

# State of Wisconsin\Government Accountability Board

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JUDGE THOMAS H. BARLAND  
Chair

KEVIN J. KENNEDY  
Director and General Counsel

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## Wisconsin Government Accountability Board

212 East Washington Avenue

Madison, Wisconsin

August 2, 2011

9:30 a.m.

### Open Session Minutes

<u>Summary of Significant Actions Taken</u>	<u>Page</u>
A. Approved Minutes of Previous Meetings	1
B. Approved Draft Revised Guidance on Central Count Absentee Vote Locations	4
C. Approved Revised Rulemaking Procedures	5
D. Approved Actions Regarding Proposed Rule GAB 1.91	6

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

Staff present: Kevin Kennedy, Nathaniel E. Robinson, Jonathan Becker, Shane Falk, Michael Haas, Ross Hein, Sharrie Hauge and Reid Magney

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

Chairperson Barland called the meeting to order at 9:30 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. Approval of Minutes of Previous Meetings**

##### **June 27, 2011 Teleconference Meeting – Open Session**

**MOTION:** Approve the Open Session minutes of the teleconference meeting of June 8, 2011. Moved by Judge Nichol, seconded by Judge Cane. Motion carried unanimously.

## **D. Public Comment**

**Grant Petty of Madison** appeared on his own behalf to discuss the public's perception of election integrity. He urged the hand-counting of ballots, and said anyone who opposes hand-counting is opposed to democracy itself.

**Barbara With of La Pointe** appeared on her own behalf to discuss her observations during the Supreme Court recount, which have been detailed in a complaint filed with the Board. She believes that votes have been stolen, and that the Board is in charge of keeping her vote safe.

**Katy Reeder of Cross Plains** appeared on her own behalf to discuss election integrity. She said a lot was learned about deficiencies in the election process by observing the Supreme Court recount, and urged the Board to follow up with enforcement and accountability.

**Attorney James S. Mueller of Cross Plains** appeared on behalf of Wisconsin Citizens for Election Protection, which he said was formed after the Supreme Court recount. He said election fraud may or may not have happened, but there is a public perception that it could happen.

**Mary Ann Hanson of Brookfield** appeared on her own behalf to comment on the Board staff's proposed guidance on central counting of ballots. She said voting twice is a felony, and the proposed guidance would make it impossible to prosecute someone for voting twice.

**Darcy Gustavsson of Brookfield** appeared on her own behalf to discuss her observations during the Supreme Court recount in Waukesha County, noting that there were problems with absentee voting. She also objected to the Board's acceptance of possibly fraudulent signatures on recall petitions for Democratic senators submitted by out-of-state circulators.

**Paul Malischke of Madison** appeared on his own behalf to discuss agenda item H regarding Senate Bill 116 which would move the September Partisan Primary to August. He said the bill has been amended to undercut important protection against municipalities moving polling places by changing notice requirements from 60 to 30 days.

**Andrea Kaminski of Madison** appeared on behalf of the League of Women Voters of Wisconsin Education Fund to update the Board on league activities stationing observers at polling places in recall districts, who will be looking for problems and best practices. LWV will report its findings to the Board.

**Diane Hermann-Brown of Sun Prairie** appeared on behalf of the Wisconsin Municipal Clerks Association to express concerns about time constraints on local clerks and unfunded mandates placed on them. She said some clerks who have not completed the required training were not allowed to leave the office by their municipal boards.

**Bryan Bliss**, no address given, appeared on his own behalf to express concerns about the image of Wisconsin's elections around the world, based upon his monitoring of Internet political chatter.

Chairperson Barland called a recess at 10:31 a.m. The Board reconvened at 10:45 a.m.

#### **E. Background Materials on Electronic Voting Equipment and Ballot Security Issues**

Staff Counsel Michael Haas and Elections Supervisor Ross Hein provided an oral and written report. Haas said the Board and its staff have received a number of communications from Wisconsin Citizens for Election Protection in recent months regarding their desire for hand-counted paper ballots. Board Staff intends to take a systematic approach to incorporating such input in future training and guidance if appropriate; however, staff has not been presented with persuasive evidence that electronic voting equipment in Wisconsin has been or is at risk of being tampered with, either by election officials or by other parties. Board staff believes it is important for the Board to be informed regarding the debate and discussions which have been developing on this topic. No action is required of the Board at this time.

Discussion.

Chairperson Barland expressed concern about what appears to be the lack of verifiable security in electronic voting equipment.

Judge Deininger inquired about whether there were major discrepancies between machine counts and hand counts in the Supreme Court recount.

Michael Haas said there were not major discrepancies, and the Board staff had a procedure in place to review vote totals from a reporting unit that varied by 10 or more votes. Ross Hein noted that after the recount period, the ballots are open to public inspection, and members of the public can perform their own hand-count audit. The G.A.B. also does post-election audits.

Director Kennedy said that only 23 of the 3,602 reporting units had a change of 10 or more votes, and most changes were due to human error. He said there would have to be a vast conspiracy among non-partisan municipal clerks and partisan county clerks for an election to be manipulated. The G.A.B. has known that the ballot bags need to be changed, and the information gathered from the recount will give staff a good roadmap of changes that need to be made. He noted that there has been nothing brought to the Board's attention indicating election fraud by election officials had occurred.

Chairperson Barland said the Board does follow up on suggestions from the public, but asked for specifics in writing rather than general beliefs based on rumor or incomplete conclusions.

Chairperson Barland called a recess at 11:08 a.m. The Board reconvened at 11:20 a.m.

## **F. Proposed Guidance on Central Count Absentee Vote Locations**

Staff Counsel Shane Falk made an oral and written presentation. He explained that 15 Wisconsin municipalities centrally count absentee ballots as allowed by statutes, but issues can arise when someone who submitted an absentee ballot also votes at the polls. This is permitted as long as the absentee ballot has not been cast (processed and tabulated), but central count makes it more difficult to conduct a reconciliation procedure to ensure that only one of the two ballots are included in vote totals. In one case in Milwaukee, a couple was prosecuted for voting twice. Staff has looked at the issue, has proposed new guidance for municipalities, and is seeking Board approval of the draft, after which there will be further comment from the 15 municipalities and the public prior to formal adoption by the Board.

Discussion.

Chairperson Barland expressed concern that processing central count absentee ballots must be an administrative nightmare. He inquired about efforts to resolve the issue legislatively.

**MOTION:** Approve the draft revised guideline for central count absentee and direct staff to incorporate more specific information on central count absentee processes in the Election Day Manual and G.A.B. training.

**MOTION:** Direct staff to solicit further comments from the current 15 central count absentee municipalities and the public with respect to the draft revised central count absentee guidance and return to the Board at a later meeting to report findings for consideration by the Board, including recommended legislative changes, before formal adoption of the revised guidance, as well as revision of the Election Day Manual and G.A.B. training.

Both motions moved by Judge Cane, seconded by Judge Nichol. Motions carried unanimously.

## **G. Review of County Boards of Canvassers' Minutes from Spring 2011 Statewide Recount**

Staff Counsel Michael Haas and Elections Supervisor Ross Hein provided an oral and written report, based on an analysis of the recount minutes from all 72 counties by Elections Specialist Aaron Frailing. The report is for information only.

Discussion.

## **H. Legislative Status Report**

Staff Counsel Michael Haas provided an oral and written report.

Discussion regarding Mr. Malischke's concerns about Senate Bill 116 and the length of notice municipalities would be required to provide when changing or consolidating polling places from 60 days to 30 days.

Director Kennedy said that currently the time requirements are not uniform, and G.A.B. staff suggested making the time a uniform 30 days because there is often not 60 days prior to a special election. He said emergency situations also arise before a partisan primary or general election in which a municipality must change polling places at the last minute.

## **I. Administrative Rules Status Report**

### **1. Status Report on Pending Administrative Rules**

Staff Counsel Shane Falk made an oral and written report on 2011 Act 21 and 2011 Act 32, which significantly altered the authority of agencies to promulgate administrative rules and also prescribe new rule-making procedures that are a significant change from longstanding procedures.

Discussion.

Judge Nichol expressed strong concern that before the Board can begin study of a new rule it must receive the Governor's approval. He said he considered resigning from the Board in protest, but would not do that to the staff.

**MOTION:** Direct staff to return to the Board at the next meeting with recommendations prioritizing the Board's rule-making with an effort to avoid expiration of pending rules.

**MOTION:** The Board adopts a policy of soliciting information and advice from those that may be affected by a proposed rule-making – solicitations via an email notice directing the recipient to the G.A.B. website for detailed information, with a 10 day deadline to respond to G.A.B., and of only the following for the provided subjects:

1. All clerks for proposed election and campaign finance rules;
2. All campaign finance registrants for proposed campaign finance, ethics and lobbying rules;
3. Top state public officials who have filed a Statement of Economic Interests with the G.A.B. for proposed ethics rules;

4. Registered lobbyists and lobbying principals for proposed lobbying rules;
5. Wisconsin Manufacturer's and Commerce for all campaign finance, ethics, and lobbying rules with a recommendation that it circulates the solicitation to all its members for comment directly to the G.A.B.;
6. Wisconsin Democracy Campaign, League of Women Voters, Common Cause of Wisconsin, Disability Rights of Wisconsin, and the Wisconsin Board for Persons with Developmental Disabilities for proposed elections, campaign finance, ethics, and lobbying rules.

Both motions moved by Judge Vocke, seconded by Judge Deininger. Motions carried unanimously.

**2. GAB 1.28 Relating to Scope of Campaign Finance Regulation**

Staff Counsel Shane Falk made an oral and written report for information only.

**3. GAB 1.91 Relating to Disclosure of Independent Campaign Finance Activity**

Staff Counsel Shane Falk made an oral and written report regarding the status of GAB §1.91 related to independent disbursements. He said the Assembly Committee on Election and Campaign Finance Reform and the Joint Committee for Review of Administrative Rules have both objected to the rule, based on a misunderstanding of what it requires. Staff recommends continuing to communicate with the Legislature and the Governor's office to clarify the purpose of the rule. If they prohibit promulgation of GAB §1.91, staff recommends that the Board adopt a guideline interpreting and applying existing campaign finance statutes and Attorney General J.B. Van Hollen's formal opinion (OAG 05-10) to persons making independent disbursements in the context of and compliance with the *Citizens United* decision.

Discussion about staff's efforts to communicate with the Legislature.

**MOTION:** Direct staff to continue communications with members of the Legislature and the Governor's office to clarify the provisions of s. GAB §1.91, Wis. Adm. Code, in an effort to successfully complete its promulgation.

**MOTION:** Adopt the "Guideline Relating to Person(s) making Independent Disbursements," to be issued in the event that the Legislature and Governor prohibit promulgation of s. GAB §1.91, Wis. Adm. Code.

Both motions moved by Judge Cane, seconded by Judge Deininger. Motions carried unanimously.

## **J. Director and General Counsel's Report**

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

Division Administrator Jonathan Becker, presented an oral and written report, which was included in the Board packet, including information about filing of July 2011 Continuing Reports of lobbying reports for the first six months of the 2011-2012 legislative session. He also reporting on ongoing efforts to rebuild the Lobbying website and revamp the pricing structure of the Focus lobbying reports.

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

Written report from Division Administrator Nathaniel E. Robinson was included in the Board packet. Mr. Robinson gave an oral presentation, and discussed the Voter Photo ID Law spending plan which was approved by the Joint Committee on Finance, as well as other division activities in planning for implementation of the new law.

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

Written report from Kevin J. Kennedy, Sharrie Hauge and Reid Magney was included in the Board packet. Director Kennedy noted the incredible amount of work Sharrie Hauge and her team have done, including the fiscal year close-out and Contract Sunshine.

Judge Barland inquired about the status of Contract Sunshine in light of the requirement in the budget bill for the Department of Administration to establish a spending transparency website. Director Kennedy said responsibility rests with DOA, and that staff will be meeting soon with the Legislative Audit Bureau to review preliminary findings of their audit of the Contract Sunshine Act.

Chairperson Barland called a lunch recess at 12:50 p.m. The Board reconvened at 1:21 p.m.

## **K. Closed Session**

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

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

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

Motion carried.

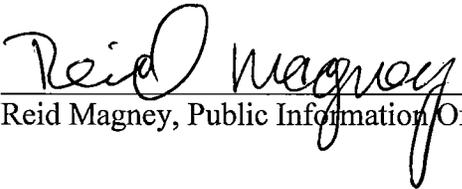
**L. Adjourn**

The Board adjourned in closed session at 4:50 p.m.

####

The next regular meeting of the Government Accountability Board is scheduled for Monday, September 12, 2011, at the G.A.B. offices located at 212 East Washington Avenue, Third Floor, in Madison, Wisconsin beginning at 9:30 a.m.

August 2, 2011 Government Accountability Board meeting minutes prepared by:

  
Reid Magney, Public Information Officer

August 30, 2011

August 2, 2011 Government Accountability Board meeting minutes certified by:

  
Judge Gerald Nichol, Acting Board Secretary

September 12, 2011