

Meeting of the Board

Monday, March 30, 2009 - 9:30 A.M.

Agenda

Tuesday, March 31, 2009 - 9:00 A.M.

Open Session

Government Accountability Board Conference Room

212 East Washington Avenue, Third Floor

Madison, Wisconsin

Monday, March 30, 2009**9:30 A.M.****Page
#****A. Call to Order****B. Director's Report of Appropriate Meeting Notice****C. Approval of Minutes of Previous Meeting****1****D. Public Hearing on GAB 1.28 Scope of Regulation****7****E. Public Comment*****Break*****F. Demonstration and Report on Campaign Finance Information System (CFIS)****14****G. Report on Affirmation of Administrative Rules, Guidelines and Formal Opinions of former Elections and Ethics Boards****60****1. Pre-1990 Ethics Opinion Clarification****2. Pre-1990 Ethics Opinions Previously Affirmed Clarification****3. Remaining Administrative Rules to be Affirmed****4. Letter to Legislative Reference Bureau Related to Repeal of Certain Administrative Rules*****Lunch*****H. Report on Election Fraud (1:30 pm)****89**

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| I. | Administrative Rules | 95 |
| 1. | GAB Chapter 4 Election Observers | |
| 2. | GAB Chapter 22 Settlement Offer Schedule | |
| 3. | GAB 6.05 Electronic Filing of Campaign Finance Reports | |
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Elections Division Report – election administration and SVRS.

Ethics and Accountability Division Report – campaign finance, state official financial disclosure, lobbying registration and reporting, contract sunshine

Office of General Counsel Report – general administration and orders

Break

O. 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 may conduct a roll call vote, a voice vote, or otherwise decide to approve, reject, or modify any item on this agenda.

**Tuesday, March 31, 2009
9:00 A.M.**

P. Presentation by Brady Williamson on Observing Elections in Bangladesh**

Q. Remaining Open Session Items from March 30, 2009 Agenda

R. 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 may go into closed session on March 30, 2009 and return to open session to consider additional open session items. The Government Accountability Board will go into closed session on Wednesday, March 31, 2009 after completing any remaining open session agenda items including Item P.**

**** This item will be presented at 9:00 am on Tuesday, March 31, 2009**

The Government Accountability Board has scheduled its next meeting for Tuesday, May 5 and Wednesday, May 6, 2009 at the Government Accountability Board offices, 212 East Washington Avenue, Third Floor in Madison, Wisconsin beginning at 9:30 a.m. on May 5th and 9:00 a.m. on May 6th.

The Government Accountability Board may conduct a roll call vote, a voice vote, or otherwise decide to approve, reject, or modify any item on this agenda.

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

Risser Justice Building, Room 150
120 Martin Luther King Jr., Boulevard
Madison, Wisconsin
January 15, 2009
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. Amended the minutes of the previous meeting to include reference to the blind trust of the husband of Justice Patience Roggensack in the first motion under Section I: Requests for Exemption from Filing Statement of Economic Interests. | 2 |
| B. Directed staff to meet with Wisconsin Eye staff regarding a request to help educate candidates about use of Wisconsin Eye content. | 2 |
| C. Amended and approved promulgation of GAB 1.28, regarding scope of campaign finance regulation. | 3 |
| D. Adopted GAB 6.05, regarding electronic filing of campaign finance reports. | 3 |
| E. Approved the 2009 Spring Election Ballot Access Report. | 3 |
| F. Adopted a HAVA Check statistical analysis study, its findings and conclusions, and protocol for conducting statewide retroactive "HAVA Checks." | 3 |
| G. Endorsed the 2009 Elections Division legislative initiatives. | 4 |
| H. Delegated authority to act on various items to the Director and General Counsel. | 4 |
| I. Reaffirmed eight guidelines and seven opinions of the former State Ethics Board. | 4 |

Present: Judge Michael Brennan, Judge William Eich, Judge Gerald Nichol, Judge Thomas Cane, Judge Victor Manian (via telephone), and Judge Gordon Myse

Staff present: Kevin Kennedy, Jonathan Becker, Nat Robinson, David Buerger, Shane Falk, Michael Haas, Barbara Hansen, Sharrie Hauge, Diane Lowe, Dotti Milner, Kyle Richmond, Tommy Winkler, and Sarah Whitt.

A. Call to order

Chairman Cane called the meeting to order at 9:41 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. Selection of Board Officers

Chairman Cane drew the name of Judge Brennan to be G.A.B Chairman for 2009, and then handed the gavel to Chairman Brennan.

Chairman Brennan then drew the names of Judge Eich to be G.A.B. Vice Chairman and Judge Nichol to be G.A.B. Secretary for 2009.

D. Approval of Minutes of Previous Meeting

MOTION: Amend the minutes of the December 17, 2008, Government Accountability Board meeting to include reference to the blind trust of the husband of Justice Patience Roggensack in the first motion under Section I: Requests for Exemption from Filing Statement of Economic Interests. Moved by Myse, seconded by Eich. Motion carried.

MOTION: Approve the minutes of the December 17, 2008, Government Accountability Board meeting as amended. Moved by Nichol, seconded by Brennan. Motion carried.

E. Public Comment

1. **Christopher Long**, president and CEO of Wisconsin Eye, appeared to comment about coverage of the 2008 fall election cycle, and unauthorized use of its program content.

MOTION: Direct staff to meet with Wisconsin Eye staff and discuss Mr. Long's request for the G.A.B. to help educate candidates about the use of Wisconsin Eye program content. Moved by Myse, seconded by Cane. Motion carried.

2. **Paul Malischke**, of Madison, appeared to comment about the Elections Division's legislative initiatives report. Materials related to this topic can be found on pages 52-7 of the G.A.B. meeting packet for the January 15, 2009 meeting.
3. **Mike Wittenwyler**, Association of Wisconsin Lobbyists, appeared to comment about the proposed G.A.B review of ethics and lobbying guidelines. Materials related to this topic can be found on pages 63-117 of the G.A.B. meeting packet for the January 15, 2009 meeting.

F. Review of Proposed Administrative Rule GAB 1.28; Scope of Campaign Finance Regulation

MOTION: Amend proposed text of rule in section (3) to offer the option of either section (3) (a) or section (3) (b). Moved by Myse, seconded by Eich. Motion carried.

MOTION: Adopt staff recommendations to approve Notice of Proposed Order Adopting Rule, Notice of Submittal to Legislative Council Clearinghouse, and Notice of Hearing, and to take all other steps necessary to complete promulgation of the amended rule. Moved by Myse, seconded by Eich. Motion carried.

The Chairman recessed the meeting at 11:08 a.m. and reconvened the meeting at 11:25 a.m.

G. Review of Proposed Emergency Administrative Rule 6.05; Filing campaign finance reports in electronic format

Jonathan Becker explained the proposed rule. The consensus of the Board was to hold a public hearing on the administrative rule before the next G.A.B. meeting.

MOTION: Adopt the proposed rule. Moved by Cane, seconded by Nichol. Motion carried.

H. Consideration of support for legislative proposals for (1) adequate public financing of Supreme Court campaigns and (2) increased transparency of Government Accountability Board investigations

Jonathan Becker discussed the topics with the Board. The Board took no action.

I. Spring 2009, Election Ballot Access Report

Nat Robinson and Diane Lowe presented the report.

MOTION: Approve the ballot access report. Moved by Cane, seconded by Eich. Motion carried.

MOTION: Deny request to place multi-jurisdictional municipal judge in Brown County on the ballot. Moved by Nichol, seconded by Eich. Motion carried.

The Chairman recessed the meeting for lunch at 12:14 p.m. and reconvened it at 12:51 p.m.

J. Update: A Continuing Discussion on “HAVA Checks”

Nat Robinson and Sarah Whitt presented a statistical study on “HAVA Check,” and a protocol for the G.A.B. staff to perform statewide retroactive HAVA Check procedures.

MOTION: Adopt HAVA Check statistical study, its findings, conclusions, and proposed protocol for the retroactive “HAVA Check” procedure.
Moved by Myse, seconded by Nichol. Motion carried unanimously.

K. Report on Elections Division Legislative Initiatives

Mike Haas presented the report.

MOTION: Endorse the Elections Division legislative initiatives. Moved by Cane, seconded by Eich. Motion carried.

L. Delegation of Certain Authority to Director and General Counsel

MOTION: Delegate certain provisions of the Board’s authority to the Director and General Counsel as set out on page 59 of the G.A.B. meeting materials of January 15, 2009. Moved by Myse, seconded by Eich. Motion carried.

M. Proposed Meeting Date January 2010

The Chairman tabled this item until later in the meeting.

N. Review of Select Former State Ethics Board Guidelines and Formal Opinions related to:

- 1. Ethics Code for State Public Officials**
- 2. Ethics Code for Local Public Officials**
- 3. Lobbying Law**

MOTION: Reaffirm Guidelines 211, 231, 234, 237, 245, 250, 252 and 281, and Opinions 2002 Wis Eth Bd 06, 2007 Wis Eth Bd 06, 2007 Wis Eth Bd 14, 1992 Wis Eth Bd 31, 1993 Wis Eth Bd 08, 1196 Wis Eth Bd 10 and 2000 Wis Eth Bd 1, with the understanding that the Board will revisit 1992 Wis Eth Bd 31 in a comprehensive manner. Moved by Cane, seconded by Myse. Motion carried.

MOTION: Approve all remaining opinions and guidelines with the exception of 2003 Wis Eth Bd 14. Moved by Myse, seconded by Eich. Motion carried.

The Chairman returned to agenda item M. The consensus of the Board was to meet in January 2010 by teleconference, with the provision that the out-going Chairman be present to draw lots for selection of new Board officers.

O. Director’s Report

Elections Division Report

(Presented by Nat Robinson, David Buerger and Dotti Milner)

Elections Division Update, study on first year implementation of Statewide Special Registration Deputy Program, and presentation of finalized Accessibility Survey were received for information purposes only. The Board took no action.

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 Sharrie Hauge)

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

P. 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 Eich, seconded by Cane.

| | | | |
|--------------------------|-----|---------|-----|
| 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 3:33 p.m. The Board reconvened in closed session beginning at 3:46 p.m.

Summary of Significant Actions Taken in Closed Session

- A. Requests for Advice: None considered or closed.
- B. Investigations: One matter considered. Kyle this text box covers parts of the minutes. Please correct.

The meeting adjourned at 4:58 p.m.

###

The next meeting of the Government Accountability Board is scheduled for 9:30 a.m., Monday and Tuesday, March 30 and 31, 2009 in the G.A.B. Conference Room, Third Floor, 212 East Washington Avenue, Madison, Wisconsin.

January 15, 2009 Government Accountability Board meeting minutes prepared by:



Kyle R. Richmond, Public Information Officer

January 21, 2009

Date

January 15, 2009 Government Accountability Board meeting minutes certified by:

Judge Gerald Nichol, Board Secretary

March 30, 2009

Date

NOTICE OF HEARING
GOVERNMENT ACCOUNTABILITY BOARD
CR 09-013

NOTICE IS HEREBY GIVEN that pursuant to ss. 5.05(1)(f) and 227.11(2)(a), Stats., and interpreting s.11.01(16), Stats., the Government Accountability Board will hold a public hearing to consider adoption of a rule to amend s. GAB 1.28, Wis. Adm. Code, relating to the definition of the term “political purpose.”

Hearing Information

The public hearing will be held at the time and location shown below.

Date and Time
March 30, 2009
at 9:30 a.m.

Location
Government Accountability Board Office
212 E. Washington Avenue, 3rd Floor
Madison, Wisconsin 53703

This public hearing site is accessible to people with disabilities. If you have special needs or circumstances that may make communication or accessibility difficult at the hearing, please contact the person listed below.

ANALYSIS PREPARED BY GOVERNMENT ACCOUNTABILITY BOARD:

1. Statute Interpreted: s.11.01(16), Stats.
2. Statutory Authority: ss. 5.05(1)(f) and 227.11(2)(a), Stats.
3. Explanation of agency authority: Under the existing statute, s. 11.01(16), Stats., an act is for “political purposes” when by its nature, intent or manner it directly or indirectly influences or tends to influence voting at an election. Such an act includes support or opposition to a person’s present or future candidacy. Further, s. 11.01(16)(a)1., Stats., provides that acts which are for “political purposes” include but are not limited to the making of a communication which expressly advocates the election, defeat, recall or retention of a clearly identified candidate. The existing rule, s. GAB 1.28(2)(c), provides that the campaign finance regulations under ch. 11 of the Wisconsin Statutes apply to making a communication that contains one or more specific words “or their functional equivalents” with reference to a clearly identified candidate that expressly advocates the election or defeat of that candidate and that unambiguously relates to the campaign of that candidate.

Under the existing statute, s. 11.01(16)(a)1., Stats., and rule, s. GAB 1.28(2)(c), individuals and organizations that do not spend money to expressly advocate the election or defeat of a clearly identified candidate, or to advocate a vote “Yes” or vote “No” at a referendum, are not subject to campaign finance regulation under

ch.11 of the Wisconsin Statutes. The term “expressly advocate” initially was limited to so-called “magic words” or their verbal equivalents. The Wisconsin Supreme Court, in *Wisconsin Manufacturers & Commerce (WMC) v. State Elections Board*, 227 Wis.2d 650 (1999), has opined that if the Government Accountability Board’s predecessor, the Elections Board, wished to adopt a more inclusive interpretation of the term “express advocacy,” it could do so by way of a rule. The Wisconsin Court of Appeals, in *Wisconsin Coalition for Voter Participation, Inc. v. State Elections Board*, 231 Wis.2d 670 (Wis. Ct. App. 1999), further opined:

And while, as plaintiffs point out, “express advocacy” on behalf of a candidate is one part of the statutory definition of “political purpose,” it is not the only part. Under s. 11.01(16), Stats., for example, an act is also done for a political purpose if it is undertaken “for the purpose of influencing the election . . . of any individual.

* * *

Contrary to plaintiffs’ assertions, then, the term “political purposes” is not restricted by the cases, the statutes or the code to acts of express advocacy. It encompasses many acts undertaken to influence a candidate’s election—including making contributions to an election campaign.

The United States Supreme Court, in *McConnell et al. v. Federal Election Commission (FEC) et al.*, 540 U.S. 93 (2003), in a December 10, 2003 opinion, has said that Congress and state legislatures may regulate political speech that is not limited to “express advocacy.” Specifically, the *McConnell* Court upheld, as facially constitutional, broader federal regulations of communications that (1) refer to a clearly identified candidate; (2) are made within 60 days before a general election or 30 days before a primary election; and (3) are targeted to the relevant electorate. The *McConnell* Court further opined:

Nor are we persuaded, independent of our precedents, that the First Amendment erects a rigid barrier between express advocacy and so-called issue advocacy. That notion cannot be squared with our longstanding recognition that the presence or absence of magic words cannot meaningfully distinguish electioneering speech from a true issue ad Indeed, the unmistakable lesson from the record in this litigation . . . is that *Buckley’s* magic-words requirement is functionally meaningless Not only can advertisers easily evade the line by eschewing the use of magic words, but they would seldom choose to use such words even if permitted. And although the resulting advertisements do not urge the viewer to vote for or against a candidate in so many words, they are no less clearly intended to influence the election.

In *Federal Election Comm’n. v. Wisconsin Right To Life, Inc. (WRTL II)*, 550 U.S. ____ (2007), a United States Supreme Court case, Chief Justice Roberts writing for the majority, opined that an ad is the functional equivalent of express

advocacy, if the ad is susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate, i.e. mentions an election, candidacy, political party, or challenger; takes a position on a candidate's character, qualifications, or fitness for office; condemns a candidate's record on a particular issue.

The revised rule will more clearly specify those communications that may not reach the level of "magic words" express advocacy, yet are subject to regulation because they are the functional equivalent to express advocacy, for "political purposes," and susceptible of no other reasonable interpretation other than as an appeal to vote for or against a specific candidate.

4. Related statute(s) or rule(s): s. 11.01(16), Stats., and s. GAB 1.28, Wis. Adm. Code.
5. Plain language analysis: The revised rule will subject to regulation communications that are "susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate." The revised rule will subject communications meeting this criteria to the applicable campaign finance regulations and requirements of ch. 11, Stats.
6. Summary of, and comparison with, existing or proposed federal regulations: The United States Supreme Court upheld regulation of political communications called "electioneering communications" in its December 10, 2003 decision: *McConnell et al. v. Federal Election Commission, et al.* (No.02-1674) and pursuant to its June 25, 2007 decision of: *Federal Election Commission (FEC) v. Wisconsin Right to Life, Inc. (WRTL II)*, (No.06-969and 970).

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

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

7. Comparison with rules in adjacent states:

Illinois has a rule requiring a nonprofit organization to file financial reports with the State Board of Elections if it: 1) is not a labor union; 2) has not established a political committee; and 3) accepts or spends more than \$5,000 in any 12-month period in the aggregate:

- A) supporting or opposing candidates for public office or questions of public policy that are to appear on a ballot at an election; and/or
- B) for electioneering communications.

In addition, the same rule mandates all the same election reports of contributions and expenditures in the same manner as political committees, and the nonprofit organizations are subject to the same civil penalties for failure to file or delinquent filing. (See Illinois Administrative Code, Title 26, Chapter 1, Part 100, s. 100.130).

Iowa prohibits direct or indirect corporate contributions to committees or to expressly advocate for a vote. (s. 68A.503(1), Iowa Stats.) Iowa does allow corporations to use their funds to encourage registration of voters and participation in the political process or to publicize public issues, but provided that no part of those contributions are used to expressly advocate the nomination, election, or defeat of any candidate for public office. (s. 68A.503(4), Iowa Stats.) Iowa does not have any additional rules further defining indirect corporate contributions or expressly advocating for a vote.

Michigan prohibits corporate and labor contributions for political purposes (s. 169.254, Mich. Stats.) and requires registration and reporting for any independent expenditures of \$100.01 or more (s. 169.251, Mich. Stats.) Michigan does not have any additional rules defining political purposes.

Minnesota statutes prohibit direct and indirect corporate contributions and independent expenditures to promote or defeat the candidacy of an individual. (s. 211B.15(Subds. 2 and 3), Minn. Stats.) A violation of this statute could subject the corporation to a \$40,000.00 penalty and forfeiture of the right to do business in Minnesota. A person violating this statute could receive a \$20,000.00 penalty and up to 5 years in prison. Minnesota does not have any additional rules defining indirect influence on voting. (s. 211B15 (Subds. 6 and 7), Minn. Stats.)

8. Summary of factual data and analytical methodologies: Adoption of the rule was primarily predicated on federal and state statutes, regulations, and case law. Additional factual data was considered at several Government Accountability Board public meetings, specifically the expenditures on television advertisements, and the actual transcripts for the same, as aired during a recent Wisconsin Supreme Court race.

9. Analysis and supporting documentation used to determine effect on small businesses: The rule will have no effect on small business, nor any economic impact.
10. Effect on small business: The creation of this rule does not affect business.
11. Agency contact person: Shane W. Falk, Staff Counsel, Government Accountability Board, 212 E. Washington Avenue, 3rd Floor, P.O. Box 2973, Madison, Wisconsin 53701-2973; Phone 266-2094; Shane.Falk@wisconsin.gov
12. Place where comments are to be submitted and deadline for submission: Government Accountability Board, 212 E. Washington Avenue, 3rd Floor, P.O. Box 2973, Madison, Wisconsin 53701-2973, no later than March 30, 2009.

FISCAL ESTIMATE: The creation of this rule has no fiscal effect.

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

TEXT OF PROPOSED RULE:

SECTION 1. GAB 1.28 is amended to read:

GAB 1.28 Scope of regulated activity; election of candidates.

(1) Definitions. As used in this rule:

(a) “Political committee” means every committee which is formed primarily to influence elections or which is under the control of a candidate.

(b) “Communication” means any printed advertisement, billboard, handbill, sample ballot, television or radio advertisement, telephone call, e-mail, internet posting, and any other form of communication that may be utilized for a political purpose.

(c) “Contributions for political purposes” means contributions made to 1) a candidate, or 2) a political committee or 3) an individual who makes contributions to a candidate or political committee or incurs obligations or makes disbursements for the purpose of expressly advocating the election or defeat of an identified candidate political purposes.

(2) ~~Individuals other than candidates and committees~~ persons other than political committees are subject to the applicable ~~disclosure-related and recordkeeping-related~~ requirements of ch. 11, Stats., ~~only~~ when they:

(a) Make contributions or disbursements for political purposes, or

(b) Make contributions to any person at the request or with the authorization of a candidate or political committee, or

(c) Make a communication ~~containing~~ for a political purpose.

(3) A communication is for a “political purpose” if either of the following applies:

(a) The communication contains terms such as the following or their functional equivalents with reference to a clearly identified candidate that expressly advocates the election or defeat of that candidate and that unambiguously relates to the campaign of that candidate:

1. “Vote for;”
2. “Elect;”
3. “Support;”
4. “Cast your ballot for;”
5. “Smith for Assembly;”
6. “Vote against;”
7. “Defeat;” or
8. “Reject.”

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

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

~~(3)~~(4) Consistent with s. 11.05 (2), Stats., nothing in sub. (1) ~~or~~, (2), or (3) should be construed as requiring registration and reporting, under ss. 11.05 and 11.06, Stats., of an individual whose only activity is the making of contributions.

SECTION 2. EFFECTIVE DATE.

This rule shall take effect on the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.(22)(intro), Stats.



Wisconsin Campaign Finance Information System Performance Report



March 30, 2009

Report Prepared and Presented by:
Jonathan Becker
**Division Administrator ~ Ethics and
Accountability Division**

I. Introduction

The Government Accountability Board's Campaign Finance Information System ("CFIS") is a database with a website interface that allows all users to enter and access the data required to be captured by chapter 11, *Wisconsin Statutes*. The users of the system are in three major categories: 1) registrants – committees registered in Wisconsin and required to report their financial activity; 2) the public –consisting of press, candidates, individuals, and other registrants wishing to view the data; and 3) Government Accountability Board staff to monitor the system and audit filed transactions.

The database was designed to facilitate viewing and analyzing reported campaign activity to enable citizens to understand the financing of political campaigns. It is intended to fulfill the legislative intent of campaign finance law as stated in section 11.001, *Wisconsin Statutes*:

"The legislature therefore finds that the state has a compelling interest in designing a system for fully disclosing contributions and disbursements made on behalf of every candidate for public office, and in placing reasonable limitations on such activities. Such a system must make readily available to the voters complete information as to who is supporting or opposing which candidate or cause and to what extent, whether directly or indirectly. This chapter is intended to serve the public purpose of stimulating vigorous campaigns on a fair and equal basis and to provide for a better informed electorate."

In 2006, Elections Board staff began the process of determining the needs of a new system to replace the outdated and unstable computer system in use since 1987. In April 2006, the Elections Board hired a consultant to help determine the requirements of a new system, help draft a Request for Proposal ("RFP"), and begin the search for a vendor. The RFP was drafted and given to Department of Administration ("DOA") personnel for review and compliance with state procurement rules in December 2006. A goal was set to select a vendor by February 2007, and have a completed project available by January 2008, before the fall 2008 elections.

This time table for issuing the RFP was postponed until December 2007, one full year later than planned, due to delays in the review process by DOA. With the RFP approved, the process began again in earnest with two vendors submitting proposals and the selection of a vendor completed by February 2008. With the vendor selected, staff began the design phase of the project. The vendor came to Madison for meetings with staff, registrants, and press representatives to determine the requirements of the system. Staff explained the statutory requirements of what information was required to be captured, with the registrants and press helping with suggestions on what the system should provide for them such as tracking contribution limits and the ability to search for any contributor or contributions to any committee.

Staff continued to test portions of the application as it was being developed and, in September 2008, we asked committees to volunteer to help test the system and identify any system errors. In November 2008 staff sent login and password information to all active committees so they could update their registration information and start entering financial transactions for the Janu-

ary Continuing 2009 finance report. We also sent out notices that training sessions would be available.

Staff recommended the January Continuing 2009 report as the implementation date so that the system, already a year behind schedule, could be used for providing complete information about the Fall 2008 elections. In order to achieve this goal, we also set out on an ambitious project of converting data from older reports filed under the old system.

II. System Use

936 active registrants filed their January Continuing 2009 campaign finance reports using the CFIS. An additional 389 reports, filed by those not required to file electronically, have been scanned into the system.

III. Training and advice provided by G.A.B.

- A. Staff received approximately 921 phone calls during the time period before the January Continuing 2009 report was due.
- B. Staff received approximately 2211 emails during the time period before the January Continuing 2009 report was due. Each committee who chose email as a means of communication with the G.A.B. averaged three email contacts per committee.
- C. The following chart depicts the types of problems and questions in the emails and the frequency of the reported questions or problems.

| Type of Problems/Questions | Frequency of Problem/Questions |
|---|--------------------------------|
| User Login Issues | |
| Need Password | 136 |
| Problems logging in not as a result of a lack of password | 7 |
| E-Signature problems associated with User entering wrong bank information | 19 |
| Registration Errors | 27 |
| User Data Entry Questions/Issues | |
| How To questions for entering receipts | 77 |
| How To questions for entering expenses | 74 |
| How To questions for editing a transaction | 5 |
| How To questions for deleting transactions | 5 |
| How To questions for entering late transactions or amending reported transactions | 35 |
| How To questions for entering conduit contributions | 9 |
| How To questions for printing conduit transmittal letters | 14 |
| How To questions for officially filing all entered transactions to the State | 80 |
| User Data Entry Questions/Issues cont. | |

| | |
|---|----|
| How To questions for terminating a committee using CFIS | 17 |
| How To questions for filing a report of No Activity using CFIS | 37 |
| How To questions for loan entries | 3 |
| How To questions for Oaths of Independent Expenditures | 3 |
| Users reporting they are Computer Illiterate | 7 |
| Reported Uploading Problems: This includes How To upload questions, needing help determining what columns and rows are wrong in the spreadsheet, questions on how to correct spreadsheet entries and how to proceed after correction, and format problems with users' self-designed spreadsheets, etc. | |
| Need help from the G.A.B. determining what is entered wrong in the spreadsheets. | 72 |
| Taking too long to upload files | 10 |
| Mac and Safari problems | 11 |
| Firefox web browser problems | 17 |
| Users Do Not have Adobe Reader 8.0 or better (this program is required and is a free download) | 24 |
| Users with Dial-Up connections reporting problems | 7 |
| System slowness problems NOT related to inadequate browsers, computers, or dial-up internet connection | 5 |
| Committee Specific Problems | |
| Governor Doyle issues with upload and data entry – Note: On more than one occasion User did not follow instructions given by the G.A.B. staff. | |
| Attorney General J.B. Van Hollen issues with upload and data entry – Note: Committee did not attend a training class. | |
| ADCC and SDCC upload errors – Users uploaded contributions as receipts from the GAB when they should have uploaded the receipts as coming in from “Registrants”. | |
| John Lehman sent an email with questions and issues that he requested the G.A.B. address. | |
| Campaign finance Reporting Questions | |
| Questions about the basic look and feel of the new CFIS and public inquiry on how to search for information | 31 |
| Campaign Finance reporting requirement questions – general information | 64 |
| Filing Fee questions | 5 |

Staff worked late into the evenings and on weekends to respond to all inquiries.

IV. CFIS Performance

Output. CFIS has performed as intended and expected in allowing users to view and analyze information in the system. Filers' individual reports are available on-line and may be printed out. In addition, users may search for (1) the contributors to an individual filer sorted by name, amount of contribution, employer, and other criteria; (2) the identity of those committees to which an individual contributor furnished campaign contributions; (3) the recipients of contributions from members of specific occupations. The only search function that is not fully satisfactory is a search of contributors by employer. This is because, if an employer has multiple addresses, the system lists each address as a separate employer. We are working on a solution to this problem.

Inputting data. Filers using the CFIS experienced significant problems using the system. After analyzing the experience of the filing period, we believe problems may be divided into three categories, in order of importance:

- 1. The conversion of prior data from the old, paper system into CFIS.**
- 2. Users' ability to operate the CFIS system.**
- 3. The performance of the CFIS application.**

Attempting to convert prior data from the old, paper system into CFIS – At the outset we faced the question whether to simply have the January Continuing 2009 data be the only data that initially would be accessible in the new system or to convert older data in order to present a complete picture of the Fall 2008 election cycle. We made the decision to convert prior data for state candidate committees beginning with their July 2007 Continuing reports. We devoted much time and many resources to this effort. We underestimated the difficulty in converting data from the old, paper system into CFIS. Conversion has not been successful.

The major problem encountered in conversion was the lack of quality and consistency in prior campaign finance reports. Prior reports used perhaps a dozen different templates and forms. Even though paper reports were also filed electronically, this fact made electronic conversion feasible for only a fraction of prior filings. More significantly, we seriously underestimated the problems with the quality of the data provided in prior reports. Because filers could report anything without any check on their ability to do so, much of the information provided does not meet statutory requirements. Issues we discovered with prior data were:

1. Missing transaction data, including missing contribution amounts; missing contributor names, and missing contribution dates.
2. Incorrect cash balances.
3. Report of loans and incurred obligations without supporting transactions.
4. Loans and incurred obligations that remained outstanding but were no longer reported.

Our ability to convert only partial data from prior reporting periods has been the major cause of inaccurate data problems for which the system has been criticized. Partial data has led to inaccur-

rate reports as well as obstacles to filers attempting to report repayment of previously reported loans and incurred obligations and return of prior contributions (since the CFIS requires that such transactions be linked to the initially reported transaction).

As a result, we have decided to remove all links in the CFIS to data derived from reports filed prior to the Fall 2008 pre-primary campaign finance reports. These older reports remain available on paper at G.A.B. offices and electronically on the G.A.B.'s website. Staff will continue to manually input as needed prior data for committees related to loans, incurred obligations, and contributions that a filer has returned.

Users' ability to operate the CFIS system – Change is never easy. The transition to a new system has created apprehension and frustration among users who are familiar with and comfortable using their current systems. Anecdotal evidence suggests that new registrants experienced minimal problems compared to existing registrants and long-term filers. We underestimated the learning curve necessary for users to become comfortable with the new system. With increased training and familiarity with CFIS, a majority of issues that result from user operating problems will disappear. Having said this, we have learned the following lessons:

1. We need to do a better job of training. Although we offered dozens of sessions, fewer than 10% of all committees sent a representative to training sessions. In future, we plan to offer training sessions outside of Madison and will seek to offer training at conferences and other gatherings of organizations. We need to make greater efforts at informing people of training opportunities. In addition, a complete set of on-line training videos were not available at the beginning of the filing period. This has been addressed.
2. We need to ensure that our training and instructional materials are effective. Experienced training staff from the G.A.B.'s Elections Division will review all training and instructional materials. G.A.B. staff unfamiliar with the system will test the ease of understanding and using the system and on-line instructions to file.
3. We need to make using the system as intuitive as possible. We will hold an application development session with the CFIS developers and representatives from legislators' committees on April 7 to address problems that have arisen.

The performance of the CFIS application – Valid system functionality issues were identified by CFIS users during the January 2009 Continuing report filing period. Upon learning of problems, G.A.B. staff promptly notified the IT developers of the problems and the matters were promptly addressed. A majority of these problems have been resolved and the limited numbers of outstanding system issues are being addressed for future filing periods. System errors constitute a small percentage of the total issues raised by users. The major outstanding system function issues remaining at the end of the reporting period were:

1. CFIS does not function properly with certain web browsers including Mozilla Firefox or the Safari browser on MAC computers. The developer has found a solution to the Mozilla Firefox issues and is close to a solution for MAC users using Safari.

2. Speed on upload. This was a major issue throughout the filing period. In part, slow speeds were due to the fact that DET provided only one server for all uploads. We have arranged with DET to provide multiple “virtual” servers during peak download periods in the future. The developer continues to work to upgrade system processing speeds. Because the system checks data for completeness on upload, and alerts users to missing information, the system will never upload instantaneously. The developer is creating a screen to alert users as to where they are in the upload queue. We continue to identify whether speed problems are system issues or server issues.
3. Speed in auto-filling certain fields. The CFIS is designed to provide users the ability to choose contributor information already existing in the system to automatically populate the contributor field. The search mechanism initially used was extremely slow. The developer has created a new, faster search mechanism.

V. Conclusion

On the whole, we believe the CFIS to be sound. We remain confident that it will provide the public with unsurpassed transparency and easily accessible information about the financing of campaigns in Wisconsin.

Many issues in the first filing period for which CFIS was used were created by the transition to a new system -- especially because of conversion problems. These conversion issues will disappear over time. As users become familiar with CFIS, many difficulties should disappear.

It has been suggested that we require users who file electronically to also file paper reports. We do not recommend this. Paper reports will simply be printed out versions of on-line spreadsheets or on-line pdfs generated by CFIS. The system appears to properly and accurately capture and display filed information. Inaccuracies in information have been due either to user error, which would be replicated in paper filings, or to the incomplete conversion of prior data, which we are addressing by removing that information.

Nonetheless, we should regard the CFIS as a work in progress and continue to work with users and our IT consultants to develop a more intuitive and faster system with the goal that people will want to use the system and will feel confident in relying on it.

Appendix CFIS A

Issues Raised by the Wisconsin Democracy Campaign



Posted: March 4, 2009

New Campaign Finance Reporting System Shows Erroneous Reports For Doyle, Others

Madison - Campaign finance reports posted on a new state electronic reporting system for Governor Jim Doyle and other statewide officeholders, legislators and political action committees are riddled with erroneous information, a review by the Wisconsin Democracy Campaign shows.

WDC reviewed about four dozen campaign finance reports for candidates and political action committees from 2006 to present and found nearly all had erroneous information including incorrect cash balances and spending and fundraising totals. In addition, campaign expenses including travel, staff payroll, political advertising, postage and printing are described as "data conversion" in reports being put on the new system from July 2008 and before.

The original 368-page campaign finance report filed by Doyle last July showed individual and committee contributions and other income totaling \$906,000 and expenditures totaling \$234,090 for the first six months of 2008. (See [original July 2008 summary page](#).)

A version of that same report on the new electronic reporting system is only nine pages and shows Doyle's campaign raised only \$2,959 in the first six months and \$624,895 for the year. Both totals, which should be identical, are wrong. The report also shows Doyle spent nothing in the first six months and \$292,175 for the year – again both figures should be the same but both are wrong. (See [July 2008 summary page from GAB's new campaign finance reporting system](#).)

Doyle's year-end 2008 report on the new reporting system was also incorrect because it showed he raised \$624,895 for the entire year. Doyle actually raised more than \$1.5 million last year. (See [January 2009 summary page](#).)

In addition to Doyle, campaign finance reports available on the new electronic system for many other candidates and PACs also contain erroneous spending, fundraising and cash balance figures and other information, including:

- A July 2006 campaign finance report for Attorney General J.B. Van Hollen shows he only raised \$70,000 – a one-time contribution from himself – and spent nothing in the first half of 2006. His original report shows contributions and other income totaling \$468,892 – including two loans of \$175,000 each from Van Hollen to his campaign – and expenses totaling \$95,799.
- PAC reports for the Wisconsin Education Association Council, the state's largest teachers union and one of the state's highest spending PACs, and the Greater Wisconsin Committee contained numerous errors.

WEAC PAC's July 2008 report shows it was broke with a negative cash balance of \$456,466. Its correct cash balance was \$2.56 million. The new system's report also showed WEAC raised \$421,693 and spent \$3 million in the first six months. The PAC actually raised \$1.02 million and spent \$548,077. Finally, all of its expenses were described as "data conversion," including \$349,325 it spent on a controversial television ad in the 2008 Supreme Court race.

The Greater Wisconsin Committee's July 2008 PAC report on the new reporting system shows it raised \$280,450 and spent \$300,630 and ended the first six months of the year with a negative cash balance of \$73,824. The PAC's original reports showed it raised \$74,700 and spent \$112,839 and ended the first six months of 2008 with a balance of \$4,185. The report on the new system also wrongly described as "data conversion" four expenditures totaling \$101,822 for negative advertising in last spring's Supreme Court race.

- A July 2008 campaign finance report for Democratic Assembly Majority Leader Tom Nelson shows two different fundraising totals for the first six months of the year – \$39,364 for the six-month period and \$48,270 for the year – figures which should be the same. It also shows two different expense totals – \$7,889 for the six-month period and \$17,240 for the year – that should be the same. All of Nelson's expenses, including fundraising, printing and bank charges, are classified as "data conversion." Nelson's original electronic report filed last July shows he raised \$39,414 and spent \$7,689 in the first six months of 2008. Finally, the ending cash balances on both reports differ by \$49,000. The original report he filed shows a cash balance of \$80,617 while the report generated by the new electronic reporting system shows a cash balance of \$31,475.
- Two campaign finance reports on the new system for Republican Representative Jim Ott show fundraising and spending totals for 2007 that are triple the totals listed in his original reports because many contributors and expenditures were listed three times. All of the expenses listed in the reports are erroneously categorized as "data conversion" including postal, retail, credit card and hotel expenditures.
- A July 2008 report generated by the new system for Republican Senator Mike Ellis shows no fundraising or income for the first six months of 2008, \$4,510 in expenses and a negative cash balance of \$4,510. Ellis' original report filed last July lists \$4,711 in interest income, \$11,179 in expenses and contributions to committees and a cash balance of \$204,534 – one of the largest among the state's 132 legislators. Like the others, all of Ellis' expenses are described as "data conversion."
- July 2008 reports generated by the new system for the two top Republican legislative leaders – Senate Minority Leader Scott Fitzgerald and Assembly Minority Leader Jeff Fitzgerald – both contained different fundraising and spending totals than the electronic reports they filed in July. The reports on the new electronic filing system also contained substantially higher year-to-date fundraising and spending totals than those listed for the six-month period even though the totals should match. In addition, the June 30, 2008 cash balance on Jeff Fitzgerald's original report was \$51,345 but the report on the new filing system showed a cash balance for the same period of \$4,203. Scott Fitzgerald's ending cash balance last June was \$10,550 but the report for the same period on the new filing system listed a negative cash balance of \$8,127.

- In a campaign finance report filed last October on the new electronic system by MTI Voters – the Madison teachers union PAC – expenditures were inflated by \$17,004 because 12 expenses for newspaper ads totaling \$3,504 and 27 contributions of \$500 each were each listed twice in the report.

Finally, 2008 year-end campaign finance reports due February 2 as well as basic fundraising and spending totals for more than two dozen legislative candidates are not yet available on the Government Accountability Board's reporting system or upon request.

In the past most paper and electronically filed campaign finance reports were available within two or three days after they were due. And basic fundraising, spending and cash balance totals culled from those reports were usually available a week to 10 days after the reports were due.

An audio version of this story is available in our [podcast archive](#).

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site design by: [Atomic Coffee Media](#)

Group says new campaign finance Web site failing the public; GAB disagrees

By Brady Bautch, RiverTown Staff

The president of a political watchdog group claims the public is being denied access to campaign finance information because of difficulties with the state's new campaign finance Web site.

"The public is being denied access to information they were able to get before," said Mike McCabe, president of the Wisconsin Democracy Campaign.

McCabe claims that the new system, operated by the Government Accountability Board, is not only difficult for the public to retrieve information from, but also hard for campaign and political action groups to use.

"We would normally have a report out about January campaign filings, but because the system is missing so much information we are not able to do so," McCabe said.

He added that he doesn't fault the candidates, campaign treasurers or political committees:

"I'd say right now the new system is a mess," McCabe said.

However, a spokesman for the GAB said the site provides quicker access to information and it is primarily a case of getting used to something new. The site was piloted in November and all campaigns were required to use the site starting in January.

"After we explain how to use it they, (campaign treasurers) find it easier to use than the old system," said Kyle Richmond, GAB public information officer.

He also said the system will make campaign finance more transparent in the state because the new system allows for information entered by campaign staffs to be seen almost immediately by the public.

"The overall goal is not to make the system easier on the campaigns, but to make it more transparent so that people can see where campaign money is coming from and where it is being spent," Richmond said.

"When you report it (campaign finances), it's up there," he added.

On top of being difficult to use, McCabe said that the information they are able to get is not accurate.

He pointed out that WDC found \$178,454 in committee contributions attributed to the GAB, but that they were found in paper reports filed by the State Senate Democratic Committee and Assembly Democratic Campaign. Both groups are heavy legislative

fundraisers.

On top of that, \$124,815 in staff wages plus office supplies from the two committees was attributed to GAB.

Richmond argued that it wasn't the system's fault for the wrong information, but a user problem.

"Anyone could file the wrong information," Richmond said.

Richmond added that GAB is offering training to campaign staffs on how to use the system.

Another WDC complaint about the system is that it does away with paper reports which could be used as a backup to the electronic forms.

Richmond noted that paper reports are still available for those campaigns with \$20,000 or less in activity. He also noted that on the new site PDF versions of campaign finance reports can be printed out.

While he argues the site is an improvement, Richmond acknowledged there are still bugs to work out.

"As campaigns point out problems to us we get them fixed," he said.

The Wisconsin Campaign Finance Information System Web site can be accessed through the GAB Web site (<http://elections.state.wi.us>).

More information about WDC can be found on their Web site (www.wdc.org).

Contact Brady Bautch at internet@rivertowns.net

Published 06:17 Feb-26-09

Appendix CFIS B

Response to Issues Raised by the Wisconsin Democracy Campaign

1. Governor Doyle

In order to accurately file Governor Doyle's January continuing 2009 report, returned contributions needed to be report. The system does not allow a committee to return a contribution if the original contribution does not exist in the system. A solution to this problem, as communicated by G.A.B. staff to Governor Doyle's person filing the report, is to go back to the reporting period in which the contribution was originally made (in this case July 2008) and enter the contribution into the system but not file the report. This allows the committee to accurately enter the return contribution, but does not obligate the committee file an incomplete report. Doyle's complete July 2008 report has not yet been converted into the CFIS system. In this situation, Doyle's campaign inadvertently filed the July 2008 report, filing only contributions associated with the return contributions reported on the January 2009 report; as a result, the report filed was incomplete and inaccurate. For cash balance and data conversion comments, see information provided above.

2. Attorney General Van Hollen

The full July 2006 report for Attorney General Van Hollen is not converted into CFIS. The treasurer entered an outstanding loan so that the treasurer could have the ability to enter payments made towards that loan during the January Continuing 2009 reporting period so that the January 2009 report would be accurate. Outstanding loan information can be entered into the system so that payments can be entered towards that loan without filing the previous report in which the loan was taken out. Not filing this incomplete report would have prevented this error from occurring.

3. WEAC

Some of the entries did not have dates or receiving registrant codes; therefore, some transactions were left off of the report that was converted into the system. This then throws off the balances for the committee. Staff has since "cleaned" the file and re-filed the accurate report.

4. Greater Wisconsin Committee

Year to date totals are off because the system is calculating the year to date totals based upon all filed transactions for 2008. If the pre-primary, pre-election or January 2009 continuing reports are filed into the system before the July 2008 report was converted, the system will inaccurately calculate year to date totals. The system was designed to calculate those totals assuming that reports would be filed in sequential order. Data conversion prevented this from happening. See "Data Conversion" above for the response to WDC's "data conversion" comment.

5. Majority Leader Nelson

Cash balances that appear on this report were calculated by the system, not entered by the user. If prior reports are not entered into the system, beginning cash balances and year to date balances will not calculate and display correctly. In Representative Nelson's situation, the system thought his beginning cash balance was \$0, thus throwing off his ending cash balance total. Also, his year to date cash balances are calculated incorrectly because his pre-primary and pre-election reports were filed before his July 2008 report. CFIS took activity from these reports (receipts and expenses) in addition to his July 2008 report activity to calculate year to date totals (the reports being filed out of order caused this problem). G.A.B staff will be working with the vendor to correct this system issue in the future. His report is missing \$50 worth of contributions (something not correctly converted due to missing or inaccurate information) and his expenses are \$200 greater (something entered wrong or duplicated), thus throwing off his report period balances. Staff is working to find out what the cause of those discrepancies is.

6. Representative Jim Ott

An error occurred during the data conversion process and his activity was duplicated twice producing three of the same entries for every transaction. This was a system error and staff will delete the duplicated entries and re-file the report. See Data Conversion above for response to "data conversion" comment.

7. Senator Mike Ellis

Cash balances for this report were calculated with the assumption of a beginning cash balance of \$0. The interest income amount was missing information that was required in order to convert the data into the system; therefore, it doesn't appear in the system. The expenses that were contributions from Ellis' campaign to committees also did not get converted because GAB id numbers for those committees were not provided, a requirement to give a contribution to a committee. Therefore, only \$4510 converted for his July 2008 report, and that minus 0 (what the system thought his beginning cash balance was) produces the -\$4510 as an ending balance. See Data Conversion above for response to "data conversion" comment.

8. Senate Minority Leader Fitzgerald

Senator Scott Fitzgerald's July 08 report cash balance was incorrect due to the beginning balance reported at \$0. The total receipts and total expenses are incorrect due to some transactions not converting properly. GAB staff is working with the committee to correct the reports.

9. Assembly Minority Leader Fitzgerald

Jeff Fitzgerald's committee had two issues on the July 08 report. The beginning cash balance was entered as \$0 (see above). Secondly there was a contribution to a local candidate (\$50) that was not included in the disbursements due to the system not being able to enter transactions with local candidates in earlier versions when the initial entry was done.

Representative Fitzgerald's Pre-Primary report had similar issues. The beginning cash balance was entered as \$0 and there were two contributions returned to individuals that were not on the report because the receipts were not entered on a previous report. Both reports have been updated by GAB staff and now agree with the original reports filed.

10. MTI

Madison Teachers Inc. (MTI) filed a Pre-Election report, which was entered into CFIS. The committee also filed an amended report which included all the original entries and an additional returned contribution (\$350). When this amended report was processed, all entries were entered into the system creating duplicates for everything except the return contribution. GAB staff has amended the report in CFIS to delete the duplicate entries, and also update the expenses to reflect the independent expenditures rather than monetary. CFIS now reflects the activity filed by the committee on their amended report.

Appendix CFIS C

Feedback Received from CFIS Users

Positive Feedback

Porter, Tracey D - GAB

From: Bill Davis [kincaid@mwt.net]
Sent: Friday, January 23, 2009 2:37 PM
To: Porter, Tracey D - GAB
Subject: Re: Upload Issues:
Follow Up Flag: Follow up
Flag Status: Completed

Just an aside: in spite of some of the frustrations with the transition to the new system, I can see that the new will be quite an improvement once the wrinkles are ironed out. Thanks!

Porter, Tracey D - GAB

From: Bohringer, Richard - GAB
Sent: Sunday, February 01, 2009 6:59 PM
To: Porter, Tracey D - GAB; Winkler, Tommy - GAB; Becker, Jonathan - Ethics; Venu Gurrarn; 'Anupama sarasam'; Macur, Kenneth M - GAB
Subject: Compliments on the system from at least one committee
Follow Up Flag: Follow up
Flag Status: Completed

From: WICPA - Tammy Hofstede [mailto:TAMMY@wicpa.org]
Sent: Thursday, January 29, 2009 6:54 PM
To: Bohringer, Richard - GAB
Subject: WICPA Question

How do I filed the EB12 online? I see where I can put in the expenditures (which are actually 0), but how do I report the staff time? If I go to File No Activity, will it lead me to enter staff time less than 5 hours? If I fill this out online, then I don't need to send anything in, correct?

Second, on our conduit. I just want to verify that the Manually entering contributions are ONLY those contributions related to the disbursement to the legislator? It does not mean those who contributed in the reporting period (like PAC)? It stays/means the same as filing the old reports?

If I upload using an Excel template – the one to download from the site – the same criteria as above, I enter all the contributor info, then use the GABID's for the recipient (legislator)?

Since all the contributor's are new, being the first time, once this report is filed, they will receive an ID that I can use next time which will be downloadable?

One other comment – I LOVE this site and reporting. It is so much cleaner and once information is in there, it will be just a click to record it. If it could only print the checks (and transmittal letters) for us, it would PERFECT!

Thank you!

Tammy Hofstede
Director of Finance & Operations
 WICPA | 235 N. Executive Dr. | Suite 200
 Brookfield, WI 53005
 ph:262-785-0445 x3013 | 800-772-6939
 fax:262-785-0838 | wicpa.org

a passion for the profession
a passion for life
 My Career. My Life.

Porter, Tracey D - GAB

From: Chris Wery [cwery1@new.rr.com]
Sent: Monday, February 02, 2009 2:12 AM
To: Bohringer, Richard - GAB; Porter, Tracey D - GAB
Subject: Fw: January 2009 Continuing Campaign Finance Report
Follow Up Flag: Follow up
Flag Status: Completed

Hello again,
Please disregard my email.
I was able to get back onto the site and complete everything.
Very nice site, easy to use. Take care.

Alderman Chris Wery
Green Bay City Council President
cwery1@new.rr.com
920-490-9282
<http://c.wery.tripod.com>

----- Original Message -----

From: Chris Wery
To: richard.bohringer@wi.gov ; tracey.porter@wi.gov
Sent: Monday, February 02, 2009 12:44 AM
Subject: January 2009 Continuing Campaign Finance Report

Howdy,
The website seems to have locked me out after I updated our account info.
I will try to submit our update again on Monday, Feb 2.
I have attached the report and understand it must be submitted on the website.

Alderman Chris Wery
Green Bay City Council President
cwery1@new.rr.com
920-490-9282
<http://c.wery.tripod.com>

Porter, Tracey D - GAB

From: Hahner, Sue [HahnerS@WEAC.org]
Sent: Tuesday, February 03, 2009 7:52 AM
To: Porter, Tracey D - GAB
Subject: RE: CFIS question
Follow Up Flag: Follow up
Flag Status: Completed

Classic example of typical
 User errors as a
 result of being unable to
 attend training.

Tracey,

I appreciate all of your help so far!

I was able to get back on the system – but I had a 50 – 50 chance of getting it right – and I picked the wrong one! I did not add the interest (Receipts) because I was not sure if the two files (receipts and expenditures) joined in the one file.

So, I subtracted the expenditures – because that is what I had up on my computer– but did not add the receipts. I, of course, did not print the file I sent and I don't know how to now change the ending balance to reflect the receipts.

* It is really an easy system once you know it – I just didn't have the time (or took the time) to get to learn it.

I really appreciate your help – and I am so sorry about the hours you need to put in because of people like me!

Thanks,
 Sue Hahner
 REA PAC

From: Porter, Tracey D - GAB [mailto:Tracey.Porter@Wisconsin.gov]
Sent: Monday, February 02, 2009 10:09 PM
To: Hahner, Sue
Subject: RE: CFIS question

I apologize for not being able to address your problems before the end of the day. As you can imagine with the new system, it's been quite the day. (I'm still working now but I don't think you're available at 10 pm.) I will flag this for follow-up and will call tomorrow.

Tracey Porter
 Campaign Auditor
 WI Government Accountability Board
 Phone: 608-267-7804

From: Hahner, Sue [mailto:HahnerS@WEAC.org]
Sent: Monday, February 02, 2009 5:01 PM
To: Porter, Tracey D - GAB

Porter, Tracey D - GAB

From: John Reindl [reindl@chorus.net]
Sent: Wednesday, February 04, 2009 11:11 AM
To: GAB CFIS
Subject: Potential problem with CFIS web page
Follow Up Flag: Follow up
Flag Status: Completed

Hi ~

We were asked at our training seminar to report problems that we encountered with the CFIS system

I am not sure if this is a problem or not, so I will let you decide.

As shown in the picture below, when the report is to be filed, the first line of the electronic signature asks for our GAB ID. However, the second line of the signature gives the GAB ID and asks for the password.

So, it either seems unnecessary to ask for the ID in line 1, or perhaps it is a security issue that this screen gives out the ID in line 2.

Best wishes on this new system. While it took a lot of extra time for our PAC to submit its report this way, I can see that it should help not only the users of the system to extract information, but also, in the long run, save the treasurers time in filing the reports.

John Reindl



Porter, Tracey D - GAB

From: Glenn and Karen [sandhillwi@gmail.com]
Sent: Friday, February 06, 2009 12:31 PM
To: GAB CFIS
Subject: Online reporting oomments
Follow Up Flag: Follow up
Flag Status: Completed

Hello,

As treasurer of the Eau Claire Democrats, I have a few observations about the online filing process.

After getting past several glitches, it was great.

Suggestions:

- It needs to be very clearly and widely stated (maybe even in the column heading itself) that the GAB# must be formatted as text. Unfortunately, I copied the rows containing data from another spreadsheet with the GAB number cells formatted as general. It took many tries to upload it before I called for help. The heading says its a "#" but it's not a number!
- It needs to be very clearly and widely stated that pop up's must be allowed.
- The Edit/File Pending Transactions, Amend Filed Transactions, Upload Transactions, and View Filed Reports screens should default to the current year and reporting period instead of 1998.
- It would be helpful for the Upload Transactions menu to also mention Downloads. It's not obvious that Upload is where you go to download!

Thank you.

Glenn Reynolds

Porter, Tracey D - GAB

From: Ellen Talavera [ellen@ibew494.com]
Sent: Friday, February 13, 2009 8:46 AM
To: Porter, Tracey D - GAB
Subject: RE: online filing

Follow Up Flag: Follow up
Flag Status: Completed

Thank you, Tracey, for the follow up. I'm chalking this one up to user error. I gotta say, after the swearing and complaining was over, I found this new system pretty slick. Best regards,
Ellen Talavera
IBEW 494 PAC Treasurer

From: Porter, Tracey D - GAB [mailto:Tracey.Porter@Wisconsin.gov]
I am following up on all phone calls and emails sent to the GAB during the filing deadlines of January 2009 Continuing and Spring Pre-Primary 2009. I am inquiring whether this issue was resolved.
If not, there is a simple fix for this issue: Please download Adobe Reader 8.0 or better. There is a link on the home page on the lower right-hand corner. <http://cfis.wi.gov>

From: Ellen Talavera [mailto:ellen@ibew494.com] Hi-I am creating the January Continuing report and attempting to preview it. Acrobat loads, and an error message saying the file is damaged occurs. How can this be corrected? I won't be sure my report is accurate, but may I send it anyway if this problem isn't resolved by February 2nd? I would be grateful for direction or help on this matter.

Bohringer, Richard - GAB

From: Porter, Tracey D - GAB
Sent: Monday, February 16, 2009 1:52 PM
To: Becker, Jonathan - GAB; Winkler, Tommy - GAB; Bohringer, Richard - GAB; Morvak, Dennis - GAB; Macur, Kenneth M - GAB
Subject: FW: Nice Comments on CFIS

Hello Everybody!
Please see the nice comments from Mike Huebsch :)

Tracey Porter
Campaign Auditor
WI Government Accountability Board
Phone: 608-267-7804

From: Mike Huebsch [mailto:mdhuebsch@aol.com]
Sent: Monday, February 16, 2009 1:39 PM
To: Porter, Tracey D - GAB
Subject: Re: July 2009 Continuing

Excellent. I know you guys have come under some fire by others, but I think this new system is great! Although I haven't had any training it has been easy to use and seems to work well. I have two suggestions. One, allow us to enter a spouse in the donor name list. I am exporting this list to Excel for thank you notes and it is important to include the spouse. Two, allow us to print off a hard copy of the Occupation list in the donations. Rather than scrolling through the list every time to determine an appropriate occupation listing, I could have it all in front of me and jump right to that line. Thanks for getting back to me so quickly.
Mike

Porter, Tracey D - GAB

From: Jeffrey S. Johns [jsjohns@wi.rr.com]
Sent: Tuesday, February 17, 2009 6:56 AM
To: Porter, Tracey D - GAB
Subject: Re: Republican Party of Ozaukee County - Jan. 2009 Report
Follow Up Flag: Follow up
Flag Status: Completed

Tracey,

Thanks for all your help! The report has been filed to the state successfully. Once all the little error nuances were figured out, I thought this system/ method of filing is very CONVENIENT.

Take Care,
 Jeff

----- Original Message -----

From: Porter, Tracey D - GAB
To: 'Jeffrey S. Johns'
Sent: Monday, February 16, 2009 10:28 AM
Subject: RE: Republican Party of Ozaukee County - Jan. 2009 Report

Jeff,

I have attached the file with my change recommendation. Once this change is made all should go well. And then you can file to the state.

To File a report, please follow these steps:

1. Login to the system.
2. From the left menu, click on "Edit/File Pending Transactions"
3. Select the Filing Period Name from the dropdown - January Continuing 2009
4. Click Search. This will bring up the results.
5. Scroll down and you will see a red button that says "File All to State". Click it.
6. A pop-up window will appear (as long as you've allowed pop-ups from the site).
7. Enter the report period start date, depending on your last report submission it will either be 07.01.08 or 10.21.08.
8. Enter the beginning and ending cash for this report.
9. Enter your electronic signature.
10. Click Submit.
11. After the wheels turn, you will see a successful screen and will be able to view and print your report for your records.

Tracey Porter
 Campaign Auditor
 WI Government Accountability Board
 Phone: 608-267-7804

From: Jeffrey S. Johns [mailto:jsjohns@wi.rr.com]
Sent: Thursday, February 12, 2009 9:52 PM
To: Porter, Tracey D - GAB
Subject: Re: Republican Party of Ozaukee County - Jan. 2009 Report

Tracey,

One more question: An error message on my Expense report occurs that requests a Dependent GAB ID for all 19 entries. What does that mean?

Thanks, Jeff

----- Original Message -----

From: Porter, Tracey D - GAB
To: 'Jeffrey S. Johns'
Sent: Wednesday, February 11, 2009 8:18 AM
Subject: RE: Republican Party of Ozaukee County - Jan. 2009 Report

Jeffrey,
 I have answers to your questions below. (written in blue)

Tracey Porter
 Campaign Auditor
 WI Government Accountability Board
 Phone: 608-267-7804

From: Jeffrey S. Johns [mailto:jsjohns@wi.rr.com]
Sent: Wednesday, February 11, 2009 7:42 AM
To: Porter, Tracey D - GAB
Subject: Re: Republican Party of Ozaukee County - Jan. 2009 Report

Tracey,

The following are questions that I have with the Jan. 09 Report.

1. If our contributions are below \$20,000 for the entire 08' period. Do I have to file this report electronically? Once you start to e-file whether emailing files to us or using the system, you have to continue based on the board's rule. And if you start, then the only e-file system approved is the CFIS campaign finance information system.
2. In uploading the two attached files for receipts and expenses, I recieved "processed-errors" in the Status column. What could be causing this? I opened the blue file links in the upload transactions screen. These blue file links are your error reports.

In column W I see that there are only two issues with the contribution file.

1. Invalid occupations - you need to use the occupation codes found either in the manual or available for downloading in the Upload Transactions screen under the additional information heading.
2. The last three contributions are marked as "I" for individuals. These need to be changed to Contribution Type "OI" for other income and contributor Type of "U" for Unitemized. Then enter comments, like sales of "something". For the last contribution I am thinking Williams Campaign is a campaign committee? If so the contributor type should be changed to "L" for local candidate or "R" for a committee that is registered with us. If the committee is registered with us, you will have to enter the GAB ID of the committee. (Be sure to format the cell as text or the leading ZERO will be cutoff and you'll get another error message after upload).

In the Expense File there are also just two issues:

1. Remove all entries in the Column labeled "Vendor Type". Since you are paying these entities directly there is no need for vendor information.
2. You need to fill in an Expense Type for each transaction. Expense Type CODES can be found either in the manual or you can download them also from the additional information section of the Upload Transactions screen.

That should take care of all the problems. I know it takes alot of words to explain what's wrong with them but the clean-up is much quicker :)

Be sure to make the changes to your original files. Save the changes. Delete the old files from CFIS by clicking on little trash can next to the error messages. Then re-upload your changed files and all should work fine.

Then you can file to the state:

To File a report, please follow these steps:

1. Login to the system.
2. From the left menu, click on "Edit/File Pending Transactions"
3. Select the Filing Period Name from the dropdown - January Continuing 2009
4. Click Search. This will bring up the results.
5. Scroll down and you will see a red button that says "File All to State". Click it.
6. A pop-up window will appear (as long as you've allowed pop-ups from the site).
7. Enter the report period start date, depending on your last report submission it will either be 07.01.08 or 10.21.08.
8. Enter the beginning and ending cash for this report.
9. Enter your electronic signature.
10. Click Submit.
11. After the wheels turn, you will see a successful screen and will be able to view and print your report for your records.

1. If I don't have to file electronically since our total contributions weren't above \$20,000, I have attached our report Jan. 09.

Thanks again for you help and patience!

Jeff Johns

----- Original Message -----

From: Porter, Tracey D - GAB

To: 'Jeffrey S. Johns'

Sent: Monday, February 09, 2009 7:46 AM

Subject: RE: Republican Party of Ozaukee County - Jan. 2009 Report

Jeff,

Sounds good. If you need any assistance or have questions, please contact me.

Tracey Porter

Campaign Auditor

WI Government Accountability Board

Phone: 608-267-7804

From: Jeffrey S. Johns [mailto:jsjohns@wi.rr.com]
Sent: Monday, February 09, 2009 7:14 AM
To: Porter, Tracey D - GAB
Subject: Republican Party of Ozaukee County - Jan. 2009 Report

Tracey,

Thanks for this manual! It has been helpful. I will be filing the report for Republican Party of Ozaukee County by tonight. Sorry about the delay. I have paid the GAB filing fee.

Thanks,
Jeff Johns
Treasurer - Republican Party of Ozaukee County

----- Original Message -----

From: Porter, Tracey D - GAB
To: 'Jeff Johns'
Sent: Friday, January 23, 2009 2:21 PM
Subject: EB-2 Manual

Jeff,
Attached is the manual for filing. If you have any questions, please contact me.

Tracey Porter
Campaign Auditor
WI Government Accountability Board
44 E. Mifflin, Suite 601
PO Box 2973
Madison, WI 53701-2973

Phone: 608-267-7804
Fax: 608-264-9319

Negative Feedback

Bohringer, Richard - GAB

From: JOHN LEHMAN [lehman4senate@sbcglobal.net]
Sent: Thursday, January 08, 2009 10:22 PM
To: Bohringer, Richard - GAB
Cc: sen.lehman@legis.wisconsin.gov
Subject: Problems with the new reporting web site (CFIS)

Richard--

Thanks for the training session earlier in the week and for the help on the phone yesterday. As I mentioned on the phone this new system, from the data input point of view, is very poorly done. It is an insult to campaign volunteers to ask them to work on such a tedious system.

Here is a sample of questions and problems.

1. Generally all input is a 5-7 second wait. Inputting is a very slow process. It took me about 6 hours to input about 60 contributions.
2. The system makes it difficult if you want to have all emails sent to two addresses for the same person. "candidate" option in the additional addresses needed 3. Your reminder messages are only half visible at the top of the screen.
4. Using the pull down menus is very, very slow going. I searched and searched for the SSDC, State Senate Democratic Committee as a contributor name. And there is no first name for the SSDC.
5. "Registrant" isn't at first understood to be PACs.
6. If you are a user and get "If RadComboBox is not initially visible on your ASPX...telerik.com" what would you do. Log out. Start all over. Type in password and go thru all that. OFTen the system locks up and you have no choice but to log our and in again. I probably got stuck and couldn't get any response so I logged out about 20 times in the process of inputting 60 names 7. The program tossed me out one time I was researching an occupation during the input session. Is the automatic shut down necessary?
8. Many "saves" took 10-12 wasted seconds. *bumped to 2 hour sessions.*
9. I experienced a number of more than one minute searches when I was hoping to get previous donor names. I gave up and inputted them as a new donor...and sometimes even that didn't work.
10. What is with the long delay after choosing "conduit" as the type of donation? Try inputting ten conduit donations and see how much time is used up.
11. Try inputting Roger Breske, Barb Worcester, etc and see how long it takes for them to come up as previous donors.
12. Hitting "enter" or, times, "backspace" in the middle of entering data really shouldn't cause the problems that it does.?
13. Normal data entry would allow you to use right arrow, left arrow, up and down arrow. to move from one entry box of data to another. THIS WOULD BE A BIG HELP. *excellent, yes. web entry tab.*
14. Can you manually change the YTD totals when you know they are wrong?
15. There is no easy way to cancel when the program locks up on "submit"
16. Some data I found had been submitted but the entry page had just locked up. spinning, spinning, spinning 17. The program was not picking up previous contributions. Even though the data was identical as to name and address. That should be simple table checking that I should not have to do with a slow pull-down menu.
18. On entry of conduit the backspace key locked up the whole page.
19. Why is there no way to enter a series of folks from the same conduit without the cumbersome pull down and "conduit" selection. Every time you choose "conduit" instead of individual it is a six second wait. Why does the computer assume the next entry is an individual contribution when I am doing 50 folks from 10 different conduits.
20. The calendar arrow to move over one month is too small and you often lose the calendar.
21. There is a super-long wait after "Occupation" is entered into. Why not have the program save this and go to the data base later to save time?
22. Similarly the long wait BEFORE entering new details on occupation is just poor program design.
23. The program sometimes hangs up/ locks up on "submit" Then later takes the identical data.
24. Two times the program would not go into "edit/file pending transactions" from the data entry section. All I could figure out was to start all over with a new log in.
25. You can type the exact, correct conduit name and it will show quickly and then

disappear.

26. At one point the program refused to go into the "enter receipts" section. White screen only below heading.
27. "Clear" does not clear the form. What is it good for? *not sure what he means? If clears entered data*
28. The screen jumps down a line when the conduit name box finally fills. Tough to get your cursor ready for the last name entry when it jumps like that.
29. If the comment box was one or two lines smaller then the "submit" button would actually be visible when you are ready to submit. Now you have to scroll down to hit it.

Hope some of these observations lead to improvements.

John Lehman

Bohringer, Richard - GAB

From: JOHN LEHMAN [cathieorchard@yahoo.com]
Sent: Friday, January 16, 2009 1:20 PM
To: Bohringer, Richard - GAB
Subject: Fw: Questions for Richard B or Tommy or anyone

--- On **Mon, 1/12/09**, JOHN LEHMAN <lehman4senate@sbcglobal.net> wrote:

From: JOHN LEHMAN <lehman4senate@sbcglobal.net>
 Subject: Questions for Richard B or Tommy or anyone
 To: gabcfis@wi.gov
 Cc: "John Lehman" <sen.lehman@legis.wisconsin.gov>
 Date: Monday, January 12, 2009, 3:53 PM

Richard.

I now have about a day and a half full-time in on inputting a few dozens receipts and one expenditure. Still having severe wait time and other problems. Please help with a few specific questions.

Thanks.

John Lehman (262-632-3330 or email is fine)

1. How do I get "U.S. Postal Service, Racine" to appear as a payee?

2. How do I get out of "loading" that never quits?

3. How do I get back in to entering receipts when the "RadComboBox....streamers...." shows?

raining → 4. If I find error in contributor information on a contributor that comes out of your data base what is the best thing for me to do? (Remember, it has already entered wrong data information in all the boxes on my page.)

raining → 5. What is the "add" button on the expenditures page? What happens if you "submit" without the "add" ?? What is the difference?

6. "Error occurred and it has been logged" showed up on my one expense on my January report. I see no error.

raining → 7. Do I not use "business" on my receipts from my bank (dividends)? Error on the pending list but if you try to input as an individual receipt it asks for the last name of my bank. My bank doesn't have a first and last name.

raining → 8. Looking at my pending report how do you "drag and drop" to organize by columns.

9. How do you tab up or back (not forward and to the right) when inputting?

Porter, Tracey D - GAB

From: Leeman, Philip [PLEeman@democracydata.com]
Sent: Monday, February 02, 2009 10:23 AM
To: Porter, Tracey D - GAB; Morvak, Dennis - GAB; Bohringer, Richard - GAB
Subject: RE: Filing Questions
Follow Up Flag: Follow up
Flag Status: Completed

BTW, working for a software vendor that is always putting out new software updates, I strongly empathize with the position you three have been in over the last several days in responding to the large volume of calls and emails. You all have always been responsive and very helpful and I'm very thankful for that, and I think you were able to maintain your own high standard through this particular storm.

From: Leeman, Philip
Sent: Monday, February 02, 2009 11:19 AM
To: 'Porter, Tracey D - GAB'; 'dennis.morvak@wi.gov'; 'Bohringer, Richard - GAB'
Subject: RE: Filing Questions

Even though the site is not accepting the occupation and employer, and employer address that is in the file (as noted below), I'm going to go ahead and submit the reports for my clients in about 30 minutes. From what I can tell, it looks like all of these individuals were manually entered into your system over the past 6 months as you've been trying to get the new system up and running, but now it's not allowing the new information in the efile to overwrite or update the information that was manually entered.

But let me know if you think I should hold off.

From: Porter, Tracey D - GAB [mailto:Tracey.Porter@Wisconsin.gov]
Sent: Friday, January 30, 2009 12:05 PM
To: Leeman, Philip
Subject: RE: Filing Questions

Phillip,
 I've sent this to the developers and their checking on it. I'll let you know when I find something out. Thanks!

Tracey Porter
 Campaign Auditor
 WI Government Accountability Board
 Phone: 608-267-7804

From: Leeman, Philip [mailto:PLEeman@democracydata.com]
Sent: Thursday, January 29, 2009 4:06 PM
To: Richard Goldberg; Morvak, Dennis - GAB; Porter, Tracey D - GAB
Cc: Gilbert, Emily; Zelenakas, Colleen; Szathmary, Christine; Sherman, Peter
Subject: FW: Filing Questions

Sorry, one more questions.

As you can see in the attached efile, which was successfully loaded, the occupation codes for all the individuals exceeding \$100 is HC10. However, it's appearing on the Preview/Print as if it were the code for AD05.

Porter, Tracey D - GAB

From: mtierney1@charter.net
Sent: Thursday, February 05, 2009 1:00 PM
To: Porter, Tracey D - GAB
Subject: Continuiong CFIS problems

Follow Up Flag: Follow up
Flag Status: Completed

CONTACTED PCC RIGHT AWAY TO DELETE THE REPORT.
***2/19 GAB STAFF ENTERED PAPER REPORT SUCCESSFULLY. DETERMINED PROBLEMS WERE USER ERROR.
--trac***

Tracey -

I filed the report and it produced a report that is not at all accurate in terms of receipts, disbursements or ending balance.

I then attempted to amend the report by adding the "returned expense" check of \$38,280.66 - the system would not let me file the change and then logged me out and then it locked me out. Apparently, it wanted me to enter the pre-primary report information which I did not have available and should not be relevant for making the necessary changes.

I am going to send in an amended 2008 Pre-election report and then the January 2009 continuing report. I will print out a paper copy of each and then provide an electronic copy of both reports as we did in the past not with the CFIS.

In the meantime, the January continuing 2009 report now on file is not accurate and ought to be deleted.

Mike Tierney
Friends of Robert W Wirch

Porter, Tracey D - GAB

From: Ryan Smith [rufusgb@yahoo.com]
Sent: Tuesday, February 03, 2009 9:32 AM
To: Porter, Tracey D - GAB
Subject: RE: CFIS Problem
Follow Up Flag: Follow up
Flag Status: Completed

I figured it out eventually. I'm guessing that the program is designed to only work with Internet Explorer? I use Firefox at home and that was causing all sorts of problems. I opened the program in Internet Explorer and got it to work.

Are there plans to make it compatible with programs other than IE?

--- On Mon, 2/2/09, Porter, Tracey D - GAB <Tracey.Porter@Wisconsin.gov> wrote:

From: Porter, Tracey D - GAB <Tracey.Porter@Wisconsin.gov>
Subject: RE: CFIS Problem
To: "Ryan Smith" <rufusgb@yahoo.com>
Date: Monday, February 2, 2009, 9:48 PM

Ryan,
Have you enabled pop-ups from the website?

Tracey Porter
Campaign Auditor
WI Government Accountability Board
Phone: 608-267-7804

From: Ryan Smith [mailto:rufusgb@yahoo.com]
Sent: Monday, February 02, 2009 4:02 PM
To: Porter, Tracey D - GAB
Subject: CFIS Problem

Tracey,

I took your training class last week. I have all of my transactions ready, but I can't file the report. When I hit the "File All to State" button, the page just reloads itself. It doesn't go to the confirmation page. Same thing happens when I try to preview the report. The whole system has been incredibly slow and buggy, but that's another story.

Any thoughts?

Ryan Smith
608-469-2841

Porter, Tracey D - GAB

From: drjfulmer@tds.net
Sent: Friday, January 30, 2009 10:23 AM
To: Porter, Tracey D - GAB
Subject: CFIS

Follow Up Flag: Follow up
Flag Status: Completed

Hi Tracey

I talked to you this morning about reporting campaign finance for Guttormsen for Judge in kenosha. I have been on the web site (which is NOT user friendly) and have tried to submit receipts. Unfortunately I cannot because the date is prior to registration. What is the date of registration? Why is it not listed on the EB-1?

The training video was excellent but the web site won't take my info. Please help.

Thank you

Jim
--

James C. Fulmer, DDS
Family & Restorative Dentistry
Kenosha & Paddock Lake, WI
262-945-2084

Porter, Tracey D - GAB

From: Marc Herstand [marcherstand@tds.net]
Sent: Monday, February 02, 2009 11:56 AM
To: Porter, Tracey D - GAB
Subject: Government finance reports
Follow Up Flag: Follow up
Flag Status: Completed

Tracey:

I am having tremendous problems filing the finance reports on line. I did look at the training instrument on line.

I have three reports to file. I spoke to your colleague who helped me file the Conduit file.

I filled out our corporate report and cannot figure out if it actually was sent to you.

I am trying to fill out the EB-2 report and started on revenue. I don't understand how to do this on line. I have many questions. In the old form there is space to fill in all the contributions for the period-this on-line form only seems to allow on contribution. It doesn't allow me to put the aggregate number in. I know you are all very busy. I either need someone to walk me through this process or allow me to submit the old forms. I have spent much of this morning working on these forms and don't seem to be getting anywhere.

I appreciate your help.

The only time I will not be available is between 2:50 and 3:15.

Sincerely yours

Marc

Marc Herstand, MSW CISW
Executive Director
National Association of Social Workers, Wisconsin Chapter
16 N. Carroll Street, Suite 220
Madison, WI 53703
608-257-6334
608-257-8233 (FAX)
866-462-7994 (toll-free)

Porter, Tracey D - GAB

From: Evers [ktevers@tds.net]
Sent: Sunday, March 15, 2009 10:28 AM
To: GAB CFIS
Subject: Any Helpful Hints
Follow Up Flag: Follow up
Flag Status: Completed

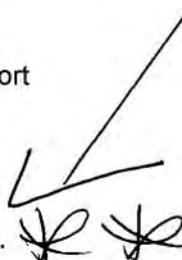
Dear GAB: My volunteers are entering conduit receipts from a conduit that does not electronically load the contributions into the GAB site for me to download. To enter these singly takes on average 4 - 5 minutes per entry, mainly due to the long time it takes the GAB system to recognize the name, populate the fields, etc. At this rate it will take over 20 hours to enter. Way too much time for a system that should be minimizing time. Tony Evers

Porter, Tracey D - GAB

From: Jack Jablonski [cjklecker@yahoo.com]
Sent: Friday, February 27, 2009 8:59 PM
To: Porter, Tracey D - GAB
Subject: Re: January Continuing 2009 campaign finance report
Follow Up Flag: Follow up
Flag Status: Completed

System slowness.
 complaints

Computer is a Mac, with primarily Firefox (and, of course Safari).



Jack

From: "Porter, Tracey D - GAB" <Tracey.Porter@Wisconsin.gov>
To: Jack Jablonski <cjklecker@yahoo.com>
Sent: Thursday, February 26, 2009 8:55:47 PM
Subject: RE: January Continuing 2009 campaign finance report

Jack,
 What kind of computer and browser are you using? By any chance are you using Mozilla Firefox, a Mac Computer or Safari?

Tracey Porter
 Campaign Auditor
 WI Government Accountability Board
 Phone: 608-267-7804

From: Jack Jablonski [mailto:cjklecker@yahoo.com]
Sent: Thursday, February 26, 2009 8:29 PM
To: Porter, Tracey D - GAB
Subject: Re: January Continuing 2009 campaign finance report

Tracey,

I have tried this procedure to preview and/or submit my records to the state online repeatedly since last month, without success. I was working with Richard who provided similar instructions.

I ensured pop ups were available, but the program just loads/locks. The information is all contained within the site (and has been for weeks); but it simply won't load. If you can go into the program to preview and/or submit, I welcome the assistance. This has been a very frustrating ordeal.

For review, I have posted the correspondence I had with Richard. I know you folks are busy, and he did not respond to my last email. I spent another hour on this in addition to a period of well over 10 hours weeks ago. I am at wits end.

As importantly, in the data itself, it appears duplicates were created by the program wherein an instant report has created two entries now automatic to our file (thus 270 fields ready for 266 legitimate entries).

Please advise. Thanks.

Jack Jablonski
Friends of Sheila Harsdorf

EMAILS:

I followed these instructions in an attempt to submit, but when I hit "File All to State" it just comes back to the same screen as "Edit/File Pending Transactions" with the upload information. It is difficult to assess whether it is all there, but I strongly suspect it is. However, there are 270 entries, and I (actually you) uploaded only 266 fields. Then, I scrolled through the information, and found four records with the "Notified" field completed, and they appear to be duplicates. I presume these might have been entered as conduits elsewhere, and duplicated into my transactions. Am I correct?

So, I can't figure out "File All to State" and must leave by 2 p.m. Please advise. Thanks again.

Jack

----- Original Message -----

From: "Bohringer, Richard - GAB" <Richard.Bohringer@Wisconsin.gov>
To: Jack Jablonski <cjklecker@yahoo.com>
Sent: Monday, February 2, 2009 7:14:49 AM
Subject: RE: Uploading files

To file the report, login and go to 'Edit /File Pending Transactions', select the reporting period 'January Continuing 2009' and SEARCH. You will see the transactions you have entered and an option to 'File All to State'. When you are ready to file the report, select file all to state and provide your cash balances and electronic signature and submit. You should get a message the report has been submitted successfully and an email with a copy of the report you filed attached.

Richard Bohringer
Campaign Auditor
Government Accountability Board
(608) 267-7735

-----Original Message-----

From: Jack Jablonski [<mailto:cjklecker@yahoo.com>]
Sent: Sunday, February 01, 2009 11:30 PM
To: Bohringer, Richard - GAB
Subject: Re: Uploading files

Richard,

Once they are uploaded, how do I see them and/or edit?

Thanks.

Jack

----- Original Message -----

From: "Bohringer, Richard - GAB" <Richard.Bohringer@Wisconsin.gov>

To: Jack Jablonski <cjklecker@yahoo.com>

Cc: "Porter, Tracey D - GAB" <Tracey.Porter@Wisconsin.gov>

Sent: Sunday, February 1, 2009 9:16:14 PM

Subject: RE: Uploading files

Jack,

I have uploaded everything but the conduit contributions. On the attached spreadsheet, please lookup and provide the GABID # for the conduits. Once you have the GAB ID# for the conduits, upload these receipts.

The main issues you had were zip plus 4, the system wants just the 9 digits, no punctuation and the missing conduit ID #s.

If you have any questions, please contact me.

Richard Bohringer
Campaign Auditor
Government Accountability Board
(608) 267-7735

-----Original Message-----

From: Jack Jablonski [<mailto:cjklecker@yahoo.com>]

Sent: Sunday, February 01, 2009 7:34 PM

To: Bohringer, Richard - GAB

Cc: Porter, Tracey D - GAB

Subject: Uploading files

Richard & Tracey,

I am stuck on uploading the template sheets. I have spent 8 hours trying to mess with formatting, re-entering data, etc. It won't upload without errors to all records. I tried both versions of the templates . . . nearly every option I could think of; but remain stuck. I cannot identify the errors in the "columns" as the tutorial suggests (it is a few thousands rows long with no clarity).

I went to the training and also watched the upload transactions video on the web (by the way, I wish the video's tutorial was a bit slower; the intro with disclaimers is very slow, and then it burns through everything else). My matters have been complicated; (not as an excuse) but my grandfather died Friday, and now I was out this weekend and have a funeral tomorrow night.

Bottom line: I could really use some help. I have attached the CFIS files in the best format I can have to

upload. Additionally, I have left the files with errors in the websheet. Can you help??? Or offer a bit of an extension to complete this (and some necessary assistance)?? Please advise today if possible (leaving for funeral at 4 p.m.).

Thanks.

Jack Jablonski
Friends of Sheila Harsdorf, #0102332
Cell: 608-358-5445

From: "Porter, Tracey D - GAB" <Tracey.Porter@Wisconsin.gov>
To: "cjklecker@yahoo.com" <cjklecker@yahoo.com>
Sent: Thursday, February 26, 2009 12:05:00 PM
Subject: January Continuing 2009 campaign finance report

It appears that the January Continuing 2009 report has not been filed to the state. Please login to the system and follow the instructions below to formally file your report to the state. Thank you.
If you have any questions, please contact me.

To File a report, please follow these steps:

1. Login to the system.
2. From the left menu, click on "Edit/File Pending Transactions"
3. Select the Filing Period Name from the dropdown - January Continuing 2009
4. Click Search. This will bring up the results.
5. Scroll down and you will see a red button that says "File All to State". Click it.
6. A pop-up window will appear (as long as you've allowed pop-ups from the site).
7. Enter the report period start date, depending on your last report submission it will either be 07.01.08 or 10.21.08.
8. Enter the beginning and ending cash for this report.
9. Enter your electronic signature.
10. Click Submit.
11. After the wheels turn, you will see a successful screen and will be able to view and print your report for your records.

Tracey Porter
Campaign Auditor
WI Government Accountability Board
PO Box 2973
Madison, WI 53701-2973

Phone: 608-267-7804
Fax: 608-264-9319

Porter, Tracey D - GAB

From: Bohringer, Richard - GAB
Sent: Sunday, February 01, 2009 4:26 PM
To: 'Lisa Neubauer'; Porter, Tracey D - GAB
Subject: RE: Campaign Finance Report
Follow Up Flag: Follow up
Flag Status: Completed

We were not aware of the issues with certain browsers until committees tried entering their data. The system has a number of pop up windows to confirm transactions have been saved and for the electronic signature when filing the report. Was your system freezing after entering a transaction? If so, this could be due to not seeing the pop up to click on the ok. We will be working with our vendor and testing more with the different browsers.

If you have any questions, please contact me.

Richard Bohringer

Campaign Auditor
 Government Accountability Board
 (608) 267-7735

From: Lisa Neubauer [mailto:lisaneubauer@gmail.com]
Sent: Sunday, February 01, 2009 1:45 PM
To: Bohringer, Richard - GAB; Porter, Tracey D - GAB
Subject: Re: Campaign Finance Report

Ok - I did get it filed yesterday. I did not see anything re incompatibility with MAC or mozilla. Seems this would be good to let people know - I literally spent two evenings, and about 2-3 hours each night, trying over and over.

Thanks again.

Lisa Neubauer

On Fri, Jan 30, 2009 at 1:14 PM, <lisaneubauer@gmail.com> wrote:

Thanks for your responses. In my several attempts to do expenses over the last two nights, the main issue was with freezing. Was there anything in materials re no MACs or mozilla? I have mozilla on one computer and a Mac.

Please advise re confirming an extension, when I can call you tomorrow, and I will see if I can get explorer.

→ no, because we didn't know at that time.

Thanks again.

Lisa Neubauer

Sent via BlackBerry by AT&T

From: "Bohringer, Richard - GAB"

Date: Thu, 29 Jan 2009 19:01:42 -0600
To: 'Lisa Neubauer' <lisaneubauer@gmail.com>; Porter, Tracey D - GAB <Tracey.Porter@Wisconsin.gov>
Subject: RE: Campaign Finance Report
Judge Neubauer,

I'm guessing that the problem in entering the expenses is that you are clicking on add vendor detail and not clicking the second time on submit to save the expense. If you have a list of your expenses, I will try to get them in for you to review and able to file to state.

If you have any questions, please contact me.

Richard Bohringer
Campaign Auditor
Government Accountability Board
(608) 267-7735

From: Lisa Neubauer [mailto:lisaneubauer@gmail.com]
Sent: Thursday, January 29, 2009 6:56 PM
To: Bohringer, Richard - GAB; Porter, Tracey D - GAB; Friends of Judge Lisa Neubauer
Subject: Campaign Finance Report

Hello,

I have now attempted at least ten times to work with the pending transactions to no avail. Last night I entered the expenses, but they did not show up. I only have two expenses and four receipts. I'm sure I could have done the report by hand in less than 1/2 hour.

In any event, each time I attempt to work through the pending transactions, it freezes up. Even if the expenses were there, I have not been able to get to the next step of sending the file to the state - because it says it is loading. I've now reentered the expenses, and they still do not show up on the pending transactions screen.

I have been on jury duty today, and go back tomorrow - so I'm not sure how I will be able to file by Monday.

Please advise.

Thanks

Lisa Neubauer
(262) 497-5507

State of Wisconsin \ Government Accountability Board

Post Office Box 2973
212 East Washington Avenue, 3rd Floor
Madison, WI 53701-2973
Voice (608) 266-8005
Fax (608) 267-0500
E-mail: gab@wisconsin.gov
<http://gab.wi.gov>



JUDGE MICHAEL BRENNAN
Chairperson

KEVIN J. KENNEDY
Director and General Counsel

MEMORANDUM

DATE: For the March 30-31, 2009 Meeting

TO: Members, Wisconsin Government Accountability Board

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

Prepared and Presented by:
Shane W. Falk, Staff Counsel

SUBJECT: Review of Certain Administrative Rules of the former Elections and Ethics Board
Pre-1990 Ethics Board Opinion Clarification

Upon direction by the Legislature pursuant to 2007 A. 1, the Government Accountability Board was charged with reviewing all former Elections Board and Ethics Board rules, opinions, policies and procedures. At the January 15, 2009 Board Meeting, the deadline for completing this function was extended three months to April 16, 2009. This memorandum presents the final remaining administrative rules for review and an opportunity to clarify some additional issues in order to complete the legislative direction of 2007 A. 1.

1. Record Keeping and Reporting:

On May 5, 2008, the Board reviewed opinions and administrative rules regarding this category. While the Board technically reaffirmed EIBd. 1.15 and most other rules in ch. GAB 1, the Board specifically reserved two issues for later consideration and, hence, only gave partial reaffirmation to these rules. Clarification is necessary.

A. Postmark Reports

GAB 1.15 Filing reports of late campaign activity.

(1) Any registrant required to file a special report of late campaign activity pursuant to ss. 11.12 (5), (6) and 11.23 (6), Stats., shall comply with the provisions of this section.

(2) A registrant required to file a special report disclosing the receipt of contributions from a single source, totaling \$500 or more cumulatively during the 15 day period immediately preceding a primary or an election, shall use Form EB-3 or use a format which is acceptable to the filing officer and which contains the information required by the board on Form EB-3.

(3) A registrant required to file a special report of late independent disbursement exceeding \$20 during the 15 day period immediately preceding a primary or an election shall use Form EB-7 or shall use a format which is acceptable to the filing officer and which contains the information required by the board on form EB-7.

*(4) A special report of late campaign activity is timely filed when it is in the physical possession of the filing officer within the time prescribed for filing. **Except as provided in sub. (6), any special report of late campaign activity also shall be treated as timely filed when it is mailed with the U.S. postal service, by first class mail, with sufficient prepaid postage, addressed to the appropriate filing officer, and postmarked not later than the date prescribed by law for the filing of such report.***

(5) If the date on which a special report of late campaign activity is due is a Saturday, Sunday, or legal holiday, the special report shall not be due until the next business day.

(6) If a special report of late campaign activity is required to be filed on the day of or the day immediately preceding a primary or an election, the report is not timely filed unless it is actually received at the office of the appropriate filing officer before the close of business on that day, unless that day is a Saturday, Sunday, or legal holiday.

*(7) **If the filing officer for a special report of late campaign activity is the state elections board, a registrant filing the report on the day of or the day immediately preceding a primary or an election may file by sending a facsimile (FAX) copy by telecopier on the date, if the signed original of the report is received through the U.S. mail with a postmark not later than the date due.***

History: Cr. Register, January, 1992, No. 433, eff. 2-1-92.

This rule accurately describes applicable campaign finance reporting requirements and the rule was reaffirmed on May 5, 2008; however, the Board reserved the issue regarding whether a postmark on the date a report is due or postmarked three days prior to due date is sufficient. The bolded sections of the rule are what remain for consideration by the Board. Staff recommends the Board approve amending the rule to remove the bolded references to postmarks, especially given the fact that electronic options for filing timely exist.

B. Revision of Forms

The rules of ch. GAB 1 involve detailed applications of campaign finance reporting requirements. Throughout this chapter of the administrative code, numerous references are made to forms by number upon which campaign finance filings must be made. At the May 5, 2008 meeting, the Board reserved consideration of further amendments to the reaffirmed rules in ch. GAB 1 to revise all references to forms and form numbers after implementation of the Campaign Finance Information System (CFIS.) Staff recommends that the Board approve the current form numbers until such time as a compilation of suggested revised forms can be presented at a subsequent meeting.

2. Registration

On May 5, 2008, the Board reviewed GAB 1.41 and technically affirmed it; however, the Board had directed staff to amend the rule to clarify that the postmark date for filing did not apply to ballot access requirements. In addition, the Board reserved the issue as to whether the postmark date for all other registration forms should in fact be a date three days prior to the filing deadline,

rather than the deadline date itself. Staff now recommends that the Board decline to reaffirm this rule.

GAB 1.41 Mailing registration forms.

(1) Where a requirement is imposed for the filing of a registration statement no later than a certain date, the requirement may be satisfied either by actual receipt of the statement by the prescribed time for filing at the office of the filing officer, or by filing a report with the U.S. postal service by first class mail with sufficient prepaid postage, addressed to the appropriate filing officer, no later than the date provided by law for receipt of such report.

(2) In any case where the postal service is employed by a person subject to a registration requirement as the agent for transmittal of a statement, the burden is upon such person to show that a statement has been filed with the postal service.

(3) It is presumed until the contrary is established that the date shown by the postal service cancellation mark on the envelope containing the statement is the date that it was deposited in the mail.

History: Cr. Register, January, 1978, No. 265, eff. 2-1-78; corrections made under s. 13.93 (2m) (b) 1., Stats., Register, January, 1994, No. 457.

This rule is not consistent with the requirement that a candidate file a registration statement by the deadline for filing nomination papers in order to qualify for ballot status. §8.30 (2), Wis. Stats. Several court cases hold the failure to file nomination papers or other ballot access papers on time is fatal to ballot access. *State ex. rel. Ahlgrimm v. State Elections Board*, 82 Wis. 2d 585, 263 N.W. 2d 152 (1978) Since this rule applies to “registration statements” and the law is clear that they must be filed by the deadline for filing nomination papers, staff recommends that the Board reverse its prior conditional approval and decline to reaffirm this rule. In addition, staff recommends that this rule is added to the request to the Legislative Reference Bureau to remove this rule from the administrative code.

3. Disclaimers/Source Identification

On June 9, 2008, the Board reviewed three opinions and GAB 1.655 regarding disclaimers and source identification for political communications. At that meeting, the Board motion adopted staff recommendations in meeting materials; however, those meeting materials did not include a reference to GAB 1.655. This rule must still be addressed.

GAB 1.655 Identification of the source of communications paid for with money raised for political purposes.

(1) Definitions: as used in this rule:

(a) "Bona fide poll" means a poll which is conducted for the purpose of identifying, or collecting data on, voter attitudes and preferences and not for the purpose of expressly advocating the election, defeat, recall or retention of a clearly identified candidate or a particular vote at a referendum.

(b) "Communication" means any printed advertisement, billboard, handbill, sample ballot, television or radio advertisement, telephone call, and any other form of communication that may be utilized by a registrant for the purpose of influencing the election or nomination of any individual to state or local office or for the purpose of influencing a particular vote at a referendum.

(bm) "Political party" has the meaning provided in s. [5.02 \(13\)](#), Stats.

(c) "Political purpose" has the meaning provided in s. [11.01 \(16\)](#), Stats.

(d) "Registrant" has the meaning provided in s. [11.01 \(18m\)](#), Stats.

(e) "Source" means the individual who, or committee which, pays for, or the individual who takes responsibility for, a communication that is required, by s. [11.30](#), Stats., to be identified.

(2) Pursuant to s. [11.30 \(2\) \(a\)](#), Stats., any communication paid for with money that has been raised for political purposes must identify the source of that communication, subject to the following exceptions:

(a) The source identification requirements of s. [11.30](#), Stats., do not apply to communications paid for by an individual who, or a committee which, is not subject to the registration requirements of s. [11.05](#), Stats.

(b) A bona fide poll or survey under s. [11.30 \(5\)](#), Stats., concerning the support for or opposition to a candidate, political party, referendum or a position on issues, may be conducted without source identification unless the person being polled requests such information. If requested, the person conducting the poll shall disclose the name and address of the person making payment for the poll and, in the case of a registrant under s. [11.05](#), Stats., the name of the treasurer or the person making the payment.

(c) Incidental administrative communications need not identify their source if such communications are singular in nature and are not intended to communicate a political message.

(d) Communications for which reporting is not required under s. [11.06 \(2\)](#), Stats., are not required to identify their source.

(3) When making communications requiring source identification, disclosure is not required to be made at any particular place within or time during the communication. In the case of telephone calls, or other audio communications, the required disclosure may be made at any time prior to the end of the call or other communication.

(4) A registrant who conducts a bona fide poll must report the expense of conducting the poll on its campaign finance reports, whether or not the registrant is required to identify the source of that poll under s. [11.30 \(5\)](#), Stats., and this rule.

(5) If a political party makes a communication supporting the election of more than one candidate, the source identification for that communication shall be as follows:
"Paid for by the (name of party) Party as an in-kind contribution to the candidates named."

History: Cr. Register, September, 1996, [No. 489](#), eff. 10-1-96; cr. (1) (bm) and (5), Register, April, 1998, [No. 508](#), eff. 5-1-98.

This rule provides clear direction on the application of source identification requirements to a wide range of communications. It is consistent with current statutes and provides guidance for registrants.

Staff recommends the Board reaffirm the rule.

4. Pre-1990 Ethics Opinions

A. On August 27, 2008, by consensus only, the Board determined that it would allow Ethics Board opinions from 1978 to 1989 to lapse. At least this is what is reflected in the August 27, 2008 minutes. From review of the Board meeting materials and the Wisconsin Eye coverage of the meeting, staff believes the Board intended to adopt a staff recommendation to allow Ethics Board opinions from 1978 through 1989 to lapse. Clarification is needed.

B. In addition, the Board should note that the Board had previously affirmed numerous pre-1990 Ethics Board opinions at the February 25, 2008 Board Meeting. Staff now recommends that the Board should reverse its affirmation of the following pre-1990 Ethics Board opinions (see attached for a synopsis of each attached as Exhibit A):

Disqualification; Eth. Bd. 525, Volume XI, Page 9

Disqualification; Representation of Clients; Employment Conflicting with Official Responsibilities; Eth. Bd. 365, Volume X, Page 13; 360, Volume X, Page 3; 346, Volume IX, Page 45; 338, Volume IX, Page 35; 336 Volume IX, Page 31; 324, Volume IX, Page 7

Disqualification; Eth. Bd. 304, Volume VIII, Page 33; 303, Volume VIII, Page 31; 300, Volume VIII, Page 21; 298, Volume VIII, Page 11; 284, Volume VII, Page 21; 280, Volume VII, Page 11; 278, Volume VII, Page 5

Disqualification; Boards, Commissions and Agencies; Employment Conflicting with Official Responsibilities; Eth. Bd. 270, Volume VI, Page 41; 266, Volume VI, Page 33; 259, Volume VI, Page 27; 259, Volume VI, Page 27; 243, Volume V, Page 93; 242, Volume V, Page 89; 239, Volume V, Page 79; 235, Volume V, Page 65; 234, Volume V, Page 59

Disqualification; Eth. Bd. 228, Volume IV, Page 103; 227, Volume IV, Page 97; 210, Volume IV, Page 49; 201, Volume III, Page 93; 197, Volume III, Page 83; 190, Volume III, Page 67; 162, Volume II, Page 82; 157, Volume II, Page 75; 141, Volume II, Page 49; 123, Volume I, Page 120; 122, Volume I, Page 119; 116, Volume I, Page 111; 106, Volume I, Page 102; 104, Volume I, Page 100; 93, Volume I, Page 88; 63, Volume I, Page 55; 58, Volume I, Page 48; 26, Volume I, Page 20; 18, Volume I, Page 14; 17, Volume I, Page 14; 12, Volume I, Page 9; 11, Volume I, Page 8

C. Finally, having not reaffirmed pre-1990 Ethics Board opinions, staff recommends that the Board issue a statement regarding the effect of the pre-1990 Ethics Board opinions. Staff recommends that the Board issue a statement indicating that the pre-1990 Ethics Board opinions were not affirmed due in part to significant changes in the law and duplication by subsequent opinions, pre-1990 Ethics Board opinions may not be used as precedent, but the pre-1990 Ethics Board opinions still maintain some persuasive value and may be referenced to that extent by the Government Accountability Board.

5. Facsimile and Electronic Filing

In Chapter GAB 6, Wisconsin Administrative Code, entitled "Procedure," two rules establish procedures for facsimile and electronic filing of documents and campaign finance reports with the Government Accountability Board. Staff recommends that the Board reaffirm GAB 6.04, but direct staff to continue to review the rule and suggest amendments as necessary at a subsequent meeting to address other forms of electronic filing and maintaining consistency among the filing methods for the various types of reports. Staff recommends that the Board reaffirm GAB 6.05, subject to the amended form of the rule, currently an emergency rule, and promulgation procedures to create a permanent rule requiring use of the Campaign Finance Information System (CFIS.) The full text of the rules follow (Emergency Rule GAB 6.05 approved at January 15, 2009 Board Meeting; Permanent Rule GAB 6.05 is presented elsewhere in these Board Meeting materials):

GAB 6.04 Filing documents by facsimile (FAX) process.

(1) As used in this rule:

- (a) "Document" means any form, statement, pleading or other writing which is required to be filed with the filing officer.
- (b) "Facsimile process" means the electronic transmission of a duplicate copy of a signed original document.
- (c) "FAX" has the same meaning as facsimile process.
- (d) "Filing officer" means the government accountability board or any other elections official with whom elections or campaign finance documents are required to be filed by chs. 5 to 12, Stats.

(2) Nomination papers, recall petitions, and those campaign finance reports provided in ss. 11.20 and 11.50 (12), Stats., may not be filed with the filing officer by facsimile process. Nomination papers and recall petitions shall not be considered filed with the filing officer until the signed original of each nomination paper and each recall petition is received in the offices of the filing officer. Campaign finance reports which are provided in ss. 11.20 and 11.50 (12), Stats., and which are delivered by the U.S. mails are considered filed with the filing officer when the report is postmarked. Campaign finance reports which are provided in ss. 11.20 and 11.50 (12), Stats., and which are not delivered by the U.S. mails, are considered filed with the filing officer when received in the filing officer's offices.

(3) Except as provided in sub. (2), where the Wisconsin Statutes or rules of the government accountability board require that a document be filed no later than a date certain, that document shall be considered timely filed if both:

- (a) A duplicate copy of the document is received by the filing officer, in its offices, by facsimile process, no later than the day and hour at which the document is required to be filed and
- (b) The signed original of the document is received at the offices of the filing officer with a postmark not later than the filing deadline; or the signed original is delivered to the filing officer not later than the filing deadline.

(4) Any document which is filed by facsimile process under this rule shall be considered received at the time of transmission as recorded and entered by the receiving equipment by the filing officer's staff when the facsimile copy is delivered to the filing officer's offices.

(5) If, for any reason, transmission of a document is not received at the filing officer's offices, whether because of a failure in the receiving system of the filing officer or because of a failure in the transmitting system of the person attempting to file or for any other reason, a document shall not be considered received or filed until a facsimile copy is delivered to and received at the filing officer's offices and the signed original is received at the filing officer's offices with a postmark not later than the filing deadline.

(6) The burden of establishing that a document has been received by facsimile process at the offices of the filing officer shall be upon the person who, or the committee or group which, is required to file the document.

History: Cr. Register, January, 1992, No. 433, eff. 2-1-92; am. (1) (a), (2), (3) (a) and (b), (4) to (6), cr. (1) (d), Register, June, 1996, No. 486, eff. 7-1-96.

GAB 6.05 Filing campaign finance reports in electronic format.

(1) Definitions: As used in this rule:

(a) "Campaign period" for a candidate, personal campaign committee or support committee has the same meaning as provided in s. [11.26 \(17\)](#), Stats., and for any other registrant begins on January 1 of an odd-numbered year and ends on December 31 of the following year.

(b) "Contribution" has the same meaning as provided in s. [11.01 \(6\)](#), Stats.

(c) "Electronic format" means computer diskette or a computer data file created using Access or Excel software or software that produces a delimited text file.

(d) "Filing officer" means the government accountability board.

(e) "Registrant" has the same meaning as provided in s. [11.01 \(18m\)](#), Stats.

(f) "Report" means any filing required by ss. [11.05](#), [11.06](#), [11.12 \(5\)](#) and [\(6\)](#), [11.20](#), and [11.23](#), Stats.

(2) Any registrant who files with the government accountability board and who accepts contributions or makes disbursements in a total amount or value of \$20,000 or more during a campaign period shall file each campaign finance report that is required to be filed by [ch. 11, Stats.](#), in an electronic format.

(3) Any registrant not required to file reports electronically may elect to file any campaign finance report in an electronic format.

(4) Any campaign finance report filed in an electronic format shall be transmitted in time to be received by the filing officer no later than the time provided by law for filing the report. Any registrant who files a campaign finance report electronically shall, thereafter, file electronically all campaign finance reports required to be filed by the registrant.

(5) A registrant shall submit a trial report to the board before the end of the report period to determine if the report is in a format that meets the board's requirements set out in this rule.

(6) Each registrant who files a report in an electronic format shall file, with the filing officer, a paper copy of the report that complies with the format set forth in Forms EB-2, EB-2a, EB-3, EB-4, EB-7, EB-10, EB-10a, EB-12 or EB-24. The paper copy of the report shall be signed by an individual authorized by the registrant to file and filed no later than the time prescribed by law for filing the report.

Note: The forms listed in sub. (6) are the forms prescribed by the board for campaign finance reporting.

History: Cr. Register, August, 1998, [No. 512](#), eff. 9-1-98; am., Register, August, 1999, [No. 524](#), eff. 9-1-99; [CR 02-082](#): am. (1) (c), (2) and (5), Register November 2002 [No. 563](#), eff. 12-1-02.

6. Staff Assistance

Administrative Rules GAB 6.03 and GAB 21.30 involve advice that may be rendered by the G.A.B. for elections and ethics matters respectively. Both rules clarify Sec. 5.05(6a), Wis. Stats., which explains that the Board may issue formal advisory opinions and the Board may authorize the Director and Legal Counsel to issue informal advisory opinions, with the Board retaining the right to review and revise any informal advisory opinion. However, GAB 6.03 should be amended to properly reference Sec. 5.05(6a), Wis. Stats., and refer to Chapters 5-12 instead of Title II. Staff recommends that the Board reaffirm both GAB 6.03 and GAB 21.30, but direct staff to amend GAB 6.03 to properly reference Sec. 5.05(6a), Wis. Stats., and Chapters 5-12 instead of Title II.

GAB 6.03 Assistance by government accountability board staff. Pursuant to the authority and responsibility vested in the government accountability board by the statutes, specifically s. 5.05 (6) and (7), Stats., the staff of the board is authorized to provide advice to any interested person with respect to the proper application of title II. Such advice should not be construed as a formal opinion of the board under s. 5.05 (6), Stats.

Note: Section 5.05 (6), Stats., is repealed by 2007 Wis. Act 1.

History: Cr. Register, March, 1978, No. 267, eff. 4-1-78.

GAB 21.30 Requests for written advice. When delay is of substantial inconvenience or detriment to a person requesting the board's written advice regarding the propriety of a matter to which the person is or may become a party, the board's director may, with the advice and consent of the chair, or if the chair is unavailable, with the advice and consent of the vice chair, or if the vice chair is unavailable, with the advice and consent of any member of the board, advise the state public official. Written advice prepared by the director pursuant to this rule has the full force and effect of written advice given by the board.

History: Cr. Register, June, 1976, No. 246, eff. 7-1-76; am. Register, September, 1976, No. 249, eff. 10-1-76; am. Register, October, 1976, No. 250, eff. 11-1-76; am. Register, April, 1985, No. 352, eff. 5-1-85.

7. Registration Statement Sufficiency

Administrative Code Section GAB 6.02 addresses the registration statement sufficiency and provides for substantial compliance, but also a 15 day window after the filing deadline to correct insufficiencies. Staff has some concern that this rule does not clearly specify the threshold standard for sufficiency and substantial compliance. In addition, staff has some concern regarding the 15 day period following the filing deadline to remedy deficiencies, as the registrant will already be certified to be on the ballot. Staff recommends that the Board reaffirm GAB 6.02, but also direct staff to review and return at a subsequent meeting to suggest possible revisions to address the joint agency, timing for remedying, Campaign Finance Information System, and threshold sufficiency issues.

GAB 6.02 Registration statement sufficiency.

(1) Any registration filed with a filing officer under s. 11.05, Stats., which is insufficient as to essential form, information or attestation shall be rejected by such officer and shall be promptly returned if possible to the proposed registrant indicating the nature of the insufficiency. The proposed registrant shall be informed that the attempted registration is not effective.

(2) Any registration statement filed with a filing officer under s. 11.05, Stats., which is insufficient or incomplete in some manner but substantially complies with law shall be accepted by such officer who shall then promptly notify the registrant indicating the nature of the incompleteness or insufficiency. The registrant shall then have 15 days from the date of such notice to rectify the problem. If the incompleteness or insufficiency is not rectified by the registrant within 15 days from the date of the notice, the registration lapses and is not effective.

History: Emerg. cr. 8-9-74; cr. Register, November, 1974, No. 227, eff. 12-1-74.

8. Forms

Administrative Code Chapter GAB 25 identifies the forms used by the G.A.B. for campaign finance (GAB 25.03) and ethics (GAB 25.05.) Section GAB 25.01 clarifies where forms prescribed by rule may be obtained. Staff recommends that the Board reaffirm the entirety of

Chapter GAB 25, but direct staff to return at a subsequent meeting with suggested amendments to update the forms and form numbers.

GAB 25.01 Forms prescribed by rule. *Certified copies of forms prescribed under this chapter are filed with the secretary of state and the legislative reference bureau. A copy of each form is also available from the Government Accountability Board, 17 West Main Street, Suite 310, P. O. Box 2973, Madison, Wisconsin 53701-2973.*

History: *Emerg. cr. 9-9-74; cr. Register, November, 1974, No. 227, eff. 12-1-74; am. Register, September, 1978, No. 273, eff. 10-1-78; correction made under s. 13.93 (2m) (b) 6., Stats., Register, February, 1986, No. 362; renumbered from s. ElBd 8.01 under s. 13.92 (4) (b) 1., Stats., and corrections made under s. 13.92 (4) (b) 6., Stats., Register April 2008 [No. 628](#).*

GAB 25.03 Titles of campaign finance forms.

- (1) Campaign Finance Registration Statement (EB-1).
- (2) Campaign Finance Report (EB-2).
- (3) Campaign Finance Report, short form, (EB-2a).
- (4) Campaign Finance Report, local candidates, (EB-2L).
- (5) Special Report of Late Contribution (EB-3).
- (6) Supplementary Oath for Voluntary Committees and Individuals (EB-6).
- (7) Report of Independent Disbursements (EB-7).
- (8) Conduit Registration Statement (EB-9).
- (9) Corporate Registration Statement (EB-11).
- (10) Corporate Finance Report (EB-12).
- (11) Application for Grant from Wisconsin Election Campaign Fund (EB-23).
- (12) Campaign Finance Report, Wisconsin election campaign fund (EB-24).
- (13) Report on use of Grant from Wisconsin Election Campaign Fund (EB-25).
- (14) Withdrawal of Application from Wisconsin election campaign fund (EB-26).

History: *Cr. Register, March, 1976, No. 243, eff. 4-1-76; cr. (7) and (8), Register, July, 1976, No. 247, eff. 8-1-76; am. Register, September, 1978, No. 273, eff. 10-1-78; am. (1) to (4), renum. (5) to (10) to be (6), (7), (9), (10), (11), (13), and am. (10) and (13), cr. (5), (8), (12) and (14), Register, May, 1986, No. 365, eff. 6-1-86; renumbered from s. ElBd 8.03 under s. 13.92 (4) (b) 1., Stats., Register April 2008 [No. 628](#).*

GAB 25.05 Ethics forms. *Each of the following forms may be obtained from the Government Accountability Board, 17 West Main Street, Suite 310, P. O. Box 2973, Madison, Wisconsin 53701-2973.*

- (1) Statement of Economic Interests filed by candidates and continuing state public officials (Eth 1).
- (2) Statement of Economic Interests filed by nominees and new state public officials (Eth 2).
- (3) Quarterly Report of Economic Transactions (Eth 3).
- (4) Request to Examine Statements of Economic Interests (Eth 4).
- (5) Principal Registration (Eth 5).
- (6) Principal Authorization (Eth 6).
- (7) Lobby License Application (Eth 7).
- (8) Lobby Activity Information form (Eth 8).
- (9) Daily Log of Lobbying Activities for use by Lobbyists (Eth 9).
- (10) Statement of Lobbying Activities and Expenditures with Daily Log of Lobbying Activities for use by Employers (Eth 10).
- (11) Identification of Legislative Liaisons to be filed by state agencies (Eth 11).

History: *Cr. Register, June, 1976, No. 246, eff. 7-1-76; am. Register, October, 1978, No. 274, eff. 11-1-78; r. and recr. Register, April, 1985, No. 352, eff. 5-1-85; emerg.*

am. eff. 1-23-91; am. Register, July, 1991, No. 427, eff. 8-1-91; renumbered from s. Eth 5.01 under s. 13.92 (4) (b) 1., Stats., and corrections made under s. 13.92 (4) (b) 2. and 6., Stats., Register April 2008 [No. 628](#).

9. Complaint Procedure

Administrative Code Chapter GAB 20 addresses the complaint procedure before the G.A.B. On January 28, 2008, the Board addressed the amendment of Section GAB 20.01 regarding the applicability of Chapter GAB 20; however, the Board has yet to address the remaining rules in Chapter GAB 20. Staff recommends that the Board reaffirm GAB 20.02, 20.03, 20.04, 20.05, 20.06, 20.07, 20.08, 20.09, and 20.10, until such time as staff returns to the Board at a subsequent meeting with possible amendments of these rules to address any necessary changes to accommodate investigation and confidentiality requirements of Sec. 5.05, Wis. Stats. The full text of these rules are attached as Exhibit B.

10. Statement of Economic Interests

Administrative Code Chapter GAB 15 addresses statements of economic interests. The four rules contained in Chapter GAB 15 remain appropriate and consistent with current law. Staff recommends that the Board reaffirm Sections GAB 15.045, 15.06, 15.07, and 15.08. The full text of these rules are attached as Exhibit C.

11. Lobbying

Administrative Code Chapter GAB 16 addresses lobbying. The three rules contained in Chapter GAB 16 remain appropriate and consistent with current law. Staff recommends that the Board reaffirm Sections GAB 16.02, 16.03, and 16.04. The full text of these rules are attached as Exhibit D.

Proposed motions:

MOTIONS:

1. Section GAB 1.15(4) shall be amended to remove sentence regarding postmark filing, Section GAB 1.15(7) shall be deleted, and staff is directed to complete rule-making procedures to so amend Section GAB 1.15.
2. The references to forms and form numbers in Chapter GAB 1 are reaffirmed until such time as staff returns at a subsequent meeting with a compilation of suggested revised forms.
3. The May 5, 2008 affirmation of Section GAB 1.41 is reversed and the Board declines to reaffirm it. Staff is directed to include a request in the letter to the Legislative Reference Bureau seeking the deletion of Section GAB 1.41 from the Administrative Code.
4. Section GAB 1.655 is reaffirmed.
5. Clarifying the Board's August 27, 2008 consensus ruling, all Ethics Board opinions from 1978 through 1989 shall lapse as the Board declines to reaffirm them.
6. The Board reverses its reaffirmation of pre-1990 Ethics Board opinions approved on February 25, 2008 and those opinions shall lapse.
7. All pre-1990 Ethics Board opinions shall not be cited as authority or used as precedent; however, these opinions maintain some persuasive value and may be referenced to that extent in the future by the Government Accountability Board.

8. Section GAB 6.04 is reaffirmed and staff shall continue to review the rule and suggest amendments as necessary at a subsequent meeting to address other forms of electronic filing and maintaining consistency among the filing methods of various types of reports.
9. Section GAB 6.05 is reaffirmed, subject to the amended form of the rule, currently an emergency rule, and promulgation of the permanent rule.
10. Sections GAB 6.30 and GAB 21.30 are reaffirmed and staff are is directed to begin rulemaking procedures to amend Section GAB 6.30 to properly reference Sec. 5.05(6a), Wis. Stats. and Chapters 5-12 instead of Title II.
11. Section GAB 6.02 is reaffirmed and staff is directed to review and return at a subsequent meeting to suggest possible amendments to address the joint agency, timing for remedying the registration statement, Campaign Finance Information System, and threshold sufficiency issues.
12. Chapter GAB 25 is reaffirmed and staff is directed to return at a subsequent meeting with suggested amendments to update the forms and form numbers.
13. Sections GAB 20.02, 20.03, 20.04, 20.05, 20.06, 20.07, 20.08, 20.09, and 20.10 are reaffirmed and staff is directed to review and return at a subsequent meeting with possible amendments to address any necessary changes to accommodate investigation and confidentiality requirements of Sec. 5.05, Wis. Stats.
14. Chapter GAB 15 is reaffirmed in its entirety.
15. Chapter GAB 16 is reaffirmed in its entirety.

DISQUALIFICATION; A legislator should not participate in official discussions, deliberations, or votes with respect to legislation to sustain or alter a statute affecting the requirements for the official's spouse's employment unless the action affects a whole class of similarly-situated interests, the legislator's interest is insignificant when compared to all affected interests, and the action's effect on the legislator's private interests is neither significantly greater nor less than upon other people affected by the act. Eth. Bd. 525, Volume XI, Page 9

DISQUALIFICATION; REPRESENTATION OF CLIENTS; EMPLOYMENT CONFLICTING WITH OFFICIAL RESPONSIBILITIES; With respect to a member of a state board, the Ethics Code's application to these circumstances is discussed:

- a. Official action directly affecting the official's personal interest;
- b. Official action directly affecting a client of the official's firm;
- c. Action the official, in a public capacity, may take involving a matter in which the official personally or a client of the official's firm is interested; and
- d. Action the official, in a private capacity, or a member or employe of the official's firm may take involving a matter about which the official, as a public officer, is authorized to take some discretionary action. Eth. Bd. 365, Volume X, Page 13

DISQUALIFICATION; If a member of a government board is associated with a corporation, the member, ordinarily should not, as a member of that board, participate in discussions, deliberations, or votes concerning that corporation; however, the member need not withdraw from a matter if the matter is so broad that it affects scores of

organizations among which the corporation is not especially significant and the action's effect on the corporation is neither greater nor less than upon the other affected organizations. Eth. Bd. 360, Volume X, Page 3

EMPLOYMENT CONFLICTING WITH OFFICIAL DUTIES; REPRESENTATION OF CLIENTS; LEGISLATORS; DISQUALIFICATION; A state legislator should not, in connection with his business, refer to his official position except in a limited circumstance. A state official should not, except in narrow circumstances, communicate with a state official or employe on behalf of the official's business. A state official must give notice of his interest in contract before official's business enters into contract paid for state funds. A legislator should not act officially in a way likely to affect legislator's business unless business is insignificant member of larger class affected by legislation. Eth. Bd. 346, Volume IX, Page 45

DISQUALIFICATION; When confronted with a need for legal counsel in a matter in which the Attorney General is unable to act, it is appropriate for the affected state agency to ask the Governor to designate special counsel. Eth. Bd. 338, Volume IX, Page 35

DISQUALIFICATION; A state board's earlier award of a grant to an organization does not bar a member of the board from later working for the organization as a paid consultant in a capacity unsupported by the grant; nor does a board member's working as a paid consultant to an organization foreclose the board's award of a grant to the organization unless the member or the member's immediate family would benefit from the grant. In any event the board member may not in either a public or private capacity promote a grant to an organization of which the member is a paid consultant. Eth. Bd. 336, Volume IX, Page 31

DISQUALIFICATION; BOARDS, COMMISSIONS AND AGENCIES; COMPATIBILITY OF OFFICES; EMPLOYMENT CONFLICTING WITH OFFICIAL RESPONSIBILITIES; A member of a state board should not be the direct financial beneficiary of that board's actions.

A member of a state board should not accept a payment from an interested party to prepare a matter for review and action by the board.

Compatibility of membership on board and municipal employment discussed. Eth. Bd. 324, Volume IX, Page 7

DISQUALIFICATION; If the owner of a regulated business became the chief executive of a state agency responsible for regulating that business, then the owner's personal financial interests would conflict with his public responsibilities whenever, in the discharge of official duties, he was confronted by a matter in which his business had a substantial financial interest including action affecting his business and its competitors.

If the conflict were substantial and continually present or frequently recurring, the conflict's cure could come only from the person's divesting himself of the regulated business. Eth. Bd. 304, Volume VIII, Page 33

DISQUALIFICATION; A board that awards grants should not consider an application for a grant from which one of the board's members or the member's immediate family would benefit financially. Having disqualified himself or herself from considering an application for a grant, a person should not participate in a subsequent ranking of that application relative to others. Eth. Bd. 303, Volume VIII, Page 31

LEGISLATORS; DISQUALIFICATION; A legislator who practices a trade or profession may participate in votes, deliberations, discussions and other legislative activities likely to affect that trade or profession as long as:

- a. The legislator's presence in the class of people affected by the legislator's action is insignificant when compared to the number of similarly situated people in the affected class, and
- b. The legislator's actions' effects upon himself or herself are neither significantly greater nor less than upon other members of the class. Eth. Bd. 300, Volume VIII, Page 21

DISQUALIFICATION; BOARDS, COMMISSIONS AND AGENCIES; Circumstances under which a member of a board should disqualify self from decision making are discussed. Eth. Bd. 298, Volume VIII, Page 11

DISQUALIFICATION; EMPLOYMENT CONFLICTING WITH OFFICIAL RESPONSIBILITIES; A state public official should not:

- a. as a representative of a firm, participate in a matter pending before or likely to be appealed to the state panel of which the official is a part;
- b. as an officer of a state agency, participate in a matter pending before or likely to be appealed to the state panel of which the official is a part if the firm with which the official is affiliated is involved;
- c. rely upon his or her title or a state agency's prestige to attempt to acquire new or additional business for a firm with which he or she is associated. Eth. Bd. 284, Volume VII, Page 21

DISQUALIFICATION; BOARDS, COMMISSIONS AND AGENCIES; Circumstances under which a member of a board should disqualify self from discussions and decisions concerning grants to people and organizations are discussed. Eth. Bd. 280, Volume VII, Page 11

DISQUALIFICATION; BOARDS, COMMISSIONS AND AGENCIES; Circumstances under which a member of a board should disqualify self from decision making are discussed. Eth. Bd. 278, Volume VII, Page 5

DISQUALIFICATION; EMPLOYMENT CONFLICTING WITH OFFICIAL RESPONSIBILITIES; USE OF STATE'S TIME, FACILITIES, SUPPLIES AND SERVICES; The Ethics Code does not forbid a state public official to hold an office in an organization, provided:

- a. the official does not use his or her public position to obtain a substantial favor or service for the organization;

- b. the official does not, in furtherance of the official's responsibilities to or interest in the organization, rely upon the state's facilities, supplies, or services that are not generally available to all of Wisconsin's residents; and
- c. that if in the discharge of official duties the official confronts a matter in which the organization has a substantial interest, the official gives his or her superior a written statement describing the nature of the possible conflict and the superior assigns the matter to a person not subject to the conflicting interests. Eth. Bd. 270, Volume VI, Page 41

DISQUALIFICATION; BOARDS, COMMISSIONS AND AGENCIES; PUBLIC CONTRACTS; As long as a nominee to a state board retains a 10% or greater interest in a private business, he or she may not use his or her public position to obtain financial gain or anything of substantial value for that business except under certain conditions.

The nominee's private company may not enter into a state contract or lease involving a payment exceeding \$3,000 within 12 months unless the nominee's relationship to the private business is disclosed to the Ethics Board and the agency acting for the state with regard to its contract. Further the nominee should disqualify himself or herself from any matter coming before the board which involves the nominee's private business, and the board's minutes should reflect the nominee's absence from the discussion and voting upon the issue. Eth. Bd. 266, Volume VI, Page 33

BOARDS, COMMISSIONS AND AGENCIES; DISQUALIFICATION; The Ethics Board approved a course of conduct for a member of a state board concerning his or her withdrawal from certain official actions involving the board and the official's private interests. Eth. Bd. 259, Volume VI, Page 27

DISQUALIFICATION; EMPLOYMENT CONFLICTING WITH OFFICIAL RESPONSIBILITIES; REPRESENTATION OF CLIENTS; The Ethics Code does not prohibit a state public official's continued employment with a law firm while the official is serving on a part-time board provided (a) the official does not represent the firm before that board, (b) the official does not participate in any vote or discussion concerning a legal proceeding in which the official's law firm represents interests adverse to those of the board, and (c) the official's actions are consistent with the Supreme Court's rules. Eth. Bd. 243, Volume V, Page 93

DISQUALIFICATION; EMPLOYMENT CONFLICTING WITH OFFICIAL RESPONSIBILITIES; BOARDS, COMMISSIONS AND AGENCIES; A person who is a state public official by virtue of his or her membership on a state board may not participate in that board's consideration of an appeal concerning a controversy involving the official or the official's partner, but the Ethics Code will not ordinarily pose an obstacle to the official's participation in the board's decisions in which the official does not have a financial stake. The Ethics Code does not pose an impediment to an official's participation in votes, deliberations, and discussions concerning the board's work and its employment of independent contractors as long as the official's action affects a large class of similarly situated people and businesses, the official's presence in the class is insignificant when compared to the number of members of the class, and the official's

actions' effects upon his or her own self interest are neither significantly greater nor less than upon other members of the class.

If an agency's selection and payment of independent contractors is a ministerial function not requiring the exercise of discretion by members of the board which direct the agency, the Ethics Code does not pose an obstacle to the agency's entrance into a contract with a member of that board or with the member's partner. Eth. Bd. 242, Volume V, Page 89

DISQUALIFICATION; EMPLOYMENT CONFLICTING WITH OFFICIAL RESPONSIBILITIES; REPRESENTATION OF CLIENTS; The Ethics Code discourages a state public official from representing a person in a matter over which the official or the official's colleagues or subordinates must take official action or exercise some official judgment. Eth. Bd. 239, Volume V, Page 79

IMPROPER USE OF OFFICE; DISQUALIFICATION; EMPLOYMENT CONFLICTING WITH OFFICIAL RESPONSIBILITIES; The Ethics Code bars a public official from taking any official action likely to affect a business in which he or she has a 10% or greater interest unless:

- a. his or her action affects the whole class of similarly situated businesses,
- b. the business's presence in the class is insignificant when compared to the number of members of the class and
- c. his or her action's effect upon the business 1) is neither significantly greater nor less than upon other members of the class or 2) results from the regular process of competitive bids.

In addition the official may not intentionally use or disclose any information which could result in the receipt of anything of value for the business had the information not been communicated to the public.

The business may not enter into a contract or lease involving a payment or payments of more than \$3,000 within 12 months in whole or in part derived from the state's funds unless the official has disclosed in writing the nature and extent of his or her relationship or interest to the Ethics Board and to the department acting for the state with regard to the contract or lease. Eth. Bd. 235, Volume V, Page 65

OFFICERS, DIRECTORS AND MEMBERS OF ORGANIZATIONS; EMPLOYMENT CONFLICTING WITH OFFICIAL RESPONSIBILITIES; LEGISLATORS; DISQUALIFICATION; A legislator should not participate in votes, deliberations, discussions, or other legislative activity likely to affect a business with which he or she is associated except to the extent that:

- a. the legislator's actions affect the whole class of similarly situated businesses,
- b. the business's presence in the class is insignificant when compared to the number of members of the class, and
- c. the effects of the legislator's actions upon the business are neither significantly greater nor less than upon other members of the class. Eth. Bd. 234, Volume V, Page 59

DISQUALIFICATION; The Ethics Code does not bar a state public official's participation in a program administered by a state agency of which he or she is a member of the policy making board provided (1) the official neither seeks nor receives any consideration with regard thereto that the official would not receive were he or she not a state public official and (2) the official does not act officially with respect to a matter in which he or she has a personal interest except to the extent that the official's personal interest in the matter is insignificant when compared with the interests of others in the same matter. Eth. Bd. 228, Volume IV, Page 103

DISQUALIFICATION; The Ethics Code does not compel a state public official to refrain from acting officially with respect to a business with which the official's spouse has a contract for professional services provided the spouse does not receive payments from the business in connection with projects financed through the public body of which the official is a member. Eth. Bd. 227, Volume IV, Page 97

JUDGES; DISQUALIFICATION; FEES AND HONORARIUMS; The public's perception of an impartial judiciary would best be served by a judge's withdrawal from officiating in matters involving the judge's business associates, even though the Ethics Code does not require that result in all cases. Eth. Bd. 210, Volume IV, Page 49

BOARDS, COMMISSIONS AND AGENCIES; IMPROPER USE OF OFFICE; DISQUALIFICATION; COMPATIBILITY OF OFFICES; Wisconsin's Code of Ethics for Public Officials and Employees does not require a member of a board, whose members by statute are required to be representatives of local governments, to withdraw from participating in decisions of the board simply because the official is an officer of a local government potentially affected by the Board's actions. However, it would be inappropriate for a member of the board to benefit personally, as opposed to officially, from any action of the board. Eth. Bd. 201, Volume III, Page 93

BOARDS, COMMISSIONS AND AGENCIES; PUBLIC CONTRACTS; DISQUALIFICATION; EMPLOYMENT CONFLICTING WITH OFFICIAL RESPONSIBILITIES; IMPROPER USE OF OFFICE; The Code of Ethics for Public Officials and Employees would pose no impediment to a person's appointment to a board while the person is an officer of an organization with which the board transacts business. However, the person's private interests would impair his or her ability to participate in the board's actions. Eth. Bd. 197, Volume III, Page 83

DISQUALIFICATION; LEGISLATORS; The Ethics Code does not require a legislator to withdraw from votes, deliberations, or other actions concerning legislation that might affect organizations of the type with which his or her spouse is associated.

A legislator must give the Ethics Board and the presiding officer of his or her house written statement describing the legislator's substantial interest in a matter before the house of the Legislature. The presiding officer must have the statement published in the legislative journal. A legislator may satisfy this requirement by filing a blanket statement of matters in which the legislator and his or her immediate family are substantially interested. Eth. Bd. 190, Volume III, Page 67

BOARDS COMMISSIONS AND AGENCIES; DISQUALIFICATION; A state agency's adoption of a plan for avoiding conflicts between its administrator's personal interests and public responsibilities is desirable and makes it unnecessary for the official to consult the Ethics Board each time he or she is subjected to conflicting interests. Eth. Bd. 162, Volume II, Page 82

BOARDS COMMISSIONS AND AGENCIES; DISQUALIFICATION; FEES AND HONORARIUMS; Where a member of an examining board did not participate in preparation of the board's examination for licensure, he or she may accept an honorarium from a college in appreciation of his or her providing instruction to a student of a field regulated by the examining board; but a member of the examining board who prepares or administers or is privy to the board's examination should not instruct students preparing themselves for the examination regardless of whether compensation is offered. Eth. Bd. 157, Volume II, Page 75

GRANTS; DISQUALIFICATION; BOARDS, COMMISSIONS AND AGENCIES; A member of a panel which advises a state agency on the distribution of money should not benefit directly from the panel's actions and should not participate in official activities from which he or she may benefit even indirectly. Eth. Bd. 141, Volume II, Page 49

PUBLIC CONTRACTS; GRANTS; BOARDS, COMMISSIONS AND AGENCIES; DISQUALIFICATION; A member or employe of a part-time board or advisory panel should not benefit directly from the board's actions and should not participate in official activities from which he or she may benefit even indirectly. Eth. Bd. 123, Volume I, Page 120

BOARDS, COMMISSIONS AND AGENCIES; DISQUALIFICATION; A member of an examining board should physically withdraw from the board's determinations and discussions in which his or her independence of judgment might be questioned by a reasonable and impartial observer but no special consequences flow from the member's association with a company which transacts business with the examining board's licenses. Eth. Bd. 122, Volume I, Page 119

BOARDS, COMMISSIONS AND AGENCIES; DISQUALIFICATION; EMPLOYMENT CONFLICTING WITH OFFICIAL RESPONSIBILITIES; OFFICERS, DIRECTORS AND MEMBERS OF ORGANIZATIONS; A member of a part-time board who is a lawyer may be associated with a law firm which represents the board's employes in labor matters provided he or she acts to prevent private interests from interfering with public responsibilities. Eth. Bd. 116, Volume I, Page 111

LEGISLATORS, DISQUALIFICATION; By notifying the presiding officer of his or her house of a possible conflict between private interests and public responsibilities, a legislator may be excused from votes, deliberations and other actions concerning a matter. However, in the present case the legislator's withdrawal from consideration of a bill is not and should not be required by law. Eth. Bd. 106, Volume I, Page 102

PUBLIC CONTRACTS; GRANTS; BOARDS, COMMISSIONS AND AGENCIES; DISQUALIFICATION; A member of a part-time board or advisory panel should not benefit directly from the board's actions and should not participate in official activities from which he or she may benefit even indirectly. Eth. Bd. 104, Volume I, Page 100

BOARDS, COMMISSIONS AND AGENCIES; DISQUALIFICATION; EMPLOYMENT CONFLICTING WITH OFFICIAL RESPONSIBILITIES; A person who, because he represents certain interests, is appointed to a part-time board responsible for reviewing administrative rules proposed by another agency should fully advise his colleagues of his actions prior to agreeing to draft, for compensation, the rules which the board of which he is a member will review. Eth. Bd. 95, Volume I, Page 90

DISQUALIFICATION; LEGISLATORS, IMPROPER USE OF OFFICE; A legislator may participate in debate and votes on a bill which may substantially and materially affect a company which is wholly owned by a corporation in which the legislator has stock when legislator's interest in parent company is so minute that the legislator will not share substantially in any benefits resulting from Legislature's action. Eth. Bd. 93, Volume I, Page 88

BOARDS, COMMISSIONS AND AGENCIES; DISQUALIFICATION; Members of part-time board should not participate in any official deliberations which might affect the official or organization with which the official is associated. Eth. Bd. 63, Volume I, Page 55

DISQUALIFICATION; BOARDS, COMMISSIONS AND AGENCIES; OFFICERS, DIRECTORS AND MEMBERS OF ASSOCIATIONS; JURISDICTION; Whenever a member of a part-time board or an organization with which the member is associated will realize anything of value from a proposal before the board, the member should disclose his or her interest to the other members and refrain from voting on or discussing the proposal.

The Ethics Code's standards of conduct do not apply to unsalaried officials whose appointments do not require the Senate's consent. Eth. Bd. 59, Volume I, Page 49

DISQUALIFICATION; POST EMPLOYMENT; LEGISLATIVE EMPLOYEES; A legislative employe contemplating employment with corporation with special interest in Legislature's actions should notify supervisor and disqualify self from matters of interest to potential employer. Eth. Bd. 58, Volume I, Page 48

REPRESENTATION OF CLIENTS; LEGISLATORS; DISQUALIFICATION; PUBLIC CONTRACTS; Although the Ethics Code does not prohibit a state public official from performing official duties, it does provide a way for a legislator to be excused from those duties in regard to a matter in which a possible conflict exists.

A legislator should not represent a person for compensation before a state agency unless the representation involves only ministerial actions by the agency or is a formal proceeding and is a matter of public record.

A state official should not enter into contract involving substantial payment from state funds unless disclosure has been made to Ethics Board or to agency acting for state. Eth. Bd. 46, Volume I, Page 35

EMPLOYMENT CONFLICTING WITH PUBLIC RESPONSIBILITIES; DISQUALIFICATION; Although the Code of Ethics for Public Officials does not prohibit a legislator from voting or otherwise performing his or her official duties, it does provide a way for a legislator to be excused from these duties in regard to a matter on which possible conflict exists. Eth. Bd. 40, Volume I, Page 28

DISQUALIFICATION; BOARDS, COMMISSIONS AND AGENCIES; After informing colleagues of nature of potential conflict a member of a part-time board should abstain from votes and participation in deliberations concerning matters in which private interest might conflict with official responsibilities. Eth. Bd. 26, Volume I, Page 20

EMPLOYMENT CONFLICTING WITH OFFICIAL RESPONSIBILITIES; JURISDICTION; LEGISLATORS; The provisions of the Code of Ethics for Public Officials supersede the rules of either house of the Legislature.

*The Code of Ethics for Public Officials does not prohibit a legislator from voting or otherwise performing official duties, but a legislator should excuse himself or herself from voting on proposal of special interest to organization of which legislator is a salaried officer. Eth. Bd. 23, Volume I, Page 17**

*PUBLIC CONTRACTS; DISQUALIFICATION; BOARDS, COMMISSIONS AND AGENCIES; Although a member of a state agency's governing body will not violate the Code of Ethics for Public Officials if he or she refrains from voting upon or discussing, as a state public official, the agency's approval of a contract in which the member is financially interested, the member should review the application of § 946.13, *Wisconsin Statutes*, with the Attorney General before proceeding. Eth. Bd. 18, Volume I, Page 14*

OFFICERS, DIRECTORS AND MEMBERS OF ORGANIZATION; DISQUALIFICATION; BOARD, COMMISSIONS AND AGENCIES; The Code of Ethics for Public Officials does not prohibit a member of a state agency's governing board (1) from taking any official action concerning one of the agency's programs which was the subject of legal proceedings to which the official was a party prior to assuming state public office or (2) from being a member of or contributing to non-profit organizations which lobby for and against proposals affecting the agency and matters regulated by it. Eth. Bd. 17, Volume I, Page 14

BOARDS, COMMISSIONS AND AGENCIES; DISQUALIFICATION; Provided a member of a part-time board receives no special consideration from the state agency with which he or she is associated, there is no substantial and material conflict between the member's public responsibilities and his or her personal requests to the agency for advice and technical assistance and approval of various licenses, permits and plans. Moreover, the member may acquire or dispose of personal interests potentially of interest to the

* Italicized opinions are obsolete.

agency with which the member is associated after appropriate disclosures of interest and, where appropriate, disqualification from voting or discussion. Eth. Bd. 12, Volume I, Page 9

DISQUALIFICATION; BOARDS, COMMISSIONS AND AGENCIES; A member of an examining board should disqualify himself or herself from examining a candidate who is in the process of becoming an associate of the member in the licensed trade or profession. Eth. Bd. 11, Volume I, Page 8

Ethics Board Guideline 232

Unofficial Text (See Printed Volume). Current through date and Register shown on Title Page.

Chapter GAB 20

COMPLAINT PROCEDURE

GAB 20.01 Applicability.
 GAB 20.02 Definitions.
 GAB 20.03 Filing.
 GAB 20.04 Investigations.
 GAB 20.05 Board meetings.

GAB 20.06 Hearings.
 GAB 20.07 Withdrawal and settlement.
 GAB 20.08 Diligent action; dismissals.
 GAB 20.09 Temporary orders.
 GAB 20.10 Service.

Note: Chapter EIBd 10 was renumbered chapter GAB 20 under s. 13.92 (4) (b) 1., Stats., and corrections made under s. 13.92 (4) (b) 2., 6. and 12., Stats., Register April 2008 No. 628.

GAB 20.01 Applicability. This chapter applies to complaints filed with the government accountability board pursuant to ss. 5.05, 5.06, 11.60 (5) and 11.66, Stats., requesting the government accountability board to enforce the election and campaign finance laws. This chapter does not apply to complaints to challenge to nomination papers or petitions which are filed under s. GAB 2.05 or 2.11.

History: Cr. Register, January, 1994, No. 457, eff. 2-1-94; correction made under s. 13.92 (4) (b) 7., Stats., Register April 2008 No. 628.

GAB 20.02 Definitions. As used in this chapter:

- (1) "Board" means the government accountability board.
- (2) "Complainant" means an elector, a committee or a group filing a matter with the board under this chapter.

(3) "Director" means a person duly appointed by the board or any employee of the agency to whom a lawful function has been delegated by the director to administer and manage the agency.

(4) "Probable cause" means the facts and reasonable inferences that together are sufficient to justify a reasonable, prudent person, acting with caution, to believe that the matter asserted is probably true.

(5) "Respondent" means a person, committee, or a group whose decisions or actions may be brought before the board on complaint for review under this chapter.

History: Cr. Register, January, 1994, No. 457, eff. 2-1-94.

GAB 20.03 Filing. (1) All complaints, answers and replies shall be in writing and shall be sworn to before a person authorized to administer oaths.

(2) The form of the complaint, answer or reply should, but is not required to, follow the format prescribed herein:

State of Wisconsin
Before the Government Accountability Board

The Complaint of _____
_____, Complainant
against _____
_____, Respondent ¹

COMPLAINT

This complaint is under _____ (Insert the applicable section(s) of law in chs. 5 to 12, Stats., if known) ²

I (Insert the complainant's name), allege that (Set forth in detail the facts that establish probable cause to believe that a violation occurred. Use as many separate pages as needed.)

Date: _____ (complainant's signature)

I (complainant's name), being first duly sworn on oath state that I personally read the above complaint, and that the above allegations are true based on my personal knowledge and, as to those stated on information and belief, I believe them to be true.

_____ (complainant's signature)

STATE OF WISCONSIN)
) ss.
County of _____),
(county of notarization)

Sworn to before me this _____ day of _____, 2_____

(Signature of person authorized to administer oaths)

My commission expires _____, or is permanent
Notary Public or (official title if not notary)

¹ Substitute complaint, answer or reply, as the case may be, and make the appropriate changes throughout the document.

² A statutory basis is not required for an answer or reply.

Unofficial Text (See Printed Volume). Current through date and Register shown on Title Page.

(3) The complaint shall specify the statutory basis for the complaint and shall set forth the facts which are alleged to establish probable cause. Information which may establish probable cause includes allegations that set forth which persons are involved; what those persons are alleged to have done; where the activity is believed to have occurred; when the activity is alleged to have occurred and who are the witnesses to the events. The complaint shall be signed by the complainant or by an individual acting as the complainant's representative.

(4) The complaint shall state the name and last known post office address of the complainant and the respondent.

(5) The complainant, not the complainant's representative, shall verify the allegations of the complaint. The complainant verifies the complaint by signing a statement under oath before a notary public or other person authorized to administer oaths. The verification statement, or a statement to the same effect, shall state as follows:

"I, (complainant's name), being first duly sworn upon oath, state that I personally read the above complaint and that the above allegations are true and correct based on my personal knowledge and, as to those allegations stated on information and belief, I believe them to be true."

The verification shall be placed at the bottom of the complaint.

(6) The complainant shall mail to, or personally serve on, the respondent a copy of the complaint no later than the time of filing the complaint with the Board and shall certify to that service on the complaint or in a cover letter filed with the complaint. Each party shall mail to, or personally serve on, each other party any subsequent pleading before filing the pleading with the board and shall certify to the service on the pleading or in a cover letter filed with the pleading.

History: Cr. Register, January, 1994, No. 457, eff. 2-1-94.

GAB 20.04 Investigations. (1) Any matter brought to the board shall be reviewed by the director who shall determine within 10 business days whether the complaint is timely, is sufficient as to form and states probable cause.

(2) If the complaint does not meet the standards under sub. (1), the director shall promptly return the complaint to the complainant, without prejudice unless otherwise provided by law, specifying both the defect in the complaint and the information appropriate to cure the defect. A copy of the director's letter to the complainant shall be provided to the respondent.

(3) If the complaint meets the standards under sub. (1) as applied to complaints under ss. 5.05 and 11.60 (5), Stats., the director shall promptly forward the complaint to the respondent at the respondent's last known post office address. The respondent shall file with the board a verified, written answer within 10 business days. After receiving the answer, the director shall promptly forward the answer to the complainant at the complainant's last known post office address. The complainant may file a written, verified reply to the answer within 10 business days.

(4) After receiving an answer that makes any counterclaim against the complainant, the director shall promptly forward the counterclaim to the complainant. The complainant shall file a written, verified answer to the counterclaim within 10 business days. After receiving the complainant's answer, the director shall promptly forward the answer to the respondent for a written, verified reply to be filed within 10 business days.

(5) The director has the discretion to extend by not more than an additional 10 business days, the time for the complainant or respondent to file any responsive pleading. A business day is any day that the agency is open for business.

(6) If the complaint meets the standards under sub. (1), as applied to complaints under ss. 5.06 and 11.66, Stats., the director shall proceed as the board authorizes by duly adopted motion and,

where no motion is in effect, the director shall proceed after consultation with the board's chair.

(7) A party that fails to obtain an extension of time to respond pursuant to sub. (2), or who fails to respond within 10 business days to a pleading mailed to the party's last known post office address that is not returned to the board, may be deemed to have admitted each allegation contained in the pleading, and to have accepted any other consequences for failing to respond to a pleading.

(8) The time period for filing an answer or reply begins 3 business days after the date of the transmittal letter from the director. An answer or reply will be treated as filed based on the postmark of the envelope transmitting the pleading.

(9) After all pleadings are filed under ss. 5.05 and 11.60 (5), Stats., the director shall analyze the pleadings, present them, with appropriate recommendations, to the Board at its next regularly scheduled meeting, or at the most immediate meeting thereafter at which the matter can be heard if the matter cannot be heard at the next regularly scheduled meeting, and forward a copy of the analysis and recommendations to the complainant and respondent within a reasonable time before the board meeting at which the matter will be considered.

(10) After all pleadings are filed under ss. 5.06 and 11.66, Stats., the director shall proceed as the board authorizes by duly adopted motion or, where no motion is in effect, the director shall proceed after consultation with the board's chair. Where the board has delegated to the director the authority to resolve complaints, the director shall issue an order making findings and resolving the complaint.

History: Cr. Register, January, 1994, No. 457, eff. 2-1-94; corrections in (3) and (9) made under s. 13.92 (4) (b) 7., Stats., Register April 2008 No. 628.

GAB 20.05 Board meetings. (1) The board shall review the analysis and recommendations of its director with respect to pleadings filed under ss. 5.05 and 11.60 (5), Stats., at its next regularly scheduled meeting.

(2) Any party may submit a written statement of facts approved by the director for consideration by the board.

(3) Personal appearances, limited to 10 minutes per party plus additional time to respond to questions from board members and staff, are permitted at each meeting of the board. A complainant shall make the first presentation and the respondent shall make the second presentation. No rebuttal or extension of time will be allowed unless specifically provided by the board.

(4) Parties may provide a written argument or brief in support of their positions. Such arguments or briefs are limited to 5 pages, single spaced on one side of a sheet of paper. Parties submitting written material to the board must submit 12 copies to the director no later than 3 business days before the board meeting at which the matter will be considered.

History: Cr. Register, January, 1994, No. 457, eff. 2-1-94; correction in (1) made under s. 13.92 (4) (b) 7., Stats., Register April 2008 No. 628.

GAB 20.06 Hearings. (1) Before issuing a final decision or order on the merits of a complaint filed with the board under this chapter, the board or its director shall conduct an evidentiary hearing, under ch. 227, Stats., if either of the following occurs:

(a) In the board's judgement, a hearing is necessary in the interest of justice and a material question of fact exists.

(b) A hearing is expressly required by statute.

(2) Before issuing a final decision or order on the merits of a complaint filed with the board under this chapter, the board or its director may conduct an evidentiary hearing, under ch. 227, Stats., when:

(a) The board concludes that facts exist which have not been presented and which may tend to resolve the dispute.

(b) The board, in its discretion, determines that an evidentiary hearing is appropriate.

Unofficial Text (See Printed Volume). Current through date and Register shown on Title Page.

(3) Except in the case of an emergency, the board shall provide the parties with at least 10 days written notice of a hearing stating the date, the time, and the place of the hearing, the nature of the case, and a general statement of the issues to be heard. The parties may, with the consent of the board, waive the right to notice. Continuances or postponements may be granted by the director only in the case of exceptional circumstances entirely beyond the control of the party requesting the continuance or postponement and only upon notice to the director given at least 3 days before the hearing.

(4) The board, or the director, or a hearing examiner proceeding under ch. 227, Stats., may preside over the hearing. The board may, by duly adopted motion of the board or by an order issued before taking any testimony, direct that the director's or the hearing examiner's decision be final as to the merits of the matter. Subject to the provisions of this chapter, the director or hearing examiner shall have the powers specified in s. 227.46 (1), Stats.

(5) Based upon the law applicable to the type of proceeding the board is required to conduct, the parties appearing at the hearing shall be afforded reasonable opportunity to be represented by counsel, to call witnesses, to present evidence, and to confront and cross examine adverse witnesses. The statutory and common law rules of evidence shall not be binding as to issues of admissibility. The director or hearing examiner may admit all testimony having reasonable probative value, but shall exclude irrelevant, immaterial or unduly repetitious testimony. No material finding of fact shall be made unless supported by competent evidence in the record.

(6) All testimony at the hearing shall be given under oath and shall be recorded by a stenographer or a recording machine, but need not be transcribed unless a party requests a transcript and pays any costs required to prepare a transcript.

(7) All decisions following a hearing shall be in writing and shall set forth, in relevant detail, the findings of fact and conclusions of law. A decision shall be served on the parties by mailing a copy to each party's last known post office address.

History: Cr. Register, January, 1994, No. 457, eff. 2-1-94.

GAB 20.07 Withdrawal and settlement. (1) At any time before the issuance of a final decision, a complainant may file with the board a written request to withdraw his or her complaint, specifying the reasons for the request. Upon receiving such a request, the board may, but is not required to, issue an order dis-

missing the matter with or without prejudice. If the board decides not to dismiss the case, the board may take any appropriate action, within its authority, that the board determines will serve the public interest.

(2) The parties to proceedings under this chapter may not settle disputed matters by compromise and conciliation without the consent of the board, except where the settlement is authorized by law. Upon receiving written notice that settlement has been proposed, the board may, at its next regularly scheduled meeting, consider the proposal as the board deems appropriate.

History: Cr. Register, January, 1994, No. 457, eff. 2-1-94.

GAB 20.08 Diligent action; dismissals. (1) The board shall proceed promptly and diligently to decide cases under this chapter.

(2) If a party fails to appear at a hearing, the board, the director, or the hearing examiner may proceed with the hearing, provided that due notice of the hearing was mailed to the party's last known post office address.

(3) A party may request the board to reconsider its decision if a request for reconsideration is received by the board within 30 days after the party receives written notice of the board's decision by filing a written request with supporting information showing that an obvious mistake of fact or law which materially affects the outcome of the decision has occurred; or showing newly discovered evidence that was not obtainable with due diligence during the course of the hearing.

(4) A party may request that board consideration of a matter be postponed. The request shall be in writing and shall be served on the director and all other parties at least 3 business days before the date scheduled for board consideration of the matter.

History: Cr. Register, January, 1994, No. 457, eff. 2-1-94.

GAB 20.09 Temporary orders. The board may issue a protective order or grant such protective relief as the board determines is necessary to preserve the rights of any party to a matter subject to this chapter before issuing a final decision or order.

History: Cr. Register, January, 1994, No. 457, eff. 2-1-94.

GAB 20.10 Service. The director may accept service of any pleading on behalf of the board including civil actions commenced against the board.

History: Cr. Register, January, 1994, No. 457, eff. 2-1-94.

Unofficial Text (See Printed Volume). Current through date and Register shown on Title Page.

Chapter GAB 15

STATEMENT OF ECONOMIC INTERESTS

GAB 15.045 Identification of individuals and organizations.
GAB 15.06 Interests held for benefit of another.

GAB 15.07 Valuation.
GAB 15.08 Partnership interest.

Note: Chapter Eth 2 was renumbered chapter GAB 15 under s. 13.92 (4) (b) 1., Stats., Register April 2008 No. 628.

GAB 15.045 Identification of individuals and organizations. (1) The identity of an organization under s. 19.44 (1), Stats., is information sufficient to enable a person to ascertain without extraordinary diligence the following information:

(a) The general nature of the business or activity in which the organization is engaged.

(b) The identity of the organization's directors and principal officers, if any.

(c) In the case of a partnership, the identity of the general partners.

(d) If the organization's business is primarily income producing real property, the property's location.

(2) The identity of an individual includes the individual's name and information sufficient to distinguish the person from any other individual.

History: Cr. Register, June, 1977, No. 258, eff. 7-1-77; am. Register, October, 1978, No. 274, eff. 11-1-78; renum. (intro.) and (1) to (4) to be (1), (intro.) and (a) to (d) and am. (1) (intro.), cr. (2), Register, April, 1985, No. 352, eff. 5-1-85.

GAB 15.06 Interests held for benefit of another. Economic interests held in the name of a bank, broker-dealer, trustee, or nominee for the account of a person are owned by the person for whose benefit they are held. A person owns economic interests held in the name of another person or entity if by reason of any contract, understanding, relationship, including a family relationship or arrangement, such person obtains therefrom benefits substantially equivalent to those of ownership.

History: Renum. from 2.04 (2) and am., Register, September, 1976, No. 249, eff. 10-1-76.

GAB 15.07 Valuation. For the purpose of determining under s. 19.44 (1), Stats., whether securities are valued at \$5,000 or more:

(1) The value of securities listed on a stock exchange is the closing price on the exchange.

(2) The value of securities not listed on a stock exchange but traded in the over-the-counter market is the average of the bid and asked price.

(3) The value of securities for which no market information is readily available is:

(a) For common stock and equivalent securities, the issuer's net worth divided by the number of outstanding shares multiplied by the number of shares held.

(b) For preferred stock, the redemption price or, if not redeemable, the stated value.

(c) For debt securities, the unpaid balance.

History: Cr. Register, June, 1976, No. 246, eff. 7-1-76; am. (1) (intro.), Register, October, 1978, No. 274, eff. 11-1-78; renum. (1) (intro.) and (a) to (c) to be (intro.) and (1) to (3) and am., r. (1) (d) and (e), Register, April, 1985, No. 352, eff. 5-1-85; correction made under s. 13.93 (2m) (b) 1., Stats, Register, October, 1999, No. 526.

GAB 15.08 Partnership interest. A partner has a 10% or greater interest in a partnership under s. 19.44 (1), Stats., if:

(1) The partner would be entitled to receive 10% or more of the proceeds from the partnership's dissolution, or

(2) During the partnership's accounting period covering the date for which the calculation is made the partner, either by prior agreement or by the partner's best estimate, received or will be entitled to receive 10% or more of the partnership's net profit or will be credited with 10% or more of the partnership's net loss.

History: Cr. Register, June, 1976, No. 246, eff. 7-1-76; am. Register, September, 1976, No. 249, eff. 10-1-76; r. and recr. Register, April, 1985, No. 352, eff. 5-1-85.

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Chapter GAB 16

LOBBYING

GAB 16.02 Hospitality, defined.
GAB 16.03 Topic of a lobbying communication.

GAB 16.04 Proposed administrative rule number.

Note: Chapter Eth 1 as it existed on June 30, 1976 was repealed and a new Chapter Eth 1 was created effective July 1, 1976. Chapter Eth 1 was renumbered chapter GAB 16 under s. 13.92 (4) (b) 1., Stats., Register April 2008 No. 628.

GAB 16.02 Hospitality, defined. When used in s. 19.42 (1), Stats., "hospitality" includes but is not limited to meals, beverages and lodging which a host other than an organization offers a guest on premises owned or occupied by the host or his or her immediate family as the host's principal or seasonal residence. Hospitality is unrelated to state business if the hospitality would be extended if the recipient or a member of the recipient's immediate family did not hold a state public office.

Note: Anything of value is defined at s. 19.42 (1), Stats., and later appears at ss. 19.42 (6) and 19.45 (2), (3) and (4), Stats. Specifically excluded from the term is "... hospitality extended for a purpose unrelated to state business by a person other than an organization."

In general, these sections provide that a state public official may not use his or her public office to obtain anything of substantial value and may not accept anything of value if it could reasonably be expected to influence the official's judgment. Moreover, a state official must report annually the acceptance of anything of value received as a gift from someone other than a relative if its value exceeds \$50.

GAB 16.02 identifies the most common situations coming within the hospitality exclusion. Many other circumstances may come within the exclusion (e.g., wedding receptions, theater parties, hunting trips) but because of their diverse character no general rule can be stated. Written opinions on the term's application to situations not addressed here may be obtained from the board on request.

The rule also identifies the circumstances under which hospitality is unrelated to state business.

History: Cr. Register, June, 1976, No. 246, eff. 7-1-76; am. (1) and (5), Register, September, 1976, No. 249, eff. 10-1-76; renum. (6) to be (7), cr. (6), Register, May, 1977, No. 257, eff. 6-1-77; am. (1), Register, June, 1977, No. 258, eff. 7-1-77; renum. (7) to be (8), cr. (7), Register, November, 1977, No. 263, eff. 12-1-77; am.

(intro.) r. and recr. (1) and r. (2) to (8), Register, October, 1978, No. 274, eff. 11-1-78; renum. (1) to be (2), cr. (1), Register, July, 1979, No. 283, eff. 8-1-79; am. (intro.) and (1), r. (2), Register, April, 1985, No. 352, eff. 5-1-85.

GAB 16.03 Topic of a lobbying communication. A person reports a topic as provided by s. 13.67, Stats., if the person provides the board all of the following information:

(1) A succinct written statement sufficient to put the reader on notice of the communication's subject matter.

(2) Whether the communication is an attempt to influence legislative or administrative action, or both.

(3) With respect to an attempt to influence administrative action, if the lobbying communication relates to the subject of a scope statement published in the Wisconsin Administrative Register, the scope statement summary, together with the date of the register and page number on which the scope statement appears.

History: Cr. Register, September, 2000, No. 537, eff. 10-1-00; CR 03-061: am. Register December 2003 No. 576, eff. 1-1-04.

GAB 16.04 Proposed administrative rule number. A person reports a proposed administrative rule number as provided by s. 13.67, Stats., if the person provides the board any of the following:

(1) The related scope statement summary published in the Wisconsin Administrative Register, together with the date of the register and page number on which the scope statement appears.

(2) The clearinghouse rule number.

History: CR 03-061: cr. Register December 2003 No. 576, eff. 1-1-04.

State of Wisconsin \ Government Accountability Board

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JUDGE MICHAEL BRENNAN
Chairperson

KEVIN J. KENNEDY
Director and General Counsel

MEMORANDUM

DATE: For the March 30-31, 2009 Meeting

TO: Members, Wisconsin Government Accountability Board

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

Prepared and Presented by:
Shane W. Falk, Staff Counsel

SUBJECT: Repeal of Certain Administrative Rules, Address Corrections

Pursuant to §13.92(4)(b), Stats., the Legislative Reference Bureau can make certain administrative changes to the administrative code without requiring agencies to complete entire rule-making procedures. This process can be used to delete obsolete rules promulgated by an agency that no longer exists. (§13.92(4)(b)15.) The legislature specifically required the Government Accountability Board to review and affirm, or refuse to affirm, administrative rules promulgated by the former State Elections Board and State Ethics Board. Since those two agencies no longer exist, I believe the Legislative Reference Bureau can delete administrative rules that the G.A.B. did not adopt without the G.A.B. having to complete formal rule-making procedures. In addition, the G.A.B. offices have moved and this process can certainly be used to change incorrect addresses in the administrative code. (§13.92(4)(b)6.)

The attached letter to the Legislative Reference Bureau addresses several changes to make in the administrative code.

Recommendations

The Board should direct the Director and General Counsel to submit the attached letter to the Legislative Reference Bureau to address administrative rules that should be repealed and correct the G.A.B. office address in the administrative rules.

Proposed motions:

MOTION:

The Director and General Counsel is directed to submit the attached letter to the Legislative Reference Bureau to repeal certain administrative rules not affirmed by the Government Accountability Board and correct the office address of the agency.

State of Wisconsin\Government Accountability Board

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JUDGE MICHAEL BRENNAN
Chair

KEVIN J. KENNEDY
Director and General Counsel

April 1, 2009

Mr. Bruce Hoesly
Code Editor
Legislative Reference Bureau
1 East Main Street, Suite 200
Madison, WI 53703-3233

Via U.S. Mail and email (bruce.hoesly@legis.wisconsin.gov)

Re: Government Accountability Board: §13.92(4)(b), Stats. Requests

Dear Mr. Hoesly:

Please consider this letter a request of the Legislative Reference Bureau by the Government Accountability Board to make certain §13.92(4)(b), Stats., corrections to the administrative code. Please make the requested corrections to the administrative code at your earliest convenience.

Pursuant to 2007 A. 1, §209(2)(e), the Government Accountability Board has not and will not reaffirm the following administrative rules and therefore pursuant to said Act, the following rules expired on January 16, 2009 (See 2007 A. 1, §209(1) and (2)(e)[Initiation Date 1/18/08; 365 days is 1/16/09]). While the Government Accountability Board extended the period to complete the review of rules as permitted by 2007 A. 1, §209(2)(e), that extension will expire April 16, 2009 and the Board is clear that it will not reaffirm the below rules, nor is there even another Board meeting scheduled prior to the expiration of the review process. Pursuant to these statutory and legislative provisions and since the former Elections Board agency no longer exists, the Legislative Reference Bureau may delete the following obsolete rules promulgated by the nonexistent agency. Please delete the following rules from the administrative code as permitted under §13.92(4)(b)15.:

- s. GAB 1.29 (declined to reaffirm March 26, 2008)
- s. GAB 1.41 (declined to reaffirm March 30, 2009)
- s. GAB 1.55 (declined to reaffirm May 5, 2008)

Pursuant to §13.92(4)(b)6., the Legislative Reference Bureau may make corrections to the administrative code to update an agency address. Please use the following address to update the following rules:

Government Accountability Board
212 E. Washington Avenue, 3rd Floor
P.O. Box 7984
Madison, WI 53707-7984

Rules to modify agency address:

- s. GAB 21.01
- s. GAB 25.01
- s. GAB 25.05

Mr. Bruce Hoesly

April 1, 2009

Page 2

If you have any questions or concerns regarding the above, please contact Shane W. Falk, Staff Counsel, at 266-2094 or via email at shane.falk@wi.gov . Thank you for your attention to these matters.

GOVERNMENT ACCOUNTABILITY BOARD

Kevin J. Kennedy
Director and General Counsel

cc: Via Email: adminrules@wisconsin.gov

State of Wisconsin \ Government Accountability Board

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JUDGE MICHAEL BRENNAN
Chairperson

KEVIN J. KENNEDY
Director and General Counsel

MEMORANDUM

DATE: For the March 30-31, 2009 Meeting

TO: Members, Wisconsin Government Accountability Board

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

Prepared and Presented by:
Michael R. Haas, Staff Counsel

SUBJECT: Statewide Survey of Voter Fraud Complaints

In an attempt to provide the Board with an overview of voter fraud cases related to the November 2008 General Election, staff has developed a short survey which has been forwarded to each District Attorney, with the assistance of the State Prosecutor's Office. A copy of the survey is attached. Our goal is to gather facts regarding the prevalence of voter fraud complaints and the outcome of those complaints.

The findings of the survey will be presented at the Board meeting. In addition, we have invited Bruce Landgraf of the Milwaukee County District Attorney's Office, to speak to the board about voter fraud cases and the work of the Election Fraud Task Force, a joint effort of the Department of Justice and Milwaukee County District Attorney's Office.

No action is required of the Board.

State of Wisconsin\Government Accountability Board

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JUDGE MICHAEL BRENNAN
Chair

KEVIN J. KENNEDY
Director and General Counsel

March 9, 2009

Dear District Attorney:

We are seeking your assistance in collecting data regarding the number and type of voter fraud complaints received by District Attorney offices statewide in relation to the November 2008 election, and the disposition of those cases. As you know, such cases would be filed under Wis. Stats. §12.13(1).

We hope to present a summary to our Board which meets on March 30 and 31st. To that end, we ask your office to complete the following questionnaire and return it to us by March 20, 2009 if possible. You may return the completed form to Staff Attorney Michael Haas by email at Michael.haas@wi.gov, or by fax to 608-267-0500.

We will be glad to share our findings with anyone who is interested. As always, we appreciate your assistance in enforcing Wisconsin laws related to elections and campaigns, and are available to answer any questions you may have in those areas.

Thank you very much for your help in completing this project.

Sincerely,

Kevin J. Kennedy
Director and General Counsel

**GOVERNMENT ACCOUNTABILITY BOARD
SURVEY OF VOTER FRAUD COMPLAINTS**

1. How many complaints of potential voter fraud did you receive in relation to the November 2008 General Election?

2. How many complaints are still under investigation?

3. How many complaints resulted in the filing of court action?

4. Please cite the statutory subsections charged and the number of cases filed under each subsection.

§ _____ cases
§ _____ cases
§ _____ cases

5. Of the court cases filed, please list the number in each of following dispositions.

- A. Felony conviction _____
- B. Misdemeanor conviction _____
- C. Dismissal _____
- D. Still Pending _____

Please list your County: _____

Thank you for your assistance. Please return to Staff Counsel Michael Haas at michael.haas@wi.gov or by fax to 608-267-0500.

Government Accountability Board
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JUDGE MICHAEL BRENNAN
Chairperson

KEVIN J. KENNEDY
Director and General Counsel

MEMORANDUM

DATE: For the March 30-31, 2009 Meeting

TO: Members, Wisconsin Government Accountability Board

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

Presented by:

Michael R. Haas, Staff Counsel

Prepared by:

Shane W. Falk, Staff Counsel

SUBJECT: Wisconsin Attorney General Reports Summary for 11/4/08 General Election

The following is a brief overview of some of the relevant comments drawn from the Wisconsin Attorney General Reports taken during the observations of assistant attorneys general during the November 4, 2008 General Election (note: most reports specifically identified the number of "Obama" observers and the number of "Republican" observers):

Milwaukee area:

- *Pulaski Pool: facility seemed too small
- *Firehouse Eng 23: facility VERY inadequate; insufficient no. of election inspectors
- *Sholes Middle School: No flag outside and poor signage
- *Garland School: Very small facility; Chief Insp. reports prob. placing observers
- *Saneland Park Pavilion: "Charlie Sykes" incident rptd. (Command Center informed)
- *Water Tower: Site of Performance Art; Two inspectors had no training, ltd. Education
- *Greater Holy Temple Christian Academy: voter intimidation; report filed w/ police
- *Bryant School: uniformed officer present; MPD sd no uniform allowed; rptd to MPD
- *John Marshall H.S.: rpt. I.D. not taken at registration; confirmed were taking I.D.
- *John Marshall H.S.: rpt. male politicking in line; was only assting. w/ crowd control
- *New Hope Baptist Church: no observer sign in sheet; Chief Insp. not aware obs. Rules
- *Oasis Senior Center: Dispatched to location re: complaint that DOJ reps. refusing to sign in and threatening; not required to sign in and observers confirmed no one threatened anyone
- *Ben Franklin School: rpt. that DCI Agent Martinez acted improperly; discovered that Chief Insp. requested assistance from agents because location so busy

- *Shorewood School-Atwood Elementary: rpt. that DCI Agent Martinez acted improperly; discovered that he had Chief Insp. move observers back because they were too close per rules and observers were upset with this
- *Lydell Comm. Center: rpt. that DCI Agent Martinez harassed persons; discovered he was never there; rpt. was false; DCI Agent Spakowicz prepared detailed report
- *Cherry St.: two voters claimed someone voted in their name already
- *Housing Auth: no room for observers; Chief Insp. not allowing observation of ballot table and poll books due to congestion
- *Washington Park Senior Center: Election Protection observer helping register voters
- *Milwaukee College Prep School: Extremely congested; 3 Wards and only one poll worker to process EDRs; called in extra help
- *Francis Sterns School: preferential voting treatment complaint; discovered that inspectors allowed physically disabled to sit in area near registration and assisted them there; no violation
- *Phyllis Wheatley: Chief Insp. had to retrieve ineligible list from sealed envelope
- *Center St. Library: Ineligible lists still in sealed envelope at 10:50 a.m. after processing several EDRs already
- *Carver Academy: Chief and other Inspectors very standoffish and wouldn't respond to concerns that observers engaging voters; Entire staff and chief not personable
- *Ben Franklin Sch.: Observers took down AAG license plates; did not feel welcome

Appleton:

- *Riverview Ev. Luth. Church: observer promoting Obama too close; complied w/ move
- *Good Sheppard Luth. Church: two voters voted in person and later learned had voted absentee

Beloit:

- *Grace Luth. Church: one person voted in person, later learned voted absentee; man on felon list appeared w/ letter stating early termination of probation so allowed to vote

Eau Claire:

- *Grace Luth. Church: students claimed reg. on campus; not on poll list so told to re-register and vote

Green Bay:

- *Bay Evangelical Cov. Church: students registered on campus after poll lists done; were re-registering at poll and taking while, but working o.k.

Kenosha:

- *Unified Schools Bldg. East Entrance: count off on tabulator, which shows more votes than voter list shows voters; occurred early in day so always off by at least 4; Obama observer sd. no duplicate voting; believe was poll worker error in counting
- *Forest Park Elementary: two women showed up separately with same name and address; first allowed to vote and when second came in, she was questioned and sent to clerk's office to vote and will be investigated by clerk later
- *Senior Citizen Center: poll worker accepting money for book sale; chief inspector notified and book sale moved
- *Frank Elementary Sch.: person outside polling place w/ sign encouraging people to vote; clearly advocating voting, but not specific person so not electioneering; also not offering inducement to vote so permitted

La Crosse:

- *No. 2 Fire Station: no election laws posted but after notifying Chief Insp. were posted; Chief Insp. asked man to leave who was in front asking people to sign petition; one person allowed to cast ballot that didn't live in ward
- *First Presbyterian Church: Only one sample ballot posted; corrected
- *Longfellow Middle Sch.: no sign re: polling hours posted conspicuously; moved from behind pollworker table to near entrance
- *Spence Elementary Sch.: no sign re: polling hours posted conspicuously; moved from table by pollworkers to near entrance; City Clerk present too; Chief Insp. made petition gatherer move outside 100 feet b/c was saying had to sign to vote
- *Altra Fed. Credit Union: Chief Insp. reported person gathering petition signatures and had him move outside 100 feet; Assistant AG Kilpatrick noted "Not sure if this was 'electioneering.'"
- *Hintgon Elementary: no sign re: polling hours posted conspicuously so moved from table for poll workers to wall

Madison:

- *Brittingham Apts: Chief Insp. observed/admitted completing arrows on absentee ballots; after checking with G.A.B., Chief Insp. agreed to discontinue the practice

Racine

- *Primary Issue noted was observer involvement with G.A.B.; There were many contacts with G.A.B. and many attempts by observers to assist voters

Complaints:

- *Referral No. 17: political signage near polling place; signs conform to rules
- *Referral No. 19: uniformed officer at Bayside Middle School; verified Chief Insp. requested for crowd control and no suppression occurring
- *Referral No. 34: line preference given to EDR's; referred to another team
- *Referral No. 42: disabled persons voting curbside at Marshall H.S.; no violations—space and physical limitations considered by Chief Insp. who allowed curbside voting
- *Referral No. 87: rpt. untrained poll workers registering people at Marquette University; Chief Insp. explained that volunteers assisting voters with completing registration and explaining required paperwork, but not actually registering voters; no violation or basis for complaint per DCI Agents
- *Referral No. 91: rpt. van at poll w/ "Obama for President" sign; DCI Agents did observe van drop off voters and wait; contacted driver who sd. was simply bringing students to poll; DCI Agents instructed driver to wait outside 100 feet from poll; driver complied

State of Wisconsin \ Government Accountability Board

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JUDGE MICHAEL BRENNAN
Chairperson

KEVIN J. KENNEDY
Director and General Counsel

MEMORANDUM

DATE: For the March 30-31, 2009 Meeting

TO: Members, Wisconsin Government Accountability Board

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

Prepared and Presented by:

Michael R. Haas, Staff Counsel

SUBJECT: Promulgation of Permanent Rule Repealing and Recreating Chapter GAB 4

Pursuant to §227.11(2)(a), Stats., the legislature has generally authorized agencies, such as the Government Accountability Board, to promulgate rules interpreting the provisions of any statute enforced or administered by the agency, if the agency considers it necessary to effectuate the purpose of the statute. Furthermore, pursuant to §5.05(1)(f), Stats., the legislature authorized the Government Accountability Board specific power to promulgate rules under ch. 227, Stats., for the purpose of interpreting or implementing the laws regulating the conduct of elections or election campaigns or ensuring their proper administration. Finally, pursuant to s. 7.41(5), Stats., the legislature has authorized the Board to promulgate rules related to the proper conduct of individuals exercising the right to observe all public aspects of the voting process in an election under s. 7.41.

The Board previously published a Statement of Scope necessary to repeal and recreate Chapter GAB 4, Election Observers, in the Administrative Register dated November 30, 2005. The Board also implemented an emergency rule for use during the 2008 General Election which was published in the Register dated September 15, 2008. The Board held a public hearing on the emergency rule at its meeting of November 11, 2008, and heard public comments related to the use of the rule during the General Election and input regarding the promulgation of a permanent rule.

Based on the comments received at the public hearing and the Board's input, two changes have been made to the proposed permanent rule. First, a phrase has been added to section 4.01(18) clarifying that political texts on buttons or clothing, as well as the names or likenesses of candidates, is prohibited. Second, section 4.07(2) related to media cameras was revised so that it no longer refers to objections by voters, but still requires that cameras not interfere with voting or disrupt the election.

Attached to this Memorandum is the proposed Notice of Proposed Order Adopting Rule, Notice of Submittal to Legislative Council Clearinghouse, and Notice of Hearing. Approval of these documents will allow staff to schedule a public hearing and proceed with promulgation of the permanent recreated Chapter GAB 4.

Recommendations

1. Pursuant to §§5.05(1)(f), 7.41(5), 227.11(2)(a), 227.14(4m), 227.15(1), and 227.16-17, Wis. Stats., staff recommends that the Board formally approve the attached Notice of Proposed Order Adopting Rule Recreating Chapter GAB 4, Notice of Submittal of Recreated Chapter GAB 4 to Legislative Council Clearinghouse, and Notice of Hearing of Recreated Chapter GAB 4, and direct the staff to proceed with promulgation of the permanent rule.
2. Staff recommends that the Board authorize staff to take all other steps necessary to complete promulgation of the permanent rule recreating Chapter GAB 4, Wis. Adm. Code.

Proposed motions:

1. **MOTION:** Pursuant to §§5.05(1)(f), 7.41(5), 227.11(2)(a), 227.14(4m), 227.15(1), and 227.16-17, Wis. Stats., the Board formally approves the attached Notice of Proposed Order Adopting Rule Recreating Chapter GAB 4, Notice of Submittal of Recreated Chapter GAB 4 to Legislative Council Clearinghouse, and Notice of Hearing of Recreated Chapter GAB 4, and directs staff to proceed with promulgation of the permanent rule.
2. **MOTION:** Staff shall take all other steps necessary to complete promulgation of the permanent rule recreating Chapter GAB 4, Wis. Adm. Code.

NOTICE OF PROPOSED ORDER ADOPTING RULE
GOVERNMENT ACCOUNTABILITY BOARD

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

ANALYSIS PREPARED BY GOVERNMENT ACCOUNTABILITY BOARD:

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

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

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

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

4. Related statute(s) or rule(s): Wisconsin Statutes ss.5.35(5), 7.37(2) and 12.13(3)(x), Stats., relating to maintaining order at the polling place, and other locations where observation of the public aspects of the voting process is taking place, and enforcing compliance with the lawful commands of the inspectors at the polling place.
5. Plain language analysis: This rule repeals and recreates rule chapter GAB 4, relating to observers and observation of the public aspects of the voting process at polling places and other locations where observation of the public aspects of the voting process is taking place.
6. Summary of, and comparison with, existing or proposed federal regulations: Observers and observation of the voting process is a matter of state regulation, not federal regulation. Consequently, no federal legislation or regulation applies to observers in Wisconsin or any other state.
7. Comparison with rules in adjacent states: The States of Illinois, Iowa, Michigan and Minnesota all have legislation that allows persons to observe at the polling places in that state, but none of those states allows any member of the public to show up at a polling place and observe because each of those states requires prospective observers to register with the municipal clerk before the election and receive authorization to observe.
8. Summary of factual data and analytical methodologies: Adoption of the rule was not predicated on any factual data or analytical methodologies, but on observation eliminating provisions of the former Ethics Board's and Elections Board's rules that were inconsistent with the provisions or intent of the new law merging those agencies into the new Government Accountability Board. The Government Accountability Board implemented an emergency rule consistent with the proposed permanent rule for use during the 2008 General Election. The emergency rule was created with the input of an ad hoc committee of election officials, and input regarding the effectiveness of the rule and suggested revisions was gathered at a public hearing on November 11, 2008.
9. Analysis and supporting documentation used to determine effect on small businesses: Preparation of an economic impact report is not required. The Government Accountability Board does not anticipate that the repeal and recreation of the described provisions will have an economic impact.
10. Effect on small business: The creation of this rule does not affect business.
11. Agency contact person: Michael R. Haas, Staff Counsel, Government Accountability Board, 212 E. Washington Avenue, 3rd Floor, P.O. Box 2973, Madison, Wisconsin 53701-2973; Phone 266-0136; Michael.haas@wisconsin.gov

12. Submission of written comments: Comments may be submitted to the Government Accountability Board, 212 E. Washington Ave., 3rd Floor, P.O. Box 2973, Madison, WI 53701-2973; (elections.state.wi.us)

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

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

TEXT OF PROPOSED RULE:

SECTION 1. Chapter GAB 4 is repealed.

SECTION 2. Chapter GAB 4 is recreated to read:

Election Observers

GAB 4.01 Observers at the polling place

(1) In this chapter:

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

- (g) “Public aspects of the voting process” means the election activities that take place at a polling place, or other observation location, that includes waiting in line to vote by inspectors, the election day registration process, the recording of electors under s. 6.79 Stats., the elector’s receipt of a ballot, the deposit of the ballot into the ballot box, a challenge to an elector’s right to vote, the issuing of a provisional ballot, and the counting and reconciliation process.
- (2) Any member of the public intending to exercise the right to observe an election under s. 7.41, Stats., shall notify the chief inspector of that intent upon entering the voting area of a polling place. The observers shall sign a form acknowledging they understand the applicable rules and will abide by them. The observers shall also list their full name, street address and municipality, and the name of the organization or candidate the observer represents, if any, on the form. The inspector shall attach the form to the Inspectors’ Statement, EB-104. The chief inspector shall provide the observer with a name tag supplied by the board which reads “Election Observer.” Observers shall wear this name tag at all times when they are inside the polling place.
 - (3) To ensure the orderly conduct of the election, the chief inspector may reasonably limit the number of observers representing a particular organization or candidate.
 - (4) The chief inspector shall direct the observer to an area of the polling place designated by the chief inspector as an observation area.
 - (5) The observation area shall be situated to enable observers to observe all public aspects of the voting process during the election. When physically feasible within the polling place, the observation area shall be not less than 6 feet nor more than 12 feet from the table at which electors are announcing their name and address and being issued a voter number. If observers are unable to hear the electors stating their name and address, the poll workers shall repeat the name and address. If necessary to ensure all public aspects of the process are readily observable, the chief inspector shall set up additional observation areas near the election-day registration table and area where elector challenges are handled.
 - (6) Observers shall comply with the chief inspector’s lawful commands or shall be subject to removal from the polling place.
 - (7) All of the observers’ questions and challenges shall be directed to the chief inspector.
 - (8) Upon receiving a challenge to a voter’s ballot at the polling place, the chief inspector shall follow the challenge procedure in Chapter GAB 9, Wis. Adm.

Code. The challenge shall be recorded on the Challenge Documentation Form, EB-104c.

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

The chief inspector may order that other conversation be minimized if it is disruptive or interferes with the orderly conduct of the election.

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

GAB 4.02 Observers at the municipal clerk's office

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

4.01(9) and, if the observer does not cease the offending conduct, order the observer's removal under s. GAB 4.01(10).

- (6) Observers may not use any video or still camera inside the clerk's office.

GAB 4.03 Observers at the central counting location

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

GAB 4.04 Observers at absentee ballot canvass

- (1) In a municipality using a central absentee ballot canvass location under s. 7.52, Stats., observers shall be permitted to be present at the canvass location.
- (2) Observers shall conform their conduct to the requirements of s. GAB 4.01. The board of absentee ballot canvassers shall exercise the authority of the chief inspector under s. GAB 4.01 to regulate observer conduct.
- (3) The board of absentee ballot canvassers shall establish observation areas to allow observers to view all public aspects of the canvassing process.
- (4) If any observer engages in any loud, boisterous, or otherwise disruptive behavior that, in the opinion of the board of absentee ballot canvassers, threatens the orderly conduct of the count, the board of absentee ballot canvassers shall issue a warning under s. GAB 4.01(9) and, if the observer does

not cease the offending conduct, order the observer's removal under s. GAB 4.01(10).

- (5) Observers shall be permitted to use a video or still camera inside the absentee canvass location unless it is disruptive or interferes with the administration of the absentee ballot canvass.
- (6) All of the observers' questions and challenges shall be directed to the member of the board of absentee ballot canvassers designated to receive questions and challenges.

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

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

GAB 4.06 Observers at a recount

- (1) Pursuant to s.9.01(1)(b)11., Stats., the recount of any election shall be open to any interested member of the public including candidates and their counsel.
- (2) Observers shall conform their conduct to the requirements of s. GAB 4.01. The board of canvassers shall exercise the authority of the chief inspector under s. GAB 4.01 to regulate observer conduct.

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

GAB 4.07 Communications media observers

- (1) Observers from communications media organizations shall identify themselves and the organization they represent to the chief inspector upon arriving at the polling place. The inspector shall record that information on the inspectors' statement, EB-104.
- (2) Communications media observers shall be permitted to use video and still cameras provided the cameras are not used in a manner that allows the observer to see or record how an elector has voted and provided the cameras do not interfere with voting or disrupt the orderly conduct of the election.

GAB 4.08 Polling Place Accessibility Assessments

- (1) This section applies to disability advocates and other individuals authorized by the board to assess the compliance of a polling place with s. 5.25(4)(a), Stats.
- (2) When practical, groups and individuals observing under this section shall notify the clerk at least 24 hours in advance of their intent to assess polling place accessibility.
- (3) Disability advocate observers shall be allowed out of the designated observation area to take accessibility measurements to ensure compliance with polling place accessibility requirements unless it is disruptive or interferes with the administration of the election.

- (4) Disability advocate observers shall be allowed to take photos and video to document compliance with the accessibility requirements unless it is disruptive or interferes with the administration of the election.
- (5) Disability advocate observers shall be allowed to wear shirts or name tags identifying themselves as disability advocate observers.
- (6) Election officials, including poll workers, shall facilitate the work of disability advocates in making their accessibility assessments.

SECTION 3. EFFECTIVE DATE.

This rule shall take effect on the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.22, Stats.

Government Accountability Board
Election Observers, Chapter GAB 4
CR 09-

On April ____, 2009, the Government Accountability Board submitted a proposed rule-making order to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed order repeals and recreates Chapter GAB 4, Wis. Adm. Code, relating to the conduct of individuals exercising the right to observe all public aspects of the voting process in an election under s.7.41, Stats.

Agency Procedure for Promulgation

A public hearing will be scheduled at a later time. The Government Accountability Board is primarily responsible for preparing the proposed rule.

Contact Information

Michael R. Haas, Staff Counsel
Government Accountability Board
212 E. Washington Avenue, 3rd Floor
P.O. Box 2973, Madison, Wisconsin 53701-2973
Phone 266-0136; Michael.haas@wisconsin.gov

NOTICE OF HEARING
GOVERNMENT ACCOUNTABILITY BOARD
CR 09-

NOTICE IS HEREBY GIVEN that pursuant to ss. 5.05(1)(f) and 227.11(2)(a), Stats., and interpreting Section 7.41 of the Wisconsin Statutes, the Government Accountability Board will hold a public hearing to consider adoption of a rule to repeal and recreate chapter GAB 4 Election Observers, Wis. Adm. Code.

Hearing Information

The public hearing will be held at the time and location shown below:

Date and Time

_____ at _____

Location

Government Accountability Board Office
212 E. Washington Avenue, 3rd Floor
Madison, Wisconsin 53703

This public hearing site is accessible to people with disabilities. If you have special needs or circumstances that may make communication or accessibility difficult at the hearing, please contact the person listed below.

ANALYSIS PREPARED BY GOVERNMENT ACCOUNTABILITY BOARD:

1. Statutory authority: ss.5.05(1)(f), s.5.93, 7.41(5), and 227.11(2)(a)
2. Statutes interpreted: Section 7.41 of the Wisconsin Statutes
3. Explanation of agency authority: This rule repeals rules chapter GAB 4, Observers, which interprets s.7.41 of the Wisconsin Statutes, as amended by 2005 Wisconsin Act 451. This rule repeals and re-creates Chapter GAB 4, Election observers, interpreting s.7.41 of the Wisconsin Statutes – Public’s right to access. The board is empowered by s. 7.41(5), Stats., to promulgate rules consistent with the supervisory authority of a chief inspector at any polling place on election day, regarding the proper conduct of individuals exercising the right under s. 7.41, Stats., to readily observe all public aspects of the voting process in an election.

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

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

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

4. Related statute or rule: ss. 5.35(5), 7.37(2) and 12.13(3)(x), Stats., relating to maintaining order at the polling place, and other locations where observation of the public aspects of the voting process is taking place, and enforcing compliance with the lawful commands of the inspectors at the polling place.

5. Plain language analysis: This rule repeals and recreates rule chapter GAB 4, relating to observers and observation of the public aspects of the voting process at polling places and other locations where observation of the public aspects of the voting process is taking place.

6. Summary of, and comparison with, existing or proposed federal regulations: Observers and observation of the voting process is a matter of state regulation, not federal regulation. Consequently, no federal legislation or regulation applies to observers in Wisconsin or any other state.

7. Comparison with rules in adjacent states: The States of Illinois, Iowa, Michigan and Minnesota all have legislation that allows persons to observe at the polling places in that state, but none of those states allows any member of the public to show up at a polling place and observe because each of those states requires prospective observers to register with the municipal clerk before the election and receive authorization to observe.

8. Summary of factual data and analytical methodologies: Adoption of the rule was not predicated on any factual data or analytical methodologies, but on observation eliminating provisions of the former Ethics Board’s and Elections Board’s rules that were inconsistent with the provisions or intent of the new law merging those agencies into the new Government Accountability Board.

9. Analysis and supporting documents used to determine effect on small business or in preparation of economic impact report: Preparation of an economic impact report is not required. The Government Accountability Board does not anticipate that the repeal and recreation of the described provisions will have an economic impact.

10. Effect on small business: The creation of this rule does not affect business.

11. Agency contact person (including e-mail and telephone): Michael R. Haas, Staff Counsel, Government Accountability Board, 212 E. Washington Avenue, 3rd Floor, P.O. Box 2973, Madison, Wisconsin 53701-2973; Phone 266-0136; (Michael.haas@wi.gov)

12. Place where comments are to be submitted and deadline for submission: Government Accountability Board, 17 West Main Street, P.O. Box 2973, Madison, WI 53701-2973; (elections.state.wi.us)

FISCAL ESTIMATE:

The creation of this rule has no fiscal effect.

INITIAL REGULATORY FLEXIBILITY ANALYSIS:

The creation of this rule does not affect business.

TEXT OF PROPOSED RULE:

SECTION 1. Chapter GAB 4, Observers, is repealed.

SECTION 2. Chapter GAB 4, Observers, is recreated to read:

Election Observers

GAB 4.01 Observers at the polling place

(1) In this chapter:

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

be cast at that site, for the purpose of observation of an election or the absentee ballot voting process, excluding a candidate appearing on the ballot at that polling place or a registered write-in candidate, for an office voted on at that polling place or other location.

(g) “Public aspects of the voting process” means the election activities that take place at a polling place, or other observation location, that includes waiting in line to vote by inspectors, the election day registration process, the recording of electors under s. 6.79 Stats., the elector’s receipt of a ballot, the deposit of the ballot into the ballot box, a challenge to an elector’s right to vote, the issuing of a provisional ballot, and the counting and reconciliation process.

- (2) Any member of the public intending to exercise the right to observe an election under s. 7.41, Stats., shall notify the chief inspector of that intent upon entering the voting area of a polling place. The observers shall sign a form acknowledging they understand the applicable rules and will abide by them. The observers shall also list their full name, street address and municipality, and the name of the organization or candidate the observer represents, if any, on the form. The inspector shall attach the form to the Inspectors’ Statement, EB-104. The chief inspector shall provide the observer with a name tag supplied by the board which reads “Election Observer.” Observers shall wear this name tag at all times when they are inside the polling place.
- (3) To ensure the orderly conduct of the election, the chief inspector may reasonably limit the number of observers representing a particular organization or candidate.
- (4) The chief inspector shall direct the observer to an area of the polling place designated by the chief inspector as an observation area.
- (5) The observation area shall be situated to enable observers to observe all public aspects of the voting process during the election. When physically feasible within the polling place, the observation area shall be not less than 6 feet nor more than 12 feet from the table at which electors are announcing their name and address and being issued a voter number. If observers are unable to hear the electors stating their name and address, the poll workers shall repeat the name and address. If necessary to ensure all public aspects of the process are readily observable, the chief inspector shall set up additional observation areas near the election-day registration table and area where elector challenges are handled.
- (6) Observers shall comply with the chief inspector’s lawful commands or shall be subject to removal from the polling place.
- (7) All of the observers’ questions and challenges shall be directed to the chief inspector.

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

chief inspector may order that other conversation be minimized if it is disruptive or interferes with the orderly conduct of the election.

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

GAB 4.02 Observers at the municipal clerk's office

- (1) Observers shall be permitted to be present at the municipal clerk's office, provided the clerk's office is located in a public building, or an alternate site for absentee voting designated under s. 6.855, Stats., on any day that absentee ballots may be cast in the office.
- (2) Observers shall conform their conduct to the requirements of s. GAB 4.01. The municipal clerk shall exercise the authority of the chief inspector under s. GAB 4.01 to regulate observer conduct.
- (3) The clerk shall establish observation areas to allow observers to view all public aspects of the absentee voting process. The observers need not be allowed behind the counter in the clerk's office.
- (4) All of the observers' questions shall be directed to the clerk.
- (5) If any observer engages in any loud, boisterous, or otherwise disruptive behavior that, in the opinion of the clerk, threatens the orderly conduct of the election or interferes with voting, the clerk shall issue a warning under s. GAB 4.01(9) and, if

the observer does not cease the offending conduct, order the observer's removal under s. GAB 4.01(10).

- (6) Observers may not use any video or still camera inside the clerk's office.

GAB 4.03 Observers at the central counting location

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

GAB 4.04 Observers at absentee ballot canvass

- (1) In a municipality using a central absentee ballot canvass location under s. 7.52, Stats., observers shall be permitted to be present at the canvass location.
- (2) Observers shall conform their conduct to the requirements of s. GAB 4.01. The board of absentee ballot canvassers shall exercise the authority of the chief inspector under s. GAB 4.01 to regulate observer conduct.
- (3) The board of absentee ballot canvassers shall establish observation areas to allow observers to view all public aspects of the canvassing process.
- (4) If any observer engages in any loud, boisterous, or otherwise disruptive behavior that, in the opinion of the board of absentee ballot canvassers, threatens the orderly conduct of the count, the board of absentee ballot canvassers shall issue a warning under s. GAB 4.01(9) and, if the observer does not cease the offending conduct, order the observer's removal under s. GAB 4.01(10).

- (5) Observers shall be permitted to use a video or still camera inside the absentee canvass location unless it is disruptive or interferes with the administration of the absentee ballot canvass.
- (6) All of the observers' questions and challenges shall be directed to the member of the board of absentee ballot canvassers designated to receive questions and challenges.

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

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

GAB 4.06 Observers at a recount

- (1) Pursuant to s.9.01(1)(b)11., Stats., the recount of any election shall be open to any interested member of the public including candidates and their counsel.
- (2) Observers shall conform their conduct to the requirements of s. GAB 4.01. The board of canvassers shall exercise the authority of the chief inspector under s. GAB 4.01 to regulate observer conduct.
- (3) The board of canvassers may limit observers to a designated area, but the observers shall be positioned so that they can see the poll lists and each individual ballot as it is counted. If there is not room for all observers to view the ballots as they are

being counted, visual preference shall be given to the candidates or their representatives.

- (4) If any observer engages in any loud, boisterous, or otherwise disruptive behavior that, in the opinion of the board of canvassers, threatens the orderly conduct of the count, the board of canvassers shall issue a warning under s. GAB 4.01(9) and, if the observer does not cease the offending conduct, order the observer's removal under s. GAB 4.01(10).
- (5) Observers shall be permitted to use a video or still camera inside the recount location unless it is disruptive or interferes with the administration of the election.
- (6) All of the observers' questions and challenges shall be directed to the member of the board of canvassers designated to receive questions and challenges.

GAB 4.07 Communications media observers

- (1) Observers from communications media organizations shall identify themselves and the organization they represent to the chief inspector upon arriving at the polling place. The inspector shall record that information on the inspectors' statement, EB-104.
- (2) Communications media observers shall be permitted to use video and still cameras provided the cameras are not used in a manner that allows the observer to see or record how an elector has voted and provided the cameras do not interfere with voting or disrupt the orderly conduct of the election.

GAB 4.08 Polling Place Accessibility Assessments

- (1) This section applies to disability advocates and other individuals authorized by the board to assess the compliance of a polling place with s. 5.25(4)(a), Stats.
- (2) When practical, groups and individuals observing under this section shall notify the clerk at least 24 hours in advance of their intent to assess polling place accessibility.
- (3) Disability advocate observers shall be allowed out of the designated observation area to take accessibility measurements to ensure compliance with polling place accessibility requirements unless it is disruptive or interferes with the administration of the election.
- (4) Disability advocate observers shall be allowed to take photos and video to document compliance with the accessibility requirements unless it is disruptive or interferes with the administration of the election.
- (5) Disability advocate observers shall be allowed to wear shirts or name tags identifying themselves as disability advocate observers.

- (6) Election officials, including poll workers, shall facilitate the work of disability advocates in making their accessibility assessments.

State of Wisconsin \ Government Accountability Board

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JUDGE MICHAEL BRENNAN
Chairperson

KEVIN J. KENNEDY
Director and General Counsel

MEMORANDUM

DATE: For the March 30-31, 2009 Meeting

TO: Members, Wisconsin Government Accountability Board

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

Prepared and Presented by:

Shane W. Falk, Staff Counsel

SUBJECT: Promulgation of Rules Creating ch. GAB 22

Pursuant to §5.05(2m)(c)12., Stats., specifically authorizes the Board to prescribe by rule categories of civil offenses which the Board will agree to compromise and settlement without a formal investigation upon payment of specified amounts by the alleged offender. The Board may authorize the Administrator of the Ethics and Accountability Division to compromise and settle such alleged offenses in the name of the Board, if the alleged offenses by an offender, in the aggregate, do not involve payment of more than \$1,000.00.

Furthermore, §5.05(1)(f), Stats., the legislature authorized the Government Accountability Board specific power to promulgate rules under ch. 227, Stats., for the purpose of interpreting or implementing the laws regulating the conduct of elections or election campaigns or ensuring their proper administration. The legislature has also generally authorized agencies, such as the Government Accountability Board, to promulgate rules interpreting the provisions of any statute enforced or administered by the agency, if the agency considers it necessary to effectuate the purpose of the statute. §227.11(2)(a), Stats.

Pursuant to chs. 11, 13, and 19, Stats., various reporting requirements and contribution limits are prescribed. Most minor or less serious violations of these chapters, including late registration, late filing of reports, and exceeding contribution limits, are and have been resolved by settlement between the offending registrant and the Government Accountability Board, pursuant to §5.05, Stats. At the Board meeting on June 9, 2008, the Board approved an updated settlement offer schedule to be promulgated as rules, but requested a revision to §22.02(11) to address the fact that §11.60(3), Stats., allows treble damages for contributors violating ch. GAB 11.

Attached to this Memorandum is the proposed Notice of Proposed Order Adopting Rule, Notice of Submittal to Legislative Council Clearinghouse, and Notice of Hearing. Approval of

these documents will allow staff to proceed forward with promulgation of ch. GAB 22 and keep things moving between Board meetings.

Recommendations

1. Pursuant to §§5.05(2m)(c)12., 5.05(1)(f), 227.11(2)(a), 227.14(4m), 227.15(1), and 227.16-17, Wis. Stats., staff recommends that the Board formally approve the attached Notice of Proposed Order Adopting Rule Creating ch. GAB 22, Notice of Submittal of ch. GAB 22 to Legislative Council Clearinghouse, and Notice of Hearing of ch. GAB 22, and direct the staff to proceed with promulgation of this chapter of the Administrative Code.
2. Staff recommends that the Board authorize staff to take all other steps necessary to complete promulgation of ch. GAB 22, Wis. Adm. Code.

Proposed motions:

1. **MOTION:** Pursuant to §§5.05(2m)(c)12., 5.05(1)(f), 227.11(2)(a), 227.14(4m), 227.15(1), and 227.16-17, Wis. Stats., the Board formally approves the attached Notice of Proposed Order Adopting Rule Creating ch. GAB 22, Notice of Submittal of ch. GAB 22 to Legislative Council Clearinghouse, and Notice of Hearing of ch. GAB 22, and direct the staff to proceed with promulgation of this chapter of the Administrative Code.
2. **MOTION:** Staff shall take all other steps necessary to complete promulgation of ch. GAB 22, Wis. Adm. Code.

NOTICE OF PROPOSED ORDER ADOPTING RULE
GOVERNMENT ACCOUNTABILITY BOARD

The Government Accountability Board proposed an order to create ch. GAB 22, Wis. Adm. Code, relating to settlement of certain campaign finance, ethics and lobbying violations.

ANALYSIS PREPARED BY GOVERNMENT ACCOUNTABILITY BOARD:

1. Statutes interpreted: ss. 5.05(2m)(c)12., 11.05, 11.055, 11.06, 11.12, 11.20, 11.21, 11.26, 13.64, 13.65, 13.66, 13.67, 13.68, 13.625, and 19.43, Stats.
2. Statutory authority: ss. 5.05(2m)(c)12., 5.05(1)(f), and 227.11(2)(a), Stats.
3. Explanation of agency authority: Pursuant to s. 5.05(2m)(c)12., Stats., the legislature specifically authorized the Board to prescribe, by rule, categories of civil offenses which the Board will agree to compromise and settle without a formal investigation and upon payment of specified amounts by the alleged offender.
4. Related statute(s) or rule(s): Wisconsin Statutes ch. 11—Campaign Financing, ch. 13, subchapter III—Regulation of Lobbying, and ch. 19, subchapter III—Code of Ethics for Public Officials and Employees. Administrative Code, Ch. GAB 1—Campaign Financing.
5. Plain language analysis: Chapter GAB 22 will establish settlement offer guidelines that the Government Accountability Board’s staff may use to resolve certain violations of chapters 11, 12, and 19, Stats., in lieu of an enforcement action.
6. Summary of, and comparison with, existing or proposed federal regulations: Federal regulations will not apply to the activities covered by ch. GAB 22. The Federal Election Commission has established various formulas and charts for automatic administrative civil penalties for late filing of federal reports that are based upon the amount of activity during the reporting period. See 11 CFR 111.43.
7. Comparison with rules in adjacent states: Illinois statutes prescribe automatic civil penalties for late or failure to file statements of organization of political committees, which are \$25.00 per business day and \$50.00 per business day for statewide offices. 10 ILCS 5/9-3. Illinois has administrative rules regarding civil penalties for late campaign finance reports, categorized based upon the amount of receipts, expenditures and balance at the end of the report. See 26 Ill. Adm. Code §125.425. These civil penalties range from the lowest category of \$25.00 per business day for the first violation, \$50.00 per business day for the second

violation, and \$75.00 per business day for the third and each subsequent violation, to the highest category of \$200.00 per business day for the first violation, \$400.00 per business day for the second violation, and \$600.00 per day for the third and each subsequent violation. Id.

Iowa's Ethics and Campaign Finance Disclosure Board has the authority to administratively resolve late reports by assessment of automatic civil penalties prescribed by the Board. Ch. 351—9.4(5), Iowa Adm. Code.

Michigan has rules prescribing automatic late fees for registration, reports and statements for lobbying and campaign finance matters. Rs. 4.443, 4.52, and 169.4. The automatic late fees campaign registration statements are \$10.00 per business day. See s. 169.224, Mich. Stats. The automatic late fees for campaign finance reports are \$25.00 for each business day it remains unfiled, an additional \$25.00 for each business day after the first three that the report remains unfiled, and an additional \$50.00 for each business day after the first ten that the report remains unfiled.

In Minnesota, the Office of Administrative Hearings has used a “penalty matrix” designed by the Secretary of State’s Office to provide guidance for most campaign finance violations.

8. Summary of factual data and analytical methodologies: Adoption of these rules was primarily predicated upon the legislature’s specific authorization to have the Government Accountability Board prescribe, by rule, categories of civil offenses which the Board will agree to compromise and settle without a formal investigation and upon payment of specified amounts by the alleged offender.
9. Analysis and supporting documentation used to determine effect on small businesses: The rule will have no effect on small business, nor any economic impact.
10. Effect on small business: The creation of this rule does not affect business.
11. Agency contact person: Shane W. Falk, Staff Counsel, Government Accountability Board, 212 E. Washington Avenue, 3rd Floor, P.O. Box 7984, Madison, Wisconsin 53707-7984; Phone 266-2094; Shane.Falk@wisconsin.gov

FISCAL ESTIMATE: The creation of this rule has no new fiscal effect.

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

TEXT OF PROPOSED RULE:

SECTION 1. Ch. GAB 22 is created to read:

CHAPTER GAB 22

SETTLEMENT OFFER SCHEDULE

22.01 Definitions. In this chapter:

- (1) “Board” means the Wisconsin government accountability board.
- (2) “Campaign finance registration statement” means the statement required to be filed by individuals, committees and groups under s.11.05, Stats.
- (3) “Continuing campaign finance report” means the semi-annual campaign finance report required under s.11.20(4), Stats.
- (4) Contribution has the meaning given in s.11.01(6), Stats.
- (5) Contributor means an individual or committee who makes a contribution under s.11.01(6), Stats.
- (6) “Contributor information” means the information required by s.11.06(1), Stats., regarding contributions greater than \$20 or greater than \$100.
- (7) “Disbursement” has the meaning given in s.11.01(7), Stats.
- (8) “Disbursement information” means the information required by s.11.06(1), Stats., regarding disbursements greater than \$20.
- (9) “Excess contribution” means a contribution that exceeds any of the limits set in s.11.26, Stats.
- (10) “File a paper copy” means the requirement in s.11.21(16), Stats., that registrants who are required to file a copy of their campaign finance reports in electronic format must also file a paper copy of their campaign finance reports.
- (11) “File electronically” means the requirement in s.11.21(16), Stats., that registrants subject to that section file a copy of their campaign finance reports in electronic format.
- (12) “Filing fee” means the fee required by s.11.055, Stats.
- (13) “Last-minute contribution” means the contribution or contributions described in s.11.12(5), Stats., that are made later than 15 days prior to a primary or an election.
- (14) “Lobbyist” has the meaning given in s.13.62(11), Stats.

(15) “Pre-primary report and pre-election report” means the campaign finance reports referred to in s.11.20(2), Stats., that are due no earlier than 14 days before a primary or election and no later than 8 days before a primary or election.

(16) “Principal” has the meaning given in s.13.62(12), Stats.

(17) “Registrant” has the meaning given in s.11.01(18m) Stats.

(18) “Statement of economic interests” has the meaning given in s.19.43, Stats.

22.02 Settlement of campaign finance violations.

(1) Violations of s.11.05, Stats., failure to timely file a campaign registration statement.

- a. If a campaign finance registration statement is received within 5 days of the due date for that registration, no penalty will be imposed on the registrant.
- b. If a campaign finance registration statement is received within 6 to 10 days of the due date for that registration, a settlement offer of \$100 will be extended to the registrant.
- c. If a campaign finance registration statement is received within 11 to 15 days of the due date for that registration, a settlement offer of \$250 will be extended to the registrant.
- d. If a campaign finance registration is received more than 15 days after the due date for that registration, a settlement offer of \$500 will be extended to the registrant.
- e. Notwithstanding the settlement terms provided by the preceding paragraphs, the board may consider mitigating circumstances, including the registrant’s low level of activity, in determining the amount of the settlement offer that will be extended to the registrant.

(2) Violations of s.11.20(4), Stats., failure to timely file the continuing campaign finance report.

- a. If a continuing campaign finance report is received within 5 days of the due date for that report, no penalty will be imposed on the registrant.

- b. If a continuing campaign finance report is received within 6 to 10 days of the due date for that report, a settlement offer of \$200 will be extended to the registrant.
- c. If a continuing campaign finance report is received within 11 to 15 days of the due date for that report, a settlement offer of \$500 will be extended to the registrant.
- d. If a continuing campaign finance report is received within 16 to 30 days of the due date for that report, a settlement offer of \$500 plus the greater of \$50 per day, or .1% of the salary for the office for which registered (for a candidate committee) per day, will be extended to the registrant.
- e. If a continuing campaign finance report is received more than 30 days after the due date for that report, a settlement offer of \$500 plus the greater of \$25 per day, or .5% of the salary for the office for which registered (for a candidate committee), per day, will be extended to the registrant.
- f. Notwithstanding the settlement terms provided by the preceding paragraphs, the board may consider mitigating circumstances, including the registrant's level of activity under \$1,000 in receipts, in determining the amount of the settlement offer that will be extended to the registrant.

(3) Violations of s.11.20(2), Stats., failure to timely file the pre-primary and pre-election campaign finance reports.

- a. If a pre-primary or pre-election campaign finance report is received within 1 day of the due date for that report, no penalty will be imposed on the registrant.
- b. If a pre-primary or pre-election campaign finance report is received within 2 days of the due date for that report, a settlement offer of \$250 will be extended to the registrant.
- c. If a pre-primary or pre-election campaign finance report is received within 3 days of the due date for that report, a settlement offer of \$500 will be extended to the registrant.
- d. If a pre-primary or pre-election campaign finance report is received more than 3 days after the due date for that report, a settlement offer of \$500 plus the greater of \$50 per day, or 1% of the annual salary for the office for which registered (for a candidate committee) per day, will be extended to the registrant.
- e. Notwithstanding the settlement terms provided by the preceding paragraphs, the board may consider mitigating circumstances, including

the registrant's failure to win the primary election, in determining the amount of the settlement offer that will be extended to the registrant.

(4) Violations of s.11.12(5), Stats., failure to timely file the 24-hour report of last-minute contributions.

- a. If a 24-hour report of last-minute contributions is received within 1 day of the due date for that report, a settlement offer of \$500 will be extended to the registrant.
- b. If a 24-hour report of last-minute contributions is received more than 1 day after the due date for that report, a settlement offer of \$500 plus the greater of \$50 per day, or 1% of the annual salary for the office for which registered (for a candidate committee) per day, will be extended to the registrant.

(5) Violations of s.11.21(6), Stats., failure to timely file any campaign finance report electronically when required to do so. The board will extend a settlement offer based on treating the failure to timely file electronically the same as the failure to file a campaign finance report in any other format.

(6) Violations of s.11.055, Stats., failure to timely pay the filing fee.

- a. If a registrant has not paid the filing fee within the time provided by s.11.055, Stats., but does pay the fee within 10 days after notice of nonpayment from the Board, a settlement offer of \$300 will be extended to the registrant.
- b. If a registrant has not paid the filing fee within the time provided by s.11.055, Stats., but does pay the fee within 11 to 18 days after notice of nonpayment from the Board, a settlement offer of \$500 will be extended to the registrant.
- c. If a registrant has not paid the filing fee within the time provided by s.11.055, Stats., and does not pay the fee within 18 days after notice of nonpayment from the Board, a settlement offer of \$500 plus three times the payable fee will be extended to the registrant.

(7) Violations of s.11.06, Stats., failure to report all required contributor information on a campaign finance report.

- a. If the contributor information required by s.11.06, Stats., is not included on a campaign finance report and is not provided within 10 days of the board's notice of failure to comply – the registrant shall be extended a settlement offer consisting of the registrant's donation of the contribution to charity.

- b. If a report of the donation to charity of the prohibited contribution is not provided within 20 days of notice of the board's settlement offer – a settlement offer of \$500 plus the greater of \$50 per day, or 1% of the annual salary for the office for which registered (for a candidate committee) per day, will be extended to the registrant, and the prohibited contribution must be paid to charity.
- c. Notwithstanding the settlement terms provided by the preceding paragraphs, the board may consider mitigating circumstances, including the registrant's inability to obtain the required information from the contributor, in determining the amount of the settlement offer that will be extended to the registrant.

(8) Violations of s.11.06, Stats., failure to report all required disbursement information on a campaign finance report.

- a. If the disbursement information required by s.11.06, Stats., is not included on a campaign finance report and is not provided within 10 days of the board's notice of failure to comply, the registrant will be extended a settlement offer consisting of \$100 plus 10% of the disbursement amount up to a maximum settlement offer of \$500 plus the greater of \$50 per day, or 1% of the annual salary for the office for which registered (for a candidate committee) per day.
- b. If disbursement information required by s.11.06, Stats., is not included on a campaign finance report and is not provided within 20 days of the board's notice of failure to comply, the registrant will be extended a settlement offer consisting of \$100 plus 25% of the disbursement amount up to a maximum settlement offer of \$500 plus the greater of \$50 per day, or 1% of the annual salary for the office for which registered (for a candidate committee) per day.
- c. If the disbursement information required by s.11.06, Stats., is not included on a campaign finance report and is not provided within 30 days of the board's notice of failure to comply, the registrant will be extended a settlement offer consisting of \$500 plus the greater of \$50 per day, or 1% of the annual salary for the office for which registered (for a candidate committee) per day.

(9) Violations of s.11.06(5), Stats., failure to timely report the receipt of a contribution.

- a. If a contribution has not been included on a campaign finance report and the late report of the contribution is filed within 10 days of the due date for reporting the contribution, a settlement offer of 10% of the contribution

will be extended to the registrant, up to a maximum settlement offer consisting of \$500, plus the greater of \$50 per day, or 1% of the annual salary for the office for which registered (for a candidate committee), per day.

- b. If the late report of the contribution is filed within 11 to 20 days of the due date for reporting the contribution, a settlement offer of 25% of the contribution will be extended to the registrant, up to a maximum settlement offer consisting of \$500, plus the greater of \$50 per day, or 1% of the annual salary for the office for which registered (for a candidate committee), per day.
- c. If the late report of the contribution is filed more than 20 days after the due date for reporting the contribution, a settlement offer of consisting of \$500, plus the greater of \$50 per day, or 1% of the annual salary for the office for which registered (for a candidate committee), per day, will be extended to the registrant.
- c. Notwithstanding the settlement terms provided by the preceding paragraphs, the board may consider mitigating or aggravating circumstances, including the board's discovery of the receipt of the contribution without disclosure by the registrant, in determining the amount of the settlement offer that will be extended to the registrant.

(10) Violations of s.11.06(5), Stats., failure to timely report the receipt of a disbursement.

- a. If a disbursement has not been included on a campaign finance report and the late report of the disbursement is filed within 10 days of the due date for reporting the disbursement, a settlement offer of 10% of the disbursement will be extended to the registrant, up to a maximum settlement offer consisting of \$500, plus the greater of \$50 per day, or 1% of the annual salary for the office for which registered (for a candidate committee), per day.
- b. If the late report of the disbursement is filed within 11 to 20 days of the due date for reporting the disbursement, a settlement offer of 25% of the disbursement will be extended to the registrant, up to a maximum settlement offer consisting of \$500, plus the greater of \$50 per day, or 1% of the annual salary for the office for which registered (for a candidate committee e), per day.
- c. If the late report of the disbursement is filed more than 20 days after the due date for reporting the disbursement, a settlement offer of consisting of \$500, plus the greater of \$50 per day, or 1% of the annual salary for the

office for which registered (for a candidate committee), per day, will be extended to the registrant.

- d. Notwithstanding the settlement terms provided by the preceding paragraphs, the board may consider mitigating or aggravating circumstances, including the board's discovery of the making of the disbursement without disclosure by the registrant, in determining the amount of the settlement offer that will be extended to the registrant.

(11) Violations of s.11.26, Stats., for receiving or making contributions in excess of statutory limits. Any committee that receives a contribution in excess of the limits set by s.11.26, Stats., may be required to pay the excess portion of the contribution to any organization recognized as a charity by the Internal Revenue Code and will also be extended a settlement offer for a forfeiture of 50% of the excess contribution up to a maximum of \$500. Any individual or committee who makes a contribution in excess of the limits set by s.11.26, Stats., may be extended a settlement offer for a forfeiture of one and one-half times the excess portion of the contribution.

(12) Other violations of chapter 11 of the Wisconsin Statutes. Settlement offers to resolve all other violations of chapter 11 of the Wisconsin Statutes will be determined on a case-by-case basis.

22.03 Violations of Subchapter III of Chapter 19, Stats., the Code of Ethics for Public Officials and Employees: The failure to timely file the statement of economic interests as required by s.19.43, Stats.,

- (1) If a statement of economic interests is received within 5 days of the due date for that statement, no penalty will be imposed on the official.
- (2) If a statement of economic interests is received within 6 to 10 days of the due date for that statement, a settlement offer of \$10 will be extended to the official.
- (3) If a statement of economic interests is received within 11 to 25 days of the due date for that statement, a settlement offer of \$50 will be extended to the official.
- (4) If a statement of economic interests is received within 26 to 30 days of the due date for that statement, a settlement offer of \$100 will be extended to the official.
- (5) If a statement of economic interests is received more than 30 days after the due date for that statement, a settlement offer of \$250 will be extended to the official.

- (6) Notwithstanding the settlement terms provided by the preceding paragraphs, the board may consider mitigating circumstances, including the fact that the board's staff failed to notify the person filing the statement of the requirement to file the statement of economic interests, in determining the amount of the settlement offer.

22.04 Violations of Subchapter III of Chapter 13, Stats., the Regulation of Lobbying in Wisconsin

(1) Violations of s.13.64, Stats., failure of a principal to timely file a registration statement .

- a. If the registration statement of a principal, as required by s.13.64, Stats., is received within 7 days of the due date for that registration, no penalty will be imposed on the registrant, but a warning, that any future failure to timely file could lead to a forfeiture, will be issued.
- b. If the registration statement of a principal is received within 8 to 14 days of the due date for that registration, a settlement offer of \$250 will be extended to the registrant.
- c. If the lobbying registration statement of a principal is received within 15 to 21 days of the due date for that registration, a settlement offer of \$500 will be extended to the registrant.
- d. If the lobbying registration statement of a principal is received within 22 to 28 days of the due date for that registration, a settlement offer of \$750 will be extended to the registrant.
- e. If the lobbying registration statement of a principal is received more than 28 days after the due date for that registration, a settlement offer of \$1,000 will be extended to the registrant.

(2) Violations of s.13.66, Stats., failure of a lobbyist to timely obtain a license to act as a lobbyist.

- a. If a lobbyist fails to timely obtain a license to act as a lobbyist under s.13.66, Stats., but obtains that license within 7 days of the due date for obtaining that license, no penalty will be imposed on the lobbyist, but a warning, that any future failure to timely file could lead to a forfeiture, will be issued.
- b. If a lobbyist fails to timely obtain a license to act as a lobbyist under s.13.66, Stats., but obtains that license within 8 to 14 days of the due date

for obtaining that license, a settlement offer of \$75 will be extended to the lobbyist.

- c. If a lobbyist fails to timely obtain a license to act as a lobbyist under s.13.66, Stats., but obtains that license within 15 to 21 days of the due date for obtaining that license, a settlement offer of \$125 will be extended to the lobbyist.
- d. If a lobbyist fails to timely obtain a license to act as a lobbyist under s.13.66, Stats., but obtains that license within 22 to 28 days of the due date for obtaining that license, a settlement offer of \$250 will be extended to the lobbyist.
- e. If a lobbyist fails to timely obtain a license to act as a lobbyist under s.13.66, Stats., and does not obtains that license until more than 28 days of the due date for obtaining that license, a settlement offer of \$500 will be extended to the lobbyist.

(3) Violations of s.13.65 Stats., failure of a principal to timely file a written authorization for a lobbyist to represent the principal.

- a. If a principal fails to timely file a written authorization for a lobbyist to represent the principal under s.13.65, Stats., but files that authorization within 7 days of the due date for filing that authorization, no penalty will be imposed on the principal, but a warning, that any future failure to timely file could lead to a forfeiture, will be issued.
- b. If a principal fails to timely file a written authorization for a lobbyist to represent the principal under s.13.65, Stats., but files that authorization within 8 to 14 days of the due date for filing that authorization, a settlement offer of \$125 will be extended to the principal.
- c. If a principal fails to timely file a written authorization for a lobbyist to represent the principal under s.13.65, Stats., but files that authorization within 15 to 21 days of the due date for filing that authorization, a settlement offer of \$250 will be extended to the principal.
- d. If a principal fails to timely file a written authorization for a lobbyist to represent the principal under s.13.65, Stats., but files that authorization within 22 to 28 days of the due date for filing that authorization, a settlement offer of \$375 will be extended to the principal.
- e. If a principal fails to timely file a written authorization for a lobbyist to represent the principal under s.13.65, Stats., and does not file that authorization until more than 28 days after the due date for filing that authorization, a settlement offer of \$500 will be extended to the principal.

(4) Violations of s.13.68, Stats., failure of a principal to timely file the semi-annual report of lobbying expenditures and incurred obligations.

- a. If a principal fails to timely file the semi-annual report of lobbying expenses as required by s.13.68, Stats., but files that report within 2 days of the due date for filing that report, no penalty will be imposed on the principal.
- b. If a principal fails to timely file the semi-annual report of lobbying expenses as required by s.13.68, Stats., but files that report within 3 to 6 days of the due date for filing that report, a settlement offer of \$50 will be extended to the principal.
- c. If a principal fails to timely file the semi-annual report of lobbying expenses as required by s.13.68, Stats., but files that report within 7 to 14 days of the due date for filing that report, a settlement offer of \$200 will be extended to the principal.
- d. If a principal fails to timely file the semi-annual report of lobbying expenses as required by s.13.68, Stats., but files that report within 14 to 21 days of the due date for filing that report, a settlement offer of \$500 will be extended to the principal.

(5) Violations of s.13.67, Stats., failure of a principal to timely report the subject matter of lobbying. If a principal has failed to timely report the subject matter of lobbying, as required by s.13.67, Stats., the Board's staff will determine a settlement offer on a case-by-case basis, taking into consideration whether the principal's violation is a first, second, or third offense and taking into consideration the number of late-reported interests and the time period in which the violation or violations occurred.

(6) Violations of s.13.625, Stats.: Prohibited campaign contributions by lobbyists. If a lobbyist makes a campaign contribution prohibited by s.13.625, Stats., the recipient will be required to donate that contribution to charity and a settlement offer of \$500 will be extended to the lobbyist.

(7) The board's staff shall have the authority to increase or decrease any settlement offer extended for violations of Subchapter III of Chapter 13, Stats., based on mitigating or aggravating circumstances surrounding the violation.

SECTION 2. EFFECTIVE DATE.

This rule shall take effect on the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.(22), Stats.

Government Accountability Board
Settlement Offer Schedule, ch. GAB 22
CR 09-

On April ____, 2009, the Government Accountability Board submitted a proposed rule-making order to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed order creates ch. GAB 22, Wis. Adm. Code, relating to settlement of certain campaign finance, ethics and lobbying violations. The proposed order will establish a settlement offer schedule to prescribe some resolutions for violations of certain provisions from Chapters 11, 13, and 19, Stats. These prescribed resolutions are to be used in settlements between the Government Accountability Board and a registrant or other party.

Agency Procedure for Promulgation

A public hearing will be scheduled at a later time. The Government Accountability Board is primarily responsible for preparing the proposed rule.

Contact Information

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NOTICE OF HEARING
GOVERNMENT ACCOUNTABILITY BOARD
CR 09-

NOTICE IS HEREBY GIVEN that pursuant to ss. 5.05(2m)(c)12., 5.05(1)(f), and 227.11(2)(a), Stats., and interpreting ss. 5.05(2m)(c)12., 11.05, 11.055, 11.06, 11.12, 11.20, 11.21, 11.26, 13.64, 13.65, 13.66, 13.67, 13.68, 13.625, and 19.43, Stats., the Government Accountability Board will hold a public hearing to consider adoption of a rule to create ch. GAB 22, Wis. Adm. Code, relating to settlement of certain campaign finance, ethics and lobbying violations.

Hearing Information

The public hearing will be held at the time and location shown below.

Date and Time

_____ at _____

Location

Government Accountability Board Office
212 E. Washington Avenue, 3rd Floor
Madison, Wisconsin 53703

This public hearing site is accessible to people with disabilities. If you have special needs or circumstances that may make communication or accessibility difficult at the hearing, please contact the person listed below.

ANALYSIS PREPARED BY GOVERNMENT ACCOUNTABILITY BOARD:

1. Statutes interpreted: ss. 5.05(2m)(c)12., 11.05, 11.055, 11.06, 11.12, 11.20, 11.21, 11.26, 13.64, 13.65, 13.66, 13.67, 13.68, 13.625, and 19.43, Stats.
2. Statutory authority: ss. 5.05(2m)(c)12., 5.05(1)(f), and 227.11(2)(a), Stats.
3. Explanation of agency authority: Pursuant to s. 5.05(2m)(c)12., Stats., the legislature specifically authorized the Board to prescribe, by rule, categories of civil offenses which the Board will agree to compromise and settle without a formal investigation and upon payment of specified amounts by the alleged offender.
4. Related statute(s) or rule(s): Wisconsin Statutes ch. 11—Campaign Financing, ch. 13, subchapter III—Regulation of Lobbying, and ch. 19, subchapter III—Code of Ethics for Public Officials and Employees. Administrative Code, Ch. GAB 1—Campaign Financing.
5. Plain language analysis: Chapter GAB 22 will establish settlement offer guidelines that the Government Accountability Board’s staff may use to resolve certain violations of chapters 11, 12, and 19, Stats., in lieu of an enforcement action.

6. Summary of, and comparison with, existing or proposed federal regulations: Federal regulations will not apply to the activities covered by ch. GAB 22. The Federal Election Commission has established various formulas and charts for automatic administrative civil penalties for late filing of federal reports that are based upon the amount of activity during the reporting period. See 11 CFR 111.43.
7. Comparison with rules in adjacent states: Illinois statutes prescribe automatic civil penalties for late or failure to file statements of organization of political committees, which are \$25.00 per business day and \$50.00 per business day for statewide offices. 10 ILCS 5/9-3. Illinois has administrative rules regarding civil penalties for late campaign finance reports, categorized based upon the amount of receipts, expenditures and balance at the end of the report. See 26 Ill. Adm. Code §125.425. These civil penalties range from the lowest category of \$25.00 per business day for the first violation, \$50.00 per business day for the second violation, and \$75.00 per business day for the third and each subsequent violation, to the highest category of \$200.00 per business day for the first violation, \$400.00 per business day for the second violation, and \$600.00 per day for the third and each subsequent violation. Id.

Iowa's Ethics and Campaign Finance Disclosure Board has the authority to administratively resolve late reports by assessment of automatic civil penalties prescribed by the Board. Ch. 351—9.4(5), Iowa Adm. Code.

Michigan has rules prescribing automatic late fees for registration, reports and statements for lobbying and campaign finance matters. Rs. 4.443, 4.52, and 169.4. The automatic late fees campaign registration statements are \$10.00 per business day. See s. 169.224, Mich. Stats. The automatic late fees for campaign finance reports are \$25.00 for each business day it remains unfiled, an additional \$25.00 for each business day after the first three that the report remains unfiled, and an additional \$50.00 for each business day after the first ten that the report remains unfiled.

In Minnesota, the Office of Administrative Hearings has used a “penalty matrix” designed by the Secretary of State's Office to provide guidance for most campaign finance violations.

8. Summary of factual data and analytical methodologies: Adoption of these rules was primarily predicated upon the legislature's specific authorization to have the Government Accountability Board prescribe, by rule, categories of civil offenses which the Board will agree to compromise and settle without a formal investigation and upon payment of specified amounts by the alleged offender.

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

FISCAL ESTIMATE: The creation of this rule has no new fiscal effect.

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

TEXT OF PROPOSED RULE:

SECTION 1. Ch. GAB 22 is created to read:

CHAPTER GAB 22

SETTLEMENT OFFER SCHEDULE

22.01 Definitions. In this chapter:

- (1) “Board” means the Wisconsin government accountability board.
- (2) “Campaign finance registration statement” means the statement required to be filed by individuals, committees and groups under s.11.05, Stats.
- (3) “Continuing campaign finance report” means the semi-annual campaign finance report required under s.11.20(4), Stats.
- (4) Contribution has the meaning given in s.11.01(6), Stats.
- (5) Contributor means an individual or committee who makes a contribution under s.11.01(6), Stats.
- (6) “Contributor information” means the information required by s.11.06(1), Stats., regarding contributions greater than \$20 or greater than \$100.
- (7) “Disbursement” has the meaning given in s.11.01(7), Stats.
- (8) “Disbursement information” means the information required by s.11.06(1), Stats., regarding disbursements greater than \$20.

(9) “Excess contribution” means a contribution that exceeds any of the limits set in s.11.26, Stats.

(10) “File a paper copy” means the requirement in s.11.21(16), Stats., that registrants who are required to file a copy of their campaign finance reports in electronic format must also file a paper copy of their campaign finance reports.

(11) “File electronically” means the requirement in s.11.21(16), Stats., that registrants subject to that section file a copy of their campaign finance reports in electronic format.

(12) “Filing fee” means the fee required by s.11.055, Stats.

(13) “Last-minute contribution” means the contribution or contributions described in s.11.12(5), Stats., that are made later than 15 days prior to a primary or an election.

(14) “Lobbyist” has the meaning given in s.13.62(11), Stats.

(15) “Pre-primary report and pre-election report” means the campaign finance reports referred to in s.11.20(2), Stats., that are due no earlier than 14 days before a primary or election and no later than 8 days before a primary or election.

(16) “Principal” has the meaning given in s.13.62(12), Stats.

(17) “Registrant” has the meaning given in s.11.01(18m) Stats.

(18) “Statement of economic interests” has the meaning given in s.19.43, Stats.

22.02 Settlement of campaign finance violations.

(1) Violations of s.11.05, Stats., failure to timely file a campaign registration statement.

- a. If a campaign finance registration statement is received within 5 days of the due date for that registration, no penalty will be imposed on the registrant.
- b. If a campaign finance registration statement is received within 6 to 10 days of the due date for that registration, a settlement offer of \$100 will be extended to the registrant.
- c. If a campaign finance registration statement is received within 11 to 15 days of the due date for that registration, a settlement offer of \$250 will be extended to the registrant.

- d. If a campaign finance registration is received more than 15 days after the due date for that registration, a settlement offer of \$500 will be extended to the registrant.
- e. Notwithstanding the settlement terms provided by the preceding paragraphs, the board may consider mitigating circumstances, including the registrant's low level of activity, in determining the amount of the settlement offer that will be extended to the registrant.

(2) Violations of s.11.20(4), Stats., failure to timely file the continuing campaign finance report.

- a. If a continuing campaign finance report is received within 5 days of the due date for that report, no penalty will be imposed on the registrant.
- b. If a continuing campaign finance report is received within 6 to 10 days of the due date for that report, a settlement offer of \$200 will be extended to the registrant.
- c. If a continuing campaign finance report is received within 11 to 15 days of the due date for that report, a settlement offer of \$500 will be extended to the registrant.
- d. If a continuing campaign finance report is received within 16 to 30 days of the due date for that report, a settlement offer of \$500 plus the greater of \$50 per day, or .1% of the salary for the office for which registered (for a candidate committee) per day, will be extended to the registrant.
- e. If a continuing campaign finance report is received more than 30 days after the due date for that report, a settlement offer of \$500 plus the greater of \$25 per day, or .5% of the salary for the office for which registered (for a candidate committee), per day, will be extended to the registrant.
- f. Notwithstanding the settlement terms provided by the preceding paragraphs, the board may consider mitigating circumstances, including the registrant's level of activity under \$1,000 in receipts, in determining the amount of the settlement offer that will be extended to the registrant.

(3) Violations of s.11.20(2), Stats., failure to timely file the pre-primary and pre-election campaign finance reports.

- a. If a pre-primary or pre-election campaign finance report is received within 1 day of the due date for that report, no penalty will be imposed on the registrant.

- b. If a pre-primary or pre-election campaign finance report is received within 2 days of the due date for that report, a settlement offer of \$250 will be extended to the registrant.
- c. If a pre-primary or pre-election campaign finance report is received within 3 days of the due date for that report, a settlement offer of \$500 will be extended to the registrant.
- d. If a pre-primary or pre-election campaign finance report is received more than 3 days after the due date for that report, a settlement offer of \$500 plus the greater of \$50 per day, or 1% of the annual salary for the office for which registered (for a candidate committee) per day, will be extended to the registrant.
- e. Notwithstanding the settlement terms provided by the preceding paragraphs, the board may consider mitigating circumstances, including the registrant's failure to win the primary election, in determining the amount of the settlement offer that will be extended to the registrant.

(4) Violations of s.11.12(5), Stats., failure to timely file the 24-hour report of last-minute contributions.

- a. If a 24-hour report of last-minute contributions is received within 1 day of the due date for that report, a settlement offer of \$500 will be extended to the registrant.
- b. If a 24-hour report of last-minute contributions is received more than 1 day after the due date for that report, a settlement offer of \$500 plus the greater of \$50 per day, or 1% of the annual salary for the office for which registered (for a candidate committee) per day, will be extended to the registrant.

(5) Violations of s.11.21(6), Stats., failure to timely file any campaign finance report electronically when required to do so. The board will extend a settlement offer based on treating the failure to timely file electronically the same as the failure to file a campaign finance report in any other format.

(6) Violations of s.11.055, Stats., failure to timely pay the filing fee.

- a. If a registrant has not paid the filing fee within the time provided by s.11.055, Stats., but does pay the fee within 10 days after notice of nonpayment from the Board, a settlement offer of \$300 will be extended to the registrant.
- b. If a registrant has not paid the filing fee within the time provided by s.11.055, Stats., but does pay the fee within 11 to 18 days after notice of

nonpayment from the Board, a settlement offer of \$500 will be extended to the registrant.

- c. If a registrant has not paid the filing fee within the time provided by s.11.055, Stats., and does not pay the fee within 18 days after notice of nonpayment from the Board, a settlement offer of \$500 plus three times the payable fee will be extended to the registrant.

(7) Violations of s.11.06, Stats., failure to report all required contributor information on a campaign finance report.

- a. If the contributor information required by s.11.06, Stats., is not included on a campaign finance report and is not provided within 10 days of the board's notice of failure to comply – the registrant shall be extended a settlement offer consisting of the registrant's donation of the contribution to charity.
- b. If a report of the donation to charity of the prohibited contribution is not provided within 20 days of notice of the board's settlement offer – a settlement offer of \$500 plus the greater of \$50 per day, or 1% of the annual salary for the office for which registered (for a candidate committee) per day, will be extended to the registrant, and the prohibited contribution must be paid to charity.
- c. Notwithstanding the settlement terms provided by the preceding paragraphs, the board may consider mitigating circumstances, including the registrant's inability to obtain the required information from the contributor, in determining the amount of the settlement offer that will be extended to the registrant.

(8) Violations of s.11.06, Stats., failure to report all required disbursement information on a campaign finance report.

- a. If the disbursement information required by s.11.06, Stats., is not included on a campaign finance report and is not provided within 10 days of the board's notice of failure to comply, the registrant will be extended a settlement offer consisting of \$100 plus 10% of the disbursement amount up to a maximum settlement offer of \$500 plus the greater of \$50 per day, or 1% of the annual salary for the office for which registered (for a candidate committee) per day.
- b. If disbursement information required by s.11.06, Stats., is not included on a campaign finance report and is not provided within 20 days of the board's notice of failure to comply, the registrant will be extended a settlement offer consisting of \$100 plus 25% of the disbursement amount up to a maximum settlement offer of \$500 plus the greater of \$50 per day,

or 1% of the annual salary for the office for which registered (for a candidate committee) per day.

- c. If the disbursement information required by s.11.06, Stats., is not included on a campaign finance report and is not provided within 30 days of the board's notice of failure to comply, the registrant will be extended a settlement offer consisting of \$500 plus the greater of \$50 per day, or 1% of the annual salary for the office for which registered (for a candidate committee) per day.

(9) Violations of s.11.06(5), Stats., failure to timely report the receipt of a contribution.

- a. If a contribution has not been included on a campaign finance report and the late report of the contribution is filed within 10 days of the due date for reporting the contribution, a settlement offer of 10% of the contribution will be extended to the registrant, up to a maximum settlement offer consisting of \$500, plus the greater of \$50 per day, or 1% of the annual salary for the office for which registered (for a candidate committee), per day.
- b. If the late report of the contribution is filed within 11 to 20 days of the due date for reporting the contribution, a settlement offer of 25% of the contribution will be extended to the registrant, up to a maximum settlement offer consisting of \$500, plus the greater of \$50 per day, or 1% of the annual salary for the office for which registered (for a candidate committee), per day.
- c. If the late report of the contribution is filed more than 20 days after the due date for reporting the contribution, a settlement offer of consisting of \$500, plus the greater of \$50 per day, or 1% of the annual salary for the office for which registered (for a candidate committee), per day, will be extended to the registrant.
- c. Notwithstanding the settlement terms provided by the preceding paragraphs, the board may consider mitigating or aggravating circumstances, including the board's discovery of the receipt of the contribution without disclosure by the registrant, in determining the amount of the settlement offer that will be extended to the registrant.

(10) Violations of s.11.06(5), Stats., failure to timely report the receipt of a disbursement.

- a. If a disbursement has not been included on a campaign finance report and the late report of the disbursement is filed within 10 days of the due date for reporting the disbursement, a settlement offer of 10% of the

disbursement will be extended to the registrant, up to a maximum settlement offer consisting of \$500, plus the greater of \$50 per day, or 1% of the annual salary for the office for which registered (for a candidate committee), per day.

- b. If the late report of the disbursement is filed within 11 to 20 days of the due date for reporting the disbursement, a settlement offer of 25% of the disbursement will be extended to the registrant, up to a maximum settlement offer consisting of \$500, plus the greater of \$50 per day, or 1% of the annual salary for the office for which registered (for a candidate committee e), per day.
- c. If the late report of the disbursement is filed more than 20 days after the due date for reporting the disbursement, a settlement offer of consisting of \$500, plus the greater of \$50 per day, or 1% of the annual salary for the office for which registered (for a candidate committee), per day, will be extended to the registrant.
- d. Notwithstanding the settlement terms provided by the preceding paragraphs, the board may consider mitigating or aggravating circumstances, including the board's discovery of the making of the disbursement without disclosure by the registrant, in determining the amount of the settlement offer that will be extended to the registrant.

(11) Violations of s.11.26, Stats., for receiving or making contributions in excess of statutory limits. Any committee that receives a contribution in excess of the limits set by s.11.26, Stats., may be required to pay the excess portion of the contribution to any organization recognized as a charity by the Internal Revenue Code and will also be extended a settlement offer for a forfeiture of 50% of the excess contribution up to a maximum of \$500. Any individual or committee who makes a contribution in excess of the limits set by s.11.26, Stats., may be extended a settlement offer for a forfeiture of one and one-half times the excess portion of the contribution.

(12) Other violations of chapter 11 of the Wisconsin Statutes. Settlement offers to resolve all other violations of chapter 11 of the Wisconsin Statutes will be determined on a case-by-case basis.

22.03 Violations of Subchapter III of Chapter 19, Stats., the Code of Ethics for Public Officials and Employees: The failure to timely file the statement of economic interests as required by s.19.43, Stats.,

- (1)** If a statement of economic interests is received within 5 days of the due date for that statement, no penalty will be imposed on the official.

- (2) If a statement of economic interests is received within 6 to 10 days of the due date for that statement, a settlement offer of \$10 will be extended to the official.
- (3) If a statement of economic interests is received within 11 to 25 days of the due date for that statement, a settlement offer of \$50 will be extended to the official.
- (4) If a statement of economic interests is received within 26 to 30 days of the due date for that statement, a settlement offer of \$100 will be extended to the official.
- (5) If a statement of economic interests is received more than 30 days after the due date for that statement, a settlement offer of \$250 will be extended to the official.
- (6) Notwithstanding the settlement terms provided by the preceding paragraphs, the board may consider mitigating circumstances, including the fact that the board's staff failed to notify the person filing the statement of the requirement to file the statement of economic interests, in determining the amount of the settlement offer.

22.04 Violations of Subchapter III of Chapter 13, Stats., the Regulation of Lobbying in Wisconsin

- (1) Violations of s.13.64, Stats., failure of a principal to timely file a registration statement .
 - a. If the registration statement of a principal, as required by s.13.64, Stats., is received within 7 days of the due date for that registration, no penalty will be imposed on the registrant, but a warning, that any future failure to timely file could lead to a forfeiture, will be issued.
 - b. If the registration statement of a principal is received within 8 to 14 days of the due date for that registration, a settlement offer of \$250 will be extended to the registrant.
 - c. If the lobbying registration statement of a principal is received within 15 to 21 days of the due date for that registration, a settlement offer of \$500 will be extended to the registrant.
 - d. If the lobbying registration statement of a principal is received within 22 to 28 days of the due date for that registration, a settlement offer of \$750 will be extended to the registrant.

- e. If the lobbying registration statement of a principal is received more than 28 days after the due date for that registration, a settlement offer of \$1,000 will be extended to the registrant.

(2) Violations of s.13.66, Stats., failure of a lobbyist to timely obtain a license to act as a lobbyist.

- a. If a lobbyist fails to timely obtain a license to act as a lobbyist under s.13.66, Stats., but obtains that license within 7 days of the due date for obtaining that license, no penalty will be imposed on the lobbyist, but a warning, that any future failure to timely file could lead to a forfeiture, will be issued.
- b. If a lobbyist fails to timely obtain a license to act as a lobbyist under s.13.66, Stats., but obtains that license within 8 to 14 days of the due date for obtaining that license, a settlement offer of \$75 will be extended to the lobbyist.
- c. If a lobbyist fails to timely obtain a license to act as a lobbyist under s.13.66, Stats., but obtains that license within 15 to 21 days of the due date for obtaining that license, a settlement offer of \$125 will be extended to the lobbyist.
- d. If a lobbyist fails to timely obtain a license to act as a lobbyist under s.13.66, Stats., but obtains that license within 22 to 28 days of the due date for obtaining that license, a settlement offer of \$250 will be extended to the lobbyist.
- e. If a lobbyist fails to timely obtain a license to act as a lobbyist under s.13.66, Stats., and does not obtains that license until more than 28 days of the due date for obtaining that license, a settlement offer of \$500 will be extended to the lobbyist.

(3) Violations of s.13.65 Stats., failure of a principal to timely file a written authorization for a lobbyist to represent the principal.

- a. If a principal fails to timely file a written authorization for a lobbyist to represent the principal under s.13.65, Stats., but files that authorization within 7 days of the due date for filing that authorization, no penalty will be imposed on the principal, but a warning, that any future failure to timely file could lead to a forfeiture, will be issued.
- b. If a principal fails to timely file a written authorization for a lobbyist to represent the principal under s.13.65, Stats., but files that authorization within 8 to 14 days of the due date for filing that authorization, a settlement offer of \$125 will be extended to the principal.

- c. If a principal fails to timely file a written authorization for a lobbyist to represent the principal under s.13.65, Stats., but files that authorization within 15 to 21 days of the due date for filing that authorization, a settlement offer of \$250 will be extended to the principal.
- d. If a principal fails to timely file a written authorization for a lobbyist to represent the principal under s.13.65, Stats., but files that authorization within 22 to 28 days of the due date for filing that authorization, a settlement offer of \$375 will be extended to the principal.
- e. If a principal fails to timely file a written authorization for a lobbyist to represent the principal under s.13.65, Stats., and does not file that authorization until more than 28 days after the due date for filing that authorization, a settlement offer of \$500 will be extended to the principal.

(4) Violations of s.13.68, Stats., failure of a principal to timely file the semi-annual report of lobbying expenditures and incurred obligations.

- a. If a principal fails to timely file the semi-annual report of lobbying expenses as required by s.13.68, Stats., but files that report within 2 days of the due date for filing that report, no penalty will be imposed on the principal.
- b. If a principal fails to timely file the semi-annual report of lobbying expenses as required by s.13.68, Stats., but files that report within 3 to 6 days of the due date for filing that report, a settlement offer of \$50 will be extended to the principal.
- c. If a principal fails to timely file the semi-annual report of lobbying expenses as required by s.13.68, Stats., but files that report within 7 to 14 days of the due date for filing that report, a settlement offer of \$200 will be extended to the principal.
- d. If a principal fails to timely file the semi-annual report of lobbying expenses as required by s.13.68, Stats., but files that report within 14 to 21 days of the due date for filing that report, a settlement offer of \$500 will be extended to the principal.

(5) Violations of s.13.67, Stats., failure of a principal to timely report the subject matter of lobbying. If a principal has failed to timely report the subject matter of lobbying, as required by s.13.67, Stats., the Board's staff will determine a settlement offer on a case-by-case basis, taking into consideration whether the principal's violation is a first, second, or third offense and taking into consideration the number of late-reported interests and the time period in which the violation or violations occurred.

(6) Violations of s.13.625, Stats.: Prohibited campaign contributions by lobbyists. If a lobbyist makes a campaign contribution prohibited by s.13.625, Stats., the recipient will be required to donate that contribution to charity and a settlement offer of \$500 will be extended to the lobbyist.

(7) The board's staff shall have the authority to increase or decrease any settlement offer extended for violations of Subchapter III of Chapter 13, Stats., based on mitigating or aggravating circumstances surrounding the violation.

SECTION 2. EFFECTIVE DATE.

This rule shall take effect on the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.(22), Stats.

State of Wisconsin \ Government Accountability Board

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JUDGE MICHAEL BRENNAN
Chairperson

KEVIN J. KENNEDY
Director and General Counsel

MEMORANDUM

DATE: For the March 30-31, 2009 Meeting

TO: Members, Wisconsin Government Accountability Board

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

Prepared and Presented by:

Shane W. Falk, Staff Counsel

SUBJECT: Promulgation of Permanent Rule Amending Rule GAB 6.05

Pursuant to §5.05(1)(f), Stats., the legislature authorized the Government Accountability Board specific power to promulgate rules under ch. 227, Stats., for the purpose of interpreting or implementing the laws regulating the conduct of elections or election campaigns or ensuring their proper administration. Furthermore, the legislature has generally authorized agencies, such as the Government Accountability Board, to promulgate rules interpreting the provisions of any statute enforced or administered by the agency, if the agency considers it necessary to effectuate the purpose of the statute. §227.11(2)(a), Stats.

Pursuant to s. 11.21(16), Stats., the legislature required registrants to file campaign finance reports in electronic format, if they accept \$20,000.00 or more during a campaign period. Within s. 11.21(16), Stats., the legislature specifically directed the Government Accountability Board to “specify, by rule, a type of software that is suitable for compliance with the electronic filing requirement of this subsection.” The Government Accountability Board has approved the use of the Campaign Finance Information System and affirmed a requirement that registrants begin using it January 1, 2009. Some registrants may continue to file campaign finance reports in electronic formats other than C.F.I.S., which would affect the comprehensiveness of that system. An emergency rule is needed to amend GAB 6.05, Wis. Adm. Code, to require use of C.F.I.S. to insure its effectiveness and a uniform filing system.

Pursuant to s. 227.24, Wis. Stats., the Government Accountability Board has the authority to issue an emergency rule that is effective upon publication in the Wisconsin State Journal. At the January 15, 2009 Board meeting, this Board did adopt an emergency rule amending GAB 6.05, but the emergency rule will only remain in effect for 150 days. The Board should approve promulgation of a permanent rule.

Attached to this Memorandum is the proposed Statement of Scope, Notice of Proposed Order Adopting Rule, Notice of Submittal to Legislative Council Clearinghouse, and Notice of

Hearing. Approval of these documents will allow staff to proceed forward with promulgation of the permanent amended GAB 6.05 and keep things moving between Board meetings. This is important so as to avoid the expiration of the emergency rule at or near the next campaign finance reporting deadline. Even so, staff may need to request an extension of the emergency rule.

Recommendations

1. Pursuant to §§5.05(1)(f), 227.11(2)(a), 227.135, 227.14(4m), 227.15(1), and 227.16-17, Wis. Stats., staff recommends that the Board formally approve the attached Statement of Scope, Notice of Proposed Order Adopting Rule Amending GAB 6.05, Notice of Submittal of Amended GAB 6.05 to Legislative Council Clearinghouse, and Notice of Hearing of Amended GAB 6.05, and direct the staff to proceed with promulgation of the permanent rule.
2. Staff recommends that the Board authorize staff to take all other steps necessary to complete promulgation of the permanent rule amending GAB 6.05, Wis. Adm. Code.

Proposed motions:

1. **MOTION:** Pursuant to §§5.05(1)(f), 227.11(2)(a), 227.135, 227.14(4m), 227.15(1), and 227.16-17, Wis. Stats., the Board formally approves the attached Statement of Scope, Notice of Proposed Order Adopting Rule Amending GAB 6.05, Notice of Submittal of Amended GAB 6.05 to Legislative Council Clearinghouse, and Notice of Hearing of Amended GAB 6.05, and directs staff to proceed with promulgation of the permanent rule.
2. **MOTION:** Staff shall take all other steps necessary to complete promulgation of the permanent rule amending GAB 6.05, Wis. Adm. Code.

Statement of Scope
Government Accountability Board
Filing Campaign Finance Reports in Electronic Format, GAB 6.05

Subject

Amend s. GAB 6.05, Wis. Adm. Code, relating to the filing of campaign finance reports in the electronic format.

Objective of the Rule

Require registrants subject to Sec. 11.21(16), Stats., and those voluntarily choosing to file campaign finance reports in electronic format to do so in the form of the internet-based Campaign Finance Information System. The amendment would create a uniform requirement and restrict registrants to an “electronic format” compatible with the Government Accountability Board’s electronic filing system for campaign finance reports.

Policy Analysis

Under the current s. GAB 6.05, Wis. Adm. Code, registrants required to file campaign finance reports in electronic format pursuant to Sec. 11.21(16), Stats., and those voluntarily agreeing to file in electronic format, can do so in a large variety of ways. On January 18, 2008, the Government Accountability Board approved the use of a new electronic filing system, and the technical requirements thereof, conflict with the technical electronic format filing permitted by the current rule. In effect, the current electronic filing system cannot work without a uniform and restricted electronic format that is compatible with the new electronic filing system.

Statutory Authority

Sections 11.21(16), 5.05(1)(f), and 227.11(2)(a), Stats.

Comparison with Federal Regulations

Federal regulations mandated electronic filing of campaign finance reports with a standard uniform system since January 1, 2001. 11 CFR 104.18. The amendment to s. GAB 6.05, Wis. Adm. Code, will not conflict with federal regulations.

Entities Affected by the Rule

All registrants for whom the Government Accountability Board serves as filing officer and who or which accepts contributions in a total amount or value of \$20,000.00 or more during a campaign period and who or which must file campaign finance reports in electronic format, as required by Sec. 11.21(16), Stats. In addition, registrants who do

not meet the threshold requirements of Sec. 11.21(16), Stats., but who or which voluntarily chose to file campaign finance reports in electronic format with the Government Accountability Board.

Estimate of Time Needed to Develop the Rule

10-15 hours.

NOTICE OF PROPOSED ORDER ADOPTING RULE
GOVERNMENT ACCOUNTABILITY BOARD

The Government Accountability Board proposed an order to amend GAB 6.05, Wis. Adm. Code, relating to filing campaign finance reports in electronic format.

ANALYSIS PREPARED BY GOVERNMENT ACCOUNTABILITY BOARD:

1. Statutes interpreted: s.11.21(16), Stats.
2. Statutory authority: ss. 11.21(16), 5.05(1)(f), 227.11(2)(a) and 227.24, Stats.
3. Explanation of agency authority: Under the existing statute, s. 11.21(16), Stats., the Government Accountability Board is specifically charged with developing rules to address compliance with the electronic format filing requirement of this statute. Under the existing rule, GAB 6.05 the term “electronic format” does not restrict registrants to the electronic filing system currently in use by the Board. Adoption of this rule will create a uniform electronic format filing requirement that is compatible with the Board’s current electronic filing system.
4. Related statute(s) or rule(s): Wisconsin Statutes ch. 11—Campaign Financing.
5. Plain language analysis: This amended rule, GAB 6.05, creates a uniform requirement and restricts registrants to an “electronic format” compatible with the Board’s electronic filing system for filing campaign finance reports.
6. Summary of, and comparison with, existing or proposed federal regulations: Federal regulations mandated electronic filing of campaign finance reports with a standard uniform system since January 1, 2001. 11 CFR 104.18.
7. Comparison with rules in adjacent states: Illinois mandates electronic filing of campaign finance reports with a standard uniform system for committees exceeding \$10,000.00 in receipts or expenditures, strongly encouraging all other committees to file electronically. Michigan, Minnesota, and Iowa have optional electronic filing of campaign finance reports.
8. Summary of factual data and analytical methodologies: Adoption of the rule was primarily predicated upon the legislature’s previous appropriation of funds to purchase an electronic filing system for campaign finance reports. In addition, the Government Accountability Board approved the use of an electronic filing system for campaign finance reports beginning year end 2008.
9. Analysis and supporting documentation used to determine effect on small businesses: The rule will have no effect on small business, nor any economic impact.

10. Effect on small business: The creation of this rule does not affect business.

11. Agency contact person: Shane W. Falk, Staff Counsel, Government Accountability Board, 212 E. Washington Avenue, 3rd Floor, P.O. Box 2973, Madison, Wisconsin 53701-2973; Phone 266-2094; Shane.Falk@wisconsin.gov

FISCAL ESTIMATE: The creation of this rule has no new fiscal effect. The legislature has previously appropriated funds to purchase the electronic filing system for campaign finance reports.

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

TEXT OF PROPOSED RULE:

SECTION 1. GAB 6.05 is amended to read:

GAB 6.05 Filing campaign finance reports in electronic format. (1)

Definitions: As used in this rule:

- (a) "Campaign period" for a candidate, personal campaign committee or support committee has the same meaning as provided in s. 11.26 (17), Stats., and for any other registrant begins on January 1 of an odd-numbered year and ends on December 31 of the following year.
 - (b) "Contribution" has the same meaning as provided in s. 11.01 (6), Stats.
 - (c) "Electronic format" means ~~computer diskette or a computer file created using Access or Excel software or software that produces a delimited file~~ the government accountability board's internet-based Campaign Finance Information System.
 - (d) "Filing officer" means the government accountability board.
 - (e) "Registrant" has the same meaning as provided in s. 11.01 (18m), Stats.
 - (f) "Report" means any filing required by ss. 11.05, 11.06, 11.12 (5) and (6), 11.20, and 11.23, Stats.
- (2) Any registrant who files with the government accountability board and who accepts contributions or makes disbursements in a total amount or value of \$20,000 or more during a campaign period shall file each campaign finance report that is required to be filed by ch. 11, Stats., in ~~an~~ the electronic format specified by this rule.

- (3) Any registrant not required to file reports electronically may elect to file any campaign finance report in ~~an~~the electronic format specified by this rule.
- (4) Any campaign finance report filed in ~~an~~ electronic format shall be transmitted in time to be received by the filing officer no later than the time provided by law for filing the report. Any registrant who files a campaign finance report electronically shall, thereafter, file electronically all campaign finance reports required to be filed by the registrant.
- ~~(5) A registrant shall submit a trial report to the board before the end of the report period to determine if the report is in a format that meets the board's requirements set out in this rule.~~
- ~~(6)~~(5) Each registrant who files a report in ~~an~~the electronic format specified by this rule shall file, with the filing officer, a paper copy of the report that complies with the format set forth in Forms EB-2, EB-2a, EB-3, EB-4, EB-7, EB-10, EB-10a, EB-12 or EB-24. That paper copy of the report shall be signed by an individual authorized by the registrant to file and filed no later than the time prescribed by law for filing the report need not file a copy of the report in any other medium and shall be deemed to have satisfied the requirement of s. 11.21 (16), Stats.

SECTION 2. EFFECTIVE DATE.

This rule shall take effect on the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.(22), Stats.

Government Accountability Board
Filing Campaign Finance Reports in Electronic Format, GAB 6.05
CR 09-

On April ____, 2009, the Government Accountability Board submitted a proposed rule-making order to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed order amends GAB 6.05, Wis. Adm. Code, relating to the filing of campaign finance reports in the electronic format of the internet-based Campaign Finance Information System.

Agency Procedure for Promulgation

A public hearing will be scheduled at a later time. The Government Accountability Board is primarily responsible for preparing the proposed rule.

Contact Information

Shane W. Falk, Staff Counsel
Government Accountability Board
212 E. Washington Avenue, 3rd Floor
P.O. Box 2973, Madison, Wisconsin 53701-2973
Phone 266-2094; Shane.Falk@wisconsin.gov

NOTICE OF HEARING
GOVERNMENT ACCOUNTABILITY BOARD
CR 09-

NOTICE IS HEREBY GIVEN that pursuant to ss. 5.05(1)(f), 227.11(2)(a), Stats., and interpreting s.11.21(16), Stats., the Government Accountability Board will hold a public hearing to consider adoption of a rule to amend GAB 6.05, Wis. Adm. Code, relating to filing campaign finance reports in electronic format.

Hearing Information

The public hearing will be held at the time and location shown below.

Date and Time

_____ at _____

Location

Government Accountability Board Office
212 E. Washington Avenue, 3rd Floor
Madison, Wisconsin 53703

This public hearing site is accessible to people with disabilities. If you have special needs or circumstances that may make communication or accessibility difficult at the hearing, please contact the person listed below.

ANALYSIS PREPARED BY GOVERNMENT ACCOUNTABILITY BOARD:

1. Statutes interpreted: s.11.21(16), Stats.
2. Statutory authority: ss. 11.21(16), 5.05(1)(f), 227.11(2)(a) and 227.24, Stats.
3. Explanation of agency authority: Under the existing statute, s. 11.21(16), Stats., the Government Accountability Board is specifically charged with developing rules to address compliance with the electronic format filing requirement of this statute. Under the existing rule, GAB 6.05 the term “electronic format” does not restrict registrants to the electronic filing system currently in use by the Board. Adoption of this rule will create a uniform electronic format filing requirement that is compatible with the Board’s current electronic filing system.
4. Related statute(s) or rule(s): Wisconsin Statutes ch. 11—Campaign Financing.
5. Plain language analysis: This amended rule, GAB 6.05, creates a uniform requirement and restricts registrants to an “electronic format” compatible with the Board’s electronic filing system for filing campaign finance reports.
6. Summary of, and comparison with, existing or proposed federal regulations: Federal regulations mandated electronic filing of campaign finance reports with a standard uniform system since January 1, 2001. 11 CFR 104.18.

7. Comparison with rules in adjacent states: Illinois mandates electronic filing of campaign finance reports with a standard uniform system for committees exceeding \$10,000.00 in receipts or expenditures, strongly encouraging all other committees to file electronically. Michigan, Minnesota, and Iowa have optional electronic filing of campaign finance reports.
8. Summary of factual data and analytical methodologies: Adoption of the rule was primarily predicated upon the legislature's previous appropriation of funds to purchase an electronic filing system for campaign finance reports. In addition, the Government Accountability Board approved the use of an electronic filing system for campaign finance reports beginning year end 2008.
9. Analysis and supporting documentation used to determine effect on small businesses: The rule will have no effect on small business, nor any economic impact.
10. Effect on small business: The creation of this rule does not affect business.
11. Agency contact person: Shane W. Falk, Staff Counsel, Government Accountability Board, 212 E. Washington Avenue, 3rd Floor, P.O. Box 2973, Madison, Wisconsin 53701-2973; Phone 266-2094; Shane.Falk@wisconsin.gov

FISCAL ESTIMATE: The creation of this rule has no new fiscal effect. The legislature has previously appropriated funds to purchase the electronic filing system for campaign finance reports.

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

TEXT OF PROPOSED RULE:

SECTION 1. GAB 6.05 is amended to read:

GAB 6.05 Filing campaign finance reports in electronic format. (1)

Definitions: As used in this rule:

- (a) "Campaign period" for a candidate, personal campaign committee or support committee has the same meaning as provided in s. 11.26 (17), Stats., and for any other registrant begins on January 1 of an odd-numbered year and ends on December 31 of the following year.
- (b) "Contribution" has the same meaning as provided in s. 11.01 (6), Stats.
- (c) "Electronic format" means ~~computer diskette or a computer file created using Access or Excel software or software that produces a delimited file~~ the government accountability board's internet-based Campaign Finance Information System.

- (d) "Filing officer" means the government accountability board.
 - (e) "Registrant" has the same meaning as provided in s. 11.01 (18m), Stats.
 - (f) "Report" means any filing required by ss. 11.05, 11.06, 11.12 (5) and (6), 11.20, and 11.23, Stats.
- (2) Any registrant who files with the government accountability board and who accepts contributions or makes disbursements in a total amount or value of \$20,000 or more during a campaign period shall file each campaign finance report that is required to be filed by ch. 11, Stats., in ~~an~~the electronic format specified by this rule.
 - (3) Any registrant not required to file reports electronically may elect to file any campaign finance report in ~~an~~the electronic format specified by this rule.
 - (4) Any campaign finance report filed in ~~an~~ electronic format shall be transmitted in time to be received by the filing officer no later than the time provided by law for filing the report. Any registrant who files a campaign finance report electronically shall, thereafter, file electronically all campaign finance reports required to be filed by the registrant.
 - ~~(5) A registrant shall submit a trial report to the board before the end of the report period to determine if the report is in a format that meets the board's requirements set out in this rule.~~
 - ~~(6)~~(5) Each registrant who files a report in ~~an~~the electronic format specified by this rule shall file, with the filing officer, a paper copy of the report that complies with the format set forth in Forms EB-2, EB-2a, EB-3, EB-4, EB-7, EB-10, EB-10a, EB-12 or EB-24. That paper copy of the report shall be signed by an individual authorized by the registrant to file and filed no later than the time prescribed by law for filing the report need not file a copy of the report in any other medium and shall be deemed to have satisfied the requirement of s. 11.21 (16), Stats.

SECTION 2. EFFECTIVE DATE.

This rule shall take effect on the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.(22), Stats.

State of Wisconsin \ Government Accountability Board

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JUDGE MICHAEL BRENNAN
Chairperson

KEVIN J. KENNEDY
Director and General Counsel

DATE: For March 30, 2009 Board Meeting
TO: Government Accountability Board
FROM: Jonathan Becker
SUBJECT: Proposed statutory revisions

Guide to subjects discussed on accompanying pages

- A. **Bolster the statutory standards of conduct.** Raise the standards of conduct expected of state and local governmental officials.
- B. **Enhance lobbying laws.** Enhance the integrity of the governmental decisions by enhancing the standards applicable to lobbyists.
- C. **Moderate effects of campaign contributions from lobbyists and people associated with the organizations they represent. Strengthen the integrity of the governmental decision-making process by mitigating effect of campaign contributions on government decisions.**
- D. **Enhance Statements of Economic Interests.** Enhance Board's ability to provide information about governmental officials' financial interests to confirm for the public the absence of conflicting interests or to identify conflicts meriting attention.
- E. **Bolster Board's investigation and enforcement powers.** Bolster Board's abilities to investigate possible violations of the ethics code, lobbying law, and campaign finance law and to seek appropriate remedies.

I have placed an asterisk next to those proposed revisions that I believe to be the most important.

IDEAS FOR STRENGTHENING ETHICS CODE AND LOBBYING LAW

- A. **Bolster the statutory standards of conduct.** Raise the standards of conduct expected of state and local governmental officials.
- *1. Improve scrutiny of private organization's paying for government officials' expenses.

Amend statute authorizing a state government official to accept food, drink, lodging and travel that the official determines to be for the state's benefit by requiring an official, when practicable, to seek a determination from a superior or for a legislator, from the Assembly Speaker or

Senate Organization Committee, that the acceptance is on behalf of the State and primarily benefits state government.

The Ethics Code generally forbids an official to accept items and services offered because the official holds a government position. An exception permits an official to accept transportation, lodging, and meals if the official can demonstrate that their acceptance is primarily for the state's benefit.

Problem with current arrangement is that either [1] an official makes a self-serving election to accept a favor that should not have been accepted or [2] a conscientious official makes an appropriate choice to accept a benefit but is nonetheless criticized and the public's confidence is undermined. Potential solution is to remove the self-interest by making this a business decision of the person's superior.

*2. Forbid state and local officials to act in quasi-judicial matters affecting the officials' relatives.

Provide that with respect to the award of a contract, license, permit, grant, decision or other quasi-judicial action, neither a state nor local public official may participate or take any action if the official or the official's spouse or person within the third to degree of kinship to either of them, or the spouse of such a person, has a substantial interest in the matter. The current prohibition extends only to spouses, dependent children, and dependent parents.

The standard proposed is the standard to which Wisconsin's judges are held. There is already a body of law developed to explain the importance and application of the rule proposed. See SCR 60.04 (4) (d) and 60.01 (12).

Many government decisions are policy decisions (legislative in character). The legislature, boards, and commissions are appropriately given considerable latitude in acting on policies. They may act on matters even affecting their businesses, families, and selves as long as they are making laws or rules of general application and their personal interests are insignificant when considered in the greater context. But the award of a specific contract, license, permit or grant is different and a different and higher standard ought to pertain.

*3. Forbid elected official to act in quasi-judicial matters affecting a substantial contributor to campaign.

Provide that with respect to the award of a contract, license, permit, grant, decision or other quasi-judicial action, neither an elected public official nor a person who holds a state public office to which he or she was appointed by the elected official may participate in the matter or take any action affecting the matter if the award or action will affect a substantial interest of either [1] a person who has contributed more than \$xxx to the official's personal campaign committee during the current or prior calendar years or [2] a business or organization, the officers and directors and employees of which have contributed more than \$xxx to the official's personal campaign committee during the current and prior calendar years and if the official knew or should have known of the campaign contributions.

Perhaps the number one suspicion or accusation of unfair dealing lodged against the chief executive of state or local government has been that contracts or permits have been awarded, not on their merits, but on the basis of campaign contributions. This item addresses that concern.

4. Foreclose legislator from accepting employment from organization that lobbies the legislature (within 12 months of leaving office).

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

Wisconsin has had a citizen legislature since the beginning of Statehood. Legislators may have other employment while a member of the legislature and may return to private employment when they conclude their terms. This proposal is akin to a "no-compete" clause that for a limited number of months protects the public employer from a legislator's moving to the payroll of an organization trying to influence government action.

- *5. Foreclose officer or employee of state regulatory agency from accepting employment by regulated business (within 12 months of leaving office).

Officials often try to negotiate private employment while in public office, sometimes within the industry they regulate. A regulator who knows that he or she will not accept employment from an organization that he or she regulates frees the regulator to act in the interests he or she thinks best without thought of how his or her action will affect employment by the regulated organization. One approach would be along the following lines: "No state public official, while an official or for 12 months thereafter, may accept employment from any person regulated by the official's agency, or from any person that represents such persons or their interests, or from any person who has negotiated, bid for, or entered a contract with the official's agency during the final 12 months of the official's term of office."

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

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

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

Reason -- When an official appears for pay before his or her governmental body there is an appearance of influence peddling that can undermine citizens' confidence in government.

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

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

Reason -- An official's taking money to represent clients before the government body on which one serves undermines citizen confidence in the decisions of that body. Compare §19.45(7) for state officials.

8. Forbid state and local officials to act in quasi-judicial matters affecting the officials' employers.

The Ethics Code prohibits a public official from using his or her office to benefit a business in which the official has a 10% or greater ownership interest or a business or organization of which the official is an authorized representative or agent. Extend the prohibition to foreclose a government official's acting on a contract or permit or license in which the official's or the official's spouse's employer is interested.

Reason -- Under current law, it is difficult to determine if an employee is an authorized representative or agent of an employer. This new language is clear and easy to apply. It covers situations that have raised issues in the past and will help strengthen citizen confidence in government.

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

The Ethics Code generally restricts legislators from representing persons for pay before state agencies. The Statutes currently contain an exception for representing persons in tax matters before the Department of Revenue. This repeals that exception.

Reason -- There is no good public policy reason for this exception.

10. Repeal §19.45(12), a provision held unconstitutional by the United States District Court in *Barnett v. State Ethics Board*, 817 F. Supp. 67 (E.D. Wis. 1993).

The section provides:

19.45 (12) No agency, as defined in s. 16.52(7), or officer or employee thereof may present any request, or knowingly utilize any interests outside the agency to present any request, to either house of the legislature or any member or committee thereof, for appropriations which exceed the amount requested by the agency in the agency's most recent request submitted under s. 16.42.

- *11. Codify by statute the Legislature’s rules that address campaign activities of legislative employees.

In October 2001 the Ethics Board and Elections Board entered into an agreement with the leaders of the Senate and Assembly that defined “campaign activity” and forbid the Legislature’s employees to engage in campaign activities during hours for which they are paid by the state of Wisconsin. The agreement was implemented by its adoption by the Legislature’s Joint Committee on Legislative organization.

Codify these provisions by incorporating them in the statutes.

12. Extend to the executive branch of state government rules that mitigate conflicts between the employees’ campaign activities and their government responsibilities.

Foreclose the secretaries, deputies, executive assistants, and administrators of the state’s departments from soliciting campaign contributions and sponsoring campaign fundraisers.

Reason – It is unseemly and undermines confidence in government for a person who holds a key government position to seek campaign contributions from interests regulated by or that do business with his or her department.

Officials Subject to Ethics Code

13. Apply Ethics Code’s Standards of Conduct to Officers-Elect

The law currently applies to individuals elected to office only after they have assumed office. Apply the Ethics Code’s standards of conduct to individuals upon the certification of their election by the signing of the canvas of election results.

Reason -- Individuals should not be permitted to profit from the fact that they have been elected to public office, even if they have not yet assumed that office. It also makes for equitable treatment between newly elected officials and reelected officials.

The statutes should not provide an open season, from the date of November’s general election to the date the official-elect is sworn into office, for the official to use the title and prestige of the office to which just elected in order to lock up advantages for the official-elect’s family or business before the general prohibition on use of office for private benefit takes effect at the start of the new term.

14. Apply the standards of conduct generally applicable to local government official to all the members of the Southeast Wisconsin Professional Baseball Park District.

Currently, the members of the district board of a local professional baseball park district are either appointed by the governor to serve for a term specified by law or appointed by various local elective officials to serve at the pleasure of those officials. Members of a district board who are appointed by the governor are subject to the statutory code of ethics for local public officials, which prohibits certain specified conduct that would create a conflict of interest. Other members of the district board, while required to adhere to standards of conduct that parallel the standards required of state public officials, are not subject to identical standards.

Require those members of the district board of a local professional baseball park district who are appointed by local elective officials to adhere to the same standards of conduct that are currently applicable to other local public officials, including other members of the district board.

B. Enhance lobbying laws. Enhance the integrity of governmental decisions by enhancing the standards applicable to lobbyists.

*1. Prohibit a lobbyist or principal to arrange the furnishing of anything of value to a state official or candidate.

The lobbying law forbids a lobbyist or principal to furnish anything of pecuniary value to a state elected official or agency official. It does not expressly forbid a lobbyist or principal to arrange for others, such as an organization's members or officers or directors, to furnish items or services to an official. A practical example is that a lobbyist or principal will arrange for an organization's members to bundle campaign contributions to convey to a legislator while the legislature is meeting. Prior to 1978, the lobbying law prohibited "directly or indirectly furnishing or being concerned in another's furnishing" anything of pecuniary value to an official. This proposal would prevent a lobbyist or principal from circumventing the law's restrictions on furnishing things of pecuniary value merely by arranging for others to do the same thing.

2. Clarify that lobbying law's standards of conduct apply to all those licensed to lobby.

Clarify that the lobbying law's restraints apply to individuals licensed to lobby and organizations registered as principals as well as to individuals and organizations engaged in lobbying regardless of whether they are licensed.

Reason -- Because of various thresholds, particularly the five-day contact rule, some organizations are registered, and some individuals are licensed, before they meet the definition of a principal or lobbyist. This has resulted in staff investigations of apparently illegal activities, such as the provision of campaign contributions, only to discover that the activity occurred before a fifth day of contact. Moreover, a principal or lobbyist, although still listed as such, can now claim to have ceased lobbying activities, and thereby attempt to avoid the law. This revision would add clarity and certainty to the law.

3. In section of lobbying law creating limited exception for local government to provide benefit to a "legislative official", clarify that "legislative official" includes a legislative employee.

Section 13.625 (6g) and (6r) create exceptions to certain prohibited practices for certain "legislative officials." However, this term is nowhere defined in the lobbying law.

4. Clarify that the exception in §13.625 (7) that permits a lobbying principal to pay the expenses a state public official incurs in connection with the official's giving a talk also permits the lobbying principal to pay costs of other state government employees covered by the lobbying law but not covered by the ethics code's standards.

Section 13.625 (7) creates an exception to one restriction in the lobbying law by reference to an exception found in the Ethics Code. However, the Ethics Code exception is written as an exception for state public officials, while the lobbying law applies to all "agency officials." The Attorney General has issued an opinion [80 Op. Att'y Gen. 205, 208-09] that the exception

does apply to all agency officials, even those who are not state public officials. This amendment would codify that opinion.

5. Explicitly address appropriateness of permitting a lobbying principal to provide food and drink to a state official at certain receptions if the official pays fair consideration.

Under the Ethics Code, state officials may attend receptions sponsored by non-lobbying organizations as long as the official pays the cost of food and drink that is provided. The lobbying law makes no provision for officials attending receptions sponsored by principals and paying for food and drink. Codify the former Ethics Board's position that it will permit officials to pay for food and drink at principal-sponsored receptions.

Under current law, and in accordance with the Attorney General's opinion, an official may not accept anything of pecuniary value from a principal, even if the official pays fair market value in exchange. Among other results, this means an official cannot attend events sponsored by a principal and accept any food or drink, even in exchange for payment. If an event is not sponsored by a principal, an official may pay for food and drink. The Ethics Board took the position that it will not enforce the law in this specific circumstance. Should we amend the lobbying law to permit officials to attend private functions sponsored by a principal as long as the official pays fair market value?

This would explicitly put all receptions, conferences, and seminars on the same footing, regardless of sponsorship.

Reason -- State officials are urged to meet with groups and individuals to discuss issues of statewide concern. There seems no good reason in this context to distinguish between groups that employ lobbyists and those that do not, where officials are not receiving anything of value because of the payment requirement.

Persons subject to lobbying law

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

Require contract lobbyists to be licensed at the time of their first lobbying contact with a state official.

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

7. Clarify that if a principal registers during a reporting period it must report lobbying expenditures for the entire reporting period.

Clarify that if a principal registers during a reporting period, rather than at its beginning, or exceeds the limits of its limited lobbying statement, it must report lobbying expenditures for the entire reporting period.

Reason -- Current law is ambiguous on this score and this recommendation will lead to consistent and more accurate treatment of expenditures reported by principals.

8. Identify more precisely the state government positions to which the lobbying law pertains (including key professional staff of governor's office).

Apply the lobbying law to state public officials, as defined in the Ethics Code, and to elected officials, legislative employees, and candidates for elective state offices; exempt other state employees not subject to the Ethics Code.

The lobbying law currently prohibits a lobbyist or lobbying principal to furnish anything of pecuniary value to any state employee part of whose duties include administrative rule making. Apply the restriction to: (a) any full-time state public official; and (b) any employee of an agency the lobbyist or principal indicates on its registration form it may lobby and any agency a lobbyist is authorized to lobby.

Reason -- The lobbying law currently applies to "agency officials" who are individuals whose official responsibilities include participation in rulemaking. This leads to a great deal of uncertainty as to who is covered, among both lobbyists and the individuals themselves. Moreover, it can apply to state employees at almost all levels, whether management or policy-makers or not. Other state employees would continue to be covered by the Department of Employment Relation's rule prohibiting employees from accepting things of value offered because of one's state position.

Under current law, it is difficult to determine which state employees are covered. In addition, the law sometimes applies to restrict normal social relations in situations in which a lobbyist has no connection with an employee's agency. This amendment addresses both of these situations.

9. Curtail circumvention of standards of conduct by lobbyists who relinquish then reacquire a lobbying license.

As condition of re-obtaining a lobbying license in a session add requirement that applicant attest that the applicant has not furnished anything of pecuniary value to an agency official or legislative official within the period in which the lobbyist relinquished his or her license.

10. Clarify that a state agency's legislative liaison may not accept anything of pecuniary value from a lobbyist or lobbying principal.

The current law exempts a state agency liaison from the provisions of the prohibited practices section. This clarifies that a state agency's legislative liaison is still subject to the lobbying law's restrictions on accepting anything of pecuniary value from a lobbyist or principal.

Reason -- The legislative intent has always been to exempt state agency liaisons from the restrictions on lobbyists furnishing items to state officials. A state official otherwise subject to the lobbying law's restrictions on accepting items from lobbyists and principals should not be exempt simply because of those duties. This appears to be a case of poor drafting.

Lobbying Law Registration, Licensing and Reporting Requirements

11. Clarify that the responsibility for proper registration of a lobbying principal falls both on the lobbyist and the lobbyist's employer.

This clarifies that it is a violation of law, both for a principal and its lobbyist, to lobby if the organization has failed to register as a principal.

Reason -- Lobbyists are often in greater contact with the Ethics Board and have greater familiarity with the law than the organizations that employ them. This clarifies that the responsibility for ensuring proper registration falls both on lobbyists and their employers.

12. Extend lobbying law to attempts to influence certain executive actions.

Without expanding the set of organizations already covered by the lobbying law or the number of people already licensed as lobbyists, require the lobbying principals to account for the amount of time and the subject matter of their efforts to affect the award of state contracts, permits, licenses, grants, and the like. Currently they account for efforts to affect state laws and administrative rules.

C. Moderate effects of campaign contributions from lobbyists and people associated with the organizations they represent. Strengthen the integrity of the governmental decision-making process by mitigating effect of campaign contributions on government decisions.

- *1. Amend the lobbying law to impose the same timing restrictions for furnishing campaign contributions on a PAC controlled by a principal as exist for a lobbyist and lobbying principal.

An organization that employs a lobbyist may contribute to the campaign committee of a candidate for election to a partisan state office only when the contribution is made in the year of the candidate's election after June 1 and before the November general election. Apply the same limitation to a political action committee that the organization controls.

Reason -- The lobbying law restricts a lobbyist and an organization that employs a lobbyist to furnish a campaign contribution to a candidate for partisan state office except during specified time periods. In 1994, the Dane County Circuit Court ruled that the lobbying law does not apply to a PAC, even if a lobbying principal has established and controls the PAC. Plumbers and Gas Fitters Local 75 Political Action Fund, et al. v. State of Wisconsin Ethics Board, aff'd, District IV Court of Appeals, 94-0826 (May 19, 1995), rev. den., Supreme Court, 94-0826 (September 27, 1991).

In the view of the Dane County Circuit Court, current law permits a lobbying organization to furnish a contribution to legislators at any time, including the very time the organization is

trying to influence legislators' votes, as long as the organization makes the contribution from a political action committee it maintains and controls.

The effect is wrong and should be changed.

- *2. Apply the lobbying law's timing restrictions for furnishing campaign contributions to include the four legislative campaign committees.

These committees are exempt from the lobbying law's timing restrictions on receiving campaign contributions from lobbyists. They are controlled by legislative leadership and serve as vehicles for running legislative campaigns. There is no good public policy reason for exempting these committees from the timing restrictions of the lobbying law.

- *3. When a lobbying principal is forbidden to furnish a campaign contribution to a candidate, apply the same limitation to a conduit that the lobbying principal administers.

An organization that employs a lobbyist may contribute to the campaign committee of a candidate for election to a partisan state office only when the contribution is made in the year of the candidate's election after June 1 and before the November general election. Apply the same limitation to a campaign conduit that the organization administers.

Current law permits a campaign conduit that is managed and administered by an organization that employs a lobbyist to furnish a contribution to legislators at any time, including the very time the organization is trying to influence legislators' votes.

- *4. Forbid a lobbyist or principal to furnish anything of pecuniary value either directly or indirectly through an agent (including a spouse).

In the past, the Ethics Board found incidents in which the circumstances strongly suggested that a lobbyist's spouse was making campaign contributions at the direction, and on behalf, of the lobbyist during times in which the law restricted the lobbyist to make such contributions. One lobbyist admitted a violation of the pertinent statute. In 1999, the District IV Court of Appeals ruled that the lobbying law does not prohibit a lobbyist's spouse to make a campaign contribution from marital property at any time, even if a spouse acts at the behest of a lobbyist. *Katzman v. State of Wisconsin Ethics Board*, 98-2884 (May 6, 1999). This proposal would close this loophole.

The Ethics Board recognized that the lobbying law does not place any limitation on a person who is neither a lobbyist nor a lobbyist's employer, nor a state official. But the lobbying law should restrain a lobbyist from enlisting an agent as a subterfuge to accomplish what the Statutes expressly forbid the lobbyist to accomplish directly.

- 5. Clarify that a lobbyist may not furnish professional services to a campaign except at a time when a lobbyist may contribute money to a personal campaign committee and then only if the contribution is permitted and reported under campaign finance laws.

The lobbying law restricts a lobbyist to furnish anything of pecuniary value to a state official or candidate for state office. In 1993, the United States District Court held that this provision is unconstitutional to the extent it would restrict a lobbyist providing uncompensated personal services to a campaign. *Barker, et al. v. State of Wisconsin Ethics Board*, 93-C-150-C (December 13, 1993). The court distinguished between personal services and professional ser-

vices. This would clarify the law's restriction on a lobbyist providing professional services, such as legal, accounting, or public relations services to a candidate's campaign.

6. Forbid campaign contributions to influence special sessions of the Legislature.

Amend the lobbying law to prohibit all elected officials from accepting contributions during a special session and have the restriction begin at the time a special session is called.

Currently, the restriction on campaign contributions from lobbyists and principals during a special session applies only to candidates for the legislature and begins when the special session starts. This permits the governor and incumbent legislators running for another office to accept contributions and permits a flurry of contributions from special interests right before a session begins. To be avoided is the circumstance in which it is announced that a special or extraordinary session will be convened and then elected officials collect campaign contributions between the date of the announcement and the date the session is convened.

D. Enhance Statements of Economic Interests. Enhance Board's ability to provide information about governmental officials' financial interests to confirm for the public the absence of conflicting interests or to identify conflicts meriting attention.

*1. Eliminate requirement that Board notify an official of a request to view the official's Statement of Economic Interests.

The statute currently requires the Board to notify an official each time an individual views the official's Statement and to provide the identity of the requester. This requirement prevents the Board from posting Statements on-line. There is nothing to prevent a newspaper or blogger from posting those same Statements. Little is gained by the current requirement.

2. Report financial interests held throughout reporting period.

Under current law, an official updating a Statement of Economic Interests identifies organizations with which he or she is associated, organizations in which the official or his or her immediate family owns \$5,000 or more in securities, creditors of \$5,000 or more, and interests in Wisconsin real estate only as of a specific date. The information is to be current as of the prior December 31. For people updating their Statements have them identify the interests they held since the last date for which their statement was current.

Reason -- This change would more fully and fairly reflect an official's interests and relationships for periods during which an official was engaged in policymaking. The current "snapshot" approach leads to arbitrary disclosure results.

This adjustment will also address a circumstance that sometimes currently requires a person who is appointed to a position in January and who enters upon the new duties in the same month to file a Statement with information current both as of the appointment date and as of the prior December 31.

3. Require identification of certain business creditors.

Expand the current requirement to identify creditors of an official or the official's family, to include identification of the creditors of a business with which the official is associated.

Reason -- The identification of creditors of an individual's business seems to be as significant as the identification of an individual's creditors and is likely to be as important with respect to the overall financial status of an official.

4. Require identification of a person whose loan the official has guaranteed.

Require the identification of persons (other than relatives) for whom an official is a guarantor of a loan of \$5,000 or more and of the lenders of such loans.

Reason -- This requirement will identify those organizations and individuals in whose financial status an official has an economic interest.

5. Eliminate identification of money market and mutual funds.

Under current law, officials identify every organization in which an official owns \$5,000 or more of securities. This leads to the identification of many mutual funds and money market funds. Eliminate the need for an official to identify investments held by large, diversified funds.

Reason -- The identification of investments in large, diversified mutual funds serves little public purpose. Of more importance is an official's connection to a specific business. Requiring listing of mutual funds obscures more important information and can be an irritant to filers.

6. Eliminate identification of mortgage lenders.

Under current law, officials must identify all creditors to whom the official or a member of the official's immediate family owes \$5,000 or more. This change would eliminate the need to identify commercial mortgage lenders.

Reason -- The identification of commercial mortgage lenders serves little public purpose. Such lenders are subject to extensive regulations and an official is unlikely to be able to use public office for private benefit through any official action on behalf of a commercial mortgage lender.

7. Clarify that an official must report an organization that is a source of income, even if the official also receives dividends or interest from the source.

This would amend §19.44(1)(f) to insert the word "only" before the word "dividends" in that section that provides that an official need not report a source of income from which the official receives dividends or interest.

Reason -- This change clarifies that an official must report an organization that is a source of income, even if the official also receives dividends or interest from the source but need not identify businesses from which the official receives only dividends or interest.

8. Treat a candidate for municipal judge serving two or more municipalities in same way as other candidates for municipal judge.

Currently, candidates for the office of municipal judge are required to file statements of economic interests containing certain information with the Government Accountability Board. Municipal clerks and boards of election commissioners are prohibited from certifying the names of candidates for the office of municipal judge for placement on the ballot at an election until the candidates have complied with this requirement.

Currently, two or more municipalities may create a joint municipal judgeship. In that case, the filing officer or agency that certifies the names of the candidates for placement on the ballot is the county clerk or board of election commissioners of the county having the largest portion of the population within the jurisdiction served by the municipal judge. 2001 Senate Bill 430.

- E. **Bolster Board's investigation and enforcement powers.** Bolster Board's abilities to investigate possible violations of the ethics code and lobbying law and to seek appropriate remedies.

- *1. Extend statute of limitations from 3 to 6 years.

There have been instances in the past in which the Board has not learned of a possible violation of law until 2 or 3 years have passed. Coupled with the fact that a complete investigation may take a year or more, the Board may, and has, lost the ability to prosecute an individual for a violation of law as a result of the current limitation period. This proposal would remedy that situation.

- *2. Eliminate the requirement that the board inform the subject of an investigation of who the board is deposing

This eliminates the requirement, created by 2007 Wis Act 1, that the board inform the subject of an investigation of who the board is deposing. The notice requirement only provides an opportunity for an ill-meaning individual to attempt to improperly influence or intimidate witnesses and serves no legitimate investigative purpose. Such a requirement applies to no other investigative agency of which I am aware.

- *3. Eliminate provisions which provide that civil and criminal actions be brought in the county where the defendant resides.

The evidence and witnesses needed for a prosecution under the Ethics Code, lobbying law, and campaign finance laws are likely to be found in the county where the violation has occurred. In addition, violations of these laws often, if not usually, involve more than one person. The current provisions (1) require multiple trials in different jurisdictions if more than one individual is involved, (2) cause inconveniences to witnesses required to testify, and (3) create difficulties for a district attorney in one county investigating events that occurred in a different jurisdiction. Venue should lie in the county in which a violation has occurred as for other statutory offenses and as was the case for three decades since the creation of the Ethics Code.

4. Amend requirement of notification to a district attorney of a board investigation.

The current provision, that the board notify a district attorney of an investigation, applies only if the board has received a complaint and only if it hires a special investigator. In other instances, there is no such requirement. The requirement creates a bureaucratic step that has little effect or meaning. The board can use its discretion to notify a district attorney of an investigation if the board deems that to be appropriate.

- *5. Enhance Board's authority to make public the findings of its investigations.

Clarify that the preliminary findings and conclusions that the board adopts under §5.05 (2m) (c) 9. are available to the public when the board files a complaint or refers a matter to a district attorney, and not just a notation in the board's meeting minutes. It also accounts for instances in which the board has concluded an investigation and determines that seeking a penalty is not warranted. Investigations that the board terminates before concluding a full investigation remain confidential.

Clarify that communications with employees of a contracted investigator are permitted. This currently is not addressed.

Provide discretion to the board to authorize the release of further information, after an investigation has been concluded, in the exercise of its sound judgment. This exception preserves the confidentiality of an ongoing investigation, but would permit the board's employees to comment on an investigation after its conclusion, but only at the direction of the board.

Eliminate criminal penalty of up to 9 months in jail and a \$10,000 fine on any board member or employee who talks about an investigation except as specifically permitted. In contrast, the maximum civil penalty for a violation of the Ethics Code is \$5,000 and the maximum criminal penalty is 1 year in jail and a \$5,000 fine. At the same time, there is no similar confidentiality restriction on the subject of an investigation or on any witness, nor would such a restriction likely be constitutional. An employee who violates the confidentiality provisions would be subject to discipline as are state employees generally who violate agency rules.

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An Examination of Early Voting in Wisconsin

Guiding Principles and Values

Any proposed transition to early voting in Wisconsin must include at least the following four core policy principals and values:

1. Improving the Wisconsin Voter's Experience
 - An effort to reduce the time required for citizens to early vote.
 - An outline of clear and uniform early vote standards, processes, procedures and guidelines.
2. Voting Integrity
 - A commitment to protect the accuracy, security, and secrecy of the early vote count process.
3. Administrative Efficiency
 - An effort to reduce administrative burdens on local election officials and workers.
 - An effort to control costs so that expenditures are justified by benefits to voters and election officials.
 - A strategic plan for implementation which includes a clear timeline and accurate cost analysis.
4. Balancing Local and State Interests
 - A commitment to respect self-determination and control of elections at the municipal level while making early voting accessible and consistent statewide.
 - A commitment to consult, collaborate with, and seek advice and counsel from local election officials (county and municipal clerks), members of the state legislature, voters, and other concerned and interested parties, elected officials, and advocacy groups.

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An Examination of Early Voting in Wisconsin

Executive Summary

The Government Accountability Board (G.A.B.) has examined the feasibility of implementing early voting in Wisconsin. True early voting allows the elector to complete and cast a ballot immediately by placing it in a tabulation machine. Early voting would significantly reduce the need for absentee applications and envelopes. Benefits and challenges to the implementation of early voting are summarized below.

Objectives

Increase voter satisfaction by reducing lines, maintain integrity of the vote-counting process, relieve the workload of local elections officials, and control costs.

Challenges

Some obvious challenges include identifying funding sources to:

- Maintain municipal-level control of elections while extending early voting to electors uniformly across the state;
- Acquire new tabulating machines that can accommodate multiple ballot styles from an entire city or county, instead of a few wards; and,
- Compensation for additional staff, implementation of electronic poll lists, or a workable substitute.

Background and Best Practices

A study of early voting in other states has produced best practices that should be considered for implementing early voting in Wisconsin. These include:

1. Time Period: Begin early voting about 20 days before an election. End at least 3 days before an election so officials may prepare for Election Day.
2. Hours: Set minimum hours at permanent early vote locations that can be extended at the discretion of election officials. Some Saturday hours should be required and Sunday hours should be optional.
3. Staff: Staff early voting locations similarly to that of polling place locations on Election Day, with a minimum of two election officials.

4. E-Poll List: Electronic poll lists are very helpful because they allow poll workers to immediately mark the poll list when an early vote is cast; thereby, preventing any duplicate voting.
5. Voting Equipment: Studies suggest the best practice is to use Direct Recording Equipment (DRE) systems because they can hold a multiple number of ballot styles, and there is no need for a printed ballot. However, early voting can be adapted to optical scan systems currently in use.
6. Other: Accessibility requirements, electioneering, election observer, and ballot challenges should follow the same rules as on Election Day.

Recommendations

Based on a review of other states' early vote best practices, G.A.B. has identified three viable options to consider for changing pre-Election Day (absentee) voting in Wisconsin.

- **Option A - Regional Districts conduct early voting**: Provides for regional districts consisting of counties and/or municipalities that would offer early voting at designated locations. Municipal, county, or state staff members would organize the machines, staff and supplies necessary. This would provide uniform access for voters interested in early voting, but it would change Wisconsin's tradition of municipal-level control of elections.
- **Option B - Municipalities may opt into early voting as desired**: The municipality's governing body could opt into early voting instead of offering no-excuse absentee voting in the municipal clerk's office. Clerks may choose one or more early voting locations. This would provide maximum flexibility for municipalities, but would not lead to statewide uniformity. With this option, traditional methods of absentee voting will continue, such as by mail, hospitalized, military, and permanent absentee voting for indefinite confined electors.
- **Option C - No true early voting, but absentee voting process is streamlined**: Wisconsin does not change to true early voting, but instead alters and streamlines its absentee requirements. No absentee application would be required. Instead of placing the ballot in an envelope, the ballot would be placed in a secure carrier, to be fed into a voting machine and tabulated on Election Day.

Pilot Program

G.A.B. recommends a pilot early voting program for the April 2010 election. A demonstration would provide valuable information on strategies that work well in Wisconsin's highly decentralized electoral process, and which approaches do not. Pre-testing the early vote concept in select municipalities would also invite voluntary participation by local elections officials and help ameliorate the cost of required equipment and staff.

A pilot program would be based on one of the aforementioned options described. A wide variety of municipalities would be included, i.e., large/small, urban/rural, cities/counties, and towns/villages, etc. G.A.B. staff would oversee the early voting demonstration process, evaluate results, make significant changes to the Statewide Voter Registration System software to

facilitate early voting, and based on the results, recommend changes as necessary. Depending on whether Options A, B, or C was selected, the estimated costs could range between \$398,040 and \$449,100. The details of the fiscal impacts are delineated in the in-depth review and analysis of early voting in Wisconsin.

Dissemination/Communication Plan

G.A.B. will broadly disseminate this examination of early voting and continue to gather input from local election officials and others, including clerks representing large and small populations and a diversity of demographics. G.A.B. will also communicate with elected officials, community partners, and voters directly. Communications will include face-to-face meetings with groups such as the Wisconsin Republican, Democratic, Green, Independent, and Libertarian political parties, the League of Women Voters, the Wisconsin Counties and Towns Associations, and Disability Rights Wisconsin, and others.

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An Examination of Early Voting in Wisconsin

An In-depth Review and Analysis

Introduction

In 2000, Wisconsin changed its absentee voting statutes to allow electors to cast an absentee ballot in the office of their municipal clerk without an excuse. This option is popular with many voters and the percentage of electors who cast their ballot by absentee has increased dramatically. Wisconsin's statutes, however, limit absentee voting to a single site per municipality; thereby, resulting in long lines. Statutes requiring the use of an absentee application and an absentee ballot envelope have also increased the burden of paperwork on clerks, and confusion for the voter. Editorials, elected officials, elections administrators and the voting public have called for the institution of true early voting in Wisconsin.^{1,2,3}

True early voting allows voters to cast ballots early, without absentee applications, and at multiple locations for convenience. This system would shorten lines, lighten the burden of municipal clerks, and reduce spoiled ballots because voters would have a chance to correct some incorrectly marked ballots, since they would be cast immediately. The implementation of early voting also raises issues such as continuing Wisconsin's traditional municipality-based administration of elections; whether current voting machines are up to the task of processing early ballots from an entire city or county; and, how the Statewide Voter Registration System (SVRS) would handle these voters.

The Government Accountability Board's (G.A.B.) staff has studied the feasibility of implementing true early voting in Wisconsin. This review discusses G.A.B.'s objectives, challenges and opportunities for implementing early voting in Wisconsin. Additionally, this review highlights best practices gathered from states that offer early voting. This examination also recommends three viable options for discussion and debate for adapting early voting to Wisconsin. This analysis proposes a pilot program to collect data and identify challenges around implementing early voting.

Issues

The following issues will need to be addressed as true early voting in Wisconsin is considered. This examination of other states' early voting best practices is intended to provide guidance as the public discussion and debate as to whether to institute true early voting in Wisconsin continues.

1. Should the Wisconsin Legislature and Governor adopt legislation to implement true early voting?

2. Assuming early voting is recommended, what sort of legislation would be required to ensure voter convenience while controlling costs and workloads of county and municipal clerks? (Refer to Appendix A for examples).

Definitions

1. **Early Voting**: A voter completes and casts a ballot by placing it in a tabulating machine or other receptacle before Election Day. Ballots are not necessarily counted immediately. No absentee application or envelope is required.
2. **Casting a ballot**: For early voting purposes, casting a ballot means putting a ballot into a tabulating machine or other secured receptacle before Election Day.
3. **Counting ballots**: Counting ballots means using the tabulating machine to determine the total numbers of votes for each candidate or issue.
4. **Absentee In-Person**: Voting absentee in-person means voting by absentee ballot in the clerk's office before Election Day.
5. **Absentee by Mail**: Voting absentee by mail means an absentee ballot is requested by mail, email, or fax, and returned by mail.

Goals that Electors Expect Early Voting to Address

- Increase voter satisfaction by reducing lines in the municipal clerks' offices for voting before and on Election Day.
- Maintain integrity of the vote-counting process by protecting the accuracy, secrecy, and security of ballots and counting methods.
- Relieve the workload on local election officials by reducing the burden of absentee paperwork.
- Control costs so that expenditures are justified by benefits to voters and election officials.

Challenges

Implementation of early voting in Wisconsin raises several practical issues. First, uniform implementation of early voting is made a challenge by Wisconsin's highly decentralized elections system. There are 1850 municipalities in Wisconsin, ranging from large cities to townships to villages, many of which have only a few hundred voters. Small villages and townships may not have the resources to host early voting within the municipality, meaning that early voting sites would have to cover multiple municipalities and be organized at a county or regional level.

Early voting will increase costs for voting machines. Many tabulating machines currently in use are only capable of tabulating a small number of ballot styles. The City of Madison, for example, would need approximately 50 tabulating machines for a citywide early voting site, unless this municipality purchased new tabulators capable of accepting ballots for the entire city. Costs would also increase for staff at early voting sites.

Printing and distributing poll lists and ballots to early voting locations is likely to cause logistical challenges. Using our Statewide Voter Registration System (SVRS) as an electronic poll list is one possibility for addressing some of the logistical challenges, but that would require expensive modifications. Electronic poll lists could possibly require internet access which is not available at many polling sites around the State.

Other issues exist as well. There may be very little time between when printed ballots arrive and when early voting begins, and voting machines must be tested during that time. Security for ballots must be maintained over weeks, rather than a single day. Local election officials and voters would have to be educated in the new early voting procedures.

Background

Absentee voting in general, and in-person absentee voting in particular, has become increasingly popular in Wisconsin since no-excuse absentee voting was implemented prior to the 2000 General Election, culminating with the 2008 General Election. In the last three presidential election years, absentee voting increased from 6.12% of the total vote in 2000 to 12.09% of the total vote in 2004, and to 21.1% of the total vote in 2008.

Of the 2,997,086 voters in the 2008 General Election, a total of 633,610 cast absentee ballots. An estimated 475,649 of those absentee voters cast their ballots in-person, or approximately 16% of all ballots cast. This population of voters may be seen as most likely to participate in early voting. Based on numerous news reports, voters in some locations waited in line for hours to cast absentee ballots, resulting in a lighter than expected turnout and shorter lines on Election Day.

G.A.B.'s staff reviewed studies of early voting procedures in other states and examined best practices. In particular, the question that G.A.B. examined is, if Wisconsin were to pass early voting legislation, how could it best adapt other states' statutes and best practices given Wisconsin's history of Election Day registration and municipal control of elections? G.A.B.'s study includes some background concepts behind early voting, best practices found in several early voting states, and recommendations for adapting early voting to Wisconsin.

1. Positive Impacts of Early Voting

A report from the Caltech/MIT Voting Technology Project strongly recommended early voting in-person as opposed to absentee voting in-person or by mail. The study noted that absentee and mail-in voting present concerns over coercion, because voter privacy may be compromised by family members, or staff at a nursing home, for example. The report also raised concerns about the security of the mail, and potential fraud.⁴ Another concern that the authors acknowledged was the potential for absentee ballots to be more likely to be uncounted, unmarked, or spoiled. However, when the study was completed, it found that absentee ballots may actually be slightly more accurate than ballots cast in-person: "...any correlation between the rate of absentee voting in counties and the rate of uncounted, unmarked, and spoiled ballots in 2000.... was slight and negative."⁵ Finally, the report noted that voting absentee or by mail tended to "eliminate the ceremonial aspects of voting."⁶

The Caltech/MIT Project was glowing in its praise of in-person early voting. It found that “these techniques promise greater administrative control over elections -- not because they simplify elections per se, but because they provide more time for election administrators to handle the increasingly complex problems that arise in running elections.”⁷ It also stated that “[e]arly voting can provide nearly equal convenience with significantly greater controls against fraud and coercion.”⁸

A study entitled “Early Voting and Turnout” touted in-person early voting for “a test-run of new voting machines, relief of Election Day crowds, lower staffing costs, and extra hands-on training opportunities for poll workers.”⁹ It emphasized that early voting (compared to voting on Election Day) has been found to result in a more accurate count (but absentee voting and vote by mail have as well).¹⁰ Other studies have found that early voting can also have a positive psychological impact on the electorate. For example, voters prefer and are happier with the opportunity to vote early (even if it results in longer waits), because they are allowed to choose their time for voting. In Texas, rates of early voting increased from 24% in 1988 to 38% in 2000.¹¹ In Tennessee, the rate went up from 5% in 1994 to over 35% in 2000.¹²

2. Negative Impacts of Early Voting

Many studies noted issues or limitations with the institution of early voting. Hopes of increased turnout do not seem to be borne out by some observation. There is evidence that in-person early voting increases turnout only very slightly, if at all.¹³ Some studies suggest that early voting does not bring new voters to the polls, but may “encourage regular voters to participate in lower intensity contests they might otherwise skip.”¹⁴

Early voting is also not always as convenient or problem-free as it should be or is thought to be. In a study of early voting in Florida in 2004, several technical problems were revealed.¹⁵ First, the use of optical scan machines, in which paper ballots were generated, marked, and fed into a tabulation machine, was very inefficient. Previously, Florida had used Direct Recording Equipment (DRE) because of “the capacity of DREs to produce multiple types of ballots virtually instantaneously”.¹⁶ With optical scan equipment, Florida’s counties found themselves with a choice between “pre-printing and stocking huge quantities of hundreds/thousands of ballot types,”¹⁷ or printing ballots as each voter appeared to vote. They chose to print ballots on site, which required purchase of several additional printers, and each page took “approximately 20-30 seconds compared with 2-3 seconds to prepare the access card for a DRE system.”¹⁸

In addition, some counties’ tabulating equipment required that poll workers manually input the voters’ precinct number, adding between “7-15 seconds.”¹⁹ Some counties found that because their machines “lacked enough memory to store all of the ballot forms needed to address each of the different local issues, only half of the machines at any one site could be used for ballots appropriate for local residents. The remaining machines... [designated for users in the rest of the county]... largely went unused.”²⁰ These practical issues have meant long lines at Florida early vote centers, and an emergency extension of polling place hours in 2008.²¹

3. Early Voting’s Impact on Political Campaigns

Early voting also affects campaigns. Candidates and parties find themselves facing not an Election Day but election weeks. Some argue effort and expense may be wasted if campaigns cannot easily get a list of early voters who no longer need to be contacted. “The results are consistent over time and across each type of reform, early voting reforms increase candidate uncertainty and raise candidate costs. The worst case scenario for campaigns is what already exists in many states and localities: a “mixed” system where large portions of the electorate choose to cast an absentee or early vote and the rest vote on Election Day.”²² But other campaigns, with better information about who has voted, may relish the opportunity to focus on non-voters, or pull early voters into their GOTV activities.²³

Another significant, though rare, result of early voting is its impact on “second-string” campaigns, in which the first candidate dies or is otherwise disqualified, and then replaced. There may be no way for voters to cast an updated ballot if their early vote has already been recorded, whereas an absentee voter in Wisconsin currently may cast a valid ballot on Election Day if the absentee ballot has not been processed.

4. Early Voting Costs

Early voting will cost more. It is very difficult to generalize how much it costs, because different states pay poll workers different amounts, have different hours, and a different number of locations. One study found that “early voting required considerably more staffing than traditional precinct voting.”²⁴ States and localities with outmoded voting machines may have to purchase new ones capable of processing dozens or hundreds of different ballot styles; some states already have equipment able to do this. Electronic poll lists may be required for larger counties and municipalities. Studies confirm that early in-person voting and liberalized absentee balloting do not clearly result in cost saving.”²⁵

Early Vote States- Best Practices

The initial assessment of early voting incorporates several academic studies on early voting and comparisons of early voting procedures in several states. From these sources, we have selected the best practices and envisioned how these practices could be implemented in Wisconsin.

1. **Period:** Generally in other states early voting starts between 45 and 15 days before an election, and ends 5 to 3 days before an election. We found that the very best practice is to begin early voting 20 days before an election, or the day after Wisconsin’s close of early voter registration. Early voting should end at least 3 days before an election in order for clerks to process early ballots, update poll lists, and prepare for Election Day.
2. **Hours:** Current statutes regarding absentee voting do not specify required hours which have led to widely varying opportunities for absentee voting based solely on the availability or willingness of the municipal clerk to accommodate it. Generally hours for early voting locations include regular business hours, but temporary locations can have varying hours depending on the clerk’s discretion. Saturday hours are usually included. The best practice we found is to set minimum hours at permanent early vote locations that can be extended upon the clerks’ discretion. Some Saturday hours should be required and Sunday hours should be optional. The hours of operation for temporary locations should be up to the clerk.

3. Staff: Most states leave staffing up to the clerks' discretion. The best practice we found is to staff early vote locations similarly to that of polling place locations on Election Day, with a minimum of 2 poll workers. If parties designate poll workers, then at least one poll worker from each major party should be used.
4. Same Day Registration: None of the early vote states we surveyed have same day registration. However, the best practice for Wisconsin is to continue to allow same day registration at all early vote locations. By applying same day registration to early voting, Wisconsin continues its tradition of allowing late registration at the municipal clerk's office twenty days before an election. Same day registration will require a little more time to identify voters' correct ballot styles, as voters may be registering from several different wards or municipalities. There is also a security concern that voters could register more than once at multiple early voting locations, but this same risk exists with Election Day registration, and double-voting has proven extremely rare in Wisconsin.
5. E-Poll List: Five out of the seven states we surveyed use electronic poll lists in some or all of their early vote locations. This is very helpful because the use of electronic poll lists allows poll workers to immediately mark the poll list when an early vote is cast; thereby, preventing any duplicate voting on Election Day. It also saves clerks from printing and distributing an immense amount of paper.
6. Voting Equipment: Most states use a mixture of optical scans, paper ballots and DRE systems. It is the G.A.B.'s position that using DRE systems with a paper audit trail is the best practice because the DRE systems can hold an unlimited number of ballot styles and there is no need for a printed ballot.
7. Security: No early vote states surveyed allowed voters that use the early voting option to also vote on Election Day. Some states do not tabulate early vote ballots until Election Day, while others have set standards in place for tabulating early vote ballots before the election. States that do tabulate early have provisions that restrict releasing results before Election Day. Studies show the best practice is to restrict early voters from receiving a second ballot on Election Day, and wait to tabulate results until Election Day.
8. Secrecy: A good example of possible ballot secrecy issues arose in Nevada, which reports early voting returns separately unless a precinct has fewer than ten votes cast. The best practice we found is to always combine early vote returns with Election Day returns in order to continue giving priority to the secrecy of the ballot. However, there is some academic interest in seeing returns reported separately.
9. Accessibility: Other states have a variety of special measures to insure accessibility to older voters, and voters with disabilities. New Mexico and Nevada also have language interpreter requirements, and New Mexico has mobile vote locations. Generally, the best practice we found is to apply the same accessibility standards on Election Day and during early voting.
10. Other: Other best practices include making electioneering, election observer, and ballot challenges follow the same rules as on Election Day, scaling the number of early vote locations by voter population, and posting the names of early voters online.

Recommendations

Based on the aforementioned best practices, G.A.B. developed recommendations for public discussion and consideration. G.A.B. has explored three options for implementing early voting in Wisconsin. Both Options A and B would implement true early voting in Wisconsin. Option C would modify the State's existing absentee in-person voting policies and practices.

First, presented are core early voting guidelines that would be incorporated in both Options A and B. Then, details of all three options are discussed.

Core Early Voting Guidelines

1. Early voting would run from the 3rd Thursday before the election (the day after close of registration) until the Friday before the election. No early voting or in-person absentee voting would be allowed after that Friday.
2. Early vote locations would be open from 7am to 8pm on weekdays. Weekday hours could be extended and weekend hours could be added at the discretion of the appropriate election officials.
3. Early vote locations would be designated by local election officials, 60 days before the September/November elections or 30 days before the February/April elections, with appropriate provisions to add or change a location in order to accommodate last minute emergencies such as flooding, street repairs, heating problems, or security threats.
4. New poll list functionality would be added to enable early voting. One option is to make on-line electronic poll lists available through the SVRS software. This will require extensive technical development of the SVRS software (as further described in the recommend Pilot Program below). Early voters' participation would be marked in SVRS, and poll lists printed for Election Day would note that the voter had already voted.

Another option is to have poll workers use a spreadsheet program to create an electronic supplemental poll list at early voting locations. This list would include the voters name, address, and other information as required. Supplemental lists would then be alphabetized and distributed to Election Day polling places.

5. Early vote locations would meet the same accessibility, staffing, and training requirements as Election Day polling places.
6. Statutes and rules on challenging electors, election inspectors, and electioneering would be the same. However, no provisional balloting would be allowed until Election Day.
7. A list of early voters, like the list of absentee voters, would be made public by statute (see Wis. Stats. §6.89). The best practice is to put a list of all early voters on-line, which could serve as a deterrent against voter fraud and help candidates focus their efforts in reaching the electorate.

Option A: Regional Early Voting Districts

Early vote statutes would provide for regional districts consisting of counties and/or municipalities that would offer early voting at designated locations. Municipal, county, or state staff members would organize the machines, staff and supplies necessary. This would provide uniform access for voters interested in early voting. However, for the first time, it would encourage greater sharing of pre-Election Day election administration responsibilities and duties between local and county clerks.

Option A Guidelines:

1. Option A would implement all of the core guidelines listed above.
2. County staffers rather than local municipal officials would administer pre-Election Day procedures.
3. Early vote locations would be staffed by a minimum of 2 poll workers who reside within the regional district.
4. Regional districts would count early ballots on Election Day, by central count. Totals would be forwarded to reporting units for combined reporting on Election Day.

Option B: Municipalities May Opt into Early Voting as Desired

The early voting statutes would state that the municipality's governing body could opt into early voting instead of offering no-excuse absentee voting in the clerk's office. Clerks may choose one or more early vote locations, and the clerk's office may be included, but is not required to be. This would provide maximum flexibility for municipalities, but would not place a priority on statewide uniformity, possibly leading to some confusion and an impression of a patchwork approach.

Option B Guidelines:

1. Option B would implement all of the core guidelines listed above.
2. Early vote locations would be staffed by a minimum of 2 poll workers, and clerks could deputize staff members who do not live in their municipality.
3. Municipalities would count early ballots on Election Day, by central count. Totals would be forwarded to reporting units for combined reporting on Election Day.

Option C: No Early Voting, but Absentee Voting Process is Streamlined

Wisconsin does not change to true early voting. Instead, Wis.Stats. §6.855, the statute covering alternate absentee ballot sites, is changed to allow absentee voting in multiple locations. No absentee application would be required. Instead of placing the ballot in an envelope, the ballot would be placed in a secure carrier, to be fed into a voting machine and tabulated on Election Day. SVRS would also need to be altered to allow for easier absentee processing which may involve additional costs to upgrade current software.

Option C Guidelines:

1. Option C would not implement true early voting, so the core guidelines listed would not apply.
2. Instead, a more streamlined absentee voting process would be in place from the 3rd Thursday before the election (the day after close of registration) until Monday, the day before Election Day. Currently, absentee voting can begin up to 30 days before the election. In practice, this is inconsistently implemented because municipalities receive their printed ballots at different times and may even receive them less than 30 days before the election.
3. Absentee vote locations would be open during business hours. Hours could be extended at the discretion of the municipality. The current statute limits absentee voting to when the clerk's office is open, which can vary widely throughout the state. For example, during the 2008 Presidential Election, some part-time municipal clerks' offices were open only for very limited hours, leading to different opportunities to vote depending upon location.
4. Locations would be designated by the municipal clerk, 60 days before the September/November elections, or 30 days before the February/April elections, with appropriate provisions to add or change a location in order to accommodate last minute emergencies. Clerks may choose one or more absentee early vote locations, and the clerk's office may be included but is not required to be. The current statute limits each municipality to one site, which may or may not be the clerk's office.
5. Absentee vote locations would meet the same accessibility requirements as Election Day polling places.
6. In-person absentee voters would not be required to fill out an absentee application. Instead, an electronic list of all voters who have cast an absentee ballot will be maintained on site. This list will be alphabetized and distributed to polling places on Election Day. Poll workers would be required to check the absentee vote list before allowing anyone to vote on Election Day.
7. Once ballots are voted and returned to municipal staff, instead of being placed in an absentee envelope, they would be placed in a sealed and secured ballot box. The boxes would be transported to the central count facility or polling place and opened on Election Day.

Pilot Program

In order to address questions, identify issues, and plan for a statewide implementation of early voting, we recommend the State conduct an early voting pilot program for the April 2010 Spring Election, which would invite voluntary participation by local elections officials and help ameliorate the cost of required equipment and staff. A pilot program would involve one or more of the early vote options described above. Municipalities of varying sizes and population densities would be included. Municipalities with a high percentage of absentee early voting and a variety of voting equipment would also be included. Another consideration

will be whether the municipalities' elections are run by the municipal clerk, an elections commission, with county involvement, or shared between respective participating local election officials.

The cost of the pilot program will vary depending on which proposed early vote option recommendation is chosen, and the number of early voting sites. Preliminary rough estimates of the costs of a pilot program for each option are as follows. Note however, we are not recommending that the G.A.B. absorb any of the elections costs currently incurred and borne by municipalities, specifically expenditures for ballot printing, staffing (including poll workers) or voting systems acquisitions. G.A.B. is not in a financial position to assume these costs.

| Costs | Option A | Option B | Option C |
|-------------------------------------|-----------------------------|-----------------------------|-----------------------------|
| Voting Equipment | \$6,000 per location (5) | \$6,000 per location (5) | \$0 |
| Staff | \$7,020 per location (5) | \$7,020 per location (5) | \$7,020 per location (2) |
| Software Development/New Technology | \$384,000 | \$384,000 | \$384,000 |
| Estimated Total | \$449,100 | \$449,100 | \$398,040 |

Option A:

We have estimated costs that would be absorbed by municipalities if a pilot program for Option A were implemented, utilizing 5 early voting sites.

1. Each site would require a new tabulating machine, costing roughly \$6,000.
2. Each site would incur staff costs of up to \$7,020, computed using 15 days of early voting, 2 election officials, 13 hours a day, and a \$12 per hour pay rate.
3. If electronic poll lists are used, laptops and internet access would be required, but the G.A.B. currently has enough training laptops to conduct a pilot program.

Anticipated G.A.B. Costs: Modifications to SVRS would be the most costly item. Extensive modification of the SVRS software code would require up to 6 months of dedicated work by 3 technical staff members. This would amount to roughly \$384,000, not including the time dedicated by other GAB staff to design and test the necessary changes. Total cost would be roughly \$449,100.

Option B:

Although a pilot program for Option B would be based in municipalities rather than at a county or regional level as in Option A, pilot costs would be similar, costs that would be absorbed by municipalities if a pilot program for Option B were implemented, utilizing 5 early voting sites, actual statewide implementation of Option B would be much less than Option A.

1. We have again utilized 5 early voting sites.

2. Tabulating machines would be roughly \$6,000 per site, and staff costs would be roughly 7,020 per site.

Anticipated G.A.B. Costs: Modifications to SVRS would again amount to roughly \$384,000. Total cost would be roughly \$449,100.

Option C:

Since Option C simply alters the current absentee in-person voting process, no additional tabulating machines would be required for a pilot program.

1. Most municipalities would continue to conduct absentee voting in the clerk's office, so additional staff would not be required.
2. Budgeting for a minimum of two absentee voting locations, have been included as part of this analysis. Larger municipalities, however, may choose to conduct voting in more than one location and the pilot program should include one or two of these cities.
4. The staff cost to be absorbed by municipalities would amount to approximately \$14,040.

Anticipated G.A.B. Costs: Although the changes to the software would be different, the cost of modifying the SVRS would remain at roughly \$384,000. Total cost would be roughly \$398,040.

Dissemination/Communication Plan

G.A.B. will continue to actively gather comment, feedback and input from (including but not limited to):

- Local election officials around the State, including Municipal and County Clerks representing large/small and urban/rural populations and diverse demographics;
- Wisconsin Electorate (the public);
- Statewide Elected Officials;
- Community Partners;
- Wisconsin Ballot Political Parties, i.e., Republican Party of Wisconsin; Democratic Party of Wisconsin; and, Green and Libertarian Parties of Wisconsin;
- Wisconsin Counties and Towns Associations; League of Wisconsin Municipalities and the Wisconsin Alliance of Cities; and,
- League of Women Voters, and other interested and concerned individuals and groups.

Footnotes

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⁵ "Voting: What Is, What Could Be," 40.

⁶ "Voting: What Is, What Could Be," 39.

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⁹ Gronke, Paul, Eva Galanes-Rosenbaum, and Peter Miller, "Early Voting and Turnout." *PS: Political Science and Politics* XL (4) 2007, 8.

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¹⁵ McCormack, Conny B., "Florida's Transition from Touch Screens to Op Scan Paper Ballots for Early Voting – A Snapshot Review in Two Counties," Prepared for Pew Charitable Trusts' Make Voting Work Initiative, 23 Sep. 2008.

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²² Gronke, Paul, "Early Voting Reforms and American Elections," 12.

²³ Gronke et al., "Early Voting in Florida, 2004," 3.

²⁴ Gronke et al., "Early Voting in Florida, 2004," 6.

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Addendum A

Potential Changes to Wisconsin Statutes for Early Voting

Following is a working draft, listing select statutory changes that would be required if early voting were to be adopted in Wisconsin.

- §5.02 requires a new definition for early voting, change to definitions of municipality and municipal clerk for early voting purposes. New definition for poll list for early voting. “Election day shall include early voting dates only when specified.” “Ward or election district,” for early voting purposes, shall include all districts who report to the same polling place for early voting.
- §5.15 (6) needs a new section describing how early voting locations are to be selected and publicized.
- §5.55 specifies that non-voting machine ballots include the name of the polling place (which would potentially result in two sets of ballots).
- §5.84 and §10.66(4)(gm); (etc) would have to move testing of electronic voting equipment to 10 days before early voting begins.
- §5.85 and §5.89 may need alteration if early ballots are tallied before Election Day. (And §6.88 may have to be altered if absentee ballots are to be tallied before Election Day).
- §6.15(6) and §6.21 cover how to deal with absentee/presidential only ballots if the elector dies before Election Day. If ballots are counted, these would need to be altered.
- §6.15(d)(2) and other statutes would be affected, depending upon whether or not returned absentee ballots could be processed in the early vote count.
- §6.29 would need another section covering registration at early voting sites.
- §6.36 would require a new section about electronic poll lists or a change to subsection (2) about the registration list prepared for use as a poll list.
- §6.45(1m) specifies that the registration list at the polling place be open for public inspection. If SVRS is used for this, it cannot be open to public inspection. VPA might work, but a space would need to be added for ID Required and an Absentee watermark.
- §6.76 currently gives voter 3 hours off “while polls are open,” which should be restricted to Election Day.
- §6.79 includes a provision for electronic poll lists, but the current configuration of SVRS makes subsection (4) (entry of proof of residence information) difficult to comply with.
- Under §6.79(6) confidential electors could only be found by name, not confidential number. This has been identified as a bug in SVRS, but would need to be fixed. It is not a problem with paper poll lists.

- §6.86(1)(b) (in-person application for absentee ballot) would have to be changed if the deadline for absentee/early voting is moved to Saturday before Election Day, and §6.875(6) would also be affected (nursing home absentee voting).
- §6.97 would allow provisional balloting only on Election Day and not during early voting, as an early voter without proof of residence would have the opportunity to return another day.
- §§7.08 to 7.15 (duties of G.A.B., county clerks, and municipal clerks) may have to be altered to allow early voting to be administered by county or regional staff.
- §7.25(6) would have to be adjusted if early voting machines would not have to be zeroed out each day. §7.37(3) similarly would be revised to address emptying of the ballot boxes for early voting.
- §7.30(2) may need to be revised to allow more than 2 exceptions to the non-residency requirement for poll workers.
- §7.41 should explicitly state that observers are welcome at early voting locations.
- §7.51 should require canvassing procedures to be followed after close of polls for early voting, except that tally sheets should be certified by reporting unit and forwarded to the correct polling places (modification of §7.51(4)), along with supplemental poll lists of everyone who voted. If canvassing of absentee ballots takes place before Election Day, §7.52 may also have to be modified.
- §8.35(3) and (4) would require a provision that if a death and renomination occur after early ballots have been cast, there will be no opportunity to vote another ballot, and votes will be counted as cast by early voters.
- §10.01(2)(e) should specify that notices regarding early voting should must either be combined with the Type E notice, or given in a separate notice, Type F.
- §§10.01(2)(b) and (c) and (d); §10.04(3); §10.06; should require publication dates for Type B, C, and D notices to be moved up to the day before early voting, instead of the day before the election, and possibly require these notices to be reposted before Election Day.
- §§10.62 to 10.82 would require changes to add commencement of early voting, change dates for testing voting equipment to 10 days before early voting, change dates for posting and publishing notices to before early voting occurs.
- §12.07(2) should specify whether the requirement that employers must allow an employee to serve as an election official applies only on Election Day, or to early voting days as well.

State of Wisconsin \ Government Accountability Board

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JUDGE MICHAEL BRENNAN
Chairperson

KEVIN J. KENNEDY
Director and General Counsel

DATE: For March 30, 2009 Board Meeting
TO: Government Accountability Board
FROM: Jonathan Becker
SUBJECT: Procedures for review of Guidelines

The Government Accountability Board has completed its statutory review of all Guidelines promulgated by the former Ethics Board. The Board has approved those Guidelines on an interim basis but has agreed to revisit and re-examine the Guidelines more thoroughly on an on-going basis. Attached is a list of all current Guidelines in effect.

I believe the process for review of each Guideline should be (1) a re-examination by staff for conformity with statutes and Board opinions; (2) a review for clarity and conciseness; (3) editing as needed; (4) circulation of Guideline to stakeholders; (5) review and incorporation, as appropriate, of stakeholder suggestions; (5) proposed Guideline presented to Board together with old Guideline for consideration at Board meeting; (6) receipt of public comment at Board meeting; (7) adoption by Board or direction to staff to make changes and return to Board for adoption at next meeting. This process should also be followed for new Guidelines.

I have also attached two Guidelines adopted by the Government Accountability Board and their counterparts from the Milwaukee County Ethics Board for comparison. While State law may be more complex, it seems to me that the Milwaukee approach offers more clarity and certainty. We should keep this approach in mind as we examine our Guidelines. We want to create Guidelines that cover narrower areas in order to achieve greater conciseness.

I propose that we begin the re-examination process now, and continue the process on a regular basis, so that we can come back to the Board at each meeting with two or three revised Guidelines.

State of Wisconsin \ Government Accountability Board

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Wisconsin Government Accountability Board

*For legislators, legislative employees, and executive branch officers
elected in state-wide elections*

Officials' receipt of food, drink, favors, services, etc.

ITEMS SPECIFICALLY AUTHORIZED

Consistent with the statutes administered by the Government Accountability Board, *an elected state official or legislative employee may accept and retain:*

FROM ANY ORGANIZATION (EVEN A LOBBYING ORGANIZATION):

a. **EXPENSES FOR TALKS AND PROGRAMS.**

Payment or reimbursement by a meeting's sponsor of expenses an official or employee incurs for presenting a talk or program about state issues (including meal and travel costs)¹ [§ 19.56(3)(a)];

b. **ITEMS AND SERVICES MADE AVAILABLE TO THE GENERAL PUBLIC ON THE SAME TERMS.**

Food, drink, transportation, lodging, items, and services at the same price, if any, charged others, when each of the following applies:

(i) the admission, items, or services are available to anyone who wants them at the same price;

(ii) the official is not given a preference or advantage in obtaining the items; and

(iii) there is no offer or notice of the event, item, or service directed to an official that would confer an advantage to the official. [§ 13.625(2), *Wisconsin Statutes*];

c. **FOOD AND DRINK THAT THE OFFICIAL PURCHASES AT AN EVENT INTENDED FOR AND CONDUCTIVE TO THE DISCUSSION OF STATE GOVERNMENTAL PROCESSES, PROPOSALS, OR ISSUES.**

Food and drink that an official purchases at an event intended for and conducive to the discussion of state governmental processes, proposals, or issues if the official pays the highest of (i) the price charged others; (ii) the food and drink's true value, or (iii) the sponsor's cost;²

d. **EXPENSES PROVIDED BY OR TO THE STATE.**

Food, drink, transportation, lodging, or payment or reimbursement of costs that the official can clearly and convincingly demonstrate are provided by or on behalf of the state and primarily for the state's benefit, not for a private benefit³ [§ 19.56(3)(c)]; and

e. **INFORMATION.**

Informational materials of unexceptional value [§§ 13.625(6t) and 19.45(2)].

FROM AN INDIVIDUAL OR ORGANIZATION OTHER THAN A LOBBYIST OR LOBBYING ORGANIZATION:

f. **ITEMS AND SERVICES UNRELATED TO PUBLIC POSITION.**

Food, drink, transportation, lodging, items, and services which the recipient can clearly demonstrate are received for a reason unrelated to the recipient's holding or having held *any* public position [§§ 19.45(3m) and 19.56(3)(b), *Wisconsin Statutes*];

g. **ITEMS AND SERVICES FOR WHICH THE RECIPIENT PAYS THE FULL COST.**

Food, drink, transportation, lodging, items, and services if the official pays either (a) the price charged all others, if the event is open to the general public, or (b) the highest of (i) the price charged others; (ii) the item's or service's true value, or (iii) the furnisher's cost [§§ 19.45(3m) and 19.56(3)(b) *Wisconsin Statutes*];

h. **ITEMS, SERVICES, AND REIMBURSEMENTS FROM CAMPAIGN COMMITTEES.**

Services, items, and reimbursements from campaign committees as permitted and reported under campaign finance laws [§ 19.56(3)(d)].

¹ In addition to expenses, an elected state official may also accept reasonable compensation for a talk from the organizer of an event, as long as the organizer is not a lobbyist or lobbying organization.

² Minutes, open session, Government Accountability Board, March 8, 1995.

³ Normally, in the case of a legislator, the certification of the committee or organization or the presiding officer of the appropriate house of the legislature that attendance at the event and the receipt of items is primarily for the benefit of the state, not for a private benefit.

This is a guide. For authoritative information consult Wisconsin Statutes.

Wisconsin Government Accountability Board

*For legislators, legislative employees, and executive branch officers
elected in state-wide elections*

Restraints on officials' receipt of food, drink, favors, services, etc.

STATUTORY RESTRAINTS

Except as noted on the other side of the page, *an elected state official or legislative employee should not accept:*

1. TRANSPORTATION, TRAVELING ACCOMMODATIONS, OR COMMUNICATION SERVICES.

Discounted transportation or traveling accommodation for which the supplier would usually charge [§946.11; Art. 13, §11, Const.].

2. ITEMS OR SERVICES FROM LOBBYISTS.

Food, drink, transportation, lodging, employment, or any other thing of pecuniary value from a lobbyist⁴, either directly or through an agent [§ 13.625(1)-(3)];

3. ITEMS OR SERVICES FROM ORGANIZATIONS THAT EMPLOY LOBBYISTS.

Food, drink, transportation, lodging, employment, or any other thing of pecuniary value from an organization that employs a lobbyist unless also made available to the general public on like terms and conditions⁵ [§ 13.625(2)]; and

4. FOOD, DRINK, OR TRAVEL OFFERED FOR A REASON RELATED TO HOLDING ANY PUBLIC POSITION.

Food, drink, transportation, or lodging offered for a reason related to the recipient's holding or having held any public position. [§§ 19.45(3m) and 19.56(3)(b)];

5. OTHER ITEMS OR SERVICES OFFERED BECAUSE OF STATE POSITION.

Any item or service of more than nominal value offered because of the person's holding a state public office [§ 19.45(2), *Wisconsin Statutes*];⁶

6. REWARDS FOR OFFICIAL ACTION.

Anything of value that could reasonably be considered as a reward for the official's action or inaction [§ 19.45(3), *Wisconsin Statutes*];

7. ITEMS AND SERVICES THAT COULD INFLUENCE OFFICIAL ACTION.

Anything of value that could reasonably be expected to influence the state public official's vote, official actions or judgment [§ 19.45(3), *Wisconsin Statutes*].

See other side 

⁴ Unless the lobbyist and recipient are married to each other, are engaged to be married, reside in the same household, or are close relatives [§ 13.625(6)].

⁵ In the case of an official who also holds an *elected* position in a local government that employs a lobbyist, the local government may furnish the individual anything it normally furnishes to its other similarly situated elected officials. [§ 13.625(6g)(a)] If an official is *appointed* to a local government position compatible with the state position, the local government may furnish the individual a per diem or reimbursement of expenses up to the amount furnished to its other similarly situated elected officials. [§ 13.625(6g)(b)]

⁶ For more detailed information about **attending conferences, seminars, and receptions**, see Government Accountability Board Guideline Eth 222.



Milwaukee County Ethics Board



Gifts and Services



County officials and employees are prohibited from using their public position to obtain financial gain or anything of substantial value. County officials and employees are also prohibited from accepting and retaining anything of value that could reasonably be expected to influence their actions or judgment or be considered a reward for official action or inaction. (§ 9.05(2)).

To avoid any potential Ethics Code violations, county officials and employees should not accept any items, gifts or services offered because of their public position. County officials and employees should also

decline any items, gifts or services which could influence their actions or judgment or be construed as a reward.

If a county official or employee receives an item or gift not authorized by the Ethics Code, the official or employee must return it or give it to their supervisor or department head. If the official or employee is required to file a Statement of Economic Interests, the item must be reported. (§ 9.14(4)).

 **Milwaukee County Ethics Board** 
Food and Drink

County officials and employees are prohibited from using their public position to obtain financial gain or anything of value that could reasonably be expected to influence their actions or judgment or be considered a reward for official action or inaction. (§ 9.05(2)). Therefore, county officials and employees may not accept food or drink, including dinner invitations, which could be expected to influence their actions or judgment.



However, county officials and employees may accept food and drink offered for a reason unrelated to their public position and which could not reasonably be expected to influence their official vote or action. In addition, county officials and employees are not prohibited from accepting food and beverage offered coincidentally with a talk or meeting. (§ 9.14(1)).

Generally, any food or beverage with a combined pecuniary value exceeding \$50.00 must be reported on an individual's Statement of Economic Interests. But, if food or beverage is offered coincidentally with a talk or meeting that a county official or employee is attending in his or her official capacity, the value of that food or beverage does not need to be reported on his or her Statement of Economic Interests.

Expenses and compensation for talks

Wisconsin Statutes encourage every state public official to meet with clubs, conventions, special interest groups, political groups, school groups and other gatherings to discuss and to interpret:

1. legislative, administrative, executive or judicial processes and proposals AND
2. issues initiated by or affecting the legislature, the university of Wisconsin system, an authority or public corporation created and regulated by the legislature an office, department, independent agency or legislative service agency, technical college district, constitutional office, or the judicial branch. [§§ 19.42 (5) and 19.56 (1), *Wisconsin Statutes*]

EXPENSES

For the presentation of a talk about the types of processes, proposals, and issues just described, a state public official may receive and retain reimbursement or payment of actual and reasonable expenses that are paid or arranged by the event's organizer. [§19.56 (3) (a), *Wisconsin Statutes*]

COMPENSATION

APPOINTED OFFICIALS: An appointed state public official may not retain compensation for presenting a talk related to the official's state position [§19.45 (2), *Wisconsin Statutes*]

ELECTED OFFICIALS: For the presentation of a talk about the types of processes, proposals, and issues described above, an elected state official may retain **reasonable compensation** paid or arranged by the event's organizer if:

- The official prepares and presents the talk without more than incidental reliance upon the state's time, facilities, supplies, or services not generally available to any one [§19.56 (3), *Wisconsin Statutes*]; AND
- The payment is provided neither by a lobbyist nor by a business, or organization, or local government that employs a lobbyist [§13.625 (1) and (2), *Wisconsin Statutes*]

"**Compensation**" refers not only to an honorarium of cash or its equivalent but also gifts, tickets, entertainment and the like and to the payment or reimbursement of travel, lodging, meals, et cetera for an official's spouse or guest.

Barring unusual circumstances, the Government Accountability Board presumes that compensation of \$100 or less for a talk is reasonable. Compensation in excess of that amount may or may not be reasonable depending upon the totality of the circumstances. The Board considers case by case the reasonableness of payments that substantially exceed \$100. Factors the Board may take into account in assessing a payment's reasonableness include: the payer's relationship to the official's public position; the amount of preparation required for the presentation; the compensation the sponsoring organization provided to other participants who were not state officials; the relative importance of the presentation; and the official's history of commanding speaking fees prior to taking public office.

DISPOSITION OF GIFTS AND PAYMENTS THAT MAY NOT BE RETAINED. If a state official receives cash or a gift that the official may not keep, the official should, if practical, convey it to the agency with which the official is associated, or, in the case of a justice or judge, to the director of state courts. If this is not practical, the official may either return it or its equivalent or give it to a charitable organization other than one with which the official is associated. [§19.56 (3), *Wisconsin Statutes*] See also Government Accountability Board Publication Eth 235 – Disposition of Gifts.

REPORTING PAYMENTS FOR TALKS

When a public official accepts travel, meals, food, lodging, reimbursement of expenses, or compensation valued at more than \$50 (exclusive of a meal coincident with the talk) for presenting a talk or participating in a meeting, then the official must identify the payer, the circumstances for which the payment was made, and the approximate value either on his or her annual Statement of Economic Interests or by a separate letter to the Government Accountability Board. An official should report that information even if all or part of the payment is donated to charity or to a state institution. [§19.56 (2), *Wisconsin Statutes*]

This is a guide. For authoritative information consult Wisconsin Statutes.



Milwaukee County Ethics Board



Honorariums and Speeches

County officials and employees may receive and retain compensation for speeches, publications, etc., but only if the activity or publication is accomplished by the official or employee without the use of the county's time, resources or property and outside the course of his or her official duties. (§ 9.14(3)).

If a county official or employee receives a payment not authorized by the Ethics Code, the official or employee must return it or deposit that payment in the county's general revenue fund. If the official or employee is required to file a Statement of Economic Interests, the payment must be reported. (§ 9.14(4)).



Tickets and access to skyboxes and other premium areas

1. *For state and local government officials*

Neither a state public official nor a local public official should accept or purchase a ticket or admission to an event or access to a loge, skybox, or other premium area unless the official can clearly and convincingly demonstrate that:

- The transaction is not prohibited under sections 2, 3, or 4 below; AND
- The ticket, admission, or access cannot reasonably be expected to influence the official's vote, official actions or judgment, and can not reasonably be considered as a reward for any official action or inaction on the part of the official; AND EITHER
- The ticket, admission, or access is offered for a reason unrelated to the official's holding or having held a public office; OR
- The ticket, admission, or access is available to the general public on the same terms and conditions. [§§19.45(2); 19.59(1)(a)]

2. *Additional restriction in situation involving a state official and an organization that employs a lobbyist*

An organization that employs a lobbyist should not give, furnish, or even sell, or arrange for another to give, furnish, or sell to an elected state official, legislative employee, candidate for state office, or agency official a ticket or admission to an event or access to a loge, skybox, or other premium area unless the ticket, admission, or access is available to the general public on the same terms and conditions. [§13.625(2)]

An elected state official, legislative employee, candidate for state office, or agency official should not accept or even purchase from an organization that employs a lobbyist a ticket or admission to an event or access to a loge, skybox, or other premium area unless the ticket, admission, or access is available to the general public on the same terms and conditions. [§13.625(3)]

3. *Additional restriction in situation involving a state official and a lobbyist*

A lobbyist should not give, furnish, or even sell, or arrange for another to give, furnish, or sell to an elected state official, legislative employee, candidate for state office, or agency official a ticket or admission to an event or access to a loge, skybox, or other premium area. [§13.625(1)(b)]

An elected state official, legislative employee, candidate for state office, or agency official should not accept or even purchase from a lobbyist a ticket or admission to an event or access to a loge, skybox, or other premium area. [§13.625(3)]

4. *Additional restriction for University of Wisconsin System athletic events*

A complimentary or reduced price ticket must be permitted by rules of intercollegiate athletic conferences of the institution participating in the event and approved by the chancellor.[§36.39]

See other side 

This is a guide. For authoritative information consult Wisconsin Statutes.

Prepared by the Wisconsin Government Accountability Board, 44 E. Mifflin St., Suite 601, Madison, WI 53703 (608) 266-8123

Website: <http://ethics.state.wi.us> Created December 2001. Rev. 12/06. Obtain updated edition after February 2008.

Eth 220

Limited exceptions to the preceding restrictions

Substantive or ceremonial governmental responsibilities. An individual or organization may provide admission to or accommodation at an event and a state or local public official may attend an event without payment or on terms not available to the general public to the extent that the official's participation in the event is clearly and convincingly for the benefit primarily of the state or a local government as demonstrated by the official's furtherance of a substantial, well-articulated governmental purpose or prominent, public ceremonial activity appropriate to the official's government office and any private benefit is merely incidental to the government purpose. [§19.56(3)(c)]

Ticket of no pecuniary value. In the unusual circumstance in which a ticket, admission, or access is without pecuniary value, a government official may accept it and a lobbyist and an organization that employs a lobbyist may furnish it.

Restriction concerning admission to certain stadiums

An individual serving in one of the following positions should not accept a discount (including a discount on the use of a skybox or private luxury box) on the price of admission or parking charged to members of the general public at Miller Park in Milwaukee or Lambeau Field in Green Bay: for the United States, the offices of president, vice president, senator, and representative in Congress; for the state of Wisconsin, the offices of governor, lieutenant governor, secretary of state, state treasurer, attorney general, justice of the supreme court, court of appeals judge, circuit court judge, state senator, state representative to the Assembly, and district attorney; for Wisconsin's local governments, any elected office.* [§19.451]

Reporting receipt of ticket or admission

An official, when filing a Statement of Economic Interests with the Government Accountability Board, must identify in the Statement each organization or individual (other than a family member) that gave the official a ticket or admission valued at more than \$50 during the prior year. Unless the official returned the ticket or admission unused to the donor, the official should identify the donor on the Statement even if the official has redirected the ticket or admission to another person, organization, or office or agency or has applied it to the benefit of the state or a local government.

* This restraint applies to any professional sports stadium exempt from general property taxes under §70.11(36), *Wisconsin Statutes*.



Milwaukee County Ethics Board



Tickets and Special Access



County officials and employees are prohibited from using their public position to obtain financial gain or anything of value that could reasonably be expected to influence their actions or judgment or be considered a reward for official action or inaction. (§ 9.05(2)).

“Anything of value” is defined as any money or property, favor, service, payment, advance, forbearance, loan, or promise of future employment, business, or other

consideration having a value greater than \$25.00. (§ 9.02(1)).

Therefore, county officials and employees generally should not accept tickets or special access to events unless the official or employee can demonstrate that the ticket is unrelated to the person’s position with the county, or unless the ticket or access is offered to the general public on the same terms and conditions.

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JUDGE MICHAEL BRENNAN
Chairperson

KEVIN J. KENNEDY
Director and General Counsel

MEMORANDUM

DATE: For the March 30-31, 2009 Meeting

TO: Members, Wisconsin Government Accountability Board

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

Prepared and Presented by:
Shane W. Falk, Staff Counsel

SUBJECT: GAB ch. 7, Wis. Adm. Code, and Voting Systems Approval

BACKGROUND

Currently, for initial approval of an electronic voting system for use in Wisconsin, ch. GAB 7, Wis. Adm. Code, requires "reports from an independent testing authority accredited by NASED (now EAC) demonstrating that the voting system conforms to all the standards recommended by the federal elections commission." Since the EAC assumed responsibility in 2007 for accrediting independent testing authorities and voting systems, the EAC has only approved one system (MicroVote) and has been slow to approve or certify modifications sought by manufacturers providing voting systems in Wisconsin. (Please note that voting systems manufacturers must comply with the requirements of Secs. 5.905 and 5.91, Wis. Stats., regarding software and equipment standards and submit an application to the Board for approval of voting systems pursuant to Sec. GAB 7.01, Wis. Adm. Code.)

At least two manufacturers providing voting systems in Wisconsin have requested approval of upgrades or modifications to voting systems currently in use and previously approved by the Board. The G.A.B. staff granted an interim approval to Premier Election Solutions (Premier) for SSL certificate upgrades in Wisconsin. The G.A.B. staff also granted interim approval to Elections System & Software (ES&S) to perform certain modifications to the AutoMARK for the February 17, 2009 Primary as is set forth in an Engineering Change Order (ECO) dated July 22, 2008 (revised February 5, 2009), but subject to certain requirements.

Additional requests for approval of ECOs and updates for voting systems in Wisconsin are likely to continue. In fact, ES&S has already notified G.A.B. staff of additional requests for approval of Engineering Change Orders for the remainder of the voting systems they provide in Wisconsin. While a G.A.B. staff member heard an EAC official state on January 29, 2009, that the timeline for the EAC to process all voting systems applications and

modifications is 120 days, as of writing this memo, that is not definite. In addition, the current statutes and administrative code provisions provide little guidance regarding the process by which to approve updates and modifications to previously approved voting systems.

BRIEF LEGAL OVERVIEW AND CASE EXAMPLE

The Government Accountability Board has the authority to approve software components of voting systems under Sec. 5.905(2), Wis. Stats., and voting systems equipment under Sec. 5.91, Wis. Stats. These statutes set out standards of such voting systems. The procedure by which manufacturers of voting systems obtain Board approval is described in Sec. GAB 7.01, Wis. Adm. Code, where a formal application process is prescribed. Once voting systems are approved by the Board, manufacturers are required to inform the G.A.B. of “any modifications” and of “all changes in the hardware, firmware and software.” Secs. GAB 7.01(1)(f) and 7.03(1), Wis. Adm. Code. However, these statutes and administrative code provisions do not provide guidance on the approval process for updates and modifications of the previously Board approved voting systems.

Pursuant to Sec. 5.05(3g), Wis. Stats., the Director and General Counsel, Kevin J. Kennedy, is the Chief Election Officer of the State of Wisconsin. As such, Mr. Kennedy possesses the inherent authority as the Chief Election Officer to make ministerial decisions regarding voting systems, not to mention that he has this inherent authority as Director and General Counsel. As an example of the exercise of this authority, ES&S previously submitted an application for approval of the AutoMARK voting system and received Board approval on April 26, 2006. Once that voting system was approved by the Board, nothing in the statutes or administrative code currently mandates that the manufacturers submit to the Board a new application for approval of the entire voting system each and every time an engineering change order or other modification occurs. ES&S has now presented the G.A.B. staff with an Engineering Change Order for the AutoMARK, which includes several hardware and some firmware updates or modifications that need to be made to insure that the voting system is functioning properly. With elections looming and several municipalities at risk of not having an accessible AutoMARK available, the Director and General Counsel had staff obtain documentation from ES&S to complete a review of the modifications and any potential impact on the voting system. With this information, the Director and General Counsel provided interim approval of some of the modifications for necessary changes in municipalities at risk of having no accessible AutoMARK. The approved modifications were limited to hardware parts and excluded anything that might affect the firmware of the operating system (i.e. processors, flash memory, flash card storage, printed circuit board components.) This does not resolve the issue at hand, however. ES&S wishes to upgrade all of the AutoMARKs with the Engineering Change Order components, as some of the previous parts suppliers are no longer supplying ES&S and the smooth operation of the voting system may require the upgrades.

Even though the current statutes and code do not require anything more of manufacturers other than notification of modifications, the Government Accountability Board staff has taken great measures to obtain additional documentation from manufacturers having provided notice of modifications to determine the extent of those modifications and any impacts on the integrity of the voting systems. This analysis requires the staff to determine whether the modifications are significant enough to warrant a recommendation that the Government Accountability Board require a manufacturer to submit a new application for approval of the entire voting system containing all modifications. The staff balances the interests of conducting accessible elections with requiring re-approval of entire voting systems as a result of minor modifications.

NOTIFICATIONS OF MODIFICATIONS AND INTERIM APPROVALS

The Government Accountability Board staff was presented with two notices of modification from manufacturers providing voting systems in Wisconsin, one from Premier and one from ES&S. Staff analyzed each very carefully and in one instance requested substantial additional documentation and clarification of the modifications. The Director and General Counsel granted limited interim approval for use of the modifications. Please find attached as Exhibit A, the documentation of the Premier SSL certificates interim approval and a supporting memorandum. Please find attached as Exhibit B, the documentation of the interim approval of the ES&S AutoMARK Engineering Change Order. The actual engineering change orders, independent testing authorities reports, and other software, firmware, and hardware specifics are protected trade secret, copyrighted, and/or patented information and are not available for insertion into this meeting record; however, this information is available for review by the Board as it may deem necessary.

Recommendations

1. The Government Accountability Board staff has recognized that the voting system approval process prescribed by statute and code did not contemplate the ongoing updates, engineering change orders, and other modifications that incidentally affect previously approved voting systems. The G.A.B. staff recognizes that further clarification of an approval process for such updates, engineering change orders, and other modifications is needed; however, any procedure must be flexible enough to address these issues timely. The Board should direct staff to review the process by which updates, engineering change orders, and other modifications to voting systems are reviewed and approved, returning to the Board at a subsequent meeting with recommendations for action, including possible revision of the administrative code.
2. The Government Accountability Board staff has granted interim approvals to the Premier SSL certificates and ES&S AutoMARK Engineering Change Order modifications, within certain parameters. The Board should ratify these two interim approvals, with permanent approval only upon a more thorough review following implementation of a developed procedure by which to process such requests. In addition, the Board should affirmatively authorize the Director and General Counsel to grant similar interim approvals as necessary and pending implementation of a more developed procedure by which to process notifications of modifications to previously approved voting systems. The G.A.B. staff intends to inform the Board of interim approvals granted by the Director and General Counsel at the first Board meeting following a granted request.

Proposed motions:

MOTIONS:

1. Staff is directed to review the process by which updates, engineering change orders, and other modifications to voting systems are reviewed and approved, returning to the Board at a subsequent meeting with recommendations for action, including possible revision of the administrative code.
2. The Board ratifies the interim approvals granted by the Director and General Counsel with regard to the Premier SSL certificates and ES&S AutoMARK Engineering Change Order, with permanent approval only upon a more thorough review following implementation of a developed procedure by which to process notifications of

modifications to previously approved voting systems. Until the Board implements a developed procedure by which to process notifications of modifications to previously approved voting systems, the Director and General Counsel may continue to grant interim approvals as necessary and inform the Board of each approval at the first Board meeting following the granted request.

Falk, Shane - GAB

From: Hein, Ross D - GAB
Sent: Wednesday, January 14, 2009 1:19 PM
To: Vopalensky, Don
Cc: Kennedy, Kevin - GAB; Robinson, Nathaniel E - GAB; Falk, Shane - GAB; Buerger, David - GAB
Subject: SSL Certificate Upgrades Approved
Attachments: Updated Digital Certificate for Premier Election Solutions 1.9.09.doc

Mr. Vopalensky,

Please see the attached memorandum that recommends interim approval of the SSL certificate upgrades for Premier Election Solutions AccuVote-TSX and GEMS server. Mr. Kevin J. Kennedy, Director and General Counsel of the Government Accountability Board, approved the recommendation.

Note that this recommendation is approved with the understanding that there will be no cost to the municipality/county for the SSL certificate upgrades from Premier Election Solutions, unless assistance is required by required by Premier staff to conduct the upgrade. At no cost, a Premier Election Solutions representative will send the new SSL certificate upgrade to the municipality/county to be uploaded.

Please provide us with the SSL test results from Florida when they become available. Further questions regarding this should be directed to Staff Counsel, Shane Falk, as I will be on vacation until January 20, 2009. Mr. Falk may be contacted at (608) 266-2094 or by email at shane.falk@wi.gov. Thank you very much for your assistance.

Kind Regards,

Ross Hein

Ross D. Hein
Elections Specialist, CERA
Voting Equipment
Government Accountability Board
Elections Division
17 W. Main Street, Suite 310
PO Box 2973
Madison, WI 53701-2973
608-267-3666

State of Wisconsin \ Government Accountability Board

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JUDGE THOMAS CANE
Chairperson

KEVIN J. KENNEDY
Director and General Counsel

DATE:

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

Nathaniel E. Robinson
Elections Division Administrator
WI Government Accountability Board

FROM: Ross D. Hein
Voting Equipment Elections Administration Specialist

SUBJECT: Updated Digital Certificate for Premier Election Solutions

Issue

Premier Election Solutions has requested the WI Government Accountability Board (G.A.B) to allow certificate updates for the GEMS elections management system and the AccuVote-TSX.

Description

Premier Election Solutions implements Secure Socket Layer (SSL) to secure communication that is used in authenticating and encrypting data transmissions. This communications protocol is used for the upload and download of election data to ensure secure communication between GEMS and the AccuVote-TSX. SSL authentication permits each party in a data transfer operation to verify the identity of the other party and is used to help prevent uploads of data to or from unauthorized sources.

For authentication to occur a digital certificate is used and this certificate has an expiration date. The expiration date on the digital certificates currently in use is January 31, 2009. In order for the certificates to function properly for the February 17, 2009 Spring Primary updates will need to take place. This is not a modification to the systems source code nor is it a modification to the tabulation software and therefore does not require agency testing as put forth in Administrative Code 7.02.

Updating SSL digital certificates is a common practice. These certificates are usually provided with an expiration date of no more than five years. Premier's replacement SSL digital certificate will have an updated expiration date good for another five years, expiring on July 3, 2013.

Independent Testing Performed

SysTest Labs was contracted as an independent and accredited Voting System Test Lab (VSTL) by Premier Election Solutions to verify the authenticity of new Premier SSL digital certificates. The SysTest Labs report was issued October 22, 2008. On October 31, 2008 the EAC suspended SysTest Labs as an accredited VSTL for failing to follow EAC requirements. SysTest Labs tested the installation of the certificate. SysTest Labs also validated that the certificate was updated to the new certificate during the deployment testing.

Wyle Laboratories was contracted as an independent and accredited VSTL by Premier Election Solutions to perform functional testing on the GEMS server and AccuVote-TSX. Wyle Laboratories has concluded that the update SSL digital certificate tested does not adversely affect the function of uploading and downloading election data between the GEMS server and the AccuVote-TSX. The updating of this certificate is compliant with the FEC Voting System Standards.

Recommended Action by Premier Election Solutions

1. Installing a replacement digital certificate on the GEMS server and each AccuVote-TSX.
2. Installing a replacement digital certificate on the GEMS server and only the AccuVote-TSX involved in uploads and downloads.
3. Installing a replacement digital certificate only in the GEMS server and selecting to disable the SSL Authenticate Client feature in GEMS.

NOTE: If no action is taken prior to the February 17, 2009 Spring Primary the digital certificates will expire and the GEMS server will not be able to download information from the AccuVote-TSX. Election officials will not be able to modem election night results into the GEMS server and the results will need to be manually entered into the election management system.

States that have given approval of the new SSL certificates

Alaska, California, Colorado, Georgia, Illinois, Iowa, Kansas, Maryland, Mississippi, Missouri, Ohio, Texas, Utah, Washington, Wyoming, Florida (currently doing their own testing with the new SSL certificates).

WI Premier Election Solutions Counties/Municipalities

- 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

Financial Impact

There will be no cost to the municipality/county for the SSL certificate upgrades from Premier Elections Solutions, unless assistance is required by Premier staff to conduct the upgrade. At no cost, a Premier Election Solutions representative will send the new SSL certificate upgrade to the municipality/county to be uploaded. If the municipality/county requires Premier to perform the upgrades, the service cost would be \$1,365.00 per day plus travel and expenses. Given this high cost, G.A.B staff recommends providing assistance to the municipality either through the county or by G.A.B staff as needed. However, a vast majority of clerks will be able to perform this upgrade

independently. It is estimated that it should take no longer than 15 minutes per machine to perform the SSL certificate upgrade.

Recommended Action

It is recommended that the Director and General Counsel of the Government Accountability Board grant interim approval of the SSL certificates upgrades for the GEMS server and AccuVote-TSX for the February 17, 2009 Spring Primary and April 7, 2009 Spring Election. This allows for future testing and EAC approval, technically required by Administrative Code Chapter 7, and allows the SSL certificate upgrades to be implemented prior to the February 17, 2009 Spring Primary.

State of Wisconsin\Government Accountability Board

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<http://gab.wi.gov>



JUDGE MICHAEL BRENNAN
Chair

KEVIN J. KENNEDY
Director and General Counsel

Via email only

February 10, 2009

Mr. Steve Pearson
Vice President Certification
Election Systems and Software
11208 John Galt Boulevard
Omaha, NE 68127

Dear Mr. Pearson:

On February 3, 2009, I provided you with written documentation illustrating what the Government Accountability Board is prepared to do in order to ensure that local election officials are not without access to an operable AutoMARK system for the upcoming Spring Primary on February 17, 2009. It has now been confirmed that as of this date, we are aware of only four municipalities that may require further maintenance:

1. City of Milwaukee: 1 AutoMARK. Please identify specific part number and description of part, as well as whether it is a part covered by the ECO.
2. Manitowoc County: 1 AutoMARK. Possible bent pins. Please identify specific part number and description of part, as well as whether it is a part covered by the ECO.
3. City of Madison: 1 AutoMARK. System not accepting ballots. Please identify specific part number and description of part, as well as whether it is a part covered by the ECO.
4. City of Greenfield: 1 AutoMARK. Needs a new LCD screen, part no. 86119.

Please be advised the interim approval of the ECO parts covers only the Spring Primary scheduled for February 17, 2009. While the interim approval is immediate, any permanent approval is subject to the assent of our Board and the accreditation of system modifications currently being tested by the EAC.

This interim approval of ECO parts is limited to hardware parts and specifically excludes processors, flash memory, flash card storage, or other modifications that may affect firmware or the operating system. I assume that all repairs that do not require ECO parts will continue to be performed.

Please note that for all remedial maintenance with ECO parts, ES&S must report the following to the G.A.B.:

- A. Jurisdiction in which repair was made.

- B. Specific type of remedial maintenance performed, including identification of the specific part involved (part number and description of function.)
- C. Proof or verification that previously approved parts and loaner units were not available.

Members of our staff are currently reviewing the supplemental ECO documentation, sent by Mr. Mark Manganaro, Wisconsin State Certification Manager for ES&S, received today, February 10, 2009.

We thank you for your continuing cooperation. If you have questions, please contact me at Nat.Robinson@wi.gov (608) 267-0715, or Shane W. Falk, at Shane.Falk@wi.gov (608) 266-2094, or Ross Hein at Ross.Hein@wi.gov (608) 267-3666.

Sincerely,



NATHANIEL E. ROBINSON
Elections Division Administrator
Government Accountability Board

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

Shane W. Falk
Staff Counsel
Government Accountability Board

Ross Hein
Elections Administration Specialist
Government Accountability Board

David Buerger
Elections Administration Specialist
Government Accountability Board

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JUDGE THOMAS CANE
Chair

KEVIN J. KENNEDY
Director and General Counsel

MEMORANDUM

DATE: For the March 30-31, 2009, 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 the Government Accountability Board's (G.A.B.) January 15, 2009, meeting, the Elections Division has focused on the following:

Elections Administration Core Activities

1. Prepared for the February 19, 2009, Spring Primary
 - A. Provided information, technical assistance and feedback to our clerk partners, and candidates applying for ballot access for the February 19, 2009, Spring Primary.
 - B. Approximately 256,909 electors cast votes, which is about 5.9% of Wisconsin's voting age population.
 - C. In the Superintendent of Public Instruction race, Tony Evers received 35 percent of the vote or 89,883 votes for first place, and Rose Fernandez came in second with 31 percent or 79,757 votes.
 - D. On Tuesday, March 3, G.A.B.'s Vice Chair Judge William Eich signed the certified results, as submitted to the State Elections Division by 72 county clerks.

E. A list of state candidates who will appear on the April 7 ballot can be found on the G.A.B. website at <http://gab.wi.gov> under “Elections and Results,” then “2009,” then “Candidates on Ballot.”

2. Preparing for the April 7, 2009, Spring Election

We continue to service our clerk partners as G.A.B. and 72 county clerks and 1,850 municipal clerks continue to prepare for the April 7, 2009, Spring Election. The Spring Election ballot will include races for Wisconsin Supreme Court; State Superintendent of Public Instruction; two state appeals court seats; and, 64 circuit court judge seats in 32 counties. There will also be local government contests on the ballot such as races for city council, county executive and school district referenda.

3. Four-Year Voter Record Maintenance Initiative

On Friday, February 20, 2009, 313,205 postcards were mailed to voters who have not voted in the past four years. §6.50 of Wisconsin Statutes requires that voter records be reviewed after every general election (November of even-numbered years), and that the names of people who have not voted in four years (including the November 2008 election) be removed from the poll lists, but retained in an inactive status in the Statewide Voter Registration System (SVRS). Note however, that voters who received a postcard but participated in Wisconsin’s February 17 Spring Primary, or who vote in the April 7 Spring Election, are automatically retained in the SVRS and on active poll lists.

Information on the postcards asks voters if they wish to remain active in the Statewide Voter Registration System (SVRS). Voters have 30-days, or until March 23 to contact the Elections Division with a return postcard to maintain their active status in the SVRS.

While the postcard is titled “Notice of Suspension,” it gives voters a chance to double-check their voter record information and confirm it, or take even steps to update it. This process will also help improve voter data quality. The Governor and the Legislature were informed of this effort prior to its implementation, and will be updated on the results.

4. Accessibility Survey Instrument to be Used Statewide for on Election Day

The finalized 2009 Polling Place Accessibility Survey will be completed for each of our 2,822 polling places on Election Day, April 7, 2009. In complying with a Legislative directive, the survey has been extensively revised, and supporting documents added to more effectively help clerks determine whether or not a polling place is accessible. The enthusiasm and cooperation of local election officials in making polling places accessible to voters, is much appreciated.

For the February 17, 2009, Spring Primary, Polling Place Accessibility Evaluations were conducted in **101** Polling Places, in **47** counties. Of the 101 sites visited:

- 17 were in Cities
- 20 were in Villages
- 54 were in Towns

Related Noteworthy Support Activities

1. News of the New Wisconsin Election Data Collection System (WEDCS)
(The \$2 million Election Data Collection Grant)

You may recall, Wisconsin was one of five states (along with Minnesota, Illinois Ohio and Pennsylvania) to be awarded a \$2 million competitive grant from the U.S. Election Assistance Commission (EAC). These grants -- \$10 million dollars total -- are designed to improve the collection and reporting of voter participation and elections data throughout the United States.

Grant funds are being used in Wisconsin to:

- A. Improve local and state election data collection processes;
- B. Identify best elections management practices;
- C. Develop a national model election data collection protocol;
- D. Upgrade and expand local election officials' training to a web-based, online platform;
- E. Standardize reporting of the official election canvass to produce more accurate results faster;
- F. Enhance the capacity of absentee voter tracking in the Statewide Voter Registration System;
- G. Improve the tracking and counting of ballots cast by overseas and military voters; and,
- H. Examine polling place activities in order to improve the experience of voters on Election Day.

By March 31, we will submit our November 2008 election data for Federal review. Based on results submitted by Wisconsin and the other aforementioned four states, the EAC will submit a report to the U. S. Congress in June.

2. A summary of grant initiatives include:

- A. February 5-6: Two Pilot pre-testing educational/training sessions were held in Madison and Rothschild respectively, with both county and municipal clerks participating.
- B. March 3: Wisconsin county clerks praised the new system at their annual spring meeting on March 3.
- C. March 12: G.A.B. staff hosted a U.S. Election Assistance Commission (EAC) independent contract evaluator and our project team, including local election officials, University of Wisconsin Political Science Department, University of Wisconsin -Extension, and the Department of Administration, Division of Enterprise Technology partners.

The evaluator was impressed by our progress, and remarked that unlike the other four grant-receiving states that partnered with private consultants to implement major portions of their respective grants, Wisconsin collaborated with its state agencies; thereby, eliminating the possible challenges to perceived propriety or intellectual property arguments if other states wish to replicate Wisconsin's model.

- D. March 13-April 17: WEDCS' education and training exchanges with county and municipal clerks, in venues throughout the state, continue.
- E. April 7: The WEDCS will be pilot-tested statewide for the April 7, Spring Election. Municipal and County clerks will enter data directly into the system immediately after the April 7 Spring Election.
- F. Over \$500,000 to be shared with Municipalities: During the week of March 3, grants began to be mailed to municipalities for helping to improve the elections administration by assisting in the development and effectuation of the WEDCS. Municipalities must use grant funds to improve the conduct of elections.

Review and Analysis: Post-2008 Election Cycle

We have already begun the planning process for positioning and readying our staff and clerk partners for the 2010 Gubernatorial and Senatorial Election Cycle. Below are example of the first phase of our review process.

1. Communications: A staff committee has been appointed to make communication efforts to clerks more cohesive, timely and efficient.
2. Voting Equipment: A committee is being formed made-up of professionals to address all voting equipment needs. Members are likely to include representatives from D.E.T. and the DOA's Division of Gaming.
3. Online Municipal Clerk and Inspector Training: Currently, online training is available for SVRS, called WBETS. Utilizing the WBETS model, we will be exploring online training for Municipal Clerk training and Chief Inspector training opportunities and possibilities.
4. Improve SVRS: An ad-hoc team has been meeting to determine the focus of a Request for Information/Request for Service that will improve the performance and efficiency of the SVRS. This team is comprised of our SVRS staff, including Ben Cameron, and DET representatives.
5. Improve our Canvass Process: We are working with D.O.A. and D.E.T. to make our canvass process more efficient and user-friendly.

Clerks Involvement: As has been our business model since March 2008, we will continue to involve, include and seek input, advice and feedback from our 1,922 clerk customers, other local election officials, and community partners in all of the our reviews and analyses of elections administration policies, procedures and practices.

Examples that Reflect Growing Customer Service Satisfaction

We want to share the following two examples that are an indicator of the kind of favorable feedback that are getting from an increasing number of our customers and election partners.

-----Original Message-----

From: LORI STOTTLER [mailto:STOTTLER@co.rock.wi.us]

Sent: Friday, March 06, 2009 10:51 AM

To: Robinson, Nathaniel E - GAB
Subject: Thank You! (for staff eyes)

Nat,

As promised, I am e-mailing you a quick note to let you know that I believe the Government Accountability Board has done a phenomenal job over the past year to improve the process, communications and level of commitment to the county clerks of Wisconsin.

I came on board in November 2007 with NO experience in county government, let alone elections - with four elections in front of me, I depended on your staff for a lot of my information. Even when the website gave some outdated information, your staff was quick to point me in the right direction, whether it be an updated admin. rule, statute, election policy, or procedural manual.

As a new clerk with no election experience, my first contact with employees of the GAB was at the March 2008 conference when security and audits were the main topic of conversation. It took me three months to consider ever going to another meeting with your people or mine! Kidding aside, I have always know your staff to be professional, kind and optimistic about their work with County Clerks, Municipal Clerks and the media.

Now I have 5 elections under my belt and am a little more confident but I would not be able to have that confidence without people like Eric, Katie (both of them!), Zach, Nate, Ross, Diane, Steve, and the rest of the staff members who whenever I call, treat me like I am the only one they are worried about helping for that moment! PLEASE tell them I say THANK YOU and that I believe we will only CONTINUE to improve our relations, communications and the way that elections are administered in our great state!

PS - I have been so inspired by your staff that I have applied to the Election Center and will be attending CERA sessions 1-5 in July in Baton Rouge, LA. If you are sending staff members to this session, please consider consolidating costs with me as much as possible.

Have a great day Nat and thank YOU for the effort you've put in to developing an organization with purpose that does worthwhile work to make a difference in what we do!

Warmest Regards,

Lori Stottler, Rock County Clerk
Rock County Courthouse
51 S. Main Street
Janesville, WI 53545
(608)757-5660
stottler@co.rock.wi.us

-----Original Message-----

From: Gibson, Karen [mailto:kgibson@co.dodge.wi.us]
Sent: Friday, March 06, 2009 4:46 PM
To: Robinson, Nathaniel E - GAB; Kennedy, Kevin - GAB
Subject: Staff

Nat:

I am writing to let you know how impressed I am with the staff at GAB. When Dodge County went onto SVRS in 2006 we had a specialist named Andrea Canadeo (I believe that was her name). Andrea was a fantastic trainer and when I heard she was leaving to go back to Canada I was a little apprehensive about getting a new SVRS specialist but there was nothing to worry about. Katie Mueller

and Logan Dixon are both very knowledgeable, have patience, explain answers to problems in a very understandable way and they have a sense of humor too (that always helps.)

Also, the staff members in the Elections Division of GAB are always very helpful. From the pleasant voice of the receptionist to all of the help I receive from Diane, Steve, David and Ross, everyone is great. Their help is always appreciated.

Thank you to everyone.

Karen J. Gibson

Dodge County Clerk
127 E. Oak Street
Juneau WI 53039
920-386-3602
920-386-3928 (fax)

Key Metrics

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

A. Training and Technical Assistance Summary

See Attachment #1

B. Public Education and Information Summary

See Attachment #2

30-day Forecast

1. Continue preparing for the Tuesday, April 7, 2009, Spring Primary Election.
2. Continue to oversee implementation of the Wisconsin Election Data Collection System (WEDCS).

Action Items

No action is required of the Board at this time.

Statewide Voter Registration System Update

Barbara A. Hansen, SVRS Project Director

Introduction

The following Statewide Voter Registration System (SVRS) activities took place since the January 15, 2009, meeting of the Government Accountability Board:

SVRS Upgrade

On March 13, clerks were advised that an upgrade (version 6.6) had been made in the SVRS application. This improvement provides clerks with the ability to perform the statutorily required Four-Year Voter Record Maintenance, and other data functionalities.

Status of Voter Data Interface

Effective August 6, 2008, clerks have performed voter HAVA Checks. Since that time, clerks continue to use SVRS to run HAVA Checks to validate against Department of Transportation (DOT) and Social Security Administration (SSA) records, and confirm matches with Department of Corrections (DOC) for felon information, and Department of Health Services (DHS) for death data, as part of on-going HAVA compliance.

| HAVA Checks Reported by Month | |
|---|----------------|
| August 2008 | 23,832 |
| September 2008 | 38,168 |
| October 2008 | 192,994 |
| November 2008 | 294,905 |
| December 2008 | 172,574 |
| January 2009 | 41,038 |
| February 2009 | 11,902 |
| March 2009* | 1,703 |
| Total HAVA Checks since August 6: (* as of March 19, 2009) | 777,116 |

ATTACHMENT #1

GAB Election Division's Training Initiatives
01/16/2009 – 3/31/2009

| Training Type | Description | Class Duration | Target Audience | Number of Classes | Number of Students |
|--|---|--|--|---|--|
| SVRS "Initial" Application and Election Management | Instruction in core SVRS functions – how to navigate the system, how to add voters, how to set up elections and print poll books. | 16 hours | New users of the SVRS application software. | 6 classes conducted in Madison, West Allis, Green Bay, Elkhorn, Eau Claire and Fond du Lac. Additional classes scheduled on an "as needed" basis. | 60 |
| SVRS "Advanced" Election Management | Instruction for those who have taken "initial" SVRS training and need refresher training or want to work with more advanced features of SVRS. | 3 types of classes: Election Management; Absentee Process; HAVA Interfaces, Reports, Labels & Mailings; 4 hours each | Experienced users of the SVRS application software. | 10 | 130 |
| 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. |
| Municipal Clerk | 2005 Wisconsin Act 451 requires that all municipal clerks attend a state-sponsored training program at least once every 2 years. | 3 hours | All Municipal clerks are required to take the training; other staff may attend. | 16 classes conducted in varied locations across Wisconsin. | 75 |

ATTACHMENT #1

GAB Election Division's Training Initiatives
01/16/2009 – 3/31/2009

| Training Type | Description | Class Duration | Target Audience | Number of Classes | Number of Students |
|-----------------------------|---|---|--|--|--|
| Chief Inspector | Instruction for new Chief Inspectors before they can serve as an election official for a municipality during an election. | 3 hours | Election workers for a municipality. | 32 classes conducted in locations across the state. | 500 |
| Special Registration Deputy | 2005 Wisconsin Act 451 allows a qualified elector of Wisconsin to be appointed as a Special Registration Deputy (SRD) for the purpose of registering electors of any municipality in Wisconsin during periods of open voter registration. | 2 hours | Qualified electors in Wisconsin. | 3 classes conducted before the close of registration on March 18, 2009 in Madison, West Bend and Milwaukee. *All Eligible SRDS from the 2007-2008 term were invited to be "reappointed" to the position for the 2009-2010 term. | 12 1500 SRDs sent application for reappointment; 175 have been reappointed to date. |
| 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. | February 11, 2009: Municipal Elections/Clerk's Duties | Average 200 per class |

ATTACHMENT #1

GAB Election Division's Training Initiatives
01/16/2009 – 3/31/2009

| Training Type | Description | Class Duration | Target Audience | Number of Classes | Number of Students |
|-----------------|--|----------------|--|--|---|
| WBETS | Web Based Election Training System. Still under development. Reference materials were made available to the clerks in February; voter registration training made available to clerks 3/24/2008. | Varies | County and municipal clerks and their staff. | Phase 1 of eLearning training plan close to completion; Phase 2 under discussion. | Site is available for clerks to train temp workers in data entry; relies are also able to access the site upon request. |
| HAVA Interfaces | Instruction in the user of the interface functionality in SVRS to check death records, felon records, DOT records and duplicate records against voter records as part of HAVA compliance requirements. | 2 hours | All clerks (staff as determined by clerk). | Pilot of web-based training presented to the Standards Committee on May 14, 2008. Lessons available online June 2, 2008. | Eventually 2000+ |

ATTACHMENT #2

**GAB Elections Division
Communications Initiatives
January 15 - March 31, 2008**

| Topic | Message | Media | Audience | Follow-up Activities |
|---|---|--|--|-----------------------------|
| “G.A.B. Votes to Issue Rule to Encourage Uniform Electronic Campaign Finance Report Filing” | Registrants must now use the CFIS standard template to file their campaign finance reports. | News release: 01/15/09 | General public, news media. | Posted to the website. |
| “Accountability Board Votes to Advance Issue Ad Rule Requiring Disclosure of Contributions for Political Ads” | Board is set to promulgate GAB 1.28 changes. | News release: 01/15/09 | General public, news media. | Posted to the website. |
| “G.A.B. Report Spurs Wisconsin Attorney General to Finally Concede Voter Records Lawsuit” | “HAVA Check” report to Board shows that the G.A.B.’s position on voter records was proper. | News release: 01/16/09 | General public, news media. | Posted to the website. |
| “Accountability Board Will Move to New Headquarters” | G.A.B staff will move and be housed in a single office. | News release: 01/21/09 | General public, news media. | Posted to the website. |
| “Accountability Board Completes Move to New Headquarters” | G.A.B.’s move is finished. | News release: 01/28/09 | General public, news media. | Posted to the website. |
| The Elections Division’s legislative agenda, new GAB-190, training and SVRS improvements. | Changes are coming to improve election administration in Wisconsin in 2009. | <i>Election Update: 2/6/09</i> | Municipal and county clerks. | Posted to the website. |
| Record maintenance, “HAVA Checks,” accessibility survey, | “News from the Wisconsin Government Accountability Board” | <i>Wisconsin Elections</i> newsletter: 2/12/09 | Agency partners, news media and Legislature. | Posted to the website. |

ATTACHMENT #2

**GAB Elections Division
Communications Initiatives
January 15 - March 31, 2008**

| | | | | |
|---|---|------------------------|------------------------------|------------------------|
| Attorney General's suit. | Voters encouraged to participate in primary election. | News release: 02/16/09 | General public, news media. | Posted to the website. |
| "Wisconsinites Urged to Vote in Tomorrow's Election" | Four-Year Voter Record Maintenance process is underway in Wisconsin. | News release: 02/19/09 | General public, news media. | Posted to the website. |
| "Elections Division to Conduct Voter Record Maintenance" | New four-member G.A. Candidate Committee is selected for a two-year term. | News release: 02/20/09 | General public, news media. | Posted to the website. |
| "Chief Justice to Select Government Accountability Candidate Committee Members Tuesday" | Official election results are approved by the Board. | News release: 03/03/09 | General public, news media. | Posted to the website. |
| "Wisconsin Spring Primary Election Results Certified" | Inactive voters who received a reminder postcard should return it to the G.A.B. | News release: 03/09/09 | General public, news media. | Posted to the website. |
| "Inactive Voters Have Two Weeks to Respond" | Wisconsin requires an election to replace a U.S. Senator, Kennedy says. | News release: 03/10/09 | General public, news media. | Posted to the website. |
| "State's Chief Election Official to Testify Before Congress" | Clerks are receiving checks, per reporting unit, for data reported for the new WEDCS. | News release: 03/11/09 | Municipal and county clerks. | Posted to the website. |
| "G.A.B. Provides over \$500,000 to Clerks for Improving Elections" | Inactive voters have one more week to respond to G.A.B. reminder postcard. | News Release: 3/16/09 | General public, news media. | Posted to the website. |
| "Final Reminder! Wisconsin's Inactive Voters Have One Week to Return Postcard" | | | | |

ATTACHMENT #2

**GAB Elections Division
Communications Initiatives
January 15 - March 31, 2008**

| | | | | |
|--|---|--|---|------------------------|
| Election data grants and payments to Wisconsin municipalities. | The Elections Division has supported clerks with checks for data reporting. | Memo: 3/16/09 | Governor, Legislature and DOA Secretary (copy). | |
| Four-Year Voter Record Maintenance process. | Postcards sent to state voters were legal, proper and helpful for clerks. | Op-ed column: 3/17/09 | Badger Herald newspaper, UW-Madison. | Shared with staff. |
| April 7 polling place accessibility, WEDCS project, G.A.B. budget, website changes. | Clerks should know about various spring election and program topics. | <i>Election Update:</i> 03/20/09 | Municipal and county clerks. | Posted to the website. |
| Communications with clerks, WEDCS, SVRS improvement process, Wisconsin early voting? | “News from the Wisconsin Government Accountability Board” | <i>Wisconsin Elections</i> newsletter: 3/23/09 (planned) | Agency partners, news media and Legislature. | Posted to the website. |
| Four-Year Voter Record Maintenance process. | The FYVRM process is proceeding well and legislators will receive data. | Memo: 3/26/09 (planned) | Governor and Legislature. | |
| Campaign Finance Information System | Here’s how to search in the CFIS. | In-person briefing for news media: 3/26/09 (planned) | Reporters. | |

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KEVIN J. KENNEDY
Director & General Counsel

MEMORANDUM

DATE: March 30-31, 2009 Meeting

TO: Members, Wisconsin Government Accountability Board

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

Prepared by: Jonathan Becker, Administrator
Ethics and Accountability Division

SUBJECT: Ethics and Accountability Division Program Activity (not including Campaign Finance)

Campaign Finance Program

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

Staff continues to work with those candidates, PACs, parties, conduits and corporations on filing campaign finance information using the Campaign Finance Information System. Materials for the Spring Pre-Primary filing were sent to those candidates participating in the Spring Primary election. 59 pre-primary reports were filed with the G.A.B. Spring Pre-Election notices were sent to all 61 candidates participating in the spring election. This report covers campaign finance activity from February 3 through March 23, 2009 and is due on or before March 30, 2009. Any non-candidate committee with expenses over \$2,500 is required to pay a \$100 filing fee. This fee was due on or before February 2, 2009. As of March 23, 2009, the G.A.B. has collected \$39,450 in filing fees. If this fee is not paid timely, the committee's is required to pay a total of \$300 for filing fees, and a possibly, a \$500 settlement offer.

Lobbying Update

Tommy Winkler, Ethics Specialist

Government Accountability Board staff continues to process 2009-2010 lobbying registrations, licenses and authorizations. Processing performance and revenue statistics related to this session's registration is provided in Table 1 below. Additionally, principal organizations and lobbyists registered and licensed in the 2007-2008 session completed and filed their final six month Statement of Lobbying Activities and Expenditures reports. These reports were due on or before January 31, 2009. The program received 99% reporting compliance with this filing. Statistical information related to the final 6 month reporting period and the entire 2007-2008 legislative session is provided in Table 2 below. Staff continues to process lobbying interests reported by principal organizations and provide advice related to Chapter 13, *Wisconsin Statutes*, on a daily basis.

TABLE 1

| 2009-2010 Legislative Session: Lobbying Registration by the Numbers (Data Current as of March 1, 2009) | | | |
|--|--------|-------|-------------------|
| | Number | Cost | Revenue Generated |
| Organizations Registered | 620 | \$375 | \$232,500 |
| Lobbyists Licenses Issued (Single) | 486 | \$250 | \$121,500 |
| Lobbyists Licenses Issued (Multiple) | 121 | \$400 | \$48,400 |
| Lobbyists Authorizations Issued | 1276 | \$125 | \$159,500 |

TABLE 2

| 2007-2008 Legislative Session: Lobbying by the Numbers (Comparison to 2005-2006 Legislative Session) | | | |
|--|------------------|------------------|-------------------|
| | <u>2007-2008</u> | <u>2005-2006</u> | <u>Difference</u> |
| Hours Lobbied | ~ 477,000 | ~ 472,000 | 5,000 |
| Dollars Spent | ~ \$62,250,000 | ~ \$58,100,000 | \$4,150,000 |
| Number of Organizations Registered to Lobby | 794 | 755 | 39 |
| Number of Lobbyists Licensed to Lobby | 852 | 815 | 37 |

Financial Disclosure Update

Tommy Winkler, Ethics Specialist

Government Accountability Board staff mailed approximately 2100 pre-printed Statements of Economic Interests to state public officials required to file a statement with the Board under Chapter 19, *Wisconsin Statutes*. As of Monday, March 23, 2009, **1,783** statements have been filed. Of those filed, **1,660** statements have been processed into the online index available on the agency's website. Statements of Economic Interests are due on or before April 30, 2009. Staff will continue to process incoming statements throughout the month of April and follow up with those officials who have yet to file to ensure they are aware of the statutory deadline. Staff will also be sending out quarterly financial disclosure statements to State Investment Board members on March 31. These statements are to be completed and returned to the G.A.B. no later than April 30, 2009.

Contract Sunshine Update

Tommy Winkler, Ethics Specialist

Staff continues to process transactions reported by state agencies into the Contract Sunshine website application. The G.A.B. team will resume testing the second version of the system in order to

identify that improvements in system functionality and appearance are working correctly. After completing this user acceptance testing, staff will communicate with Sundial Software employees those system features that need to be corrected; once corrected, the second version of the application will be released to all agencies for use. Training sessions on the new version of the application will be conducted in the future by staff members in order to effectively administer the program.

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KEVIN J. KENNEDY
Director and General Counsel

MEMORANDUM

DATE: For the March 30-31, 2009 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 preparing for the agency's 2009-2011 Biennial Budget Briefing, processing election data grant incentive and polling hour reimbursement payments, presentations and staff recruitment.

Noteworthy Activities

1. We Moved

On January 26, 2009, after more than a year of preparing, we moved all three offices into one location. The move was very successful; however, we are still adapting to our new surroundings.

2. 2009-2011 Biennial Budget Fiscal Impacts

In February, the Governor delivered the 2009-2011 Executive Budget. The Governor's budget recommendation included across-the-board 1 percent budget reductions and an additional 5 percent GPR budget reduction for FY-10 and FY-11. Below is a table outlining the budget impacts.

| SOURCE OF FUNDS | AGENCY BASE REQUEST | | GOV. RECOMMENDATION | | REDUCTION AMOUNTS | |
|--------------------------------|---------------------|------------------|---------------------|------------------|-------------------|----------------|
| | FY-10 | FY-11 | FY-10 | FY-11 | FY-10 | FY-11 |
| GENERAL PURPOSE REVENUE | 2,694,400 | 2,693,600 | 2,563,500 | 2,562,700 | 130,900 | 130,900 |
| State Operations | 2,534,400 | 2,533,600 | 2,403,500 | 2,402,700 | 130,900 | 130,900 |
| Local Assistance | 160,000 | 160,000 | 160,000 | 160,000 | 0 | 0 |
| PROGRAM REVENUE | 572,100 | 572,100 | 551,200 | 551,200 | 20,900 | 20,900 |
| State operations | 572,100 | 572,100 | 551,200 | 551,200 | 20,900 | 20,900 |
| SEGREGATED REVENUE | 750,100 | 750,100 | 742,600 | 742,600 | 7,500 | 7,500 |
| State Operations | 100 | 100 | 100 | 100 | 0 | 0 |
| Local Assistance | 0 | 0 | 0 | 0 | 0 | 0 |
| Aids to Ind. & Org. | 750,000 | 750,000 | 742,500 | 742,500 | 7,500 | 7,500 |
| TOTAL | 4,016,600 | 4,015,800 | 3,857,300 | 3,856,500 | 159,300 | 159,300 |
| State Operations | 3,106,600 | 3,105,800 | 2,954,800 | 2,954,000 | 151,800 | 151,800 |
| Local Assistance | 160,000 | 160,000 | 160,000 | 160,000 | 0 | 0 |
| Aids to Ind. & Org. | 750,000 | 750,000 | 742,500 | 742,500 | 7,500 | 7,500 |

On March 17, 2009, the Joint Committee on Finance began their budget briefings on the Governor's 2009-2011 budget recommendations. The G.A.B. appeared on Tuesday to comment on the proposed Government Accountability Board budget as described in 2009 Assembly Bill 75.

The major focus of my testimony (see attached) was to encourage the Legislature to restore the 5% annual reduction (121,700) in GPR base operations. The 5% annual reduction is a permanent reduction in the agency base that may be temporarily alleviated this budget cycle if the Legislature includes the proposed one-time replacement funding of the 5% cut with federal stimulus money. However, we are not guaranteed that will happen.

We continue to explore options for ways to reduce GPR spending in light of these dire fiscal times. One suggestion was to consider eliminating the polling place reimbursement funding. The second suggestion was to take a look at the \$200,000 generated for the Wisconsin Election Campaign Fund by the \$1 taxpayer check-off. I did note the Board has not taken a position on this potential reduction.

3. Polling Hour Reimbursements

Since November 2008, staff has processed approximately \$50,500 in polling hour reimbursements to municipalities for the September 2008 Fall Primary Election and the November 2008 General Election, which consists of approximately 970 transactions.

4. Staffing

Temporary Services Staff

On March 4, 2009, the agency hired 5 temporary staff to assist in data entry of G.A.B. 190 forms into the web-based Wisconsin Election Data Collection grant system and perform initial steps of G.A.B. 190 incentive payment process. There is more detailed information in the Elections Administrator's report.

5. Meetings and Presentations

I had several meetings with key agency stakeholders. On January 21, 2009, Sharrie, Nat and I met with Michael Morgan, Department of Administration Secretary, to discuss our budget request and the Governor's proposals for our agency.

On February 3, 2009, Jon Becker and I met with Speaker Mike Sheridan to discuss the impact of the Campaign Finance Information System (CFIS) rollout.

On February 4, 2009, Jon and I met with Representative Jeff Smith to discuss CFIS and proposed campaign finance legislation.

On February 17, 2009, I made a presentation to the Assembly Committee on Elections and Campaign Reform on the first year of operations for the Government Accountability Board.

The Chief Justice, in the presence of the other Justices, selected the members of the Government Accountability Candidate Committee on February 24, 2009. The new Committee members are Court of Appeals Judges Ralph Adam Fine, Daniel Anderson, Edward Brunner and Charles Dykman.

On January 26 and 27, 2009, I joined Sandi Wesolowski, the Franklin City Clerk, to provide informational testimony on Election Day registration to legislative committees in the City of Washington DC and the Maryland Senate.

On February 10, 2009, I prepared presentational materials for a CLE program for state election attorneys for the National Association of State Election Directors (NASSED). Shane Falk and Mike Haas assisted in the presentation on voter registration litigation.

In response to an invitation from Senator Russ Feingold, on March 11, 2009, I testified at a joint congressional subcommittee hearing concerning the filling of vacancies in the office of United States Senator by a special election.

On March 12, 2009, I made a presentation on the organization and jurisdiction of the Government Accountability Board at a CLE program for state attorneys organized by the Department of Justice.

Looking Ahead

The staff will continue to work with the Legislature on the biennial budget and new initiatives.

Action Items

None