
Meeting of the Board

Wednesday, December 17, 2008

9:30 A.M.

Risser Justice Center, Room 150

120 Martin Luther King Jr. Boulevard

Madison, Wisconsin

Agenda
Open Session

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A. Call to order (Judge Thomas Cane, Chair)	
B. Director's report of appropriate notice of meeting	
C. Approval of minutes of previous meeting (See accompanying minutes)	1
D. Public Comment	
Break	
E. Elections Administration Voter Record Policies	7
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2. Principles and Values Statements	
3. Proposed 4-Year Voter Record Maintenance Protocol	
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J. Proposed 3-Month Extension of Review Schedule	51
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1. Federal Campaigns	
2. Vacancies	
3. Recall Manual	
L. Director's Report	61
1. Elections Division Report – election administration and SVRS	

2. Ethics and Accountability Division Report – campaign finance, state official financial disclosure, lobbying registration and reporting, contract sunshine
3. Office of General Counsel Report – general administration and orders

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], |

The Government Accountability Board has scheduled its next meeting for Thursday, January 15, 2009 at the Risser Justice Center, Room 150, 120 Martin Luther King Jr. Boulevard, Madison, Wisconsin beginning at 9:30 a.m.

State of Wisconsin\Government Accountability Board

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JUDGE THOMAS CANE
Chair

KEVIN J. KENNEDY
Director and General Counsel

WISCONSIN GOVERNMENT ACCOUNTABILITY BOARD

Room 300 Southeast
State Capitol
Madison, Wisconsin
November 11, 2008
9:30 a.m.

DRAFT

Not yet approved
by the Board

Open Session Minutes

<u>Summary of Significant Actions Taken</u>	<u>Page</u>
A. Declined to reconsider a previous decision not to allow the use of blind trusts by state public officials.	3
B. Directed staff to develop a recommendation, including standards and uniform guidance, for local clerks to perform retroactive "HAVA Checks" for consideration no later than the January 2009 meeting.	3
C. Directed staff to promulgate amendment of GAB 1.28, pertaining to "issue ads" and the definition of "political purpose."	4
D. Reaffirmed three former Elections Board formal opinions and five administrative rules relating to training and selection of election officials, and duties and responsibilities of campaign treasurers.	4
E. Reaffirmed ten former Ethics Board formal opinions relating to local officials/gifts and meals and local officials/other issues, and held 35 formal opinions relating to local officials/conflicts of interest and local officials/gifts and meals for further review.	

Present: Judge Thomas Cane, Judge Michael Brennan, Judge William Eich, Judge Victor Manian, Judge Gordon Myse, Judge Gerald Nichol

Staff present: Kevin Kennedy, Jonathan Becker, Nat Robinson, Shane Falk, Michael Haas, Sharrie Hauge, Ross Hein, Bart Jacque and Kyle Richmond

A. Call to order

Chairman Cane called the meeting to order at 9:35 a.m.

B. Director's Report of Appropriate Notice of Meeting

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

C. Approval of Minutes of Previous Meeting

MOTION: Approve the minutes of the October 6, 2008, Government Accountability Board meeting. Moved by Nichol, seconded by Manian. Motion carried.

D. Public Hearing on Administrative Rules

1. GAB Chapter 4, Elections Observers
2. GAB Chapter 5, Ballot and Electronic Voting System Security

Director Kennedy and Ross Hein gave a summary of the two administrative rules.

Before moving to public comment, Judge Nichol requested to speak and congratulated the G.A.B. staff, Wisconsin's local election officials, and other state officials, including the Department of Administration management and staff, on a successful election on November 4, 2008. The other members of the Board concurred.

E. Public Comment

1. **Joe Mikolajczak**, New Berlin, appeared to comment about GAB Chapter 4, the election observer rule.
2. **Matt O'Neill**, representing the Democratic Party of Wisconsin, appeared to comment about GAB Chapter 4, the election observer rule.
3. **Paul Malischke**, Madison, appeared to comment about GAB Chapter 4, the election observer rule and distributed some suggestions for the Board's consideration.
4. **Robert Welch**, representing the Wisconsin Broadcasters Association, and **Thomas Fonfara**, representing the Wisconsin Newspaper Association, appeared to comment about GAB Chapter 4, the election observer rule.
5. **Paul Malischke**, representing Fair Elections Wisconsin, appeared to comment about GAB Chapter 5, ballot and electronic voting system security and distributed some suggestions for the Board's consideration.
6. **George K. Steil, Sr.**, representing Attorney General J.B. Van Hollen, appeared to comment about the use of blind trusts. Materials related to this topic can be found on pages 26-39 of the G.A.B. meeting packet for the November 11, 2008 meeting.
7. **Donald K. Schott**, representing Justice Patience Roggensack, appeared to comment about the use of blind trusts. Materials related to this topic can be found on pages 26-39 of the G.A.B. meeting packet for the November 11, 2008 meeting.

Hearing no objections, the Chairman called a recess at 11:25 a.m. and reconvened the meeting at 11:41 a.m.

8. **Bob Ohlsen**, Dane County Clerk, appeared to comment about GAB Chapter 4, the election observer rule, and on proposed action regarding retroactive “HAVA Checks.” Mr. Ohlsen urged the Board to delay commencement of retroactive HAVA checks until after the 2009 Spring Election. Materials related to the second topic can be found on a handout distributed to the Board at the G.A.B. meeting of November 11, 2008.
9. **Kim Bushey**, Walworth County Clerk, appeared to comment about proposed action regarding retroactive “HAVA Checks.” Ms. Bushey concurred with Mr. Ohlsen’s suggestion concerning the timing of retroactive “HAVA Checks”. Materials related to this topic can be found on a handout distributed to the Board at the G.A.B. meeting of November 11, 2008.
10. **Mike McCabe**, Wisconsin Democracy Campaign, appeared to comment about the proposed administrative rule defining the scope of campaign finance regulation, GAB 1.28. Materials related to this topic can be found on pages 40-48 of the G.A.B. meeting packet for the November 11, 2008 meeting.

Hearing no objection, the Chairman took up Item G out of order.

G. Use of Blind Trusts by State Public Officials

Jonathan Becker summarized the issue for Board members.

MOTION: Allow the use of blind trusts, the requirements for which will be determined. Moved by Manian, seconded by Cane.

Roll call vote:	Brennan:	No	Cane:	Aye
	Eich:	No	Manian:	Aye
	Myse:	No	Nichol:	No

Motion failed, 2-4.

F. Proposed Action Regarding Retroactive HAVA Checks

Nathaniel E. Robinson summarized the issue for Board members.

MOTION: Direct staff to develop a recommendation for consideration regarding guidance to be provided to local clerks for the implementation of retroactive HAVA checks. The Board will consider the recommendation at its January 2009 meeting. In order to ensure statewide consistency, the Board also reaffirms its direction to local clerks not to initiate retroactive HAVA checks until further action by the Board. Moved by Nichol, seconded by Myse.

MOTION: Amend the original motion to begin with “As directed at its August 27, 2008 meeting...” and insert “no later than” in the second sentence after the word

“recommendation” and strike the word “at.” Moved by Nichol, seconded by Brennan.
Motion to amend carried.

Original motion carried as amended.

The Chairman called a break for lunch at 1:00 p.m. and reconvened the meeting at 1:30 p.m.

H. Proposed Administrative Rule Defining the Scope of Campaign Finance Regulation, GAB 1.28.

Jonathan Becker summarized the alternative draft rules in the Board’s materials.

MOTION: Amend GAB 1.28 according to Proposed Rule (Alternative 1) as set out on pages 41-2 of the Board’s materials. Moved by Eich, seconded by Myse.

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

Motion carried, 6-0.

I. Review of Select Former State Elections Board Operating Procedures, Opinions and Rules Related to:

1. Training and Selecting Election Officials
2. Duties and Responsibilities of Campaign Treasurers

MOTION: Reaffirm Opinion El.Bd. 75-1 and Administrative Rules El.Bd 11.01, 11.02, 11.03, 11.04, and 11.05 relating to training and selection of election officials. Moved by Myse, seconded by Eich. Motion carried.

MOTION: Reaffirm Opinions El.Bd. 74-11 and El.Bd. 74-15 relating to duties and responsibilities of campaign treasurers. Moved by Myse, seconded by Nichol. Motion carried.

J. Review of Select Former State Ethics Board Operating Procedures, Opinions and Rules Related to:

1. Local Official – Conflicts of Interest
2. Local Officials – Acceptance of Items
3. Local Officials – Other

MOTION: Reaffirm 2003 Wis Eth Bd 16, 2002 Wis Eth Bd 7, 1997 Wis Eth Bd 15, 1992 Wis Eth Bd 17, 1992 Wis Eth Bd 9, 1992 Wis Eth Bd 8, 2006 Wis Eth Bd 01, 2003 Wis Eth Bd 13, 1999 Wis Eth Bd 1, 1998 Wis Eth Bd 16, and postpone action on 1993 Wis Eth Bd 8 and 1992 Wis Eth 31, and any items

pertaining to conflicts of interest. Moved by Nichol, seconded by Myse. Motion carried.

K. Director's Report

Elections Division Report

(Presented by Nathaniel E. Robinson)

Report received for information purposes only. The Board took no action.

A special report on the November 4 General and Presidential Election was also provided to the Board. Board members reiterated their praise for agency staff for a well-run problem-free election.

Judge Myse requested that a report be made on voting systems and security compliance monitoring for future elections, and that the election observer "Rules-at-a-Glance" brochure be rewritten. The other members of the Board concurred.

Ethics & Accountability Division Report

(Presented by Jonathan Becker)

Report received for information purposes only. The Board took no action.

Office of the General Counsel Report

(Presented by Kevin J. Kennedy and Sharrie Hauge)

Report received for information purposes only. The Board took no action.

Board members expressed their appreciation for G.A.B. staff members' work on the agency budget and plans to move, and especially thanked Sharrie Hauge for her effort on the budget.

K. Adjourn to closed session to consider written requests for advisory opinions and the investigation of possible violations of Wisconsin's lobbying law, campaign finance law, and Code of Ethics for Public Officials and Employees; and confer with counsel concerning pending litigation:

MOTION: Move to closed session pursuant to Sections 5.05(6a), 19.85(1) (c), (g), (h), and 19.851 Wis. Stats., to consider written requests for advisory opinions, the investigation of possible violations of Wisconsin's lobbying law, campaign finance law, and Code of Ethics for Public Officials and Employees; and confer with counsel concerning pending litigation;. Moved by Nichol, seconded by Manian.

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

Motion carried.

Hearing no objection, the Chairman called a recess at 3:40 p.m. The Board reconvened in closed session beginning at 3:47 p.m.

Summary of Significant Actions Taken in Closed Session

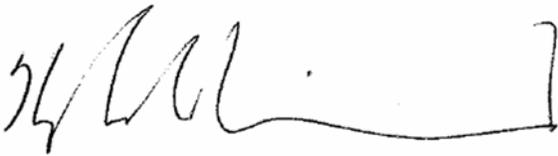
- A. Requests for Advice: None considered.
- B. Investigations: Seventeen matters considered; 10 matters closed.

The meeting adjourned at 4:50 p.m.

###

The next meeting of the Government Accountability Board is scheduled for 9:30 a.m., Wednesday, December 17, 2008, in Room 150, Risser Justice Building, 120 Martin Luther King, Jr. Boulevard, Madison, Wisconsin.

November 11, 2008 Government Accountability Board meeting minutes prepared by:



Kyle R. Richmond, Public Information Officer

November 14, 2008

Date

November 11, 2008 Government Accountability Board meeting minutes certified by:

Judge Michael Brennan, Board Secretary

December 17, 2008

Date

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JUDGE THOMAS CANE
Chair

KEVIN J. KENNEDY
Director and General Counsel

MEMORANDUM

DATE: For the December 17, 2008, Meeting

TO: Members, Wisconsin Government Accountability Board

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

SUBJECT: Draft Protocols

1. Principles and Values that Guided Development of Protocols
2. Four-Year Voter Record Maintenance (Approval Recommended)
3. Retroactive HAVA Checks (For Information)

Attached are two draft documents (Protocols) -- a Four-Year Voter Record Maintenance Policy, and a Retroactive HAVA Check Policy. The Four-Year Voter Record Maintenance Policy is presented for your consideration. The Retroactive HAVA Check Policy is presented as information at this time, and will be formally submitted for consideration at your January 15, 2008, meeting.

The Government Accountability Board's Statewide Voter Registration System's (SVRS) Standards Committee met on Monday, November 24, 2008, and advise on the preliminary proposals for the Four-Year Voter Record Maintenance and the Retroactive HAVA Checks Protocols. Attached are:

1. Principles and Values that Guided Development of the Protocols

These principles and values provided the context in which the two proposed policy documents were developed by G.A.B. staff and vetted by the SVRS Standards Committee.

Recommendation: Approve the principles and values that guided the development of the two draft protocols.

2. Draft Four-Year Voter Record Maintenance Policy

Wisconsin Statute §6.50 (1) and (2) mandate that municipal clerks periodically conduct a purge of electors who have not voted within the past 4 years. Within 90 days after the November General Election, clerks must send a mailing to all registered voters who have been qualified to vote for the past 4 years but who have not voted. The mailing will

notify voters that if they do not respond within 30 days, their registration will be inactivated.

Recommendation: Authorize the G.A.B. staff to perform the Four-Year Voter Records Maintenance function on behalf of all municipalities, in accordance with the standards and procedures summarized in the attached draft protocol.

3. Retroactive HAVA Checks of Voter Records Policy:

The Help America Vote Act (HAVA) of 2002 and State statutes require voter data comparisons with the Wisconsin Department of Transportation (DOT) and Federal Social Security Administration (SSA) -- hereafter referred to as "HAVA Checks" -- on registered electors. These HAVA Checks are facilitated by Wisconsin's Statewide Voter Registration System (SVRS).

During the August 27, 2008, meeting of the Government Accountability Board (G.A.B.), the Board directed staff to gather statistics and facts and prepare a report analyzing the non-matches identified between August 6 and the November 4 General and Presidential Election. Based on staff's report, the Board committed to implementing a statewide uniform procedure for improving the quality of voter data preceding August 6, 2008, with the DOT and SSA databases.

Recommendation: Accept this draft Retroactive HAVA Check protocol and procedure as information at this time. Staff will bring back to the Board, a final recommendation at its January 15, 2009, meeting.

Given the high volume of voter turn-out for the November 4, General and Presidential Election, our 1,923 county and municipal clerks and local election officials are still conducting and closing-out post-election activities including the inputting of voter data in the SVRS. For example, clerks are still processing the following voter data:

- 294,586 voters Registered on Election Day
- 137,000 voters registered by Statewide Registration Deputies
- 360,477 electors who voted an absentee ballot

Note that these numbers are preliminary as data continue to be inputted into SVRS. In addition, clerks have to finish-up the aforementioned voter data processing before they can complete the required GAB-190 Elections Voting and Registration Statistics Form. The point being made is this – all the post-election business processes must be done first by clerks before complete statewide statistics and facts are available for staff to prepare a report analyzing all the non-matches identified between August 6 and the November 4 General and Presidential Election.

A protocol containing uniform standards and procedures has been drafted, but the companion report containing voter HAVA Check non-match statistics and facts between August 6 and the November 4 General and Presidential Election has not been completed, based on the aforementioned reasons. Staff expects to have an analysis completed by the Board's January 15, 2009, meeting, at which time, a final Retroactive HAVA Check Protocol recommendation will be presented to the Board for consideration.

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Government Accountability Board's Draft Protocols Voter Record Four-Year Maintenance Policy and Process Retroactive HAVA-Checks of Voter Records

Guiding Principles and Values

For the Protocol Development Process

The Retroactive HAVA-Checks of Voter Records Protocol must address the key aspects of the August 27, 2008, ruling of the Government Accountability Board. In addition, both Protocols must include at least the following policy elements:

1. Clear uniform standards, processes, procedures and guidance.
2. A commitment that the application of the Protocol will be consistent and statewide.
3. Instructions for treating every Voter Record in the same fair manner, and with care and respect.
4. Guidance that will give Voter Records the benefit of the doubt. Voters will not be penalized, disqualified or disenfranchise in those cases where:
 - Voter's name format or name variation in SVRS is not a perfect match with DOT or SSA records or vice-versa.
 - Voters' registration dates are unclear or unknown.
5. A commitment to consult with, and seek advice and counsel from:
 - Local Election Officials (county and municipal clerks).
 - Other concerned and interested parties.
6. A definitive commencement and end-date for the:
 - 2008 Four-Year Voter Record Maintenance Policy and Process.
 - Retroactive HAVA Checks of Voter Records Policy and Process.

The underlying assumption is, the Government Accountability Board's staff will conduct and manage the 2008 Four-Year Voter Record Maintenance and Retroactive HAVA Checks of Voter Records.

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Director and General Counsel

Government Accountability Board's Draft Protocol Four-Year Voter Record Maintenance Policy and Process (Draft v.5)

Wisconsin Statute §6.50 (1) and (2) mandate that municipal clerks must periodically conduct a purge of electors who have not voted within the past 4 years. Within 90 days after the November General Election, clerks must send a mailing to all registered voters who have been qualified to vote for the past 4 years but who have not voted. The mailing notifies voters that if they do not respond within 30 days, their registration will be inactivated.

Before 2006, municipalities with a population of less than 5,000 were not required to maintain voter registration lists, and thus this maintenance requirement did not apply to them. Larger municipalities did perform the maintenance, on an individual basis, using varied timetables and methods. With the implementation of the Statewide Voter Registration System (SVRS), all municipalities are required to perform this maintenance, and new methods and standards must be developed and implemented uniformly across the state.

Issues

1. Who should conduct the statutorily-required 2008 Four-year Voter Record Maintenance?
2. What process should be used to conduct the 2008 Four-year Voter Record Maintenance?

What is Needed

A uniform, statewide process to automatically identify all electors who have not voted in the past four years, generate a notice to the affected voters, and inactive those voters who do not respond in a timely fashion, as required by Wis. Stats §6.50(1) and (2).

Background

The Government Accountability Board's (G.A.B.) SVRS is designed to automatically identify all electors who have not voted in the past four years, generate a notice to the affected voters, and inactive those voters who do not respond in a timely fashion. If an individual indicates he or she wants to remain registered to vote, the municipal clerk or clerk's agent must continue his or her registration. Wis. Stats. §6.50(1).

When municipalities converted from legacy voter registration systems into SVRS, complications arose surrounding performing the maintenance in SVRS. The Legislative Audit Bureau (LAB) Report from November 2007 noted that of twelve clerks contacted, seven did not suspend registrations at all, and two suspended registrations before they began using the SVRS, but not after the 2006 General Election, as statutorily required. The three clerks who

performed a maintenance process using SVRS encountered a number of problems identifying nonvoting electors.

The result of conversion to SVRS initially was a manual process that required clerks to ask G.A.B. staff to provide lists of electors, mail the electors postcards at the municipalities' expense, and manually inactivate each elector's record in SVRS. Further refinements in the system did allow inactivating voters in groups. The LAB recommended that G.A.B. improve the process for the suspension of voter registrations. [See pages 38-39, Legislative Audit Bureau Report 07-16, An Evaluation: Compliance with Election Law, Elections Board, November 2007.]

Discussion

There are a variety of issues and challenges the G.A.B. and local clerks will encounter during the 4-year maintenance process. These include:

1. Approximately **300,000** voters are eligible for the maintenance as of November 19, 2008. This number will decrease as municipalities record voter history for the November 2008 election.
2. Approximately **1,400** municipalities did not convert voter history into SVRS. Therefore, their voter histories do not begin until 2006, and voters in those municipalities should not be subject to the maintenance process until 2010. This includes voters whose residences were annexed from a municipality without voter history into a municipality with voter history.
3. Approximately **350,000** active voters have a default registration date of January 1, 1918. Those voters may have registered at any time up until their municipality's data were converted into SVRS, in August 2006, at the latest. It is possible these voters first registered in the past four years, and they should not be purged without further examination of their voter record.
4. Some elections converted into SVRS from legacy voter registration systems have incorrect dates attached to them. Approximately 25 elections in SVRS have an election date in the future listed. Approximately 200 elections have a default election date of January 1, 1800. These election dates should be corrected so voters can be properly purged.
5. Military electors who vote by absentee are also purged, but after 6 years of not voting rather than 4 years. Voters with a valid military absentee application who are purged in this process, but who have voted in the past 6 years will have to be reactivated. Note that not all "Military" electors are in the military, such as Peace Corps, spouses of military, and civilian employees of the U. S. Government attached to a uniformed service.

Options

There are two possible options for completing the 2008 voter record maintenance process.

1. The G.A.B. completes the 4-year maintenance process on behalf of and instead of local municipalities, using its capability to complete this task on a statewide basis.
2. Wisconsin's 1,850 individual local municipalities complete the 4-year maintenance process on their own, using the current manual process (please note that Provider clerks perform SVRS services for approximately 1,500 of these municipalities). If this option were to be selected, G.A.B. would issue guidelines and monitor compliance.

Recommendation

Given the complexity of the issues noted, and the concerns and recommendations cited by the Legislative Audit Bureau that were supported by the Legislative Joint Audit Committee, staff of the Government Accountability Board (G.A.B.) will recommend to the G.A.B. that **staff conducts the statewide 2008 Four-year Voter Record Maintenance process on behalf of local municipalities and clerks.**

The recommended procedure:

1. Using a batch process in SVRS, all voters who have not voted in the past four years, but were qualified to do so, would be identified, and a "Notice of Suspension of Registration" would be generated.
2. SVRS will be programmed to automatically mark all voters sent a Notice of Suspension of Registration, with a status of "Active – Suspended – 4-year Maintenance."
3. G.A.B. sends the Notice of Suspension of Registration to the identified electors.
4. The elector responds to G.A.B. if she or he wishes to continue to be registered and G.A.B. staff changes the voter's status back to "Active."
5. After 30 days, if no response is received from the voter, or if the mailing is returned undeliverable, SVRS will be programmed to automatically change the voter status to "Inactive – 4-year Maintenance."
6. G.A.B. will generate and send to each municipality a report which identifies voters that have been suspended due to non-voting so that clerks can maintain the hard-copy voter registration forms (marking the form as cancelled and scheduled for destruction in four years).

Communication with Clerks

Ongoing communication will include:

1. Met with the SVRS Standards Committee on November 24, 2008, to review recommendations and gather feedback for further development of the 4-Year Record Maintenance Process.
2. Hold a WisLine teleconference call available to all county and municipal clerks to review the recommendations and gather additional feedback.

3. Present a recommendation to the G.A.B. at its December 17, 2008, meeting. If significant changes need to be made to the proposal and recommendations based on feedback obtained from clerks in steps 1 and 2, the information may be presented at the January meeting instead.
4. Send a notice to all municipal and county clerks that the 4-year maintenance will be completed at the state level using SVRS. Clerks will be informed that they should not perform this maintenance on their own. This notice shall include a brief legal background, overview of the process, and a timeline.
5. Communicate individually with local clerks regarding unreliable election data and questions about individual voters.
6. Send a notice to all municipal and county clerks that the 4-year maintenance is complete. This notice will include instructions on how to generate the appropriate reports in SVRS. Clerks who do not use SVRS to track absentee ballots would be directed to reactivate any Military electors who voted by absentee in the past 6 years.

Suggested Timeline

1. **November 21, 2008:** G.A.B. notified municipalities that G.A.B. is reviewing the process for conducting the 4-year maintenance and directed clerks not to initiate that process.
2. **November 24, 2008:** G.A.B. staff met with the SVRS Standards Committee to review the proposed 4-year maintenance protocol.
3. **November 28, 2008:** G.A.B. staff sends draft protocol to county and municipal clerks and post to G.A.B.'s website.
4. **December 4, 2008:** Statutory deadline for municipalities to have completed entering voter registrations and voting history from the November 4th election.
5. **December 11, 2008:** Hold a WisLine teleconference call for county and municipal clerks to review the recommendations and gather additional feedback.
6. **December 11- December 16, 2008:** Between these dates, meet with representatives of the two major political ballot parties, state agencies (Department of Transportation and the Department of Administration's Division of Enterprise Technology), the Federal Social Security Administration, county, labor and community groups, to present a final draft of the retroactive voter record protocol.
7. **December 17, 2008:** Present a recommendation to the G.A.B. at its December 17, 2008, meeting for information or consideration.
8. **December 18, 2008:** Prepare a timeline with communication milestones based on the G.A.B. decision. Communicate the G.A.B.'s decision to the Legislature, all municipalities, clerks and the general public. Keep the Legislature, municipalities, clerks and the general public duly informed.

9. **December 22, 2008**: G.A.B. staff will complete necessary code updates to run the 4-year maintenance.
10. **January 16, 2009**: Testing of the changes to SVRS code will be complete. Code will be installed in production over the weekend.
11. **January 20, 2009**: Batch utility will run, marking voter records as Active - Suspended – 4 Year Maintenance. A mailing will be generated and printed by the state or its agent.
12. **February 2, 2009**: Deadline for mailing the Notice of Suspension letter to voters.
13. **February 17, 2009**: Statewide primary election. Voters identified as Active-Suspended-4-Year Maintenance in SVRS remain on the poll lists and are eligible to vote without registering again. The act of voting within the 30-day period is equivalent to responding positively to the Notice of Suspension.
14. **March 4, 2009**: Deadline for voters to respond to the Notice of Suspension mailing. Batch processes run to inactivate voters who did not respond and to remove the Suspended-4-Year Maintenance designation from the records of voters who did respond.
15. **March 17, 2009**: SVRS staff will run a query to determine if any purged voters voted in the February election. Those voters will be reactivated.
16. **March 18, 2009**: Close of registration for April 7, 2009 Spring Election.

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Director and General Counsel

Government Accountability Board's Draft Protocol Retroactive HAVA Checks of Voter Records (Draft, v.5)

The Help America Vote Act (HAVA) of 2002 and state statutes require the State to conduct voter data comparisons with the Wisconsin Department of Transportation (DOT) and Federal Social Security Administration (SSA) -- hereafter referred to as "HAVA Checks" -- on registered electors. These HAVA Checks are facilitated by Wisconsin's Statewide Voter Registration System (SVRS).

A common misconception is that HAVA Checks are intended to confirm a voter's eligibility to vote. In reality, HAVA Checks were not designed or intended to prove or affect voter eligibility. Rather, HAVA Checks are performed for the purpose of improving the quality of voter data and to facilitate list maintenance. A voter's eligibility is determined by verifying information contained on the Wisconsin Voter Registration Application, EB-131 Form and related documents.

During the August 27, 2008, meeting of the Government Accountability Board (G.A.B.), the Board directed staff to gather statistics and facts and prepare a report analyzing the non-matches identified between August 6 and the November 4 General and Presidential Election. Based on staff's report, the Board committed to implementing a statewide uniform procedure for improving the quality of voter data preceding August 6, 2008 with the DOT and Social Security databases. On August 27, 2008, specifically, the G.A.B. ruled that county and municipal clerks and the G.A.B. staff should:

"Continue with the 'HAVA Check' procedure in effect as of August 6, 2008, through the fall election, **and correct the SVRS database later**. A mismatch with Wisconsin DOT data, in and of itself, shall not result in disqualification of a voter." (official/approved excerpted minutes from the G.A.B. August 27, 2008 Meeting).

We now have the benefit of gathering voter data from the November 4 General and Presidential Election that is still being HAVA Checked, in addition to the Circuit Court's decision upholding the Board's previous action. In accordance with the Board's August 27 decision, staff is proceeding in consultation with clerks to develop a method and guidance on how to improve data quality for voters who were registered prior to August 6, 2008.

Issues

1. On what date should retroactive HAVA Checks commence?
2. Who should conduct retroactive HAVA Checks, clerks or G.A.B. staff?

3. For quality control and consistency, what should uniform standards and procedures be applied and implemented?

What is Needed

In order to ensure consistency and quality control, a uniform process and procedure needs to be developed and applied. Standard criteria will be utilized statewide for conducting retroactive HAVA Checks on voters who registered after January 1, 2006, but before the HAVA Check process became available on August 6, 2008.

Background

HAVA requires that voters' information be compared with records at the DOT or SSA when registering to vote. The HAVA Check process became available in SVRS on August 6, 2008, and the G.A.B ordered them to be mandatory for new voter applications as of August 23, 2008. G.A.B. is considering the most efficient and effective process and procedure to improve the quality of the data in the statewide voter database for voters who registered on or after January 1, 2006, but prior to August 6, 2008. The following background information is helpful to frame the issue and understand the dynamic factors that must be considered.

HAVA Compliance Milestones: HAVA required states to be compliant by January 1, 2004, with the option to file a waiver to be compliant by January 1, 2006. Wisconsin was granted the waiver to January 1, 2006, at which point Wisconsin was partially compliant. Approximately one third of Wisconsin's counties were using the SVRS as of that date. The remainder of the State was brought into SVRS and went "live" during the summer of 2006, resulting in all Wisconsin municipalities using the SVRS for the first election in 2006 (the September Partisan Primary). The HAVA Check process was first available in the SVRS on August 6, 2008. On August 23, 2008, the process became mandatory for all new voter applications entered into the system.

Current HAVA Check Process: HAVA Checks are currently "run" by local election officials on all new voter applications that are entered into the SVRS. The result of the check usually comes back the following day. If the result is a mismatch (no match, partial match, or problem completing HAVA Check), the clerk should take the following steps:

1. Review the paper voter registration application and compare it to SVRS to determine if there is a typographical error. If so, correct the error and "rerun" the HAVA Check.
2. If no typographical error is found, send the DMV Ping Notification letter to the voter, notifying the voter that the information does not match and instructing the voter to contact the clerk to correct any data errors or inconsistencies.
3. If the voter responds to the letter, validate the relevant information in SVRS with the voter. Make any appropriate updates to the voter record in SVRS and "rerun" the HAVA Check.

If the voter confirms that all information matches SVRS and the HAVA Check still results in a mismatch, the clerk should contact the G.A.B. Help Desk. Staff will investigate the reason for failure with DOT or SSA. Mismatches can occur due to special characters such as apostrophes, hyphens, spaces in names, or variations of names. The clerk should attempt the

HAVA Check on different variations of the name (i.e. Bill versus William), or with or without the hyphen, apostrophe, or space in order to resolve the mismatch.

The outcome of a HAVA Check Mismatch: There are several reasons a HAVA Check may result in a mismatch. The most serious reason could be that a voter gave false information when registering to vote. However, the data that have been analyzed to date, show that the overwhelming reason for a non-match is that the information is incorrectly inputted into SVRS, or there are differences in a voter's name format or name variation in the three databases.

On August 27, 2008, the Board ruled that a mismatch with Wisconsin DOT data, in and of itself, shall not result in the disqualification or disenfranchisement of a voter. However, the Board decided that additional information was needed before deciding what, if any, the next step may be. The Board asked staff to collect specific data regarding the HAVA Checks that were "run" from August 6, 2008 when the HAVA Check process became available, and November 4, 2008 (the date of the 2008 Presidential and General Election).

Potential Impact of Retroactive HAVA Checks: Preliminary queries indicate that approximately **872,014** voters registered on or after January 1, 2006 that have not received a HAVA Check. Of these, **90%** (785,412) registered using their driver license, **7%** (64,236) used their social security number (last 4 digits), and **3%** (22,366) did not provide either. Based on our current match rates, we anticipate that approximately **109,239** (13%) of these records will not match and will require some follow-up after an initial HAVA Check. Please refer to this table for summary information about the statistical calculation:

	Number	Percent of Total
Total # of voters who registered after 1/1/2006 and have not received a HAVA Check	872,014	
# registering with Driver License	785,412	90%
# registering with Social Security number	64,236	7%
# registering with neither	22,366	3%
Total # of voters who registered between 8/6/2008 and 11/4/2008.	Number being determined	Percent being determined
Projected # of mismatches	109,239	13%
# of voters to be HAVA Checked who have already voted in one or more elections	Number being determined	Percent being determined

Discussion

The G.A.B. has several critical factors to consider for developing a sound and defensible policy for retroactive HAVA Checks.

1. What is the appropriate pool of voters for the retroactive HAVA Check process?

Significant considerations in this decision are:

- A. Should the Board HAVA Check all voters who were entered into the SVRS since January 1, 2006, who have not yet received a HAVA Check?

- B. Should the Board perform HAVA Checks on voters who registered after January 1, 2006, but before the SVRS went “live” in the voter’s region?
- C. Can the Board rely on data that was converted into SVRS from local municipal voter registration systems to determine when those voters actually registered?

2. What is the intent and purpose of the HAVA Check Process:

The purpose of the HAVA Check process is to improve the quality of the data in SVRS by comparing the voter information in SVRS to another data source (DOT or SSA). The HAVA Check process was never intended to determine a voter's eligibility to vote. Voter eligibility is based on factors such as whether a voter has resided at their residence at least 10 days with no present intent to move; whether the voter is eighteen years of age or older; and, whether the voter is not currently serving a sentence related to a felony conviction.

Clearly the HAVA Checks do not verify any of these eligibility requirements. However, the HAVA Checks are very useful in detecting and correcting data quality issues such as typographical errors, a voter’s name format, or name variation within databases that were not designed with the intent to facilitate perfect data matches. These data “corrections” improve the quality and integrity of the voter registration list.

3. How much work should be required of local election officials related to these checks:

Due to the volume of voters that would be checked retroactively (872,014), this process could place a significant burden on local election officials. Implementing the HAVA Check process requires time-consuming steps in order to resolve a mismatch. Paper registration forms for voters who registered in 2006 or 2007 may no longer be readily available to clerks if they are stored offsite. Currently, the HAVA Check process in SVRS may only be “run” one voter at a time which is tedious and painstakingly slow and time consuming.

Recommendations

G.A.B. staff makes the following recommendations regarding the retroactive HAVA Check Process:

- 1. In order to obtain the best quality voter data, perform the HAVA Check on voters who registered on or after January 1, 2006, but who have not yet had a HAVA Check. Include records that were converted into SVRS from local municipal voter registration systems, using the most reliable information that is available to determine when they actually registered.

Rationale: This ensures that the HAVA Check process is completed for voters for whom it is required; thereby, ensuring the best available quality of data are maintained in SVRS.

- 2. G.A.B. will conduct statewide HAVA Checks on voter records between January 1, 2006 and August 5, 2008. The capability is being developed in SVRS that will enable G.A.B. staff to “run” the retroactive HAVA Checks in batches/bundles.

Rationale: Having G.A.B. staff “run” HAVA Checks will ensure uniformity and consistency across-the-board, statewide. Plus, this single point of operation alleviates the need for local election officials to have to manually conduct each HAVA Check individually, one voter at a time.

3. Commence performing retroactive HAVA Checks on May 1, 2009, and complete the process by December 1, 2009 (7 months).

Rationale: Even with G.A.B. conducting the HAVA Checks in bulk, there is still a significant burden of follow-up work that local clerks may need to complete. It is not practical or feasible for clerks to perform this work while performing the election-related tasks for the February Primary and April Spring Election, as well as attend to their other clerk duties.

G.A.B.’s HAVA Check Process

1. On behalf of all municipalities, G.A.B. staff will send an appropriately worded WI DMV Ping Notification Letter to voters whose HAVA Check results in a mismatch. The letter will include return contact information for the G.A.B. (not the municipal clerk), and request the voter to contact G.A.B. within 30 days to verify their information. The G.A.B. will validate the voters' information and “rerun” the HAVA Check.
2. The G.A.B. will provide reports to clerks (both county and municipal) listing which voters were impacted by a mismatch during the retroactive HAVA checks. Municipalities will be given the option to have Ping letters sent immediately after the retroactive HAVA Checks are “run”, or sent 60 days after the checks are “run”, giving municipalities the opportunity to clean up errors prior to having the letters sent.

Rationale for both Steps 1 and 2: This procedure helps alleviate much of the burden of follow-up work for the local clerks. Given that these voters registered as much as two years ago, it may not be practical or feasible for all municipalities to validate the data against the original voter application. The expense of sending the appropriately worded WI DMV Ping Notification Letter to all voters who mismatch is less than the expense in staff time required for clerks to find and pull original registration forms and validate the information.

3. The August 27, 2008, ruling of the Government Accountability Board continues in effect (Refer to G.A.B.’s August 27 ruling on page one of this Protocol)

Rationale: Many of the voters who will be affected by the retroactive HAVA Check process have been registered for several years, and most have already voted in one or more elections. Since, the HAVA Check does not determine voter eligibility, and these voters have clearly been voting, it would be inappropriate to apply any penalty against voters merely because their data in two different databases do not match.

G.A.B. must ensure that voters are not disqualified or disenfranchised simply because their name is spelled or formatted differently or varied in two different state databases. However, if a clerk suspects voter fraud as a result of the retroactive HAVA Check process, the G.A.B. staff and the District Attorney should be notified. The HAVA Check

is simply an additional tool that clerks can use to compare voter data. It is not an "across the board" fraud detection tool.

Proposed Timeline and Activities

The G.A.B. proposes the following general timeline (**May 1 - December 1, 2009**) and activities for completing the retroactive HAVA Check process. Note it is anticipated that this timeline will vary. The timeframes below are intended to be general and are expected to overlap.

1. **May 1, 2009 - June 30, 2009**

G.A.B. Staff "runs" HAVA Checks.

- A. Throughout this period of time, G.A.B. staff will conduct retroactive HAVA Checks on a county-by-county basis -- in population order -- beginning in descending order, with the largest population counties. This will be done on a rolling basis as the HAVA Checks are performed.
- B. This process allows those municipalities with the greatest number of HAVA Checks the longest amount of time to follow up. Running checks by counties also makes the follow up process simpler for providers because all their municipalities will be "run" at approximately the same time.
- C. Once the HAVA Checks are "run" for a given county, reports of voters with a mismatch status will be sent to both the county clerks and the appropriate municipal clerks within the respective counties.
- D. Clerks are encouraged to make a determination as soon as possible if they wish to follow up with voters through telephone contacts to attempt to correct the mismatches, or if they wish to have G.A.B. send out Ping Letters.

2. **July 1 – September 1, 2009**

During this timeframe, clerks are given the opportunity to follow-up with voters to attempt to correct the mismatches, or ask G.A.B. staff to send Ping Letters to voters.

- A. Clerks are given the opportunity to follow up with voters to attempt to correct the mismatches. If clerks wish to follow up with voters to attempt to correct the mismatches, they will have from July 1 – September 1, 2009, to do so.
- B. If clerks do not wish to conduct follow up telephone calls, they should make this decision as soon as possible, but no later than September 1, 2009. G.A.B. will then send out Ping Letters to those affected voters.
- C. Clerks who choose to follow up with voters to attempt to correct the mismatches should inform G.A.B. staff as soon as possible, but no later than September 1, 2009, of the voters who did not respond to telephone contacts.

3. **September 1- October 31, 2009**

During this timeframe, G.A.B. staff will mail Ping Letters on behalf of clerks.

- A. In an appropriately worded Ping Letter, voters will be asked to respond to G.A.B. within 30 days.
- B. G.A.B. staff will compile county-by-county reports of the outcome of the Ping letter mailing and send to both county and municipal clerks.

4. **November 1 - December 1, 2009**

During this time, G.A.B. staff will develop a report of the 2009 Retroactive HAVA Check Process, to present to the Government Accountability Board during its December 14, 2009 regular meeting.

5. **December 14, 2009: G.A.B. Board Meeting.** G.A.B. staff will provide a final report on the retroactive HAVA Check process to the Board at its December 14, 2009, meeting.

Communication Plan

It is critical that G.A.B. remains in close communication with local election officials throughout this retroactive HAVA Check process. Communication is intended to take place in the following ways:

1. G.A.B. staff met with the SVRS Standards Committee on November 24, 2008, to review preliminary recommendations and gather feedback for further development of uniform standards and procedures for conducting retroactive HAVA Check of voter records.
2. G.A.B. staff sends draft protocol to county and municipal clerks and post to G.A.B.'s website.
3. Hold a WisLine teleconference call on Thursday, December 11, 2008, for county and municipal clerks to review the recommendations and gather additional feedback.
4. Meet with representatives of the two major political ballot parties, state agencies (Department of Transportation and the Department of Administration's Division of Enterprise Technology), the Federal Social Security Administration, county, labor and community groups, to present a final draft of the retroactive voter record protocol.
5. Present a recommendation to the G.A.B. at its December 17, 2008, meeting for information or consideration. If significant changes need to be made to the proposal and recommendations based on feedback obtained from clerks in steps 1 and 2, a status report will be presented to the G.A.B. as information, and formal recommendation will be presented its January meeting.
6. Communicate the G.A.B. decision to the Legislature, all municipalities, clerks and the general public once the Board has made a decision.

7. Prepare a timeline with communication milestones based on the G.A.B. decision, keep the Legislature, municipalities, clerks and the general public duly informed before, during, and after the actual retroactive HAVA Check processing.

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JUDGE THOMAS CANE
Chair

KEVIN J. KENNEDY
Director and General Counsel

DATE: For the December 17, 2008, Meeting

TO: Members, Wisconsin Government Accountability Board

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

Prepared and Presented by:
David Buerger, Elections Administration Specialist
Government Accountability Board

SUBJECT: Recount Manual Review Committee Feedback

At the August 27, 2008, Board meeting, you the Board approved the Recount Manual for use in the fall elections subject to further technical revisions upon review by our stakeholders: municipal and county clerks, political party representatives and other interested persons. The purpose of this report is to provide the Board with a status update on the Recount Manual review process. Staff will return to the Board at another meeting in the near future with a revised Recount Manual and other recommendations for Board approval.

Staff convened an ad hoc review committee on December 3, 2008. The feedback provided can largely be categorized into three types: policy suggestions, legislative suggestions, and technical clarifications.

Policy Suggestions:

1. Reduce the level of detail required for poll book reconciliation.
2. Remove absentee application review from the recount process until § 9.01(1)(b)4 can be revised to allow draw down as a remedy.
3. Permit multiple reporting units to be recounted simultaneously if resources permit.

Legislative Suggestions:

1. Amend § 9.01(1)(ar)3. to allow clerks more time between when the recount petition is filed and when they must begin the recount.
2. Amend § 9.01(1)(b)4. to allow for draw down of probable absentee ballots in the event of a valid absentee certificate not having a valid absentee application.
3. Amend § 9.01(1)(b)4.d. to allow the board of canvass to draw down from ballots completely lacking proper initials before drawing down from ballots that were only partially lacking proper initials.

The attachment summarizes the policy, legislative and technical feedback provided by the ad-hoc Recount Committee.

Recount Committee Feedback

Suggestions/Clarifications for the Recount Manual

1. Introduction – Add language to the effect that the board of canvassers has the inherent discretion to run the recount as they see fit and should not feel compelled to get a consensus of the observers.
2. Page 1, FN2 – Check statutory text, should be no later than 9:00 am.
3. Page 3 – § 7.60 canvass rules should be mentioned as the county canvass deadlines are important to determine when the recount clock starts in a recount spanning multiple counties.
4. Page 3 & 5 – Add that the recommended best practice if anticipating a recount is to have the canvass done by early in the week, so the 3-day recount petition deadline would be on a Friday and the recount would not need to start until Monday. That way the clerks have the weekend to prepare, if needed.
5. Page 3 – Note in recount manual (and Election Administration manual) that clerks are advised to ask for contact information for the candidate for the days following the election so a candidate can be contacted in the event of a recount.
6. Page 3 – Clarify the open meeting `publication requirements under § 19.84. Newspaper publication is not required, just delivery of the notice to the newspaper. Posting in 3 places is sufficient; however a website does not count as one of the 3 places.
7. Page 5 – Add blank memory cards/PROM packs (if required) to checklist of materials. Originals from election must be kept at least 21 days.
8. Page 5 – Add exhibit stickers to checklist of materials.
9. Page 5-6 – Add that reconciling the poll book in advance of the recount is an option, but whoever does the reconciliation must prepare a detailed report of what was done for the board of canvass to approve.
10. Page 7 – Clarify that tabulators may continue to work as long as there is at least one member of the board of canvass present to supervise. Must still have full board approve actions while absent.
11. Page 7-8 – If absentee applications continue to be required at the recount (see Suggested Policy Changes #4), clarify why they are checked. If still required, indicate that copies are acceptable as long as original is available.
12. Page 8, FN8 – Citation should be reworded to correctly indicate that statute supports Paulson, not the staff attorney memo.

13. Page 9 – Clarify what a probable absentee ballot is and also add a reminder that a remade absentee ballot needs to be put in the probable absentee pile as well even though it will have no folds and two sets of initials now.
14. Page 9 – Restructure the draw down procedure to correctly indicate that draw down is required for rejected absentee certificate envelopes regardless of voter-ballot count.
15. Page 9 – Clarify that a ballot is only a blank ballot if there are no votes on it at all.
16. Page 9 – State under ballot count section that the ballots should not be separated into piles by how it was voted. Piles are too hard to randomize again.
17. Page 9 – Add a clarification that ALL ballots eligible to be counted (late arriving military, provisional, etc.) are to be included if draw down of blanks and improperly initialed is not enough.
18. Page 12 – Clarify that the worker feeding ballots into the tabulator should be watching for ballots that will be read as an undervote and set those aside in addition to those that may not be read correctly.
19. Page 12 – Clarify that an objection must have a reasonable basis, cannot object just to get the board to decide.
20. Page 12 – Emphasize that once a ballot is assessed for voter intent by the board of canvass, you cannot go back and ask for the machine to count it instead.
21. Page 14 – Add a section about retention of recount records.

Suggested Policy Changes

1. Reduce the level of detail required for poll book reconciliation.
 - Wide disparity among clerks as to how much they check during poll list reconciliation. Some check total voter numbers, some check a random sample of voter numbers and some follow the currently recommended procedure to check everything.
 - Committee also expressed 3 different practices for the reconciliation process:
 - Before the recount begins, clerk's office staff reconcile the poll lists and prepare a report of any discrepancies found and likely explanations for the board of canvass to review and approve.
 - At the recount, the poll lists are reconciled.
 - At the recount, the board of canvass checks the total voter count on each poll list to make sure they match, if they match, no further checks are conducted. If they do not match, the poll lists are reconciled.
2. Allow recount procedure to be abbreviated if parties stipulate agreement on procedure.

3. Use pre-recount teleconference to advise candidates if procedure will differ from manual and get any difference in procedure addressed (if not resolved) before the recount begins.
4. Remove any reference to absentee applications from recount procedures.
 - If there is no consequence to finding a problem with absentee applications, there is no need to have them examined at the recount. See page 7-8.
5. Decide if it is okay to remove an absentee ballot if a problem is identified with its application if the ballot can be readily identified. Supports Paulson/Town of Walworth memo distinction. Consensus that we should NOT add to manual, should be a case-by-case determination by the board of canvass.
6. Recommend running multiple reporting units at once if resources are available.
 - Potential harm of cross-contamination of reporting units must be weighed against the cost savings.
7. Recommend best practice of getting neighboring clerks/elections inspectors to serve as tabulators. Add to page 7 if approved.

Suggested Legislative Action

1. Change the filing deadline for a recount petition to be earlier in the afternoon (3:30pm), so that clerks have a better opportunity to prepare before the recount commences.
 - Typically recount petitions are filed right at the deadline, which means the clerks must begin by 9:00am the next day. See § 9.01(1)(ar)3.
2. Changes to draw down procedure in § 9.01(1)(b)4:
 - Allow draw down for valid absentee certificates that lack a valid absentee application. See §§ 6.84(2), 6.86, 6.87(3)-(7), mandatory provisions.
 - Blank ballots should not be drawn down, some voters may intend to vote for none of the above. Also not consistent that we draw down total blanks, but not blanks for the office being recounted.
 - Allow ballots with no initials to be drawn down first, then those only missing a single set of initials if draw down is still needed.

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JUDGE THOMAS CANE
Chairperson

KEVIN J. KENNEDY
Director and General Counsel

MEMORANDUM

DATE: For December 17, 2008 Meeting

TO: Members, Government Accountability Board

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

Prepared and Presented by:
Ross Hein, Elections Administration Specialist
Shane W. Falk, Staff Counsel
Government Accountability Board

SUBJECT: Clarification of § 7.23 (1) (g), Wis. Stats.
Maintenance of Electronic Voting Records

Issue

For compliance with § 7.23 (1) (g), Wis. Stats., what election data are required to be transferred to an electronic medium and maintained for 22 months?

Background

The Government Accountability Board (G.A.B.) staff received a request that G.A.B. require clerks' compliance with § 7.23 (1) (g), Wis. Stats. Staff has been gathering information on what actions clerks are taking in order to comply with this statute. Staff finding: There is no consistent manner in which Wisconsin clerks are following § 7.23 (1) (g). Exactly what § 7.23 (1) (g) requires is an issue that needs to be clarified.

“7.23 (1) (g): Detachable recording units and compartments for use with electronic voting machines may be cleared or erased 14 days after any primary and 21 days after any other election. Before clearing or erasing the units or compartments, a municipal clerk shall transfer the data contained in the units or compartments to a disk or other recording medium which may be erased or destroyed 22 months after the election to which the data relates.”

Cost a Major Consideration: There has been much concern expressed by municipal and county clerks regarding the cost of transferring election data from memory devices to an electronic medium, such as a compact disk or a hard drive. Election costs within the last 5 years have increased dramatically with state and federal mandates leaving many of the municipalities struggling to fund all the statutorily required election mandates.

One of the principle issues is the cost of transferring the data to an electronic medium, which is then stored for 22 months. Depending on the voting equipment manufacturer/programmer, the costs of transferring the memory device data can range from \$50-\$200 for each election for each voting equipment unit. For example, the cost to transfer the memory device results to a recording medium for the City of Marinette, a municipality with a population of less than 12,000, is \$1,400 for 2008.

Unlike most other states that provide state funds to support the local electoral process, the State of Wisconsin does not award any General Purpose Revenue (GPR) to local governmental units to help prepare for or conduct elections. In Wisconsin, the cost and financial support for funding elections are incurred at the local level. In addition to complying with the Federal Help America Vote Act (HAVA) of 2002, local officials also have to adhere to an array of HAVA companion state laws codified in 2003 Wisconsin Act 265 (published April 29, 2004); 2005 Wisconsin Act 92 (published January 19, 2006); 2005 Wisconsin Act 333 (published April 28, 2006); and, 2005 Wisconsin Act 451 (published June 9, 2006).

As Federal and State laws governing elections administration continue to grow in number and complexity, the financial burden on local election officials grows proportionally. Local elections partners are having and will continue to experience a difficult enough time struggling to support even the most basic/core election requirements.

Discussion

With the advent and increased use of electronic voting equipment, the legislature passed 1987 Act 391, which revised §7.23(1)(g), Wis. Stats., to address the emerging fact that some election materials were created and stored in electronic forms. The legislative intent surrounding the adoption of the current version of §7.23(1)(g), Wis. Stats., was to capture the electronic forms of election materials for retention, just as had been the practice for lever machines, paper and hard copies of election materials. In addition, the revisions to §7.23(1)(g), Wis. Stats., were consistent with requirements of 42 U.S.C. §1974 of the Civil Rights Act of 1960, which requires retention of all election records from Federal elections for 22 months.

The November 4, 2008 General Election contained Federal offices on the ballot. This fact brings into play §7.23(1)(f), Wis. Stats., which requires elections officials to retain for 22 months the following election materials: “ballots, applications for absentee ballots, registration forms, or other records and papers requisite to voting.” The application of §7.23(1)(g), Wis. Stats., provides election officials with a means to preserve the electronic election materials for the same retention period of 22 months and specifically authorizes the transfer of electronic elections materials to disk or other recording medium to allow for the erasure of the memory devices for re-use in the next election. Under the current status of §7.23(1)(g), Wis. Stats., and despite the fact that it was originally intended to apply to Federal elections, elections officials have an obligation to retain election materials for 22 months for Federal, State, and local elections in Wisconsin.

With respect to electronic/computerized vote recording or tabulation equipment utilizing removable programmable data storage devices (memory devices or PROMs) or other similar storage devices, the United States Department of Justice, Public Integrity Unit, recommends that election officials retain an electronic record of the program by which votes are to be recorded or tabulated, which is captured prior to the election, and the hard copy output from each detachable recording unit or compartment (memory device or PROM), i.e. the results tape. The electronically stored program and the results tapes should then be retained for 22

months. From speaking with ES&S and Command Central representatives, it appears that the memory devices for Insight and Eagle optical scan equipment only possess the final results totals and no other programming data can be transferred. This raises a large cost issue for preservation of results data that is actually preserved in paper form. To comply with U.S. DOJ recommendations, the results tape from the voting equipment and the original programming is sufficient.

A. Some jurisdictions in Wisconsin actually own their own programming software, which will make it easier to comply with the U.S. DOJ policy of retaining an electronic record of the program by which votes are to be recorded or tabulated and the results tape. In fact, the programming software likely can also be used to transfer data from the memory devices to electronic media. Other than labor costs associated with transferring programming data, other costs associated with retaining the original programming should be minimal. (NOTE: ES&S currently offers Elections Results Manager software for \$8,000.00 plus \$1,500.00 for training (total cost \$9,500.)

Per a representative of ES&S, the following counties (and City of Milwaukee) have their own programming software:

- Brown
- Columbia
- Dane
- Jefferson
- La Crosse
- Marathon
- City of Milwaukee
- Rock

Per a representative of Command Central (programmer for Sequoia voting systems,) the following counties have their own programming software:

- Chippewa
- Eau Claire
- Fond du Lac
- Racine
- Sheboygan
- Waukesha

Per a representative of Premier, the following counties (and two cities) have their own programming software:

- Chippewa
- Dodge
- Door
- Green
- Kenosha
- Ozaukee
- Sauk
- St. Croix
- Walworth
- Washington
- Winnebago
- City of Kenosha
- City of Oshkosh

B. For those elections officials using both the Premier AccuVote OS and AccuVote TSX, or similar systems, the manufacturer has provided instructions to download all election programming and materials from each memory device to hard drive or disk before erasure and reprogramming. Those elections officials who possess these and similar elections management software should also be able to download all election programming and materials from each device to hard drive or disk before erasure and reprogramming. The electronically stored data then should be retained for 22 months. Other than labor costs associated with transferring programming and election data, other costs associated with retaining the original programming and election materials should be minimal.

Per a representative of Premier, the following jurisdictions are able to readily transfer all election data:

- Calumet County (17 municipalities)
- Chippewa County (31 municipalities)
- Dodge County (42 municipalities)
- Door County (19 municipalities)
- Green County (22 municipalities)
- Kenosha County (13 municipalities)
- Ozaukee County (16 municipalities)
- Sauk County (37 municipalities)
- St. Croix County (26 municipalities)
- Vilas County (15 municipalities)
- Walworth County (28 municipalities)
- Washington County (21 municipalities)
- Winnebago County (21 municipalities)
- City of Mauston in Juneau County
- Town of Three Lakes in Oneida County
- Town of Marion in Waushara County
- Town of Wautoma in Waushara County

C. Election officials may make arrangements with the manufacturers or programmers to have them retain the programming data for the retention period of 22 months. After speaking with representatives of ES&S and Command Central, we learned that they still possess the election programming data from the November 4, 2008 election. Arrangements could be made to either have them retain this programming data in-house for 22 months or transfer it to electronic media for the municipalities to retain. In the future, new understandings could be reached between ES&S and Command Central to deal with this programming data retention as part of the original writing of the programming. It is likely that storage and transfer fees may be charged by the manufacturers.

D. Election officials may transfer the data contained on the memory devices to electronic media. One manufacturer (Premier) has already provided the means and ability to do this transfer after an election. Another manufacturer (ES&S) sells a drive that costs \$600.00 and it can read and transfer all data from PCMCIA memory cards to electronic media. There is substantial cost associated with having the manufacturers transfer data on the memory devices to electronic media, but only for two of the manufacturers serving Wisconsin, one of which also sells the drive which would allow the election officials to complete the transfer on their own.

Premier: Labor costs, but no additional costs. See B above.

Command Central (Sequoia):

Edge results cartridges: \$200 first unit per year for 4 elections, then \$50 per unit thereafter per year for up to 4 elections;

Optech memory pack: \$225 first unit per year for 4 elections, then \$50 per unit thereafter per year for up to 4 elections.

ES&S:

M100: OmniDrive to copy PCMCIA cards: \$600

Email Zip Drive copy of programming: \$125/unit

E. Finally, the electronic election materials contained on the memory devices may be retained on the device itself for the period of 22 months. In light of the frequency of Federal elections (every two years) and should §7.23(1)(g), Wis. Stats., be revised to have a shorter retention period for State and local elections, election officials would likely need two sets of memory devices in order to have one set in storage at a time for the 22 month retention period. Per discussions with representatives of the manufacturers of voting equipment used in Wisconsin, the following cost estimates are applicable for this option:

Command Central (Sequoia):

Edge results cartridges: \$200/unit to 100; \$150/unit over 100

Optech Insight memory pack: \$250/unit

Optech Eagle memory pack: \$250/unit

Premier:

AccuVote OS memory card: \$275/unit

AccuVote TSX memory card: \$195/unit

Rental option: \$95/unit

ES&S:

M100 PCMCIA Card: \$90/unit plus delivery

Eagle RAM pack (new): \$350/unit plus delivery

Eagle RAM pack (used): \$300/unit plus delivery

I-Votronic compact flash card: \$75/unit plus delivery

Rentals:

M100 PCMCIA Card: \$10/unit per election plus delivery

Eagle RAM pack: \$75/unit per election plus delivery

I-Votronic compact flash card: \$10/unit/election plus deliv.

Recommendations For All Elections Until Legislative Changes May Occur

1. For those election officials using electronic/computerized vote recording or tabulation equipment utilizing memory devices such as a PROM or other similar memory storage devices, the "data" that should be transferred and maintained electronically for 22 months pursuant to §7.23(1)(g), Wis. Stats., and 42 U.S.C. §1974, is the electronic record of the program by which votes are to be recorded or tabulated, which is captured prior to the election, plus the hard copy output from each detachable recording unit or compartment (memory device or PROM), i.e. results tape.

If there is no removable initial programming contained on the detachable recording unit or compartment (memory device or PROM), then the costs of simply retaining an electronic copy of the results tape is excessive. The Government Accountability Board staff may coordinate contact between local election officials and manufacturer and programming representatives to arrive at a uniform policy and escrow arrangement for programming, if necessary.

2. As an alternate way to comply with §7.23(1)(g), Wis. Stats., and 42 U.S.C. §1974, election officials using electronic/computerized vote recording or tabulation equipment utilizing removable programmable data storage devices (memory devices or PROMs) or other similar storage devices may also retain the actual devices for the period of 22 months.
3. For those elections officials using both the Premier AccuVote OS and AccuVote TSX, the “data” that should be transferred and maintained electronically for 22 months pursuant to §7.23(1)(g), Wis. Stats., and 42 U.S.C. §1974, is all election programming and materials from each device which can be downloaded to hard drive or disk before erasure and reprogramming.
4. For those elections officials who possess elections management software the “data” that should be transferred and maintained electronically for 22 months pursuant to §7.23(1)(g), Wis. Stats., and 42 U.S.C. §1974, is the following: A) all election programming (programmable code,) and B) for each memory device programmed by election officials, the accumulation of election results will be incorporated into the election management system in order to obtain and retain aggregate election results. This programming and results data can be downloaded to hard drive or disk before erasure and reprogramming of the memory devices.

Next Steps

1. The Government Accountability Board should pursue a 2009 Legislative Agenda that includes legislative changes to establish two separate retention periods for electronic and other election materials: A) 22 months for elections with a Federal office on the ballot; and B) a shorter period tied to the right to contest/recount for elections with only State or local offices on the ballot.
2. The Government Accountability Board should continue to gather information regarding the costs and ranges of options available for election materials retention, including discussions with our local election partners, manufacturers and programming representatives (specifically regarding retention of programming data,) and the United States Department of Justice—noting any additional updates to the U.S. DOJ data retention policy with respect to audit logs and other data that might be available on some removable memory devices.

State of Wisconsin \ Government Accountability Board

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JUDGE THOMAS CANE
Chairperson

KEVIN J. KENNEDY
Director and General Counsel

MEMORANDUM

DATE: For December 17, 2008, Meeting

TO: Members, Government Accountability Board

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

Prepared and Presented by:
Ross Hein, Elections Administration Specialist
Government Accountability Board

SUBJECT: Protocol for Conducting On-Site Monitoring of Administrative Code Chapter 5
Electronic Voting System Security

During the Board's November 11 meeting, staff was asked to develop procedures to monitor voting system security compliance. This memorandum sets forth a recommended protocol for addressing the Board's directive.

Background:

Administrative Code Chapter 5: Ballots and Electronic Voting Systems Security provides many safeguards to ensure the security and accuracy of our electronic voting systems and ballots. For each election, the municipal clerk is responsible for securing all memory devices within a voting system by keeping record on the Inspectors' Statement (EB-104) specifying which memory devices and which serialized tamper-evident seals are assigned to particular voting stations or units.

Currently the post election procedures put forth in 5.05 of the Administrative Code monitors compliance at the local and county level:

5.05: At each post-election meeting of the municipal board of canvassers, the members shall verify that the tamper-evident serial numbers from the voting equipment have been recorded on five Inspectors' Statements (EB-104) or 10% (whichever is greater) of the total statements, and have been initialed by the Chief Election Inspector. The county board of canvassers shall verify ten Inspectors' Statements. All Inspectors' Statements shall be verified by the appropriate board of canvassers in a recount. Proper documentation shall be maintained.

G.A.B staff currently monitors accessibility for individuals with disabilities by selecting polling locations throughout the state and traveling to those locations on Election Day. G.A.B staff uses the Polling Place Accessibility Survey as a guide in determining accessibility compliance.

For the 2008 election cycle starting with the February 19 Presidential Preference Primary, G.A.B staff evaluated **289** polling locations, roughly 10% of the 2,822 polling places in the state. The on-site assessments were conducted during five elections held in 2008; the four scheduled elections and a June 24, 2008, special school district election. At least one polling place in each of the 72 counties in the state has been evaluated.

Recommendation:

In order to monitor voting system security compliance, staff recommends implementing security monitoring in conjunction with the on-site accessibility visits on Election Day. Staff, in addition to completing the polling place accessibility evaluation, will be trained and instructed to verify and record voting system security documentation.

Procedure:

1. Staff will request that Chief Election Inspector provide the Inspectors' Statement (EB-104) and G.A.B staff shall verify the memory device and serialized tamper-evident seals assigned to particular voting stations or units are recorded on the Inspectors' Statement (EB-104).
2. G.A.B staff will also verify the Chief Election Inspector initials are contained in the pre-election verification section on the Inspectors' Statement (EB-104). After which, G.A.B staff shall then verify the same serialized tamper-evident seal number(s) recorded on the Inspectors' Statement are contained on the electronic voting systems. G.A.B staff will maintain proper written documentation of voting system security compliance.
3. Status reports will be provided to the Board at the same time that accessibility updates are given.

The recommendation proposed procedure offers a cost-effective verification approach that will be able to be implemented for the February 17, 2008, Primary Election and assures the electronic voting systems rules are being followed per Administrative Code Chapter 5.

State of Wisconsin\Government Accountability Board

Ethics & Accountability Division
44 East Mifflin, Ste. 601
Madison, WI 53703
Phone (608) 266-8123
Fax (608) 264-9319
E-mail: ethics@ethics.state.wi.us



KEVIN J. KENNEDY
Director and General Counsel

MEMORANDUM

DATE: For December 17, 2008 Board meeting

TO: Members, Wisconsin Government Accountability Board

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

SUBJECT: Requests of Justices Ziegler and Roggensack for partial waiver of financial interest disclosure requirements

Justice Annette Ziegler and Justice Patience Roggensack have requested that the Government Accountability Board permit them to continue to hold assets in blind trusts and not report those assets on their annual financial disclosure statements. The Ethics Code for State Public Officials, §19.43, *Wisconsin Statutes*, requires annual financial disclosure of an official's investments. The law further requires that information "shall be provided on the basis of the best knowledge, information and belief of the individual." 19.44 (4), *Wisconsin Statutes*. Wisconsin law contains no provision for an official to establish a blind trust and not disclose trust holdings. Nor do I think an individual can avoid disclosure by purposeful ignorance.

Section 19.43 (8), *Wisconsin Statutes*, provides:

19.43(8) On its own motion or at the request of any individual who is required to file a statement of economic interests, the board may . . . waive any filing requirement if the board determines that the literal application of the filing requirements of this subchapter would work an unreasonable hardship on that individual or that the . . . waiver is in the public interest. The board shall set forth in writing as a matter of public record its reason for the . . . waiver.

This provision could be read to give the Board authority to permit an official to establish a blind trust and to waive the disclosure of financial interests in a blind trust. The test is whether literal application of the filing requirement would work an unreasonable hardship or whether it is in the public interest to grant a waiver.

I am aware of only two officials who, in the past, have established a blind trust: Governor Tommy Thompson and Governor Scott McCallum. Currently, Attorney General J.B. Van Hollen also has placed assets in a blind trust.

The Ethics Board never adopted a policy with respect to blind trusts, although the Board was aware of them. In 1990, the Board authorized its Director to obtain from the trustee of Governor Thompson's trust, George Steil, information about the investments placed in the trust and an agreement to notify the board when any trust asset was disposed of.

After he left office, Governor Thompson paid a \$3,000 forfeiture for not reporting a real estate acquisition by Mr. Steil that was placed in the trust, even though Mr. Thompson knew about the acquisition at the time it was made.

In 2001, the Ethics Board authorized its Director to communicate with Governor McCallum either that he not establish a blind trust or that he adhere to federal requirements for blind trusts established by the United States Office of Government Ethics.

Both Justice Roggensack and Justice Ziegler were advised by the Ethics Board's Director that a blind trust would be permitted. Both Justices were advised to follow federal rules for blind trusts. These rules require (1) that the official file with the Board the trust instrument creating the blind trust; (2) that the trustee of each trust be an identified financial institution independent of the official and the official's family; and (3) that the only communications that pass between the official and the trustee be in writing and be limited to the trustee's written report, with a copy to the government agency, of the sale of an asset and any written summary required for tax purposes.

Neither Justice Roggensack's nor Justice Ziegler's trusts fully conform to federal rules at this time. We have a copy of the trust instrument for one of Justice Roggensack's trusts. The trustees are financial institutions. We have been informed of the assets initially placed in the blind trusts. Neither we nor Justice Roggensack receives notices of the disposal of any asset.

We do not have copies of the trust instruments for Justice Ziegler's blind trusts. We have been informed that at least one trustee of the trust is a relative of Justice Ziegler (I believe a brother-in-law). Justice Ziegler has not provided information about what assets she placed in the blind trusts. I note that, of investments reported in 2007 that were not reported in 2008 (and which could have been either sold or placed into a blind trust) almost all were stock holdings in publicly-traded corporations. Investments reported in 2007 and not in 2008 which were not publicly-traded stocks were a 10% or greater interest in a real estate company, Ziegler Bence Partners 4; and three non-commercial real estate properties. I also note that Justice Ziegler no longer reports owning over \$50,000 in stock in Ziegler Co. Inc., a publicly-traded corporation that provides asset management and investment banking services.

Annette K. Ziegler

November 26, 2008

RECEIVED

DEC -1 AM 10:42

Wisconsin Government Accountability Board
17 West Main Street, Suite 310-P.O. Box. 2973
Madison, WI 53701-2973

STATE OF WISCONSIN
ELECTIONS BOARD

Re: Blind Trust Waiver-Wis. Stat. 19.43(8)

Dear Members of the Board:

I write in response to your recent ruling regarding blind trusts. While I have not received any notice from you regarding the ruling, I respectfully request a Wis. Stat. Sec. 19.48(8) exemption from the ruling. I understand that the Board contemplated this possibility of waiver. For the following reasons, I believe that it is in the best interests of the public and the court system that the Ziegler blind trusts remain intact.

Put simply, placing my husband's and my assets in blind trusts ensure that any party that comes before me is confident in the impartiality of my decisions. To be clear, I have always ruled on every case with only the facts and the law as my guide. Moreover, because I am now unaware of my own holdings, all parties in a case have an added level of confidence that outside factors did not influence my decisions.

The public also benefits from knowing that no Justice knows of his or her family's stock ownership. At the Wisconsin Supreme Court, a blind trust is a valuable tool to ensure that there is not even the appearance that a Justice could be influenced based upon stock ownership. Having been someone who has filed numerous Statements of Economic Interest over the years, I understand the importance of public disclosure of a known asset. However, the purpose served by disclosure of presently unknown assets should be balanced with the purpose served by keeping intact an existing blind trust.

Why does it make sense to exempt a Justice of the Wisconsin Supreme Court from the Government Accountability Board's blind trust ruling? First, it would further public confidence in the courts because it will eliminate the temptation (and perhaps obligation) for a party to attempt to configure a court that they view as more sympathetic to their cause. Self serving motions for recusal and the attendant waste of resources and the effect such gamesmanship has on the public trust are avoidable with a blind trust. Second, the public is better protected when Justices can render a decision without even the perception of a conflict of interest. Recall that stock ownership is rarely a basis for recusal given the miniscule nature of ownership in a public company, but still a party more interested in political results can tactically assert matters to the long term detriment of the public trust. A blind trust prevents that outcome. Third, unlike circuit court judges or even court of appeals judges, there are only seven Wisconsin Supreme Court Justices. We are elected to hear and decide the matters that come before us and, unlike other courts, no one else can be selected to sit in our stead. This fact alone is a good reason to make every effort to always have a court of seven decide a case. A blind trust furthers

the goal of having seven Justices decide a case because it removes from question, any issue surrounding stock ownership.

Blind trusts are not new. Government officials have been using them for some time to avoid possible conflicts of interest. The federal system has employed the use of them for decades. It is my understanding that in prior years, blind trusts were a satisfactory practice in Wisconsin, without question, by at least one other judicial office holder and another government official. It seems then, that while Wisconsin may not have had specific rules to govern the use of blind trusts, they have been deemed acceptable for some time. I relied on that accepted practice when my family decided to implement blind trusts. Particularly for a Justice of the Supreme Court, a blind trust should be deemed a suitable method of removing even the appearance that a holding could effect the consideration of that jurist.

In fact, the use of blind trusts has been applauded by the Wisconsin Ethics Board, which is one of the predecessors to the GAB. Indeed, as a part of the drafting process for the blind trusts, we forwarded our attorney a letter sent to me by the Ethics Board which commended the undertaking. Also, after the trusts were drafted, they were reviewed by the Executive Director of the Judicial Commission. Thus, until this Board's recent ruling, our formation of blind trusts was viewed with approval, not viewed with disfavor.

Under the blind trusts that we have in place, we cannot control the ownership of stocks in any way. We cannot know what stocks exist in the trust or what is bought or sold. Even if asked, (which we would not) the trustee is prohibited from disclosing that information to us. Because of these safeguards, there is no possible concern that somehow a holding can affect my determination of a case.

Significantly, you should consider that requiring a Justice to disband a blind trust may ultimately affect the public trust and confidence in the judiciary. Political gamesmanship, not judicial integrity, may be the result of a decision to bar blind trusts for Justices of the Court. The Code of Judicial Conduct does not call for a Judge's recusal because of stock ownership. The relative amount of stock ownership by a judge in comparison to the total value of a publically traded company is *de minimis*. It is a near impossibility that a publically traded company's stock value could ever be affected by a Wisconsin court decision, and even more unlikely that the value of a Judge's portfolio may be affected by such a decision. If there is concern that a Judge may rule for a company because they own stock, then the concern is associated with the notion that the Judge seeks to gain from that ruling. As a practical matter, any such gain would be next to impossible. A blind trust, however, completely removes even the appearance that a Judge could be ruling in favor of the company based on stock ownership. Requiring a Justice to dissolve an existing blind trust cannot possibly further the public trust and confidence in the judiciary.

Furthermore, a blind trust provides even better safeguards than ownership in a mutual fund or common investment fund yet a mutual fund and common investment fund

receive special protection in the Code of Judicial Conduct. Presumably that protected status is because a Judge does not typically manage those funds. However, even in a mutual fund or a common investment fund, the Judge could be quite aware of what stock exists in the fund. The exact holdings are, after all, published by the fund. Thus, a blind trust actually offers more protection to the public than such funds. However, if a blind trust is not deemed to be a satisfactory safeguard, then, for the same reasons, there exists no logical basis for shielding a mutual fund or common investment fund and the Board would then require a listing of each of every fund's holdings by Wisconsin officials. The Code of Judicial Conduct suggests that it is not the holding that dictates the duty of a Judge, but rather, it is the Judge's management of the asset that informs of a Judge's duty. SCR 60.01 (5) (a) instructs us that:

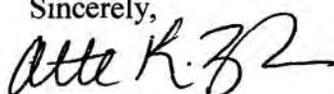
“‘Economic interest’ means ownership of more than *de minimis* legal or equitable interest, or a relationship as officer, director, advisor or other active participant in the affairs of a party, except that none of the following is an economic interest:

(a) Ownership of an interest in a mutual or common stock investment fund that holds securities, **unless the judge participates in the management of the fund** or unless a proceeding pending or impending before the judge could substantially affect the value of the interest.”
(emphasis added).

Seemingly then, this rule instructs us that it is not stock ownership which necessarily implicates a Judge's economic interest, but rather, it is properly the Judge's participation in the management of the investment which implicates the interest. If this rule is to make sense, then a blind trust actually proves more useful in promoting public confidence than a Judge investing in a mutual fund.

The Ziegler blind trusts were formed in good faith, with no expectation that they would need to be disbanded at a later time. Please recognize the fact that implementing these trusts was not a simple undertaking. Not only was it very expensive, but it involved sweeping changes and sacrifice of financial knowledge and control. I respectfully request that as a Justice, who in good faith created the blind trusts in reliance on the then existing rules and practice, I be exempted from the recent ruling and be allowed to continue to file my Statement of Financial Disclosure with the blind trusts in place.

Thank you for your consideration.

Sincerely,

Annette K. Ziegler

RECEIVED
ANNETTE K. ZIEGLER
WEST BEND, WI 53090 DEC 11 PM 7:10

December 11, 2008 STATE OF WISCONSIN
ELECTIONS BOARD

(Via facsimile)
Jonathon Becker
Wisconsin Government Accountability Board
Madison, WI

Re: Blind trust requirements

Dear Mr. Becker:

While I know that the State of Wisconsin does not currently have rules regarding the formation of blind trusts, should the Board institute such rules or should the Board decide that such trusts will need to meet certain conditions to be qualified as exempt, please so advise. If you can list requirements that, if met, will ensure that they are deemed exempt, please advise. At that point, I would be in a position to determine whether our trusts are in compliance with those new requirements or whether they will need some adjustment to so comply.

The trusts, as they stand, preclude me from knowing or acquiring knowledge of our stock ownership. The goal of these trusts is to allow me to fully participate in court decisions and provide the maximum opportunity for me to serve the citizens of this State, without question. Thank you.

Sincerely,

Annette K. Ziegler



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December 8, 2008

Wisconsin Government Accountability Board
17 West Main Street, Suite 310
P.O. Box 2973
Madison WI 53701

RE: Request for Waiver of Disclosure Requirement

Dear Members of the Board:

As you know, we represent Wisconsin Supreme Court Justice Patience D. Roggensack. On November 3, 2008, Kevin Kennedy, Director and General Counsel of the Government Accountability Board ("Board"), informed me that the Board had made an initial determination that it would "not permit an official to exclude economic interests held in a blind trust" from that official's annual Statement of Economic Interests. On November 11, 2008, the Board apparently affirmed this initial determination.

We understand the Board's position to be that before Justice Roggensack completes and files her Statement of Economic Interests for calendar year 2008, she must obtain information that she currently does not have, and is prohibited from obtaining. We do not believe that the Board has authority to require that Justice Roggensack obtain this information. Under Wisconsin law, she is required to provide information "on the basis of [her] best knowledge, information and belief." Wis. Stat. § 19.44(4). We see nothing in the statutes which empowers the Board to require Justice Roggensack to obtain information beyond what she already possess. However, in an attempt to avoid any dispute about the Board's authority, and without waiving the right to question the Board's authority in this or any other regard, I write to request that the Board waive any requirement that Justice Roggensack learn of, and then disclose, the holdings of the blind trusts established by her and her husband.

Under Wis. Stat. § 19.43(8), the Board may waive any filing requirement if the Board determines that the requirement would work an unreasonable hardship on the individual, or that the waiver is in the public interest. Here, a waiver of the "requirement" (as determined by the Board) that Justice Roggensack and her husband terminate their blind trusts so that Justice Roggensack can obtain a listing of investments that are held in them, and then disclose those investments on her Statement of Economic Interests 1) is in the public interest, and 2) will

prevent an unreasonable hardship on Justice Roggensack and her husband. We, therefore, respectfully request that the Board waive the disclosure requirement for Justice Roggensack.

A Waiver of the Disclosure Requirement is in the Public Interest

A waiver of the requirement that Justice Roggensack learn of and then disclose the assets in her and her husband's blind trusts is in the public interest. The public interest in disclosure with regard to judges is to provide members of the public with information so that they can be apprised of whether a judge has a potential conflict of interest in pending matters. Justice Roggensack fully supports the goal of promoting public trust in transparent government, and she seeks to serve the public interest in an impartial and accessible judiciary. Indeed, that is why she established her blind trust in July of 1996, before first assuming judicial office. She sought to be unaware of her holdings in publicly traded securities so that she could minimize the number of times where a potential conflict of interest could arise and to minimize the number of requests for recusal. The blind trusts have worked. Justice Roggensack has seldom had to recuse herself, and she has never been asked to recuse herself due to stock ownership. This is in sharp contrast to other justices, who have been asked to recuse themselves due to the ownership of securities.

Justice Roggensack's blind trust and that of her husband are not inconsistent with the public's interest in information about potential conflicts of interest because they are truly "blind." Justice Roggensack and her husband's trusts hold only publicly traded securities. Any real estate and partnership holdings that they own have been fully disclosed in Justice Roggensack's Statements of Economic Interest. Their trust assets are managed by independent investment advisors with recognized brokerage firms. The trustees for both trusts are prohibited from disclosing the securities in the trusts to either Justice Roggensack or her husband.¹

Justice Roggensack established her blind trust over 12 years ago. She placed her retirement account holdings into the trust. At that time, those holdings consisted of ten publicly traded stocks, which she disclosed. According to the investment advisor for the blind trust, only one of those stocks remains in the blind trust (Justice Roggensack does not know which stock that is, nor do I). However, the blind trust has since purchased, and currently holds, over 125 new positions. All of these investment decisions were made by the investment advisor, without any input by or knowledge of by Justice Roggensack. Justice Roggensack does not know, and has never known, what these new holdings are. Indeed, until this issue arose she was not even aware of the number of positions held by her blind trust.

Similarly, Justice Roggensack does not know what is in her husband's, Dr. Roggensack's, blind trust. According to the investment advisor for that trust, approximately one half of the securities initially placed into the trust have been sold, and 48 new holdings have been

¹ More specific information about the Trusts and their history is contained in my November 3, 2008 letter to the Board, which is incorporated by reference into this request.

added. Neither Justice Roggensack or her husband have any information about which securities were sold, or which new securities were purchased.

Simply put, what the Board is asking Justice Roggensack to do is to find out the identity of over 150 securities which have been purchased by the investment advisors to the blind trusts since they were created, and to disclose securities that the trusts hold on December 31, 2008 on her Statement of Economic Interests due April 30, 2009. This does nothing to inform the public about any existing potential conflict of interest, because there can be no reasonable argument that, under the current circumstances, Justice Roggensack has any idea what these new investments are. The Board's request does, however, create the possibility of a claim of conflict of interest where no such claim currently exists. This is not in the public interest.

This last point deserves special emphasis. Unlike most judges, Justice Roggensack sits on a court of seven members where the members can not be substituted with another judge. Wisconsin Constitution, Article VII, § 4(3). Therefore, recusal of a Supreme Court justice does not simply result in the assignment of a new judge, as occurs at the trial court or court of appeals level, it fundamentally alters the composition of the reviewing court. This fact can, in some cases, result in a deadlocked court or a court with too few justices to decide important cases. It can also lead to attempts to influence the outcome of cases by forcing the recusal of justices.

Because of this, as pointed out previously, respected commentators have advocated that state and U.S. Supreme Court justices should be required to place their stock holdings in blind trusts. (See Attachments A and B.) In Wisconsin, the instances where parties seek the recusal of a Supreme Court justice have become more common. The Supreme Court has become quite concerned about recusal issues and is considering establishing standards for determining recusal requests. (See Attachment C - a newspaper description of a recent hearing on this issue.) Chief Justice Abrahamson has advocated that any such standards should also address the issue of a justice's stock holdings (See Attachment C.) Although under current law a justice's decision on a recusal request may not be appealed, as Chief Justice Abrahamson observed, it may be one of the toughest decisions that a judge must make. (Id.) By establishing the blind trusts, Justice Roggensack has avoided these issues. Therefore, the Board will best serve the public interests it seeks to protect by waiving the preclusion of blind trusts in Justice Roggensack's case.

The Disclosure Requirement Works an Unreasonable Hardship on Justice Roggensack and Her Husband

Forcing Justice Roggensack and her husband to terminate their blind trusts will also work an unreasonable hardship on Justice Roggensack and her husband. Prior to creating her 1996 blind trust, Justice Roggensack consulted with the Director of the Ethics Board. She was informed that if she did not know of particular investments, she did not have to annually discover and disclose that information. She was told that a blind trust was an acceptable vehicle for putting assets beyond her "knowledge," as that term is used in Chapter 19. Later, when her

husband retired from Madison Radiologists, S.C. ("MRSC"), Justice Roggensack was further informed by the Ethics Board's Director that her husband could also create a blind trust, which could be used to hold investments "rolled over" from MRSC's retirement plan. Not only did the Ethics Board Director approve of this blind trust, he also provided her with information to assist in structuring it.

Justice Roggensack and her husband relied on, and followed, the advice of the Ethics Board Director. Justice Roggensack placed her retirement account holdings in a blind trust. Dr. Roggensack withdrew his retirement funds from MRSC's plan and placed them into a blind trust (but not before Justice Roggensack disclosed every security that was placed in it). Justice Roggensack and her husband have therefore made significant financial and estate planning decisions based on that advice, and would have made far different ones had they known they could not have blind trusts.

The Board is now demanding that Justice Roggensack and her husband terminate their blind trusts, but Justice Roggensack and her husband cannot undo the decisions they have made in good faith and in reliance on what the Ethics Board staff previously told them regarding blind trusts. Dr. Roggensack, for example, cannot replace his retirement funds into MRSC's plan. This irrevocable act would never have occurred if Justice Roggensack had known it would create potential conflicts of interest for her. The Board should therefore not retroactively apply its blind trust decision to the Roggensacks.

Moreover, forcing Justice Roggensack and her husband to terminate the trusts will create problems where there are no problems. As discussed above, Justice Roggensack and her husband have trusts that are truly blind. Justice Roggensack does not know what publicly traded securities she and her husband hold; therefore, she cannot appear to be influenced by such ownership. Actual conflicts of interest are avoided; so is the appearance of conflicts. However, if Justice Roggensack is forced to learn of her and her husband's securities, she may learn that some years ago, one of them (unbeknownst to her) owned stock in a company that was a party to a suit she helped decide. Justice Roggensack and the Court on which she serves may face unfounded allegations of bias and an increase in motions for reconsideration claiming the same. The possibility of unnecessary attacks on Justice Roggensack's integrity works an unreasonable hardship on her.

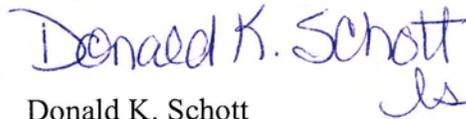
Conclusion

Justice Roggensack asks that the Board recognize and respond to the unique set of facts she presents. Justice Roggensack and her husband created trusts that are truly "blind." Moreover, Justice Roggensack is asking that the Board waive what is, for her, a retroactive application of a new rule, one that would require her to discover and disclose information she does not have.

Wisconsin Government Accountability Board
December 8, 2008
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Justice Roggensack and her husband placed assets in blind trusts before the Board's decision not to permit blind trusts, and they did so in reliance on information and advice they received from Ethics Board staff. Justice Roggensack does not know what the trusts hold. The public knows everything she knows about her securities. The public interest is better served if Justice Roggensack and her husband's blind trusts are permitted to satisfy her obligations under Wis. Stat. § 19.44(4). We therefore respectfully request that the Board waive the requirement that Justice Roggensack discover and disclose the assets held in her and her husband's blind trusts.

Very truly yours,

A handwritten signature in blue ink that reads "Donald K. Schott" followed by a stylized monogram "DS".

Donald K. Schott

DKS:ls4
Attachments

The New York Times

The Board

A Blog by the Editorial Writers of The New York Times

JANUARY 16, 2008, 4:39 PM

Sorry, The Judges Own Too Much Oil Company Stock to Hear Your Case

By THE EDITORIAL BOARD

Big corporations have been winning more than their share of victories lately in Congress and in the courts. But the California Supreme Court may have just brought things to a new low. It turns out that it does not have enough justices without financial interests in oil companies to do their job of meting out justice.

Braxton Berkley, who worked on military planes at a Lockheed Martin plant, sued for injuries that he suffered as a result of exposure to toxic chemicals. When he appealed his case, the California Supreme Court rejected it — but not because he didn't have a good legal claim. It turned out that four of the seven justices were conflicted out because they held stock in oil companies that provided some of the chemicals at issue in the case.

It's a crazy — and unacceptable — way to run a court. The justices should be required to put their financial holdings in a blind trust. Instead, California requires judges to follow their investments so they can recuse themselves in cases where there is a conflict.

California Chief Justice Ron George said, according to the Associated Press, that it was “a very unusual situation and I hope it doesn't recur.”

Mr. Berkley, who says many of his friends died as a result of the toxic chemicals, said “It's unfair and I am very disgusted with the courts.”

California needs to change its rules about judges' investments. But as long as they are in place, we would like to see the justices put their money in Treasury bills or certificates of deposit.

There would be a lot fewer cases in which they would need to recuse themselves. And if the rate of return is lower than with stocks, it might just give them a little more in common with little-guy plaintiffs like Mr. Berkley who come before them seeking justice.

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Blind trusts will improve blind justice in the high court

They could help avoid judicial conflicts of interest.

By David A. Ridenour

from the June 25, 2008 edition

Washington - For justice to be blind, the nine justices of the US Supreme Court need to have blind trusts.

An embarrassing situation arose in May when the high court affirmed a US Court of Appeals ruling permitting a landmark \$400 billion lawsuit, American Isuzu Motors v. Ntsebeza, to proceed because four Supreme Court justices had conflicts of interest involving the plaintiff companies and had to recuse themselves from the case.

The result was a setback to dozens of multinational corporations being sued in federal court for allegedly aiding and abetting South Africa's apartheid regime because they did business there when its abhorrent system of racial segregation was in place.

In addition to Isuzu Motors, the companies include such well-known giants as Ford, JPMorgan Chase, Honeywell International, General Electric, and 3M.

If the suit eventually prevails, it could threaten America's currently fragile economy by opening the door to lawsuits against other US firms that operated in countries whose rulers imposed unjust sanctions against their citizens.

The US, British, German, Swiss, and South African governments had urged the Supreme Court to accept the case and overturn the lower court's ruling.

South Africa feared that a victory by the plaintiffs' lawyers would dry up desperately needed foreign investment and hurt the ongoing effort for racial reconciliation.

Indeed, South African President Thabo Mbeki – Nelson Mandela's handpicked successor – called the lawsuit a clear example of "judicial imperialism."

The Bush administration, in its brief, argued that the lawsuit "would interfere with the ability of the US government to employ the full range of foreign policy options" when interacting with regimes the US would like to influence to adopt democratic reforms.

It said such policies "would be greatly undermined" if the corporations that invest or operate in a foreign country are subjected to lawsuits more properly aimed at the offending regimes themselves.



msn video

The Justice Department contends that current US tort law allows suits against the South African government, but not against US and foreign companies doing business there when the repressive policies were in place.

The personal injury lawyers filing the suit appear likely to receive the lion's share of any damage awards in the case.

They charge that the companies are guilty of helping support apartheid merely because they did business in South Africa during the 46 years its legalized system of racial segregation was in place – an accusation the current black-majority government of the country strongly refutes. To the contrary, many US firms fought for racial equality in South Africa as signatories to the Sullivan Principles, a code of conduct committing firms not only to practice equal employment, but to commit significant resources to improve the housing, training, and education for South Africa's black population.

In 1986, although foreign-owned firms accounted for just 2.8 percent of the companies doing business in South Africa, they were responsible for 20 percent of all corporate spending on education, training, and community development in the country.

And US firms openly defied apartheid laws. A May 1987 report in *The New York Times* noted, for example, that 77 US companies operating in South Africa were settling nonwhite managers and executives in white-only neighborhoods in defiance of the law.

Incredibly, if the plaintiffs eventually win, the 20 million black South Africans still living who suffered under apartheid could get as little as 50 cents in compensation. The lawyers, meanwhile, stand to pocket millions.

As South Africa's leading business newspaper, *Business Day* of Johannesburg, recently noted: "The only redistribution of wealth ever likely to result is from shareholders to lawyers. There has been plenty of that already. There will be more."

Yet this harmful lawsuit is going forward because of judicial conflicts of interest that could have been avoided but weren't. Four recusals left the Supreme Court short of the required six-justice quorum – thwarting an expected decision that almost certainly would have overruled a deeply flawed lower-court action that allowed the litigation to proceed.

Three of the four declined to involve themselves in the case because they own shares in some of the defendant companies. All could have participated if their stock holdings had been placed in a blind trust or even mutual funds when they took the bench.

The fourth had an unavoidable conflict – his son works for a defendant in the case.

Although the number of Supreme Court cases affected by investment-linked recusals is unknown because justices seldom explain their reasons for bowing out, several high-profile cases this year proceeded without nine justices for this reason. Perhaps the most notable is *Warner-Lambert v. Kent*, which yielded a 4-to-4 split decision.

Anytime a justice is disqualified due to a financial conflict of interest, it increases the likelihood of split decisions, creating uncertainty in the law.

Congress passed a law two years ago that makes it easier for federal judges to divest themselves of holdings creating conflicts of interest by allowing them to sell these assets without incurring capital gains taxes, but it isn't enough. Justices are unlikely to divest when it is a bad time to sell or the divestiture would create as many appearance problems as it resolves.

For the justice system to work with certainty, the president and the senate should require Supreme Court nominees to place their assets in blind trusts as a condition of serving.

• *David A. Ridenour is vice president of the National Center for Public Policy Research, a nonpartisan conservative think tank on Capitol Hill.*

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State Politics

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State justices consider recusal rules

Voter group, Realtors make competing proposals

By Patrick Marley of the Journal Sentinel

Posted: Nov. 29, 2008

Madison - After two bruising judicial campaigns that set spending records, the state Supreme Court is thinking of setting standards for when justices must recuse themselves from cases because of campaign contributions.

The debate has exposed tensions on the court, with some justices arguing that different standards are applied to the court's seven members.

The League of Women Voters of Wisconsin is asking the court to set a rule that would require judges to step aside in cases involving a party or an attorney who spent \$1,000 or more to get them elected. Meanwhile, the Wisconsin Realtors Association is asking the court to establish a rule that says a contribution or endorsement by itself is not enough to require a judge to step aside.

The competing requests come after voters picked Michael Gableman this year and Annette Ziegler last year to join the court. About \$6 million poured into each of those races, far outstripping previous records. Special-interest groups weighed in heavily after generally staying out of past court races.

"There's a constant pressure to get people off cases on this court and, to some degree, manipulate the outcome by who sits on cases because of who got a contribution or didn't get a contribution," Justice Patience Roggensack told her colleagues in a meeting last month. "I don't think that's going away, and I think that's really damaging to this court as an institution."

Ziegler went further at the meeting, saying that justices were being held to different standards on when they should step aside.

"The fact of the matter is we aren't all asked the same questions, and we aren't all asked to get off of cases for a variety of different reasons," Ziegler said. "We don't all have people digging into our backgrounds, and we haven't all been confronted with these issues."

After Ziegler joined the court, she routinely sent letters to parties to alert them to campaign contributions she received. In some cases, she stepped aside after being asked.

Ziegler was criticized for writing a July decision that said Menasha Corp. should not have had to pay the 5% sales taxes on specialized computer software it bought. The case was a priority of the business lobbying group Wisconsin Manufacturers & Commerce, which spent more than \$2 million to help get Ziegler elected.

Ziegler said at the time that there was no conflict of interest, and that no one asked her to get off the case.

The rule that the League of Women Voters is seeking would cover donations given directly to candidates, as well as those made to groups such as WMC. By law, the ads that special-interest groups run may not be developed in coordination with candidates.

"We believe it is necessary to have rules for recusal which remove any perception that justices and judges are beholden to those who contribute to their campaigns," the league says in its petition. "People who go before a judge should be able to trust that the judge is a fair and impartial decision maker."

Joe Murray, political director for the Wisconsin Realtors Association, said such a rule would go too far.

Last year, Ziegler stepped aside in a case between the Realtors and the Town of West Point in Columbia County after the town asked her to do so because she received \$8,625 from the Realtors. The court then tied 3-3 on the case, sending the matter back to the Court of Appeals to resolve.

"These are political campaigns," Murray said. "Just because they've become . . . more intense doesn't mean they don't have a responsibility to sit there and make decisions, which is what they're elected to do."

At the meeting, Ziegler suggested she was put under more scrutiny than Chief Justice Shirley Abrahamson, who has been on the court 32 years. Ziegler noted that Abrahamson has enjoyed past support from the Wisconsin Education Association Council, the state's largest teachers union.

"This court, as a court, doesn't have rules that this court consistently applies across the board," Ziegler said to Abrahamson.

"Do you get asked to get off cases involving WEAC because they have been so supportive of you? . . . I don't know. But when I came on this court, there was zero guidance, and I think it'd be good for us all to have the exact same rules applied regardless."

Abrahamson said she thought justices were treated equally. She said the issue wasn't new because judges in Wisconsin have always been elected.

Abrahamson is running for another 10-year term in April against Jefferson County Circuit Judge Randy Koschnick.

The issue won't be resolved until after that campaign because a public hearing on the matter isn't scheduled until April 20, two weeks after the election. Other justices said they didn't want to consider the matter in the midst of Abrahamson's campaign.

Abrahamson said any discussion of judicial disqualification has to include issues such as judges' stock holdings.

Judges themselves decide whether to stay on or step aside from cases, and they don't have to state a reason for stepping aside. A decision to stay on a case can't be appealed.

Abrahamson called decisions on disqualification some of the toughest that judges must make.

"It's the only time no one reviews you, and it has a lot to do with the decision in the case," Abrahamson said.

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KEVIN J. KENNEDY
Director and General Counsel

MEMORANDUM

DATE: For December 17, 2008 Meeting

TO: Members, Wisconsin Government Accountability Board

FROM: Kevin J. Kennedy, Director and General Counsel

SUBJECT: Proposed three Month Extension of Review Schedule

The Government Accountability Board (GAB) is required to hold one or more public hearings on the question of reaffirmation of each administrative rule, formal opinion, guideline, and each order promulgated, issued or developed by the State Elections Board and the State Ethics Board that is presently in effect. 2007 Wisconsin Act 1, Section 209 (2), (3). The Government Accountability Board (GAB) is also required to review certain internal operating procedures of the former Boards.

Background

The administrative rules, formal opinions, guidelines and orders of the former agencies expire one year from the initiation date of 2007 Wisconsin Act 1, subject to a limited extension by the GAB. The initiation date has been established as January 10, 2008. The review of administrative rules, formal opinions, guidelines and orders of the former agencies will be substantially completed by December 17, 2008.

There are a small number of administrative rules, formal opinions, guidelines and orders that remain to be reviewed. In addition, the staff has not presented any internal operating procedures for review by the Board except to the extent these procedures were reflected in informational manuals and the discussion of ballot access and voter registration protocols.

The remaining matters consist of the administrative rules related to electronic filing of campaign reports and other documents; administrative rules on staff assistance; administrative rules listing agency forms; and certain opinions and guidelines of the former Ethics Board that have been postponed from earlier meetings. Jon Becker has listed these items in a separate document which accompanies this memorandum. There also may be other matters that were not identified when the initial review schedule was established in February.

The Board may extend its review of administrative rules, formal opinions, guidelines and orders by up to three months and renew the extension for an additional three months. 2007 Wisconsin Act 1, Section 209 (2), (3).

Discussion

The rules on electronic filing have not been presented for review because the staff may have proposed changes based on its implementation of the new Campaign Finance Information System (CFIS). This software application will be used in January for the filing of campaign finance reports.

We will be revising several forms as part of its internal review process. It does not seem to be a good practice to reaffirm a list of forms that will be changed over the course of the next 6 months.

The opinions and guidelines of the former Ethics Board that have been postponed from earlier meetings need to be discussed with representatives of the Association of Wisconsin Lobbyists. This vetting process is expected to lead to recommendations for development of new administrative rules along with recommendations for reaffirmation of certain opinions and guidelines.

Staff will identify the internal operating procedures that are subject to Board review and present them at a future meeting. The rules on staff assistance should be coordinated with the review of any applicable internal operating procedures. The internal operating procedures subject to review are those procedures that affect the manner in which the Board interrelates with persons who are not employees of the board. The review is required to specifically address the degree to which employees are authorized to perform their functions without direct supervision of or approval of the Board.

Recommendation

In order to ensure the Board is able to address the administrative rules, formal opinions, guidelines and orders that have not been presented, I recommend the Board authorize a three month extension of its review schedule. The extension would address the items listed in this memorandum along with a any items identified by staff at the January 15, 2009 meeting.

This extension will take the review process through the Board's March 30, 31 2009 meeting. Any further extension can be determined at that time.

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KEVIN J. KENNEDY
Director and General Counsel

MEMORANDUM

DATE: For December 17, 2008 Board meeting

TO: Members, Wisconsin Government Accountability Board

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

SUBJECT: Remaining Ethics Board opinions and guidelines to be reviewed

There are only a handful of Ethics Board opinions remaining for the Government Accountability Board to review, but there are a number of Guidelines about which the Board asked for further information or revisions. There are also a number of issues about which the Board directed staff to consult with Mike Wittenwyler. Mr. Wittenwyler represents the Association of Wisconsin Lobbyists. Following is a list of opinions and guidelines on which the Government Accountability Board deferred action:

- 1992 Wis Eth Bd 31
- 1993 Wis Eth Bd 08
- 2002 Wis Eth Bd 06
- 2004 Wis Eth Bd 04
- 2004 Wis Eth Bd 06
- 2007 Wis Eth Bd 14
- 33 opinions pertaining to local officials' conflicts of interest, presented at the last meeting, for staff to develop tougher language where appropriate pertaining to conflicts not expressly covered by statutory language.

- Guideline Eth 211
- Guideline Eth 231
- Guideline Eth 234
- Guideline Eth 245
- Guideline Eth 250
- Guideline Eth 252
- Guideline Eth 281

Below is a list from Mike Wittenwyler identifying other topic areas that the Board's staff will address over the course of the next several months.

- An interpretation of "furnish" and restrictions on lobbyists involving campaign contributions;
- An interpretation of "solicit" and restrictions on candidates seeking campaign contributions;
- The ability of candidates to solicit campaign contributions for legislative campaign committees and political party committees;

- The ability of individuals who are not agents of candidates to solicit contributions on behalf of candidates;
- The ability of non-lobbyist employees of a lobbying principal to work with candidates on fundraising events;
- The involvement of lobbyists in candidate fundraising events;
- A lobbyist's role as conduit administrator or PAC treasurer;
- A lobbying principal's role as the sponsor of a PAC or conduit;
- The ability of candidates to send invitations to lobbyists and lobbying principals;
- A public official's inability to reimburse a lobbyist or lobbying principal;
- The lack of clarity in the Board's guidance on public service announcements and the guideline's unfair treatment of lobbying principals;
- The ability of public officials to participate in public policy litigation and amicus briefs when it's financed by a lobbying principal;
- The inability of lobbyists to transfer funds to a candidate's campaign finance defense fund;
- The need to clarify and apply consistently a standard of when an organization is qualified to be a lobbying principal; and,
- The need to clarify and suggest to the legislature that gubernatorial committees and task forces should be exempt from the lobbying registration and reporting requirements.

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KEVIN J. KENNEDY
Director and General Counsel

MEMORANDUM

DATE: For December 17, 2008 Meeting

TO: Members, Wisconsin Government Accountability Board

FROM: Kevin J. Kennedy, Director and General Counsel

SUBJECT: Review of Certain Administrative Rules, Manuals and Formal Opinions of the State Elections Board Relating to Federal Campaigns Vacancy in Office, and Recall of Elected Officials.

This memorandum presents 3 administrative rules, 1 manual and 7 formal opinions of the former State Elections Board presently in effect relating to federal campaigns, vacancy in office and recall of elected officials.

1. **Federal Campaigns** (4 Formal Opinions, 1 Administrative Rule)

Opinion El.Bd. 74-3

Federal authorization of spending limits which are in excess of those provided by state law in campaigns for U.S. congressman is not governing in determining compliance by Wisconsin candidates for national office. Federal spending limitations upon a candidate and members of his immediate family are consistent with state contribution limitations for these specific contributors. (Issued to Alan C. Cole, August 6, 1974)

This opinion is no longer applicable because of the U.S. Supreme Court decision in *Buckley v. Valeo* which struck down spending limits in the absence of a compelling state interest such as a condition for receipt of public funds to conduct a campaign. It is also clear that the state may not regulate federal campaign finance activity. Congress has preempted the field.

Staff recommends the Board decline to reaffirm formal opinion: ElBd Op 74-3,

Opinion El.Bd. 77-2

Procedures for conversion of the campaign committee of a federal candidate to a campaign committee for state office; use of residual funds from a federal campaign for a state campaign. (Issued to Peter Viviani, April 21, 1977)

This opinion is no longer applicable because the State Elections Board amended its administrative rule, now GAB 1.39 Wis. Admin. Code, to explicitly prohibit the conversion of a federal candidate campaign committee to a state committee. The rule permits a transfer of funds from a candidate's federal committee to the candidate's state committee subject to the limit on contributions from a PAC to a candidate committee. §11.26 (2), Wis. Stats.

Staff recommends the Board decline to reaffirm formal opinion: ElBd Op 77-2

Opinion El.Bd. 77-3

A national political party committee's payment of compensation to another specifically in exchange for full-time political services performed on behalf of a Wisconsin committee is a contribution, which subjects the national committee to registration and applicable reporting requirements. Such committee's payment of compensation to an employee or employees performing occasional services for a Wisconsin committee, when such services are merely incidental to the work of the employee or employees on behalf of the national committee, is not a contribution. Sec 11.01(5), Stats. (Issued to George Innes, July 21, 1977)

This opinion provides that a national political party providing direct campaign assistance to a state candidate committee in the form of paid field staff is subject to the registration, reporting and contribution limits of the campaign finance law. It also specifies that incidental payments to the state party done for the purpose of promoting the national party's programs such as training, research and informational materials do not require the national party to register and report the a transactions.

The principles articulated in this opinion accurately reflect current law and represent sound public policy.

Staff recommends the Board reaffirm ElBd Op. 77-3.

Opinion El.Bd. 00-03

Conversion of Federal Committee to State Committee and Use of Funds: A federal campaign committee may convert to a state committee and use funds collected for federal purposes in a state or local campaign by filing a campaign finance registration statement, pursuant to s.11.05, Stats., with the appropriate filing officer and simultaneously filing a campaign finance disclosure report showing the sources of all funds on hand at the time of the report to the requirements of s.11.06(1)(a), (b), (c), (d), and (f), Stats.

This opinion is no longer applicable because the State Elections Board amended its administrative rule, now GAB 1.39 Wis. Admin. Code, to explicitly prohibit the conversion of a federal candidate campaign committee to a state committee. The rule permits a transfer of funds from a candidate's federal committee to the candidate's state committee subject to the limit on contributions from a PAC to a candidate committee. §11.26 (2), Wis. Stats.

Staff recommends the Board decline to reaffirm formal opinion: ElBd Op 00-3

Administrative Rule

GAB 1.39 Conversion of federal campaign committee to state committee prohibited.

(1) As used in this rule,

(a) “Federal campaign committee” means the campaign committee of a candidate for federal office, which is not registered with a state or local filing officer, and

(b) “State campaign committee” means the personal campaign committee of a candidate for state or local office.

(2) (a) A candidate’s federal campaign committee may not be converted to a state campaign committee.

(b) A candidate’s federal campaign committee may contribute funds collected for federal purposes to the candidate’s state or local campaign, not to exceed the maximum amount that may be contributed by a single committee to a candidate for the same office under ss. 11.26 (2) and (10), Stats., by filing a campaign finance registration statement, pursuant to s. 11.05, Stats., with the appropriate filing officer.

History: *Cr. Register, August, 1977, No. 260, eff. 9-1-77; CR 05-027: am. (2) Register November 2005 No. 599, eff. 12-1-05.*

This rule was originally adopted in 1977 by the State Elections Board following the issuance of formal opinion ElBd Op. 77-2. In 2006, the State Elections Board amended the rule to reverse its longstanding policy permitting the conversion of federal campaign committees to state committees. Such a conversion permitted a federal candidate to move substantial funds amassed during several federal campaign in to a state campaign.

When the Board considered requests for guidance in the conversion process in 2000 and 2006, it became clear there was strong public support for reversing the policy established in 1977 because of the changing nature of political campaign funding at the state and federal level. Also the 1977 conversions sanctioned by the State Elections Board involved losing candidates transferring a relatively small amount of funds. The 2000 and 2006 conversion involved significant amounts of PAC funds raised at the national level.

The rule explicitly prohibits the conversion of a federal candidate campaign committee to a state candidate committee. The rule permits a transfer of funds from a candidate’s federal committee to the candidate’s state committee subject to the limit on contributions from a PAC to a candidate committee. §11.26 (2), Wis. Stats.

Staff recommends the Board reaffirm GAB 1.39

2. **Vacancies:** (3 formal opinions)

Opinion El.Bd. 89-2

A vacancy on a school board caused by a registration after a recall petition has been filed with the school district clerk is filled by recall election and may not be filled by appointment by the board. (Issued to Mark F. Vetter, July 20, 1989)

This opinion provides that a school board may not circumvent the recall process by appointing a new Board member if the incumbent subject of the recall resigns after the recall effort commences. The State Elections Board also determined in an informal opinion that an individual appointed to fill a vacancy on a governing body steps into the shoes of the prior incumbent for purposes of determining the one year period for recall of an elected official. In other works the new official does get a one year grace period from recall. It is generally accepted that the one year period starts with each election of the particular official to a new term.

The principles articulated in this opinion accurately reflect current law and represent sound public policy. The Board may want to direct staff to present the informal opinion on whether an appointee steps into the shoes of a predecessor at a subsequent meeting.

Staff recommends the Board reaffirm ElBd Op. 89-2.

Opinion El.Bd. 95-1

The filling of a vacancy on the City of Milwaukee Board of Election Commissioners under s.7.20 of Wisconsin Statutes: A vacancy on the Milwaukee Board of Election Commissioners is filled by appointment from a list of nominees submitted by the political party of whom the vacating member was a representative. (Issued to Mark E. Sostarich)

This opinion was issued to address a concern about filling a vacancy on the Milwaukee City Board of Election Commissioners. In the City and County of Milwaukee, the political party receiving the most votes for Governor in the preceding general election is entitled to nominate individuals to fill two of the three positions on the Commissions. The 4-year term for a Commissioner begins on July 1 following the presidential election.

In the case presented, an intervening gubernatorial election would change which political party was entitled to nominate individuals to fill two positions. The opinion concluded a vacancy should be filled with nominations from the political party entitled to make the original nomination.

The principles articulated in this opinion accurately reflect current law and represent sound public policy.

Staff recommends the Board reaffirm ElBd Op. 95-1.

Opinion El.Bd. 05-01

A vacancy in the office of municipal judge, caused by the creation of that office by a municipality, is filled on a temporary basis by appointment and on a permanent basis by election at the next spring election following the effective date of the office, if the office takes effect before December 1 and at the spring election following the next spring election if the office takes effect after December 1.

This opinion provides direction for municipalities that establish a municipal court and fill it initially by temporary appointment.

The principles articulated in this opinion accurately reflect current law and represent sound public policy.

Staff recommends the Board reaffirm ElBd Op. 05-1

3. **Recall:** (1 manual)

The State Elections Board has developed a manual to provide guidance for local election officials and individuals interested in recall of local elected officials. *Recall of Local Elected Officials* <http://elections.state.wi.us/docview.asp?docid=14632&locid=47> The Manual was last revised in April 2007.

This is an area that generates confusion and controversy. Local election officials may be caught between their responsibility to provide information and direction to persons seeking to recall a local elected official and their relationship with the elected official. It is important accurate and clear information is available for the local election official, the individuals seeking to recall a local elected official and the official subject to recall.

It is relatively easy to obtain the required number of signatures to recall a local elected official except in more populous municipalities and counties. The staff receives many inquiries concerning the recall of local elected officials.

The Manual does not address the issue raised in the discussion of ElBd Op 89-2 whether an appointee steps into the shoes of a predecessor for the purpose of determining the one-year waiting period before initiating a recall effort.

The Manual does state a recall election may not be held if a petition is filed less than six weeks before the Spring election for which the elected official's office is up for election. This is a concession to the practicalities of conducting a recall election. At a minimum, a recall election would take 6 weeks from the time a petition is filed. It appears a poor use of resources to conduct a recall election if the winning candidate would not serve because of the expiration of the term of office within a short time – 2 weeks or less- following the certification of the recall results.

The principles articulated in the Recall Manual accurately reflect current law and represent sound public policy. The Manual cover should be revised and the pages should be numbered

Staff recommends the Board reaffirm the manual *Recall of Local Elected Officials* with the formatting changes noted.

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JUDGE THOMAS CANE
Chair

KEVIN J. KENNEDY
Director and General Counsel

MEMORANDUM

DATE: For the December 17, 2008, Meeting

TO: Members, Wisconsin Government Accountability Board

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

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

SUBJECT: Elections Division Activities

Elections Administration Update

Introduction

Since your November 11, 2008, meeting, the Elections Division has focused on the following:

1. **November 4, 2008, Post-Elections Activities**
 - A. Guided clerks through the statutory required process of preparing for conducting audits of electronic voting equipment:
 - 47 municipalities; 55 reporting units total.
 - G.A.B. Staff will conduct 11 audits.
 - Total: **66**
 - B. Provided robust technical assistance to counties conducting recounts:
 - 18th Senate District.
 - 47th Assembly District.
 - C. Provided assistance to clerks for processing Voter Registration Forms, in-putting EB-131 Wisconsin Voter Registration Application information, Election Day Voter Registration Data and related tasks;

- D. Provided information and assistance to clerks for completing the GAB-190 Election Voting and Registration Statistics Report; and,
- E. Received, reviewed and completed the November 4, General and Presidential Election Statewide Canvasses; and,
- F. Statewide Canvass signed on Monday, December 1, 2008, by G.A.B. Member Judge William Eich, representing G.A.B. Chairman Judge Thomas Cane and his G.A.B. colleagues.
 - 2,983,417 Wisconsinites voted for President in the November 4 General and Presidential Election.
 - 69% of the estimated voting age population.
 - Once all data are collected we will know the total number of voters and the % drop off between the votes cast for president and the total number of voters
- G. Prepared for Presidential Electors to meet on Monday, December 15, 2008, at the State Capitol, in the Governor's Conference Room.
- H. Finalized Input from County and Municipal Clerks and Others, on Recount Manual
 - On Wednesday, December 3, staff met with an ad-hoc advisory group comprised of county and municipal clerks from 5 counties and 6 municipalities, and three representatives from political parties to gain additional advice for finalizing the Recount Manual.

2. **Developed Election Business Practices' Protocols**

A. **Draft Protocols on Four-Year Voter Record Maintenance**

Wisconsin Statute §6.50 (1) and (2) mandates that municipal clerks must periodically conduct a purge of electors who have not voted within the past 4 years. Within 90 days after the November General Election, clerks must send a mailing to all registered voters who have been qualified to vote for the past 4 years but who have not voted. The mailing notifies voters that if they do not respond within 30 days, their registration will be inactivated.

G.A.B. met with the Statewide Voter Registration System (SVRS) Standards Committee on Monday, November 24 to seek advice on a preliminary draft protocol that included uniform standards that will be consistently applied across the board, statewide. The draft was amended with the Committee's input and distributed to all county and municipal clerks for broad review and feedback.

B. **Draft Protocol on Retroactive HAVA Checks**

The Help America Vote Act (HAVA) of 2002 and state statutes require the State to conduct voter data comparisons with the Wisconsin Department of Transportation (DOT) and Federal Social Security Administration (SSA) on registered electors. These HAVA Checks are facilitated by Wisconsin's Statewide Voter Registration System (SVRS).

A common misconception is that HAVA Checks are intended to confirm a voter's eligibility to vote. In reality, HAVA Checks were not designed or intended to prove or affect voter eligibility. Rather, HAVA Checks are performed for the purpose of improving the quality of voter data and to facilitate list maintenance. A voter's eligibility is determined by verifying information contained on the Wisconsin Voter Registration Application EB-131 Form and related documents.

During the August 27, 2008, meeting of the Government Accountability Board (G.A.B.), the Board directed staff to gather statistics and facts and prepare a report analyzing the non-matches identified between August 6 and the November 4 General and Presidential Election. Based on staff's report, the Board committed to implementing a statewide uniform procedure for improving the quality of voter data preceding August 6, 2008 with the DOT and Social Security databases. On August 27, 2008, specifically, the G.A.B. ruled that county and municipal clerks and the G.A.B. staff should:

"Continue with the 'HAVA Check' procedure in effect as of August 6, 2008, through the fall election, *and correct the SVRS database later*. A mismatch with Wisconsin DOT data, in and of itself, shall not result in disqualification of a voter." (official/approved excerpted minutes from the G.A.B. August 27, 2008 Meeting).

In accordance with the Board's August 27 decision, G.A.B. staff met with the Statewide Voter Registration System (SVRS) Standards Committee on Monday, November 24 to seek advice on a preliminary draft protocol that included uniform standards on how to improve data quality for voters who were registered prior to August 6, 2008.

It is G.A.B.'s intent that uniform standards be consistently applied statewide. The draft was amended with the Committee's input and distributed to all county and municipal clerks for broad review and feedback.

3. **Key Metrics**

Training, technical assistance and public information/education initiatives with our customers, constituents and partners continued.

A. **Training and Technical Assistance Details**

See Attachment #1

B. **Public Education and Information Summary**

See Attachment #2

4. **Other Noteworthy Activities**

Compliments from satisfied customers (local elected officials). These comments are reflective of the kinds of feedback the Elections Division is receiving:

Clerk Number One:

[Hi Sarah and Nat, I read all of the recent GAB communications this morning and wanted to share my thoughts with you on them, since I probably won't be able to make the WISLine calls on the 11th. First and foremost I think they (the draft protocols) are great, and I'm not just saying that because you guys are going to perform the work for us (clerks). I really feel these would be better done by GAB staff just to keep everything uniform and that way there is some oversight on your part. I would give more reasons why I support your decisions on the changes, but I agree, and I have the same reasons! So keep up the good work guys I'm very impressed.

I have to say, and I told Nat this before but am happy to reiterate, I've seen an improvement in communication, cooperation, and coordination with the GAB and clerks. I started my job as a clerk when SVRS was first implemented 3 1/2 years ago, so I've been involved from the very beginning. Before the SEB was horrible to work with, but it seems as your letters have changed (SEB to GAB) the attitude has as well and I really appreciate it. Thanks for all your hard work guys and I hope you both had a great Thanksgiving.]

Clerk Number Two:

[Recently we also received similar feedback verbally from another municipal clerk indicating that she appreciated the recent cooperative tone of the communications from our agency. In her opinion the deliberate effort to include clerks and other stakeholders in our planning and policy development has led to stronger relationships that contributed to successful election administration statewide this fall.]

Our staff is committed to continuing our focus on open, consistent, and positive communication with all of our customers and partners.

5. **30-day Forecast**

- A. Commence planning for conducting a post-2008 election cycle assessment on our election administration business practices.
- B. Continue to manage implementation process of our \$2 million data grant.
- C. Start planning for 2009: Identify needs and develop a planning process.

Statewide Voter Registration System Update

Barbara A. Hansen, SVRS Project Director

Introduction

The following Statewide Voter Registration System (SVRS) activities took place since the November 11 meeting of the Government Accountability Board:

Overview of Activities

1. Election Support – The SVRS team provided support to Wisconsin's 1,923 County and Municipal Clerks to manage the November 4 Presidential and General Election to ensure smooth election processes. SVRS staff also worked with clerks to assure data quality and poll book integrity.
2. Limited Term Employee (LTE) Data Entry Staff – Temporary staff continue to work on processing cancellations for voters who have moved out of state, and entering date of birth information in response to the G.A.B. Default Date of Birth mailing.
3. GAB Help Desk – The GAB Help Desk hours were extended beginning October 24 to provide added support to clerks preparing for the November election. Weekday hours were increased to 8:00 p.m. until Election Day. In addition, clerks were able to call on Saturday, October 25, from 8:00 a.m. to noon. On November 1, hours were from 8:00 a.m. to 3:00 p.m. On Election Day, the Help Desk was open until 10:00 p.m. to accommodate calls from the public and election officials. The Help Desk acted as a call center for G.A.B. and handled hundreds of call ranging from “Where do I vote?” to handling technical calls from users about SVRS. The Help Desk and G.A.B. staff managed approximately 2,000 calls on Election Day, most from voters wanting to know where to vote or how to register.
4. Voter Public Access (VPA) – The VPA has been widely promoted by G.A.B. to assist voters in obtaining their voter status and polling place. The success of VPA was shown by the thousands of visitors to the VPA site particularly on Election Day. Over 65,500 visitors accessed the VPA site on November 4.

Visitor traffic on the VPA site dramatically increased on November 3, 2008, the day before Election Day, with approximately 59,000 sessions. Users reported performance degradation which resulted in very slow response time. In order to manage the huge increase in VPA usage, DET added 2 additional servers for VPA to the 2 already in production and installed another during the evening. Once the additional servers were installed in the production environment, reports of performance problems by users stopped. No performance issues were reported on Election Day.

5. SVRS Application – Few updates were made to the SVRS Application during the month of November, because of risk of making changes during a major election event. A patch was made to the SVRS Application to correct a problem processing the HAVA Check files that contained double spaces. The translation software that is used to send HAVA Checks to the Department of Transportation was updated to accommodate files larger than 13,000 records. The VPA website was also upgraded with additional servers in order to handle the huge increase in site usage on Election Day. Current census data for each jurisdiction was loaded into SVRS.

Statistics

The following are some relevant statistics from SVRS as of November 26, 2008:

HAVA Check Statistics

- **531,069** - Total HAVA Checks run in SVRS since August 6, 2008.
- **275,819** - Total HAVA Checks run in the month in November.

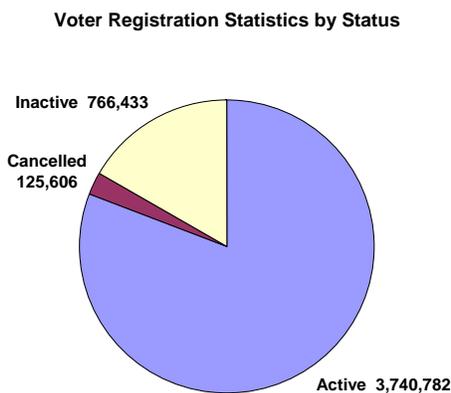
- **258,833** or 94% of the November total were HAVA Checks on Driver License validations.
- **230,369** or 89% matched with Driver License records and 28,464 or 11% did not match.
- **16,986** or 6% of the total HAVA Checks were Last 4-Digits of Social Security Number validations.
- **14,679** or 86% of the Social Security Number validations passed the HAVA Check and 2,307 or 14% did not match.
- Overall, **245,048** or 89% of the total HAVA Checks passed, and 30,771 or 11% did not match.

November 4 Election Statistics

- **360,477**- Total requests for absentee ballots tracked in SVRS for the November election to date. Note: Not all municipal clerks use SVRS to track their absentee ballot requests.
- **3,623** - Number of poll books printed from SVRS for the November Election.
- **1,476,784** - Total voter history recorded in SVRS for the November Election to date.
- **294,586** - Election Day Registrations entered into SVRS for the November Election to date.

Voter Registration Statistics

The chart below shows the registration type and the number of new registrations in SVRS.



Total Number of Registration Records in SVRS = 4,632,821

NOTE: An Active Voter is one whose name will appear on the poll list. A Cancelled Voter is one who will not become active again, e.g. deceased person. An Inactive Voter is one who may become active again, e.g. convicted felon. (As of November 26, 2008)

Acknowledgement

Thank-you letters were sent to several partners (clerks, staff, Governor Doyle, state agencies' department heads, and others) who contributed substantially to making the November 4 General and Presidential Election a success.

Action Items

No action is required of the Board at this time.

ATTACHMENT #1

GAB Election Division's Training Initiatives
11/12/2008 – 12/17/2008

Training Type	Description	Class Duration	Target Audience	Number of Classes	Number of Students
Voter Registration	Basic training in adding voter registration applications, searching for voters, updated voters.	3 hours	Municipal and county clerks, staff and temp workers who provide election support only.	The WBETS site is available to train temporary workers.	Ongoing, self-directed training is available online.
WisLine	Series of 10 programs designed to keep local government officers up to date on the administration of elections in Wisconsin.	80 minute conference call, hosted by the UW Extension, conducted by Elections Division staff.	Clerks and chief inspectors; campaign treasurers and candidates.	November 19, 2008, Getting Candidates on the Spring Ballot; December 3, 2008, Caucus Procedures for Towns and Villages.	200 - 800 per class
WBETS	Web Based Election Training System. Still under development. Reference materials were made available to the clerks in February; voter registration training made available to clerks 3/24/2008.	Varies	County and municipal clerks and their staff.	Phase 1 of eLearning training plan still under construction Phase 2 under discussion.	Site is available for clerks to train temp workers in date entry; relies are also able to access the site upon request.
Interfaces	Instruction in the user of the interface functionality in SVRS to check death records, felon records, DOT records and duplicate records against voter records as part of HAVA compliance requirements.	2 hours	All clerks (staff as determined by clerk).	Pilot of web-based training presented to the Standards Committee on May 14, 2008. Lessons available online June 2, 2008.	Eventually 2000+

ATTACHMENT #1

GAB Election Division's Training Initiatives
11/12/2008 – 12/17/2008

Training Type	Description	Class Duration	Target Audience	Number of Classes	Number of Students
Other Activities	<ul style="list-style-type: none"> ➤ Training staff is supporting the GAB Help Desk and clerks prior to the November 4, 2008 election. ➤ Training staff working on additional modules/lessons for Phase 1 of the WBETS site. ➤ Training staff working on materials relating to early voting in Wisconsin. ➤ Training staff compiling information in SVRS regarding municipal clerk recertification hours and special registration deputy training. 	n/a	n/a	n/a	n/a

ATTACHMENT #2

**GAB Elections Division
Communications Initiatives
November 4 – December 16, 2008**

Topic	Message	Media	Audience	Follow-up Activities
“State Election Runs Smoothly in Wisconsin”	Election results are official, two recounts on-going, and Electors meet in two weeks.	News release: 11/5/08	General public, news media.	Posted to the website.
Wisconsin’s Election Day performance.	Wisconsin fared well on Election Day.	Background briefing for reporters with Kevin Kennedy: 11/5/08	Wisconsin news media.	Distributed news release (above).
“Government Accountability Board Reiterates Original Plans to Correct SVRS database”	Focus of statement was to iterate that the Board made a decision to correct SVRS database on 08/17/08	News release: 11/11/08	General public, news media.	Posted to the website.
“Wisconsin Finishes Successful Pilot of New Campaign Finance Information System”	CFIS pilot is done; registrants will be using the new system in January 2009.	News release: 11/19/08	General public, news media.	Posted to the website.
SVRS Standards Comm. on four-year maintenance and retroactive HAVA Checks, upcoming deadlines, recounts.	Information touched on a number of high-interest election administration issues.	<i>Election Update</i> : 11/21/08	Municipal and county clerks.	Posted to the website.
“Wisconsin Certifies November 4 General Election Results”	Election results are official, two recounts concluded, and Electors meet in two weeks.	News release: 12/1/08	General public, news media.	Posted to the website.
2008 Elections “Post Mortem;” Getting clerk input on Standards Comm. recs.; deadlines	Elections Division is seeking feedback in two policy documents and preparing for 2009	<i>Election Update</i> : 12/5/08	Municipal and county clerks.	Posted to the website.
“Wisconsin’s Presidential Electors Meet at State Capitol”	Results of presidential contest are confirmed by electors	News Release: 12/15/08	General public, news media.	To be posted to the website.

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KEVIN J. KENNEDY
Director & General Counsel

MEMORANDUM

DATE: December 17, 2008 Meeting

TO: Members, Wisconsin Government Accountability Board

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

Prepared by: Jonathan Becker, Administrator
Ethics and Accountability Division

SUBJECT: Ethics and Accountability Division Activities

Campaign Finance Program

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

Audits

There were 25 committees placed on "R" status, Requesting Termination. The committees on "R" status are no longer required to file campaign finance reports; however, they are required to be available to answer questions and resolve any violations prior to termination being granted.

January Continuing 2009 Report

The EB-2 form has been revised for compatibility with the new campaign finance information system. Major changes were the addition of occupation codes and expense codes that will be used in CFIS. Forms and notices were sent for bid the week of 12-08-08. Filing notices for the January Continuing reports will be sent out to the committees the week of December 29, 2008. All committees required to file the January Continuing report must have the reports submitted to the GAB by February 2, 2009.

Other Activities

The audit staff is continuing work on data conversion and registration updates into the new campaign finance information system. Staff is also continuing to enter transactions and upload reports into the system from previous reporting periods.

Staff sent letters to 2455 registrants (544 are e-Filers, 878 are on exempt status, and 999 are paper filers) providing them with their 'Username' (GAB ID #) and 'Password' so they could login to the CFIS website to update their registration data. To date, 151 registrants have logged into the new campaign finance information system to update their registration information.

There are a number of training sessions available for committees to attend throughout December, and January. Individuals may register on-line for the session of their choice on either the CFIS website, or the GAB – Ethics/Accountability Division website. These sessions will give the committees the information necessary to work within the new campaign finance information system. We are currently using version 2.7.2 of the database and will continue to work with our vendor to make needed updates in future releases.

Action Items

No action is required of the Board at this time.

Contract Sunshine Update Tommy Winkler, Ethics Specialist

INTRODUCTION

Wisconsin's Contract Sunshine Act (2005 Act 410) calls for the creation and maintenance of an Internet site at which anyone may access information about every state contract, purchase, and solicitation of bids or proposals that involves an annual expenditure of \$10,000 or more. *Wisconsin Statutes* direct the Wisconsin Government Accountability Board to create and maintain this site. In enacting the Contract Sunshine Act, the Legislature's intention was to enhance citizens' confidence in the State's procurement process by providing a one-stop Internet location where citizens, the press, vendors, and others can learn about current procurement activities. The legislature intended that the Act provide potential vendors of goods and services with ready access to information about the State's purchases and confirm that the State's procurement programs are operating fairly and efficiently.

KEY MEASUREMENTS

None

MILESTONES

Government Accountability Board staff completed a user acceptance testing and review process for the new version of the Contract Sunshine application back in May 2008. Staff also solicited feedback on the new version of the application from procurement officials at DOA. Due to staffing issues and other agency priorities related to multiple report filing deadlines at the end of July, the Government Accountability Board staff assigned to this project has had other tasks to attend to. Significant work on the Contract Sunshine program has been put on hold until these other items are completed.

LOOK AHEAD

Government Accountability Board staff plans to this fall meet with DOA staff in order to finalize the previously solicited feedback on the new version of the application. After receiving this feedback, GAB staff will meet with personnel from Sundial in order to implement the final changes to the application and release the updated version of the website. GAB staff will meet with DOA personnel to train procurement staff in reporting information using the updated version of the program. After completing this training, correspondence will be sent to all agencies communicating the changes made to current version of the application; the updated version of the application will be released for all agencies to use. It is staff's goal to have all agencies required to report information to the GAB under the Contract Sunshine law do so using the new website by the end of 2008.

ACTION ITEMS

None.

Financial Disclosure Update
Tommy Winkler, Ethics Specialist

INTRODUCTION

State officials and candidates file Statements of Economic Interests under Chapter 19 of Wisconsin Statutes. These statements are filed on an annual basis with the Government Accountability Board, and they are open for public inspection at the time they are filed. A statement identifies a filer's, and his or her immediate family's, employers, investments, real estate, commercial clients, and creditors. The idea is to identify which businesses and individuals an official is tied to financially. The focus is on identifying a filer's financial relationships, not on identifying the individual's wealth. This information is entered into an online index that is managed by Government Accountability Board staff.

KEY MEASUREMENTS

- 178** The number of positions up for election in the spring of 2009 that are required to file a Statement of Economic Interests with the Government Accountability Board under Chapter 19, Wisconsin Statutes.

- 94** The number of state candidates as of Tuesday, December 9, 2009, who are running for a position up for election this spring that is required to file a statement of economic interests with the Board in order for their name to appear on the spring primary ballot.

- 114** The number of municipal judge candidates as of Tuesday, December 9, 2009, who are running for a position up for election this spring that is required to file a statement of economic interests with the Board in order for their name to appear on the spring primary ballot.

MILESTONES

Government Accountability Board staff mailed 2009 pre-printed Statement of Economic Interests filing forms and filing instructions to incumbent candidates running for the office of Supreme Court Justice, Superintendent of Public Instruction, Appellate Court Judge, Circuit Court Judge, and Municipal Judge that are up for election this spring. Challengers running for these offices were also provided a blank 2009 form and a copy of the filing instructions. Completed statements are due by 4:30 p.m. on Friday, January 9, 2009 in order for the candidate's name to appear on the February 17, 2009 primary election ballot. A 2009 spring election webpage containing filing instructions, deadlines, and relevant forms is available as a resource for potential candidates and the public via the Ethics and Accountability Division website. A link to the webpage is also available from the Wisconsin Municipal Judges Association's website. In addition, staff completed the final preparations for the 2009 annual filing. A business procedure for processing filed statements and entering the information into the online index was also developed and approved.

Government Accountability board staff will be mailing 34 Quarterly Transaction reports to State of Wisconsin Investment Board members. Investment Board members are required to complete and file this report on or before January 31, 2009. Copies of these reports are sent to the Legislative Audit Bureau for review.

LOOK AHEAD

Government Accountability Board staff will continue to process 2009 statements of economic interests filed by candidates running for office in the spring election as well as print and mail 2009 statements to state public officials required to file on an annual basis. The first of 8 batch mailings for the annual filing will be sent on January 5, 2009. A real-time listing of who has and has yet to file a completed statement will be available to

the public on the Ethics and Accountability Division's Eye on Financial Relationships portion of the agency's website.

Additionally, staff will continue to work with SunDial Software Corporation on changes to the Eye on Financial Relationships website application in order to improve efficiency in reporting information to the online index. A major part of the proposed enhancement to the website is allowing filers the ability to file their Statements of Economic Interests online. Staff is working to transition to online filing of Statements of Economic Interests for the 2010 filing year.

ACTION ITEMS

None.

Lobbying Update

Barton Jacque, Ethics Specialist

Introduction

Wisconsin has some of the most structured lobbying laws in the country. Lobbyists and organizations that employ lobbyists are governed under Chapter 13 of the *Wisconsin Statutes*. They are required to complete a Statement of Lobbying Activities and Expense Report every 6 months. The report for January – June is due July 31 and the report for July – December is due January 31. They are also required to report within 15 days of lobbying on a specific legislative and administrative proposal and topic.

In addition to the Statement of Lobbying Activity and Expense Reports managed by our agency, all state agencies are required to file Legislative Liaison reports to the Government Accountability Board (the 'Board') every 6 months. Key staff and agency officials who are authorized to affect legislation and administrative rule-making notify the Board of their annual salary and the percentage of time spent on lobbying matters.

Key Metrics

- 785** The number of principal lobbying organizations registered with the Government Accountability Board.
- 699** The number of lobbyists registered to lobby on behalf of one organization.
- 144** The number of lobbyists registered to lobby on behalf of more than one organization.
- 1,787** The number of individual authorizations of lobbyists representing a principal organization.

Noteworthy Activities

During the week of December 8, 2008, pre-printed lobbying licenses & registrations were mailed out. Generally the Board allows individuals to register early for the upcoming new session and we can expect some lobbyists and principals to do so. Also, our database has been updated and is ready for the upcoming session.

Looking Ahead

The Board has received a completed request for information (RFI) regarding the usability and efficacy our lobbying database. The lobbying program has outgrown its current software life-span and specific design flaws make operating the program very inefficient. The work was completed by Patricia Watson of Smart Solutions. (Smart Solutions has been working with the Board for a number of years and has a strong understanding of the Board's lobbying program.) This RFI points out specific limitations within the current lobbying program and provides specific solutions which will be included in a future request for bid (RFB). Details of the future RFB will be included for the next Board meeting.

Action Items:

No action is required of the Board at this time.

State of Wisconsin\Government Accountability Board

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KEVIN J. KENNEDY
Director and General Counsel

MEMORANDUM

DATE: For the December 17 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, Special Assistant to the Director

SUBJECT: Administrative Activities

Agency Operations

Introduction

It continues to be an extremely busy time. The primary administrative focus has been on researching ways to reduce operating costs, preparing for the move to our new office location, presentations and staff recruitment.

Noteworthy Activities

1. New Office Space Update

Staff have been working diligently preparing for the agency's move to its new location. The move team is working on a task list of items that need to be completed to ensure a seamless move. To date, we have successfully secured a furniture vendor, Office Furniture Options, Inc, for refurbished furniture. Office Furniture Options will provide remanufactured work stations (cubicles), a remanufactured reception station, remanufactured private office furniture, tables, chairs and file cabinets. The cost for the office furniture, including installation is \$120,000.

Staff conducted a simplified bid for Voice Data Wiring Services and contracted with AB Electric. The cost for Voice Data Wiring services is \$23,785. We also contracted with Faith Technologies to provide and install fiber optic cable to the office space. The cost of those services is \$1,750.

Staff continues to work with DOA Facilities' staff and the new landlords on the tenant improvement plans for building out the space. The projected move-in date is January 26.

2. 2009-11 Agency Budget Reductions Plans

In the Governor's Major Budget Policies for the 2009-11 biennium it called for all agencies to submit reduction plans equal to 10 percent of their administrative operation base budgets. The Government Accountability Board's 10 percent equaled \$300,600.

However, because of the current state of the nation's economy, the budget reduction plan due date was set aside and budget cuts have increased beyond 10 percent. State Budget Office staff have been assigned to work with agency financial staff regarding budget reduction ideas and associated impacts. All agencies have been asked to review all agency activities to identify redundancies, low-priority program and new ways of doing business. I will continue to keep you informed as we receive further direction regarding budget reduction plans.

3. Staffing

EAC Data Collection Grant Positions

On Thursday, December 4, interviews were conducted for the Project Manager and Assistant Project Manager positions. The interviews went well and we expect to make offers within the next couple of weeks.

4. Presentations

On November 13, 2008, I participated in a post election interview with WIZM. A similar interview was conducted with the Wheeler report on December 5, 2008.

On November 14, 2008, I conducted a recount planning teleconference for the 47th Assembly District recount with county clerks from Columbia, Dane and Sauk counties along with representatives of the candidates.

On November 17, 2008, a teleconference for the 18th State Senate recount was conducted with county clerks from Dodge, Fond du Lac and Winnebago counties along with representatives of the candidates. Shane Falk and David Buerger assisted in the set up and conduct of the meetings.

On November 18, 2008, I attended a presentation at the University of Wisconsin Law School on judicial election reform. I also made a presentation for the Frautschy Dinner Group on the role of the Government Accountability Board. Judge Eich is a member of this distinguished group of University of Wisconsin alumni that traces its origins to campus discussion groups begun in the 1930s.

On December 4, 2008, I made a presentation to for the State Prosecutors Education and Training (SPET) program for new district attorneys on the enforcement of campaign finance, election, ethics and lobby laws by the Government Accountability Board and district attorneys. Several members of the staff, along with Vice-Chair Jerry Nichol, are participating in a State Bar of Wisconsin program on December 12, 2008. The focus of the program is on Regulating Democracy, The Government Accountability Board: Year One.

In addition to Judge Nichol and me, Nat Robinson, Jon Becker and Barbara Hansen are making presentations.

Jon Becker and I also participated in the Council on Governmental Ethics Laws (COGEL) Annual Conference in Chicago. I organized and moderated a panel on the organizational structure of enforcement agencies. I also put together and moderated a program on tracking campaign related communications that included attorneys in private practice, a representative of the IRS, a member of the Federal Election Commission and an attorney for a campaign watchdog group. On December 8, 2008, I received the Distinguished Service Award from COGEL at the conference.

On December 15, 2008, the Elections Division staff organized the conduct of the presidential electors meeting in the Governor's Conference Room at the State Capitol building to cast the official vote for president and vice- president.

Looking Ahead

Elections Division staff will continue to focus on post election data activities. Ethics and Accountability Division staff are working on the deployment of the Campaign Finance Information System for the January continuing report. The Office of General Counsel and the division administrators are putting together a legislative package for consideration by the Board at its next meeting. Staff is also meeting with various legislators to address proposed legislative initiatives developed by legislators.

The agency is also preparing for a transition to new quarters, where we will all be in one location. This will greatly improve our customer service and agency efficiency.

Action Items

No action items.