

# State of Wisconsin\Government Accountability Board

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JUDGE TIMOTHY L. VOCKE  
Chair

KEVIN J. KENNEDY  
Director and General Counsel

## Wisconsin Government Accountability Board

212 East Washington Ave.  
Madison, Wisconsin  
December 17, 2013  
9:00 a.m.

### Open Session Minutes

<u>Summary of Significant Actions Taken</u>	<u>Page</u>
A. Accepted 2008-2012 Voting Equipment Audit Report	2
B. Heard Interim Report on Use of Electronic Poll Books	3
C. Approved Proposed Administrative Rule GAB 5	5

Present: Judge Timothy L. Vocke, Judge Gerald C. Nichol, Judge Michael Brennan, Judge Thomas H. Barland, Judge Harold Froehlich and Judge Elsa Lamelas

Staff present: Kevin Kennedy, Jonathan Becker, Michael Haas, Shane Falk, Nathan Judnic, Sharrie Hauge, Ross Hein, Sherri Ann Charleston, David Buerger, Brian Bell and Reid Magney

### **A. Call to Order**

Judge Vocke called the meeting to order at 9:00 a.m. and introduced and welcomed the two new Board Members, Judge Harold Froehlich of Appleton and Judge Elsa Lamelas of Shorewood.

### **B. Director's Report of Appropriate Meeting Notice**

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

### **C. Minutes of Previous Meetings**

#### **October 22, 2013 Meeting**

#### **November 19, 2013 New Board Member Briefing**

**MOTION:** Approve the Open Session minutes of the meeting of October 22, 2013.  
Moved by Judge Barland, seconded by Judge Brennan. Because they had not yet been

appointed to the Board, Judge Froehlich and Judge Lamelas abstained. Motion carried 4-0.

**MOTION:** Approve the Open Session minutes of the meetings of November 19, 2013. Moved by Judge Barland, seconded by Judge Brennan. Motion carried unanimously.

## **D. Personal Appearances from Members of the Public**

**Karen McKim** of Waunakee appeared on behalf of the Wisconsin Grassroots Network Election Integrity Action Team to comment on agenda item E, the 2012 Voting Equipment Post-Election Audit. She said post-election audits are the most cost-effective method of ensuring accuracy of voting machines. She commended the section of the report dedicated to quality improvement, but said she would have liked to see the report include the evidence staff used in reaching its conclusions.

**Jim Mueller** of Verona appeared on behalf of Wisconsin Counts to discuss voting equipment audits. He said that because voting equipment has always been manufactured by private companies and people cannot look at the programming code, the way to verify its accuracy is to hand-count the ballots after the polls close and compare those results to the machine tabulations. He noted that in Humboldt County, California, voted ballots were scanned and made available on the Internet in an effort to improve election transparency.

## **E. 2012 Voting Equipment Post-Election Audit**

Elections Division Administrator Michael Haas introduced Elections Specialist Sherri Ann Charleston and Elections Supervisor Ross Hein, who presented a verbal and written report located on page 13 of the December Board Meeting materials regarding post-election audits conducted in 2008, 2010 and 2012. Ms. Charleston said that despite most ballots being counted by 20-year-old equipment, the equipment continues to be accurate. She noted that the audit does not include ballots that were not properly marked by voters.

Judge Lamelas asked whether the auditing process disregards the intent of the voter because it only examines whether machines accurately count properly marked ballots. She asked whether going forward the audit could examine ballots the machine did not count.

Extended discussion regarding the purpose of the audit. Director Kennedy said it is to focus on the machines. Mr. Hein noted that in a close election, all ballots are examined to determine voter intent. Director Kennedy said that a county board of canvass has procedures to ensure that all ballots are counted, such as looking for discrepancies between the number of ballots processed and the number of voters.

**MOTION:** Accept the 2008-2012 Voting Equipment Audit Report starting on page 14 of the December Open Session Board Meeting materials. Moved by Judge Nichol, seconded by Judge Brennan. Motion carried unanimously.

Discussion regarding next steps for future audits. The Board requested that at the January meeting, staff present the Board with a list of issues identified by the Board which staff may be directed to examine and report on at subsequent meetings.

## **F. Interim Report on Use of Electronic Poll Books**

Division Administrator Haas introduced Elections Specialist David Buerger, who is leading a staff team studying electronic poll books, which current statutes allow for use in registering and processing voters at the polling place. Mr. Buerger made a verbal and written presentation of materials starting on page 40 of the December Board Meeting materials. He said the Board has never had an electronic poll book system brought to it for approval, and noted that the state does not have the ability to compel municipalities to use them. Paper poll books serve as an eligibility check, a record of who voted, and an audit trail. Electronic poll books automate that process, and can also provide training and guidance materials to help poll workers through situations that may arise at the polls on Election Day. G.A.B. staff observed a pilot test of different commercially-available electronic poll book products in Minnesota in November.

Judge Brennan asked whether longtime poll workers would be receptive to electronic poll book technology. Mr. Buerger said anecdotal evidence is that while there is initial concern among users, they prefer electronic poll books once they get to use them. Judge Froehlich indicated that his preference would be for any required signatures to be completed on paper and not done electronically with a signature pad or other means.

Discussion regarding electronic poll book systems developed by the states of Iowa and Michigan versus commercially developed systems in use in other states.

Mr. Buerger said staff will present recommendations to the Board at its March 2014 meeting.

## **G. Approve Proposed Administrative Rule GAB Chapter 5 Ballot and Electronic Voting Equipment Security**

Staff Counsel Shane Falk made a verbal and written presentation of materials starting on page 64 of the December Board Meeting materials regarding the proposed administrative rule GAB Chapter 5 related to the security of ballots and electronic voting equipment. The Board approved the Statement of Scope at its August 2013 meeting. Staff recommends the Board approve the rule so the promulgation process can continue. Two written comments about the rule have been received from Mary Ann Hanson, regarding whether the rule applied to central count, and from Paul Malischke, regarding inclusion of requirements for hardened systems for use with election management software. Mr.

Falk said he assured Ms. Hanson the rule did apply to central count, specifically the security and documentation provisions for memory devices. Regarding voting system hardening, he said that the U.S. Election Assistance Commission requires the voting systems it certifies to run on hardened computer systems, and Wisconsin requires that systems be certified by the US-EAC, so adding a hardening requirement to the administrative rule would be redundant.

Discussion regarding the Board's prior efforts to promulgate GAB 5 in 2009 and the steps the Board took at the time to ensure the involvement of two important groups – clerks and election observers – in the rulemaking process. Mr. Falk said the Board listened to clerks' concerns about the specificity of the rule and adopted more general language in some places to allow for flexibility in cases where a municipality does not have acceptable on-site storage facilities for equipment and ballots.

**MOTION:** Approve the proposed administrative rule GAB 5, related to the security of ballots and electronic voting equipment starting on page 65 of the December Board Meeting materials, and direct staff to proceed with promulgation of the permanent rule. Moved by Judge Nichol, seconded by Judge Froehlich.

Further discussion of requirements for hardened computer systems and reasons not to include the requirement in the administrative rule because some counties are using legacy systems that are not hardened.

Judge Vocke called for a vote. Motion carried unanimously.

## **H. Report on Campaign Finance Audits and Forfeitures Collected**

Ethics & Accountability Division Administrator Jonathan Becker and Campaign Finance Auditor/Ethics Specialist Adam Harvell presented a verbal and written report of materials starting on page 72 of the December Board Meeting materials regarding the 2013 Campaign Finance Audit and a summary of forfeitures collected during 2013. Mr. Becker said that while staff has always done auditing of campaign finance reports filed with the Board, staff is able to do a more thorough compliance audit now that Mr. Harvell has come on board and the Campaign Finance Information System has been improved with additional auditing tools. Mr. Harvell said staff has moved from conducting audits based on complaints to universal audits of everyone who is on the ballot during a calendar year. Staff now audits for compliance with the following statutes: \$10,000 annual individual limit, prohibited corporate contributions, inclusion of employer and occupation information for contributors when required, prohibited lobbyist contributions, campaign period limits for individual officeholders, and committee contribution limits.

Director Kennedy asked whether the amount of lobbyist forfeitures is higher this year than in the past. Mr. Becker said it probably is because of a narrow, four-day window when lobbyists could make contributions due to the timing of recall elections. He said the purpose of the audit is not to collect forfeitures, but to get committees to comply with the law. He said the amounts of forfeitures are based on a settlement schedule adopted

by the Board, though staff has some discretion to adjust forfeitures based on aggravating and mitigating circumstances.

Judge Lamelas asked Mr. Becker whether he approves all forfeitures. He said staff members come to him if they want to vary from the settlement schedule. Mr. Harvell noted that if a committee is terminating, staff may accept a lower forfeiture based upon previously granted authority from the Ethics and Accountability Division Administrator. Director Kennedy added that Mr. Becker also checks with him on any variance from the settlement schedule.

## **I. Legislative Status Report**

Director Kennedy introduced Ethics & Accountability Specialist Brian Bell, who recently transferred from the Elections Division but will continue monitoring legislation for the entire agency.

Mr. Bell provided a verbal and written report, beginning on page 78 of the December Board Meeting materials. He said staff has been monitoring 70 pieces of legislation this year. Mr. Haas commented that while there is one large omnibus elections bill being considered this session, there are also many smaller bills.

## **J. Director's Report**

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

Written report from Division Administrator Becker and Division staff was included beginning on Page 94 of the Board meeting packet.

### **Elections Division Report – election administration**

Written report from Division Administrator Haas and Division staff was included beginning on Page 98 of the Board packet.

### **Office of General Counsel Report – general administration**

Written report from Kevin J. Kennedy, Sharrie Hauge, and Reid Magney was included beginning on Page 106 in the Board packet.

Director Kennedy noted that the Pew Charitable Trusts today featured an item about data-driven elections benefitting voters, which mentioned Wisconsin's efforts to make good use of data. Judge Vocke mentioned that Pew said Wisconsin is consistently among the highest performing states in its Elections Performance Index.

Judge Lamelas asked about the voter felon audit mentioned on page 103 in the Elections Division report, and why it is not complete. Director Kennedy explained that staff is

working to automate the IT process between the Statewide Voter Registration System and the Department of Corrections, which prior to this year was done by a manual process. Judge Lamelas asked when it will be done, and Director Kennedy said it normally takes this long to be done. Staff Counsel Falk said clerks have already made referrals to district attorneys in some cases, and that G.A.B.'s audit is to ensure the process worked. Mr. Hein said that for 2012 there were fewer than 100 matches of potential felon voters. Mr. Falk said the improved process will help ensure that referrals to sheriffs and district attorneys relate to actual matches, which has not always been the case in the past.

**MOTION:** Accept the Director's Report. Moved by Judge Nichol, seconded by Judge Barland. Motion carried unanimously.

## **K. Closed Session**

Adjourn to closed session as required by statutes to deliberate on requests for advice under the Code of Ethics for Public Officials and Employees, lobbying law, and campaign finance law; to consider the investigation of possible violations of Wisconsin's lobbying law, campaign finance law, and Code of Ethics for Public Officials and Employees; to confer with counsel concerning pending litigation; and to consider performance evaluation data of a public employee over which it exercises responsibility.

**MOTION:** Move to closed session pursuant to §§5.05(6a), 19.85(1)(h), 19.851, 19.85(1)(g), and 19.85(1)(c), to deliberate on requests for advice under the Code of Ethics for Public Officials and Employees, lobbying law, and campaign finance law; to consider the investigation of possible violations of Wisconsin's lobbying law, campaign finance law, and Code of Ethics for Public Officials and Employees; and confer with counsel concerning pending litigation, and to consider employment, promotion and performance evaluation data of a public employee of the Board. Moved by Judge Nichol, seconded by Judge Barland.

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

Motion carried unanimously. The Board recessed at 11:50 a.m. for lunch and convened in closed session at 12:55 p.m.

## **M. Adjourn**

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

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The next regular meeting of the Government Accountability Board is scheduled for Tuesday, January 14, 2014. The meeting will be held by teleconference at the Government Accountability Board office in Madison, Wisconsin beginning at 9:00 a.m. The Board will also hold a

teleconference meeting on Monday, January 6, 2014 beginning at 10:00 am. The primary business of the meeting will be conducted in closed session.

December 17, 2013 Government Accountability Board meeting minutes prepared by:

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Reid Magney, Public Information Officer

December 19, 2013

December 17, 2013 Government Accountability Board meeting minutes certified by:

/s/

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Judge Michael Brennan, Board Secretary

January 14, 2014