

Meeting of the Board
Tuesday, June 10, 2014

Agenda
Open Session

9:00 A.M.

Room 412 East, State Capitol
Madison, Wisconsin

Tuesday, June 10, 2014

9:00 A.M.

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I. 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 26, 2014 at the Government Accountability Board offices, 212 East Washington Avenue, Third Floor in Madison, Wisconsin beginning at 9:00 a.m.

State of Wisconsin\Government Accountability Board

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JUDGE THOMAS H. BARLAND
Chair

KEVIN J. KENNEDY
Director and General Counsel

Wisconsin Government Accountability Board

212 East Washington Avenue
Madison, Wisconsin
May 21, 2014
9 a.m.

Open Session Minutes

<u>Summary of Significant Actions Taken</u>	<u>Page</u>
A. Approved Minutes of April 17, 2014	1
B. Accepted Staff Report on Prime III Pilot	3
C. Approved ES&S 3401 Unity Voting System	4
D. Approved Proposed Guidance on Lobbyists Furnishing	5
E. Approved Opinion on Scheduling Referenda	6

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

Staff present: Kevin Kennedy, Jonathan Becker, Michael Haas, Shane Falk, Nathan Judnic, Sharrie Hauge, Ross Hein, Diane Lowe, Sherri-Ann Charleston, Brian Bell, Molly Nagappala, and Reid Magney

A. Call to Order

Judge Barland called the meeting to order at 9 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 April 17, 2014 Meeting

MOTION: Approve the minutes of the April 17, 2014 Board Meeting. Moved by Judge Vocke, seconded by Judge Nichol. Motion carried unanimously.

D. Personal Appearances for Public Comment

Manitowoc County Clerk Jamie Aulik of Manitowoc appeared to comment on agenda item E1, the Prime III Accessible Voting Pilot Election report. He thanked G.A.B. for selecting Manitowoc County as a pilot site for the testing and described the experience of using Prime III during an election. He said that while there were positives such as the ability to use non-dedicated computers, open software and standard office paper for ballots, there were a few bugs in the system, such as occasionally skipping contests in tabulation.

Mr. Aulik answered questions from Judge Vocke, Judge Lamelas and Judge Nichol regarding training of poll workers, potential cost and time savings from Prime III, and electronic poll books.

Brown County Clerk Sandy Juno of Green Bay appeared to comment on the agenda item E2, ES&S Modem (3401) Approval, and item E1, Prime III pilot report. She said the requirements for a hardened computer system for the ES&S 3401 were burdensome and costly for the county. She supported approval of the ES&S 3401, reporting it worked with 100 percent accuracy in the Spring Election. She raised issues about the Prime III pilot, saying there were problems with the system.

Outagamie County Clerk Lori O’Bright of Appleton appeared to comment on agenda item E1, the Prime III Accessible Voting Pilot Election report. She said she is excited about the potential for an open-source system that could integrate with the Statewide Voter Registration System and the Canvass System. She referenced recent election administration errors in the cities of Appleton and Kaukauna, and said that a voting system that integrates with SVRS and Canvass could eliminate those kinds of errors.

Alicia Boehm of Madison appeared on behalf of Disability Rights Wisconsin to comment on agenda item E1, the Prime III Accessible Voting Pilot Election report. She said that while there were some great things about the Prime III system there were also some problems, notably the “voice to vote” function is not ready yet. She also expressed concerns about the variety of computer equipment on which a Prime III system may be used, which can lead to a wide variety of variables on Election Day for someone with a disability.

Steve Pearson, vice president of voting systems at Elections Systems & Software appeared to comment on the agenda item E2, ES&S Modem (3401) Approval. He thanked the Board for allowing the counties to demonstrate the reliability of the systems during the period of conditional approval for the systems with analog modems.

Rock County Clerk Lori Stottler of Janesville appeared to comment on the agenda item E2, ES&S Modem (3401) Approval. She said she supports the recommendation for approval of the 3401 which includes a modem because Rock County needs to purchase new voting equipment. She also asked the Board to prioritize approval of the next generation of ES&S DS200 tabulators.

Dane County Clerk Scott McDonell of Madison appeared to comment on the agenda item E2, ES&S Modem (3401) Approval. He said Dane County successfully used the new ES&S voting equipment with modems in the Spring Primary and Spring Election. He raised the issue of a requirement that telephone lines be tested prior to each election, which would be cost prohibitive. Mr. McDonell suggested a functional test of the lines prior to the election by requiring the results be modemed to the county during the public test of voting equipment.

Mr. McDonell answered questions from Judge Barland and Judge Lamelas regarding telephone line testing and what would happen if municipalities decided to forgo use of modems because of testing costs.

Ardis Cerny of Pewaukee appeared on her own behalf to ask about the status of a list of eight names she previously provided to the Board allegedly containing University of Wisconsin-Madison students who voted in the November 2012 General Election and who may not be U.S. citizens. She asked that the Board refer the matter to the Attorney General's office rather than the Dane County District Attorney's office.

Debra Morin of West Allis appeared on her own behalf to ask whether the G.A.B. is planning to adopt another five-year plan for election administration, and to ask to have input on the plan before it is finished.

Mark Clear of Madison appeared on his own behalf to ask the Board for an advisory opinion about whether a campaign finance registrant may accept Bitcoins as contributions. He said the Federal Election Commission issued a ruling May 8 about the circumstances under which federal candidates may accept Bitcoins. He suggested allowing contributions of up to \$50 in Bitcoins, and requiring the recipients to sell them and deposit the proceeds in a conventional bank account.

Mr. Clear answered questions from Judge Barland and Judge Lamelas about how campaigns could convert Bitcoin contributions to currency and identify the person who made the contribution.

E. Report on Electronic Voting Equipment

1. Prime III Accessible Voting Pilot Election

Elections Division Administrator Michael Haas introduced Elections Specialist Sherri Ann Charleston, who made an oral presentation based on a written report starting on Page 7 of the May 2014 Board Meeting Materials. She said the purpose of asking the Board to endorse the staff's recommendations in the report is to make it clear that the Prime III system has a ways to go, and these are the areas the system's developers need to work on before the system is deployed. She said Prime III is not ready for deployment and use as a voting system in Wisconsin, but it represents an improvement over existing technology.

The Board and staff discussed Judge Lamelas's concerns that because Prime III has substantial problems, the Board should not endorse it, and that the system is not being held to the same standards as systems from other vendors. Ms. Charleston said Prime III is being developed by Clemson University with the assistance of a federal grant from the U.S. Election Assistance Commission, is not a vendor-designed system, is not being sold in Wisconsin, and there is no request to approve it or sell it in Wisconsin. She said that because Prime III is open-source software, any vendor is free to use the technology in its own products. She discussed the standards for approving voting systems, and said current technology is 15 years behind the curve.

Mr. Haas said staff is not asking the Board for endorsement or approval of the Prime III system, but for approval of a report on the pilot program the Board authorized, which includes staff's analysis of how the system performed, identifies necessary areas of improvement, and makes recommendations for the Clemson team and the U.S. EAC to consider for future development of the software.

The Board continued its discussion of the report.

MOTION: Accept the staff's report on the Prime III pilot program. Moved by Judge Nichol, seconded by Judge Brennan.

Ms. Charleston responded to Judge Barland's concern about security because the system would rely on off-the-shelf hardware. She said the Prime III system uses a fully-encrypted server or kiosk, and only marks the ballots. The voter can always verify that the system marked the ballot as intended before depositing it in the ballot box for scanning and tabulation later. The scanner captures images and text files of the ballot, and there are four different means of verifying the vote.

Director Kennedy said it is important to encourage the Clemson team to keep developing Prime III based on feedback from G.A.B. staff as well as the clerks and voters involved in the pilot. The Board is not asking Clemson to bring the system back to Wisconsin, just offering feedback on things we would like to see improved.

Judge Vocke asked whether the motion offered by Judge Nichol included endorsing the staff's recommendations. Judge Nichol said it was just to accept the staff's report.

The motion carried unanimously on a voice vote.

2. ES&S Modem Approval

Ms. Charleston made an oral presentation based on a written report starting on Page 38 of the May 2014 Board Meeting Materials. She said approval would be for the Unity 3401 suite, which the Board conditionally approved in 2013. The system successfully performed in the Spring Election, and clerks using the system met all the requirements.

Judge Barland asked about Dane County’s concern regarding the cost of telephone line testing prior to each election. Ms. Charleston said the recommendation is that the municipalities should test the telephone lines, but it is not a requirement. She said that if there is a problem with telephone lines, it would show up during functional testing of the equipment’s ability to transmit test results to the county. Judge Brennan suggested adding the word “recommended” to the section dealing with telephone line testing.

MOTION: Adopt the staff’s recommendations for final approval of ES&S voting system’s Application for Approval of Unity 3.4.0.1 to be sold or used in Wisconsin, including the conditions described in the staff memorandum on pages 44 and 45 of the May 2014 Board Meeting Materials, as amended to reflect that telephone line testing before each election is a recommendation. Moved by Judge Vocke, seconded by Judge Nichol. Motion carried unanimously.

3. Background Report on Voting Equipment Approval

Ms. Charleston made an oral presentation regarding the staff’s procedures for processing an application for voting equipment approval and for testing the equipment, based upon a written report starting on Page 55 of the May 2014 Board Meeting Materials.

Judge Barland told Ms. Charleston that he regrets she is leaving the G.A.B., and wished her success in her new job directing the pre-law program at UW-Madison.

Judge Barland called a recess at 11:02 a.m. The Board reconvened at 11:15 a.m.

F. Report on Nomination Paper Review and Candidate Ballot Access Timetable and Procedures

Mr. Haas made an oral presentation based upon a written report starting on Page 60 of the May 2014 Board Meeting Materials. He said the staff normally makes this presentation on the day the Board meets to hear challenges, but is making it today to give the Board more time to study the procedures in advance of the meeting. Mr. Haas discussed the heavy workload ahead for staff and the tight timelines associated with reviewing hundreds of petitions, as well as the review process involved for any challenges that are filed. He indicated that it will take staff four to five hours to process nomination papers for statewide candidates and about two hours for State Senate candidates, slightly less for Assembly candidates.

Board members discussed the issues and Mr. Haas answered questions. He said the new law requiring printed names in addition to signatures on nomination papers will cause problems for some candidates.

G. Proposed Guidance on Lobbyists Furnishing

Ethics and Accountability Division Administrator Jonathan Becker made an oral presentation based upon a written report starting on Page 76 of the May 2014 Board

Meeting Materials, dealing with the unintended consequences of a change to the law in 2013 Act 153. Staff’s initial reading of the law was that it prohibited lobbyists from furnishing contributions from another person or committee at any time. Mr. Becker said that since the memorandum was written he has given a lot of thought to the issue and changed his position. A document containing three alternate motions was included in Board members’ folders. Mr. Becker said he is recommending the Board adopt the first alternative motion:

Resolved, that the Board interprets Wis. Stat. §13.625 (1) as amended by Act 153 to permit a lobbyist to furnish a campaign contribution to a candidate for any office at any time except that a lobbyist may furnish a personal contribution to a partisan elected state official running for any office or to a candidate for a partisan elective state office only between the first day authorized by law for the circulation of nomination papers and the date of the election in the year of the candidate's election.

Mr. Becker discussed with the Board the history of the lobbying law and its interpretation by the former Ethics Board and the current Government Accountability Board, including an extended discussion about the meaning of the words “furnish” and “make” in connection to contributions. Initially, the Legislative Council interpreted the language as prohibit(ing) a lobbyist from furnishing anything of pecuniary value other than personal contributions made during the permitted window of time.” The Legislative Council subsequently issued a second memo which interprets the law to say lobbyists are permitted to “deliver” contributions to candidates, even though the word “deliver” does not appear in statutes.

Judge Froehlich suggested changing the phrase “furnish a personal contribution” to “make a personal contribution.”

MOTION: Interpret Wis. Stat. §13.625 (1) as amended by Act 153 to permit a lobbyist to furnish a campaign contribution to a candidate for any office at any time except that a lobbyist may *make* a personal contribution to a partisan elected state official running for any office or to a candidate for a partisan elective state office only between the first day authorized by law for the circulation of nomination papers and the date of the election in the year of the candidate's election. Moved by Judge Brennan, seconded by Judge Froehlich.

Board members and staff discussed the motion. Staff Counsel Shane Falk asked whether the motion should be changed slightly to add a clause, “except as otherwise prohibited in subsections 1 and 2.” Judge Barland and Judge Lamelas said they assumed that was included.

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

Motion carried unanimously.

Judge Barland called a recess for lunch at 12:26 p.m. The Board reconvened at 1:02 p.m.

H. Request for Opinion on Scheduling Referenda

Staff Counsel Nathan Judnic made an oral presentation based upon a written report starting on Page 83 of the May 2014 Board Meeting Materials. Staff recommends the Board approve the opinion provided to United Wisconsin regarding the deadlines for submitting referendum questions to municipal clerks.

Judge Lamelas suggested breaking apart the sections of the opinion dealing with the Fall Partisan Election from those dealing with the Spring Elections.

MOTION: Approve the staff's opinion with recommended changes as a formal advisory opinion of the Board pursuant to Wis. Stat. §5.05(6a). Moved by Judge Vocke, seconded by Judge Brennan. Motion carried unanimously.

I. Legislative Implementation Report 2013 Wisconsin Act 153

Mr. Haas made an oral presentation based upon a written report starting on Page 91 of the May 2014 Board Meeting Materials. He said staff is working on implementation of 18 pieces of legislation from the last session, and revised materials for clerks should be available in mid-June.

Director Kennedy noted that when staff drafts campaign finance and lobbying guidelines, the practice has been to give a draft to the regulated community for their comments before finalizing the guideline for presentation to the Board. He said staff will bring the final lobbying guideline on furnishing back to the Board at its June meeting.

J. Director's Report

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

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

Elections Division Report – election administration

Written report from Division Administrator Haas and Division staff was included beginning on Page 98 of the Board packet. Mr. Haas discussed two items, the voter felon audit on Page 104, and the data automation process on Page 106.

The Board and staff discussed the improvements to the voter felon audit process, as well as the history of referrals of cases to District Attorneys.

Judge Brennan asked about voters being given incorrect ballots, described on Page 99. Elections Supervisor Ross Hein explained that problems can occur in Spring Elections when municipalities combine wards into a single reporting unit with multiple ballot styles.

Office of General Counsel Report – general administration

Written report from Kevin J. Kennedy, Sharrie Hauge, and Reid Magney was included beginning on Page 105 in the Board packet. Director Kennedy showed the Board a short video interview with Judge Barland produced by the University of Chicago for a conference on election administration reform.

Director Kennedy and Ms. Hauge discussed preparations for the biennial budget process.

K. Closed Session

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

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

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

Motion carried unanimously. The Board convened in closed session at 2:04 p.m.

L. Adjourn

The Board adjourned in closed session at 5:23 p.m.

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The next regular meeting of the Government Accountability Board is scheduled for Tuesday, June 10, 2014, at the State Capitol in Madison, Wisconsin beginning at 9 a.m.

May 21, 2014 Government Accountability Board meeting minutes prepared by:

Reid Magney, Public Information Officer

May 30, 2014

May 21, 2014 Government Accountability Board meeting minutes certified by:

Judge Michael Brennan, Board Secretary

June 10, 2014

DRAFT

State of Wisconsin \ Government Accountability Board

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JUDGE THOMAS H. BARLAND
Chairperson

KEVIN J. KENNEDY
Director and General Counsel

MEMORANDUM

DATE: For the Meeting of June 10, 2014

TO: Members, Wisconsin Government Accountability Board

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

Prepared and Presented by:
Michael Haas, Elections Division Administrator
Pauline Shoemaker, Legal Intern

SUBJECT: Common Challenges to Nomination Papers

INTRODUCTION

This memorandum outlines common and anticipated challenges to nomination papers and the analysis the Board has applied in the past to evaluate and rule on challenges to nomination papers. The Board may certainly adopt different analyses and decisions in specific cases, but this memorandum is intended to inform the Board, as well as candidates and challengers, regarding the legal analyses and resolutions previously adopted by the Board and its staff.

Pursuant to Wis. Adm. Code GAB § 2.05(5), “where a required item of information on a nomination paper is incomplete, the filing officer shall accept the information as complete if there has been substantial compliance with the law.” Furthermore, any information on a nomination paper is entitled to a presumption of validity. Wis. Adm. Code GAB § 2.05(4).

COMMON CHALLENGES

1. Candidate Information

None of the information in the heading of the nomination paper, (i.e., candidate’s name, candidate’s address, political party represented, date of election, office sought, name of jurisdiction or district in which candidate seeks office), may be altered, amended, or added after circulation of the nomination paper. This is the nomination information that each signatory saw and relied upon in deciding to sign the paper.

a. Office Title and District Designation

Challenge: Irregularities in the title of the office or the district number as required by Wis. Stat. §8.15(a).

Analysis: Staff has typically allowed for variances in listing the office title, such as “Assembly,” “Representative,” “State Assembly.” In the past, staff determined that the papers were sufficient as long as the electors could determine the office and district the candidate was pursuing by other information provided in the nomination paper heading. Additionally, where the title or district designation is illegible or in the incorrect boxes, staff has found these pages to substantially comply when the required information could be determined elsewhere in the nomination paper heading. In the past, the Board has approved these recommendations.

b. Election Date

Challenge: Incomplete date of election as required by Wis. Stat. §8.15(5)(a).

Analysis: When a date of election is completely missing from a petition, staff has recommended approving the challenge and striking the signatures on those pages. When a date is listed but incomplete or incorrect (e.g., using the date of the primary, not indicating the year, indicating the month and year but not the day, indicating an incorrect date, or incorrectly indicating “general” as the type of election on the petition heading), past policy for this Board and the former State Elections Board found substantial compliance with Wis. Stat. §8.15 where there was sufficient notice to the signers that the candidate was seeking office at the election immediately following circulation of the nomination papers. Consequently, staff has typically allowed for irregularities in the listed election date where it can be determined that electors understood the nomination papers were for the fall election event. In the past, the Board has approved these recommendations.

c. Candidate Address

Challenge: The candidate has not specified a municipality for voting purposes.

Analysis: In the past, the Board has rejected challenges to petitions where the candidate has not specified a municipality for voting purposes and as a result, in reviewing nomination papers, staff does not invalidate signatures on this basis alone. Wis. Stat. §8.15(5)(b) provides that “[e]ach candidate shall include his or her mailing address on the candidate’s nomination papers,” but is silent with regard to inclusion of municipality for voting purposes. The established policy of the Board in reviewing nomination papers has been to find substantial compliance with Wis. Stat. §8.15 by presuming the validity of the information listed unless evidence to the contrary is presented. Absent such evidence, the municipality listed for voting purposes is presumed to be the same as the municipality listed for mailing purposes.

d. Candidate Certification (Gender Identification)

Challenge: The candidate has not completed the gender identification checkbox in the candidate certification statement.

Analysis: Staff has considered such an omission to be an oversight of a technical requirement and have considered papers that are otherwise correct to be in substantial compliance with statutory requirements. In the past, the Board has approved this recommendation.

e. Candidate Dates of Circulation

Challenge: The candidate circulated nomination papers prior to the date he or she filed a campaign registration statement or declaration of candidacy.

Analysis: Staff has recommended dismissing these challenges. Wis. Stat. §8.15(4)(b) provides that if a candidate has not filed a campaign registration statement prior to the time of filing nomination papers, “the candidate shall file the statement with the papers.” Wis. Stat. §8.21(1) provides that each candidate shall file a declaration of candidacy “no later than the latest time provided for filing nomination papers.” While such a failure to file a campaign registration statement may be a campaign finance violation of Wis. Stat. §11.05(2g), the ballot access statutes do not provide for ballot status denial as a consequence of a potential campaign finance violation. In the past, the Board has approved these recommendations.

2. Circulator Information

a. Circulator Address

Challenge: The circulator’s address, required by Wis. Stat. §8.15(4)(a), is insufficient because the circulator has not indicated type of municipality of residence (e.g., “Town of” or “City of”).

Analysis: Staff has recommended dismissing these challenges. Wis. Stat. §8.15(4)(a) states in the relevant portion that “the certification of a qualified circulator stating his or her residence with street and number, if any, shall appear at the bottom of each nomination paper, stating he or she personally circulated the nomination paper and personally obtained each of the signatures.” There is no separate statutory requirement that the circulator indicate the type of municipality of residence. In the past, the Board has approved these recommendations.

Challenge: The circulator’s address, required by Wis. Stat. §8.15(4)(a), is insufficient because the circulator has not indicated the municipality of residence.

Analysis: Staff has recommended finding substantial compliance for papers missing the municipality in the circulator’s address, but only when the circulator is the candidate and when the missing information is supplied by reference to other information on the same nomination paper page (e.g., the candidate’s address in the nomination paper heading). In the past, the Board has approved this recommendation.

b. Circulator Date and Signature

Challenge: The date of certification is incomplete or incorrect, as required by Wis. Stat. §8.15(4)(a).

Analysis: The circulator may correct errors in the certificate of the circulator, such as the circulator failed to sign or otherwise complete the certificate, or entered inadvertently erroneous data (for instance: the circulator dated the certificate before circulation, not after). If the circulator has not corrected these errors by affidavit by the correction deadline, the challenge must be upheld and the signatures on those pages invalidated. In the past, the Board has approved staff recommendations to this effect.

3. Elector Signatures

Only one signature per person for the same office is valid. In addition to his or her signature, in order for the signature to be valid, each signer of a nomination paper shall legibly print his or her name in a space provided next to his or her signature and shall list his or her municipality of residence for voting purposes, the street and number, if any, at which the signer resides, and the date of signing. Wis. Stat. §8.15(2).

a. Multiple Signatures

Challenge: The elector has signed nomination papers for more than one candidate for the same office.

Analysis: Where the elector has signed another candidate's papers prior to the signature on the challenged papers, only the earliest signature is valid and the later signatures should be invalidated. In the past, the Board has approved this recommendation.

b. Signature

Challenge: The elector has "signed" with a printed name.

Analysis: Staff has typically allowed signatures where the name has been printed. Wis. Adm. Code GAB § 2.05(8) requires that the elector "sign his or her own name;" the rule does not require that the signature be made in cursive. The dictionary definition of "signature" simply states that it is "the name of a person written with his own hand." At its meeting of April 17, 2014, the Board also accepted a staff recommendation that signatures be permitted where both the "printed name" and "signature" have been printed. Because this is the first nomination cycle involving the printed name requirement described below, this is an issue of first impression in any fact-finding situation presented to the Board.

Challenge: The elector's signature is illegible.

Analysis: Staff has recommended denying challenges alleging that signatures are illegible. Wis. Stat. §8.15(2) requires each signer of a nomination paper to provide a signature and address. There is no requirement that a signature must be legible, and individual signers mark their signatures in a wide variety of ways (e.g., by marking an "X"). Furthermore, any information on a nomination paper is entitled to a presumption of validity. Wis. Adm. Code GAB § 2.05(4). In the past, the Board has approved this recommendation.

c. Printed Name

Challenge: The elector's printed name is illegible or in cursive.

Analysis: Challenges to printed names have not yet been decided by the Board. Consistent with the G.A.B. guidance issued to clerks on April 11, 2014 and approved by the Board, staff checks to see if the letters are printed and the name is legible. "Printed" names that are made in cursive handwriting do not meet this standard, are not entitled to a presumption of validity, and thus are invalid.

At the April 17, 2014 Board meeting, the Board approved the following standard for reviewing the legibility of printed names:

1. If the filing officer can discern no part of the printed name, it should be deemed illegible and the signature should not be counted.
2. If the filing officer can discern a possible name, but may not be certain of the exact spelling of the name, the printed name is deemed legible and the signature may be counted if otherwise valid.
3. The filing officer is not required to consult extrinsic sources of information (voter registration records, telephone directories, etc.), but may do so if it assists the filing officer in discerning a possible name.

The elector may correct a printed name error in a correcting affidavit filed by the correction deadline; however, the elector must provide a handwritten legible printed name and otherwise complete the correcting affidavit. The circulator may not "correct" electors' signatures or printed names.

Board staff has attempted to apply the legislative mandate and intent of 2013 Wisconsin Act 160, which amended Wis. Stat. §8.15(2) to read as follows:

Only one signature per person for the same office is valid. In addition to his or her signature, **in order for the signature to be valid, each signer of a nomination paper shall legibly print his or her name in a space provided next to his or her signature** and shall list his or her municipality of residence for voting purposes, the street and number, if any, on which the signer resides, and the date of signing. (Amended language underlined).

Staff relied on the dictionary definition of "print" which states "to write in letters shaped like those of ordinary roman text type," and on the distinguishing feature of cursive in which individual letters are connected to one another. If the printed name was written in cursive, staff struck the signature as not complying with the additional requirement to "print" as imposed by Act 160.

The sufficiency of the printed name and whether it complies with Act 160 is a matter of first impression for the Board. Board staff experienced challenges in implementing this standard

across all petitions due to the many variables caused by this new requirement. Given the infinite ways in which a signer may write letters as “printed” or using cursive, it necessarily requires the exercise of subjective judgment on the part of the individual reviewer as to whether a name is both printed and legible. The process of having each nomination paper reviewed by two staff members helped to lend some consistency to the final staff determinations.

d. Signature Address

Wis. Stat. §8.15(2) requires that a signer of a nomination paper “shall list his or her municipality of residence for voting purposes, the street and number, if any, on which the signer resides.” Errors in which the elector used an address or listed a municipality which does not reflect his or her actual residence, or wrote an incomplete address, may be corrected by the elector or by the circulator in a correcting affidavit filed by the correction deadline.

Challenge: The elector’s address is missing an apartment number.

Analysis: Staff has recommended that signatures be found in substantial compliance where the insufficiency is solely a missing apartment number. In the past, the Board has approved this recommendation.

Challenge: The elector’s address is missing the municipality designation or the elector has checked a box in error.

Analysis: The Board and its staff have advised candidates and challengers that a signatory’s failure to check the correct box to indicate “Town, Village or City” is not a basis for disqualifying a signature, unless a challenger can show that the given address is outside the subject jurisdiction or district. For instance, the challenger needs to show that a given address is required to be in a specific electoral district, but the signatory’s street address places the address in a municipality outside the proper district. The signatory’s error or omission in checking a box on a form is not sufficient evidence in itself to uphold a challenge. In the past, the Board has approved this recommendation.

Challenge: The elector’s address is incomplete because the elector has abbreviated the name of the municipality.

Analysis: In the past, the Board has rejected challenges to signatures alleged not to include the proper municipality of residence, where the municipality can be determined by other information contained on the nomination papers, pursuant to Wis. Adm. Code GAB § 2.05(15)(c). For instance, the municipality of “WFB” was determined by the mailing address to indicate “Whitefish Bay,” or “Gtown” was determined by the zip code to indicate “Germantown.” In the past, the Board has approved this recommendation.

Challenge: The elector has used a P.O. Box as his or her address.

Analysis: In the past, Board policy has been to accept signatures with a P.O. Box rather than a residential address, but only if the entire municipality in which the P.O. Box is located is within the candidate’s District. Staff has consistently applied this policy over the years.

Challenge: The elector lives outside the district.

Analysis: A complaint challenging the eligibility of a signatory to a nomination paper based on the signer's non-residency must be accompanied by reference to MyVote Wisconsin or "Who is My Legislator?" web searches, by a map of the district demonstrating that the address is outside the district, or by a signed statement from the election official, (municipal clerk or deputy clerk), whose responsibility it is to determine the residency of electors of the district. Staff recommends that challengers relying exclusively on "Who is My Legislator?" to determine elector eligibility, cross-reference with the more accurate data contained at MyVote Wisconsin before filing a challenge to any particular signature. Without such supporting factual evidence, the complainant challenger's bare assertion of the signer's non-residency is not sufficient in itself to meet the challenger's initial burden of proof. Time permitting, Board staff may attempt to verify the location of the address via MyVote Wisconsin and SVRS. In the past, the Board has approved this policy.

e. Signature Date

Challenge: The elector's signature, as required by Wis. Stat. §8.15(2), is incomplete or missing.

Analysis: Wis. Adm. Code GAB § 2.05(15)(a) allows for a signature to survive an incomplete date challenge if "the date can be determined by reference to the dates of other signatures on the paper." In the past, the Board policy has required that signatures on the first and last line of a nomination paper contain the complete date information, and did not allow missing date information on those lines to be determined by reference to the dates of other signatures on the page. However, in the context of a court case challenging the Board's application of Wis. Adm. Code GAB § 2.05(15)(a), the Department of Justice has advised that the Board's interpretation of that rule was too restrictive in that it required incomplete dates to be "bracketed" by complete dates. The DOJ recommended that the Board equally apply the principle of determining missing date information by reference to other information on the page, even if the incomplete date appeared on the first or last signature line. In the past, the Board has approved this recommendation.

Challenge: The elector's signature is dated after the date of the circulator's certification.

Analysis: Staff has struck these signatures pursuant to the Board's administrative rules that provide that a signature may not be counted, if it is dated after the date of the certificate of the circulator. Wis. Adm. Code GAB § 2.05(15)(b). In the past, the Board has approved this recommendation. This error may be corrected by an affidavit of the signer stating that the nomination paper included an incorrect date for their signature, and stating the correct date, or an affidavit of the circulator stating that the certification contained the wrong date and stating the correct date.

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JUDGE THOMAS BARLAND
Chairperson

KEVIN J. KENNEDY
Director and General Counsel

MEMORANDUM

DATE: For the Meeting of June 10, 2014

TO: Members, Wisconsin Government Accountability Board

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

Prepared and Presented by:
Michael Haas, Elections Division Administrator

SUBJECT: Proposed Changes to Chapter GAB 4 Election Observers

This memorandum summarizes recent activity related to the promulgation of administrative rule Chapter GAB 4 Election Observers, and the status of the proposed rule.

Board staff submitted the proposed permanent rule to the Chief Clerks of the State Senate and State Assembly on March 24, 2014. The Senate Committee on Elections and Urban Affairs conducted a public hearing on the proposed rule on May 13, 2014, and the Assembly Committee on Campaigns and Elections conducted its public hearing on May 22, 2014. The two public hearings were held pursuant to the Committees' responsibilities under Wis. Stat. §227.19(4).

Division Administrator Haas presented testimony on behalf of the Board at both hearings. As a result of public comments offered at the Senate Committee hearing, and questions raised by Committee members, Board staff agreed to incorporate several suggested revisions into the proposed rule. Attached is a copy of the testimony that was presented at the subsequent Assembly Committee hearing, which outlines the changes which staff concurs should be made to the proposed rule as well as several suggestions that Board staff considered and concluded should not be included in the rule.

Given that the 30-day review period of the two Committees expired at the end of May, and that discussions were continuing between legislators and Board staff about additional revisions, the Senate Committee on Elections and Urban Affairs voted to extend the review period on May 27, 2014. The Committee passed the following motion on a 3-2 vote:

The Senate Committee on Elections and Urban Affairs requests that the Government Accountability Board consider modifications to Clearinghouse Rule 10-130. If the board does not provide written acceptance of the request to consider modifications, delivered to Senator Mary Lazich Chair of the Committee, by 4:00 PM, Tuesday, May 27, 2014, then, pursuant to s. 227.19 (4) (d) 6., Stats., the Committee objects to Clearinghouse Rule 10-130, on the grounds that the proposed rule is arbitrary and capricious.

Board staff provided the required written acceptance of the Committee's request on May 27, 2014, and is continuing to work with legislators to finalize any additional changes so that a revised version of the proposed rule can be re-submitted to the Legislature for its approval. If the proposed rule is approved by the two oversight committees, it will be forwarded to the Joint Committee on the Review of Administrative Rules for its consideration. The revised rule will also be submitted to the Board for its approval. If the revised rule incorporating comments from the Committees is available prior to the Board meeting, staff will forward it to the Board. It is the hope of Board staff that the new permanent rule will be in place before the start of in-person absentee voting for the August Partisan Primary.

Unless final proposed revisions are completed prior to the Board meeting, no Board action is required at this time.

**Testimony of Michael Haas
Elections Division Administrator
Wisconsin Government Accountability Board**

Assembly Committee on Elections and Urban Affairs

May 22, 2014

**Room 328 Northwest, State Capitol
Public Hearing**

Clearinghouse Rule 10-130

Chairperson Bernier and Committee Members:

Thank you for the opportunity to comment on the proposed administrative rule chapter which is before you today. I am appearing in support of the proposed rule on behalf of Director and General Counsel Kevin Kennedy and the Government Accountability Board (G.A.B). The Board has approved these new standards and provisions to govern the conduct of election observers at polling places and other locations where voting takes place. The proposed rule has been in the making for over six years and we have the benefit of observing the performance and effect of the proposed rule in elections since 2008. The proposed rule has been widely credited with protecting the right of the public to observe the voting process while also helping local election officials maintain order at polling places.

History of Proposed Rule

Prior to the formation of the Government Accountability Board, the former State Elections Board initiated a review and revision of the administrative rules pertaining to election observers. That effort was in response to legislative changes expanding the right of the public to observe the voting process, and to the increased interest of candidates, political parties, and other organizations in sending observers to the polls.

The Elections Board, and subsequently the G.A.B., drafted proposed changes to Chapter GAB 4 of the Administrative Code, and gathered comments from the public, legislators, local election officials, and organizations that sponsor election observers. In 2008, the G.A.B. convened a committee to review the public comments and make recommendations for changes to the draft rule. The ad-hoc committee was comprised of six municipal and county clerks and five representatives from political parties and

observer organizations. Its extensive work resulted in consensus on almost all provisions of the draft rule.

In August 2008, the G.A.B. promulgated Emergency Rule GAB 4 regarding election observers, which was in place for the high turnout 2008 General Election. In addition to training local clerks on the provisions of the rule, the G.A.B. printed and distributed a brochure outlining the main provisions of the rule which was available at polling places. The Board held a public hearing after the election and heard feedback about the emergency rule, and some of those suggestions were incorporated into subsequent versions of the rule.

The emergency rule expired in 2009. In 2010, the Board enacted a revised emergency rule and started the process of promulgating a permanent rule to guide the conduct of election observers and election inspectors. The Board held another public hearing in December 2010 regarding the proposed rule and made several revisions based upon public comments. The benefits of the observer rules were consistently demonstrated in the fall elections of 2010 and 2012, as well as in the recall elections of 2011 and 2012. While the emergency rule expired before the 2012 General Election, Board staff has advised local election officials to continue to implement the provisions of the rule as the Board's application of the relevant statutes.

Statutory Basis

As noted in our legislative report, the basis for the proposed rule is found in four statutes. First, Wis. Stat. §7.41 provides that, except for a candidate who is on the ballot, any member of the public may observe an election at any polling place, in the municipal clerk's office, or at an alternate absentee ballot site. That statute places some restrictions on individuals exercising their right to observe the election, and authorizes the G.A.B. to promulgate rules regarding the proper conduct of observers consistent with the statute. Section 7.41 was recently amended as a result of 2013 Act 177, which specified that observers must sign in on an observer log, and established the distance of the observer area as between three feet and eight feet from the tables at which electors register and obtain their ballots.

Second, Wis. Stat. §5.35(5) provides that polling places may not be situated so as to interfere with or distract election officials from carrying out their duties, and that local election officials have a duty to prevent interference with and distraction of electors at polling places. Third, Wis. Stat. §7.37(2) states that election inspectors have full authority to maintain order during an election, and to order a law enforcement officer to remove a disorderly person from the polling place who refuses to obey the lawful command of the inspector. Finally, these provisions may be enforced through Wis. Stat. §§12.13(3)(x) and 12.60, which make it a crime to refuse to obey a lawful order of an

election inspector, to engage in disorderly behavior at or near a polling place, or to interrupt or disturb the voting or canvassing proceedings.

Observer Rules in Practice

As the Legislature has recognized, the right to observe the voting process is a fundamental and important component of democratic elections. It promotes transparency as well as confidence in the integrity of the election. Observers can track the participation of voters, see their local election inspectors at work, and sometimes spot problems with the process that they may bring to the attention of the chief election inspector. Most observers, both partisan and nonpartisan, understand this role and contribute in a positive way to the election process.

The G.A.B.'s experience with implementing the emergency rules, and the reports and complaints we have received, however, demonstrate that a minority of observers do not exercise that right with an equal measure of responsibility. In every major election that the rules have been in place, some observers continue to impede the ability of election inspectors to do their jobs, hover over their shoulders and repeatedly second-guess the work of inspectors, and improperly insert themselves into the process instead of simply observing.

Worse, some local election officials have reported that observers have provided inaccurate information to voters, and in some cases have been so harassing and intimidating to voters that they have given up and left the polling place without casting a ballot. I would like to emphasize that the majority of observers abide by the rules and respect the role of the inspectors and rights of the voters, but a small percentage of observers continue to disrupt the orderly conduct of elections. And in election administration, it is often the exceptions that require extra attention and resources.

Key Provisions of Proposed Rule

I would like to highlight some of the more significant provisions of the proposed rule. The primary regulations are contained in Section 4.02 of the rule related to the polling place but are incorporated into the other provisions related to other voting and counting locations:

1. Observers are entitled to view and hear “public aspects of the voting process,” on Election Day and while absentee ballots are completed at a clerk’s office or at an alternate absentee voting or adult-care facility; while ballots are counted at the polling place or central counting location; and during the canvass process and recount. §§ *GAB 4.01(1)(h), 4.02 through 4.07.*

2. Observers must tell the chief inspector or election official supervising the process that they wish to observe the election and sign the observer log and list their address and any organization with which they are affiliated. Observers must also wear a name tag while in the polling place and may not wear any clothing or buttons which constitute electioneering. § *GAB 4.02(2) and (17)*.
3. Observers are to remain within the designated observation area which must be situated to enable observers to see the voting process and to hear electors state their name and address before obtaining a ballot. Consistent with Act 177, the proposed rule states that when physically feasible within the polling place, the observation area shall be located between three and eight feet from the sign-in table. § *GAB 4.02(5)*.
4. Observers may view the public portions of the poll lists when doing so does not interfere with or distract electors, but may not make copies or take photos of the poll lists on Election Day, and may not handle official election documents, including elector proof of residence documents. § *GAB 4.02(11) and (12)*.
5. Observers may not use a cell phone within the observation area to make voice calls but may use them for text messaging and other non-audible uses. Observers also may not use video or still cameras while polls are open for voting, but may do so after the polls close. § *GAB 4.02(14), (18) and (19)*.
6. Members of the media must identify themselves to the chief inspector. The restriction on the use of cameras does not apply to media observers, provided that the cameras do not allow the observer viewer to see or record how an elector has voted and provided the camera does not disrupt or interfere with voting or disrupt the orderly conduct of the election. § *GAB 4.08*.
7. Disability advocates and the G.A.B.'s accessibility auditors are not restricted to the observation area and may take measurements, photos and video to ensure compliance with polling place accessibility requirements unless doing so is disruptive. § *GAB 4.09*.
8. Consistent with Wis. Stat. §6.875(7), during absentee voting at nursing homes and other adult-care facilities, observers are restricted to one observer from each of the two major political parties. § *GAB 4.06(1)*.
9. Observers shall direct all questions and challenges to the chief inspector or official supervising the voting process, and shall not interact directly with electors, except to provide assistance as requested by an elector. Observers shall

minimize distractions to electors and election officials, and shall not engage in loud, boisterous, or disruptive behavior. § *GAB 4.02(7), (9), (15) and (16)*.

10. The chief inspector or official supervising the voting process may reasonably limit the number of observers representing a particular organization or candidate. The supervising election official may also issue a warning to observers to stop conduct which violates the rules and disrupts the operation of the polling place, or conduct which constitutes electioneering or improperly distributing election-related materials. If offending observer does not cease the offending conduct following a warning, the election official may order the observer to leave the polling place and summon law enforcement to remove the observer. § *GAB 4.02(3) and (20)*.

Proposed Revisions

Finally, I would like to address a number of the suggested revisions which were made at last week's public hearing on the proposed rule in the Senate Committee on Elections and Urban Affairs. G.A.B. staff has considered those suggestions and agrees that some revisions are beneficial while concluding that others would not be an improvement. We would like this Committee to be aware of our thinking on these specific items as you consider the proposed rule. We are also certainly open to other input that Committee members may have.

Distance Requirements

The specific rules for observers at polling places that are outlined in Section 4.02 are incorporated by reference into the rules for other locations. But we agree with the suggestion that the 3 – 8 foot distance requirement should be specifically stated in the other sections related to the clerk's office and other locations where voting takes place or ballots are counted. §§ *GAB 4.02(5), 4.03, 4.04, 4.05, 4.06, 4.07*.

In recent years, the voting process at nursing homes and other adult-care facilities has attracted more attention. We have advised that, when special voting deputies conduct voting in a resident's room, observers should remain in the doorway so as not to interfere with the resident's right to vote privately and independently. However we recognize that in some cases the resident's room may be configured so that observers cannot view the process from the doorway. While Act 177 mandated the 3 to 8 feet distance only at the polling place, that distance range may help address that situation

We would propose amending the provision authorizing the special voting deputy to establish the observation area so that it is required to be within 3 to 8 feet of the special voting deputy. Special voting deputies would be empowered to balance the rights of the

voter with those of observers by designating an appropriate observation area. § *GAB 4.06(3)*.

As I stated in the Senate Committee hearing last week, we also realize that we did not properly revise the language requiring that an observation area be established near the registration table as required by Act 177, and we will make that change. In addition, we agree with a suggestion made by one of the observers who has submitted testimony to the Committee that the rule should specify that the observer rules apply to the process of local canvassing boards processing absentee ballots that arrive after Election Day. While that process is subject to the open meetings law, observers should have the ability to view and monitor the processing of those absentee ballots. § *GAB 4.02(5)*.

The other feedback we have received related to the distance provision is that the proposed rule makes the 3 to 8 foot range subject to the phrase “when physically feasible.” That language has been in the rule since its inception and has been useful to local election officials when there was some physical impediment to complying with the former 6 to 12 foot requirement.

We certainly understand that those words are not contained in the statute but we have viewed it as a proper exercise of administrative guidance to allow for some flexibility as a last resort. After all, there may be over 2800 polling places in Wisconsin at a major election and there may be some where the 3 to 8 foot range is simply impossible. This may be caused by obstructions or physical features at the polling place, or because a crowded polling place is trying to accommodate too many voters and observers in a cramped area. When that happens on Election Day, it is the Government Accountability Board that will receive the call to resolve a dispute on the spot, possibly from hundreds of miles away.

To address the concern about the phrase “when physically feasible” we propose revising section 4.02(5) and other corresponding section in a few ways. The first sentence would be amended to state “The observation area shall be situated to enable observers to observe all public aspects of the voting process during the election *without disrupting the voting process*. We could then directly state the 3 to 8 feet distance as a requirement pursuant to the Statute, and add a requirement that the chief inspector document on the Inspectors’ Log if that observation area cannot be accommodated and the reason why. § *GAB 4.02(5)*.

Photos and Video

Another significant change requested as a result of the Senate Committee hearing was to eliminate the rule’s prohibition on observers taking photos or video as well as other language that authorizes the media and accessibility auditor to use cameras. The

argument for removing that prohibition is that it is not specified in the Statutes and that provision, although possibly the correct policy choice, should be established by the Legislature.

The consensus of our staff is that the provisions related to cameras at polling places should remain in the rule but we would revise that provision according to the wishes of the oversight committees. We believe it is important to advise this Committee of the rationale for that provision and anticipated consequences of permitting observers to use cameras. § *GAB 4.02(18)*.

Wis. Stat. §7.41 ensures the right of the public to observe the elections. It does not state that the act of observation includes taking still photos or video footage. Based on our experience fielding complaints and the feedback of clerks, we know that voters often feel that it is an invasion of their privacy and somewhat intimidating to have strangers taking their photo for some unknown reason and purpose. We are concerned that a large group of observers will feel the need to document activities at the polls by taking a stream of photos or video of voters, election inspectors, and issues that arise. Whether an observer takes photos of an individual voter, a certain category of voter, or all voters, it is easy to imagine the suspicions that will arise and the conflicts that will be created.

We suggest that the Legislature should approve the proposed rule with the camera prohibition intact, which is what local election officials and observers are accustomed to, and then consider revisiting that issue during the next legislative session when there will be an opportunity for greater input from the public and the Legislature. If the Legislature feels strongly that cameras should not be prohibited at polling places, however, we can remove that language provided that the Committee understands our concerns about the potential consequences.

The rule would then permit observers to shoot photos and video unless it created a disturbance or disrupts the voting process. We are quite confident that municipal clerks and election officials would not be in favor of such a change, and anticipate that there may be very inconsistent interpretations of when such photography creates a disturbance or disruption significant enough to prohibit the use of cameras.

Other Observer Concerns

There are several minor revisions of the proposed rule that observers have requested and which we can accommodate. For instance, permitting the chief inspector to designate another inspector to assist with questions and challenges raised by observers, rather than requiring only the chief inspector to handle all of those inquiries. We will also make changes to emphasize the duty of inspectors to announce the remaking of a ballot, as well as the requirement of individuals who want to act as observers at adult-care facilities to

notify the clerk 24 hours in advance. And we can clarify that a plan adopted to govern a specific recount may supersede portions of the observer rules. §§ *GAB* (7), 4.04(3), 4.06, 4.07.

There are three requests made by observers that we believe should not be incorporated into the proposed rule. First, the proposed rule requires observers to indicate their name and address on an observer log. This has proven to be a useful provision to help local clerks, the G.A.B., or law enforcement to locate an individual observer if necessary after the election. There was testimony from a couple of observers that they felt intimidated by other observers who might want to view their address on the observer log and they requested that either the address not be required or that it be kept confidential, at least on Election Day.

We believe that there is not a basis under the Public Records Law to shield an observer's address, and that the benefits of collecting that information outweigh any risk of observers being or feeling intimidated. In addition, we thought it seemed inconsistent and unfair to require voters to state their name and address publicly while permitting observers to omit their address from the observer log. § *GAB* 4.02(2).

Second, some observers have noted the difficulty in hearing voters state their name and address as well as the inconvenience of requesting that election inspectors repeat that information if observers cannot hear it. They have requested a revision to specify that the observation area must ensure that observers can hear the proceedings. The ability of observers to hear is dependent on a number of factors such as the acoustics at a particular polling place, the level of noise, and the individual observer's sense of hearing.

The new distance of 3 to 8 feet will help in some circumstances, and we do not believe we can craft any improvement in the rule to establish an objective standard which would permit observers to more easily hear the proceedings. We also believe that the intent of the Statutes is not to guarantee that, apart from the voter's name and address, observers must be able to hear every conversation involving election inspectors and voters. § *GAB* 4.02(5).

Third, there was some testimony from observers encouraging that the rules give priority to observers who are Wisconsin residents if the number of observers needs to be reduced due to space limitations. The Statutes establish the right to observe for members of the public, not only for Wisconsin residents, and we have not known the space limitations to be a significant problem. If it is, the rule instructs chief inspectors to reasonably limit the number of observers representing a particular organization or candidate. Inspectors may accomplish this by assigning an equal number of observer spots to each organization represented and/or by requiring observers to rotate shifts in the observation area. Given the variety of situations and of observers that may be present at a polling location, it is

our opinion that the rule should continue to rely on chief inspectors to resolve those individual cases based on factors on the ground. § *GAB 4.02(3)*.

Conclusion

The G.A.B. and county and municipal clerks have invested much time in educating observers, the political parties, and organizations sponsoring observers about these provisions over the last five years. In 2012, we distributed a communication directly to the political parties and organizations which had sponsored election observers to remind them of the rules for observers. While the proposed rule may not completely eliminate disagreements and disputes at polling places, the feedback we have received indicates that the rules have produced a much greater level of order, and provided a framework for resolving the merits of any disagreements or issues that arise.

The Government Accountability Board believes that, consistent with the legislative mandate expressed in the relevant statutory provisions, the proposed revision of GAB Chapter 4 strikes the correct and appropriate balance between the public's right to observe elections, the responsibility of local election officials to maintain order at the polls, and the rights of voters to participate in elections freely and without harassment.

I hope this testimony will help inform the Legislature's consideration of this rule. As always, we are available to answer questions and work with you in addressing any issues which may arise. As I mentioned we are open to considering any other suggestions the Committee may have, but we also hope that the final version of the rule can be in place in time to educate local election officials, political parties and other organizations that sponsor observers before the August Partisan Primary. Thank you for the opportunity to share my thoughts with you.

Respectfully submitted,



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JUDGE THOMAS H. BARLAND
Chairperson

KEVIN J. KENNEDY
Director and General Counsel

MEMORANDUM

DATE: For the June 10 2014 Board meeting

TO: Members, Government Accountability Board

FROM: Jonathan Becker

SUBJECT: Revised Guidelines

In light of 2013-14 Wisconsin Act 153, staff has developed revised Guidelines and a Frequently Asked Questions documents pertaining to soliciting and accepting campaign contributions from lobbyists. We solicited comment on the drafts from the Association of Wisconsin Lobbyists, individual lobbyists, legislators, and others. We have attempted to incorporate those comments into the drafts. We recommend that the Board adopt these Guidelines for publication with the expectation that minor adjustments may be made as warranted from experience.

Campaign Fundraising

This Guideline is provided as an information resource only. For authoritative advice, contact the Wisconsin Government Accountability Board.

Times during which fundraising is permitted. State statutes do not limit the time period during which campaign fundraising may occur, once the individual has registered a campaign committee with the Board. Rules or policies of the Assembly or Senate may limit the time during which fundraising activities are permitted for an incumbent of either house; consult the Chief Clerk of each house for specific restrictions.

Soliciting a lobbyist or lobbying principal for a contribution.

For a personal contribution to a legislative candidate. State statutes limit when a member of, or candidate for, the Legislature may solicit a personal contribution from a lobbyist. A legislator or candidate for the Legislature may solicit a lobbyist for a personal contribution **only between the date when candidates can begin to circulate nomination papers (April 15 for the general election) and the date of the election in the year of the candidate's election.** This solicitation "window" may be delayed because it does not open for a legislative candidate until after the Legislature concludes its final floor period (as determined by joint resolution of the Legislature). The "window" for a legislative candidate closes during any time that the Legislature is in a special or extraordinary session.

The restriction on soliciting applies whether a legislator or legislative candidate is soliciting a personal contribution for the candidate's own campaign committee or for another candidate. The restriction also applies to soliciting using another individual who is acting for, in cooperation with, and at the behest of the candidate.

For a PAC, conduit, or other contribution to a legislative candidate. There is no limitation on when a legislator or legislative candidate may solicit a lobbyist for a PAC, conduit or other contribution.

For any type of contribution to a Political Action Committee (PAC), conduit, or other non-candidate committee. There is no limitation on when a legislator or legislative candidate may solicit a lobbyist or lobbying principal for a contribution to a PAC, conduit, political party, legislative campaign committee or other political registrant that is not a candidate's personal campaign committee.

Accepting a contribution from a lobbyist or principal. A legislator or legislative candidate may accept a contribution from a lobbyist or lobbying principal only during the time period permitted for soliciting a lobbyist or principal for that contribution. Moreover, a legislator or legislative candidate may accept a contribution from a lobbying principal only if it is an unincorporated organization – i.e., not a corporation or Limited Liability Company. The restrictions apply to both monetary and in-kind contributions. This means:

- A legislator or legislative candidate may accept a PAC, conduit, or other non-personal contribution delivered by a lobbyist at any time and
- A legislator or legislative candidate may accept a personal contribution from a lobbyist only during the "window"

Accepting a contribution from a Political Action Committee (PAC). The restrictions under the lobbying law apply only to a lobbying principal itself – not to a PAC, even if it is a principal's PAC. A legislator or legislative candidate may solicit and accept a PAC contribution at any time, except as otherwise restricted by a rule or policy of the Legislature.

Types of persons from whom a legislator or legislative candidate may accept a contribution. A legislator or legislative candidate may accept a contribution from any individual (either directly or through a conduit), a political party, or a political action committee (PAC). A legislator or legislative candidate may not accept a contribution from any corporation or limited liability company but may accept a contribution from such an organization's PAC.

What is a solicitation? A solicitation can be oral, written, or electronic. We recommend that a solicitation sent to a lobbyist outside the "window" should contain a disclaimer that it is not a solicitation for a personal contribution from the lobbyist.

Limitations on how much a legislator or legislative candidate may accept. A member of, or candidate for, the Assembly may accept up to \$500 from a single individual during any two-year period beginning January 1st of the year following the previous election. A member of, or candidate for, the Senate may accept up to \$1,000 from a single individual during any four-year period beginning January 1st of the year following the previous election. The maximum aggregate contribution from a single PAC or other candidate committee is also \$500 for Assembly candidates and \$1,000 for Senate candidates.

The aggregate that may be accepted from all PACs combined may not exceed \$7,763 for an Assembly candidate or \$15,525 for a Senate candidate. The maximum from all committees, including candidate committees and political parties, may not exceed \$11,213 for an Assembly candidate or \$22,425 for a Senate candidate. There is no limit on how much an individual may contribute to his or her own campaign committee.

Exceptions to these contribution limits or time periods may apply when a candidate is subject to a recount or recall election, or runs for election to a statewide or local office.

Legal references: §§11.26, 11.38, and 13.625, *Wisconsin Statutes*; *Plumbers and Gas Fitters Local 75 Political Action fund, et al. v. State of Wisconsin Ethics Board*, Dane County Circuit Court, 93-CV-3984 (February 23, 1994), *aff'd*, District IV Court of Appeals, 94-0826 (May 19, 1995), *rev. den.*, Supreme Court, 94-0826 (September 27, 1995).

Campaign Contributions and Activities by Lobbyists and Lobbying Principals

This Guideline is provided as an information resource only. For authoritative advice, contact the Wisconsin Government Accountability Board.¹

CAMPAIGN CONTRIBUTIONS BY LOBBYISTS

Personal contributions

A lobbyist may make a campaign contribution from personal funds:

TO

- a partisan elected state official² running for any office (even a local or national office),
- a candidate for election to a partisan state office, OR
- the campaign committee of either

ONLY

between the date when candidates can begin to circulate nomination papers (April 15 for the general election) and the date of the election in the year of the candidate's election. For a candidate for the Legislature, this "window" does not open until after the Legislature concludes its final floor period (as determined by joint resolution of the Legislature). The "window" closes for contributions to a legislative candidate during any time that the Legislature is in a special or extraordinary session.

Contributions from a PAC, conduit, and other persons

A lobbyist may furnish (e.g., deliver or convey) a campaign contribution on behalf of a PAC, conduit, or other person to a candidate for any office at any time and may at any time participate in discussions with a candidate about such contributions.

CAMPAIGN CONTRIBUTIONS AND ACTIVITIES BY LOBBYING PRINCIPALS

Under Wis. Stat. §11.38 (1) a lobbying principal that is a corporation or Limited Liability Company may not contribute to a candidate's campaign committee at any time. Lobbying principals not subject to Wis. Stat. §11.38 (1) may make a contribution to any candidate but only when the contribution window that applies to lobbyists is open.

The prohibition on incorporated lobbying principal contributions is true not only for monetary contributions but also for in-kind contributions such as a lobbying principal directing its employees or using its supplies to organize or run a golf outing, dinner, or other fundraising event for a candidate's benefit. A lobbying principal may provide such assistance to a candidate's campaign committee only through its PAC. A PAC, even one controlled by a

¹ Rules of the Assembly and Senate may impose additional restrictions on when contributions may be accepted by Legislators and when a Legislator may hold a fundraising event.

² Partisan state offices are those of the governor, lieutenant governor, secretary of state, state treasurer, attorney general, state senator, state representative to the assembly, and district attorney [§5.02(23)].

lobbying principal may contribute to a candidate at any time, including an in-kind contribution and may be reimbursed by a principal for the fair market value of supplies and services the PAC furnishes to a campaign committee.

PAC CONTRIBUTIONS AND ACTIVITIES – AT ANY TIME

- **Contributions from Political Action Committees (PACs).** A PAC (even one controlled by an organization that employs a lobbyist), may contribute to a candidate's campaign as long as the committee is appropriately registered with the Government Accountability Board and the contribution does not exceed the limit imposed by campaign finance laws.
- **Sponsoring a fundraising event for a candidate.** Unless otherwise restricted by a rule or policy of the Senate or Assembly, a PAC (even one controlled by an organization that employs a lobbyist) may sponsor a fundraising event for a candidate at any time.

CAMPAIGN ACTIVITIES BY LOBBYISTS – AT ANY TIME

- **Endorsements.** A lobbyist may endorse a candidate or lend his or her name as a supporter or sponsor of a campaign event, including a fundraising event.
- **Advice to others.** A lobbyist, as a volunteer, may advise or urge others to contribute to a candidate.
- **Professional services.** A lobbyist may not, at any time, provide services (whether or not for compensation) to a candidate for any state office or a state official running for any office for which the lobbyist would normally charge a fee, such as legal, accounting, computer, or consulting services. (This is because personal services for a political purpose are excluded from the definition of a "contribution" but nonetheless are something of pecuniary value and thus prohibited by the lobbying law).
- **Uncompensated personal services.** A lobbyist may furnish uncompensated personal services (e.g., distributing yard signs, stuffing envelopes, going door-to-door and bookkeeping *provided the lobbyist does not charge a fee to others for similar work*) to candidates.
- **Attending a fundraising event.** A lobbyist may attend a fundraising event at any time, but may not make a personal contribution at such event except during permitted times.
- **Contributions to self or family.** A lobbyist may make a campaign contribution to the lobbyist's own campaign or to the campaign of the lobbyist's spouse, certain relatives (Wis. Stats. §13.62 (12g)), and members of the lobbyist's household.
- **Contributions to PACs and legislative campaign committees.** A lobbyist may make a personal contribution or convey a PAC, conduit or other's campaign contribution at any time to a political action committee, legislative campaign committee, political party, or the campaign committee of a candidate who neither holds nor who is seeking election to a partisan state office.
- **Contributions to conduits.** A lobbyist may deposit money into a conduit account at any time, but may make a contribution to a partisan elected official or candidate for partisan elective state office through a conduit account only during permitted times.

Legal references: §13.625, *Wisconsin Statutes*; *Barker, et al. v. State of Wisconsin Government Accountability Board*, 841 F. Supp. 255 (1993); 1996 Wis Eth Bd 5.

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FREQUENTLY ASKED QUESTIONS

DATE: Draft

SUBJECT: Lobbyist campaign contributions

Lobbyists furnishing campaign contributions to candidates

Q. When may a lobbyist furnish a personal campaign contribution from the lobbyist's own funds to a candidate?

A. To a candidate for partisan state office (or a partisan elected state official running for any office) between April 15 and the general election, except as noted below. To a candidate for any other office (as long as the candidate is not currently a partisan elected state official) at any time.

Q. Are there additional restrictions for furnishing a personal campaign contribution from the lobbyist's own funds to a legislative candidate?

A. Yes. A lobbyist may furnish a personal campaign contribution to a candidate for the Legislature (whether an incumbent or non-incumbent) after April 15 but only after the Legislature has concluded its final floor period. This "window" for furnishing a contribution closes during any special or extraordinary session.

Q. Do these additional restrictions apply to a Legislator running for another partisan office?

A. No, only the April 15 restriction applies. The additional restrictions above only apply to candidates for legislative office.

Q. When may a lobbyist furnish a PAC or conduit contribution to a candidate?

A. A lobbyist may furnish a PAC or conduit contribution to a candidate running for any office at any time.

Q. What does "furnishing" mean?

A. "Furnishing" means to deliver or convey, in person or by writing, or by signing a contribution check.

Q. When may a lobbyist and candidate participate in discussions about PAC or conduit contributions?

A. At any time.

Q. When may a PAC furnish a campaign contribution to a candidate?

A. At any time.

Q. Even if the PAC is controlled by a lobbying principal?

A. Yes.

Q. When may a conduit furnish a campaign contribution to a candidate?

A. At any time, unless the contribution is from a lobbyist's personal funds. If it is from a lobbyist, all the timing restrictions on a lobbyist furnishing a personal contribution apply.

Q. What services may a lobbyist furnish to a candidate apart from furnishing a campaign contribution?

A. A lobbyist may endorse a candidate, be listed as a sponsor of a fundraising event, and provide uncompensated personal (non-professional) services to a campaign.

Q. When may a lobbyist furnish a contribution to a PAC, political party, or legislative campaign committee?

A. At any time. The lobbyist may furnish either a personal contribution or contributions from a PAC or conduit.

Q. May a lobbyist arrange a fundraising event for a legislator's personal campaign committee?

A. Yes, provided it is as a volunteer or the lobbyist's time is reimbursed through a PAC.

Candidates soliciting campaign contributions from lobbyists

Q. When may a candidate ask a lobbyist to furnish a personal campaign contribution from the lobbyist's own funds?

A. During the time during which the intended recipient may accept such a personal contribution from a lobbyist.

Q. When may a candidate ask a lobbyist to furnish a PAC or conduit contribution?

A. At any time.

Q. May a candidate ask a lobbyist for a non-lobbyist contact from whom the candidate may request a PAC or conduit contribution?

A. Yes.

Q. May a candidate ask a lobbyist to convey information about a fundraiser to others?

A. Yes.

Q. May a candidate send an invitation to a fundraiser to a lobbyist?

A. Yes, but if the invitation is sent outside of the "window" it should specify that it is not a solicitation of a lobbyist's personal contribution.

Q. May a legislative campaign committee invite a lobbyist to a fundraiser for the legislative campaign committee?

A. Yes, but neither a legislator nor a legislative employee may solicit a personal campaign contribution from a lobbyist except during permitted times, even if it is for a legislative campaign committee or a PAC.

Q. May a legislative campaign committee's employee solicit contributions to the legislative campaign committee?

A. Yes. Statutes do not prevent a person not employed by the Legislature but employed by any of the four legislative campaign committees to solicit a lobbyist for a contribution to the legislative campaign committee at any time.

Q. May a lobbyist arrange a fundraising event for a legislative campaign committee?

A. Yes, a lobbyist may make arrangements for and obtain potential contributors for a fundraising event for a legislative campaign committee.

Q. May a lobbyist ask a candidate for advice about where to direct campaign contributions?

A. Yes. Statutes do not prevent a candidate's replying to a communication from a lobbyist asking who should be the recipients of PAC or conduit contributions.

