

Monday, December 13, 2010 – 9:30 A.M.
 G.A.B. Board Room
 212 East Washington Avenue, Third Floor
 Madison, Wisconsin

Open Session*

Tuesday, December 14, 2010 – 9:00 A.M.
 G.A.B. Board Room
 212 East Washington Avenue, Third Floor
 Madison, Wisconsin

Closed Session*

*The Board may convene in closed session on December 13th and will return to open session to consider any remaining open session items before returning to closed session. Some open session agenda items may be considered on Tuesday, December 14th.

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K. 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 13, 2011. The meeting will be conducted by teleconference. The public can observe the meeting at the Government Accountability Board offices, 212 East Washington Avenue, Third Floor in Madison, Wisconsin, beginning at 10:00 am.

State of Wisconsin\Government Accountability Board

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JUDGE GORDON MYSE
Chair

KEVIN J. KENNEDY
Director and General Counsel

Wisconsin Government Accountability Board

212 East Washington Avenue, Third Floor

Madison, Wisconsin

October 11, 2010

9:30 a.m.

Open Session Minutes

<u>Summary of Significant Actions Taken</u>	<u>Page</u>
A. Reviewed WECF Grant Denials	2
B. Adopted the G.A.B. Canvass Reporting System Protocol	3
C. Approved Statement of Scope for GAB Chapter 4 Election Observer Rule	3
D. Approved Proposal for 10 percent Budget Reduction	4

Present: Judge Gordon Myse, Judge Thomas Barland, Judge Gerald Nichol, Judge Michael Brennan, Judge Thomas Cane, and Judge David Deininger

Staff present: Kevin Kennedy, Jonathan Becker, Nathaniel E. Robinson, Shane Falk, Michael Haas, Sharrie Hauge, Tommy Winkler, Diane Lowe, Ann Oberle, and Reid Magney

A. Call to Order

Chairperson Myse called the meeting to order at 9:30 a.m.

B. Director's Report of Appropriate Meeting Notice

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

C. Minutes of Previous Board Meetings

MOTION: Approve the amended minutes of the August 30, 2010 and September 13, 2010 meetings of the Government Accountability Board. Moved by Judge Cane, seconded by Judge Deininger. Motion carried unanimously.

D. Review of Wisconsin Election Campaign Fund (WECF) Grant Denials

Staff Counsel Shane Falk presented an oral and written report recommending denial of WECF grant funds to candidate Charles R. Eno because he exceeded the self-contribution limit.

Discussion.

MOTION: To deny the application of Charles R. Eno for WECF grant funds. Moved by Judge Deininger, seconded by Judge Nichol. Motion carried unanimously.

E. Public Comment

- 1. Annette Kuglitsch of Waukesha** appeared on her own behalf to share with the Board her experiences as an election worker. While she did not witness any voter fraud, she found it disturbing that the chief inspector and other election workers did not always follow the manual.
- 2. Mary Ann Hanson of Brookfield** appeared on her own behalf to express concern about the HAVA check process and suggest turning the lists of voters who have failed HAVA checks, and have not responded to Board mailings, over to local clerks.
- 3. Debbie Morin of West Allis** appeared on her own behalf to express concern about voter registration.

F. Election Canvass Reporting System Protocol

A report was included in the Board packet. Elections Division Administrator Nathaniel Robinson introduced Lead Elections Specialist Diane Lowe and SVRS UAT Lead Ann Oberle, who made an oral presentation to the Board about the new Election Canvass Reporting System, which was used for the first time following the September 14, 2010 Partisan Primary Election. All 72 County Clerks used the system, and the staff has received very positive feedback about its functionality.

Discussion.

The Board discussed the need for clerks to use the G.A.B. Canvass Reporting System to increase accuracy and consistency in reporting election results and voter participation data.

MOTION: Adopt the G.A.B. Canvass Reporting System Protocol for the submission of canvass results for the November 2, 2010 General Election, and for subsequent canvass results. Moved by Judge Cane, seconded by Judge Nichol. Motion carried unanimously.

G. Report on MOVE Act Compliance

Staff Counsel Michael Haas and MOVE Act Coordinator Katie Mueller made an oral and written presentation to the Board about the state's compliance with the federal Military and Overseas Voter Empowerment Act. The Board has entered into a consent decree with the U.S. Department of Justice regarding the administration of absentee ballots for voters covered by the Uniformed and Overseas Citizens Absentee Voting Act. Under the consent decree, Wisconsin municipal clerks were required to have absentee ballots available by October 1, 2010, and returned ballots will be required to be counted until November 19. Approximately 3,500 ballots had been requested, and approximately 95 ballots did not go out on time. Staff worked with clerks to ensure that all ballots have been mailed.

Discussion.

Judge Myse commented that we met the marks statewide, and the only problems we had were a few instances of clerks not sending ballots by the deadline. We have substantial compliance.

H. Administrative Rules

1. Statement of Scope Relating to GAB Chapter 4 – Election Observers

Staff Counsel Michael Haas introduced the Statement of Scope for GAB Chapter 4 – Election Observers, which will be the subject of a public hearing at the Board's December meeting.

Discussion.

MOTION: Pursuant to § 227.135, Stats., the Board approves the proposed Statement of Scope regarding the adoption of the permanent rule repealing and recreating Chapter GAB 4 and to proceed with all other steps necessary to promulgate the permanent rule. Moved by Judge Barland, seconded by Judge Cane. Motion carried unanimously.

2. Status Report on Pending Administrative Rules

Staff Counsel Shane Falk made an oral and written presentation to the Board about pending administrative rules. He said that work on the Contract Sunshine rule is going well, and that clarification provided by the rule has been received well by state agencies.

I. Director’s Report

Elections Division Report – election administration

A written report from Nathaniel E. Robinson was included in the Board packet. Mr. Robinson gave an oral presentation, and discussed issues in the September 14, 2010 Partisan Primary. SVRS Functional Lead Sarah Whitt updated the Board on the Retroactive HAVA Check process and plans to deal with 12,780 voters whose first Ping Letter was returned as undeliverable. Mr. Robinson also updated the Board on upcoming meetings with clerks in coming weeks.

Discussion.

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

A written report from Jonathan Becker was included in the Board packet. Mr. Becker and Tommy E. Winkler Jr., assistant administrator in the Ethics and Accountability Division, presented an oral and written report. They discussed efforts to get late-filers to report campaign finance data, the Wisconsin Election Campaign Fund, and the new lobbying website.

Discussion.

Office of General Counsel Report – general administration

A written report from Kevin J. Kennedy, Sharrie Hauge and Reid Magney was included in the Board packet. Ms. Hauge provided an update on the ongoing federal performance audit and the compliance certification process for Contract Sunshine. Mr. Kennedy discussed the agency’s budget proposal and plans to develop a proposed 10 percent budget reduction from the 2011-2013 base budget. He proposed eliminating the Wisconsin Election Campaign Fund (WECF) and grants to reimburse municipalities for the costs of keeping their polling places open from 7 a.m. to 9 a.m. as part of an initiative to establish uniform poll hours.

Discussion.

MOTION: Authorize the director and general counsel to proceed with the proposed budget reduction approach to eliminate WECF and polling place reimbursement programs. Moved by Judge Nichol, seconded by Judge Cane. Motion carried unanimously.

J. Closed Session

Adjourn to closed session to consider written requests for advisory opinions and the investigation of possible violations of Wisconsin’s lobbying law, campaign finance law,

and Code of Ethics for Public Officials and Employees, confer with counsel concerning pending litigation, and consider performance evaluation data of a public employee over whom the Board exercises responsibility.

MOTION: Move to closed session pursuant to §§5.05(6a), 19.85(1)(h), 19.851, 19.85(1)(g), and 19.85(1)(c), to 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 Barland.

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

Motion carried.

Hearing no objection, Chairperson Myse called a recess at 12:15 p.m. The Board reconvened in closed session beginning at 12:48 p.m.

Summary of Significant Actions Taken in Closed Session:

- A. Investigations and Enforcement: Fifteen pending matters considered; six investigations authorized; no lawsuits authorized.
- B. Personnel: One matter considered.
- C. Litigation: Seven pending matters considered.

K. Reconvene into Open Session

The Board reconvened in open session at 2:59 p.m.

MOTION: To adjourn. Moved by Judge Cane, seconded by Judge Barland. Motion carried unanimously.

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The next meeting of the Government Accountability Board is scheduled for Monday, December 13, and Tuesday, December 14, 2010, at the G.A.B. offices located at 212 East Washington Avenue, Third Floor, in Madison, Wisconsin beginning at 9:30 a.m.

October 11, 2010 Government Accountability Board meeting minutes prepared by:

Reid Magney, Public Information Officer

November 18, 2010

October 11, 2010 Government Accountability Board meeting minutes certified by:

Judge Gerald Nichol, Board Secretary

December 13, 2010

State of Wisconsin\Government Accountability Board

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JUDGE GORDON MYSE
Chair

KEVIN J. KENNEDY
Director and General Counsel

MEMORANDUM

DATE: For the December 13, 2010 Meeting

TO: Members, Wisconsin Government Accountability Board

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

County Clerk Panel Coordinated and Moderated by:
Nathaniel E. Robinson
Elections Division Administrator

SUBJECT: **Agenda Item F**
County Clerk Panel on G.A.B. Canvass Reporting System

Whenever new election administration business processes are implemented by the G.A.B., it is important that staff monitor and assess whether these new practices are doing what they were intended to do, and whether they are having the impact that is expected. As a matter of our core function, the Elections Division staff pursues a variety of methods, techniques and strategies to evaluate the impact of Board's policies, procedures and business processes on clerks and whether or not such new processes are improving the efficiency and effectiveness of election administration.

Prior to September 2010, the G.A.B. Canvass System had been manual, laborious and prone to lot of errors. There were no uniform reporting standards and as a result, the lack of consistency in reporting election data resulted in different formats. Significant staff resources were needed to proof and verify County Boards of Canvassers' submissions. Staff were required to work overtime during weekday evenings and on weekends.

In mid-2009, the G.A.B. commissioned an initiative for converting the manual canvass process to an online platform for the purpose of improved reporting consistency and efficiency, increased accuracy and lessen the need for staff manual review and proofing. G.A.B.'s new Online Canvass Reporting System was used for the first time by County Clerks to report their respective September 14, 2010 Partisan Primary canvass results to the G.A.B. The September Partisan Primary is Wisconsin's most complex and complicated election in that this Primary is actually four elections rolled into one. Inputting the September 14, 2010 Partisan Primary canvass results into the Online Canvass Reporting System was likely the toughest challenge and most rigorous test for both the new system and for clerks.

During their Fall Annual Meeting on September 27, 2010 in Milwaukee, County Clerks were surveyed in a one-on-one verbal exchange, and via a questionnaire regarding their feedback about the Online Canvass Reporting System. The comments were favorable. County Clerks offered meaningful suggestions for making the new system even more helpful. The most strategic suggestions were incorporated as part of an upgrade for the November 2, 2010 General Election Canvass.

During its October 11, 2010 meeting, the Board adopted the G.A.B. Online Canvass Reporting System and directed it be used by County Clerks for the November 2, 2010 General Election and for all subsequent canvasses. The Board has heard from staff on what Clerks think about the Online Canvass Reporting System. The purpose of the County Clerk Panel presentation is for the Board to hear directly from Clerks.

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JUDGE GORDON MYSE
Chairperson

KEVIN J. KENNEDY
Director and General Counsel

MEMORANDUM

DATE: December 13 and 14, 2010
TO: Members of the Wisconsin Government Accountability Board
FROM: Kevin Kennedy, Director and General Counsel
SUBJECT: Proposed Legislative Agenda for 2011-2012 Legislative Session

Introduction

Staff was requested to provide recommendations on legislative proposals in the campaign finance, ethics and financial disclosure, and lobbying program areas. Provided below is a list of recommendations for policy changes and the subsequent statutory section that would need to be added, amended or deleted in order to achieve such a change.

Campaign Finance

Listed below are those policy changes staff recommends in the area of campaign finance regulation.

Late contributions and independent expenditures – 11.12(5) and 11.12(6)

Modify Section 11.12(5) and 11.12(6) to require committees that receive late contributions or make late disbursements to file electronically in CFIS so the information is immediately available to the public. Also, amend 11.12(6) to remove the language that says “mail a copy of the report to all candidates” and change it to read “notify each committee” in order to allow staff to leverage more efficient and cost effective methods for providing the information to candidates that are impacted by the campaign activity. §11.12(5) and §11.12(6)

Eliminate Fundraising by Legislators during Budget Process

Create legislation in Chapter 11 that mirrors the Assembly and Senate caucus rules that prohibit fundraising by incumbent legislators’ candidate committees during the budget process. See Assembly Rule 98 for guidance.

Disclaimers – 11.30

Change Section 11.30 to include new technologies (internet, text messaging, etc.) and provide more clarification on when a disclaimer is required when a particular medium is used to communicate a political message. §11.30

Notices by First Class Mail – 11.21(2) and 11.22(3)

Currently state law requires the G.A.B. to notify the committee and committee’s treasurer by first class mail when a filing deadline occurs and reports are due. Amend state law to say the G.A.B. must notify

the committee and committee treasurer of the filing deadline. This allows G.A.B. the flexibility to use more efficient, cost effective methods of notifying committees about filing deadlines. §11.21(2) and §11.22(3)

Elimination of postmark dates as acceptable for filing reports – 11.20(10)(a) and (b)

Currently a report is considered timely filed if it is *postmarked* on or before the statutory deadline for filing the report. Amend state law to require all reports to be received by the G.A.B. on or before the statutory deadline for filing the report. If this cannot be changed for all reports, at least remove the postmark language for the Pre-Primary and Pre-Election, and any 24 hour reports of late campaign activity that are filed with the G.A.B. §11.20(10)(a) and (b)

Create a definition for “Electioneering” – 11.01

Create a definition for electioneering in 11.01 of state statutes. §11.01

Require Exempt Committees to Notify Filing Officer when Terminating – 11.19

Currently a committee on exempt status is not required to notify its filing officer of when it terminates its status as a registered political committee. Amend state law to require exempt committees to notify their filing officer when they terminate in order to allow for periodic purging of old records and an accurate campaign finance committee registry. §11.19

Duplicate reports – 11.09

Under current law some committees are required to file reports with multiple filing officers. With the Campaign Finance Information System, local clerks and individuals can access campaign finance information from the internet without having to go and ask for a copy of a finance report from a local filing officer. Modify state law to allow registrants that file a report with the G.A.B. to not be required to file a duplicate report with another local filing officer. §11.09

Adjust the contribution and spending limits to account for inflation – 11.26

The current contribution limits have been in place since 1978. They have not been adjusted for inflation. State law should be amended to adjust and put these limits in real dollars by using the consumer price index’s inflation calculator. New limits should be discussed with registrants, legislators and advocacy groups, then presented to the Board next year.. §11.26

Ethics & Financial Disclosure

Listed below are those policy changes staff recommends in the area of ethics & financial disclosure regulation.

Provide Open Access to Statements of Economic Interests – 19.55

Current law requires an individual who examines a state public official’s statement of economic interests to complete a form in order to do so and the official whose statement is examined is notified with one business day of the individual who examined his/her statement. This requirement to examine a statement should be eliminated and all statements should be made open to the public. Eliminate §19.55 because it does not promote the agency’s goal of transparent government.

Eliminate Reporting of Mutual Funds on Statements of Economic Interests – 19.44

State public officials are required to report mutual funds on their statements of economic interests. The public policy purpose behind providing this information is not sound. Many individuals have a financial interest in a particular mutual fund and the fact that a state official has an ownership interest in

a mutual fund that is very diverse in its investments does not have an impact on the official's judgment or official actions. This reporting requirement should be eliminated in §19.44.

Forbid a member of a state board to accept money to represent a person before the official's agency.

Wisconsin law currently forbids elected and full-time officials from representing persons for compensation before state agencies except in limited circumstances. Extend the prohibition to a state public official who is a member of a part-time board from representing a person for compensation before that board or commission.

Imagine a member of the Natural Resources Board representing a paying client to argue a case before the Department of Natural Resources. That would be wrong. Wisconsin Statutes expressly forbid a former official, for 12 months after leaving office, to represent a person for pay before the official's former agency. Make it clear that a similar restraint also applies while the person is a state official. §19.45 (7).

Forbid a local public official to accept pay to represent a person before the official's local government.

Wisconsin law currently forbids elected and full-time state officials from representing persons for compensation before state agencies except in limited circumstances. Prohibit salaried and elected local public officials' acceptance of compensation for representing people before that local government. Prohibit an unsalaried local public official's acceptance of compensation for representing people before the board or commission or office to which the official pertains. §19.59.

Prohibit lawyer-legislators from representing clients in matters before the Department of Revenue.

There is no good public policy reason for this exception and it should be removed. §19.45 (7).

Apply the Ethics Code's Standards of Conduct to Officers-Elect

The Ethics Code currently applies to individuals elected to office only after they have assumed office. Individuals should not be permitted to profit from the fact that they have been elected to public office, even if they have not yet assumed that office. It also makes for equitable treatment between newly elected officials and reelected officials.

The statutes should not provide an open season, from the date of November's general election to the date the official-elect is sworn into office, for the official to use the title and prestige of the office to which just elected in order to lock up advantages for the official-elect's family or business before the general prohibition on use of office for private benefit takes effect at the start of the new term. Apply the Ethics Code's standards of conduct to individuals upon their election to office. The date of the certification of election results appears to be the best deadline. §19.42 (14).

Lobbying

Listed below are those policy changes staff recommends in the area of lobbying regulation.

Grass roots lobbying legislation

Introduce legislation that requires "grass roots" lobbying organizations to register and disclose lobbying activities and expenditures with the Government Accountability Board. Propose introducing the legislation drafted by Senator Erpenbach during the 2009-2010 legislative session.

Identification of legislators with whom lobbyists had lobbying communications – 13.67

State law should be amended to require lobbyists to identify the state legislator with whom they had a lobbying communication with on a particular bill, budget bill subject, proposed administrative rule and/or topic within 15 days of the first communication with that state legislator on that particular lobbying interest.

Revolving door ban on former politicians serving as lobbyists

Legislators occasionally try to negotiate private employment while in public office, sometimes with the very organizations that are trying to influence the legislators' action on specific bills. Prohibit a legislator from accepting employment by an organization that lobbies the legislature for 12 months after leaving office. A legislator's knowing that he or she will not accept employment from an organization that lobbies the legislature frees a legislator to act in the interests he or she thinks best without thought of how his or her action will affect employment by an organization trying to influence the legislator's vote.

Wisconsin has had a citizen legislature. A legislator may have other employment while a member of the legislature and may return to private employment when the legislator concludes a term. This proposal is akin to a limited "no-compete" clause that for a limited number of months protects the public employer from a legislator's moving to the payroll of an organization trying to influence government action. §19.45 (8).

Explicitly permit a lobbying principal to provide food and drink to a state official at certain receptions if the official pays fair consideration.

Under current law, and in accordance with an opinion of the Attorney General, an official may not accept anything of pecuniary value from a principal, even if the official pays fair market value in exchange. Among other results, this means an official cannot attend events sponsored by a principal and accept any food or drink, even in exchange for payment. If an event is not sponsored by a principal, an official may pay for food and drink. State officials are urged to meet with groups and individuals to discuss issues of statewide concern. There seems no good reason to distinguish between groups that employ lobbyists and those that do not, where officials are not receiving anything of value because of the payment requirement. The Government Accountability Board's policy is to permit an official to purchase food and drink from a lobbying principal at an event intended for and conducive to the discussion of state issues.

Amend the lobbying law to permit officials to attend private functions sponsored by a principal as long as the official pays fair market value. This would codify the Government Accountability Board's policy and explicitly put all receptions, conferences, and seminars on the same footing, regardless of sponsorship. §13.625.

Require contract lobbyists to obtain lobbying license, prior to lobbying.

Under current law, any individual whose duties for a principal are not exclusively lobbying does not meet the definition of a lobbyist until he or she communicates with state officials on five different days. Since almost all lobbyists perform at least some duties not falling under the strict definition of lobbying, this five-day rule has applied to contract, as well as to in-house, lobbyists. This was an inadvertent change from prior law that, in conjunction with the Secretary of State's administrative rules, distinguished between the two types of lobbyists. There is no justification for application of this threshold to an individual hired specifically as a lobbyist, rather than as an employee with a number of duties. This proposal would correct the present situation by remedying a drafting error. Require contract lobbyists to be licensed at the time of their first lobbying contact with a state official. §13.62 (11).

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JUDGE GORDON MYSE
Chairperson

KEVIN J. KENNEDY
Director and General Counsel

MEMORANDUM

DATE: For the Meeting of December 13-14, 2010

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

SUBJECT: GAB Chapter 4 – Election Observers

The Board will conduct a public hearing regarding administrative rule GAB Chapter 4 at its December 13, 2010 meeting. The hearing will fulfill the obligation to conduct a public hearing regarding the emergency rule which was in effect during the 2010 General Election, as well as the hearing required to promulgate the proposed permanent rule which will be forwarded to the Legislature upon approval by the Board. The notice for the hearing was published in the Wisconsin Administrative Register on November 30, 2010. The proposed rule was submitted to the Legislative Council on November 4, 2010. The Legislative Council report has not been received but will be provided to the Board if it arrives prior to the Board meeting.

Attached is a copy of the Notice of Proposed Order adopting the rule, which includes the text of the emergency rule, along with proposed revisions which are underlined in the text. Several of the proposed revisions are the result of suggestions made by Paul Malischke, and are included in sections 4.01(1)(g) and (5), 4.02(6), 4.03(3), and 4.04(3). Board staff has also recommended a revision to section 4.07(2) which would permit the Board to use video or still cameras in polling places and other election facilities, or to authorize others to do so. Specifically granting this authority may be useful for purposes such as training, accessibility auditing, and investigations.

The proposed rule takes into consideration the comments of local election officials, media representatives, and the public over several years. For this public hearing, two individuals submitted written comments. Mr. Malischke's written comments are attached, as is an email supporting the rule submitted by Noreen Johnson. A final email is also attached describing the experience of one election observer, which does not specifically address the rule but provides the perspective of one individual and illustrates the value of observers in ensuring the transparency of the election process.

Except for the revisions which are underlined and minor changes made after the 2008 General Election, the proposed rule is identical to the emergency rule which has been in place for the

last two general elections. The rule has been credited by both municipal clerks and observers with helping to maintain order and reduce confusion regarding the role of observers.

Recommended Motion: Approve the attached Proposed Order repealing and recreating ch. GAB 4, including the underlined revisions, and direct staff to take all additional steps necessary to complete promulgation of the rule.

NOTICE OF PROPOSED ORDER ADOPTING RULE
GOVERNMENT ACCOUNTABILITY BOARD

The Government Accountability Board proposes an order to repeal and recreate chapter GAB 4, Wis. Adm. Code, relating to observers at a polling place or other location where votes are being cast, counted, canvassed or recounted.

ANALYSIS PREPARED BY GOVERNMENT ACCOUNTABILITY BOARD:

1. Statutes interpreted: s.7.41, Stats.
2. Statutory authority: ss. 7.41(5), 5.05(1)(f), 227.11(2)(a), Stats.
3. Explanation of agency authority: This rule repeals rules chapter GAB 4, Election Observers, which interprets s.7.41 of the Wisconsin Statutes, Public's right to access, as amended by 2005 Wisconsin Act 451. The board is empowered by s. 7.41(5), Stats., to promulgate rules consistent with the supervisory authority of a chief inspector at any polling place on election day, regarding the proper conduct of individuals exercising the right under s. 7.41, Stats., to readily observe all public aspects of the voting process in an election.

Existing Chapter GAB 4 (formerly Chapter EIBd 4), was adopted to implement s.7.39, Stats., relating to the appointment of election observers at polling places in a municipality. Subsequent to the enactment of s.7.39, Stats., the legislature enacted a much broader statute, s.7.41, Stats., that expanded the class of persons who may observe the proceedings at a polling place to include "any member of the public." Because any member of the public has the right to observe merely by being present, appointment as an observer was no longer necessary, thereby rendering s.7.39, Stats., obsolete and necessitating its repeal. Consequently, the legislature repealed s.7.39, Stats., in 1999 Wisconsin Act 182.

In 2005 Act 451, the Wisconsin Legislature expanded the number of locations at which observers had the right to observe to include "the office of any municipal clerk whose office is located in a public building on any day that absentee ballots may be cast in that office, or at an alternate site under s. 6.855 on any day that absentee ballots may be cast at that site for the purpose of observation of an election and the absentee ballot voting process."

The Government Accountability Board now needs to promulgate a new rule implementing the new, amended s. 7.41, Stats., by setting forth standards of conduct applicable to persons who are present at a polling place, or elsewhere, for the purpose of observing all public aspects of an election, including voting, and the counting and canvassing of ballots.

4. Related statute(s) or rule(s): Wisconsin Statutes ss.5.35(5), 7.37(2) and 12.13(3)(x), Stats., relating to maintaining order at the polling place, and other locations where observation of the public aspects of the voting process is taking place, and enforcing compliance with the lawful commands of the inspectors at the polling place.
5. Plain language analysis: This rule repeals and recreates rule chapter GAB 4, relating to observers and observation of the public aspects of the voting process at polling places and other locations where observation of the public aspects of the voting process is taking place.
6. Summary of, and comparison with, existing or proposed federal regulations: Observers and observation of the voting process is a matter of state regulation, not federal regulation. Consequently, no federal legislation or regulation applies to observers in Wisconsin or any other state.
7. Comparison with rules in adjacent states: The States of Illinois, Iowa, Michigan and Minnesota all have legislation that allows persons to observe at the polling places in that state, but none of those states allows any member of the public to show up at a polling place and observe because each of those states requires prospective observers to register with the municipal clerk before the election and receive authorization to observe.
8. Summary of factual data and analytical methodologies: Adoption of the rule was not predicated on any factual data or analytical methodologies, but on observation eliminating provisions of the former Ethics Board's and Elections Board's rules that were inconsistent with the provisions or intent of the new law merging those agencies into the new Government Accountability Board. The Government Accountability Board implemented an emergency rule consistent with the proposed permanent rule for use during the 2010 General Election. The emergency rule was created with the input of an ad hoc committee of election officials, and input regarding the effectiveness of the rule and suggested revisions was gathered at a public hearing on November 11, 2008.
9. Analysis and supporting documentation used to determine effect on small businesses: Preparation of an economic impact report is not required. The Government Accountability Board does not anticipate that the repeal and recreation of the described provisions will have an economic impact.
10. Effect on small business: The creation of this rule does not affect business.
11. Agency contact person: Michael R. Haas, Staff Counsel, Government Accountability Board, 212 E. Washington Avenue, 3rd Floor, P.O. Box 7984, Madison, Wisconsin 53707-7984; Phone 266-0136; Michael.haas@wisconsin.gov

12. Submission of written comments: Comments may be submitted by October 10, 2010, to the Government Accountability Board, 212 E. Washington Ave., 3rd Floor, P.O. Box 7984, Madison, WI 53707-7984; (gab.wi.us)

FISCAL ESTIMATE: The creation of this rule has no new fiscal effect. Observers at polling places will continue to be monitored and supervised by local election officials.

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

TEXT OF PROPOSED RULE:

SECTION 1. Chapter GAB 4 is repealed.

SECTION 2. Chapter GAB 4 is recreated to read:

Election Observers

GAB 4.01 Observers at the polling place

(1) In this chapter:

- (a) “Board” means the Government Accountability Board.
- (b) “Chief inspector” means the chief inspector at a polling place, under s.7.30(6)(b), Stats., or the election official that the chief inspector designates to carry out the responsibilities of the chief inspector under this chapter.
- (c) “Clerk” means the municipal or county clerk, the executive director of the board of election commissioners, or the official designated by the clerk or director to carry out the election responsibilities under this chapter.
- (d) “Communications media” has the meaning given in s. 11.01(5), Stats.
- (e) “Electioneering” has the meaning given in s. 12.03(4), Stats.
- (f) “Member of the public” means any individual who is present at any polling place, or in the office of any municipal clerk whose office is located in a public building on any day that absentee ballots may be cast in that office, or at an alternate site under s. 6.855, Stats., on any day that absentee ballots may be cast at that site, for the purpose of observation of an election or the absentee ballot voting process, excluding a candidate appearing on the ballot at that polling place or a registered write-in candidate, for an office voted on at that polling place or other location.

- (g) “Public aspects of the voting process” means the election activities that take place at a polling place, or other observation location, that includes the opening of a polling place prior to the commencement of voting, waiting in line to vote by inspectors, the election day registration process, the recording of electors under s. 6.79, Stats., the elector’s receipt of a ballot, the deposit of the ballot into the ballot box, a challenge to an elector’s right to vote, the issuing of a provisional ballot, and the counting and reconciliation process.
- (2) Any member of the public intending to exercise the right to observe an election under s. 7.41, Stats., shall notify the chief inspector of that intent upon entering the voting area of a polling place. The observers shall sign a form acknowledging they understand the applicable rules and will abide by them. The observers shall also list their full name, street address and municipality, and the name of the organization or candidate the observer represents, if any, on the form. The inspector shall attach the form to the Inspectors’ Statement, GAB-104. The chief inspector shall provide the observer with a name tag supplied by the board which reads “Election Observer.” Observers shall wear this name tag at all times when they are inside the polling place.
- (3) To ensure the orderly conduct of the election, the chief inspector may reasonably limit the number of observers representing a particular organization or candidate.
- (4) The chief inspector shall direct the observer to an area of the polling place designated by the chief inspector as an observation area.
- (5) The observation area shall be situated to enable observers to observe all public aspects of the voting process during the election. When physically feasible within the polling place, the observation area shall be not less than 6 feet nor more than 12 feet from the table at which electors are announcing their name and address and being issued a voter number. If observers are unable to hear the electors stating their name and address, the poll workers shall repeat the name and address. If necessary to ensure all public aspects of the process are readily observable, the chief inspector shall set up additional observation areas near the election-day registration table and area where elector challenges are handled. Before remaking any ballot, election inspectors shall announce to observers that the ballot is being remade and the reason for doing so. Election inspectors shall also inform observers at the time that absentee ballots are inserted into ballot boxes or tabulating equipment.
- (6) Observers shall comply with the chief inspector’s lawful commands or shall be subject to removal from the polling place.

- (7) All of the observers' questions and challenges shall be directed to the chief inspector.
- (8) Upon receiving a challenge to a voter's ballot at the polling place, the chief inspector shall follow the challenge procedure in Chapter GAB 9, Wis. Adm. Code. The challenge shall be recorded on the Challenge Documentation Form, GAB-104c.
- (9) If any observer engages in any loud, boisterous, or otherwise disruptive behavior that, in the opinion of the chief inspector, threatens the orderly conduct of the election or interferes with voting, the chief inspector shall warn the offending observer(s) that such conduct shall cease or the observer shall have to leave the polling place.
- (10) If, after receiving the warning provided in sub. 9, the offending observer does not cease the offending conduct, the chief inspector shall order the offending observer to depart the polling place. If the offending observer declines or otherwise fails to comply with the chief inspector's order to depart, the chief inspector shall summon local law enforcement to remove the offending observer.
- (11) While in the polling place, observers shall keep conversation to a minimum and shall try to conduct whatever conversation is necessary at a low enough volume to minimize distraction to electors and to the election inspectors and any other election officials. Failure to adhere to this subsection shall result in a warning under sub. 9 and, if the conduct continues, removal under sub. 10.
- (12) Observers shall be permitted to view the poll lists, excluding the confidential portions of the lists maintained under ss. 6.35(4) and 6.79(6), Stats., as long as doing so does not interfere with or distract electors under s. 5.35(5) Stats. Observers shall not be permitted to make a photocopy or take photographs of the poll lists on election-day.
- (13) Observers shall not be permitted to handle an original version of any official election document.
- (14) Observers shall not engage in electioneering as defined in s.12.03, Stats. If an observer violates s. 12.03, Stats., the chief inspector shall issue a warning under sub. 9 and, if the conduct continues, shall order the offending observer to depart the polling place or suffer removal under sub. 10.
- (15) Observers shall not use a cellular telephone or other wireless communication device inside the voting area to make voice calls. Such use shall result in a warning under sub. 9 and, if the conduct continues, shall result in removal under sub. 10. Text messaging and other non-audible uses of such a device are permissible.

- (16) Observers shall not engage in any conversation with election officials or other electors concerning a candidate, party, or question appearing on the ballot. Such conversation constitutes electioneering under s. 12.03, Stats., and shall result in a warning under sub. 9 and, if the conduct continues, removal under sub. 10. The chief inspector may order that other conversation be minimized if it is disruptive or interferes with the orderly conduct of the election.
- (17) The restrictions on voter contact under sub. 16 shall not be construed to prevent any observer from assisting an elector under s. 6.82, Stats., provided that the elector requests the observer's assistance, and provided that the assistance meets the other requirements of s. 6.82, Stats., and the observer qualifies to provide assistance under that statute.
- (18) Observers shall not wear any clothing or buttons having the name or likeness of, or text related to, a candidate, party, or referendum group appearing on the ballot or having text which describes, states, or implies that the observer is a governmental official or has any authority related to the voting process. Wearing such apparel at the polling place constitutes a violation of s. 12.03, Stats., and shall result in a warning under sub. 9 and, if the observer refuses to comply with the chief inspector's order, shall result in removal under sub. 10.
- (19) Observers may not use any video or still cameras inside the polling place while the polls are open for voting. Failure to adhere to this subsection shall result in a warning under sub. 9 and, if the conduct continues, removal under sub. 10.
- (20) After the polls close, candidates are allowed to be present and the prohibition of video and still cameras does not apply unless it is disruptive or interferes with the administration of the election.

GAB 4.02 Observers at the municipal clerk's office

- (1) Observers shall be permitted to be present at the municipal clerk's office, provided the clerk's office is located in a public building, or an alternate site for absentee voting designated under s. 6.855, Stats., on any day that absentee ballots may be cast in the office.
- (2) Observers shall conform their conduct to the requirements of s. GAB 4.01. The municipal clerk shall exercise the authority of the chief inspector under s. GAB 4.01 to regulate observer conduct.
- (3) The clerk shall establish observation areas to allow observers to view all public aspects of the absentee voting process. The observers need not be allowed behind the counter in the clerk's office.
- (4) All of the observers' questions shall be directed to the clerk.

- (5) If any observer engages in any loud, boisterous, or otherwise disruptive behavior that, in the opinion of the clerk, threatens the orderly conduct of the election or interferes with voting, the clerk shall issue a warning under s. GAB 4.01(9) and, if the observer does not cease the offending conduct, order the observer's removal under s. GAB 4.01(10).
- (6) Observers may not use any video or still camera inside the clerk's office while voting is in progress.

GAB 4.03 Observers at the central counting location

- (1) In a municipality using a central counting location under s. 5.86, Stats., observers shall be permitted to be present at the central counting location.
- (2) Observers shall conform their conduct to the requirements of s. GAB 4.01. The municipal clerk shall exercise the authority of the chief inspector under s. GAB 4.01 to regulate observer conduct.
- (3) The clerk shall establish observation areas to allow observers to view all public aspects of the counting process. Before remaking any ballot, election inspectors shall announce to observers that the ballot is being remade and the reason for doing so.
- (4) If any observer engages in any loud, boisterous, or otherwise disruptive behavior that, in the opinion of the clerk, threatens the orderly conduct of the count, the clerk shall issue a warning under s. GAB 4.01(9) and, if the observer does not cease the offending conduct, order the observer's removal under s. gab 4.01(10).
- (5) Observers shall be permitted to use a video or still camera inside the central count location unless it is disruptive or interferes with the administration of the election.
- (6) All of the observers' questions and challenges shall be directed to the clerk.

GAB 4.04 Observers at absentee ballot canvass

- (1) In a municipality using a central absentee ballot canvass location under s. 7.52, Stats., observers shall be permitted to be present at the canvass location.
- (2) Observers shall conform their conduct to the requirements of s. GAB 4.01. The board of absentee ballot canvassers shall exercise the authority of the chief inspector under s. GAB 4.01 to regulate observer conduct.

- (3) The board of absentee ballot canvassers shall establish observation areas to allow observers to view all public aspects of the canvassing process. Before remaking any ballot, election inspectors shall announce to observers that the ballot is being remade and the reason for doing so.
- (4) If any observer engages in any loud, boisterous, or otherwise disruptive behavior that, in the opinion of the board of absentee ballot canvassers, threatens the orderly conduct of the count, the board of absentee ballot canvassers shall issue a warning under s. GAB 4.01(9) and, if the observer does not cease the offending conduct, order the observer's removal under s. GAB 4.01(10).
- (5) Observers shall be permitted to use a video or still camera inside the absentee canvass location unless it is disruptive or interferes with the administration of the absentee ballot canvass.
- (6) All of the observers' questions and challenges shall be directed to the member of the board of absentee ballot canvassers designated to receive questions and challenges.

GAB 4.05 Observers at absentee voting locations described in s. 6.875, Stats.

- (1) One observer from each of the two political parties whose candidate for governor or president received the greatest number of votes in the municipality, in the last general election, may accompany the special voting deputies to absentee voting locations described in s. 6.875, Stats.
- (2) Observers shall conform their conduct to the requirements of s. GAB 4.01. The special voting deputies shall exercise the authority of the chief inspector under s. GAB 4.01 to regulate observer conduct.
- (3) The special voting deputies shall establish observation areas to allow observers to view all public aspects of the absentee voting process.
- (4) If any observer engages in any loud, boisterous, or otherwise disruptive behavior that, in the opinion of the special voting deputies, threatens the orderly conduct of the absentee voting process, the special voting deputies shall issue a warning under s. GAB 4.01(9) and, if the observer does not cease the offending conduct, order the observer's removal under s. GAB 4.01(10).
- (5) Observers shall not be permitted to use a video or still camera inside the voting location.
- (6) All of the observers' questions shall be directed to the special voting deputies.

GAB 4.06 Observers at a recount

- (1) Pursuant to s.9.01(1)(b)11., Stats., the recount of any election shall be open to any interested member of the public including candidates and their counsel.
- (2) Observers shall conform their conduct to the requirements of s. GAB 4.01. The board of canvassers shall exercise the authority of the chief inspector under s. GAB 4.01 to regulate observer conduct.
- (3) The board of canvassers may limit observers to a designated area, but the observers shall be positioned so that they can see the poll lists and each individual ballot as it is counted. If there is not room for all observers to view the ballots as they are being counted, visual preference shall be given to the candidates or their representatives.
- (4) If any observer engages in any loud, boisterous, or otherwise disruptive behavior that, in the opinion of the board of canvassers, threatens the orderly conduct of the count, the board of canvassers shall issue a warning under s. GAB 4.01(9) and, if the observer does not cease the offending conduct, order the observer's removal under s. GAB 4.01(10).
- (5) Observers shall be permitted to use a video or still camera inside the recount location unless it is disruptive or interferes with the administration of the election.
- (6) All of the observers' questions and challenges shall be directed to the member of the board of canvassers designated to receive questions and challenges.

GAB 4.07 Communications media observers

- (1) Observers from communications media organizations shall identify themselves and the organization they represent to the chief inspector upon arriving at the polling place. The inspector shall record that information on the inspectors' statement, GAB-104.
- (2) Communications media observers shall be permitted to use video and still cameras provided the cameras are not used in a manner that allows the observer to see or record how an elector has voted and provided the cameras do not disrupt the interfere with voting or disrupt the orderly conduct of the election. The Board may also use video and still cameras at polling places, municipal clerks' offices, central counting locations, or absentee ballot canvass locations, or authorize others to do so for purposes authorized by the Board.

GAB 4.08 Polling Place Accessibility Assessments

- (1) This section applies to disability advocates and other individuals authorized by the board to assess the compliance of a polling place with s. 5.25(4)(a), Stats.

- (2) When practical, groups and individuals observing under this section shall notify the clerk at least 24 hours in advance of their intent to assess polling place accessibility.
- (3) Disability advocate observers shall be allowed out of the designated observation area to take accessibility measurements to ensure compliance with polling place accessibility requirements unless it is disruptive or interferes with the administration of the election.
- (4) Disability advocate observers shall be allowed to take photos and video to document compliance with the accessibility requirements unless it is disruptive or interferes with the administration of the election.
- (5) Disability advocate observers shall be allowed to wear shirts or name tags identifying themselves as disability advocate observers.
- (6) Election officials, including poll workers, shall facilitate the work of disability advocates in making their accessibility assessments.

SECTION 3. 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, Stats.

State of Wisconsin \ Government Accountability Board

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JUDGE GORDON MYSE
Chairperson

KEVIN J. KENNEDY
Director and General Counsel

MEMORANDUM

DATE: For the December 13-14, 2010 Meeting

TO: Members, Wisconsin Government Accountability Board

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

Prepared and Presented by:

Shane W. Falk, Staff Counsel

SUBJECT: Status Report on Pending Administrative Rule-Making

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

STATUS REPORT ON PENDING ADMINISTRATIVE RULE-MAKING

Revise 1.10

Relating to: Registration by Nonresident Committees and Groups

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

Revise 1.15

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

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

Revise 1.20

Relating to: Treatment and Reporting of In-Kind Contributions

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

Create 1.21

Relating to: Treatment of Joint Account Contributions

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

Revise 1.26

Relating to: Return of Contribution

Status: Board original action on May 5, 2008. Scope statement approved at August 10, 2009 meeting, which must be submitted to the Legislative Reference Bureau and then can begin rule-making process to correct grammatical error. Likely will complete

with 30 day notice rule-making, which will not require a public hearing before submittal to legislature (unless someone petitions for a hearing.)

Revise 1.43

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

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

Revise 1.85 and 1.855

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

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

Create 1.90

Relating to: MCFL Corporation Registration and Reporting Requirements

Status: Board original action August 27, 2008. Scope statement approved by the Board at the December 17, 2009 meeting. Draft rule was approved by the Board at the March 23-24, 2010 meeting. The Statement of Scope must be submitted to the Legislative Reference Bureau for publication to begin the rule-making process. Will likely have to hold public hearing, so following submittal to Legislative Council will hold public hearing and then submittal to legislature before publication.

Create 1.91

Relating to: Organizations Making Independent Disbursements

Status: Board original action May 10, 2010. At the March 23-24, 2010 Board meeting, the Board considered the ramifications of the U.S. Supreme Court decision, *Citizens United v. FEC*. The Board adopted an interim policy regarding corporate independent expenditures. Staff was directed to draft an emergency rule which was adopted by the Board at the May 10, 2010 meeting. In addition, the Board directed staff to promulgate permanent rules to address independent expenditures in the context of Citizens United.

Emergency rule was published and effective May 20, 2010, but will expire on October 16, 2010. Staff has requested an extension so that the emergency rule is in effect throughout the Fall Election and on August 24, 2010, the Joint Committee for the

Review of Administrative Rules granted the 60 day extension, which continues the emergency rule until December 15, 2010. Staff has requested an additional 60 day extension from the Joint Committee for the Review of Administrative Rules. This is the last extension that may be granted.

Staff published the scope statement and on July 7, 2010 also submitted the proposed permanent rule to Legislative Council for review. The Legislative Council Report was received by staff on August 3, 2010. The public hearing on both the emergency and permanent rules was held on August 30, 2010. Staff must file a Legislative Report and await the standing committees' 30 day review before final publication.

Revise Chapter 3

Relating to: Voter Registration, HAVA Checks

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

Revise 3.01(6) and 12.01(2)

Relating to: Election Cycle Period for SRD and Municipal Clerk Training

Status: Board original action August 30, 2010. Scope Statement was approved by the Board at the August 30, 2010 meeting and must be published with the Legislative Reference Bureau. Thereafter may begin rule-making process to change the election cycle for special registration deputy and municipal clerk training so that the cycle begins on January 1 of an even-numbered year and continues through December 31 of the following odd-numbered year. Likely will complete with 30 day notice rule-making, which will not require a public hearing before submittal to the legislature (unless someone petitions for a hearing.)

Repeal and Recreate Chapter 4

Relating to: Election Observers

Status: Board original action on August 27, 2008. Final draft of Chapter 4 approved March 30, 2009 based upon comments from emergency rule proceedings. Board reviewed the rule and took renewed action on September 13, 2010. Emergency Rule was published on September 24, 2010. Scope statement published and was approved by the Board at its October 11, 2010 meeting. The final version of Chapter 4 was submitted to Legislative Council for review and its report was due back to the G.A.B. on November 24, 2010, but is expected prior to the Board's next meeting on December 13, 2010. A public hearing is scheduled for December 13, 2010 at the Board's meeting. Thereafter, the rule will be submitted to the Legislature before publication.

Repeal and Recreation of Chapter 5

Relating to: Security of Ballots and Electronic Voting Systems

Status: Board original action on May 5, 2008. Legislative Council review complete.

Public Hearing held November 11, 2008 and some additions may be necessary. The Legislative Report for Chapter 5 will be submitted after the Board considers an additional provision to the chapter at the October 5, 2009 and now November 9, 2009 meetings. These additions resulted from public comments. Additions approved by the Board at the November 9, 2009 meeting. Legislative Report will be submitted and upon return, publication.

Revise 6.02

Relating to: Registration Statement Sufficiency.

Status: Board original action on March 30, 2009. Scope statement submitted for publication. Draft rule approved by the Board at the December 17, 2009 meeting and then can continue rule-making process to clarify sufficiency standards. Likely will complete with 30 day notice rule-making, which will not require a public hearing before submittal to legislature (unless someone petitions for a hearing.)

Revise 6.03

Relating to: Assistance by Government Accountability Board Staff

Status: Board original action on March 30, 2009. Scope statement and draft rule approved by the Board at the December 17, 2009 meeting. This will officially begin the rule-making process to update statutory citations with new statutes post 2007 Act 1. Likely will complete with a statutory procedure that will not require a public hearing before submittal to legislature.

Revise 6.04

Relating to: Filing Documents by FAX or Electronic Means

Status: Board original action on March 30, 2009. Scope statement submitted for publication. Draft rule approved by the Board at the December 17, 2009. Must submit to the Legislative Council for review to continue rule-making process to clarify electronic filing requirements. Likely will complete with 30 day notice rule-making, which will not require a public hearing before submittal to legislature (unless someone petitions for a hearing.)

Revise 6.05

Relating to: Filing Campaign Finance Reports in Electronic Format

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

Revise Chapter 7

Relating to: Approval of Electronic Voting Equipment

Status: Board original action on May 5, 2008. Division Administrator Robinson establishing a committee to make recommendations. Must draft scope statement and

then begin rule-making process. Will require public hearing, so following submittal to Legislative Council will have public hearing before submittal to legislature.

Revise 9.03

Relating to: Voting Procedures for Challenged Electors

Status: Board original action on May 5, 2008. Scope statement and draft rule approved by the Board at the December 17, 2009 meeting. Must draft Statement of Scope to begin the rule-making process to remove a reference to lever voting machines. Likely will complete with statutory procedure that will not require a public hearing before submittal to legislature.

Revise 12.01(2) See 3.01(6) above.

Creation of Chapter 13

Relating to: Training Election Officials

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

Repeal 21.01, 21.04 and Revise 20.01

Relating to: 21.01—filing of all written communications and documents intended for former Ethics Board
21.04—transcripts of proceedings before former Ethics Board
20.01—procedures for complaints before former Elections Board

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

Creation of Chapter 22

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

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

Creation of Chapter 26

Relating to: Contract Sunshine

Status: Board original action at the July 21-22, 2010 meeting, at which the Board approved the scope statement. Staff published the scope statement. Proposed rule

approved by the Board at the August 30, 2010 Board meeting. On September 10, 2010, staff distributed the rule to all agencies for preview and comment. Staff will also submit it to Legislative Council for review. Likely will proceed with a public hearing upon return of the rule from Legislative Council.

State of Wisconsin \ Government Accountability Board

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JUDGE GORDON MYSE
Chairperson

KEVIN J. KENNEDY
Director and General Counsel

MEMORANDUM

DATE: For the Meeting of December 13-14, 2010

TO: Members, Wisconsin Government Accountability Board

FROM: Kevin J. Kennedy
Director and General Counsel

Prepared and Presented by:
Jonathan Becker, Ethics and Accountability Division Administrator
Michael Haas, Staff Counsel

SUBJECT: Implementation of Impartial Justice Act

This memorandum summarizes recent activity related to the implementation of the Impartial Justice Act and establishment of the Democracy Trust Fund to provide public financing to candidates for Supreme Court justice. In addition, this memorandum outlines two statutory interpretation issues for which staff seeks the Board's input and decisions.

Status of Candidate Filings

Three candidates have filed forms declaring their candidacies for Supreme Court justice with the Board. All three candidates have indicated an interest in the public financing program but no candidate has yet filed the application required to participate in the Democracy Trust Fund. The deadline for filing the application is January 5, 2011, the day after the deadline for filing nomination papers. Board staff has been in contact with the candidates and their representatives to provide information regarding the Impartial Justice Act and answer questions.

Establishment of Democracy Trust Fund

Jonathan Becker and Michael Haas met with staff of the State Treasurer's office regarding establishment of the Democracy Trust Fund ("DTF"). While the Government Accountability Board administers and enforces the provisions of the Impartial Justice Act, the legislation delegated to the State Treasurer the responsibility to establish and administer the DTF. The Fund will be the vehicle for distributing public financing benefits by issuing separate lines of credit to each qualifying candidate.

We will meet with the State Treasurer's staff again in the next week to discuss the specifics of transferring funds from the existing Wisconsin Election Campaign Fund to the Democracy Trust Fund, and the process and timing of certifying candidates and making funds available. Approximately \$110,000 is available from existing funds to transfer into the DTF, and the

legislation commits the State to fund the balance of the public grants through future income tax check-offs and a sum-sufficient appropriation.

If three candidates request funds and qualify, each will receive a base grant of \$100,000 in early January 2011 for use in the spring primary campaign period. If all candidates participate in the DTF, however, no matching funds based on the spending of a non-participating candidate will be required to be appropriated or made available to candidates. In addition, given the suspension of the revised version of administrative rule GAB 1.28, it may be unlikely that significant matching funds will be made available based upon the level of independent expenditures made by other organizations.

Assuming three candidates receive the base grant for the primary and two candidates receive the \$300,000 grants for the election, there will be a need for additional funds to be made available to the State Treasurer through the sum sufficient account. Board staff has contacted Governor-elect Walker's transition staff to advise the new administration of the potential funding requirements which may occur early in 2011.

Implementation Issues and Decisions

During the course of implementing the new law and providing guidance to potential candidates, Board staff has made a number of administrative decisions, including the following:

1. Any seed money or qualifying contributions which are within the applicable limits but are not spent during the qualifying period are not required to be transferred to the DTF. Under section 11.508(2), Stats., disbursements from seed money contributions may be made only through the end of the qualifying period, but there is no provision for requiring unspent private contributions to be transferred to the Democracy Trust Fund. Any seed money or qualifying contributions must be spent prior to the filing deadline, returned to the contributor, or kept in the campaign account and spent after the current election cycle but not on expenses related to the current campaign.
2. Public grant funds may be used to pay an eligible expense which is incurred prior to receiving the public funds. Under section 11.511(1), Stats., the public grant can be used to "finance any lawful disbursements during the primary and election campaign periods to further the election of the candidate in that primary or election." If the candidate's DTF application has not yet been approved, the risk to the campaign is that the application might be denied and the public grant would not be available to pay the expense.
3. Filing of the semi-monthly finance reports, and submission of receipts to the Board documenting qualifying contributions, may be delayed until a candidate submits an application to participate in the DTF. Pursuant to §11.502, Stats., candidates may submit an application for public financing at any time, but are not required to do so until the first Wednesday in January. At the time of application the candidate must certify compliance with all requirements of the Act, and therefore will need to submit all previously required reports and receipts by the application deadline, but the obligation to file semi-monthly reports and receipts does not arise until the candidate has applied for public funds. While staff believes this is the interpretation required by the Act, it may impose significant

responsibilities on staff to review finance reports in short order if candidates delay their submissions until late in the process.

4. A self-contribution made by Justice Prosser to his campaign committee in November, 2009 of \$5,000 may be designated as a seed money contribution under the Act, and may be either spent during the qualifying period or may be returned to him. The Board previously determined that funds existing in a campaign account prior to the Act's effective date could be used for qualifying disbursements only until July 21, 2010, and that the amount of expenditures from such pre-existing funds would be deducted from the candidate's public grant.

However, the Act permits candidates to self-contribute up to \$5,000 as seed money contributions after the Act's effective date until the end of the qualifying period. The candidate's prior contribution has not been spent and could still be returned to him as a refunded contribution or loan repayment, which would permit him to start over and contribute up to the same amount. Rather than require that funds be returned and then contributed again, Board staff advised that the 2009 self-contribution could be designated as seed money and spent without reducing the amount of the public grant, or could be returned to the candidate. Also, the public grant may not be used to repay the candidate's contribution or loan.

Outstanding Implementation Issues

Staff has analyzed the following two administrative issues but has delayed issuing guidance to candidates pending the Board's review and affirmation.

1. The Act does not address whether a candidate may apply for public financing and subsequently withdraw the application, in contrast to the statutes governing public financing for candidates in partisan elections. The only relevant date cited for determining the status of candidates is the deadline for submitting the DTF application, the day after the deadline for filing nomination papers. Therefore the opinion of Board staff is that candidates should be permitted to withdraw an application at any point up to that date. Staff considered the option of permitting candidates to withdraw DTF grants up to the date of ballot certification, but without specific mention of that option in the Act, believes that the better statutory and policy interpretation is to utilize the application filing deadline as the deadline for withdrawal of an application.
2. Section 11.51(2), Stats., requires the Board to certify the names of candidates eligible to receive public funds for the spring primary promptly after the candidate demonstrates eligibility, but not later than five days after the deadline for filing nomination papers. The Board's certification of candidates for ballot access, however, will not occur until seven days after that deadline, allowing time for nomination challenges and responses to any challenges. Therefore, it is the opinion of Board staff that certification of candidates for DTF eligibility must be contingent on the candidate achieving ballot access, and that no public funds may be made available until the Board's certification of candidates for ballot access.

Recommended Motion

Direct staff to administer provisions of the Impartial Justice Act as follows:

1. Affirm the administrative and policy interpretations of Board staff as outlined above.
2. The Board shall permit candidates to withdraw an application for participation in the DTF until the deadline for applying for public financing, but no withdrawal of an application shall be permitted after said deadline.
3. The Board may certify the eligibility of a candidate for a public financing grant contingent upon the candidate being certified for ballot access, and public funds shall not be made available to qualifying candidates until the Board has certified ballot access.

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JUDGE GORDON MYSE
Chair

KEVIN J. KENNEDY
Director and General Counsel

MEMORANDUM

DATE: For the December 13, 2010 Meeting

TO: Members, Wisconsin Government Accountability Board

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

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

SUBJECT: Elections Division Update

Election Administration Update

Introduction

Since the Government Accountability Board's October 11, 2010, meeting, the Elections Division has focused on the following tasks:

1. November 2, 2010 General Election

The General Election was conducted on November 2, 2010. In order to be available to clerks preparing for the election, staff worked extended hours the week before and the week of the election. On Election Day, staff was available from 6:30 a.m. until approximately 9:00 p.m. Staff was also available until 6:00 p.m. on the day after the election for any follow up questions.

Although the election was generally uneventful, staff was alerted to issues concerning voting equipment. Staff received several reports of equipment problems, mostly machine jams upon the insertion of a ballot. Please refer to the details below in section 2, "Voting Systems' Performance on Election Day."

2. Voting Systems' Performance on Election Day

During the November 2 General Election, Wisconsin clerks and voters experienced a high number of situations with the voting equipment jamming and in one case, a ballot was not tabulated by the voting equipment. In the case of a ballot jam, there was a degree of uncertainty on whether the ballot counted, especially when the election inspector was not aware if the number on the equipment increased. In these cases, it is not uncommon for the election inspector to pull the ballot out, potentially remake it and then run it through again. This produces a higher number of ballots cast on the equipment than there was voter numbers issued. When this takes place, election inspectors are directed to hand-count the ballots to ensure the number of ballots counted

matches with the number attributed by the equipment. If after the hand count, the number of ballots matches the number of voter numbers issued, or does not match the number of ballots counted by the equipment, there needs to be a decisive procedure for the election inspectors to proceed.

The situation with one ballot not being tabulated by the voting system occurred in Douglas County on the Election Systems & Software (ES&S) M100. The municipality was instructed to re-run all the ballots through a newly programmed memory device on the backup M100, as they believed the equipment was not an accurate count of the ballots cast. The result from the re-tabulation showed that the voting equipment at the polling place did indeed fail to read one ballot. In normal situations if the election inspectors were not aware the equipment did not read a ballot, leading to scenario of having less ballots than voter numbers issued, no recourse would be taken because it is only required when there are more ballots than voter numbers issued, not less. The County Clerk and also the G.A.B. has requested an explanation from ES&S.

G.A.B. staff is formulating procedures for election officials in the case of voting equipment result report not accurately reflecting the total amount of ballots casts on the system. The process will require hand counting the total number of ballots cast (not examining individual offices) and match that number against the results report produced by the voting system. If it is determined that results report is not an accurate representation of the number of ballots cast, the ballot will need to be re-tabulated on the voting system using another programmed and tested memory device. Additionally, G.A.B. staff has contacted the voting equipment manufacturers requesting information on voting equipment issues they received from the General Election.

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

Since 2008, before, during and immediately after each election, staff have been offering extended services and technical support to our valued clerk customers and to the public, and we will continue to do so for the November 2, 2010 General Election. Staff's extended operating hours starting Monday, October 25, 2010 (excluding Sunday) and concluded on Wednesday, November 3, 2010.

During the extended hours of operation and on Election Day, staff maintained an Election Activity Log of all calls relating to elections issues. A preliminary review of this data has been conducted. The preliminary review focused on determining best practices, areas of needed improvement and lessons learned for improving election administration. Please refer to the two attached documents titled, "2010 Fall Election Cycle Call Log Evaluation."

4. Election Canvass

The November 2, 2010 General Election marked the second time in which County Clerks used the G.A.B. Canvass Reporting System (CRS). This system is an on-line application by which the county clerks provide election results electronically. Once again the system functioned admirably, greatly reducing the time previously required to edit, load and proof the canvass.

All 72 counties used the CRS to report the official election results for the November 2, 2010 General Election. Based upon feedback from County Clerks, critical improvements were made to the CRS between the Primary and the General Election. The improvements reduced the amount of paper clerks were required to mail to the G.A.B., and eliminated the number of canvasses that were rejected by the G.A.B. New step-by-step instructions were sent to all clerks and Board staff were available during and after normal work hours to provide one-on-one technical support as needed. Staff is working to make the reporting aspect of the system foolproof so that county clerks cannot choose the wrong report for certification to G.A.B. In December, an ad-hoc advisory committee of County Clerks will convene to discuss additional refinements to the G.A.B. CRS.

Statutorily, the deadline for certifying the Election was Wednesday, December 1, and canvass reports were to be received in the G.A.B. office no later than Tuesday, November 16. Electronic canvass reports were received timely from all counties. Original canvasses were received as follows:

- Nine (9) canvasses were received on November 5;
- Thirty two (32) on November 8;
- Nine (9) on November 9;
- Thirteen (13) on November 10;
- One (1) on November 11;
- Three (3) on November 12;
- Three (3) on November 15;
- One (1) on November 16; and,
- One (1) on November 20.

In accordance with the consent decree, ballots from military and overseas electors could be counted if postmarked no later than November 2, 2010, and received no later than November 19, 2010. Military amendments to the canvass were completed by November 23, and verified recount results in the CRS system by November 29, 2010.

5. Recounts

Candidates in the 31st State Senate District and 68th and 93rd Assembly Districts petitioned for recounts. All recounts were completed by Friday, November 19, 2010, and all counties conducting recounts verified recount results in the CRS system by November 29. Recounts produced no change to the winners, and the candidates in each district indicated they would not seek to appeal the results of the recount. The canvass was certified (signed by Judge David Deininger, designee of Board Chair, Judge Gordon Myse) on December 1, 2010.

6. Ballot Preparation and Compliance with Consent Decree

Ballots are required by law to be available for absentee voting no later than the 30th day before the November election. In 2010, that first business day was Monday, October 4. However, in accordance with the terms and conditions of the Consent Decree, county and municipal clerks were ordered to have absentee ballots mailed to military and overseas voters no later than October 1. In the event that ballot printers were unable to print and deliver ballots to the county clerks for distribution to municipal clerks no later than noon on October 1, county clerks were instructed to provide an electronic PDF version of the ballot to municipal clerks. The electronic ballot was to be used in lieu of the official ballot for delivery to UOCAVA voters by the method specified by the voter, i.e. mail, email or fax.

7. Preparation s for the 2011 Spring Primary and Election Cycle

The Type A Notice of 2011 Spring Election was sent to clerks on Monday, November 15. County, municipal and school district clerks were required to publish a Type A Notice no later than November 23rd. Sample write-in ballots for military voters have been prepared and are available for clerks on the G.A.B. website. Campaign finance and ballot access checklist for use by spring candidates are also available on the G.A.B. website. Staff will complete preparation of sample official spring primary and election ballots soon. Nomination papers can be circulated beginning December 1, 2010, and are due no later than 5:00 p.m. on Tuesday, January 4, 2011.

8. MOVE Act: Status of Wisconsin's Compliance with Federal Court Consent Decree

The Government Accountability Board staff is completing compliance with the Federal court Consent Decree regarding absentee voting by military and overseas voters. A final report is due to the U.S. Department of Justice (US-DOJ) by December 17 to document the number of military and overseas ballots received and counted in each municipality through the extended deadline of November 19, 2010. G.A.B. Staff is working with municipal clerks to enter their election data into the Statewide Voter Registration System (SVRS) and the Wisconsin Election Data Collection System (WEDCS), which will form the basis of the statistics required for the final report to the US-DOJ.

The consent decree required county clerks to make absentee ballots available on or before October 1, 2010, and required municipalities to deliver ballots on that day to all military and overseas electors with a request on file. As reported to the Board at its October meeting, 95 military and overseas voters with requests on file were sent absentee ballots after the deadline of October 1, 2010. Staff is seeking written explanations from each municipal clerk as to the reasons for the delay in the delivery of those ballots. The consent decree also extended the time period after Election Day in which military absentee ballots can be counted from 10 days to 17 days, or through November 19, 2010, and also included overseas absentee ballots in this extension. Of the more than 2,600 military and overseas absentee ballots which were outstanding on Election Day, approximately 101 ballots were returned and counted on November 19, 2010

9. Inter-State Voter Registration Data Sharing
(A Collaborative Initiative to Detect Possible Border Election Fraud)

One of the methods to improve the accuracy of voter information in SVRS is to share voter registration data between states, and enhance the detection of possible voter fraud, particularly the states that border Wisconsin. Board staff has continued working with local election officials and the Minnesota Secretary of State to compare and verify voter data in order to determine whether any individuals voted in both Wisconsin and Minnesota during the 2008 General Election.

Of the 35 cases that were referred to the appropriate district attorney, staff received status reports on 16 of the cases:

- For 9 cases the District Attorney determined not to file charges;
- For 6 cases the District Attorney is investigating;
- For 1 case the District Attorney declined to investigate.

In addition, 2 additional cases are being investigated by a Minnesota prosecutor. Board staff is in the process of contacting the remaining District Attorneys for the status of the cases referred to them. The next state that staff will initiate contact with will be Illinois/

10. Ensuring Election Integrity in Wisconsin

Board staff expanded its election integrity section on the agency website and was available for public access and use for the November 2 General Election. The more advanced robust system collects voter comments and complaints, including allegations of election fraud. Instructions direct members of the public where to report observations of voter irregularities. Staff closely monitor complaints and comments received from the website, and will review and make referrals to local District Attorneys whenever appropriate. This voter integrity section includes the Board's existing toll-free voter helpline, 1-866-VOTE-WIS. During the General Election several comments, complaints about election officials, complaints about election fraud and complaints about voter intimidation were received. Please refer to the Director's Report for details.

11. Summary of Survey Soliciting Clerks Satisfaction with Government Accountability Board's Communication Protocol

In response to clerks overwhelming outcry about being overburden with staff communication during the 2008 Election Cycle, staff formed an ad-hoc clerk communication advisory committee and conducted a series of listening sessions held around the State. The result of this data-gathering process was a tiered protocol for releasing emails, documents and other statewide correspondence to that went into effect October 1, 2009. In spring of this year, clerks were surveyed regarding their satisfaction with the communication protocol. Please refer to the attached titled, "Government Accountability Board Service Satisfaction Survey: Clerks Communication Protocol."

The summary shows that a large majority of the 810 respondent clerks are satisfied (or highly satisfied) with the protocol., the first question does ask for the clerks' overall opinion of the protocol. 695 of 810 clerks (86%) responded that they were either satisfied, highly satisfied or completely satisfied with the procedure..

12. Training

Please refer to the Attachment titled, "Training Summary."

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 Elections Division update to the Board at the October 11, 2010 meeting, clerks processed approximately 189,539 HAVA Checks with DOT/SSA on voter applications in SVRS. This is much higher than in the previous report, due to Election Day Registrations being processed for the September 14, 2010 Partisan Primary and November 2, 2010 General Election.

2. Retroactive HAVA Checks Status

A Final Report on the Retroactive HAVA Check Project was presented to the Board at the March 23, 2010 meeting. Staff has continued to provide updates to the Board on the Retroactive HAVA Check non-matches at recent Board meetings.

As previously reported, City of Milwaukee mailed 30-Day Notice letters on September 20, 2010, to the voters whose DMV Ping Letter was returned as undeliverable. On October 21, after 30 days, the City of Milwaukee updated voters who did not respond requesting a continuation of their registration as inactive.

On October 7, Board staff mailed 30-Day Notice letters on behalf of the clerks in the rest of the municipalities that have voters whose Retroactive HAVA Check DMV Ping Letter was returned as undeliverable. Over 8,000 letters were returned as undeliverable, and in accordance with the state statues, their voter records were marked as inactive. Board staff will also inactivate any voters who received a letter, but did not respond. Staff is waiting until the Election Day

Registrations and voter participation for the November General Election are recorded in SVRS prior to inactivating the non-responders to ensure that voters who have since moved or updated their address are not marked inactive.

Board staff is also working with the Department of Transportation (DOT) to find innovative ways to resolve the HAVA Check non-matches that remain from the Retroactive HAVA Check Project, as well as the HAVA Checks that municipal clerks run on a regular basis. This month, we began discussions with DOT on providing Board staff the ability to look-up non-matches in DOT's system to gather more information on why they do not match. We are also exploring bundling non-matches into categories and investigating them by type of non-match.

3. Voter Registration Statistics

As of Monday, November 29, 2010, there were a total of 4,569,368 voter records stored in SVRS. Of this number, 3,473,124 were active voters; 848,675 were inactive; and 247,569 were cancelled voters.

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.

The number of records in SVRS has slightly increased since the last report due to the daily work of clerk users and Board staff. 7,341 merges were completed in SVRS between October 11, 2010, and November 29, 2010.

4. G.A.B. Help Desk

The G.A.B. Help Desk is supporting over 1,700 active SVRS users. The Help Desk staff assisted with processing the canvass, data requests and testing SVRS improvements. Help Desk staff is continuing to improve and maintain the two training environments that are being utilized in the field.

The majority of calls during October 2010 were from clerks requesting assistance with setting-up the November 2, 2010 General Election, issuing absentee ballots, printing absentee labels and running reports. On Election Day, the majority of calls were from electors regarding polling locations and hours. Calls for November consisted of clerks requesting assistance entering data into the G.A.B. Canvass Reporting System and the Wisconsin Election Data Collection System, assistance reconciling election data, entering Election Day Registrations (EDR) and running reports. Help Desk staff assisted with configuring and installing SVRS on many new clerk computers due to the number of new SVRS data entry users assisting clerks with EDR entry.

G.A.B. Help Desk Call Volume	
September 2010 (from September 24, 2010)	215
October 2010	1,225
November 2010 (as of November 30, 2010)	1,934
Total Calls for Period	3,374

To alleviate distractions from the Reception Desk during the November General Election, calls from the Front Desk's main number and the 800 number were transferred to the Help Desk. The Help Desk operated on extended hours from Wednesday, October 27, 2010, through Wednesday, November 3, 2010.

5. Voter/Felon Comparison Audit

No new information since the July 21-22, 2010 Board meeting.

6. SVRS Facilitated Mail-In Registration

With approval from the Board, staff is developing a system using the Voter Public Access website and SVRS to facilitate mail-in voter registration. This is a web-based portal where voters can fill in voter registration information, and then print off and mail in a completed voter registration form. The data is saved in SVRS, so when the clerk receives the mailed in form, they can simply review and approve the pending voter application in SVRS rather than having to data enter the information on the form.

The new systems will be demonstrated to several focus groups in December to gather feedback and finalize the system. Staff plans to demonstrate the system to the following groups:

- A. Board staff
- B. An ad-hoc committee of municipal and county clerks
- C. The Wisconsin Election Assistance Council
- D. A public panel including college students and other interested community members and groups

It is intended that the system will be ready for voters to register for the 2011 Spring Election.

7. SVRS Core Activities

A. Software Upgrade(s)

Several updates were installed SVRS since the last Board meeting. Three new patches, SVRS Version 7.1 Patches 2, 3 and 4, were installed in SVRS. These patches made improvements to existing reports and mailings that are used during the election cycle.

A new version of the Wisconsin Election Data Collection System (WEDCS) was installed on November 1, 2010 in anticipation of entry of General Election information by clerks. This version addressed some usability suggestions made by clerk users.

A new version of the G.A.B. Canvass Reporting System was also installed on November 1, 2010. This new version addressed some of the challenges encountered by county clerks during the September 2010 Partisan Primary canvass process, which was the first time the system was used statewide. Several reports were also updated in the Canvass system in response to requests from clerk users.

B. System Outages

There were three service interruptions that impacted users' access to SVRS since the last Board meeting:

- On Friday, October 15, 2010, at approximately 11:00 a.m., the reporting functions of SVRS became unavailable due to a problem with the replication process in the application. Reporting services were restored by the end of the day. G.A.B. developers were unable to reproduce the issue that caused the reporting outage.
- On Friday, November 5, 2010, starting at 11:55 a.m., DET began experiencing intermittent network outages that impacted some SVRS users. 310 SVRS users were

simultaneously kicked off the system. Most users were able to log back in and continue to function. The intermittent outages continued until approximately 12:45 p.m. Network connectivity/hardware problems were determined to be the cause of the outage.

- On Thursday, November 11, 2010, beginning in the early morning, one of the four SVRS servers that is used for logging into the system was not functioning properly. Any users attempting to log-in who hit that server were not able to access the application. The problem was corrected at approximately 8:30 a.m.

C. Data Requests

The Board 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.

Due to the past fall election events, Board staff received many data requests since the last report. The following statistics demonstrate the activity in this area from the last Board report through November 24, 2010:

- Fifty-four (54) inquiries were received requesting information on purchasing electronic voter lists from the SVRS system.
- Thirty-one (31) electronic voter lists were purchased.
- No paper voter lists were purchased.
- \$13,090 was received for the 31 electronic voter lists requested.

Election Division Administrator Represents G.A.B. and Wisconsin at U. S. Election Assistance Commission's Sponsored National Election Review Roundtable

The G.A.B. Elections Division Administrator was invited by the U. S. Election Assistance Commission to participate in a National Election Review Roundtable debriefing of the November 2, 2010 mid-term election. The focus of the discussion however, was on the performance of voting systems. The Roundtable was held on Thursday, December 2, 2010, in Washington, DC. Participants included:

- US-EAC Commissioners
- Voting System Manufacturers
- Voting System Test Labs
- US-EAC Consultants
- State Election Officials
- County Election Officials

One of the major take-away points that was the consensus of all the participants was that given the fact that legacy systems are reaching their life cycle and spare parts are increasingly difficult to find, a new generation of voting systems will have to be procured. Since states are experiencing financial difficulty and since there is no funding initiative in the President's budget to assist states with the purchase of new voting systems, future election problems across the nation are likely to arise.

30 Day Forecast

1. Assist Municipal Clerks and candidates to prepare for the 2011 Spring Election Cycle.
2. In December 2010, convene an ad-hoc advisory committee of County Clerks to discuss additional refinements to the G.A.B. Canvass Reporting System.
3. In December 2010, prepare final report on Wisconsin's compliance with the Federal consent decree regarding military and overseas electors.
4. Continue to develop the G.A.B.'s SVRS Facilitated Mail-In Registration Initiative
5. Continue the collaboration with the Department of Transportation (DOT) to find innovative ways to resolve the HAVA Check non-matches that remain from the Retroactive HAVA Check Project, as well as the HAVA Checks that municipal clerks run on a regular basis.
6. Continue the Inter-State Voter Registration Data Sharing Initiative. Contact will be made with the State Illinois.
7. Close-out the \$2 million dollar competitively-awarded Election Date Collection Grant. Please refer to the Director's Report for information about PEW's interest in the Wisconsin Election Date Collection System (WEDCS) funded by the \$2 million dollars National Election Data Collection Grant through the U. S. Election Assistance Commission.

Action Items

None.

2010 Fall Election Cycle Call Log Evaluation

September 14, 2010 Primary Election

- Total calls: 771*
- Calls during regular business hours: 716 (93%)
- Calls during extended hours: 55 (7%)
- Calls on Election Day: 300 (39%)
- Calls on day before election: 150 (19%)
- Calls on other days: 321 (42%)

** Note: This figure does not include the 49 calls requesting polling place information (VPA), which made up 6% of our overall call volume.*

November 2, 2010 General Election

- Total calls: 1594*
- Calls during regular business hours: 1291 (81%)
- Calls during extended hours: 303 (19%)
- Calls on Election Day: 540 (34%)
- Calls on day before election: 313 (20%)
- Calls on other days: 741 (46%)

** Note: This figure does not include the 767 calls requesting polling place information (VPA), which made up 32% of our overall call volume.*

For both elections, on the day before the election

- Calls regarding election administration issues: 103 (22%)
- Calls regarding SVRS: 101 (22%)
- Calls regarding absentee voting: 91 (20%)
- Calls regarding the voter registration process: 52 (11%)
- Call regarding proof of registration: 26 (6%)

The remainder were scattered across several categories.

For both elections, on Election Day

- Calls regarding election administration issues: 244 (29%)
- Calls regarding absentee voting: 146 (17%)
- Calls regarding issues at the polling place: 93 (11%)
- Calls regarding the voter registration process: 89 (11%)
- Calls regarding SVRS: 69 (8%)
- Calls regarding proof of registration: 64 (8%)
- Calls regarding voting machine issues: 58 (7%)

The remainder were scattered across several categories.

2010 Fall Election Cycle Call Log Evaluation

Election Activity Logs

A Comparison of Call Activity for the September Primary and the November General Election

As we did for the Spring election cycle, Board staff collected information on the number and type of inquiries fielded during extended hours and on Election Day for both the 2010 September and November elections. The data, which included the name and position of the person inquiring, what they were inquiring about and how their inquiry was resolved, was entered into a uniform template that was analyzed to find any trends, patterns or popular lines of inquiry that might be present that could help in the development of future extended hour plans. The results are summarized in the tables below:

September Primary Election Activity Logs

Inquiries Received	Number	Percent
On Election Day (Regular Business Hours)	264	83
On Election Day (Extended Hours only)	36	11
The Day Before Election Day (Extended Hours only)	8	3
Other Days (Extended Hours only)	11	3
Total	319	100

November General Election Activity Logs

Inquiries Received	Number	Percent
On Election Day (Regular Business Hours)	294	49
On Election Day (Extended Hours only)	246	41
The Day Before Election Day (Extended Hours only)	35	6
Other Days (Extended Hours only)	21	4
Total	596	100

Combined Data for the Day Before the Sept. 14 and Nov. 2 Elections

Inquiries Received Regarding	Number	Percent
Election Administration	103	22
Statewide Voter Registration System	101	22
Absentee Voting	91	20
Voter Registration Process	52	11
Proof of Registration	26	6
Training Opportunities	13	3
Other	77	16
Total	463	100

Combined Data for Election Day, Sept. 14 and Nov. 2

Inquiries Received Regarding	Number	Percent
Election Administration	244	29
Absentee Voting	146	17
Issues at the Polling Place	93	11
Voter Registration Process	89	11
Statewide Voter Registration System	69	8
Proof of Registration	64	8
Voting Machine Issues	58	7
Other	77	9
Total	840	100

Conclusions from the Election Activity Logs

As was observed with the analysis of the Extended Hours program for the Spring election cycle, the data show that it is worthwhile for the Board to offer clerks and the public extended hours on Election Day, as well as the day prior. As with the Spring cycle, the majority of calls received the day before the election related to SVRS activity, especially the printing of poll books.

The single largest volume of inquiries in any one category comes on Election Day, and relates to the process of Election Administration. This encompasses the wide array of issues that clerks and poll workers face, especially as unusual issues arise. This suggests that we must continue to do more to train our clerks and poll workers, to ensure that they are well-prepared for the myriad issues that arise on Election Day.

What is your overall level of satisfaction with the G.A.B./Clerk Communication Protocol, instituted on October 1, 2009?					
Completely Satisfied	Highly Satisfied	Satisfied	Dissatisfied	Very Dissatisfied	No Response
84 10%	205 25%	406 50%	15 2%	4 0%	96 12%

What is your level of satisfaction with G.A.B. communications' succinctness, easiness to read and quality of information contained?					
Completely Satisfied	Highly Satisfied	Satisfied	Dissatisfied	Very Dissatisfied	No Response
75 9%	193 24%	424 52%	16 2%	5 1%	97 12%

What is your level of satisfaction with the High, Medium and Low prioritization used in G.A.B. communications?					
Completely Satisfied	Highly Satisfied	Satisfied	Dissatisfied	Very Dissatisfied	No Response
114 14%	229 28%	332 41%	27 3%	8 1%	100 12%

What is your level of satisfaction with the volume of G.A.B. communications since October 1, 2009?					
Completely Satisfied	Highly Satisfied	Satisfied	Dissatisfied	Very Dissatisfied	No Response
161 20%	163 20%	415 51%	56 7%	10 1%	5 1%

What is your level of satisfaction with the frequency of G.A.B. communications since October 1, 2009?					
Completely Satisfied	Highly Satisfied	Satisfied	Dissatisfied	Very Dissatisfied	No Response
48 6%	169 21%	435 54%	49 6%	7 1%	102 13%

What is your level of satisfaction with the dedicated Elections Division website page "Recent Clerk Communications" in providing you ease of access to G.A.B. communications?					
Completely Satisfied	Highly Satisfied	Satisfied	Dissatisfied	Very Dissatisfied	No Response
108 13%	224 28%	348 43%	12 1%	2 0%	116 14%

What is your level of satisfaction with the amount of information, technical assistance and training you received in preparation for the 2010 Spring Election Cycle?					
Completely Satisfied	Highly Satisfied	Satisfied	Dissatisfied	Very Dissatisfied	No Response
78 10%	191 24%	400 49%	16 2%	6 1%	119 15%

What is your level of satisfaction with the quality of information, technical assistance and training you received in preparation for the 2010 Spring Election Cycle?					
Completely Satisfied	Highly Satisfied	Satisfied	Dissatisfied	Very Dissatisfied	No Response
81 10%	202 25%	390 48%	15 2%	3 0%	119 15%

What is your level of satisfaction with the Elections Division in providing you with service during the 2010 Spring Election Cycle?					
Completely Satisfied	Highly Satisfied	Satisfied	Dissatisfied	Very Dissatisfied	No Response
92 11%	200 25%	362 45%	6 1%	3 0%	147 18%

What is your level of satisfaction with the administration of the 2010 Spring Election Cycle in terms of the smoothness of running the election?					
Completely Satisfied	Highly Satisfied	Satisfied	Dissatisfied	Very Dissatisfied	No Response
92 11%	200 25%	386 48%	6 1%	2 0%	124 15%

What was your level of satisfaction with the extended hours offered during the 2010 Spring Election Cycle?					
Completely Satisfied	Highly Satisfied	Satisfied	Dissatisfied	Very Dissatisfied	No Response
112 14%	171 21%	310 38%	9 1%	6 1%	202 25%

ATTACHMENT “TRAINING”

GAB Election Division’s Training Initiatives
10/11/2010 – 12/13/2010

Training Type	Description	Class Duration	Target Audience	Number of Classes	Number of Students
SVRS “Beginning” Application and Election Management	Instruction in core SVRS functions – how to navigate the system, how to add voters, how to set up elections and print poll books.	16 hours	New users of the SVRS application software.	Training classes held in Madison for internal staff and clerks.	8
SVRS “Advanced” Election Management	Instruction for those who have taken “initial” SVRS training and need refresher training or want to work with more advanced features of SVRS.	4 types of classes: Election Management; Absentee Process; HAVA Interfaces; Reports, Labels & Mailings; 4 hours each	Experienced users of the SVRS application software.	Classes held in Madison for internal staff and clerks.	8
Voter Registration	Basic training in adding voter registration applications, searching for voters, updated voters.	3 hours	Municipal and county clerks, staff and temp workers who provide election support only.	The WBETS site is available to train temporary workers.	Ongoing, self-directed training is available online.
WBETS	Web Based Election Training System. Still under development. Reference materials were made available to the clerks in February; voter registration training made available to clerks 3/24/2008.	Varies	County and municipal clerks and their staff.	Phase 1 of eLearning training plan close to completion; Phase 2 under discussion.	Site is available for clerks to train temp workers in data entry; relies are also able to access the site upon request.

ATTACHMENT “TRAINING”

GAB Election Division’s Training Initiatives
10/11/2010 – 12/13/2010

Training Type	Description	Class Duration	Target Audience	Number of Classes	Number of Students
HAVA Interfaces	Instruction in the user of the interface functionality in SVRS to check death records, felon records, DOT records and duplicate records against voter records as part of HAVA compliance requirements.	2 hours	All clerks (staff as determined by clerk).	Pilot of web-based training presented to the Standards Committee on May 14, 2008. Lessons available online June 2, 2008.	Eventually 2000+
WisLine	Series of 10 programs designed to keep local government officers up to date on the administration of elections in Wisconsin.	80 minute conference call, hosted by the UW Extension, conducted by Elections Division staff.	Clerk and chief inspectors; campaign treasurers and candidates.	October 20, 2010: Important Points to Remember for the November Election; October 27, 2010: Election Administration Training for School District Clerks; November 17, 2010: Getting Candidates on the Spring Ballot; December 8, 2010: Caucus Procedures for Towns and Villages.	Average 200 per program.

ATTACHMENT “TRAINING”

GAB Election Division’s Training Initiatives
10/11/2010 – 12/13/2010

Training Type	Description	Class Duration	Target Audience	Number of Classes	Number of Students
Other initiatives:	<ul style="list-style-type: none"> • Board staff gave election administration and SVRS presentations to municipal clerks at WMCA District meetings in River Falls, Racine and Tomah. • Board staff working on migration of several training programs to online and DVD formats. • Board staff compiled and posted municipal clerk training hours for the 2009-2010 in preparation for the close of the term. 				

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KEVIN J. KENNEDY
Director & General Counsel

MEMORANDUM

DATE: December 13-14, 2010 Meeting

TO: Members, Wisconsin Government Accountability Board

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

Prepared by: Jonathan Becker, Administrator
Ethics and Accountability Division

SUBJECT: Ethics and Accountability Division Program Activity

Campaign Finance Program

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

2010 Fall Pre-Primary and Pre-Election Campaign Finance Reports

Staff is continuing to review and audit the 2010 Fall Pre-Primary and Pre-Election campaign finance reports filed by those candidates and committees that participated in the fall 2010 election. Reports were due on July 20th, 2010. As of 8:00 a.m. on December 3, 2010 **only 1** pre-election report has not been received. Staff is continuing to follow up with late filers to obtain and process their campaign finance reports.

2010 Campaign Finance Activity – Summary Report

Staff recently conducted an analysis of campaign money raised and spent by all registered political committees in Wisconsin in calendar year 2010. To date in 2010, approximately **\$51.4 million** was reported spent by all political committees excluding those corporations registered to make independent expenditures only. Candidates running for state office in the fall 2010 election reported spending approximately **\$25.6 million** and raising **\$26.6 million** since January 1, 2010. Included as an attachment is a report summarizing campaign finance activity that was reported to the G.A.B. from January 1, 2010 through the most recently filed reports. In the coming months staff will continue to analyze the campaign finance activity reported for the 2010 election and build on the information provided today to produce a more comprehensive analysis and report.

2011 January Continuing Campaign Finance Notices

During the week of December 28, 2010 staff will send notices to all active, non-exempt committees informing them of their statutory requirement to file a campaign finance report; these reports are to be filed with the G.A.B. on or before January 31, 2011. For candidates and committees that participated in the fall 2010 election, the report covers all campaign finance activity from October 19, 2010 through December 31,

2010. For committees that did not participate in the fall 2010 election, this report covers all campaign finance activity from July 1, 2010 through December 31, 2010.

Campaign Finance Information System Update

Staff continues to work with PCC Technology and the Department of Administration – Division of Enterprise Technology to improve the performance of the Campaign Finance Information System. A code release is taking place this week that will address some small report formatting and display issues discovered in the application. This release will also make other enhancements to a few minor areas in the user interface and to some search and auditing tools for both the public and G.A.B. staff. The next code release is scheduled prior to the filing of the January 2011 reports, in mid January, 2011.

Lobbying Update

Tracey Porter, Ethics and Accountability Specialist
Tommy Winkler, Assistant Division Administrator

Preparation for the 2011-2012 Legislative Session

On Monday, November 22nd, 2011-2012 lobbying registration materials were mailed to approximately 1500 lobbyists and lobbying organizations informing them of the need to register for the upcoming 2011-2012 legislative session. Lobbying registrations, licenses and authorizations expire at the end of each legislative session; organizations and lobbyists have to register and be licensed and authorized for each session.

Included in the packet of materials sent to lobbyists and lobbying organizations is a cover letter; pre-printed registration forms; filing instructions; a communication about lobbying training seminars offered by the G.A.B. in early January, 2011; a FOCUS marketing piece; and information about the new lobbying web site coming in mid-2011. Also included in the registration materials is information explaining the increase in fees for lobbying licenses in the 2011-2012 session. Single licenses will cost \$350, up from \$250, and multiple licenses will cost \$650, up from \$400. All funds generated from the increased fees are going to fund the creation of the new lobbying web site.

Lobbying Training Seminars

Government Accountability Board staff will conduct eight lobbying training seminars in early January, 2011. These 90 minute sessions are intended to explain the lobbying law's registration, licensing, and reporting requirements. Staff provides attendees information on how to register and become licensed, how to report lobbying communications, and how to use the online reporting tool to complete and file 6 month Statement of Lobbying Activities and Expenditures reports. Lobbyists and members of the lobbying community can sign up online to reserve a place in one of the sessions. All training seminars are held at the Government Accountability Board office in Madison.

Final 6 Month Statement of Lobbying Activities and Expenditures Report for 2009-2010 Session

Lobbying principal organizations and lobbyists registered and licensed as of July 1, 2010 in this legislative session are required to complete and file a six month Statement of Lobbying Activities and Expenditures reports covering lobbying activity and expenditures from July through December, 2010. These reports are due on or before Monday, January 31, 2011. Filing notices will be sent to all lobbyists and lobbying organizations required to file on January 3 and e-mail reminders will be sent throughout January to those lobbyists and lobbying organizations that have not filed.

Lobbying Registration and Reporting Information

Government Accountability Board staff continues to process 2009-2010 lobbying registrations, licenses and authorizations. Processing performance and revenue statistics related to this session's registration is provided in Table 1 below.

TABLE 1

2009-2010 Legislative Session: Lobbying Registration by the Numbers (Data Current as of December 1, 2010)			
	Number	Cost	Revenue Generated
Organizations Registered	786	\$375	\$294,750
Lobbyists Licenses Issued (Single)	675	\$250	\$168,750
Lobbyists Licenses Issued (Multiple)	143	\$400	\$57,200
Lobbyists Authorizations Issued	1,766	\$125	\$220,750

New Lobbying Website Project Update

Work continues by the Department of Administration's IT team on the development of a new lobbying website and online reporting application to be ready for the 2011-2012 legislative session. The system has now been deployed to DOA servers and work continues on the lobbying reporting, registration, and administration functionality. Staff will be providing a brief demonstration the public portion of the new lobbying web site to those members of the lobbying community who are attending the lobbying seminars in January, 2011. Staff will be creating and working with a focus group of members from the lobbying community, demonstrating portions of the application and collecting comments on how to improve the system's functionality and user interface. This approach allows staff to utilize feedback from system users and incorporate it into the final product. It is anticipated that these focus group sessions will begin in February, 2011.

Financial Disclosure Update

Cindy Kreckow, Ethics and Lobbying Support Specialist
Tommy Winkler, Assistant Division Administrator

2011 Spring Election – Candidates Filing Statements of Economic Interests

State Supreme Court, appellate court, circuit court, and municipal court candidates are required under Chapter 19.43(4), *Wisconsin Statutes*, to file a Statement of Economic Interests with the Government Accountability Board in order to have their name appear on the ballot for the spring election. On November 22nd, pre-printed Statements of Economic Interests were mailed out to **140** incumbent judges who are up for re-election in the spring of 2011. These statements are to be filed with the G.A.B. on or before 4:30 p.m. on Friday, January 7, 2011. Staff will receive and process these financial disclosure statements throughout the rest of December leading up to the January 7th filing deadline.

2011 Statements of Economic Interests Annual Filing Preparation

Government Accountability Board staff is making final preparations for the 2011 Statement of Economic Interests filing period. Database records, forms, instructions and reports are updated to reflect the upcoming filing year. Staff finished identifying those technical college positions at each Wisconsin technical college that are required to file a Statement of Economic Interests with the G.A.B. Staff also identified active reserve judges and mailed pre-printed copies of their 2011 Statement of Economic Interests to them in early December. Reserve judges are required to file a Statement of Economic Interests with the G.A.B. within 21 days of taking a case.

Beginning on Monday, January 24, 2011, staff will mail out pre-printed statements in 8 staggered batches to state public officials required to file a statement with the G.A.B. on or before 4:30 p.m. on April 30th, 2011. In response to comments received regarding last year's filing communication, the cover letter that accompanies the pre-printed statement and filing instructions this year respectfully asks that the filer complete and return his/her statement prior to the filing deadline for a timely processing of his/her statement but makes clear that the statutory filing deadline is April 30th, 2011.

State of Wisconsin Investment Board Quarterly Transaction Reports

G.A.B staff prepared and will send out **43** quarterly financial disclosure statements to State of Wisconsin Investment Board members and staff required to file quarterly reports on January 3rd, 2011. 4th quarter statements are to be completed and returned to the G.A.B. no later than January 31, 2011.

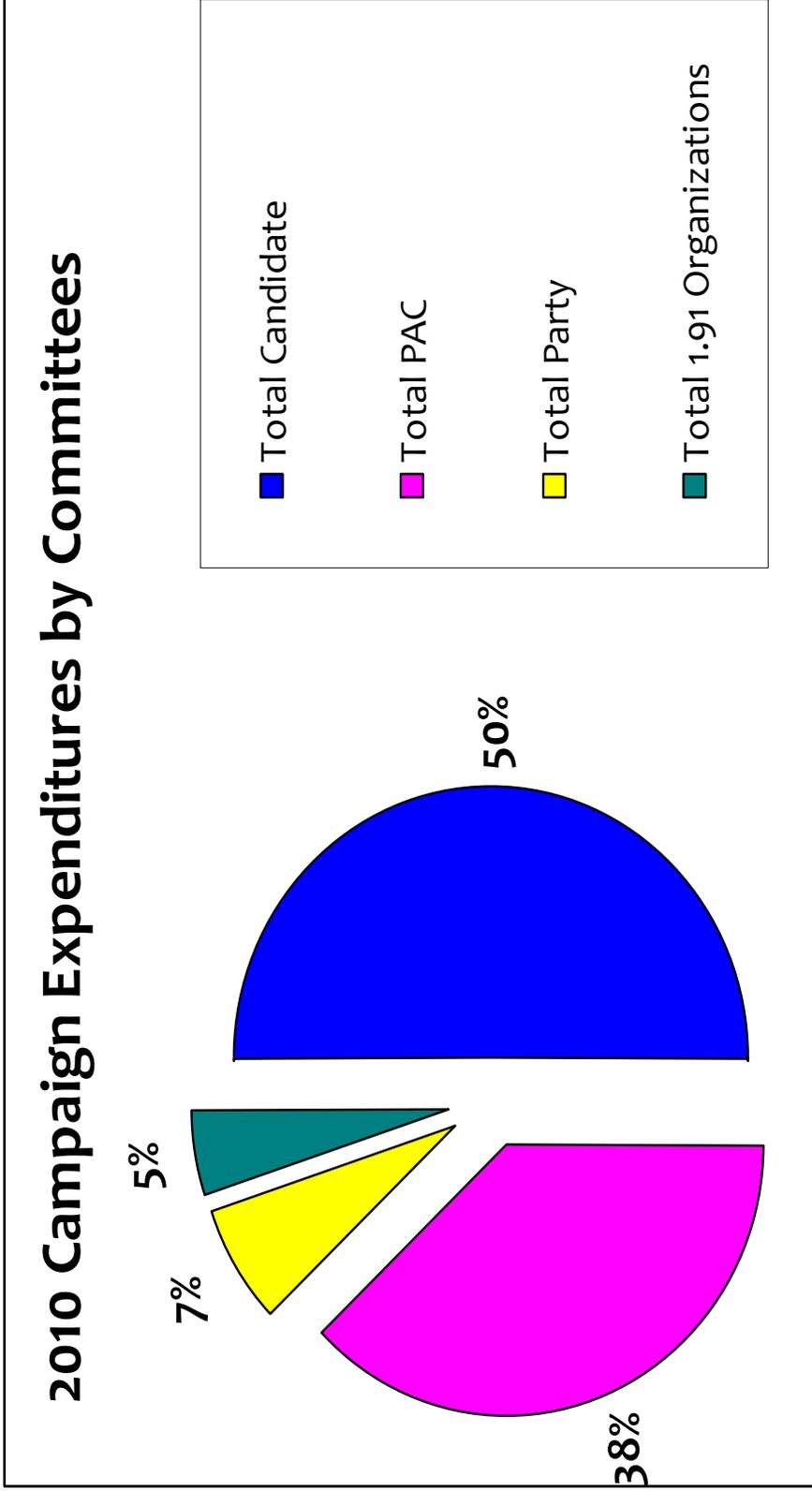
Wisconsin Government Accountability Board
Ethics and Accountability Division
December - 2010

2010 Campaign Finance Activity

Summary Report



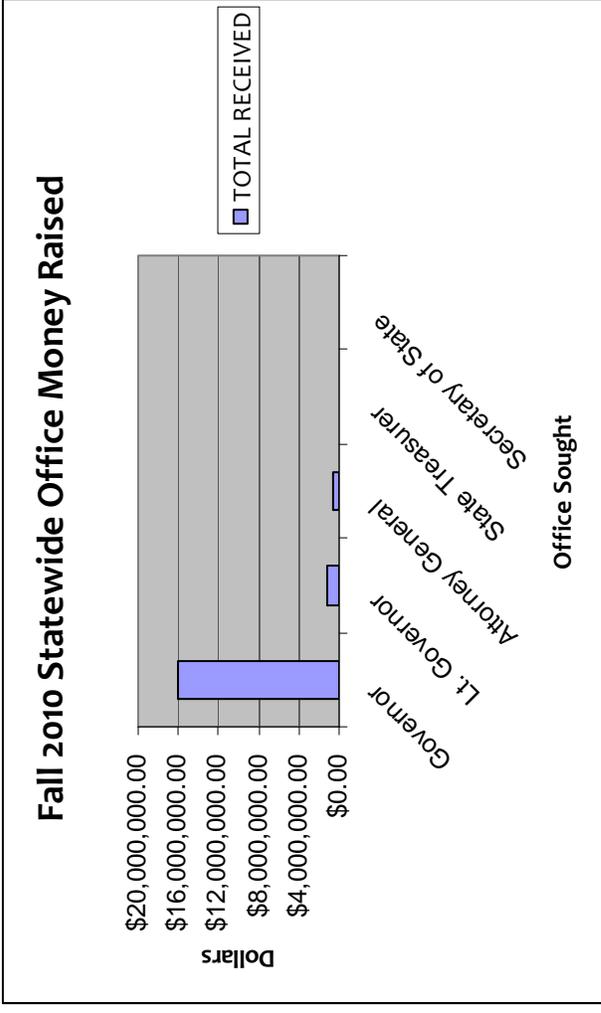
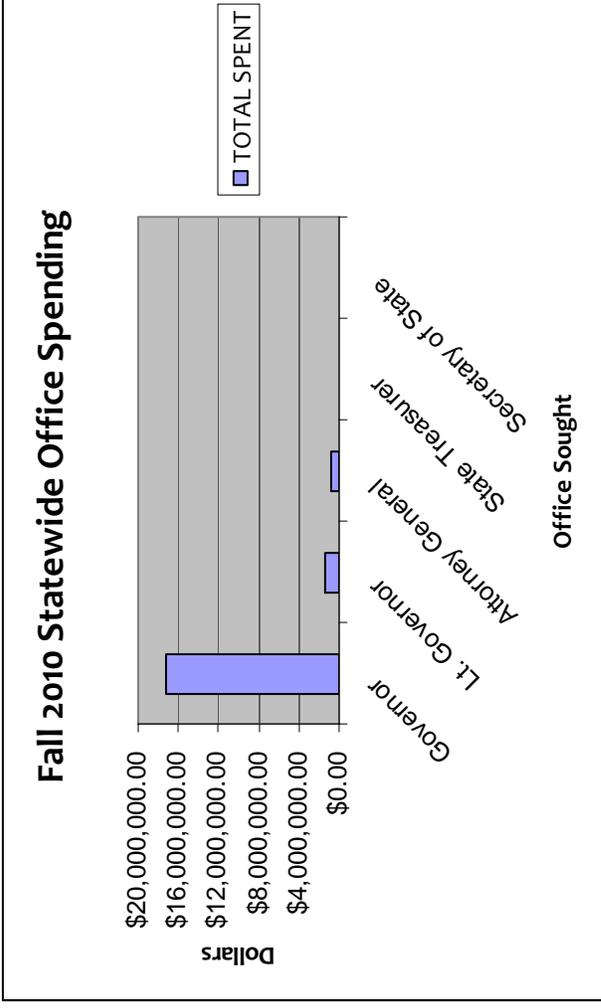
2010 Campaign Spending by Committees



Committee Type	Money Spent
Total Candidate	\$25,643,788.27
Total PAC	\$19,556,003.13
Total Party	\$3,700,478.29
Total 1.91 Organizations	\$2,521,978.00

Fall 2010 Statewide Offices Up for Election

The offices of Governor, Lieutenant Governor, Attorney General, State Treasurer and Secretary of State

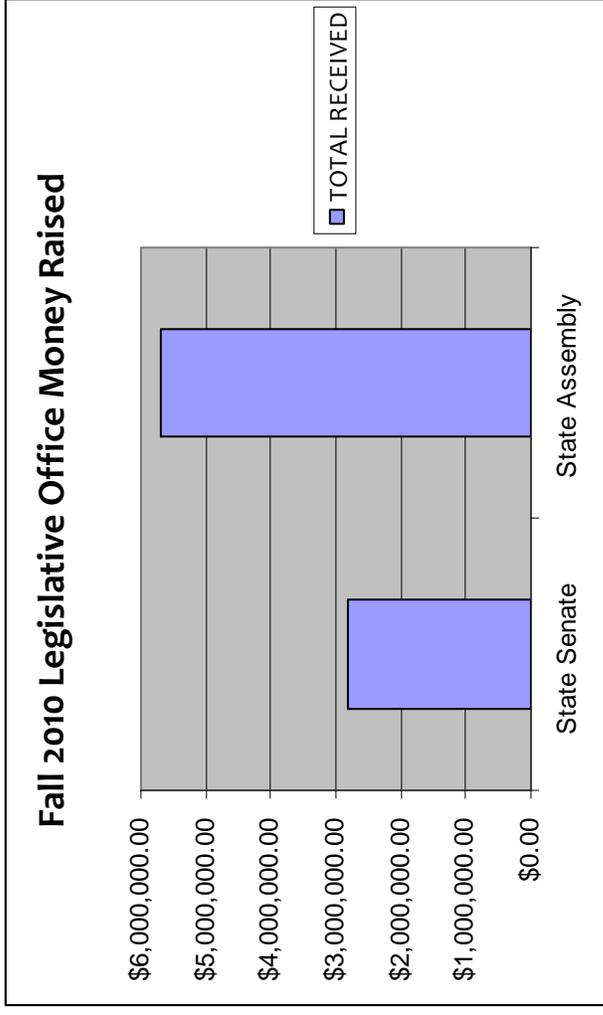
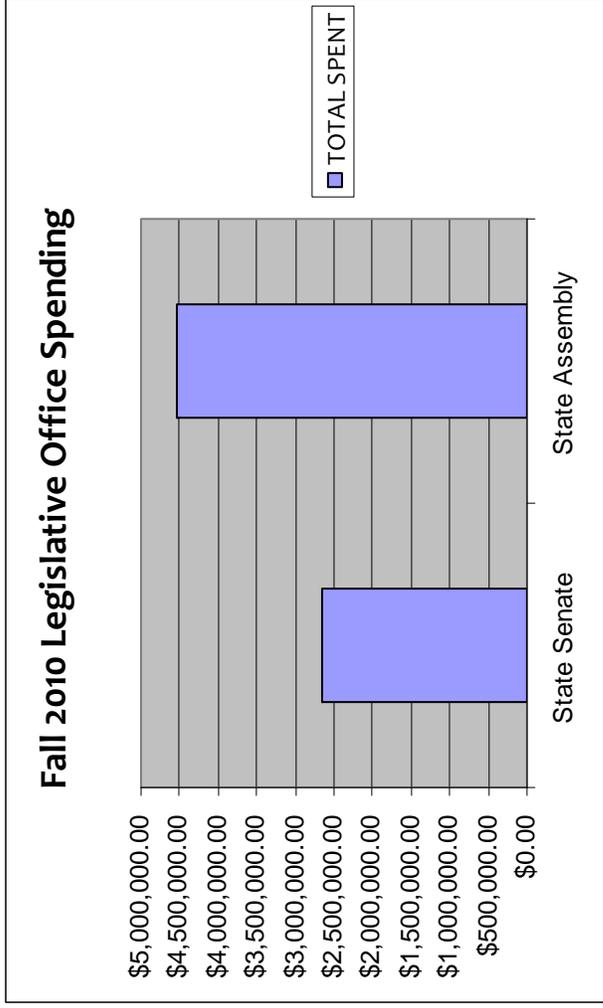


OFFICE	TOTAL SPENT	TOTAL RECEIVED
Governor	\$17,299,418.49	\$16,096,094.37
Lt. Governor	\$1,483,120.68	\$1,246,229.85
Attorney General	\$815,260.98	\$692,721.36
State Treasurer	\$17,815.77	\$21,510.15
Secretary of State	\$8,851.22	\$49,524.61

⊕ Total Money Spent by All Candidates Running for a Statewide Office **\$18,289,657.00**
 Total Money Received by All Candidates Running for a Statewide Office **\$18,106,080.00**

Fall 2010 Legislative Offices up for Election

The offices of State Senate – Odd Districts 1 through 33, and State Assembly (17 Senate and 99 Assembly seats)



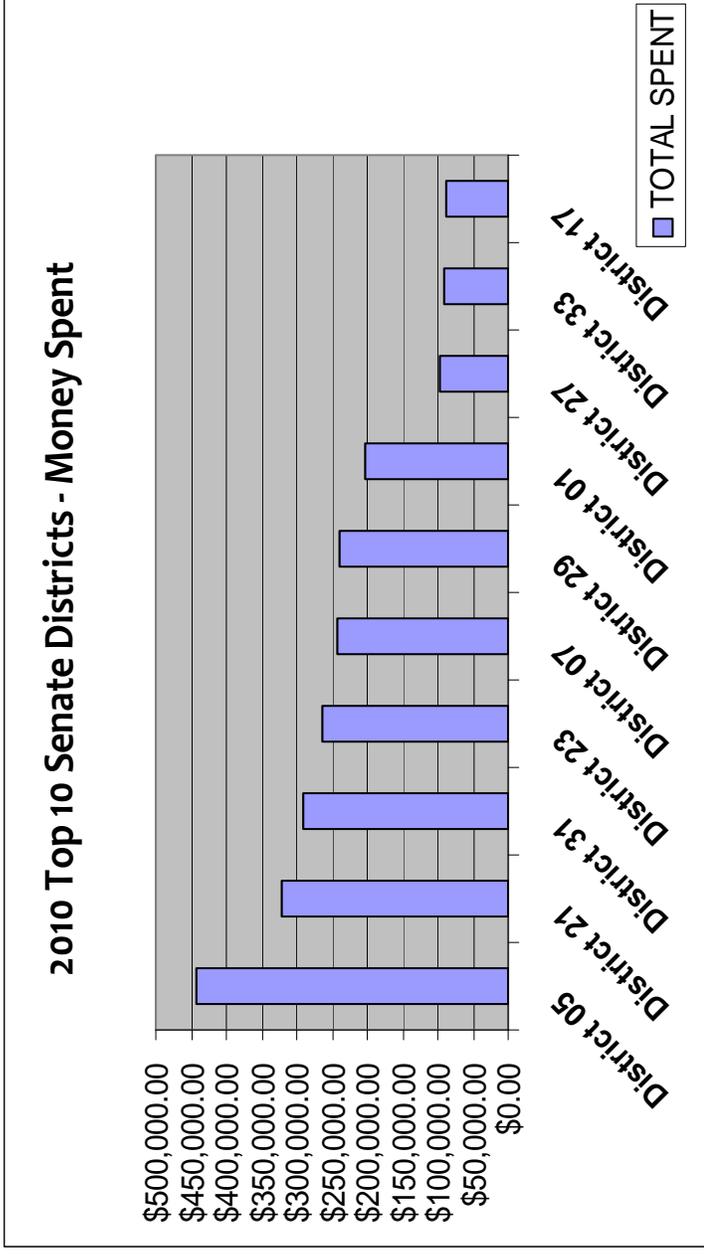
OFFICE	TOTAL SPENT	TOTAL RECEIVED
State Senate (Odd # Districts 1-33)	\$2,649,490.63	\$2,808,270.97
State Assembly (All 99 Districts)	\$4,531,633.89	\$5,703,841.20

Total Money Spent by All Candidates Running for a Legislative Office **\$7,181,124.00**

Total Money Received by All Candidates Running for a Legislative Office **\$8,512,112.00**

Top 10 Senate Districts – Money Spent

TOP SENATE DISTRICTS	TOTAL SPENT
District 05	\$443,409.26
District 21	\$320,457.47
District 31	\$289,715.31
District 23	\$263,589.29
District 07	\$241,187.41
District 29	\$239,284.19
District 01	\$203,781.47
District 27	\$96,213.88
District 33	\$89,425.87
District 17	\$87,436.99



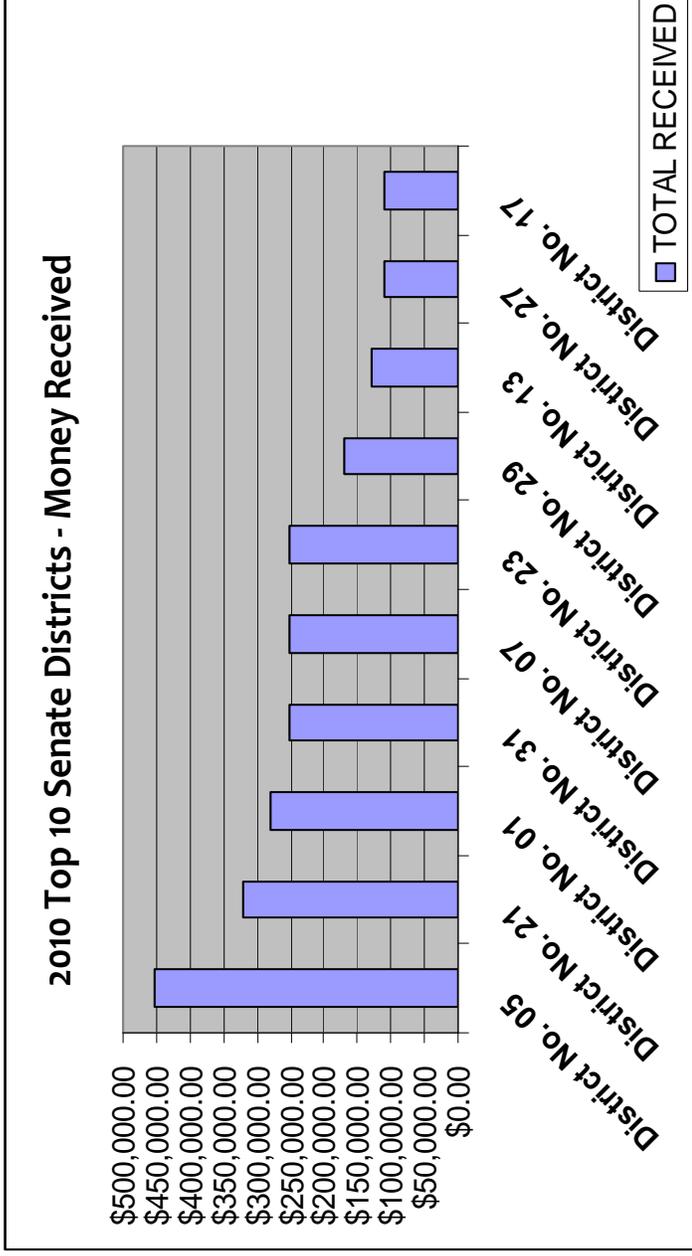
Total Money Spent by Candidates in the Top 10 Senate Districts

\$2,274,501.00

83 **This is 85.9% of all the money spent by candidates in Senate races.**

Top 10 Senate Districts – Money Received

TOP SENATE DISTRICTS	TOTAL RECEIVED
District No. 05	\$453,002.32
District No. 21	\$320,366.54
District No. 01	\$278,883.10
District No. 31	\$252,803.81
District No. 07	\$252,485.28
District No. 23	\$250,182.79
District No. 29	\$170,599.42
District No. 13	\$130,079.97
District No. 27	\$111,560.71
District No. 17	\$108,550.40



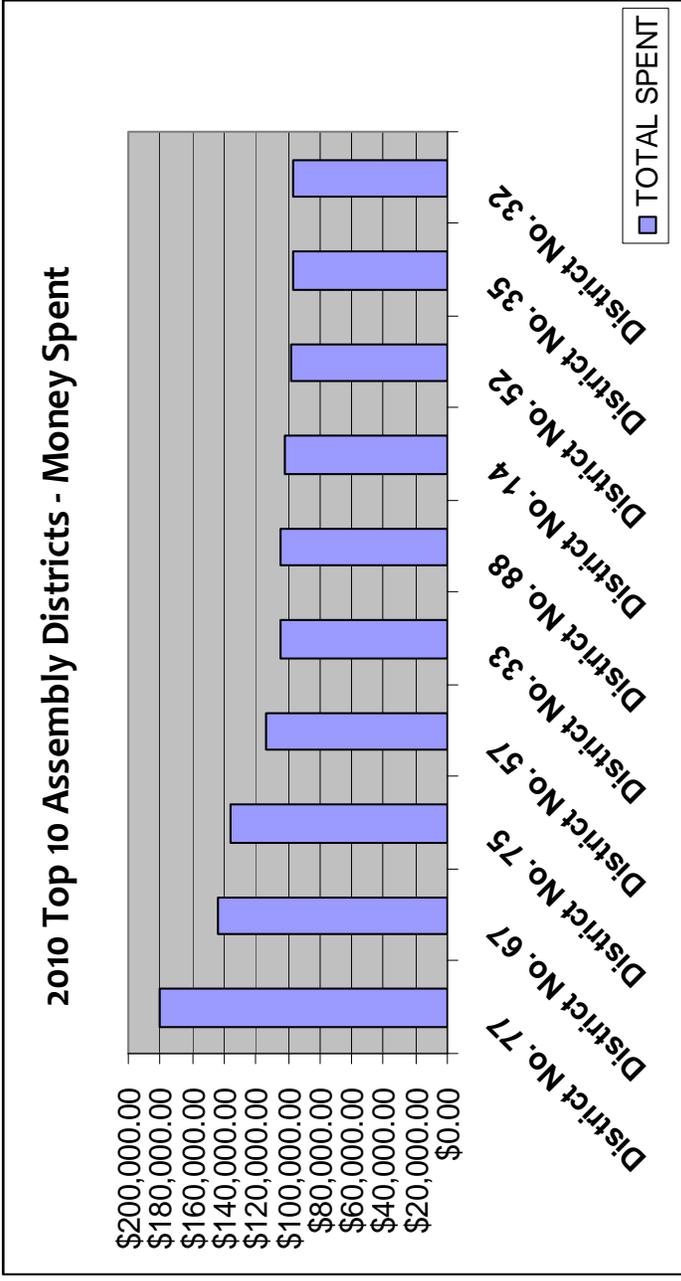
Total Money Received by Candidates in the Top 10 Senate Districts

\$2,328,514.00

This is 82.9% of all the money received by candidates in Senate races.

Top 10 Assembly Districts – Money Spent

TOP ASSEMBLY DISTRICTS	TOTAL SPENT
District No. 77	\$180,485.54
District No. 67	\$143,636.90
District No. 75	\$135,418.46
District No. 57	\$113,706.10
District No. 33	\$105,152.06
District No. 88	\$104,212.14
District No. 14	\$102,329.82
District No. 52	\$98,582.07
District No. 35	\$96,401.19
District No. 32	\$96,248.32



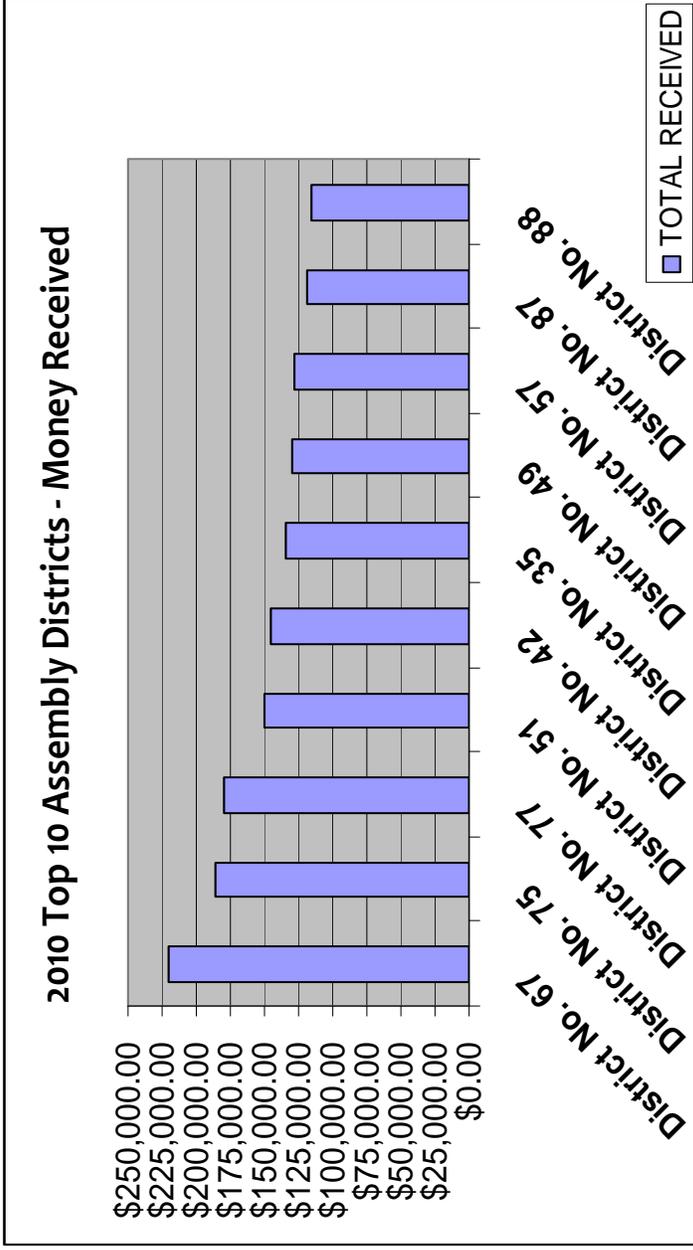
Total Money Spent by Candidates in the Top 10 Assembly Districts

\$1,176,173.00

This is 26.0% of all the money spent by candidates in Assembly races.

Top 10 Assembly Districts – Money Received

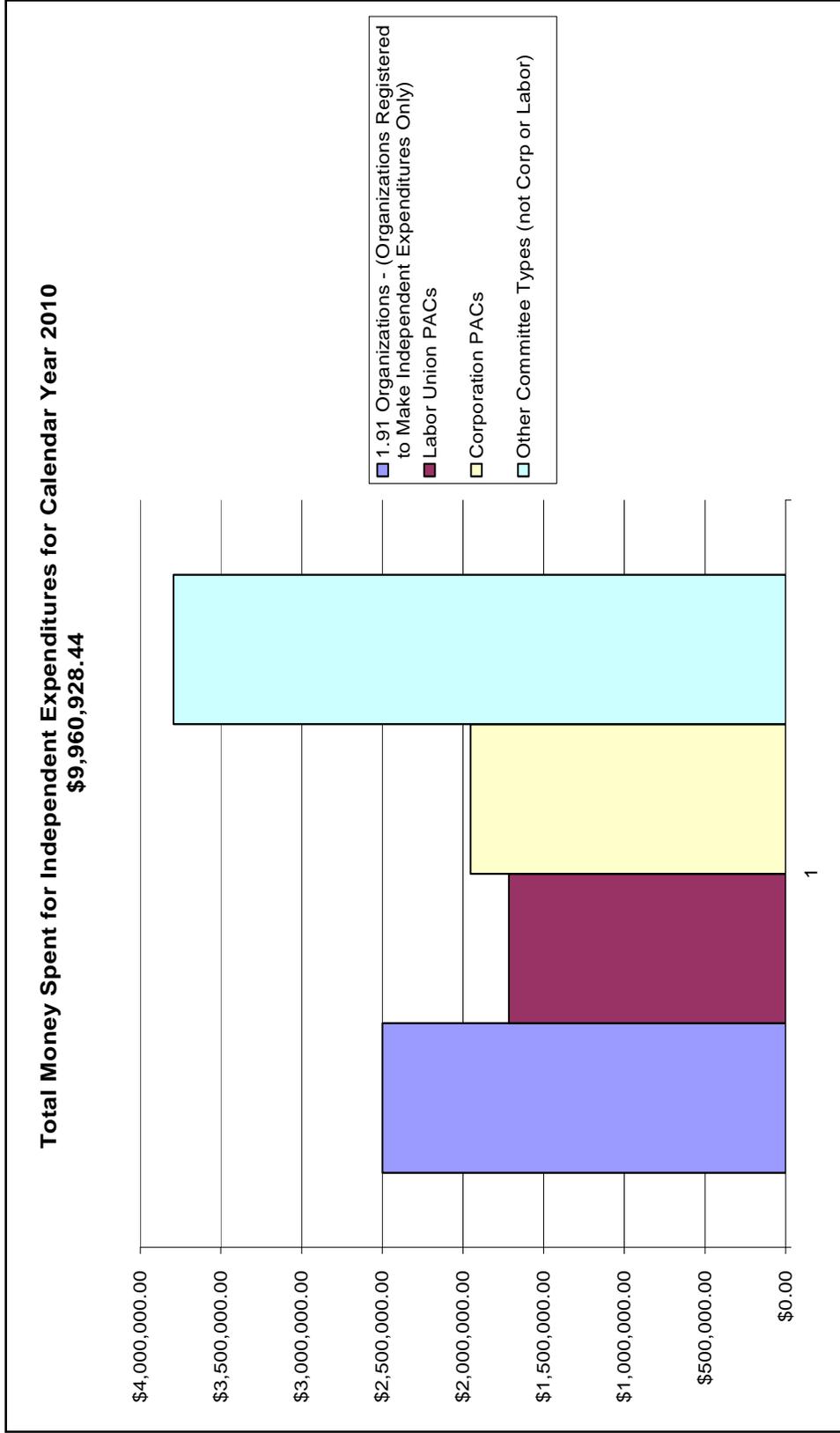
TOP ASSEMBLY DISTRICTS	TOTAL RECEIVED
District No. 67	\$219,634.77
District No. 75	\$185,291.32
District No. 77	\$179,889.13
District No. 51	\$149,532.83
District No. 42	\$145,226.73
District No. 35	\$134,920.10
District No. 49	\$129,023.48
District No. 57	\$128,014.73
District No. 87	\$118,922.11
District No. 88	\$114,959.95



Total Money Received by Candidates in the Top 10 Assembly Districts **\$1,505,415.00**

This is 26.4% of all the money received by candidates in Assembly races.

2010 Total Money Spent for Independent Expenditures



Committee/Organization Type	Amount Spent
1.91 Organizations - (Organizations Registered to Make Independent Expenditures Only)	\$2,499,494.27
Labor Union PACs	\$1,715,253.46
Corporation PACs	\$1,952,650.45
Other Committee Types (not Corp or Labor)	\$3,793,530.26

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KEVIN J. KENNEDY
Director and General Counsel

MEMORANDUM

DATE: For the December 13 and December 14, 2010, 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 working with outside auditors on the agency's federal compliance audit, developing the Contract Sunshine program and enhancing the reporting website, closing out the Wisconsin Election Data Collection grant, recruiting staff, communicating with agency customers, and making presentations.

Noteworthy Activities

1. Federal Performance Audit

Staff continues to address performance audit questions by Mr. Arnie Garza, Assistant Inspector General for audits. He expects to finalize his audit report and Notice of Findings and Recommendations (NFRs) to the U.S. Elections Assistance Commission (US-EAC) by mid December. After receiving the NFRs the G.A.B. will be able to respond to them. Subsequently a draft report will be developed that the G.A.B. will also be able respond to. Then a final audit report will be issued starting the resolution process between the G.A.B. and the US-EAC.

2. Contract Sunshine Program Update

Regular Contract Sunshine reporting activity has continued at a steady pace following the first certification. There are still 23 agencies that did not complete the first certification; of these, 20 are CAPS agencies whose certifications should be returned by the Department of Administration. The Department of Workforce Development has successfully used the Automatic Upload feature in the live Contract Sunshine website; however, other agencies who have attempted to use this functionality have encountered errors which we continue to work on with our vendor. G.A.B. staff also continues to work with staff from the Legislative Audit Bureau regarding the ongoing performance audit of the Contract Sunshine program.

In preparation for the second quarter certification for Contract Sunshine, James Malone is preparing another message that will be sent to all Contract Sunshine agency contacts. This message will be sent out to agency contacts no later than Friday, December 10. The certification period will begin on Monday, January 3, and the final day to certify without being considered late is Friday, January 14. As part of the first certification, we asked agency contacts to indicate whether they preferred to receive the certification document as an electronic copy via e-mail, or if they would prefer to receive a physical copy of the certification. Of the agencies that returned the certification, 71% indicated a preference to receive the form via e-mail. Combining those who did not care what format they received the form in with those who preferred e-mail, the percentage becomes 89%. Considering these overwhelming numbers, and the advantages in terms of ease and cost savings for the state, the next certification will be sent out by the G.A.B. in electronic form only. The letter that will be sent with this certification will specifically state that agencies can either return a completed and signed electronic copy of the certification, or they can return a physical copy of the form via interagency mail.

3. Wisconsin Election Data Collection (WEDCs) Grant Close-Out

In May of 2008, Wisconsin was among five states selected to receive a competitive \$2M grant for purposes of improving election data collection. The cornerstone of Wisconsin's data collection project was the development of the Wisconsin Election Data Collection System (WEDCS). The system is a data warehouse with a web-based front-end accessible by our 1,923 county and municipal clerks. The system also features robust reporting functionality, allowing us to easily complete the U.S. Election Assistance Commission's Election Day Survey, as well as to provide reports on-demand to members of this agency, other agencies, and the general public.

Now that the funds have been exhausted, staff is working on preparing the necessary close-out forms to bring the grant to an end and completing numerous accounting transactions to reconcile and close-out the account.

4. Staffing

Currently, we are recruiting for two Office Operations Associate positions to support the Elections Division Administrator and the HAVA program staff. We are also recruiting for a Grants Specialist position that will be responsible for developing, monitoring and maintaining all accounting and financial records for HAVA federal funds and all other federal funds the agency receives in accordance with state and federal requirements governing federal fund sources and grants.

David Meicher has resigned from his position as Grant Accountant, for the Wisconsin Election Data Collection grant, effective December 17. David has accepted a position at Meicher & Associates CPA firm. In David's 2+ year tenure he has managed the financial activities of the WEDCs grant and was assigned lead contact for the federal grant performance audit. David's contributions will sorely be missed. We will be filling his position with the Grants Specialist position that was recently approved.

5. Communications Report

Since the October 11, 2010, Board meeting, the Public Information Officer has engaged in the following communications activities in furtherance of the Board's mission:

- In the weeks prior to the November 2, 2010 General Election, the PIO developed and distributed a series of news releases designed to educate voters about how and where to vote, what their rights and responsibilities are, and who to contact if they experienced

problems at the polling place. Many of these news releases were published or served as the basis for news stories.

- One week before the election, we launched a new comments and complaints section on the Board's website to give voters the ability to make comments and complaints online. In the days before and after the election, the website generated 45 comments, 13 complaints about election officials, six complaints about possible election fraud and 13 complaints about voter intimidation. Board staff is following up on those complaints and comments.
- The PIO also responded to numerous media and public inquiries about the General Election, including Military and Overseas Voter Empowerment (MOVE) Act compliance, recounts in three Western Wisconsin legislative districts. The PIO set up several electronic news media interviews for Mr. Kennedy and Mr. Robinson, and also gave interviews when they were not available.
- After the election, we distributed a news release based on the Ethics & Accountability Division's analysis of independent expenditure data from CFIS, which sparked a number of state-wide news stories and editorials. This is a change from past years, when advocacy groups were usually the first ones out with numbers and analysis of the Board's campaign finance data.
- The PIO made arrangements for Board staff to host two presentations for delegations of international visitors. The first, on October 28, 2010, was for a group of eight Pakistani women on a program sponsored by the American Council for Young Political Leaders. The second group, comprised of visitors from Australia, Bangladesh, Ecuador, Ghana, India and Timor-Leste, arrived November 15, 2010, on a U.S. State Department program through the International Institute of Wisconsin.
- The PIO 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 been participating in a series of meetings and working with agency staff on several projects. The primary focus of the staff meetings was to review issues raised in preparation and conduct of the November 2, 2010 general election. These meetings also included a status review of our MOVE compliance activities, the development of the new lobby administration application, changes to our Contract Sunshine program to make other agencies more accountable, and the implementation of our new election canvass program.

Staff has also been working on evaluating billing practices with the Division of Enterprise Technology (DET) in the Department of Administration (DOA) for information technology services. DET/DOA has instituted wide-ranging rate changes that have resulted in significant increases to the agency's information technology costs. This included a meeting with Oskar Anderson and his staff to discuss the impact of these cost increases on the agency budget.

On October 14 and 15, 2010 Director Kennedy met with two representatives of the Organization for Security and Cooperation in Europe (OSCE) Gernot Eberle from Austria (via South Africa) and Cristina Alves from Portugal, who were observing elections in Wisconsin, Arizona and California. Mr. Eberle and Ms. Alves met with staff counsel Mike Haas and Elections Division staff on October 15 to discuss the role of the G.A.B. in administering Wisconsin elections. Judge Myse and

Judge Deininger met with them on Monday, October 18, 2010. Nat Robinson organized and coordinated the Wisconsin leg of the observations which included meetings with local election officials, citizen groups, candidate and political party representatives and legislative staff.

On October 25, 2010, Jon Becker and Director Kennedy attended a public forum sponsored by Common Cause in Wisconsin and the Wisconsin League of Women Voters on campaign finance at Lawrence University in Appleton.

Staff attorneys and Director Kennedy met with Ismael Ozanne, the new Dane County District Attorney, to discuss campaign finance and election enforcement practices. On October 27, 2010, Director Kennedy and Assistant Attorney General Roy Korte conducted a training session at Camp Douglas for Wisconsin Department of Justice agents who would be teaming with Assistant Attorneys General in observing polling place activity. The Department of Justice utilized materials developed by our staff for training its Election Law Task Force and Election Day observation teams.

On October 28, 2010, the agency hosted a delegation of woman public officials from Pakistan. Jon Becker, Reid Magney and Director Kennedy presented information on the role of the Government Accountability Board in administering elections, ethics and ensuring compliance through enforcement actions. Representative Berceau coordinated the visit.

On November 2, 2010, Director Kennedy was in the field observing the conduct of the general election at polling places in City of Madison, City of Green Lake, Town of Brooklyn, City of Ripon and Milwaukee. This also included visits to the Green Lake County Clerk's office and offices of the Milwaukee City Board of Election Commissioners.

A post election debriefing session was held for Elections Division staff and the agency legal team on November 4, 2010. This was a valuable exercise for agency staff particularly for the two new employees in the Elections Division who started in the weeks just before the November 2, 2010 election.

On November 11, 2010, the agency hosted a delegation of public officials from Australia, Bangladesh, Ecuador, Ghana, India, and Timor Leste. Tommy Winkler, Reid Magney and Director Kennedy presented information on the role of the Government Accountability Board in administering elections, ethics and ensuring compliance through enforcement actions. The International Institute in Milwaukee coordinated the meeting with our agency on behalf of the United States Department of State.

Director Kennedy participated in an extensive interview with Steve Walters of Wisconsin Eye on November 5, 2010. The focus of the interview was the conduct of the November 2, 2010 election. A link to the interview can be found at <http://www.wisconsineye.org>. (http://wisconsineye.org/wisEye_programming/campaign10/ARCHIVES-CPN10_GOV.html).

On November 11, 2010, members of the Wisconsin Election Data Collections System (WEDCS) team briefed representatives of the Pew Center on the States on the agency's election data collection application. The application was developed with a grant from the U.S. Election Assistance Commission in 2008. On December 10, 2010, Sarah Whitt and Director Kennedy made a presentation to representatives of several Pew Center on the States election working groups and newly elected state chief election officials on how election offices collect data and how data collection can be made easier using modern tools that both improve the quality of the data and facilitate fulfilling state/federal election data reporting requirements.

On November 22, 2010, Nat Robinson and Kevin Kennedy met with Diane Herman-Browne, current president of the Wisconsin Municipal Clerks Association, along with a village clerk and town clerk from Dane County to discuss ways to work together on improving election administration, communication with local election officials and evaluating legislative to initiatives.

Jon Becker and Director Kennedy made presentations at the 32nd Annual Council on Governmental Ethics Laws (COGEL) Conference in Washington, DC on December 6, 7, and 8, 2010. On Monday, December 6, Director Kennedy participated on a panel with Marc Mayrand, Canada's chief electoral officer, and a representative of the U.S. Election Assistance Commission discussing *Current Trends in Elections Administration - Legislation and Litigation*. On Tuesday, December 7, Director Kennedy moderated and participated on a panel with U.S. Election Assistance Commission Chair Donetta Davidson and Keith Cunningham of the Allen County Ohio Board of Elections on *Election Costs: Managing Expectations in a World of Increasing Complexity*.

On Wednesday, December 8, Jonathan Becker moderated and participated on a panel with Gary Goldsmith, Executive Director, Minnesota Campaign Finance and Public Disclosure Board; Mike Wittenwyler, Attorney, Godfrey & Kahn S.C.; and Tara Malloy, Associate Legal Counsel, Campaign Legal Center on *Independent Expenditures and Citizens United: The State/Local Response*. This panel was part of a two-session panel originally developed in 2007 by the Board's Director and General Counsel and continuing in subsequent years to provide a national forum for discussing the role and perceptions of various participants in regulating campaign speech.

The Pew Charitable Trusts Center on the States Performance Index for Election Administration Working Group met in Austin, Texas on December 9, 10, 2010. Director Kennedy is member of the working group along with several other state and local election officials and academic researchers including Dr. Barry Burden of University of Wisconsin-Madison political science department. Director Kennedy demonstrated the agency's WEDCS election data collection application to the group. Sarah Whitt and Director Kennedy also participated in the Voter Registration Modernization Working Group meeting on December 11, 2010.

Looking Ahead

The staff will develop a response to findings identified in the federal audit of HAVA funds, evaluate legislative initiatives affecting the agency, carry out a number of functions related to ongoing investigations, implement the Impartial Justice Act funding for the Supreme Court race, work on proposed administrative rules and work with the elections division staff in preparation for the spring primary.

The Board's next meeting is by teleconference on Thursday January 13, 2011 at 10 a.m. CST. The Board will select new officers for the calendar year and review its delegation of authority to the Director and General Counsel.

The Director and General Counsel will work with the Chief Justice of the Wisconsin Supreme Court to select the new members of the Government Accountability Candidate Committee as required by law. The terms of current Committee members expire on March 1, 2011. Director Kennedy and agency staff will then begin the process of assisting the Candidate Committee in selecting nominees for the position currently held by Judge Myse, whose term expires on May 1, 2011.

The State Supreme Court has scheduled oral arguments on litigation challenging the changes in the Board's administrative rule governing the scope of regulation of campaign activity, GAB 1.28. *Wisconsin Prosperity Network et al v. Myse et al*. The arguments are scheduled for 9:45 am on Wednesday, March 9, 2011.

Action Items

The Board should determine if it wants to alter its 2011 meeting schedule to enable Members to observe the oral arguments in the Supreme Court on March 9, 2010 in *Wisconsin Prosperity Network et al v. Myse et al.*

Board Members should also determine if the proposed starting time for the January 13, 2011 teleconference meeting is acceptable. It is recommended that one Board Member be present in Madison to conduct the drawing of Board officers.