14, 2009

Staff met the ad-hoc Clerk Training Advisory Committee to Identify Clerks Concerns about the Board's Training Requirements.

Other Noteworthy Initiatives:

1. Voter Data Interface

Clerks continue to use SVRS to run HAVA Checks to validate against Department of Transportation (DOT) and Social Security Administration (SSA) records, and confirm matches with Department of Corrections (DOC) for felon information, and Department of Health Services (DHS) for death data, as part of on-going HAVA compliance.

Clerks process HAVA Checks and confirm matches on an ongoing basis during the course of their daily election administration tasks, having done so since the Interfaces became functional in SVRS on August 6, 2008. The numbers reported in the table below

should not be confused with the Retroactive HAVA Check process. Retroactive HAVA Check information is in addition to the HAVA Checks performed by our Clerks.

Since the Board's last meeting and October 27, 2009, Clerks processed approximately 988 HAVA Checks with DOT/SSA in SVRS.

2. Retroactive HAVA Checks Status

Board staff is in the process of hiring ten limited term employee (LTE) positions to assist with the Retroactive HAVA Check process. These positions will be responsible for finishing up the work related to the first batch of DMV Ping Letters that were mailed in July, as well as responding to calls and performing data entry for the second wave of DMV Ping letters, scheduled to start going out in early November.

As previously reported, a new protocol will be used for the Second Wave of DMV Ping letters. The protocol, as well as samples of the letters that will be sent, were reviewed by a panel of Municipal and County Clerks who provided valuable feedback, and improved the process. The protocol includes staggering the mailing of the letters over a few weeks to control call volume, asking voters to respond via mail instead of via phone, and having customized letters tailored to what specifically does not match, in order to help alleviate confusion or any perceptions that the letters are fraudulent or a scam.

Some relevant Retroactive HAVA Checks statistics include:

- Approximately 120,000 of the 777,561 Retroactive HAVA Checks initially resulted in a non-match. Currently, approximately 98,000 of those voters still show a non-match.
- From the 87,000 DMV Ping letters that were mailed in July, Board staff verified voter data for 25,000 voters. Approximately 17,000 of the letters were returned as undeliverable. This means that 36% of the voters who got a letter have now verified their data. This leaves approximately 45,000 voters who received a letter, but we have not yet been able to verify their data. We expect this number to decrease as the LTE staff positions begin contacting voters who responded via e-mail or left voice messages, and have not yet had their data verified.
- Approximately 15,500 letters will be mailed in the Second Wave of DMV Ping Letters. These letters will result in additional voter updates, further reducing the number of non-matches that result from the Retroactive HAVA Checks.

3. Voter Registration Statistics

As of Wednesday, October 28, 2009, there were a total of 4,557,018 voter records stored in SVRS. Of this number, 3,449,683 were active voters; 918,758 were inactive; and, 188,577 were cancelled voters.

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

4. Efforts to Improve the Statewide Voter Registration System's Performance

As previously reported, an Ad-Hoc SVRS Study Team was formed to evaluate the SVRS and plan for the future of the application.

- A Request for Information (RFI) was released on August 18, 2009, with responses due by September 18, 2009. The RFI asked vendors to provide information on services that they offer related to maintenance of the system (including upgrades and performance improvements); if they have replacement systems available; if they have hardware/infrastructure management services; and if they offer services related to the upcoming redistricting that will result from the 2010 census.
- Eleven Responses were received from vendors. 5 vendors provided information on maintenance and enhancement services. 4 vendors provided information on replacement systems. 4 vendors provided information on hardware/infrastructure management services. 4 vendors provided information on services related to redistricting.
- Two of the vendors specifically recommended enhancing the existing system rather than purchasing a replacement system, as the cost, risk, and effort to replace the system outweighs the benefits of replacement. This corroborates recommendations previously made by the Division of Enterprise Technology, who reviewed the SVRS Source Code and indicated that the architecture was both sound and robust, and could be upgraded and improved without requiring significant redesign.
- The replacement systems described in the RFI responses did not include significantly improved or enhanced functionality over the current SVRS. In fact, some of the replacement systems had less functionality.

5. Online Voter Registration Initiative

An Online Voter Registration Team has been appointed and charged with developing a model online voter registration program, researching online registration best practices, and developing a funding proposal to be submitted to the PEW Center on the States/The PEW Charitable Trusts. A project plan and charter are under development. As part of the data gathering phase of this project, Board staff, DOA/Division of Enterprise Technology, and DOT staff participated in a telephone conference on September 28 to discuss the possibility of instant verification of DMV identification information providing for real-time HAVA Checks. The ability to have real-time DMV verification would greatly enhance online registration capability.

6. Improving the Canvass Process

The team to improve the canvas process and retire the Board's current election administration software, SWEBIS II, continued to meet. Staff members are conducting a gap analysis to determine what enhancements are needed to transition the ballot access and canvass process to SVRS. DET is in the process of acquiring development staff to work on this project. Once staff are in place, work can begin on this important initiative.

7. G.A.B. Help Desk

The G.A.B. Help Desk continues to support over 1,700 active SVRS users. With SVRS training sessions resuming with an active schedule, there have been 45 new user accounts added. Help Desk staff has completed setting up two new training environments with one currently being used in the field.

Incoming call volume at the Help Desk for October was over 355. Of these, 110 were calls from Clerks requesting SVRS assistance and help with special local elections. 200 were calls from voters that had been mailed the Retroactive HAVA Check Letter on July 29th. There were 45 calls asking to verify a voter's status.

8. Voter/Felon Comparison Audit

After all information relating to registrations was made in SVRS for the November 2008 Presidential and General Election, SVRS staff compared the list of voters with a list of felons still under supervision on Election Day, as provided by DOC.

- 213 voters were matched and the list was sent to DOC for confirmation that the felons on the list were indeed still under supervision on Election Day.
- Once the verification by DOC staff was completed, a list of 195 remaining voters was sent to affected Clerks to review for accuracy. The 78 affected Clerks had until September 21 to respond.
- Board staff will notify the appropriate district attorney for the county where the polling place is located.

9. SVRS Core Activities

A. Software Upgrade(s)

- SVRS staff assisted the City of Milwaukee by creating a custom HAVA Check DMV Ping Letter in SVRS. The letter was deployed in SVRS on September 21, 2009, and is available for use in the City of Milwaukee.
- The Department of Administration/Division of Enterprise Technology (DET) installed the latest version of the CITRIX software in October. CITRIX is a component of the SVRS that provides security and allows the users to connect to the SVRS. The upgrade went well and few problems were detected.
- DET developers completed work on a new version of the "middleware" that supports the SVRS Interfaces with the Department of Transportation (DOT), Department of Health Services (DHS), and Department of Corrections (DOC). The new software includes more efficient file handling, as well as better reporting. It is currently being tested at G.A.B. and is scheduled to be deployed in late November/early December.
- SVRS 6.6 Patch 5 is currently in testing. This patch contains long awaited enhancements to the death matching in SVRS. Testing is almost complete, and the patch is scheduled to be deployed by Friday, October 30.'

- A new version of the SVRS application, version 6.7 is also being tested. This new version includes long awaited enhancements to the duplicate matching in SVRS. Preliminary testing revealed several improvements that have since been made to the code, and G.A.B. staff are currently retesting. Version 6.7 is scheduled to be promoted to the next cycle of testing the week of November 2, and should be deployed in mid-November.

B. System Outages

Two following system outages were experienced since the last report:

- On Tuesday, October 13, DOA/DET experienced a general network outage from approximately 4:00 pm until approximately 7:30 pm that impacted almost all state agencies. All internet connectivity and e-mail were completely unavailable during the outage. The SVRS and CFIS systems were also completely unavailable during the outage. The cause of the outage is not yet known.
- On Monday, October 26, 2009, SVRS experience a printer services outage, due to services not starting after a scheduled reboot of servers on Sunday, October 25, 2009. Board staff and users were unable to print from SVRS for several hours.

As noted in previous updates, the Board's 1,922 County and Municipal Clerk customers are becoming concerned with the frequency of the unexpected recurring outages. The outages adversely affect our relationship with our customers as a reliable and dependable partner.

We are pleased to note that Oskar Anderson, Chief Information Officer/Division Administrator, Enterprise Technology, Department of Administration has assigned a high level Accounts Management Representative to our agency, and this person will be our one-stop shop for coordinating and handling our IT concerns.

30-Day Forecast

1. The University of Wisconsin-Madison, Political Science Department completed and submitted a Final Evaluation Report for our Election Data Collection Grant. Staff is in process of reviewing the Report. A presentation of the assessment and findings will be made to the Board at its December 14, 2009, meeting.
2. In response to Clerks' concerns about the Board's Training Requirements, staff will be holding a series of listening sessions around the state to solicit comments on feedback on what improvements the Board should consider.
3. Staff will continue to provide support to Clerks to prepare for the 2010 Elections.

Action Items

This is an informational update. No action is required of the Board at this time.

ATTACHMENT #1

GAB Election Division's Training Initiatives
10/6/2009 – 11/8/2009

Training Type	Description	Class Duration	Target Audience	Number of Classes	Number of Students
SVRS "Initial" Application and Election Management	Instruction in core SVRS functions – how to navigate the system, how to add voters, how to set up elections and print poll books.	16 hours	New users of the SVRS application software.	4 classes conducted in West Bend, Madison, Wausau and Hudson. Additional classes scheduled on an "as needed" basis.	55
SVRS "Advanced" Election Management	Instruction for those who have taken "initial" SVRS training and need refresher training or want to work with more advanced features of SVRS.	3 types of classes: Election Management; Absentee Process; HAVA Interfaces, Reports, Labels & Mailings; 4 hours each	Experienced users of the SVRS application software.	13	200
Voter Registration	Basic training in adding voter registration applications, searching for voters, updated voters.	3 hours	Municipal and county clerks, staff and temp workers who provide election support only.	The WBETS site is available to train temporary workers.	Ongoing, self-directed training is available online.
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.	8 classes conducted in varied locations across Wisconsin.	65

ATTACHMENT #1

GAB Election Division's Training Initiatives
10/6/2009 – 11/8/2009

Training Type	Description	Class Duration	Target Audience	Number of Classes	Number of Students
Special Registration Deputy	2005 Wisconsin Act 451 allows a qualified elector of Wisconsin to be appointed as a Special Registration Deputy (SRD) for the purpose of registering electors of any municipality in Wisconsin during periods of open voter registration.	2 hours	Qualified electors in Wisconsin.	1 class conducted in Sheboygan.	20
WisLine	Series of 10 programs designed to keep local government officers up to date on the administration of elections in Wisconsin.	80 minute conference call, hosted by the UW Extension, conducted by Elections Division staff.	Clerks and chief inspectors; campaign treasurers and candidates.	October 7, 2009: Completing Election Day Forms and Counting Votes; October 21, 2009: Appointing Election Officials; November 4, 2009: Cracker Barrel	Average 200 per class
WBETS	Web Based Election Training System. Still under development. Voter registration training made available to clerks 3/24/2008.	Varies	County and municipal clerks and their staff.	Phase 1 of eLearning training plan is completed; Phase 2 under discussion.	Site is available for clerks to train temp workers in data entry; relies are also able to access the site upon request.

ATTACHMENT #1

GAB Election Division's Training Initiatives
10/6/2009 – 11/8/2009

Training Type	Description	Class Duration	Target Audience	Number of Classes	Number of Students
HAVA Interfaces	<p>Instruction in the use of the interface functionality in SVRS to check death records, felon records, DOT records and duplicate records against voter records as part of HAVA compliance requirements.</p>	<p>2 hours</p>	<p>All clerks (staff as determined by clerk).</p>	<p>Pilot of web-based training presented to the Standards Committee on May 14, 2008. Lessons available online June 2, 2008.</p>	<p>Eventually 2000+</p>
Other initiatives:	<ul style="list-style-type: none"> ➤ Trainers have updated the SVRS training servers, replacing aging equipment and updating the servers with the most current Version of SVRS. ➤ Board staff has formed an ad-hoc clerk training advisory committee and will conduct a series of listening sessions intended to illicit feedback from clerks on a training development plan. 	<ul style="list-style-type: none"> ➤ Trainers finalizing a report summarizing the Early Voting Listening sessions they conducted through August 2009. Clerks will have a 30-day review period before the report is submitted to the G.A.B. Board. ➤ SVRS and Election Specialists updated SVRS and Election Administration Manuals. 			

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JUDGE MICHAEL BRENNAN
Chairperson

KEVIN J. KENNEDY
Director and General Counsel

MEMORANDUM

DATE: November 9, 2009 Meeting

TO: Members, Wisconsin Government Accountability Board

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

Prepared by: Jonathan Becker, Administrator
Ethics and Accountability Division

SUBJECT: Ethics and Accountability Division Program Activity

Campaign Finance Program

Richard Bohringer, Tracey Porter and Dennis Morvak, Campaign Finance Auditors

Government Accountability Board campaign finance auditors continue to work on updating committee registrations and work to help new committees register with the state using the Campaign Finance Information System. Staff organized and purged old campaign finance records during October. Chapter 11.21(a), *Wisconsin Statutes*, requires the Government Accountability Board to preserve campaign finance records for six years from the receipt date. Paper copies of campaign finance records for those committees that terminated prior to January 1, 2003, were sent to the State Records Center or State Historical Society during the week of October 26th. Staff also created a 2010 filing calendar that identifies all campaign finance notice dates, filing dates, and follow up tasks to efficiently administer the campaign finance program through the 2010 election cycle.

Lobbying Update

Tommy Winkler, Ethics Specialist

Government Accountability Board staff continues to process 2009-2010 lobbying registrations, licenses and authorizations. Processing performance and revenue statistics related to this session's registration is provided in the table below. Staff continues to process lobbying interests reported by principal organizations and provide advice related to Chapter 13, *Wisconsin Statutes*, on a daily basis and staff conducted eight lobbying training seminars in 2009. On Friday, October 23, staff met with IT personnel from the Department of Administration to demonstrate the existing lobbying website and database application and discuss the scope of the project to create and implement a new, enhanced lobbying application. A follow up meeting in mid November will discuss a project proposal, timeline and costs.

2009-2010 Legislative Session: Lobbying Registration by the Numbers (Data Current as of November 2, 2009)			
	Number	Cost	Revenue Generated
Organizations Registered	720	\$375	\$270,000
Lobbyists Licenses Issued (Single)	606	\$250	\$151,500
Lobbyists Licenses Issued (Multiple)	133	\$400	\$ 53,200
Lobbyists Authorizations Issued	1590	\$125	\$198,750

Financial Disclosure Update

Tommy Winkler, Ethics Specialist

Government Accountability Board staff is preparing for the 2010 Statement of Economic Interests filing period. Database records, forms, instructions and reports have all been updated to reflect the upcoming filing year. Staff has been in contact with all of the Wisconsin technical colleges to identify those technical college positions that each college's board determines need to file a Statement of Economic Interests with the G.A.B. Staff is also working to identify active reserve judges in order to mail pre-printed copies of their Statement of Economic Interests to them in early December. Reserve judges are required to file a Statement of Economic Interests with the G.A.B. within 21 days of taking a case. Municipal judge candidates, as well as state court candidates are required under Chapter 19.43(4), *Wisconsin Statutes*, to file a Statement of Economic Interests with the Government Accountability Board in order to have their name appear on the ballot for the spring election. Statements will be mailed out to incumbent judges in November. Staff is receiving and processing Quarterly Transaction reports from State of Wisconsin Investment Board members and staff required to file quarterly reports. 37 officials are required to file and the 3rd quarter statements are to be completed and returned to the G.A.B. no later than November 2, 2009. As of Monday, November 2nd, staff received 34 completed statements.

State of Wisconsin\Government Accountability Board

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KEVIN J. KENNEDY
Director and General Counsel

MEMORANDUM

DATE: For the November 9, 2009 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 for the agency's federal compliance audit, contract sunshine program implementation, staff recruitments, communicating with agency customers and presentations.

Noteworthy Activities

1. Federal Compliance Audit Preparations

The U.S. Elections Assistance Commission (EAC), Office of the Inspector General has tentatively scheduled a general audit of Wisconsin's administration of Help America Vote Act Funds to begin January 26, 2010.

The EAC auditors will be determining if the HAVA funds were spent in compliance with federal and state law. The information to be examined is:

- All audit reports and other reviews related to G.A.B.'s financial management systems and the HAVA program for the last 5 years.
- Policies, procedures and regulations for the G.A.B.'s accounting, personnel, payroll, property, and procurement systems as they related to the administration of HAVA funds and programs.

- An organizational chart of G.A.B. and a list of all full and part-time employees of the G.A.B. indicating those employees whose salary is financed with HAVA funds.
- Timesheets/certifications of work performed for full time and part time HAVA employees.
- Inventory list of all equipment purchased with HAVA funds.
- Contract and procurement files for major procurements (i.e., voter registration system and election systems).
- Source/support documents for payments made with HAVA funds.
- List of all agreements providing HAVA funds to counties.
- County financial reports submitted to G.A.B.
- State laws that established and impact the election fund.
- Description of G.A.B.'s methods of accounting for any income such as revenue from equipment leases, generated by HAVA programs.
- Identification of the expenditure of funds in fiscal year 2000 for the level of effort for section 251-type activities and the support for those expenditures.
- Appropriations and expenditure reports for State funds used to maintain the level of expenses for elections at least equal to the amount expended in fiscal year 2000 and to meet the five percent matching requirement for section 251 requirements payments.
- Sources/support documents for the maintenance of effort and matching contributions.

In preparation for the audit, an internal audit committee has been assigned to develop a timetable for assessing and completing audit preparations, to review reports of audits conducted by other states on the US EAC website, to schedule a meeting with a contractor recently hired by the US EAC to assist states in audit preparation, to identify HAVA program areas and activities, to compile and organize documents to support HAVA transactions and to identify potential audit issues along with proposed resolutions for management consideration.

2. Contract Sunshine Program Implementation

On October 13, 2009, James Malone was hired to focus on the administration of the Contract Sunshine Program. 2005 Act 410, requires that all state agencies report to the Government Accountability Board certain information about contracts, purchases, bids and requests for bids and proposals that involve an expenditure of \$10,000 or more, or in the case of a contract or order for continuing purchases, an expenditure of over \$10,000 in the current biennium. The law also requires G.A.B. to maintain a website where this information can be posted and accessed. This information is to be posted within 24 hours after the time of initial solicitation or commencement of negotiations, and is required to remain posted on the website for 90 days following the awarding of the contract or placement of the order.

There is a website in place for reporting. However, state agencies have not been consistent in providing the required information. There is no statutory penalty for failure to comply. With the filled position we will expand efforts to educate state agencies and to encourage compliance.

3. Staffing

Currently, we are interviewing for 10 vacant LTE positions to assist in the second round Retroactive HAVA Check initiative.

4. Communications Report

Since the October 5, 2009, Board meeting, the Public Information Officer has responded to numerous media inquiries, and planned communications strategy in furtherance of the Board's mission.

Significant time was spent helping prepare for US-EAC Chair Beach's visit to Wisconsin on October 19 and 20, as well as accompanying the Chair and her public information officer and the Director and General Counsel as they met with the Governor, administration staff and legislative leaders. News releases were written about Chair Beach's visit and the Joint Committee on Finance's approval of the Board's Five-Year Election Administration Plan.

Our project to consolidate the web sites of the former Elections and Ethics boards continues. The web site team meets weekly, and has made significant progress in organizing and designing the new, consolidated G.A.B. web site using free, open source software. The new site should be up later this fall.

The Public Information Officer also helped Board staff respond to concerns from Legislators on a variety of topics, including the Campaign Finance Information System and the Five-Year Election Administration Plan.

5. Meetings and Presentations

The Director and General Counsel had several informal meetings and contacts with key agency stakeholders related to agency information technology issues, proposed legislation, the agency budget, and the Campaign Finance Information System (CFIS). I monitored several meetings organized by the Elections Division related to the State Election Administration Plan, early voting, 2010 census planning, SVRS enhancements, the election data grant and clerk communications. I also monitored Ethics and Accountability Division presentations on lobbying and CFIS planning.

Director Kennedy and staff hosted the current Chair of the United States Elections Assistance Commission, Gineen Beach, for a series of meetings on October 19 and 20, 2009 with stakeholders in the Wisconsin election process. Chair Beach participated in a staff briefing on the election process in Wisconsin followed by a meeting with members of the Wisconsin Election Administration Council. Judge Eich and Judge Nichol also participated in the session. We also arranged for the Chair to meet with the Governor, the Deputy Secretary of Administration and a number of legislators to provide their perspective on the administration of elections in Wisconsin. Time was also set aside for her to meet with members of the public, including several frequent observers at G.A.B. meetings. Chair Beach gained a favorable impression of Wisconsin and the manner in which we administer and conduct elections. During

her briefing to the media, she said her visit to Wisconsin was meaningful, productive and successful. We were honored to host Chair Beach.

On October 2, 2009, I participated in a panel discussion for the Jim Crow and Beyond: Exploring the Past to Change the Future Conference held at Alverno College in Milwaukee. The panel topic was "The Legacy of Jim Crow: Voter Suppression in the U.S. Today." I presented an exercise on the evolution of voting rights in the United States with links to the parallel points in Wisconsin.

Jonathan Becker and I attended a series of hearings on campaign finance reform held by the Assembly Committee on Elections and Campaign Reform on October 8, 2009 in Madison and October 14, 2009 in Franklin. Sharrie Hauge and I attended the hearing of the Legislative Joint Committee on Finance on October 13, 2009 at which the Committee approved the agency's 2009-2014 State Election Administration Plan on a 13-1 vote. On October 21, 2009 Jonathan Becker and I attended an executive session of the Senate Committee on Ethics Reform and Government Operations in which the Committee voted unanimously (5-0) to recommend confirmation of Judge Barland and Judge Myse to serve as Members of the Government Accountability Board.

I also testified at the following legislative hearings:

October 13, 2009 for information on 2009 Senate Bill 240 relating to restoring the right to vote to certain persons barred from voting as a result of a felony conviction and changing the information required on voter registration forms before the Senate Committee on Labor, Elections and Urban Affairs.

October 21, 2009 for information on 2009 Senate Bill 236 relating to electronic filing of campaign finance reports before the Senate Committee on Ethics Reform and Government Operations.

The Pew Charitable Trusts Center on the States has included me along with several other state and local election officials on its Voter Registration Modernization Design Working Group. The goal of the working group is to identify practices and policies that will enhance the efficiency, accuracy and integrity of voter registration records and achieve significant cost savings through the use of technology. The working group consists of 20 state election officials, 7 local election officials, 4 political scientists along with several computer scientists and policy analysts. The most recent set of meetings which I have participated in was held on October 22 and 23, 2009.

6. Future Government Accountability Board Meeting Schedule

Judge Myse has asked if Board Members would consider rescheduling the December 14, 2009 meeting to a later date in December. The best time is later in the same week because the next week is a partial work week due to seasonal holidays.

In addition, I suggest the Board add a second day to its March 2010 meeting. The current meeting is scheduled for Monday March 29, 2010. I recommend the Board also meet on Tuesday, March 30, 2010. However, if possible I would like to suggest the Board change the

meeting date to the week preceding: March 22, 23, 2010. This would enable me to take advantage of a vacation opportunity before the election season commences.

The Board will not have met in person since the December 2009 meeting. The Board has a teleconference meeting scheduled for Thursday, January 14, 2010. The primary purpose of the meeting is to select a new Chair, conduct the annual delegation of specified authority to the Director and General Counsel and address any pressing ballot access concerns for the Spring Primary and Spring Election.

Looking Ahead

The staff will continue to prepare for the federal audit of HAVA funds, to work with the Legislature on legislative initiatives, to carryout a number of organization functions related to ongoing investigations, administrative rule promulgation, informational manual revisions, preparing for the 2010 election cycle and rolling out the revised agency website.

Action Items

1. Whether the Government Accountability Board will reschedule its December 14, 2009 meeting to Thursday, December 17, 2009 or another date that week.
2. Whether the Government Accountability Board will schedule a second meeting day in conjunction with its March 2010 meeting.
3. Whether the Government Accountability Board will schedule its March 2010 meeting on March 22,23 or March 29, 30.