

Meeting of the Board
Tuesday, May 21, 2013

Agenda
Open Session

9:00 A.M.

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

Tuesday, May 21, 2013

9:00 A.M.

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- A. Call to Order**
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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.

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L. Closed Session

5.05 (6a) and 19.85 (1) (h)	The Board's deliberations on requests for advice under the ethics code, lobbying law, and campaign finance law shall be in closed session.
19.85 (1) (g)	The Board may confer with legal counsel concerning litigation strategy.
19.851	The Board's deliberations concerning investigations of any violation of the ethics code, lobbying law, and campaign finance law shall be in closed session.
19.85 (1) (c)	The Board may consider performance evaluation data of a public employee over which it exercises responsibility.

The Government Accountability Board has scheduled its next meeting for Tuesday, August 13, 2013 at the Government Accountability Board offices, 212 East Washington Avenue, Third Floor in Madison, Wisconsin beginning at 9:00 a.m.

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.

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JUDGE TIMOTHY L. VOCKE
Chair

KEVIN J. KENNEDY
Director and General Counsel

Wisconsin Government Accountability Board

Risser Justice Center, 120 Martin Luther King, Jr. Blvd., Room 150,
Madison, Wisconsin
March 20, 2013
9:00 a.m.

Open Session Minutes

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Present: Judge Timothy L. Vocke, Judge Gerald C. Nichol, Judge Michael Brennan, Judge Thomas H. Barland, Judge Thomas Cane and Judge David G. Deininger

Staff present: Kevin Kennedy, Jonathan Becker, Michael Haas, Shane Falk, Ross Hein, Sharrie Hauge, Richard Rydecki, Brian Bell, David Buerger, Sherri Ann Charleston, Ann Oberle, Diane Lowe, Ashley Davis, Cameron Smith, Nathan Judnic, and Reid Magney

A. Call to Order

Judge Vocke called the meeting to order at 9:01 a.m.

B. Director's Report of Appropriate Meeting Notice

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

C. Minutes of Previous Meeting

December 18, 2012 Meeting

January 14, 2013 Meeting

MOTION: Approve the Open Session minutes of the meetings of December 18, 2012, and January 14, 2013. Moved by Judge Deininger, seconded by Judge Cane. Motion carried unanimously.

D. Personal Appearances from Members of the Public

Mary Ann Hanson of Brookfield appeared on her own behalf to discuss the Special Voting Deputy Manual revisions (Agenda Item I). She said the draft revisions reflect that the Board staff listened to citizens' concerns expressed at the December 2012 meeting of the Board. She still has a number of questions which have been submitted to the staff. She urged the Board to wait until after the Spring election cycle to finalize the manual changes so as not to create confusion in the April election.

Sharon Foley of Whitefish Bay appeared on her own behalf to discuss the Special Voting Deputy Manual revisions. She said many nursing home staffs already have absentee ballots that were sent out by the clerk's office, and that there is confusion because of the different levels of care offered at facilities, ranging from independent living to full nursing care.

Andrea Kaminski of Madison appeared on behalf of the League of Women Voters of Wisconsin to provide findings of the League's 300 volunteer election observers at 430 polling sites at the November 6, 2012 election. She indicated that the G.A.B. can be proud that Wisconsin had the second highest voter turnout and that it was a clean efficient election. She indicated that the observers generally found polling locations to be orderly, safe, and well-staffed. There were only some site specific issues, but no general problems. She reported that the Board's work to clarify observer rules and acceptable proof of residence documents were very helpful, and urged the Board to build on the strengths of Wisconsin's elections and not undermine them. She expressed that the G.A.B. is a model for the nation because it is nonpartisan and able to balance interests and input of diverse groups. The League of Women voters presented five recommendations: 1) retain election day registration; 2) improve training of election officials; 3) advocate for use of a wider array of proof of residence documents, such as dorm lists, corroboration, etc. because people were not able to register; 4) modernize SVRS to permit on-line voter registration and easier updates when a voter has moved; and 5) enhance voter education.

Steve Pearson of Omaha, Nebraska, vice president of voting systems for Elections Systems & Software, appeared to speak in support of approval of the Unity 3.4.0.0 and 3.4.0.1 systems (Agenda Items F and G). He made a presentation on the difference between the two systems, which is that Unity 3.4.0.1 has telecommunications modem capabilities, and has not been certified by the U.S. Election Assistance Commission.

Discussion between Board members and Mr. Pearson regarding why ES&S withdrew Unity 3.4.0.1 from federal certification, security measures included in modem transmission of unofficial results, and lack of serious vulnerabilities to computer hacking.

Dane County Clerk Scott McDonell of Madison appeared on behalf of Dane County to comment on approval of Unity 3.4.0.1. He said many communities now use older voting equipment with modems to transmit unofficial results on Election Night that do not have the security features in Unity 3.4.0.1. If there were any issues with the Election Night transmission, they would be picked up and addressed during the official canvass, where the results are compared with the hard copy tapes of results from each tabulator. Many of the errors on Election Night come when results are transmitted over the telephone. He urged the Board to approve the system sooner rather than later.

Discussion between Board members, staff and Clerk McDonell regarding the advantages of using a modem to transmit results.

Brown County Clerk Sandy Juno of Green Bay appeared on behalf of Brown County to ask the Board to move forward with testing and approval of the Elections Systems & Software Unity 3.4.0.1 system without waiting for certification from the U.S. Election Assistance Commission. She described the types of older voting equipment with modem capabilities in use in Brown County and how it helps poll workers get most results to the county by 9 p.m., with the remaining 10 percent coming in by 10 p.m. She said there have never been any errant data or security breaches in modemed data. She expressed total confidence in the process of telecommunicating unofficial election results.

Discussion between Board members and Clerk Juno regarding Brown County's plans to purchase voting equipment, for which the county bonded already three years ago.

Wood County Clerk Cindy Cepress of Wisconsin Rapids appeared on behalf of Wood County to discuss Board approval of Unity 3.4.0.1. She said Wood County has used ES&S DS-200 scanners since 2010, which have been a vast improvement. The next improvement would be the addition of modem transmitting capabilities if the Board approves Unity 3.4.0.1. Current use of DS-200 has been a wonderful improvement; however, having modem capabilities would permit election inspectors to go home earlier after a 13 hour Election Day of work and avoid having to drive 45 minutes in bad weather to deliver the results.

Discussion between Board members and Clerk Cepress regarding Wood County's satisfaction with DS-200 equipment.

Rock County Clerk Lori Stottler of Janesville appeared on behalf of Rock County to discuss Board approval of Unity 3.4.0.1. She said 20 municipalities are waiting to buy equipment with modems for transmitting unofficial results, and to have to purchase equipment without modems would be a setback. She said modems add security because ballots, memory packs and tapes could be destroyed in an auto accident during

transportation from the polling place to the county clerk, and the modemed results would give the county a back-up. Use of thumb drives to transmit unofficial results would require her office to have more staff to process the results, as currently 75 percent of results are modemed in on Election Night, which does not require nearly as much labor. She also noted that soon land phone lines will not be as readily available and the G.A.B. should keep in mind approval of digital transmission of unofficial results, i.e. wireless transmission.

Jefferson County Clerk Barb Frank of Jefferson appeared on behalf of Jefferson County to discuss Board approval of Unity 3.4.0.1. She said Jefferson County has had Optech Eagle ballot scanners for 20 years and all 40 units have modems for sending results, there have been no problems with the modems, and there are checks in place to catch any errors if they were to occur. She emphasized that in the certain places that do not have a phone line for telecommunicating the unofficial results, she does not trust phone and verbal transmission because there is too much likelihood for human error relating and receiving the results. She has these locations scan and email or fax the tape to her office, rather than rely on phone and verbal transmission of the results. She also noted that she has to keep an old computer around because the software for using the current Eagle tabulators is so old that it cannot run on newer computers. This old computer can only be used for election results and nothing else because it is not advanced enough to perform other office functions. Also, she purchased five Eagles to use for parts for the tabulators in operation because parts are starting to become difficult to obtain due to the age of the current equipment and lack of readily available parts for maintenance. The county appropriated funds to purchase new equipment in 2009, and they are set to purchase ES&S DS-200 units, but have been waiting for approval of a unit with a modem.

Discussion between Judge Cane and Clerk Frank regarding whether it would be a step backwards to not have the ability to purchase equipment with modems. Clerk Frank said that clerks were originally apprehensive about modems, but now they love them.

Racine County Clerk Wendy Christensen of Racine appeared on behalf of Racine County to discuss the Clerks' Election Workload Concerns Task Force report (Agenda Item H). She said she agrees with the staff recommendation that election cost reports in the Wisconsin Election Data Collection System should be entered after every Spring and General Election. However, those reports should be due 60 days after the first of the year, not 15 days. She also agreed that data from the Statewide Voter Registration System should not be used (auto-populate) in WEDCS because those systems need to be checks against each other. Finally, she said voter list maintenance should be done every two years after a General Election rather than every four years because the process keeps information in SVRS more up to date and with cleaner data.

Discussion between Judge Vocke and Clerk Frank regarding who should be responsible for mailing the notification postcard to voters. Clerk Christensen said it should be the Board's responsibility, with state funding, because it is more cost-effective. She also said the Board staff should look at different ways for clerks to report election costs that take

into account differences between annual costs and those for a particular election. She emphasized that the G.A.B. should send both the four-year maintenance cards as well as other verification cards. She stated that she would work with the Legislature because the processes of G.A.B. completion of four year maintenance and verification cards are more efficient at the state level and that the G.A.B. needs funding to complete these processes. She indicated that having the G.A.B. complete these processes provides assurance that SVRS has integrity and confidence that the processes are completed.

E. Final Report on Impacts and Costs of Eliminating Election Day Registration in Wisconsin

Elections Division Administrator Michael Haas introduced Elections Data Manager Brian Bell and Elections Specialist Richard Rydecki, who led the team of staff members who worked on the report on Election Day registration. Messrs. Bell and Rydecki presented a verbal and written report.

The Executive Summary is included in the Board meeting materials, and the full preliminary report is available on the G.A.B. website. The final report contains extensive information about the costs of eliminating Election Day voter registration on other state agencies that would be required to provide voter registration services under the National Voter Registration Act. Since the preliminary report in December, staff has refined its estimate of G.A.B. costs from \$5.2 million for initial implementation to \$4.6 million. Other state agencies estimate their startup costs at \$8 million to \$10 million. Ongoing costs would be between \$5 million and \$5.2 million for G.A.B. and other state agencies combined.

Discussion. Judge Cane inquired about whether any other states have eliminated Election Day voter registration. Staff reported that Oregon did many years ago by voter initiative in response to an isolated incident involving a cult using it to take over a small community, and Maine's Legislature did so recently, only to be overturned by a public referendum. Staff clarified that should the Legislature repeal Election Day registration and later reinstitute it, the State will have to continue to incur the NVRA costs because the exemption from NVRA is dependent upon having Election Day registration at the enactment of NVRA and continuously since then. Staff also noted that the states that recently adopted Election Day registration still incur NVRA costs for this very reason.

Discussion regarding cost estimates by other state agencies, which vary greatly. Mr. Rydecki said staff double-checked with the agencies, who reported having consulted with other states for comparison. Some agencies have clientele that require more time than others to fill out forms.

MOTION: Accept the staff's Final Report on the Impacts and Costs of Eliminating Election Day Registration in Wisconsin. Moved by Judge Deininger, seconded by Judge Cane. Motion carried unanimously.

F. Approval of ES&S Voting System 3.4.0.0

Elections Division Administrator Haas introduced Elections Supervisor Ross Hein and Voting Equipment Specialist Sherri Ann Charleston, who presented a verbal and written report.

Mr. Hein said that the Unity 3.4.0.0 is very similar to the Unity 3.2.0.0 Revision 3 system already approved by the Board. Unity 3.4.0.0 has been certified by the U.S. Election Assistance Commission. G.A.B. staff has performed the required testing, has conducted a public demonstration, and has met with the Wisconsin Election Administration Council. Staff has concluded that the Unity 3.4.0.0 can run a fair and secure Wisconsin election, and meets all Wisconsin statutory requirements. Staff recommends approval subject to the same conditions as Unity 3.2.0.0 Revision 3, including that ES&S cannot impose deadlines on clerks that are contrary to statutes, that voting equipment must be programmed to reject overvotes and crossover votes in a partisan primary. One new condition includes stipulations related to the public records law, regarding what information should be provided in the event of a public records request.

Discussion. Judge Cane inquired about the difference between Unity 3.4.0.0 and Unity 3.4.0.1, which is also on the Board's agenda. Mr. Hein said that the only difference is Unity 3.4.0.0 does not have a telecommunications modem for transmitting unofficial election results from polling places to the clerk's office after polls close. Unity 3.4.0.1 has not been certified by the U.S. Election Assistance Commission, and staff will be asking the Board's direction on plans to move forward with testing and possible certification of Unity 3.4.0.1 without that system first having received federal certification.

Further discussion regarding voting systems approval procedures, whether clerks would purchase Unity 3.4.0.0 without modems, and why the Board would approve a system that clerks may not purchase because they want tabulating equipment with modems.

Chair Vocke called a recess at 10:50 a.m. The Board reconvened at 11:15 a.m.

Steve Pearson, vice president of ES&S, discussed the situation with certification of Unity 3.4.0.1. He said Unity 3.4.0.0 and Unity 3.4.0.1 are identical with the exception of the modem. He said DS-200 ballot scanners can be upgraded with modems. He also indicated that the firmware for the DS-200 would have to be upgraded and that the modeming software in the source code would have to be switched on. He said that although ES&S had informed staff that it would not resubmit Unity 3.4.0.1 to the EAC for certification, at some point ES&S may go back and seek federal certification of Unity 3.4.0.1. or another version of the Unity suite. That system is now in the process of being certified in five other states including Illinois, Michigan and Minnesota, but is only currently approved for use in Iowa.

Discussion regarding the costs of upgrading equipment with modems and other equipment required for clerks to use modems. Mr. Pearson said the cost difference is negligible.

MOTION: Adopt the staff's recommendation for approval of the ES&S voting system's Application for Approval of Unity 3.4.0.0 to be sold or used in Wisconsin, in compliance with US EAC certificate: ESSUnity3400, including the conditions described in the staff report on Pages 32 and 33 of the Board's meeting materials. Moved by Judge Deininger, seconded by Judge Cane. Motion carried unanimously.

G. Proposed Process for Review of ES&S Voting System with Telecommunications Application

Mr. Hein and Ms. Charleston presented a verbal and written report regarding state certification issues involving ES&S Unity 3.4.0.1, which has not been certified by the U.S. Election Assistance Commission.

Discussion. Judge Brennan inquired about the costs of federal certification, which Mr. Pearson said could be several million dollars. Director Kennedy said that if the Board approves, staff will develop a testing protocol for approval at the May meeting, after which state testing would begin. Judge Cane inquired about the length of testing. Ms. Charleston said it could take a couple of months with the Board's meeting schedule. Staff Counsel Falk said the testing itself would take one day. Judge Deininger inquired about a decision opening up approval requests from other vendors whose voting systems have not been federally certified yet. Ms. Charleston said that is a concern, thus the staff recommends that the Board restrict development of this process to voting systems that have an underlying EAC certification except for the telecommunications component.

MOTION: Direct staff to review the practices of other states in order to determine what testing models could be adapted and implemented by the Board, if the Board later directs staff to conduct testing for non-U.S. EAC certified voting systems, where the underlying voting system received U.S. EAC certification to either the 2002 or 2005 Voluntary Voting System Guidelines (VVSG), but any additional modeming component will not meet the 2005 VVSG. Also, direct staff to develop testing procedures and standards (after consultation with other states, the academic community, and industry professionals) regarding a testing protocol for non-U.S. EAC certified voting systems, where the underlying voting system received U.S. EAC certification to either the 2002 or 2005 VVSG, but any additional modeming component will not meet the 2005 VVSG, and return to the Board at its May 21, 2013 meeting to report findings for consideration and possible adoption by the Board.

Moved by Judge Cane, seconded by Judge Barland.

Discussion. Judge Brennan inquired about the staff's technical expertise to conduct testing. Mr. Hein said staff may bring in someone with more technical expertise to assist. Ms. Charleston said staff will also look at testing protocols developed by other states.

Motion carried unanimously.

Judge Vocke indicated that Agenda Item H. would be considered after lunch.

I. Report on Special Voting Deputies in Nursing Homes and Care Facilities

(This agenda item was taken out of order.)

Division Administrator Haas introduced Elections Specialist David Buerger, who presented a verbal and written report regarding draft revisions to the manual on Absentee Voting in Nursing Homes, Retirement Homes and Adult Care Facilities. The changes were made following numerous public comments at the Board's December 2012 meeting about issues identified with the Special Voting Deputy process.

Mr. Buerger said that nothing in the draft changes to the manual contradict or overrule existing procedures. Instead the draft changes elaborate and give additional guidance, especially in the areas of confined voters, observers and ballot security. One new section elaborates on the issue of power of attorney in voting.

Director Kennedy commented that agency staff will routinely have conversations with people who insist that they have the right to vote on behalf of the person for whom they have power of attorney, which is incorrect.

Judge Vocke asked whether there were additional Special Voting Deputy process incidents at the February 2013 Spring Primary. Mr. Buerger said the staff had not received reports of additional incidents. He continued that staff is still getting comments on the manual revisions.

Mr. Haas said staff feels comfortable with the manual revisions, but would like the ability to make small changes.

Judge Barland said the manual needs additional grammatical editing, and the section on power of attorney could be more direct, without so much detail. Staff commented that they receive many questions regarding the power of attorney issue at each election, and that the clerks and people with powers of attorney regularly require a more detailed description of the issue, which we have provided in much the same form as appears in the draft manual.

MOTION: Give preliminary approval to the substance of the draft revisions to the manual on Absentee Voting in Nursing Homes, Retirement Homes and Adult Care Facilities, with staff to submit final version to Board in May after language has been cleaned up and the public's questions have been answered. Moved by Judge Deininger, seconded by Judge Brennan. Motion carried unanimously.

Judge Vocke called a recess for lunch at 12:13 p.m. The Board reconvened at 1 p.m.

H. Report on Clerks' Election Workload Concerns Task Force

Division Administrator Haas introduced Elections Specialists Ann Oberle and David Buerger and Elections Data Manager Brian Bell, who presented verbal and written reports on Task Force Recommendations regarding SVRS Provider-Relier Relationships, Wisconsin Election Data Collection System, Four-Year Voter List Maintenance, and Election Costs Levy Exception. The Task Force grew out of a letter from the Wisconsin County Clerks Association regarding difficulties county clerks were facing in providing SVRS services to municipalities that rely on them. The Task Force began in the fall of 2012, and held its first substantive meeting January 29, 2013. Another meeting will be scheduled for this Spring.

Provider-Relier Relationships

Mr. Buerger briefed the Board about the memorandum on provider-relied relationships, in which a small municipality without adequate staff or technical resources relies on the county clerk's office to maintain its voter list and perform other election administration tasks in the Statewide Voter Registration System. There are a wide variety of contractual agreements and pricing structures between counties and municipalities, and in some cases the charges do not cover the costs of services provided. The Task Force has recommended the Board come up with sample agreements that can be adapted for use by counties and municipalities.

Judge Barland asked why the Board would need to be concerned about the financial relationship between counties and relied municipalities. Mr. Buerger said it impacts data quality in SVRS if counties cannot do the job properly because they do not have adequate resources.

Judge Deininger asked what would happen if counties back out of providing services to municipalities. Mr. Haas said the Board would have to provide training and support to many more municipalities. Staff Counsel Falk said one possibility is a hybrid system where some of the more labor intensive duties such as entering voter registrations are shifted to local clerks. He said the clerks do not want the Board to mandate a standard memorandum of understanding, but want a general template they can use. Ms. Oberle said a provider-relied system with different levels of service would allow the Board staff to develop new types of training for clerks who take on greater responsibilities. Director Kennedy said that one of the recurring themes of clerk concerns is that in 2005 when SVRS was being deployed, they did not realize everything they would have to do as providers. Mr. Falk said there are also regional differences across the state with what SVRS tasks county clerks feel comfortable having municipal clerks perform.

MOTION: Accept the Task Force's recommendation on Page 59 of the Board meeting materials for facilitating and improving SVRS Provider-Relier relationships and

workflow, and direct staff to implement this recommendation. Moved by Judge Nichol, seconded by Judge Cane. Motion carried unanimously.

Wisconsin Election Data Collection System

Mr. Bell briefed the Board about the memorandum on the Wisconsin Election Data Collection System, which is a website clerks use to report election statistics within 30 days after each election. Prior to WEDCS, clerks reported this data on paper forms, which required a great deal of staff resources to process.

Detailed discussion regarding collection of election cost data and deadlines for reporting. In 2012 Board staff began asking clerks for election cost data for each election, but now believes that can be scaled back to Spring and General Elections.

MOTION: Accept staff's recommendations on Page 64 of the Board meeting materials to improve WEDCS and election cost reporting, with the exception that cost data would be due by January 31 instead of January 15, and direct staff to implement these recommendations. Moved by Judge Cane, seconded by Judge Barland. Motion carried unanimously.

Four-Year Voter Record Maintenance

Ms. Oberle briefed the Board about the memorandum on Four-Year Voter Record Maintenance, which involves inactivating voters who have not voted in four years if they fail to respond to a postcard notification that gives them the chance to indicate they wish to remain active. As it has done following the previous two general elections, the G.A.B. will print all the postcards and mail them on behalf of municipal clerks following the Spring Election in April. The agency does not have financial resources to continue performing this required task for clerks. The Task Force recommends the G.A.B. continue the practice and the Legislature should provide funding, but if funding is not provided the agency should continue performing the maintenance but without postcard notification. It also recommended the process should be conducted once every four years following Presidential elections if the list maintenance process includes postcards, or once every two years if postcards are not sent.

Discussion regarding statutory language requiring municipalities to conduct Four-Year Voter Record Maintenance, the history of the G.A.B. taking responsibility for the clerk's duties following a 2007 Legislative Audit Bureau report that indicated many municipalities were not carrying it out, and municipalities' abilities to conduct list maintenance.

Discussion regarding timing of postcard mailings relative to statutory language requiring list maintenance to be done within 90 days of a General Election, and difficulties and confusion caused by sending postcards immediately prior to a Spring Election.

Discussion regarding whether G.A.B. has statutory authority to send out postcards for municipal clerks. Judge Cane said he does not believe the agency has authority because Wis. Stat. Sec. 6.50 says that municipal clerks shall perform SVRS maintenance for voters who have not voted in four years. Director Kennedy said it is the staff's legal opinion since 2008 that the agency does have authority to maintain SVRS. Ethics and Accountability Division Administrator Jonathan Becker said the issue may be whether the agency has express authority or general authority.

Judge Vocke said a motion would be in order to table the recommendation and convey to the Legislature that the G.A.B. does not have any objection to conducting list maintenance, but wishes to have clear express authority to do it, along with necessary funding.

MOTION: Table consideration of the Clerks' Election Workload Concerns Task Force regarding the Four-Year Voter Record Maintenance and direct staff to convey to the Legislature that the Board does not have any objection to conducting Four-Year Voter Record Maintenance on behalf of municipal clerks, but that the Board wishes to have clear express authority stated in the statutes, along with necessary funding. Moved by Judge Barland, seconded by Judge Nichol.

Roll call vote: Barland:	Aye	Brennan:	Aye
Cane:	Aye	Deininger:	Aye
Nichol:	Aye	Vocke:	Aye

Motion carried unanimously.

Property Tax Levy Limit Exemption for Special Election Costs

Mr. Buerger briefed the Board about the memorandum beginning on Page 68 of the Board meeting materials regarding the task force recommendation for a property tax levy limit exemption for special election costs and costs to comply with additional election requirements. He said clerks are concerned about a large number of costs incurred in recent years due to recall elections, but staff had difficulty with this recommendation.

Discussion regarding the appropriateness of the Board making a recommendation on this subject. Judge Barland said this is a subject for the League of Municipalities to take up.

The Board took no action.

Mr. Buerger briefed the Board on the two issues on the agenda for the task force's Spring meeting: absentee voting and public records requests for inspection of ballots.

J. Legislative Status Report

Elections Supervisor Ross Hein and Ethics Division Administrator Jonathan Becker presented the report on Page 92 of the Board's meeting materials.

Discussion.

Mr. Becker directed the Board's attention to Item 11 in the Legislative Status Report regarding LRB 1722/1: to raise the threshold for campaign finance disclosure of referendum-related activity from \$750 to \$2,500. He discussed the legislative and legal history of the threshold and the need to raise it in light of constitutional challenges. The Legislative Reference Bureau has drafted legislation, and staff needs Board authorization to pursue introduction.

MOTION: Authorize staff to seek introduction of LRB 1722/1: to raise the threshold for campaign finance disclosure of referendum-related activity from \$750 to \$2,500. Moved by Judge Cane, seconded by Judge Brennan. Motion carried unanimously.

K. Director's Report

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

Written report from Division Administrator Becker and Division staff was included beginning on Page 95 of the Board meeting packet. Division staff has been in their busiest time in the past two-year period with Statements of Economic Interests, lobbyist registrations for the new session and campaign finance reports.

Elections Division Report – election administration

Written report from Division Administrator Haas and Division staff was included beginning on Page 99 of the Board packet. The report includes information about elections costs in 2012, which totaled \$37 million.

Office of General Counsel Report – general administration

Written report from Kevin J. Kennedy, Sharrie Hauge, and Reid Magney was included in the Board packet. Ms. Hauge praised the work of her staff in supporting the two divisions, and Director Kennedy praised the work of PIO Magney, and Staff Counsel Falk.

M. Closed Session

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

MOTION: Move to closed session pursuant to §§5.05(6a), 19.85(1)(h), 19.851, 19.85(1)(g), and 19.85(1)(c), to consider the investigation of possible violations of

Wisconsin’s lobbying law, campaign finance law, and Code of Ethics for Public Officials and Employees; and confer with counsel concerning pending litigation, and to consider employment, promotion and performance evaluation data of a public employee of the Board. Moved by Judge Deininger, seconded by Judge Barland.

Roll call vote: Barland:	Aye	Brennan:	Aye
Cane:	Aye	Deininger:	Aye
Nichol:	Aye	Vocke:	Aye

Motion carried unanimously. The Board recessed at 2:53 p.m. and convened in closed session at 3:13 p.m.

H. Adjourn

The Board adjourned in closed session at 5:18 p.m.

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The next regular meeting of the Government Accountability Board is scheduled for Tuesday, May 21, 2013. The meeting will be held the Government Accountability Board office in Madison, Wisconsin beginning at 9 a.m.

March 20, 2013 Government Accountability Board meeting minutes prepared by:

Reid Magney, Public Information Officer

March 27, 2013

March 20, 2013 Government Accountability Board meeting minutes certified by:

Judge Michael Brennan, Board Secretary

May 21, 2013

State of Wisconsin \ Government Accountability Board

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JUDGE TIMOTHY L. VOCKE
Chairperson

KEVIN J. KENNEDY
Director and General Counsel

MEMORANDUM

DATE: For the May 21, 2013 Board Meeting

TO: Members, Government Accountability Board

FROM: Kevin J. Kennedy
Director and General Counsel

Prepared and Presented by:
Kevin J. Kennedy
Director and General Counsel

SUBJECT: Request for Formal Attorney General Opinion

The Director of Legal Services at the Wisconsin Department of Justice contacted agency staff to discuss a request for a formal opinion from a citizen concerning the application of the state's open meetings law to a series of post-election activity. This activity includes:

- the work of election inspectors at the polling place after voting is completed;
- the work of municipal employees to organize and assemble election-related documents for delivery to the municipal or county boards of canvassers;
- the work of the municipal board of canvassers to determine and certify municipal election results;
- the work of the county board of canvassers to determine and certify county election results and certify state and federal election results; to the Government Accountability Board;
- the work of the Government Accountability Board Chair or designee to determine and certify state and federal election results.

The Government Accountability Board (G.A.B.) staff has provided oral and written guidance to local election officials on legal requirements to conduct post-election activity public.

After reviewing the citizen request for advice and discussing it with representatives from the Wisconsin Department of Justice, we believe that a request for a formal opinion from the G.A.B. would present the issues in a manner that would provide the best guidance for the public as well as local election officials.

The attached draft opinion request presents the issues with the correct legal descriptions of the post-election activity. The draft opinion request also raises issues of concern that would provide the best guidance for local election officials, notably how statutory requirements would be enforced and maintaining order during the public aspects of the post-election activity. The draft opinion request puts the various post-election activities in a context that will assist the Department of Justice in preparing a formal opinion.

The draft opinion does not address the application of the open meetings law to the meetings of the school district board of canvassers. I recommend that language be added to the draft opinion request to include the post-election activity of the school district board of canvassers to the request.

Proposed Motion

The Government Accountability Board directs the Director and General Counsel to request a formal opinion of the Attorney General on the application of the state's open meetings law to the post-election activity of election inspectors, employees and local election officials and boards of canvassers including the actions of the Government Accountability Board.

Attachments

Draft Proposed Formal Opinion Request

State of Wisconsin\Government Accountability Board

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JUDGE TIMOTHY VOCKE
Chair

KEVIN J. KENNEDY
Director and General Counsel

May 21, 2013

The Honorable J.B. Van Hollen, Attorney General
Wisconsin Department of Justice
State Capitol, Room 114 East
Madison, Wisconsin 53702

Opinion Request: Application of Open Meeting Requirements to Post-Election Activities

Dear Attorney General Van Hollen:

I write on behalf of the Government Accountability Board (hereinafter G.A.B.) to ask your opinion on the application of the Open Meeting Requirements of Wis. Stats. Subchapter V, Chapter 19, to post-election activities of municipal, county and state officials. Our agency provides information and training to local election officials on elections administration. One question that occurs with regularity is the application of open meeting requirements to elections administration activity. I understand your office has received similar public inquiries.

Wisconsin law requires certain Election Day responsibilities and post-election canvassing of election results to be conducted publicly. Many post-election duties are carried out by election inspectors (poll workers) and local government employees. There are several steps in the post-election process where the G.A.B. is seeking guidance. Our questions, along with explanatory information, are set out below.

1A. Do the activities of election inspectors following the close of voting on Election Day as described in Wis. Stat. §7.51 constitute a “meeting” of a “governmental body” as those terms are defined in Wis. Stat. §19.82(1) and (2)?

A “meeting” is defined as “the convening of members of a governmental body for the purpose of exercising the responsibilities, authority, power or duties delegated to or vested in the body.” Under the *Showers* test, there are two requirements for a meeting: (1) there is a purpose to engage in governmental business and (2) the number of members present is sufficient to determine the governmental body’s course of action.

The term “Local Board of Canvassers” is set out in the title of Wis. Stat. §7.51. The term is not defined in the Elections Code (Wis. Stats. Chapters 5-10, 12). There is no other statutory reference to “Local Board of Canvassers,” and the Government Accountability Board (G.A.B.) does not use this term in its information and training materials.

The activities described in Wis. Stat. §7.51 are conducted by election inspectors (poll workers). Election inspectors are appointed by the municipal governing body pursuant to Wis. Stat. §7.30. Election Inspectors are appointed for a two-year term beginning in January of an even-numbered year and ending on December 31 of an odd-numbered year. The general duties of election inspectors are described in Wis. Stat. §7.37.

There are six (6) regularly scheduled elections during the two-year period. In many municipalities not all election inspectors serve at every election. In many cases an election inspector may only serve at one or two elections. The municipality may also choose to add election inspectors in anticipation of high turnout elections.

Election inspectors have clearly delineated duties to conduct following the close of the polls on Election Day. Those duties are focused on reconciling voter lists, counting votes, recording polling place activity, preparing election returns, securing election materials, certifying reporting unit level election results and delivering election materials to the municipal clerk.

These duties would seem to meet the first *Showers* test of being for the purpose of engaging in governmental business, as the purpose is to complete tasks related to conducting a public election. The tasks of the election inspectors are principally administrative in nature, although some amount of discretion may be involved in counting votes.

It is not clear that election inspectors assigned to work the polls on Election Day constitute a “governmental body as defined in Wis. Stat. §19.82(1). “Governmental body” includes a “state or local agency, board, commission, committee, council, department or public body corporate and politic created by constitution, statute, ordinance, rule or order.” This provision focuses on the manner in which a body was created rather than on the type of authority the body possesses.

Election inspectors are appointed pursuant to statute by the local governing body. Election inspectors are a collection of public officials with specified duties under the Elections Code. It is not clear whether, when completing post-election tasks, the election inspectors are acting as a governmental body. If they are not a “governmental body,” their work at the polling place does not appear to meet the definition of a “meeting” pursuant to Wis. Stat. §19.82(2).

One factor to weigh in determining if election inspectors are acting as a governmental body is that each municipality has a differing amount of election inspectors serving a widely disparate number of polling places. For example most municipalities have one set of election inspectors serving a single polling place. However larger municipalities have anywhere from 2 to 200-plus polling places, some of which are staffed by more than one set of election inspectors assigned to handle different wards located at a single polling place.

- 1B. If the activities of election inspectors under Wis. Stat. §7.51 are a “meeting” of a “governmental body,” does such a meeting constitute an “open session,” as defined in Wis. Stat. §19.82(3), and is it ever permissible for such a meeting to go into closed session, pursuant to Wis. Stat. §19.85?**
- 1C. If the activities of election inspectors under Wis. Stat. §7.51 are a “meeting” of a “governmental body,” is such a meeting subject to the public notice requirements of Wis. Stat. §19.84 and, if so, what public official is responsible for ensuring compliance with those notice requirements?**

The G.A.B. does not believe the actions of election inspectors described in Wis. Stat. §7.51 are covered by the open meeting requirements and does not advise municipal clerks to publish a notice of the activities of election inspectors conducted after the close of the polls as an open meeting. The duties of election inspectors are required to be conducted publicly. Wis. Stat. §7.51 (1). There is no provision for the duties of election inspectors to be conducted in private. The G.A.B. proactively works to ensure that these duties are carried out in a transparent and accessible manner. We have directed law enforcement to intervene at polling locations that were locked by election inspectors after the close of voting.

There already exist statutory requirements for the actions of election inspectors to be conducted publicly following notice. The canvassing of votes by election inspectors is required to be done publicly after the close of voting. Wis. Stat. §7.51 (1). The hours of voting and polling place locations are noticed pursuant to Wis. Stat. §10.01 (2)(d). The notice does not include a description of the activities conducted at the polling place. In addition there is no notice of how long after the polls close, that election inspectors may be publicly conducting their post-election tasks specified in Wis. Stats §7.51. These public activities and notice requirements are independent of the Open Meetings Law provisions.

- 2A. Does the canvassing of the vote by the Municipal Board of Canvassers as described in Wis. Stat. §7.53 constitute a “meeting” of a “governmental body” as those terms are defined in Wis. Stat. § 19.82(1) and (2)?**
- 2B. If the activities of the Municipal Board of Canvassers under Wis. Stat. §7.53 are a “meeting” of a governmental body,” does such a meeting constitute an “open session,” as defined in Wis. Stat. §19.82(3), and is it ever permissible for such a meeting to go into closed session, pursuant to Wis. Stat. §19.85?**
- 2C. If the activities of the Municipal Board of Canvassers under Wis. Stat. §7.53 are a “meeting” of a governmental body,” is such a meeting subject to the public notice requirements of Wis. Stat. §19.84 and, if so, what public official is responsible for ensuring compliance with those notice requirements?**

The G.A.B. believes meetings of the Municipal Board of Canvassers are subject to open meeting requirements. The Municipal Board of Canvassers is a defined entity pursuant to Wis. Stat. §7.53. In municipalities with more than one reporting unit for municipal offices, the Municipal Board of Canvassers is a formally constituted governmental subunit of specific individuals serving a fixed term with provisions for filling temporary or permanent vacancies. Wis. Stat. §7.53 (2).

In the case of a municipality with one polling place and one reporting unit for municipal offices, the election inspectors perform the duties of the Municipal Board of Canvassers on Election Day after the polls close. Wis. Stat. §7.53(1). In these jurisdictions, the election inspectors have two separate sets of duties under Wis. Stat. §7.51 and Wis. Stat. §7.53.

The duties of the Municipal Board of Canvassers are: to publicly declare the election results for municipal offices; prepare a statement showing the results of each election for a municipal office and any municipal referendum question; following a primary, prepare a statement certifying each candidate nominated to municipal office; and prepare a determination showing

each candidate elected to municipal office and the results of each municipal referendum. Wis. Stat. §7.53 (2)(d).

When the election inspectors perform the duties of the Municipal Board of Canvassers on Election Day after the polls close, it is not clear that they are a governmental body subject to the open meeting requirements. Their duties are required to be conducted publicly. Wis. Stat. §7.53 (2)(d). The G.A.B. believes the Department of Justice needs to provide direction on whether the role of the election inspectors performing the duties of the Municipal Board of Canvassers on Election Day is subject to the open meetings notice requirements pursuant to Wis. Stats. §§19.81 et. seq.

The actions of the Municipal Board of Canvassers are required to be conducted publicly. Wis. Stat. §7.53 (2)(d). The G.A.B. advises municipal clerks to notice the activities of the Municipal Board of Canvassers as an open meeting. Election Administration Manual, pg. 161. <http://gab.wi.gov/clerk/education-training/election-administration-manual>

There is no provision for the duties of the Municipal Board of Canvassers to be conducted in private. However, because the decisions for the Municipal Board of Canvassers may be reviewed in circuit court following an election recount conducted by the Municipal Board of Canvassers, there may be occasions where the Board may need to confer with legal counsel concerning litigation in which the Board is likely to become involved. This is a permissible reason for convening in closed session, provided it is properly noticed. Wis. Stat. §19.85 (1)(g). The G.A.B. believes this exception would also apply when the election inspectors serve as the Municipal Board of Canvassers pursuant to Wis. Stat. §7.53 (1).

The Municipal Board of Canvassers in municipalities with more than one reporting unit for municipal offices is a formally constituted governmental subunit. The G.A.B. believes the municipality is required to abide by the notice requirement of Wis. Stat. §19.84.

- 3A. Does the county-level canvassing of votes by the County Board of Canvassers under Wis. Stat. § 7.60 constitute a “meeting” of a “governmental body” as those terms are defined in Wis. Stat. § 19.82(1) and (2)?**
- 3B. If the activities of the County Board of Canvassers under Wis. Stat. § 7.60 are a “meeting” of a governmental body,” does such a meeting constitute an “open session,” as defined in Wis. Stat. § 19.82(3), and is it ever permissible for such a meeting to go into closed session, pursuant to Wis. Stat. § 19.85?**
- 3C. If the activities of the County Board of Canvassers under Wis. Stat. § 7.60 are a “meeting” of a governmental body,” is such a meeting subject to the public notice requirements of Wis. Stat. § 19.84 and, if so, what public official is responsible for ensuring compliance with those notice requirements?**

The G.A.B. believes meetings of the County Board of Canvassers are subject to open meeting requirements. The County Board of Canvassers is a formally constituted governmental subunit of specific individuals serving a fixed term with provisions for filling temporary or permanent vacancies. Wis. Stat. §7.60 (2). The canvass board meetings are subject to the provisions of Wis. Stats. §§19.81 et. seq. The G.A.B. advises county clerks to notice the activities of the

County Board of Canvassers as an open meeting. *Procedures for County Boards of Canvassers*, pg. 1 <http://gab.wi.gov/node/2719>; *Election Recount Procedures*, pg. 3 <http://gab.wi.gov/manuals/recount>.

- 4A. **Does the state-level canvassing of votes under Wis. Stat. §7.70 constitute a “meeting” of a “governmental body” as those terms are defined in Wis. Stat. §19.82(1) and (2)?**
- 4B. **If the state-level canvassing of votes under Wis. Stat. §7.70 is a “meeting” of a “governmental body,” does such a meeting constitute an “open session,” as defined in Wis. Stat. §19.82(3), and is it ever permissible for such a meeting to go into closed session, pursuant to Wis. Stat. § 19.85?**
- 4C. **If the state-level canvassing of votes under Wis. Stat. §7.70 is a “meeting” of a “governmental body,” is such a meeting subject to the public notice requirements of Wis. Stat. §19.84 and, if so, what public official is responsible for ensuring compliance with those notice requirements?**

The chairperson of the Government Accountability Board, or a designee of the chairperson appointed by the chairperson to canvass a specific election, is required to publicly canvass the returns and make the required certifications and determinations for elections for state and federal office and state referenda. Wis. Stat. §7.70 (3)(a). By agency practice this activity is noticed pursuant to Wis. Stat. §19.84. The G.A.B. believes the work of its staff collecting county canvass statements and certifications along with preparing the documents for the state and federal certifications and determinations is not subject to the provisions of Wis. Stats. §§19.81 et. seq.

5. **In larger municipalities permanent and temporary municipal employees conduct post-election activities preparing for the meetings of the municipal and county boards of canvassers. Are these activities subject to the open meeting requirements of Wis. Stats. §§19.81 et. seq.?**

The permanent and temporary municipal employees are organizing the election materials and returns delivered to the municipal clerk or Milwaukee City Election Commission by election inspectors following the close of the polls pursuant to Wis. Stat. §7.51 (5)(a). The election inspectors have already completed their duties pursuant to Wis. Stat. §7.51. The employees are organizing materials for the municipal canvass and preparing for the delivery of election materials and returns to the County Clerk or Milwaukee County Board of Election Commissioners pursuant to Wis. Stat. §7.51 (5)(b).

The G.A.B. does not believe these actions of permanent and temporary municipal employees are covered by the open meeting requirements. This activity is not being done by a governmental body, but by employees.

6. **During the post-election activities of election inspectors or canvassing boards, to what extent do the openness requirements found in the open meetings law and in the state election code require that members of the public be allowed to inspect**

election documents or the materials relied on by election officials in preparing those documents?

The G.A.B. advises local election officials that members of the public may observe the post-election activities of election inspectors described in Wis. Stat. §7.51. This is based on the provisions of Wis. Stat. §7.51(1) which requires these activities to be done publicly and the provisions of Wis. Stat. §7.41 (1) which authorize any member of the public to be present at a polling place to observe the election. However, the G.A.B. advises local election officials that members of the public may not touch or inspect the materials and equipment used by election officials in post-election activities to prepare the required documents certifying reporting unit level election results.

The G.A.B. advises local election officials that members of the public should be permitted to readily observe post-election activities performed by election inspectors, but may not be positioned in such a way as to interfere with the work of the election inspectors. Similarly, the G.A.B. advises that members of the public may record the post-election proceedings, but may not interfere with the work of the election inspectors. G.A.B. staff advises that members of the public are not entitled to photograph the documents and materials used by election officials in post-election activities to prepare the required documents certifying reporting unit level election results. This would unduly interfere with the activities of election inspectors because of the proximity of observers to the election inspectors.

The G.A.B. provides the same direction with respect to public access to the meetings of Boards of Canvassers. The open meetings law requires governmental bodies to make a reasonable effort to accommodate individuals who wish to record, film or photograph the meeting as long as it does not interfere with the conduct of the meeting. Wis. Stat. §19.90

The G.A.B. does not believe members of the public have a right to be present and observe the work of municipal, county or state employees organizing the election materials and returns or preparing the required documents to certify election results. These documents and materials would be subject to inspection and copying under the public records law once the government employees or governmental bodies are no longer creating and working with them.

7. Where the post-election activities of election inspectors or canvassing boards are subject to the requirements of both the open meetings law and the election code, what are the permissible and appropriate enforcement procedures for a violation of one or more of those requirements?

State law provides penalties and enforcement mechanisms to ensure compliance with the requirements of the open meetings law. Wis. Stats. §§19.96, 19.97. Election officials are prohibited from willfully neglecting, refusing to perform any of the duties prescribed under chs. 5-12 or intentionally violating any provision of chs. 5-12. Wis. Stats. §§ 12.13 (2)(a), (b)7. Violations are enforced by the District Attorney. Wis. Stats. §§12.60 (4), 11.61 (2).

In addition the Government Accountability Board has compliance review authority over the actions of local election officials. Wis. Stat. §5.06. The G.A.B. may order any election official to conform his or her conduct to law. Any elector may file a sworn complaint with the G.A.B. alleging that a local election official has acted contrary to law or abused the discretion vested

in him or her by law. Wis. Stat. §5.06 (1). The Board may also act on its own. Wis. Stat. §5.06 (4).

Conclusion

The issues presented above continue to be a focus of inquiries despite the guidance and training provided by the G.A.B. to local election officials. The Board believes that a formal opinion from your office will assist in clarifying the application of the open meetings requirements and supporting the advice issued by the agency as part of its required training of local election officials and public outreach.

Thank you for your consideration of our request.

Government Accountability Board

A handwritten signature in black ink that reads "Kevin J. Kennedy". The signature is written in a cursive style. A large, light gray "DRAFT" watermark is visible diagonally across the page, partially overlapping the signature.

Kevin J. Kennedy
Director and General Counsel

State of Wisconsin \ Government Accountability Board

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JUDGE TIMOTHY L. VOCKE
Chairperson

KEVIN J. KENNEDY
Director and General Counsel

MEMORANDUM

DATE: For the May 21, 2013 Board Meeting

TO: Members, Government Accountability Board

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

Prepared and Presented by:
Michael Haas, Elections Division Administrator
Brian Bell, Elections Data Manager

SUBJECT: 2012 MOVE Act Federal Consent Decree Final Report

On April 3, 2013, G.A.B. staff submitted a status report to the U.S. Department of Justice (USDOJ), fulfilling the final requirement of the 2012 MOVE Act Federal Consent Decree between the United States and the State of Wisconsin. This report outlines the steps taken by the State of Wisconsin and the Government Accountability Board in recent years, and future plans to ensure that military and overseas voters have the full opportunity to participate in the electoral process guaranteed under law.

Legislative changes requiring ballots to be available at least 47 days prior to a federal election, and changing the dates of the Presidential Preference and Partisan Primary to comply with the MOVE Act both enhance the opportunity for UOCAVA voters to participate. In addition to these laws passed by the State Legislature and signed into law by the Governor, Board Staff have also taken considerable steps to improve the voting experience for military and overseas voters. The launch of the My Vote Wisconsin website (<https://MyVote.WI.gov>) allowed UOCAVA voters to receive their ballot electronically, and provides extensive information about the voting process. Even though the website went live less than two months before the 2012 Presidential and General Election, more UOCAVA voters received their ballot online than by any other single source (mail, email, or fax). Staff also spent thousands of hours communicating important information and working with municipal and county clerks to augment efforts to assist military and overseas voters.

G.A.B. staff and Assistant Attorney General Tom Bellavia discussed this final report with USDOJ by teleconference on Thursday, April 25, 2013. The consent decree for the litigation initiated by USDOJ in 2012 expired on April 30, 2013. The complete final report submitted to USDOJ is enclosed.

No additional action is required by the Board at this time.

State of Wisconsin \ Government Accountability Board

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JUDGE TIMOTHY L. VOCKE
Chairperson

KEVIN J. KENNEDY
Director and General Counsel

Sent by email only to catherine.meza@usdoj.gov

April 3, 2013

Catherine Meza, Trial Attorney
Civil Rights Division, Voting Section
United States Department of Justice
950 Pennsylvania Avenue, NW
Room 7151-NWB
Washington, DC 20530

Dear Attorney Meza:

This correspondence provides the status report of the State of Wisconsin concerning its efforts to ensure that military and overseas electors have the full opportunity to vote guaranteed by UOCAVA in federal elections. This status report is required by paragraph (10) of the consent decree entered into between the United States Department of Justice and the State of Wisconsin, and approved by the federal court in *United States of America v. State of Wisconsin, et al.*, Case No. 12-CV-197 in the U.S. District Court, Western District of Wisconsin. We appreciate the Department of Justice granting us a brief extension to submit this report.

Since the enactment of the Military and Overseas Voter Empowerment Act of 2009 (MOVE Act), Wisconsin has made significant legislative and administrative improvements to the election process to enhance voting opportunities for UOCAVA electors, in addition to implementing the federal requirements. At the urging of the Government Accountability Board (G.A.B), the Wisconsin Legislature moved the date of the fall Partisan Primary from the second Tuesday in September to the second Tuesday in August, and moved the date of the Presidential Preference Primary from the third Tuesday in February to the first Tuesday in April. These statutory changes removed a structural barrier to complying with the MOVE Act and were made to allow ballots to be delivered to UOCAVA voters in a timely manner.

The Legislature also enacted a requirement that absentee ballots must be transmitted to UOCAVA electors who had a request on file 47 days before a federal election, rather than the 45-day requirement of the MOVE Act. Absentee ballots in Wisconsin are counted if they are postmarked by Election Day and are received by 4 p.m. on the Friday following the election. These statutes provide up to 50 days for UOCAVA electors to receive, vote, and return their absentee ballot. The statutory deadline is noted in the absentee ballot instructions which accompany each ballot that is transmitted to military and overseas voters.

In the fall of 2012, the G.A.B. also launched the MyVote Wisconsin website (<http://myvote.wi.gov>) to allow military and overseas voters to request and access their ballots online. This online absentee ballot delivery system for UOCAVA voters was created with funds received from a \$1.9 million grant from the Federal Voting Assistance Program through the Electronic Absentee Systems for Elections (EASE) project. The highlights regarding the use of this new site during the 2012 Presidential and General Election include the following:

- 1,853 UOCAVA voters accessed their ballot through MyVote Wisconsin (3,496 requested ballots by email, fax or mail).
 - 1,388 military voters accessed their ballot online (1,652 by email/fax/mail).
 - 475 Overseas voters accessed their ballot online (1,844 by email/fax/mail).

- More UOCAVA voters in Wisconsin accessed their ballot online through MyVote Wisconsin than by any other single means of ballot delivery (email, fax, or mail).
- MyVote Wisconsin significantly reduced absentee ballot transit time for UOCAVA voters.
 - Average transit time of 12 days using MyVote Wisconsin versus 25 days for all UOCAVA voters.
 - Average transit time of 11 days using MyVote Wisconsin versus 24 days for all military voters.
 - Average transit time of 15 day using MyVote Wisconsin versus 25 days for all overseas voters.
- Wisconsin UOCAVA voters did not experience a statistically significant difference in absentee ballot rejection rates between the ballots delivered online compared to traditionally delivered ballots (email, fax, or mail).
- The 2012 Presidential and General Election in Wisconsin experienced the lowest rejection rate for all UOCAVA absentee ballots in the last three general elections.

The G.A.B. has continually communicated with municipal and county clerks to emphasize compliance with UOCAVA, and to provide assistance to proactively resolve any issues. Beginning in January 2012, our office sent 12 separate communications to local election officials explaining the ballot transmission and reporting requirements for military and overseas voters during the 2012 elections. We verified that all 72 county clerks prepared and delivered the November election ballots to municipal clerks in time for the ballots to be transmitted by the deadline.

Pursuant to the consent decree, our office collected information regarding the transmission of absentee ballots to military and overseas voters and the return of those ballots. Board staff, along with temporary staff hired specifically to collect information regarding MOVE Act compliance, made hundreds of phone calls and repeat calls to 1,851 municipal clerks in order to get all information required by the consent decree reporting requirements. We identified specific delivery problems and reported them to the U.S. Department of Justice. We intervened in the small number of cases where ballots were sent out shortly after the 45-day deadline, and followed up with municipal clerks to determine that ballots had been delivered and to track their return. In all, we estimate that staff dedicated well over 2,000 hours ensuring compliance with the terms of the consent decree. This figure does not account for the time and effort that municipal and county clerks dedicated to serving UOCAVA voters.

While a total of four UOCAVA ballots were transmitted late for the 2012 Presidential and General Election, the protections provided under Wisconsin laws and the consent decree still afforded those voters at least 45 days to receive, vote, and return their ballots. The overwhelming majority of UOCAVA ballots were transmitted timely, and we continue to work diligently with our municipal and county clerk partners to reinforce the importance of prompt ballot delivery in future elections for all voters, especially military and overseas electors.

Since early 2012, state and local election officials in Wisconsin have been in a nearly constant state of election preparation and administration due to a large number of special and recall elections. Following yesterday's Spring Election, we are not scheduled to have another regular statewide election until February 2014. The G.A.B. will take this opportunity to further evaluate efforts to serve UOCAVA voters and tailor its training of local election officials based upon our experiences in the 2010 and 2012 federal elections. One effort that is in progress is improving the MyVote Wisconsin website, increasing clerks' familiarity with its requirements and workflow, and promoting its use to UOCAVA voters. We see greater use of that voter portal as a promising opportunity to significantly reduce the ballot transit time for greater numbers of military and overseas voters.

Wisconsin is firmly committed to improving the voting experience for military and overseas voters, and for all voters. The Government Accountability Board is proud of what has been accomplished in partnership with the Legislature, local election officials, and uniformed services representatives to comply with the requirements of the MOVE Act and to enhance the ability of UOCAVA voters to exercise their right to vote. We look forward to building upon those successes in the future.

We trust that this correspondence has outlined the aggressive steps Wisconsin has taken to improve the voting experience for UOCAVA voters, and the efforts we will continue in the future. If you need any additional information please contact, Michael Haas, the Elections Division Administrator at 608-266-0136 or Michael.Haas@wi.gov.

Wisconsin Government Accountability Board

A handwritten signature in black ink that reads "Kevin J. Kennedy". The signature is written in a cursive, flowing style.

Kevin J. Kennedy
Director and General Counsel

cc: Members, Wisconsin Government Accountability Board

State of Wisconsin\Government Accountability Board

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JUDGE TIMOTHY L. VOCKE
Chair

KEVIN J. KENNEDY
Director and General Counsel

MEMORANDUM

DATE: For the May 21, 2013 Board Meeting

TO: Members, Wisconsin Government Accountability Board

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

Prepared and Presented by:
Sherri Ann Charleston
Voting Equipment Elections Specialist
Government Accountability Board

Ross Hein
Elections Supervisor
Government Accountability Board

SUBJECT: Election Systems and Software (ES&S)
Petition for Approval of Voting System Testing Procedures and
Protocols for Modeming in the Unity 3.4.0.1

I. Introduction and Recommendations

Election Systems & Software (ES&S) has sought Board approval for Election Management Suite Unity 3.4.0.1. Unity 3.4.0.1 currently lacks federal certification and as it stands will likely never receive it because ES&S has withdrawn it from certification by the United States Election Assistance Commission (U.S. EAC). Though ES&S initially informed Board staff on October 3, 2012 that it would not re-submit Unity 3.4.0.1 for review by the U.S. EAC, ES&S stated at the Board's March 20, 2013 meeting that it was considering resubmitting the Unity 3.4.0.1 to the U.S. EAC for certification.

At the Board's March 20, 2013 meeting, despite the fact that the Unity 3.4.0.1 had not received federal certification, ES&S requested that the Board consider conducting functional testing and certification of the Unity 3.4.0.1 based on its interpretation of the Wisconsin Administrative Code. ES&S posits that Wis. Admin. Code Ch. GAB 7 does not require U.S. EAC certification as a condition of testing and approval in Wisconsin.

At the March 20, 2013 meeting, the Board exercised authority per Wis. Adm. Code 7.03(5), according to which, for good cause shown, the Board may exempt any

electronic voting system from strict compliance with Wis. Adm. Code Ch. 7. The Board subsequently directed staff to establish protocols that will be used as guidelines for evaluating future (and concurrent) applications for approval of non-U.S. EAC certified voting systems, where the underlying voting system received U.S. EAC certification to either the 2002 or 2005 Voluntary Voting System Guidelines (VVSG), but any additional modeming component does not meet the 2005 VVSG.

In accordance with the Board directive from the March 20, 2013 meeting, G.A.B. staff has reviewed the practices of other states regarding non-U.S. EAC certified voting systems and equipment to determine what testing models could be adapted and implemented by the Board. Staff consulted with and reviewed the statutory requirements and testing protocols of select states (Iowa, Illinois, Minnesota, Virginia, New York, and Florida), and also consulted with the academic community and industry professionals regarding testing protocols for non-U.S. EAC certified voting systems, where the underlying voting system received U.S. EAC certification to either the 2002 or 2005 VVSG, but any additional modeming component does not meet the 2005 VVSG. Staff also reviewed Election Day and post-election procedures utilized by other states that allow the transmission of unofficial results via modem technology.

Based on the review of other states' testing protocols, Wisconsin's statutory requirements, and industry standards, Board staff developed proposed testing protocols and procedures, and makes the follow recommendations:

1. That the Board adopt the testing procedures and standards pertaining to Modeming and Communication as detailed in *Voting System Standards, Testing Protocols and Procedures Pertaining to the Use of Communication Devices* contained herein. These testing protocols would apply to non-U.S. EAC certified voting systems, where the underlying voting system received U.S. EAC certification to either the 2002 or 2005 VVSG, but any additional modeming component does not meet the 2005 VVSG.
2. That the Board direct staff (pursuant to a properly submitted Wisconsin application for approval) to test non-U.S. EAC certified voting systems, where the underlying voting system received U.S. EAC certification to either the 2002 or 2005 VVSG, but any additional modeming component does not meet the 2005 VVSG to the testing standards contained in the proposed *Voting System Standards, Testing Protocols and Procedures Pertaining to the Use of Communication Devices*.
3. That the Board clarify that any modem hereafter approved for use in Wisconsin must have been tested to the requirements contained in the most recent version or versions of the Voluntary Voting System Guidelines (VVSG) or Voting System Standards (VSS) currently accepted for testing and certification by the U.S. Election Assistance Commission (EAC).

II. Background

- A. ES&S has sought Board approval for the Unity 3.4.0.1, even though it currently lacks federal certification and as it stands will likely never receive it because ES&S has withdrawn it from certification with the United States Election Assistance Commission (U.S. EAC).

Unity 3.4.0.1 is a modification to the Unity 3.4.0.0 (EAC#ESSUnity3400). The modification provides support for landline modeming of unofficial results from the DS200 tabulator to a Secure File Transfer Protocol (SFTP) server. This function enables jurisdictions to modem unofficial results from a polling place to a central location, where the unofficial results are aggregated by use of election management software on election night. In addition to the modeming capability, the Hardware Programming Manager (HPM) and Election Reporting Manager (ERM) applications were modified to support the addition of modem functionality. All modifications of the system were tested to the 2005 Voluntary Voting System Guidelines (VVSG) Standard by Wyle Laboratories; however the system as a whole is only compliant to the 2002 VVSG Standards.¹

ES&S withdrew the Unity 3.4.0.1 from the U.S. EAC certification program after failing to resolve two Notices of Anomalies issued by Wyle Laboratories during the test campaign. On November 2, 2012, Wyle Laboratories issued its test report for the ES&S Unity 3.4.0.1. During the testing campaign, Wyle issued three Notices of Anomalies to ES&S, two of which were not resolved.² Wyle concluded that the Unity 3.4.0.1 Technical Data Package (TDP) documentation conflicted with the requirements of the 2005 VVSG and the actual operation of the system. ES&S corrected this anomaly and resubmitted the TDP documentation for review. Regarding the two remaining anomalies, Wyle concluded: 1) that the Unity 3.4.0.1 failed to meet the 2005 VVSG standards pertaining to Data Transmission (2005 VVSG Volume 1, Section 7.6.1) and 2) that the Unity 3.4.0.1 failed to meet the 2005 VVSG standards pertaining to Maintaining Data Integrity (2005 VVSG Volume 1, Section 7.5.1.b).³ ES&S refused to submit a resolution of these anomalies to Wyle for review and subsequently withdrew the Unity 3.4.0.1 from the U.S. EAC certification process. As a result, Unity 3.4.0.1 has not received federal certification.

Several county clerks have also requested that the G.A.B. disregard the prerequisite for U.S. EAC certification of Unity 3.4.0.1. In December 2012, G.A.B. staff received a letter from Brown County Clerk Darlene Marcelle expressing her support for ES&S's proposal for the G.A.B. to approve Unity 3.4.0.1 without first requiring federal certification. Additionally, at the February 14, 2013 meeting of the Wisconsin Election Administration Council (WI-EAC), several county clerks expressed a desire

¹ Voting systems submitted for testing after December 13, 2007, are tested to the 2005 VVSG. However, in cases where the systems are modifications to existing systems approved under the 2002 Voting System Standards (VSS), only the modifications will be tested to the 2005 standards. Systems that are modifications to the 2002 VSS can only be certified to the 2002 VSS.

² A Notice of Anomaly is generated upon occurrence of a verified failure, an unexpected test result, or any significant unsatisfactory condition.

³ In October of 2012, the U.S. EAC issued two Requests for Interpretations addressing both of these standards. Both have been included with this report as attachments.

to acquire new equipment with the capability to transmit unofficial results from polling place tabulators to their offices. Many other clerks subsequently reiterated their support for equipment with modem capability at the March 4, 2013 meeting of the Wisconsin County Clerks Association. Finally, at the Board's March 20, 2013 meeting, several county clerks addressed the Board, expressing their desire to purchase equipment capable of modeming unofficial results from the polling place to a central processing location on election night. Several jurisdictions in Wisconsin have benefited from the use of landline modems to transmit unofficial results using the Optech Eagle, namely Brown, Dane, Jefferson, Marathon, and Rock Counties.

B. Current interpretation of Wisconsin's statutes and administrative rules pertaining to approval of voting systems requires U.S. EAC certification prior to the G.A.B. conducting functional testing.

No electronic voting equipment may be offered for sale or utilized in Wisconsin unless the Board approves it. Wis. Stat. § 5.91 (see attached). The Board has also adopted administrative rules detailing the approval process. Wis. Admin. Code Ch. GAB 7 (see attached). In particular, G.A.B. administrative rules require that an application for approval of an electronic voting system shall be accompanied by reports from an independent testing authority accredited by the United States Election Assistance Commission (U.S. EAC) (formerly, National Association of State Election Directors (NASSED)), demonstrating that the voting system conforms to all the standards recommended by the U.S. EAC (formerly, Federal Election Commission (FEC)). Wis. Adm. Code 7.01(1)(e). Past interpretation by the Board of Wis. Adm. Code Ch. 7 and policies regarding the approval of voting equipment requires U.S. EAC certification prior to conducting testing for approval for sale or use in Wisconsin. However, for good cause shown, the Board may exempt any electronic voting system from strict compliance with Wis. Adm. Code Ch. 7. Wis. Adm. Code 7.03(5).

The U.S. EAC currently requires that voting systems seeking federal certification must be in compliance with federal voting system standards as outlined in the 2005 Voluntary Voting System Guidelines. Prior to the passage of the Help America Vote Act of 2002 (HAVA), voting systems were assessed and qualified by the National Association of State Election Directors (NASSED), a nonpartisan association consisting of state level election directors nationwide. These voting systems were tested against the 1990 and 2002 voting system standards developed by the Federal Election Commission (FEC). With HAVA's enactment, the responsibility for developing voting system standards was transferred from the FEC to the U.S. Election Assistance Commission (U.S. EAC).

HAVA directed the U.S. EAC to develop voluntary voting system guidelines—a set of specifications and requirements against which voting systems can be tested to determine if the systems provide all of the basic functionality, accessibility and security capabilities required of these systems. 42 U.S.C. § 15481. In 2005, the U.S. EAC issued the Voluntary Voting System Guidelines (VVSG), in accordance with HAVA. The EAC's federal advisory committee, the Technical Guidelines Development Committee (TGDC), and the National Institute of Standards and Technology (NIST) developed the Guidelines.

The 2005 VVSG update and augment the 2002 Voting System Standards (VSS), as required by HAVA, to address advancements in election practices and computer

technologies. The 2005 VVSG significantly increased security requirements for voting systems and expanded access, including opportunities to vote privately and independently for individuals with disabilities. Adoption of the VVSG at the state level is voluntary. However, states may formally adopt the VVSG, either entirely or in part, making these guidelines mandatory in their jurisdictions.

Currently, vendors seeking U.S. EAC certification of equipment with a telecommunications component must demonstrate that their equipment is compliant with the 2005 VVSG requirements governing the use of public telecommunications in voting systems. To do so, vendors seeking federal certification must first submit their voting systems to a U.S. EAC accredited test laboratory which will test the equipment against the 2005 VVSG requirements.⁴

- C. The U.S. EAC has not been able to certify any voting system with a modeming component under the current interpretation of the 2005 Voluntary Voting System Guidelines (VVSG).

The U.S. EAC currently has no systems certified that include the modeming function. Moreover, given the lack of U.S. EAC commissioners, the U.S. EAC has not been able to promulgate up-to-date technology standards, a contributory factor in the current stagnation in election technology innovation. In 2007, the Technical Guidelines Development Committee (TGDC) delivered a complete rewrite of the 2005 VVSG to the EAC.⁵ This revision, known as the VVSG 1.1, has not been implemented. Implementation of the VVSG 1.1 is an action that can only be carried out with the approval of at least three of the four U.S. EAC commissioners. 42 U.S.C. § 15328. Implementation of the revised standards is therefore not possible because there are currently four vacancies on the U.S. EAC.⁶

The 2005 VVSG standards against which modems are tested pertain to telecommunications and cryptography in voting systems. The 2005 VVSG Volume 1, Section 7.6.1 (Data Transmission) requires that all systems that transmit data over public telecommunications networks shall require that at least two authorized election officials activate any critical operation regarding the processing of ballots transmitted over a public communication network. Additionally, 2005 VVSG Volume 1, Section 7.5.1.b (Maintaining Data Integrity) requires that voting systems which use telecommunications to communicate between system components and locations before the polling place is officially closed shall implement an encryption standard currently documented and validated for use by an agency of the U.S. government.

⁴ The U.S. EAC accredits test laboratories (voting system test laboratories or VSTLs) that evaluate voting systems, voting devices, and software against the voluntary voting system guidelines to determine if they provide all of the basic functionality, accessibility, and security capabilities required of these systems. The test laboratory provides a recommendation to the U.S. EAC, and the Commission's executive director makes the determination whether to issue a certification.

⁵ The TGDC assists U.S.EAC in developing the Voluntary Voting System Guidelines. The chairperson of the TGDC is the director of the National Institute of Standards and Technology (NIST). The TGDC is composed of 14 other members appointed jointly by U.S. EAC and the director of NIST. Visit NIST at <http://www.nist.gov/itl/vote/> or the U.S. EAC at http://www.eac.gov/about_the_eac/technical_guidelines_development_committee.aspx to view TGDC resolutions, meeting minutes and additional information.

⁶ HAVA specifies that four commissioners are nominated by the President on recommendations from the majority and minority leadership in the U.S. House and U.S. Senate.

On October 1, 2012, the U.S. EAC released two Requests for Information (RFI) related to the use of telecommunications and cryptography in voting systems. The RFI's were issued after ES&S had already begun the test campaign at Wyle Laboratories for the telecommunications component found in Unity 3.4.0.1. The October 1, 2012 RFI's clarified the 2005 VVSG telecommunications standards for both Data Transmission⁷ and Cryptography⁸. The U.S. EAC explained that to comply with 2005 VVSG Volume 1, Section 7.6.1, voting equipment transmitting data over public telecommunications networks shall require two digital signatures.⁹ Furthermore, to comply with 2005 VVSG Volume 1, Section 7.5.1.b, the U.S. EAC required voting equipment to meet the Federal Information Processing Standard (FIPS) 140-2 or the most current FIPS certified cryptographic modules.¹⁰ Additionally, all portions of the voting system, including any central locations, would have to include this level of encryption.¹¹

The October 2012 RFI's further clarified the U.S. EAC's May 2012 Decision on the Transmission of Results.¹² In the May RFI, the EAC clarified that voting systems using telecommunications technologies shall be tested to all telecommunications requirement for the technology (i.e. wired or wireless) without distinction between official *and unofficial* results. The EAC now requires federally accredited testing laboratories to test all voting systems according to these amended standards.

In response to the October RFI's, Wyle Laboratories tested the Unity 3.4.0.1 to the clarified 2005 VVSG standards. On November 6, 2012, Wyle Laboratories issued two Notices of Anomaly, indicating that the Unity 3.4.0.1 did not meet the requirement in 2005 VVSG Volume 1, Section 7.6.1, because it did not require at least two authorized election officials to activate critical operations as noted. Additionally, Unity 3.4.0.1 did not meet Section 7.5.1.b as it did not use the specifically required encryption standard. ES&S chose not to resolve the anomalies and refused to resubmit Unity 3.4.0.1 for review.

On November 19, 2012, the G.A.B. received an Application for Approval of Unity 3.4.0.1. The Application for Approval of 3.4.0.1 was filed without the U.S. EAC's certification. During a meeting between ES&S representatives and G.A.B. staff on October 3, 2012, the vendor informed staff that the Unity 3.4.0.1 would never be submitted to the U.S. EAC for certification, thus it would never obtain U.S. EAC certification. ES&S subsequently amended this statement at the March 20, 2013

⁷ EAC, RFI 2012-06, EAC Decision on Use of Public Telecommunications Networks and Data Transmission

⁸ EAC, RFI 2012-05, EAC Decision on Public Telecommunications and Cryptography

⁹ EAC, RFI 2012-06, EAC Decision on Use of Public Telecommunications Networks and Data Transmission

¹⁰ The 140 series of Federal Information Processing Standards (FIPS) are U.S. government computer security standards that specify requirements for cryptography modules. The current version of the standard is FIPS 140-2, issued on 25 May 2001.

The National Institute of Standards and Technology (NIST) issues the FIPS 140 Publication Series to coordinate the requirements and standards for cryptographic modules which include both hardware and software components for use by departments and agencies of the United States federal government. See full text of FIPS 140-2 at

<http://csrc.nist.gov/publications/fips/fips140-2/fips1402.pdf>

¹¹ EAC, RFI 2012-05, EAC Decision on Public Telecommunications and Cryptography

¹² EAC, RFI 2012-02, EAC Decision on Transmission of Results (Official and Unofficial)

Board meeting, stating that they had not foreclosed the possibility of resubmitting a version of the Unity 3.4.0.1 to the U.S. EAC for certification.

III. Discussion

In accordance with the Board directive from the March 20, 2013 meeting, staff reviewed the practices of other states regarding non-U.S. EAC certified voting systems and equipment to determine what testing models could be adapted and implemented by the Board. Staff consulted with other states, the academic community, and industry professionals regarding testing protocols for non-U.S. EAC certified voting systems, where the underlying voting system received U.S. EAC certification to either the 2002 or 2005 VVSG, but any additional modeming component does not meet the 2005 VVSG. Staff also reviewed Election Day and post-election procedures regarding the transmission of unofficial results via modem technology.

Staff reviewed the statutory requirements and testing protocols of select states (Iowa, Illinois, Minnesota, Virginia, New York, and Florida) and discerned four general categories of testing programs. The state testing protocols under review cover the spectrum, ranging from protocols that require no independent functionality and integrity testing of the modeming component to those that are administered by state employed testing teams and have extensive testing procedures in place.

With two exceptions — New York and Florida — all selected states (Iowa, Minnesota, Illinois, and Virginia) have either tested the Unity 3.4.0.1 or have indicated that they will do so in the future. Florida and New York have established comprehensive state-specific standards and testing protocols and procedures to examine voting systems in lieu of requiring testing to federal standards. As part of its examination, staff reviewed these state-generated models for testing to assess the viability of adopting similar protocols as a model.

A. Model Testing Procedures and Protocols

- 1) Some states do not conduct independent testing of the modeming component, but may rely almost entirely on test reports from a VSTL or other Independent Testing Authority to verify that the voting system is compliant with either the 2002 or the 2005 VVSG.

Iowa

Iowa does not require U.S. EAC certification, but does require vendors to submit voting systems to a federally accredited laboratory for review.¹³ The vendor must submit a passing testing report from the Independent Testing Authority (ITA) with its application for testing and certification, indicating that the system examined meets either the 2002 or subsequently adopted VVSG standards. Iowa does not explicitly require testing to the 2005 standards. Iowa Code § 22.5(4). This allows Iowa to approve the modem components of voting systems which meet the lesser requirements of the 2002 VVSG.

¹³ 42 U.S.C. § 15481. HAVA requires that the U.S. EAC provide for the accreditation of voting system testing laboratories.

Iowa's state board of examiners conducts its own functional and integrity testing of the system as a whole, but does not independently test the functionality or integrity of the modem component. Iowa's Administrative Code dictates that the examiners may accept the qualification test report as evidence of the modem's sufficiency, therefore the Iowa board of examiners has chosen not to conduct its own testing. Iowa Admin. Code § 22.30 (1).

The examiners review the qualification test report submitted with the application for examination and testing of the voting system. If the test report for the voting system under examination shows that the electronic transmission components have met the voting system standards and the examiners concur, the electronic transmission components may be used in conjunction with the voting system. If the qualification test report or the examiners conclude that the electronic transmission components do not meet the voting system standards, or if this feature is not mentioned in the report, purchasers of the voting system may not transmit election results electronically.

Illinois

Illinois has eliminated the need for vendors to obtain a U.S. EAC certification number but requires voting systems to be tested by a U.S. EAC accredited laboratory to the requirements of the federal voting system standards. Ill. Admin. Code tit. 26, § 204.40-10. Illinois also does not specify whether voting systems will be tested to the 2002 or 2005 standards.

The Illinois State Board of Elections conducts its own functional testing under simulated Election Day conditions, but does not test the modem component independently. Board staff is required, after giving written notice, to make an on-site inspection to review production and testing of equipment and to interview personnel involved in the development of the proposed voting system. Board staff also prepares and performs a test of the proposed voting system to determine whether the system fulfills the criteria and requirements of Ill. Admin. Code § 204.40, but the § 204.40 requirements do not apply to the modeming component.

The Illinois Board has elected to observe a simulated transmission of results conducted by the vendor in lieu of conducting independent testing on the modeming component. The Illinois Board has not established either Election Day or post-election procedures pertaining to modeming.

Minnesota

Minnesota requires testing by an independent authority, but unlike Illinois and Iowa, does not require the ITA to be federally accredited. Minn. Stat. § 206.57(6). State statute requires that a voting system must be certified by an independent testing authority approved by the secretary of state and conform to current standards for voting equipment issued by the Federal Election Commission or its successor, the U.S. Election Assistance Commission. As Minnesota statute does not require testing to the 2005 standards, voting systems can be tested to the 2002 standards.

Minnesota conducts functionality and integrity testing, however their statutorily prescribed examination is limited to examining the ballot programming, vote counting, and vote accumulation functions of each voting system. Minn. Stat. § 206.57(1). Minnesota does not require the independent testing of the modem component for functionality and integrity. Because it is not statutorily required to examine the modem independently, the Secretary of State has elected not to conduct testing on the voting system's modem, but rather to rely predominately on the test results provided by the ITA. Their testing protocols pertaining to modeming primarily consist of certifying that the results are tabulated correctly and verifying the transmission of the results during an observational demonstration.

- 2) A state may contract out the functional and integrity testing to an Independent Testing Authority that will test the voting systems against Federal and State standards.

A state may contract with Independent Testing Authorities as external evaluation agents to create formalized requirements and procedures as well as to perform the logic and accuracy testing that is derived from these standards and procedures. Staff has chosen to focus exclusively on Virginia for this model, which conducts an extensive testing of the modeming component, whereas other states do not necessarily do so.

There are three distinct levels of testing that a voting system must successfully complete before a voting system can be used in the Commonwealth of Virginia. These levels are Federal Compliance Testing, State Certification Testing (the equivalent of Wisconsin's functionality and integrity testing), and Acceptance Testing.¹⁴ As a condition of the Federal Compliance Testing, vendors must demonstrate that they are in compliance with the most recent version or versions of the Voluntary Voting System Guidelines (VVSG) or Voting System Standards (VSS) currently accepted for testing and certification by the U.S. EAC. Furthermore, as a condition of State Certification Testing, Virginia has created the *Virginia Requirements and Procedures for State Certification of Voting Systems*, a set of formal procedures intended to provide a formal and organized process for vendors to follow when seeking state certification for a new voting system or an improvement or modification to an existing voting system currently certified for use in Virginia.¹⁵ Finally, during Acceptance Testing, the final phase, counties within Virginia are required to verify that they have received the same equipment that has been tested by the state.

To meet the elements of Federal Compliance testing, Virginia requires that voting systems meet the standards contained in the most recent version or versions of the Voluntary Voting System Guidelines (VVSG) or Voting System Standards (VSS) currently accepted for testing and certification by the U.S. EAC. Compliance with the applicable VVSG/VSS may be substantiated through federal certification by the EAC, through certification by another state that requires compliance with the applicable VVSG/VSS, or through testing conducted by a federally certified voting system test laboratory (VSTL) to the standards contained in the

¹⁴ Federal Compliance testing is conducted by a VSTL, state certification testing is conducted by a VSTL, and Acceptance testing is conducted on the county level, which verifies that the system received was the system that has been tested at the Federal and State levels.

¹⁵ http://www.sbe.virginia.gov/Files/ElectionAdministration/BoardPolicies/2010-004_Voting_Equipment_Certification_Procedures_Update.pdf

applicable VVSG/VSS. The Virginia State Board of Elections (SBE) retains discretionary ability to make the final decision on compliance based on all available information. If there is evidence of a material non-compliance (as was the case with the ES&S Unity 3.4.0.1), the Commonwealth has stated that it will work with the vendor to resolve the issue.

The Commonwealth of Virginia relies on an external evaluation agent, an Independent Testing Authority, to conduct its State Certification testing. The evaluation agent reviews the Technical Data Package, Corporate Information, and other material provided and notifies the vendor of any deficiencies. The evaluation agent also conducts a preliminary analysis of the Technical Data Package, Corporate Information, and other materials provided and prepares an Evaluation Proposal. After the vendor agrees to the proposal, the evaluation agent conducts the evaluation described in the Evaluation Proposal and then submits a report of the findings to the Virginia SBE.

Modem testing in Virginia is conducted as part of the functionality and integrity testing that is performed by the ITA. For several certification campaigns, Virginia has allowed Brian Hancock, the Director of Certification for the U.S. EAC, to participate in the testing of the equipment. For the modem testing, the ITA conducts both a simulated transmission using the vendors testing equipment and then attempts to modem the results gathered from the test run on the test desks to a central location. The ITA conducts the transmission between at least two different polling precincts and the central polling location in the state.

Certification testing is not completed in Virginia until after there is a successful test use of the equipment in an actual election in one or more local jurisdictions, which have consented to conduct such a test. Successful completion of a test election includes a post-election audit. Code of Virginia §24.2-629 (E).

Vendors must pay an initial fee of \$10,000 for new voting system certification requests and \$5,000 for requests for modifications to a previously certified voting system. If the SBE's actual costs for reviewing the vendor's submission exceed the amount of the initial fee, the vendor agrees to reimburse SBE for all additional costs incurred. All fees must be collected before certification will be granted.

- 3) The New York Model. New York State has adopted the 2005 VVSG in its entirety, but has augmented it by adopting U.S. EAC recommendations as requirements and creating a joint testing operation between a VSTL and a state technology enterprise to implement their protocols.

In order for a polling place system to be considered by the New York State Board for Certification, it must comply with the mandates of New York State Election Law, and meet the Election Assistance Commission's 2005 Voluntary Voting System Guidelines, to the extent that they are consistent with State law. N.Y. Comp. Codes R § Regs. tit. 9, § 6209.2. By statute, New York has adopted the 2005 VVSG in its entirety, but the State testing authority has further clarified the statute to make the requirements more strenuous than those issued by the U.S. EAC.

The New York State Board of Elections has issued testing requirements that stipulate that testing against the 2005 VVSG will include testing all mandatory requirements stated as "Shalls" as well as all standards stated as "should." The standards stated as

“should”, while not required of the vendor, will still be tested as they are used as tiebreakers or extra credits when comparing one vendor to another.¹⁶ Hence, while New York does not explicitly require U.S. EAC certification, it does require vendors to adhere to the requirements of the VVSG during the course of the testing it conducts on the state level.

New York has the most expensive test campaign structure of any state in the country. The New York State Board of Elections utilizes the services of a VSTL as well as the services of the New York State Technology Enterprise Corporation (NYSTEC), which is responsible for and acts as an independent security advisor with regard to the voting systems security testing. The VSTL and NYSTEC jointly administer the testing of voting systems seeking certification in the state.

As a condition of certification in New York, the State Board of Elections requires a line-by-line source code review, which generates the majority of the testing costs. New York developed a requirements matrix, reflecting the 1,524 requirements of New York’s statutes and regulations, as well as the EAC’s 2005 VVSG. From this matrix, approximately 26 unique test cases, and 6,730 test steps are employed to ensure the accuracy of the testing to each requirement. New York does not allow for the modeming of results and therefore systems currently approved by the state are not tested for this functionality.

At the conclusion of the first round of testing conducted by the VSTL and NYSTEC, New York elections staff conduct functional testing of the voting system under review. New York concludes its testing campaign by piloting the equipment in actual elections, at which time it is reviewed for its suitability for use in New York. Given the requirements of the New York certification program, testing campaigns tend to cost vendors in the neighborhood of one million dollars.

- 4) The Florida Model. Florida has developed the Florida Voting System Standards (FVSS) to establish minimum standards for hardware and software for electronic and electromechanical voting systems. The FVSS are administered by its own Bureau of Voting System Certification.

The State of Florida has not adopted the VVSG and operates completely autonomously from the federal certification process. The state does not require EAC certification nor does it adhere to the federal requirements contained in the VVSG. In lieu of doing so, the state has directed the Florida Department of State to establish the Florida Voting System Standards, which establish minimum standards for hardware and software for electronic and electromechanical voting systems. The Florida Division of Elections Voting System Section published the “Florida Voting Systems Standards” in June 1998. The Florida Voting Systems Standards were revised in November 2001 and then later in May of 2004 to comply with changes in state election law and accessibility requirements.

¹⁶ <file:///H:/Voting%20Equipment/Research/Voting%20Systems%20Standards%20Research/New%20York/New%20York%20State%20Board%20of%20Elections%20Voting%20System%20Expectations%20Overview.pdf>

The Florida Voting System Standards include directives pertaining to the following: (a) Functional requirements; (b) Performance levels; (c) Physical and design characteristics; (d) Documentation requirements; and (e) Evaluation criteria. Fla. Stat. § 101.015 (2009). The publication contains the minimum standards, procedures for testing to determine if those standards have been met, and procedures for certifying and provisionally certifying compliance with the minimum standards.

The Florida Voting System Standards are implemented through the Bureau of Voting System Certification (BVSC), which consists of the Bureau Chief and a Senior Management Analyst who manage and employ its two technical sections: Functional Testing and Source Code Analysis. Since the BVSC employs its own in-house technical team, it is able to conduct source code review, a costly examination that is typically conducted on the federal level for EAC relying states, in addition to administering functionality and integrity testing. The BVSC's incurred costs include those associated with the Bureau's course of business involving staff salary and nominal cost for equipment testing. If BVSC staff needs to travel for testing purposes, the vendor reimburses actual costs incurred by the Department of State in examining the system.

The Florida Bureau of Voting Systems Certification (BVSC) outlines two different procedures based on analog modem or wireless communication in the FVSS. The FVSS requires tests, which verify the correct extraction of voting data from transportable memory devices or for the acquisition of such data over a communications link. To meet this testing goal, the equipment testing team conducts transmission simulations between at least eight precincts and at least two tabulators within the same precinct. Additionally, the testing team simulates transmission anomalies, stress loading, and security attacks during each transmission.

B. Model Election Day and Post-Election Day Procedures related to the transmission of unofficial results using modeming technology.

Of the states reviewed by G.A.B. staff, two that allow the modeming of unofficial results have established Election Day and post-Election Day procedures to ensure the security and integrity of election reporting. Staff reviewed the reporting requirements of the two states — Minnesota and Iowa — in developing recommendations for the Board regarding Election Day and post – election procedures.

Minnesota has established both Election Day and post-election procedures governing the transmission of unofficial results. The head election judge is not allowed to either connect the modem or transmit the precinct's results until after the polling place closes and a record of the results has been printed. After the record has been printed, the head election judge in a precinct that employs automatic tabulating equipment may transmit the accumulated tally for each device to a central reporting location using a telephone, modem, Internet, or other electronic connection. During the canvassing period, the results transmitted electronically must be considered unofficial until the canvassing board has performed a complete reconciliation of the results. Minn. Stat. Ann. § 206.845 (2). Wireless communications may not be used in any way in a vote recording or vote tabulating system. Wireless device-to-device capability is not permitted. Minn. Stat. Ann. § 206.845(1).

Iowa also has established Election Day procedures governing the transmission of unofficial results via modem. Iowa's administrative code provides that on Election Day, results may be transmitted electronically from voting equipment to the county commissioner of elections' office only after the precinct election officials have produced a written report of the election results as required by Iowa Code § 50.11.¹⁷ All of the precinct's election officials sign the printed report of the election results. The signed copy is the official tabulation from that precinct.¹⁸

The Iowa Administrative Code also includes post-election day procedures. County commissioners of elections are required to compare the printed report to the results transmitted on election night. Iowa Admin. Code r. 751-22.30(3). Before the canvass by the board of supervisors, the county commissioner of elections must compare the signed, printed report from each precinct with the results transmitted electronically from the precinct on election night. The commissioner shall report any discrepancies between the two sets of election results to the board of supervisors. The signed, printed results produced pursuant to Iowa Code § 50.11 shall be considered the correct results.

C. The testing and certification result from states where the 3.4.0.1 has been tested indicates that real world tests, not simulations, provide the most effective model for testing the modeming components because the data transmission success rate depends on the telecommunications infrastructure in place in a given municipality.

No equipment with modeming capabilities has been certified by the U.S. EAC. Hence, the states that allow the modeming of either official or unofficial results have done so without first requiring U.S. EAC certification. Similarly, all of the states that have tested the ES&S Unity 3.4.0.1 have done so without requiring federal certification. The Unity 3.4.0.1 is currently certified in Minnesota (certified April 11, 2013) and Iowa (certified January 18, 2013). Testing has been completed in North Carolina and Virginia, with certification decisions pending in both states. Illinois' testing is currently in process.

Of the states where the Unity 3.4.0.1 has been tested, only one, Virginia, attempted to transmit results between actual locations during testing. For Unity 3.4.0.1, the Iowa, Minnesota, and North Carolina boards accepted the Independent Testing Authority report from Wyle Laboratories indicating the modem components met the 2002 or 2005 VVSG standards as sufficient evidence for approval. These three states conducted functionality and integrity testing of the system as a whole, but did not independently test the modeming component.

¹⁷ Iowa Code § 50.11 Proclamation of Result. Election results may be transmitted electronically from voting equipment to the commissioner's office only after the precinct election officials have produced a written report of the election results. The devices used for the electronic transmission of election results shall be approved for use by the board of examiners pursuant to section 52.41. The state commissioner of elections shall adopt rules establishing procedures for the electronic transmission of election results. The commissioner shall remain on duty until such information is communicated to the commissioner from each polling place in the commissioner's county.

¹⁸ See also 22.241(52) (Electronic transmission of election results). If the equipment includes a modem for the electronic transmission of election results, the precinct officials may transmit the results after a printed copy has been made. If the voting system includes a data card, cartridge or other small device that contains an electronic copy of the election results, the precinct chairperson shall secure the device and ensure its safe delivery to the commissioner.

Conversely, Virginia, with the assistance of an ITA tested the entire system including the modem. Virginia conducted a test of Unity 3.4.0.1 on March 18, 2013, during which time the Virginia elections staff, the director of the U.S. EAC certification program, staff from ES&S, and scientists from the involved voting systems testing laboratory, Pro V&V, conducted a joint testing of Unity 3.4.0.1, including the modem functionality and integrity.

From March 18-21, 2013, the Virginia SBE evaluated the Unity 3.4.0.1 for use in the Commonwealth of Virginia. The system was evaluated as a modified version of the 3.4.0.0 voting system, which was previously certified in Virginia.¹⁹ Virginia SBE determined that the Unity 3.4.0.1 was equivalent to Unity 3.4.0.0 with one exception: the Unity 3.4.0.1 suite adds landline-modeming feature to the DS200 Tabulator v.1.6.1.0. The Unity 3.4.0.1 was evaluated by Virginia's designated testing agent, Pro V&V testing laboratory.

The test plan for the 3.4.0.1 included a test to ensure the system's conformance to the *Code of Virginia*. This included the test goal of verifying the modem transmission for the DS200 tabulator. The DS200 was used to transmit results via modem and was evaluated during seven (7) Virginia specific election scenarios, using a combination of different ballot programming approaches, ballot designs, ballot sizes, languages, and tabulators.

Pro V&V conducted a security analysis for the DS200 tabulator's modem transmission. The pre-programmed scenarios were programmed by ES&S test managers prior to the evaluation and were executed from the point where the election is completed in the system's Election Data Manager (EDM). Each testing scenario began with opening the election in EDM, reviewing the election definition, and proceeding with the remaining preparations for Election Day and absentee voting.

The end-to-end scenario created a new election for an existing county, generated elections definitions for the tabulators, and verified loading of the election definition on the tabulators. The security analysis focused on data transmission, denial of service attack, and modem configuration.

Pro V&V encountered an anomaly during the transmission of results. While transmitting results for one test election, the test team switched from the telephone simulator to analog phone lines maintained by the Commonwealth. The evaluators noticed anomalous behavior in the DS200 tabulator's ability to connect to the SFTP Server. When the test team used the simulator it worked every time. However when using the analog telephone lines, the examiners were only able to achieve a fifty percent (50%) connection rate. The system was able to connect from one test location into the EMS server and successfully transmit results packets. However, the test team was unable to achieve this same result from the second test site into the server. Testing was done repeating the transmission 20 times. The test team was able to isolate the issue to the phone lines at the second test site.

¹⁹ The original voting system certified for use by the Commonwealth of Virginia is Unity 3.2.1.1, which was certified for use in March of 2011. The Unity 3.2.1.1 system further represents an upgrade to the previously certified system, Unity 3.0.1.1.

Because of the expertise required to configure the modem and the transmission lines, the Pro V&V testing report for the 3.4.0.1 has included a suggestion that any jurisdiction purchasing this system with the intent to utilize the modem feature work with both their selected telecommunication provider and ES&S to ensure the highest success rate for transfers.

IV. Analysis

G.A.B. staff assessed the feasibility of instituting the various models for testing modem functionality including: establishing Wisconsin specific voting system standards to augment or replace the requirements of the 2005 VVSG; requiring additional testing specifically on the modem component by an independent testing authority, G.A.B. IT staff, or security specialists from the Wisconsin Division of Gaming; or instituting substantial post-election auditing and reporting requirements substantive enough to offset any security related concerns.

Staff conducted a preliminary review of the costs, personnel, and infrastructure requirements borne by other states, such as Florida. Staff determined that the G.A.B. lacked the financial and personnel resources to replicate the extensive testing structures in place in New York and Florida. Additionally, the testing protocols employed by Illinois, Minnesota, and Iowa did not appear to ensure the level of functionality and integrity that the G.A.B. has heretofore required during state level testing. Using Virginia as a model, staff then developed state specific testing protocols that could be implemented in Wisconsin given the level of staff and financial resources presently available.

Based on the Board's directives at the March 20, 2013 meeting, staff researched and developed new testing protocols and procedures specifically related and restricted to the testing of the modem component of voting systems submitted for approval in the State of Wisconsin for any non-U.S. EAC certified voting systems, where the underlying voting system received U.S. EAC certification to either the 2002 or 2005 VVSG, but any additional modeming component does not meet the 2005 VVSG. Test protocols and procedures staff developed and are proposing in this memorandum are based upon an assessment of other states' testing plans, including the Virginia testing, which occurred on March 18, 2013. Board staff intends to conduct the testing in house. However, staff may also need to consult or acquire outside expertise from telecommunications or voting system testing experts to either develop or execute testing plans.

Given the results of the testing conducted on the 3.4.0.1 in other states where it has been certified, G.A.B. staff recommends that the Board adopt the protocols contained herein, which will require a vendor to demonstrate a system's ability to transmit results in real world conditions. As the Virginia testing demonstrates, it is imperative to assess the ability of a modem to achieve a successful connectivity rate given Wisconsin's telecommunication infrastructure.

To this end, the staff has conducted preliminary research into the telecommunications infrastructure within the state. G.A.B. staff consulted with staff from the Public Service Commission, Department of Administration, and the State's major telecommunications providers to assess whether Wisconsin's telecommunications infrastructure can support the modeming of unofficial results via the modem

component of the DS200 tabulator. Based on this research, staff decided to recommend the Board include real world testing as a component of the test protocols and procedures.

The Analog technology utilized by the modem in the DS200 tabulator requires, at a minimum, that a municipality maintain conditioned analog lines. Even when this criterion is met, staff's research demonstrates that a number of factors may affect the rate of transmission, including, for example, the speed of the modem and the number of analog to digital conversions that take place during a single transmission. Several Wisconsin municipalities, particularly those in rural areas, currently have difficulty transmitting results using analog technology.

The modem component within the DS200 tabulator relies on an analog transmission, which may not be sustainable in Wisconsin for the foreseeable future. Analog technology from the era of "Ma Bell" was built in the mid-19th century. While it is often reliable, it is dated technology and is slowly being replaced. The general trend is to move to voice service over Internet Protocol (VoIP) which is a digital service IP-based system. How quickly that will occur on a statewide basis is not known and is subject to a number of factors including regulatory treatment under an IP system, the cost to implement, the benefits to implementing the change, and customer demand. Nevertheless, as a general rule, most municipal systems are moving to a VoIP type internal network and it would be up to each individual municipality using Unity 3.4.0.1 to ensure that analog technology will be supported into the foreseeable future.

Staff has also developed a number of security and procedural recommendations. The Election Day security protocols clarify that the modeming component shall only be used for the transmission of unofficial results. Staff also recommends that the Board adopt post-election equipment audits during the equipment's initial period of use. For example, the protocols and procedural requirements enumerate specified time periods for modeming unofficial results after election inspectors have already "closed the polls" on each piece of voting equipment as well as enhanced post-election auditing procedures. Staff has determined that many of the security concerns associated with modeming unofficial results can be alleviated through auditing, canvassing, and additional procedural safeguards in place on Election Day, rather than solely through pre-approval testing.

As directed by the Board, staff has limited the scope of the testing protocols to the modeming component for non-U.S. EAC certified voting systems, where the underlying voting system received U.S. EAC certification to either the 2002 or 2005 VVSG, but any additional modeming component does not meet the 2005 VVSG. This approach is based on a number of specific factors.

First, the Unity 3.4.0.1 is based on a presently U.S. EAC approved system, Unity 3.4.0.0. Wyle Laboratories has indicated that the Unity 3.4.0.1 is a slight modification of the Unity 3.4.0.0. However, because Unity 3.4.0.1 has a separate telecommunications module that will have to be added into the machine, this is a more extensive modification than what might be covered under an Application for Approval of an Engineering Change Order that is de minimis to the functioning of a voting system. Secondly, given the current state of the U.S. EAC and the ongoing stagnation in the availability of innovative equipment, staff recommends considering protocols

that might allow new equipment to be sold and used in Wisconsin. Lastly, the recommendation to move forward with testing systems that have not obtained U.S. EAC certification on the modeming component may allow municipalities the opportunity to replace aging equipment (should the Board ultimately approve the Application for Approval of Unity 3.4.0.1.), while not sacrificing the modeming capability on which many have relied for decades.

Finally, staff suggests that the Board clarify that any modem hereafter approved for use in Wisconsin must have been tested to the requirements contained in the most recent version or versions of the VVSG or VSS currently accepted for testing and certification by the U.S. Election Assistance Commission (EAC). The 2005 VVSG contain the requirements for Optical Scan tabulators using modems, unlike the 2002 VSS, which only applies to Direct Recording Equipment (DRE). Furthermore, if the Board chooses to require evidence that the modem has been tested to the 2005 standards, this will enable Board staff more adequately to assess a modem's level of compliance with the 2005 VVSG while determining whether to recommend said system for Board approval. Finally, the 2005 VVSG, or the most current version thereof, in contrast to the 2002 versions, contains the most up to date standards for technology and accessibility and should therefore aid in meeting the State's goal of ensuring election integrity and voter confidence. While modeming technology may not satisfy the requirements of the 2005 VVSG, testing based upon those standards will help the Board to evaluate whether the functionality of the modem technology merits approval for use in Wisconsin.

Proposed Motions:

MOTION: Pursuant to authority granted in Wis. Stat. § 5.91 and Wis. Adm. Code Ch. 7, and based upon the analysis and findings outlined in the May 21, 2013 staff memorandum, the Board adopts the testing procedures and standards pertaining to Modeming and Communication as detailed in the *Voting System Standards, Testing Protocols and Procedures Pertaining to the Use of Communication Devices in Wisconsin* contained herein. These testing protocols apply to non-U.S. EAC certified voting systems, where the underlying voting system received U.S. EAC certification to either the 2002 or 2005 VVSG, but any additional modeming component does not meet the 2005 VVSG.

MOTION: The Board directs staff (pursuant to a properly submitted Wisconsin application for approval) to test non-U.S. EAC certified voting systems, where the underlying voting system received U.S. EAC certification to either the 2002 or 2005 VVSG, but any additional modeming component does not meet the 2005 VVSG, to the testing standards contained in the proposed *Voting System Standards, Testing Protocols and Procedures Pertaining to the Use of Communication Devices in Wisconsin*, which are attached.

MOTION: The Board clarifies that any modem hereafter approved for use in Wisconsin must have been tested to the requirements contained in the most recent version or versions of the Voluntary Voting System Guidelines (VVSG) or Voting System Standards (VSS) currently accepted for testing and certification by the U.S. Election Assistance Commission (EAC).

Attachments

- ✓ Appendix 1: *Voting System Standards, Testing Protocols and Procedures Pertaining to the Use of Communication Devices*
- ✓ EAC, RFI 2012-06, EAC Decision on Use of Public Telecommunications Networks and Data Transmission
- ✓ EAC, RFI 2012-05, EAC Decision on Public Telecommunications and Cryptography
- ✓ EAC, RFI 2012-02, EAC Decision on Transmission of Results (Official and Unofficial)
- ✓ Wisconsin Statutes §5.91
- ✓ Wisconsin Administrative Code, GAB 7

APPENDIX 1: VOTING SYSTEM STANDARDS, TESTING PROTOCOLS AND PROCEDURES PERTAINING TO THE USE OF COMMUNICATION DEVICES

PART I: PROPOSED TESTING STANDARDS

Applicable VVSG Standard

The modem component of the voting system or equipment must be tested to the requirements contained in the most recent version or versions of the Voluntary Voting System Guidelines (VVSG) currently accepted for testing and certification by the U.S. Election Assistance Commission (EAC). Compliance with the applicable VVSG may be substantiated through federal certification by the EAC, through certification by another state that requires compliance with the applicable VVSG, or through testing conducted by a federally certified voting system test laboratory (VSTL) to the standards contained in the applicable VVSG. Meeting the requirements contained in the VVSG may substantiate compliance with the voting system requirements contained in Section 301 of the Help America Vote Act of 2002 (HAVA).

Access to Election Data

Provisions shall be made for authorized access to election results after closing of the polls and prior to the publication of the official canvass of the vote. Therefore, all systems must be capable of generating an export file to communicate results from the election jurisdiction to the Central processing location on election night after all results have been accumulated. The system may be designed so that results may be transferred to an alternate database or device. Access to the alternate file shall in no way affect the control, processing, and integrity of the primary file or allow the primary file to be affected in any way.

Security

All voting system functions shall prevent unauthorized access to them and preclude the execution of authorized functions in an improper sequence. System functions shall be executable only in the intended manner and order of events and under the intended conditions. Preconditions to a system function shall be logically related to the function so as to preclude its execution if the preconditions have not been met.

Accuracy

A voting system must be capable of accurately recording and reporting votes cast. Accuracy provisions shall be evidenced by the inclusion of control logic and data processing methods, which incorporate parity, and checksums, or other equivalent error detection and correction methods.

Data Integrity

A voting system shall contain provisions for maintaining the integrity of voting and audit data during an election and for a period of at least 22 months thereafter. These provisions shall include protection against:

- the interruption of electrical power, generated or induced electromagnetic radiation
- ambient temperature and humidity
- the failure of any data input or storage device
- any attempt at an improper data entry or retrieval procedure

Reliability

Successful Completion of the Logic and Accuracy test shall be determined by two criteria

- The number of failures in transmission
- and the accuracy of vote counting

The failure or connectivity rate will be determined by observing the number of relevant failures that occur during equipment operation. The accuracy is to be measured by verifying the completeness of the totals received.

PART II: TEST PROCEDURES AND PROTOCOLS

Overview of Telecommunication Test

The telecommunication test focuses on system hardware and software function and performance for the transmission of data that is used to operate the system and report election results. This test applies to the requirements for Volume I, Section 6 of the EAC 2005 VVSG. This testing is intended to complement the network security requirements found in Volume I, Section 7 of the EAC 2005 VVSG, which include requirements for voter and administrator

access, availability of network service, data confidentiality, and data integrity. Most importantly, security services must restrict access to local election system components from public resources, and these services must also restrict access to voting system data while it is in transit through public networks. Compliance with Section 7, EAC 2005 VVSG shall be evidenced by a VSTL report submitted with the vendor's application for approval of a voting system.

In an effort to achieve these standards and to verify the proper functionality of the units under test, the following methods will be used to test each component of the voting system:

Wired Modem Capability Test Plan

Test Objective: To transfer the results from the tabulator to the Election Management System via a wired network correctly.

Test Plan:

1. Attempt to transmit results prior to the closing of the polls and printing of results tape
2. Set up a telephone line simulator that contains as many as eight phone lines
3. Perform communication suite for election night reporting using a bank with as many as seven analog modems:
 - a. Connect the central site election management system to the telephone line simulator and connect the modems to the remaining telephone line ports
 - b. Setup the phone line numbers in the telephone line simulator
 - c. Use the simulated election to upload the election results
 - i. Use at least eight tabulators in different reporting units
 - ii. Use as many as two tabulators within the same reporting units
 - d. Simulate the following transmission anomalies
 - i. Attempt to upload results from a tabulating device to a computer which is not part of the voting system
 - ii. Attempt to upload results from a non-tabulating device to the central site connected to the modem bank
 - iii. Attempt to load stress by simulating a denial of service (DOS) attack or attempt to upload more than one polling location results (e.g., ten or more polling locations)

Wireless Capability Test Plan

Test Objective: To transfer the results from the tabulator to EMS via a wireless network correctly.

Test Plan:

1. Attempt to transmit results prior to the closing of the polls and printing of results tape.
2. Perform wireless communication suite for election night reporting:
 - a. Use the simulated election to upload the election results using wireless transfer to the secure FTP server (SFTP)
 - b. Use at least eight tabulators in different reporting units
 - c. Use as many as two tabulators within the same reporting unit
3. Simulate the following transmission anomalies
 - a. Attempt to upload results from a tabulating device to a computer which is not part of the voting system
 - b. Attempt to upload results from a non-tabulating device to the SFTP server
 - c. Attempt to load stress by simulating a denial of service (DOS) attack or attempt to upload more than one polling location results (e.g., ten or more polling locations)
 - d. If possible, simulate a weak signal
 - e. If possible, simulate an intrusion

Test Conclusions for Wired and Wireless Transmission

- System must be capable of transferring 100% of the contents of results test packs without error for each successful transmission.
- Furthermore, system must demonstrate secure rate of transmission consistent with security requirements.
- System must demonstrate the proper functionality to ensure ease of use for clerks on election night.
- System must be configured such that the modem component remains inoperable until after the official closing of the polls and printing of one (1) copy of the results tape.

PART III: PROPOSED SECURITY PROCEDURES

Staff recommends that as a condition of purchase, any municipality or county which purchases this equipment and uses modem functionality must agree to the following conditions of approval.

1. Devices which may be incorporated in or attached to components of the system for the purpose of transmitting tabulation data to another data processing system, printing system, or display device shall not be used for the preparation or printing of an official canvass of the vote unless they conform to a data interchange and interface structure and protocol which incorporates some form of error checking.
2. Any jurisdiction using a modeming solution to transfer results from the polling place to the central count location may not activate the modem functionality until after the polling place closes.
3. Any municipality using modeming technology must have one set of results printed before it attempts to modem any data.
4. Any municipality purchasing and using modem technology to transfer results from the polling location to the central count location must conduct an audit of the voting equipment after the conclusion of the canvass process.
5. Default passwords provided by ES&S to county/municipality must be changed upon receipt of equipment.
6. Counties must change their passwords after every election.

PART IV: CONDITIONS FOR APPROVAL (VENDOR)

Additionally, staff recommends that, as a condition/continuing condition of approval, ES&S shall:

1. Reimburse actual costs incurred by the G.A.B. and local election officials, where applicable, in examining the system (*including travel and lodging*) pursuant to state processes.
2. Configure modem component to remain inoperative (incapable of either receiving or sending transmissions) prior to the closing of the polls and the printing of tabulated results.



EAC Decision on Request for Interpretation 2012-06 (Use of Public Telecommunications Networks and Data Transmission)

2005 VVSG Volume I, Section 7.6.1

Date:

October 1, 2012

Question:

Two primary questions are intended to be addressed in this RFI:

- Do the Data Transmission requirements of the 2005 VVSG apply to voting systems that transmit aggregate vote totals?
- How should Voting System Test Laboratories and Voting System Manufacturers interpret these requirements?

Section of Guidelines:

2005 VVSG Volume 1, Section 7.6.1 - Data Transmission

All systems that transmit data over public telecommunications networks shall:

- a) Preserve the secrecy of voter ballot selections and prevent anyone from violating ballot privacy
- b) Employ digital signatures for all communications between the vote server and other devices that communicate with the server over the network
- c) Require that at least two authorized election officials activate any critical operation regarding the processing of ballots transmitted over a public communications network, i.e. the passwords or cryptographic keys of at least two employees are required to perform processing of votes

Discussion:

In discussing the Data Transmission requirements with Voting System Test Laboratories (VSTLs) and voting system manufacturers, multiple parties asserted that voting systems transmitting aggregate vote totals are not subject to these requirements. 2005 VVSG Volume 1, Section 7.1.2 states the following about the "Use of Public Communications Networks" section:

Use of Public Communications Networks: *These standards address security for systems that communicate individual votes or vote totals over public communications networks.*

Because this section explicitly states “*for systems that communication individual votes or **vote totals***,” [emphasis added] the EAC concludes the requirements of section 7.6.1 apply to voting systems transmitting aggregate vote totals over public telecommunications networks. As the 2005 VVSG public telecommunications requirements have not been evaluated against any voting system to date, the EAC will provide guidance for these three requirements.

Requirement 7.6.1.a pertains to confidentiality. Transmitting aggregate vote totals can potentially safeguard the secrecy of an individual voter’s ballot selections and prevent violations of ballot privacy. VSTLs shall devise tests to ensure the format of the aggregated vote totals does not violate this requirement.

Requirement 7.6.1.b requires manufacturers to digitally sign individual votes or vote totals (e.g., aggregate totals) before they are transmitted. The vote server must verify the digital signature of the vote or vote totals. In an effort to not limit the innovation and design of voting systems, the EAC will not define the term “vote server.” Vote server may refer to a single server, but multiple devices could also work together to provide this functionality. VSTLs shall confirm votes or vote totals are digitally signed, and work as intended. Digital signatures are cryptographic functions which, per RFI 2012-05, are to be FIPS 140-2 certified.

Requirement 7.6.1.c applies to critical operations of processing returns received via data transmission from various precincts. The action of processing these votes or vote totals must be a deliberate action performed by only election officials authorized by the voting system.

Additionally, Section 6.1 of the 2005 VVSG states:

A wide area network (WAN) public telecommunications component consists of the hardware and software to transport information, over share public (i.e., commercial or governmental) circuitry or among private systems. For voting systems, the telecommunications boundaries are defined as the transport circuitry, on one side of which exists the public telecommunications infrastructure, outside the control of voting system supervisors. On the other side of the transport circuitry are the local area network (LAN) resources, workstations, servers, data and applications controlled by voting system supervisors.

Finally, Section 6.1.2 of the VVSG States:

This section applies to voting-related transmissions over public networks, such as those provided by local distribution and long distance carriers. This section **also** applies to private networks regardless of whether the network is owned and operated by the election jurisdiction. (emphasis added)

Conclusion:

The requirements of section 7.6.1 apply to all voting systems with public telecommunications capabilities. The guidance provided here by the EAC is intended to assist VSTLs and voting

system manufacturers in determining the applicability, implementation, and testing of these requirements to verify their operation within the voting system.

Effective Date:

Effective immediately for all voting systems without an approved application for testing.

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EAC Decision on Request for Interpretation 2012-05 (Public Telecommunications and Cryptography)

2005 VVSG Volume I, Section 7.5.1.b

Date:

October 1, 2012

Question:

Which 2005 VVSG encryption requirements apply to systems using public telecommunications technologies?

Section of Guidelines:

2005 VVSG Volume 1, Section 7.5.1.b - Maintaining Data Integrity

Voting systems that use telecommunications to communicate between system components and locations before the polling place is officially closed shall:

- i. Implement an encryption standard currently documented and validated for use by an agency of the U.S. government
- ii. Provide a means to detect the presence of an intrusive process, such as an Intrusion Detection System

Discussion:

2005 VVSG Volume 1, requirement 7.5.1.b is unclear on the following items:

1. What is meant by telecommunications?
2. When is a polling place officially closed?
3. Which technologies does this requirement apply to?

The definition of telecommunications provided by the first paragraph of 2005 VVSG Section 6 states:

2005 VVSG Section 6

For the purpose of the Guidelines, telecommunications is defined as the capability to transmit and receive data electronically using hardware and software components over distances both within and external to a polling place.

The phrase “*external to a polling place*” leads the EAC to conclude all devices that are part of the voting system’s network residing inside and/or outside the polling place, including the

central election office, are subject to this requirement. The applicability of requirement 7.5.1.b to all locations is further demonstrated by references in the requirement to communication between “system components and locations.”

The second point needing clarification in the requirement references the time at which a “polling place is officially closed.” The requirement is difficult to enforce as this is a legal matter decided by states and election jurisdictions. Closing the polling place is a multi-step process including the following:

1. Closing the polls on each individual voting component or system;
2. No longer allowing voters to cast votes at a polling site;
3. Concluding all post-election activities at the polling site; and
4. Closing the physical location of the polling site.

While the first method of closing the polling place is a technical solution, it does not directly align with all voting channels, such as early voting. The second method is extremely variable from election to election, and in some scenarios differs by polling place. Many polling sites share a location with centralized vote centers at election offices, further complicating the official close because the election office may not close until much later that night.

For the purposes of this requirement, polling places are officially closed when *all election-related duties conclude at the polling site*. This ensures that voting systems adhere to the 2005 VVSG and can be used in election jurisdictions regardless of state or local laws related to the close of polls. Therefore, voting systems using telecommunications before the polling place is officially closed shall implement an encryption standard currently documented and validated for use by an agency of the U.S. government. This interpretation is consistent with the next iteration of the VVSG.

There are many open source solutions available to assist in implementing these requirements, and if implemented properly, should appear transparent to the voting system’s users. Voting systems using public telecommunications usually operate as part of a larger network owned and operated by the county. When new systems are connected to public telecommunications networks, there are new threats introduced into the entire network. Protecting data in this manner is one of many standard risk mitigating practices present in systems using public telecommunications technologies.

The 2005 VVSG differentiates between wired and wireless technologies by applying different security requirements for each medium. As expected, more stringent requirements exist for systems with wireless capabilities. However, requirement 7.5.1.b does not mention technology specific requirements; it applies to all systems utilizing public telecommunications technology.

Conclusion:

This decision ensures EAC certified voting systems conform to the 2005 VVSG in any configuration election officials choose to use the voting system. The requirements and information discussed here leads the EAC to conclude that all aspects of the system that are

exposed to the threats of a public/private network need to be protected using FIPS 140-2 or the most current FIPS certified cryptographic modules. These shall be used in FIPS-compliant mode for all portions of the voting system, including precinct and central locations, and for both public and private networks.

Effective Date:

Effective immediately for all voting systems without an approved application for testing.



EAC Decision on Transmission of Results 2012-02 (Official and Unofficial Results)

Date:

May 30, 2012

Question:

What is the distinction between official and unofficial results?

Section of Guidelines:

2005 VVSG Volume 1 Sections 2, 6, and 7

2005 VVSG Volume 2 Sections 1, 2, 6, and Appendix A

Discussion:

The 2005 VVSG requirements for voting systems using telecommunications technologies to broadcast results can be divided into two categories; official and unofficial results. The 2005 VVSG does not supply a definition for either term. Historically, voting system manufacturers declared if their system transmitted official and/or unofficial results, and their systems were tested to the applicable requirements. When voting systems are fielded, the election jurisdictions using the voting system ultimately decide how results are treated on election night. Therefore, the distinction between official and unofficial results is procedural, not technical.

Conclusion:

The EAC cannot enforce the distinction between official and unofficial results. Each election jurisdiction using a voting system with telecommunications capabilities follows state and local election administration practices the EAC cannot anticipate during testing. Voting systems using telecommunications technologies **shall** be tested to all telecommunications requirements for the technology (i.e., wired or wireless), without distinction between official and unofficial results. This decision ensures EAC certified voting systems adhere to the 2005 VVSG in any manner election officials choose to use the voting system.

Effective Date:

Effective immediately for all systems without an approved Test Report.

tronic voting machines are used, the board of canvassers shall perform the recount using the permanent paper record of the votes cast by each elector, as generated by the machines.

(2) Any candidate, or any elector when for a referendum, may, by the close of business on the next business day after the last day for filing a petition for a recount under s. 9.01, petition the circuit court for an order requiring ballots under sub. (1) to be counted by hand or by another method approved by the court. The petitioner in such an action bears the burden of establishing by clear and convincing evidence that due to an irregularity, defect, or mistake committed during the voting or canvassing process the results of a recount using automatic tabulating equipment will produce incorrect recount results and that there is a substantial probability that recounting the ballots by hand or another method will produce a more correct result and change the outcome of the election.

(3) A court with whom a petition under sub. (2) is filed shall hear the matter as expeditiously as possible, without a jury. The court may order a recount of the ballots by hand or another method only if it determines that the petitioner has established by clear and convincing evidence that due to an irregularity, defect, or mistake committed during the voting or canvassing process the results of a recount using automatic tabulating equipment will produce incorrect recount results and that there is a substantial probability that recounting the ballots by hand or another method will produce a more correct result and change the outcome of the election. Nothing in this section affects the right of a candidate or elector aggrieved by the recount to appeal to circuit court under s. 9.01 (6) upon completion of the recount.

History: 1979 c. 311; 1987 a. 391; 2005 a. 92, 451; 2007 a. 96.
Cross-reference: See also ch. GAB 7, Wis. adm. code.

5.905 Software components. (1) In this section, “software component” includes vote-counting source code, table structures, modules, program narratives and other human-readable computer instructions used to count votes with an electronic voting system.

(2) The board shall determine which software components of an electronic voting system it considers to be necessary to enable review and verification of the accuracy of the automatic tabulating equipment used to record and tally the votes cast with the system. The board shall require each vendor of an electronic voting system that is approved under s. 5.91 to place those software components in escrow with the board within 90 days of the date of approval of the system and within 10 days of the date of any subsequent change in the components. The board shall secure and maintain those software components in strict confidence except as authorized in this section. Unless authorized under this section, the board shall withhold access to those software components from any person who requests access under s. 19.35 (1).

(3) The board shall promulgate rules to ensure the security, review and verification of software components used with each electronic voting system approved by the board. The verification procedure shall include a determination that the software components correspond to the instructions actually used by the system to count votes.

(4) If a valid petition for a recount is filed under s. 9.01 in an election at which an electronic voting system was used to record and tally the votes cast, each party to the recount may designate one or more persons who are authorized to receive access to the software components that were used to record and tally the votes in the election. The board shall grant access to the software components to each designated person if, before receiving access, the person enters into a written agreement with the board that obligates the person to exercise the highest degree of reasonable care to maintain the confidentiality of all proprietary information to which the person is provided access, unless otherwise permitted in a contract entered into under sub. (5).

(5) A county or municipality may contract with the vendor of an electronic voting system to permit a greater degree of access to

software components used with the system than is required under sub. (4).

History: 2005 a. 92.

5.91 Requisites for approval of ballots, devices and equipment. No ballot, voting device, automatic tabulating equipment or related equipment and materials to be used in an electronic voting system may be utilized in this state unless it is approved by the board. The board may revoke its approval of any ballot, device, equipment or materials at any time for cause. No such ballot, voting device, automatic tabulating equipment or related equipment or material may be approved unless it fulfills the following requirements:

(1) It enables an elector to vote in secrecy and to select the party for which an elector will vote in secrecy at a partisan primary election.

(3) Except in primary elections, it enables an elector to vote for a ticket selected in part from the nominees of one party, and in part from the nominees of other parties, and in part from independent candidates and in part of candidates whose names are written in by the elector.

(4) It enables an elector to vote for a ticket of his or her own selection for any person for any office for whom he or she may desire to vote whenever write-in votes are permitted.

(5) It accommodates all referenda to be submitted to the electors in the form provided by law.

(6) The voting device or machine permits an elector in a primary election to vote for the candidates of the recognized political party of his or her choice, and the automatic tabulating equipment or machine rejects any ballot on which votes are cast in the primary of more than one recognized political party, except where a party designation is made or where an elector casts write-in votes for candidates of more than one party on a ballot that is distributed to the elector.

(7) It permits an elector to vote at an election for all persons and offices for whom and for which the elector is lawfully entitled to vote; to vote for as many persons for an office as the elector is entitled to vote for; to vote for or against any question upon which the elector is entitled to vote; and it rejects all choices recorded on a ballot for an office or a measure if the number of choices exceeds the number which an elector is entitled to vote for on such office or on such measure, except where an elector casts excess write-in votes upon a ballot that is distributed to the elector.

(8) It permits an elector, at a presidential or gubernatorial election, by one action to vote for the candidates of a party for president and vice president or for governor and lieutenant governor, respectively.

(9) It prevents an elector from voting for the same person more than once for the same office, except where an elector casts excess write-in votes upon a ballot that is distributed to the elector.

(10) It is suitably designed for the purpose used, of durable construction, and is usable safely, securely, efficiently and accurately in the conduct of elections and counting of ballots.

(11) It records correctly and counts accurately every vote properly cast and maintains a cumulative tally of the total votes cast that is retrievable in the event of a power outage, evacuation or malfunction so that the records of votes cast prior to the time that the problem occurs is preserved.

(12) It minimizes the possibility of disenfranchisement of electors as the result of failure to understand the method of operation or utilization or malfunction of the ballot, voting device, automatic tabulating equipment or related equipment or materials.

(13) The automatic tabulating equipment authorized for use in connection with the system includes a mechanism which makes the operator aware of whether the equipment is malfunctioning in such a way that an inaccurate tabulation of the votes could be obtained.

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(14) It does not employ any mechanism by which a ballot is punched or punctured to record the votes cast by an elector.

(15) It permits an elector to privately verify the votes selected by the elector before casting his or her ballot.

(16) It provides an elector with the opportunity to change his or her votes and to correct any error or to obtain a replacement for a spoiled ballot prior to casting his or her ballot.

(17) Unless the ballot is counted at a central counting location, it includes a mechanism for notifying an elector who attempts to cast an excess number of votes for a single office that his or her votes for that office will not be counted, and provides the elector with an opportunity to correct his or her ballot or to receive and cast a replacement ballot.

(18) If the device consists of an electronic voting machine, it generates a complete, permanent paper record showing all votes cast by each elector, that is verifiable by the elector, by either visual or nonvisual means as appropriate, before the elector leaves the voting area, and that enables a manual count or recount of each vote cast by the elector.

History: 1979 c. 311; 1983 a. 484; 1985 a. 304; 2001 a. 16; 2003 a. 265; 2005 a. 92; 2011 a. 23, 32.

Cross-reference: See also ch. GAB 7, Wis. adm. code.

5.92 Bond may be required. Before entering into a contract for the purchase or lease of an electronic voting system or any ballots, voting devices, automatic tabulating equipment or related equipment or materials to be used in connection with a system, any municipality may require the vendor or lessor to provide a performance bond with a licensed surety company as surety, guaranteeing the supply of additional equipment, parts or materials, provision of adequate computer programming, preventive

maintenance or emergency repair services, training of election officials and other municipal employees or provision of public educational materials for a specified period, or guaranteeing the security of the computer programs or other equipment or materials to be utilized with the system to prevent election fraud, or such other guarantees as the municipality determines to be appropriate.

History: 1979 c. 311.

Cross-reference: See also ch. GAB 7, Wis. adm. code.

5.93 Administration. The board may promulgate reasonable rules for the administration of this subchapter.

History: 1979 c. 311; 1985 a. 332 s. 251 (1).

Cross-reference: See also ch. GAB 7, Wis. adm. code.

5.94 Sample ballots; publication. When an electronic voting system employing a ballot that is distributed to electors is used, the county and municipal clerk of the county and municipality in which the polling place designated for use of the system is located shall cause to be published, in the type B notices, a true actual-size copy of the ballot containing the names of offices and candidates and statements of measures to be voted on, as nearly as possible, in the form in which they will appear on the official ballot on election day. The notice may be published as a newspaper insert. Municipal clerks may post the notice if the remainder of the type B notice is posted.

History: 1979 c. 311; 2001 a. 16.

5.95 Elector information. The board shall prescribe information to electors in municipalities and counties using various types of electronic voting systems to be published in lieu of the information specified in s. 10.02 (3) in type B notices whenever the type B notice information is inapplicable.

History: 1979 c. 311.

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

Chapter GAB 7

APPROVAL OF ELECTRONIC VOTING EQUIPMENT

GAB 7.01 Application for approval of electronic voting system.
GAB 7.02 Agency testing of electronic voting system.

GAB 7.03 Continuing approval of electronic voting system.

Note: Chapter EIBd 7 was renumbered chapter GAB 7 under s. 13.92 (4) (b) 1., Stats., and corrections made under s. 13.92 (4) (b) 7., Stats., Register April 2008 No. 628.

GAB 7.01 Application for approval of electronic voting system. (1) An application for approval of an electronic voting system shall be accompanied by all of the following:

(a) A signed agreement that the vendor shall pay all costs, related to approval of the system, incurred by the board, its designees and the vendor.

(b) Complete specifications for all hardware, firmware and software.

(c) All technical manuals and documentation related to the system.

(d) Complete instruction materials necessary for the operation of the equipment and a description of training available to users and purchasers.

(e) Reports from an independent testing authority accredited by the national association of state election directors (NASED) demonstrating that the voting system conforms to all the standards recommended by the federal elections commission.

(f) A signed agreement requiring that the vendor shall immediately notify the board of any modification to the voting system and requiring that the vendor will not offer, for use, sale or lease, any modified voting system, if the board notifies the vendor that the modifications require that the system be approved again.

(g) A list showing all the states and municipalities in which the system has been approved for use and the length of time that the equipment has been in use in those jurisdictions.

(2) The board shall determine if the application is complete and, if it is, shall so notify the vendor in writing. If it is not complete, the board shall so notify the vendor and shall detail any insufficiencies.

(3) If the application is complete, the vendor shall prepare the

voting system for three mock elections, using offices, referenda questions and candidates provided by the board.

History: Cr. Register, June, 2000, No. 534, eff. 7-1-00.

GAB 7.02 Agency testing of electronic voting system. (1) The board shall conduct a test of a voting system, submitted for approval under s. GAB 7.01, to ensure that it meets the criteria set out in s. 5.91, Stats. The test shall be conducted using a mock election for the partisan primary, a mock general election with both a presidential and gubernatorial vote, and a mock non-partisan election combined with a presidential preference vote.

(2) The board may use a panel of local election officials and electors to assist in its review of the voting system.

(3) The board may require that the voting system be used in an actual election as a condition of approval.

History: Cr. Register, June, 2000, No. 534, eff. 7-1-00.

GAB 7.03 Continuing approval of electronic voting system. (1) The board may revoke the approval of any existing electronic voting system if it does not comply with the provisions of this chapter. As a condition of maintaining the board's approval for the use of the voting system, the vendor shall inform the board of all changes in the hardware, firmware and software and all jurisdictions using the voting system.

(2) The vendor shall, at its own expense, furnish, to an agent approved by the board, for placement in escrow, a copy of the programs, documentation and source code used for any election in the state.

(3) The electronic voting system must be capable of transferring the data contained in the system to an electronic recording medium, pursuant to the provisions of s. 7.23, Stats.

(4) The vendor shall ensure that election results can be exported on election night into a statewide database developed by the board.

(5) For good cause shown, the board may exempt any electronic voting system from strict compliance with ch. GAB 7.

History: Cr. Register, June, 2000, No. 534, eff. 7-1-00.

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JUDGE TIMOTHY L. VOCKE
Chairperson

KEVIN J. KENNEDY
Director and General Counsel

MEMORANDUM

DATE: For the May 21, 2013 Board Meeting

TO: Members, Government Accountability Board

FROM: Michael Haas
Elections Division Administrator

Prepared and Presented by:
David Buerger
Elections Specialist

SUBJECT: Clerks' Concerns Taskforce Update

The Clerks' Concerns Taskforce reconvened on April 30, 2013 to address election workload concerns identified by the membership at its last meeting on January 29, 2013. The issues identified for further discussion at this meeting were:

1. Absentee Voting
2. Public Records Requests

Clerks' concerns with absentee voting tended to fall into two primary categories: (1) Absentee Voting Procedures and (2) Use of SVRS for Absentee Tracking. As such, Board staff prepared two separate memos providing background material and summarizing the concerns expressed in those two areas. A memo was also drafted providing background material and summarizing the concerns clerks had expressed related to Public Records Requests.

In response to a request from the Taskforce at the April 30th meeting, Board staff also invited the Wisconsin Department of Justice to attend to provide guidance on any public records questions that may come up during the meeting. Assistant Attorney General Mary Burke graciously accepted our invitation and attended on April 30th as a representative of the Wisconsin Department of Justice.

In a last-minute addition, Board staff also decided to bring one of the agency's own concerns to the Taskforce. Board staff has consistently had difficulty getting timely notifications of annexations from local units of government. Board staff decided to take advantage of the April 30th meeting to open a dialogue with county and municipal clerks regarding the annexation process so we can develop more effective notification procedures. A brief memo was drafted providing background material and summarizing the problem from the G.A.B.'s perspective.

In addition to the members of the Taskforce, other interested parties continued to attend to observe the meeting including the legislative aides of Senator Lazich and Representative Bernier, chairs of the Senate and Assembly elections committees, respectively.

The Taskforce had a healthy discussion of each issue on the agenda and the Taskforce adopted recommendations for each topic area (see attached memos).

Board staff will continue to work with the Taskforce to develop recommendations for reducing clerks' election-related workload, present those recommendations to the Board, and take further action as directed by the Board.

This memorandum provides an ongoing status report to the Board regarding staff's involvement with the Taskforce and does not require Board action. However, staff requests the Board's review of the attached memos that individually address each area of concern, as well as the decisions or the actions described in each.

Attachments

1. Absentee Voting
2. Absentee Voting - SVRS
3. Public Records Requests
4. Annexations

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JUDGE TIMOTHY L. VOCKE
Chair

KEVIN J. KENNEDY
Director and General Counsel

MEMORANDUM

DATE: For the May 21, 2013 Board Meeting

TO: Members, Government Accountability Board

FROM: Michael Haas
Elections Division Administrator

Prepared and Presented by:
Diane Lowe
Lead Elections Specialist

SUBJECT: Clerks' Concerns Taskforce Recommendations – Absentee Voting Procedures,
Deadlines and Post-Election Day Acceptance

Background

Rather than appear at the polling place on Election Day, any eligible Wisconsin voter may vote by absentee ballot. While voting itself is a constitutionally protected right, voting by absentee ballot is a privilege exercised outside the traditional safeguards of the polling place. For this reason, absentee voting must be carefully regulated to prevent the potential for fraud and abuse. Wis. Stat. §§ 6.84(1) & (2). Wisconsin's municipal clerks are charged with conducting absentee voting in their respective municipalities.

Federal laws (UOCAVA, MOVE), as well as a series of 2011 Wisconsin Acts, instituted numerous changes to absentee voting which necessitated considerable modification of existing procedures and the creation of additional processes. These legislative changes, and the speed at which they occurred, have caused a relatively simple process to become complex, labor intensive and costly.

Analysis

- Procedural Complexity and Inconsistency

Due to the federal government's efforts to simplify and accelerate the voting process for military and overseas voters and attempts by the Legislature to improve absentee voting security, absentee voting procedures have become cumbersome and inconsistent for voters and election officials. Procedures vary depending upon the type of voter, the method by which the request for an absentee ballot is made, the time frame in which the ballot is requested and the type of election. Some statutory amendments have resulted in a toggle effect, such as the ability to transmit absentee ballots electronically. What began as an option available only to military and overseas voters became available to all voters, and then reverted to military and overseas voters again. It is difficult for both voters and election officials to keep track of such vacillations in the law.

The passage of 2011 Wisconsin Act 227 prohibits voting on Election Day if a voter has returned an absentee ballot. This Act also provides deadlines (which correspond to the variety of deadlines for requesting absentee ballots) for spoiling an absentee ballot and voting another ballot, but still allows a

voter to correct an insufficient absentee certificate envelope through Election Day. Municipal clerks must keep meticulous records of absentee voting activity and communicate detailed instructions to poll workers with respect to handling in-person voters who have been issued an absentee ballot but may or may not have returned it. Poll workers may not process absentee ballots with incomplete certificate envelopes until after the polls close, in case a voter appears at the polling place to correct the error.

The Government Accountability Board (G.A.B.) has worked to create administrative processes that meet the provisions of the new statutes. However, the intricacies and inconsistencies of absentee voting laws have resulted in processes that are complicated and difficult to communicate in training. Setting aside any debate regarding whether specific legislative changes were warranted, there is a strong consensus among clerks that the cumulative and practical effect of recent federal and state legislative changes, especially with regard to absentee voting, is the addition of more complex administrative procedures that must be followed by local election officials.

- **Processing Late-Arriving and Provisional Ballots**

2011 Wisconsin Act 115 requires the Municipal Board of Canvassers (MBOC) to convene (or in some cases, reconvene) to process any absentee ballots postmarked by Election Day and received after the close of the polls but no later than 4 p.m. on the Friday after the election, and ballots of provisional voters who have provided the information they were lacking on Election Day. The delay in certification of election results may delay or lead to confusion regarding the winners or provoke suspicion regarding the veracity of election results.

The number of absentee ballots that are actually returned during the additional time frame following an election is negligible compared to the total number of absentee ballots outstanding on election night. Requiring the MBOC to convene to process late-arriving and provisional ballots is an additional time-consuming task and a financial burden to the municipality. There is a significant cost in the form of wages paid to the members of the MBOC and to provide what is essentially a duplicate set of supplies (various forms and envelopes used to accept/reject ballots, tally sheets, inspector's statements, etc.). In addition to the requirement to meet when there *are* ballots to be processed, the MBOC must also meet when there *are not*, in order to certify that the election night results stand. The MBOC is the only body authorized to confirm timely receipt or non-receipt of late absentee ballots or timely rehabilitation of provisional ballots. Therefore, the MBOC is required to meet whenever there are outstanding absentee ballots and/or provisional ballots, regardless of whether any were returned or rehabilitated timely.

Suggested Recommendations

There are two strategies that may be employed in order to streamline the absentee voting process and lessen administrative and financial burdens imposed by absentee voting laws. In order to achieve a worthwhile, if not entirely satisfactory outcome, both strategies should be utilized.

1. The first is to bring these concerns to the attention of the Legislature. The Clerk Concerns Taskforce, in conjunction with their partner associations, may wish to consider developing suggested remedial legislation to be presented to the members of the Senate Committee on Elections and Urban Affairs and the Assembly Committee on Campaigns and Elections.
2. The second is to review current processes and procedures in an effort to streamline and simplify them, without losing the effect or the intent of the law.

Taskforce Recommendations

At its April 30, 2013 meeting, the Taskforce discussed the above analysis and other potential solutions and adopted the following recommendations. The Taskforce requests that the Government

Accountability Board address the Legislature regarding statutory revisions in order to effect the recommendations.

1. Electronic Transmission of Ballots

Currently only military voters and overseas voters (U.S. Citizen voters residing overseas with no present intent to return) are eligible to receive ballots by electronic transmission. Voters who are overseas temporarily may not receive ballots electronically.

Taskforce Recommendation:

Permit electronic transmission of ballots to all voters who are overseas, including voters who are overseas temporarily, if electronic transmission is requested by the voter.

Staff Recommendation:

Staff supports the Taskforce recommendation. In the several weeks before the November 2012 general election, G.A.B. staff received a number of calls from temporarily overseas voters protesting their ineligibility to receive absentee ballots electronically. Municipal clerks also contacted G.A.B. staff to make sure there was not a more expedient way to transmit the ballot. Both voters and clerks recognized the futility of mailing a ballot, when the round-trip absentee ballot transit time through the mail made it virtually impossible, especially in non-federal elections, for voters temporarily overseas to receive and return an absentee ballot timely.

Recommended motion: The Board accepts the Taskforce's recommendation to permit electronic transmission of absentee ballots to all overseas voters who request it, and directs staff to request that the Legislature act on the recommendation.

2. Elimination of Pre-paid Postage on Absentee Ballot Return Envelopes

Except for ballots sent to military voters, municipal clerks are currently required to include return postage for any absentee ballot that will be returned from within the United States. Municipal clerks have observed a dramatic rise in postage costs due to the increased popularity of absentee voting. The Taskforce also asserted that postage is "wasted" due to the number of ballots that are not returned to be counted, or that are sent by mail but returned to the clerk in person rather than by mail.

Taskforce Recommendation:

Require all absentee voters to pay for postage to return their ballots.

Staff Recommendation:

Staff does not support the Taskforce recommendation. Staff believes the intent of the statutes regarding absentee voting law is not only to provide an alternative to voting at the polling place, but also to facilitate voting. Although staff recognizes that absentee voting is a privilege and not a right, the concern is that requiring a voter to pay to return their ballot could be construed as a form of poll tax or at least an impediment to voting. To address the argument of unused postage, G.A.B. staff queried the Wisconsin Election Data Collection System (WEDCS) and determined that of the 228,392 ballots sent to voters for the November 2012 election, 17,945 (7.86%) were not returned for counting. Data is unavailable as to the number of ballots returned in person, rather than by mail. Municipalities may wish to investigate the cost of postage for Business Reply Mail, so they are only charged if the ballot is returned via mail.

Recommended motion: The Board does not adopt the Taskforce's recommendation to require voters to pay for return postage for their absentee ballots.

3. Absentee Ballot Request Deadlines

Currently deadlines for requesting absentee ballots by mail vary depending on the type of voter. Generally, voters have until 5:00 p.m. on the Thursday before the election to request an absentee ballot by mail. Military and indefinitely confined voters have until 5:00 p.m. on the Friday before the election to request a ballot by mail. At federal elections, active duty military voters may request a ballot up to 5:00 p.m. on Election Day.

Taskforce Recommendations:

1. Seek legislative changes to move the deadlines for military and indefinitely-confined voters to request an absentee ballot by mail from the Friday before the election to the Thursday before the election.
2. Seek legislative change to move the deadline for active duty military voters to request an absentee ballot for a federal election from 5:00 p.m. on Election Day to 5:00 p.m. on the Thursday before the election.

Staff Recommendation:

Staff supports the Taskforce recommendation. Allowing an extra day for indefinitely confined voters to request an absentee ballot by mail provides little discernible benefit to the voter as compared to the added confusion it brings to the process. Even allowing five extra days for active duty military voters to request an absentee ballot by mail provides little added benefit, especially if another recommendation is adopted to require that the voted ballot be returned via mail from overseas by Election Day (see Issue #4). Federal law requires military voters to request an absentee ballot no later than 30 days before the election.

A query of the Statewide Voter Registration System (SVRS) indicated that, for the November 2012 election, the number of military voters who requested a ballot after the Thursday before the election was 267. Military voters may request electronic transmission of their ballot or may access the My Vote Wisconsin website to access their ballot on line immediately, but would now need to do so by the Thursday before the election. This greatly reduces the concern that ballots will not be received promptly by military voters. For federal elections, state law provides for 47-day absentee ballot transit time for military voters who have submitted an absentee ballot request by that date. The consensus of the Clerk Taskforce is that removing the ability of active military electors to request an absentee ballot on Election Day would have minimal impact.

Recommended motion: The Board accepts the Taskforce's recommendation to standardize the deadline for by-mail absentee ballot requests by moving the deadline for both military and indefinitely confined voters to request an absentee ballot by mail from the Friday before the election to the Thursday before the election, and by moving the Election Day deadline for active military voters to request an absentee ballot for a federal election to the Thursday before the election, and directs staff to request that the Legislature act on the recommendation.

4. Absentee Ballots Returned After Election Day

Currently absentee ballots may be processed if postmarked no later than Election Day and received by the municipal clerk no later than 4:00 p.m. on the Friday after the election. This provision requires the Municipal Board of Canvassers (MBOC) to convene after the Friday deadline to process any late-arriving absentee ballots or to certify that no outstanding ballots were received timely.

Taskforce Recommendation:

Require all absentee ballots to be physically returned by 8:00 p.m. on Election Day.

Staff Recommendation:

Staff supports the Taskforce's recommendation to require all absentee ballots to be physically returned by 8:00 p.m. on Election Day. Clerks report that the number of absentee ballots that are received after the close of the polls and no later than 4:00 p.m. on the Friday after the election is small. The Taskforce struggles to justify the cost and time involved in conducting this task when weighed against its perceived minimal value.

Recommended motion: The Board accepts the Taskforce's recommendation to change the deadline for return of absentee ballots to the close of the polls on Election Day, and directs staff to request that the Legislature act on the recommendation.

5. Validation of Provisional Ballots

Currently a provisional voter has until 4:00 p.m. on the Friday after the election to provide the missing information that caused him or her to vote provisionally in order for their ballot to be counted. Provisional voting in Wisconsin is restricted to two distinct circumstances: A voter who registers on Election Day and cannot or will not provide their driver license number (upon indicating they have been issued a Wisconsin driver license), and a first-time Wisconsin voter who submitted a voter registration application by mail and did not provide acceptable proof of residence.

The provision of 2011 Act 23 relating to the requirement to provide identification before receiving a ballot has been enjoined by two separate court orders. However, if the voter I.D. requirement were to again be in effect, a third circumstance for provisional voting would exist for the Election Day voter without acceptable identification. If the court decisions were to be overturned and Act 23 was in full effect, the number of provisional ballots issued in this circumstance would most likely be greater than the number issued for the other reasons combined.

Taskforce Recommendation:

For as long as the voter ID requirement is not in effect, the deadline for a voter to validate their provisional ballot shall be moved from 4:00 p.m. on the Friday after the election to 4:00 p.m. on the Wednesday after the election. If the voter ID requirement is in effect, the deadline for validating provisional ballots shall remain 4:00 p.m. on Friday after the election.

Staff Recommendation:

Staff has considered this recommendation and has not taken a position on it. Staff is aware that provisional voting for the first two reasons discussed above is infrequent. Clerks indicate that the vast majority of voters who cast provisional ballots for these reasons do not return to validate their ballot. Those who do return to validate their ballot do so on Election Day or the day after. Staff also recognizes that prior to 2011 Act 23, the deadline for curing provisional ballots was on the Wednesday after the election. Certification of the election is delayed by waiting another two days for voters to return to validate their provisional ballot. This rarely happens, especially in the first two circumstances discussed above. Finally, staff fully expects that a greater number of provisional ballots would be issued if the voter ID law becomes effective and that the three-day period for validation would be warranted because of the added actions which may be necessary to obtain a valid identification card during that time. Considering all of these factors, however, staff has not reached a consensus as to

whether the Board should advocate for this recommended change, and is simply forwarding for the Board's consideration.

Recommended motion: The Board directs staff to refer this Taskforce recommendation to the Legislature for its consideration without taking a position on the merits of the proposal.

6. Elimination of Requirement for Signature of Witness on Absentee Certificate Envelope

Wisconsin law requires the signature of a U.S. citizen witness on an absentee certificate envelope. Obtaining the signature of a U.S. Citizen is frequently difficult for Wisconsin voters living in remote areas overseas. In addition, Wisconsin is one of only four states that require a witness signature on an absentee certificate envelope at all. *Democracy from Afar*, pg. 5 (January 2012) available at: http://www.pewtrusts.org/uploadedFiles/wwwpewtrustsorg/Reports/Election_reform/Elect-Democracy-From-Afar-Brief.pdf

Taskforce Recommendation:

Eliminate the witness signature requirement on absentee certificate envelopes.

Staff Recommendation:

Staff does not support the elimination of the requirement for a witness signature on absentee certificate envelopes because requiring a witness to absentee voting enhances the security of the absentee voting process.

Staff supports the elimination of the requirement that the absentee ballot witness be a U.S. citizen.

Shortly before the November 2012 election, staff was contacted by a U.S. citizen residing in Brussels who was discouraged at the lack of assistance he received at the American Embassy. The gentleman went to the Embassy in search of a U.S. citizen who could witness his absentee ballot. The exterior guard refused him entry because they thought he was looking for someone who could notarize a document, which embassy employees are not allowed to do. Staff contacted the State Department, which in turn contacted the embassy to explain that witnessing an absentee ballot is not the same as notarization. The voter was extremely thankful for staff's intervention. This is just one of many stories related by frustrated overseas voters regarding their often futile efforts to locate an U.S. citizen to witness their absentee ballot, and requiring the witness to be a U.S. citizen provides little additional security benefit.

Recommended motion: The Board accepts the staff recommendation to eliminate the requirement that the witness to absentee voting be a U.S. citizen, and directs staff to request that the Legislature act on the recommendation.

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JUDGE TIMOTHY L. VOCKE
Chair

KEVIN J. KENNEDY
Director and General Counsel

MEMORANDUM

TO: Members, Government Accountability Board

FROM: Michael Haas
Elections Division Administrator

Prepared and Presented by:

Sarah Whitt

SVRS Functional Lead

Ann Oberle

UAT Testing Lead

DATE: For the Meeting of May 21, 2013

SUBJECT: Clerks' Concerns Taskforce Recommendation – Tracking Absentee Information in SVRS

Background

The Statewide Voter Registration System (SVRS) was implemented in Wisconsin in 2005 and 2006 as mandated by the federal Help America Vote Act (HAVA) of 2002. SVRS allows clerks to not only track registered voters (as required by federal law) but also to track voters who have requested an absentee ballot. The absentee functionality in SVRS remained optional for clerks to use until enactment of the federal Military and Overseas Voter Empowerment Act (MOVE) of 2009. The MOVE Act required all clerks to track military and overseas absentee ballot requests in SVRS so that these voters could determine the status of their absentee ballot on the State website. Today, the absentee functionality in SVRS still remains optional for tracking non-military and non-overseas absentee ballot requests.

When SVRS was first implemented, there were significant issues with the absentee functionality reported by clerks. Many improvements have been made to the absentee tracking in SVRS, however it remains a complicated process that many clerks still consider to be too time consuming and glitchy. Efforts to simplify absentee functions in SVRS have become more difficult as a direct result of recent State election law changes to the absentee process that mandate different rules and deadlines for different types of absentee voters. At this time it is predominantly large municipalities, along with a few smaller self-providers, that use the full absentee functions in SVRS. Most smaller self-providers, as well as providers on behalf of their reliers, only use the SVRS absentee tracker as mandated by federal law for military and overseas ballots and track all remaining absentee ballots using an alternate method (Excel, paper, etc.).

In 2012, the G.A.B. received a grant from the Federal Voting Assistance Program (FVAP) to develop technology allowing military and overseas voters to obtain an absentee ballot online. The online ballot delivery system was first used for the 2012 General Election. The G.A.B. and local election officials were subject to a federal court Consent Decree resulting from a small number of municipal clerks who did not transmit absentee ballots by deadlines mandated by federal law during federal elections in 2010 and 2012. The online tool created as part of MyVote Wisconsin was designed to make it easier for municipal clerks and military and permanent overseas voters to submit and process absentee ballot

requests and to transmit absentee ballots between clerks and voters. The online absentee ballot delivery system requires clerks to enter all contests and candidates in SVRS as soon as candidates are certified. This was a task that the G.A.B. had already asked of municipal clerks and providers, but it has become more critical with the new MyVote system, and it is required in order to comply with the federal mandates from the MOVE Act. While SVRS was always intended to serve as a tool for election administration and more than simply a list of registered voters, the burdens of data entry and tasks performed within SVRS has become greater and greater with each new state or federal mandate.

Analysis

Clerk Issues with Absentee Tracking in SVRS

The following issues have been commonly reported by clerks using the absentee functions in SVRS:

1. **Complexity:** The absentee functionality is complex. There are multiple ways in the system to perform the same task, which can also produce different results. Processes are not as intuitive as they should be and require clerks to continually refer back to instructions even after they are experienced users. Some tasks require going to different nodes within the system instead of seamlessly flowing to the next task. Mandates from changes in state and federal election laws in recent years have resulted in system modifications and functionality add-ons completed in a piecemeal fashion. Features that are needed for larger municipalities may be confusing and create additional unnecessary work for smaller municipalities. Many municipalities require telephone support from G.A.B. staff each time they use the absentee functions.
2. **Inadequate Reports:** Reporting absentee information is time consuming and SVRS deadlines do not always mesh well with legislatively mandated and practical deadlines. Clerks are forced to choose between waiting until the last minute to print poll books and absentee ballot logs from SVRS, or manually updating poll books and absentee ballot logs with hand-written notes the weekend before an election.
3. **Glitches:** Many of the glitches in the absentee functions in SVRS have been resolved over time, however some glitches still remain which can result in data quality problems and a lack of confidence in the system. When errors do occur, it is not always clear what went wrong. Clerks may have to contact G.A.B. to report problems and get advice and workarounds to be able to finish the process.
4. **System Performance:** The time it takes to generate a large batch of absentee ballot labels is longer than desirable. When printing individual labels on a label printer, it can sometimes take several minutes for the label to print. When multiple clerks are performing absentee tasks, SVRS slows down overall. Performance is particularly impacted when clerks are performing post-election tasks from a primary (such as recording votes and entering Election Day registrations) while other clerks are generating absentee ballots for an upcoming election.

The Provider/Relier Relationship

Many smaller municipalities across Wisconsin rely on the County Clerk or another Municipal Clerk to perform their data entry tasks in SVRS. This model creates unique challenges for tracking absentee information in those municipalities. Reliers must communicate with their providers every time a military or overseas voter is sent a ballot, when the ballot is returned, and if the ballot was cancelled for some reason (such as being returned undeliverable) in order to comply with mandates from federal law. If providers were to track all absentees for their reliers, even more communication would be required. Providers would need to know the type of absentee ballot request, when the request was made, what election(s) the voter is requesting ballots for, the dates the ballots were mailed, the dates they were returned, whether a ballot was returned as undeliverable, if a ballot was cancelled and reissued (as well

as the reason why) and other information. Providers and reliers would need to communicate weekly or even daily in order to share information in a timely manner. If a provider has multiple reliers, they would need to track all of this information for each of their reliers.

These factors create significant business process and workload issues. Any discussion of changing how and when absentee ballots are tracked in SVRS must take the provider/reliar relationship into consideration. Many County Clerks have stated that if the G.A.B. requires all municipalities to track all absentee ballots in SVRS they will no longer be willing or able to be SVRS providers.

Benefits of Tracking Absentees in SVRS

There are many benefits to tracking all absentee ballot information in SVRS. Reliers and self-providers who cannot or do not track their absentees in SVRS are not able to reap these benefits. Some of the benefits include:

- **Voter benefits:** Voters can track the status of their absentee ballot on-line through the MyVote Wisconsin website. This allows voters to see for themselves if their ballot has been sent, if the clerk has received it back from the voter, or if there is some other problem. This is not only a convenience to the voter, but also reduces the number of phone calls a clerk has to take answering these questions.
- **Integrity/Fraud Prevention and Detection:** Clerks are notified by SVRS if they attempt to issue an absentee ballot to a voter who has recently moved out of their municipality and is no longer eligible to vote absentee, or if a voter has recently moved into a municipality but already received an absentee ballot from their previous municipality. These safeguards help prevent voters from getting multiple ballots, or ballots they are not eligible to vote, improving the integrity of the process. Without tracking absentee ballots in SVRS, these errors may only be caught after an election when it is too late to correct the problem.
- **Better data:** More complete and accurate data and statistics can be provided to public officials and the public regarding voters who vote absentee. Currently, only partial statistics can be provided by the G.A.B. until after clerks report absentee ballots on their GAB-190 forms. Requestors who want to obtain lists of absentee voters must contact each municipal clerk separately to get lists of absentees and updated ballot status information. Before major elections, political parties frequently make burdensome public records requests for updated absentee ballot information from local clerks that could be provided by the G.A.B., if all clerks tracked absentee ballots through SVRS.

Preliminary Recommendations for Taskforce Consideration

1. **SVRS Modernization:** The G.A.B. IT Team is developing ideas to re-engineer the absentee tracking functionality to make it simpler, more efficient, and more responsive. Revamping the absentee tracking process is one of the priorities of the SVRS Modernization initiative, which will retool SVRS using modern technologies. It is recommended that absentee ballot tracking be one of the first components of SVRS to be modernized.
2. **Clerk Input:** G.A.B. will be using an ad hoc team of clerks to assist with the SVRS Modernization project to ensure the new system is built around the needs of clerks. It is recommended that clerks be heavily involved in revamping the absentee functions in SVRS. This input should occur early in the SVRS modernization development process such that the provider/reliar relationship and other concerns may be addressed up front, rather than piecemeal after the development is underway or complete.
3. **Customize Functions for Mandates of Wisconsin Laws:** Given the complexity of absentee voting laws in Wisconsin, many business rules will need to be coded into the absentee functionality to

make it easier for clerks to use. The system will need to know the different mandated deadlines and options for different types of voters to help make it easier for clerks to follow the appropriate procedures.

4. **Prioritize Usability:** Create simplified functionality that smaller self-providers and providers on behalf of reliers could easily use to track absentees, while allowing larger cities to utilize additional features that may be helpful for a larger voter volume.
5. **Measure Success:** After any changes to absentee functionality are made, it is recommended that G.A.B. gather input from clerks to see if the process was improved, and to continue to solicit feedback so that further process improvements can be made.
6. **Customize Functionality for Clerks:** Allow for more types of SVRS users. For example, allow reliers to enter absentee voter information in SVRS while maintaining their relier status.
7. **Evaluation Before Implementation:** Absentee tracking in SVRS should not be required of all clerks until it can be documented through user feedback and performance evaluation that absentee tracking is sufficiently improved and State mandates properly addressed so as to not be overly burdensome on relier and provider clerks.

Taskforce Recommendations:

These concerns were discussed at the Tuesday, April 30, 2013 meeting of the Clerk Concerns Task Force. The Taskforce voted by two-thirds majority to accept all seven recommendations presented above, with one added caveat. Provisions for adequate training and sufficient notice for implementing the full SVRS absentee functionality should be added to Recommendation 7.

Staff Recommendations:

Staff recommends revising Recommendation 7 as follows:

7. **Evaluation Before Implementation:** Absentee tracking in SVRS should not be required of all clerks until it can be documented through user feedback and performance evaluation that absentee tracking is sufficiently improved and State mandates properly addressed so as to not be overly burdensome on relier and provider clerks. Clerks should be given significant advance notice of the change before it is implemented. Any compliance deadline must also include sufficient time to adequately train clerks in the improved absentee functionality to ensure they are prepared for such a tracking requirement.

Staff recommends that all other recommendations be accepted as stated above.

Recommended Motion:

The Board accepts the Taskforce recommendations above, including the revisions to Recommendation 7, and directs Board staff to implement the recommendations.

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JUDGE TIMOTHY L. VOCKE
Chair

KEVIN J. KENNEDY
Director and General Counsel

MEMORANDUM

TO: Members, Government Accountability Board

FROM: Michael Haas
Elections Division Administrator

Prepared and Presented by:
David Buerger
Elections Specialist

DATE: For the Meeting of May 21, 2013

SUBJECT: Clerks' Concerns Taskforce Recommendation – Public Records Requests

Background

Wisconsin's Public Records Law, Wis. Stat. §§ 19.31-19.39, authorizes individuals to inspect or obtain copies of records maintained by units of government. This includes voted ballots, poll lists, and other election materials. While there are some exceptions to the Public Records Law, Wis. Stat. § 19.31 declares that "all persons are entitled to the greatest possible information regarding the affairs of government and the official acts of those officers and employees who represent them." This strong language is a reflection of the intent of the Legislature to promote transparency in government, which is especially critical in elections, where public confidence is a necessary element to a healthy democracy.

Responding to public records requests is typically a routine matter for public employees and one that most municipalities and counties have well-established policies to handle. However, requests for election-related documents sometimes present unique challenges such as requests for voted ballots or data from electronic voting equipment. The heightened attention to the recall elections of 2011 and 2012 also prompted a higher-than-usual number of public records requests for election-related records as well. Responding to these public records requests was an additional burden placed on election officials during an already busy election cycle.

While the Government Accountability Board (Board) is not the authority on Wisconsin's Public Records Law, Wis. Stat. § 5.05(1) does give the Board authority over "other laws relating to elections and election campaigns". As such, Board staff can provide some guidance in this area, particularly where public records requests intersect with elections and election campaigns. However, for more specific or authoritative guidance, election officials are recommended to continue to rely on the Wisconsin Attorney General's Office and their own legal counsel.

Analysis

While a full walkthrough of how to handle a public records request is beyond the authority of the Board and the scope of this memo, some examination of the particular requirements of the law is necessary to understand the unique challenges election officials face when handling election-related records requests.

1. Timely Response

Generally, requests for election-related public records are treated the same as requests for any other public record. This means that election officials must respond to all requests “as soon as practicable and without delay.” Wis. Stat. § 19.35(4)(a). While the Public Records Law does not require a response within any specific time, it is the policy of the Wisconsin Department of Justice (DOJ) that 10 working days is a reasonable time for responding to a simple request for easily identifiable records. If a response cannot be provided within 10 working days, it is DOJ policy that a communication is sent to the requester indicating that the request has been received and that a response is being prepared.

Some requestors will attempt to unilaterally impose a deadline for response to their request such as “I will consider my request denied if no response is received by Friday and will seek all available legal relief.” Election officials are not obligated to meet such unilaterally imposed deadlines. However, to avoid misunderstandings, it is prudent when receiving such a request to send a brief acknowledgement indicating when a response reasonably might be anticipated.

In the days surrounding an election, election officials often have their hands full with processing absentee ballots, voter registrations, and other important election tasks. A response to a public records request in the days immediately before and after the election is often not practical. The courts have recognized that whether an authority is acting with reasonable diligence in responding to a particular request will depend on the totality of the circumstances surrounding that request. *WIREdata II*, 2008 WI 69, ¶ 56, 310 Wis. 2d 397, ¶ 56, 751 N.W.2d 736, ¶ 56. While Wis. Stat. § 7.41 does grant the public a right to observe the public aspects of the voting process, this right does not include immediate inspection of all election-related records or immediate responses to all election-related record requests. See GAB Emergency Rule 4.01(12) & (13) (*expired*). Furthermore, confidential voter information such as driver license numbers, social security numbers, dates of birth, and financial account numbers are exempted from release as part of public records and therefore documents including them should not be allowed to be inspected on Election Day, but instead only viewed after they have been properly redacted. See Wis. Stat. §§ 6.36(1)(b), 19.36(13).

It is also common to see heightened public interest in election-related records during post-election canvass processes. It is the policy of the Board that election-related records such as voted ballots, tally sheets, and voting equipment printouts may not be viewed by members of the public until after the applicable deadline for requesting a recount has passed, or if a recount occurs, the applicable appeal deadline has passed. Clerk Communication of June 28, 2012 re: Letter from Kennedy to Magnuson of June 27, 2012, available at <http://gab.wi.gov/node/2406>. This is to protect the integrity of those original materials until such time as the election results can be finalized. See also Clerk Communication of July 3, 2012 re: Memo from Ross Hein to Clerks, available at <http://gab.wi.gov/node/2409>.

2. Restrictions on Access

Even once an election-related record is available to be inspected by the public, election officials must be careful in permitting inspection of original election records. The Public Records Law permits an authority to impose reasonable restrictions on the manner of access to original records if they are irreplaceable or easily damaged. Wis. Stat. § 19.35(1)(k).

In 2012, Board staff advised clerks who had received requests to inspect voted ballots from the June 5th recall election that due to the sensitive nature of these documents, the ballots should not be given to the requestor to handle. Clerk Communication of June 28, 2012 re: Letter from Kennedy to Magnuson of June 27, 2012, available at <http://gab.wi.gov/node/2406>. See also Clerk Communication of July 3, 2012 re: Memo from Ross Hein to Clerks, available at <http://gab.wi.gov/node/2409>. Instead, unless the requestor opted for copies, the clerk’s office staff would be required to present each ballot to the requestor to view individually. *Id.* Ballot security and integrity requirements must still be followed

even if the election is past any statutory recount deadline so as to preserve the materials for future examination. These recommendations led to significant expenses for many local election officials who received such requests and had to assign staff to present the voted ballots to requestors.

3. Electronic Data Requests

Requests for electronic data such as the contents of the removable memory device used in voting equipment are treated the same under the Public Records Law as requests for paper documents. However, these types of requests can present additional challenges if the clerk contracts with a vendor for storage and retention of that data.

An election official cannot avoid their responsibilities under the Public Records Law by contracting with a vendor for the retention of electronic data. The election official remains responsible for complying with the law and cannot simply redirect the request to the vendor. *WIREDATA II*, 2008 WI 69, ¶¶ 82-89, 310 Wis. 2d 397, ¶¶ 82-89, 751 N.W.2d 736, ¶¶ 82-89.

An additional consideration with electronic records is a request for data that may be protected from disclosure due to statutory exemptions, such as computer programs, or claims by the manufacturer or vendor of trade secrets, such as proprietary source code or data processes. Wis. Stat. §§ 19.36(4), (5). To ensure that all requested records that statutorily must be disclosed are in fact available to public inspection, clerks should request the position of the vendor to prevent violations of trade secret, copyright, trademark, proprietary and general confidentiality rights of the vendor. Any claims for protection should be carefully examined by legal counsel. The Board previously provided some instruction on this topic and a copy of a May 6, 2011 from the Department of Justice that more specifically sets forth the legal and factual considerations with electronic records public records requests. See Clerk Communication of July 3, 2012 re: Memo from Ross Hein to Clerks, *available at* <http://gab.wi.gov/node/2409>.

G.A.B. staff also recommends addressing public records law compliance in contracts with a voting equipment manufacturer or service provider. Municipalities and counties should consider including indemnification and hold harmless clauses to protect themselves should a public records dispute arise. To support municipalities and counties in this regard, G.A.B. recently began including language in its voting equipment approvals that require vendors to abide by applicable Wisconsin Public Records Law. See Letter from Michael Haas to Steve Pearson re: Approval and Certification of ES&S Unity 3.4.0.0 (April 2, 2013) *available at* <http://gab.wi.gov/publications/other/ess-unity-3400-approval-letter>.

4. Costs

Complying with public records requests always has a cost. Generally, the Public Records Law allows an authority to recoup the actual, necessary and direct costs associated with four particular tasks: (1) reproduction and transcription, (2) photographing and photographic processing, (3) locating, and (4) mailing or shipping. However, there are some limitations:

a. Copying Costs

The Public Records Law allows an authority to impose a fee upon the requestor of a public record for the actual, necessary and direct costs associated with copying the record. The Department of Justice policy is that photocopy fees should be around \$0.15 per page, and that anything in excess of \$0.25 per page may be suspect.

b. Location Costs

Actual, necessary and direct costs associated with locating records may be charged if they total \$50.00 or more. Wis. Stat. § 19.35(3)(c). An authority must be careful when passing through vendor costs, as allowed costs are limited to actual, necessary, and direct expenses associated with the request. Wis. Stat. §§ 19.35(3)(g). If the vendor is charging more than the actual direct costs to produce the record, those additional costs cannot be passed on to the requestor.

c. Redaction Costs

The costs incurred to delete or redact confidential information from copies of responsive records, may not be charged to the requestor. *Milwaukee Journal Sentinel v. City of Milwaukee*, 2012 WI 65, ¶¶ 1 & n.4, 6, 58, 341 Wis. 2d 607, ¶¶ 1 & n.4, 6, 58, 815 N.W.2d 367, ¶¶ 1 & n.4, 6, 58 (Abrahamson, C.J., lead opinion); *Id.*, ¶ 76 (Roggensack, J., concurring).

d. Staff Costs

Generally, the rate charged for staff time should be based on the lowest paid employee capable of performing the task. Wisconsin Department of Justice Public Records Law Compliance Outline, Section XI(C)11, pg. 54 (September 2012), available at <http://www.doj.state.wi.us/sites/default/files/dls/public-records-compliance-outline-2012.pdf>.

Taskforce Recommendation

At the Taskforce's April 30, 2013 meeting, the Taskforce discussed the above analysis and other potential solutions to the challenges presented by public records requests. After considerable debate the Taskforce identified the inspection of voted ballots to be an area where legislative change is necessary. Specifically the Taskforce recommended:

- Voted ballots should not be subject to inspection under the Public Records Law, but copying of ballots would remain permitted.

The Public Records Law provides a number of exceptions from disclosure for certain documents or types of information. Wis. Stat. §19.36. The Public Records Law also already recognizes that "a legal custodian may impose reasonable restrictions on the manner of access to an original record if the record is irreplaceable or easily damaged." Wis. Stat. §19.35(1)(k). Creating a statutory prohibition on the public inspection of voted ballots would give custodians the authority to limit the manner of access to copies despite the strong presumption of complete public access codified in Wis. Stat. § 19.31.

This change would respect the public's right to view these records while not compromising the integrity of the original record or imposing as much of an undue burden on election officials to supervise "unofficial hand recounts" of voted ballots.

Staff Recommendation

Board staff recommends that the Board not take a position on this issue, but instead refer this recommendation to the Legislature as it is the proper body to determine the balance of costs and burdens between a requestor and custodians of records.

While the proposed exception would not directly prevent an individual from viewing voted ballots because copying would still be permitted, Board staff are concerned that it could deter access as described in *Milwaukee Journal Sentinel* by creating a substantial financial obstacle to access. *Milwaukee Journal Sentinel v. City of Milwaukee*, 2012 WI 65, ¶ 5.

Recommended Motion

The Board accepts the staff recommendation to refer this Taskforce recommendation to the Legislature for its consideration without taking a position on the merits of the proposal.

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JUDGE TIMOTHY L. VOCKE
Chair

KEVIN J. KENNEDY
Director and General Counsel

MEMORANDUM

TO: Members, Government Accountability Board

FROM: Michael Haas
Elections Division Administrator

Prepared and Presented by:
Zach Robinson
SVRS/ GIS Analyst

DATE: For the Meeting of May 21, 2013

SUBJECT: Clerks' Concerns Taskforce Recommendation - Annexation Notification Process

Background

The Statewide Voter Registration System (SVRS) uses geographic boundaries to assign voters to specific district combinations which determine the ballot style individual voters receive. Specific district combinations are determined by a combination of geographic boundaries based on where that individual lives. Therefore it is imperative that the most accurate and current boundaries be represented within SVRS.

Annexations take place throughout different municipalities at different times and at varying rates. Unfortunately the G.A.B. is frequently notified of annexations which have already taken place only weeks prior to an election. This does not allow enough time for acquisition, verification, and implementation of updated ward boundaries from the respective Municipality or County GIS departments.

When the G.A.B. does not have enough time to acquire updated data, a manual district combination has to be created which then represents the attributes of that particular district combination but lacking any actual geographic boundary. This in turn requires the SVRS user to manually assign impacted voters to the correct district combination to ensure they receive the correct ballot, creating more work for the SVRS user and requiring greater attention to detail.

The G.A.B. has been working with Municipal and County GIS departments where those resources are available in order to receive the most updated ward boundaries. In order for the GAB to acquire, verify, and implement updated boundaries and so as not to interfere with other pre-election preparation and set-up it is important for the G.A.B. to receive updated ward boundaries no later than three weeks prior to an election.

Objectives

It is the goal of the G.A.B. to improve this process for clerks and impacted electors. The G.A.B. would like to open a dialogue with clerks regarding the annexation process so we can determine the most appropriate notification procedures clerks may use. G.A.B. staff would like to get recommendations from the Clerks Concerns Task Force for an improved annexation notification process.

Analysis

Statutes require municipalities to notify multiple parties when an annexation occurs. Under current law, G.A.B. is not one of the parties to which notice is required. Therefore G.A.B. does not receive notification unless and until the municipal or county clerk proactively contacts G.A.B. to provide notification. There are several options to improve this process to increase reliability and timeliness of notifications. G.A.B. staff has prepared the following suggestions to be considered by local election officials:

- Expand the agencies required to be notified by the Secretary of State (SOS) to include G.A.B.: Under current law, municipalities are required to notify the SOS, who then notifies multiple state agencies including the Departments of Transportation, Administration, Revenue, and Agriculture, Trade & Consumer Protection. These notifications are designed to update the agency records for programs which they administer. Adding G.A.B. as a notified agency would require a legislative change but would make notification to G.A.B. automatic, taking the burden off of local clerks to remember to notify G.A.B.
- Have G.A.B. review and update municipal boundaries on a scheduled basis: G.A.B. could work with local land planning offices to have a regular schedule for the review of municipal boundaries to ensure that SVRS is in synch with local GIS systems. This could be done annually, twice a year, or quarterly depending on the election calendar and the frequency of annexations in a particular locality.
- Ask clerks to perform an annexation review prior to each election: Clerks could be asked to review their municipal boundaries in SVRS 60 days prior to any election, as part of the standard election readiness and checklist process that G.A.B. currently monitors. Clerks could verify whether any annexations are missing, and also notify G.A.B. of forthcoming annexations that may occur prior to the election.

Ask clerks to notify G.A.B. at the time the annexation passes. Clerks could be asked to proactively notify G.A.B. each time an annexation is passed by their municipal governing body, at the time the annexation is passed. Clerks must also verify that ward plans are properly amended and adopted by their municipal governing body, prior to G.A.B.'s implementation of the new annexation and ward boundaries in SVRS.

Taskforce Recommendation

It was the Recommendation of the Clerks Concerns Taskforce that the G.A.B. be added to the list of state agencies notified of annexations. Under Wis. Stat. §§ 66.0217(9)(a) municipalities must notify the Secretary of State of completed annexations. Under Wis. Stat. §§ 66.0217(9)(b), the Secretary of State is required to forward two copies of the annexation ordinance, certificate, and plat to the Department of Transportation and one copy to the Department of Administration, Department of Revenue, Department of Agriculture, Trade & Consumer Protection, and two copies to the clerk of the municipality for which the territory is being annexed. It was the recommendation of the Taskforce that the Government Accountability Board be added to the list of agencies that the Secretary of State is required to notify under Wis. Stat. §§ 66.0217(9)(b).

Staff Recommendation

Board staff agrees with the Taskforce's recommendation and believes it will provide a systematic means for receiving more timely notification of municipal annexations which affect the boundaries of election districts and the ballot styles assigned to individual voters.

It is also the recommendation of the G.A.B. staff for the Board to direct staff to continue to work with clerks to develop notification policies for annexations (municipal lines as they occur), amended ward plans, and a deadline for receipt of any shape files for updating SVRS prior to an election. Such policies may include a requirement for clerks to perform an annexation review prior to each election: Clerks could be asked to review their municipal boundaries in SVRS 60 days prior to any election, as part of the standard election readiness and checklist process that G.A.B. currently monitors, with a 30 day deadline for receipt of shape files prior to any election; clerks could also verify whether any annexations are missing, and also notify G.A.B. of forthcoming annexations that may occur prior to the election.

Recommended Motions:

1. The Board accepts the Taskforce's recommendation that the G.A.B. should be added to the list of state agencies which the Secretary of State is statutorily required to notify of completed annexations, and directs staff to request that the Legislature to act on the recommendation.
2. The Board directs staff to continue to work with clerks to develop notification policies for annexations (municipal lines as they occur), amended ward plans, and a deadline for receipt of any shape files for updating SVRS prior to an election.

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JUDGE TIMOTHY L. VOCKE
Chairperson

KEVIN J. KENNEDY
Director and General Counsel

MEMORANDUM

DATE: For the May 21, 2013 Board Meeting

TO: Members, Government Accountability Board

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

Prepared and Presented by:
Michael Haas, Elections Division Administrator
David Buerger, Elections Specialist
Allison Coakley, Training Officer

SUBJECT: Absentee Voting in Nursing Homes, Retirement Homes and Adult Care Facilities Manual Revision

At the March 20, 2013 Board Meeting, Elections Division staff presented proposed language for a revised and renamed *Absentee Voting in Nursing Homes, Retirement Homes and Adult Care Facilities* manual. The manual was revised to provide expanded guidance on the appointment, duties and responsibilities of Special Voting Deputies (SVDs), and the processes they must follow when administering absentee voting in certain care facilities prior to an election.

In response to comments and suggestions expressed by members of the Board and the public, staff has made additional revisions for the Board's review, including a clarification in the definition of a "facility," and expanding the GAB-104SVD form to two pages. In addition, pronoun agreement was corrected and manual sections were reorganized to reflect the SVD absentee voting administration process flow. The staff team which worked on this project believes that the feedback and revisions have resulted in a document that provides more comprehensive and clear guidance to clerks, SVDs, voters, and the public than has previously been available regarding absentee voting in nursing homes and other adult care facilities. As with other guidance issued by staff, the manual attempts to balance presenting information in a readable and understandable format while accurately describing the intricacies of the election laws.

There is one policy determination included in the manual for which staff requests the Board's specific input and ruling, related to the ability of indefinitely confined voters to continue receiving absentee ballots if the elector fails to return an absentee ballot which was requested for an election. The relevant language of Wis. Stat. §6.86(2) is italicized below:

(a) *An elector who is indefinitely confined because of age, physical illness or infirmity or is disabled for an indefinite period may by signing a statement to that effect require that an absentee ballot be sent to the elector automatically for every election.* The application form and instructions shall be prescribed by the board, and furnished upon request to any elector by each municipality. The envelope containing the absentee ballot shall be clearly marked as not forwardable. If any elector is no longer indefinitely confined, the elector shall so notify the municipal clerk.

(b) The mailing list established under this subsection shall be kept current through all possible means. *If an elector fails to cast and return an absentee ballot received under this subsection, the clerk shall notify the elector by 1st class letter or postcard that his or her name will be removed from the mailing list unless the clerk receives a renewal of the application within 30 days of the notification. The clerk shall remove from the list the name of each elector who does not apply for renewal within the 30-day period.* The clerk shall remove the name of any other elector from the list upon request of the elector or upon receipt of reliable information that an elector no longer qualifies for the service. The clerk shall notify the elector of such action not taken at the elector's request within 5 days, if possible.

Board staff's previous interpretation of this statute has been that indefinitely confined voters who do not return a ballot for a primary election should not be subject to the removal process for a couple of reasons. First, staff viewed the primary election as essentially part of the nominating process and believed that indefinitely confined voters should not be penalized for failing to return the primary ballot as that did not seem to be a reliable indication that the voter wished to stop receiving absentee ballots.

More significantly, as a practical matter, the tasks of entering voter participation for an election into the Statewide Voter Registration System and then sending out the required 30-day notice to the elector can be difficult to complete for some clerks in the period after a primary election. This was especially true when the Partisan Primary was held in September, and remains true for the short period between the Spring Primary and the Spring Election, as well as the short period between recall or special election primaries and the actual recall or special election. There is also no specific deadline in Wis. Stat. §6.86(2)(b) for clerks to send out the notice to electors and it is likely that removal notices would be sent out less than 30 days before the next election, causing confusion as to the individual's status as an indefinitely confined voter.

Some election observers and local election officials have requested that the Board adopt an alternate interpretation of these statutory provisions which would require clerks to mail out 30-day removal notices to indefinitely confined voters after a spring primary, partisan primary, or special election primary. Board staff believes it is appropriate for the Board to make a specific determination regarding the proper interpretation of Wis. Stat. §6.86. The following excerpt from the revised manual outlines current Elections Division policy regarding the failure of indefinitely confined voters to return absentee ballots:

The municipal clerk keeps a list of indefinitely confined electors and automatically sends or arranges for delivery of an absentee ballot to the indefinitely confined elector for each primary and election. If an elector does

not return a ballot for a spring, general or special election sent under this provision, the clerk shall notify the elector that he or she must reapply within 30 days of receiving the notice in order to automatically receive an absentee ballot for the next election. **This process does not apply to indefinitely confined voters who do not return a ballot for a primary election.**

(emphasis added)

Board staff is requesting that the Board approve this interpretation as Elections Division policy to be included in the manual governing the SVD process and voting in nursing homes and adult care facilities.

Recommended Motion: The Board approves the revised manual entitled Absentee Voting in Nursing Homes, Retirement Homes and Adult Care Facilities.

Absentee Voting in Nursing Homes, Retirement Homes and Adult Care Facilities

May 2013



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Introduction

The Wisconsin Legislature has determined that the vigorous exercise of our constitutional right to vote should be strongly encouraged. The Legislature also recognizes that it is difficult for some individuals to get to their polling place on Election Day. This is particularly true for individuals residing in nursing homes, community-based residential facilities, retirement homes, residential care apartment complexes, and adult family homes. Wis. Stats. §§6.84(1), 6.875.

In order to meet this need, the Legislature has established the privilege of absentee voting as an extension of the right to vote on Election Day. The Legislature recognizes that the privilege of voting absentee is exercised wholly outside the traditional safeguards of the polling place. The privilege of absentee voting must be carefully regulated to prevent the potential for fraud or abuse, overzealous solicitation of absent electors who may prefer not to participate in an election, and undue influence on an absentee elector to vote for or against a candidate or referendum. Wis. Stat. §6.84(1). The procedures described in this manual are the exclusive means of absentee voting for voters who are occupants of nursing homes and other care facilities that are designated by the municipal clerk to be served by Special Voting Deputies (SVDs).

The purpose of this manual is to describe the procedures for absentee voting in Wisconsin nursing homes, qualified community-based residential facilities, qualified retirement homes, qualified residential care apartment complexes, and qualified adult family homes. These procedures have been developed in order to encourage occupants of these facilities to participate in the process of choosing their elected representatives.

Definitions

Facility – an area or location that is defined by the license which governs its operations as described below. There may be several facilities within a single building or complex located, for instance, on separate floors or in separate wings.

Nursing Home – a facility occupied by 10 or more unrelated individuals for the primary purpose of obtaining full-time personal or nursing care which is necessitated by their physical or mental conditions, but does not include a hospital. Wis. Stat. §6.875(am).

Qualified Adult Family Home – a facility that is certified or licensed to operate as an adult family home under Wis. Stat. §§50.032 or 50.033, and it is determined by the municipal clerk or board of election commissioners that a significant number of the occupants lack adequate transportation to the appropriate polling place, need assistance in voting, are aged 60 or over, or are declared as indefinitely confined electors. Wis. Stat. §6.875(1)(ap) and (2)(d).

Qualified Community-Based Residential Facility (CBRF) – a facility licensed under Wis. Stat. §50.01(lg), except that it must be occupied by at least 10 unrelated adults, and it is determined by the municipal clerk or board of election commissioners that a significant number of the occupants lack adequate transportation to the appropriate polling place,

need assistance in voting, are aged 60 or over, or are declared as indefinitely confined electors. Wis. Stat. §6.875(1)(a), (as), and (2)(b).

Qualified Residential Care Apartment Complex – a facility that is certified or registered to operate as an adult family home under Wis. Stat. §50.034, and it is determined by the municipal clerk or board of election commissioners that a significant number of the occupants lack adequate transportation to the appropriate polling place, need assistance in voting, are aged 60 or over, or are declared as indefinitely confined electors. Wis. Stat. §6.875(1)(asm) and (2)(d).

Qualified Retirement Home – a facility occupied as a primary place of abode by 10 or more unrelated individuals, where it is determined by the municipal clerk or board of election commissioners that a significant number of the occupants lack adequate transportation to the appropriate polling place, need assistance in voting, are aged 60 or over, or are declared as indefinitely confined electors. Wis. Stat. §6.875(1)(at), (c), and (2)(b).

Special Voting Deputies (SVDs) – individuals appointed by a municipal clerk or board of elections to conduct absentee voting at certain care facilities. SVDs are the exclusive method by which absentee voting may be conducted in nursing homes. The municipal clerk may choose to utilize SVDs in other qualified care facilities. A person who is appointed an SVD:

1. Must be a qualified elector of the municipality.
2. Must attend training.
3. May not currently be employed by the facility.
4. May not have been employed by the facility within two years of the appointment.
5. May not be an immediate family member of anyone currently employed by the facility or employed by the facility with two years of the appointment.

If you are uncertain if there are any such facilities in your municipality or whether a certain facility fits into one of the above definitions, a full list of licensed facilities by county can be found on the Wisconsin Department of Health Services website:

<http://www.dhs.wisconsin.gov/bqaconsumer/directories.htm> .

Designation of Qualified Care Facilities Served by SVDs

Municipal clerks are only required to use SVDs for nursing homes. Other care facilities may be served by SVDs if the municipal clerk determines that a significant number of the occupants lack adequate transportation to the appropriate polling place, need assistance in voting, are aged 60 or over, or are declared as indefinitely confined electors. However, once the clerk has made this determination, the facility will be designated for SVD service for all elections until the clerk makes a contrary formal determination as to the facility's eligibility for future SVD service.

Clerks should NOT switch a facility's SVD eligibility in the period between a primary election and a general or spring election, or between a special primary and a special election. Clerks are also strongly recommended to inform the administrator of any facility of the clerk's determination so that the administrator can properly inform the facility's occupants regarding the change in status.

Occupants who live in facilities visited by SVDs are no longer eligible to request a traditional by-mail absentee ballot, but instead must vote absentee via SVDs and follow the procedures included in this manual. Occupants may still vote at the polls on Election Day.

Prior to Voting Day

Special Voting Deputies (SVDs) are appointed by the municipal clerk to bring absentee ballots to qualified care facilities. The two major political parties may submit a list of potential SVDs to the municipal clerk. If lists are submitted, then SVDs who represent each of the political parties must be selected from the lists. No person who is or was in the last two years employed or retained at a qualified facility, or is a member of the immediate family of such an individual, may serve as an SVD. Wis. Stat. §6.875(4). Once SVDs are appointed, they will take the Oath of Special Voting Deputy (GAB-155). Wis. Stat. §6.875(5). Special Voting Deputies may not deputize other individuals to administer the voting process.

The municipal clerk or Election Commission shall determine which facilities, in addition to nursing homes, are to be designated as qualified facilities based upon the above definitions. In such designated facilities, voting by SVDs is the exclusive means of absentee voting by occupants. Occupants may not receive their absentee ballot in the mail or in-person in the municipal clerk's office, unless they were unavailable during the SVDs' scheduled visits. Voters in other facilities which are not designated by the municipal clerk to be served by SVDs may cast an absentee ballot by mail or in-person in their municipal clerk's office.

Prior to sending SVDs to a facility, the municipal clerk should compile a list of occupants at the facility who have absentee ballot requests on file. This list should be shared with the facility administrator. The social worker for the facility may be consulted if there is a question of voter competency. The administrator should survey the occupants on the list to inform them of the date and time of the SVDs' visit. The administrator should also note on the list which individuals will be able to meet the SVDs for voting and which are unable or unwilling to meet the SVDs at the designated time. The municipal clerk must check with the facility administrator to verify which individuals will be served by SVDs in a multi-facility complex.

Special Voting Deputies shall arrange one or more convenient times with the administrator of the facility to conduct absentee voting for the election. The SVDs shall contact the administrator of the facility as soon as possible, but no later than 5:00 p.m. on the Friday before an election. Absentee voting may be conducted no earlier than the

fourth Monday before the election and no later than 5:00 p.m. on the Monday before the election. As soon as possible after arrangements are made for the visit, but not less than 24 hours before the visit, the municipal clerk shall post a notice at the facility indicating the date and time that absentee voting will take place at that facility (see Sample Notice, page 20). Arrangements for multiple visits to a facility may be made and posted at the same time.

Upon the request of a relative of an occupant of a facility, the administrator of the facility may notify the relative of the time or times at which SVDs will conduct absentee voting and permit the relative to be present in the room where the voting is conducted. Wis. Stat. §6.875(6)(c)2.

Who May Vote Absentee

Any qualified elector who for any reason is unable or unwilling to appear at the polling place on Election Day may vote absentee. Wis. Stat. §6.85. A qualified elector is a United States citizen, age 18 or older on Election Day, who has resided in an election district 28 consecutive days before any election where the person offers to vote, and is not currently serving a felony sentence (including any term of extended supervision) or has not been adjudicated incompetent to vote. Wis. Stats. §§6.02(1), 6.03. If an individual has been adjudicated incompetent to vote, that information is provided to the Government Accountability Board, which cancels his or her registration to vote.

Voter Registration

If a person is voting for the first time in Wisconsin, or has changed his or her name or address since the last time they voted, they are required to complete a Voter Registration Application (GAB-131) before they vote. Before receiving an absentee ballot, an elector must be registered. Wis. Stat. §6.86(1).

- Special Registration Deputies (SRDs) are appointed by the municipal clerk to register individuals outside of the clerk's office until the third Wednesday before an election. Wis. Stat. §6.28.
- A qualified elector may also register to vote by mail no later than the third Wednesday before an election. Wis. Stat. §6.30(4). First-time voters registering to vote by mail, must provide "proof of residence." Registration forms may be obtained by request from the municipal clerk or from the Government Accountability Board's website, <http://gab.wi.gov>.
- An elector may also register at the municipal clerk's office until the Friday before the election. Wis. Stat. §6.29(2). When registering in the clerk's office *after* the third Wednesday before an election, the elector must provide "proof of residence." An elector registering in the clerk's office *before* the third Wednesday before an election is not required to provide "proof of residence."

- Electors who vote at the polls may register at the polling place on Election Day. Wis. Stat. §6.55(2). Electors registering at the polling place on Election Day must provide “proof of residence.”

A list of acceptable forms of “proof of residence” can be found on the G.A.B. website.

NOTE: If the SVDs are also trained and appointed as Special Registration Deputies and are conducting absentee voting at a care facility on or before the third Wednesday before the election, they may register eligible electors to vote. If the SVDs are conducting absentee voting at a facility after the third Wednesday before the election, all prospective voters must already be registered to vote. After the third Wednesday before an election, registration may only occur in the office of the municipal clerk or at the polling place on Election Day.

How to Obtain an Absentee Ballot

Any elector wishing to vote absentee at an election must make a written application to the municipal clerk or board of election commissioners. Wis. Stat. §6.86(1). If made by mail, this written application must be received no later than 5:00 p.m. on the Thursday preceding the election. Applications from indefinitely confined electors must be received no later than 5:00 p.m. on the Friday preceding the election. The clerk will not accept absentee ballot applications received after 5:00 p.m. or the close of business (whichever is later) the Friday preceding the election. However, if SVDs are visiting a care facility, they may accept an application for absentee ballot from a qualified voter and offer an absentee ballot while at the facility. Wis. Stat. §6.875(6).

The application must be signed by the absentee elector. It cannot be signed by anyone else on behalf of the elector unless the absentee elector needs assistance in signing his or her name. If someone else signs the application for the elector, that person must certify that the individual is unable to sign his or her name. However, a Power of Attorney may request an absentee ballot for his or her principal without signing the certification of assistance. (See Power of Attorney section below for more information.)

The Government Accountability Board has developed an Application for Absentee Ballot (GAB-121), which is available on the agency website, under the “Forms” link. An elector may also apply for an absentee ballot by delivering or sending a written request to the municipal clerk in person, by regular mail, fax or email. Absentee ballots may NOT be requested by telephone. Any elector may request an absentee ballot for a single election or all elections in a calendar year with a single application. Indefinitely confined voters may also make a single request to receive absentee ballots automatically for each election.

Application by an Indefinitely Confined Elector

Many occupants of the facilities covered in this manual are indefinitely confined. This means they are confined to the facility and are unable to travel to the polling place on Election Day, due to age, physical illness, infirmity, or because they are otherwise

disabled for an indefinite period. These electors may make a single absentee ballot request and will receive absentee ballots automatically for each election. Wis. Stat. §6.86(2). Electors must certify in writing with their request that they are indefinitely confined. See Section 6 of the Application for Absentee Ballot (GAB-121).

The municipal clerk keeps a list of indefinitely confined electors and automatically sends or arranges for delivery of an absentee ballot to the indefinitely confined elector for each primary and election. Indefinitely confined electors residing in a facility served by SVDs must receive their absentee ballot from the SVDs rather than by mail. If an elector does not return a ballot for a spring, general or special election sent under this provision, the clerk shall notify the elector that he or she must reapply within 30 days of receiving the notice in order to automatically receive an absentee ballot for the next election. This process does not apply to voters who do not return a ballot for a primary election.

If the clerk receives reliable information that an indefinitely confined elector is no longer eligible for this service, he or she shall remove the elector from the indefinitely confined voter list. The clerk shall send the voter a notice within five days, if possible. Wis. Stat. §6.86(2)(b). The voter must reapply for indefinitely confined status.

Residence of Absentee Voter

In Wisconsin an elector can maintain a voting residence, even if temporarily absent, so long as he or she continues to have an intent to return to his or her residence. Wis. Stat. §6.10(5). Electors temporarily residing in a nursing home or other qualified care facility located in a municipality other than the municipality in which they were last registered to vote may continue to vote from their former residence, rather than voting in the municipality where the facility is located. Alternatively, any person living in a nursing home or a qualified care facility for at least 28 consecutive days before any election, who is registered to vote, and who also meets the other qualifications of an elector may vote in the municipality in which the facility is located. Wis. Stats. §§6.02(1), 6.03.

If a clerk receives an absentee ballot application from a resident who lives in a nursing home or qualified care facility served by SVDs located in another municipality, the absentee ballot is sent to the municipal clerk where the facility is located for delivery to the voter by the SVDs of the municipality where the facility is located. If a clerk receives an absentee ballot application from a voter living in a nursing home or qualified care facility located in the municipality, but who is a registered voter of another municipality, the clerk must, as soon as possible, notify the clerk of the municipality in which the elector is registered, and request that an absentee ballot be issued to the voter living in the facility and sent to the municipal clerk for the facility for delivery by the SVDs of the municipality where the facility is located. Wis. Stat. §6.875(3).

Family Members

Some family members of voters residing in care facilities served by SVDs may express concerns that the relative must vote absentee in this manner. In such cases, clerks, facility administrators and SVDs should explain to the relative that this method of voting

is required by law. Family members should be informed that they may be present when the SVDs conduct absentee voting at the facility, and that they may assist the voter if the voter so requests.

Rules for Observers

One election observer from each of the two recognized political parties whose candidate for governor or president received the greatest number of votes in the municipality at the most recent general election may accompany the SVDs to each facility where absentee voting will take place. Each party wishing to have an observer present shall submit the name of the observer to the municipal clerk no later than the close of business on the last business day prior to the visit. Wis. Stat. §6.875(7). No other observers may be present during absentee voting conducted by SVDs.

The observers may view the public aspects of the process in the common areas of the facility. The SVDs may exercise the authority granted to the chief inspector under Wis. Stat. §7.41 to regulate the conduct of observers. For the purposes of the application of Wis. Stat. §7.41, the facility shall be treated as a polling place. Wis. Admin. Code GAB 4.05(2). However, challenges to the voter's eligibility may not be made at the facility, but must be made at the municipal clerk's office or at the polling place on Election Day. Wis. Stats. §§6.48, 6.93.

The SVDs shall establish observer areas in the common room where absentee voting is to occur that allow observers to view all public aspects of the process. Wis. Admin. Code GAB 4.05(3). If the SVDs go to an occupant's private room to offer the occupant an opportunity to vote, the SVDs shall establish an observation area in the nearest common area, for example, the hallway, but observers may not enter an occupant's private room. When practical, observer areas should be 6 – 12 feet from where voting takes place.

Observers may not use still or video cameras inside the facility during the hours that absentee voting is being administered. Wis. Admin. Code GAB 4.05(5). Observers shall direct any questions to the SVDs. Wis. Admin. Code GAB 4.05(6). Election observers are prohibited from engaging in electioneering. An observer who engages in any loud, boisterous, or otherwise disruptive behavior, that in the opinion of the SVDs, threatens the orderly conduct of the absentee voting process shall be issued a warning, and if the observer does not cease the offending conduct, be ordered to leave the facility. Wis. Admin. Code GAB 4.05(5).

Delivery of Ballots and Voting

Absentee ballots are brought to the care facility by the SVDs. The municipal clerk or board of election commissioners shall issue a supply of ballots sufficient to provide for the proper applications received, and also an additional number of ballots and application forms.

The municipal clerk or board of election commissioners is required to keep a careful record of all ballots issued to the SVDs and require the SVDs to return every ballot. Wis. Stat. §6.875(6)(b). SVDs should complete the GAB-104SVD, a diary of voting activity at the facility. (See GAB-104SVD, pages 21-22).

The municipal clerk or board of election commissioners shall issue all ballots to be used by the SVDs in a ballot container or envelope that is secured with a tamper-evident serialized tag or seal. The municipal clerk or board of election commissioners should record the number of the serialized tag or seal on the GAB-104SVD. The SVDs should also be issued another tamper-evident serialized tag or seal to secure the container after the facility visit is complete. The number of this second serialized tag or seal should also be recorded on the GAB-104SVD by the SVDs after the facility visit is complete.

Both SVDs should verify the seal or tag number and that the seal or tag is intact before opening the ballot container. The SVDs should indicate that this verification was completed by initialing the respective section of the GAB-104SVD. Upon opening the ballot container, the SVDs should confirm the total number of issued ballots is the same as the number indicated on the GAB-104SVD and that they have the correct ballot styles. During the facility visit, both SVDs shall keep the opened ballot container in their presence at all times and are jointly responsible for the security of the ballots issued to them.

Two SVDs shall visit the facility at the time designated in the posted notice. Wis. Stat. §6.875(6)(a). The SVDs shall conduct absentee voting as a team. Both SVDs, together, shall personally offer each absentee elector who has filed the proper application an opportunity to cast his or her ballot. **Facility staff may not handle ballots.**

Voting shall be conducted in a common area of the facility. Also, SVDs shall visit the room of each occupant with an absentee ballot request on file who is unable or unwilling to meet in the common area to offer the elector a ballot or to confirm the elector does not wish to vote in the election. This includes visiting the rooms of occupants who already have informed the administrator (or staff member) of the facility of their intent not to vote. The SVDs should also visit the rooms of any occupants who have informed facility staff of their intent to vote, but whose names do not appear on the absentee ballot log.

Special Voting Deputies, election observers, family members and facility staff should afford the voter privacy to vote his or her ballot. After marking the ballot in the presence of the SVDs, the voter places the marked ballot(s) in the certificate envelope (GAB-122) and seals the envelope. The voter completes and signs the certification on the envelope. **Both** of the SVDs must sign as witnesses on the certificate envelope. Wis. Stat. §6.875(6)(c)1.

An indefinitely confined elector whose name appears on the absentee ballot log may not wish to vote an absentee ballot, but may want to maintain his or her status as an indefinitely confined voter. In that case, the SVDs should ask the elector to enclose a blank ballot in the certificate envelope and sign the certificate.

The clerk must arrange for a second visit if an occupant is unable to vote at the time scheduled for the facility due to any reason, including a quarantine, or if the clerk receives a new absentee application after the first visit. If the requesting occupant is still unable to vote after the second SVD visit, the municipal clerk may mail the absentee ballot to the occupant of the facility in the same manner as other absentee ballots are mailed. Completed absentee ballots issued and returned by mail must be postmarked by Election Day and received by 4:00 p.m. the Friday following the election. Wis. Stats. §§6.87(6), 7.515(3).

NOTE: The SVDs may accept a written request for an absentee ballot from a registered, qualified voter and offer an absentee ballot while at the qualified care facility. Wis. Stat. §6.875(6)(c)1. However, completing the certificate envelope (GAB-122) is not sufficient because the voting is taking place outside of the municipal clerk’s office.

Persons Assisting Voters with Physical Disabilities

A voter may request assistance in reading and/or marking his or her ballot and completing the absentee certificate envelope. Generally, a voter may select any person (except his or her employer or officer/agent of a labor union who represents the voter) to assist them with the voting process. However, when voting by SVD, assistance with these two tasks is limited to an SVD or a relative of the voter. The term “relative” refers to a spouse or individual related within the 1st, 2nd or 3rd degree of kinship.

Kinship	Relative
1 st degree	The voter’s children or parents
2 nd degree	The voter’s grandparents, grandchildren, brothers and sisters
3 rd degree	The voter’s great-grandparents, great grandchildren, uncles, aunts, nephews, nieces

Absentee ballots must be voted only by the absentee elector, unless the voter requests assistance. The SVDs shall assist the elector if requested. No one other than an SVD or relative of an elector may assist the elector in reading and/or marking the absentee ballot and completing the Absentee Certificate Envelope. Wis. Stat. §6.875(6)(c)1. An assistor must always act under the direction of the voter. The SVD or relative providing the assistance must certify in the space provided on the ballot that it was completed with his or her assistance. If assistance is required to complete the Absentee Certificate Envelope, the SVD or relative providing the assistance must certify in the space provided on the envelope that it was completed with his or her assistance. Wis. Stats. §§6.82(2), 6.875(6)(c)1.

There are other types of assistance that any person (except his or her employer or officer/agent of a labor union who represents the voter) may provide to a voter with a physical disability upon request. This person may assist a voter in completing election forms, such as the Voter Registration Application (GAB-131), Application for Absentee

Ballot (GAB-121) or letter requesting an absentee ballot. If the voter is unable to sign any document necessary for voting, the voter may direct the assistor to sign the voter’s name to the document. Unless acting as a Power of Attorney, the assistor must sign the certificate of assistance.

The following table summarizes the rules related to assisting voters served by SVDs.

Who May Undertake the Following Actions for Electors Voting
by Special Voting Deputy?

Action	Anybody	Family Member	SVD	Power of Attorney or Guardian
Assist a voter in completing a Voter Registration Application. +	Yes	Yes	Yes	Yes
Assist the voter by signing the voter’s name on the Voter Registration Application.+	Yes	Yes	Yes	Yes
Assist a voter in completing a request for absentee ballot.	Yes	Yes	Yes	Yes
Assist the voter by signing the voter’s name on an absentee ballot request.	Yes	Yes	Yes	Yes
Assist a voter in marking a ballot at the direction of a voter.	No	Yes	Yes	No
Assist the voter by completing the Absentee Certificate Envelope.	No	Yes	Yes	No
Assist the voter by signing the voter’s name on the Absentee Cert Envelope.	No	Yes	Yes	No
Assist a voter by requesting an absentee ballot for the voter.	No	No	No	Yes

+ Before the open registration cut off only.

Power of Attorney and Guardianship

The basic difference between a power of attorney and guardianship is that the power of attorney is a private, pre-planned arrangement between the principal and the agent where the court is involved only if there is a dispute. A guardianship is not planned in advance by the ward, but is ordered by a court, usually after a medical evaluation of competency.

Power of Attorney

A “Power of Attorney (POA)” is a contract in which one person (the principal) transfers certain rights to act on behalf of the principal to another person (the agent). The agent is able to make certain decisions and perform certain actions for his or her principal. However, voting is not a transferable right. The two basic types of POA are financial and health care.

A POA designation is not indicative of the principal's mental capacity, nor is the agent able to declare the principal to be incompetent without court intervention. A POA may file a guardianship action in probate court seeking a court determination of incompetency, but the POA acting alone without court intervention does not have the ability to conclude that the principal is incompetent.

The actions that an agent may take on behalf of his or her principal with respect to the electoral process are limited. A POA may not register his or her principal to vote. A POA may not vote a ballot for his or her principal; this includes completing the Absentee Certificate Envelope for his or her principal. However, the agent may request an absentee ballot for his or her principal. Also, a relative of an elector in a facility may act as an assistor, at the elector's request, whether or not the relative is the elector's POA.

Guardianship

A "guardianship" is a legal relationship created by a court which authorizes the guardian to make decisions for another person (the ward). Guardianships are usually created only after an evaluation of competency. The court's appointment of a guardian includes a finding regarding competency. However, appointment of a guardian, even with a general finding of incompetency, does not automatically mean that the ward is not competent to vote.

The format used currently for court guardianship orders indicates that a ward is competent to retain all rights unless a specific right has been indicated as forfeited. The format of older guardianship orders finds the ward incompetent to retain any rights unless specific rights are indicated as retained.

Return of Ballots

Upon completion of absentee voting at the facility, the SVDs shall count the number of voted and unvoted ballots, record those numbers on the GAB-104SVD, and confirm all ballots are accounted for. Voted ballots, unvoted ballots and any other voting materials, except for the GAB-104SVD, are placed in the ballot container. The SVDs should then re-secure the ballot container with a new tamper-evident serialized tag or seal, recording the number of the tag or seal on the GAB-104SVD before signing the certification section.

Upon completion of voting, the deputies shall promptly deliver, either personally or by first class mail, any absentee ballot applications and the sealed certificate envelopes containing each ballot to the municipal clerk of the municipality in which the elector casting the ballot resides within such time as to permit delivery to the polling place by Election Day. An SVD must personally deliver the ballots to the municipality at which the voter resides no later than noon on Election Day. Wis. Stat. §6.875(6)(d).

Special Precautions

In order to ensure the integrity of the absentee voting process, the Government Accountability Board recommends that the personnel in care facilities familiarize

themselves with the absentee voting process. Administrators of these facilities should communicate regularly with the municipal clerk concerning the status of absentee voters at their facility. The administrator should also make an effort to ensure that any occupant who desires to vote is properly registered. Persons who are found by a court to be incapable of understanding the electoral process are not permitted to vote. Wis. Stat. §6.03(1)(a), (3). The facility should have a social worker available who may be consulted regarding any competency determinations made by a court for an occupant.

Facility administrators and personnel, election observers, and occupants of care facilities should be aware that failure to comply with these requirements may result in invalidation of the votes of occupants. Wis. Stat. §6.84(2). It is also a misdemeanor to interrupt or disturb the voting process. Wis. Stat. §12.13(3)(x).

Candidates may visit care facilities to present their positions to occupants of these facilities, subject to any rules or regulations of the facility. Additionally, candidate literature may be distributed to occupants. However, the same restrictions on electioneering apply to the facility while SVDs are conducting absentee voting as a polling place on Election Day. Candidates are not allowed in the voting area. Additionally, there should be no campaign activity in the facility or within 100 feet of any entrance to the facility while voting is taking place.

Any questions concerning any aspect of voting in Wisconsin should be directed to the municipal clerk or the Government Accountability Board. (See contact information below).



Wisconsin Application for Absentee Ballot

Confidential Elector ID#
(HINDI - sequential #) (Office Use Only)

SVRS ID #
(Office Use Only)

Instructions

Instructions for completion are on the back of this form. Return this form to your municipal clerk when completed.

- Please use uppercase (**CAPITAL**) letters only. Fill in circles as appropriate.
- You must be registered to vote before you can receive an absentee ballot. You can confirm your voter registration at <https://myvote.wi.gov>

VOTER INFORMATION

1	Municipality	<input type="radio"/> Town <input type="radio"/> Village <input type="radio"/> City		County	
2	Last Name			First Name	
	Middle Name			Suffix (e.g. Jr, II, etc.)	
	Phone		Fax		Date of Birth <small>(MM/DD/YYYY)</small>
3	Residence Address: Street Number & Name				
	Apt. Number		City		State & ZIP
4	If you are a military or permanent overseas elector, fill in the appropriate circle (see instructions for definitions): <input type="radio"/> Military <input type="radio"/> Permanent Overseas				

I PREFER TO RECEIVE MY ABSENTEE BALLOT BY: (Ballot will be mailed to the address above if no preference is indicated)

5	<input type="radio"/> MAIL	Mailing Address: Street Number & Name			
		Apt. Number		City	State & ZIP
	<input type="radio"/> CLERK'S OFFICE	Nursing Home Name (if applicable)			
		C / O (if applicable)			
	<input type="radio"/> FAX	Fax Number	Military and Permanent Overseas only		
	<input type="radio"/> EMAIL	Email Address	Military and Permanent Overseas only		

I REQUEST AN ABSENTEE BALLOT BE SENT TO ME FOR: (mark only one)

6	<input type="radio"/> The election(s) on the following date(s): _____
	<input type="radio"/> All elections from today's date through the end of the current calendar year (ending 12/31).
	<input type="radio"/> Every election subsequent to today's date. I further certify that I am indefinitely confined because of age, illness, infirmity or disability and request absentee ballots be sent to me until I am no longer confined or fail to return a ballot.

TEMPORARILY HOSPITALIZED VOTERS ONLY (please fill in circle)

7	<input type="radio"/> I certify that I cannot appear at the polling place on election day because I am hospitalized, and appoint the following person to serve as my agent, pursuant to Wis. Stat. § 6.86(3).				
	Agent Last Name		Agent First Name		Agent Middle Name
	AGENT: I certify that I am the duly appointed agent of the hospitalized absentee elector, that the absentee ballot to be received by me is received solely for the benefit of the above named hospitalized elector, and that such ballot will be promptly transmitted by me to that elector and then returned to the municipal clerk or the proper polling place.				
	Agent Signature	X	Agent Address		

ASSISTANT DECLARATION / CERTIFICATION (if required)

I certify that the application is made on request and by authorization of the named elector, who is unable to sign the application due to physical disability.			
Assistant Signature	X	Today's Date	

VOTER DECLARATION / CERTIFICATION (required for all voters)

I certify that I am a qualified elector, a U.S. Citizen, at least 18 years old, having resided at the above residential address for at least 28 consecutive days immediately preceding this election, not currently serving a sentence including probation or parole for a felony conviction, and not otherwise disqualified from voting. Please sign below to acknowledge that you have read and understand the above.			
Voter Signature	X	Today's Date	



Wisconsin Application for Absentee Ballot Instructions

General Instructions: *Please Review Fully* This form should be submitted to your municipal clerk, unless directed otherwise.

- This form should only be completed by registered voters; if you are not a registered voter or military elector, please submit a Voter Registration Application (GAB-131) with this form.

- | | |
|---|---|
| 1 | <ul style="list-style-type: none"> Indicate the municipality and county of residence. Use the municipality's formal name (For example: City of Plymouth, Village of Chenequa, or Town of Aztalan). |
| 2 | <ul style="list-style-type: none"> Provide your name as you are registered to vote in Wisconsin. If applicable, please provide your suffix (Jr, Sr, etc.) and/or middle name. If your current name is different than how you are registered to vote, please submit a Voter Registration Application (GAB-131) with this form to update your information. Provide your month, day and year of birth. Remember to use your birth year, not the current year. Providing your telephone/fax number or email address allows elections officials to contact you if there is a problem with your absentee application. |
| 3 | <ul style="list-style-type: none"> Provide your home address (legal voting residence) in Wisconsin. Provide the full house number (including fractions, if any). Provide your full street name, including the type (St, Ave, etc.) and any pre- and/or post-directional (N, S, etc.). Provide the city name and ZIP code as it would appear on mail delivered to the home address. <u>You may not enter a PO Box as a voting residence.</u> A rural route box without a number should not be used. |
| 4 | <ul style="list-style-type: none"> A "Military elector" is a person, or the spouse or dependent of a person who is a member of a uniformed service or the merchant marines, a civilian employee of the United States, a civilian officially attached to a uniformed service and serving outside the United States, or a Peace Corp volunteer. Military electors do not need to register to vote. Military electors will continue to receive ballots for all elections unless otherwise requested. A "Permanent Overseas elector" is a person who is a United States citizen, 18 years old or older, who resided in Wisconsin immediately prior to leaving the United States, who is now living outside the United States <u>and has no present intent to return</u>, who is not registered in any other location, or who is an adult child of a United States citizen who resided in this state prior to establishing residency abroad. Permanent Overseas electors will receive ballots for federal offices only and must be registered to vote prior to receiving a ballot. |
| 5 | <ul style="list-style-type: none"> Fill in the circle to indicate your preferred method of receiving your absentee ballot. Only Military and Permanent Overseas voters may receive an absentee ballot by email or fax. If no preference is indicated, your absentee ballot will be mailed to your residence address listed in Box 3. You are encouraged to provide a physical mailing address as backup in case of electronic transmission difficulties. Please only fill the circle for your preferred means of transmission. If you are living in a nursing home, please provide the name of the facility. If someone will be receiving the ballot on your behalf, please list them after C/O. <u>Please note:</u> The absentee elector is still required to vote their own ballot, although they may request assistance in physically marking the ballot. |
| 6 | <ul style="list-style-type: none"> Select the first option if you would like to receive a ballot for a single election or a specific set of elections. Select the second option if you would like to have a standing absentee request for any and all elections that may occur in a calendar year (ending December 31). Select the third option only if you are indefinitely confined due to age, illness, infirmity or disability and wish to request absentee ballots for all elections until you are no longer confined or fail to return a ballot for an election. |
| 7 | <ul style="list-style-type: none"> This section is only to be completed by an elector or the agent of an elector who is currently hospitalized. A hospitalized elector must certify that he or she cannot appear at the polling place on Election Day. An agent completing this form for a hospitalized elector must provide his/her name, signature and address on this application. |

Assistant Signature: In the situation where the elector is unable to sign the Voter Declaration / Certification due to a physical disability, the elector may authorize another elector to sign on his or her behalf. Any elector signing an application on another elector's behalf shall attest to a statement that the application is made on request and by authorization of the named elector, who is unable to sign the application due to physical disability

Voter Signature: By signing and dating this form, you certify that you are a qualified elector, a U.S. citizen, at least 18 years old, having resided at your residential address for at least 28 consecutive days immediately preceding this election, not currently serving a sentence including probation or parole for a felony conviction, and not otherwise disqualified from voting.

OFFICIAL ABSENTEE BALLOT APPLICATION/CERTIFICATION

NOTE: *With certain exceptions, an elector who mails or personally delivers an absentee ballot to the municipal clerk at an election is not permitted to vote in person at the same election on Election Day. Wis. Stat. § 6.86(6).*

<p>VOTER: THE INFORMATION BELOW IS REQUIRED!</p> <p>▼ <i>Complete the information below and sign the certification that follows in the presence of a witness who must also sign.</i> ▼</p> <p>Name (First, Middle, Last) including suffix _____</p> <p>Street Address – include street number or fire number and name of street, or rural route and box number _____</p> <p>City, State, Zip _____</p>	<p>▼ Shaded Section for Clerk Use Only ▼</p> <p>Voted in clerk's office <input type="checkbox"/></p> <p>Date of Election (month, day, year) _____</p> <p>County _____</p> <p>Municipality: Town <input type="checkbox"/> Village <input type="checkbox"/> City <input type="checkbox"/> of _____</p> <p>District (if applicable) _____ Ward _____</p> <p>▼ CERTIFICATION OF VOTER ▼ <i>(Required!)</i></p> <p>I certify, subject to the penalties for false statements of Wis. Stat. § 12.60(1)(b), that I am a resident of the ward of the municipality in the county of the state of Wisconsin indicated hereon and am entitled to vote in the ward at the election indicated hereon; that I am not voting at any other location in this election; that I am unable or unwilling to appear at the polling place in the ward on Election Day, or I have changed my residence within the state from one ward to another within 28 days before the election. I certify that I exhibited the enclosed ballot, unmarked, to the witness, that I then in the presence of the witness and in the presence of no other person marked the ballot and enclosed and sealed the ballot in this envelope in a manner that no one but myself and any person providing assistance under Wis. Stat. § 6.87(5), if I requested assistance, could know how I voted. I further certify that I requested this ballot.</p> <p>X _____ / _____ / _____</p> <p>▲ Signature of Voter (ALL Voters Must Sign) ▲ _____</p> <p>▲ Signature of Voter (ALL Voters Must Sign) ▲ _____</p> <p>ATTENTION MILITARY AND OVERSEAS VOTERS: Your date of birth is required or your ballot may not be counted. As a military or overseas voter, I further certify my birth date is _____ / _____ / _____</p>
<p>▼ CERTIFICATION OF WITNESS ▼ <i>(Required!)</i></p> <p>I, the undersigned witness, subject to the penalties for false statements of Wis. Stat. § 12.60(1)(b), certify that I am an adult U.S. Citizen and that the above statements are true and the voting procedure was executed as stated. I am not a candidate for any office on the enclosed ballot (except in the case of an incumbent municipal clerk). I did not solicit or advise the voter to vote for or against any candidate or measure. I further certify that the name and address of the voter is correct as shown.</p> <p>1. X _____</p> <p>▲ Signature of ONE Witness, who is an adult US Citizen ▲ _____</p> <p>▲ Address of U.S. Citizen Witness ▲ _____</p> <p>----- (▼ <i>Second Special Voting Deputy signs and provides address below.</i> ▼)</p> <p>2. X _____</p> <p>-----</p> <p>▼ CERTIFICATION OF ASSISTANT, if applicable (Assistant may also be witness)</p> <p>I certify that the voter named on this certificate is unable to sign his/her name or make his/her mark due to a physical disability, and that I signed the voter's name at the direction and request of the voter.</p> <p>X _____</p> <p>Signature of Assistant _____</p>	<p>As a military or overseas voter, I further certify my birth date is _____ / _____ / _____</p>

NOTICE OF PUBLIC MEETING

Absentee Voting to be Administered at [insert facility]

[insert start time]

[insert date]

[insert location]

Special Voting Deputies appointed by the [City/Village/Town of XXX] will be administering absentee voting for the residents of this facility for the [insert election] at the above time and place. Any qualified elector who is unable or unwilling to appear at the polling place on Election Day may request to vote an absentee ballot. A qualified elector is any U.S. citizen, who will be 18 years of age or older on Election Day, who has resided in the ward or municipality where he or she wishes to vote for at least 28 consecutive days before the election. The elector must also be registered in order to receive an absentee ballot.

Only observers from each of the two recognized political parties whose candidates for governor or president received the greatest number of votes in the municipality at the most recent general election may accompany the deputies to each facility where absentee voting will take place. The observers may observe the process of absentee ballot distribution in the common areas of the home, facility, or complex. Each party wishing to have an observer present shall submit the name of the observer to the clerk or board of election commissioners no later than the close of business on the last business day prior to the visit.

Family members of residents may be present at the time of voting.

If you have further questions, please contact:

[clerk name]

[clerk address]

[clerk telephone]

[clerk email]

Special Voting Deputy Log of Absentee Voting Activity at

(insert name of care facility)

TO BE COMPLETED BY MUNICIPAL CLERK

Primary or Election Date: _____

Date of Special Voting Deputy Visit to this Care Facility: _____

Names of Special Voting Deputies:

Number of absentee ballots issued to the Special Voting Deputies? _____

Tamper-Evident Seal Serial Number _____

TO BE COMPLETED BY SPECIAL VOTING DEPUTY

Tamper-evident seal number verified by Special Voting Deputies (SVDs): _____
(SVD #1 initials) (SVD #2 initials)

Number of voted ballots returned to clerk? _____

Number of un-voted absentee ballots returned to clerk? + _____

Total: = _____

(Total should equal number of ballots issued by clerk.)

Upon sealing the ballot bag or container to which this Inspectors' Statement pertains, **record the number of the tamper-evident seal used for this purpose here** _____.

CERTIFICATION OF SPECIAL VOTING DEPUTIES

We, the undersigned Special Voting Deputies, certify that we conducted absentee voting at the above-listed care facility on the date listed above. We further certify that the information contained in this document is a true and correct record of activity and incidents occurring at this care facility during the conduct of absentee voting.

(signature of Special Voting Deputy) (date)

(signature of Special Voting Deputy) (date)

Oath of Special Voting Deputy



STATE OF WISCONSIN
_____, County } ss.

I, _____, having been appointed to the office of special voting deputy in and for the (town, village, city) of _____, swear (or affirm) that:

I will support the constitution of the United States and the constitution of the State of Wisconsin and will faithfully and impartially discharge the duties of a special voting deputy to the best of my ability.

I am qualified to act as a special voting deputy pursuant to §6.875, Wis. Stats.; I have read the statutes governing absentee voting; I understand the proper absentee voting procedure; I understand the penalties set out in §12.13, Wis. Stats., for noncompliance with the absentee voting procedure.

I understand that my sacred obligation is to fully and fairly implement the absentee voting law and to seek to have the intent of the electors ascertained. I realize that any error in conducting the absentee voting procedure may result in invalidation of an elector's vote under §7.51(2)(e), Wis. Stats. I realize that absentee voting is a privilege and not a constitutional right.

(Signature of Special Voting Deputy)

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

(Signature of person authorized to administer oaths)

My commission expires _____, or is permanent

Notary Public or _____
(Official title, if not a notary)

Prepared by: GOVERNMENT ACCOUNTABILITY BOARD, ELECTIONS DIVISION, P.O. Box 7984, Madison, WI 53707-7984, 608-266-8005, <http://gab.wi.gov>
The information on this form is required by §§6.875(5), 7.30(5), 19.01(1), (1m), Stats.

State of Wisconsin \ Government Accountability Board

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<http://gab.wi.gov>



JUDGE TIMOTHY L. VOCKE
Chairperson

KEVIN J. KENNEDY
Director and General Counsel

MEMORANDUM

DATE: For the May 21, 2013 Board Meeting

TO: Members, Government Accountability Board

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

Prepared and Presented by:

Brian Bell, Elections Data Manager
Nate Judnic, Campaign Finance Auditor
Ross Hein, Elections Supervisor

SUBJECT: Legislative Status Report

The following is a summary of legislative proposals and legal actions relevant to the agency that staff is monitoring.

INTRODUCED LEGISLATION

1. Senate Bill 6: prohibiting the use of telephone automatic dialing-announcing devices for political messages and providing a penalty.

This bill prohibits any caller from using an automatic dialing-announcing device to disseminate a prerecorded or synthesized voice message that has a political purpose. This practice is commonly known as "robo-calling". The prohibition applies to a voice message that has a "political purpose," defined under current state campaign finance law. The bill applies to any interstate or intrastate voice message that is received by a person in this state.

The bill requires the Department of Agriculture, Trade and Consumer Protection to investigate violations of the bill and bring enforcement actions for violations. The bill also creates a civil forfeiture of no more than \$100 for each violation of the bill.

Bill referred to committee on Government Operations, Public Works and Telecommunications.

2. Assembly Bill 18 and Senate Bill 20: residency of election officials.

These bills provide that an individual who serves as an election official at a polling place on election day need be an elector only of a county in which the municipality where the official serves is located, except as the law currently permits the individual to reside elsewhere. AB 18 and SB 20 make no change, however, to the residency requirement applicable to a high school pupil who serves as an inspector.

The bills also permit, for up to 50 percent of the positions to be filled, a political party officer to specify the ward for which an individual is nominated to serve. The bills require municipalities to appoint individuals who are nominated to serve in a specified ward in the ward for which they are nominated for at least 50 percent of the positions to be filled, unless the G.A.B. or the attorney general permits non-appointment for good cause shown. The bills permit a nominee whose non-appointment is authorized by the G.A.B. to appeal the decision to the attorney general, who may affirm or reverse the decision of the G.A.B.

Senate: Bill referred to Elections and Urban Affairs
Assembly: Bill referred to Campaigns and Elections

3. Assembly Bill 24 and Senate Bill 14: the method of recounting votes cast with automatic tabulating equipment.

These bills permit the board of canvassers conducting a recount to determine to conduct the recount of a specific election by hand unless a court orders the recount to be conducted by another method.

Assembly: Public hearing held 4/24/13
Senate: Bill passed by Committee on Campaigns and Elections; Referred to Committee on Rules

4. Assembly Bill 26: fees charged for access to public records.

This bill amends the public records law to provide that an authority may impose a fee upon a requester for the actual, necessary, and direct cost of deleting, redacting, or separating information that is not subject to disclosure from a record.

Public hearing held 2/27/13.

5. Assembly Bill 51 and Senate Bill 33: employment by a former member of the legislature as a lobbyist.

These bills prohibit any individual who serves as a member of the legislature, for 24 months following the date on which the individual ceases to hold office, from being employed as a lobbyist.

Violators of the prohibition are subject to a forfeiture of not more than \$5,000 for each violation. Intentional violators are guilty of a misdemeanor and are subject to a fine of not less than \$100 nor more than \$5,000 or imprisonment for not more than one year, or both, for each violation.

Assembly: Referred to Committee on Government Operations and State Licensing.
Senate: Referred to Committee on Government Operations, Public Works and Telecommunications

6. Assembly Bill 40: state finances and appropriations, constituting the executive budget act of the 2013 legislature.

This bill is the "executive budget bill" under section 16.47 (1) of the statutes. It contains the governor's recommendations for appropriations for the 2013-2015 fiscal biennium.

Agency specific hearings in front of Joint Finance Committee.

7. Assembly Bill 54: limiting the times for voting by absentee ballots in person.

This bill limits the time period for in-person absentee requests to Monday through Friday between the hours of 7:30 a.m. and 5 p.m. It does not mandate that voting take place during all of those hours and does not require that the clerk's office be open 40 hours a week to receive applications made in person. AB 54 also states that the clerk's office or designated site for absentee voting may not be open more than 40 hours a week beginning on the third Monday preceding the election and ending on 5 p.m. on the Friday preceding the election.

Referred to Committee on Campaigns and Elections. Substitute amendment offered by Rep. Stroebel to extend end time to 6pm and to allow individuals to make appointments with local clerks to arrange for absentee voting after the prescribed days and times, but not the Saturday and Sunday preceding the election.

8. Senate Bill 90: communications by members of the legislature.

This bill creates an exemption to the so-called "50 piece" rule. This bill exempts the cost of materials or distribution of a communication made by a member of the legislature to their constituents during the 45-day period following a declaration of a state emergency by the governor affecting any county in which the legislator's district is located if the communication relates solely to the subject of the emergency.

Referred to Committee on Elections and Urban Affairs.

9. Senate Bill 91: alternate sites for absentee voting in person.

Currently, the governing body of a municipality may designate a single alternate site for absentee voting in person by electors of the municipality. If designated, this site serves in lieu of the office of the municipal clerk or board of election commissioners as the site where absentee voting is conducted for the election at which the designation is made.

This bill permits the governing body of a municipality to designate more than one alternate site for absentee voting in person by electors of the municipality. Under the bill, an alternate site may be used for absentee voting in addition to or in lieu of use of the office of the municipal clerk or board of election commissioners. The bill also directs a municipality that designates an alternate site for absentee voting at an election to notify the Government Accountability Board in writing of its designation.

Referred to Committee on Elections and Urban Affairs.

10. Senate Bill 94: the method of reporting election returns by municipalities.

Under this bill, any municipality having a population of 35,000 or more may provide that election returns for any ward having a population of less than 20 will be combined with returns for any adjacent ward, unless separate returns are required to determine the results of an election. A municipality, however, may not combine wards if the total population of the combined wards would exceed the applicable population range for wards in that municipality. The bill allows the municipal clerk to estimate ward populations for the purpose of combining returns if the population cannot be determined from census results.

Referred to Committee on Elections and Urban Affairs.

11. Senate Bill 98: reporting of information by nonresident registrants under the campaign finance law.

Under this bill, for campaign finance reporting purposes, non-resident registrants are treated the same as resident committees and are required to file a report containing information required by Wis. Stats. 11.06(1). This bill changes the previous requirement of non-resident registrants only being required to report contributions from Wisconsin sources and disbursements made relating to Wisconsin contests.

Referred to Committee on Elections and Urban Affairs.

12. Senate Bill 114 and Assembly Bill 128: recall petition requirements.

Under current law, a petition for the recall of a city, village, town, town sanitary district, or school district officer, in addition to other requirements, must indicate a reason for the recall that is related to the officer's official responsibilities. Under this bill, any person who wishes to circulate a petition for the recall of a city, village, town, town sanitary district, or school district officer must include with the person's registration under the campaign finance laws a statement indicating that the officer for whom the recall is sought has been charged with committing a crime or violating a code of ethics law applicable to local officials. The person must also include a copy of the criminal or civil complaint alleging the crime or violation.

Senate: Referred to Committee on Elections and Urban Affairs.

Assembly: Referred to Committee on Campaigns and Elections

13. Assembly Bill 141: notice of certain political contributions made to a judge or justice.

This bill provides that whenever an interested contributor makes a political contribution to a court of appeals, circuit, or municipal judge or supreme court justice in a pending civil or criminal action or proceeding over which the judge or justice is presiding, or to the personal campaign or authorized support committee of a judge or justice, the contributor must, within five days of the date that the contribution is made, notify the judge or justice and every party other than the interested contributor to the action or proceeding, in writing, of the fact that the contribution has been made and the date and amount of the contribution. The bill also provides a definition for an "interested contributor."

Referred to Committee on Campaigns and Elections

14. Senate Bill 158: authorization for electors to vote in the primary of more than one political party.

This bill permits a voter in a partisan primary to "split tickets," designating the candidate of his or her choice for each office, including the offices of governor and lieutenant governor, regardless of party affiliation. The bill also allows a voter to vote for independent candidates for one or more state offices in a partisan primary, in addition to party candidates for one or more state or county offices. Under the bill, a voter may still vote for only one candidate for each office. The voting procedure at the general election and other partisan elections is unaffected by the bill. The bill initially applies to voting at the 2014 partisan primary election.

Referred to Committee on Elections and Urban Affairs.

15. Senate Joint Resolution 24 and Assembly Joint Resolution 25: proposed constitutional amendment to limit the grounds for the recall of an incumbent congressional, judicial, or legislative elective officer or any county elective officer specified in the Wisconsin Constitution (elective officer).

Under this amendment, an elective officer may be recalled only if he or she has been charged with a serious crime or if a finding of probable cause has been made that he or she violated the state code of ethics. The amendment also requires the filing officer to determine that the petition for recall demonstrates sufficient grounds for recalling the elected official. The amendment also requires the legislature to establish a code of ethics for government officials and a board to administer the code.

Senate: Referred to Committee on Elections and Urban Affairs.

Assembly: Referred to Committee on Campaigns and Elections

16. SB163 and AB185: legislative and congressional redistricting.

This bill creates a new procedure for the preparation of legislative and congressional redistricting plans. The bill directs the Legislative Reference Bureau (LRB) to draw redistricting plans based upon standards specified in the bill and establishes a Redistricting Advisory Commission to perform certain tasks in the redistricting process. The bill requires that the names of appointees to the Commission be filed with the Government Accountability Board. The bill also makes various other changes to the laws governing redistricting.

Senate: Referred to Committee on Elections and Urban Affairs.

Assembly: Referred to Committee on Government Operations and State Licensing

17. SB166: political disbursements and obligations by corporations, cooperative associations, and labor organizations and the scope of regulated activity and reporting of certain activity under the campaign finance law.

This bill imposes additional registration and reporting requirements on any person who within 60 days of an elections, makes any mass communications, including an electronic communications, a mass distribution, or a mass telephoning, that includes a reference to a clearly identified candidate at that elections. In addition, it requires the person who becomes subject to the registration requirements because of making the mass communications to report, upon registration, the information that would have been required to be reported has they been registered. The bill does not apply to communications made by a corporation, cooperative, or nonpolitical voluntary association and is limited to the corporation's, cooperative's, or association of members, shareholders, or subscribers. Reportable activity under this bill also applies to contribution and disbursement limitations and restrictions by causing reportable "contributions," "obligations," and "disbursements" to include the cost of all reportable communications. This bill extends 24-hour reporting of mass communication expenditures of \$500 cumulatively since the date of the registrant's last report.

Referred to Committee on Elections and Urban Affairs.

18. AB189: incorporations of villages and cities involving more than one town.

Under this bill, if the territory to be incorporated includes portions of more than one town, the electors of each town must approve the referendum for the incorporation to take effect. In addition, the

majority that is required to approve the referendum in the territory with the smallest population, that is located solely in one of the towns, is 75 percent.

Referred to Committee on Elections and Urban Affairs.

19. AJR 23: establishing competitive election criteria for redistricting the legislature (first consideration).

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

20. SB173: durational residency requirement for voting and deadlines for late registration and absentee voting in person.

This bill decreases the durational residency requirement for voter registration to ten consecutive days. This bill changes the deadline for late registration made in person and at the office of a municipal clerk or board of election commissioners to vote in an election and deadline for absentee voting in person at the office of a municipal clerk or board of election commissioners to the day before the election at 5pm or the close of business, whichever is later.

Referred to Committee on Elections and Urban Affairs.

21. AB85: changing the compensation structure by which a Milwaukee County supervisor may be paid, changing the term length of a Milwaukee County supervisor, affecting the right of an annuitant under the Milwaukee County Employee's Retirement System to be rehired by Milwaukee County, limiting the authority of Milwaukee County to enter into certain intergovernmental agreements, removing and clarifying some authority of the Milwaukee County board, increasing and clarifying the authority of the Milwaukee County executive, deleting obsolete statutory references, and requiring a referendum.

This bill would require a referendum be held in Milwaukee County in April 2014 on several provisions of this bill. The bill would also change the term of Milwaukee County Supervisors from four years to two years. This bill prohibits the Milwaukee County Board from scheduling a referendum on any matter that is subject to the approval of the electors of a county under this bill to be held concurrently with the election at which the question of approval is presented to the electors.

The text of Engrossed 2013 Assembly Bill 85 consists of the bill, as passed by the assembly on May 8, 2013, as affected by the following Assembly Amendments adopted in the assembly on April 17, 2013: Assembly Amendments 1, 2, and 3.

DRAFT LEGISLATION

22. LRB 1722/1: to raise the threshold for campaign finance disclosure of referendum-related activity from \$750 to \$2500.

23. LRB 0058/1: to allow online voter registration up to 20 days prior to an election for any eligible voter who has a driver license or DOT ID.

- 24. LRB 1731/1: to require that a special election for certain vacant legislative seats be ordered within 60 days.**
- 25. LRB 0046/1: to double the number of nominees submitted to the governor by the GAB candidate committee.**
- 26. LRB 0115/1: to restrict securing ballot containers to the chief inspector and one other inspector whose party affiliation differs from the chief inspector's party affiliation.**
- 27. LRB 0116/1: to require the address of a witness for an absentee ballot in order to be counted.**
- 28. LRB 121/1: to require the board of canvassers to hear and decide any objection to the validity of any Election Day registration.**
- 29. LRB 122/1: to only count as voting electors those who signed the poll list, for the purposes of a recount and draw-down procedures.**
- 30. LRB 0123/1: to require chief inspectors to assign an equal number of pollworkers from party nominations.**
- 31. LRB 0471/1: to require election officials to record the type of proof of residence presented by a voter; and to require the GAB to include on the official registration list (SVRS) an indication of whether an elector was required to provide proof and residence, and if so, type of identifying document submitted by the elector.**
- 32. LRB 0472/1: to require election officials to uniformly write the identity of remade/duplicate ballots on the upper right-hand corner of the ballot.**
- 33. LRB 1527/2: to clarify standards for election observers.**

State of Wisconsin \ Government Accountability Board

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JUDGE TIMOTHY VOCKE
Chair

KEVIN J. KENNEDY
Director and General Counsel

MEMORANDUM

DATE: For the May 21, 2013 Board Meeting

TO: Members, Wisconsin Government Accountability Board

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

Prepared by: Jonathan Becker, Nathan Judnic, Cindy Kreckow
Ethics and Accountability Division

SUBJECT: Ethics and Accountability Division Program Activity

Division Staffing

Jonathan Becker
Division Administrator

As of April 7, 2013, the Ethics and Accountability Division is fully staffed. Colleen Adams has joined the division as a Campaign Finance Auditor after spending her first year with the agency as an SVRS Specialist in the Elections Division. Colleen brings a wealth of knowledge and enthusiasm to the position and we are excited to bring her aboard. Orientation and cross-training on the various subject areas in the division is ongoing with her initial priority being campaign finance reporting and auditing.

Campaign Finance Update

Richard Bohringer, Nate Judnic, Adam Harvell, Molly Sessler and Colleen Adams
Campaign Finance Auditors

Spring Pre-Primary and Pre-Election Reports

Materials for the Spring Pre-Primary and Pre-Election filing were sent to all candidates participating in the Spring elections and to all non-candidate committees. The Spring Pre-Primary report covered campaign finance activity from January 1 through February 4, 2013 and was due on or before February 11, 2013. All candidates required to file this report have filed. The Spring Pre-Election report covered campaign activity from February 5 through March 18, 2013 and was due on or before March 25, 2013. One candidate committee has failed to file their Spring Pre-Election report. This candidate lost their primary and was not on the ballot. G.A.B. staff will continue to follow-up with this committee until they file their report.

January Continuing 2013 Reports

Materials for the January Continuing 2013 filing were sent to all registrants. As of May 7, 2013, 1558 reports have been filed. 17 committees did not file their required reports. All outstanding filers have

been contacted by G.A.B. staff on multiple occasions and on May 10, 2013 were sent notices that their committees have been placed on administrative suspension. Registrants (excluding candidate committees) exceeding \$2500 in activity in calendar year 2012 are required to pay a \$100 filing fee along with their report. 446 registrants were required to pay a \$100 filing fee. 436 registrants paid a \$100 fee. 8 registrants paid \$300 for late payment of the fee and one registrant paid \$100 plus a \$20 fee for a returned check. One registrant that did not pay the required fee has been placed on administrative suspension after repeated contacts by G.A.B. staff. Total receipts for 2012 filing fees were \$46,020.

Upcoming Campaign Finance Reports

The next report due for all registrants is the July Continuing 2013 report and is due July 22, 2013. G.A.B. staff will prepare the required notices and send them to all registrants so they arrive the first week of July.

Campaign Finance Audits

Staff conducts various audits on campaign finance data received through the many reports filed with our office. An audit is one tool used to ensure compliance with campaign finance laws enforced by the G.A.B. G.A.B. staff will be conducting the following audits over the course of the next two months: \$10,000 annual individual limit, campaign period limit for individual office holders (where applicable), employer and occupation information, termination audits for committees concluding activity, corporate contributions, and registered lobbyist contributions outside the allowable window. This is not an exhaustive list as other audits are triggered by complaints or from issues discovered by staff review of reports on their face. G.A.B. staff continues to work with our software vendor and our in-house IT staff to automate the audits we conduct.

Campaign Finance Training

G.A.B. campaign finance staff have scheduled 10 formal training sessions on campaign finance across the state in the months of May and June. The training sessions are intended for committee treasurers, parties and county/local clerks on the basics of campaign finance and the Campaign Finance Information System (CFIS). Below is a listing of the campaign finance training sessions the G.A.B. staff have conducted recently or will be conducting in the near future.

Date	Time	City	Location
5/14/13	1:00pm-3:00pm	Madison	GAB Boardroom
5/15/13	2:00pm-4:00pm	West Allis	West Allis City Hall
5/15/13	5:00pm-7:00pm	West Allis	West Allis City Hall
5/16/13	2:00pm-4:00pm	Sturtevant	Racine County Ives Grove Complex
5/29/13	10:00am-12:00pm	Madison	GAB Boardroom
6/11/13	1:00pm-3:00pm	Wausau	Marathon County Sheriff's Department
6/12/13	10:00am-12:00pm	Green Bay	Neville Public Museum of Brown County
6/19/13	1:00pm-3:00pm	Eau Claire	Eau Claire County Courthouse
6/20/13	10:00am-12:00pm	La Crosse	La Crosse County Administrative Center
6/26/13	1:00pm-3:00pm	Madison	GAB Boardroom

Staff will continue to conduct one-on-one campaign finance training with candidates and treasurers on an appointment basis.

Lobbying Update
Molly Sessler and Nate Judnic
Campaign Finance Auditors

Statement of Lobbying Activities and Expenditures Reports

All registered lobbying principals were required to file a 6-Month Statement of Lobbying Activities and Expenditures (SLAE) report covering lobbying activities from July 1 through December 31, 2012. The report was due January 31, 2013. All lobbying principals required to file this report have filed. 23 lobbying principals were sent letters notifying them that their report was filed late. Of the 23 principals, 17 received a warning while the remaining 6 were required to pay a forfeiture. As of May 9, 1 forfeiture of \$150 has been collected and G.A.B. staff will continue to be in contact with the principals that received a forfeiture notice until all outstanding money is received.

Eye on Lobbying Website Project Update

IT support for the lobbying website has been transitioned from the Department of Administration-Division of Enterprise Technology to the G.A.B. internal IT staff. David Grassl and Kavita Dornala have taken over data migration, general technical support and system enhancements and have been working diligently to learn the complexities of the new site. Since this transition, many functional bugs in the system code have been addressed and enhancements to the system have been prioritized and continue to be worked on. Based on valuable feedback we have received from legislative staff, the lobbying community and the general public, G.A.B. staff are committed to making the site as user friendly as possible and intend to incorporate as much feedback as we can.

Staff continues to assist the public, lobbying principals and lobbyists as we transition from the old site to the new site.

Lobbying Registration and Reporting Information

G.A.B. staff continues to process 2013-2014 lobbying registrations, licenses and authorizations and will continue to do so throughout the session. Processing performance and revenue statistics related to the 2013-2014 session so far is provided in the table below.

2013-2014 Legislative Session: Lobbying Registration by the Numbers (Data Current as of May 10, 2013)			
	Number	Cost	Revenue Generated
Organizations Registered – Full Lobbying	635	\$375	\$238,125
Organization Registered – Limited Lobbying	9	\$20	\$180
Lobbyists Licenses Issued (Single)	466	\$350	\$163,100
Lobbyists Licenses Issued (Multiple)	110	\$650	\$71,500
Lobbyists Authorizations Issued	1202	\$125	\$150,250

Financial Disclosure Update

Cindy Kreckow, Ethics and Financial Disclosure Specialist

Statements of Economic Interests – Annual Filing

Continuing state public officials who served in office during any portion of 2013 are required to file an annual Statement of economic Interests. Statements were due April 30, 2013. As of May 6, 2013, approximately 50 outstanding statements remained out of over 2,500 officials required to file. A significant amount of staff time has been devoted to answering questions regarding individual Statements of Economic Interests, providing copies of past statements to filers and logging received statements into our current official's database. Outstanding filers have received multiple reminders and staff will continue to follow-up with these individuals. A forfeiture schedule for late filing begins May 13, 2013.

Investment Board Quarterly Transaction Reports and Statements of Economic Interests

Staff received and processed 51 quarterly transaction reports from State Investment Board members and employees that were due on or before April 30, 2013. Statements of Economic Interests for those 51 board members and employees who file them, also due April 30th, have been received as well. Copies of the reports and statements were delivered to the Legislative Audit Bureau for their review and analysis.

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JUDGE TIMOTHY L. VOCKE
Chairperson

KEVIN J. KENNEDY
Director and General Counsel

MEMORANDUM

DATE: For the May 21, 2013 Meeting

TO: Members, Wisconsin Government Accountability Board

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

Prepared by Elections Division Staff and Presented by:
Michael Haas
Elections Division Administrator

SUBJECT: Elections Division Update

Since its last Update (March 20, 2013) the Elections Division staff has focused on the following tasks:

1. April 2, 2013 Spring Election and Special Partisan Election

On April 2, 2013, Wisconsin voters had the opportunity to vote for the offices of State Superintendent of Public Instruction; Justice of the Supreme Court; Court of Appeals Judge in Districts 2, 3 and 4; 29 Circuit Court Judge positions in 21 counties; and county, municipal and school district offices throughout the state. Voters in several Waukesha County municipalities also cast ballots in the special election for the office of Representative to the Assembly, District 98.

A. Conducting April 2, 2013 Spring Election and Special Partisan Election

As required, election administration and SVRS staff assisted county and municipal clerks in preparing for and conducting the primary by providing extended hours of staff availability. Staff was available on Thursday, March 28, Friday, March 29 and Monday, April 1 from 6:30 a.m. until 6:00 p.m. On Election Day, staff was available from 6:30 a.m. to 11:00 p.m.

B. Election-Day Issues

The election itself proceeded without reports of serious polling place issues, and staff responded to calls and emails of a routine subject matter. Contacts generally pertained to questions from clerks, poll workers, observers and candidates with respect to acceptable proof of residence, counting votes and procedures used by election inspectors. Staff fielded 232 calls on Election Day--an exceptionally high number for a Spring Election.

Elections for local office and involving local political issues are notoriously contentious, and the 2013 Spring Election was no exception. Two municipalities embroiled in significant controversy were the Town of Thornapple in Rusk County and the Town of Morrison in Brown County. The Thornapple and Morrison issues are recapped below, as well as a few other notable incidents:

- Town of Thornapple

Thornapple had problems on a number of fronts. It was reported that a candidate for Town Board Supervisor placed election materials into U.S. Postal Service mailboxes and local newspaper boxes. This same candidate allegedly “coerced” the clerk into appointing her as a deputy. Upon discovery that the accessible voting equipment had been programmed with the candidate names in the wrong order, the newly-appointed deputy removed the equipment from the municipality to obtain assistance from a friend in order to reprogram the equipment. The Town Chair and the Clerk were unable to compel the deputy to return the equipment. The deputy succeeded in reprogramming the equipment and performed the public test of the voting equipment, but failed to secure the memory device with a tamper-evident seal. A second test was conducted and a seal was applied. Even with the reprogramming, there was still inconsistency between the form of candidate names (middle initials included) on the accessible equipment versus the form of the names (no middle initial) on the paper ballots.

- Town of Morrison

The Town of Morrison Board and a group of Morrison citizens have been involved in an ongoing dispute regarding wind turbine development in the town. Several weeks before the spring election, representatives of the citizen group began contacting G.A.B. staff to discuss real or perceived wrongdoing on the part of town officials, including the conduct of election processes. On the other hand, the clerk reported that the members of this group had been attempting to intimidate town officials for months and had been rude, impertinent and “bullying” at town board meetings. The group intended to be present at the polling place to observe the conduct of the election. The Town Clerk and the Brown County Clerk feared that due to the rancor surrounding the election, violence could erupt at the polling place. No violence or disruptive behavior was reported. However, the losing candidate did petition for a recount, which did not result in a change in the outcome of the election. The candidate did not appeal the recount result.

- City of Wautoma

The new City of Wautoma clerk did not include the Silver Lake Sanitary District ballot on the accessible touch screen voting equipment. The clerk stated that the Sanitary District asserted that “they would handle everything” and would provide the City of Wautoma with sanitary district ballots. Sanitary district paper ballots were provided. However, it did not occur to the clerk to include the sanitary district in the accessible voting equipment programming, which rendered the accessible voting equipment noncompliant with state and federal law. Due to the excessive cost of reprogramming, the clerk requested, and was granted, a one-time exception to the accessibility requirements per Wis. Stat. §5.05(1)(e) and 5.25(4)(a).

- City of Cudahy

Spring Election ballots were required to be available for mailing to voters with absentee ballot requests on file on March 12, 2013, which is when the City of Cudahy received the ballots from Milwaukee County. Upon inspecting the ballots, the City Clerk discovered the ballots for wards 13, 14 and 15 (28 ballots total) had a misprint -- instead of listing the names of the candidates for Justice of the Supreme Court, “Candidate 1 TBD” and “Candidate 2 TBD” was listed. The City Clerk notified the Milwaukee County Election Commission, and the County

immediately arranged for reprinting. Except for the 28 misprinted ballots, all absentee ballots were mailed on March 12th and 13th. The reprinted ballots were mailed on March 14th.

- City of Oak Creek

For the office of Milwaukee County Circuit Court Judge, Branch 45, the instruction “Vote for one” was omitted from all City of Oak Creek ballots. G.A.B. staff recommended that the City Clerk send a letter of explanation to voters, instructing them to contact the clerk if they thought they may have over voted. The City Clerk was adamant about not only sending a letter, but also sending voters a second ballot. Staff is not aware of any complaints or reports of confusion resulting from a second ballot being issued.

C. Canvass of the Spring Election

The deadline for county clerks to submit canvasses electronically to the Elections Division was April 12, 2013. All canvasses were received by the statutory deadline. Canvasses (12) began arriving on April 8th. The majority of canvasses (52) were received on April 9th. April 10th and 11th yielded 6 and 1 respectively. The last canvass came in on April 12th, 2013.

One petition for recount (the office of Manitowoc County Circuit Court Judge, Branch 1) was filed on April 11th. The recount commenced on Friday morning, April 12th and concluded on Sunday evening, April 14th. G.A.B. consulted with the County Clerk and Elections Supervisor Ross Hein was available for phone calls over the weekend. The recount produced no change in the outcome of the election. The deadline for appeal passed on Friday, April 19th, and no appeal was filed.

The canvass statement for the office of Representative to the Assembly, 98th District, was signed by Judge Deininger on April 15, 2013. The winning candidate’s agent appeared personally to receive the certificate of election. The canvass statements for all other state offices at the Spring Election were signed by Judge Nichol on Tuesday, April 23, 2013. Certificates of election were mailed to winning candidates.

D. Provision of Targeted Assistance to Municipalities

G.A.B. staff continued to serve as a resource to the City of Milwaukee Election Commission staff as the Commission developed a compliance plan to meet the minority language requirements of their designation under Section 203 of the 1965 Voting Rights Act, as required by the U.S. Department of Justice. Agency staff provided the Milwaukee Election Commission with an updated surname analysis report before the election to help it determine the need for bilingual poll workers. The agency continued to work with the U.S. Department of Justice concerning the rigidity of the surname analysis tool that was developed to assist the Milwaukee Election Commission in determining their need for bilingual election inspectors.

2. **The GAB-190 Form: Voting and Registration Statistics and Elections Costs Report**

Statistics for the 2013 Spring Primary were due on March 21, 2013. The Village of North Freedom (Sauk County) is the only municipality that has not entered its statistics report into WEDCS. The deadline to report statistics for the 2013 Spring Election in WEDCS was May 2, 2013. The cost reports for the 2013 Spring Primary and Spring Election are due by June 1, 2013. The following tables provide a statewide summary of the statistics reported by clerks in WEDCS for the 2013 Spring Primary:

TotalBallots	374,514	363,675 votes in Canvass (Wisconsin Supreme Court Justice)	
TotalElectors	374,693		
AbsenteeIssued	73,866	19.72%	of ballots cast
AbsenteeIssuedInPerson	7,785	10.54%	of absentee ballots issued
AbsenteeNotReturned	19,876	26.91%	
AbsenteeUndeliverable	2,016	2.73%	
AbsenteeReturnedByElectionDay	47,945	64.91%	
AbsenteeReturnedByFriday	3,396	4.60%	
AbsenteeCounted	48,968	66.29%	
AbsenteeRejected	1,337	1.81%	
AbsenteeLate	311	0.42%	
MilitaryIssued	449	0.12%	
MilitaryNotReturned	346	77.06%	of military absentee ballots issued
MilitaryUndeliverable	31	6.90%	
MilitaryReturnedByElectionDay	74	16.48%	
MilitaryReturnedByFriday	13	2.90%	
MilitaryCounted	76	16.93%	
MilitaryRejected	10	2.23%	
MilitaryLate	6	1.34%	
FWABReceived	0	0.00%	of ballots cast
FWABCounted	0	0.00%	of FWAB received
FWABRejected	0	0.00%	
FWABLate	0	0.00%	
Registrants	3,697,950		
LateRegistrants	12,525	3.34%	of electors
EDRs	11,497	3.07%	
ProvisionalCast	6	0.00%	of ballots cast
ProvisionalNoDL#	2	33.33%	of provisional ballots cast
ProvisionalNoPOR	2	33.33%	
ProvisionalCounted	2	33.33%	
ProvisionalRejected	3	50.00%	
PaperBallots	27,826	7.43%	of ballots cast
OpticalScan	303,921	81.15%	
DRE	41,354	11.04%	
AutoMARK	2,334	0.62%	
TotalElectionInspectors	20,063	5.35%	of electors
16-17	182	0.91%	of election inspectors
18-25	143	0.71%	
26-40	548	2.73%	
41-60	4,165	20.76%	
61-70	8,258	41.16%	

71+	6,942	34.60%
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3. Clerks' Election Administration Workload Concerns Task Force

The Clerks' Workload Concerns Task Force met again on April 30, 2013 to discuss three areas of concern that had been identified as priority issues, as well as one item initiated by G.A.B. staff. Materials related to the Task Force's discussions and recommendations are included in the Board's meeting materials.

4. Voting Equipment Testing and Demonstration

As directed by the Board, staff has worked to develop testing protocols for certain modem functions of voting equipment that has previously received EAC certification. A detailed analysis of the staff's analysis and recommendations is included with the Board's meeting materials.

5. MOVE Act 2012 Federal Consent Decree

On April 3, 2013, Board Staff submitted the final reporting requirement to the U.S. Department of Justice regarding the 2012 Federal Consent Decree and the steps taken to improve the delivery of absentee ballots to military and overseas voters. The full report is addressed as a separate agenda item.

7. Cost-Benefit Analysis Projects Planned

Each year, the La Follette School of Public Affairs at the University of Wisconsin-Madison offers a graduate course in cost-benefit analysis (CBA), taught by Professor David Weimer. Students in the course work in teams to conduct a CBA for a real-world client. G.A.B. Staff and Professor Weimer plan to collaborate on two projects this fall. The first project will be to conduct a CBA comparing online versus paper-based voter registration systems. The second project will provide a CBA of list maintenance procedures, comparing the use of mass mailings to using the National Change of Address system, as well as comparing the use of each method at the state versus county level. The full descriptions for both projects are provided in the supplemental materials as Attachments 1 and 2.

8. The AccessElections! Accessibility Compliance Program

A. New Training Materials and Website Content

Board staff recently created a Polling Place Set-Up Guide for use with ongoing clerk training. The guide was presented during the "What Every New Clerk Should Know" webinar that was held on May 1, 2013 and has been posted to the agency website. This resource was created to provide local election officials with an overview of how accessibility interacts with polling place set-up that could be used as both a reference guide and a poll worker training tool.

New accessibility-related content has also been posted to the G.A.B. website. A webpage containing material for voters with disabilities has been created to provide comprehensive information about available voting options, accessible voting equipment and polling place accessibility requirements. A second webpage, containing resources for clerks and poll workers, explains polling place accessibility standards and provides information about accessible voting options and assisting voters with disabilities.

B. The April 2, 2013 Spring Election

For the 2013 Spring Election, 174 Accessibility Audits were completed. This number is in addition to the 139 audits that were conducted during the Spring Primary. Seventeen temporary workers were hired and trained to conduct onsite accessibility compliance audits in 139 municipalities in Marathon, Clark, Adams, Juneau, Columbia and Sauk counties. An initial review of audit results for the Spring Election indicates that many of the most commonly identified problems remained. However, auditors did identify more parking area and accessible pathway surface issues than in the past. This increase in prevalence may have been a product of the rural nature of many of the polling place locations that were audited for this election.

As a reference, both the top ten most common audit findings from the Spring Election and the overall most common issues identified by accessibility audits are provided below.

Top Ten Accessibility Compliance Issues from the Spring Election

- Required election notices are not always posted and those posted are not printed in 18-point font.
- Lack of accessible parking spaces and/or insufficient signage for accessible parking spaces.
- Insufficient signage for accessible entrances.
- Doors that require more than 8 lbs. of force to open.
- Gaps and uneven pavement in the pathway from the parking area to the accessible entrance.
- Accessible parking spaces were not on level, firm, stable and slip-resistant ground.
- Voting areas that had no booth or table where a voter using a wheelchair may cast a paper ballot privately and independently.
- Lack of privacy for voters casting a paper ballot.
- Accessible voting equipment that was not positioned to ensure voter privacy.
- The voting area contained obstacles that hinder navigation of the polling place.

Overall Top Ten Accessibility Compliance Issues

- Required election notices are not always posted and those posted are not printed in 18-point font.
- Lack of accessible parking spaces and/or insufficient signage for accessible parking spaces.
- Insufficient signage for accessible entrances.
- Doors that require more than 8 lbs. of force to open.
- Gaps and uneven pavement in the pathway from the parking area to the accessible entrance.
- Lack of privacy for voters casting a paper ballot
- Interior routes that had obstacles, were poorly lit, and/or were not clearly marked.
- Accessible voting equipment that was not functional or was not clearly available for voters to use.
- Doors that do not have lever door handles or an electronic feature such as an automatic opener, power-assist, or bell/buzzer.
- Pathways to the accessible entrance that were not clearly marked.

C. Analysis of Accessibility Audit Results

Board staff has analyzed audit results from the November and December 2012 elections and reported audit findings to the municipalities' clerks and executive officers. To date, staff has received and is processing plans of actions for polling places audited during the June 5, 2012 Recall Election, August 14 Partisan Primary, November 6 Presidential and General Election, and the December 4 Special Election for State Senate District 33. Staff is currently analyzing audit results and preparing to report findings from audits performed during the 2013 Spring Primary and 2013 Spring Election. Staff will continue to process plans of action received from municipalities audited during these elections.

D. Ongoing Accessibility Compliance Efforts

Staff continues to coordinate with municipal clerks to ensure that accessibility problems uncovered during previous Onsite AccessElections! Accessibility Compliance Audits are resolved as quickly and cost-effectively as possible. In addition, staff arranged for the distribution of grant-funded accessibility supplies to 58 municipalities in response to documented needs. Staff is monitoring the use and effectiveness of previous accessibility grant funding by municipalities. Staff is also working with the agency IT Development Team to automate multiple aspects of the AccessElections! Compliance Audit administrative process.

9. Education/Training/Outreach/Technical Assistance

Following this memorandum as Attachment 3 is a summary of information on core and special election administration training conducted by G.A.B. staff. In response to questions and concerns raised at the Board's meetings in December and March regarding voting administered by special voting deputies in nursing homes, retirement homes and adult-care facilities, staff has also continued drafting revisions to the Special Voting Deputy Manual. The proposed revised manual is included with the Board's meeting materials.

10. Four-Year Voter Record Maintenance

On April 15, 2013 the G.A.B. mailed 299,748 postcards to registered voters who have not voted in the previous four years. Wisconsin Statutes §6.50(1) and (2) mandate the inactivation of voters who have not voted within the past four years. A mailing is required to be sent to registered voters who have been qualified to vote for the past four years but who have not voted. As stipulated by statute, the mailing notifies voters that if they do not respond within 30 days, their registration will be inactivated – not deleted – from SVRS. The G.A.B. has sent out the postcards on behalf of the Municipal Clerks for the past two General Elections (2008 and 2010).

The G.A.B. paid \$90,491.86 for printing and postage for the 2012-2013 Four-Year Voter record maintenance (\$11,163 for printing and \$79,329 for postage). The G.A.B. sent postcards on behalf of all municipalities, except the Village of Richfield. The G.A.B. assisted the Village of Richfield which wished to do its own mailing at an earlier date. The clerk reported that it cost the village \$261.00 to print and mail 391 postcards.

Clerks have recorded returned mailings in SVRS and updated the voter status to "Active – Registered" for voters who return an Application for Continuation of Registration, or "Inactive – 4 Year Maintenance" for Voters whose postcard is returned undeliverable. On May 15, 2013, the G.A.B. will update the status of voters who did not return postcards to "Inactive – 4 Year Maintenance."

The purposes of the mailing is to help Wisconsin maintain accurate and quality voter data, and to ensure that every voter's name and address is correct and current, and to remove names of voters that no longer wish to vote from the poll lists. The following chart displays the outcome of postcards sent by the G.A.B., on April 15, 2013, as reported by clerks as of May 3, 2013. The statistics include information on voters who were cancelled because the postcard prompted new information that was provided to clerks, merged voters who had duplicate records, overseas voters and military voters whose UOCAVA status was not recorded in SVRS and who have since updated their records to reflect their UOCAVA status, and finally voters who were sent postcards but whose voting participation had not been recorded in SVRS by the clerk for the November 2012 General election or a subsequent election.

2012-2013 Four-Year Voter Record Maintenance Statistics

Total Postcards Sent	299,748
Total Returned Undeliverable	68,587
Total Returned Continuation	10,736
Total Returned Request Cancellation	5
Total Returned Deceased	166
Total Not Returned	220,411
Total Other Status	0
Total Merged Voters	371
Total UOCAVA Voters	452
Total UOCAVA Active Reg Voters	14
Total Voted Nov2012	189
Total Voted Dec2012	0
Total Voted Feb2013	1
Total Voted Apr2013	1,065

11. Voter Data Interface

Clerks continue to use the Statewide Voter Registration System (SVRS) to run HAVA Checks to validate voter information against Department of Transportation (DOT) and Social Security Administration (SSA) records, and confirm matches with Department of Corrections (DOC) felon information and Department of Health Services (DHS) death data, as part of on-going HAVA compliance.

12. SVRS Core Activities

A. Software Upgrades

Several updates have been made to SVRS applications:

- MyVote Wisconsin: A new version of the MyVote Wisconsin website was installed on 5/1/2013. This update includes fixes to some minor defects, as well as text corrections to instructions and links on the webpage. These changes will make the MyVote site

simpler for voters to use and understand. The next version of MyVote Wisconsin will be focused on improving the usability and intuitiveness of the website.

- Other Systems: No updates have been made to SVRS, WEDCS or the Canvass Reporting system since the last Board meeting. A new version of SVRS (version 8.5) is in the planning stages.

B. System Outages

Unscheduled service outages of G.A.B. systems during this period were reported.

- SVRS was unavailable from 4:30 pm on April 4th until 11:30 am on April 5th due to human error. DET initiated a firewall change to the Production environment that was intended for the test environment. This prevented external SVRS users from accessing the SVRS system through the internet.

13. **Voter Registration Statistics**

The following statistics summarize the statewide voter registration activity since the previous Elections Division Update (February 27, 2013) as of May 6, 2013:

- 3,607,787 active voter registrations.
- 1,014,194 inactive voter registrations.
- 360,922 cancelled voter registrations.
- 15,143 HAVA checks.
- 6,406 merged voter registrations

14. **Voter Data Requests**

Staff regularly receives requests from customers interested in purchasing electronic voter lists. SVRS has the capability and capacity to generate electronic voter lists statewide, for any county or municipality in the state, or by any election district, from congressional districts to school districts. The voter lists also include all elections that a voter has participated in, going back to 2006 when the system was first deployed.

The following statistics demonstrate the activity in this area since the previous Elections Division Update (February 27, 2013) as of May 6, 2013:

- 59 SVRS data requests were received.
- 36 electronic voter lists were purchased.
- \$40,685.00 was collected for SVRS voter data requests which were fulfilled.

15. **G.A.B. Customer Service Center**

The G.A.B. Customer Service Center is supporting over 2,000 active SVRS users, the public and election officials. The Customer Service Center staff assisted with processing the Spring Election canvass and the GAB-190 Form data reporting, and with testing SVRS improvements. The Customer Service Center is continuing to upgrade and maintain the two training environments that are being utilized in the field. Staff is monitoring state enterprise network changes and status, assisting with processing data requests, and processing voter verification postcards. Customer Service Center staff assisted clerks with configuring and installing SVRS and WEDCS (GAB-190) on new computers.

Overall, the majority of inquiries the G.A.B. Customer Service Center received from clerks during this period related to assistance with setting-up the April 2 Spring Election and closing out the February 19th Spring Primary in SVRS; logging into the CRM system; printing ineligible voter lists; tracking absentee and provisional ballots; printing poll books; absentee processing; producing SVRS reports; and related election processes. Customer Service staff assisted in contacting clerks to correct verification postcard addresses.

Public and elector inquiries came primarily from the Wisconsin electorate which had questions about the Four-Year Maintenance postcards, absentee voting, registration requirements, registration locations, EDR requirements, acceptable proof of residence documents, and other election-related inquiries.

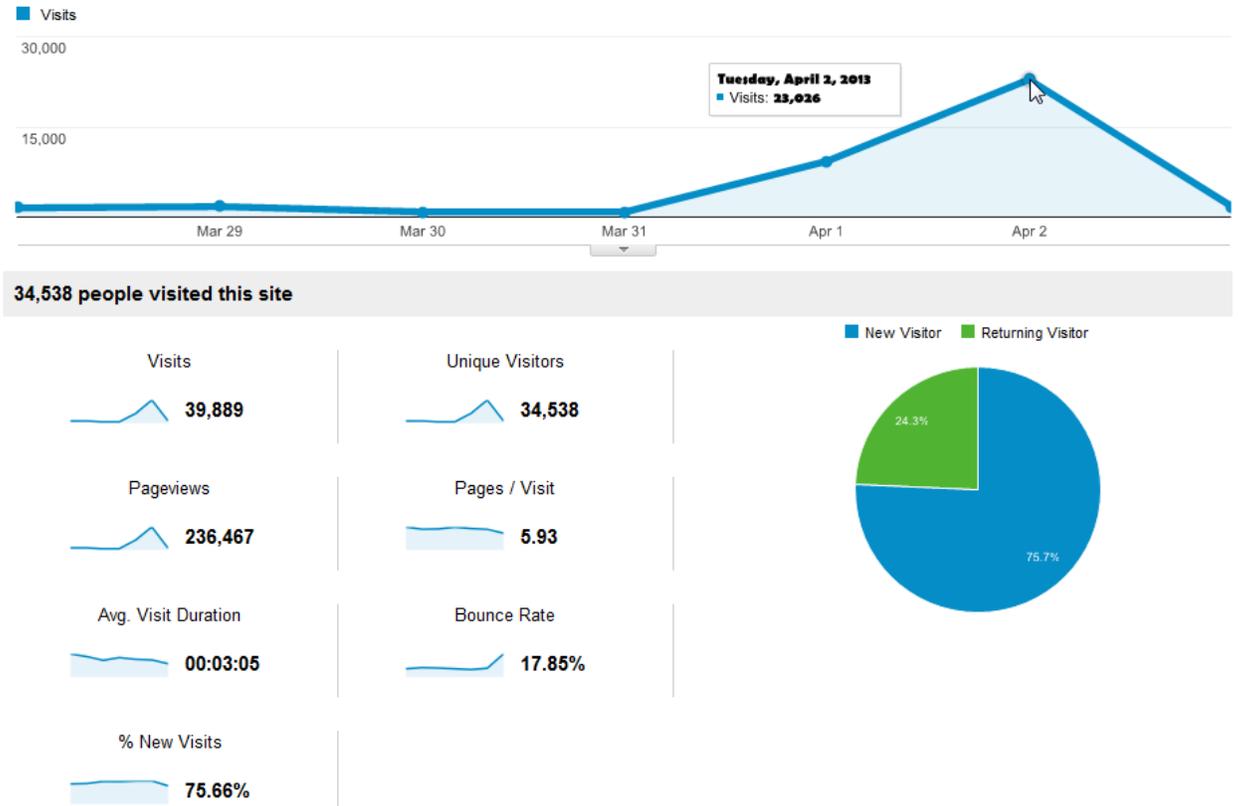
Staff assisted a number of electors with navigating the MyVote Wisconsin website. With the exception of a few days immediately following the Four-Year Maintenance mailing, call volume has been unusually quiet, compared to the consistently high volume experienced over the past two years.

Calls for this period also consisted of campaign finance reporting issues, lobbyist reporting and the Statements of Economic Interests filing deadline. The Ethics Division's CFIS and Lobbying systems also generated an amount of call traffic prior to the filing deadlines.

G.A.B. Customer Service Center Call Volume
(608-261-2028)

March 2013	1,746
April 2013	1,940
Total Calls for Reporting Period	3,686

Unique voter visits to the G.A.B.'s MyVote.wi.gov website for the week prior to and including the April 2 Spring Election. Election Day generated 34,538 unique visitors, typically viewing 5.93 pages per visit. On Election Day there were 23,026 unique visitors.



16. Voter Outreach Services

Since the G.A.B.’s launch of its Facebook and Twitter accounts in April of 2012 the number of people the agency is able to reach through social media continues to grow.

The G.A.B. Facebook account currently has over 850 likes (people following the page). On average, each post reaches a viral audience of 300 additional people, with the more popular posts generating an additional reach of over 1,000 people. G.A.B. staff typically publishes two or more posts daily on Facebook during the six to eight weeks before an election. During periods of time between elections, the frequency of posts decreases to around three per week.

The G.A.B. Twitter account currently has over 1,000 followers. Additional statistics for reach and viral impact are not available for twitter. However, a number of news media sources “re-tweet” G.A.B. posts regularly. Because of these “re-tweets” each G.A.B. post reaches additional Twitter users, beyond our 1,000 followers. G.A.B. staff typically publishes two or more posts daily on Twitter during the six to eight weeks before an election. During periods of time between elections, the frequency of posts decreases to around three per week.

Online Versus Paper-Based Voter Registration

The Wisconsin Government Accountability Board (G.A.B.) is interested in a cost-benefit analysis of online versus paper-based voter registration. In Wisconsin, current statutes require an elector to complete a voter registration application form, and submit the original form with a “wet” signature. The form requires the elector’s full name, date of birth, residential address for voting purposes, and Wisconsin driver license or Wisconsin Department of Transportation issued ID number. Municipal clerks are required to retain the original form, and to enter the information into the Statewide Voter Registration System (SVRS). In September 2012, the G.A.B. released the MyVote Wisconsin website (myvote.wi.gov), which permits voters to complete a registration form online, print and sign the form, and return it to their municipal clerk. The information that is entered online is automatically populated into SVRS as a pending application for the clerk to approve once after the signed paper form is received and approved. Fifteen states allow paperless voter registration (12 states have online registration, and three have passed legislation but not yet implemented it). This online voter registration process typically relies on using the voter name, date of birth, and State ID number to verify their identity and to obtain a digitized signature from driver license records. Establishing the necessary electronic information sharing systems between the G.A.B. and the Department of Motor Vehicles may have significant startup costs, but present opportunities for long-term cost savings. Online voter registration could potentially reduce labor costs for entering registrations into SVRS, reduce the need to produce and retain forms, reduce the need for Special Registration Deputies, reduce data quality issues, and reduce the number of provisional ballots cast. Conduct a cost-benefit analysis of online registration in Wisconsin. Client: Brian M. Bell, Elections Data Manager, Wisconsin Government Accountability Board, Brian.Bell@wi.gov.

Voter List Maintenance Options

The Wisconsin Government Accountability Board (G.A.B.) is interested in a cost-benefit analysis of using mass mailings to voters versus using the U.S. Postal Service's National Change of Address (NCOA) database to conduct voter list maintenance, as well as completing the list maintenance process by the G.A.B. versus at the county or municipal level. Within 90 days after a general election (every two years), each municipal clerk is required to review voter records and identify those who have not voted in the past four years. Clerks can mail those identified voters a notice that their registration is suspended. Voters can sign and return the card and ask for their registration to be continued. If the card is returned as undeliverable, or not returned within 30 days, then the voter registration is inactivated and the name will not appear on future poll lists without completing a new registration application. Alternatively, clerks can use information available through the Postal Service's NCOA to update voter records. This process does not require sending any documentation to the voter, but there are costs associated with accessing the NCOA database. Voter record maintenance using NCOA must be done at least every two years during the 60 days preceding the close of registration for the partisan primary. A 2007 study completed by the Legislative Reference Bureau noted that several municipalities were not complying with Wisconsin Statutes regarding voter list maintenance, and as a result, after the 2008 Presidential and General Election, the G.A.B. voluntarily took on the responsibility of mailing the notifications to voters statewide. Conduct a cost-benefit analysis of four alternatives: G.A.B. use of the NCOA, G.A.B. mass mailing, county use of the NCOA, and county mass mailings. Client: Brian M. Bell, Elections Data Manager, Wisconsin Government Accountability Board, Brian.Bell@wi.gov.

ATTACHMENT #3

GAB Election Division's Training Initiatives
3/20/2013 – 5/20/2013

Training Type	Description	Class Duration	Target Audience	Number of Classes	Number of Students
SVRS "Initial" Application and Election Management/HAVA Interfaces	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.	0	0
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.	2 types of classes: Absentee Process; Reports, Labels & Mailings; 4 hours each	Experienced users of the SVRS application software.	0	0
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.	2 classes: 1 webinar conducted by G.A.B. staff; 1 training class conducted by certified clerk-trainer; recording posted to website for training.	31
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.	5 classes: 1 webinar conducted by G.A.B. staff; 4 training classes conducted by certified clerk-trainers; recording posted to website for training.	140

ATTACHMENT #3

GAB Election Division's Training Initiatives
3/20/2013 – 5/20/2013

Training Type	Description	Class Duration	Target Audience	Number of Classes	Number of Students
Election Administration Training Webinar Series	Series of 8 - 12 programs designed to keep local government officers up to date on the administration of elections in Wisconsin.	45 – 120 minute webinar conference hosted and conducted by Elections Division staff.	Clerks and chief inspectors; campaign treasurers and candidates.	April 18, 2013: Four-Year Voter Record Maintenance; May 1, 2013: What Every New Clerk Should Know.	An average of 175 clerks participate in the live webcast; recordings and materials available for download from website.
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 completed; 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.
Other	<ul style="list-style-type: none"> Board staff updated Absentee Voting in Nursing Homes manual to reflect comments from Board members during the March Board meeting and feedback from members of the public and county and municipal clerks. 				

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KEVIN J. KENNEDY
Director and General Counsel

MEMORANDUM

DATE: For the May 21, 2013 Meeting

TO: Members, Wisconsin Government Accountability Board

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

Prepared by: Kevin J. Kennedy, Director and General Counsel
Sharrie Hauge, Chief Administrative Officer
Reid Magney, Public Information Officer

SUBJECT: Administrative Activities

Agency Operations

Introduction

The primary administrative focus for this reporting period has been on financial services activity, procuring goods and services, contract sunshine administration, recruiting staff, communicating with agency customers, and developing legislative and media presentations.

Noteworthy Activities

1. Financial Services Activity

- Calculated and booked the third fiscal quarter payroll adjusting entry, to properly allocate salaries and fringe benefits between federal and state programs. Calculated and booked the I.T. service time adjusting entries, to properly allocate outside professional service costs between federal and state programs. Effected several payroll funding changes in the payroll system, to account for federal employee assignment changes, for new LTE hires, and for staffing transfers between programs.
- Implemented a daily time reporting procedure for federal project workers, which is being monitored by the financial staff.
- The Legislative Audit Bureau released its single audit report for the fiscal years 2011-2012. The G.A.B. was included in the scope of the federal compliance portion of the single audit, but was not one of those eight state agencies that administered a major federal program being audited during the biennium.
- This spring, the State plans to launch its expenditure disclosure website called *OpenBook Wisconsin*, which will provide checkbook-level state spending information to the public. It's unknown how the launch of *OpenBook* will impact the future of Contract Sunshine, but it should improve the State's ranking in national surveys of state spending transparency.

The agency is required to redact certain private payment information to vendors working on confidential investigations within this online database. We also anticipate that *OpenBook* will generate a significant increase in public requests for additional information about specific expenditures.

- Logged employee and temporary help time worked on the 3.4.0.0. voting equipment testing project, for purposes of billing \$4,946 of labor costs incurred by G.A.B. staff to ES&S, the voting equipment and software vendor, per the cost recovery agreement. The subsequent cash receipt was accounted for as a refund of expenditure, allocated amongst three separate appropriations. Time spent testing the newer 3.4.0.1 equipment version is also being logged, for future billing to manufacturer. Time worked will also be recorded for a recent public records request, to determine if quoted costs are in line with actual hours worked to compile those records.
- Claimed reimbursements of \$104,484 for the March & April FVAP federal aid expenditures, coordinated accounting for incoming wire transfers with DOA-Treasury staff, prepared journal entries to record revenues received, and followed up with federal personnel on why one receipt was not timely approved. Approximately \$795,804 (41.5%) of the \$1,919,864 grant has been expended since its inception in March, 2012.
- Journal entries were prepared and booked to reclass purchasing card expenditure object codes and to properly allocate both monthly interest earnings and mixed server usage charges to their appropriate federal or state programs. Monthly DOA General Service Billing charges were audited prior to payments being processed; researched file transfer protocol (FTP) users and email accounts no longer in use, for purposes of eliminating unnecessary charges, thereby saving \$2,100 per year.
- Created a ledger account rollforward for both federal and state payroll & travel balance sheet liability accounts, to facilitate the monthly reconciliation of these 38 ledger account balances. Prepared and booked journal entries to correct any balance sheet account coding errors.
- Summarized and communicated the federal program budget-to-actual operating results for the fiscal 10 months ended April 30. All federal programs are still under budget at this time. Staff also prepared a current fiscal year appropriation entry, to increase the allocation of federal funds for local aids, such as voting equipment programming and maintenance cost reimbursements, and the sub recipient grant payable to Disability Rights Wisconsin.
- Monitored the final expenditures of Federal Section 261 funds allotment of \$201,733 and processed change orders and liquidated encumbrances to close out this L261 ledger year, well before the federal fiscal year ending September 30, 2013. Initiated the accounting transition to the next federal fiscal year allotment of \$201,645. Once this 2009 federal year's funding is expended, only two federal grant allotment years remain, specifically \$201,091 from the 2010 federal year and \$199,998 from the 2011 federal year. No further allotments are expected for this federal program. All Federal Cash Management (FCM) system reports were reviewed and tied out each month. Secured a federal lobbying certification from Disability Rights Wisconsin, and then processed a federal funds payment request, to reimburse them for updating and printing their voter guide.

- Researched an NSF check received for a campaign finance filing and a lobbying e-payment rejection, followed up with campaign finance staff on recovering the NSF check and related fee, and then prepared reversing entries for the revenue and subsequent accounts receivable.
- Updated the WiSMART Federal Aid Inference Table for the new 2014 fiscal year. Reviewed and approved the GPR, FVAP, and Federal Expense Budget and Revenue Budget documents, along with the zero dollar appropriation loads in WiSMART. Responded to several Government Accounting Standards Board (GASB) surveys from the State Controller's Office (SCO), including GASB 14 – The Financial Reporting Entity, GASB 39 – Determining Whether Certain Organizations Are Component Units, in addition to confirming our GAAP fund accounting codes for the FY2013 CAFR. The Appointment of Reconciler form was also prepared and filed with SCO, to report the reconciler's name and any additional approvers for the fiscal year-end 2013 Form 78 – appropriation certifications in SharePoint.
- All FY13 revenue and expenditures have been entered into QuickBooks (QB) and reconciled back to the internal accounting Excel files, running parallel between the two sets of subsidiary ledgers. This accounting software has now been installed on all financial staff PC's, and testing of QB as our general ledger is almost complete. Procedures for entering cash receipts into QB were drafted and are being reviewed. Staff synchronized purchase orders in Excel with their associated budget projections in QB, for recent change orders, for I.T. contractor new hires, and for federal reporting category liquidations, to free up Section 261 funds.
- Contracted staff costs for February and April accessibility field audits: \$15,500

2. Procurements

Since the last Board meeting, the purchasing and procurement section have been busy requesting bids/quotes and procuring goods and services as requested.

- Assisted in getting bids to replace aging desktop and laptop PC's for the agency.
- Secured bids for the printing and mailing of 4-year voter verification postcards.
- Hired 17 temporary services employees to conduct Accessibility audits during the April 2 Spring Election.

3. Contract Sunshine

- The certification period for Contract Sunshine from January 1, 2013 to March 31, 2013 was completed. Of the 33 agencies required to report, 32 agencies returned their certification forms on time. The Tax Appeals Commission has not yet certified for the quarter.

4. 2013-15 Biennial Budget Fiscal Impacts

On April 30, 2013, the Joint Committee on Finance (JCF) began its Executive Sessions for the 2013-2015 Biennial Budget. On May 9, 2013 the Government Accountability Board's biennial budget was on the agenda. The only decision item was if the JCF would approve the Governor's recommendation to extend 5.0 two-year GPR project positions and associated funding for an additional two years to implement Act 23 voter identification provisions.

The JCF approved the recommendation to extend the 5.0 two-year GPR project positions, but to delete the \$230,400 GPR annually in base resources. Instead, they will provide the \$230,400 annually in its GPR supplemental appropriation. If the courts lift the permanent injunctions against the enforcement of Act 23 photo identification provisions during 2013-15, the Board could file an s.13.10 request to seek the release of its funding in order to fill the 5.0 project positions.

Additionally, a provision was inserted into the state budget requesting a comprehensive audit of the Government Accountability Board. The Legislative Audit Bureau would be asked to conduct a program audit evaluating the G.A.B.'s election-day processes and practices; review how the agency responds to complaints it receives about voting irregularities, and assess G.A.B.'s procedures for investigating and resolving these complaints; along with a complete review of the Statewide Voter Registration System, including system processes and the accuracy of the data included in the system; and a review of the instructions and how we train local elections officials.

5. Staffing

Currently, we are working on recruitment materials for four vacant trainer positions and the vacated attorney position.

6. Communications Report

Since the March 20, 2013, Board meeting, the Public Information Officer has engaged in the following communications activities in furtherance of the G.A.B.'s mission:

The PIO responded to media and public inquiries on a variety of subjects including the 2013 Spring Election, Four-Year Voter Record Maintenance, a potential Legislative Audit Bureau review of the G.A.B., and various lobbying issues. The PIO set up interviews with journalists for Director Kennedy and Division Administrators Becker and Haas, and has also given multiple interviews when they were not available.

Between March 6, and May 6, 2013, the PIO responded to more than 370 contacts from news media and the public for information and interviews – 143 telephone calls and 227 emails.

In addition to responding to routine public records requests, the PIO has also been coordinating the agency's response to a few very comprehensive public records requests which involve substantial staff time in locating large numbers of documents, and which have required extensive review by staff counsel.

The PIO has been assisting Elections Division and Ethics & Accountability Division with several online projects, including serving on the team planning the redevelopment of the MyVote Wisconsin website and deploying a training registration system on the agency's main website.

The PIO has also worked on a variety of other projects including responding to concerns from Legislators on a variety of topics, and communicating with our clerk partners.

7. Meetings and Presentations

During the time since the March 20, 21, 2013, Board meeting, Director Kennedy has been participating in a series of meetings and working with agency staff on several projects. The primary focus of the staff meetings has been on agency internal administration, management and IT issues as well as preparing for the 2013-14 legislative session. There have been several management team meetings on IT procurement and resource issues. In addition the Director has met with several legislators and legislative aides concerning budget and legislative issues. The Director has also met with representatives of the Governor and the Wisconsin Department of Justice on administrative and legislative issues.

On April 2, 2013, the Government Accountability Candidate Committee met to select at least two nominees to fill the vacancy that will be created by the expiration of Judge Thomas Cane's term on May 1, 2013. The Committee consists of Court of Appeals Judges from each of the four appellate districts, Judge Ralph Adam Fine (District 1), Judge Paul Reilly (District 2), Judge Michael Hoover (District 3) and Judge Paul Lundsten (District 4). The Committee submitted four names to the Governor for consideration for appointment to serve on the Government Accountability Board: Judge Gary Carlson of Medford, Judge Harold Froehlich of Appleton, Judge William Jennaro of Milwaukee and Judge Elsa Lamelas of Milwaukee.

The Governor's office advised the Director that an appointment before the May 21, 2103 Board meeting was not likely, so Judge Cane will continue to serve until the Governor makes an appointment.

On April 23, 2013, Representatives of the Pew Voting Information Project met with agency staff to work out details for the Government Accountability Board to participate in this national project. The project partners with Google, Microsoft and others to provide state election officials with information technology tools that enable voters to access information about voter registration, polling place location and sample ballots. The project will enable the G.A.B. to leverage its existing voter lookup tools by making them available to a wider public audience. Sarah Whitt has been actively involved in the technical design aspects of the project for Pew. Director Kennedy has been involved in the policy aspects of the project for Pew. Both of them will be attending a meeting on June 17 and 18, 2013 for continued collaboration on the national project and other elections technology initiatives.

On April 24, 25 and 26, 2013, Director Kennedy, Elections Supervisor Ross Hein and Lead Elections Specialist Diane Lowe attended the Election Center Special Workshop on *The Future of Voter Registration and Elections* in Minneapolis. Ross and Diane also took a professional education program course on *Contracts for Election Systems Equipment* following the workshop. The advanced level course can be applied to their continuing education requirement as a Certified Elections and Registration Administrator (CERA).

Director Kennedy and Lead Elections Specialist Diane Lowe participated in a teleconference meeting of the National Association of Secretaries of State (NASS) Emergency Preparedness Task Force on April 30, 2013. Director Kennedy is one of several chief election officials invited to participate on the Task Force. The Task Force was developed in response to issues identified in the wake of Super Storm Sandy which pummeled the East Coast one week before the November 4, 2012 election and Hurricane Katrina. Wisconsin has been a recognized leader

in the area of election preparedness. Director Kennedy testified before Congress on this issue in 2008.

The Pew Center for the States released its Elections Performance Index for 2008 and 2010 on February 5, 2013. Wisconsin's elections, which are administered in partnership between the Government Accountability Board and nearly 2,000 local election officials, ranked at the top in 2008 and in the top seven in 2010 in the Pew Elections Performance Index. The Index is a set of 17 performance measures culled from data that is readily available from public reports and academic research. Most importantly, the statistical information is consistently gathered across states and over a period of several election cycles. This enables election officials, scholars, and the general public to compare a state's performance over time and in conjunction with other states. Kevin Kennedy and University of Wisconsin–Madison professor Barry Burden were part of a study group of election officials and academics who reviewed the proposed statistical measurements and vetted their relevance to evaluating election administration performance.

On May 1, 2013, Ethics and Accountability Division Administrator Jonathan Becker and Director Kennedy made a presentation at the Capitol to members and staff of the Assembly Democratic Caucus on the Code of Conduct for State Public officials. The Caucus requested the training.

On May 9, 2013, the Joint Committee on Finance (JCF) reviewed the Governor's proposed budget for the agency. In addition to approving 5 two-year voter ID project positions, JCF requested the Joint Audit Committee to direct the Legislative Audit Bureau to conduct a comprehensive program audit of the G.A.B.

On May 20, 2013, the agency hosted a group of Central European international visitors as part of a program on transparency and accountability for a regional project for newly independent states. The International Institute of Wisconsin facilitated the U.S. Department of State's International Visitor Leadership Program. Visitors were from Armenia, Bosnia-Herzegovina, Czech Republic, Germany, Republic of Macedonia, Serbia, and Slovenia. Director Kennedy and Public Information Officer Reid Magney discussed the practice of transparency in Wisconsin government in the context of the 2011 and 2012 recall initiatives.

Looking Ahead

The next Board meeting is scheduled for Tuesday, August 13, 2013 at the Board's offices. However, staff is working on several administrative rules. Once the Governor has approved applicable scope statements, the Board needs to formally approve the statements before work can be done on the actual rules. Since it will be 12 weeks between meetings, the Director and General Counsel recommends that Board Members plan for one or more short teleconference meetings in the interim to formally approve the scope statements to enable work to be done on the rules.

The next regularly scheduled election is the Spring primary on February 18, 2014. That is 273 days from the current Board meeting.

Action Items

Provide the Director and General Counsel with a list of unavailable dates between May and August, to schedule short teleconference meetings on approval of administrative rule scope statements.