

Meeting of the Board
Tuesday, December 13, 2011 – 9:00 a.m.
G.A.B. Board Room
212 East Washington Avenue, Third Floor
Madison, Wisconsin

Agenda
Open Session

	<u>Page #</u>
A. Call to Order	
B. Director’s Report of Appropriate Meeting Notice	
C. Approval of Minutes of Previous Meeting	3
1. November 9, 2011 Meeting	
D. Public Comment (Limit of 5 minutes per individual appearance)	
<i>Break</i>	
E. Report on Recall Administrative Preparations	12
F. Report on Voter Identification Public Information Campaign	22
G. Review of Waukesha County Election Night and Canvass Reporting Procedures	24
H. Proposed Guidance on Central Count Absentee Vote Locations	34
I. Legislative Status Report	52
J. Administrative Rules	60
1. Approve Permanent Rule GAB 1.28 Scope of Regulation	
2. Report on Joint Committee for Review of Administrative Rules Mandated Scope Statements	

K. Director's Report

- 1. Ethics and Accountability Division Report -
campaign finance, ethics, and lobbying administration 85**
- 2. Elections Division Report – election administration 88**
- 3. Office of General Counsel Report – general administration 104**

L. 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 Thursday, January 12, 2011. The meeting will be conducted by teleconference originating at the Government Accountability Board offices, 212 East Washington Avenue, Third Floor in Madison, Wisconsin, beginning at 9:00 am.

State of Wisconsin\Government Accountability Board

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



JUDGE THOMAS H. BARLAND
Chair

KEVIN J. KENNEDY
Director and General Counsel

Wisconsin Government Accountability Board
GAR Hall, Room 417 North, State Capitol
Madison, Wisconsin
November 9, 2011
9 a.m.

Open Session Minutes

<u>Summary of Significant Actions Taken</u>	<u>Page</u>
A. Approved Minutes of Previous Meetings	1
B. Approved Use of Technical College IDs under the Voter Photo ID Law	5
C. Upheld Use of Stickers for University and College ID Cards	6
D. Approved Guidance on Effective Date of Redistricting	6
E. Modified Policy on Preparation of Recall Petitions	7
F. Approved Scope Statement for Administrative Rule GAB 1.28	7

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

Staff present: Kevin Kennedy, Nathaniel E. Robinson, Jonathan Becker, Shane Falk, Michael Haas, Sharrie Hauge and Reid Magney

A. Call to Order

Chairperson Barland called the meeting to order at 9:08 a.m.

B. Director's Report of Appropriate Meeting Notice

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

Mr. Kennedy also introduced four new staff members: Office Operations Associate Julie Nischik, Elections Voter Services Specialist Meagan McCord Wolfe, Voter Photo ID Elections Specialist Nadya Perez-Reyes, and Voter Photo ID Elections Specialist Richard Rydecki.

C. Approval of Minutes of Previous Meetings

September 12, 2011 Meeting – Open Session

MOTION: Approve the Open Session minutes of the meeting of September 12, 2011. Moved by Judge Deininger, seconded by Judge Cane. Motion carried unanimously.

D. Public Comment

Ardis Cerny of Pewaukee appeared on her own behalf to comment on the Voter Photo ID Law, and the availability of a free state ID card for persons, including students, who do not currently have an acceptable state ID for voting.

Mary Ann Hanson of Brookfield appeared on her own behalf to express concern about the use of student ID cards for voter identification purposes. She also expressed concern about recall petitions.

Patrick Williams of Milwaukee appeared on his own behalf to comment on single-signature recall petitions.

Orville Seymer of Milwaukee appeared on behalf of CRG Network to ask about the status of public records requests he has made of the G.A.B.

Matt Lind of Madison appeared on behalf of the University of Wisconsin System to comment on the university's efforts to make their student ID cards comply with the law.

Mark Balwinski of Racine appeared on his own behalf to comment on recall petitions, and his desire to provide petitions online in PDF form.

Paul Gabriel of Madison appeared on behalf of the Wisconsin Technical College District Boards to advocate for technical college student ID cards being acceptable for voting purposes. He said that by any legal analysis, technical colleges are accredited colleges.

Discussion.

James Zylstra of Madison appeared on behalf of the Wisconsin Technical College System to ask the Board to reconsider its previous decision that technical college ID cards are not acceptable for voter identification purposes.

Discussion.

Tim Casper of Madison appeared on behalf of Madison College to ask the Board to reconsider its decision about technical college ID cards. He said it is risky to rely on the recollections of lawmakers about legislative intent rather than to use a plain reading of the law.

Joe Lowndes of Madison appeared on behalf of Madison College staff and faculty to discuss technical college ID cards for voting, and asked the Board to reverse its decision.

Adam Strozier of Milwaukee appeared on behalf of Milwaukee Area Technical College to discuss student ID cards. He said all his credits will transfer to UW schools, and that MATC thought the law was clear that its ID card would be acceptable.

Laura Chern of Madison appeared on her own behalf to ask the Board to reverse its decision on technical college ID cards. She said students do not have two hours to wait at the DMV to get state ID cards.

Ric Poole of Madison appeared on behalf of the Madison College Student Senate to ask the Board to reverse its decision on technical college ID cards.

Dan Dodge of La Crosse appeared on behalf of the University of Wisconsin-La Crosse Student Association to comment on issues related to students' ability to prove residency in order to vote.

Jason Krug of La Crosse appeared on behalf of the University of Wisconsin-La Crosse Student Association to comment on difficulties he had voting in the recent special election for Assembly District 95 because he lives in a residence hall.

Discussion.

Fiona Cahill of Madison appeared on behalf of the University of Wisconsin-Madison Young Progressives to ask the Board to uphold its previous decision to allow universities to use stickers to modify their existing student ID cards to make them comply with the requirements in the Voter Photo ID Law.

Seth Hoffmeister of Stevens Point appeared on his own behalf to say the Voter Photo ID Law puts too many barriers in front of students to vote.

Discussion.

Rose Clearmont of Sun Prairie appeared on behalf of the Madison College Student Senate to say the Board should allow technical college ID cards to be used for voting. She discussed the issues she encountered to get a copy of her birth certificate to get a state ID card.

Jennifer Johnson of Madison appeared on her own behalf to say the Board should allow technical college ID cards to be used for voting.

Alan Irish of Madison appeared on his own behalf to say the Board should allow technical college ID cards to be used for voting.

Discussion.

John Mack of Madison appeared on behalf of the Madison College Student Senate to say the Board should allow technical college ID cards to be used for voting. He said he is in the liberal arts transfer program, and all his credits will transfer to the UW system.

Linda Rees of Thiensville appeared on her own behalf to applaud the Board for its work to ensure the voting rights for all citizens who should be voting.

Annette Kuglitsch of Waukesha appeared on her own behalf to discuss Section 7.30 of the Wisconsin Statutes regarding political parties nominating election inspectors. She asked the Board to direct staff to put more resources into communicating with municipal clerks so they will follow the law.

Susan Hoffman of Madison submitted a comment that technical college students are not second class students, and deserve to have their student IDs work for voting.

Les Hoffman of Madison submitted a comment asking the Board to include technical college student IDs as acceptable forms of ID for voting.

Damon Terrell of Madison appeared on his own behalf to ask the Board to allow Madison College students IDs and stickers.

Judge Barland called a recess at 11:02 a.m. The Board reconvened at 11:10 a.m.

Michael Pincikowski of Kenosha appeared on his own behalf to say student ID cards should be allowed for voting.

Eric Grow of Milwaukee appeared on behalf of the University of Wisconsin-Milwaukee Student Association. He apologized for undue criticism the Board has received for its decisions on student ID cards.

Patrick Williams of Milwaukee asked to comment on voter ID issues.

Judge Barland informed Mr. Williams he had already used his five minutes.

Celeste Ortmeier of Nashotah appeared on her own behalf to say that stickers on student ID cards could be duplicated, and that students are capable of getting state ID cards.

Jayne Montgomery Baker of Milwaukee appeared on behalf of the League of Young Voters Education Fund. She urged the Board work to make sure interpretation of the Voter Photo ID Law is possible by the end of the month, to create a strong brand for voter ID education, and to work with the Wisconsin Department of Transportation on what documentation it requires for free state ID cards.

Don Nelson of Madison appeared on behalf of the University of Wisconsin-Madison. He said the university is looking at a two-ID system or a single ID that would be compliant with the law, and is working on educating students.

Discussion.

Karen Sauer of Oconomowoc appeared on her own behalf to ask questions regarding her 17-year-old son who is disabled. She is concerned that if she takes away his right to vote that a healthcare worker may register him to vote sometime in the future.

Discussion.

David Ryan of Waukesha appeared on his own behalf to discuss student ID issues. He said there should be a central ID for colleges with uniformity so clerks know what they look like.

Bryan Bliss of Madison appeared on his own behalf to discuss concerns about recall, and about legislative proposals to require petitions to be notarized.

E. Treatment of Wisconsin Technical College System Student Identification Cards under 2011 Wisconsin Act 23

MOTION: Reconsider the Board’s decision of September 9 regarding technical college student ID cards. Moved by Judge Cane, seconded by Judge Vocke. Motion carried unanimously.

Discussion.

Judge Cane said he believes the Board was wrong in September. He said technical colleges meet the technical definition of the statute.

Judge Barland said he concurs, based upon the ordinary meaning of the term “college.”

Judge Vocke said he agrees with Judge Cane.

Judge Deininger said he is uncertain the Board was in error.

Discussion.

Judge Nichol said the Legislature wanted to reduce fraud, and there is much less likelihood of fraud from two-year colleges because most of their students are Wisconsin residents, whereas other universities have substantial numbers of students from outside the voting area.

MOTION: To reverse the Board’s September 9, 2011 decision and to allow technical college ID cards for voting purposes, and direct staff to document the Board’s basis for its decision. Moved by Judge Vocke, seconded by Judge Cane.

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

Motion carried unanimously.

F. Joint Committee for the Review of Administrative Rules Request for Policy on Use of Stickers on Student Identification Cards

Director Kennedy briefed the Board on the concerns expressed by members of JCRAR about the use of stickers on student ID cards. He said there are questions about whether stickers could be duplicated, and JCRAR members wanted assurances of security in the process. He suggested looking at stickers on a case-by-case basis, since only Beloit College and Viterbo University have expressed an interest in using stickers.

Discussion.

MOTION: Reconsider the use of stickers on student ID cards. Moved by Judge Cane, seconded by Judge Deininger.

Discussion.

Roll call vote: Barland:	No	Brennan:	No
Cane:	Aye	Deininger:	Aye
Nichol:	No	Vocke:	No

Motion failed.

Judge Barland called a lunch recess at 12:20 p.m. The Board reconvened at 12:53 p.m.

G. Proposed Guidance on Effective Date of Redistricting under 2011 Wisconsin Acts 39, 43, 44

Director Kennedy provided an oral and written report, and directed Board members to supplemental materials including correspondence from Senators Lazich and Fitzgerald. He explained that specific language in the redistricting legislation established that the right to recall is based upon the pre-Act 43 Senate districts, which is not a decision the Board can change.

MOTION: Authorize the Director and General Counsel to send a letter, as amended, to the Assembly and Senate Chief Clerks regarding the effective dates of the redistricting legislation. Moved by Judge Vocke, seconded by Judge Brennan. Motion carried unanimously.

MOTION: Adopt the analysis and conclusions contained in the staff memorandum dated October 19, 2011, related to the effective dates governing elections and constituent representation established by 2011 Wisconsin Act 43. Moved by Judge Deininger, seconded by Judge Vocke. Motion carried unanimously.

MOTION: Approve draft Guideline pertaining to the effective dates established in Act 43, subject to any legislation which alters the conclusions contained in the draft Guideline. Moved by Judge Deininger, seconded by Judge Cane. Motion carried unanimously.

H. Joint Committee for the Review of Administrative Rules Request for Policy on Preparation of Recall Petitions

Kevin Kennedy provided an oral and written report. He said the Board's action in September regarding single-signature recall petitions had been misconstrued by some in the media and the Legislature as an approval of online petition-gathering. He said the issue is what information on a petition may be pre-filled by the petition circulator, and what information must be filled in by the signer.

Discussion.

MOTION: Adopt the analysis and conclusions contained in the staff memorandum that if the circulator of an election-related petition is also a signer of the petition page circulated by the circulator, then the individual must sign once in a section of the form designed to collect information from qualified electors signing the petition and a second time in a section of the form designed to obtain a certification from the circulator. Moved by Judge Deininger, seconded by Judge Brennan. Motion carried unanimously.

Discussion.

MOTION: Adopt the analysis and conclusions contained in the staff memorandum that no one other than the signer or the circulator may prepare an election-related petition with a signer's residential address information or the full date of signing pre-populated. However, an election-related petition may have the municipality of residence and the month or year of signing pre-populated. Moved by Judge Nichol, seconded by Judge Cane. Motion carried unanimously.

I. Legislative Status Report

Michael Haas provided an oral and written report.

J. Administrative Rules

Proposed Scope Statement for GAB 1.28 relating to the Scope of Regulated Campaign Finance Activity

Staff Counsel Shane Falk provided an oral and written report.

MOTION: Adopt the statement of scope for GAB 1.28. Moved by Judge Deininger, seconded by Judge Cane. Motion carried unanimously.

K. Director's Report

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

Written report from Division Administrator Jonathan Becker was included in the Board packet.

Elections Division Report – election administration

Written report from Division Administrator Nathaniel E. Robinson was included in the Board packet.

Office of General Counsel Report – general administration

Written report from Kevin J. Kennedy, Sharrie Hauge, and Reid Magney was included in the Board packet.

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 Brennan, seconded by Judge Cane.

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

Motion carried. The Board convened in closed session at 2:03 p.m.

M. Adjourn

The Board adjourned in closed session at 4:15 p.m.

####

The next regular meeting of the Government Accountability Board is scheduled for Tuesday, December 13, 2011, at the G.A.B. office, 212 East Washington Avenue, in Madison, Wisconsin beginning at 9 a.m.

November 9, 2011 Government Accountability Board meeting minutes prepared by:

Reid Magney, Public Information Officer

November 30, 2011

November 9, 2011 Government Accountability Board meeting minutes certified by:

Judge Gerald Nichol, Acting Board Secretary

December 13, 2011

State of Wisconsin \ Government Accountability Board

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



JUDGE THOMAS H. BARLAND
Chairperson

KEVIN J. KENNEDY
Director and General Counsel

MEMORANDUM

DATE: For the December 13, 2011 Meeting

TO: Members, Wisconsin Government Accountability Board

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

Prepared by:

Recall Strategic Response Team
David Buerger, Co-Team Lead
Katie Mueller, Co-Team Lead

SUBJECT: Recall Status and Proposed Administrative Processes

Once again Wisconsin faces an unprecedented number of recalls. Committees have formed to recall the Governor, Lieutenant Governor, and four additional state senators. Since the Wisconsin Constitution was amended in 1926 to allow recall for state officials, 13 state legislators have been successfully subjected to an actual recall election, with 9 of those in the last year alone. While the recalls earlier this year have given G.A.B. staff valuable experience in administering the recall process, the scale of even a single statewide recall is a daunting challenge that far exceeds anything Wisconsin has seen in its history. Including the recall of a second statewide office and four state legislators puts this recall effort far above and beyond anything ever attempted before in the history of the state, and perhaps even the nation. If the recall petitions are turned in with the same percentage signature buffer as the recalls earlier this year (~130%), the G.A.B. is faced with examining approximately 1,500,000 signatures in only 31 days.

It is within this historical and unprecedented context that the Board staff have begun to provide advice and guidance to persons interested in recall efforts, registered recall committees, and incumbents who are the targets of recall efforts. Staff are also preparing to administratively process the recall petitions and any resulting elections. This Memorandum is divided into two sections. The first section gives an update as to the status of the recall committees that have filed with the Government Accountability Board, and is presented for information only. The second section is subdivided into multiple subsections that each describe an aspect of the proposed procedures to be used in the pending recalls. Staff seeks any feedback the Board wishes to provide and the Board's approval of the proposed administrative procedures which are outlined.

I. Recall Status Report

As of December 1, 2011, nine separate recall committees have registered to circulate petitions against six officeholders, all of whom will have been in office at least one year as of January 3, 2012, and will be eligible for recall. Of these nine committees, three target Governor Scott Walker, two target Lieutenant Governor Rebecca Kleefisch, and one committee has filed against

each of the following State Senators: Senator Scott Fitzgerald (SD 13), Senator Van Wanggaard (SD 21), Senator Terry Moulton (SD 23), and Senator Pam Galloway (SD 29).

Detailed information regarding the nine registered recall committees may be found on the Board's website at <http://gab.wi.gov/elections-voting/recall>. The situation appears to have solidified somewhat at this time, with no new registrations since the initial wave of filings the week of November 14. There is however, one committee that has some deficiencies in their registration.

Close Friends to Recall Walker, which registered on November 4, had some defects in their Campaign Registration Statement (GAB-1). Close Friends to Recall Walker was contacted regarding the insufficiencies and advised that they would need to file a corrected Campaign Registration Statement or the registration will be terminated. As of the time of this memo, no amended registration has been received from the Close Friends to Recall Walker.

The number of signatures petitioners targeting the Governor or Lieutenant Governor must have certified as sufficient by Board staff to trigger a recall election is a minimum of 540,208 signatures. The number of signatures petitioners targeting the State Senators must have certified as sufficient by Board staff to force a recall election varies from 14,958 to 16,742 signatures depending upon the specific Senator. These signature figures are based upon a calculation of 25% of the electors that voted for Governor on November 2, 2010, statewide or in each Senate district. The signatures must be collected and filed within 60 days of the recall committee's registration with the G.A.B. Board staff expect to receive recall petitions for review and determination of sufficiency at any time, but no later than January 17, 2012, based upon the recall committees' registration dates.

A brief breakdown of the offices against whom recall registrations were filed and the number of recall committees registered follows:

District	Officeholder	# Comm.	Notes
Statewide	Governor Scott Walker	3	
Statewide	Lieutenant Governor Rebecca Kleefisch	2	
SD 13	Senator Scott Fitzgerald	1	
SD 21	Senator Van Wanggaard	1	
SD 23	Senator Terry Moulton	1	
SD 29	Senator Pam Galloway	1	

Since circulation began in earnest on November 15, there have been a number of media reports of alleged illegal activity by both sides. Reports include allegations of circulators trespassing on private property/disrupting traffic, fraudulently forging signatures on petitions, and circulating petitions before the recall committee registration date. Reports also include allegations of opponents to the recall presenting false petitions to electors in the hopes of keeping them from signing the real petition, physically destroying petitions, and verbally or physically threatening recall supporters. These media reports are further supported by numerous phone calls and emails to the G.A.B. office reporting similar alleged activity.

Media Reports

The recall Scott Walker effort, to date, has been anything but dull
http://host.madison.com/ct/news/local/govt-and-politics/article_0beaccf0-1621-11e1-bc62-001cc4c002e0.html

Liberal group offers petition destruction reward

http://www.journaltimes.com/news/local/state-and-regional/madison-liberal-group-offers-petition-destruction-reward/article_1fdcdf46-153b-11e1-b459-001cc4c03286.html

Police investigate claim that Edgewood College student destroyed Scott Walker recall petition

http://host.madison.com/ct/news/local/govt-and-politics/city-hall/police-investigate-claim-that-edgewood-college-student-destroyed-scott-walker/article_7ae65858-1af5-11e1-89b5-001cc4c03286.html

Madison police probe 3 more reported crimes against Walker recall campaign

http://host.madison.com/ct/news/local/crime_and_courts/madison-police-probe-more-reported-crimes-against-walker-recall-campaign/article_c960d8ec-1b4e-11e1-84bd-001cc4c002e0.html

Civility lost in political upheaval

<http://www.jsonline.com/news/statepolitics/Civility-lost-in-Wisconsin-turbulent-political-season.html>

Staff are working with law enforcement across the state to funnel these recall-related complaints to the G.A.B. so that staff can assess each complaint for further action or referral to authorities, as necessary. On December 1, 2011, Director Kennedy, along with the Department of Justice, presented a telephone conference to Wisconsin district attorneys regarding the types of election-related complaints which are enforced and prosecuted by local law enforcement. The G.A.B. has offered to serve as a clearinghouse for complaints filed around the State and to assist in referring complaints to the appropriate decision maker. The Department of Justice has also indicated that it is available to assist district attorneys in the investigation and prosecution of recall-related incidents. On December 1, G.A.B. and DOJ also issued a joint media release emphasizing the serious nature of and penalties associated with violations of the elections statutes.

Litigation

Lawsuits have been filed in both federal and state courts related to the recently-enacted redistricting legislation which potentially could impact the administration of the recall petitions and any elections. Two lawsuits have been filed and consolidated in the Eastern District federal court challenging the constitutionality of the new district boundaries. The petitioners also seek a declaration that the any recall elections prior to November 2012 must be conducted using the legislative district boundaries which existed prior to the passage of the new redistricting laws, which has been the position adopted by the Board based upon the express language of the legislation. The federal court has issued a scheduling order which includes trial dates the week of February 21, 2012.

Another group of plaintiffs have filed lawsuits in the Wisconsin Supreme Court and the Waukesha County Circuit Court seeking a declaration that the “old” legislative districts are unconstitutional and that the new districts must govern any recall or special elections which take place after August 24, 2011. The Board is represented by the Department of Justice in the federal and state litigation.

In the event that any of the pending litigation results in a court finding that recall elections associated with the current petitions must use the new district boundaries, the Board would look to the court for guidance as to the proper procedures to be followed for administering any recall elections.

Finally, Board staff has determined that if a petition for a statewide recall (Governor or Lieutenant Governor) is filed, it will be necessary to seek court approval for an extension to

complete the review and challenge process. Staff has estimated that the review and challenge process will require a 60-day timeline rather than the 31-day time period established by statute.

II. Proposed Administrative Processes

Staff is largely operating under the same recall procedures as were approved by the Board in the prior round of recalls. Experience from the last round of recalls and the scale of the pending recalls however, have prompted some new procedures.

A. Registration

The registration of recall committees has been conducted largely as it was in the previous round of recalls. Each committee has been required to file a Campaign Registration Statement (GAB-1) identifying itself as a recall committee targeting a specific officeholder and providing other relevant details of the committee such as contact and depository information. Each recall committee is also required to file a Statement of Intent (SoI), which identifies the petitioner, the officeholder targeted, and is signed by the petitioner. Unlike the prior round of recalls, the petitioners have been directly listed on the GAB-1 for most committees, eliminating any potential argument regarding the ties between the petitioner and the recall committee.

Upon registration, each recall committee is sent a letter confirming their registration and providing important information such as the deadline to offer the recall petition for filing with the G.A.B., the deadline for circulation of the petition, the minimum required number of signatures, and campaign finance reporting deadlines. The letter also directs the committee to the G.A.B.'s Recall Manual for further details.

Please Note: Staff has changed computation of the deadline to circulate the recall petition to a straight 60-day period upon advice of counsel. See Wis. Stat. § 9.10(2)(d), 990.001(4)(b), and (c). Each recall committee has been advised of the change from the prior round of recalls in their initial registration correspondence. As a result of weekend dates and the Martin Luther King, Jr. holiday, all of the committees which registered on November 15, 2011 must offer petitions for filing no later than 5:00 p.m. on Tuesday, January 17, 2012, but all signatures must be collected no later than Saturday, January 14, 2012.

In addition, upon registration of a recall committee, a letter is generated to the targeted officeholder advising that a recall has been registered against them. This letter accompanies a copy of the recall committee's GAB-1 and our correspondence to the committee. Also, enclosed with this letter are memoranda informing the officeholder of certain ethics and campaign finance requirements that go into effect for the duration of the recall petition effort and any election period resulting from the petition.

B. Capacity Building / Training

Staff estimates that 1.5 million signatures will be reviewed during the processing of recall petitions in 2012. This volume of signatures will require the Board's staff to be supplemented with temporary staff to review the facial validity of the petition signatures and assist with challenge reviews. In order to complete the review process in the estimated eight weeks allotted, staff expects up to 50 temporary workers to assist in the process.

These temporary staff will be organized into teams for the intake, scanning, reviews, and data entry of certain information from the petitions, as well as assistance with processing

the legal challenges to the petitions. Each team will be supervised by other temporary staff that have been more extensively trained in the policies and procedures of signature validation and specifically recruited for leadership ability and supervisory experience. G.A.B. also plans to employ a temporary legal staff person to assist with the processing of challenges that rely on more detailed documents such as affidavits and related exhibits.

Staff are in the process of finding an additional secure location to house the 50 temporary workers for the eight weeks needed to review the recall petitions as well as the estimated 300,000 petition pages. Supplies such as tables, chairs, filing cabinets, scanners, computers, and other office supplies will be ordered and set up in the new location anticipating the needs of the temporary staff. The recall committees will be informed of the new location when it is determined and directed to deliver the recall petitions to that location.

As mentioned above, eight of the 50 temporary staff will be recruited to serve as “team leaders” based on leadership ability and supervisory experience. These staff will be brought in for interviews with G.A.B. staff before hiring and trained more extensively to supervise and answer basic questions from the other 42 temporary staff. All temporary staff will be subjected to a criminal background check as well as a partisan activity check, as are all G.A.B. staff members, before being hired. The partisan background check will include a search of the Campaign Finance Information System for partisan campaign contributions as well as a self-certification from each applicant that they have not participated in the current recall efforts.

In order to promote professional behavior in the recall review process, all temporary staff will be required to sign an acknowledgement that they have received and read a copy of the Recall Review Team Code of Conduct. The code of conduct will establish the nonpartisan nature of the review, work rules, and the acts prohibited by any recall review staff. All temporary staff will also have to sign a statement certifying that they have not participated in or contributed to any of the current recall efforts.

The Recall Strategic Response Team members have been trained in the recall procedures used in processing recall petitions in 2011 and are preparing training materials for other staff. The training materials created by the Recall Strategic Response Team members will be used to train all Elections Division staff in case their assistance is needed as well as the temporary staff. Approximately one week before the petitions are to be filed, the 50 temporary staff will be trained on reviewing recall petitions.

A database is being customized by IT staff to track the signatures struck by staff and other petition information (see the Data Entry section below) to assist with challenge review. A select group of temporary staff will be entering this petition data into the customized system. These select temporary staff will also be trained in the usage of the new database in the week preceding the anticipated filing date.

C. Intake

The intake procedures are largely the same as they were in the prior round of recalls. When an authorized representative of the recall committee appears to offer the completed recall petition for filing, staff will request the representative estimate the number of pages and signatures. The representative will also be asked to confirm that the pages are sequentially numbered and in sequential order. The staff will then complete a recall petition receipt and make a copy for the representative.

Using the information from the receipt, another set of letters are generated to the targeted officeholder and the recall committee informing them that the petition has been offered for filing and advising them of the challenge process procedures and timeline. A digital copy of the petition will also be made and delivered to the committee and targeted officeholder as soon as possible following the receipt of the petition (see below Scanning section).

Before the petition is delivered to the scanning team, it must be broken down in preparation for scanning, the estimated number of pages and page numbering verified, and a chain of custody log prepared for tracking the petition. Temporary staff will separate the recall petition into stacks of 50 page numbers (1-50, 51-100, etc.) This is done to keep each scanned image reasonably-sized for upload to the G.A.B. website. During this breakdown process, temporary staff will also count the pages and verify unique consecutive page numbers have been applied, if not it is corrected at this time. If any pages are found to be missing, they are also documented at this time. All staff who handle the petition pages will be required to sign the chain of custody log before the petition is delivered to the scanning team.

D. Scanning

After each recall petition is received, temporary staff will need to create an electronic record of the petition. Board staff plan on using two high-speed scanners to create PDF images of each petition page. It is anticipated that two eight-hour shifts per day for two days will be required to scan in all of the petition pages. As the pages are scanned, electronic files will be created and will need to be reviewed and renamed. After all of the petition pages are scanned, an electronic copy will be provided to the recall committee and the targeted officeholder, and will be made available to the public.

The scanned copies of the recall petition will also assist during the challenge process. Staff will be able to more quickly locate individual signatures that have been challenged using the electronic version of the recall petitions. If the validity of the challenge can be determined from the electronic version the staff will use the scanned recall petitions in lieu of retrieving the paper petition.

E. Review of Petitions

The Board is charged with conducting a review of each petition page and its signatures to determine sufficiency. Each petition will be reviewed twice by two different temporary staff members. Pursuant to Wis. Stat. § 9.10(3) and Wis. Admin. Code GAB 2, the reviews conducted by the temporary staff will be facial reviews of the information on the petition. This is in conformance with the standard business practices of the G.A.B., used for all petition reviews including nomination papers and recalls. Temporary staff will be trained using the Determination of Sufficiency of Recall Petitions guide. The Determination of Sufficiency of Recall Petitions guide is attached to this memo as Exhibit A.

Per GAB 2.05(4), the first and second reviews are conducted based upon a presumption of validity of the information on the petition. This means that while temporary staff will verify that all the required elements are present on each page, they will not consult any extrinsic records to verify the truth of that information. It is important to keep in mind that petition signers must be qualified electors, but are not required to be registered voters, and therefore names of signers may not necessarily be included in the Statewide Voter Registration System.

The facial review conducted by temporary staff is not intended or designed to eliminate all potential reasons or arguments for petition insufficiency. The rules governing the recall process established by the statutes reflect the reality that the available time and resources do not permit a more extensive examination of each signature during the process of first and second reviews. Wis. Stat. § 9.10(2) specifically establishes the opportunity and obligation of the targeted officeholder to file verified challenges against any signatures alleged to be invalid. That statute lists several possible bases for a challenge, including the fact that an individual signed the petition more than once, or is ineligible to sign the petition for any reason such as a felony conviction or invalid address. The burden of proof for any challenge rests with the individual bringing the challenge.

F. Data Entry

The purpose of data entry is to help staff track the review process as well as facilitate challenge reviews. In the 2011 recall efforts the team utilized Microsoft Excel to manage the petition data. Due to the scale of the potential 2012 recall petitions, Microsoft Excel does not have the capacity to meet our operational needs. The 2012 Recall Team will utilize more advanced database technology for the pending recalls. It is anticipated that this more advanced database system will require customization by the G.A.B. technology staff to meet our needs. This will allow the team to better query information and utilize advanced reporting features.

The data entry efforts will focus on signatures that have been struck by G.A.B. staff or challenged by the targeted officeholder. Using the database the team will track, for each petition page, how many signatures were counted as valid, how many signatures were struck, and the circulator. The team will also track the line and page number of every signature that was struck along with the reason. The database will also track the ultimate determination of that signature's validity.

Data entry will also be used to track challenges by outside parties. The team will ask that all challenge information be submitted electronically so it can easily be uploaded into the challenge database. The challenge database will include the line and page number of the challenged signature, the reason for the challenge, and the ultimate determination on whether or not to count the signature.

Please Note: The data entry team will not enter all data elements for each recall petition. This means that most identifying information, such as names, addresses, municipalities, and dates of signing will not be recorded in the G.A.B. database and will not be available in any reports generated from the database (See Review of Petitions section above).

G. Challenge Review

Once the recall petitioner has offered to file a petition, the targeted officeholder will have an opportunity to file written challenges to the petition. The challenge to the petition must be filed within 10 days after the petition is offered for filing. The petitioner then has 5 days after the challenge is filed to file a rebuttal. The targeted officeholder then has the opportunity to file a reply to the rebuttal within 2 days after the rebuttal is filed. The G.A.B. then has 14 days after the deadline for the reply to determine the sufficiency of the petitions. Upon showing of good cause, these deadlines may be extended by court order. Wis. Stat. § 9.10(3)(b). Board staff anticipates requesting an extension for its 31-day period in the event of a petition for a statewide recall election. It is expected the officeholder may also request a court ordered extension for the challenge period.

Petitions are challenged for a variety of reasons. Some general categories include problems with signature dates, residential addresses, eligibility of the signer, duplicate signatures, improper certification of circulator, or alleged misrepresentation of the petition by the circulator. The recall petitioner may file affidavits correcting insufficiencies in the petition and responding to any challenges.

Staff will be requesting that all challenges to the petitions be filed electronically. Should the challengers fail to file their challenges electronically, the temporary staff will data enter the challenges. Working with challenges in an electronic format or database will allow the challenged signatures to be easily compared to those signatures that have already been struck. This comparison process will be performed by both G.A.B. staff and temporary employees. Should challenged signatures be found that were not struck during the initial petition review process, the signatures will be manually reviewed and the number of valid signatures adjusted if necessary. During the challenge review process, staff will enter updated information in the challenge database which will document the page, line, and reason the signature was struck.

At the conclusion of the review of the challenges, staff will prepare a memorandum providing a recommendation to the Board. This memorandum will provide a recommendation of sufficiency or insufficiency and a detailed breakdown of which signatures were struck and enumerate the reasons why they were struck.

Subsequent to G.A.B. staff providing a memorandum on sufficiency or insufficiency of the petitions, the Board shall hold a public hearing. These challenge hearings are administrative proceedings subject to statutory administrative procedures and potential court reviews and as such each recall petition shall be handled separately. The targeted officeholder or his or her representative shall be provided an opportunity to address the Board and present a statement or argument, for a maximum of 15 minutes. The recall petitioner or his or her representative shall also be provided an opportunity to address the Board and present a statement or argument for a maximum of 15 minutes. The targeted officeholder or his or her representative shall then be granted an opportunity to address the Board to reply to any new matter raised in the petitioner's argument to the Board.

After the challenger and petitioner have had their opportunities to speak, G.A.B. staff shall present its written report and recommendation to the Board for consideration. The Board may ask additional questions of the challenger, petitioner, or their representatives at any point of the proceeding. In addition, the Board may permit additional comments limited to no more than 5 minutes for each person. The Board has the power to restrict public comments as necessary to ensure that the challenger and petitioner have a full opportunity to be heard on each recall petition and to ensure completion of the hearing in a timely fashion.

H. Security

To ensure the integrity of the process, the physical security of the recall petitions is addressed through multiple methods.

The location of the recall petition review process will be in a secure building. Only individuals on the Government Accountability Board Management Team, the Government Accountability Board Recall Strategic Response (RSR) Team, or temporary staff escorted by G.A.B. RSR team members will be allowed in the area where the review of the petitions is occurring. All individuals will be required to sign in and sign out of the petition review area creating a record of who had access to the materials at any given time. Depending on

the space available, the Team will determine the extent to which the public may observe the process.

All petitions will be secured in a locked cabinet or other secure storage while the process is occurring. When a packet of petitions is checked out for review, the initials of the individual checking out the petitions will be recorded on a Chain of Custody Log. Also, during the petition review process, whenever a packet of petitions is under review, the initials of the employee conducting the review process will be clearly marked on all tracking sheets. This will allow staff to keep an accurate record of who had access to specific petition pages.

Upon the Board's final determination of sufficiency regarding the petition, the petition will be placed in a secure container, sealed with tamper-evident seals, and a final entry will be made on the Chain of Custody Log. Unless there is a pending appeal, these secured containers will then be stored at the State Records Center until any necessary period of retention has expired.

G.A.B. staff will plan to secure the petitions from the possibility of fire and other natural disasters or emergencies. Physical security will be a key feature of any location that is chosen for the recall review site. G.A.B. staff will develop contingency plans in the event of fire or other natural disaster so the review process can continue unimpeded. Having an electronic copy of the petition also helps ensure that no information can be completely destroyed. The G.A.B. will also work with Capitol Police to monitor the location closely and provide further physical security as needed.

I. Communications / Frequently Asked Questions (FAQ)

The two Co-Team Leads of the Recall Strategic Response Team will regularly (daily) collaborate with the Elections Division Administrator and the assigned Staff Counsel. The agency Director and General Counsel will be briefed as necessary. In addition to these daily status reports, a periodic update will be sent from the 2012 Recall Strategic Response Team to G.A.B. management to advise of the status of the Team's progress. The memorandum will include important upcoming events as well as identify important milestones in the timeline which have been met. A copy of the Team's official schedule will also be created which includes completed deadlines and future objectives. Periodic correspondence will also be generated for the recall committee and targeted officeholder to apprise them of each new phase of the process. Throughout the recall process, local election officials will be apprised via a clerk communication of any recall-related events which may affect local election administration.

The GAB website will be updated with information on the recalls on as-needed basis. The "Recall" section of the website will be updated to reflect each new committee's registration, targeted officeholder, signatures required, date the petition is offered for filing, and the estimated number of signatures filed. Other information specific to each committee will also be posted as it is available. News, status updates, and other events that are of the highest importance will also appear on the Government Accountability Board's homepage (gab.wi.gov).

The Team will address questions received in the form of an FAQ. The FAQ will be included as a feature in the "Recall" section of the website. Questions which receive multiple inquiries or which address pertinent information will be added to the FAQ as they are received.

The Team will work closely with the GAB Public Information Officer to assure important deadlines and information is relayed to the public and the media in a timely matter. If an election date is set, the team will also communicate important information to local municipalities through the use of press releases that can be customized for distribution in their communities.

Recommended Motion: That the Board approve the proposed administrative processes as outlined in Section II of this memorandum for the review and processing of recall petitions offered for filing in 2012.

State of Wisconsin\Government Accountability Board

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



KEVIN J. KENNEDY
Director and General Counsel

MEMORANDUM

DATE: For the December 13, 2011, Meeting

TO: Members, Wisconsin Government Accountability Board

FROM: Sharrie Hauge, Project Lead for Public Information Campaign
Reid Magney, Public Information Officer

SUBJECT: Voter Photo ID Law Public Information Campaign

The Board's Voter Photo ID Law Public Information Campaign is scheduled to launch in early January 2012. Since the Board's last meeting in November, staff has held dozens of meetings and spent hundreds of hours working on the development of the campaign in conjunction with Knupp, Watson and Wallman (KW2), the advertising firm we hired to develop the campaign. KW2 has done extensive work for the state of Wisconsin over the years, including the state's tobacco control campaign.

The campaign's theme is "Bring It to the Ballot." Because most voters already have an acceptable photo ID, this statewide, multimedia campaign focuses on reminding them to bring that photo ID to the polling place, as well as raising awareness with voters who do not have an acceptable ID that they can get a free Wisconsin State ID card from the Division of Motor Vehicles. The campaign directs people who need more information about how to get a Free State ID card to visit a dedicated website (bringit.wisconsin.gov) or call a toll-free number (866-VOTE-WIS) for more information.

Specifically, we will be educating voters about the new law using television and radio ads, a website devoted specifically to Voter Photo ID education, training videos for voters and election workers, a texting program, print ads, billboard ads, transit ads, Internet banner ads directing people to our Voter Photo ID Law website, brochures and other printed materials, and our toll-free number.

Since late October we have been working relentlessly to bring this campaign to fruition. The process began with KW2 presenting concepts/storyboards for television ads, radio ads, training videos and the website. Those concepts were tested at a series of focus groups throughout the state.

In addition to senior staff, a significant number of Elections Division staff members have played key roles in helping to develop and vet KW2's excellent work. On November 11, we met with KW2 to approve the concepts for the informational videos. On November 14 we met with KW2 to review the concepts for the television ads. On November 15 we met to review website designs. On November 16, staff met with Lorraine Lathan, KW2's minority outreach subcontractor. On November 18, we met with KW2 and they presented the radio ad scripts for our review. On November 21 staff met to finalize the radio scripts. On November 22 we met to discuss print ads. We also finalized the TV scripts and met with KW2 for a pre-production meeting. On November 28, we signed off on the website designs.

On November 29, we finalized the TV and radio scripts. We had gone through two revision cycles for the TV and radio ads to ensure our message is conveyed accurately. On November 30, Reid, Christopher Doffing and I attended the production of our television and radio ads at a studio in Fitchburg. On December 1, we also attended the voiceover recording session for TV and radio commercials. Also that

day, we met with KW2 to go over concepts for two of the four informational videos KW2 are developing about the voting process, to review the first storyboards and scripts.

Because the campaign is kicking off in early January, and most of KW2's work must be completed by December 19, key staff members are devoting nearly 100 percent of efforts to overseeing the campaign.

For our media buys (television and radio) we have used the State of Wisconsin's contract with Wisconsin Broadcasters Association to secure 28 weeks of broadcast media placement, using WBA's paid public service announcement program. This program provides an extraordinary value for government agencies by guaranteeing that public service announcements run statewide during unsold periods throughout the day. The weeks for media placement are January 2 - February 20, March 5 - April 2; July 2 - August 13; and September 3- October 29. In addition to this these media buys, the Board may need to purchase additional broadcast time in the event recall elections are ordered outside these time frames, to ensure the public is adequately informed about the Voter Photo ID Law. In a recent letter about potential recall costs to be borne by the G.A.B, we have informed the Joint Committee on Finance that additional media buys could cost as much as \$250,000 because not all of the time required may be available from WBA on short notice. In that event, the Board would have to buy airtime at market rates.

The television ads and the radio ads are scheduled to be completed by December 19; however, we wanted to give you a sneak-preview of the ads prior to their official release on January 2. At the meeting, we will play at least one TV ad (which may not be in its final form) and one radio ad. We will also show you screenshots of the Voter Photo ID Law website, which will still be in production.

State of Wisconsin\Government Accountability Board

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



JUDGE THOMAS H. BARLAND
Chair

KEVIN J. KENNEDY
Director and General Counsel

MEMORANDUM

DATE: For the December 13, 2011 Meeting

TO: Members, Wisconsin Government Accountability Board

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

Prepared and presented by:

Ross Hein, Elections Supervisor
Diane Lowe, Lead Elections Specialist

SUBJECT: Waukesha County Procedures and Security with Respect to Collecting and Posting Election Night Results and the Count Canvass Process

As a result of an investigation into several complaints alleging that Waukesha County Clerk Kathy Nickolaus violated laws regulating the conduct of election officials in connection with the April 5, 2011 Spring Election, the Board found that Clerk Nickolaus failed to comply with the statutory requirement to post all returns on Election Night. Wis. Stats. §7.60(1). On September 12, 2011, the Board ordered Clerk Nickolaus to conform her conduct to law and to take steps to ensure that documented procedures for the collection, posting, compiling and canvassing of election results are in place for future elections.

Clerk Nickolaus has worked diligently and cooperatively with Elections Specialist Diane Lowe to develop comprehensive procedures that ensure transparency and provide security, documentation, checks and balances. The procedures meet the goal of Waukesha County to make results available on Election Night and to preserve the integrity of election results from the close of the polls through the conduct of the county canvass.

Although the procedures may not be “one size fits all,” with respect to all Wisconsin counties, they provide a template on which other counties may build their own secure and transparent post-election processes.

Recommended Motion:

The Government Accountability Board accepts and approves the proposed procedures for posting election night returns; receiving and securing election materials from municipalities; and preparing for and conducting the county canvass.

**Procedures for Collecting, Reporting and Canvassing Election Results
Waukesha County**

The following procedures have been written to comply with the order from the Government Accountability Board dated September 12, 2011.

1. *Written procedures for collecting reporting unit level election results from all Waukesha County municipalities after the polls close on Election Day.*

Municipalities that DO NOT Use Dominion Election Equipment (Villages of Menomonee Falls and Mukwonago)

- a. Village of Menomonee Falls and the Village of Mukwonago will report results, by reporting unit, via a spreadsheet.
- b. The spreadsheet will be faxed to the Office of the County Clerk *and* emailed to the general county clerk email account.
- c. The faxed copy will be used to enter data into the election administration software (WinEds), but the emailed results will be used for this purpose if the fax is not clear enough to read.

Municipalities that USE Dominion election equipment (all municipalities except the Villages of Menomonee Falls and Mukwonago)

- a. Election inspectors will place the results cards and packs (removable memory devices which contain a ballot image and the election results) in the blue canvass security bag, one bag for each polling place. Two copies of each machine tape (2 optical scan machine tapes and 2 touch screen machine tapes) shall also be placed in the blue canvass bag. A tamper-evident security seal must be placed on the blue bag.
- b. The chain of custody card must be signed by two election inspectors from the polling place and sealed into the window pocket of the blue bag. The blue bag shall be delivered to the municipal clerk or clerk's designee, who will deliver the blue bag to the County Clerk's Office.
- c. The clerk or clerk designee delivering the results to the county will sign and date stamp the Election Return Form (ERF) (See number 4). Two county staff will review the tamper-evident seal and the signatures of the poll workers, break the seal on the blue bag, and ensure that both the touch screen and optical scan memory devices and two copies of each tape are in the bag. The two county staff will initial the ERF.
- d. If any of the memory devices or tapes is missing from the blue canvass bag, county staff will note the omission in the comments area on the ERF, and the clerk or clerk designee will be required to retrieve the missing articles.

2. *Procedures for posting reporting unit level election results for all offices on the ballot so the results are readily available to the public, candidates and the media as soon as practicable after receipt of the returns. The procedures should document a clear chain of responsibility involving more than one member of your staff to ensure election returns posted accurately reflect the returns received from the municipalities.*

Municipalities That DO NOT Use Dominion Election Equipment

- a. A copy of the faxed results sheet will be posted in the county building outside the Clerks office, as soon as practicable if not immediately. This will allow members of the public present at the courthouse to view results as soon as possible.
- b. The results will be hand entered into the election administration software (WinEds) by two county staff persons; one will read the results for all County, State and Federal contests, while the other enters the results. When entry is complete, the ERF will be initialed by both staffers.
- c. The Reporting Unit Report will be printed from WinEds. Two county staff people will compare the report against the faxed or emailed results sent by the municipality in order to verify the accuracy of the hand entry. County staff will initial the ERF indicating that verification is complete. Note: The email copy will only be used if the faxed copy is not clear enough to read.
- d. If the Reporting Unit Report and the faxed or emailed copy do not match, the corrections will be written on the Reporting Unit Report to reflect the results on the faxed or emailed municipal copy. The corrections shall be hand entered as in step 2b followed by the verification process in step 2C until both reports match.

Municipalities That USE Dominion Election Equipment

- a. A copy of all optical scan and touch screen tapes from each polling place will be posted in the county building outside the Clerks office, as soon as practicable if not immediately. This will allow members of the public present at the courthouse to view results as soon as possible.
- b. All contests on the ballot will be electronically captured. Two county staffers will upload results from the memory devices into WinEds. Both staffers will initial the ERF indicating that upload is complete. After completion of upload, the memory devices will be returned to the blue canvass bags, sealed with tamper-evident seals and placed in the County Clerk Vault.
- c. A Reporting Unit Report will be printed out of WinEds. Two county staff people (not the same two who uploaded the results) will verify all federal, state and county election results against the machine tapes containing the results. The ERF will be initialed by both county employees performing the verification when verification is complete.
- d. If the reporting unit report printed from the election administration software and the machine tapes from the polling places do not match during verification, a note of the change needed will be written on the reporting unit report to reflect the machine tapes.

- e. When all corrections have been recorded on the Reporting Unit Report, the corrections will be hand entered into WinEds by two county staff people; one will read the corrections written on the Reporting Unit Report, while the other enters the corrections into WinEds. When all corrections have been entered, the ERF will be initialed by both staffers. A Reporting Unit Report will be printed as in step 2c followed by the verification process in step 2d until both reports match.
 - f. Summary and Reporting Unit Reports will be printed from WinEds periodically throughout the night and posted in the County Building outside the Clerks office, for media and public access.
 - g. When all results have been entered and verified, a Reporting Unit Report listing all Waukesha County municipalities and their respective reporting units will be printed. Both the reporting unit and summary report will be posted at the county building for media and public access.
3. *Written procedures for entering election returns into the G.A.B.'s Canvass Reporting System (CRS). These procedures should document a clear chain of responsibility involving more than one member of your staff to ensure election returns entered into CRS accurately reflect the returns received from the municipalities.*
- a. Before the meeting of the county board of canvassers, but no earlier than the day after the election, the results entered/uploaded to WinEds on election night will be exported from WinEds into G.A.B.'s Canvass Reporting System (CRS). A report by reporting unit will be printed from CRS.
 - b. Two county staff will compare the report printed from CRS to the final verified unofficial results from WinEds to ensure the export is accurate and complete.
4. *Written procedures for documenting the receipt of election returns, polling place records and ballots from municipalities.*
- a. The blue bag referenced in Question 1 is delivered to the County Clerk's Office on Election Night. Other election materials may be delivered with the blue bag or delivered separately no later than 4:00 p.m. on the day after the election as set out in paragraph b.
 - b. When the municipalities deliver the election returns, records and ballots to the county, each municipality's materials will be reviewed by County staff. County staff will initial the ERF indicating that each of the following has been delivered :
 - Inspectors' Statement – photocopy
 - Write-in form
 - Spoiled ballot envelope
 - Used Absentee Certificate Envelope-sealed

- Provisional Ballot Carrier Envelope- sealed (if applicable)
- Letter of explanation if discrepancy in voter numbers
- Poll book with voter signatures

All of the above documents must be signed by the appropriate officials.

- Remade Ballots Envelope – should be sealed in a ballot bag with ballots.
- Ballot bags properly identified with municipality and reporting unit and properly sealed. The number of ballot bags will be counted and recorded on the ERF.
- Ballot bags will be placed in a bin and the bin number will be placed on the ERF. At the end of the night or when the bin is full the bin will be locked and a serial security seal will be placed on the bin. The Security Seal number will be placed on the ERF. Bins will be placed in a secure room inside the Clerk’s office.
- NO unissued ballots will be returned to the County Clerk. Unissued ballots will remain in the possession of the municipal clerks until after the period for petitioning for a recount has passed without incident or until all opportunities for appeal of a recount have expired
- All supplies returned to the County Clerk for use during the board of canvass will be stored in a locked room inside the administration building, which is keyed for access by the County Clerk and County Clerk Staff only.

5. *Written procedures for the conduct of the Waukesha County Canvass. These procedures should clearly delineate the tasks to be conducted by staff in your office and the members of the Waukesha County Board of Canvassers to ensure that the returns from the municipalities, including poll lists, inspectors’ statements, chain of custody documentation, official tally sheets, and all ballots are inspected, reconciled and the official election results are properly documented for certification.*

- Canvass board made up of three canvassers. In addition an assistant will be present to take notes.
- Canvasser One will announce the reporting unit to be reviewed. All three canvassers and the assistant will have a copy of the CRS report. The assistant will have the ERFs.
- Review ERF to be sure all materials have been delivered and county staff has indicated this by initialing.
- Canvasser Two will take out the materials for the first reporting unit to review. Canvasser Two hands Canvasser Three the poll book.

- e. Canvasser Three will review the poll book to be sure the last number voted is clearly written on the front of the poll book, that the page on which the last number appears is listed, and that the last number is circled on the page on which it appears. Canvasser Three announces the number of voters in poll book.
- f. Canvasser Two will read the number of voters on the machine tape. If they do not match, the canvassers will first look for a letter of explanation and review the inspector statement for an explanation.
 - i. If the number of ballots cast (machine tape) is lower than the number of voters (poll book) and is not a significant difference, a note will be made of the difference on the ERF.
 - ii. If the number of ballots cast (machine tape) is higher than the number of voters (poll book,) and there is no explanation, the Municipal clerk is called to find the discrepancy. Set aside and move on to the next reporting unit (go to “a”) until explanation from Municipal Clerk arrives.
 - iii. If the Municipal Clerk cannot determine the reason for the discrepancy, three poll workers must come to the Board of Canvasser’s meeting to find and explain the error.
 - iv. If the discrepancy cannot be found or explained the statutory draw down procedure would be used (only after all possibilities have been exhausted).
- g. Canvasser Two will read from the machine tapes the number of votes cast for all federal, state and county contests and candidates.
- h. Canvasser One will verify the numbers are the same on the CRS report as announced. If the numbers are not the same, the correction will be written on the CRS report to reflect the machine tape from the polling place. The discrepancy is also noted on the ERF.
- i. Canvasser Three will review the inspectors’ statement and read any notations which impact either numbers in the poll book or the machine tape. The inspectors’ statement will be reviewed by all canvass board members.
- j. Canvasser Three will read off names on the write-in sheet. Canvassers One and Three will make the decision to count the write in or not. If there is a tie, canvasser two would break the tie. All names and partial names including Mickey Mouse, Donald Duck, Brett Favre and so on will be counted.
- k. If a letter of explanation is in the supplies it is read aloud.
- l. Assistant to take minutes.

- i. Using the ERF, the number of voters on the poll book and the number of ballots cast will be recorded.
- ii. The number of write in votes reported by the poll workers and the number of write-in votes accepted by the board of canvass. If the number counted by the BOC differs from the number tallied by the inspectors, the minutes should reflect the reason.

(The following procedures may be amended after G.A.B. staff completes review of 2011 Act 75)

- m. Check for late-arriving absentee ballots. Canvassers One and Three examine the certificate envelope and determine if the envelope can be opened (looking for two signatures, evidence of tampering).
 - i. Canvasser three places the voter number next to the voter's name on the poll list, marks in the signature area "added at canvass" and initials. A notation is made on the front of the poll book "xx absentee voters have been added during canvass."
- n. Check for provisional ballots. Review Municipal Clerk statement on which provisional ballots can be opened.
 - i. Canvasser three places the voter number next to the voter's name on the poll list, marks in the signature area "added at canvass" and initials. A notation is made on the front of the poll book " xx provisional voters have been added during canvass. "
 - ii. A note is made on ERF of the PV numbers counted.
- o. On the cover of the poll book, add the number of late-arriving absentee ballots and provisional ballots counted at the canvass to the original number of voters. On the cover of the poll book, note the page number where the last voter number appears and indicate that the page where the last voter number now appears is different than originally marked (due to additional voter numbers added during the canvass). The board of canvassers initial when notations are complete.
- p. The pages of the poll book where changes were made during canvass are copied for transmission to municipal and school district clerks so that they may update their poll books.
- q. Processing the ballots opened during canvass.
 - i. Canvasser One opens the certificate envelopes, removes the ballots and sets the ballots aside until all absentee and provisional ballots have been processed and

voter numbers added to the poll book. Canvasser One shuffles the pile of ballots and hands them to Canvasser Two to announce the votes.

- ii. Canvasser Three reviews ballots with Canvasser Two when announcement of votes is made. Canvassers Two and Three tally the votes on the hand-count tally sheet. The canvassers add the hand tallied votes to the CRS printout under the appropriate candidate or scattering column.
- iii. The late-arriving absentee and provisional ballots are placed in new ballot bag. The ballot container certificate is signed and dated by the board of canvassers and marked as added at board of canvassers meeting. A tamper-evident seal number is applied to the ballot bag and the seal number is written on the ERF
- r. Continue to next reporting unit starting with step b of procedures until all reporting units are completed.
- s. The corrections made at the board of canvassers meeting are hand entered into the CRS by two county staff persons; one reading the changes for all county, state and federal contests, while the other enters the results. After the corrections are made, the CRF report pages which required changes will be printed.
- t. The canvassers examine each correction for accuracy.
- u. The CRS certification is printed after all corrections have been verified.
- v. The Board of Canvassers signs 2 copies of certification for all federal and state contests. One copy is mailed to G.A.B. and also faxed or emailed to the G.A.B. immediately.
- w. The Board of Canvassers signs 1 copy of the certification for all County contests.
- x. Board is adjourned.
- y. ERF and tally sheet of hand counted provisional and late-arriving absentee ballots are added as part of the minutes
- z. All supplies and materials are placed back in locked rooms when canvass is complete.

ELECTION RETURN FORM

ELECTION DATE _____ MUNICIPALITY _____
REPORTING UNIT _____

RESULTS RETURNED BY _____ TIME _____

- | | |
|---|---|
| <input type="checkbox"/> Blue Bag w/Chain of Custody card | <input type="checkbox"/> Number on chain of custody correct initials
_____ |
| <input type="checkbox"/> Memory Cartridges-Edge | <input type="checkbox"/> 2-Edge Tapes |
| <input type="checkbox"/> Memory Pack -Eagle | <input type="checkbox"/> 2-Eagle Tapes |
| <input type="checkbox"/> Memory Pack -Insight | <input type="checkbox"/> 2-Insight Tapes |

COMMENTS:

ELECTION NIGHT

- Data entered into WinEds initials _____
- Data Verified initials _____

SUPPLIES AND BALLOT RETURNS

- Inspectors' Statement-Photocopy
- Write-In form (buff colored)
- Used Absentee Affidavit Envelope-Sealed
- Rejected Ballots of Absentee Voters Envelope-Sealed
- Provisional Ballot Carrier Envelope-Sealed if used
- Spoiled Ballot Envelope-Sealed
- Letter of Explanation if discrepancy in voter numbers
- Poll book with Voter signature-Highest voter number highlighted and circled in red
- Ballot bags properly identified and sealed Number of bags _____
- Ballot bags placed in BIN Number _____ Bin Seal number _____
- Ballot bag _____ has the remade ballot envelope included

BOARD OF CANVASS

Number of voters' _____ Poll Book Number of ballots cast _____ machine tape/tally sheet
Discrepancies

Write-in

Number of write-in votes on tape _____ Number of write-ins votes counted by board _____
Explanation of difference

Late Military Ballots Y/N

Number received _____ Number opened _____
Names of voters added to the poll book.

<hr/>	<hr/>
---	---

Provisional Ballots Y/N

Number received _____ Number opened _____
PV voters added to the poll book.

<hr/>	<hr/>
---	---

Grand total of voters if number changed _____

Seal numbers of ballot bags with processed provisional and military ballot during board of canvass.

Comments:

State of Wisconsin \ Government Accountability Board

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



JUDGE THOMAS H. BARLAND
Chairperson

KEVIN J. KENNEDY
Director and General Counsel

MEMORANDUM

DATE: For the December 13, 2011 Meeting

TO: Members, Wisconsin Government Accountability Board

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

Prepared by:

Shane W. Falk, Staff Counsel

SUBJECT: Central Count Absentee Guidance

Introduction and Recommendations:

Sections 7.52 and 7.53(2m), Wis. Stats., were created by 2005 Wisconsin Act 451, which permits the governing body of a municipality to provide for the canvassing of all absentee ballots on Election Day by a municipal board of absentee ballot canvassers. This process is commonly referred to as "central count absentee." Following the enactment of §§7.52 and 7.53(2m), Wis. Stats., the governing bodies of several municipalities adopted ordinances permitting the central count of absentee ballots. Currently, there are 14 municipalities with central count of absentee ballots and recently 2 additional municipalities have stated a desire to implement central count of absentee ballots. Municipalities with existing central count of absentee ballots include larger municipalities such as Milwaukee, Kenosha, Brookfield, and Wausau.

In 2011, a married couple who voted in Milwaukee were charged and tried for alleged double-voting because they both submitted an absentee ballot and both then voted in-person at the polls. See exhibit A (Milwaukee Journal Sentinel article dated May 25, 2011.) The couple was found "not guilty" by a jury. In reviewing this situation, staff became concerned that the central count absentee guidance issued by the State Elections Board on February 21, 2007 and reissued by the G.A.B. on January 17, 2008 needed further review and clarification. See exhibit B (G.A.B. guidance dated January 17, 2008).

The G.A.B. and its predecessor, the S.E.B., have long had a policy permitting an elector to appear in person on Election Day to vote, even if that same elector had already submitted an absentee ballot, so long as the absentee ballot had not already been "cast" - processed and tabulated. If the absentee ballot had not yet been cast, the elector is permitted to vote in-person and the election officials are to reject the elector's absentee ballot. If the absentee ballot had already been cast and a voting number assigned to the elector, the election officials are to

prohibit the elector from voting in-person. This procedure is specifically authorized by §6.88(3)(a), Wis. Stats. Application of specific central count absentee statutory provisions (§§7.53(1) and (2)(d), Wis. Stats.) similar to this policy and §6.88(3)(a), Wis. Stats., has been inconsistent.

Following the Gunka verdicts and pursuant to §5.05(6a), Wis. Stats., two specific requests were made for the Board to provide an opinion on central count absentee processes, hoping to clarify the procedures for election officials and voters, but also to avoid unnecessary use of prosecutorial resources.

This topic was first on the Board's meeting agenda on August 2, 2011 and again on September 12, 2011 when the Board received copies of comments from many municipalities with central count absentee. Since the September 12, 2011 meeting, the G.A.B. has received no additional comments from municipalities with existing central count absentee; however, staff has been contacted by two new municipalities considering implementing central count absentee.

In addition, since September 12, 2011, the Joint Committee for Review of Administrative Rules has objected to at least three separate Board actions and required the G.A.B. to promulgate three emergency rules based upon the belief that the actions taken require an administrative rule because they involve "a regulation, standard, statement of policy or general order of general application which has the effect of law and which is issued by an agency to implement, interpret or make specific legislation enforced or administered by the agency." See §227.01(13), Wis. Stats. In this context and in light of unambiguous statutory language regarding central count absentee processes, staff has updated its guidance on central count absentee processes.

Recommendation:

1. Staff recommends that the Board approve the draft revised guideline for central count absentee that follows this Memorandum as Exhibit C and incorporate more specific information on central count absentee processes in the Election Day Manual and G.A.B. training.
2. Staff recommends that the Board direct staff to notify all clerks, but specifically the clerks for municipalities with existing or considering central count absentee, of the revised guidance and inform them that they must conform their conduct to the law.

Background:

The background, requirements to establish a central count absentee process, Election Day procedures, voter lists, and procedures for processing central count absentee ballots are set forth in the G.A.B. guidance dated January 17, 2008 and which follows this Memorandum as Exhibit B. Clerks have pointed out to staff that the Election Day Manual does not specifically address central count absentee in great detail and there is no reference to central count absentee in the section of the manual relating to the "absentee" watermark on the poll list. Clerks have also identified that some procedural inconsistencies in the central count absentee process have emerged since the State Election Board's first guidance in 2007 and that the G.A.B. training on

the central count absentee process has been minimal thus far. Some clerks apparently were not even aware of the 2007 and 2008 guidance issued by the S.E.B. and G.A.B.

The issue raised by the prosecution of the couple in Milwaukee for allegedly double-voting is addressed in the “miscellaneous issues” section of the January 17, 2008 guidance and specifically the following two paragraphs:

“A list of absentee ballots issued must be provided to each polling place, so that the inspectors do not permit a voter who has been issued an absentee ballot to vote at the polling place. If the voter insists that the absentee ballot was not returned to the municipal clerk, the voter may cast a challenged ballot at the polling place.

If it is determined that an elector voted both by absentee ballot and in person, the absentee ballot is void.”

The first paragraph quoted above identifies a procedure that appears to differ from the absentee ballot process in municipalities that do not have central count absentee with respect to addressing an in-person elector on Election Day who has also submitted an absentee ballot. It does appear to place the burden on the elector to avoid potentially casting two ballots for the same election, whereas that burden has traditionally been born by the election officials. It also seems to conflict with specific statutory provisions of §7.53(1) and (2)(d), Wis. Stats., which require the board of canvassers to reconcile the poll list of the electors who vote by absentee ballot with the corresponding poll list of the electors who vote in-person to ensure that no elector is allowed to cast more than one ballot. These same statutes clearly state that if an elector who votes in-person has submitted an absentee ballot, the absentee ballot is void.

The second quoted paragraph above is consistent with the Board’s longstanding policy to permit an elector to vote in-person on Election Day, rejecting any absentee ballot; however, it does only implicitly require the election officials or clerk to reject the absentee ballots for any electors having voted in-person. Obviously, the purpose was to prevent a situation where two ballots were counted for the same elector at the same election. The second quoted paragraph above was likely a quote from §§7.53(1) and (2)(d), Wis. Stats., but did not include the prefatory provision requiring the board of canvassers to reconcile the poll list of the electors who vote by absentee ballot with the corresponding poll list of the electors who vote in-person to ensure that no elector is allowed to cast more than one ballot.

In practice, some municipalities with central count absentee have adopted a policy whereby an election official at the poll calls the central count absentee location when confronted with an elector on Election Day that wishes to vote in-person, but has the “absentee” watermark adjacent to the elector’s name on the poll list. If the election officials at the central count absentee location confirm that they have not processed the elector’s absentee ballot, the absentee ballot is rejected and the elector is permitted to vote in-person at the poll; however, if the election officials at the central count absentee location have already processed the absentee ballot, the elector is not permitted to vote in-person. Both the central count absentee and polling place election inspectors properly document these activities on the GAB 104. This process avoids having to challenge ballots at the polls and placing the burden on the elector to

assure that his or her absentee ballot has not been cast. This process also preserves the elector's ability to vote in-person on Election Day if he or she so chooses, even if the elector has already submitted an absentee ballot (so long as that absentee ballot has not been cast.) Under these practices, electors voting in municipalities with central count absentee are treated the same as electors in municipalities without central count absentee, where those absentee ballots are processed at the individual polling locations on Election Day.

Some municipalities with central count absentee are too large and have 10,000 or more absentee voters (elector having requested an absentee ballot) for any given election, making it practically impossible to have election officials at the polls contacting election officials at the central count absentee location. In the larger municipalities, such as Milwaukee, on average 75% of the issued absentee ballots are returned. On average in Milwaukee for any given election, 10,000 absentee requests are processed, which then leaves roughly 2,500 unreturned absentee ballots per election. A high percentage of those electors not returning their absentee ballot end up voting in-person at the polls on Election Day. A municipality like Milwaukee has asserted that it is not practical to require Chief Inspectors, staffing 190 polling locations in Milwaukee, to call the central count site to even inquire on these 2,500 unreturned absentee ballots, let alone also having to contact the central count regarding additional in-person electors that have already returned an absentee ballot.

These larger municipalities have adopted central count absentee policies whereby in-person electors at the poll are denied the ability to vote in-person on Election Day, if there is an absentee watermark adjacent to their names on the poll lists. In the instances where an election official misses the notation and permits the elector to vote in-person, clerks have referred any elector having cast an absentee ballot and having voted in-person at the polls to their district attorney for prosecution for double-voting. It appears that this is what occurred with the couple in Milwaukee that were charged, tried, and found not guilty by a jury. This process seems to place the burden on the elector to know whether his or her absentee ballot is accepted and processed by the central count location. This approach appears to treat those electors subject to this central count absentee process different than electors from other municipalities without central count absentee and even some municipalities that do have central count absentee.

It appears likely that no municipality with central count absentee requires the board of canvassers to reconcile the poll list of electors who vote by absentee ballot with the corresponding poll list of the electors who vote in-person to ensure that no elector is allowed to cast more than one ballot.

Analysis:

No person may vote more than once in the same election. §12.13(1)(e), Wis. Stats. Whoever intentionally violates §12.13(1)(e), Wis. Stats., is guilty of a Class I felony. §12.60(1)(a), Wis. Stats. An elector may obtain an absentee ballot pursuant to §§6.86 and 6.865, Wis. Stats., in lieu of voting in-person at the polls on Election Day. Statutorily prescribed procedures set forth the absentee ballot canvassing process, in part to insure that no person votes more than once in the same election.

In municipalities without central count absentee, the municipal clerk shall deliver all timely received absentee ballots to the election inspectors of the proper ward or election district where the absentee ballots are canvassed. §6.88(2), Wis. Stats. Except in municipalities with central count absentee, the inspectors shall canvass the absentee ballots at any time between the opening and closing of the polls on Election Day. §6.88(3)(a), Wis. Stats. At the polls in the same room where votes are being cast, the inspectors shall review the certification on the absentee envelope. Id. “When the inspectors find that the certification has been properly executed, the applicant is a qualified elector of the ward or election district, and the applicant has not voted in the election, they shall enter an indication on the poll list next to the applicant’s name indicating that an absentee ballot is cast by the elector.” Id. (emphasis added.) After opening the absentee envelope, removing the ballot, verify endorsement by the issuing clerk, and verifying whether proof of residence is required, “the inspectors shall then deposit the ballot into the proper ballot box and enter the absent elector’s name or voting number after his or her name on the poll list in the same manner as if the elector had been present and voted in person.” Id.

The procedures for municipalities using central count absentee are set forth in §§7.52 and 7.53(2m), Wis. Stats. In counting the absentee ballots, the board of absentee ballot canvassers shall use 2 duplicate copies of a single poll list for the entire municipality and upon accepting each absentee ballot, shall enter a poll list number on the poll list next to the name of the elector who voted the ballot. §7.52(2), Wis. Stats. The board of absentee ballot canvassers shall mark the poll list number of each elector who casts an absentee ballot on the back of the elector’s ballot before depositing the ballot into the proper ballot box and entering the absent elector’s name or poll list number after his or her name on the poll list. §7.52(3)(a), Wis. Stats. After any canvass of the absentee ballots is completed under §7.52, Wis. Stats., the board of canvassers shall reconcile the poll list of the electors who vote by absentee ballot with the corresponding poll list of the electors who vote in-person to ensure that no elector is allowed to cast more than one ballot. §§7.53(1) and (2)(d), Wis. Stats. **If an elector who votes in person has submitted an absentee ballot, the absentee ballot is void.** Id. The purpose of marking the poll list number of each elector on the back of the elector’s ballot before depositing it in the ballot box is to provide for easy identification and later rejection of the absentee ballot after the reconciliation of the poll list of the electors who vote by absentee ballot with the corresponding poll list of the electors who vote in-person, pursuant to §§7.53(1) and (2)(d), Wis. Stats.

The statutory procedures with regard to central count absentee are clear and unambiguous with respect to handling electors who vote in-person at the polls after having received and even having submitted an absentee ballot. A reconciliation of the central count absentee poll list with the corresponding poll list for electors having voted in-person at the polls must occur to ensure that an elector is not allowed to cast more than one ballot. The statutory remedy for a central count absentee elector having submitted an absentee ballot and also having voted in-person at the polls is also clear - the absentee ballot is void. These statutory procedures further ensure that electors from municipalities with central count absentee are allowed to vote in-person after having submitted an absentee ballot, very similar to absentee electors in municipalities where absentee ballots are canvassed at the polls on Election Day.

Proposed Motions:

1. **MOTION:** The Board approves the draft revised guideline for central count absentee and directs staff to incorporate more specific information on central count absentee processes in the Election Day Manual and G.A.B. training.
2. **MOTION:** Staff shall notify all clerks, but specifically the clerks for municipalities with existing or considering central count absentee, of the revised guidance and inform them that they must conform their conduct to the law.



Jury finds couple who voted twice not guilty of election fraud

Intentions considered in rendering verdict

By Bruce Vielmetti of the Journal Sentinel

May 25, 2011 |(74) Comments

A Milwaukee couple wept and hugged their lawyers Wednesday after a jury found them not guilty of election fraud for voting twice in the 2008 presidential election.

But they had little to say after escaping a possible prison sentence.

"I'm drained right now," said Herbert Gunka, 61.

"I'm speechless," said Suzanne Gunka, 56, as they quickly left the Milwaukee County Safety Building.

The Gunkas admitted casting both absentee and election-day ballots, but insisted the latter was only because they honestly believed the former had not been counted, due in part to talk radio discussions that raised their fear of fraud and stolen votes. They said they never meant to have each vote count.

They were among 20 people charged by the Election Fraud Task Force, including several cases of felons voting, or improper registration of voters, but the only case of double voting. The Gunkas were charged in March 2010.

"We believe the evidence presented reflected a violation of the state election laws, but we respect the jury's verdict," said Bill Cosh, spokesman for Attorney General J.B. Van Hollen.

One juror said the panel felt the state didn't prove the Gunkas each meant for both of their votes to count, and didn't think the fact they initially lied to agents who came asking questions a year later betrayed anything more than the panic Herbert Gunka said gripped him when he realized what was happening.

Assistant Attorney General David Maas had stressed the couple's personal responsibility to ask about their prior vote before casting a second, but the juror said that cut both ways.

"You have a personal responsibility when you have a job as a poll worker," said Nicole Matenaer of West Allis.

Election officials testified that a poll worker should have noted the word "absentee" printed in gray left of the Gunkas' names in the poll book Nov. 2, 2008, and asked them if they had sent in their absentee ballots. If they had answered yes, the worker was not supposed to give them ballots.

A-2

Matenaer also wondered why Maas did not put the poll workers on as witnesses, a question raised by the defense.

She said jurors were also disturbed by the fact the state Department of Justice agents who showed up at the Gunkas' house in September 2009 intentionally misled him about the purpose of their visit, and secretly recorded Herbert Gunka, yet expected him and his wife to be completely forthcoming with them.

"It's all about honesty," Matenaer said.

The jury had heard the agents' recording of their doorway interview with Herbert Gunka, and they asked to hear it a second time during four hours of deliberations.

Ambush or opportunity?

In his closing argument, Maas stressed how the agents gave both Herbert and Suzanne, interviewed a short time later at her workplace, multiple chances to admit they had voted absentee, and gone together to their polling place a week later.

But the couple's attorneys said they were just scared by the ambush-style interviews.

Herbert Gunka's attorney, Patrick C. Brennan, reminded the jury that his client had voted 32 times since 1992, and never twice in the same election.

"He's not a criminal," Brennan said. "He's a responsible citizen.

"All the man wanted was for his one vote to count."

Patrick Cafferty, representing Suzanne Gunka, argued that the government "goes too far" when it charges people who make honest errors.

Jurors in the two-day trial got a crash course in Milwaukee voting procedures.

Before 2008, absentee ballots were counted at each polling place, and a red A was marked after a voter's name on the poll book. But starting that year, all absentee votes were counted at a central location. If a voter requested an absentee ballot, it is indicated in gray on the left margin of the poll book.

Herbert Gunka testified that, succumbing to similar concerns in 2004, he went to his polling place, saw the red A next to his name, and was reassured his vote was counted. He said he hadn't read letters sent with absentee ballots in 2008 explaining the change and, when he checked on election day and didn't see the A, concluded his first ballot had been lost or stolen.

After the verdict, Circuit Judge Richard Sankovitz told the Gunkas it must have been odd for them, as frequent voters, to see how many people in the jury pool admitted they never vote.

He also advised them to change their listening habits. "Talk radio hosts are the purveyors of misinformation," the judge said.

ascript language="JavaScript" src="http://js.adsonar.com/js/adsonar.js">

A-3

Find this article at:

<http://www.jsonline.com/news/crime/122632359.html>

Check the box to include the list of links referenced in the article.

State of Wisconsin \ Government Accountability Board

Post Office Box 2973
17 West Main Street, Suite 310
Madison, WI 53701-2973
Voice (608) 266-8005
Fax (608) 267-0500
E-mail: seb@seb.state.wi.us
http://elections.state.wi.us



KEVIN J. KENNEDY
Legal Counsel

MEMORANDUM

DATE: January 17, 2008
TO: Municipal and County Clerks
FROM: Nathaniel E. Robinson, Administrator
Elections Division, WI Government Accountability Board
SUBJECT: Establishing Central Count Absentee Procedures

Special Note: The Wisconsin Legislature created the new Government Accountability Board (GAB) in January 2007, which assumed the combined responsibilities of the former State Elections Board and the State Ethics Board on Thursday, January 10, 2008. The GAB is made up of two divisions: the Elections Division and the Ethics and Accountability Division. Welcome to the new GAB!

This memorandum provides some basic information for municipalities who want to utilize a municipal board of absentee ballot canvassers for counting absentee ballots on Election Day. 2005 Wisconsin Act 451 permits the governing body of a municipality to provide for the canvassing of all absentee ballots on Election Day by a municipal board of absentee ballot canvassers. Section 7.52, Wis. Stats.

This memorandum also provides the basic requirements for establishing procedures for utilizing a municipal board of absentee ballot canvassers to count absentee ballots on Election Day. There are a number of administrative procedures that will have to be developed to ensure individuals do not vote absentee and in person and that votes cast by absentee ballot are properly reported for the canvass of election results. We expect that these procedures can be further developed after municipalities have had some initial experience with a municipal board of absentee ballot canvassers counting absentee ballots on Election Day.

What is required?

If the governing body decides to provide for the canvassing of all absentee ballots on Election Day by a municipal board of absentee ballot canvassers, it must adopt an ordinance. Section 7.52 (1), Wis. Stats. The municipal clerk is required to notify the Elections Division in writing before the municipality adopts the ordinance and consult with the Elections Division staff concerning administration of a central location for counting absentee ballots.

The governing body must also establish a municipal board of absentee ballot canvassers. Section 7.53 (2m), Wis. Stats. The municipal board of absentee ballot canvassers is the municipal clerk and two other qualified electors of the municipality appointed by the clerk. They serve two-year terms beginning January 1st of odd-numbered years.

Election Day Procedures

The municipal board of absentee ballot canvassers shall publicly convene between 7 a.m. and 10 p.m. on Election Day to count the absentee ballots for the municipality. The municipal clerk shall give at least 48 hours notice of the meeting of the municipal board of absentee ballot canvassers.

Any member of the public has the right to observe the proceedings of the municipal board of absentee ballot canvassers just as they do at the polling place.

Election inspectors may be appointed to assist the municipal board of absentee ballot canvassers with counting the absentee ballots for the municipality. If appointed, there must be an odd number of inspectors, and there must be at least three inspectors present at all times while absentee ballots are counted.

No later than 8 p.m. on Election Day, the municipal clerk shall post an informational statement in the clerk's office and on the Internet, at a site announced by the clerk, before the polls open at 7 a.m. The statement shall list the number of absentee ballots that have been issued and the number of absentee ballots that have been returned by the close of the polls on Election Day. The statement shall not include the name or address of absentee voters. If the municipality does not have a website where this information can be posted, the municipality is not required to make an Internet posting.

Voter Lists

The municipal board of absentee ballot canvassers shall use two duplicate SVRS-generated copies of a single poll list for the entire municipality. The list shall be annotated with voter numbers beginning with the number 1, along with an indication the voter cast an absentee ballot. If the voter's name does not appear on the poll list, the name and voter number shall be recorded on the supplemental poll list.

Procedures for Processing Absentee Ballots

No earlier than 7:00 a.m. on Election Day, the municipal board of absentee ballot canvassers shall open the carrier envelope or container in which the absentee ballots were delivered to the polling place so that a member of the public may observe the opening.

As each ballot is processed, the municipal board of absentee ballot canvassers shall announce the name of the absentee voter so that any member of the public present may hear the voter's name. The municipal board of absentee ballot canvassers shall carefully examine the certificate to determine it is signed and witnessed and the elector is a qualified voter in the reporting unit for which the absentee ballot is being processed.

The municipal board of absentee ballot canvassers shall compare the certificate envelope to the list of ineligible voters provided by the Department of Corrections. If the absentee voter's name appears on the list, the municipal board of absentee ballot canvassers shall challenge the absentee ballot.

The municipal board of absentee ballot canvassers shall carefully open the certificate envelope, remove the ballot from the certificate envelope and verify that the ballot has been initialed by the municipal clerk or a deputy clerk. NOTE: If the ballot does not contain the initials of either the municipal clerk or a deputy clerk, the omission is noted on the Inspectors' Statement (Form EB-104), and the ballot is processed. An absentee ballot is not rejected solely because the initials of the clerk or deputy clerk are missing.

The municipal board of absentee ballot canvassers shall mark the voter number on the back of the ballot and on the poll list along with the indication the voter cast an absentee ballot.

If the poll list indicates the voter was required to provide proof of residence as a first-time voter, the municipal board of absentee ballot canvassers shall record the type of document provided on the poll list. If no proof of residence was provided, the municipal board of absentee ballot canvassers shall treat the absentee ballot as a provisional ballot.

The municipal board of absentee ballot canvassers may not count the absentee ballot and shall mark the ballot as "Rejected" if:

- The certification is insufficient (not signed or witnessed);
- The voter is not a qualified elector of the reporting unit;
- The absentee certificate envelope was open or had been opened and resealed;
- The absentee certificate envelope contains more than one ballot of any one kind;
- The certificate of an absentee elector who received an absentee ballot by Fax or e-mail is missing;
- Proof is submitted that the elector has died.

The reason for rejection shall be recorded on the certificate envelope and on the Inspectors' Statement (Form EB-104) by the municipal board of absentee ballot canvassers. The rejected absentee ballots shall be placed in the brown envelope for rejected absentee ballots (Form EB-102).

After recording the voter number for a properly cast absentee ballot, the municipal board of absentee ballot canvassers shall deposit the absentee ballot in the ballot box or vote tabulating device. The used certificate envelopes shall be placed in the white envelope for used certificate envelopes (Form EB-103).

Follow the Same General Procedures as Used at the Polling Place

The municipal board of absentee ballot canvassers shall follow the same general procedures, and use the same forms as are used at the polling place when processing, counting and securing absentee ballots. Duplicate original tally sheets and a single Inspectors' Statement (Form EB-104) must be maintained for each reporting unit. Rejected absentee ballots and used certificate envelopes are not required to be maintained by reporting unit. Rejected absentee ballots may be placed in a single Rejected Absentee Ballot envelope or container. Used certificate envelopes may be placed in a single Used Certificate envelope or container.

Challenging Absentee Ballots

An absentee ballot may be challenged in the same manner as it would be challenged at the polling place. Any qualified elector may challenge an absentee ballot. The municipal board of absentee ballot canvassers shall challenge an absentee ballot cast by an elector whose name appears on the ineligible voter list. The municipal board of absentee ballot canvassers shall follow the challenge procedures set out in the Election Day Manual and ElBd Chapter 9, Wis. Admin. Code using the EB 104-C to document the challenge.

Completing and Delivering Forms

The municipal board of absentee ballot canvassers shall carefully record the votes for each reporting unit on duplicate original tally sheets, which are signed by the board of absentee ballot canvassers and anyone who assisted in the counting. Municipalities utilizing an optical scan voting system shall use two machine printouts as tally sheets. However, write-in votes must be recorded on duplicate original tally sheets (Form EB-105). The ballots and materials shall be delivered to the municipal clerk following processing and counting of the absentee ballots, and after completing, recording and securing the required forms.

Miscellaneous Issues

Automatic tabulating devices must be properly set up, programmed and tested before Election Day to count absentee ballots by reporting unit for the entire municipality.

A list of absentee ballots issued must be provided to each polling place, so that the inspectors do not permit a voter who has been issued an absentee ballot to vote at the polling place. If the voter insists that the absentee ballot was not returned to the municipal clerk, the voter may cast a challenged ballot at the polling place.

If it is determined that an elector voted both by absentee ballot and in person, the absentee ballot is void.

Detailed training, including checklists and instructions shall be provided to the municipal board of absentee ballot canvassers by the municipal clerk.

Questions and Comments

If clerks have questions on the utilization of a municipal board of absentee ballot canvassers to count absentee ballots contact the Elections Division staff. We also encourage you to identify issues and detail procedures so that the central count absentee ballot process can be improved and shared with all clerks.

Guideline—Central Count Absentee

Special Note: This guideline provides some basic information for municipalities who want to utilize a municipal board of absentee ballot canvassers for counting absentee ballots on Election Day. Section 7.52, Wis. Stats., permits the governing body of a municipality to provide for the canvassing of all absentee ballots on Election Day by a municipal board of absentee ballot canvassers.

This guideline also provides the basic requirements for establishing procedures for utilizing a municipal board of absentee ballot canvassers to count absentee ballots on Election Day. There are a number of administrative procedures that will have to be developed to ensure individuals do not vote absentee and in person for the same election. In addition, these administrative procedures will ensure that votes cast by absentee ballot are properly reported for the canvass of election results.

What is required?

If the governing body decides to provide for the canvassing of all absentee ballots on Election Day by a municipal board of absentee ballot canvassers, it must adopt an ordinance. Section 7.52 (1), Wis. Stats. The municipal clerk is required to notify the Elections Division in writing before the municipality adopts the ordinance and consult with the Elections Division staff concerning administration of a central location for counting absentee ballots.

The governing body must also establish a municipal board of absentee ballot canvassers. Section 7.53 (2m), Wis. Stats. The municipal board of absentee ballot canvassers is the municipal clerk and two other qualified electors of the municipality appointed by the clerk. They serve two-year terms beginning January 1st of odd-numbered years.

Election Day Procedures

The municipal board of absentee ballot canvassers shall publicly convene between 7 a.m. and 10 p.m. on Election Day to count the absentee ballots for the municipality. The municipal clerk shall give at least 48 hours notice of the meeting of the municipal board of absentee ballot canvassers.

Any member of the public has the right to observe the proceedings of the municipal board of absentee ballot canvassers just as they do at the polling place.



Election inspectors may be appointed to assist the municipal board of absentee ballot canvassers with counting the absentee ballots for the municipality. If appointed, there must be an odd number of inspectors, and there must be at least three inspectors present at all times while absentee ballots are counted.

No later than 8 p.m. on Election Day, the municipal clerk shall post an informational statement in the clerk's office and on the Internet, at a site announced by the clerk, before the polls open at 7 a.m. The statement shall list the number of absentee ballots that have been issued and the number of absentee ballots that have been returned by the close of the polls on Election Day. The statement shall not include the name or address of absentee voters. If the municipality does not have a website where this information can be posted, the municipality is not required to make an Internet posting.

After any canvass of the absentee ballots is completed under §7.52, Wis. Stats., the board of canvassers shall reconcile the poll list of the electors who vote by absentee ballot with the corresponding poll list of the electors who vote in-person to ensure that no elector is allowed to cast more than one ballot. §§7.53(1) and (2)(d), Wis. Stats. If an elector who votes in person has submitted an absentee ballot, the absentee ballot is void. Id. The purpose of marking the poll list number of each elector on the back of the elector's ballot before depositing it in the ballot box or voting equipment is to provide for easy identification and later rejection of the absentee ballot after the reconciliation of the poll list of the electors who vote by absentee ballot with the corresponding poll list of the electors who vote in-person, pursuant to §§7.53(1) and (2)(d), Wis. Stats.

Voter Lists

The municipal board of absentee ballot canvassers shall use two duplicate SVRS-generated copies of a single poll list for the entire municipality, or the SVRS-generated absentee ballot log for the entire municipality. The list shall be annotated with voter numbers beginning with the number 1, along with an indication the voter cast an absentee ballot. If the voter's name does not appear on the poll list, the name and voter number shall be recorded on the supplemental poll list.

Procedures for Processing Absentee Ballots

No earlier than 7:00 a.m. on Election Day, the municipal board of absentee ballot canvassers shall open the carrier envelope or container in

C-3

which the absentee ballots were delivered to the central count absentee ballot site so that a member of the public may observe the opening.

As each ballot is processed, the municipal board of absentee ballot canvassers shall announce the name of the absentee voter so that any member of the public present may hear the voter's name. The municipal board of absentee ballot canvassers shall carefully examine the certificate to determine it is signed and witnessed and the elector is a qualified voter in the reporting unit for which the absentee ballot is being processed.

The municipal board of absentee ballot canvassers shall compare the certificate envelope to the list of ineligible voters provided by the Department of Corrections. If the absentee voter's name appears on the list, the municipal board of absentee ballot canvassers shall challenge the absentee ballot.

The municipal board of absentee ballot canvassers shall carefully open the certificate envelope, remove the ballot from the certificate envelope and verify that the ballot has been initialed by the municipal clerk or a deputy clerk. NOTE: If the ballot does not contain the initials of either the municipal clerk or a deputy clerk, the omission is noted on the Inspectors' Statement (Form GAB-104), and the ballot is processed. An absentee ballot is not rejected solely because the initials of the clerk or deputy clerk are missing.

The municipal board of absentee ballot canvassers shall mark the voter number on the back of the ballot and on the poll list, or SVRS-generated absentee ballot log, along with the indication the voter cast an absentee ballot.

If the poll list indicates the voter was required to provide proof of residence as a first-time voter, the municipal board of absentee ballot canvassers shall record the type of document provided on the poll list. If no proof of residence was provided, the municipal board of absentee ballot canvassers shall treat the absentee ballot as a provisional ballot.

The municipal board of absentee ballot canvassers may not count the absentee ballot and shall mark the ballot as "Rejected" if:

- The certification is insufficient (not signed or witnessed);
- The voter is not a qualified elector of the reporting unit;
- The absentee certificate envelope was open or had been opened and resealed;

- The absentee certificate envelope contains more than one ballot of any one kind;
- The certificate of a military or overseas elector who received an absentee ballot by Fax or e-mail is missing;
- Proof is submitted that the elector has died.

The reason for rejection shall be recorded on the certificate envelope and on the Inspectors' Statement (Form GAB-104) by the municipal board of absentee ballot canvassers. The rejected absentee ballots shall be placed in the brown envelope for rejected absentee ballots (Form GAB-102).

After recording the voter number for a properly cast absentee ballot, the municipal board of absentee ballot canvassers shall deposit the absentee ballot in the ballot box or vote tabulating device. The used certificate envelopes shall be placed in the white envelope for used certificate envelopes (Form GAB-103).

Follow the Same General Procedures as Used at the Polling Place

The municipal board of absentee ballot canvassers shall follow the same general procedures, and use the same forms as are used at the polling place when processing, counting and securing absentee ballots. Duplicate original tally sheets and a single Inspectors' Statement (Form GAB-104) must be maintained for each reporting unit. Rejected absentee ballots and used certificate envelopes are not required to be maintained by reporting unit. Rejected absentee ballots may be placed in a single Rejected Absentee Ballot envelope or container. Used certificate envelopes may be placed in a single Used Certificate envelope or container.

Challenging Absentee Ballots

An absentee ballot may be challenged in the same manner as it would be challenged at the polling place. Any qualified elector of Wisconsin may challenge an absentee ballot. The municipal board of absentee ballot canvassers shall challenge an absentee ballot cast by an elector whose name appears on the ineligible voter list. The municipal board of absentee ballot canvassers shall follow the challenge procedures set out in the Election Day Manual and GAB Chapter 9, Wis. Admin. Code using the GAB 104-C to document the challenge.

Completing and Delivering Forms

The municipal board of absentee ballot canvassers shall carefully record the votes for each reporting unit on duplicate original tally sheets, which are signed by the board of absentee ballot canvassers and anyone who assisted in the counting. Municipalities utilizing an optical scan voting system shall use two machine printouts as tally sheets. However, write-in votes must be recorded on duplicate original tally sheets (Form GAB-105). The ballots and materials shall be delivered to the municipal clerk following processing and counting of the absentee ballots, and after completing, recording and securing the required forms.

Miscellaneous Issues

Automatic tabulating devices must be properly set up, programmed and tested before Election Day to count absentee ballots by reporting unit for the entire municipality.

Detailed training, including checklists and instructions shall be provided to the municipal board of absentee ballot canvassers by the municipal clerk.

Questions and Comments

If clerks have questions on the utilization of a municipal board of absentee ballot canvassers to count absentee ballots contact the Elections Division staff. We also encourage you to identify issues and detail procedures so that the central count absentee ballot process can be improved and shared with all clerks.

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>



JUDGE THOMAS BARLAND
Chairperson

KEVIN J. KENNEDY
Director and General Counsel

MEMORANDUM

DATE: For the Meeting of December 13, 2011

TO: Members, Wisconsin Government Accountability Board

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

Prepared and Presented by:
Michael Haas, Staff Counsel
Edward Edney, SVRS Application Trainer

SUBJECT: Legislative Status Report

Following is a summary of legislative proposals that Board staff is monitoring:

1. Senate Bill 311 and Assembly Bill 393: Voter intimidation or suppression near polling places

SB311 and AB393 are companion bills that create criminal penalties for any voter intimidation or suppression conducted within 500 feet of a polling place. Both bills were referred to committee and have not been scheduled for a public hearing.

2. Senate Bill 298: Enclosure of absentee ballots in privacy envelopes

SB298 directs election officials to provide a privacy envelope for each absentee ballot. It also directs election officials to enclose an absentee ballot received electronically or by fax in a privacy envelope before enclosing it in the certificate envelope. SB 298 was referred to committee and has not been scheduled for public hearing.

3. Senate Bill 281: Certain communications made for political purposes

SB281 places additional requirements on political communications made through radio and television. Requirements for radio must be spoken at the beginning and end of the communication, and requirements for television must appear on the screen during the entire communication over the full width of the screen and must be readable to viewers. SB281 was referred to committee and has not been scheduled for public hearing.

4. Senate Bill 271: Voting at the polls by electors who voted by absentee in the same election

SB271 provides that if an elector casts an absentee ballot, either by mail or in person, the municipal clerk or board of election commissioners shall not return the ballot to the elector. SB271 also provides that an elector who casts an absentee ballot at an election is not permitted to vote in person at the same election on Election Day. SB271 was referred to committee and a public hearing was held on October 31, 2011. Senator Erpenbach has offered senate amendment 1.

5. Senate Bill 270: Notary requirement for recall petition circulators

SB270 requires that when a circulator signs a petition for the recall of an elective officer, the statement must be in the form of an affidavit acknowledged by a notary who administers an oath affirming the circulator's identity and that the circulator appeared before the notary and executed the statement in the notary's presence. SB270 was referred to committee and a public hearing was held on October 31, 2011. Senator Erpenbach has offered senate amendments 1, 2, and 3.

6. Assembly Bill 389: Authority of a state agency to promulgate rules interpreting statutory provisions

AB389 eliminates all changes made to the administrative ruling making process by Wisconsin Act 21, thereby restoring prior law. AB389 was referred to committee and has not been scheduled for public hearing.

7. Assembly 366: Notice of the fee for DOT-issued identification cards

AB366 requires the Department of Transportation (DOT) to post signs advising customers that identification cards may be available without charge for the purposes of voting. AB366 was referred to committee and has not been scheduled for public hearing.

8. Assembly Bill 365: Electronic voter registration

AB365 permits a qualified elector with a current and valid driver's license or DOT identification card to register to vote electronically on a secure internet site maintained by the Government Accountability Board. AB365 also permits an elector who is registered and has a current and valid driver's license or identification card to electronically enter a change of name or address using a similar procedure. Under AB365, electronic registrations would be treated the same as mail-in registrations. AB365 was referred to committee and has not been scheduled for public hearing.

9. Senate Bill 269 and Assembly Bill 169: Residency of election officials

SB269 and AB169 are separate versions of bills that allow an individual who serves as an election official at a polling place on Election Day to be an elector of the county where he or she serves. AB169 was referred to committee and had a public hearing on June 9, 2011. SB269 was also referred to committee and had a public hearing held on October 31, 2011.

10. Senate Bill 268: The applicability of Wisconsin Act 43 to special and recall elections

SB268 provides that Wisconsin Act 43 first applies to special and recall elections for assembly representatives held concurrently with the 2012 general election and to special and recall elections for senators held on or after November 9, 2011. SB268 also provides that Act 43 first applies to petitions filed on or after November 9, 2011 for the recall of senators. SB268 was referred to committee and a public hearing was held on October 31, 2011. Senator Erpenbach has offered senate amendments 1, 2, and 3.

11. Senate Bill 267 and Assembly Bill 370: Method for reporting election returns by municipalities

SB267 allows a municipality that combine wards for voting purposes at a single location to also combine wards when reporting election returns, except when a separate ballot is required in a partisan or nonpartisan election, in which case the municipality must report separate results for the offices listed on each separate ballot. SB267 was referred to committee and a public hearing was held on October 31, 2011. It passed the Senate on November 2, 2011. It was received by the Assembly and has not been referred to committee.

AB370 is the Assembly companion bill to SB267. AB370 was referred to committee and has not been scheduled for public hearing.

12. Senate Bill 256 and Assembly Bill 354: Fee exception for duplicate identification cards

SB256 includes duplicate identification cards in the the fee exception under Wisconsin Act 23, and requires that the Department of Transportation (DOT) charge no fee for duplicate identification cards. SB256 was referred to committee and has not been scheduled for public hearing.

AB354 is the Assembly companion bill to SB256. AB354 was also referred to committee and has not been scheduled for public hearing.

13. Senate Bill 245 and Assembly Bill 355: The GAB and administrative rule-making procedures requiring Governor Approval

SB245 exempts the GAB from administrative rule-making requirements involving the approval of the governor. In particular, SB245 exempts the GAB from presenting for approval statements of the scope for proposed rules, the final draft form of the proposed rules, and the final draft form of all emergency rules. SB245 was referred to committee and has not been scheduled for public hearing.

AB355 is the Assembly companion bill to SB245. AB355 was also referred to committee and has not been scheduled for public hearing.

14. Senate Bill 213 and Assembly Bill 317: Creation of a Wisconsin Election Campaign Fund

SB213 and AB317 are companion bills that allow individuals to designate on their state income tax return \$1 to be transferred to an election campaign fund administered by the GAB and the state treasurer. Both bills were referred to committee and have not been scheduled for public hearing.

15. Assembly Bill 296: Contributions used to finance recall petition drives

AB296 makes contributions used to finance recall petition drives subject to the contribution limitations under campaign finance laws. AB296 was referred to committee and has not been scheduled for public hearing.

16. Senate Bill 176 and Assembly Bill 268: Filling legislative vacancies

SB176 and AB268 are companion bills that change statutes to specify that a special election must be ordered by the Governor within 60 days after a vacancy occurs in the senate or assembly, subject to the current exception. Both bills were referred to committee and have not been scheduled for public hearing.

17. Assembly Bill 264: Political contributions by certain elective state officials

AB264 prohibits any incumbent or elected partisan state official from accepting any political contribution for the purpose of promoting their nomination or reelection from January 1 of an odd-numbered year up to the date the biennial budget act is enacted. AB264 also prohibits an incumbent governor or lieutenant governor, or an individual who has been elected to either of those offices from accepting any political contribution for the purpose of promoting their nomination or reelection from the day after the general election through the succeeding first Monday in January. Violators are subject to a civil penalty and intentional violators are guilty of a misdemeanor and may be fined not more than \$1,000 or imprisoned for not more than six months or both.

AB264 was referred to committee and has not been scheduled for public hearing.

18. Senate Bill 165: Birth certificates for Milwaukee County residents

SB165 allows a resident of Milwaukee County to obtain a free birth certificate, for one year following its effective date, if the resident needs the birth certificate in order to obtain a driver license or identification card for the purpose of voting. SB165 was referred to committee and has not been scheduled for public hearing.

19. Senate Bill 162 and Assembly Bill 226: Notice of the fee for free ID cards

SB162 and AB226 are companion bills that would require the Department of Transportation (DOT) to include on its application forms for identification cards a statement that there is no fee for the initial issuance, renewal, or reinstatement of an identification card for voting purposes. The bills also require DOT staff to inform any person inquiring about an identification card that

identification cards are available without charge for purposes of voting. Both SB162 and AB226 were referred to committee and have not been scheduled for public hearing.

20. Senate Bill 148 and Senate Bill 149 and Senate Bill 150: Redistricting

SB148, SB149, and SB150 are companion bills related to the state redistricting plans based on the 2010 federal census. SB148 redistricts state legislative districts and SB149 redistricts congressional districts. SB150 requires that municipal ward plans, and the aldermanic and supervisory districts upon which they are based, reflect municipal boundaries on April 1 of the year of each federal decennial census.

SB148, SB149, and SB150 were all referred to committee and had public hearings on July 13, 2011. The bills passed in the Senate on July 19, 2011. SB148 was amended with one senate amendment, and SB150 was amended with two senate amendments. SB149 was not amended. All bills were then concurred in the Assembly on July 20, 2011. The governor approved SB148, SB149, and SB150 on August 9, 2011 and they were published on August 23, 2011 as Wisconsin Act 43, 44, and 39 respectively.

21. Senate Bill 157 and Assembly Bill 198: Redistricting Standards

SB157 and AB198 are companion bills that require the Legislative Reference Bureau and the Government Accountability Board to jointly develop standards for legislative and congressional districts based on population requirements under the Wisconsin Constitution and the U.S. Constitution and requirements under Section 2 of the Voting Rights Act. Both bill were referred to committee and have not been scheduled for public hearing.

22. Assembly Bill 196: Restrictions on campaign finance rule making authority

AB196 prohibits the promulgation of certain rules concerning campaign financing by the Government Accountability Board. Under AB196, the Board is unable to promulgate a rule that affects the authority of a corporation or cooperative to make a disbursement independently of a candidate or any agent or authorized committee of such a candidate. In addition, apart from the requirements imposed under the campaign finance law, the board is unable to impose upon any person, including any organization, any registration, reporting, filing, accounting, treasury, or fee payment requirement, or any attribution requirement in making communications.

AB196 was referred to committee and was not scheduled for public hearing. It was then referred to the committee on Rules but referred back to committee on September 13, 2011.

23. Senate Bill 116 and Assembly Bill 161: Changing the September Partisan Primary

SB116 and AB161 are companion bills which would change the date of the September primary from the 2nd Tuesday in September to the 2nd Tuesday in August, and rename it the "Partisan Primary". SB116 and AB161 also change the dates of related election events to accommodate the change in the date of the primary. In addition, the bills make various changes in the laws pertaining to absentee voting by military and overseas electors.

SB116 and AB161 were referred to committee and had public hearings on June 02, 2011. While in committee, AB161 was amended. It was then made a special order of business on November 1, 2011, and laid on the table.

While in the Senate, SB116 was amended and passed on June 08, 2011. It was then amended and concurred in the Assembly. The Senate concurred SB116 as amended in the Assembly, and the Governor approved. SB116 was published into law as Wisconsin Act 75 on December 1, 2011.

24. Senate Bill 115 and Assembly Bill 162: Changing the Presidential Preference Primary

SB115 and AB162 are companion bills which would change the date of the presidential preference primary from the 3rd Tuesday in February to the first Tuesday in April in those years in which the president and vice president are elected. The bills also change the dates of all related election events to accommodate the change in the date of the primary.

Both SB115 and AB162 were referred to committee and had public hearings on June 02, 2011. While in committee AB 162 was amended with one substitute amendment and then referred to the committee on rules. On September 13, 2011 AB162 was laid on the table in the Assembly.

In the Senate, SB115 was amended with one senate substitute amendment and passed on June 08, 2011. The Assembly concurred on September 14, 2011. SB115 was then approved by the Governor on September 30, 2011 and published as Wisconsin Act 45 on October 14, 2011.

25. Senate Bill 35: Reducing legislative districts

SB35 reduces the number of State Senators from 33 to 25 and the number of Assembly Representatives from 99 to 75. It would apply to the next decennial legislative redistricting that occurs after its enactment. SB35 was referred to committee and has not been scheduled for public hearing.

26. Senate Bill 25 and Assembly Bill 36: Dissolving regional transit authorities

SB25 and AB36 are companion bills which would eliminate legislative authorization to create regional transit authorities, dissolve any existing regional transit authority and the Southeastern Regional Transit Authority, and eliminate the Southeast Wisconsin transit capital assistance program. RTAs may conduct referendum elections, and therefore this legislation would affect the Board's administration of SVRS. The companion bills have been referred to the respective oversight committees.

27. Assembly Bill 32: Communications by legislators

AB32 would modify the statute which prohibits legislators who are up for re-election from distributing more than 49 pieces of substantially identical material between June 1st of the election year and the date of the election. The bill would create an exception for communications to constituents during the 45 days following a declaration of emergency if the communication relates to the subject of the emergency.

AB32 was referred to committee and had a public hearing on June 2, 2011. The bill was then referred to the committee on Rules on August 2, 2011. It passed in the Assembly on September 13, 2011 and was referred to committee in the Senate on September 14, 2011.

28. Senate Bill 17 and Assembly Bill 28: Reporting by nonresident committees

SB17 and AB28 are companion bills which would expand the amount of campaign finance information which is required to be reported by nonresident political committees. Currently such committees are required to report only contributions received by Wisconsin residents and expenditures made which involve Wisconsin elections. SB17 was referred to committee, but has not been scheduled for a public hearing. AB28 was also referred to committee, which held a public hearing on June 9, 2011.

29. Senate Bill 6 and Assembly Bill 7 and Assembly Bill 67: Photo ID

SB6 and AB7 were introduced as identical companion bills which would require electors to show a valid form of photo identification prior to receiving a ballot. SB6 was amended, but laid on the table in the Senate on June 8, 2011. AB7 was also amended through two substitute amendments, but was made a special order of business before the Assembly on May 11, 2011. The Assembly adopted both substitute amendments, and passed the bill. The Senate concurred on May 19, 2011. The bill was then approved by the Governor on May 25, 2011 as Wisconsin Act 23, which was published on June 9, 2011.

AB67 was introduced as a separate companion bill to SB6 which would require electors to show a valid form of photo identification prior to receiving a ballot. AB67 would in addition change the deadlines for late registration and in-person absentee voting, and require G.A.B. to provide an interactive electronic registration form. The bill was referred to committee, but was not taken up.

30. Assembly Joint Resolution 78: Criteria for legislative redistricting

AJR78, proposed on first consideration, requires the establishment of competitive election criteria for redistricting the legislature following the completion of each census. AJR78 was introduced on December 1, 2011 and referred to committee.

31. Assembly Joint Resolution 63: Recall of elective officers and a code of ethics for government officials

AJR63, proposed on first consideration, limits the grounds for the recall of an incumbent congressional, judicial, or legislative elective officer or any county elective officer specified in the Wisconsin Constitution. Under AJR63, an elective officer may be recalled only if they were charged with a serious crime or if a finding of probable cause has been made that they violated the state code of ethics. AJR63 was referred to committee.

32. Assembly Joint Resolution 56: Granting the right to vote to persons convicted of a felony or a certain misdemeanor

AJR56, proposed on first consideration, grants felons and persons convicted of certain misdemeanors the right to vote as well as hold and run for public office. AJR56 was referred to committee.

33. Assembly Joint Resolution 51: Constitutional amendment to change certain elected offices

AJR51, proposed on first consideration, makes elections for the office of district attorney, sheriff, register of deeds, county clerk, treasurer, surveyor, coroner, and clerk of circuit court nonpartisan and changes the term of office to begin on the first Monday in June. AJR51 was referred to committee.

State of Wisconsin \ Government Accountability Board

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



JUDGE THOMAS H. BARLAND
Chairperson

KEVIN J. KENNEDY
Director and General Counsel

MEMORANDUM

DATE: For the December 13, 2011 Meeting

TO: Members, Wisconsin Government Accountability Board

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

Prepared by:

Shane W. Falk, Staff Counsel

SUBJECT: Promulgation and Amendment of ch. GAB §1.28(3)(b), Wis. Adm. Code
Proposed Permanent Rule and Status

Introduction:

Pursuant to §5.05(1)(f), Stats., the legislature authorized the Government Accountability Board specific power to promulgate rules under ch. 227, Stats., for the purpose of interpreting or implementing the laws regulating the conduct of elections or election campaigns or ensuring their proper administration. At the Board's meeting on December 22, 2010, the Board adopted an Emergency Rule 1.28 (EmR 1049) that was effective from its published date on January 7, 2011 through two extensions and when it expired on October 3, 2011. The Emergency Rule 1.28 removed the second sentence of GAB 1.28(3)(b), Wis. Adm. Code, which was effective on August 1, 2010 and the subject of several lawsuits. At the Board's meeting on March 22-23, 2011, the Board adopted a proposed permanent rule GAB 1.28(3)(b) that mirrored the emergency rule; however, the Legislature and Governor considered and enacted new laws regarding administrative rule-making. This has slowed staff's promulgation of the permanent rule GAB 1.28(3)(b) that mirrors the emergency rule.

Pursuant to 2011 Act 21 (effective June 8, 2011) and as amended by 2011 Act 32, §§2725d-2740 (effective July 1, 2011), staff submitted a Statement of Scope for the proposed permanent Rule 1.28 to Governor Walker on July 14, 2011. On August 24, 2011, staff received Governor Walker's written approval to proceed with publishing the Statement of Scope in the Wisconsin Administrative Register, where it appeared on September 14, 2011. Pursuant to 2011 Act 21, the Board affirmatively approved the State of Scope at the Board's November 9, 2011 meeting, which permitted staff to begin drafting the proposed rule.

Following this Memorandum is the proposed permanent Rule 1.28(3)(b), which mirrors the previous emergency rule. If the Board approves the proposed Rule 1.28(3)(b), 2011 Act 21 requires staff to prepare a detailed economic impact analysis after receiving comments from

affected persons and entities. Upon completion of the economic impact analysis, staff can submit both the draft proposed rule and economic impact analysis to the Legislative Council for review. At the same time, staff must also submit the economic impact analysis to the DOA, the Governor, and to the Chief Clerks of each house of the Legislature, who shall distribute the analysis to the presiding officers of their respective houses, to the chairpersons of the appropriate standing committees of their respective houses and to the co-chairpersons of the joint committee for review of administrative rules.

On November 2, 2011, Governor Walker issued Executive Order #50, which appears to add some additional requirements for economic impact analyses and these requirements may conflict with some of the Board's previously adopted practices, which will be reviewed below.

Executive Order #50:

At its August 2, 2011 meeting, the Board approved a practice for staff to solicit comments for an economic impact analysis and it included a 10 day comment period. On November 2, 2011, Governor Walker issued Executive Order #50, which appears to establish additional requirements for the statutorily required economic impact analysis and may contradict the Board's practices that were adopted on August 2, 2011. Following this Memorandum and for reference is a copy of the practices adopted by the Board at its August 2, 2011 meeting.

While the Board had significant foresight in establishing a reasonable practice for soliciting comments associated with an EIA for a proposed rule and preemptively adopted a practice that included much of the same requirements as Executive Order #50, staff believes that the previously approved Board practice should be modified to reflect the new or additional requirements of Executive Order #50. Staff renews its concern that the new administrative rule-making process will significantly slow the Board's rule-making efforts. In addition, with the issuance of Executive Order #50 and the "consultation" requirements, staff is very concerned about the onerous nature of completing an EIA and the negative impact of the increased use of agency staff resources. However, the Board's rule-making generally does not have an economic impact on the "economy, a sector of the economy, jobs, or the overall economic competitiveness of the state," so it may be highly unlikely that the G.A.B. will have to conduct lengthy consultations with persons commenting on the proposed rule.

The following are some of the new requirements and/or further definition of statutory requirements established by Executive Order #50 as they relate to an economic impact analysis (hereafter "EIA"):

1. Exec. Order #50, Sec. IV(3)(a-c):
 - (a) Requires that information including the proposed rule language shall be made available by posting on the agency website and the Wisconsin administrative rules website, submitting the information to the Governor's Office of Regulatory Compliance, and by e-mailing individuals who have requested to receive information and other persons identified by the agency as potentially interested persons.

- (b) Requires a 14 calendar day comment period for rules having no or minimal economic impact locally or statewide; a 30 calendar day comment period for rules having a moderate economic impact locally or statewide; and a 60 calendar day comment period for rules having a significant economic impact locally or statewide or on a sector of the economy.
 - (c) Requires the agency to review the comments received and the statement of scope description of all the persons that may be affected by the proposed rule. The agency is required to update the list of businesses, business sectors, associations representing businesses, local governmental units, and individuals included in the statement of scope and submit the list to the Governor's Office of Regulatory Compliance.
- 2. Executive Order #50, Sec. IV(4): requires the agency to prepare the EIA in coordination with the local governmental units that respond to the solicitation and request to coordinate with the G.A.B. The agency is required to contact those local governmental units to discuss such comments and incorporate them into the EIA to the extent feasible.
- 3. Executive Order #50, Sec. IV(5): requires the agency to a make a determination in the EIA, in consultation with the responding businesses, business sectors, associations representing businesses, local governmental units, and individuals, as to whether the proposed rule would adversely affect in a material way the economy, a sector of the economy, productivity, jobs, or the overall economic competitiveness of this state in the following manner:
 - (a) The agency shall compile a list of affected persons and economic concerns identified in the comments solicited by the agency.
 - (b) The agency shall contact those affected persons to discuss economic concerns and give consideration to those concerns in its EIA determination.
 - (c) The agency shall document in the EIA the affected persons who were consulted and whether the agency's determination is disputed by any of the affected persons.
- 4. Executive Order #50, Sec. IV(8): If the agency finds that a proposed rule will not have an economic impact after review of any comments submitted in response to the agency's solicitation, it may complete the EIA without additional coordination with local governmental units or consultation with other affected parties. The agency shall detail in the

EIA the information supporting the conclusion that the proposed rule will not have an economic impact.

Recommendations:

1. Staff recommends that the Board approve the proposed permanent Rule GAB 1.28(3)(b).
2. Staff recommends that the Board revise its economic impact analysis practices that were approved on August 2, 2011 to incorporate the new requirements following Executive Order #50 that was issued on November 2, 2011 as follows:

A. Staff recommends that the Board adopt a reasonable practice of soliciting information and advice from those that may be affected by a proposed rule-making - solicitations via an email notice directing the recipient to the G.A.B. website for detailed information, with a 14/30/60 calendar day deadline to respond to G.A.B. as applicable, and of only the following for the provided subjects:

1. All clerks for proposed election and campaign finance rules;
2. All campaign finance registrants for proposed campaign finance, ethics and lobbying rules;
3. Top state public officials who have filed a Statement of Economic Interests with the G.A.B. for proposed ethics rules;
4. Registered lobbyists and lobbying principals for proposed lobbying rules;
5. Wisconsin Manufacturer's and Commerce for all campaign finance, ethics, and lobbying rules with a recommendation that it circulates the solicitation to all its members for comment directly to the G.A.B.;
6. Wisconsin Democracy Campaign, League of Women Voters, Common Cause of Wisconsin, Disability Rights of Wisconsin, and the Wisconsin Board for Persons with Developmental Disabilities for proposed elections, campaign finance, ethics, and lobbying rules.
7. Any individual who has requested to receive information and other persons identified by the agency as potentially interested parties as to requested or identified subjects.

B. Staff recommends that pursuant to §5.05(1)(e), Wis. Stats., the Board delegate authority to the Director and General Counsel to make a finding under Executive Order #50, Sec. IV(8), that a proposed rule does not have an economic impact.

Background of Rule GAB 1.28(3)(b):

As part of a lawsuit against the Board in the U.S. District Court for the Western District of Wisconsin, and after consulting with its litigation counsel from the Wisconsin Attorney General's office, the Board previously executed a joint stipulation with the plaintiffs, asking the Court to permanently enjoin application and enforcement of the second sentence of ch. GAB §1.28(3)(b), Wis. Adm. Code. On October 13, 2010, the Court issued an Opinion and Order which, among other things, denied the parties' request for that permanent injunction and stayed the case pending the outcome of a separate case in the Wisconsin Supreme Court. In denying the permanent injunction, the District Court noted that "G.A.B. has within its own power the ability to refrain from enforcing, or removing altogether, the offending sentence from a regulation G.A.B. itself created" and emphasized that "removing the language—for example, by G.A.B. issuing an emergency rule—would be far more 'simple and expeditious' than asking a federal court to permanently enjoin enforcement of the offending regulation." *Wisconsin Club for Growth, Inc. v. Myse*, No. 10-CV-427, slip op. at 2 (W.D. Wis. Oct. 13, 2010). The Court further noted that staying the case would give the Board time to resolve some or all of the pending issues through further rulemaking. *Id.*, slip op. at 14.

In addition, the Board, through its litigation counsel, has represented to the Wisconsin Supreme Court that it does not intend to defend the validity of the second sentence of ch. GAB § 1.28(3)(b) and that it would stipulate to the entry of an order by that Court permanently enjoining the application or enforcement of that sentence.

On December 22, 2010, the Board adopted an Emergency Rule Order bringing ch. GAB § 1.28 into conformity with the above stipulation and with the representations that have been made to the Wisconsin Supreme Court. The emergency rule also comported with the suggestions made in the October 13, 2010, Opinion and Order of the U.S. District Court for the Western District of Wisconsin.

The only change that the emergency rule made to the August 1, 2010, rule is the repeal of the second sentence of GAB 1.28(3)(b). All other portions of GAB 1.28 remain unchanged. However, all of the revisions to GAB 1.28 that were effected on August 1, 2010, remain temporarily enjoined pending further order of the Wisconsin Supreme Court. Oral arguments for the litigation against the Board that is pending before the Wisconsin Supreme Court were held on September 6, 2011; however, a decision from the Supreme Court is not expected until some time in 2012. Promulgation of a permanent rule mirroring the emergency rule is necessary to maintain the Board's previous commitments made in the course of litigation.

Proposed Motions:

- 1. MOTION:** The Board approves the attached Notice of Proposed Order Adopting Rule Amending ch. GAB §1.28(3)(b).

2. **MOTION:** The Board adopts a reasonable practice of soliciting information and advice from those that may be affected by a proposed rule-making - solicitations via an email notice directing the recipient to the G.A.B. website for detailed information, with a 14/30/60 calendar day deadline to respond to G.A.B. as applicable, and of only the following for the provided subjects:
1. All clerks for proposed election and campaign finance rules;
 2. All campaign finance registrants for proposed campaign finance, ethics and lobbying rules;
 3. Top state public officials who have filed a Statement of Economic Interests with the G.A.B. for proposed ethics rules;
 4. Registered lobbyists and lobbying principals for proposed lobbying rules;
 5. Wisconsin Manufacturer's and Commerce for all campaign finance, ethics, and lobbying rules with a recommendation that it circulates the solicitation to all its members for comment directly to the G.A.B.;
 6. Wisconsin Democracy Campaign, League of Women Voters, Common Cause of Wisconsin, Disability Rights of Wisconsin, and the Wisconsin Board for Persons with Developmental Disabilities for proposed elections, campaign finance, ethics, and lobbying rules.
 7. Any individual who has requested to receive information and other persons identified by the agency as potentially interested parties as to requested or identified subjects.
- B. Staff recommends that pursuant to §5.05(1)(e), Wis. Stats., the Board delegate authority to the Director and General Counsel to make a finding under Executive Order #50, Sec. IV(8), that a proposed rule does not have an economic impact.

State of Wisconsin \ Government Accountability Board

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



JUDGE THOMAS H. BARLAND
Chairperson

KEVIN J. KENNEDY
Director and General Counsel

MEMORANDUM

DATE: For the August 2, 2011 Meeting

TO: Members, Wisconsin Government Accountability Board

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

Prepared by:

Shane W. Falk, Staff Counsel

SUBJECT: Administrative Rule-Making Post 2011 Act 21 (as amended by 2011 Act 32)
Excerpted Provisions Related to Economic Impact Analyses Practices

III. Staff Identified Rule-Making Procedural Issues and Recommendations

B. Economic Impact Analyses Procedures

Recommendation: Staff recommends that the Board adopt a reasonable policy of soliciting information and advice from those that may be affected by a proposed rule-making - solicitations via an email notice directing the recipient to the G.A.B. website for detailed information, with a 10 day deadline to respond to G.A.B., and of only the following for the provided subjects:

- 1. All clerks for proposed election and campaign finance rules;**
- 2. All campaign finance registrants for proposed campaign finance, ethics and lobbying rules;**
- 3. Top state public officials who have filed a Statement of Economic Interests with the G.A.B. for proposed ethics rules;**
- 4. Registered lobbyists and lobbying principals for proposed lobbying rules;**
- 5. Wisconsin Manufacturer's and Commerce for all campaign finance, ethics, and lobbying rules with a recommendation that it**

circulates the solicitation to all its members for comment directly to the G.A.B.;

- 6. Wisconsin Democracy Campaign, League of Women Voters, Common Cause of Wisconsin, Disability Rights of Wisconsin, and the Wisconsin Board for Persons with Developmental Disabilities for proposed elections, campaign finance, ethics, and lobbying rules.**

The new procedures mandate that the G.A.B. prepare an economic impact analysis for any proposed rule that “shall contain information on the economic effect of the proposed rule on specific businesses, business sectors, public utility ratepayers, local government units, and the state’s economy as a whole.” Staff is very concerned about the onerous burdens on G.A.B. as a result of the mandates to solicit information and advice from businesses, associations representing businesses, local governmental units, and individuals that may be affected by the proposed rule and to prepare the economic impact analysis in coordination with local governmental units that may be affected by the proposed rule.

The new procedures do provide the G.A.B. with authority to “request information that is reasonably necessary for the preparation of the economic impact analysis from other businesses, associations, local governmental units, individuals, and from other agencies.” A combination of use of the G.A.B. website and email is the only effective way to solicit this information in a cost-effective and timely manner. Limiting the number of persons or entities is another reasonable way to manage this process. The recommendation above appears limited in nature, but depending upon the subject matter of the proposed rule actually would include solicitations from thousands of persons or entities, including a large percentage of Wisconsin businesses, every Legislator via his or her campaign committee, all political parties registered as such in Wisconsin, several non-partisan organizations particularly interested in the Board’s activities, and all 1,850 county and municipal clerks in Wisconsin.

With this more reasonable and manageable solicitation procedure and most importantly the deadline for a response, staff would more readily be able to review and consider incorporating responses into the economic impact analysis. In addition to the Board’s open meeting process which permits public comment by Wisconsin clerks, this procedure would complete compliance with the requirement to prepare an economic impact analysis in coordination with local governmental units that may be affected by the rule.

This process will still be onerous, particularly if there are hundreds or thousands of responses to a solicitation, as that information must be reviewed and somehow incorporated into the economic impact analysis.

IV. Proposed Motions

- B. MOTION:** The Board adopts a reasonable policy of soliciting information and advice from those that may be affected by a proposed rule-making - solicitations via an email notice directing the recipient to the G.A.B. website

for detailed information, with a 10 day deadline to respond to G.A.B., and of only the following for the provided subjects:

- 1. All clerks for proposed election and campaign finance rules;**
- 2. All campaign finance registrants for proposed campaign finance, ethics and lobbying rules;**
- 3. Top state public officials who have filed a Statement of Economic Interests with the G.A.B. for proposed ethics rules;**
- 4. Registered lobbyists and lobbying principals for proposed lobbying rules;**
- 5. Wisconsin Manufacturer's and Commerce for all campaign finance, ethics, and lobbying rules with a recommendation that it circulates the solicitation to all its members for comment directly to the G.A.B.;**
- 6. Wisconsin Democracy Campaign, League of Women Voters, Common Cause of Wisconsin, Disability Rights of Wisconsin, and the Wisconsin Board for Persons with Developmental Disabilities for proposed elections, campaign finance, ethics, and lobbying rules.**

NOTICE OF PROPOSED ORDER ADOPTING RULE
GOVERNMENT ACCOUNTABILITY BOARD
CR 12-_____

Definition of the term “political purpose,” s. GAB 1.28(3)(b)

The Wisconsin Government Accountability Board proposes an order to adopt a rule to amend s. GAB 1.28(3)(b), Wis. Adm. Code, relating to the definition of the term “political purpose.”

ANALYSIS PREPARED BY GOVERNMENT ACCOUNTABILITY BOARD:

1. Statute Interpreted: s.11.01(16), Stats.
2. Statutory Authority: ss. 5.05(1)(f) and 227.11(2)(a), Stats.
3. Explanation of agency authority: Under the existing statute, s. 11.01(16), Stats., an act is for “political purposes” when by its nature, intent or manner it directly or indirectly influences or tends to influence voting at an election. Such an act includes support or opposition to a person’s present or future candidacy. Further, s. 11.01(16)(a)1., Stats., provides that acts which are for “political purposes” include “but are not limited to” the making of a communication which expressly advocates the election, defeat, recall or retention of a clearly identified candidate.

Under s. 5.05(1), Stats., the Board is expressly vested with responsibility for the administration of all Wisconsin laws relating to elections and election campaigns, specifically including chapters 5 through 12 of the Wisconsin Statutes. Pursuant to that responsibility, s. 5.05(1)(f), Stats., gives the Board express statutory authority to promulgate administrative rules “for the purpose of interpreting or implementing the laws regulating the conduct of elections or elections campaigns or ensuring their proper administration.” Similarly, s. 227.11(2)(a), Stats., grants state agencies—including the Board—the authority to “promulgate rules interpreting the provisions of any statute enforced or administered by it, if the agency considers it necessary to effectuate the purpose of the statute,” as long as the rule does not “exceed[] the bounds of correct interpretation.” Sections 5.05(1)(f) and 227.11(2)(a), Stats., thus give the Board clear and express authority to promulgate rules that interpret and implement the meaning of all Wisconsin laws that regulate or govern the proper administration of election campaigns in this state, including s. 11.01(16), Stats.

Section GAB 1.28, as promulgated on August 1, 2010, made a number of changes to the Board’s interpretation and implementation of the statutory definition of an act “for political purposes” under s. 11.01(16), Stats. Those changes were fully analyzed and explained in the July 13, 2010, Order of the Government Accountability Board, CR 09-013.

The present amendment involves only the repeal of the second sentence of s. GAB 1.28(3)(b). All other portions of GAB 1.28, including the first sentence of s. GAB 1.28(3)(b), are unchanged. Moreover, all of the revisions to GAB 1.28 that were effected on August 1, 2010, remain temporarily enjoined pending further order of the Wisconsin Supreme Court. The present amendment has no effect on the continued effectiveness of that injunction.

The first sentence of s. GAB 1.28(3)(b), provides that any communication that “is susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate” is a communication “for political purposes” within the meaning of s. 11.01(16), Stats., and hence is subject to all of the campaign finance regulations under ch. 11 of the Wisconsin Statutes that apply to communications for a political purpose—subject, of course, to any additional requirements or limitations contained in particular statutes.

The second sentence of s. GAB 1.28(3)(b) additionally identifies communications which are susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate. That is, any communications that possess the characteristics enumerated in the second sentence of s. GAB 1.28(3)(b) would automatically be deemed communications for a political purpose and, as a result, would automatically be subject to the applicable campaign finance regulations under ch. 11 of the Wisconsin Statutes.

As a result of litigation challenging the validity of the August 1, 2010, amendments to s. GAB 1.28, the Board has entered into a stipulation to refrain from enforcing the second sentence of s. GAB 1.28(3)(b). The Board, through its litigation counsel, has also represented that it does not intend to defend the validity of that sentence and has sought judicial orders permanently enjoining its application or enforcement. This sentence is removed by this rule.

This amendment does not affect the first sentence of s. GAB 1.28(3)(b), under which individuals and organizations that raise or spend money to make communications that are susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate, are subject to campaign finance regulation under ch. 11 of the Wisconsin Statutes. As previously noted however, all of the August 1, 2010, amendments to s. GAB 1.28—including the first sentence of s. GAB 1.28(3)(b)—are currently subject to the August 13, 2010, temporary injunction by the Wisconsin Supreme Court.

4. Related statute(s) or rule(s): s. 11.01(16), Stats., and s. GAB 1.28, Wis. Adm. Code.
5. Plain language analysis: The revised rule will subject to regulation communications that are “susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate.” The revised rule will subject communications meeting this criterion to the applicable campaign finance

regulations and requirements of ch. 11, Stats. The scope of regulation will be subject to the United States Supreme Court Decision, *Citizens United vs. FEC* (No. 08-205), permitting the use of corporate and union general treasury funds for independent expenditures.

6. Summary of, and comparison with, existing or proposed federal regulations: The United States Supreme Court upheld regulation of political communications called “electioneering communications” in its December 10, 2003 decision: *McConnell et al. v. Federal Election Commission, et al.* (No.02-1674), its June 25, 2007 decision of: *Federal Election Commission (FEC) v. Wisconsin Right to Life, Inc. (WRTL II)*, (No.06-969and 970), and pursuant to its January 21, 2010 decision of: *Citizens United vs. FEC* (No. 08-205).

The *McConnell* decision is a review of relatively recent federal legislation – The Bipartisan Campaign Reform Act of 2002 (BCRA) – amending, principally, the Federal Election Campaign Act of 1971 (as amended). A substantial portion of the *McConnell* Court’s decision upholds provisions of BCRA that establish a new form of regulated political communication – “electioneering communications” – and that subject that form of communication to disclosure requirements as well as to other limitations, such as the prohibition of corporate and labor contributions for electioneering communications in BCRA ss. 201, 203. BCRA generally defines an “electioneering communication” as a broadcast, cable, or satellite advertisement that “refers” to a clearly identified federal candidate, is made within 60 days of a general election or 30 days of a primary election and, if for House or Senate elections, is targeted to the relevant electorate.

In addition, the Federal Election Commission (FEC) promulgated regulations further implementing BCRA (generally 11 CFR Parts 100-114) and made revisions incorporating the *WRTL II* decision by the United States Supreme Court (generally 11 CFR Parts 104, 114.) The FEC regulates “electioneering communications.”

7. Comparison with rules in adjacent states:

Pursuant to Public Act 96-0832, Illinois revised its “electioneering communication” statute in 2009, effective July 1, 2010, to include the “no reasonable interpretation other than an appeal to vote for or against” test, among other revisions. Subject to some delineated exemptions found in 10 ILCS 5/9-1.14, the statute now defines an “electioneering communication” as any broadcast, cable or satellite communication, including radio, television, or internet communication, that:

- 1) refers to a clearly identified candidate or candidates who will appear on the ballot, a clearly identified political party, or a clearly identified question of public policy that will appear on the ballot,

- 2) is made within 60 days before a general election or 30 days before a primary election,
- 3) is targeted to the relevant electorate, and
- 4) is susceptible to no reasonable interpretation other than an appeal to vote for or against a clearly identified candidate, a political party, or a question of public policy.

As a result of the adoption of Public Act 96-0832, Illinois is undergoing a substantial revision of its administrative code with respect to campaign finance and disclosure rules. (See proposed Illinois Administrative Code, Title 26, Chapter 1, Part 100, Campaign Financing, JCAR260100-101389r01). In the context of excluding “independent expenditures” from the term “contribution,” Section 100.10(b)(3)G., of the proposed rules include both electioneering and express advocacy communications as forms of independent expenditures.

Iowa’s Administrative Code defines “express advocacy” as including a communication that uses any word, term, phrase, or symbol that exhorts an individual to vote for or against a clearly identified candidate or the passage or defeat of a clearly identified ballot issue. (Chapter 351—4.53(1), Iowa Administrative Code.)

Michigan statutes define a “contribution” as anything of monetary value made for the purpose of influencing the nomination or election of a candidate or the qualification, passage or defeat of a ballot question. (s. 169.204(1), Mich. Stats.) “Expenditure” is defined as a payment of anything of monetary value in assistance of or opposition to the nomination or election of a candidate or the qualification, passage or defeat of a ballot question. (s. 169.206(1), Mich. Stats.) Michigan does not have any additional rules defining political purposes.

Minnesota statutes define a “campaign expenditure” or “expenditure” as the purchase or payment of money or anything of value, or an advance of credit, made or incurred for the purpose of influencing the nomination or election of a candidate or for the purpose of promoting or defeating a ballot question. (s. 10A.01, Subd. 9, Minn. Stats.) “Independent expenditure” is defined as an expenditure expressly advocating the election or defeat of a clearly identified candidate, if the expenditure is not coordinated with any candidate or any candidate’s principal campaign committee or agent. (s. 10A.01, Subd. 18, Minn. Stats.) Minnesota does not have any additional rules defining political purposes.

8. Summary of factual data and analytical methodologies: The factual data and analytical methodologies underlying the adoption of the August 1, 2010 amendments to s. GAB 1.28 have been described in the July 13, 2010, Order of the Government Accountability Board, CR 09-013. The adoption of the present amendment to s. GAB 1.28(3)(b) is predicated on the same data and methodologies and also on developments related to several court cases challenging the validity of the August 1, 2010 amendments to s. GAB 1.28.

These developments were discussed by the Board in a closed session meeting with its litigation counsel on December 14, 2010. These developments are also being discussed in an open session, public meeting of the Board on December 22, 2010.

9. Analysis and supporting documentation used to determine effect on small businesses: The rule will have no effect on small business, nor any economic impact.
10. Effect on small business: The creation of this rule does not affect business.
11. Agency contact person: Shane W. Falk, Staff Counsel, Government Accountability Board, 212 E. Washington Avenue, 3rd Floor, P.O. Box 7984, Madison, Wisconsin 53707-7984; Phone 266-2094; Shane.Falk@wisconsin.gov
12. Place where comments are to be submitted and deadline for submission: Government Accountability Board, Attn: Shane W. Falk, 212 E. Washington Avenue, 3rd Floor, P.O. Box 7984, Madison, Wisconsin 53707-7984, no later than _____, 2012.

FISCAL ESTIMATE: The creation of this rule has minimal fiscal effect. There may be additional registrants filing reports with the Board and potentially additional enforcement actions that may require staff action. The extent of this potential fiscal impact is undetermined.

INITIAL REGULATORY FLEXIBILITY ANALYSIS: The creation of this rule does not affect the normal operations of business.

TEXT OF PROPOSED RULE:

SECTION 1. GAB 1.28(3)(b) is amended to read:

(b) The communication is susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate. ~~A communication is susceptible of no other reasonable interpretation if it is made during the period beginning on the 60th day preceding a general, special, or spring election and ending on the date of that election or during the period beginning on the 30th day preceding a primary election and ending on the date of that election and that includes a reference to or depiction of a clearly identified candidate and:~~

- ~~1. Refers to the personal qualities, character, or fitness of that candidate;~~
- ~~2. Supports or condemns that candidate's position or stance on issues; or~~
- ~~3. Supports or condemns that candidate's public record.~~

SECTION 2. EFFECTIVE DATE. This rule shall take effect on the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.22(2) (intro.), Stats.

Dated this ____ day of _____, 2012.

Kevin J. Kennedy
Director and General Counsel
Government Accountability Board

State of Wisconsin \ Government Accountability Board

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



JUDGE THOMAS H. BARLAND
Chairperson

KEVIN J. KENNEDY
Director and General Counsel

MEMORANDUM

DATE: For the December 13, 2011 Meeting

TO: Members, Wisconsin Government Accountability Board

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

Prepared by:

Shane W. Falk, Staff Counsel

SUBJECT: Promulgation of 3 Emergency Rules as Directed by JCRAR
For Information Purposes Only/No Board Action Required

Introduction:

At the November 9, 2011 meeting, the Board took additional action with respect to three separate requests for advice related to election administration: 1) use of technical college identification cards to meet the photo identification requirements of Act 23; 2) use of stickers or labels affixed to student identification cards to meet photo identification requirements of Act 23; and 3) no one other than the signer or the circulator may prepare an election-related petition with a signer's residential address information or the full date of signing pre-populated; however, an election-related petition may have the municipality of residence and the month or year of signing pre-populated.

At the November 9, 2011 meeting, the Board specifically approved the use of technical college identification cards to meet the photo identification requirements of Act 23 (reversing a previous Board action), approved the use of stickers or labels affixed to student identification cards to meet photo identification requirements of Act 23 (upholding a previous Board action), and modified prior Board action regarding election-related petitions. Following the Board's actions on November 9, 2011, the Joint Committee for Review of Administrative Rules immediately scheduled a public hearing and an executive session for November 15, 2011 to discuss the Board's actions. In executive session, JCRAR adopted three motions requiring the G.A.B. to promulgate emergency rules addressing the specific content of each motion. See JCRAR motions that follow this Memorandum.

Pursuant to §227.26(2)(b), Wis. Stats., the G.A.B. has 30 days to begin the rule-making process (actually the statute requires promulgation of an emergency rule within 30 days, but as a result of 2011 Act 21, that is a practical impossibility.) Thursday, December 15, 2011 is the

statutory deadline for the submission of a statement of scope to the Governor on each of the three emergency rules.

Status:

Staff remains concerned that JCRAR's actions on these three matters, and the general exercise of §227.26(2), Wis. Stats., authority for day-to-day election administration issues, affect the ability of the G.A.B. to provide timely and uniform advice for the proper administration of elections, particularly with sufficient notice such that proper training of election officials may be conducted. As a result of 2011 Act 21, the process to complete promulgation of an emergency rule is more complicated and lengthy.

The new process under 2011 Act 21 for emergency rule promulgation is as follows:

1. An agency shall prepare a statement of scope of any proposed emergency rule and obtain approval of the governor and the body with policy-making authority in the same process as for a permanent rule. The statement of scope is sent to the legislative reference bureau for publication in the administrative register and copied to the secretary of DOA, only after receipt of written approval from the governor. §227.24(1)(e)1d, Wis. Stats.
2. The body with policy-making authority may not approve the statement until at least 10 days after publication in the administrative register. No state employee or official may perform any activity in connection with the drafting of the proposed emergency rule except for preparation of the statement of scope, until the governor and the body with policy-making authority approves the statement. §227.24(1)(e)1d, Wis. Stats.
3. An agency shall submit the proposed emergency rule in final draft form to the governor for approval in the same fashion as approval. The governor, in his or her discretion, may approve or reject the proposed emergency rule. If the governor approves the proposed emergency rule, the governor shall provide the agency with a written notice of that approval. An agency may not file an emergency rule with the legislative reference bureau as provided in §227.20, Wis. Stats., and an emergency rule may not be published until the governor approves the emergency rule in writing. §227.24(1)(e)1g, Wis. Stats.

The statement of scope with respect to an emergency rule addressing the use of technical college identification cards to meet the photo identification requirements of Act 23 was submitted to the Governor on November 22, 2011. (See correspondence and statement of scope that follows this Memorandum.) The Governor provided his written approval of the statement of scope on December 2, 2011, which now permits the G.A.B. to submit the statement of scope to the Legislative Reference Bureau for publication in the Administrative Register where it must appear for 10 days before the Board can affirmatively approve it. (See correspondence from the Governor that follows this Memorandum.) (Note: staff still must complete the statements of scope for the use of stickers or labels on student identification cards and regarding election-related petitions.

The impact of the above new process for the purposes of the technical college identification card emergency rule is as follows:

1. Tuesday, November 15, 2011, JCRAR ordered the G.A.B. to promulgate an emergency rule pursuant to §227.26(2)(b), Wis. Stats., and do so within 30 days.
2. Upon having the specific language of the JCRAR motions regarding the ordered rule-making, the G.A.B. drafted the statement of scope and submitted it to the Governor on November 22, 2011 for approval. The Governor approved the statement of scope on December 2, 2011. The deadline for submissions to the Legislative Reference Bureau for publication of notices in the end-of-month Administrative Register is December 15, 2011. The December 30, 2011 publication of the Administrative Register is when the statement of scope will first appear.
3. Since the statement of scope must appear in the Administrative Register for 10 days before the Board can affirmatively approve it, the January 12, 2012 Board meeting will be the first opportunity for the Board to affirmatively approve the statement of scope. Only after affirmative approval of the statement of scope by the Board, may staff begin drafting the emergency rule.
4. Assuming the Board approves the scope statement on January 12, 2012, staff can prepare an emergency rule for consideration by the Board, but the Board will have to schedule a special Board meeting to approve the draft emergency rule.
5. Once the Board approves a proposed emergency rule, we still have to submit it to the Governor for approval. Assuming the Governor approves the emergency rule within a week or two, we can then publish the rule in the paper and file it with the Legislative Reference Bureau. Usually, it takes a couple weeks minimum to get a rule published in the paper and the emergency rule would not take effect until it was published (and on file with the LRB.) On this schedule, the earliest this emergency rule could be effective is likely the end of February. Both the Governor and the Legislature have an opportunity to block the emergency rule and this schedule presumes that they will not do so.

As this schedule shows, even with the near immediate completion of the statement of scope regarding the technical college identification card emergency rule, it is unlikely that an emergency rule would be effective prior to the February 2012 primary, even if the Governor or the Legislature does not object to the rule. The date will likely be later for the other two outstanding emergency rules. With the limited staff resources and the large number of priority tasks to address, staff will still continue to move these three emergency rules along as quickly as possible; however, special Board meetings are likely going to need to occur to avoid more significant delays.



JOINT COMMITTEE FOR THE REVIEW OF ADMINISTRATIVE RULES

COMMITTEE CO-CHAIRS: SENATOR LEAH VUKMIR AND REPRESENTATIVE JIM OTT

That JCRAR finds the Government Accountability Board's motion to permit the use of technical college student identification to meet photo identification requirements for voting is an interpretation of s. 5.02(6m)(f), Stats. that meets the definition of a rule under s. 227.01(13), Stats.; and, pursuant to ss. 227.10(1) and 227.26(2), Stats., that JCRAR directs the Government Accountability Board to promulgate its action as an emergency rule within 30 days.

SEN.VUKMIR@LEGIS.WISCONSIN.GOV
608-266-2512

P.O. BOX 7882, STATE CAPITOL
MADISON, WI 53707-7882

REP.OTTJ@LEGIS.WISCONSIN.GOV
608-266-0486

P.O. BOX 8953, STATE CAPITOL
MADISON, WI 53708-8953



JOINT COMMITTEE FOR THE REVIEW OF ADMINISTRATIVE RULES

COMMITTEE CO-CHAIRS: SENATOR LEAH VUKMIR AND REPRESENTATIVE JIM OTT

That JCRAR finds the Government Accountability Board's motion to permit the use of stickers or labels affixed to student identification cards to meet photo identification requirements for voting is an interpretation of s. 5.02(6m)(f), Stats. that meets the definition of a rule under s. 227.01(13), Stats.; and, pursuant to ss. 227.10(1) and 227.26(2), Stats., that JCRAR directs the Government Accountability Board to promulgate its action as an emergency rule within 30 days.

SEN.VUKMIR@LEGIS.WISCONSIN.GOV
608-266-2512

P.O. Box 7882, STATE CAPITOL
MADISON, WI 53707-7882

REP.OTTJ@LEGIS.WISCONSIN.GOV
608-266-0486

P.O. Box 8953, STATE CAPITOL
MADISON, WI 53708-8953



JOINT COMMITTEE FOR THE REVIEW OF ADMINISTRATIVE RULES

COMMITTEE CO-CHAIRS: SENATOR LEAH VUKMIR AND REPRESENTATIVE JIM OTT

That JCRAR finds the Government Accountability Board's recognition that no one other than the signer or the circulator may prepare an election-related petition with a signer's residential address information or the full date of signing pre-populated is a statement of policy and an interpretation of ss. 8.40, and 9.10, Stats. and s. GAB 2.05, Wis. Admin. Code that meets the definition of a rule under s. 227.01(13), Stats.; and, pursuant to ss. 227.10(1) and 227.26(2), Stats., that JCRAR directs the Government Accountability Board to promulgate its action as an emergency rule within 30 days.

SEN.VUKMIR@LEGIS.WISCONSIN.GOV
608-266-2512

P.O. Box 7882, STATE CAPITOL
MADISON, WI 53707-7882

REP.OTTJ@LEGIS.WISCONSIN.GOV
608-266-0486

P.O. Box 8953, STATE CAPITOL
MADISON, WI 53708-8953

State of Wisconsin\Government Accountability Board

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



JUDGE THOMAS H. BARLAND
Chair

KEVIN J. KENNEDY
Director and General Counsel

Via Email Only: SBOAdminRules@wisapps.wi..gov

November 22, 2011

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

Re: Statement of Scope – Technical College Identification Cards for Voting Purposes

Dear Governor Walker:

With this correspondence I am attaching and submitting a proposed Statement of Scope for the creation of an emergency rule and a permanent rule on behalf of the Government Accountability Board (the “Board”). The proposed emergency and permanent rules would confirm that §5.02(6m), Wis. Stats., as created by 2011 Wisconsin Act 23, includes Wisconsin Technical College System student identification cards in the list of acceptable forms of photo identification which may be used for voting purposes.

While the Government Accountability Board considered its determination on this matter to be a matter of applying the plain language of the Statutes, the Joint Committee for the Review of Administrative Rules has directed that the Board promulgate its decision in the form of an administrative rule, pursuant to §227.26(2)(b), Wis. Stats. Therefore, the Board would appreciate your consideration and approval of the accompanying proposed Statement of Scope so that the Board may promulgate appropriate rules and provide timely and definitive guidance to local election officials, technical colleges, and voters well in advance of the 2012 Spring Primary Election.

Thank you for your attention to this matter. Please contact me at 608-261-8683 if you have any questions or need additional information.

Sincerely,

GOVERNMENT ACCOUNTABILITY BOARD

A handwritten signature in black ink that reads "Kevin J. Kennedy".

Kevin J. Kennedy
Director and General Counsel

KJK;mh

Enclosure

Statement of Scope
Government Accountability Board
Use of Technical College System Student Identification Cards for Voting

Subject

Creates GAB Chapter 10 - Voter Identification, and specifies that a Wisconsin Technical College System (WTCS) student identification card may be used for voting.

Objective of the Rule

The proposed rule implements a directive from the Joint Committee for the Review of Administrative Rules (JCRAR). The directive requires the Government Accountability Board (G.A.B.) to promulgate an emergency rule specifying that a Wisconsin Technical College System (WTCS) student identification card may be used as acceptable identification for voting.

Emergency Rule Authority

The agency is authorized to promulgate the rule as an emergency rule because it has been directed to do so by the Joint Committee for the Review of Administrative Rules pursuant to Wis. Stats. §§227.10 (1), 227.26 (2).

Permanent Rule

The agency plans to promulgate this rule as both an emergency rule and a permanent rule. This scope statement is submitted in support of both the emergency rule and the permanent rule.

Policy Analysis

The proposed rule clarifies that a WTCS student identification card is included in the description of student identification cards that may be used as acceptable identification in order to receive a ballot. In 2011 Wisconsin Act 23, the Legislature established a voter identification requirement for electors to receive a ballot. The legislation delineates the types of identification that may be used to meet the requirement. Wis. Stats. §5.02 (6m). These types of identification are:

1. An operator's license issued under ch. 343;
2. An identification card issued under s. 343.50;
3. An identification card issued by a U.S. uniformed service;
4. A U.S. passport;
5. A certificate of U.S. naturalization;
6. An unexpired driving receipt under s. 343.11;
7. An unexpired identification card receipt under s. 343.50;
8. An identification card issued by a federally recognized Indian tribe in this state;

9. An unexpired identification card issued by a university or college in this state that is accredited as defined in s. 39.30 (1)(d).

On November 9, 2011, the G.A.B. made a determination that a Wisconsin Technical College System institution is accredited under Wis. Stats. §39.30 (1)(d). Based on that determination, the Board directed staff to include WTCS student ID cards as an acceptable form of identification for voting in its training and educational materials as part of the agency's responsibility to administer the voter identification law pursuant to Wis. Stats. §5.05 (1).

The Board's analysis applied judicially accepted rules of statutory interpretation. It looked first to the plain language of the statute. The Board determined that WTCS institutions are accredited under Wis. Stats. §39.30 (1)(d). In the absence of an applicable statutory definition of college or university, the Board relied on commonly used dictionary definitions of college which included institutions similar to the WTCS.

In applying the plain language of the statute as required by law, the Board chose not to rely on a staff analysis which traced the legislative history of the student identification card provision in Act 23. The Board noted in its consideration that a comparison of the new identification requirement with statutory provisions related to the use of student identification cards for voter registration was not applicable because the separate reference to technical colleges was a result of a Revisor's correction in the 1990's to harmonize the terms technical college and technical institution.

The Board did not give weight to a failed legislative amendment explicitly authorizing the use of WTCS student ID cards for voting because it relied on the plain language of the statute defining the types of higher education institutions whose student identification cards were acceptable for use for voting. In addition, the Board recognized a failed legislative amendment could be viewed as failing because it was not necessary, not just because the Legislature was explicitly denying the policy. In view of the plain language of the statute linking the use of identification cards to those higher education institutions accredited under Wis. Stats. §39.30 (1)(d), the Board determined that it and a reviewing court would not attempt to decipher legislative intent under standard rules of statutory construction.

The Board did not determine whether permitting the use of WTCS student ID cards for voting was good public policy. It determined that the law as written included WTCS institutions. As a result, 400,000 WTCS students have as an alternative the same use of a student identification card for voting purposes that is available to students at other universities and colleges in Wisconsin. The Board viewed its determination as equivalent to acknowledging that students at University of Wisconsin System institutions could use a student ID card for voting purposes, a conclusion which would seem to not require separate rulemaking to implement.

The alternative to promulgating this rule is to significantly restrict the number of electors who may use a student identification card in order to receive a ballot. The Board addressed this issue because agency staff raised a question about legislative intent as it

was developing its implementation approach to training local election officials and educating the public on the voter identification requirement which goes into effect for the February 2012 Spring Primary Election.

Statutory Authority

The Board issued its determination pursuant to its responsibility and authority to issue advisory opinions under Section 5.05(6a), Stats., and to conduct voter education under Section 5.05(12). However, given the directive of JCRAR, Section 5.05(1)(f) Stats. provides explicit authority for the G.A.B. to promulgate rules to ensure the proper administration of elections. Section 227.11(2)(a), Stats. provides clear authority for the G.A.B. to promulgate rules to ensure the proper administration of statutes under its jurisdiction, which includes laws related to the administration of elections.

Comparison with Federal Regulations

The 2002 federal Help America Vote Act (HAVA), 42 USC 15301 et seq., contains a provision requiring states to receive identification from individuals who register to vote for the first time, by mail. HAVA Section 303 (b)(2)(A)(i)(I). That requirement is a voter registration requirement and is much more general than the state identification requirement for receiving a ballot. The federal requirement simply refers to a “current and valid photo identification.” The federal requirement does not delineate specific types of photo identification as does the Wisconsin statute.

Entities Affected by the Rules

WTCS institutions desiring to issue student identification cards acceptable for voting purposes will be affected by this rule. All students at a WTCS institution also will be affected by this rule as well as Wisconsin’s 1,851 municipal clerks responsible for administering elections and approximately 25,000 poll workers who staff voting locations on Election Day. The impact of the rule will be on town, village and city government. The rule does not impact businesses, private economic sectors or public utility ratepayers.

Economic Impact

The rule will have minimal or no impact on the governmental entities impacted by the rule. Municipal clerks and poll workers will be provided with informational and training materials on the acceptable forms of identification for voting. This rule merely adds some additional types of identification to the materials. In fact the rule will eliminate possible confusion if a voter offers a technical college student identification card when appearing at the polling place to vote.

Estimate of Time Needed to Develop the Rules

10 hours.

State of Wisconsin\Government Accountability Board

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



JUDGE THOMAS H. BARLAND
Chair

KEVIN J. KENNEDY
Director and General Counsel

MEMORANDUM

DATE: December 13, 2011

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 Update

Tracey Porter, Ethics and Accountability Specialist
Richard Bohringer and Nathan Judnic
Campaign Finance Auditors

2011 July Continuing Campaign Finance Reports

Staff has continued to work on processing and auditing the July Continuing 2011 campaign finance reports filed by the **1,451** candidates, political parties, legislative campaign committees, PACs, sponsoring organizations, independent expenditure registrants, recall committees and conduits. For most committees, this report covers campaign finance activity from January 1 through June 30, 2011 and was due on or before July 20, 2011. As of December 5, 2011, **26** reports have not been received. The non-filers include 9 candidates, 3 political parties, 6 PACs, 1 recall committees, 3 sponsoring organizations and 4 conduits. Staff sent the first email notice of late reports on July 25, 2011. Staff sent a second email notice and began calling non-filers on August 24 and 25, 2011. A formal letter to the non-filers was sent on October 3, 2011. The remaining non-filers have been placed on Administrative Suspension and have been sent a formal letter of status change with instructions to follow-up with Staff.

Special Pre-Primary, Pre-Election and Post-Election Reports – Assembly District 95

Candidates and committees that participated in the Special Primary for Assembly District 95 were required to file special pre-primary campaign finance reports. This report covers finance activity from July 1, 2011, or the date of the last report, through September 26, 2011, and was due on October 3, 2011. All candidates required to file a special pre-primary report have filed.

Candidates and committees that participated in the Special Election for Assembly District 95 were required to file special pre-election campaign finance reports. This report covers campaign finance activity from

September 27, 2011, or the date of the last report, through October 24, 2011, and was due on October 31, 2011. All candidates required to file a special pre-election report have filed.

Both candidates on the Election ballot are required to file a Post-Election finance report on December 8, 2011, covering all activity from October 25, 2011, through November 30, 2011.

30-Day Recall Reports

Committees that have spent money to support or oppose the various recall efforts currently in progress are required to file a 30-day campaign finance report on December 15, 2011. This report will cover finance activity from July 1, 2011, or the date of the last report through December 10, 2011. Notices were sent to all committees on December 2, 2011.

2012 January Continuing Campaign Finance Notices

Staff will begin preparing campaign finance notices for the January Continuing 2012 reports the week of December 5, 2011, with an estimated mail date to all registrants of December 26, 2011.

Other Division Staff Activities

In addition to processing the high number of campaign finance reports generated by the special elections, division staff continues to collect forfeitures resulting from the staff audits of lobbyist contributions outside of the allowable window and contributions exceeding allowable limits for a campaign period and calendar year. Division staff continues to assist in investigation matters and the tracking of complaints filed with the Board. Division staff continues to answer a variety of campaign finance questions from committees related to the pending recall efforts of State office holders.

Lobbying Program Update

Tracey Porter, Ethics and Accountability Specialist

6 Month Statement of Lobbying Activities and Expenditures Report

Chapter 13.68, Wisconsin Statutes, requires all registered lobbying organizations to complete a 6 month Statement of Lobbying Activities and Expenditures (SLAE) report that contains information related to the organizations' lobbying effort between January 1 and June 30, 2011. The SLAE report was due on or before August 1, 2011. As a part of the SLAE report, those lobbyists who are authorized to lobby for the organization are required to complete a time report that identifies those hours spent communicating or working on other lobbying related matters for the organization. This report was also due on or before August 1, 2011. Both reports are filed electronically. The Government Accountability Board has received all of the 1506 lobbyist time reports from 717 lobbyists, and all 707 SLAE reports from those registered principal organizations required to file. To date, we have discovered that a number of organizations either failed to register or authorize lobbyists, or notify the G.A.B. of lobbying matters in a timely matter.

Eighty-four organizations failed to notify bills, budget bill subjects, topics, or rules in a timely manner. Twenty-one organizations were sent warning letters. Sixty-three organizations were required to pay forfeitures. As of December 5, 2011, we have received forfeitures from 41 organizations for a total of \$3,250. Twenty organizations requested reconsideration of their forfeiture amounts. The Division Administrator waived forfeitures for fifteen organizations. Five organizations were not given a waiver and new letters were sent to them requesting payment of their forfeitures by December 9, 2011.

Lobbying Registration and Reporting Information

Government Accountability Board staff continues to process 2011-2012 lobbying registrations, licenses and authorizations. Processing performance and revenue statistics related to this session's registration is provided in the table below.

2011-2012 Legislative Session: Lobbying Registration by the Numbers (Data Current as of December 5, 2011)			
	Number	Cost	Revenue Generated
Organizations Registered	731	\$375	\$274,125
Lobbyists Licenses Issued (Single)	617	\$350	\$215,950
Lobbyists Licenses Issued (Multiple)	131	\$650	\$85,150
Lobbyists Authorizations Issued	1613	\$125	\$201,625

New Lobbying Website Project Update

A significant amount of time has been allocated to develop the new lobbying application. Improvements to the public site and the user interface will continue through the end of December. Staff worked with the financial specialists in the agency and the State Controllers office to establish an epayment service. The application developer has continued Phase Three work on registration tools and has continued to work with the Department of Revenue and the Department of Children and Families to streamline the social security number checks for licensing. Weekly meetings, application testing and development will continue through the winter months on the project, with release of the application scheduled for early 2012.

Financial Disclosure Update

Cindy Kreckow, Ethics and Lobbying Support Specialist

Governor Appointments

Staff continues to process ongoing appointments by Governor Walker, to include securing statements of economic interests from all appointees and referring copies of their statements to the Senate for future confirmation hearings. Confirmations are also continuously tracked in order that we may update a filer's status from nominee to active official.

Statements of Economic Interests and Officials Required to File

Government Accountability Board staff has updated the Statement of Economic Interests forms, instructions and correspondence for the 2012 spring elections and annual filing. Staff has also identified active reserve judges who need to receive a 2012 statement, as they are required to file within 21 days of taking a case. Mailings are set to begin the second and third weeks of December, beginning with pre-printed Statements to incumbent judges who are up for re-election in the spring.

2011 Wisconsin technical college annual board resolutions have all been received, and the GAB officials database updated to reflect changes in those officials identified as required to file with the GAB.

State of Wisconsin\Government Accountability Board

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



JUDGE THOMAS H. BARLAND
Chair

KEVIN J. KENNEDY
Director and General Counsel

MEMORANDUM

DATE: For the December 13, 2011 Meeting

TO: Members, Wisconsin Government Accountability Board

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

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

SUBJECT: Elections Division Update

Election Administration Update

Introduction

Since the Government Accountability Board's November 9, 2011, meeting the Elections Division has focused on the following tasks:

1. Special Election
(Assembly District 95)

On September 2, 2011, Governor Walker called an election to fill the vacancy in Assembly District 95 caused by the resignation of Jennifer Shilling. Five candidates (one Republican and four Democrats) qualified for the ballot, triggering a Democratic primary conducted on Tuesday, October 11, 2011. Candidate certified to the Democratic primary ballot were:

- Jill E. Billings
- Nick Charles
- Christine J. Clair
- David Krump

The successful candidate of the Democratic primary was Jill E Billings.

Ms. Billings faced Republican candidate David A. Drewes in the special election on November 8, 2011. The winner of the special election was Jill E. Billings. The La Crosse County Clerk submitted the canvass of the election on November 10. No petition for recount was filed, and Judge Deininger certified the canvass on November 16, 2011.

2. Extended Operating Hours to Support Clerk Partners and Voter Customers

G.A.B. staff continued the policy of offering extended office hours to our local election partners and voter customers in order to provide more effective election support for the November 8, 2011 special election. Since there was only one office up for election involving one county (the 95th Assembly District), staff was available until 6:00 p.m. on Monday, November 7, 2011, and until 9:00 p.m. on Election Day, and until 6:00 p.m. on Wednesday, November 9, 2011, the day after the special election.

Staff recorded Election Day Contacts from our clerk partners and public customers (voters) using a new web-portal format. On election day for both the primary and special, each generated relatively few contacts. The primary election had no election related phone calls the Monday before the election, four phone calls the day of the special election, and no phone calls the Wednesday afterwards. Three of the four calls on the special election day were election administration related while the fourth was regarding SVRS processing.

There were a total of 57 phone calls over the three day period immediately leading up to, on the day of the special election, and the day after. Of the 57 calls, 8 were from the public on election day inquiring if the election affected the callers. The remainder of the phone calls were from Monday, Tuesday and Wednesday (November 7-9, 2011) were from municipal or county clerks inquiring about election administration, Voter Photo ID, and SVRS processing issues. There were no calls either during the extended hour (4:30-6:00 p.m. on Monday before the election and until 9:00 p.m. on election day) during the primary election or the special election.

3. Spring Election Preparation

The Type A Notice of Spring Election and Presidential Preference Vote was issued to county clerks on November 4, 2011. The Type A Notice is required to be published on November 22, 2011. At the time of issuance, the Type A Notice included the following offices:

- Presidential Preference Vote
- Court of Appeals Judge, Districts 1, 2, 3 and 4
- Fifty two Circuit Court Judge positions in 29 counties

A Circuit Court Judge must resign no later than December 1, 2011 in order for the office to be up for election in spring 2012. Resignations after December 1, 2011 are filled at the next succeeding spring election. If resignations occur on or before December 1, the affected county clerk will be required to publish an amended notice for the additional office.

4. Implementation of 2011 Wisconsin Act 23 (Photo ID)

2011 has been a year of important legislative changes to the election process, particularly Wisconsin Act 23, the Voter Photo ID Law. In order to address the many changes to current law created by the passage of Act 23, nine teams are developed to tackle various aspects of implementation. The Teams are listed below, along with a brief description of each focus.

- The Public Information Team continues to accept invitations from various groups eager to learn the major impacts of Act 23.
- The Public Outreach Team has identified groups of “at-risk” voters who may not have acceptable ID and is working with organizations who represent various groups in order to assist voters in acquiring acceptable ID. This Team is also manages the Voter Photo Speaker’s Bureau.

- The Local Election Officials Education and Training Team has prepared instructional materials for use by clerks for their own education and for training their poll workers on changes to law. This Team continues to work toward web-based and other remote methods of training.
- The Statutory Documentation Team is assisting voters in need of acceptable ID. This Team has researched each form of acceptable ID and the steps which one must take in order to obtain each type of acceptable (statutory) ID for voting purposes.
- The Statewide Voter Registration System (SVRS) Technical Team is tackling the alterations required to the SVRS in order to administer the new provisions of law, particularly the Absentee functionalities.
- The Absentee Voting Team revised the many forms, instructions and documents associated with absentee voting, and created an overview of the different procedures required by various categories of absentee voters.
- The Provisional Ballot and Canvass Team is working through procedures for Boards of Canvassers when counting provisional ballots or late-arriving absentee ballots.
- The Publications, Forms and Manuals Team has examined all existing publications, forms and documents and made the necessary revisions to each.
- The Photo ID Program Monitoring and Evaluation Team is developing standards and measures to assess the progress and effectiveness of the implementation plan.

5. 2012 Recall Summary To Date

The following Recall committees have registered with the Government Accountability Board. The committee names and the number of signatures required are listed below:

▪ Close Friends to Recall Walker	540,208	11/4/11
▪ Committee to Recall Walker	540,208	11/15/11
▪ Committee to Recall Kleefisch	540,208	11/15/11
▪ Committee to Recall Scott Fitzgerald	16,742	11/15/11
▪ Committee to Recall Wanggaard	15,353	11/15/11
▪ Committee to Recall Moulton	14,958	11/15/11
▪ Committee to Recall Senator Pam Galloway	15,647	11/15/11
▪ Wisconsin Common Sense Citizens for Accountability and Recall (aka Recall Walker Pac)	540,208	11/18/11

Each committee has 60 days in which to obtain sufficient signatures to force a recall election. The deadline for all committees (except Close Friends to Recall Walker) to submit signatures is Tuesday, January 17, 2012. The actual 60-day deadline falls on Saturday, January 14, which is not a business day for the G.A.B. The G.A.B. offices are also closed on Monday, January 16 in observance of Martin Luther King Day. The deadline for petition submission is therefore 5:00 p.m. on Tuesday, January 17, 2012. No signatures however, may be obtained after January 14, 2012. The 60-day deadline for Close Friends to Recall Walker is January 3, 2012.

2012 Recall Strategic Response Team Appointed: On November 8, 2011, Elections Division Administrator Nat Robinson appointed a 2012 Recall Strategic Response Team and issued a Charge Statement for this Team to develop a formal and detailed Protocol for processing 2012 Recall Petitions. A copy of the Charge Statement is attached.

As part of the 2012 Recall Strategic Response Team's Charge, the Team developed a budget for the review/analysis of 2012 Recall Petitions. On Thursday, November 17, 2011, Director Kennedy shared this preliminary cost data with the Legislature's Joint Committee on Finance for informational purposes at this time. A formal request will be submitted for consideration as warranted.

6. MOVE Act: Status of Wisconsin's Compliance with the Military and Overseas Voter Empowerment (MOVE) Act

The Wisconsin State Assembly adopted and passed SB-116 and it was signed by the Governor on November 16, 2011. SB-116, now known as 2011 Wisconsin Act 75, moves the Partisan Primary from September to the second Tuesday in August. Act 75 requires that the ballots for the Partisan Primary and General Election be delivered to municipal clerks at least 47 days before the election to comply with the Military and Overseas Voter Empowerment (MOVE) Act.

Act 75 also changed other election tasks related to the moving of the partisan primary and the 47 day ballot preparation. The nomination paper circulation period is now from April 15th through June 1st and referenda must be filed no later than 70 days prior to the election. Changes were made to match other Federal requirements of MOVE including that all military and overseas voters' absentee ballots must be tracked and viewable online. This action requires clerks to email or fax military and overseas electors their absentee ballots if requested electronically.

There were other election administration changes made by Act 75 that are not directly MOVE Act related but are significant to the election process. For example, Absentee ballots can now be counted if postmarked by Election Day and received by the Friday following the election at 4:00 p.m. Municipal, county, school district, and state canvasses will all be affected by this adjustments that will need to be made to election results after Election Day due to this change. Election night results will not be accurate and the winners will not be determined until after 4:00 p.m. on the Friday following the election.

Another significant change to election administration is the limiting of emailed and faxed ballots to only military and overseas electors. Clerks may no longer email or fax absentee ballots to electors unless they are military or overseas electors.

Changes will need to be made to the Special Election calendar for Federal elections (elections that contain Federal offices on the ballot, i.e. U. S. Senate, U.S. House of Representatives, etc.) in order to have ballots prepared at least 45 days before the special elections with Federal offices as required by the MOVE Act. Special elections for national office are not common and Board staff does not anticipate any Federal special elections in the near future. Wisconsin is now prepared to fully comply with the MOVE Act for the 2012 election cycle.

7. The AccessElections! Wisconsin Accessibility Compliance Program
(Elections and Voting Accessibility)

Board staff finalized Accessibility Compliance Audit Reports from the August 16, 2011 Recall Elections and the November 8, 2011 Special Election (Wisconsin 95th Assembly District), and provided feedback on polling place Accessibility to respective municipalities and counties. In addition, staff are continuing to follow-up responses to findings provided to municipalities for the April 5, May 3, July 12, July 19 and August 9, 2011 Onsite Accessibility Compliance Audits. Staff are coordinating with municipal clerks to ensure that Accessibility problems uncovered during previous Onsite AccessElections! Accessibility Compliance Audits are resolved as quickly and cost-effectively as possible. At the same time, staff are monitoring the use and effectiveness of Accessibility grant funding by municipalities. Staff are working with the agency IT section to streamline the AccessElections! Compliance Audit administrative process.

Education/Training/Outreach/Technical Assistance

1. Voter Photo ID Public Education, Training, Outreach and Technical Assistance

Voter Photo ID Speaker's Bureau Report -

A major facet of the Voter Photo ID Law Implementation Strategy was the development of the Public Outreach Campaign Team. One of the charges to this Team was the creation of a Photo ID Speaker's Bureau. The Speaker's Bureau was created with the purpose of informing the residents of Wisconsin about the new Voter Photo ID law. Its first presentation commenced in August of 2011. Since that time, over 36 presentations have been held in 24 different Wisconsin cities with over 1,110 attendees. In addition, many of these presentations were taped and further distributed by the organizing groups. The information presented at the Speaker's Bureau is meant for the attendees to share with others.

2. Special Training Initiatives: Strengthening the G.A.B.-Clerk Partnership

Since August 2011, about 1,000 local election officials have been trained on the new Voter Photo ID Law. Staff have engaged the following additional education and training initiatives with local election officials.

- Board staff training team implementing plan for the training and technical support of clerks and election inspectors for the full implementation of the Voter Photo ID Law starting in the February 2012 Primary, including the development of training materials in other formats, such as "Major Impacts of the Voter Photo ID Law" and "Absentee Voting Rules and Processes."
- Board staff trained 23 county and municipal clerks as certified clerk-trainers to administer Municipal Clerk Core training for new municipal clerks.
- Board staff trained 19 county and municipal clerks as certified clerk-trainers to administer Baseline Chief Inspector training for new chief inspectors.
- Board staff updated Special Registration Deputy (SRD) training materials for clerks to use to train municipal-level SRDs.

3. G.A.B. Regular/Basic/Core Election Administration Training

Please refer to the Attachment titled, "Training Summary," for a summary of our basic/core election administration training information conducted by staff.

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) felon information and Department of Health Services (DHS) death data, as part of on-going HAVA compliance.

Clerks process HAVA Checks and confirm matches on a continuous basis during the course of their daily election administration tasks. This process has been followed since the Interfaces became functional in SVRS on August 6, 2008. Since the last Board meeting, clerks processed approximately 3,166 HAVA Checks with DOT/SSA on voter applications in SVRS.

2. Retroactive HAVA Checks Status

There has been no update on this project since the last Board Meeting. Board technical staff are focused on implementing the new Voter Photo ID Law, as well as updating SVRS for the 2010 Decennial Redistricting process.

3. Voter Registration Statistics

As of Tuesday, November 29, 2011, there were a total of 3,292,552 active voters in SVRS. There were 1,026,771 inactive voters, and 284,528 cancelled voters. 1,607 voters have been merged by clerks as duplicates since the last report.

Note: 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 or someone who has not voted in four years. A cancelled voter is one who will not become active again, e.g. deceased person.

4. G.A.B. Customer Service Center

The G.A.B. Customer Service Center (formerly called the “G.A.B. Help Desk”) is supporting over 1,800 active SVRS users, the public and election officials. The Customer Service Center staff assisted with processing the canvass, data requests and testing SVRS improvements. Customer Service Center staff are continuing to improve and maintain the two training environments that are being utilized in the field. Staff are monitoring state enterprise network status, assisting with processing data requests and processing voter verification postcards. Customer Service Center staff assisted with configuring and installing SVRS on new clerk computers.

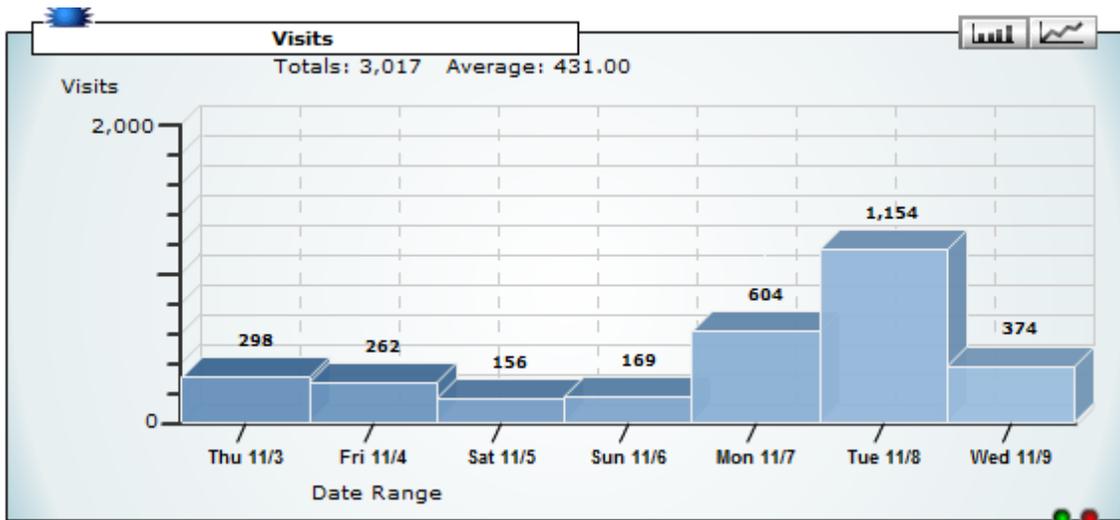
Overall, the majority of inquiries to the G.A.B. Customer Service Center during October and November 2011 from clerks were regarding assistance with running SVRS reports; redistricting; recall issues and Voter ID changes. Calls from electors, local officials and election officials inquired specifically about Recall efforts and Voter ID requirements.

Calls for this period also consisted of potential candidates requesting information about getting on the ballot. The Ethics Division CFIS and Lobbying reporting also generated a measurable amount of call traffic during November.

G.A.B. Customer Service Center Call Volume (608-261-2028)	
October 2011	1,175
November 2011	1,234
Total Calls for Period	2,409

The G.A.B. main business telephone (608-266-8005) has remained forwarded to the Customer Service Center. Staff are currently researching a more permanent solution to current telephone technologies.

The graph below illustrates unique voter visits accessing the GAB Voter Public Access (VPA) website for the week of the November 7, 2011, District 95 Special Election on Tuesday, November 8, 2011. Election Day had 1,154 visitors, typically viewing 15 pages per visit.



5. The 2010 SVRS Census Redistricting Project

The new version of SVRS to support Redistricting was installed during an extended outage window starting Wednesday evening, November 23 and could last until Monday, December 5, 2011. Several initiatives were completed or are in progress.

- Phase I of the SVRS Redistricting changes were successfully tested by G.A.B. staff and installed in Production. These changes include new mapping tools for clerks to correct voters who were put in the wrong place on the map, and to view the new districts that have been loaded. Clerks also have exception reports and tools to correct voters who may have been put in the wrong district.
- Staff continue to work on cleansing approximately 22,000 addresses in SVRS that could not be validated against the new address verification software, and could therefore not be located on a map. Approximately 10,000 addresses are still being corrected.
- Technical staff continue collecting the new GIS map files (called “shape files”) for the new districts. All wards and legislative districts that came from the Legislature have been loaded in and are ready for clerk use. Staff continue to collect school districts, sanitary districts, lake districts, and adjusted wards from County GIS systems. These districts will be implemented in SVRS as they are received.
- New district combos were created statewide using the new district shape files that were collected and loaded into SVRS. A district combo is created after all the districts are layered on top of each other, and represents the smallest piece of geography not split by a line. This is normally a ward that is split by a school district. All voters in SVRS were reassigned to one of the new district combos.
- The new districts and the new SVRS features are being rolled out to clerks in a phased approach. Counties are being grouped together based on the districts we were able to gather for their county. The first group of clerks will be trained the week of December 5th. After those clerks are trained and begin using the new SVRS features, staff will take the lessons learned from that deployment and will move on to the next group. All clerks will be trained and begin using the new SVRS features by mid-December.

6. SVRS Core Activities

- A. Software Upgrade(s)

The SVRS, WEDCS, and Canvass systems were made unavailable for an extended outage beginning on Wednesday night, November 23, to install the new changes to SVRS for Redistricting. SVRS is scheduled to come back on-line by Monday, December 5. The SVRS changes include new mapping features for clerks to manage voters and districts. The new districts that resulted from Redistricting were also loaded in and all voters were reassigned to the new districts. The Voter Public Access website was updated to show both the new districts, as well as the old districts.

The next update to SVRS is planned for mid-December and includes updates related to Click and Mail. Another SVRS update is planned for early January to include updates to SVRS to support the new voter photo ID requirements.

B. System Outages

SVRS, WEDCS, and Canvass had an extended outage from November 24 through December 4 for the installation of the Redistricting updates.

C. Data Requests

Staff regularly receives requests from customers interested in purchasing electronic voter lists. SVRS has the capability and capacity to generate electronic voter lists statewide, for any county or municipality in the state, or by any election district, from congressional districts to school districts. The voter lists also include all elections that a voter has participated in, going back to 2006 when the system was deployed.

The following statistics demonstrate the activity in this area since the last Elections Division Update through November 29, 2011:

- Seven (7) inquiries were received requesting information on purchasing electronic voter lists from the SVRS system.
- Nine (9) electronic voter lists were purchased.

30-45-60 Day Forecast

1. Continue full implementation of all aspects of the Voter Photo ID Law and the Legislatively-approved G.A.B. Voter Photo Plan for educating and training local election officials, and offering outreach educational and informational services to the general public.
2. Continue to implement the G.A.B. Voter Photo ID Speakers' Bureau.
3. Continue to work with the Department of Transportation (DOT) to resolve Voter ID issues brought to DOT and G.A.B.'s respective attention – issues that require the two agency staffs to collaborate and resolve electors' customer service complaints.
4. Continue to follow-up responses to findings provided to municipalities as a result of the 2011 Onsite AccessElections! Accessibility Compliance Audits.
5. Continue contingency planning for the possible receipt/review of 2012 Recall Petitions.
6. Prepare for the Board's January 12, 2012 meeting.

Action Items

None.

ATTACHMENT #1

GAB Election Division’s Training Initiatives
11/9/2011 – 12/12/2011

Training Type	Description	Class Duration	Target Audience	Number of Classes	Number of Students
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.	15
WisLine	Series of programs designed to keep local government officers up to date on the administration of elections in Wisconsin.	90 minute program conducted by Board staff and UW-Extension staff	Clerks and chief inspectors	11/16/2011: Everything Absentee; 11/30/2011: A Review of 2011 Election Law Changes and What’s Ahead in 2012	Average of 200 per program; certain programs may have over 750 registrants
WBETS	Web Based Election Training System. Under development.	Varies	County and municipal clerks and their staff.	Phase 1 of eLearning training plan completed; Absentee Process training modules under construction.	Site is available for clerks to train temp workers in data entry; reliers are also able to access the site upon request.

State of Wisconsin \ Government Accountability Board

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



JUDGE THOMAS H. BARLAND
Chairperson

KEVIN J. KENNEDY
Director and General Counsel

DATE: November 8, 2011

TO: **Staff Designated Leadership**
(Appointment of a 2012 Recall Strategic Response Team)

- David Buerger, Co-Team Lead
- Katie Mueller, Co-Team Lead

FROM: Nathaniel E. Robinson
Elections Division Administrator
Wisconsin Government Accountability Board

SUBJECT: Charge Statement to the 2012 Recall Strategic Response Team
Develop a Formal and Detailed Protocol for Processing 2012 Recall Petitions

David and Katie, building on our experience with processing the 2011 Recall Petitions, Director Kennedy asked that a formal, comprehensive and anticipatory Team approach be developed to ensure our capability and capacity to rapidly and effectively respond to 2012 Recall inquires and process 2012 Recall Petitions.

Assumptions
(Expected 2012 Recall Petitions)

Based on the best available speculation at this time, the Government Accountability Board (G.A.B.) staff should assume and plan for a minimum of five legislative Recalls (and possibly up to ten), and a separate statewide recall of the Governor and the Lt. Governor. As such, G.A.B. could be asked to review 1.5 million or more signatures and possibly tens of thousands of pages. In addition, the G.A.B. could be asked to process thousands of challenges for each recall offered for filing. We should prepare accordingly.

Directive of the Director and General Counsel
(Appoint a 2012 Recall Strategic Response Team)

Director Kennedy requested the appointment of a G.A.B. 2012 Recall Strategic Response Team. It is the intent of this Team to develop and implement a detailed and comprehensive process for processing 2012 Recall Petitions and related Challenges. This Team is comprised of the following core staff members:

Elections Specialists

- David Buerger, Co-Team Lead
- Katie Mueller, Co-Team Lead
- Diane Lowe
- Aaron Frailing
- Meagan Wolfe
- Sarah Whitt

Staff Counsel

Michael Haas

IT Support

David Grassl/David Meyer

The Charge Statement

The Charge for the 2012 Recall Strategic Response Team is to develop and coordinate the implementation of a detailed and comprehensive protocol (process, procedures, timelines, etc.) for the efficient processing of 2012 Recall Petitions, including Challenges. Specifically, this Team will:

1. Develop the “Ask” for Funding our Resource Needs:

Using the 2011 s.13.10 Recall Expense Reimbursement Request as a guide, by Wednesday, November 16, 2011, the 2012 Recall Strategic Response Team will develop and submit to the Elections Division Administrator, a detailed list of resource needs, a budget and budget narrative for initial processing (reviewing and analyzing and making staff recommendations) and also processing challenges (reviewing challenges and responses and making staff recommendations to Board) regarding the 2012 Recall Petitions.

A finalized budget request including a budget narrative will be submitted to the Legislative Joint Committee on Finance for consideration. Key budget line items should at least include (but are not limited to):

- Personnel (specify) and personnel cost, including fringe benefits for G.A.B. staff;
- Supplies;
- Equipment;
- Contractual; and,
- Other (specify)

Consult with the Chief Administrative Officer and the Elections Division Administrator on the development of the budget cost centers and budget narrative (justification).

2. Develop and Coordinate a Protocol for the Efficient Processing of 2012 Recall Petitions:

- A. Develop and coordinate the implementation of a process, procedures, timelines, etc., for the efficient processing of the 2012 Recall Petitions.
- B. The intent is for the Protocol to be developed in a detailed “step,” “stage” or “phase” format. For example, the first step, stage or phase may be Response to Inquiries, the second step, stage or phase may be Intake, and so on as follows:

Resource Information for Responding to Recall Inquiries -

- What is the basic information the core Team needs to know about the Recall Process?
 - Recall Manual
 - Best Practices Learned from the 2011 Recall Process
 - Relevant/Governing State Statues (i.e. s.9.10).
 - 2011 Recall decisions made by the Government Accountability Board
- What methods will be used to ensure this knowledge is uniform among Team members?

Registration -

- What is the Recall Committee Registration Process?
- How will core Recall Strategic Response Team Members be trained?
- Who will conduct the training?
- How will the actual Registration process be handled?

- Identify the process for registration by-mail, in-person, and online.
- Identify the process for communicating the registration details to the committee/officeholder.
- Identify the process for updating the G.A.B. website with new registrations.
- Specify the Office Operations Associate(s) who will provide administrative support for Recall registrations.
- Identify a back-up plan for the administrative support process.

Capacity Building/Training -

- How will the G.A.B. have the necessary capacity to administratively process the recall petitions?
- How will core Recall Strategic Response Team Members be trained?
- Who will conduct the training?
- How will the actual Capacity Building/Training process be handled?
- Identify resources required to process the recall petitions in a timely manner.
- Identify procurement steps that must be taken to secure these resources and a timeline for completion by the anticipated intake date.
- Specify the Administrative Division staff who will provide support to this process.
- Identify a back-up plan in the event that the identified resources cannot be procured in a timely manner.

Recall Petition Intake -

- What is the Recall Petition Intake Process?
- How will core Recall Strategic Response Team Members be trained?
- Who will conduct the training?
- How will the actual Intake process be handled?
- Identify the process for copying Recall Petitions and distributing copies to the various targeted entities/parties.
- Identify the process for Document Management.
- Identify the process for posting copies of the Recall Petitions to the G.A.B. website.
- Specify the Office Operations Associate(s) who will provide administrative support for the Recall Process
- Identify a back-up plan for the administrative support process.

Communications / Communications Schedule for Recall Petitions –

- Determine what types of communications need to be sent to the various entities.
- Determine a schedule for distributing such communications to the various entities.
- Determine the process for internal communications to keep staff current, including management, public information officer, and appropriate Elections Division and Ethics and Accountability Division staff.

The Review and Analysis of Recall Petitions –

- What are the criteria, standards and guiding principles that will govern the overall review process?
- Who will develop the criteria, standards, and guiding principles?
- Who will conduct the training?
- Will there be different steps/levels/tiers of review and analysis?
- Who (how many regular G.A.B. staffers/temp staff/etc.) will be recommended for each step/level/tier?
- What will be the criteria, standards, and guiding principles for each step/level/tier of review/analysis?

- What is the required number of signatures to be reviewed per day to satisfy the statutory review deadline?
- What, if any, request should be made of a court to extend the review deadline?
- What benchmarks and criteria can be developed to support request for extension of time to review petitions or process challenges

Recall Database/Data Entry –

- Identify the business process requirements of the Recall Database.
- Identify the IT Support Team members necessary for preparation of the database.
- How will core Recall Strategic Response Team Members be trained on the use and reporting functions?
- Who will conduct the training?
- How will the actual Data Entry process be handled?

Security –

- Review recall petition plan and processes for security risks.
- Identify necessary physical/electronic security measures.
- Identify documentation processes to validate chain of custody at all times petitions are in G.A.B. possession.

Other Steps, Stage or Phases -

Please specify:

Determine Information to be Shared with the Government Accountability Board -

- Determine information that need to be shared with the Government Accountability Board, via the agency Director and General Counsel.
- In accordance with statutory and/or court deadlines, determine a schedule as to when staff’s recommendations on 2012 Recall Petitions must be distributed to the assigned Staff Counsel, the Elections Division Administrator, the Elections Supervisor, and the agency Director and General Counsel for submitting to the Government Accountability Board.
- Make recommendation on how to effectively present recommendations and supporting document to the Government Accountability Board.

3. Develop and Coordinate a Protocol for the Efficient Processing of Challenges for 2012 Recall Petitions:

- A. Develop and coordinate the implementation of a process, procedures, timelines, etc., for the efficient processing of Challenges for the 2012 Recall Petitions.
- B. The intent is for the Protocol to be developed for a detailed “step,” “stage” or “phase” standpoint. For example, the first step, stage or phase may be consult with DOJ counsel, the second step, stage or phase may be Receipt of Challenges, and so on, as follows:

Recall Petition Challenge Intake -

- What is the Recall Petition Challenge Intake Process?
- How will core Recall Response Team Members be trained on the Challenge Process?
- Who will conduct the Challenge training?
- How will the actual Challenge Intake process be handled?

- Identify the process for copying Recall Challenges and distributing copies to the various targeted entities/parties.
- Identify the process for Document Management.
- Identify the process for posting copies of the Recall Challenges to the G.A.B. website.
- Specify the Office Operations Associate(s) who will provide administrative support for the Challenge Process
- Identify a back-up plan for the administrative support process.

Communications / Communications Schedule for Challenges –

- Determine what type of communications need to be sent to the various entities.
- Determine a schedule for distributing such communications to the various entities.

The Review and Analysis of the Challenge Process –

- What are the criteria, standards and guiding principles that will govern the overall Challenge Review Process?
- Who will develop the criteria, standards, and guiding principles for the Challenge Review Process?
- Who will conduct the training for the Challenge Review Process?
- Will there be different steps/levels/tiers of review and analysis for the Challenge Review Process?
- Who (how many regular G.A.B. staffers/temp staff/etc.) will be recommended for each step/level/tier of the Challenge Review Process?
- What will be the criteria, standards, and guiding principles for each step/level/tier of review/analysis the Challenge Review Process?
- Who will direct the Challenge Review Process (i.e. the assigned Staff Counsel)?
- What, if any, request should be made of a court to extend the challenge review deadline?
- What benchmarks or criteria should be used to support a request for an extension of time

Recommendations and Board Materials Regarding Challenges -

- Who will develop the recommendations and Board materials for the Challenge Hearings?
- Who will prepare, print and distribute the Board materials?
- In addition to the Board, determine who will receive the Board materials.
- Determine information that needs to be shared with the Board, via the agency Director and General Counsel.
- In accordance with statutory and/or court deadlines, determine a schedule as to when staff's recommendations and Board materials on Challenges to the 2012 Recall Petitions must be distributed to the Elections Division Administrator, the Elections Supervisor, and the agency Director and General Counsel for submitting to the Board.
- Make recommendation on how to effectively present Challenge recommendations and supporting documentation to the Board.

4. Timelines:

The 2012 Recall Strategic Response Team should assume that G.A.B. could be asked to review more than 1.5 million signatures for as many as ten legislative races, and statewide petition for Governor, and a separate petition for the Lt. Governor, as well as challenges to each recall petition offered for filing. It is important therefore, that realistic timeline (and secure sufficient resources) be developed to accomplish the 2012 Recall Petition tasks. Please note the following timelines:

➤ **By Wednesday, November 16, 2011:**

- Develop the “Ask” for funding resource. Director Kennedy’s intent is to submit a s.13.10 funding request to the Legislative Joint Committee on Finance (JCF) by the JCF’s November 17, 2011 due date. In accordance with the information summarized at the top of page 2, section titled, Develop the “Ask” for Funding our Resource Needs, please submit a draft detailed budget request to the Division Administrator by Wednesday, November 16, 2011.
- As the 2012 Recall Strategic Response Team develop the “Ask,” include a couple of scenarios regarding the amount of financial support needed depending in the scope of the Recall and Challenge processes. For example, if a statewide Recall is for the Governor and five State Senators, identify the level or resources that will be needed. However, if a statewide Recall is for the Governor, the Lt. Governor and for ten State Senators, identify the level of resources that will be needed, etc.

➤ **By Monday, December 5, 2011:**

- Develop a detailed step-by-step Protocol for the efficient processing of 2012 Recall Petitions taking into account the need to process separate petitions simultaneously.
- Develop a detailed step-by-step Protocol for the efficient processing of Challenges to the 2012 Recall Petitions, taking into account the need to complete initial processing of separate petitions and Challenges of separate petitions simultaneously with other Challenges.
- For each of the two detailed Protocols (Recall Petitions and Challenges), include the types of office support that will be needed, and the kinds of core information/knowledge the Office Associate(s) should acquire.

5. **2012 Recall Strategic Response Team’s Oversight:**
(Expected Regular and Ongoing Consultation/Collaboration)

- Policy Guidance for the 2012 Recall Strategic Response Team will be provided by an Oversight Group comprised of the agency Director and General Counsel, the Elections Division Administrator, the Elections Supervisor, and Staff Counsel (Michael Haas).
- Supervision of the Team’s work tasks and implementation of this Charge Statement is the responsibility of the Elections Division Administrator and the Elections Supervisor, in consultation with Staff Counsel particularly as to the challenge Protocol.
- The two co-leads will consult and collaborate with the assigned Staff Counsel daily and throughout the day as needed.
- The two co-leads of the 2012 Recall Strategic Response Team will meet with, and brief the Elections Division Administrator and the Elections Supervisor Director weekly to provide status reports, updates, and for discussion of needs.
- It is imperative that while petitions are being processed, that in addition to the ongoing daily consultation and collaboration with the assigned Staff Counsel, the two co-leads will also brief the Elections Division Administrator and Elections Supervisor daily on the status of the review process and issues that need to be addressed. The briefing with the assigned Staff Counsel, the Elections Division Administrator and Elections Supervisor may occur together.

- Impromptu meetings between the two co-leads and/or between the full 2012 Recall Strategic Response Team and the Oversight Group as a whole may be called and held as necessary.

5. Going Beyond the Charge Statement:

The intent is for this task to be as comprehensive as possible. Therefore, the 2012 Recall Strategic Response Team is not limited to the “letter” of this Charge Statement. The Team is encouraged and expected to explore related impacting issues and make recommendations accordingly, that may go over and beyond the specifics of this Charge Statement.

Note that this Charge Statement may be amended as deemed necessary by the 2012 Recall Strategic Response Team’s Oversight Group.

6. The 2012 Recall Strategic Response Team Organizational Meeting:

A meeting will be held at which time the Elections Division Administrator will go over this Charge Statement for developing and implementing a process for reviewing, analyzing and recommending 2012 Recall Petitions, as well as processing Challenges to the 2012 Recall Petitions.

Director Kennedy and I appreciate your willingness to take on imporant assignment. Thank you.

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

Ross D. Hein
 Elections Supervisor
 Government Accountability Board

Michael R. Haas
 Staff Counsel
 Government Accountability Board

State of Wisconsin\Government Accountability Board

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



KEVIN J. KENNEDY
Director and General Counsel

MEMORANDUM

DATE: For the December 13, 2011, 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 continuing to prepare for the implementation of Voter Photo ID, preparing a fiscal estimate for anticipated costs for the recall efforts, contract sunshine administration, staff recruitments, communicating with agency customers, and developing legislative ad media presentations.

Noteworthy Activities

1. Procurements

The procurement section continues to provide support for multiple projects. Beyond day-to-day support, procurement continues to assist with the Voter ID Public Information Campaign, currently preparing to print important support materials that will be used to reinforce our agency's message to the public. Another print order has been placed to print the most recent Election Day Manual to support our trainers and clerk partners during the busy 2012 election year. Procurement has also assisted program staff in the hiring of temporary staff to assist with our Help Desk, and is currently working on a major recruitment effort to secure highly-qualified temporary workers for a potential recall petition review in January.

2. Contract Sunshine Update

For the reporting period of July – September, all but three agencies certified their expenditure data. These agencies were the Assembly Chief Clerk's Office, the Department of Health Services and the Department of Transportation. However, the three agencies did post expenditure data during the certification period, but did not certify the data.

Contract Sunshine staff also continues to look forward to the launch of the OpenBook Wisconsin purchasing reporting system. As of December 1, the OpenBook system has not been launched. However, the system is expected to launch prior to the end of the year. Contract Sunshine staff will

evaluate the OpenBook system when it launches to determine how much of its functionality duplicates Contract Sunshine. We will be ready to report on this for both the Board and for a possible hearing before the Joint Committee on Audit, who had expressed their desire to have DOA report on the status of the OpenBook project in mid-January.

3. Other Financial Services Section Activity

- Compiled and reconciled federal fiscal year ended 9/30/2011 revenue and expenditure amounts for the annual HAVA Federal Financial Reports
- Identified future expenditures for the upcoming recall elections and assisted with the recalls cost projection for the fiscal estimate to the JCF
- Reviewed the sub grant reporting requirements under the new Federal Funding and Accountability Transparency Act (FFATA) and set up a monthly reporting procedure to DOA
- Calculated and booked the monthly interest earnings allocation to each federal program
- Reviewed & approved purchase orders, travel vouchers and invoice payments; assisted w/implementing the new travel reimbursement changes
- Logged existing staff time and calculated wages spent on Voter ID implementation; fiscal Y-T-D salaries and benefits total \$ 125K
- Updated the fourth quarter payroll adjustment calculation to properly allocate salaries and benefits between federal and state programs
- Created subsets of HAVA projects and tasks for the time distribution evaluation and coding
- Reconciled FY2012 monthly expenditures to internal financial records and audited vouchers
- Audited the monthly General Service Billings and followed up on questionable charges before payment to DET; calculated and booked journal entry to properly allocate mixed usage server charges between federal and state programs
- Prepared the bank account setup form, questionnaire, and product parameters for the e-check services application to be used by lobbyists for electronic receipt of their fees; met with agency, Treasury and DET staff to discuss functionality
- Began annual updating of our agency's internal control plan

4. Staffing

We have filled two of our five Voter ID positions and are continuing to recruit for the remaining three positions.

5. Communications Report

Since the last Board meeting, the Public Information Officer has engaged in the following communications activities in furtherance of the G.A.B.'s mission:

- The PIO continued to respond to a high number of media and public inquiries on a variety of subjects, including the recall efforts the implementation of the new Voter Photo ID Law. The PIO set up interviews with print and electronic journalists for Mr. Kennedy and also gave multiple interviews when he was not available.
- In addition to responding to media and public inquiries about Voter Photo ID Law, the PIO has been heavily involved in developing the multi-media public information campaign.
- The PIO has also worked on a variety of other projects including responding to concerns from Legislators on a variety of topics, and communicating with our clerk partners.

6. Meetings and Presentations

During the time since the last Board meeting, Director Kennedy has participated in a series of meetings and worked with agency staff on several projects. The primary focus of the staff meetings has been to address legislative and litigation issues, including several internal and external meetings on Voter Photo ID implementation.

Legislative activities included a meeting on November 15, 2011, with the Joint Committee for the Review of Administrative Rules (JCRAR) on policies adopted by the Board at its November 9, 2011, meeting related to student identification cards and preparation of recall petitions. The hearing can be viewed on Wisconsin Eye at:
<http://www.wiseye.com/Programming/VideoArchive/EventDetail.aspx?evhdid=5463>

Considerable time has been spent meeting with attorneys from the Department of Justice on the large number of lawsuits to which the agency is a party, as well as the related court hearings. Another primary focus has been meeting with staff and special investigators on pending investigations.

The media has continued to make a number of inquiries on recall and legislative initiatives, particularly Voter Photo ID and redistricting, as well as the rules and costs associated with recall. This has led to extended interviews with print journalists along with a number of television and radio appearances. On November 18, 2011, I participated in extended interviews for Wisconsin Public Television's *Here and Now* as well as for Madison television stations WKOW and WISC.

On November 14, 2011, the Director participated in a presentation to a Public Management class at the La Follette School of Public Affairs at the University of Wisconsin-Madison. Former Congressman David Obey, Madison Mayor Paul Soglin and Dane County United Way President Leslie Ann Howard also participate in the class.

On December 1, 2011, the Director, Staff Attorney Michael Haas and Assistant Attorney General Roy Korte presented a webinar for district attorneys on recall related complaints. This is part of our ongoing efforts to work with law enforcement on election integrity issues.

On December 4, 2011, the Director participated in a panel discussion on working with international organizations in the areas of campaign finance, elections, ethics, government accountability, lobbying and government transparency. Also participating in the panel were Wendy Pond, International Program Specialist, U.S. Office of Government Ethics; David Freel, Adjunct Professor at Ohio State University; and Jared DeMarinis, Director of Candidacy and Campaign Finance, Maryland State Board of Elections.

On December 4, 2011, the Director made a presentation on Current Trends in Election Legislation and Litigation at the 33rd Annual Conference of the Council on Governmental Ethics Laws (COGEL). The Director presented the United States perspective. He was joined on the panel by Greg Essensa, Chief Electoral Officer for Ontario Canada and Paul Pirani, Chief Electoral Officer for the Australian N Election Commission. Jonathan Becker also attended the conference which was held in Nashville, Tennessee.

Looking Ahead

The staff continues preparations for the 2012 Spring election cycle including the Presidential Preference Vote on April 3, 2012. The agency staff is arranging the quadrennial meeting of the Presidential Preference Selection Committee which will be held in the State Capitol on January 3, 2012. The registration of two statewide recall efforts along with four legislative recalls adds significantly to our anticipated workload. Uncertainty about new legislative districts along with implementing local ward changes also impacts the agency workload as we wrap up the 2011 calendar year. The staff will also be actively engaged in implementing several provisions of the Voter Photo ID legislation as we prepare for full implementation beginning with the February 21, 2012 spring primary.

Action Items

Pursuant to the Board's standard practice waive its per diem for the December 5, 2011 teleconference meeting.

The Board's next meeting is scheduled for Thursday, January 12, 2012 via teleconference beginning at 9 a.m.