
Meeting of the Board

Tuesday, December 15, 2015
9:00 A.M.

Agenda
Open Session

Government Accountability Board Offices
212 East Washington Avenue, Third Floor
Madison, Wisconsin

Tuesday, December 15, 2015

9:00 A.M.

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- A. Call to Order**
- B. Director’s Report of Appropriate Meeting Notice**
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- D. Personal Appearances**
- E. Review Campaign Finance Legislation** **11**
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- K. Per Diem Payments** **Oral**
- L. Director’s Report**

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M. 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 Tuesday, January 12, 2016. The meeting will be conducted by teleconference. The public may participate at the Government Accountability Board offices, 212 East Washington Avenue, Third Floor in Madison, Wisconsin beginning at 9:00 a.m.

State of Wisconsin\Government Accountability Board

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JUDGE GERALD C. NICHOL
Chair

KEVIN J. KENNEDY
Director and General Counsel

Wisconsin Government Accountability Board

212 East Washington Avenue
Madison, Wisconsin
October 20, 2015
9:00 a.m.

Open Session Minutes

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G. Approved Electronic Poll Book Standards	3
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J. Reviewed Guidance on Appointment of Election Officials	6

Present: Judge Gerald C. Nichol, Judge Elsa Lamelas, Judge John Franke and Judge Harold Froehlich (in person), and Judge Thomas Barland
Judge Timothy L. Vocke (by telephone)

Staff Present: Kevin J. Kennedy, Jonathan Becker, Michael Haas, Ross Hein, Sharrie Hauge, Nathan Judnic, Reid Magney, David Buerger, Jennifer Webb, Allison Coakley, Megan McCord Wolfe, Adam Harvell, Kyle Kundert

A. Call to Order

Chairperson Nichol called the meeting to order at 9:00 a.m.

B. Director's Report of Appropriate Meeting Notice

Director Kevin J. Kennedy informed the Board that proper notice was given for the meeting, reviewed supplemental materials in Board Member's folders, and informed them of written copies of public comments.

C. Approval of Minutes of Previous Meeting

September 1, 2015

MOTION: Approve the minutes of the September 1, 2015 meeting of the Government Accountability Board. Moved by Judge Franke, seconded by Judge Lamelas. Motion carried unanimously.

D. Personal Appearances

Matt Rothschild of Madison appeared on behalf of the Wisconsin Democracy Campaign to comment on pending legislation to reorganize the Government Accountability Board. He said that while WDC has not always agreed with the Board's actions, it has relied on the expertise of the staff, and he is dismayed by the wild and outrageous attacks on the Board.

Mary Ann Hanson of Brookfield appeared on her own behalf to comment about the agenda item regarding guidance to clerks about appointments of partisan poll workers. She expressed appreciation for the answers and concern about questionnaires being used in some municipalities to screen poll worker applicants. She also urged the board not to implement electronic poll books or a pilot program for them in the coming election year.

Andrea Kaminski of Madison appeared on behalf of the League of Women Voters of Wisconsin to express the league's vehement opposition to the proposed legislation to reorganize the Board.

Commissioner Bob Spindell of the City of Milwaukee Election Commission appeared to ask the Board to direct clerks to cooperate with the Republican Party of Wisconsin's program of providing poll workers throughout the state. He also raised concerns about the questionnaire being used in some municipalities to screen poll workers.

Clerk Sara Ludtke of the Town of Middleton and the Wisconsin Municipal Clerks Association appeared to support standards for electronic poll books because they will reduce the time required for poll workers to reconcile voter lists.

Clerk Diane Hermann Brown of the City of Sun Prairie and the Wisconsin Municipal Clerks Association appeared to support continuation of the Government Accountability Board. She also said clerks endorse the use of electronic poll books because of efficiency, cost savings and security measures.

Dane County Clerk Scott McDonell appeared to support the continuation of the Government Accountability Board and to discuss electronic poll books. He said he believes the DMV uses an electronic signature on a driver license so that should be good enough for voting.

Clerk Barbara Goeckner of the Village of Germantown and the Wisconsin Municipal Clerks Association appeared to discuss legislative changes to the G.A.B., electronic poll books, and partisan nominations of poll workers.

E. Review Proposed Agency Restructuring Legislation

Director Kennedy made an oral presentation based on a memorandum provided to Board Members and the public as an addendum to the Open Session meeting materials. He reviewed the legislation Assembly Bill 388/Senate Bill 294), which was the subject of an extensive joint hearing before the Assembly Committee on Campaigns and Elections and the Senate Committee on Elections and Local Government on October 13, 2015. The bill would eliminate the current Government Accountability Board on June 30, 2016 and replace it with an Elections Commission and an Ethics Commission. Each commission would be comprised of an even number of partisan appointees. He discussed the possible transition to the new agencies and other details of statutory changes.

Judge Froehlich asked which agency would conduct investigations.

Director Kennedy explained that both commissions would conduct investigations, though as a practical matter there would be few elections investigations. He further discussed other details of the legislation affecting investigations, funding and terms of office.

The Board took no action.

F. Review of Proposed Campaign Finance Legislation

Ethics Division Administrator Jonathan Becker made an oral presentation based on a memorandum provided to Board Members and the public as an addendum to the Open Session meeting materials regarding Assembly Bill 387/Senate Bill 292, which was the subject of a joint legislative hearing of the Assembly Committee on Campaigns and Elections and the Senate Committee on Elections and Local Affairs on October 13. Mr. Becker described how the bill changes the current Chapter 11 by doubling most of the contribution limits established in 1974 and eliminating others. He described other changes to the law, including increasing the threshold for registration of political committees and requiring registration by independent expenditure committees if their major purpose is express advocacy.

Board Members and staff discussed other aspects of the bill, including coordination between candidates and independent groups.

Board Members and staff further discussed the legislation as it related to recent court cases. Judge Franke expressed concern about the pace of the new legislation and the absence of careful deliberation about enforcement.

Judge Nichol called a recess at 11:03 a.m. The Board reconvened at 11:18 a.m.

G. Proposed E-Poll Book Standards

Elections Division Administrator Michael Haas introduced Elections Specialists David Buerger and Jennifer Webb, who made an oral presentation based on a memorandum starting on page 12 of the October 2015 Board Meeting Materials. At the September 2015 Board

Meeting, the Board directed staff to develop procedures, standards and proposed legislative changes for electronic poll books and report back to the Board by its next meeting.

Mr. Buerger discussed staff's recommendations for standards, including system requirements and required functionality. He also reviewed recommended legislative changes.

Board Members and staff discussed issues regarding e-poll books, including backing up data, whether one or two e-poll books would be required, and whether other states use vendors or build their own systems. Mr. Buerger noted that e-poll books would be optional for clerks to use.

Judge Lamelas expressed reservations about moving forward with e-poll books because of other priorities for the agency. Judge Froehlich said he could not support e-poll books if they have electronic signatures. Director Kennedy said wet signatures are not precluded, and there may be other ways to capture them.

MOTION: Adopt the standards and procedures for the testing and approval of electronic poll books as presented in the October 2015 Board Meeting Materials. Moved by Judge Vocke, seconded by Judge Franke.

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

Motion carried 4-2.

MOTION: Direct staff to conduct a cost/benefit analysis to evaluate the options of permitting municipalities to purchase electronic poll books provided by vendors or developing a state-level electronic poll book system in-house directly incorporated into the statewide voter registration system. Moved by Judge Vocke, seconded by Judge Barland.

Discussion.

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

Motion carried 4-2.

MOTION: Direct staff to incorporate the recommended legislative changes into the Board's legislative agenda and communicate those proposals to the Legislature. Moved by Judge Vocke, seconded by Judge Barland.

Discussion.

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

Motion carried 4-2.

MOTION: Direct staff to not accept applications from vendors for certification until results of the cost/benefit analysis have been presented to the Board and the Board provides further direction. Moved by Judge Froehlich, seconded by Judge Franke.

Discussion.

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

Motion carried 6-0.

Judge Nichol called a lunch break at 12:06 p.m. The Board reconvened at 12:40 p.m.

H. Proposed 2016 Ballot Designs

Lead Elections Specialist Diane Lowe made an oral presentation based on a written report starting on page 20 of the October 2015 Board Meeting Materials. She discussed the history of the agency’s formal review process for proposed ballot designs which involve clerks, political parties and committees in the Legislature. Staff is now asking for approval of designs for the 2016 ballots for the Spring Primary, Spring Election and Presidential Preference Vote, Partisan Primary and November General Election. She said staff tried to make the instructions clearer by cleaning up the language. Ms. Lowe discussed why partisan primary ballots include a party preference box, which prevents electronic voting equipment from disqualifying a ballot in its entirety if the voter accidentally crosses over. La Crosse County has requested an exemption from having the party preference box because its new voting equipment does not require it.

MOTION: Approve the proposed ballot designs for the four regularly-scheduled 2016 elections and make the party preference box a preferred element of the Presidential Preference Vote ballot but not mandatory. Moved by Judge Lamelas, seconded by Judge Froehlich.

Discussion. Director Kennedy clarified that statutes require a party preference box for the partisan primary.

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

Motion carried 6-0.

J. Guidance on Appointment of Election Officials

(This item was taken out of order.)

Ms. Lowe made an oral presentation based on a written report starting on page 48 of the October 2015 Board Meeting Materials. She said that in odd-numbered years, statutes permit political parties to submit lists of preferred poll workers to municipalities. The parties are becoming more diligent about submitting lists in recent years, and there has been some resistance by clerks who do not want to lose their trained poll workers. Recent changes to statutes permitting people to serve in other municipalities within their county have raised some questions from the public, which staff has answered in the Board materials.

Mr. Haas addressed the Green Bay application process issue raised during the public comments section of the meeting. He said Green Bay went to a more detailed application process because they had a poll worker who caused problems. He said staff had not seen the complete application form provided this morning by Mr. Spindell. Some other clerks are also using an application process, but to a different degree.

Board Members and staff discussed whether the Board has authority over the poll worker hiring processes and decisions of clerks. Mr. Haas said the Board does not have that authority, but can provide guidance and information about best practices.

There was further discussion of direction the Board may give clerks. The consensus of the Board was that an application process may be used and that municipalities may choose to complete criminal background checks as permitted in hiring other municipal employees. However, any background check and application process should not require information that is irrelevant to election inspector qualifications, and should not be designed to discourage individuals from applying. The Board took no formal action.

I. Election Division Training Overview

Elections Division Administrator Haas introduced Training Coordinator Allison Coakley and Election Specialist Meagan McCord Wolfe, who made an oral presentation based on a memorandum starting on page 40 of the October 2015 Board Meeting Materials regarding the agency's training efforts. Ms. Coakley discussed training for local election officials and the use of technology to reach clerks across the state through webinars. Ms. Wolfe discussed agency efforts to train people who work with voters about the requirements of the voter photo ID law.

Board Members and staff discussed additional ways staff can reach out to the general public.

K. Request for Waivers of SEI Requirement

Ethics & Accountability Specialist Adam Harvell made a brief presentation, noting that after the Board's action in September regarding Mr. Horning's request for a waiver, that request has been withdrawn, and no Board action is required.

L. Administrative Rules Status Report

Staff Counsel Nathan Judnic made an oral presentation based on a memorandum starting on page 54 of the October 2015 Board Meeting Materials regarding administrative rules. He said that the emergency rule on technical college IDs for voter identification has been extended for 60 days, and the permanent rule has been submitted to the appropriate Legislative standing committees for their review. He noted that legal intern James Radcliffe has been assisting with finalizing statements of scope for administrative rules that have been drafted and are ready for submission to the Governor's office.

M. Legislative Status Report

Ethics Specialist Kyle Kundert and Elections Specialist David Buerger made an oral presentation based on a memorandum starting on page 60 of the October 2015 Board Meeting Materials.

N. Per Diem Payments

MOTION: Approve a half-day's per diem payment for preparation for the October 20, 2015 Board Meeting. Moved by Judge Franke, seconded by Judge Froehlich. Motion carried unanimously.

O. Director's Report

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

Written report from Division Administrator Becker and Division staff was included beginning on Page 80 of the October 2015 Board Meeting Materials.

Elections Division Report – election administration

Written report from Division Administrator Haas and Division staff was included beginning on Page 84 of the October 2015 Board Meeting Materials.

Office of General Counsel Report – general administration

Written report from Kevin J. Kennedy, Sharrie Hauge and Reid Magney was included beginning on Page 92 of the October 2015 Board Meeting Materials.

P. 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 of the Board.

MOTION: Move to closed session pursuant to WIS. STAT. §§5.05(6a), 19.85(1)(h), 19.851, 19.85(1)(g), 19.85(1)(c), and 19.85 (1) (e), 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; consider performance evaluation data of a public employee of the Board; and deliberate or negotiate the purchase of public properties, the investing of public funds, or conducting other specified public business, whenever competitive or bargaining reasons require a closed session. Moved by Judge Vocke, seconded by Judge Barland.

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

Motion carried unanimously. The Board recessed at 2:16 p.m. and convened in closed session at 2:24 p.m. The Board adjourned in closed session at 5:30 p.m.

Summary of Significant Actions Taken in Closed Session:

- A. Complaints and Investigations: 16 matters considered; five matters terminated, two matters dismissed for no reasonable suspicion, six matters dismissed as outside the Board’s jurisdiction; two civil enforcement actions authorized; and one update.
- B. Personnel: One matter considered.
- C. Litigation: Five pending matters considered.

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The next regular meeting of the Government Accountability Board is scheduled for Tuesday, December 15, 2015, at the Government Accountability Board offices, 212 East Washington Avenue, Third Floor, Madison, Wisconsin beginning at 9:00 a.m.

October 20, 2015 Government Accountability Board meeting minutes prepared by:

Reid Magney, Public Information Officer

November 12, 2015

October 20, 2015 Government Accountability Board meeting minutes certified by:

Judge Thomas Barland, Board Secretary

December 15, 2015

State of Wisconsin \ Government Accountability Board

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JUDGE GERALD C. NICHOL
Chairperson

KEVIN J. KENNEDY
Director and General Counsel

DATE: For the December 15, 2015 Board Meeting

TO: Members, Government Accountability Board

FROM: Jonathan Becker, Administrator
Division of Ethics and Accountability

Prepared By: Kyle Kundert and Adam Harvell
Division of Ethics and Accountability

SUBJECT: 2015 Assembly Bill 387 - Significant Changes in Campaign Finance Regulation

INTRODUCTION:

The purpose of this memorandum is to highlight the significant changes made to the campaign finance law upon adoption of 2015 Assembly Bill 387. As of the drafting of this memorandum, this bill has not been signed by the Governor, but staff believes it will be signed before the end of 2015. This memorandum is drafted with the assumption that the Governor will in fact sign this bill. This legislation substantially restructures Chapter 11 of the Wisconsin statutes. The legislation makes substantive changes to registration, reporting, contribution limits and several other major policy areas.

ANALYSIS:

REGISTRATION

Types of committees

The legislation requires the following entities to register with the Government Accountability Board (Board) or a local filing officer:

1. Candidate committees.
2. Political parties.
3. Legislative campaign committees.
4. Political action committees.
5. Independent expenditure committees. Independent expenditure committees are newly recognized by statute as a type of entity separate from a political action committee.
6. Conduits.
7. Referendum committees.
8. Recall committees.

A political party or legislative campaign committee may establish a separate segregated fund to be used for purposes other than making contributions to a candidate committee or making disbursements for express advocacy.

Committees involved only in local races, other than a candidate committee, referendum committee, or local recall committee, must now file with the Board.

Registration Thresholds

The legislation creates new thresholds for requiring political action committees (PACs), independent expenditure committees (IECs) and referendum committees (RCs) to register. Such entities are required to register only if express advocacy is the entity’s major purpose. To meet the major purpose test, an entity either (1) must specify its major purpose in its organizational or governing documents, bylaws, resolutions of its governing body, or G.A.B. registration statement or (2) use more than 50% of its total spending in a 12-month period on expenditures for express advocacy and contributions to candidates, legislative campaign committees, and political parties.

In addition to the major purpose test, the legislation only requires committees to register with the Board or a local filing officer if certain monetary thresholds are crossed.

COMMITTEE TYPE	THRESHOLD AMOUNT
PAC, IEC	\$2,500
Referendum Committee	\$10,000
Recall Committee	\$2,000
Candidate, Legislative, Party or Conduit Committees	\$0 (before accepting a contribution, making a disbursement, or incurring an obligation)

Implementation Issue: Staff plans to communicate with every current committee subject to the new major purpose test to confirm that it is still subject to the registration requirement. If the committee does not confirm they are subject to the registration requirement, the Board staff intends to terminate the committee.¹

Registration Requirements

The legislation requires each entity that registers to appoint a treasurer, or in the case of a conduit, appoint an administrator. A candidate may serve as the treasurer of his or her candidate committee, but the candidate may only accept contributions and make disbursements through his or her committee. Although the legislation requires the name and address of the committee’s depository account, there is no longer a statutory requirement that a bank account number be provided.

The legislation allows an individual who is currently holding a state or local office to create a second candidate committee to pursue a different state or local office. Current law prohibits a candidate from having more than one state or local campaign committee at the same time. The legislation allows an individual to register both a political action committee (AB 387, Subchapter V) and an independent expenditure committee (AB 387, Subchapter VI).

¹ A more detailed discussion of implementation issues appears at the end of this document.

Implementation issue: We currently use a bank account number to verify an electronic signature. A bank account number may also be important for audits. Does the Board agree that we may continue to request a bank account number for administrative and auditing purposes?

REPORTING

Frequency of reporting

Under the legislation, ongoing reporting occurs biannually in January and July. Other reports are due based on election activity. Specifically, committees will comply with the following reporting schedule:

2016 Election Dates:			
Spring Primary:	February 16, 2016	Spring Election:	April 5, 2016
Fall Primary:	August 9, 2016	Fall Election:	November 8, 2016

2016 Reports	Filing Deadline	Reporting Period
January Continuing	January 15, 2016	7/1/2015 thru 12/31/2015
Spring Pre-Primary	February 8, 2016	1/1/16 thru 2/1/16
Spring Pre- Election	March 28, 2016	2/2/16, or date of your last report thru 3/21/16
July Continuing	July 15, 2016	1/1/16 thru 6/30/16, or 3/22/16 thru 6/30/16
Fall Partisan Primary	August 1, 2016	7/1/16 thru 7/25/16
4th Tuesday in September (27 th)	September 27, 2016	7/26/16 thru 8/31/16, or 7/1/16 thru 8/31/16
Fall General Election	October 31, 2016	9/1/16 thru 10/24/16 or 7/1/16 thru 10/24/16
January Continuing	January 15, 2017	10/25/16 thru 12/31/16 or date of your last report thru 12/31/16

- Spring Primary: A committee that engages in activity concerning a spring primary must file: (1) a pre-primary report; (2) a pre-election report; and (3) annually in each year of an election cycle, a report on January 15 and July 15.
- Spring Election: A committee that engages in activity concerning a spring election must file: (1) a pre-election report; and (2) annually in each year of an election cycle, a report on January 15 and July 15.
- Partisan Primary: A committee that engages in activity concerning a partisan primary must file: (1) a pre-primary report; (2) a pre-election report; (3) in an odd-numbered year, a report on January 15 and July 15; and (4) in an even-numbered year, a report on January 15 and July 15 and on the 4th Tuesday in September.
- General Election: A committee that engages in activity concerning a general election must file: (1) a pre-election report; (2) in an odd-numbered year, a report on January 15 and July 15; and (3) in an even-numbered year, a report on January 15 and July 15 and on the 4th Tuesday in September.

Additionally, the legislation requires a conduit to comply with the reporting schedule described above, except that a conduit is not required to file a preprimary or preelection report.

The legislation requires regular reporting only if a specified threshold is crossed. Even if a committee is required to register, it is exempted from reporting to the Board if it does not have contributions, disbursements, or incurred obligations in a calendar year over \$2,000.

Every committee which has over \$1,000 in activity over a biennium must now file electronically with the Board, rather than on paper forms. The previous threshold was \$20,000 in a campaign period.

Required information

The legislation excludes certain activity from the definition of a contribution or disbursement, which has the effect of exempting this activity from reporting. Specifically, excluded activities include, but are not limited to the following:

- Any news story, [...] including an Internet or other electronic publication unless a committee owns the medium in which news story, commentary, or editorial appears.²
- Any communication that does not expressly advocate for the election or defeat of a clearly identified candidate. (Definition of contribution only).
- A nominal fee paid for a communication to the general public.³
- An expenditure of funds for a political action committee's fundraising and administrative expenses.
- An expenditure of funds for an independent expenditure committee's fundraising and administrative expenses.
- Certain loans and interest.

Implementation issue: In order for a committee's cash balance reports to add up, staff plans to create a single reporting category for all other expenditures that a committee may make and all other receipts by a committee. Committees would be required to report the amount, but not itemized information.

The legislation raises the amount of a contribution that may be made in cash from \$50 to \$100. A committee may receive an anonymous contribution of up to \$10. Committees must report complete contributor information for all but anonymous contributions. Currently, such information is only required for contributions exceeding \$20. A report must contain "an itemized statement of each contribution made anonymously." The legislation eliminates the requirement to disclose a contributor's employer if the contributor donates in excess of \$100. If a contributor donates over \$200 total in a calendar year, the contributor's occupation must be listed.

The legislation requires PACs, IECs and other persons (that may or may not be registered), who spend \$2,500 or more on express advocacy to submit a statement to the Board if the express advocacy is made during the period beginning on the day that is 60 days prior to the day of the primary or election.

Late Reporting

² News story" is not defined in the legislation.

³ "Nominal fee" is not defined in the legislation.

If any contribution(s) of \$1,000 or more is received from a single contributor by a candidate committee for state office later than 15 days prior to a primary or election, and the contribution(s) is

not included in the preprimary or preelection report, the committee must report those transactions to the appropriate filing officer within 72 hours of receipt.

CONTRIBUTION LIMITS

The following is the legislation’s contribution limits table.

	INDIVIDUAL CONTRIBUTORS	CANDIDATE COMMITTEE CONTRIBUTORS	POLITICAL ACTION COMMITTEE CONTRIBUTORS
GOVERNOR	\$20,000	\$20,000	\$86,000
LT. GOVERNOR	\$20,000	\$20,000	\$26,000
SECRETARY OF STATE	\$20,000	\$20,000	\$18,000
STATE TREASURER	\$20,000	\$20,000	\$18,000
ATTORNEY GENERAL	\$20,000	\$20,000	\$44,000
SUPERINTENDENT OF PUBLIC INSTRUCTION	\$20,000	\$20,000	\$18,000
JUSTICE	\$20,000	\$20,000	\$18,000
STATE SENATOR	\$2,000	\$2,000	\$2,000
ASSEMBLY REPRESENTATIVE	\$1,000	\$1,000	\$1,000
APPEALS JUDGE – POPULOUS DISTRICTS	\$6,000	\$6,000	\$6,000
APPEALS JUDGE – OTHER DISTRICTS	\$5,000	\$5,000	\$5,000
CIRCUIT JUDGE – POPULOUS AREA	\$6,000	\$6,000	\$6,000
DISTRICT ATTORNEY – POPULOUS AREA	\$6,000	\$6,000	\$6,000
CIRCUIT JUDGE – OTHER AREA	\$2,000	\$2,000	\$2,000
DISTRICT ATTORNEY – OTHER AREA	\$2,000	\$2,000	\$2,000
LOCAL OFFICES	GREATER OF \$500 OR 2 CENTS TIMES THE POPULATION, BUT NOT MORE THAN \$6,000	GREATER OF \$500 OR 2 CENTS TIMES THE POPULATION, BUT NOT MORE THAN \$6,000	GREATER OF \$400 OR 2 CENTS TIMES THE POPULATION, BUT NOT MORE THAN \$5,000

The legislation (new Wis. Stat. § 11.1104) allows certain committees to receive contributions in unlimited amounts. These include, but are not limited to the following:

- Contributions to a political action committee.
- Contributions transferred between political action committees.
- Contributions to a political party, except that a political action committee may contribute no more than \$12,000 in any calendar year to a political party or legislative campaign committee.
- Contributions to an independent expenditure committee.
- Contributions made by a political party or legislative campaign committee to a candidate committee.
- Contributions made to a segregated fund established and administered by a political party or legislative campaign committee for purposes other than express advocacy or contributing to a candidate committee. Corporations, associations, unions, and tribes may contribute no more than \$12,000 in a calendar year. Individuals and committees may contribute an unlimited amount.

The legislation prohibits corporations, cooperatives, labor organizations, and tribes from contributing to committees, other than independent expenditure committees, referendum committees, and separate segregated funds. Previously, labor unions incorporated prior to January 1, 1978 were not subject to this restriction.

DISBURSEMENTS

Under current law, a committee may make a disbursement only for a political purpose. The legislation eliminates that restriction but prohibits a committee from making a disbursement or incurring an obligation for the committee's or an individual's "strictly personal use".

Implementation issue: The legislation does not define "strictly personal use." Attached is a document from the Federal Elections Commission detailing permissible and impermissible uses of campaign funds based on similar statutory language. This contrasts with the Board's attached current list of permissible uses that are deemed to serve a political purpose. Staff recommends that the Board use the FEC's list for guidance.

MISCELLANEOUS POLICY CHANGES

Coordination

The legislation specifically prohibits coordinated express advocacy expenditures made in excess of contribution limits or in violation of source restrictions.

Under the legislation, an expenditure for express advocacy is considered to be coordinated only if either of the following applies:

- The candidate, candidate's agent, legislative campaign committee of the candidate's political party, or the candidate's political party communicates directly with the PAC, IEC, other person, or individual making the expenditure to specifically request that the PAC, IEC, other person, or individual make the expenditure that benefits the candidate and the PAC, IEC, other person, or individual explicitly assents to the request before making the expenditure.

- The candidate, candidate’s agent, legislative campaign committee of the candidate’s political party, or the candidate’s political party exercises control over the expenditure or the content, timing, location, form, intended audience, number, or frequency of the communication.

Lastly, the legislation provides that the following are not considered coordinated communications prohibited under Chapter 11:

- Candidates endorsing and soliciting contributions for other candidates.
- Candidates, candidate committees, legislative campaign committees, and political parties responding to inquiries about a candidate’s or political party’s position on legislative or policy issues.
- Using publicly available information to create, produce, or distribute a communication if the use does not constitute coordination, as described above.

STEPS TOWARDS IMPLEMENTATION

After the passage of the first Assembly bill, staff began planning for the communications, document revisions, and updates to the Campaign Finance Information System (CFIS) infrastructure that would be required.

- Communications:
 - Board staff has prepared and will distribute a review of changes memorandum for local filing officers, post it on the G.A.B. website, and email it to all county and municipal clerks. Board staff has prepared a review of changes memorandum for each separate committee type, including candidates, political parties and legislative campaign committees, PACs, IECs, conduits, referendum committees, and recall committees. This memorandum will be posted in CFIS and emailed to all currently registered committees.
 - Board staff will ask all local clerks to provide a list of all PAC’s, conduits and IEC’s registered at the local level.
- Updates to Forms and Manuals:
 - Board staff has begun to redesign G.A.B. forms, renaming them with names like ETHCF-123. The new forms will be posted to the G.A.B. website and available through CFIS as soon as possible after January 1, 2016.
 - Board staff will also rewrite all Campaign Finance Overview Manuals – one overview for each type of committee.
 - Board staff has begun to review the website for additional changes.
- Major Updates to CFIS:
 - A new portal will be created to allow unregistered entities to enter their independent expenditures in CFIS and print the required oath.
 - The data entry screens and upload templates will be altered to eliminate the employer information fields, and to allow for the entry of “Other” disbursement types.

- Committee registration screens will be updated to display the new registration and exemption thresholds. Contribution limits for each office type will be adjusted.
- All registration and report forms will be updated to the new naming convention ETHCF-123 and will cite the new statute numbers. Additional language will be added for committees with a “major purpose” requirement.

Staff sent PCC, the Board’s contracted IT services provider for CFIS, an initial list of updates on November 9, and received a cost estimate November 17. Tasks have been prioritized and a redesign of the software will began as soon as the legislation is signed into law. It may not be possible to finish all updates by January 1, but PCC and G.A.B. staff will work together to finish updates as soon as possible.

QUESTIONS FOR THE BOARD

The legislation raises a number of questions of interpretation. Board staff has identified several issues that may cause administrative difficulties, drafted recommendations, and asks that the Board consider them.

1) Registration – Affirmation of “Major Purpose” by PACs, IECs, and Referendum Committees

Issue: Since registration requirements have changed, should existing PACs, Independent Expenditure Committees (IECs), and Referendum Committees be required to re-register?

Discussion: Current PACs have registered under Wis. Stat. §11.05(1), which required registration after receiving contributions, making disbursements, or incurring obligations of over \$300 in a calendar year. Current IECs have registered based on the same threshold, but registration and reporting for IECs has been voluntary since July of 2014, when *Wisconsin Right to Life vs. Barland (Barland II)* found it unconstitutional to require registration for IECs that did not have independent expenditures as their “major purpose.” Current referendum committees registered based on a threshold of \$2,500 worth of activity.

The new statutes do not require registration unless the PAC or IEC reaches a threshold of \$2,500 worth of activity, or the referendum committee reaches \$10,000 of activity. In order for registration to be required, these committees also have to verify that their major purpose is express advocacy, or that they will spend more than 50% of total spending in a 12-month period on contributions, independent expenditures, or spending for or against a referendum, as appropriate for each type of committee. (See Wis. Stats. §§11.0502(1), 11.0602(1), 11.0802(1), 11.0101(17), 11.0101(25)(a), 11.0101(28)(a).)

Recommendation: The Board should direct staff to require all existing PACs, IECs, and Referendum Committees to update their registrations and certify that they meet the new registration requirements. If committees do not update their registrations by March 31, 2016, the Board should direct staff to terminate those committees and provide notice of the termination to the affected committees.

2) Registration – Bank Account Numbers

Issue: Should the committee’s bank account number still be required information?

Discussion: Previously, state statutes specifically stated that a committee’s bank account number was required. The new legislation requires only the name and address of the depository account. (Wis. Stats. §§11.0203(1)(c), 11.0303(1)(c), 11.0403(1)(c), 11.0503(1)(d), 11.0603(1)(c), 11.0703(1)(c), 11.0803(1)(c), 11.0903(1)(c).)

Staff may require the committee’s bank account number for auditing or investigatory purposes. Since candidates are now allowed to have more than one committee, knowing simply the name and address of the bank or credit union does not identify which account belongs to which committee.

Finally, the Campaign Finance Information (CFIS) website relies on the bank account number to meet the security procedures required for electronic signatures in Wis. Stat. §137.17 CFIS prevents the public from viewing a committee’s bank account number. Only G.A.B. staff and that committee’s users may view that information.

The new statutes do not specifically prohibit the collection of bank account numbers, except Wis. Stats. 11.0202(b), which says a candidate who does not receive or spend any money, does not have to designate a campaign depository account. Currently, other pieces of information, like the email and telephone numbers, are not specifically required by the previous statutes, but are required by CFIS. Current Wis. Stats. §§11.21 (1), and 11.1304 of the new legislation, provides that the Board shall prescribe forms for making the reports, statement, and notices required by the statute.

Recommendation: The Board should direct staff to continue to require the bank account number on all registrations for administrative and audit purposes, except as directed in 11.0202(b).

3) Registration and Reporting – Multiple Committees for Same Candidate

Issue 1: Since the new statutes allow for a candidate to have more than one committee at the same time, should our agency require that each committee have a separate bank account number?

Issue 2: How should staff address transfers of funds between a single candidate’s accounts?

Discussion 1: Under Wis. Stat. §11.10(4) and rule GAB 1.02, no candidate was allowed more than one committee or bank account. If the candidate held one office and ran for another, all transactions would be run through the same account, and reported on the same campaign finance report, with a comment to identify which office each transaction was for. Duplicate reports were required if the candidate was running for offices with different filing officers.

Under new Wis. Stat. §11.0202(2)(d), officeholders may establish a second candidate committee to run for a different office. The statute does not specifically state that a second bank account is required. A requirement that each committee have a separate bank account would make reporting and auditing much more manageable and it is logical that a separate committee have a separate account..

Discussion 2: In addition, the new statute Wis. Stat. §11.1114(2) requires that a candidate with two committees who transfers money to an account for an office with a lower contribution limit must not transfer contributions in an amount that exceeds the contribution limits

applicable to the second office. Since individual contributions, once deposited, are not differentiated, it is impossible to identify which contributions are being transferred between committees.

Currently, if a candidate initially registers for an office with higher limits (State Senate), but does not get on the ballot for that office, and switches to an office with lower limits (State Assembly) then the committee must return contributions that are over the limit for the second office. However, if a candidate registers for an office and is on the ballot, any funds remaining in the committee's account when the campaign period ends may be carried forward for a future election – regardless of the office sought. This assumes the contributions were raised and spent under the legal contribution limits for that office.

Going through an election cycle represents a “safe harbor” - the funds remaining after the election cycle may be used to seek another office, even if that office has lower contribution limits, and no funds need to be returned to contributors. These procedures draw a clear line between activity in separate election cycles, versus activity in a single election cycle for more than one office. The new statute Wis. Stat. §11.1114(2) does not seem to require or prohibit the “safe harbor” procedure.

Recommendation 1: The Board should direct staff to require that if a candidate chooses to establish a second candidate committee to run for a different office, each separate candidate committee must register with a separate bank account number.

Recommendation 2: The Board should direct staff to continue to apply the current “safe harbor” interpretation for funds raised during previous election cycles when the candidate was on the ballot for another office. For candidates that have raised money for an office and not been on the ballot for that office, the Board should direct staff to follow new Wis. Stat. §11.1114(2) by calculating the total amount of contributions received and the total amount of contributions received over the limit for the second office. If no expenses for the first office have been made, the candidate may not transfer more than the total amount of contributions minus the total amount of contributions over the limit for the second office. Any expenses for the first office may be subtracted from the total of contributions over the limit for the second office – they will not usually lower the amount available for transfer. After expenses for the first office have been subtracted, any contributions over the limit for the second office must remain in the original bank account.

4) Registration and Reporting – Party and Legislative Campaign Committee Segregated Funds

Issue: What should be the registration and reporting requirements for the newly established “segregated funds?”

Discussion: In the legislation, Wis. Stat. §11.1104(6) allows for a political party or legislative campaign committee to establish a “segregated fund for purposes other than making contributions to a candidate committee or making disbursements for express advocacy.” Wis. Stat. §11.1112 allows corporations, associations, unions, and tribes, all otherwise prohibited from contributing to political parties or legislative campaign committees, to make contributions to a segregated fund of no more than \$12,000 per calendar year. The statutes do not otherwise address the requirements for these segregated funds to register or report activity.

In order to ensure that the segregated funds are not receiving more than \$12,000 per calendar year from the restricted entities, and to ensure the segregated funds do not contribute to candidates or spend on express advocacy, both receipts and expenses must be reported and tracked. This should include cash balance reporting, similar to committee reports.

Alternatively, staff could require the committee to report receipts and expenditures as segregated funds monies.

Recommendation: The Board should direct staff to require any segregated fund to register separately using the new ETHCF-1 form, and report all activity and cash balances using the ETHCF-2 reporting form, or CFIS website. Since segregated funds should not be required to report based on election activity, the Board should direct staff to collect continuing reports from the segregated funds in January and July of each year.

5) **Reporting – Requirement to File Continuing Reports**

Issue: The new statutes are ambiguous about the continuing reports required if a non-candidate committee does not support or oppose a candidate. They are also unclear about when the reporting requirements begin and end.

Discussion: In new statutes, Parties (§11.0304), Legislative Campaign Committees (§11.0404), PACs (§11.0504), IECs (§11.0604), and Conduits (§11.0704), are all given separate filing requirements based on whether they support or oppose a candidate at the spring primary, the spring election, the fall partisan primary, or the fall election. The continuing reports, due January 15th, and July 15th, and an additional continuing report due on the 4th Tuesday in September in even-numbered years for committees active in the fall election, are listed underneath each of the four election categories. Based on this construction, one interpretation of the statutes is that continuing reports are not required if the committee has not yet supported or opposed a candidate.

Example: A PAC registers in May of 2017, but only plans to be active in the Fall 2018 election. Its reporting requirements would be defined by statute Wis. Stat. §11.0504(5) REPORTS TO SUPPORT OR OPPOSE CANDIDATES AT GENERAL ELECTION, which would require the 2018 Fall Pre-Election report, plus in odd-numbered years, a continuing report on January 15 and July 15, and in even-numbered years, a continuing report on January 15th, July 15th, and the 4th Tuesday in September. The PAC may have no activity as of 6/30/2017, and may have done some fundraising as of 12/31/2017 and 6/30/2018, but not actually supported or opposed a candidate at a fall election yet. Is the PAC required to file the July 2017, January 2018, and July 2018 Continuing reports?

The new statutes also do not make it clear when the reporting requirements end. One interpretation could require a committee that once made a contribution for a spring primary election to be required to file a Spring Pre-Primary and Spring Pre-Election report each year as long as they remain registered, regardless of their activity in each successive year. A similar interpretation could apply to the 4th Tuesday in September Continuing report, and the Fall Pre-Primary and Fall Pre-Election reports.

Another interpretation would apply separate reporting requirements to each election cycle, but if applied to the January Continuing and July Continuing reports, might mean that a committee

is not required to file for a year or more at a time – as long as it had no activity, or its activity was not related to supporting or opposing a candidate on the ballot.

Recommendation 1: The Board should instruct staff to require all registered committees to file all January and July Continuing reports, or submit a statement of no activity. The January and July Continuing reports are required under each of the four separate subsections that direct committees to file reports, so regardless of the activity a committee has had or intends to have, those reports would always be required.

Recommendation 2: For all reports except the January and July Continuing reports, the Board should direct staff to base filing requirements only on activity occurring in the current election cycle.

6) Reporting – Should Committees on “Exempt” Status be required to file any reports?

Issue: The new legislation clearly exempts committees with activity totaling no more than \$2,000 in a calendar year from the requirement to file continuing reports. Should such committees be excused from filing other report types as well?

Discussion: Current statute Wis. Stat. §11.05(2r) describes how committees may claim “exempt” status, and states that “Any registrant making such an indication is not subject to any filing requirement if the statement is true.” The new legislation, in Wis. Stat. §11.0104(1)(a), describes a similar procedure in regard to claiming “exempt” status, but then says that “the appropriate filing officer shall suspend the requirement imposed upon that committee or conduit by this chapter to file continuing reports.” Although not defined, continuing reports are referred to in numerous sections as the January, July and September reports. The Pre-Primary, Pre-Election, and other special reports are not described as continuing reports. On its face, this would seem to require a committee with any activity, even if under \$2,000, to file pre-primary and pre-election reports if active during that period.

Since “continuing report” is not specifically defined in the new legislation, the Board may have some flexibility in defining it in this instance. Interpreting Wis. Stat. §11.0104(2) to include all reports is a common-sense interpretation comporting with the previous statutory provision. We have been informed that this was the statutory intent. Requiring an exempt committee to file Pre-Primary and Pre-Election reports, but not continuing reports, could also lead to absurd results. For example, a spring candidate committee on “exempt” status that had \$50 in spending on March 15 would have to disclose that on the Spring Pre-Election report, but it would not have to disclose \$500 in spending on April 1, because that activity would be included on the July Continuing report.

Recommendation: The Board should direct staff to interpret Wis. Stat. §11.0104(2) to exclude “exempt” committees from the requirement to file any campaign finance reports.

7) Registration and Reporting – When can a Candidate Committee choose to go on “Exempt” Status?

Issue: The new legislation provides that a candidate committee may not amend its registration statement sooner than the date of the election in which the candidate committee is participating (§11.0104(1)(b)).

Discussion: Although there is some ambiguity, taken in the context of Wis. Stat. §11.0104(1)(a), the intent of this section seems to simply prohibit a candidate from claiming “exempt” status in the time period beginning with the filing of a candidate’s ballot access documents until the date of election.⁴

Recommendation: The Board should direct staff to interpret Wis. Stat. §11.0104(1) to exclude existing, non-exempt candidate committees from amending their registration to claim “exempt” status during the time period beginning with the filing of a candidate’s ballot access documents until the close of the reporting period after the election.

8) Reporting – Activity not Qualifying as a “Contribution” or a “Disbursement”

Issue: How should staff handle reporting of financial activity that is specifically exempted from the definition of “Contribution” or “Disbursement?”

Discussion: The new legislation redefines a “Contribution” and a “Disbursement” and specifically exempts some activity from being reported, or at least itemized. New Wis. Stat. §§11.0101(8)(b) exempts interest earned on a bank account from the definition of contribution. New Wis. Stat. §11.0101(10) (b) exempts a PACs or an IECs fundraising and administrative expenses from the definition of disbursement. Wis. Stats. §§11.0505(2)(a) (for PACs) and 11.0605(2)(a) (for IECs) state that a PAC or IEC engaged in specific express advocacy is not required to submit itemized activity regarding disbursements made before reaching the \$2,500 registration threshold. Committees may expend funds for any lawful purpose not strictly personal, but such expenditures are not “disbursements” as that is defined.

Reporting statutes generally require that a committee report all contributions and disbursements, but do not address if or how a committee should report financial activity that does not qualify as a contribution or a disbursement. However, each type of (state resident) committee is required to report “the cash balance on hand at the beginning and end of the reporting period.” (Wis. Stats. §§11.0204(1)(a)6. (Candidate Committees), 11.0304(1)(a)6. (Party Committees), 11.0404(1)(a)6. (Legislative Campaign Committees), 11.0504(1)(a)6. (PACs), 11.0604(1)(a)6. (IECs), 11.0804(1)(a)5. (Referendum Committees), 11.0904(1)(a)6. (Recall Committees). Without at least a basic accounting entry totaling these ‘exempt’ activities, an accurate cash balance is not possible.

Recommendation: The Board should direct staff to require reporting of all financial activity by any registered committee. However, if a transaction does not fall under the definition of “Contribution” or “Disbursement,” or is otherwise not required to be itemized, the Board should direct staff to accept a simple entry of the category of “other receipts” or “other expenses,” with no further itemization.

⁴ The provision could be read to prohibit a candidate committee from amending its treasurer or contact information. It would also prohibit a committee on exempt status to come off of exempt status. This section does not define when a person becomes a candidate. The definitional section of the legislation defines a candidate to include any incumbent of a state or local office (§11.0101(1)(c)). Thus, it could also be read to prohibit any candidate registered for a future office to claim exemption, even if it were a Supreme Court Justice registered for re-election 10 years in the future. We have been informed that this was not the intent.

9) **Reporting – Labor Union PAC Receipts and Itemization**

Issue: How should staff administer the new statutes with respect to labor union and similarly sponsored committees?

Discussion: The previous statute prohibited contributions by corporations and most labor organizations, except those incorporated before January 1, 1978. (Wis. Stat. §11.38(2) (c)). The new statute has no such exception, and bans contributions from all labor organizations. (New Wis. Stat. §11.1112). Under the previous law, labor unions created separate PACs, and transferred contributions from individual union members into those PACs. However, in some cases those contributions from individual union members were first deposited in a union’s general treasury, and later transferred to the PAC. Other committees may have operated similarly.

In addition, most contributions from union members to labor union PACs were unitemized, since the amount withheld from each union member on each check was under the previous \$20 itemization threshold. The new statutes removed the \$20 itemization threshold, and require that all contributions be itemized, unless the contributions are anonymous – and anonymous contributions are capped at \$10. (New Wis. Stats. §§11.0204(1)(a)1. and 11.0204(1)(a)4.).

Recommendation 1: The Board should direct staff to treat any transfer of money from a labor organizations’ general treasury to its PAC as an illegal contribution, and penalize the PAC and labor organization accordingly. Any contribution to a labor union PAC must come directly from an individual union member.

Recommendation 2: The Board should direct staff to require all contributions from union members to labor union PACs to be itemized, even if under the \$10 threshold, because they do not qualify as “anonymous” contributions.

10) **Reporting and Enforcement – Employer Information Changes**

Issue: Now that information concerning an employer’s name and address is no longer required, how should staff treat employer information for contributions made on or before December 31, 2015?

Discussion: The previous statutes required employer information when an individual’s yearly contribution total exceeded \$100. (Wis. Stat. §11.06(1)(b)). The new statutes require only that an individual contributing more than \$200 per year list her or his occupation. (New Wis. Stats. §§11.0204(1)(a)3., 11.0304(1)(a)3., 11.0404(1)(a)3., 11.0504(1)(a)3., 11.0604(1)(a)3., 11.0704(1)(b)2., 11.0804(1)(a)2., 11.0904(1)(a)3.)

The CFIS database currently collects employer information through data entry and upload of excel templates. Both the data entry screens and upload templates will be redesigned by our vendor, PCC, so that employer information is not collected. Unqualified adoption of this new data standard would be far cheaper and less likely to cause errors. But it would also mean that reports for 2015 activity that have not yet been filed would not contain employer information, and users could not amend past reports to add missing employer information.

Board staff previously performed an annual employment information audit, to determine if committees have made a good faith effort to comply with Wis. Stat. §11.06(1)(b). If some data from 2015 does not contain employer information, staff will be unable to run an audit in 2016 based on 2015 reporting of employer information.

Staff believes that even though the contributions in question would have occurred in 2015 or before, the report covering those contributions would be filed after January 1, 2016, and the new reporting requirements would be in place. Filing the 2016 January Continuing report, or amending a previous report, without employer information would therefore still meet the statutory requirements.

Recommendation 1: The Board should direct staff and PCC to alter CFIS to no longer require the collection of employer information as of January 1, 2016, regardless of the dates of the contributions reported.

Recommendation 2: The Board should direct staff not to run an employer information audit covering calendar year 2015.

11) Enforcement – Definition of “Strictly Personal Use”

Issue: Now that the previous “political purpose” requirement has been removed, how should staff determine whether a disbursement is for a permissible purpose?

Discussion: The previous statute Wis. Stat. §11.01(16) defined when acts were for political purposes, and by reference, committees were barred from making expenses that were not for a political purpose. The new legislation contains no reference to “political purposes.” Instead, Wis. Stat. §11.1208(1) prohibits committees from making disbursements contrary to law, and Wis. Stat. §11.1208(2) prohibits committees from spending for “the committee’s or an individual’s strictly personal use.”

The question of what constitutes “personal use” under Wisconsin law is a new one. However, federal law does define “personal use” and the Federal Elections Commission (FEC) has interpreted and applied that language.

11 C.F.R. 113.1(g) *Personal use.* *Personal use* means any use of funds in a campaign account of a present or former candidate to fulfill a commitment, obligation or expense of any person that would exist irrespective of the candidate's campaign or duties as a Federal officeholder.

The rule goes on to list examples of items that would be considered personal use, like food and household supplies, most clothing, tuition payments, mortgage or rent or utility payments for a personal residence, dues to a country club or health club, and vacations. The list, which is attached (ADDENDUM 1), is not exhaustive, but covers many common situations.

Recommendation: The Board should interpret “strictly personal use” under the new law to be equivalent to the language used by the Federal Election Commission in rule 11 C.F.R. 113.1(g), and instruct staff to follow the FEC’s interpretation where possible.

State of Wisconsin \ Government Accountability Board

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JUDGE GERALD C. NICHOL
Chairperson

KEVIN J. KENNEDY
Director and General Counsel

DATE: For the December 15, 2015 Board Meeting

TO: Members, Wisconsin Government Accountability Board

FROM: Jonathan Becker
Ethics and Accountability Division Administrator
Government Accountability Board

Prepared by:
Kyle Kundert, Ethics Specialist

SUBJECT: Federal Election Commission Rule (11 C.F.R. 113.1(g)) - Personal Use

ADDENDUM 1

(g) *Personal use.* *Personal use* means any use of funds in a campaign account of a present or former candidate to fulfill a commitment, obligation or expense of any person that would exist irrespective of the candidate's campaign or duties as a Federal officeholder.

(1)

(i) Personal use includes but is not limited to the use of funds in a campaign account for any item listed in paragraphs (g)(1)(i)(A) through (J) of this section:

(A) Household food items or supplies.

(B) Funeral, cremation or burial expenses except those incurred for a candidate (as defined in 11 CFR [100.3](#)) or an employee or volunteer of an authorized committee whose death arises out of, or in the course of, campaign activity.

(C) Clothing, other than items of *de minimis* value that are used in the campaign, such as campaign "T-shirts" or caps with campaign slogans.

(D) Tuition payments, other than those associated with training campaign staff.

(E) Mortgage, rent or utility payments—

(1) For any part of any personal residence of the candidate or a member of the candidate's family;

or

(2) For real or personal property that is owned by the candidate or a member of the candidate's family and used for campaign purposes, to the extent the payments exceed the fair market value of the property usage.

(F) Admission to a sporting event, concert, theater or other form of entertainment, unless part of a specific campaign or officeholder activity.

(G) Dues, fees or gratuities at a country club, health club, recreational facility or other nonpolitical organization, unless they are part of the costs of a specific fundraising event that takes place on the organization's premises.

(H) Salary payments to a member of the candidate's family, unless the family member is providing *bona fide* services to the campaign. If a family member provides *bona fide* services to the campaign, any salary payment in excess of the fair market value of the services provided is personal use.

(I) Salary payments by a candidate's principal campaign to a candidate in excess of the lesser of: the minimum salary paid to a Federal officeholder holding the Federal office that the candidate seeks; or the earned income that the candidate received during the year prior to becoming a candidate. Any earned income that a candidate receives from salaries or wages from any other source shall count against the foregoing limit of the minimum salary paid to a Federal officeholder holding the Federal office that the candidate seeks. [...]

(J) A vacation.

(ii) The Commission will determine, on a case-by-case basis, whether other uses of funds in a campaign account fulfill a commitment, obligation or expense that would exist irrespective of the candidate's campaign or duties as a Federal officeholder, and therefore are personal use. Examples of such other uses include:

(A) Legal expenses;

(B) Meal expenses;

(C) Travel expenses, including subsistence expenses incurred during travel. If a committee uses campaign funds to pay expenses associated with travel that involves both personal activities and campaign or officeholder-related activities, the incremental expenses that result from the personal activities are personal use, unless the person(s) benefiting from this use reimburse(s) the campaign account within thirty days for the amount of the incremental expenses, and

(D) Vehicle expenses, unless they are a *de minimis* amount. If a committee uses campaign funds to pay expenses associated with a vehicle that is used for both personal activities beyond a *de minimis* amount and campaign or officeholder-related activities, the portion of the vehicle expenses associated with the personal activities is personal use, unless the person(s) using the vehicle for personal activities reimburse(s) the campaign account within thirty days for the expenses associated with the personal activities.

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JUDGE GERALD C. NICHOL
Chairperson

KEVIN J. KENNEDY
Director and General Counsel

MEMORANDUM

DATE: For the December 15, 2015 Meeting

TO: Members, Wisconsin Government Accountability Board

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

SUBJECT: Agency Transition Report

Legislation to reorganize the Government Accountability Board into two separate bipartisan commissions effective June 30, 2016 was concurred in by the Assembly on November 16, after amendment by the State Senate on Saturday, November 7, 2015. Enrolled 2015 Assembly Bill 388. The legislation is awaiting approval by the Governor. At the request of the Governor's staff a bill analysis was prepared. A copy of my analysis is posted on the agency website: <http://www.gab.wi.gov/publications/testimony/ab388-analysis-governor>.

The Legislation had been introduced on Friday, October 9, 2015. A joint public hearing was held on Tuesday, October 13, 2015. On Thursday, October 15, 2015 the Assembly Committee on Campaigns and Elections adopted an amendment and voted to recommend passage 6-3. The legislation as amended passed the Assembly on Wednesday, October 21, 2015.

The bill requires the Secretary of the Department of Administration to submit an implementation plan by June 1, 2016, to the Joint Committee on Finance for approval under section 13.10 of the statutes. In the plan, the secretary shall propose expenditure authority for the elections commission and the ethics commission by appropriation and specify the funding sources of all positions for each commission. The Director and General Counsel is required to participate in formulating the implementation plan. He is also required to work in concert with the secretary and members appointed to the elections and the ethics commissions to ensure a smooth transition.

The chairpersons of the Assembly Committee on Campaigns and Elections or the Senate Committee on Elections and Local Government may request that individuals employed by the Government Accountability Board and the Director and General Counsel of the Government Accountability Board appear before either or both committees for the purpose of providing information to the committees about the progress of transitioning from the Government Accountability Board to the Elections and the Ethics Commissions.

The agency Management Team is developing materials to assist in the transition of the agency into two separate entities. On December 4, 2015, I met with Department of Administration Deputy Secretary Cate Zeuske to discuss the development of an agency transition plan. The discussion was very preliminary and focused on providing information about the current structure of the

agency. We agreed that the plan should be submitted well before the June 1, 2016 deadline to ensure a smooth transition.

I will keep Board Members apprised of the development of the plan through periodic reports including keeping this update as a standing agenda item for the remaining scheduled G.A.B. meetings: January 12, 2016; March 1, 2016; April 26, 2016 and June 1, 2016.

A plain language summary of the legislation as enacted accompanies this memorandum. The summary reflects the Senate amendments all of which were concurred in by the Assembly.

This report and summary are provided for the Board's information and no action is required.

Government Accountability Board Reorganization Enrolled 2015 Assembly Bill 388

Structure and Composition

The legislation creates an Elections Commission and an Ethics Commission, both consisting of 6 members. The 4 legislative leaders (Senate Majority Leader, Assembly Speaker, Senate Minority Leader and Assembly Minority Leader) each appoint a member to the commissions. In addition the legislative leaders from each party submit a list of three individuals to the Governor to appoint 2 additional members, one from each party list to the commissions.

The Commissions are described as bi-partisan as opposed to the current non-partisan composition of the Government Accountability Board. Party identification of commissioners is based on the party of the appointing authority or in the case of the commissioners appointed by the Governor, the party lists submitted by legislative leaders.

The party lists for the Elections Commission consist of former county or municipal clerks. The party lists for the Ethics Commission consist of former judges. If a political party other than the Democratic or Republican Parties obtains 10% of the vote for Governor, the chief officer of the state party may submit a list of three names from which the Governor appoints someone to serve on the commissions.

Commissioners are appointed for 5-year terms subject to Senate confirmation. Commission members may not hold a state or local public office except reserve judge or be a lobbyist. The restrictions on political contributions, being members of political parties or an officer or employee of a political committee, and in the case of the Elections Commission, being an employee of a principal, are removed. Commissioners receive the same compensation as G.A.B. Members – currently a per diem of \$454.11, equal to a reserve circuit court judge.

The chairperson of each commission is chosen by a two-thirds vote of the commission members and serves a two-year term. The chairperson must be one of the members appointed by the four legislative leaders. The party of the initial chairperson of each commission shall be determined by lot. Following the initial two-year term, the chairperson shall rotate between the two major political parties.

The commissions are required to meet in person at least 4 times per year and conduct meetings according to accepted parliamentary procedure.

Commissioners may be appointed to serve on the Government Accountability Board as non-voting members from February 1, 2016 until the commissions begin operations. This should provide an orientation opportunity for commissioners.

Staffing

Each commission selects an administrator to run the agency. The administrator serves a four-year term ending on July 1, of an odd-numbered year and is subject to Senate confirmation. Until the

administrator is confirmed by the Senate, the appointee serves on an interim basis. The administrator may not have been a lobbyist or served in a partisan state or local office.

The administrator may be chosen by the newly selected commissioners before June 30, 2016, but may not begin employment until that date. Commissioners have 45 days to appoint an administrator in the event of a vacancy in the position. If the commissioners do not select an administrator, the Joint Committee on Legislative Organization shall appoint an interim administrator.

The administrator may select an assistant administrator. Both positions are unclassified. The administrator may designate a commission employee to serve as legal counsel.

Commission staff are prohibited from becoming a candidate for state or partisan local office, making political contributions to state or local candidates and for 12 months before becoming employed or appointed make a contribution to a candidate for state or partisan local office.

All current agency positions are transferred to the new commissions. The terms of the legislation specify the current Director and General Counsel does not transfer to either of the new commissions. All other staff transfer to the new commissions. The Secretary of the Department of Administration determines which FTE positions and which incumbent employees are transferred to each commission.

Powers – Both Commissions Unless Noted

Advice

Formal and informal opinions of the Elections Commission, including the identity of the individuals making the request or the organizations or governmental bodies on whose behalf the opinions are requested, are public. This is consistent with current law.

Formal and informal opinions of the Ethics Commission are subject to the same confidentiality provisions and exceptions applicable to opinions of the current Ethics and Accountability Division related to campaign finance, ethics or lobbying.

Within two months following the publication of a state or federal court decision that is binding on the commission and the state, the commission shall issue updated guidance or formal advisory opinions, commence rule-making or request an opinion from the attorney general on the applicability of the decision.

To have legal force and effect, each formal and informal advisory opinion must be supported by specific legal authority, the opinion shall include a citation to that legal authority along with an explanation why the authority is relevant to the conclusion of the opinion.

At each regular meeting of the commission, the administrator shall present to the commission for review any informal advisory opinions issued under the direction of the administrator that relate to recurring issues or issues of first impression for which no formal

opinion has been issued. The commission may determine to issue a formal opinion adopting or modifying the informal opinion.

Any person requesting a formal opinion may request a public or private hearing before the commission to discuss the opinion and the commission shall grant the request. Note the private hearing option applies to Elections Commission opinions, which are public.

Any individual may request in writing, electronically or by telephone an informal opinion from the commission. The commission's designee shall provide a written response, a written reference to an applicable statute or law or a written reference to a formal advisory opinion or shall refer the request to the commission for review and issuance of a formal opinion.

Any individual may request in writing, electronically or by telephone a formal opinion from the commission or a review or modification of a formal opinion of the commission. The individual shall include all pertinent facts relevant to the matter. The commission shall publish the opinion on its website. In the case of a confidential opinion issued by the Ethics Commission, it shall publish a redacted version of the opinion that complies with the applicable confidentiality provisions

If the commission declines to issue a formal opinion it may refer the matter to the attorney general or the standing legislative oversight committees.

No person acting in good faith upon a formal or informal opinion issued by the commission is subject to civil or criminal liability if the material facts are as stated in the opinion request.

Investigations and Enforcement

The commissions may only investigate civil violations based on a sworn complaint. No commissioner or employee may file a complaint. No investigation may be based solely on an anonymous complaint. The commissions are required to notify the subject of a complaint within five days of receipt of a complaint.

Before taking action on a complaint, other than dismissal, the commissions shall provide the subject of a complaint with opportunity to file a written demonstration why no action should be taken by the commission within 15 days of receipt of notice.

The current detailed provisions on initiating, conducting and completing investigations remain in effect for both commissions including confidentiality provisions.

Current restrictions, including criminal sanctions, on commissioners, staff and agents for disclosing information about investigations do not change.

Civil actions by the commissions are the sole means of enforcement of civil violations.

Records and Procedures

Records of investigations remain subject to the same confidentiality provision as under current law. The Legislative Audit Bureau continues to have access to investigation records as provided under current law. The Joint Committee on Finance has access to redacted investigation records sufficient to authorize additional funding.

Each year the commissions shall adopt written policies and procedures in order to govern its internal operations and management. The commissions shall annually report the policies and procedures to the applicable standing committees of the legislature.

Each commission shall submit an annual report under s. 15.04 (1)(d) (rather than a biennial report) that describes the statutory duties of the administrator with a description of how those duties are being fulfilled; the total number of investigations along with a description of the nature of each investigation.

The current provisions for delegating selected authority related to election administration to the Director and General Counsel have been removed.

Rulemaking

Certain permissive rulemaking is now mandatory. This includes rules for the administration of electronic voting equipment, development of a settlement offer schedule and attribution statements (disclaimers) on small items used in campaigns.

Funding

The current sum-sufficient funding for investigations is modified. Each commission may spend up to \$25,000 on an investigation. Any request for additional funding for an investigation must be submitted to the Joint Committee on Finance (JCF) for passive review along with a redacted description of the nature of the investigation. If approved by JCF, the Department of Administration Secretary shall release the requested funding.

Commissions may accept payment by credit cards and add a processing surcharge.

Elections Commission

The Administrator of the Elections Commission serves as the chief election officer of the state.

The Election Administration Council is eliminated.

Specific ability of staff to certify agency records is eliminated.

Elections Commission staff, other than the administrator and assistant administrator, no longer need to file a Statement of Economic Interests.

Ethics Commission

The commission shall give prompt notice of the contents of its rules to state public officials who will be affected by the rules.

Contract Sunshine disclosure responsibilities are handled by the Ethics Commission.

All Ethics Commission staff are required to file Statement of Economic Interest

The commission has a 30-day deadline for issuing redacted advisory opinions.

Transition and Effective Date

The terms of Government Accountability Board Members expire on June 30, 2016.

All employees transferred to the commissions have the same rights and status under subch. V of chapter 111 that they enjoyed at the G.A.B. They do not have to serve a probationary period.

The Secretary of the Department of Administration is required to adopt an implementation plan and submit it for approval to the Joint Committee on Finance by June 1, 2016. The Director and General Counsel of the G.A.B. is required to participate in formulating the implementation plan. The Director and General Counsel is also required to work in concert with the secretary and commission members to ensure a smooth transition.

All current agency positions are transferred to the new commissions. The terms of the legislation specify the current Director and General Counsel does not transfer to either of the new commissions. All other staff transfer to the new commissions. The Secretary of the Department of Administration determines which FTE positions and which incumbent employees are transferred to each commission.

The Secretary of the Department of Administration shall determine which assets and liabilities; property and records; contracts; rules, orders and formal opinions; and which pending matters shall be transferred to each commission.

The chairpersons of the Assembly Committee on Campaigns and Elections or the Senate Committee on Elections and Local Government may request that individuals employed by the Government Accountability Board and the Director and General Counsel of the Government Accountability Board appear before either or both committees for the purpose of providing information to the committees about the progress of transitioning from the Government Accountability Board to the Elections and the Ethics Commissions.

Each commission shall, to the extent practicable within its respective responsibilities, implement the recommendations in LAB reports 14-14 and 15-13. The commissions shall report their progress to the legislature no later than December 31, 2016.

Commission members may serve prior to senate confirmation. The initial terms of one-half of the commission members expire on May 1, 2019. The other half expire on May 1, 2021.

Appointments and confirmation may begin on the day after publication of the act. The initial appointees may serve before Senate confirmation.

(12.06.15)

State of Wisconsin \ Government Accountability Board

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JUDGE GERALD C. NICHOL
Chairperson

KEVIN J. KENNEDY
Director and General Counsel

MEMORANDUM

DATE: For the December 15, 2015 Board Meeting

TO: Members, Wisconsin Government Accountability Board

FROM: Kevin J. Kennedy, Director and General Counsel

Prepared and Presented by:
David Buerger, Elections Specialist

SUBJECT: 2015 Recount Manual Revision

Wisconsin Statute § 9.01(10) requires the Government Accountability Board to prescribe standard forms and procedures for conducting recounts. This requirement is met through the publication of a recount manual which sets forth standard forms and procedures for conducting recounts. The Recount Manual was last updated in August 2008 and that version is posted on the agency website at: http://www.gab.wi.gov/sites/default/files/publication/65/recount_manual_23968.pdf

In 2011, the recount of the Wisconsin Supreme Court contest prompted Board staff to develop a more detailed set of procedures for conducting the recount (Recount Plan) that was intended to supplement the Recount Manual. The Recount Plan was updated in 2014 for use in legislative recounts during the 2014 Partisan Primary. The Recount Plan is also posted on the agency website at: http://www.gab.wi.gov/sites/default/files/publication/65/recount_plan_2014_pdf_10327.pdf

Together the Recount Manual and Plan have been used effectively by boards of canvassers in over 100 recounts of state and local contests. Candidates also rely on the Recount Manual for guidance in requesting a recount and the Recount Manual also helps to inform them on what to expect during the recount.

This year Board staff has integrated the Recount Manual and the Recount Plan back into a single document and also updated the manual to reflect the changes made by 2015 Wisconsin Act 36 and 2013 Wisconsin Act 176. A copy of the revised manual is attached for the Board's review.

RECOMMENDED MOTION: The Board approves the Recount Manual as attached.

ELECTION RECOUNT PROCEDURES

December 2015



**Wisconsin Government
Accountability Board**
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Introduction

Elections are often decided by a few votes. In many cases they are decided by one or two votes out of the several hundred or even several thousand votes that are cast. An election may even end in a tie vote. These circumstances encourage a candidate, typically the one who loses the election, to have all the ballots counted again to assure all legal votes are counted properly, any illegal votes are not counted, and the proper procedures for conducting the election were followed by the election officials.

The process of counting the ballots again is known as a recount. The procedures for requesting and conducting a recount are spelled out in the election laws. A recount is the exclusive remedy to test in court the right of a candidate to hold office based on the number of votes cast at an election.

This manual explains the statutory requirements for requesting a recount, attempts to explain ambiguity in those statutes, expands on the statutory requirements with recommended procedures for conducting a recount, and contains sample forms for use during the recount. This information is prepared by the Government Accountability Board pursuant to the requirements of [Wis. Stat. § 9.01\(10\)](#). If you have any questions about the recount process, please contact the Elections Division staff through any of the methods below:

Phone: 608-261-2028

Toll Free: 866-VOTE-WIS

Fax: 608-267-0500

E-Mail: gab@wi.gov

Procedures for Requesting a Recount

Who May Request a Recount?

Any individual who voted at a referendum election may request a recount of the referendum results. Only a candidate may request a recount of office results. [Wis. Stat. § 9.01\(1\)\(a\)1.](#)

How is a Recount Requested?

A recount is requested by filing a sworn petition with the filing officer along with the filing fee, if required. This must be done not earlier than the completion of the canvass and not later than 5 p.m. on the 3rd business day following the last meeting day of the board of canvassers determining the result for the office/referendum. [Wis. Stat. § 9.01\(1\)\(a\)1.](#)

What is a Recount Petition?

A recount petition is a sworn statement requesting that the votes at an election be counted again and setting out the reasons why the ballots should be recounted. A recount petition must be filed with the filing officer along with any applicable fee.

The recount petition must state the following information:

1. The petitioner must specifically request a recount or otherwise clearly indicate they desire a recount of particular election results. See [Wis. Stat. § 9.01\(1\)\(a\)1.](#)
2. The petitioner was a candidate for the office in question. If the results of a referendum election are at issue, the petition must state that the petitioner voted on the referendum question. [Wis. Stat. § 9.01\(1\)\(a\)2.a.](#)
3. The basis for requesting the recount. This can consist of a general statement that the petitioner believes that a mistake or fraud was committed in a specified ward or municipality in the counting and return of the votes cast for the office; or more specific grounds, such as a particular defect, irregularity, or illegality in the conduct of the election, may be listed in the petition. The petitioner shall state if this information is based on personal knowledge of the petitioner or if the petitioner believes the information to be true based on information received from other sources. [Wis. Stat. § 9.01\(1\)\(a\)2.b.](#)
4. The ward or wards to be recounted.¹ If a municipality consists of only one ward, the petition need only list the municipality in which the recount is desired. If all wards in a municipality, county or district are to be recounted, the petition may list the municipality, county or district without specifying each ward to be recounted. The petitioner may also state “all wards” if the petitioner wants the entire election recounted. If no ward specifications are indicated, the filing officer will assume that all wards are included. [Wis. Stat. § 9.01\(1\)\(a\)3.](#)
5. A verification statement signed under oath before a person authorized to administer oaths.

¹ If a candidate petitions for a recount in part, but not all, of the wards or municipalities within a jurisdiction or district, the opposing candidate may file a petition for a recount in any or all of the remaining wards or municipalities. The latter petition must be filed not later than 5:00 p.m. two days after the board of canvassers completes the first recount. The board of canvassers convenes at 9:00 a.m. on the next business day to count the remaining wards or municipalities. This right also applies to a referendum election. Any elector who voted at the election may petition to recount the remaining wards or municipalities in a referendum election. [Wis. Stat. § 9.01\(4\).](#)

The verification statement must state that the petitioner, being first duly sworn, knows that the information in the petition is true based on the petitioner's personal knowledge, or that the petitioner believes the information is true based on information received by the petitioner. See [Wis. Stat. § 5.06\(1\)](#).

If a recount petition is not filed in the proper form, or not accompanied by the filing fee (if required) by the filing deadline the petitioner loses his or her right to a recount of the election. See Wis. Stat. § [9.01\(1\)\(a\)2](#) & [\(ag\)3](#). A sample recount petition ([GAB-186](#)) is available in the Appendix.

After filing the recount petition, the petitioner may amend the petition. This may be done to include information discovered as a result of the facts gathered and determined by the board of canvassers during the recount. If the petitioner wants to amend his or her petition, the petitioner must file a motion to amend the petition with the board of canvassers as soon as possible after the petitioner discovers, or should have reasonably discovered, the new information, and show that the petitioner was unable to include the information in the original petition. [Wis. Stat. § 9.01\(1\)\(a\)4](#).

When is a Filing Fee Required?

Determining if a filing fee is required depends on the total votes cast for the office² and the difference between the total votes cast for the “leading candidate” and the total votes cast for the petitioner. The “leading candidate” is typically the candidate who won the election. However, in an election where more than one candidate is elected to the same office, or in a primary election when two or more candidates are nominated, the “leading candidate” is the person who received the fewest votes, but is still elected or nominated; not the candidate with the most votes. When more than one candidate is elected or nominated, the number and percentage of votes cast is calculated by first dividing the total votes cast by the number of candidates elected or advancing. [Wis. Stat. § 9.01\(1\)\(ag\)5](#). Please see “Recount Fee Scenarios” in the Appendix for an example of how to determine if a filing fee is required.

If 4,000 or fewer votes are cast:

No fee is required if the difference in the total votes cast between the leading candidate and those cast for the petitioner or between the affirmative and negative votes cast at a referendum is less than 10. If the difference is at least 10 votes, a filing fee is required.

If more than 4,000 votes are cast:

No fee is required if the difference between the leading candidate and those cast for the petitioner or between the affirmative and negative votes cast at a referendum is 0.25% or less. If the difference is greater than 0.25%, a filing fee is required.

When a filing fee is required, the cost of the recount should be estimated by the clerk and pre-paid by the petitioner in cash or in another form of payment acceptable to the filing officer at the time of filing. [Wis. Stat. § 9.01\(1\)\(ag\)3](#).

If the recount results in the petitioner being elected or a reversal of the outcome of a referendum, the filing fee shall be refunded to the petitioner within 30 days. If the results of the recount do not change the outcome of the election, the petitioner shall pay any balance owing toward the actual cost

² In an election in which more than one office of the same type is to be filled from the same territory, the total votes cast for the office is determined by dividing the total number of votes cast for the office by the number of offices to be filled. The difference between the total votes cast for the leading candidate and the petitioner is divided by the total votes cast for the office to calculate the percentage difference to determine when a fee is required. [Wis. Stat. § 9.01\(1\)\(ag\)5](#).

of the recount, or the clerk shall refund any amount overpaid, within 30 days after the board of canvassers concludes the recount. [Wis. Stat. § 9.01\(1\)\(ag\)3m](#).

Where Does the Petitioner File the Recount Petition?

The petitioner files the recount petition with the filing officer with whom nomination papers or a declaration of candidacy are filed for that office. The filing officer for any federal or state office or referendum is the Government Accountability Board. The filing officer for any county office or referendum is the county clerk. The filing officer for a municipal office or referendum is the municipal clerk or the board of election commissioners. The filing officer for a school board office or referendum is the school district clerk. [Wis. Stat. §§ 8.10\(6\)\(d\), 9.01\(1\)\(ar\)1](#).

When Must the Petition be Filed?

If a municipal or county board of canvassers determines the election results, the timeframe for filing is not earlier than the completion of the canvass for the election and not later than 5:00 p.m. on the third business day after the last meeting day of the board of canvassers which determines the election or referendum results. [Wis. Stat. § 9.01\(1\)\(a\)1](#).

If the Government Accountability Board Chairperson or designee determines the election or referendum result, the petition must be filed no earlier than the last meeting day of the last county board of canvassers to make a statement in the election or referendum and no later than 5:00 p.m. on the third business day after the Government Accountability Board receives the last statement from the county board of canvassers. [Wis. Stat. § 9.01\(1\)\(a\)1](#).

What Happens When the Petition is Properly Filed?

Upon receipt of a valid recount petition, the filing officer shall prepare a public notice of the recount (see Appendix for an example) pursuant to [Wis. Stat. § 19.84](#) describing when and where the recount will be held. The filing officer shall send a copy of the notice to the board of canvassers and deliver a copy of the petition and public notice to all candidates whose names were listed on the ballot for the same office. The Government Accountability Board recommends that the filing officer also deliver the notice to any registered write-in candidates. In a partisan primary, candidates from all parties for the same office must be notified by the filing officer. A candidate or agent designated by the candidate may personally accept delivery of the copy of the petition. Upon delivery, the candidate or agent shall be required to sign a receipt (see Appendix). If a candidate or agent does not personally accept delivery, the copies shall be given promptly to the sheriff. The sheriff shall promptly serve the copies on the candidates without fee. [Wis. Stat. § 9.01\(2\)](#).

The petitioner and other candidates are encouraged to obtain legal counsel to represent them in any recount proceedings. The board of canvassers should also make arrangements to obtain legal advice as needed during the recount proceedings. [Wis. Stat. § 9.01\(3\)](#). Board staff may also be made available via phone during the recount upon request.

Please note that the Government Accountability Board should be notified of all recounts. In the event of a recount for state or federal office involving more than one county, the boards of canvassers shall consult with the Elections Division staff in order to ensure that uniform procedures are used to the extent practicable. The Elections Division staff will make arrangements for a teleconference through the respective county clerks prior to beginning the recount. Candidates will be invited to participate and the teleconference will be open to the public. [Wis. Stat. § 9.01\(10\)](#).

Procedures for Conducting the Recount

When Does the Recount Begin?

The recount begins no earlier than 9 a.m. on the day following delivery of notice to all candidates and no later than 9 a.m. on the day following the last day for filing the recount petition. [Wis. Stat. § 9.01\(1\)\(ar\)3](#). In a recount ordered by the Government Accountability Board, the board of canvassers shall convene no later than 9 a.m. on the second day following receipt of the order by the county clerk. [Wis. Stat. § 9.01\(1\)\(ar\)3](#). If the following morning is a Saturday (or holiday) the Government Accountability Board recommends that the board of canvassers begin the recount on the Saturday (or holiday).

Who Conducts the Recount?

The board of canvassers that determined the original election result conducts the recount, except for state and federal elections. For state and federal elections, the county boards of canvassers for the counties in which the contested votes are cast conduct the recount. The Government Accountability Board recommends that the board of canvassers be composed of the same people who initially canvassed the election results. However, in the event one of the original members is unavailable when the recount is scheduled to begin, other qualified individuals may be appointed to fill the temporary vacancy. [Wis. Stat. §§ 7.53\(1\)\(b\), \(2\)\(a\), 7.60\(2\)](#). If a member of the board of canvassers is unavailable for the recount, the clerk should be notified immediately and a list of qualified replacements composed before the recount begins. The minutes of the recount should reflect any change in canvass board members and the reason for the substitution.

The board of canvassers may hire tabulators who work at the canvass board's direction and who assist in administering the recount. Tabulators may assist the board of canvassers in conducting the recount, but only members of the board of canvassers are competent to make any determination as to the validity of any vote tabulated. [Wis. Stat. § 9.01\(5\)\(b\)](#). The Government Accountability Board recommends that where possible, the election inspectors who worked the polls on Election Day serve as tabulators.

Who May Attend the Recount?

Any person may attend the recount. This includes the candidates, their representatives or legal counsel, media representatives, and any other interested persons. [Wis. Stat. § 9.01\(3\)](#). Observers shall conform their conduct to the observer rules established by the Government Accountability Board and the board of canvassers.

The board of canvassers may enforce reasonable restrictions on items brought into the recount room such as marking devices, food, or drink. All observers shall wear badges or nametags identifying themselves and their role.

If there are multiple representatives from a single campaign, a single representative shall be designated as the primary point of contact with the board of canvassers. Secondary representatives may ask clarifying questions of recount staff and request that ballots be set aside for further review by the board of canvassers, but any challenges or objections for the record must be made by the designated primary representative.

The canvass board members and the tabulators are the only persons who may handle and touch the ballots and other election materials. The board of canvassers must, however, allow the candidates and their representatives and/or legal counsel to view and identify the election materials. [Wis. Stat. § 9.01\(1\)\(b\)11](#). The board of canvassers may establish marked observer areas³ and ask that observers remain within those areas unless otherwise permitted by the board of canvassers. If there is not sufficient room for all observers to view the election materials, preference shall be given to candidates or their representatives. The use of video or still cameras inside the recount room is permitted unless it is disruptive or interferes with the recount.

The board of canvassers shall exercise reasonable control over the conduct of the recount to assure that the canvassers and tabulators do not experience interference from any observer. If any observer engages in disruptive behavior that in the opinion of the board of canvassers threatens the orderly conduct of the recount, the board of canvassers shall issue a warning and if the observer does not cease the offending conduct, order the observer's removal.

Recount Preparations

Unless a court orders otherwise, the board of canvassers may decide to either hand-count or use voting equipment to tabulate the ballots. The board of canvassers may also choose to hand-count certain wards, while using voting equipment to tabulate other wards. [Wis. Stat. § 5.90\(1\)](#). If voting equipment is used, it should be programmed to read and tally only the results for the contest to be recounted. Prior to the recount, the filing officer should consult individually with board of canvass members to inquire how each prefers the ballots be tabulated. Based on that informal polling, the filing officer can prepare for the recount. The formal decision on the tabulation method to be used should be made publicly when the recount begins so as to provide an opportunity for candidates or their representatives to object.

The filing officer administering the recount should ensure that all the supplies and materials needed for the recount have been acquired prior to the start of the recount. The filing officer should also acquire the necessary original election materials for each reporting unit to be recounted. A sample checklist of materials and supplies is available in the Appendix.

If the necessary materials are not on hand when the recount is scheduled to begin, the Government Accountability Board recommends that the board of canvassers convene as required, document what materials are missing, what steps have been taken to procure them for the record, and adjourn until the materials are available.⁴ In the event that the board of canvassers has the required materials for some, but not all the wards to be recounted at the time they are scheduled to begin the recount, the board of canvassers may begin the recount with those wards for which it has the required materials while the missing materials are being obtained.

The Government Accountability Board recommends that the board of canvassers note in the minutes if proper notice of the recount was given to all candidates. Also, the board of canvassers should note if the recount was properly noticed as a public meeting under [Wis. Stat. § 19.84](#).

The filing officer may choose to review the recount materials prior to the beginning of the recount to identify possible errors or anomalies (e.g., reconciliation of poll books). If any such review was conducted by the filing officer prior to the recount, the filing officer shall publicly present a full

³ Unlike observation areas in the polling place, recount observations areas are not required to be placed at any specific distance as long as the candidates and their representatives can view and identify the election materials and the observers are not disruptive to the recount process.

⁴ The Board of Canvassers may not adjourn for more than one day at a time. [Wis. Stat. § 9.01\(1\)\(ar\)3](#).

report to the board of canvassers of any errors or anomalies identified as well as any corrective action taken. The board of canvassers may choose to adopt or reverse any decision made by the filing officer during the pre-recount review.

What Does the Board of Canvassers Do?

The duty of the board of canvassers is to recount the votes cast for the office in question and to correct the errors, if any, that were made at the original determination of the election results. If necessary, the board of canvassers may also issue subpoenas to compel witnesses or documents for the recount. The canvass board is also required to make a complete written record of the recount. [Wis. Stat. § 9.01\(5\)\(a\)](#).

Each party to a recount must be given an opportunity to object and provide offers of evidence on:

- all objections to the recount itself,
- the composition of the board of canvassers,
- the procedures followed,
- any ballot cast at the election, and
- any other issues presented to the board of canvassers during the recount.

[Wis. Stat. § 9.01\(5\)\(a\)](#).

Any objections or offers of evidence, the canvass board's decisions, and any findings of fact regarding any irregularities discovered during the recount, must be recorded in the written minutes of the recount proceedings. While a court reporter is not required, an audio recorder is recommended to ensure detailed minutes are kept. A sample format for the minutes can be found in the Appendix.

How Does the Board Conduct the Recount?

The board of canvassers conducts the recount by following the procedures in Wis. Stat. §§ [5.90](#); [7.50](#); [7.51](#); & [9.01\(1\)\(b\)](#). Please see the Appendix for checklists specific to the use of each type of tabulation method. These procedures are conducted separately for each municipality and reporting unit within the municipality. The board of canvassers shall announce each reporting unit before beginning the recount process for that reporting unit. Please note that the board of canvassers must keep complete minutes of each step completed, any objections made, any evidence introduced, any findings of fact made, and any decisions of the board of canvassers including the reasoning behind the decision.

1. Reconcile Poll Lists – [Wis. Stat. § 9.01\(1\)\(b\)1](#)

The board reconciles the two poll lists and any supplemental lists to confirm the lists record the same voters, the same total number of electors who voted in the ward or municipality, and that the same supplemental information is noted. The canvassers determine from the poll lists the total number of voters, the number of absentee votes recorded, and identify any irregularities appearing on these lists. The canvassers note in the minutes the total number of persons who voted, how many absentee votes were recorded, and any irregularities found on the poll lists.

2. Review Absentee Ballots and Materials – Wis. Stat. § 9.01(1)(b)2

Determine Number of Absentee Voters

The Government Accountability Board recommends that the board of canvassers determines the number of absentee voters by reviewing the poll lists, the absentee ballot certificate envelopes, the Inspectors' Statement (GAB-104), and the absentee ballot log (GAB-124).

Examine Written Absentee Applications

The board of canvassers then reviews the written applications for absentee ballots and the list of absentee voters maintained by the municipal clerk. There should be a written application for each absentee ballot envelope except those issued in-person in the clerk's office. In the case of indefinitely confined, a designation on a list prepared by the municipal clerk is sufficient if it indicates that an absentee ballot was delivered to and returned by an absentee voter.

Do not reject an absentee ballot if there is no separate written application.⁵ Because of the variety of reasons that the board of canvassers may not be able to locate a specific written application, and the likelihood that a voter may be improperly disenfranchised, the board of canvassers should not reject an absentee ballot due to the lack of a written application. The board of canvassers records in the minutes the number of written absentee ballot applications on file as well as an explanation of any discrepancy, but any request to reject a ballot on this basis should be determined by a reviewing court rather than the board of canvassers.

Review Rejected Absentee Ballots

The board of canvassers examines the rejected absentee ballot certificate envelopes contained in the brown carrier envelope (GAB-102). Rejected absentee ballot certificate envelopes are identified by the election inspectors on election night and marked "rejected." The reason for the rejection should be noted on the Inspectors' Statement (GAB-104).

The board of canvassers should make their own determination for each rejected absentee ballot certificate envelope.⁶ Any improperly rejected ballots should be marked and placed into the pool of ballots to be counted. If the number of voters is increased under this procedure the change should be recorded in the minutes. Any errors by election inspectors in rejecting absentee ballots should be documented in the minutes along with the corrective action taken.

Examine Defective Absentee Ballot Envelopes

The board of canvassers examines the used absentee ballot certificate envelopes (GAB-122) contained in the white carrier envelope (GAB-103). If the board finds any defective⁷ absentee ballot certificate envelope not identified on election night they should be marked as defective, assigned a serial number, set aside, and properly preserved. A notation including a description of the defect should be made in the minutes.

⁵ See Informal Opinion of GAB Staff Attorney Re: Recount of the Town of Walworth Recall Election (11/18/02); but see also [Wis. Stat. § 6.84\(2\)](#); [Walter V. Lee v. David Paulson, 2001 WI App 19](#).

⁶ See [Wis. Stat. § 6.88\(3\)](#) for procedures and guidance on accepting or rejecting absentee ballot certificate envelopes.

⁷ An absentee ballot is defective only if it is not witnessed, or if it is not signed by the voter, or if the certificate accompanying an absentee ballot the voter received by fax or email is missing. [Wis. Stat. § 9.01\(1\)\(b\)2](#).

The number of voters determined at the beginning of the recount is reduced by the total number of absentee ballots set aside under this procedure. This adjusted number is noted in the minutes and used whenever the number of voters is referred to during the recount. Do not remove ballots from the pool yet.

3. Examine Ballot Bag or Container – Wis. Stat. § 9.01(1)(b)3

The board of canvassers examines the ballot bag or ballot container (GAB-101) to determine that it has not been tampered with, opened, or opened and resealed. The board of canvassers should verify that the tamper-evident seal matches the serial number on the Ballot Container Certification (GAB-101) and the Inspectors’ Statement (GAB-104). The Government Accountability Board recommends the board of canvassers investigate any irregularities or possible tampering with the ballots and note its findings in the minutes.

4. Reconcile Ballot Count – Wis. Stat. § 9.01(1)(b)4

Ballot Count – 4(a)

The board of canvassers opens the ballot bag or ballot container and removes the contents. The canvassers or tabulators count the number of ballots in the ballot bag, excluding any ballots that were set aside and not counted by the election inspectors on election night under the provisions of [Wis. Stat. § 7.51\(2\)](#). These “set aside” ballots should have been marked and bundled by the election inspectors on election night.

The board of canvassers reviews all ballots marked rejected, defective, and objected to, to decide whether such ballots were correctly categorized when the ballots were first examined after the election.

Separate Probable Absentee Ballots – 4(b)

The board of canvassers separate all “probable absentee ballots”⁸ from the other ballots. The number of probable absentee ballots should equal the number of properly completed certificate envelopes (as determined by the board of canvassers in step 2 above), the number of absentee ballots recorded on the registration list on election night, and the number of written applications. Any discrepancies should be recorded in the minutes.

Reconciling the Number of Ballots with the Number of Voters

If the number of voters is greater than or equal to the number of ballots, skip this step. Only in the situation where the number of ballots exceeds the number of voters should the board of canvassers engage in the following procedure.

If the board of canvassers previously determined that any absentee ballot certificate envelopes were defective, the board of canvassers draws at random, without inspection, from the pool of probable absentee ballots, the number of ballots equal to the number of envelopes that have been determined defective. If the board of canvassers finds more defective absentee ballot envelopes than probable absentee ballots, the board of canvassers shall set aside all probable absentee ballots. The probable absentee ballots shall not be counted, but shall be marked as to the reason for their removal, set aside and properly preserved. The board of canvassers notes

⁸ The board of canvassers shall presume that a ballot initialed only by the municipal clerk, executive director of the board of election commissioners, deputy clerk or secretary is an absentee ballot. [Wis. Stat. § 9.01\(1\)\(b\)4.b.](#)

in the minutes the steps taken under this procedure and the results determined. [Wis. Stat. § 9.01\(1\)\(b\)4.b.](#)

If the number of ballots still exceeds the number of voters, the board of canvassers or the tabulators shall place all the ballots face up to check for blank ballots. Any blank ballots (ballots which have not been marked for any office) shall be marked as to the reason for their removal, set aside and properly preserved. The board of canvassers should record this action in the minutes. [Wis. Stat. § 9.01\(1\)\(b\)4.c.](#)

If the number of ballots still exceeds the number of voters after removing all blank ballots, the board of canvassers shall place all ballots face down to check for initials. Any ballots not properly initialed by two inspectors or any probable absentee ballots not properly initialed by the municipal clerk or deputy clerk are set aside. The board of canvassers must, without inspection, randomly draw from the improperly initialed ballots as many ballots as are necessary to reduce the number of ballots to equal the number of voters determined to have voted on election day less any defective absentee ballot certificate envelopes. Any ballots removed for lack of proper initials shall not be counted, but shall be marked as to the reason for their removal, set aside and properly preserved. The board of canvassers should record this action in the minutes. [Wis. Stat. § 9.01\(1\)\(b\)4.d.](#)

If the number of ballots still exceeds the number of voters, the board of canvassers places the remaining ballots in the ballot bag and randomly draws, without inspection, the number of ballots equal to the number of excess ballots. These ballots shall not be counted, but shall be marked as to the reason for their removal, set aside and properly preserved. The actions taken under this procedure are recorded in the minutes. [Wis. Stat. § 9.01\(1\)\(b\)4.e.](#)

When the number of ballots equals the number of voters or if the number of voters exceeds the total number of ballots, the board of canvassers returns the ballots to the ballot bag or container and thoroughly mixes the ballots. [Wis. Stat. § 9.01\(1\)\(b\)5.](#)

5. Review Late Arriving Absentee Ballots

The board of canvassers shall examine the absentee ballot certificate envelopes (GAB-122), Absentee Ballot Log (GAB-124), and Statement of the Municipal Board of Canvassers (GAB-106AP) to determine if all absentee ballots for late arriving absentee electors⁹ were correctly processed and have been included in the original result. A ballot that is cast by an absentee elector, that is received by mail from the U.S. postal service, and that is postmarked no later than election day shall be counted if it is received by the municipal clerk no later than 4 p.m. on the Friday following the election. [Wis. Stat. § 7.515\(3\).](#) A certificate envelope with no postmark or an illegible postmark is considered timely mailed if received by mail from the U.S. postal service no later than 5 p.m. on the Friday following the election. This presumption may be rebutted by showing a preponderance of evidence to the contrary. [Wis. Stat. § 7.515\(4\).](#) The board of canvassers shall record any discrepancies with the handling of late arriving absentee ballots in the minutes.

6. Review Provisional Ballots

The board of canvassers shall examine the Inspectors' Certificate of Provisional Ballots (GAB-108), Provisional Ballot Reporting Form (GAB-123r), Provisional Ballot Certificate envelopes

⁹ See [Wis. Stat. § 7.515](#)

(GAB-123), and Statement of the Municipal Board of Canvassers (GAB-106AP) to determine if provisional ballots were correctly processed. The board of canvassers should determine if all ballots for voters providing the required information¹⁰ have been included in the original result. The board of canvassers shall record any discrepancies in the minutes. [Wis. Stat. § 6.97](#).

7. Count the Votes

When counting paper or optical scan ballots, questions often arise concerning the intent of the elector. Election officials have a duty to attempt to determine voter intent and give effect to that intent if it can be determined. Election officials are expected to use common sense to determine the will of an elector based on the marks made by the elector on the ballot. The decisions of the election inspectors may be reviewed by the board of canvassers conducting the recount. Wis. Stat. §§ [7.50](#), [7.51](#), [7.60](#).

Even if an elector has not fully complied with the provisions of the election law, votes should be counted as intended by the elector to the extent that the elector's intent can be determined. Wis. Stat. §§ [5.01\(1\)](#), [7.50\(2\)](#). The Government Accountability Board has a manual titled "Counting Votes," which is designed to assist election officials in determining voter intent. A copy of the "[Counting Votes](#)" manual is available on the agency website and should be reviewed by the board of canvassers prior to the recount.

The exact steps for tabulating the votes will vary depending on the method or combination of methods of tabulation selected by the board of canvassers:

1. Hand Count

The Government Accountability Board recommends that hand counts be conducted using teams of at least two tabulators. These tabulators will double-check each other's work throughout the process to ensure that an accurate count is maintained.

Sort Ballots by Candidate

Each tabulation team should begin by sorting the ballots into stacks: One stack for each candidate (ballots that clearly indicate a vote for a ballot candidate or a valid write-in candidate) and one stack for ballots where no vote may be counted (defective ballots, votes for invalid write-in candidates, etc). Candidate representatives should be given the opportunity to review each ballot as it is sorted, and may request that the tabulators set aside questionable ballots for closer examination and determination of voter intent by the board of canvassers.¹¹ The board of canvassers may consult with its legal counsel or the Government Accountability Board staff regarding any questionable ballots. The Government Accountability Board recommends that any such consultation should be recorded in the minutes.

Create Stacks of a Fixed Number

Set aside the stack of ballots for which no vote can be counted. For each stack of ballots marked for a candidate, each tabulator should create sub-stacks of a fixed number (e.g., 25 ballots) with a remainder stack for any number left over from creating the full-size stacks. Each stack should be double-checked by a second tabulator to ensure the stack contains exactly the number expected.

¹⁰ See [Wis. Stat. § 6.97](#) and [Wis. Admin. Code GAB 3.04](#).

¹¹ Please refer to the [Counting Votes Manual](#) on the GAB website for detailed rules and examples of when to count or not count a mark as a vote.

Tally Stacks to Determine the Total Vote

The board of canvassers then carefully counts the number of stacks for each candidate. The counts should be recorded by two individuals on clearly labeled tally sheets (GAB-105). After all of the counts have been recorded, the two tally sheets should be compared against each other to ensure an accurate count is determined. The recount vote totals are recorded in the minutes.

A reconciliation of the ballots for which no vote could be counted should be recorded in the minutes. This documentation should list the reasons the ballots could not be counted and the number of ballots not counted for each reason.

2. Optical Scan

If an optical scan tabulator is used, the Government Accountability Board recommends that where possible the tabulator should be programmed to only tally the results for the contest to be recounted. If the tabulator is not reprogrammed to tally only the contest to be recounted, the Government Accountability Board recommends that the counts for other contests be separated, set aside and preserved. The recounted results for the other contests should not be included in the board of canvassers report of recount results.

Note: The original memory device for the voting equipment from election day cannot be cleared and reprogrammed for use at the recount, so an alternative memory device must be acquired for use at the recount. [Wis. Stat. § 7.23\(1\)\(g\), \(2\)](#).

Examine the optical scan tabulator

The board of canvassers shall make a record of the number of the tamper evident seal, protective counter, or other device, if any, before opening any of the voting equipment. The board of canvassers examines the electronic voting equipment to determine that any other tamper evident seals are intact and match the log maintained by the election inspectors and the municipal clerk. The board of canvassers notes in the minutes any irregularities or possible tampering with the device. Wis. Stat. §§ [5.90\(1\)](#) & [9.01\(1\)\(b\)6](#); [GAB 5](#).

Test the optical scan tabulator

The board of canvassers tests the automatic tabulating equipment to ensure it is programmed correctly for the recount using a pre-audited group of ballots marked to record a predetermined number of valid votes for each candidate or contest choice (test deck). The test deck should include at least one ballot with more selections than permitted (overvote) and for recounts in a partisan primary, at least one ballot with votes in more than one party primary (crossover) in order to test the ability of the tabulator to reject such ballots. The results of the test deck tabulation should be compared to the pre-audited results to ensure accuracy and a record of the test results should be noted in the minutes. Wis. Stat. §§ [5.84\(1\)](#), [5.90\(1\)](#). The board of canvassers may choose to test the tabulator for all reporting units at once and skip this step in subsequent reporting units if using the same memory device for all reporting units.

Compare Duplicate Ballots with Original Ballots

On election day, some ballots cannot be processed by the optical scan tabulator due to overvotes or other defects. When this happens, election officials create a duplicate ballot to

honor as much of the elector's intent as possible. The duplicate ballot is then tallied by the equipment and the original is set aside and not counted. Both the duplicate and original ballots should be marked as such and contain identical serial numbers so they can be matched up.

The board of canvassers compares any duplicate ballots with their respective originals to determine the correctness of the duplicates. If any duplicate ballots were remade incorrectly, the board of canvassers should set aside the incorrectly remade duplicate ballot, mark it with the reason for its removal, create a new duplicate ballot, and mark it as such. [Wis. Stat. § 5.90\(1\)](#).

❑ *Insert Ballots Into the Optical Scan Tabulator*

Each ballot shall be reviewed by the board of canvassers and may be inspected by the candidates or their representatives before being inserted into the tabulator. If it appears the ballot may not be recorded correctly by the tabulator, or if the ballot is objected to, the ballot is set aside to be examined by the board of canvassers for voter intent and counted separately by hand.

❑ *Generate Results*

The board of canvassers places the optical scan tabulator into post-election mode and generates a results tape for the reporting unit. The board of canvassers adds in any votes counted separately by hand using new tally sheets and records the total results as part of the revised canvass statement, see Step #9.

If the equipment needs to be used for another reporting unit, the board of canvassers shall ensure that all ballots have been removed from the tabulator and re-secured in ballot bags or containers before proceeding to reset the equipment for use with the next reporting unit.

3. Direct Record Electronic (DRE)

In many polling places across the state direct record electronic (DRE) voting equipment is used in conjunction with paper ballots or optical scan ballots to enable individuals with disabilities to vote privately and independently. As a result, the paper ballots and optical scan ballots should be counted first by following the steps described above, if applicable.

❑ *Separate the Voter Verified Paper Audit Trail into Individual Ballots*

DRE equipment records votes two separate ways: electronically and on a paper tape that the voter can view to verify the equipment is recording their votes correctly before casting their ballot. In a recount, the board of canvassers is required to use the paper record. [Wis. Stat. § 5.90\(1\)](#). The paper tape consists of a pre-election readiness report, a zero-report showing that no votes are currently in the memory of the machine, individual ballot records, and a closing results report.

To facilitate counting of the individual ballot records and to preserve the confidentiality of an individual's vote, the board of canvassers may cut the paper record to separate the individual voter records and then further cut the paper tape into the individual ballots, which would then be randomized. When cutting the paper tape be careful that only the section of the tape covering election day is used. When separating the tape into individual ballots, watch for "voided" ballots which appear the same as other ballot entries except they will be followed by

a “void” entry on the tape. The “void” entry may appear far below the record of votes cast on the tape. These “voided” ballots should not be counted as they were not cast.

As an alternative to cutting the paper tape, the boards of canvassers may retain the paper record in its original format and simply scroll through the tape to count each individual ballot. However, if the tape is not cut, the board of canvassers must take the appropriate precautions to ensure the confidentiality of votes as the entries on the paper record will be in the order that the voters used the equipment.

☐ *Tally Individual Ballots to Determine the Total Vote*

The board of canvassers carefully counts each individual ballot record as recorded on the tape. The counts should be recorded by two individuals on clearly labeled tally sheets (GAB-105). After all of the counts have been recorded, the two tally sheets should be compared against each other to ensure an accurate count is determined. The recount vote totals should be compared against the original results as generated by the DRE and any discrepancies shall be recorded in the minutes.

8. Secure Original Materials

After concluding the recount for a particular reporting unit, the board of canvassers shall gather and account for all original election materials. All ballots shall be placed into a ballot bag or container and resealed. The board of canvassers shall document in the minutes the serial number of any new security seals or tags used.

All election materials should be accounted for before proceeding to the next reporting unit to prevent the accidental mixing of materials from different reporting units.

9. Prepare New Canvass Statement

If any corrections were made to the results, the board of canvassers shall prepare a statement of the revised election results using the canvass reporting form (GAB-106). [Wis. Stat. § 9.01\(1\)\(b\)9](#).

After the Recount

What does the board of canvassers do after completing the recount?

- If the recount is for a municipal election, the board of canvassers promptly forwards the results and minutes to the municipal clerk.
- If the recount is for a school board election, the board of canvassers promptly forwards the results and minutes to the school board clerk.
- If the recount is for a county election, the county board of canvassers promptly forwards the results and minutes to the county clerk.
- If the recount is for a state or federal election, the results and minutes of the recount are to be forwarded immediately to the Government Accountability Board and should be received no later than 13 days after the recount is ordered. [Wis. Stat. § 9.01\(1\)\(ar\)3](#).

A copy of the minutes of any recount should be sent to the Government Accountability Board. For federal, state, and county elections, the board of canvassers should also send copies of the minutes to the chief officers of the state or county committee for any registered political party who ran candidates for that office. [Wis. Stat. § 9.01\(5\)\(bm\)](#).

No certificate of election may be issued by the filing officer until the deadline for filing all appeals has passed and the election results are final.

How Does a Candidate or Petitioner Challenge the Results?

The candidate or petitioner has a right to appeal the recount determination in circuit court. The appeal must be filed with the circuit court within five (5) business days of the completion of the recount in all counties concerned. Notice must also be served in person or by certified mail on all other candidates and persons who filed a written notice of appearance before the board of canvassers. If the recount affects a state or federal office or referendum, notice of the appeal must be served on the Government Accountability Board. See Wis. Stat. §§ [9.01\(6\)](#), [\(7\)](#), [\(8\)](#), & [9](#).

The recount process and the subsequent judicial appeals is the exclusive remedy for testing the right to hold an elective office as the result of an alleged irregularity, defect, or mistake committed during the voting or canvassing process. [Wis. Stat. § 9.01\(11\)](#).

Conclusion

This information is prepared pursuant to [Wis. Stat. § 9.01\(10\)](#). Petitioners, candidates, and filing officers should seek legal counsel when they are involved in a recount. If you have any questions, concerns, suggestions or recommendations about the recount process, please contact the:

Government Accountability Board

P.O. Box 7984

Madison, WI 53707-7984

Phone: 608-261-2028

Fax: 608-267-0500

Email: gab@wi.gov

Website: <http://gab.wi.gov>

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SAMPLE RECOUNT PETITION

In Re: The Election for
 (specify office)

Verified Petition
 for Recount

Petitioner (name of petitioner) alleges and shows to (specify the clerk or body with whom nomination papers are filed for that office):

1. That Petitioner was a candidate for the office of (specify office) in an election held on (specify_date of election);
2. That Petitioner is informed and believes that a (mistake or fraud) has been committed in (specify each ward or municipality) in the counting and return of votes cast for the office of (specify office); and/or
3. That Petitioner (is informed and believes) or (knows of his/her own knowledge) that:

 (Specify other defects, irregularities or illegalities in the conduct of the election).

Wherefore: Petitioner requests a recount of (specify each ward or municipality in which a recount is desired; each ward need not be specified if a recount is requested for all wards within a jurisdiction).

Dated this _____ day of _____, _____.

Petitioner

I, (name of petitioner), being first duly sworn, on oath, state that the matters contained in the above petition are known to me to be true except for those allegations stated on information and belief, which I believe to be true.

Petitioner

Subscribed and sworn to before me this _____ day of _____, _____.

Notary Public (or other person authorized to administer oaths)

My Commission Expires _____
(specify expiration date)

The information on this form is required by Wis. Stat. § 9.01. This form is prescribed by the Government Accountability Board, 17 West Main Street, Suite 310, P.O. Box 2973, Madison, WI 53701-2973, (608) 266-8005.

GAB-186 (Rev.8/08)

SAMPLE RECOUNT PETITION FOR REFERENDUM

In Re: The Election for
 (specify referendum)

Verified Petition
 for Recount

Petitioner (name of petitioner) alleges and shows to (specify the clerk or body with whom the referendum was filed):

1. That Petitioner was an elector who voted upon the referendum in the election held on (specify_date of election);
2. That Petitioner is informed and believes that a (mistake or fraud) has been committed in (specify each ward or municipality) in the counting and return of votes cast for the referendum of (specify referendum); and/or
3. That Petitioner (is informed and believes) or (knows of his/her own knowledge) that:

 (Specify other defects, irregularities or illegalities in the conduct of the election).

Wherefore: Petitioner requests a recount of (specify each ward or municipality in which a recount is desired; each ward need not be specified if a recount is requested for all wards within a jurisdiction).

Dated this _____ day of _____, _____.

Petitioner

I, (name of petitioner), being first duly sworn, on oath, state that the matters contained in the above petition are known to me to be true except for those allegations stated on information and belief, which I believe to be true.

Petitioner

Subscribed and sworn to before me this _____ day of _____, _____.

Notary Public (or other person authorized to administer oaths)

My Commission Expires _____
(specify expiration date)

The information on this form is required by Wis. Stat. § 9.01. This form is prescribed by the Government Accountability Board, 17 West Main Street, Suite 310, P.O. Box 2973, Madison, WI 53701-2973, (608) 266-8005.

GAB-186 (Rev.8/08)

SAMPLE ORDER FOR RECOUNT

STATE OF WISCONSIN – (County)

In the matter of:)
)
A Recount of the (Election))
for (Title of Office))
for the (District), held)
on (Date))

ORDER FOR RECOUNT

On (Date Recount Petition was filed), a recount petition was filed by (Petitioner's Name), a candidate for the office of (Office Title) for the (District), at the (Election) held on (Date).

The petition requests a recount of (list specific wards or municipalities) for the office of (Office Title).

The filing officer has reviewed the petition. The petition is sufficient. Any applicable fee has been received and accepted.

Pursuant to Wis. Stat. § 9.01:

IT IS ORDERED THAT:

1. A recount be conducted of all the votes cast for the office of (Office Title) for the (District) at the (Election) held on (Election Date) in (list of specific wards or municipalities).
2. The boards of canvassers convene at (Time) on (Date) at (Location), to begin the recount.
3. The recount be completed by the board of canvassers immediately.
4. The clerk transmit a certified canvass report of the result of the recount and a copy of the minutes of the recount proceedings to the Government Accountability Board immediately after the completion of the recount.

Dated: _____

(Clerk's Name)
(Clerk's Title)

SAMPLE PUBLIC NOTICE

Notice of Recount for the Office of (Office Title) for the (District) in the (Election)

TO: All Candidates On The Ballot For The Office of (Office Title) for the (District) and
Other Interested Persons

FROM: (Clerk)

SUBJECT: Recount of the Votes Cast for the Office of (Office Title) for the (District) in the
(Election)

DATE: (Date)

A recount of the votes cast at the (Election Date) (Election) for the office of (Office Title) for the
(District) will begin at the time and location set forth below:

(Municipality) – 9:00 a.m. on (Date), at (Location).

A copy of the recount petition is attached. This notice is given pursuant to Wis. Stat. § 9.01(2).

You have the right to be present and to be represented by counsel to observe and challenge the votes
cast and the board of canvassers' decisions at the election.

Attachment

Sample Acceptance of Service

MEMORANDUM

DATE: (Date)
TO: (Clerk)
FROM: Candidate for (Office)
SUBJECT: Service of Recount Petition

Pursuant to Wis. Stat. § 9.01(2) on this day, I have personally received delivery of copies of the notice of recount, recount petition, and order for recount for the office of (office) at the (election date) (election name). I agree to waive service and accept delivery.

(Signature of Candidate)

(Print Name)

Sample Recount Minutes

Date of Recount:

County:

Office to be Recounted: *(Include District Number)*

Original Result: *(Candidates' Names and Votes for Each Candidate. If there was a tie, explain how it was broken.)*

Canvass Board Members: *(If substitute, give reason for substitution.)*

Other Personnel: *(Tabulators, Corporation Counsel, Clerical Support)*

Others Present:

Notification: *(Were candidates notified and was public notice given?)*

Electronic Voting Equipment Test Results:

For Each Reporting Unit:

Name of Municipality:

Reporting Unit:

Original Vote Totals for Reporting Unit:

Number of Voters from Registration List:

Number of Absentee Ballot Applications:

Number of Absentee Ballots:

Notes: *(Include a description of any discrepancies, irregularities, errors, problems, objections raised by observers. Record any decision of the board of canvassers. Identify any exhibits by description and number.)*

Recount Vote Totals for Reporting Unit:

Recount Results:

A copy of the minutes from any recount must be sent to:

Government Accountability Board
P.O. Box 7984
Madison, WI 53707-7984

Recount Fee Scenarios

Scenario #1: Village President

Candidate	Votes
A	4,500
B	4,450

In this scenario, candidate A would currently be elected to office. If a recount was requested, the fee is determined by first calculating the total votes cast for the office ($4,500+4,450 = 8,950$). The difference between the leading candidate and the petitioner (50 votes) is divided by the total votes cast (8,950) and then multiplied by 100 to get the percentage difference (0.56%).

So B would be required to pay a filing fee as the percentage difference is greater than .25%.

Scenario #2: School Board (vote for up to 3)

Candidates	Votes
A	3,500
B	3,000
C	2,920
D	2,910
E	2,900
F	2,800

In this scenario, candidates A-C would currently be elected to office. If a recount was requested, the fee is determined by adding up all the votes cast for the office (18,030 total) and dividing it by the number of offices to be filled (3 in this scenario) to get a total of 6,010. The difference between the leading candidate (C, as he or she is the candidate with the lowest number of votes still being elected to office) and the petitioner is divided by 6,010 and multiplied by 100 to get the percentage difference.

So in this case:

- If Candidate D requested a recount, there would be no fee required as the difference is .17%, which is not greater than .25%
- If Candidate E requested a recount, a filing fee would be required as the difference is .33%, which is greater than .25%

General Checklist of Supplies and Materials Needed for the Recount:

- Paper and Pens (To record the minutes of the recount!)
- Tape Recorder (Optional)
- Speaker Phone (for consultation with GAB staff or counsel)
- Test Deck for Electronic Voting Equipment Test
- New *Tally Sheets* (GAB-105)
- New *Canvass Reports* (GAB-106)
- Copies of any informational memoranda relating to the election and the recount prepared by the Government Accountability Board staff and sent to county and municipal clerks.
- Recount checklists and the *Elections Recount Procedures Manual* available from the Government Accountability Board

Election Materials from Each Reporting Unit:

- All ballots to be recounted, contained in the original ballot bag or ballot container (GAB-101), including any late-arriving absentee or provisional ballots processed after Election Day;
- All paper audit trails from direct record electronic (DRE) voting devices;
- All logs of security seals for ballot boxes or electronic voting equipment;
- Both copies of the original poll lists, including any supplemental voter lists;
- All absentee ballot applications (See page 7.)
- Any rejected absentee ballots, contained in the original brown carrier envelope (GAB-102);
- Any used absentee ballot certificate envelopes, contained in the white carrier envelope (GAB-103);
- The original Inspectors' Statement (GAB-104);
- The MBOC Record of Activity (GAB-104AP) created during the processing of late-arriving absentee and provisional ballots, if any;
- The original tally sheets (GAB-105) and any results tapes generated by electronic voting and tabulating devices;
- The original canvass report of the election results (GAB-106);
- The amended canvass report of the election results created after any late-arriving absentee or provisional ballots were tabulated (GAB-106AP);
- The absentee ballot log (GAB-124) and any provisional ballot documentation (GAB-108 & GAB-123); and
- The test deck for any electronic voting equipment.

Recount Checklist

Hand Counted Paper Ballots

Municipality _____ Date _____
Reporting unit _____ Contest _____

This checklist is designed to facilitate uniform practices and is to be completed simultaneously with the recount process for each reporting unit in the recount.

- Compare and reconcile poll lists.
- Absentee ballot review: number, applications, rejected, defective envelopes.
- Verify tamper evident serial number on ballot container matches seal number written on Inspectors' Statement (GAB-104) and Ballot Container Certification (GAB-101).
- Ballot count.
 - Review ballots marked "rejected," "defective," or "objected to."
 - Separate absentee ballots and drawdown (*May be skipped if the number of absentee ballots equals the number of proper envelopes*).
 - Reconcile the number of ballots with the number of voters.
 - Treatment of excess ballots (*May be skipped if the number of voters equals or exceeds the number of ballots.*)
- Review late arriving absentee ballots.
- Review provisional ballots.
- Hand count paper ballots.
 - Sort ballots by candidate.
 - Create stacks of a fixed number.
 - Tally the stacks using duplicate original tally sheets (GAB-105).
- Add in any votes counted separately by other methods.
- Secure the original election materials.
- Prepare canvass statement.
- Prepare minutes for each reporting unit and attach completed checklist to minutes.

Recount Checklist

Optical Scan Voting Equipment

Municipality _____ Date _____
Reporting unit _____ Contest _____

This checklist is designed to facilitate uniform practices and is to be completed simultaneously with the recount process for each reporting unit in the recount.

- Compare and reconcile poll lists.
- Absentee ballot review: number, applications, rejected, defective envelopes.
- Verify tamper evident serial number on ballot container matches seal number written on Inspectors' Statement (GAB-104) and Ballot Container Certification (GAB-101).
- Ballot count.
 - Review ballots marked "rejected," "defective," or "objected to."
 - Separate absentee ballots and drawdown (*May be skipped if the number of absentee ballots equals the number of proper envelopes.*)
 - Reconcile the number of ballots with the number of voters.
 - Treatment of excess ballots (*May be skipped if the number of voters equals or exceeds the number of ballots.*)
- Review late arriving absentee ballots.
- Review provisional ballots.
- Verify voting equipment tamper evident serial number seal number written on Inspectors' Statement (GAB-104) contains Chief Inspector's initials for pre-election and post-election verification.
- Test the automatic tabulator (*The Board of Canvassers may choose to test the tabulator for all reporting units at once and skip this step in subsequent reporting units if using the same memory device for all reporting units.*)
- Compare duplicate ballots with original ballots.
- Feed ballots into the optical scan tabulator.
- Generate results.
- Add in any votes counted separately by other methods.
- Secure the original election materials.
- Prepare canvass statement.
- Prepare minutes for each reporting unit and attach checklist to minutes.

Recount Checklist

Direct Recording Electronic (DRE)/Touch Screen Voting Equipment

Municipality _____ Date _____
Reporting unit _____ Contest _____

This checklist is designed to facilitate uniform practices and is to be completed simultaneously with the recount process for each reporting unit in the recount.

- Compare and reconcile poll lists.
- Absentee ballot review: number, applications, rejected, defective envelopes.
- Verify tamper evident serial number on ballot container matches seal number written on Inspectors' Statement (GAB-104) and Ballot Container Certification (GAB-101).
- Ballot count.
 - Review ballots marked "rejected," "defective," or "objected to."
 - Separate absentee ballots and drawdown (*May be skipped if the number of absentee ballots equals the number of proper envelopes.*)
 - Reconcile the number of ballots with the number of voters.
 - Treatment of excess ballots (*May be skipped if the number of voters equals or exceeds the number of ballots.*)
- Review late arriving absentee ballots.
- Review provisional ballots.
- Verify voting equipment tamper evident serial number seal number written on Inspectors' Statement (GAB-104) contains Chief Inspector's initials for pre-election and post-election verification.
- Separate voter-verified paper audit trail into individual ballots (may be skipped if canvass board members take appropriate precautions to ensure the confidentiality of individual electors' votes)
- Hand count permanent paper record of votes generated by DRE and record on duplicate tally sheets (GAB-105).
- Add in any votes counted by other methods.
- Secure the original election materials.
- Prepare canvass statement.
- Prepare minutes for each reporting unit and attach checklist to minutes.

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JUDGE GERALD C. NICHOL
Chair

KEVIN J. KENNEDY
Director and General Counsel

MEMORANDUM

DATE: For the December 15, 2015 Board Meeting

TO: Members, Wisconsin Government Accountability Board

FROM: Kevin J. Kennedy, Director and General Counsel

Prepared and Presented by:
Michael Haas, Elections Division Administrator

SUBJECT: Statutory Definitions of Military Elector

The efforts of G.A.B. staff to modernize the statewide voter registration system and develop WisVote has again highlighted chronic issues and challenges related to administering election laws governing military electors. There are two overlapping but not consistent statutory definitions of “military elector” contained in Wis. Stat. §§ 6.22(1)(b) and 6.34(1)(a). The differences in the statutory definitions creates some uncertainty in determining which definition applies to certain registration and voting processes, and therefore which categories of voters benefit from specific statutory protections and exceptions. This memorandum outlines the issues as well as staff recommendations for applying the two definitions of military elector. Staff requests that the Board either confirm staff’s interpretation of the relevant statutes or provide any other appropriate guidance.

I. Background

Wis. Stat. § 6.22 governs absentee voting for military electors, and the definition of military elector in that section is both broad and more inclusive than the definition of military elector in Wis. Stat. § 6.34, which focuses on proof of residence requirements for voter registration. Following is the relevant definitional language in each section:

Broader definition in §6.22(1)(b): “Military elector” means any of the following:

1. Members of a uniformed service.
2. Members of the merchant marine of the United States.
3. Civilian employees of the United States and civilians officially attached to a uniformed service who are serving outside the United States.
4. Peace corps volunteers.
5. Spouses and dependents of those listed in the above categories residing with or accompanying them.

Narrower definition in §6.34(1)(a): “Military elector” means a member of a uniformed service on active duty who, by reason of that duty, is absent from the residence where the

member is otherwise qualified to vote; a member of the merchant marine, as defined in s. 6.22(1)(a), who by reason of service in the merchant marine, is absent from the residence where the member is otherwise qualified to vote; or the spouse or dependent of any such member who, by reason of the duty or service of the member, is absent from the residence where the spouse or dependent is otherwise qualified to vote.

Thus, the narrower definition includes members of the uniformed services and the merchant marine, as well as their spouses and dependents, who are absent from their voting residence due to active duty or service. In addition to those individuals, the broader definition also seems to include members of the uniformed services and merchant marine who are not away due to active duty or service, civilians attached to a uniformed service who are serving outside the United States, Peace Corps volunteers, and spouses and dependents of any of these categories of individuals residing with or accompanying them. Except for civilians attached to a uniformed service and their spouses and dependents, the broader definition does not specifically require the covered individuals to be away from home due to active duty or service.

The narrower definition of § 6.34 is consistent with the definition of “absent uniformed services voter” contained in the federal Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) which provides certain absentee voting rights to “uniformed services voters.” The term “uniformed services voter” means a member of a uniformed service who is away from their residence due to active service, a member of the merchant marine who is away from their residence due to active service, and spouses and dependents of uniformed service members or merchant marine members who are away from their residence due to the active service of the service member or merchant marine member. 52 U.S.C. § 20310. UOCAVA provides that each state, among other requirements, shall allow absent uniformed services voters to request and receive ballots electronically in federal elections, and shall transmit ballots for federal offices 45 days before a federal election to absent uniformed services voters.

As a preliminary matter, the phrase “residing with or accompanying them” in subsection 6.22(1)(b)5. could be interpreted to mean that the individuals must be residing away from their regular voting address to be considered a military elector, which would make § 6.34 more consistent with § 6.22. But the G.A.B. has not previously given the phrase that level of significance because the other categories described are not specifically restricted to individuals residing away from their voting residence.

Assuming that the broader definition in § 6.22 does not require military electors to be individuals that are active and away from their residence, the two statutory definitions lead to discrepancies in the registration and voting procedures for categories of individuals that are described as military electors. The individuals that are impacted by being included in the broader definition but not the narrower definition are 1) members of the uniformed services and merchant marine who are not away from their residence due to active duty or service, 2) civilians attached to a uniformed service who are serving outside the United States, 3) Peace Corps volunteers, and 4) spouses and dependents of any of these categories of individuals residing with or accompanying them.

As a shorthand reference, this memorandum refers to these individuals collectively as “additional categories.” They are included in the definition of military electors in § 6.22 related to absentee voting but not in the definition of military electors in § 6.34 related to proof of residence requirements.

The longstanding issue for G.A.B. staff has been to determine whether those apparent discrepancies were intentionally created by the Legislature and must be enforced and implemented, or whether they can be reconciled so that all registration and absentee voting procedures and exemptions apply to the same categories of electors. The WisVote project has again brought to a head the issue of determining how to apply the two statutory definitions and how to ensure that the relevant WisVote functions are correctly developed and implemented.

Staff has identified at least four ways in which the statutory definitions potentially impact rules for individuals depending upon whether the narrower or broader definition of military elector is applied. In determining which statutory definition applies in cases where the statutes may be ambiguous, the staff consensus is that the broader definition in § 6.22(1)(b) ought to be applied except where the narrower definition of § 6.34(1)(a) is specifically invoked. Copies of these two statutes and the other statutes cited in this memorandum are attached.

II. Specific Statutory Interpretation Issues

A. Voter registration and proof of residence

Both statutory definitions exclude military electors from the requirement to register to vote. Wis. Stat. § 6.34(2) specifically exempts individuals described in the narrower definition from the requirement to provide proof of residence (POR), possibly raising a question as to whether the POR requirement applies to those in the excluded categories. However, given that § 6.22(3) exempts individuals described in the broader definition from the requirement to register at all, and that POR is required only as part of the registration process, staff is comfortable continuing with the current agency interpretation that all individuals described in the broader category of military electors are exempt from the registration and proof of residence requirements. Thus there would be no difference in the treatment which applies to the additional categories, and military electors would be exempt from registration regardless of whether or not they are away from their residence due to active duty or service.

B. Transmission of ballot electronically

Wis. Stat. § 6.22 governs absentee voting for military voters, and that section contains the broader definition of military elector. But § 6.22(2)(e) cites the narrower definition for the purposes of transmitting ballots electronically:

A military elector may file an application for an absentee ballot by means of electronic mail or facsimile transmission in the manner prescribed in s. 6.86(1)(ac). Upon receipt of a valid application, the municipal clerk shall send the elector an absentee ballot or, if the elector is a military elector, as defined in s. 6.34(1)(a), and the elector so requests, shall transmit an absentee ballot to the elector by means of electronic mail or facsimile transmission in the manner prescribed in s. 6.87(3)(d). Emphasis added.

Wis. Stat. § 6.87(3)(d) further clarifies that the opportunity to receive a ballot electronically is restricted to the narrower category of military electors:

A municipal clerk shall, if the clerk is reliably informed by a military elector, as defined in s. 6.34(1)(a), or an overseas elector, as defined in s. 6.34(1)(b) of a facsimile transmission number or electronic mail address where the elector can receive an absentee ballot, transmit a

facsimile or electronic copy of the elector's ballot to that elector in lieu of mailing under this subsection. *An elector may receive an absentee ballot only if the elector is a military elector or an overseas elector under s. 6.34(1) and has filed a valid application for the ballot as provided in s. 6.86(1)* Emphasis added.

Given the specific reference to the narrower definition in Wis. Stat. § 6.34(1)(a), the consensus of staff is that the statutes restrict the electronic transmission of ballots (by email, facsimile, or MyVote Wisconsin) to the narrower category of military electors. This would exclude the “additional categories” (members of the uniformed services and merchant marine who are not away from their residence due to active duty or service, civilians attached to a uniformed service who are serving outside the United States, Peace Corps volunteers, and spouses and dependents of any of these categories who reside or accompany them) from the opportunity to receive ballots electronically. However, this would be a significant departure from the G.A.B.’s current guidance and procedures, which permit those additional categories of electors to receive ballots electronically, including through MyVote Wisconsin.

It should be noted that one of the legislative changes endorsed by the Board was to amend Wis. Stat. § 6.87(3)(d), but that proposed change focused on permitting temporary overseas voters to receive ballots electronically. If the Board adopts staff’s interpretation that the right to electronic transmission of ballots is restricted to the narrower definition of military electors but desires to continue the past guidance which affords that right to the additional categories of military electors, the Board may direct staff to suggest that the Legislature amend the statutes to clarify that electronic transmission of ballots is available to the individuals who are described in the broader definition of military electors.

C. Absentee ballot request deadline

Wis. Stat. § 6.22(4) establishes the deadline for absentee ballot requests from the broader category of military electors as 5:00 p.m. on the Friday before the election. This provision is consistent with Wis. Stat. § 6.86(1)(c) which states that “If an application is made by mail by a military elector, as defined in s. 6.22(1)(b), the application shall be received no later than 5 p.m. on the Friday immediately preceding the election.”

However, Wis. Stat. § 6.86(1)(b) states that:

Except as provided in par. (c), if the elector is making written application for an absentee ballot at the partisan primary, the general election, the presidential preference primary, or a special election for national office, and the application indicates that the elector is a military elector, as defined in s. 6.34(1), the application shall be received by the municipal clerk no later than 5 p.m. on election day.

Thus, it appears that the narrower category of military electors defined in § 6.34 is permitted to submit absentee ballot applications up to 5 p.m. on election day for a federal election. Given that the two different deadlines are specified in successive paragraphs of § 6.86(1), staff believes the correct application of the law affords the narrower category of military electors to submit applications for absentee ballots up to 5 p.m. on election day for a federal election. But the narrower category of voters must comply by the deadline of 5 p.m. on the Friday before the election in all non-federal elections, and the “additional categories” of military electors must submit such applications the Friday deadline before all elections.

This interpretation is consistent with the guidance previously provided by G.A.B. staff.

D. Photo ID requirement

2011 Act 23 established the voter photo identification requirement, including the requirement that, with some exceptions, voters requesting that an absentee ballot be sent by mail or electronically must first submit an acceptable form of photo ID prior to the clerk transmitting the blank absentee ballot. Wis. Stat. § 6.87(1) exempts military electors who return an absentee ballot by mail from this requirement by stating:

Unless application is made in person under s. 6.86 (1) (ar), the absent elector is exempted from providing proof of identification under sub. (4) (b) 2. or 3., *or the applicant is a military or overseas elector*, the absent elector shall enclose a copy of his or her proof of identification or any authorized substitute document with his or her application. *Emphasis added.*

This provision does not specify whether the narrower or broader definition of military elector applies to individuals who are exempt from providing photo identification prior to obtaining a ballot that is returned by mail.

Where the Legislature intended for the narrower definition to apply, it included a specific reference to Wis. Stat. § 6.34. Absent a reference to the narrower definition, it is the consensus of staff that the photo ID exemption should apply to the broader category of military electors defined in Wis. Stat. § 6.22(1)(b), including those service members who are not away from home due to active service, civilians attached to the uniformed services stationed outside of the country, Peace Corps volunteers, and family members of these individuals.

E. Recommended Motion

Based upon the above summary and analysis, Board staff recommends the following motions:

MOTION 1: The Board reaffirms the current staff guidance that military electors included in the broader definition of Wis. Stat. 6.22(1)(b) are exempt from the voter registration requirement, including the requirement to provide proof of residence.

MOTION 2: The Board directs staff to apply Wis. Stat. §§ 6.22(2)(e) and 6.87(3)(d) to permit the electronic transmission of ballots only to military electors included in the narrower definition of Wis. Stat. § 6.34(1)(a).

MOTION 3: The Board reaffirms the current staff guidance that military electors included in the narrower definition of Wis. Stat. § 6.34(1)(a) may submit an absentee ballot request no later than 5 p.m. on election day for a federal election, but that the absentee ballot request deadline is 5 p.m. on the Friday before the election for those individuals in non-federal elections and for military electors in the additional categories contained in the definition of Wis. Stat. 6.22(1)(b) at all elections.

MOTION 4: The Board concludes that the exemption from the requirement to provide an acceptable photo identification prior to receiving a ballot that is returned by mail applies to

individuals included in the broader category of military electors, as defined by Wis. Stat. § 6.22(1)(b).

MOTION 5: To improve the consistency and accuracy of election administration, the Board directs staff to recommend to the Legislature amending the relevant Statutes to incorporate one consistent definition of “military elector” in provisions related to voter registration and voting.

Statutes Related to Definitions of Military Electors

6.22 Absentee voting for military electors.

(1) DEFINITIONS. In this section, except as otherwise provided:

(a) "Member of the merchant marine" means an individual, other than a member of a uniformed service or an individual employed, enrolled or maintained on the Great Lakes or the inland waterways, who is any of the following:

1. Employed as an officer or crew member of a vessel documented under the laws of the United States, or a vessel owned by the United States, or a vessel of foreign-flag registry under charter to or control of the United States.

2. Enrolled with the United States for employment or training for employment, or maintained by the United States for emergency relief service, as an officer or crew member of any such vessel.

(b) "Military elector" means any of the following:

1. Members of a uniformed service.

2. Members of the merchant marine of the United States.

3. Civilian employees of the United States and civilians officially attached to a uniformed service who are serving outside the United States.

4. Peace corps volunteers.

5. Spouses and dependents of those listed in the above categories residing with or accompanying them.

(c) "Uniformed service" means the U.S. army, navy, air force, marine corps or coast guard, the commissioned corps of the federal public health service or the commissioned corps of the national oceanic and atmospheric administration.

(2) APPLICATION AND VOTING PROCEDURE.

(a) A military elector shall vote in the ward or election district for the address of his or her residence prior to becoming a military elector, except that:

1. A military elector voting in this state who is the spouse of another military elector and who did not maintain a residence in this state prior to becoming a military elector shall vote in the ward or election district for the address of his or her spouse.

2. A military elector voting in this state who is the dependent of another military elector and who did not maintain a residence in this state prior to becoming a military elector shall vote in the ward or election district for the address of the individual providing his or her support.

3. A military elector who is the spouse of another military elector and whose most recent residence in this state was different than the residence of his or her spouse prior to becoming a military elector may vote in the ward or election district for the address of his or her former residence or the ward or election district for the address of his or her spouse.

4. A military elector who is the dependent of another military elector and whose most recent residence in this state was different than the residence of the individual providing his or her support prior

to becoming a military elector may vote in the ward or election district for the address of his or her former residence or the ward or election district for the address of the individual providing his or her support.

(b) A military elector shall make and subscribe to the certification under s. 6.87 (2) before a witness who is an adult U.S. citizen.

(c) A federal postcard registration and absentee ballot request form may be used to apply for an absentee ballot under this section if the form is completed in such a manner that the municipal clerk or board of election commissioners with whom it is filed is able to determine all of the following:

1. That the applicant is qualified to vote in the ward or election district where he or she seeks to vote under par. (a).

2. That the applicant qualifies to receive an absentee ballot under this section.

(d) If an applicant uses a federal form under par. (c) to request an absentee ballot for all elections, the application shall so state.

(e) A military elector may file an application for an absentee ballot by means of electronic mail or facsimile transmission in the manner prescribed in s. 6.86 (1) (ac). Upon receipt of a valid application, the municipal clerk shall send the elector an absentee ballot or, if the elector is a military elector, as defined in s. 6.34 (1) (a), and the elector so requests, shall transmit an absentee ballot to the elector by means of electronic mail or facsimile transmission in the manner prescribed in s. 6.87 (3) (d).

(3) REGISTRATION EXEMPT. Military electors are not required to register as a prerequisite to voting in any election.

(4) INSTRUCTIONS AND HANDLING.

(a) Upon receiving a timely request for an absentee ballot under par. (b) by an individual who qualifies as a military elector, the municipal clerk shall send or, if the individual is a military elector as defined in s. 6.34 (1) (a), shall transmit to the elector upon the elector's request an absentee ballot for all elections that occur in the municipality or portion thereof where the elector resides in the same calendar year in which the request is received, unless the individual otherwise requests.

(b) A military elector's application may be received at any time. The municipal clerk shall not send or transmit a ballot for an election if the application is received later than 5 p.m. on the Friday preceding that election. The municipal clerk shall send or transmit a ballot, as soon as available, to each military elector who files a timely request for a ballot.

(c) A military elector may indicate an alternate address on his or her absentee ballot application. If the elector's ballot is returned as undeliverable prior to the deadline for return of absentee ballots under s. 6.87 (6), and the elector remains eligible to receive absentee ballots under this section, the municipal clerk shall immediately send or, if the elector is a military elector as defined in s. 6.34 (1) (a), transmit an absentee ballot to the elector at the alternate address.

(d) The board shall prescribe the instructions for marking and returning ballots and the municipal clerk shall enclose instructions with each ballot and shall also enclose supplemental instructions for local elections. The envelope, return envelope and instructions may not contain the name of any candidate appearing on the enclosed ballots other than that of the municipal clerk affixed in the fulfillment of his or her duties.

(e) Whenever the material is mailed, the material shall be prepared and mailed to make use of the federal free postage laws. If the material does not qualify for mailing without postage under federal free postage laws, the municipal clerk shall pay the postage required for mailing to the military elector. If the return envelope qualifies for mailing free of postage under federal free postage laws, the clerk shall affix the appropriate legend required by U.S. postal regulations. Otherwise the municipal clerk shall pay the postage required for return when the ballot is mailed from within the United States. If the ballot is not mailed by the military elector from within the United States the military elector shall provide return postage.

(f) If the municipal clerk is reliably informed that an individual who requests an absentee ballot under this section is no longer a military elector or no longer resides in the municipality, or if the elector so requests, the clerk shall discontinue sending or transmitting absentee ballots to the elector under this subsection. If a military elector who has requested an absentee ballot changes his or her residence from the municipality where a request is filed to another municipality in this state, the municipal clerk of the municipality who received the request shall notify the clerk of the municipality to which the elector's residence is changed of the date of the request. The municipal clerk who is so notified shall treat the request as having been made to him or her.

(h) The municipal clerk shall notify a military elector of any action under par. (f) that is not taken at the elector's request within 5 days of taking that action, if possible.

(5) VOTING PROCEDURE. Except as provided in s. 7.515 and as authorized in s. 6.25, the ballot shall be marked and returned, deposited and recorded in the same manner as other absentee ballots. In addition, the certification under s. 6.87 (2) shall have a statement of the elector's birth date. Failure to return any unused ballots in a primary election does not invalidate the ballot on which the elector casts his or her votes.

(6) MILITARY ELECTOR LIST. Each municipal clerk shall keep an up-to-date list of all eligible military electors who reside in the municipality in the format prescribed by the board. The list shall contain the name, latest-known military residence and military mailing address of each military elector. The list shall indicate whether each elector whose name appears on the list is a military elector, as defined in s. 6.34 (1), and has so certified under s. 6.865 (3m). All persons over 18 years of age or who will be 18 years old prior to an election shall be listed and remain on the list for the duration of their tour of duty. The list shall be kept current through all possible means. Each clerk shall exercise reasonable care to avoid duplication of names or listing anyone who is not eligible to vote. Each clerk shall distribute one copy of the list to the each polling place in the municipality for use on election day.

(7) EXTENSION OF PRIVILEGE. This section applies to all military electors for 28 days after the date of discharge from a uniformed service or termination of services or employment of individuals specified in sub. (1) (b) 1. to 4.

6.34 Proof of residence required.

(1) In this section:

(a) "Military elector" means a member of a uniformed service on active duty who, by reason of that duty, is absent from the residence where the member is otherwise qualified to vote; a member of the merchant marine, as defined in s. 6.22 (1) (a), who by reason of service in the merchant marine, is absent from the residence where the member is otherwise qualified to vote; or the spouse or dependent of any such member who, by reason of the duty or service of the member, is absent from the residence where the spouse or dependent is otherwise qualified to vote.

(b) "Overseas elector" means an elector who resides outside the United States and who is qualified under federal law to vote in elections for national office in this state because the elector was last domiciled in this state immediately prior to the elector's departure from the United States.

(2) Upon completion of a registration form prescribed under s. 6.33, each eligible elector who is required to register under s. 6.27, who is not a military elector or an overseas elector, shall provide an identifying document that establishes proof of residence under sub. (3). If the elector registered by mail, the identifying document may not be a residential lease.

(3)

(a) An identifying document used to establish proof of an elector's residence under sub. (2) shall contain the information required under par. (b) and is limited to one of the following:

1. A current and valid operator's license issued under ch. 343.
2. A current and valid identification card issued under s. 343.50.
3. Any other official identification card or license issued by a Wisconsin governmental body or unit.
4. An official identification card or license issued by an employer in the normal course of business that contains a photograph of the cardholder or license holder, but not including a business card.
5. A real property tax bill or receipt for the current year or the year preceding the date of the election.

6. Except as provided in sub. (2), a residential lease.

7. Any of the following documents without the address specified in par. (b):

a. A university, college, or technical college identification card that contains a photograph of the cardholder together with a fee payment receipt issued to the cardholder by the university, college, or technical college dated no earlier than 9 months before the date of the election at which the receipt is presented.

b. An identification card issued by a university, college or technical college that contains a photograph of the cardholder if the university, college, or technical college that issued the card provides a certified and current list of students who reside in housing sponsored by the university, college, or technical college and who are U.S. citizens to the municipal clerk prior to the election showing the current address of the students and if the municipal clerk, special registration deputy, or inspector verifies that the student presenting the card is included on the list.

8. A utility bill for the period commencing not earlier than 90 days before the day registration is made.

9. A bank statement.

10. A paycheck.

11. A check or other document issued by a unit of government.

(b) Except as provided in par. (a) 7., the identifying documents prescribed in par. (a) shall contain all of the following in order to be considered proof of residence:

1. A current and complete name, including both the given and family name.

2. A current and complete residential address, including a numbered street address, if any, and the name of a municipality.

(c) Identifying documents specified in par. (a) which are valid for use during a specified period must be valid on the day that an elector makes application for registration in order to constitute proof of residence.

6.86 Methods for obtaining an absentee ballot.

(1)

(a) Any elector of a municipality who is registered to vote whenever required and who qualifies under ss. 6.20 and 6.85 as an absent elector may make written application to the municipal clerk of that municipality for an official ballot by one of the following methods:

1. By mail.
2. In person at the office of the municipal clerk or at an alternate site under s. 6.855, if applicable.
3. By signing a statement and filing a request to receive absentee ballots under sub. (2) or (2m) (a) or s. 6.22 (4), 6.24 (4), or 6.25 (1) (c).
4. By agent as provided in sub. (3).
5. By delivering an application to a special voting deputy under s. 6.875 (6).
6. By electronic mail or facsimile transmission as provided in par. (ac).

(ac) Any elector qualifying under par. (a) may make written application to the municipal clerk for an official ballot by means of facsimile transmission or electronic mail. Any application under this paragraph need not contain a copy of the applicant's original signature. An elector requesting a ballot under this paragraph shall return with the voted ballot a copy of the request bearing an original signature of the elector as provided in s. 6.87 (4). Except as authorized in ss. 6.87 (4) (b) 2. to 5. and 6.875 (6), and notwithstanding s. 343.43 (1) (f), the elector shall transmit a copy of his or her proof of identification in the manner provided in s. 6.87 (1) unless the elector is a military elector or an overseas elector or the elector has a confidential listing under s. 6.47 (2).

(ag) An elector who is unable to write his or her name due to physical disability may authorize an application to be made by another elector on his or her behalf. In such case, the application shall state that it is made on request and by authorization of a named elector who is unable to sign the application due to physical disability.

(ar) Except as authorized in s. 6.875 (6), the municipal clerk shall not issue an absentee ballot unless the clerk receives a written application therefor from a qualified elector of the municipality. The clerk shall retain each absentee ballot application until destruction is authorized under s. 7.23 (1). Except as authorized in s. 6.79 (6) and (7), if a qualified elector applies for an absentee ballot in person at the clerk's office, the clerk shall not issue the elector an absentee ballot unless the elector presents proof of identification. The clerk shall verify that the name on the proof of identification presented by the elector conforms to the name on the elector's application and shall verify that any photograph appearing on that document reasonably resembles the elector. The clerk shall then enter his or her initials on the certificate envelope indicating that the absentee elector presented proof of identification to the clerk.

(b) Except as provided in this section, if application is made by mail, the application shall be received no later than 5 p.m. on the 5th day immediately preceding the election. If application is made in person, the application shall be made no earlier than the opening of business on the 3rd Monday preceding the election and no later than 7 p.m. on the Friday preceding the election. No application may be received on a legal holiday. An application made in person may only be received Monday to Friday between the hours of 8 a.m. and 7 p.m. each day. A municipality shall specify the hours in the notice under s. 10.01 (2) (e). The municipal clerk or an election official shall witness the certificate for any in-person absentee ballot cast. Except as provided in par. (c), if the elector is making written application for an absentee ballot at

the partisan primary, the general election, the presidential preference primary, or a special election for national office, and the application indicates that the elector is a military elector, as defined in s. 6.34 (1), the application shall be received by the municipal clerk no later than 5 p.m. on election day. If the application indicates that the reason for requesting an absentee ballot is that the elector is a sequestered juror, the application shall be received no later than 5 p.m. on election day. If the application is received after 5 p.m. on the Friday immediately preceding the election, the municipal clerk or the clerk's agent shall immediately take the ballot to the court in which the elector is serving as a juror and deposit it with the judge. The judge shall recess court, as soon as convenient, and give the elector the ballot. The judge shall then witness the voting procedure as provided in s. 6.87 and shall deliver the ballot to the clerk or agent of the clerk who shall deliver it to the polling place or, in municipalities where absentee ballots are canvassed under s. 7.52, to the municipal clerk as required in s. 6.88. If application is made under sub. (2) or (2m), the application may be received no later than 5 p.m. on the Friday immediately preceding the election.

(c) If an application is made by mail by a military elector, as defined in s. 6.22 (1) (b), the application shall be received no later than 5 p.m. on the Friday immediately preceding the election.

....

6.87 Absent voting procedure.

(1) Upon proper request made within the period prescribed in s. 6.86, the municipal clerk or a deputy clerk authorized by the municipal clerk shall write on the official ballot, in the space for official endorsement, the clerk's initials and official title. Unless application is made in person under s. 6.86 (1) (ar), the absent elector is exempted from providing proof of identification under sub. (4) (b) 2. or 3., or the applicant is a military or overseas elector, the absent elector shall enclose a copy of his or her proof of identification or any authorized substitute document with his or her application. The municipal clerk shall verify that the name on the proof of identification conforms to the name on the application. The clerk shall not issue an absentee ballot to an elector who is required to enclose a copy of proof of identification or an authorized substitute document with his or her application unless the copy is enclosed and the proof is verified by the clerk.

(2) Except as authorized under sub. (3) (d), the municipal clerk shall place the ballot in an unsealed envelope furnished by the clerk. The envelope shall have the name, official title and post-office address of the clerk upon its face. The other side of the envelope shall have a printed certificate which shall include a space for the municipal clerk or deputy clerk to enter his or her initials indicating that if the absentee elector voted in person under s. 6.86 (1) (ar), the elector presented proof of identification to the clerk and the clerk verified the proof presented. The certificate shall also include a space for the municipal clerk or deputy clerk to enter his or her initials indicating that the elector is exempt from providing proof of identification because the individual is a military or overseas elector or is exempted from providing proof of identification under sub. (4) (b) 2. or 3. The certificate shall be in substantially the following form:

[STATE OF

County of]

or

[(name of foreign country and city or other jurisdictional unit)]

I,, certify subject to the penalties of s. 12.60 (1) (b), Wis. Stats., for false statements, that I am a resident of the [... ward of the] (town) (village) of, or of the aldermanic district in the city of, residing at* in said city, the county of, state of Wisconsin, and am entitled to vote in the (ward) (election district) at the election to be held on; that I am not voting at any other location in this election; that I am unable or unwilling to appear at the polling place in the (ward) (election district) on election day or have changed my residence within the state from one ward or election district to another later than 28 days before the election. I certify that I exhibited the enclosed ballot unmarked to the witness, that I then in (his) (her) presence and in the presence of no other person marked the ballot and enclosed and sealed the same in this envelope in such a manner that no one but myself and any person rendering assistance under s. 6.87 (5), Wis. Stats., if I requested assistance, could know how I voted.

Signed

Identification serial number, if any:

The witness shall execute the following:

I, the undersigned witness, subject to the penalties of s. 12.60 (1) (b), Wis. Stats., for false statements, certify that I am an adult U.S. citizen and that the above statements are true and the voting procedure was executed as there stated. I am not a candidate for any office on the enclosed ballot (except in the case of

an incumbent municipal clerk). I did not solicit or advise the elector to vote for or against any candidate or measure.

....(Name)

....(Address)**

* — An elector who provides an identification serial number issued under s. 6.47 (3), Wis. Stats., need not provide a street address.

** — If this form is executed before 2 special voting deputies under s. 6.875 (6), Wis. Stats., both deputies shall witness and sign.

(3)

(a) Except as authorized under par. (d) and as otherwise provided in s. 6.875, the municipal clerk shall mail the absentee ballot to the elector's residence unless otherwise directed by the elector, or shall deliver it to the elector personally at the clerk's office or at an alternate site under s. 6.855. If the ballot is mailed, and the ballot qualifies for mailing free of postage under federal free postage laws, the clerk shall affix the appropriate legend required by U.S. postal regulations. Otherwise, the clerk shall pay the postage required for return when the ballot is mailed from within the United States. If the ballot is not mailed by the absentee elector from within the United States, the absentee elector shall provide return postage. If the ballot is delivered to the elector at the clerk's office, or an alternate site under s. 6.855, the ballot shall be voted at the office or alternate site and may not be removed by the elector therefrom.

(b) No elector may direct that a ballot be sent to the address of a candidate, political party or other registrant under s. 11.05 unless the elector permanently or temporarily resides at that address. Upon receipt of reliable information that an address given by an elector is not eligible to receive ballots under this subsection, the municipal clerk shall refrain from mailing or transmitting ballots to that address. Whenever possible, the municipal clerk shall notify an elector if his or her ballot cannot be mailed or transmitted to the address directed by the elector.

(d) A municipal clerk shall, if the clerk is reliably informed by a military elector, as defined in s. 6.34 (1) (a), or an overseas elector, as defined in s. 6.34 (1) (b), of a facsimile transmission number or electronic mail address where the elector can receive an absentee ballot, transmit a facsimile or electronic copy of the elector's ballot to that elector in lieu of mailing under this subsection. An elector may receive an absentee ballot only if the elector is a military elector or an overseas elector under s. 6.34 (1) and has filed a valid application for the ballot as provided in s. 6.86 (1). If the clerk transmits an absentee ballot to a military or overseas elector electronically, the clerk shall also transmit a facsimile or electronic copy of the text of the material that appears on the certificate envelope prescribed in sub. (2), together with instructions prescribed by the board. The instructions shall require the military or overseas elector to make and subscribe to the certification as required under sub. (4) (b) and to enclose the absentee ballot in a separate envelope contained within a larger envelope, that shall include the completed certificate. The elector shall then affix sufficient postage unless the absentee ballot qualifies for mailing free of postage under federal free postage laws and shall mail the absentee ballot to the municipal clerk. Except as authorized in s. 6.97 (2), an absentee ballot received from a military or overseas elector who receives the ballot electronically shall not be counted unless it is cast in the manner prescribed in this paragraph and sub. (4) and in accordance with the instructions provided by the board.

(4)

(a) In this subsection:

1. "Military elector" has the meaning given in s. 6.34 (1) (a).
2. "Overseas elector" has the meaning given in s. 6.34 (1) (b).

(b)

1. Except as otherwise provided in s. 6.875, the elector voting absentee shall make and subscribe to the certification before one witness who is an adult U.S. citizen. The absent elector, in the presence of the witness, shall mark the ballot in a manner that will not disclose how the elector's vote is cast. The elector shall then, still in the presence of the witness, fold the ballots so each is separate and so that the elector conceals the markings thereon and deposit them in the proper envelope. If a consolidated ballot under s. 5.655 is used, the elector shall fold the ballot so that the elector conceals the markings thereon and deposit the ballot in the proper envelope. If proof of residence under s. 6.34 is required and the document enclosed by the elector under this subdivision does not constitute proof of residence under s. 6.34, the elector shall also enclose proof of residence under s. 6.34 in the envelope. Proof of residence is required if the elector is not a military elector or an overseas elector and the elector registered by mail and has not voted in an election in this state. If the elector requested a ballot by means of facsimile transmission or electronic mail under s. 6.86 (1) (ac), the elector shall enclose in the envelope a copy of the request which bears an original signature of the elector. The elector may receive assistance under sub. (5). The return envelope shall then be sealed. The witness may not be a candidate. The envelope shall be mailed by the elector, or delivered in person, to the municipal clerk issuing the ballot or ballots. If the envelope is mailed from a location outside the United States, the elector shall affix sufficient postage unless the ballot qualifies for delivery free of postage under federal law. Failure to return an unused ballot in a primary does not invalidate the ballot on which the elector's votes are cast. Return of more than one marked ballot in a primary or return of a ballot prepared under s. 5.655 or a ballot used with an electronic voting system in a primary which is marked for candidates of more than one party invalidates all votes cast by the elector for candidates in the primary.

2. Unless subd. 3. applies, if the absentee elector has applied for and qualified to receive absentee ballots automatically under s. 6.86 (2) (a), the elector may, in lieu of providing proof of identification, submit with his or her absentee ballot a statement signed by the same individual who witnesses voting of the ballot which contains the name and address of the elector and verifies that the name and address are correct.

3. If the absentee elector has received an absentee ballot from the municipal clerk by mail for a previous election, has provided proof of identification with that ballot, and has not changed his or her name or address since providing that proof of identification, the elector is not required to provide proof of identification.

4. If the absentee elector has received a citation or notice of intent to revoke or suspend an operator's license from a law enforcement officer in any jurisdiction that is dated within 60 days of the date of the election and is required to surrender his or her operator's license or driving receipt issued to the elector under ch. 343 at the time the citation or notice is issued, the elector may enclose a copy of the citation or notice in lieu of a copy of an operator's license or driving receipt issued under ch. 343 if the elector is voting by mail, or may present an original copy of the citation or notice in lieu of an operator's license or driving receipt under ch. 343 if the elector is voting at the office of the municipal clerk.

5. Unless subd. 3. or 4. applies, if the absentee elector resides in a qualified retirement home, as defined in s. 6.875 (1) (at), or a residential care facility, as defined in s. 6.875 (1) (bm), and the municipal clerk or board of election commissioners of the municipality where the facility or home is located does not send special voting deputies to visit the facility or home at the election under s. 6.875, the elector may, in lieu of providing proof of identification, submit with his or her absentee ballot a statement signed by the same individual who witnesses voting of the ballot that contains the certification of an authorized representative of the facility or home that the elector resides in the facility or home and the facility or home is certified or registered as required by law, that contains the name and address of the elector, and that verifies that the name and address are correct.

....

Uniformed and Overseas Citizens Absentee Voter Act

§20310. Definitions

As used in this chapter, the term—

(1) "absent uniformed services voter" means—

(A) a member of a uniformed service on active duty who, by reason of such active duty, is absent from the place of residence where the member is otherwise qualified to vote;

(B) a member of the merchant marine who, by reason of service in the merchant marine, is absent from the place of residence where the member is otherwise qualified to vote; and

(C) a spouse or dependent of a member referred to in subparagraph (A) or (B) who, by reason of the active duty or service of the member, is absent from the place of residence where the spouse or dependent is otherwise qualified to vote;

(2) "balloting materials" means official post card forms (prescribed under section 20301 of this title), Federal write-in absentee ballots (prescribed under section 20303 of this title), and any State balloting materials that, as determined by the Presidential designee, are essential to the carrying out of this chapter;

(3) "Federal office" means the office of President or Vice President, or of Senator or Representative in, or Delegate or Resident Commissioner to, the Congress;

(4) "member of the merchant marine" means an individual (other than a member of a uniformed service or an individual employed, enrolled, or maintained on the Great Lakes or the inland waterways)—

(A) employed as an officer or crew member of a vessel documented under the laws of the United States, or a vessel owned by the United States, or a vessel of foreign-flag registry under charter to or control of the United States; or

(B) enrolled with the United States for employment or training for employment, or maintained by the United States for emergency relief service, as an officer or crew member of any such vessel;

(5) "overseas voter" means—

(A) an absent uniformed services voter who, by reason of active duty or service is absent from the United States on the date of the election involved;

(B) a person who resides outside the United States and is qualified to vote in the last place in which the person was domiciled before leaving the United States; or

(C) a person who resides outside the United States and (but for such residence) would be qualified to vote in the last place in which the person was domiciled before leaving the United States.

(6) "State" means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, and American Samoa;

(7) "uniformed services" means the Army, Navy, Air Force, Marine Corps, and Coast Guard, the commissioned corps of the Public Health Service, and the commissioned corps of the National Oceanic and Atmospheric Administration; and

(8) "United States", where used in the territorial sense, means the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, and American Samoa.

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JUDGE GERALD C. NICHOL
Chair

KEVIN J. KENNEDY
Director and General Counsel

MEMORANDUM

DATE: For the December 15, 2015 Board Meeting

TO: Members, Wisconsin Government Accountability Board

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

Prepared and Presented by:
Nathan W. Judnic
Staff Counsel

SUBJECT: Promulgation of Administrative Rules

I. Status of Promulgation Progress:

The Government Accountability Board (“G.A.B.” or “Board”) has authorized staff to promulgate 18 various rules (or sets of rules) and to remove rules from the administrative code that are no longer in effect. A table summarizing the status of promulgation of these rules follows this memorandum as “Attachment 1.”

In addition to Attachment 1, the following summarizes recent noteworthy progress regarding certain administrative rules for the Board’s information and consideration:

A. Technical College ID Emergency Rule Extension

On November 5, 2015, Board staff sought a 2nd 60-day formal extension of the Technical College ID emergency rule (WIS. ADMIN. CODE GAB §§10.01 and 10.02), which has been in effect since May 15, 2015. The first 60-day extension was granted on October 8, 2015 extending the rule through December 7, 2015. The 2nd extension was taken up by the Joint Committee for the Review of Administrative Rules and on November 12, 2015, the committee granted the Board’s request, extending the emergency rule through February 8, 2016.

B. Technical College ID Permanent Rule Status

The proposed permanent rule, along with the required notices and report to the Legislature was provided to the Chief Clerks of both houses on October 6, 2015. The Senate Chief Clerk referred

the rule to the Committee on Elections and Local Government on October 9, 2015. The committee did not act on the rule and was referred to the Joint Committee for the Review of Administrative Rules pursuant to Wis. Stat. § 227.19(5)(a) on November 25, 2015. The Assembly Chief Clerk referred to the rule to the Committee on Campaigns and Elections on October 19, 2015. The committee did not act on the rule and was referred to the Joint Committee for Review of Administrative Rules pursuant to Wis. Stat. § 227.19(5)(a) on November 25, 2015. There are currently no meetings of the Joint Committee for Review of Administrative Rules on the calendar. The full Legislature's next scheduled floor period is set to begin January 12, 2016.

C. Scope Statements Submitted to Governor

Since the last Board meeting, Scope Statements for the following rules have been submitted to the Governor's Office for review and approval: Curbside Voting (GAB § 6.06), Election Notices (GAB Ch. 8) and Overseas Voting Procedures (GAB Ch. 13). Once approval is received from the Governor's Office, Board staff will begin drafting the rules to be presented to the Board for review and action.

II. **Continued Progress:**

Conversations with the Governor's staff have continued regarding statements of scope previously submitted but not yet acted upon for a variety of reasons. Communications with the co-chairs of the Joint Committee for the Review of Administrative Rules will also continue, to monitor progress on the review of the permanent rule on Technical College IDs. As always, updates on this process will be provided to the Board on a regular basis.

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JUDGE GERALD C. NICHOL
 Chair

KEVIN J. KENNEDY
 Director and General Counsel

ATTACHMENT 1: Status of Administrative Rules

#	Proposed Rule:	Board Directive to Promulgate:	Status:
1	Use of Technical College IDs for Voting Purposes	November – December 2011	<ul style="list-style-type: none"> • Statement of Scope drafted • Statement of Scope submitted to the Governor (3/30/15) • Statement of Scope published in the Administrative Register (4/13/15) • Board approved Statement of Scope (4/29/15) • Judge Nichol approved language and analysis of proposed emergency rule (5/6/15) • Staff submitted language and analysis of proposed emergency rule to the Governor (5/7/15) • The Governor provided written approval of language and analysis of emergency rule (5/12/15) • Staff submitted emergency rule to <i>Wisconsin State Journal</i> for publication (5/12/15) • Emergency rule published in <i>Wisconsin State Journal</i> (5/15/15); emergency rule in effect with publication • Staff submitted certified copy of emergency rule to Legislative Reference Bureau for publication in Administrative Register (5/13/15) • Staff submitted emergency rule to Assembly and Senate chief clerks for distribution to the Legislature (5/13/15) • Emergency rule published in Administrative Register (5/18/15); <i>available at</i> https://docs.legis.wisconsin.gov/code/register/2015/713A3/register#emr_effect • Draft of permanent rule submitted to Judge Nichol June 4, 2015 • Judge Nichol approved rule on June 6, 2015 • Staff submitted proposed rulemaking order to Legislative Council Rules Clearinghouse on June 8, 2015 • Staff submitted Fiscal Estimate & Economic Impact Analysis to Legislative Council Rules Clearinghouse on June 9, 2015 • Rules to Clearinghouse submitted Report to G.A.B. staff • Staff reviewed Report and incorporated suggested changes into draft rule • Governor approved draft of final rule (8/19/15) • Staff prepared reports for Legislature and notices of

			<p>submission of the reports to the Chief Clerks of each house</p> <ul style="list-style-type: none"> • Staff submitted notices, reports and permanent rule draft to Legislature (10/6/15) • Staff submitted notices, reports and permanent rule draft to the Legislative Reference Bureau to publish in the Administrative Register • Emergency rule extension request submitted to Joint Committee on Review of Administrative Rules (10/6/15) • 60 day emergency rule extension granted (10/8/15) • Emergency rule extension request submitted to Joint Committee on Review of Administrative Rules (11/5/15) • 60 day emergency rule extension granted (11/12/15) – effective through February 8, 2016
2	Contents of Training that Municipal Clerks Must Provide to Election Inspectors and Special Voting Deputies	January 13, 2015	<ul style="list-style-type: none"> • Statement of Scope drafted • Statement of Scope submitted to the Governor (4/14/15) • Statement of Scope published in Administrative Register (5/11/15); <i>available at</i> https://docs.legis.wisconsin.gov/code/register/2015/713A2/register • Board approved State of Scope (6/18/15) • Staff has commenced drafting the rule
3	Standards for Determining Validity of Votes Cast with Electronic Voting Equipment	January 13, 2015	<ul style="list-style-type: none"> • Staff completed first draft of Statement of Scope in 2013 • Staff has commenced drafting an updated Statement of Scope
4	Approval of Electronic Voting Equipment in Accordance with WIS. STAT. §§5.40(2), 5.76, 5.77, 5.905, 7.23(1)(g) (Electronic Voting Systems, GAB Ch. 7)	January 13, 2015	<ul style="list-style-type: none"> • Statement of Scope drafted • Statement of Scope submitted to the Governor (4/9/2015) • Statement of Scope published in Administrative Register (5/11/15); <i>available at</i> https://docs.legis.wisconsin.gov/code/register/2015/713A2/register • Board approved Statement of Scope (6/18/15) • Staff has commenced drafting the rule
5	Ballot Security and Interpreting WIS. STAT. §§5.84, 5.86, 5.87, 5.905, 5.91, 7.23, 7.51, and 9.01 (Ballot and Voting System Security, GAB Ch. 5)	January 13, 2015	<ul style="list-style-type: none"> • Staff completed first draft of Statement of Scope in 2013 • Staff has completed the new draft of the Statement of Scope to submit to the Governor
6	Administer Statutory	January 13, 2015	<ul style="list-style-type: none"> • Staff has commenced drafting other Statements of Scope that cover these requirements

	Requirements for Electronic Voting Systems		
7	Election Notices that Clerks Must Use to Inform Public About Elections	January 13, 2015	<ul style="list-style-type: none"> • Staff has completed the first draft of the Statement of Scope • Scope statement submitted to the Governor (12/14/15)
8	Responsibilities of Clerks for Maintaining Records in the Statewide Voter Registration System	January 13, 2015	<ul style="list-style-type: none"> • Staff has completed the first draft of the Statement of Scope
9	Conduct and Regulation of Election Observers to Monitor Compliance with Election Laws by Local Officials	January 13, 2015	<ul style="list-style-type: none"> • Scope statement drafted • Scope statement submitted to the Governor (5/18/15)
10	Procedures for Ethics and Elections Complaints	April 29, 2015	<ul style="list-style-type: none"> • Staff has commenced drafting the Statement of Scope
11	Acceptable Proofs of Residence (Including Electronic)	April 29, 2015	<ul style="list-style-type: none"> • Statement of Scope drafted • Scope statement submitted to the Governor (6/2/15)
12	U.S. Citizen as Witness for Overseas Voter	April 29, 2015	<ul style="list-style-type: none"> • Staff has commenced drafting the Statement of Scope • Scope statement submitted to the Governor (12/14/15)
13	Procedures for Curbside Voting	April 29, 2015	<ul style="list-style-type: none"> • Staff has commenced drafting the Statement of Scope • Scope statement submitted to the Governor (12/14/15)
14	Definition of "Same Grounds" for Voting Purposes in WIS. STAT. §6.875(3)(b)	April 29, 2015	<ul style="list-style-type: none"> • Staff has commenced drafting the Statement of Scope
15	Synchronization of Certification Terms for Municipal Clerks, Special Registration Deputies, and Election	April 29, 2015	<ul style="list-style-type: none"> • Statement of Scope drafted • Scope statement submitted to the Governor (6/2/15) • Senator Lazich contacted staff to discuss a possible statutory change as an alternative to the proposed rule (7/3/15)

	Inspectors		
16	Applications for Approval of Modification to Voting Systems Previously Approved for Use in Wisconsin	April 29, 2015	<ul style="list-style-type: none"> Staff has commenced drafting the Statement of Scope
17	Removal of Rules No Longer In Effect	January 13, 2015	<ul style="list-style-type: none"> Staff correspondence sent to Legislative Reference Bureau to remove rules no longer in effect pursuant to 2007 Wisconsin Act 1 (6/29/15) Legislative Reference Bureau informed staff that it will work to remove rules no longer in effect (6/30/15) Legislative Reference Bureau approved proposed proofs of changes to the GAB sections of the Code, removing sections as required by 2007 Wisconsin Act I (7/8/15) COMPLETE: Wisconsin Administrative Code updated to remove sections no longer in effect. (8/15/15)
18	Deadline for Receipt of Documents Filed by Fax	June 18, 2015	<ul style="list-style-type: none"> Staff has commenced drafting the Statement of Scope
19	Amend GAB §3.04(2) to comply with WIS. STAT. §6.97(3)(b)	June 18, 2015	<ul style="list-style-type: none"> Staff has drafted the Statement of Scope

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JUDGE GERALD C. NICHOL
Chairperson

KEVIN J. KENNEDY
Director and General Counsel

MEMORANDUM

DATE: For the December 15, 2015 Board Meeting

TO: Members, Government Accountability Board

FROM: Kevin J. Kennedy – Director and General Counsel

SUBJECT: Legislative Status Report

FEDERAL LEGISLATION

The Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) was enacted by Congress in 1986. UOCAVA requires that the states and territories allow certain groups of citizens to register and vote absentee in elections for Federal offices. In addition, most states and territories have their own laws allowing citizens covered by UOCAVA to register and vote absentee in state and local elections as well.

In 2009, a subtitle of the National Defense Authorization Act for Fiscal Year 2010, titled the Military and Overseas Voter Empowerment Act ("MOVE Act"), amended UOCAVA to establish new voter registration and absentee ballot procedures which states must follow in all federal elections.

On November 10, 2015, the Department of Justice (DOJ) released a new set of proposed changes in a legislative package aimed at further helping members of the military, veterans and their families.

As part of that package, DOJ is proposing several amendments to the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA), as amended by the MOVE Act, including:

- Requiring pre-election reports (55 and 43 days before a federal election) by state and local officials on delivery of ballots to military and overseas voters¹;
- Moving the ballot transmission deadline from 45 days pre-election (which always falls on Saturday) to 46 days²;

¹ The G.A.B. has tracked this information since 2012. The G.A.B. is subject to a number of other Federal reporting requirements that require the collection of UOCAVA ballot delivery data.

² Wisconsin law currently establishes a deadline of 47 days prior to an election for transmitting absentee ballots to military and permanent overseas voters with a request on file.

- Requiring any ballots sent after the 46-day deadline to go by express delivery – and allowing voters to return by express delivery if ballots are not sent by 41 days pre-election³;
- Eliminating the hardship waiver for states;
- Clarifying that Federal Write-in Absentee Ballots (FWAB) can be used in all federal elections, not just general elections⁴;
- Extending the validity of a ballot request by Federal Post Card Application (FPCA) to include special elections up to year after the general election (and amending the FPCA as well)⁵;
- Requiring that voters who register via FPCA cannot be treated as “temporary” voters and can only be removed from the rolls pursuant to other federal laws⁶; and
- Changing the UOCAVA reporting requirement from March 31 annually to September 30 in odd-numbered years in order to improve the quality of reporting.

NEW LEGISLATION

1. Assembly Resolution 18: prohibiting certain contributions to legislative campaign committees and personal campaign committees.

Sponsors: Minority: This resolution amends the assembly rules to provide that no legislative campaign committee and no personal campaign committee of a member may accept a contribution from a corporation incorporated outside of the United States.

2. AJR84: Assembly Joint Resolution 84: Relating to: appointment of the state superintendent of public instruction by the governor with the advice and consent of the senate (first consideration).

Sponsors: Majority: This proposed constitutional amendment, proposed to the 2015 legislature on first consideration, provides that the state superintendent of public instruction shall be nominated by the governor and, with the advice and consent of the senate,

³ This is consistent with current G.A.B. guidance. If a clerk misses the deadline to transmit a UOCAVA ballot, we instruct the clerk to offer expedited delivery of the ballot to the voter as well as an expedited means for the voter to return the ballot.

⁴ Wisconsin law currently allows UOCAVA voters to use the FWAB for all elections.

⁵ Currently, any absentee ballot request, including a UOCAVA request made using a FPCA, is only considered valid for one calendar year under Wisconsin law.

⁶ When a UOCAVA voter registers using an FPCA, the registration is treated in the same manner as a regular voter registration application. The voter will remain active on the rolls until they are removed through an appropriate process such as four year maintenance.

appointed to serve at the pleasure of the governor. Currently, the state superintendent is elected in a state-wide election, to serve a four-year term.

- 3. AJR85: Assembly Joint Resolution 85: Relating to: option for each county to combine the offices of county clerk, register of deeds, and treasurer (first consideration).***

Sponsors: Majority: This proposed constitutional amendment, proposed to the 2015 legislature on first consideration, gives counties the option to combine the offices of county clerk, register of deeds, and treasurer.

- 4. Assembly Bill 464: attempts to influence action upon model or similar proposed legislation, reporting by certain persons providing or state public officials receiving certain things of value, and providing a criminal penalty.***

Sponsors: Minority. Currently, with certain exceptions, a person who employs a lobbyist (principal) must register and file semiannual itemized expense statements with the Government Accountability Board (GAB). This bill requires registration and the filing of expense statements, in addition, by a principal who attempts to influence the development, drafting, consideration, modification, adoption, rejection, or defeat of uniform, model, suggested, or recommended legislation for consideration by the legislatures of this state and other states.

- 5. Assembly Bill 472: prohibiting individuals from doing campaign work while working for other registrants.***

Sponsors: Minority. This bill prohibits an individual from being employed by a candidate, the candidate's personal campaign committee, or a legislative campaign committee while also being employed by any other individual or committee who or which is required to register with the Government Accountability Board for campaign finance purposes.

- 6. Assembly Bill 479: the requirement that a classified service employee take a leave of absence to run for office.***

Sponsors: Minority. This bill removes the requirement that a person employed in the classified service who runs for a partisan political office take a leave of absence during the campaign period for that office. The bill maintains the requirement under current law that the person separate from the classified service if elected.

- 7. Assembly Bill 481 and Senate Bill 355: limitations on borrowing by school districts and the use by school districts of resolutions and referenda to authorize bonding***

for capital projects or increase revenue limits and scheduling of school district referendums to exceed revenue limits.

Sponsors: Majority. This bill provides that, if a school board applies or adopts a resolution to borrow money or adopts a resolution to increase revenue through any of the mechanisms identified above and the application, resolution, or referendum is rejected by a majority of the electors of the school district, the school board may not use any of the mechanisms identified in the bill to borrow money or raise revenue for two consecutive 365-day periods.

8. *Assembly Bill 532 and Senate Bill 391: Relating to: training period for election officials and terms for members of a board of canvassers.*

Sponsors: Majority: This bill requires elections officials to attend at least one training session every two years during the period beginning on January 1 of each even-numbered year and ending on December 31 of the following year. Current law requires such training at least once every two years, but indicates neither the beginning nor the end of that period.

9. *Assembly Bill and Senate Bill 423: Relating to: employment by a former member of the legislature as a lobbyist.*

Sponsors: Bipartisan: This bill prohibits any individual who serves as a member of the legislature, for 12 months following the date on which the individual ceases to hold office, from being employed as a lobbyist. "Lobbyist" is defined as an individual who is compensated by a principal and whose duties include attempting to influence state legislative action or state administrative rule-making action on behalf of the principal.

10. *Senate Bill 380: Relating to: adding a circuit court branch in Calumet, Wood, Marathon, Dunn, Polk, Jackson, and Vilas counties and making an appropriation.*

Sponsors: Majority: This bill adds one additional circuit court branch for Calumet, Wood, Marathon, Dunn, and Polk counties, effective August 1, 2016, and one additional circuit court branch for Jackson and Vilas counties, effective August 1, 2017.

11. *Senate Joint Resolution 74: Relating to: prohibiting official action on proposals that financially benefit a legislator's campaign organization (first consideration).*

Sponsors: Minority: This constitutional amendment, proposed to the 2015 legislature on first consideration, prohibits a legislator from taking any official action with respect to any proposal to modify a state law or rule that would result in a substantial financial

benefit to a political campaign organization of the legislator during the biennial session in which the legislature considers the proposal.

PREVIOUS LEGISLATION – CHANGE IN STATUS

12. Assembly Bill 251: various changes regarding administrative rules and rule-making procedures; time limits for emergency rules; and making an appropriation.

Sponsors: Majority. The bill makes various changes regarding the rule-making procedures established under current law. **Executive Session October 28, 2015.**

13. Assembly Bill 68 and Senate Bill 43: John Doe proceedings and providing a penalty.

Sponsors: Majority. This bill imposes a six-month time limit on a John Doe proceeding. This limit may be extended for additional six-month periods if a majority of judicial administrative district chief judges find good cause for each extension. This bill also provides that the same finding is required to add specified crimes to the original complaint. The vote of each judge must be available to the public. Finally, under this bill, records reflecting the costs of John Doe investigations and proceedings are a matter of public record, temporary or permanent reserve judges are excluded from presiding over John Doe proceedings, and special prosecutors may be appointed to assist the district attorney in a John Doe proceeding only under certain conditions.

Assembly: A public hearing was held on May 14 and an executive session held on August 19 by the Assembly Committee on Judiciary. The committee recommended passage by a vote of 5-3. **Assembly floor session October 20, 2015, adopted amendments 8-10. Assembly tabled amendments 11-18. Assembly passed 60-36 with amendments.**

Senate: A public hearing was held on March 11 and an executive session held on March 12 by the Senate Committee on Judiciary and Public Safety. The committee recommended passage by the committee by a vote of 3-2. **Senate floor session October 20, 2015, adopted amendments 5-7. Senate tabled amendments 8-28. Senate Passed 18-14 with amendments. Signed into law by Governor 2015 WI Act 64.**

14. Assembly Bill 199 and Senate Bill 137: publication of certain legal notices on an Internet site maintained by a municipality.

Sponsors: Majority. Under this bill, a municipality that opts to post a legal notice in lieu of publication may, instead of posting the notice in three public places, post the notice in one public place and publish the notice on the municipality's Internet site.

Assembly: Public hearing held by June 16, 2015 by the Assembly Committee on Urban and Local Affairs. The Assembly Committee on Urban and Local Affairs held

an executive session on AB-199 on September 22, 2015. The Assembly passed Senate Bill 137 by a voice vote on September 24, 2015.

Senate: Public hearing held on May 28, 2015. Executive Session held on June 3, 2015. The Senate Committee on Elections and Local Government recommended passage by a vote of 3-2. The Senate passed Senate Bill 137 by a voice vote on June 9, 2015. **Signed into law by Governor 2015 WI Act 79.**

15. Assembly Bill 382 and Senate Bill 368: creating a legislative office of inspector general and making appropriations.

Sponsors: Majority. This bill creates a nonpartisan, legislative service agency known as the "Legislative Office of Inspector General," consisting of 13 inspectors general and their staff who are assigned to and housed at the headquarters of certain state agencies including the Government Accountability Board. The Joint Committee on Legislative Organization appoints each inspector general for a six-year term expiring March 1 of the odd-numbered year. The bill outlines the proposed responsibilities of the inspectors general. **Public Hearing Scheduled for December 16, 2015.**

16. Assembly Bill 387 and Senate Bill 292: campaign finance.

Sponsors: Majority. This bill restructures chapter 11 of the Wisconsin statutes, the campaign finance law. The bill follows the recommendation of the Board to strike the existing statutes and provide a complete redraft of the chapter. Assembly Amendment 1 (AA1) to the bill was approved in Executive Session. AA1 adds several of the recommendations made by Board staff, including redefining the major purpose test for PAC's and Independent Expenditure committees. Alternatively, AA1 leaves out filing of continuing reports for committees that don't make contributions, allows for the creation of separate segregated funds by party and legislative committees, and redefines what disbursements are reportable.

Assembly: The Assembly Committee on Campaigns and Elections and the Senate Committee on Elections and Local Government held a joint public hearing on October 13, 2015. Executive Session held on October 14, 2015. The committee approved Assembly Amendment 1 (AA1) on a 6-3 vote. The committee also considered several other amendments, which failed. The committee recommended passage of the bill with AA1 by a vote of 6-3. AA11 offered and passed. **Passed by Assembly 61 – 0 with amendments. 36 no-votes and 2 paired. 11/9/2015: Received from Senate amended and concurred in as amended (Senate amendment 1 adopted).**

Senate: The Assembly Committee on Campaigns and Elections and the Senate Committee on Elections and Local Government held a joint public hearing on October 13, 2015. Executive Session held October 30, 2015. **The committee**

approved Senate Amendment 1 and Senate Amendment 2 on a 3-2 votes. The committee recommended passage of the bill with amendments 1 & 2.

17. Assembly Bill 388 and Senate Bill 294: reorganizing the Government Accountability Board, requiring the exercise of rule-making authority, and making appropriations.

Sponsors: Majority. This bill eliminates the GAB and replaces it with an Elections Commission, which administers and supervises elections, and an Ethics Commission, which administers and supervises ethics, campaign financing, and lobbying regulation. The bill eliminates the position of General Counsel, and creates Commissioners and Deputy Commissioners to manage each new commission. The bill also provides for a process of the appointment of the membership of each commission. Assembly Amendment 1 to the bill was approved in Executive Session. AA1 makes several changes to the bill, including, allowing appointees to serve on the commission before confirmation, ensuring the commission consists of six (6) members, and requiring meetings to be conducted in accordance with parliamentary procedures.

Assembly: The Assembly Committee on Campaigns and Elections and the Senate Committee on Elections and Local Government held a joint public hearing on October 13, 2015. Executive Session held on October 14, 2015. The committee approved Assembly Amendment 1 (AA1) on a 6-3 vote. The committee also considered several other amendments, which failed. The committee recommended passage of the bill with AA1 by a vote of 6-3. **Passed by Assembly 58-39 with amendments. 11/9/2015: Received from Senate amended and concurred in as amended (Senate amendments 1 and 2 adopted).**

Senate: The Assembly Committee on Campaigns and Elections and the Senate Committee on Elections and Local Government held a joint public hearing on October 13, 2015. Executive Session held on October 30, 2015. **The committee approved Senate Amendment 1 and Senate Amendment 2 on a 3-2 votes. The committee recommended passage of the bill with amendments 1 & 2.**

18. Assembly Bill 389 and Senate Bill 295: voter registration, verification of certain registrations, proof of residence for voting in an election, authorizing Wisconsin to enter into agreements to share information related to the registration and voting of electors.

Sponsors: Majority. This bill permits a qualified elector to register to vote electronically, eliminates the position and responsibilities of special registration deputies, and requires the Government Accountability Board (GAB) to enter into agreements with other state election administrators to share information related to the registration and voting of qualified electors. The bill also makes several other minor changes to Wisconsin's election laws.

Assembly: A joint public hearing was held on October 13, 2015.

Senate: A joint public hearing was held on October 13, 2015.

PREVIOUS LEGISLATION – NO STATUS CHANGE

19. Assembly Joint Resolution 1 and Senate Joint Resolution 2: Election of chief justice (second consideration).

Sponsors: Majority. This constitutional amendment, to be given second consideration by the 2015 Legislature for submittal to the voters in a statewide constitutional referendum in April 2015, was first considered by the 2013 legislature in 2013 Senate Joint Resolution 57, which became 2013 Enrolled Joint Resolution 16. The amendment directs the Supreme Court to elect a chief justice for a term of two years.

Senate Joint Resolution 2: Passed by the Senate by a vote of 17-14; passed by the Assembly by a vote of 62-34-2-1 (Aye – Nay – Paired – Not voting). Enrolled as 2015 Senate Joint Resolution 2. This referendum question was approved on the 2015 Spring Election ballot statewide.

20. Assembly Joint Resolution 8 and Senate Joint Resolution 12: An advisory referendum on an amendment to the U.S. Constitution.

Sponsors: Minority. This resolution places a question on the November 2016 ballot to ask the people if Congress should propose an amendment to overturn *Citizens United v. FEC*.

21. Assembly Joint Resolution 38 and Senate Joint Resolution 32: the right to vote (first consideration).

Sponsors: Minority. This constitutional amendment, proposed to the 2015 legislature on first consideration, provides that every qualified elector of this state shall have the fundamental right to vote in any public election held in the election district in which the elector resides.

22. Assembly Joint Resolution 48: establishing competitive election criteria for redistricting the legislature (first consideration).

Sponsors: Minority. This proposed constitutional amendment, proposed to the 2015 legislature on first consideration, defines demographic and political standards for the drawing of legislative districts and establishes criteria for the drawing of legislative districts. Following the canvass of the general election in each year that is divisible by ten, the amendment requires the superintendent of public instruction to determine the mean percentage of the vote received by candidates of the two major political parties for certain statewide offices in the prior decade and to certify those mean percentages to the legislature.

- 23. *Assembly Joint Resolution 55 and Senate Joint Resolution 47: providing for an advisory referendum on the question of adopting a nonpartisan system for redistricting.***

Sponsors: Minority. These joint resolutions call for an advisory referendum on the question of whether the legislature should adopt a nonpartisan system for redistricting of legislative and congressional districts in this state. The referendum would be held at the 2016 general election.

- 24. *Assembly Joint Resolution 67 & Senate Joint Resolution 56: Wisconsin Legislative Resolution to Restore Free and Fair Elections in the United States.***

Sponsors: Minority. This resolution supports a national constitutional convention to address campaign finance issues related to *Citizens United v. Federal Election Commission*, 558 U.S. 310 (2010)

- 25. *Assembly Bill 9 and Senate Bill 6: Legislative Audit Bureau access to documents maintained by state agencies and authorizing the Government Accountability Board to provide investigatory records to the Legislative Audit Bureau.***

Sponsors: Bipartisan. These bills clarify LAB authority to have access to all state agency documents by providing that LAB also has specific access to state agency documents that relate to agency expenditures, revenues, operations, and structure that are confidential by law. In addition, the bill requires GAB to provide investigatory records to LAB to the extent necessary for LAB to carry out its duties.

Joint Legislative Audit Committee: Public hearing held on January 21, 2015. Executive session held on January 22, 2015. The committee recommended passage of both bills unanimously.

Senate Bill 6: Passed by the Senate by voice vote; passed by the Assembly by voice vote. The Governor signed Senate Bill 6 into law as 2015 Wisconsin Act 2.

- 26. *Assembly Bill 21 and Senate Bill 21: state finances and appropriations constituting the executive budget act of the 2015 legislature.***

Sponsors: Majority. This bill is the "executive budget bill" under section 16.47 (1) of the statutes. It contains the governor's recommendations for appropriations for the 2015-2017 fiscal biennium. The bill was passed by the Legislature and signed into law by the Governor as 2015 Act 55 on July 13, 2015.

- 27. *Assembly Bill 55 and Senate Bill 27: shareholder objections to corporate political expenditures.***

Sponsors: Minority. Current law defines "disbursement," for purposes relating to campaign financing, to include a purchase, payment, loan, or gift made for political purposes; an authorized expenditure from a campaign depository account; and a payment for a broadcast or print communication to the general public for a political purpose.

This bill requires corporations to give written notice to their shareholders before making disbursements, as defined under current campaign finance law. The corporation is required to give only one notice for each corporate fiscal year. The notice must include a form that the shareholder may complete and return to the corporation to object to any disbursement during the applicable fiscal year.

The bill requires a corporation, within three months after the end of its fiscal year, to calculate the total value of its expenditures for disbursements made during the fiscal year. If an objecting shareholder returns the objection form to the corporation (opts out) within 30 days after the date stated on the corporation's notice, the corporation must, within four months after the end of its fiscal year, do all of the following: 1) pay the objecting shareholder an amount determined by multiplying the total value of corporate expenditures for disbursements by the objecting shareholder's percentage of ownership in the corporation; and 2) provide the objecting shareholder with the corporation's calculation of the total value of its expenditures for disbursements made during the fiscal year, along with information related to the calculation.

28. *Assembly Bill 58 and Senate Bill 47: responding to a request for an absentee ballot.*

Sponsors: Bipartisan. Under this bill, a municipal clerk who receives a request for an absentee ballot by mail, electronic mail, or facsimile transmission must respond to the request no later than one business day after receiving the request.

Assembly: Assembly Substitute Amendment 1 to AB 58 offered by Representative Horlacher. The amendment addresses the relationship between Wis. Stats. §§6.86 and 7.15. Executive session held on May 19, 2015. The Assembly Committee on Campaigns and Elections adopted Assembly Substitute Amendment 1 by a vote of 7-0. The committee recommended passage as amended by a vote of 8-0. The Committee held a public hearing and executive session regarding on August 19, 2015.

Senate: Senate Substitute Amendment 1 to Senate Bill 47 offered by Senator Harsdorf. The amendment addresses the relationship between Wis. Stats. §§6.86 and 7.15. The Senate Committee on Elections and Local Government held a public hearing on April 9, 2015. The committee held an executive session on April 16, 2015. The committee approved Senate Substitute Amendment 1 by a vote of 5-0. The committee recommended passage as amended by a vote of 5-0. The Senate adopted Senate Substitute Amendment 1 and passed the bill as amended by a voice vote.

29. *Senate Bill 63: the presidential preference date.*

Sponsors: Minority. This bill would move the date of the Presidential Preference Election from the Spring Election to coincide with the Spring Primary.

30. *Assembly Bill 79 and Senate Bill 71: allowing municipal clerks to register voters on Election Day.*

Sponsors: Bipartisan. Under current law, election inspectors may register electors to vote at a polling place on Election Day. In addition, a municipality may provide, by adopting a resolution, that an inspector's registration duties may be performed by special registration deputies appointed by the municipal clerk or board of election commissioners.

Under this bill, an inspector's registration duties may be performed by the municipal clerk, if the clerk is not a candidate listed on the ballot, or by special registration deputies appointed by the municipal clerk or board of election commissioners, without the municipality first adopting a resolution to allow the procedure.

Assembly: Senate Bill 71 passed by a voice vote by the Assembly on June 9, 2015.

Senate: Public hearing held on April 9, 2015 by the Committee on Elections and Local Government. Senate Amendment 1 offered by Senator Gudex. Adoption of Senate Amendment 1 and passage as amended recommended by the Committee. Passed by a voice vote on June 9, 2015. Enacted as 2015 Wisconsin Act 39.

31. *Assembly Bill 80: review by state agencies of administrative rules and enactments and an expedited process for repealing rules an agency no longer has the authority to promulgate.*

Sponsors: Majority. This bill would require state agencies to file a report by March 31 of each odd-numbered year to the Joint Committee for Review of Administrative Rules identifying the following:

- Rules for which the authority to promulgate has been eliminated or restricted.
- Rules that are obsolete or that have been rendered unnecessary.
- Rules that are duplicative of superseded by, or in conflict with another rule, a state statute, a federal statute or regulation, or a court ruling.

The report must also include 1) a description of the agency's actions, if any, to address each rule listed in the report and, if the agency has not taken any action to address a rule listed in the report, an explanation for not taking action; 2) a description of the status of each rule listed in the previous year's report not otherwise listed; and 3) if the agency determines that there are no such rules to list, a statement of that determination.

Assembly: Report passage recommended by the Committee on State Affairs and Government Operations by a vote of 8-5. Report passage recommended by the Committee on Judiciary by a vote of 5-3.

Senate: Public hearing held on June 2, 2015.

32. *Assembly Bill 124 and Senate Bill 96: fees for election recounts.*

Sponsors: Bipartisan. This bill provides that, if the difference between the votes cast for the leading candidate and those cast for the petitioner, or the difference between the affirmative and negative votes cast on the referendum question, is less than 10 if 4,000 or fewer votes are cast or not more than 0.25 percent of the total votes cast for the office or on the question if more than 4,000 votes are cast, the petitioner does not pay for the recount.

Under any other circumstance, the petitioner pays the actual cost of performing the recount. However, if the recount overturns the result of the election or referendum, the petitioner receives a refund of the recount fees. No recount in Wisconsin history has changed the outcome of a contest when the original margin was more than 0.125 percent. Therefore, the 0.25 percent threshold for a free recount is double the largest original margin in Wisconsin history of a successful recount.

Assembly: Executive session held on May 19, 2015. The committee recommended passage by a vote of 5-3. The Assembly passed Senate Bill 96 by a voice vote on June 9, 2015.

Senate: the Senate Committee on Elections and Local Government held a public hearing on April 9, 2015. The committee held an executive session on April 16, 2015. The committee recommended passage by a vote of 3-2. Senate Substitute Amendment 1 offered by Senator Miller. Senate Amendment 1 introduced by Senator Miller. Senate Substitute Amendment tabled by a vote of 19-14. Senate Amendment 1 tabled by voice vote. The Senate passed Senate Bill 96 as amended by a voice vote on May 6, 2015. Enacted as 2015 Wisconsin Act 36.

33. *Assembly Bill 130: tribal identification cards.*

Sponsors: Bipartisan. This bill provides that identification cards issued by an American Indian tribe or band must be accepted as sufficient proof of identity for the purpose of any law that requires a person to present identification. This bill was prepared for the Joint Legislative Council's Special Committee on State-Tribal Relations.

Assembly: Public hearing held on May 27, 2015.

34. *Assembly Bill 164 and Senate Bill 121: various election law changes.*

Sponsors: Bipartisan. This bill makes several changes to election laws and addresses several concerns identified by the Wisconsin County Clerks Association in their 2015-2016 Legislative Objectives:

- The bill requires that a write-in candidate must file a registration statement no later than noon on the Friday before the election to be a registered write-in candidate.
- The bill provides that the governing body of a town or village may hold a caucus between January 2 and January 21.
- The bill provides that the board of canvassers need not reconvene if the municipal clerk certifies that he or she has received no provisional or absentee ballots from the time that the board of canvassers completed the initial canvass and 4 p.m. on the Friday after the election.
- The bill would require electors to submit a petition to pass an ordinance or resolution (direct legislation) at least 70 days from the date on which the council or board must act.
- The bill removes language related to an elector affixing a sticker to a ballot.
- Under current law, if a school board election is held in conjunction with a state, county, municipal, or judicial election, the school board election must take place at the same polling place, and the municipal election hours apply. This bill provides that a school board referendum held in conjunction with a state, county, municipal, or judicial election is subject to the same procedures.

Assembly: Assembly Amendment 1 offered by Representative Bernier. Executive session held on May 19, 2015. Assembly Amendment 1 offered by Representative Bernier. The committee recommended adoption of Assembly Amendment 1 by a vote of 8-0. The committee recommended passage as amended by a vote of 7-0. Senate Bill 121 passed by the Assembly by a voice vote on June 9, 2015.

Senate: Senate Amendment 1 offered by Senator LeMahieu. Executive Session held on June 3, 2015. Senate Amendment 1 was approved by a vote of 5-0. The Senate Committee on Elections and Local Government recommended passage as amended by a vote of 5-0. Senate Amendment 1 adopted and passed as amended by a voice vote on June 9, 2015. Enacted as 2015 Wisconsin Act 37.

35. *Assembly Bill 175 and Senate Bill 151:* communications by members of the Legislature.

Sponsors: Bipartisan. Currently, with certain exceptions, no person who is elected to state or local office and who becomes a candidate for national, state, or local office may use public funds for the cost of materials or distribution of 50 or more pieces of substantially identical material distributed during the period beginning on the first day for circulation of nomination papers as a candidate (or certain other dates for candidates who do not file nomination papers) and ending on the date of the election at which the person's name appears on the ballot, or on the date of the primary election at which the person's name so appears if the person is not nominated at the primary.

This bill provides that this prohibition does not apply to the cost of materials or distribution of a communication made by a member of the legislature to an address located within the legislative district represented by that member during the

45-day period following declaration of a state of emergency by the governor affecting any county in which the district is located if the communication relates solely to the subject of the emergency.

Assembly: The Committee on Campaigns and Elections held a public hearing on May 19, 2015. Assembly Amendment 1 offered by Representative Vorpagel, which would apply the exception to all state and local elected officials.

- 36. *Assembly Bill 176:*** reporting of the principal place of employment of certain individuals who make political contributions.

Sponsors: Majority. Currently, with limited exceptions, each registrant under the campaign finance law must file periodic reports with the appropriate filing officer or agency specified by law. The reports must contain specified information, including the occupation and the name and address of the principal place of employment of each individual contributor whose cumulative contributions for the calendar year exceed \$100 in amount or value. Under this bill, the report must indicate the occupation of each individual contributor whose cumulative contributions for the biennium are in excess of \$500.

- 37. *Assembly Bill 189:*** authorizing Wisconsin to enter into agreements to share information related to the registration and voting of electors.

Sponsors: Majority. This bill requires the chief election officer to enter into the Interstate Voter Registration Data Crosscheck Program, an agreement with a group of states to share data and information related to the registration and voting of electors in this state and the other participating states for the purpose of maintaining this state's statewide voter registration list.

Assembly: Public hearing held on May 19, 2015.

- 38. *Assembly Bill 230:*** requiring a municipal judge to be a licensed Wisconsin attorney.

Sponsors: Bipartisan. Beginning on January 1, 2016, this bill requires a person seeking to be elected or appointed as a municipal judge to be an attorney licensed to practice in this state and a member in good standing of the State Bar of Wisconsin.

- 39. *Assembly Bill 240 and Senate Bill 161:*** electioneering at a retirement home or residential care facility.

Sponsors: Majority. Under current law, no person may engage in electioneering in or near a retirement home or residential care facility while special voting deputies are present at the home or facility. Under this bill, no candidate or candidate's agent may engage in electioneering within 100 feet of a retirement home or residential care facility during any day on which a municipality schedules special voting deputies to be present at the home or facility.

Assembly: Public hearing for AB 240 held on August 19, 2015.

Senate: Public hearing for SB 161 held on May 28, 2015. Public hearing held on AB 240 on August 25, 2015.

40. *Assembly Bill 265: public financing of campaigns for the office of justice of the supreme court, making appropriations, and providing penalties.*

Sponsors: Minority. This bill creates a democracy trust fund under which eligible candidates for the office of justice of the Supreme Court may receive public grants derived from general-purpose revenues to finance their campaigns. Candidates who meet the requirements outlined in the bill are eligible to receive "seed money" funded through a tax refund check-off. Public financing benefits for eligible candidates are \$100,000 in the spring primary and \$300,000 in the spring election. The benefits are subject to a biennial cost of living adjustment. The bill also imposes several limitations and penalties for various violations.

41. *Assembly Bill 288: authorizing electors to vote in the primary of more than one political party.*

Sponsors: Minority. This bill permits a voter in a partisan primary to "split tickets," designating the candidate of his or her choice for each office, including the offices of governor and lieutenant governor, regardless of party affiliation. The bill also allows a voter to vote for independent candidates for one or more state offices in a partisan primary, in addition to party candidates for one or more state or county offices. Under the bill, a voter may still vote for only one candidate for each office. The voting procedure at the general election and other partisan elections is unaffected by the bill. The bill initially applies to voting at the 2016 partisan primary election.

42. *Assembly Bill 293: political disbursements ad obligations by corporations, cooperative associations, and labor organizations and the scope of regulated activity and reporting of certain activity under the campaign finance law.*

Sponsors: Minority. With certain exceptions, this bill imposes additional registration and reporting requirements on any person who, within 60 days of an election, makes any mass communication, including an electronic communication, a mass distribution, or a mass telephoning, that includes a reference to a clearly identified candidate at that election. In addition, the bill requires a person who becomes subject to a registration requirement by making such a communication to report, upon registration, the information that would have been required to be reported if the person had been registered with respect to any obligation incurred or disbursement made for the purpose of making such a communication prior to registration. The bill, however, does not require registration and reporting if the communication is made by a corporation, cooperative, or nonpolitical voluntary association and is limited to the corporation's, cooperative's, or association's members, shareholders, or subscribers.

The change in the scope of reportable activity under the bill also applies to contribution and disbursement (spending) limitations and restrictions by causing reportable “contributions,” “obligations,” and “disbursements” to include the cost of all reportable communications. The bill also requires a special report by any campaign finance registrant who makes or incurs an obligation to make a mass communication that becomes reportable under the bill within 60 days of a primary or other election in an amount greater than \$500 cumulatively since the date of the registrant’s last report. The special report must be made within 24 hours after the date that disbursements or obligations that exceed \$500 cumulatively are made or incurred and must include the information that would otherwise be reported on the registrant’s next regular report in the form prescribed by Government Accountability Board.

Under current law, violators of registration and reporting requirements are subject to a forfeiture (civil penalty) of not more than \$500 for each violation. In addition, any person who is delinquent in filing a report is subject to a forfeiture of not more than \$50 or 1 percent of the annual salary of the office for which a candidate is being supported or opposed, whichever is greater, for each day of delinquency. Intentional violators of the registration requirements and persons who intentionally file false reports or statements may be fined not more than \$1,000 or imprisoned for not more than six months, or both, if the violation involves less than \$100 in amount or value, and may be fined not more than \$10,000 or imprisoned for not more than three years and six months, or both, if the violation involves more than \$100 in amount or value.

43. Assembly Bill 316 and Senate Bill 220: allowing 16- and 17-year olds to preregister to vote.

Sponsors: Minority. This bill allows a person age 16 or 17 to preregister to vote. Under this bill, a person who is age 16 or 17 but is otherwise a qualified elector may reregister to vote. A person who preregistered to vote may not vote in any election unless they are age 18 or older on election day. A person who preregistered may vote by absentee ballot if they will be age 18 or older on election day.

Under current law, the Government Accountability Board must maintain electronically the official registration list. Each registration list prepared for use as a poll list at a polling place must contain the full name and address of each registered elector. Under this bill, for purposes of the official registration list, "elector" means any U.S. citizen age 16 or older who has registered or preregistered and will be eligible to vote on or before the date of the next election. However, a registration list prepared for use as a poll list may not contain the name of any person who preregistered to vote unless the person will be age 18 or older on election day.

44. Assembly Bill 328 and Senate Bill 58: legislative and congressional redistricting.

Sponsors: Minority. This bill creates a new procedure for the preparation of legislative and congressional redistricting plans. The bill directs the Legislative Reference Bureau (LRB) to draw redistricting plans based upon standards specified in

the bill and establishes a Redistricting Advisory Commission to perform certain tasks in the redistricting process. The bill also makes various other changes to the laws governing redistricting.

45. Assembly Bill 342: reporting travel expenses for elected state officials seeking national office and providing a penalty.

Sponsors: Minority. This bill requires an elected state official who is considering running for, or pursuing the nomination or election to, a national office to submit monthly statements to the Government Accountability Board identifying the official's travel expenses from the previous month. The bill also requires the official to reimburse the state for any state funds that the official used to pay for travel expenses used to consider or pursue the nomination or election to a national office.

46. Assembly Bill 343 and Senate Bill 258: issuance of motor vehicle operator's licenses and identification cards by the Department of Transportation.

Sponsors: Minority. This bill makes various changes to the laws relating to the issues of REAL ID non-compliant products issued by the Department of Transportation, for using the product as photo identification for voting purposes.

47. Assembly Bill 379: voter registration; proving residence for registration and voting purposes; reviewing certain expenditures of the Government Accountability Board by the Joint Committee on Finance; and granting rule-making authority.

Sponsors: Minority. This bill makes it the responsibility of the Government Accountability Board (GAB) to use all feasible means to facilitate the registration of all eligible electors of this state who are subject to a registration requirement and to maintain the registration of all eligible electors for so long as they remain eligible, except as the law specifically requires electors to take some action to continue their registrations.

In addition, the bill permits a qualified elector who has a current and valid driver's license or identification card issued by DOT to register to vote at an election electronically on a secure Internet site maintained by GAB. The bill requires an electronic registration to be completed no later than the 20th day before an election in order to be valid for that election.

48. Senate Bill 201: political disbursements and obligations by corporations, cooperative associations, and labor organizations and the scope of regulated activity and reporting of certain activity under the campaign finance law.

Sponsors: Minority. With certain exceptions, this bill imposes additional registration and reporting requirements on any person who, within 60 days of an election, makes any mass communication, including an electronic communication, a mass

distribution, or a mass telephoning, that includes a reference to a clearly identified candidate at that election. In addition, the bill requires a person who becomes subject to a registration requirement by making such a communication to report, upon registration, the information that would have been required to be reported if the person had been registered with respect to any obligation incurred or disbursement made for the purpose of making such a communication prior to registration. The bill however, does not require registration and reporting if the communication is made by a corporation, cooperative, or nonpolitical voluntary association and is limited to the corporation's, cooperative's, or association's members, shareholders, or subscribers. The change in the scope of reportable activity under the bill also applies to contribution and disbursement (spending) limitations and restrictions by causing reportable "contributions," "obligations," and "disbursements" to include the cost of all reportable communications.

The bill also requires a special report by any campaign finance registrant who makes or incurs an obligation to make a mass communication that becomes reportable under the bill within 60 days of a primary or other election in an amount greater than \$500 cumulatively since the date of the registrant's last report. The special report must be made within 24 hours after the date that disbursements or obligations that exceed \$500 cumulatively are made or incurred and must include the information that would otherwise be reported on the registrant's next regular report in the form prescribed by Government Accountability Board.

The bill also increases several penalties for violations of registration and reporting requirements.

49. Senate Bill 208: authorization for electors to vote in the primary of more than one political party.

Sponsors: Minority. This bill permits a voter in a partisan primary to "split tickets," designating the candidate of his or her choice for each office, including the offices of governor and lieutenant governor, regardless of party affiliation. The bill also allows a voter to vote for independent candidates for one or more state offices in a partisan primary, in addition to party candidates for one or more state or county offices. Under the bill, a voter may still vote for only one candidate for each office. The voting procedure at the general election and other partisan elections is unaffected by the bill. The bill initially applies to voting at the 2016 partisan primary election.

50. Senate Bill 245: the return of federal funds to the federal government.

Sponsors: Minority. Current law permits the governor, as well as other executive branch agencies, to accept federal funds on behalf of the state and its political subdivisions. This bill provides that no moneys made available to, and accepted by, the state from the federal government, the expenditure of which may increase employment in this state,

may be returned to the federal government without the approval of the legislature by law.

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JUDGE GERALD C. NICHOL
Chair

KEVIN J. KENNEDY
Director and General Counsel

MEMORANDUM

DATE: For the December 15, 2015 Board Meeting

TO: Members, Wisconsin Government Accountability Board

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

Prepared by: Jonathan Becker, Richard Bohringer, Adam Harvell, Kyle Kundert
and Molly Nagappala
Ethics and Accountability Division

SUBJECT: Ethics and Accountability Division Program Activity

Campaign Finance Update

Richard Bohringer, Adam Harvell, Kyle Kundert, and Molly Nagappala
Campaign Finance Auditors

New Campaign Finance Legislation

Staff has been busy analyzing Assembly Bill 387. A separate report will outline changes made by the legislation, implementation efforts, and questions for the Board to consider.

Special Campaign Finance Reports in Fall, 2015

In connection with a special election for the 99th Assembly District on September 29, 2015, a number of election related reports have been required. The Special Pre-Primary report was due 8/25/2015, the Special Pre-Election report was due 9/21/2015, and the Special Post-Election report was due 10/29/2015. All candidates required to file those reports have done so.

The next regular campaign finance report is the 2016 January Continuing report. Under previous law, it would have been due February 1, 2016. The new campaign finance legislation changes the due date of that report to January 15th. It also does away with the requirement for filing notices to be sent by first class mail, so staff will notify all committees of the new filing requirements by email.

Campaign Finance Audits

Staff has been working on the following audits during 2015:

- Cash Balance Audit – In May and June, staff examined all committees' 2014 reports, and sent letters to 117 committees with cash balance discrepancies of \$100 or more. As of December 4th, 96 committees have resolved their cash balance issues with no penalty. Eleven committees have paid settlements totaling \$2,973.45. Three committees have had their penalty waived. Seven outstanding committees are being presented to the board during closed session.
- Lobbyist Contribution Audit – In June, staff evaluated all committees' 2014 reports, and identified 34 lobbyists who had potentially contributed to partisan candidates outside of the statutory window. As of October 9, only one individual had not resolved his case. Ten individuals have paid forfeitures totaling \$2088.00. The Board authorized civil enforcement proceedings against one individual at its October 20, 2015 meeting.
- In September, staff sent out letters of inquiry to committees who had reported contributions from individuals over the legal limit in the 2014 election cycle. 44 committees received initial letters. 5 committees received warnings for violations of \$50 or less. 1 assembly committee continues to work, with staff assistance, on fixing all potential transactions. 1 statewide committee has fixed their remaining issues and staff is waiting to receive the Settlement Agreement.
- In September, staff sent out letters of inquiry to committees who had reported contributions from committees over the legal limit in the 2014 election cycle. 34 committees received initial letters. 1 assembly committee continues to work, with staff assistance, on fixing all potential transactions.
- Also in September, staff sent out letters of inquiry to committees who had reported possible corporate contributions in 2014. 17 committees received initial letters. Eight have amended their reports and corrected the issue. Two have paid forfeitures. Two have appealed to the board for a reduction in the settlement amount, and are on the closed session agenda.

Lobbying Update

Molly Nagappala and Kyle Kundert
Ethics and Accountability Specialists

New State Agency Legislative Liaison Reporting System

In mid-June, staff began a project to modernize state agency legislative liaison reporting. Currently, these liaisons use paper to report their activities on January 31 and July 31 every year for the preceding six-month period. All agencies' data has been transferred to the Eye on Lobbying website. Staff has completed training materials and emailed all agency users in November to inform them of the new system, and ask them to log in and verify their current information. Each agency user has been asked to provide feedback of their experience with the new reporting system.

Agency users will complete their first legislative liaison reports in the new system by January 31, 2016.

2015-2016 Legislative Session Registration and Licensing Continues

On December 1, 2014, the Eye on Lobbying website enabled the start of principal registration, lobbyist licensing, and lobbyist authorization for the upcoming 2015-2016 legislative session. While we anticipate additional registrations and licensing applications to be filed throughout the session, we have observed a continuation of the trend of decline in the number of principal registrations, lobbyist licenses (both single and multiple), and lobbyist authorizations. Both economic austerity measures by past lobbying principals, and wider margins between the majority and minority in each house of the State Legislature, are likely contributing factors.

The following tables provide a summary of licensure, registration, and authorization applications and revenue for the current and previous legislative sessions as of December 2, 2015.

2015-2016 Legislative Session as of December 2, 2015

Fee Type	Fees Paid	Fee Amount	Total Paid
Limited Lobbying Principal Registration Fee	14	\$20.00	\$280.00
Limited Lobbying to Full Lobbying Principal Amendment	5	\$355.00	\$1,775.00
Principal Registration Fee	742	\$375.00	\$278,250.00
Lobbyist Authorization Fee	1,592	\$125.00	\$199,000.00
Lobbyist License (Single Principal)	529	\$250.00	\$132,250.00
Single to Multiple Principal Lobbying License Amendment	4	\$150.00	\$600.00
Lobbyist License (Multiple Principals)	110	\$400.00	\$44,000.00
Focus Subscription	83	\$100.00	\$8,300.00
Total			\$664,455.00

2013-2014 Legislative Session

Fee Type	Fees Paid	Fee Amount	Total Paid
Limited Lobbying Principal Registration Fee	29	\$20.00	\$580.00
Limited Lobbying to Full Lobbying Principal Amendment	15	\$355.00	\$5,325.00
Principal Registration Fee	718	\$375.00	\$269,250.00
Lobbyist Authorization Fee	1,587	\$125.00	\$198,375.00
Lobbyist License (Single Principal)	571	\$350.00	\$199,850.00
Single to Multiple Principal Lobbying License Amendment	11	\$300.00	\$3,300.00
Lobbyist License (Multiple Principals)	105	\$650.00	\$68,250.00
Total			\$744,930.00

Financial Disclosure Update

Adam Harvell
Campaign Finance Auditor and Ethics Specialist

Statements of Economic Interests

Staff is preparing for the mailings associated with the 2016 annual filing. The SEI database and all forms have been updated to reflect the new filing year. Staff printed pre-filled SEIs for all municipal/multi-jurisdictional judges, and all court of record judges on the ballot in April 2016. Those SEIs were mailed out by December 4th. Candidates on the ballot in April 2016 will have an SEI due by 1/8/2016.

Staff will also send SEIs to reserve judges and GAB staff by December 15th. Forms for other state officials will be sent out in the first two weeks of January. Reserve judges must file an SEI within 21 days of taking a case. The due date for all other annual filers will be 4/30/2016.

State of Wisconsin Investment Board Quarterly Transaction Reports

Staff sent out 58 quarterly financial disclosure reports to State Investment Board members and employees at the end of September. They were due by October 31. All have been returned. The next batch of quarterly reports will go out at the end of December, and be due by February 1st.

Gubernatorial Appointments

New appointments continue to be processed on an ongoing basis. Tasks include securing statements of economic interests from all appointees and referring copies of their statements to the Senate for future confirmation hearings.

Ethics, Complaints and Investigations Update

Jonathan Becker, Division Administrator

Division staff continues to answer questions from legislators, legislative staff, and the public on various provisions of the State Ethics Code. Division staff intake numerous complaints from various parties and deal with them appropriately according to the Division's standard procedures. Division staff continues to devote time to assist on investigations and the resolution of complaints when called upon by the Division Administrator and/or the Director and General Counsel. An update on active complaints is included in a separate report.

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JUDGE GERALD C. NICHOL
Chairperson

KEVIN J. KENNEDY
Director and General Counsel

MEMORANDUM

DATE: For the December 15, 2015 Board Meeting

TO: Members, Wisconsin Government Accountability Board

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

Prepared by Elections Division Staff and Presented by:

Michael Haas
Elections Division Administrator

SUBJECT: Elections Division Update

Since its last Update (October 20, 2015), the Elections Division staff has focused on the following tasks:

1. General Activities of Election Administration Staff

A. Local Special Elections

Several local election events occurred in November: Eleven referendum elections, including an incorporation referendum; two special election to fill vacancies and a mayoral recall. A list of those election events follows this paragraph. Staff provided administrative support, set up the various elections in SVRS, and was available to the clerks by phone each election eve and election night.

November 3, 2015	Boscobel School District Referendum
	Peshtigo School District Referendum
	Potosi School District Referendum
	Tigerton School District Referendum
	Tomorrow River School District Referendum
	Shawano School District Referendum
	Unity School District Referendum
	City of Hudson Municipal Alderperson Election
	Town of Polk Referendum
	Town of Greenville Referendum
	Town of Windsor Incorporation Referendum
	Village of Germantown Referendum

November 10, 2015 City of Oconomoc Alderperson Special Election
November 24, 2015 City of Arcadia Mayoral Recall

On December 8, the Town of Maine conducted an incorporation referendum that will dissolve the Town of Texas in Marathon County and create the Village of Maine.

- B. November 30 was the deadline for county political party chairs to submit lists of election inspector nominees to the municipal clerks in their respective counties. Staff has issued several guidance memos, including *Appointment of Inspectors Guide-Step by Step* which details the process for appointing inspectors who have been nominated by a party. The guide accompanies this memorandum as Attachment 1.

The appointment process has been complicated by statutes that are not entirely compatible with one another, and by the method in which some party chairs have distributed their lists of nominees.

Conflicting Statutes

- Wis. Stat. §7.30(4)(b)2.c. provides that any name that appears on a party list with a “first-choice” indication must be appointed by the governing body before any other name on the list. Most party lists include this notation for one or more (sometimes all) names on the list.
- Wis. Stat. §7.30(2)(a), which is the results of 2013 Act 147, provides that inspectors may be residents of the county rather than expressly of the municipality in which they serve.
- Wis. Stat. §7.30(2)(a) also provides that that the chief inspector must be a resident of the municipality unless no qualified candidate is available.

Since election inspectors can be from anywhere in the county, there have been several reported instances of county party chairs submitting the same list of prospective inspectors, many of whom are indicated as first-choice nominees, to several municipal clerks. This leaves the governing bodies of multiple municipalities with no choice but to appoint the first-choice nominees, which places the same names on the election inspector rosters in multiple municipalities. The municipal clerks must work with the other municipal clerks who received the same list to determine which inspectors will work which elections in which municipality. Unless the municipal clerks discuss their lists with each other (ordinarily there would be no reason for this), the clerks may only discover that the same list was given to multiple clerks when an inspector reports they are unavailable because they are working at another polling place that day.

To address the questions that have arisen with respect to the provision that chief inspectors must be residents of the municipality in which they work unless a municipal chief inspector is not available, staff incorporated guidance into the “step-by-step” document that attempts to balance this provisions with the requirement for party imbalance at a polling place. The guidance is a “most desired” to “least desired” progression:

1. Party affiliated chief inspector who resides in the municipality
2. Unaffiliated inspector who resides in the municipality
3. Party affiliated chief inspector who resides in the county

2. Voter Registration Statistics

The following statistics summarize statewide voter registration activity year-to-date as of December 4, 2015:

Category	Voters
Active Voter Registrations	3,375,581
Inactive Voter Registrations	1,240,492
Cancelled Voter Registrations	469,143
HAVA Checks Processed In 2015	43,767
Merged Voter Registrations Processed In 2015	25,080

3. Voter Data Requests

The following statistics summarize voter data requests as of December 4, 2015:

Fiscal Year	Total Number of Requests	Requested Files Purchased	Percentage of Requests Purchased	Total Revenue
FY2016 to date	125	65	52%	\$74,585.00
FY2015	679	418	61.56%	\$242,801.25
FY2014	371	249	67.12%	\$125,921.25
FY2013	356	259	72.75%	\$254,840.00
FY2012	428	354	78.04%	\$127,835.00

Since the launch of **BADGER Voters** (<http://BADGERVoters.gab.wi.gov>) in April 2014, the site has processed about 907 requests and 544 purchased data files, generating approximately \$348,511.25 of revenue and reducing agency costs by over \$195,703. Staff continues to study potential enhancements to the website that could result in improved customer service and greater efficiencies. As of December 4, 2015, the BADGER Voters site has resulted in a net benefit of approximately \$496,095 for the G.A.B. The initial development costs were less than \$50,000.

4. WEDCS and SVRS Data Quality

A. WEDCS Reporting

Board staff concluded efforts to seek municipal and county clerk compliance with several reporting requirements following the Special Primary and Special Election for State Assembly District 99. Staff made numerous and repeated contacts with clerks, their providers (if relier municipalities), and county clerks to attempt to get all reports completed.

The GAB-190NF Election Administration and Voting Statistics Report for the 2015 Special Primary State Assembly 99 was due to be entered into the Wisconsin Elections Data Collection System (WEDCS) by October 1, 2015. All municipalities have completed these reports. The GAB-190NF Election Administration and Voting Statistics Report for the 2015 Special Election State Assembly 99 was due to be entered into WEDCS by October 29, 2015. All municipalities have completed these reports.

Once all reports were complete for the election, Board staff began reconciling data between the total votes recorded in SVRS, the total voters reported in WEDCS, and the Canvass Reporting System. Staff then followed up with clerks to resolve any discrepancy of three or more votes or a difference of one percent or more within any reporting unit. The WEDCS statistics for the election have been posted on the G.A.B. website.

B. SVRS and Special Elections

Individual checklists are not created for special elections nor do the G.A.B. staff run data quality maintenance queries for special elections. Board staff does monitor SVRS activity of municipalities affected by special elections to track the status of SVRS election-related tasks.

5. Electronic Voting Systems and Equipment

A. Elections System and Software Engineering Change Orders

Election Systems and Software (ES&S) submitted eight Engineering Change Orders (ECOs) for *de minimis* modifications to the DS200 precinct tabulator, DS850 high-speed tabulator and ExpressVote electronic voting system on October 20, 2015. Staff reviewed the application materials and agreed with the Voting System Testing Laboratory that these changes were *de minimis* and recommended approval of these changes in a memorandum to Director Kennedy dated November 30. Per the policy adopted by the Board during its April 29, 2015 meeting, the Director and General Counsel consulted with the Board Chair regarding the applications and staff recommendation.

Both Director Kennedy and Judge Nichol agreed with the staff recommendations that the changes outlined in these applications were *de minimis* and should be approved. The approval letter was sent to ES&S on December 7 and the memorandum recommending approval can be found in the Board folder for the December 15 meeting.

B. New Voting Equipment Purchases

Several counties in Wisconsin have reported to the Board that they have finalized purchase agreements for new voting equipment. Waukesha County has entered into an agreement with ES&S for the purchase of the DS200 precinct tabulator and the ExpressVote electronic voting system for all municipalities. This equipment was delivered in September 2015 and training has been provided to municipalities on the functionality of the equipment.

In addition, Fond Du Lac, Washington and Ozaukee Counties have purchased new equipment manufactured by Dominion Voting Systems. Each municipality in these three counties will be using the Image Cast Evolution tabulator and ballot marking device. Board staff has been apprised of equipment training for clerks and poll workers in Washington and Fond Du Lac Counties. A training session in Fond Du Lac County held on November 4 was attended by Board staff. This session was one of three scheduled on that day and over 100 municipal clerks and poll workers received training on the new equipment by the vendor.

6. The AccessElections! Accessibility Compliance Program

A. Ongoing Accessibility Compliance Efforts

Staff continues to coordinate with municipal clerks to ensure that accessibility problems uncovered during previous audits are resolved as quickly and cost-effectively as possible. A reminder was sent to all municipalities with an outstanding audit response from site visits conducted over the last four elections. The goal of this correspondence was to encourage municipalities to address accessibility problems before the start of the 2016 election cycle. In response, staff has received and reviewed 62 plans of action designed to correct problems identified during site visits since the last report to the Board. Deadlines for submitting plans of action are set at 60 days from receipt of the report, and staff works with local election officials to ensure that problems are addressed in a timely manner.

In addition, staff arranged for the shipment of 200 grant-funded accessibility supplies to 53 municipalities in response to documented needs. Several accessibility-related items, such as page magnifiers and signature guides, have been restocked due to continued demand, while the polling place signage inventory will continue to be liquidated.

B. Photo ID Law Public Outreach Meeting

On November 12, 2015, Board staff presented at a public outreach meeting concerning the photo ID law at the request of the Milwaukee Department on Aging. The meeting was attended by county staff from several different agencies and members of the Milwaukee community. The public outreach program consisted of two main segments: an overview of the law and a question and answer session. G.A.B. resources concerning the photo ID law were provided to all attendees and they were informed of additional multimedia resources available on the agency's photo ID information site (<http://bringit.wisconsin.gov/>).

7. Education/Training/Outreach/Technical Assistance

Following this memorandum as Attachment 2 is a summary of information on core and special election administration training recently conducted by G.A.B. staff. Following the Spring Election, the training team and elections specialists are currently focusing on updating and distributing information related to the implementation of the photo identification requirement for special elections which will occur during the remainder of the year. Staff is also developing plans for training of local election officials for the 2016 election cycle.

8. GIS (Geographic Information Systems) Update

Board staff continued to process changes to ward, school, supervisory, sanitary, or municipal boundaries that take place throughout the State of Wisconsin, as well as acquiring any of these data types directly from local municipal or county land information departments.

Board staff continues to work with the State Agency Geospatial Information Committee (SAGIC) as well as with the Wisconsin Land Information Association to assist in state agency acquisition of local land information data. Continued involvement with SAGIC as well as other land information groups throughout Wisconsin helps to facilitate and develop partnerships and more efficient data acquisition of spatial information. Accurate GIS data is essential to ensuring accurate ballot assignment within SVRS.

9. IT Projects

Several IT projects are in progress for the Elections Division:

A. Statewide Voter Registration System (SVRS) Updates

There were not outages or updates for the SVRS system during this reporting period.

B. SVRS Modernization

SVRS Modernization (now called WisVote) is in the final stages of implementation. Board staff has been keeping clerks throughout the state informed of the progress of deploying the WisVote system through bi-weekly WisVote communications. To help with the transition, Board staff has updated the training website, now called the WisVote Learning Center. Through this site, WisVote users (previously SVRS users) can access training materials such as interactive tutorials, demonstration overviews, and manual sections.

The WisVote Test Environment is available from December 1 to December 18 for the 1,863 current SVRS users. The training materials on the WisVote Learning Center are available during this time to help users become familiar with WisVote and to perform election and voter related tasks in the Test Environment. Staff has continued to collect feedback from clerks regarding the functionality and usability of the system, including through a survey available to clerks operating in the Learning Center and Test Environment.

The WisVote system will go live on January 11, 2016. There will be a temporary system outage between December 31 and January 10 in which SVRS and WisVote will not be available to current SVRS users. Users will have access to SVRS during the system outage but will no longer be permitted to add or update any information in the system. The plan to transition from SVRS to WisVote was communicated to clerks in a written communication on December 1, 2015.

In past months, G.A.B. staff attended the following training events:

Whitewater, WI. On October 15, G.A.B. staff presented at a two photo ID events in the City of Whitewater. The first event was held at the Whtiewater High School as part of their American Government course. Then, in the evening, an event was held at UW-Whitewater sponsored by the League of Women Voters, The UW-Whitewater Student Government, and many other community organizations.

Madison, WI. On October 17 G.A.B. staff presented to the county chairs of the Democratic Party on the Photo ID law. The panel discussion included a presentation on photo ID and other voter laws and featured materials from the G.A.B. intended to help explain some of those changes.

Stevens Point, WI. On November 18 G.A.B. staff presented to a group of community volunteers on the photo ID law and on what voters need to know for the 2016 elections. The event was co-sponsored the League of Woman voters and other community organizations.

Milwaukee, WI. On November 12 G.A.B. staff presented to a group of community leaders at an event hosted by the Milwaukee Department on Aging. The presentation covered the photo ID law and focused on topics that are important to elderly voters and voters with disabilities.

Staff has also been working with vendors to update the Bring It to the Ballot public education and outreach campaign. All of the videos, TV and radio ads, and printed materials had been updated with new information about how to get a free state ID card for voting. Additionally, the mobile version of the BringIt.wi.gov website for mobile devices was in final testing.

12. EAC Standards Board Appointment

The process for appointing a Wisconsin local election official representative to the U.S. Elections Assistance Commission's Standards Board is continuing, consistent with the Board's March 4, 2015 directive. An Appointment Committee was formed consisting of representatives designated by the Wisconsin Municipal Clerks Association, Wisconsin County Clerks Association, Wisconsin Towns Association, and League of Wisconsin Municipalities. The Committee met by teleconference on November 24, 2015, to discuss the process for and timing of selecting a local election official to represent Wisconsin on the Standards Board. Board staff provided a communication which each organization has provided to its members which solicits applications for the appointment. The deadline for the receipt of applications is December 14, 2015, and the Committee intends to meet on January 7, 2016 to review the applications and make an appointment.

13. Complaint Processing and Tracking

Elections Division staff has continued to process and resolve complaints related to the actions of local election. A status report regarding pending and resolved complaints will be included in the Board Members' meeting folders.

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JUDGE GERALD C. NICHOL
Chair

KEVIN J. KENNEDY
Director and General Counsel

Step-by-Step Guide to Appointment of Inspectors from Party Lists and Selection of a Chief Inspector

I. Determine Party Imbalance at each Polling Place

- A. Party whose candidate for Governor at the November 4, 2014 election received the most votes *at that polling place* is entitled to one extra inspector.
- B. Determine party imbalance for each polling place in anticipation of receiving lists of inspector nominees from the political parties. Example:
 - Republican candidate for governor received the most votes at the polling place. Seven total inspectors are needed. Positions available:
 - Four Republican positions
 - Three Democratic positions.
- C. Party imbalance at each polling place remains for the duration of the term.
 1. Positions determined to be Republican remain Republican positions for the duration of the term.
 2. Positions determined to be Democratic remain Democratic positions for the duration of the term.

II. Receive Lists from Parties (Must be received no later than November 30th) Inspectors may be from the municipality or from the county in which the municipality is located.

- A. Check for “first-choice” nominees. Names with a “first choice” indication must be appointed first. Alert governing body to this requirement.
 1. If “first choice” is not indicated, but names are numbered, appointments must be made in order of numbering.
- B. Contact nominees to ensure willingness to serve.
 1. Inquire as to willingness to be trained as chief inspector. If any are willing to be trained, arrange for training.
 - a. Provide inspectors with opportunities for training including G.A.B. conducted Chief Inspector Training (CIT) webinars.
- C. Alert Party in writing of any nominee not willing to serve or be trained as CI.

III. Appointment of Inspectors by Governing Body (No later than December 31st)

- A. Submit lists of party nominees to governing body.
 1. Advise governing body of requirement to appoint any first-choice nominees and numbered nominees in order of numbering.

- B. Submit list of unaffiliated nominees, if applicable.
- C. Governing body must appoint at least as many inspectors as there are positions to be filled (see party imbalance determined in 1B.)
 - 1. Additional inspectors may be appointed as alternates or “back up.”
- D. Appointments are made from the party lists until each party’s positions have been filled or until the lists are exhausted.
 - 1. If positions remain open and the lists have been exhausted, “unaffiliated” inspectors may be appointed to the remaining positions.
- E. Whether an inspector nominated by a party has been trained or is willing to be trained as a Chief Inspector is not relevant to the appointing process.
- F. Inspectors serve for 2-year term (1/1/2016 – 12/31/2017).

IV. Clerk Assigns Inspectors to Each Polling Place According to the Party Imbalance at that Polling Place and Selects a Chief Inspector (CI) for Each Polling Place

- A. If any party-affiliated inspectors are willing to be trained as Chief Inspectors, arrange for them to attend training.
- B. If all positions at the polling place have been filled from party lists, select a trained CI whose name was submitted by a party.

R R R D D or R R R D D

- C. If all positions at the polling place have been filled from party lists, **R R D D D** but there are no affiliated inspectors who are trained as chief inspectors or willing to be trained as chief inspectors, select a trained unaffiliated inspector. (Keep the party representation even.)

R R U D D

If you have mixture of affiliated and unaffiliated inspectors, **R R U U D** choose either a trained affiliated inspector or a trained unaffiliated inspector. If you have to replace an inspector to insert a trained CI, replace an unaffiliated inspector.

R R U U D

V. CI from the Municipality vs. CI from the County

- A. Wis. Stat. §7.30(2)(a) indicates a preference for the CI to be a municipal resident, but offers an exception: “...each chief inspector shall be a qualified elector of the municipality in which the chief inspector serves. *If no qualified candidate for chief inspector is available...the person so appointed need not be a qualified elector of the municipality...*”

1. First Choice – Affiliated municipal resident

If there is an affiliated inspector who is a resident of the municipality who is trained or willing to be trained as a CI, arrange for training and use for CI. Maintain party imbalance at the polling place.

2. Second Choice – Unaffiliated municipal resident

If no affiliated municipal resident is trained or willing to be trained as a CI, arrange for training of an unaffiliated municipal resident. If this means replacing an affiliated inspector, keep the party representation even.

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3. Third choice – Affiliated resident of the county

If there is no affiliated or unaffiliated municipal resident trained or willing to be trained as a CI, arrange for training a willing affiliated inspector who is a resident of the county.

4. Fourth choice – Unaffiliated county resident

If there is no municipal resident or affiliated county resident trained or willing to be trained, arrange for training of a willing unaffiliated county resident. If this means replacing an affiliated inspector, keep the party representation even.

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- B. Provide inspectors with opportunities for training including G.A.B. conducted Chief Inspector Training (CIT) webinars.

VI. Filling Vacancies

- A. A party that submitted a list by November 30th may supplement the list at any time during the term.
- B. The supplemental list is used only to fill vacancies which exist at the time the supplemental list is submitted or which occur after the list is submitted. The supplemental list is not used to replace an unaffiliated inspector who was originally appointed to one of the positions available to the political party.
- C. When a vacancy occurs, the position is filled from the remaining names on the original party list or a supplemental list of the party who is entitled to that position.
- D. If there are no names remaining on the list submitted by the party that is entitled to that position, and no supplemental names have been submitted by the party, the clerk may appoint an unaffiliated inspector to fill the vacancy.
- E. If an unaffiliated inspector has been appointed to fill a vacancy, and the unaffiliated inspector vacates the position, the vacancy is filled from names submitted by the party entitled to that position subsequent to the unaffiliated appointment.
 - 1. If no names have been submitted since the unaffiliated appointment was made, the clerk may fill the vacancy with another unaffiliated inspector.

ATTACHMENT #2

**GAB Election Division's Training Initiatives
10/21/2015 – 12/14/2105**

Training Type	Description	Class Duration	Target Audience	Number of Classes	Number of Students
Municipal Clerk	2005 Wisconsin Act 451 requires that all municipal clerks attend a state-sponsored training program at least once every 2 years.	3 hours	All Municipal clerks are required to take the training; other staff may attend.	7	150
Chief Inspector	Instruction for new Chief Inspectors before they can serve as an election official for a municipality during an election.	3 hours	Election workers for a municipality.	20	545
Election Administration & SVRS Training Webinar Series	Series of 8 - 12 programs designed to keep local government officers up to date on the administration of elections in Wisconsin.	45 – 120 minute webinar conference hosted by Elections Division staff.	County and municipal clerks, chief inspectors, poll workers, special registration deputies and school district clerks.	10/21/15: Election Administration Training for School District Clerks; 11/4/15: Proof of Residence & Proof of Identification; 12/2/15: A Review of 2015 – and What's Ahead in 2016	50 – 400 per webinar; posted to website for clerks to use on-demand.

ATTACHMENT #2

GAB Election Division's Training Initiatives
10/21/2015 – 12/14/2105

Training Type	Description	Class Duration	Target Audience	Number of Classes	Number of Students
Other	<p>Board staff presented Voter ID Law, election administration and SVRS/WisVote status information to county and municipal clerks attending the following conferences:</p> <ul style="list-style-type: none"> • Wisconsin Towns Association annual conference on October 27, 2015 in Wisconsin Dells; • Wisconsin Municipal Clerks Association District 8 meeting on November 5, 2015 in Eagle River; • Wisconsin Municipal Clerks District 5 meeting on November 12, 2015 in Oconomowoc; • Wisconsin Municipal Clerks District 6 meeting on November 13, 2015 in Fond du Lac; • Wisconsin County Clerks Election Refresher meeting on November 20, 2015 in Wausau. 				

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JUDGE GERALD C. NICHOL
Chairperson

KEVIN J. KENNEDY
Director and General Counsel

MEMORANDUM

DATE: For the December 15, 2015 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 STAR Project preparations, financial services activity, procuring goods and services, contract sunshine administration, recruiting staff, communicating with agency customers and developing legislative and media presentations.

Noteworthy Activities

1. STAR Project

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

Release 1 of the STAR project which includes financial and procurement went live on October 1, 2015. As with all new computer systems, there have been some difficulties in transitioning to the new accounting structures and format, but we continue to work through those issues with the State Controller's Office, the State Budget Office and the STAR experts.

In addition to learning the new accounting system, Release 2, the Human Resources (HR) component of the system is scheduled to go live on December 7 to Core HR Users. The new HR system will include a new payroll system, new paychecks and paystubs, new

timesheets, new terminology, employee self-service, and a single source for all HR functions for all of state government. In preparation for Release 2, staff continues to validate employee information and conversion data, attend user training sessions, inform users of their roles in the new system and meet weekly with the STAR team regarding G.A.B.'s readiness for Release 2.

The STAR Project continues to be very labor intensive and will continue to require dedicated G.A.B. staff resources to ensure a successful transition to the new enterprise-wide system. Staff will continue to keep the Board apprised as the STAR project moves forward.

2. Financial Services Activity

- Staff claimed reimbursements of \$6,732.79 for August and September Federal Voting Assistance Program (FVAP) grant expenditures, then coordinated the accounting for incoming wire transfers with Department of Administration Treasury staff, and prepared journal entries to record revenues receivable. Financial staff timely filed the quarterly SF 425 Report with the U.S. Department of Defense, due Sept. 30 for this federal aid grant, reporting \$1,182,117.76 (61.57 percent) of the \$1,919,864 grant expended since its inception in March 2012.
- Staff compiled and reconciled the federal grant schedule for the state fiscal year ended June 30, 2015. This annual schedule is requested by the Legislative Audit Bureau for its use in auditing the federal financial assistance received by the State of Wisconsin, which is then compiled with all other agencies into a statewide Schedule of Expenditures of Federal Awards. Reported on this schedule were federal revenues of \$594,556 and expenditures of \$2,536,239 which included \$86,783 in voting equipment reimbursements provided to sub-recipients, for the state fiscal year ended June 30.
- Staff calculated the first fiscal quarter payroll adjusting entries, to properly allocate salaries and fringe benefits between federal and state programs. A newly-created cost schedule was set up and compiled for purposes of filing a quarterly IT projects report with DOA. During the first fiscal quarter ended 9/30, the GAB has incurred \$356,583 of both employee labor and IT contractor costs for SVRS maintenance and modernization projects.
- Cumulative labor and ancillary costs of about \$8,067 have been received from Elections System & Software for the most recent round of equipment testing on Unity versions 3410, 3411, and EVS 5300. Cumulative labor and ancillary costs of about \$221 have been received from Dominion Voting Systems for the most recent round of equipment testing on the Democracy Suite 4.14. Both ES&S and Dominion have previously reimbursed the G.A.B. for all equipment testing costs, per the cost recovery agreement. These cash receipts are accounted for as refunds of expenditure and allocated amongst several ledger accounts.
- Budget-to-actual operating results for the first fiscal quarter ended September 30 were summarized and communicated to management. All federal and state programs remain within budgeted projections for this fiscal quarter-end.

3. Procurements

As authorized at the September 1 meeting of the Board, procurement staff worked with the Elections Division, the Department of Health Services (DHS) and the Department of Administration (DOA) to get permission to enter into a contract with Knupp, Watson & Wallman, Inc. (KW2) to complete the redesign of the MyVote website. First, staff had to get permission from the DHS to piggy-back off its current contract. After permission was obtained, staff had to submit a STAR Piggy-Back request form to DOA for its approval of the purchasing request. As a result of the approval, staff created a purchase order for \$216,375 to complete the project. Other miscellaneous office supplies were purchased to maintain operations.

4. Contract Sunshine

The STAR development team has created a process that will automatically import data from STAR PeopleSoft directly into the Contract Sunshine website. This process is currently under review by G.A.B. staff to determine what additional procedural steps may be required to ensure that this process meets the reporting requirements under Wis. Stat. § 16.753. If successful, this system will dramatically reduce the burden of reporting on agencies with a high volume of transactions.

5. Staffing

Currently, we are recruiting for two financial staff vacancies, which have presented significant challenges for the Administrative Services section. Two previous recruitment efforts have been unsuccessful. Additionally, because it's the end of the calendar year, we cannot make any hires until after the new year. We will re-post the Accountant and Financial Specialist positions. At present, we also have two vacant Elections Specialist positions we are actively recruiting for.

In addition to the four vacancies above, an Office Operations Associate (Nicole Woodards) resigned from her position effective Tuesday, November 3. We will begin recruitment efforts for this vacancy soon.

6. Communications Report

Since the October 20, 2015, Board meeting, the Public Information Officer (PIO) has engaged in the following communications activities in furtherance of the G.A.B.'s mission:

WisVote Learning Center Website: As the agency's webmaster, the PIO spent considerable time leading development of a completely new Elections Division training website (www.electiontraining.gab.wi.gov) for local election officials to prepare for deployment of the WisVote system in January 2016. The website employs the Moodle online learning platform, which is used by the University of Wisconsin and other leading universities for online courses. The website hosts numerous interactive video tutorials and user manual chapters produced by the Elections Division staff over the last few months, and will continue to be updated with new materials and refinements. Staff invited clerks to use the new website on December 1, and feedback has been overwhelmingly positive.

Voter ID Public Information Campaign: The PIO has completed overseeing the update to the Bring It to the Ballot public information campaign. Elections Voter Services Specialist Meagan Wolfe and Help Desk Lead Steve Rossman worked out problems with the toll-free number and automated menu recordings. The PIO completed final testing and worked with the vendor to deploy the mobile version of the BringIt.wi.gov website for mobile devices. Agency management has been in preliminary discussion with legislators about funding to re-launch our public education campaign.

Online: The PIO managed regular updates to the agency website and has begun planning for transition to websites for the new Elections and Ethics commissions.

Media: Media inquiries and interview requests have remained steady due to interest in legislative changes to the Board, special elections, lobbying activity reports, and other issues. Between October 14 and November 30, the PIO logged 22 media and general public phone calls and 203 media email contacts.

Public Records: The PIO continues to lead the agency's response to numerous public records requests received in recent months.

Other: The PIO spent significant time in late October and November assisting the Director and General Counsel in monitoring proposed legislative changes to the agency and responding to distortions of the agency's record of accomplishments.

7. Meetings and Presentations

During the time since the October 20, 2015 Board Meeting, Director Kennedy has been participating in a series of agency related meetings and working with agency staff on several projects. The primary focus of the staff meetings has been on litigation and legislative activities. As 2016 approaches considerable attention will be devoted to preparation for events related to the presidential election including the meeting of the Presidential Preference Selection Committee on January 5, 2016 in the State Capitol and the Presidential Preference Vote on April 5, 2016. There will also be a nonpartisan primary on February 16, 2016. The nonpartisan election for judicial, county, municipal and school district offices will be held on April 5, 2016 in conjunction with the Presidential Preference Vote.

There have been numerous telephone and email communications with our Department of Justice attorneys as well as outside counsel on agency-related litigation. This includes several court hearings which will be discussed in closed session. There were also numerous briefings on the status of the WisVote implementation.

On October 21 and 22, 2015 Director Kennedy participated in a meeting organized by the National Council on State Legislatures (NCSL) in Boulder, Colorado. The focus of the meeting was to bring together a group of state and local election administrators, academics and advocacy groups to develop a research plan for funding voting equipment.

On October 27, 2015, Director Kennedy led a team of Elections Division staff at the annual convention of the Wisconsin Towns Association. More than 150 clerks, treasurers and deputy clerks attended. Elections Division Administrator Mike Haas, Lead Elections Specialist

Diane Lowe and Training Coordinator Alison Coakley made presentations at the two and half hour meeting.

On October 27, 2015, Director Kennedy was a guest lecturer at a political science class, *Citizenship and Practical Decision Making*, taught by former State Senator Dale Schultz at UW-Platteville. Director Kennedy provided a history of the development of campaign finance law in Wisconsin along with some discussion on proposed changes to the campaign finance regulatory structure.

On November 2, 2015, Director Kennedy participated in a talk radio interview show, The Devil's Advocates, on WXXM, 92.1 in Madison. The focus of the interview was on the recent legislation restructuring the agency, 2015 Assembly Bill 388. The interview can be accessed here: <http://darnwi.com/?podcast=11-02-15-kevin-kennedy-gab-director-and-general-counsel> Former Board Member Judge Deininger has been a frequent guest on the show.

On November 9, 2015, Director Kennedy was guest lecturer at a webinar for the Election Academy at University of Minnesota Hubert H. Humphrey School of Public Affairs. The Election Academy is a training certification program for election officials taught by Professor Doug Chapin. The focus of the presentation was on the structure of election administration entities in the United States based on my experience as Wisconsin's chief election official for the past 32-plus years.

On November 13, 2015, Director Kennedy along Elections Supervisor Ross Hein and Election Specialist Marianne Griffin made a presentation to the District 6 meeting of the Wisconsin Municipal Clerks Association. The focus of the presentation was preparations for the 2016 election cycle along with the anticipated transition to a new state elections governance structure in the midst of the cycle.

On November 19, 2015, Director Kennedy and Chief Administrative Officer Sharrie Hauge participated in a STAR/Shared Agency Services Roundtable for selected small state agencies. The briefing was organized by the Department of Administration and included presentations on procurement, personnel, pending legislation related to civil service changes and information technology.

On November 23, 2015 Elections Division Administrator Mike Haas testified before Senate Committee on Elections and Local Government on behalf of the agency with respect to 2015 Senate Bill 391. The legislation standardizes the terms of local election officials, a concept endorsed by the G.A.B. as part of its legislative agenda.

On November 24, 2015, Elections Division Administrator Mike Haas conducted a meeting of the Standards Board Local Election Official Nominating Committee. Director Kennedy also participated in the teleconference meeting. Applications for Wisconsin's local election official representative to the U.S. Elections Assistance Commission's Standards Board have been posted on the agency website: <http://www.gab.wi.gov/node/3753>.

On December 3, 2015, Director Kennedy, Chief Administrative Officer Sharrie Hauge and Elections Division Administrator Michael Haas participated in a briefing for top state agency management on the STAR Project.

On December 4, 2015 the agency Management Team (Kevin Kennedy, Mike Haas, Jon Becker, Sharrie Hauge and Ross Hein) met with a team of six representatives from the Department of Administration to discuss the proposed agency shared services initiative which was included in the 2015-2017 biennial budget. Following the meeting, Director Kennedy met with DOA Deputy Secretary Cate Zeuske to discuss the development of an agency transition plan under the provisions of 2015 Assembly Bill 388, which has passed the Legislature and is awaiting approval by the Governor.

On December 7-9, 2015 Staff Counsel Nate Judnic and Director Kennedy participated in the annual conference of the Council on Governmental Ethics Laws (COGEL) in Boston, Massachusetts. Director Kennedy was involved in three presentations for the conference:

Technology in the Voting Process – Developing Meaningful Standards: Moderated by Director Kennedy with panelists Greg Essensa, Chief Electoral Officer for the Province of Ontario; Merle King, Executive Director of the Center for Election Systems at Kennesaw State University in Georgia; and Commissioner Mathew Masterson of the U.S. Elections Assistance Commission.

Voter Fraud – Fact or Fiction: Moderated by Anton Boergman, Deputy Chief Electoral Officer for the Province of British Columbia with panelists Thad Hall, formerly of the University of Utah, now with the Fors Marsh Group of Alexandria, Virginia; Yves Cote, Elections Commissioner of Canada; and Director Kennedy

Election Litigation Update: Moderated by Shipra Verma, Chief Electoral Officer for the Province of Manitoba; with panelists Stephane Perrault, Deputy Chief Electoral Officer, Legal Services for Canada; and Director Kennedy

On December 10, 2015 Voting Services Specialist Meagan Wolfe and Director Kennedy participated in an Overseas Voting Initiative policy working group meeting for the Council of State Governments (CSG) in Nashville, Tennessee.

On December 11, 2015, Director Kennedy served on a panel on *Improving State Elections for Military, Overseas Voters* with Kim Wyman, Washington Secretary of State; Jim Condos, Vermont Secretary of State; Lance Gough, Executive Director, Chicago Board of Election Commissioners; and Scott Wiedmann, U.S. Department of Defense's Federal Voting Assistance Program. The panel was part of the CSG National Conference.

8. Delegated Authority

No action was taken by the Director and General Counsel in this area since the October 20, 2015 Board Meeting.

9. Looking Ahead

The next Board meeting is scheduled for Tuesday, January 12, 2016. The meeting will be conducted by teleconference and accessible to the public in the agency offices, beginning at 9:00 a.m.