

Meeting of the Board  
Friday, April 10, 2015  
9:00 A.M.

Agenda  
Open Session

Teleconference Meeting

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

**Friday, April 10, 2015**

**9:00 A.M.**

**Page**

- A. Call to Order**
- B. Director's Report of Appropriate Meeting Notice**
- C. Review of Draft Report to Joint Legislative Audit Committee on Compliance with LAB Recommendations** **2**
- D. Administrative Rules**
  - 1. Report on Proposed Emergency Rule related to Use of Technical College IDs for Voter Identification** **65**
- E. Per Diem Payment**
- F. Director's Report**
- G. Closed Session**

19.85 (1) (g)      The Board may confer with legal counsel concerning litigation strategy.

19.851              The Board's deliberations concerning investigations of any violation of the ethics code, lobbying law, and campaign finance law shall be in closed session.

The Government Accountability Board has scheduled its next meeting for Wednesday, April 29, 2015 at the Government Accountability Board offices, 212 East Washington Avenue, Third Floor in Madison, Wisconsin beginning at 9:00 a.m.

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



# State of Wisconsin\Government Accountability Board

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JUDGE GERALD C. NICHOL  
Chair

KEVIN J. KENNEDY  
Director and General Counsel

April 15, 2015

The Honorable Robert Cowles, Co-Chair  
Joint Legislative Audit Committee  
Room 118 South, State Capitol  
Madison, WI 53702

The Honorable Samantha Kerkman Co-Chair  
Joint Legislative Audit Committee  
Room 315 North, State Capitol  
Madison, WI 53702

Subject: Government Accountability Board Audit Progress Report

Dear Co-Chairs Cowles and Kerkman:

## **Introduction**

The Government Accountability Board (G.A.B.) is pleased to report on its progress in addressing the findings and recommendations of the Legislative Audit Bureau's Report 14-14, issued in December 2014. As recommended by the Legislative Audit Bureau (LAB), we are reporting to the Joint Legislative Audit Committee (JLAC) by April 15, 2015, on our progress to implement its recommendations.

We have embraced the LAB audit because we know that, like any organization, we can always improve and build on our past performance. The audit report provided the Board with an unbiased appraisal of areas where the agency could improve its operations.

In the months since the LAB issued its report, the Board and its staff have moved quickly to implement its recommendations. We have corrected the problems that LAB identified, answered the questions LAB raised, and addressed the issues LAB identified that would require changes in policy or state statutes.

On March 4, 2015, the Board met in a public meeting to review and discuss the staff's progress implementing the LAB recommendations. The Board reviewed each recommendation, and where appropriate, voted to approve the staff's proposed actions or provided alternative direction to staff.

The audit report contains 35 specific recommendations, not counting recommendations to report progress to JLAC. For this report, the Board has numbered the recommendations in their original order; however, similar recommendations are grouped together. Our report contains a page reference for each recommendation's original page number in the LAB report.

The only recommendations related to existing statutory requirements that the Board has been unable to complete are those involving administrative rules and completing a review of specific voter records maintained by local clerks, which are ongoing processes. Given the extraordinary demand on agency resources, administrative rulemaking was given a much lower priority in order to respond effectively to immediate and pressing demands and because of two long periods of vacancy in the agency's two staff counsel positions. We are pleased to report that a new staff counsel joined the agency on March 23, and he will be focused on promulgating, amending and repealing administrative rules identified in the report.

Some of the audit's recommendations related to possible policy changes to be considered by the Legislature. Other recommendations contained a gap between the proposed action and the stated objective, such as the implication that the G.A.B. could resolve certain voter eligibility issues simply by reviewing data in the Statewide Voter Registration System. In those instances, this report includes additional background information regarding options for the Legislature to consider and additional actions and resources which would be required to achieve the LAB recommendation.

## **1. Election Administration Recommendations**

### **a. Clerk Voter List Maintenance Responsibilities**

The LAB Audit Report contains three recommendations related to municipal clerks' responsibilities for voter list maintenance, and how the G.A.B. monitors clerks' compliance in the Statewide Voter Registration System (SVRS).

#### **Recommendation 3, Page 26**

*Regularly monitor Statewide Voter Registration System records to identify and then contact clerks who have not mailed letters to registrants whose personally identifiable information did not match information held by other agencies.*

#### **Discussion**

LAB has recommended a procedure that is not mandated in state statutes, and would require the G.A.B. to make changes to SVRS and require clerks to take on additional duties. The approach proposed by the G.A.B. is to provide clerks the ability to track contacts with voters regarding data matching issues in SVRS, regardless of whether the contact is initiated within SVRS using an available form letter or in some manner independent of SVRS.

SVRS provides clerks with a form letter to send to voters whose personally identifiable information does not match information held by the Division of Motor Vehicles or the Social Security Administration. The matching process is mandated by federal and state laws, and is intended to maintain and improve the accuracy of voter registration data in SVRS. However, clerks are not required to use the SVRS form letter, and SVRS does not contain functions to track other contacts clerks make with voters when there is a non-match. Many local clerks find it more efficient and effective to contact voters by phone or email in specific cases to resolve data matching questions.

The Board or Legislature may mandate that clerks document these voter contacts by tracking them in SVRS. Designing a means for tracking contacts in SVRS which are not generated in SVRS will require IT development of new data fields in SVRS, updates to materials and manuals, additional clerk training and additional end user costs related to clerks' use of new technology in SVRS.

G.A.B. estimates its one-time costs for IT development and clerk training efforts at \$9,440. We estimate the annual cost to municipal clerks for updating voter records in SVRS at \$50,289.

A detailed fiscal analysis related to this recommendation is contained in Appendix A.

### **Recommendation 8, Page 32**

*Regularly monitor Statewide Voter Registration System records to contact clerks who have not mailed letters to individuals whose voter registration records have been inactivated because of ongoing felony sentences.*

### **Discussion**

When a person is convicted of a felony, he or she is advised by the sentencing judge of the loss of voting rights, as well as by the Department of Corrections. LAB has recommended a procedure that is not mandated in state statutes, and would require the G.A.B. to make changes to SVRS and require clerks to take on additional duties. The approach proposed by the G.A.B. is to provide clerks the ability to track written notification to individuals whose voter registrations were inactivated in SVRS as a result of an ongoing felony sentence regardless of whether the notification is generated in SVRS or by other means.

SVRS provides clerks with the option to generate a notification letter to voters whose registration has been inactivated as a result of a confirmed match between the individual's voter record and felon records provided by the Department of Corrections. Information regarding the notification letters generated in SVRS is logged and may be reviewed by G.A.B. staff in SVRS. Currently, sending such a notification letter is not required, and SVRS is not designed to allow G.A.B. staff to monitor clerks' contacts with voters regarding their disqualification as a felon when that contact is by some means other than the SVRS form letter.

The Board or Legislature may mandate that clerks notify voters whose registration has been inactivated due to a felony conviction, and to document these voter contacts by tracking them in SVRS. Designing a means for clerks to track such contacts in SVRS that are not generated in SVRS will require new IT development, updates to materials and manuals, additional clerk training and additional end user costs related to the clerk's use of new technology in SVRS.

G.A.B. estimates its one-time costs for IT development and clerk training efforts related to this recommendation to be \$4,720. We estimate the annual cost to municipal clerks for updating voter records in SVRS at between \$1,792 and \$4,800, depending on the annual number of felon voter matches.

A detailed fiscal analysis related to this recommendation is contained in Appendix B.

**Recommendation 9, Page 32**

*Review information for the individuals LAB identified whose voter registration records may have been erroneously inactivated and ensure that the relevant clerks have notified the individuals.*

**Discussion**

G.A.B. staff contacted the municipal clerks or their staff regarding the two voter records that required further investigation to determine if the matches were indeed correct. The clerks cannot definitively conclude whether these two voters were notified of their status change. G.A.B. staff has advised the clerks to contact the voters and advise them that their record had been erroneously inactivated. If the voters still reside at the same address, the voter records will be changed to active.

**b. G.A.B. Voter List Maintenance Responsibilities**

The LAB Audit Report contains five recommendations related to G.A.B. voter list maintenance responsibilities.

**Recommendation 5, Page 29**

*Review the records of the deceased individuals LAB identified and determine whether any of these individuals' votes were inappropriately cast in FY 2012-13 elections.*

**Discussion**

In response to this recommendation, the G.A.B. conducted a comprehensive review of the identified deceased individuals whose votes were recorded for an election which occurred after the individual's date of death. The LAB identified 88 individuals for further review, including:

- 55 deceased voters for whom SVRS provided insufficient information to determine when clerks issued and received absentee ballots
- 29 deceased voters who died after clerks issued absentee ballots but before clerks received completed absentee ballots, thus indicating that the individuals may have completed the issued ballots before they died
- four deceased voters who may have died before clerks issued them absentee ballots.

G.A.B. staff contacted clerks in 66 municipalities to gather information about these individuals and the status of the ballots which were recorded as being cast in their names. The review and analysis is not yet complete due to the need to obtain additional election records from municipal and county clerks. G.A.B. staff has determined that four of the ballots which were recorded as being cast in the name of deceased voters were in fact data entry errors as the ballot should have been attributed to another voter. In 26 cases, the primary election records requested by the G.A.B. had been destroyed by the municipal clerk pursuant to Wisconsin law, and further inquiries are being made to determine if other

records may still be retained by either the municipal or county clerk. In two cases the municipal clerk had correctly advised election inspectors to reject the ballot of the deceased individuals but the ballots were nevertheless erroneously counted by the inspectors. A detailed analysis of this review is attached as Appendix C. G.A.B. staff intends to continue its inquiry into the remaining unresolved cases and provide an updated report to the Board at a public meeting.

**Recommendation 6, Page 29**

*Review Statewide Voter Registration System records after each election in order to identify and investigate instances in which votes were cast in the names of individuals who died before Election Day.*

LAB has recommended a procedure that is not mandated in state statutes, and would require the G.A.B. to make changes to its IT systems and require clerks to take on additional duties. The approach proposed by the G.A.B. is to develop a tracking system within the G.A.B.'s existing Microsoft Dynamics CRM system. The new system would be modeled after the system that the G.A.B. currently uses to conduct the post-election felon audit required under Wis. Stat. § 6.56(3). Due to the significant resources required and impact upon the operations of the G.A.B. as well as local clerks, the Board recommends that this proposal be implemented only if it is adopted by the Legislature as a statutory mandate, similar to the felon audit.

After clerks have entered voter participation into SVRS for an election, the G.A.B. would compare voter participation recorded in SVRS to death records provided by the Wisconsin Department of Health Services (DHS) for potential matches. The potential matches would be displayed on a website that is accessible to G.A.B. staff and clerks. If a potential match is found the G.A.B. would notify clerks by email of the potential match between a death record and a voter in the election. The clerk would log into the website and review the matching records to determine whether the deceased individual actually voted in the election, or if the voter is not the person who is deceased.

If the clerk determines that a vote was cast in the deceased voter's name, the clerk would provide the G.A.B. with copies of supporting documents, including signed copies of the poll book, absentee ballot certificate envelopes, absentee ballot request documents and voter registration forms. Electronic copies of the documents would be saved to the website by the clerk or with the assistance of the G.A.B. After the G.A.B. has received the supporting documents, the G.A.B. would refer the name of the individual who died and appears to have voted to the appropriate district attorney for investigation and possible prosecution. The referral would include copies of the supporting documents supplied by the clerk and G.A.B. staff notes.

G.A.B. staff would use the system to track any actions taken by the district attorneys as the result of a referral made from the post-election audit of death records. G.A.B. staff would provide semi-annual reports to the Board regarding actions taken by district attorneys. The reports will include name of the individual, the county where the referral was made, the referral date, and any information on actions taken by the district attorney.

It is important to note that investigations and prosecutions resulting from an audit of death records likely would be more complicated than referrals resulting from the voter felon audit. The felon audit typically results in investigations focused on the eligibility or disqualification of the voter, and the fact that the individual actually voted is often not contested. In contrast, investigations resulting from an audit of death records would need to establish who might have had access to the deceased individual's ballot and actually cast the ballot in the name of the deceased individual. In cases in which the ballot was counted despite the intervening death of the individual who cast the ballot, no crime or prosecution would result absent a fraudulent act on the part of either an election official or another party.

G.A.B. estimates its one-time costs for IT development related to this recommendation to be \$39,280. We estimate the annual cost to the G.A.B. and municipal clerks for conducting a post-election death record audit to be \$22,301.45. The total five-year cost estimate related to this recommendation is \$150,787.25.

A detailed summary of the steps necessary to implement this recommendation and fiscal analysis related to it is attached as Appendix D.

### **Recommendation 11, Page 33**

*Complete in a timely manner the statutorily required reviews to identify individuals with ongoing felony sentences who may have voted.*

#### **Discussion**

Board staff has completed all post-election felon audits. This includes all of the post-election felon audits which were completed by August 2014 before the audit report was issued, as well as the audits for the August 14, 2014 Partisan Primary and November 4, 2014 General Election. Board staff has also closed all outstanding cases either by resolving the data matches or referring cases to district attorneys for all elections. We continue to receive updates from district attorneys on the progress of each referral.

The technological innovations developed by agency staff to address data quality issues and concerns of district attorneys have enabled the agency to timely complete the post-election felon audit for all elections, immediately after the data entry was completed by local election officials. The audit for the 2014 General Election was conducted approximately 90 days after the election and prior to the 2015 Spring Election and the felon audit for the Spring Primary was completed 40 days after that election. All referrals to district attorneys resulting from these audits have been made. This is a dramatic improvement over the prior process both in timeliness and in accuracy.

### **Recommendation 12, Page 33**

*Report to the Government Accountability Board on any actions taken by district attorneys against the 33 individuals who may have voted while serving felony sentences.*

## **Discussion**

Statutes require district attorneys to report to the Board concerning actions taken on matters referred, including referrals made as part of the post-election felon audit process. Wis. Stat. § 5.05 (2m)(c)18 requires that a report shall be made no later than 40 days after the date of the referral. If the matter is not disposed of during that period, the district attorney shall file a subsequent report at the end of each 30 day period following the filing of the initial report until final disposition of the matter. However, the staff's experience has been that district attorneys do not consistently provide such reports to the Board.

At the regular meetings of the Government Accountability Board, staff has reported on the actions taken by district attorneys against all of the individuals who may have voted while serving felony sentences in elections held since February 16, 2010. This number includes the 33 individuals referenced in the LAB report.

At its March 4, 2015 meeting, the Board directed staff to provide semi-annual reports to the Board regarding actions taken by district attorneys related to referrals resulting from the post-election felon audit process. The report will include the name of individual, the county where the referral was made, the referral date and any information regarding actions taken by the district attorney.

An example of the status report provided to the Board, with names of the individuals redacted, is attached as Appendix E.

## **Recommendation 13, Page 33**

*Work with the Department of Corrections to improve the accuracy of information regarding individuals serving felony sentences, including by ensuring that individuals convicted of misdemeanors are not erroneously included in the information that is electronically provided to the Statewide Voter Registration System.*

The Board is complying with this recommendation through its ongoing work with Department of Corrections to improve data quality issues. This was a key element of concern leading to the development of the new felon audit process in SVRS. The agency's work with the DOC has improved the accuracy of information regarding individuals serving felony sentences provided to SVRS and created significant cost efficiencies for both agencies. The DOC's new offender tracking system implemented in January 2015 has improved data quality, better preventing individuals convicted of misdemeanors from being erroneously included in the felon records which DOC provides to SVRS.

In addition to the technological improvements, G.A.B. and DOC staff continually work together to identify and improve the accuracy of information regarding individuals serving felony sentences. This includes changes to the manual data entry processes at DOC. For example, after G.A.B. identified an individual who was convicted of an attempted misdemeanor and erroneously included on the list provided by DOC as a convicted felon, DOC implemented a process of highlighting the "attempt" notation on the Judgment of Conviction in order to prevent data entry errors in the future. This notation process will help reduce the likelihood that an individual will be entered as being convicted of a related felony rather than the misdemeanor attempt charge. G.A.B. staff will continue to work

with DOC staff to identify data entry errors and establish procedures to reduce data entry errors.

## **2. Ethics & Accountability Administration Recommendations**

### **a. Settlement Offer Schedules**

The LAB Audit Report contains five recommendations related to settlement offer schedules for campaign finance and lobbying law violations and late filings of Statements of Economic Interests.

#### **Recommendation 17, Page 49**

*Present to the Government Accountability Board for its approval written procedures specifying penalty amounts to assess on campaign finance entities that do not pay their annual filing fees by January 31.*

#### **Recommendation 19, Page 52**

*Adhere to the Government Accountability Board's February 2008 penalty schedule for assessing penalties on campaign finance entities that do not file statutorily required campaign finance reports on time.*

#### **Recommendation 22, Page 54**

*Adhere to the Government Accountability Board's February 2008 penalty schedule when assessing penalties for campaign contributions in violation of statutory limits.*

#### **Recommendation 29, Page 64**

*Adhere to the Government Accountability Board's February 2008 penalty schedule when assessing penalties for violations of the lobbying law.*

#### **Recommendation 41, Page 73**

*Adhere to the Government Accountability Board's February 2008 penalty schedule when assessing penalties on individuals who do not file statements of economic interests on time.*

### **Discussion**

Because of their similarity, these five recommendations will be discussed together. The penalty settlement schedules approved by Government Accountability Board in 2008 have not always been well-tailored to serve as a tool to meet the Board's goals of ensuring compliance with filing deadlines and substantive requirements to provide timely and accurate campaign finance information to the public. Following the issuance of the LAB Audit Report in December 2014, the Board directed staff to adhere to the 2008 settlement schedules until they could be revised and formally approved. The Board directed staff to prepare revised schedules of settlement amounts. The Board approved revised settlement schedules for lobbying law violations and late Statements of Economic Interests at its

March 4, 2015 meeting. The Board approved a revised settlement schedule for campaign finance law violations at a special meeting on March 25, 2015. This new schedule included settlement amounts for late filing fees, late campaign finance reports, contributions exceeding legal limits and several other common violations. Board staff will follow the updated schedules until the Board approves any further revisions.

The new settlement schedules are attached as Appendix F.

#### **b. Tracking and Reporting Enforcement Actions**

The LAB Audit Report contains four recommendations related to tracking and reporting of Ethics & Accountability Division enforcement activity.

##### **Recommendation 20, Page 52**

*Report to the Government Accountability Board at least quarterly on all campaign finance reports that were not submitted on time, whether a penalty was assessed for each late report, the amount of each assessed penalty, and the amount of each penalty that was paid and unpaid.*

##### **Recommendation 23, Page 54**

*Track centrally all penalties assessed for violations of campaign finance contribution limits and use the information to report to the Government Accountability Board at least quarterly on all violations of campaign finance contribution limits, whether a penalty was assessed for each violation or a written warning was provided in lieu of a penalty, the amount of each assessed penalty, and the amount of each penalty that was paid and unpaid.*

##### **Recommendation 30, Page 64**

*Track centrally all penalties assessed for violations of lobbying laws, all penalties waived and the reasons for waiving them, and all written warnings provided in lieu of assessing penalties and the reason for each written warning and use the information to report to the Government Accountability Board at least quarterly on the number of violations of each lobbying law, whether a penalty was assessed for each violation, the amount of each assessed and waived penalty, and the amount of each penalty that was paid and unpaid.*

##### **Recommendation 40, Page 73**

*Track centrally how often they assess penalties on individuals who have not filed statements of economic interests on time and the amounts of the assessed penalties and use this information to report to the Government Accountability Board at least quarterly on the extent to which statements were not filed on time, whether a penalty was assessed for each violation, the amount of each penalty assessed, and the amount of each penalty that was paid and unpaid.*

## **Discussion**

Because of their similarity, recommendations 20, 23, 30 and 40 will be discussed together. To enable better tracking and to provide the Government Accountability Board with improved reports about late filings of campaign finance, lobbying and economic interest statements, the Board's staff has developed a centralized tracking system for complaints and investigations and for auditing campaign finance, lobbying and SEI reports using Microsoft SharePoint. Reports will be provided to the Board at its regular meetings.

### **c. Advice**

The LAB Audit Report contains two recommendations related to Ethics & Accountability advice issued by the G.A.B.

#### **Recommendation 25, Page 56**

*Publish on the Government Accountability Board's website summaries of all confidential advisory opinions issued related to compliance with campaign finance laws.*

#### **Recommendation 36, Page 67**

*Publish on the Government Accountability Board's website summaries of all confidential advisory opinions issued related to compliance with lobbying laws.*

## **Discussion**

Summaries of all confidential advisory opinions of the Government Accountability Board related to campaign finance laws and lobbying laws have been published on the agency's website. They may be found at <http://gab.wi.gov/about/opinions/campaign-finance> and <http://gab.wi.gov/about/opinions/lobbying>. The Board has adopted a policy of posting summaries of formal opinions within 10 business days after issuance by the Board.

### **d. Lobbying**

The LAB Audit Report contains four recommendations related to Lobbying enforcement and reporting.

#### **Recommendation 27, Page 59**

*Determine whether to revoke the existing licenses of lobbyists who are delinquent in paying state taxes or court-ordered child or family support payments.*

## **Discussion**

Currently, when a lobbyist applies for a lobbyist license, the application is matched against Department of Revenue (DOR) and Department of Children & Families (DCF) databases

to identify whether the applicant is delinquent in payments to the state or in child support. G.A.B. staff has now implemented procedures with DOR and DCF to regularly recheck throughout the legislative session the continuing ability for a lobbyist to hold a license.

Beginning May 1, 2015, G.A.B. staff will rerun the Social Security Numbers of licensed lobbyists each month to ensure that no DOR or DCF issues have occurred in the preceding 30 days.

### **Recommendation 31, Page 59**

*Prohibit principals that have not filed timely semiannual expense statements from allowing lobbyists to lobby on their behalf or request that the Legislature modify this provision.*

#### **Discussion**

Wis. Stat. § 13.68(6) provides that if a lobbying principal fails to timely file a complete expense statement under this section, the Board may suspend the privilege of any lobbyist to lobby on behalf of the principal. The G.A.B. has expressed a concern about the constitutionality of prohibiting a principal to lobby if it has filed a late semiannual expense statement. G.A.B. will be requesting an opinion from the Attorney General regarding the constitutionality of this statute. G.A.B. staff will report the outcome of that request to the Board.

As a practical matter, few statements are filed late and, of those principals that do report late, almost all are filed within days of the statutory due date. Agency staff sends an email notice within one business day to any lobbying principal that has not timely filed an expense report, informing the principal it may be subject to a civil forfeiture if it does not immediately comply. Staff attempts to personally contact each principal who has failed to file within the next several business days following the filing deadline. After a week, staff sends a letter which contains the settlement schedule approved by the Board. The suspension provision has been incorporated into the notices.

Overall, the agency enjoys very good levels of filing compliance from lobbying principals. The Wisconsin lobbying community is largely diligent about its reporting requirements. When a principal is late by a week or more in filing its semiannual expense statement, it is most often an out-of-state organization that had very little or no lobbying activity in the filing period. Many such organizations register to lobby in Wisconsin in the spirit of over-compliance, meaning they do not actually meet the criteria to be registered principals in this state. While the agency does sometimes experience recalcitrance from a few repeat offenders, those principals are very much the exception. Principals are also subject to the Board's settlement offer schedule which is attached as Appendix F.

### **Recommendation 33, Page 65**

*Include in the weekly reports to the Legislature while the Legislature is in session all statutorily required information about lobbying activities or request that the Legislature modify statutes to allow these reports to exclude information that is publicly available on the Eye on Lobbying website.*

## **Discussion**

Wis. Stat. § 13.685 requires the G.A.B. to report to the Legislature on a weekly basis all newly licensed lobbyists, the principals they represent and the general areas of legislative and administrative action which is the object of their lobbying. Reports to the Legislature had been submitted in the form agreed to by the Chief Clerks. The reports contained a link to all required information which is now found on the G.A.B.'s website. The Board has now changed its report to include all required information without the need to refer to the website.

### **Recommendation 34, Page 65**

*Include in the biennial reports to the Legislature all statutorily required information.*

## **Discussion**

Wis. Stat. § 13.685 (7) requires the G.A.B. to include in its biennial report a summary of the expense statements it has received from lobbying principals and a summary of statements filed by state agencies identifying their legislative liaisons. This information is available on the Board's website, but was inadvertently absent in prior reports. The required information will be included in all future biennial reports.

### **e. Statements of Economic Interests**

The LAB Audit Report contains three recommendations related to the timely filing of Statements of Economic Interests.

### **Recommendation 38, Page 73**

*Develop written policies for granting individuals extensions to the deadline for filing statements of economic interests and comply with statutes by setting forth in writing the reasons for granting each extension.*

### **Recommendation 39, Page 73**

*Promptly notify the Department of Administration and the employing agency when an individual does not file a statement of economic interests on time.*

### **Recommendation 42, Page 73**

*Present to the Government Accountability Board for its approval policies indicating when staff should not attempt to collect penalties that have been assessed on individuals who do not file statements of economic interests on time.*

## **Discussion**

All three LAB recommendations regarding the timely filing of statements of economic interests are closely related, and will be addressed together. Policies for granting extensions and discontinuing attempts to collect penalties are included in the revised

settlement schedule which the Government Accountability Board approved at its March 4, 2015 meeting, which is attached as Appendix F.

The settlement schedule includes written procedures for extensions and waivers. It sets forth in writing reasons for granting requested extensions of 15 days or less, and requires that requests for longer extensions be presented to the Board. The revised schedule requires staff to notify an individual's employing agency after 30 days of delinquency.

The settlement schedule specifies that Board staff may forgive penalties and cease enforcement if an official has left his or her position with the state. Any other deviations from the enforcement schedule require approval of the Board.

### **3. Administrative Rules Recommendations**

The LAB Audit Report contains five recommendations related to Administrative Rules. In general, promulgating, amending and repealing administrative rules became a resource issue for the Board and staff during the time period covered by the audit due to pressing agency business and two extended vacancies in the position of staff counsel. A new staff counsel began work on March 23, and his primary assignment is to bring the agency's administrative rules into compliance with statutes.

#### **Recommendation 1, Page 22**

*Promulgate administrative rules that prescribe the contents of training that municipal clerks must provide to election inspectors and special voting deputies.*

#### **Discussion**

The scope statement for this administrative rule on municipal clerk training has been drafted and will be sent to the Governor in 2015. Then, staff will submit an approved scope statement to the Board for approval within 30 days of written approval from the Governor.

#### **Recommendation 15, Page 34**

*Promulgate administrative rules that specify the responsibilities of clerks for maintaining voter registration records in the Statewide Voter Registration System.*

#### **Discussion**

The scope statement for this administrative rule will be drafted and sent to the Governor in 2015. Then, staff will submit an approved scope statement to the Board for approval within 30 days of written approval from the Governor.

#### **Recommendation 48, Page 92**

*Promulgate all required administrative rules.*

## Discussion

This recommendation refers to seven administrative rules outlined in Table 27 on page 90 of the audit report that had not been promulgated.

- *s. 5.87(2) – Standards for determining the validity of votes cast with electronic voting equipment*

The Board authorized staff to submit a scope statement to the Governor at its meeting on January 13, 2015. The scope statement for this administrative rule will be drafted and sent to the Governor in 2015. Then, staff will submit an approved scope statement to the Board for approval within 30 days of written approval from the Governor.

- *s. 5.905(3) – Security, review, and verification of software used with electronic voting equipment*

The Board authorized staff to submit a scope statement to the Governor at its meeting on January 13, 2015. The scope statement for this administrative rule will be drafted and sent to the Governor in 2015. Then, staff will submit an approved scope statement to the Board for approval within 30 days of written approval from the Governor.

- *s. 6.36(2)(a) – Space and location for a voter’s signature on the poll list*

The G.A.B. believes this rule would be redundant because the requirement is adequately described in statutes. The Board will request that the requirement to promulgate a rule be repealed.

- *s. 7.08(1)(d) – Administer statutory requirements for electronic voting systems*

The scope statement for this administrative rule will be drafted and sent to the Governor in 2015. The scope statement for this administrative rule will be drafted and sent to the Governor in 2015. Then, staff will submit an approved scope statement to the Board for approval within 30 days of written approval from the Governor.

- *s. 7.315(1)(a) – Training that municipal clerks must provide to election inspectors and special voting deputies*

A scope statement has been drafted and will be submitted to the Governor in 2015. Then, staff will submit an approved scope statement to the Board for approval within 30 days of written approval from the Governor.

- *s. 10.01(1) – Election notices that clerks must use to inform the public about elections*

A scope statement will be drafted and submitted to the Governor in 2015. Then, staff will submit an approved scope statement to the Board for approval within 30 days of written approval from the Governor.

- *s. 11.21(17) – Public access channel operators and licensees of public television stations to provide a minimum amount of free time to candidates for state office*

G.A.B. believes this proposed rule may be unconstitutional and will request that this section of the statutes be repealed.

**Recommendation 49, Page 92**

*Remove from the Administrative Code the eight rules that are not in effect because it did not vote to adopt them.*

**Discussion**

The eight administrative rules not adopted by the Board during its review of previous rules of the Elections Board and Ethics Board are:

- *s. GAB 1.29 Referenda-related campaign finance activity*
- *s. GAB 1.41 Mailing campaign finance-related registration statements*
- *s. GAB 1.55 Political campaign reimbursement for using government-owned vehicles*
- *ch. GAB 4 Election observers at polling places*
- *ch. GAB 5 Ballot security*
- *s. GAB 20.01 Procedures for considering complaints filed with GAB*
- *s. GAB 21.01 Communications and documents addressed to GAB*
- *s. GAB 21.04 Payment for transcripts of GAB proceedings*

Repealing obsolete administrative rules has been a low priority for the agency for the reasons stated above related to the delays in promulgating new rules. The agency will proceed with the repeal of these rules.

**Recommendation 50, Page 92**

*Require its staff to report to it regularly on the status of efforts to promulgate administrative rules and remove from the Administrative Code rules that are not in effect.*

Board Members will receive a written status report on the staff's progress in updating administrative rules at each regular Board meeting.

**4. Complaints Recommendations**

The LAB Audit Report contains three recommendations related to complaints which are received by the G.A.B.

**Recommendation 44, Page 87**

*Present to the Government Accountability Board for its approval written policies for considering complaints filed with the Ethics and Accountability Division and the Elections Division.*

## **Discussion**

The audit report identified a lack of thorough documentation of procedures for handling complaints. While the staff has always relied on complaint procedures outlined in the Statutes and in Chapter GAB 20 of the Administrative Code, there was a lack of written internal procedures. Since issuance of the audit report, staff has developed written procedures which were approved by the Board at its March 4, 2015 meeting.

The complaint procedures adopted by the Board are attached as Appendix G.

### **Recommendation 45, Page 87**

*Maintain complete, centralized information about all complaints received and inquiries undertaken, including the resolution of these issues.*

### **Recommendation 46, Page 87**

*Report regularly to the Government Accountability Board on the status and resolution of all inquiries.*

## **Discussion**

Because of their interrelationship, recommendations 45 and 46 will be discussed together.

Since the Board's inception in 2008, the Board's Elections and Ethics Divisions have maintained separate tracking systems for complaints and inquiries. In addition, staff has kept the Board informed about complaints and inquiries in informal ways through oral and written Division reports at Board meetings.

The audit report highlighted the need for better complaint tracking systems and regular reports to the Board. In response, staff has developed an updated and more comprehensive tracking system for complaints and settlements along with a fuller, more transparent series of reports to apprise the Board of the status of this activity. Staff has created and is using a new database which is being used to track all complaint and investigation activities.

At its March 4, 2015 meeting, the Board reviewed and approved an extensive staff report about policies and procedures for considering complaints, maintaining a central database of complaints and reporting on the same to the Board. The Board directed staff to implement the new procedures and provide reports to the Board at each regular meeting which summarizes the status of complaints received by the agency and of its investigations and inquiries.

The staff report on complaint tracking and reporting is attached as Appendix H.

## **Conclusion**

We are proud to report that the Government Accountability Board has successfully addressed most of the recommendations of the Legislative Audit Bureau, and is moving forward on the remaining recommendations related to administrative rules and completing the review of specific

voter records. While the Board and its staff were aware of many of these issues prior to the audit, we appreciate that the audit provided a tool that delineated areas requiring improvement and tracking the agency's progress.

Respectfully submitted,

**Government Accountability Board**

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

Kevin J. Kennedy  
Director and General Counsel

CC: Members, Government Accountability Board  
Legislative Audit Bureau  
Members, Joint Committee on Legislative Audit

Attachments



# Appendix A

Fiscal Analysis for LAB Recommendation –  
Personally Identifiable Information



## **FISCAL ANALYSIS FOR LAB RECOMMENDATION – PERSONALLY IDENTIFIABLE INFORMATION**

### **Description**

The Legislative Audit Bureau (LAB) recommends the Government Accountability Board (G.A.B.) “regularly monitor Statewide Voter Registration System records to contact clerks who may not have mailed letters to registrants whose personally identifiable information did not match information held by other agencies.”

The approach proposed by the G.A.B. is to provide clerks the ability to track forms of voter contact in the Statewide Voter Registration System (SVRS) regardless of whether the contact is initiated within SVRS using the available form letter or if voter contacts are made independent from SVRS.

At this time, the scope of this analysis does not include any costs that would be incurred on an ongoing basis were the G.A.B. to begin monitoring the information as recommended by the LAB but not by the Board. G.A.B. staff has experience with other comparable initiatives in monitoring clerk’s compliance with statutory directives and their reporting of their efforts. That experience clearly demonstrates that a significant investment of G.A.B. staff time and resources on a continuing basis would be required to regularly monitor whether local clerks have contacted voters whose records were inactivated due to an ongoing felony sentence, and to ensure accurate reporting of those contacts.

### **Assumptions**

Checks on personally identifiable information in SVRS are referred to as HAVA Checks. HAVA Checks are performed in SVRS any time a new registration is completed or if any of the following information is changed on an existing voter record: Name, date of birth, driver license number, Social Security Number. SVRS does not maintain all HAVA Check results; only the most recent HAVA Check result is available for each voter record. Therefore, any review of HAVA Check results would only include the most recent result for each voter record.

A completed HAVA check may result in a “No Match” or “Partial Match,” indicating that personally identifiable information in SVRS did not exactly match information for that individual in the database of either the Division of Motor Vehicles or the Social Security Administration. In such cases, municipal clerks are instructed to notify the voter of the discrepancy. To assist clerks with the process, a form letter titled “WI DMV Ping Notification” is available in SVRS. Clerks are not required to use the form letter when notifying the voter and many do not use the form letter in SVRS. In some cases clerks notify the voters via other methods, such as telephone, to share the HAVA Check results and request confirmation of the information provided on the voter registration form.

Only the Ping Notification letters printed from SVRS are logged in the voter history in SVRS. Currently there is no method for tracking voter contact if the contact is made in any way other

than use of the SVRS-provided form letter. Nor does SVRS have any means for tracking the voter response to the notification of a “No Match” or “Partial Match.”

Designing a means for tracking letters in SVRS that are not generated in SVRS would require IT development of new data fields in SVRS, updates to materials and manuals, additional clerk training and additional end user costs related to clerk’s use of new technology in SVRS.

**Fiscal Impact**

IT Development in SVRS

Adding a new letter or other contact tracking component in SVRS would require IT staff time and resources. Additional fields would also be required for tracking voter follow-up as well as the form and date of notification.

Creation of the new SVRS fields would require page design and development as well as defining business rules for the additional fields, testing and implementation.

Design and development is estimated to require approximately 80 hours at a blended rate of \$85 per hour for a total of \$6,800.

Estimated IT Development Cost = \$6,800

Other G.A.B. Staff

Post-development, G.A.B. program staff would be required to complete several tasks, including User Acceptance Testing, updating the SVRS Manual, developing training materials and hosting a webinar. The costs of these tasks are estimated as follows:

<b>TASK</b>	<b># of Staff</b>	<b># of Hours (ea.)</b>	<b>Rate</b>	<b>TOTAL</b>
User Acceptance Testing	2	25	\$33	\$1,650
Update Manual	1	20	\$33	\$660
Develop Training Material	1	8	\$33	\$264
Host Webinar	2	1	\$33	\$66
<b>Total</b>				\$2,640

Estimated G.A.B. Staff Cost = \$2,640

Local Election Officials

The costs to local clerks would vary depending on several factors including whether clerk utilizes the SVRS DMV Ping Letter, whether the clerk works regularly in SVRS, the clerk’s proficiency with SVRS, and clerk and/or staff salary.

Due to the variance of clerk salary, the estimated cost for clerks is based on the average municipal clerk salary (\$59,801) as reported on a survey conducted by the League of Wisconsin Municipalities.<sup>1</sup> The estimated time required for a clerk to open SVRS and make changes to an individual voter record, including selecting a contact type, entering a contact date, and adding notes, is approximately 3.5 minutes. Using these figures, the cost for tracking voter contacts related to HAVA Check results is \$1.68 per voter contact.

According to page 26 of the LAB audit report, for voters who registered during the audit period (FY 2012-2013), 39,232 voter records contained information that was not exactly matched during the HAVA Check. Of these, 29,934 (76.3%) displayed no indication on the record that the voter had been notified.

The estimated cost to local election officials for manual entry of 29,934 voter record updates at \$1.68 per record is \$50,289.

Estimated Annual Cost to Clerks = \$50,289

### **Summary of Estimated Fiscal Impact**

G.A.B. Cost to Implement:

IT Development	\$6,800
Other G.A.B. Staff	\$2,640
<b>Total</b>	<b>\$9,440</b>

Total Annual Costs to Clerks: **\$50,289**

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<sup>1</sup> <http://wisclerks.org/stuff/uploads/general/City%20-%20ClerkTreasurer2014.pdf>



# Appendix B

Fiscal Analysis for LAB Recommendation –  
Felon Notification Tracking



## **FISCAL ANALYSIS FOR LAB RECOMMENDATION – FELON NOTIFICATION TRACKING**

### **Description**

The Legislative Audit Bureau (LAB) recommends the Government Accountability Board (G.A.B.) “regularly monitor Statewide Voter Registration System records to contact clerks who may not have mailed letters to individuals whose voter registration records were inactivated because of ongoing felony sentences.”

The approach proposed by the G.A.B. is to provide clerks the ability to track written notification to individuals whose voter registrations were inactivated in the Statewide Voter Registration System (SVRS) as a result of an ongoing felony sentence regardless of whether the notification is generated in SVRS or by other means.

At this time, the scope of this analysis does not include any costs that would be incurred on an ongoing basis were the G.A.B. to begin monitoring the information as recommended by the LAB. G.A.B. staff has experience with other comparable initiatives in monitoring clerk’s compliance with statutory directives and their reporting of their efforts. That experience clearly demonstrates that a significant investment of G.A.B. staff time and resources on a continuing basis would be required to regularly monitor whether local clerks have contacted voters whose records were inactivated due to an ongoing felony sentence, and to ensure accurate reporting of those contacts.

### **Assumptions**

A list of felon records is provided to the G.A.B. by the Department of Corrections (DOC) and the list is compared to SVRS registration records. A potential Felon Match is created in SVRS when the DOC information and the SVRS voter registration information are determined to be similar enough in detail to suggest that the DOC and SVRS records relate to the same individual.

Municipal clerks are responsible for determining, after reviewing and verifying voter records, whether the potential Felon Match should be confirmed as a match or whether the DOC and SVRS records contained in the potential Felon Match relate to two different individuals. Upon confirmation of a match in SVRS the voter registration record is made inactive and the reason listed in SVRS for the status change is “Felon Match.”

There is no statutory requirement to send notification to voters whose voter registration was inactivated due to ineligibility based on the Felon Match. However, the G.A.B. encourages clerks to adopt a best practices policy of notifying voters when a voter record is inactivated for any reason.

Notification of ineligibility based on the Felon Match provides the voter the opportunity to dispute the clerk’s conclusion that the voter is the same person associated with the record contained on the DOC felon list; if the voter successfully disputes the inactivation, his or her voter registration may be re-activated.

SVRS provides clerks with the ability to generate a notification letter to voters whose registration has been inactivated as a result of a confirmed Felon Match. Information regarding letters generated in SVRS is logged and may be reviewed by G.A.B. staff in SVRS. However, SVRS currently provides no means for tracking notifications sent to voters whose registration was inactivated as a result of a Felon Match if SVRS is not used to generate the notification letter. Therefore it is not currently possible for G.A.B. staff, simply by monitoring SVRS data, to accurately determine whether all clerks have sent a notification letter to all individuals whose voter record has been inactivated due to an ongoing felony sentence.

Designing a means for clerks to track letters in SVRS that are not generated in SVRS would require new IT development, updates to materials and manuals, additional clerk training, and additional end user costs related to the clerk’s use of new technology in SVRS.

**Fiscal Impact**

IT Development in SVRS

Adding a new letter tracking component would require both design and development efforts to complete.

Design of the new field(s) would require page design as well as defining business rules for the additional field(s). The development scope would also include development testing of the new functions.

Design and development is estimated to require approximately 40 hours at a blended rate of \$85 per hour for a total of \$3,400

Estimated IT Development Cost = \$3,400

Other G.A.B. Staff

Post-development, G.A.B. program staff would be required to complete several tasks, including User Acceptance Testing, updating the SVRS Manual, developing training materials and hosting a webinar. The costs of these tasks are estimated as follows:

<b>TASK</b>	<b># of Staff</b>	<b># of Hours (ea.)</b>	<b>Rate</b>	<b>TOTAL</b>
User Acceptance Testing	2	12	\$33	\$792
Update Manual	1	10	\$33	\$330
Develop Training Material	1	4	\$33	\$132
Host Webinar	2	1	\$33	\$66
<b>Total</b>				<b>\$1,320</b>

Estimated G.A.B. Staff Cost = \$1,320

## Local Election Officials

The cost to local clerks would vary depending on several factors including whether a clerk utilizes the SVRS Felon Notification Letter, whether the clerk works regularly in SVRS, the clerk's proficiency with SVRS, and the clerk and/or staff salary.

Due to the variance of clerk salary, the estimated cost for clerks is based on the average municipal clerk salary (\$59,801) as reported on a survey conducted by the League of Wisconsin Municipalities.<sup>1</sup> The estimated time required for a clerk to open SVRS and make changes to the voter record, including entering a contact date, is approximately 2.5 minutes. Using these figures, the cost for tracking a voter notification sent as a result of inactivating a voter as the result of a Felon Match is \$1.20 per voter notification.

Due to a large number of variables, we have developed an estimated range for the costs to local clerks to track voter notifications which are not initiated in SVRS. The first variable considered is the annual number of confirmed matches. The average number of confirmed matches in SVRS for calendar years 2011, 2012, 2013, and 2014 is 3042. However, the trend over the same four years is an increase in the number of confirmed felon matches in each successive year (976, 3536, 3676, and 3981 respectively). If this trend were to continue, the total of number of confirmed matches could reach 4,000 or more in each successive year.

The other variable to be considered is how many confirmed felon matches would not result in a voter notification letter being generated in SVRS. According to page 31 of the LAB audit, in the FY 2012-2013 the percentage was noted at 41.9%. Because the LAB audit only looked at records for 405 municipalities, these findings are considered to be a minimum for felon matches requiring the new processes and the maximum is 100% (although it is unknown how many clerks may use the SVRS-generated letter if they were required to track their contact with such individuals). Therefore, the low end of the estimate range utilizes the average number of confirmed Felon Matches from 2011-2014 (3042), the percentage of confirmed matches that did not have an SVRS generated letter from the LAB audit (49.1) and the cost per letter (\$1.20) for a total of \$1,792. The high end of the estimated range includes the estimated confirmed Felon Matches based on the recent trend (4000), the highest possible percentage which would receive a contact other than the SVRS-generated letter (100%), and the cost per letter (\$1.20) for a total of \$4,800.

For potential felon matches identified in SVRS for calendar years 2011, 2012, 2013, and 2014, the total number of voters inactivated as a result of a confirmed match were 976, 3,536, 3,676, and 3,981, respectively. The average number of confirmed matches over four years was 3,042, though the number has increased with every year since 2011. Because the number of confirmed Felon Matches resulting in an SVRS generated letter cannot be accurately predicted, the annual cost for clerks to perform the additional tracking tasks in SVRS is estimated to be within a range as low as \$1,792 (49.1% or 3,042 x \$1.20) or as high as \$4,800 (4,000 x \$1.20)

Estimated Cost to Clerks = \$1,792 - \$4,800

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<sup>1</sup> <http://wisclerks.org/stuff/uploads/general/City%20-%20ClerkTresurer2014.pdf>

## Summary of Estimated Fiscal Impact

G.A.B. Costs to Implement:

IT Development	\$3,400
Other G.A.B. Staff	<u>\$1,320</u>
<b>Total</b>	<b>\$4,720</b>

Total Annual Costs to Clerks: **\$1,792 - \$4,800**

# Appendix C

Fiscal Analysis for LAB Recommendation –  
Maintenance of Voter Registration Records  
of Deceased Voters



## **SUMMARY REVIEW FOR LAB RECOMMENDATIONS — MAINTENANCE OF VOTER REGISTRATION RECORDS OF DECEASED VOTERS**

### **Description**

The Legislative Audit Bureau (LAB) recommends the Government Accountability Board (G.A.B) “review the records of the deceased individuals [we] identified and determine whether any of these individuals’ votes were inappropriately cast in FY 2012-13 elections.”

In response to the recommendation, the G.A.B conducted a comprehensive review of the identified deceased individuals whose votes were recorded after an election. The LAB identified 88 individuals for further review, including:

1. 55 deceased voters for whom SVRS provided insufficient information to determine when clerks issued and received absentee ballots
2. 29 deceased voters who died after clerks issued absentee ballots but before clerks received completed absentee ballots, thus indicating that the individuals may have completed the issued ballots before they died
3. Four deceased voters who may have died before clerks issued them absentee ballots.

### **Methodology**

This review draws upon communications between the G.A.B staff and municipal clerks from the identified jurisdictions. The G.A.B. contacted a total of 66 jurisdictions in order to complete the review of the 88 deceased individuals.

The G.A.B. initiated the review by emailing local clerks in a communication that identified the deceased voter(s) and provided other information relevant to the investigation. Along with the communication, the G.A.B staff provided review process instructions to assist the clerk’s analysis of key election materials for the recorded vote. Examples of election materials suggested for the review included poll books, absentee ballot log notes and signature comparisons between absentee certificate envelopes and absentee application forms and/or voter registration forms. It is important to note that the statutory record retention window defined in Wis. Stat. §7.23 has passed for the elections identified in the audit. Consequently, many of the contacted municipalities have already destroyed election materials.

The goal of the review was to determine 1) whether the vote was recorded in error, 2) if a ballot was completed and returned by the voter, or 3) if someone other than the voter returned the ballot. Accordingly, the G.A.B staff provided instructions for the review process to guide clerks in their reviews. To begin with, the G.A.B staff asked that clerks identify any existing election materials for the deceased voter(s) for the election in question. If election materials and records exist, clerks were asked to proceed further to determine whether the vote recorded for the deceased individual was recorded correctly for the deceased voter or if the vote was intended to be recorded for another voter listed on the poll book. If clerks were able to determine that the vote was recorded as intended, the G.A.B staff advised clerks to look for any supporting evidence to confirm the vote was cast by the deceased voter through inspection of election and registration materials or to determine whether the records supported any potentially fraudulent or unlawful activities which would require further investigation.

In addition to the email communication, G.A.B staff conducted follow-up telephone calls to clerks who had not immediately responded and/or did not provide sufficient information to help determine the status of the recorded vote.

### Summary Findings

The G.A.B.’s initial review of SVRS data relating to the 88 deceased voters identified three categories previously mentioned: 1) four voters who appeared to have died before the ballot was issued by the clerk, 2) 29 voters who appeared to have died after a ballot was issued but before the clerk received the ballot and 3) 55 voters whose SVRS records contained insufficient information to determine when a ballot was issued or returned.

In the initial review of the investigation, G.A.B staff was able to identify the deceased individuals whose case could no longer be subject for review. The G.A.B staff found that of the 88 deceased individuals, municipal clerks no longer had election materials for 26 individuals because records related to those elections had been destroyed pursuant to Wisconsin law. G.A.B staff also concluded that election materials indicated that votes were erroneously recorded for 4 of the 88 deceased voters. Therefore, because the status of the recorded votes was confirmed by election materials, G.A.B staff determined that those 4 cases would no longer require further review. In all, there are a total of 30 individuals whose cases were determined to require no further review or where election records were no longer retained by the municipal clerk. The following table summarizes these findings:

Category	Number of Deceased Voters
No records/election materials available from municipal clerk	26
Vote mistakenly recorded for the deceased voter	4
<b>Total</b>	<b>30</b>

Given that 30 of the 88 deceased voters either had no election materials available for review or the correct status of the recorded vote was known, 58 remaining votes required further review. Clerks were asked to review the recording of the votes to ensure that proper vote recording took place and that voter numbers were not mistakenly assigned to another voter. Of the 58 individuals, clerks were able to verify through the election materials that votes were recorded for 52 deceased voters and that those votes were not mistakenly attributed to the deceased voter. In this subset, there were two cases where clerks were aware of the voter’s death after ballots were returned but before the election. The clerks instructed poll workers to reject the ballot, however, for reasons that are unclear, the ballots were mistakenly counted. Though poll workers failed to reject the ballots, voter participation was correctly recorded for the two deceased voters.

In response to the G.A.B.’s inquiry, none of the clerks reported any suspicious voting activities for the deceased voters for whom clerks had election materials. In the remaining six cases, the clerks have provided insufficient information to determine whether the vote was correctly attributed to the deceased voter. Therefore, further review and inspection is still pending for the

six deceased voters and currently identified as having incomplete reviews. Below is a table that summarizes these findings:

Category	Number of Deceased Voters
Records confirm vote was correctly recorded for deceased voter	52
Clerks provided insufficient information	6
<b>Total</b>	<b>58</b>

While G.A.B. staff has spent significant time and resources communicating with municipal clerks regarding existing election records, to date the review does not provide enough definitive information to determine who cast the ballot in each of the 58 cases. In its initial contacts, G.A.B. staff requested that municipal clerks consult their most readily available election materials, which typically consisted of poll books and/or absentee ballot logs. Other election materials may be available from either the municipal clerk or the county clerk which could be used to help conclude the status of the 58 recorded votes that remain in question. Absentee certificate envelopes for example, could be a key determinant in investigating whether the recorded vote was cast by the deceased voter. Almost all absentee certificate envelopes are retained by county clerks and it is unclear whether or not county clerks have destroyed these materials given that the statutory record retention window has passed for the elections noted in the audit. Therefore, the G.A.B. staff has identified these 58 cases as pending which require further communications with municipal and county clerks.

G.A.B. staff also attempted to locate records related to the 4 individuals identified by the LAB as having died before their ballots were issued. After communicating with municipal clerks, G.A.B. staff found no election materials or records available to inspect related to three of the four cases. The clerk’s review of the remaining case found that the individual voted as a resident of a facility served by Special Voting Deputies (SVD’s), shortly before the voter’s death. Further investigation is warranted, but one possible explanation is that an incorrect ballot issuance date was entered into SVRS for that voter, so that the ballot was actually issued before the voter’s death.

Though little or no information about these four individuals has been located yet to resolve the status of their votes, G.A.B. staff can confirm that two of the four individuals were permanent absentee voters. A ballot was marked cancelled for at least one of the four, which may indicate the vote was recorded in error; however, the G.A.B. staff cannot confirm this due to the lack of election materials available for the particular voter and election.

**Conclusion**

Based upon this initial review, G.A.B. staff can conclude that votes were mistakenly attributed to deceased individuals in 4 of the 88 cases, and that municipal clerks no longer have the primary

election records necessary to evaluate the source of the vote in 26 cases. An additional 58 cases involve election records that still exist, including 6 cases where the G.A.B. has not yet received sufficient information to make any determination. In the remaining 52 cases, G.A.B. staff was able to confirm the votes were correctly recorded in SVRS for the deceased individuals rather than for another voter, but was not able to ascertain whether the ballot was actually submitted by the deceased individual.

As a result, despite significant efforts of G.A.B. staff and municipal clerks to date, 84 of the 88 cases require further investigation. The next steps will include determining whether municipal or county clerks have retained absentee ballot certificate envelopes for the ballots in question, and to attempt to verify the ballot issuance and return dates that are recorded in SVRS, in order to account for any additional data-entry errors or anomalies.

# Appendix D

Fiscal Analysis for LAB Recommendation –  
Post-Election Death Record Audit



## **FISCAL ANALYSIS FOR LAB RECOMMENDATIONS – POST-ELECTION DEATH RECORD AUDIT**

### **Description**

The Legislative Audit Bureau (LAB) recommends the Government Accountability Board (G.A.B.) “review the Statewide Voter Registration System (SVRS) records after each election in order to identify and investigate instances in which votes were cast in the names of individuals who died before Election Day.”

The scope proposed by the G.A.B. is to develop a tracking system within the G.A.B.’s existing Microsoft Dynamics CRM system. The new system would be modeled after the system the G.A.B. recently developed and uses to conduct the post-election felon audit required under Wis. Stat. § 6.56(3).

Under this approach, after clerks have entered voter participation into SVRS after an election, the G.A.B. would compare voter participation recorded in SVRS to death records provided by the Wisconsin Department of Health Services (DHS) to determine potential matches. The potential matches would be displayed on a website that is accessible to G.A.B. staff and clerks. If a potential match between a death record and a voter participation record is found, the G.A.B. would notify clerks by email of the potential match. The clerk would log into the website and review the matching records to determine whether a ballot was actually cast in the name of the deceased individual, or if the voter is not the same person identified in the death record.

If the clerk determines that a ballot was in fact cast in the name of the deceased individual, the clerk would provide the G.A.B. with copies of supporting documents including: signed copies of the poll book, absentee ballot certificate envelopes, absentee ballot request documents, and voter registration forms. Electronic copies of the documents would be saved to the website by the clerk or with the assistance of the G.A.B. After the G.A.B. has received the supporting documents, the G.A.B. would refer the name of the individual who died and appears to have a vote recorded to the appropriate district attorney for investigation and potential prosecution. The referral would include copies of the supporting documents supplied by the clerk as well as G.A.B. staff notes.

G.A.B. staff would use the system to track any actions taken by the district attorneys as the result of a referral made from the post-election audit of death records. G.A.B. staff would provide semi-annual reports to the Board regarding actions taken by district attorneys. The reports would include the name of the individual, the county where the referral was made, the referral date, and any information on the actions taken by the district attorney.

It is important to note that investigations and prosecutions resulting from an audit of death records likely would be more complicated than referrals resulting from the voter felon audit. The felon audit typically results in investigations focused on the eligibility or disqualification of the voter, and the fact that the individual actually voted is often not contested. In contrast, investigations resulting from an audit of death records would need to establish who might have had access to the deceased individual’s ballot and actually cast the ballot in the name of the

deceased individual. In cases in which the ballot was counted despite the intervening death of the individual who cast the ballot, no crime or prosecution would result absent a fraudulent act on the part of either an election official or another party.

### **Assumptions**

1. Designing the new post-election death record audit system would require new IT development, updates to materials and manuals, additional clerk training, and additional end user costs related to clerk's use of new technology in SVRS.
2. The LAB Audit Report identified 255 voter records which were marked in SVRS as having a vote recorded in an election that occurred on or after the individual's date of death, for the five elections that occurred in the Audit reporting period. Twelve of the 255 records were marked as having voted at the polling place, but clerks later determined that the vote had been recorded for the wrong voter in SVRS. The remaining 243 records indicated that the votes were cast as absentee ballots. A total of 88 of the 243 cases were forwarded to the G.A.B. for further investigation as possible cases where a vote may have been cast in the name of an individual who died by Election Day.
3. In the five elections that occurred in the Audit reporting period, there were a total of 7,717,032 votes cast. The 255 identified voter records that were marked as having voted on or after the individual's date of death represents 0.003% of the total voters in those election. This is roughly equal to the percentage of voters potentially identified in the post-election voter felon audit.
4. The LAB Audit Report recognized the challenges in receiving timely information about deceased individuals:

“...because of the amount of time required for local medical officials to notify DHS of the deaths, for DHS to prepare the applicable electronic data, and for the monthly data exchange with SVRS to occur. In FY 2012-13, it took an average of 54.9 days after individuals died for potential matches to be identified in SVRS...In September 2013, DHS implemented a new process for electronically providing SVRS with information about deceased individuals. Based on information provided by DHS, we estimate that it should take approximately 30 days, on average, for a potential match to be created in SVRS, which will help clerks to inactivate the registration records of deceased individuals before Election Day. Nevertheless, the names of individuals who die within 30 days of an election may not be reported to clerks before Election Day.” LAB Report 14-14, page 28.

5. In addition to the delay in DHS obtaining death records and forwarding that data to the G.A.B., the post-election death audit cannot be run until clerks have completed post-election data entry in SVRS. According to Wis. Stat. § 6.33(5)(a), clerks have 30 days after the date of a non-general election to complete this data entry. For general elections

clerks have 45 days, and may request an extension to 60 days after the election. In practice, it takes many clerks longer than the statutory deadline to complete data entry. As a result, the post-election death audit would need to be conducted 45-90 days after the election.

6. Currently, DHS provides the G.A.B. with a file each month of the cumulative death records for the year. Based upon the Memorandum of Understanding between G.A.B. and DHS, G.A.B. pays an hourly charge of \$100.00 per file for DHS staff time to produce the file, and an annual charge of \$0.06 per record (averaging 47,000 records per year). The DHS invoice for the Wisconsin 2013 death files was \$4,415.22.
7. Under state law, Wisconsin does not share death records with other states, and other states do not share their death records with Wisconsin. Therefore Wisconsin death records received from DHS include only deaths that occurred in Wisconsin. Many deaths of Wisconsin residents occur outside of the state and DHS files may not include records of these cases.
8. SVRS stores all cumulative death records received since the system was established. All cumulative death records would be compared to current voter records as part of the audit, not just deaths from the current year, providing a more comprehensive comparison.
9. Cases identified in the audit that warrant further investigation by law enforcement would be referred to district attorneys, similar to the process used for the post-election voter felon audit.
10. Any referrals and prosecution resulting from a post-election death audit may pose challenges for investigation. Unlike the post-election felon audit, district attorneys may not be able to easily determine who to investigate. The election materials gathered would indicate that a vote was cast in the deceased person's name, but will not indicate who actually cast the ballot. For this reason, investigation of these matters is expected to require more law enforcement and district attorney staff time and resources.
11. Statutes do not currently provide for a post-election death audit. This fiscal estimate assumes that state statutes would be amended to allow for such an audit, and that the legislation would be similar to the statutes governing the post-election voter felon audit.

## **Fiscal Impact**

### **Initial Development and Staff Costs**

The death record audit system would be developed in Microsoft Dynamics CRM and would be modeled after the existing post-election felon audit system. Post-development, G.A.B. program staff would be required to perform User Acceptance Testing, develop training materials and provide training to users. Based upon the G.A.B.'s experience developing the post-election voter felon audit system, development costs are estimated as follows:

<b>Role</b>	<b>Role Description</b>	<b>Hours</b>	<b>Rate</b>	<b>Cost</b>
Program Manager	Manage all schedules, technical resources, and user interfaces	60	\$85	\$5,100.00
Solution Architect	Provide overall solution architecture design for enhanced functionality	300	\$85	\$25,500.00
System Tester	Test New System, Interface, and Matching	40	\$85	\$3,400.00
User Acceptance Testers	Test system against business requirements and confirm final acceptance	80	\$33	\$2,640.00
Trainers	Develop Training Manual and Training Video, host webinar	80	\$33	\$2,640.00
<b>Total</b>				<b>\$39,280.00</b>

### **On-Going Costs Per Fiscal Year**

#### G.A.B. Staff Costs

G.A.B. staff would be required to conduct the death record audit on an ongoing basis. This would require IT staff to run the matching program after each election, as well as program staff to monitor the audit, process potential matches through stages, and follow up with partner agencies (DHS, clerks, district attorneys). These estimated costs are summarized as follows:

<b>Cost Item</b>	<b>Hours</b>	<b>Rate</b>	<b>Cost</b>
153 potential matches per fiscal year*	1 hour staff time per potential match	\$33	\$5049.00
3 elections on average per fiscal year	5 hours IT time per election	\$85	\$1275.00
<b>Total</b>			<b>\$6,324.00</b>

\* In its report the LAB reviewed voting records from 5 elections and identified 255 instances in which votes were potentially cast in the names of individuals who had died before Election Day. On average there are 3 election per fiscal year (4 elections in even years and 2 elections in odd years), therefore the 255 instances identified over 5 elections are prorated to 153 for 3 elections.

#### IT Costs

On-going IT costs for hosting, support and maintenance are estimated as follows:

<b>Cost Item</b>	<b>Quantity</b>	<b>Rate</b>	<b>Cost</b>
Break/fix support	5 hours IT time per year	\$85	\$425.00
Server Hosting per month	12 months	\$196.35	\$2356.20
<b>Total</b>			<b>\$2,781.20</b>

#### Local Election Official Costs

The cost to clerks would vary depending on several factors including how many potential matches a clerk receives, where and how election materials are stored, clerk's proficiency with CRM, and clerk and/or staff salary. Due to the variance of clerk salary, the estimated cost for clerks is based on the average municipal clerk salary (\$59,801) as reported on a survey

conducted by the League of Wisconsin Municipalities.<sup>1</sup> The time required for clerks to investigate potential matches, collect necessary election materials, and provide those materials to the G.A.B. is estimated as three hours per potential match.

Cost Item	Hours	Rate	Cost
153 potential matches per fiscal year	3 hours clerk time per potential match	\$28.75	\$13,196.25
<b>Total</b>			<b>\$13,196.25</b>

Summary of On-Going Costs

The following chart summarizes the estimated on-going costs of performing an audit of death records in comparison to voter records:

Category	Cost Per Year	5-Year Cost
G.A.B. Staff Costs	\$6,324.00	\$31,620.00
IT Costs	\$2,781.20	\$13,906.00
Local Election Official Costs	\$13,196.25	\$65,981.25
<b>Total</b>	<b>\$22,301.45</b>	<b>\$111,507.25</b>

Summary of Estimated Fiscal Impact

The following chart summarizes the total estimated fiscal impact of this proposed project over 5 years:

Category	Year 1	Year 2	Year 3	Year 4	Year 5	Total
Initial Costs	\$39,280.00					\$39,280.00
On-Going Costs	\$22,301.45	\$22,301.45	\$22,301.45	\$22,301.45	\$22,301.45	\$111,507.25
<b>Total</b>	<b>\$61,140.32</b>					<b>\$150,787.25</b>

<sup>1</sup> <http://wisclerks.org/stuff/uploads/general/City%20-%20ClerkTresurer2014.pdf>



# Appendix E

## Felon Audit Match Report

## DA Tracker - 2010 SPRING PRIMARY - NO MATCHES

## DA Tracker - 2010 SPRING ELECTION

County	Stage	Date Notice Sent	DA REPORT	Status
WAUKESHA COUNTY - 68	5 – Referred to DA	9/11/2014	10/20/2014	Under Investigation
GREEN COUNTY - 23	6 – Closed	8/27/2014	8/27/2014	Declined Charges.

## DA Tracker - 2010 PARTISAN PRIMARY

County	Stage	Date Notice Sent	DA REPORT	Status
OZAUKEE COUNTY - 46	6 – Closed	8/28/2014	1/23/2015	Declined Charges.
WINNEBAGO COUNTY - 71	5 – Referred to DA	9/11/2014		
MILWAUKEE COUNTY - 41	5 – Referred to DA	9/11/2014	4/7/2015	Declined Charges.

## DA Tracker - 2010 GENERAL ELECTION

County	Stage	Date Notice Sent	DA REPORT	Status
PORTAGE COUNTY - 50	5 – Referred to DA	11/19/2014		
RICHLAND COUNTY - 53	5 – Referred to DA	11/20/2014	1/26/2015	Under investigation.
MILWAUKEE COUNTY - 41	5 – Referred to DA	10/9/2014	4/7/2015	Declined Charges.
MILWAUKEE COUNTY - 41	5 – Referred to DA	10/9/2014	4/7/2015	Declined Charges.
MILWAUKEE COUNTY - 41	5 – Referred to DA	10/9/2014	4/7/2015	Declined Charges.
JEFFERSON COUNTY - 28	6 – Closed	11/20/2014	1/16/2015	Declined Charges.
WALWORTH COUNTY - 65	5 – Referred to DA	11/20/2014		
DANE COUNTY - 13	5 – Referred to DA	11/20/2014		
CALUMET COUNTY - 08	5 – Referred to DA	10/9/2014		
RACINE COUNTY - 52	5 – Referred to DA	11/20/2014		
DANE COUNTY - 13	5 – Referred to DA	10/9/2014	10/21/2014	Under investigation.
DOOR COUNTY - 15	6 – Closed	10/9/2014	11/17/2014	Declined charges.
SAUK COUNTY - 57	5 – Referred to DA	10/9/2014	1/7/2015	Charges Filed
MILWAUKEE COUNTY - 41	5 – Referred to DA	10/8/2014	4/7/2015	Declined Charges.
ASHLAND COUNTY - 02	5 – Referred to DA	11/20/2014		
RACINE COUNTY - 52	5 – Referred to DA	11/20/2014		
BROWN COUNTY - 05	5 – Referred to DA	10/9/2014		
WINNEBAGO COUNTY - 71	6 – Closed	11/20/2014	1/26/2015	Deceased.
KENOSHA COUNTY - 30	5 - Referred to DA	10/9/2014	3/18/2015	Charges Filed.
MILWAUKEE COUNTY - 41	5 – Referred to DA	10/9/2014	4/7/2015	Declined Charges.
WAUKESHA COUNTY - 68	5 – Referred to DA	11/20/2014		

## DA Tracker - 2011 SPRING PRIMARY

County	Stage	Date Notice Sent	DA REPORT	Status
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POLK COUNTY - 49	5 – Referred to DA	9/12/2014		
MILWAUKEE COUNTY - 41	5 – Referred to DA	7/17/2014	4/7/2015	Declined charges.

## DA Tracker - 2011 SPRING ELECTION

County	Stage	Date Notice Sent	DA REPORT	Status
DANE COUNTY - 13	5 – Referred to DA	11/18/2014		
BARRON COUNTY - 03	5 – Referred to DA	11/19/2014		
DANE COUNTY - 13	5 – Referred to DA	11/19/2014		
MARATHON COUNTY - 37	6 – Closed	9/12/2014	3/5/2015	Declined charges.
FLORENCE COUNTY - 19	6 – Closed	11/19/2014	2/6/2015	Declined charges.
MILWAUKEE COUNTY - 41	5 – Referred to DA	11/19/2014	4/7/2015	Declined charges.
WAUKESHA COUNTY - 68	5 – Referred to DA	11/20/2014		

## DA Tracker - 2012 SPRING PRIMARY

County	Stage	Date Notice Sent	DA REPORT	Status
MILWAUKEE COUNTY - 41	5 – Referred to DA	11/19/2014	4/7/2015	Under investigation.
SHEBOYGAN COUNTY - 60	6 – Closed	10/17/2014	10/20/2014	Declined charges.

## DA Tracker - 2012 PRES. PREFERENCE & SPRING ELECTION

County	Stage	Date Notice Sent	DA REPORT	Status
MILWAUKEE COUNTY - 41	5 – Referred to DA	7/17/2014	4/7/2015	Declined charges.
KENOSHA COUNTY - 30	5 – Referred to DA	11/19/2014	3/18/2015	Charges filed.
MILWAUKEE COUNTY - 41	5 – Referred to DA	11/19/2014	4/7/2015	Under investigation.
SHEBOYGAN COUNTY - 60	6 – Closed	10/17/2014	10/20/2014	Declined charges.
MILWAUKEE COUNTY - 41	5 – Referred to DA	11/18/2014	4/7/2015	Under investigation.
ROCK COUNTY - 54	6 – Closed	11/20/2014	12/2/2014	Declined charges.
MARATHON COUNTY - 37	6 – Closed	11/18/2014	3/5/2015	Declined charges.

## DA Tracker - 2012 MAY 8 RECALL PRIMARY/ELECTION

County	Stage	Date Notice Sent	DA REPORT	Status
MILWAUKEE COUNTY - 41	5 – Referred to DA	10/20/2014	4/7/2015	Under investigation.
MILWAUKEE COUNTY - 41	5 – Referred to DA	10/20/2014	4/7/2015	Under investigation.
SHEBOYGAN COUNTY - 60	6 – Closed	10/17/2014	10/20/2014	Declined charges.

## DA Tracker - 2012 JUNE 5 RECALL ELECTION

County	Stage	Date Notice Sent	DA REPORT	Status
MILWAUKEE COUNTY - 41	5 – Referred to DA	10/16/2014	4/7/2015	Under investigation.
MILWAUKEE COUNTY - 41	5 – Referred to DA	11/18/2014	4/7/2015	Under investigation.
MILWAUKEE COUNTY - 41	5 – Referred to DA	10/16/2014	4/7/2015	Under investigation.
DANE COUNTY - 13	5 – Referred to DA	11/18/2014		
MILWAUKEE COUNTY - 41	5 – Referred to DA	10/16/2014	4/7/2015	Under investigation.
MILWAUKEE COUNTY - 41	5 – Referred to DA	10/16/2014		

OZAUKEE COUNTY - 46	6 – Closed	10/15/2014	9/15/2014	Dismissed/Plea.
MILWAUKEE COUNTY - 41	5 – Referred to DA	7/17/2014	4/7/2015	Declined charges.
OUTAGAMIE COUNTY - 45	5 – Referred to DA	10/16/2014		
MILWAUKEE COUNTY - 41	5 – Referred to DA	11/17/2014	4/7/2015	Declined charges.
MILWAUKEE COUNTY - 41	5 – Referred to DA	10/17/2014		
TREMPEALEAU COUNTY - 62	5 – Referred to DA	10/17/2014	3/6/2015	Charges filed.
MILWAUKEE COUNTY - 41	5 – Referred to DA	9/23/2014	4/7/2015	Under investigation.
DANE COUNTY - 13	5 – Referred to DA	11/17/2014		
MILWAUKEE COUNTY - 41	5 – Referred to DA	11/18/2014	4/7/2015	Declined charges.
MILWAUKEE COUNTY - 41	5 – Referred to DA	10/17/2014		
FOND DU LAC COUNTY - 20	5 – Referred to DA	10/15/2014		
LA CROSSE COUNTY - 32	5 – Referred to DA	11/18/2014		
RACINE COUNTY - 52	5 – Referred to DA	11/18/2014		
PORTAGE COUNTY - 50	5 – Referred to DA	11/17/2014	12/30/2014	Under investigation.
MILWAUKEE COUNTY - 41	5 – Referred to DA	10/17/2014	4/7/2015	Under investigation.
MILWAUKEE COUNTY - 41	5 – Referred to DA	10/16/2014	4/7/2015	Under investigation.

## DA Tracker - 2012 PARTISAN PRIMARY

County	Stage	Date Notice Sent	DA REPORT	Status
MILWAUKEE COUNTY - 41	5 – Referred to DA	7/17/2014	4/7/2015	Declined charges.
FOND DU LAC COUNTY - 20	5 – Referred to DA	9/26/2014	9/29/2014	Under investigation.

## DA Tracker - 2012 PRESIDENTIAL AND GENERAL ELECTION

County	Stage	Date Notice Sent	DA REPORT	Status
MILWAUKEE COUNTY - 41	5 – Referred to DA	4/9/2014	4/7/2015	Charges filed.
JEFFERSON COUNTY - 28	6 – Closed	4/9/2014	1/26/2015	Declined charges.
MILWAUKEE COUNTY - 41	6 – Closed	4/9/2014	5/5/2014	Declined charges.
MILWAUKEE COUNTY - 41	5 – Referred to DA	4/9/2014	4/7/2015	Declined charges.
MILWAUKEE COUNTY - 41	5 – Referred to DA	4/9/2014	4/7/2015	Declined charges.
MILWAUKEE COUNTY - 41	5 – Referred to DA	5/29/2014	4/7/2015	Charges filed.
MILWAUKEE COUNTY - 41	6 – Closed	4/9/2014	5/5/2014	Declined charges.
RACINE COUNTY - 52	5 – Referred to DA	4/9/2014		
MILWAUKEE COUNTY - 41	5 – Referred to DA	5/30/2014	4/7/2015	Declined charges.
MILWAUKEE COUNTY - 41	5 – Referred to DA	4/9/2014	5/5/2014	Under investigation.
MILWAUKEE COUNTY - 41	5 – Referred to DA	4/9/2014	4/7/2015	Charges filed.
MILWAUKEE COUNTY - 41	5 – Referred to DA	5/29/2014	4/7/2015	Charges filed.
OZAUKEE COUNTY - 46	6 – Closed	4/9/2014	9/15/2014	Convicted.
JEFFERSON COUNTY - 28	6 – Closed	4/9/2014	1/26/2015	Convicted.
MILWAUKEE COUNTY - 41	5 – Referred to DA	4/24/2014	4/7/2015	Declined charges.
MILWAUKEE COUNTY - 41	6 – Closed	4/9/2014	5/5/2014	Declined charges.
MILWAUKEE COUNTY - 41	5 – Referred to DA	4/9/2014	4/7/2015	Under investigation.
MILWAUKEE COUNTY - 41	5 – Referred to DA	4/9/2014	4/7/2015	Declined charges.
MILWAUKEE COUNTY - 41	6 – Closed	4/9/2014	4/28/2014	Declined charges.
MILWAUKEE COUNTY - 41	5 – Referred to DA	5/30/2014	4/7/2015	Under investigation.
LA CROSSE COUNTY - 32	5 – Referred to DA	4/9/2014		
MILWAUKEE COUNTY - 41	5 – Referred to DA	4/9/2014	4/7/2015	Charges filed.

RACINE COUNTY - 52	5 – Referred to DA	4/9/2014		
RACINE COUNTY - 52	5 – Referred to DA	4/9/2014		
SHEBOYGAN COUNTY - 60	6 – Closed	10/17/2014	11/20/2014	Declined charges.
MILWAUKEE COUNTY - 41	6 – Closed	4/9/2014	5/5/2014	Declined charges.
RACINE COUNTY - 52	5 – Referred to DA	4/9/2014		
MILWAUKEE COUNTY - 41	5 – Referred to DA	4/9/2014	4/7/2015	Charges filed.
MILWAUKEE COUNTY - 41	5 – Referred to DA	4/17/2014	10/8/2014	Under investigation.
ASHLAND COUNTY - 02	6 – Closed	4/9/2014	6/6/2014	Declined charges.
OUTAGAMIE COUNTY - 45	5 - Referred to DA	4/12/2014	4/12/2014	Under investigation.
DANE COUNTY - 13	5 – Referred to DA	4/9/2014		
PIERCE COUNTY - 48	6 – Closed	4/9/2014	8/29/2014	Declined charges.
MILWAUKEE COUNTY - 41	5 – Referred to DA	4/30/2014	4/7/2015	Declined charges.

## DA Tracker - 2013 SPRING PRIMARY - NO MATCHES

## DA Tracker - 2013 SPRING ELECTION

County	Stage	Date Notice Sent	DA REPORT	Status
VILAS COUNTY - 64	6 – Closed	7/17/2014	8/14/2014	Declined charges.
OCONTO COUNTY - 43	6 – Closed	7/17/2014	2/20/2015	Charges dismissed.

## DA Tracker - 2014 SPRING PRIMARY - NO MATCHES

## DA Tracker - 2014 SPRING ELECTION

County	Stage	Date Notice Sent	DA REPORT	Status
FOREST COUNTY - 21	6 – Closed	7/16/2014	1/30/2015	Declined charges.
OUTAGAMIE COUNTY - 45	5 – Referred to DA	7/17/2014		
SAUK COUNTY - 57	6 – Closed	7/16/2014	9/26/2014	Declined charges.
COLUMBIA COUNTY - 11	5 – Referred to DA	7/16/2014	2/20/2015	Charges filed.

## DA Tracker - 2014 PARTISAN PRIMARY

County	Stage	Date Notice Sent	DA REPORT	Status
MILWAUKEE COUNTY - 41	5 – Referred to DA	11/14/2014		

## DA Tracker - 2014 GENERAL ELECTION

County	Stage	Date Notice Sent	DA REPORT	Status
RACINE COUNTY - 52	5 – Referred to DA	4/3/2015		
MILWAUKEE COUNTY - 41	5 – Referred to DA	4/2/2015		
MILWAUKEE COUNTY - 41	5 – Referred to DA	3/31/2015		
RACINE COUNTY - 52	5 – Referred to DA	4/2/2015		
RACINE COUNTY - 52	5 – Referred to DA	4/3/2015		
DANE COUNTY - 13	5 – Referred to DA	3/26/2015		
OUTAGAMIE COUNTY - 45	5 – Referred to DA	3/31/2015		
RACINE COUNTY - 52	5 – Referred to DA	3/31/2015		

MILWAUKEE COUNTY - 41	5 – Referred to DA	3/31/2015		
MILWAUKEE COUNTY - 41	5 – Referred to DA	4/1/2015		
MILWAUKEE COUNTY - 41	5 – Referred to DA	3/31/2015		
MILWAUKEE COUNTY - 41	5 – Referred to DA	3/31/2015		
ONEIDA COUNTY - 44	5 – Referred to DA	4/1/2015		
WALWORTH COUNTY - 65	5 – Referred to DA	4/1/2015		
KENOSHA COUNTY - 30	5 – Referred to DA	3/30/2015	3/31/2015	Under investigation.
RICHLAND COUNTY - 53	5 – Referred to DA	3/31/2015		
DANE COUNTY - 13	5 – Referred to DA	4/2/2015		
MILWAUKEE COUNTY - 41	5 – Referred to DA	4/1/2015		
MILWAUKEE COUNTY - 41	5 – Referred to DA	4/2/2015		
RACINE COUNTY - 52	5 – Referred to DA	4/2/2015		
OUTAGAMIE COUNTY - 45	5 – Referred to DA	3/31/2015		
KENOSHA COUNTY - 30	5 – Referred to DA	3/20/2015	3/23/2015	Charges Filed.
CHIPPEWA COUNTY - 09	5 – Referred to DA	3/31/2015		
MILWAUKEE COUNTY - 41	5 – Referred to DA	3/31/2015		
DANE COUNTY - 13	5 – Referred to DA	3/31/2015		
DANE COUNTY - 13	5 – Referred to DA	3/31/2015		
OZAUKEE COUNTY - 46	5 – Referred to DA	4/2/2015		
DANE COUNTY - 13	5 – Referred to DA	3/31/2015		
COLUMBIA COUNTY - 11	5 – Referred to DA	3/26/2015		
RACINE COUNTY - 52	5 – Referred to DA	4/3/2015		
DANE COUNTY - 13	5 – Referred to DA	4/2/2015		
MILWAUKEE COUNTY - 41	5 – Referred to DA	4/1/2015		
ASHLAND COUNTY - 02	5 – Referred to DA	3/31/2015		
WAUKESHA COUNTY - 68	5 – Referred to DA	3/31/2015		
SHEBOYGAN COUNTY - 60	5 – Referred to DA	3/31/2015		
RACINE COUNTY - 52	5 – Referred to DA	3/26/2015		
MILWAUKEE COUNTY - 41	5 – Referred to DA	3/30/2015		
WINNEBAGO COUNTY - 71	5 – Referred to DA	3/31/2015		
RACINE COUNTY - 52	5 – Referred to DA	4/3/2015		

## DA Tracker - 2015 SPRING PRIMARY

County	Stage	Date Notice Sent	DA REPORT	Status
DOUGLAS COUNTY - 16	5 – Referred to DA	4/3/2015		
VILAS COUNTY - 64	5 – Referred to DA	4/3/2015		
DANE COUNTY - 13	5 – Referred to DA	4/3/2015		



# Appendix F

Settlement Offer Schedules for  
Campaign Finance Violations, Lobbying  
Law Violations and Statement of  
Economic Interests Violations





## Settlement Offer Schedule for Campaign Finance Violations

This document sets out authorized settlement offers for campaign finance violations, in lieu of pursuing court action. It includes recommended settlement amounts for specific situations. The Board's authority to make settlement offers is set out in Wis. Stat. §5.05(1)(c). The Board may specify penalties for certain offenses and may compromise and settle those matters without formal investigation per Wis. Stat. § 5.05(2m)(c) 12. If an individual or committee chooses not to accept a settlement offer, the Board may bring a civil action and seek the maximum forfeitures provided by law, including costs and attorneys' fees. If there appears to be an intentional violation of law, the matter may be brought to the Board for further action.

The Board's primary interest is providing timely and accurate campaign finance information to the public, and collection of civil penalties is secondary. When addressing violations, Board staff will consider mitigating or exacerbating circumstances, and may adjust penalties accordingly. These circumstances include:

- The number of previous offenses
- The amount of financial activity
- Whether the committee is a candidate or non-candidate committee
- A candidate's presence on the ballot
- Whether the committee has provided a portion of the required information
- The sophistication of the parties, and whether the individuals involved should have been aware of the violation.

### **1. Late Filing of Continuing Campaign Finance Reports:**

<b>(Calendar) Days Late:</b>	<b>First Offense:</b>	<b>Second or Greater Offense:</b>
0-30	Warning	Warning
31-60	\$100	\$200
61-90	\$200	\$300
91-120	\$300	\$400
Over 120	\$500	\$500

Every registered committee, referenda group, or sponsoring organization must file a continuing report every six months. Committees on "exempt" status that have less than \$1,000 activity in a calendar year do not have to file reports. Reports are due by January 31<sup>st</sup> and July 20<sup>th</sup>, or if those dates fall on a weekend, the following Monday.

Maximum penalty is \$500 plus the greater of \$50 or one percent of the annual salary of the office sought for each day of delinquency. If a report is not filed after 120 days or a forfeiture is not paid, a registrant may be subject to court action and/or administrative suspension. A committee on administrative suspension may not engage in any activity without subjecting itself to court action.

Committees required to file electronically that file only on paper may be considered as not having filed.

**2. Late Filing of Pre-Primary, Pre-Election, and special Post-Election Reports:**

<b>(Business) Days Late:</b>	<b>Penalty:</b>
1	\$100
2	\$150
3	\$200
4	\$250
5	\$300
6	\$350
7	\$400
8	\$450
9	\$500

Election related reports are the Pre-Primary, Pre-Election and special Post-Election reports. Every candidate on the ballot in an election, and every committee or conduit that gives to a candidate on the ballot must file the Pre-Primary or Pre-Election reports. Non-Partisan state-level candidates with no primary must file a Pre-Primary report. Candidates who lose their primary must still file a Pre-Election report. Only candidates in special elections must file the special Post-Election report. Local candidates with no primary do not file with the G.A.B. and do not have to file a Pre-Primary report.

Pre-Primary and Pre-Election reports cover up to 15 days before the election and are due 8 days before Election Day. Special Post-Election reports cover up to 22 days after the election and are due within 30 days after Election Day. If a due date falls on a weekend, reports are due the following Monday.

Maximum penalty is \$500 plus the greater of \$50 or one percent of the annual salary of the office sought for each day of delinquency. If a report is not filed by a losing candidate after 60 days or a forfeiture is not paid, the candidate may be subject to court action and/or administrative suspension. A committee on administrative suspension may not engage in any activity without subjecting itself to court action. Office holders and other registrants may be subject to court action.

**3. Late Payment of Annual Filing Fees (Wis. Stat. §11.055):**

<b>(Calendar) Days Late:</b>	<b>Penalty:</b>
1-15	Warning
16-45	\$300
46-90	\$500
91 or more	\$800

All non-candidate committees with more than \$2,500 in expenses in the previous calendar year must pay a \$100 filing fee by January 31<sup>st</sup>, or the following Monday if January 31<sup>st</sup> is on a weekend. Maximum penalty is \$800.

**4. Late/Incomplete Filing of 48-Hour Reports:**

**Late/Incomplete Reporting**

**Penalty:**

5% of the total amount of unreported contributions  
(\$25 per \$500 unreported)

Candidate committees, party committees, PACs, and referenda groups must report contributions of \$500 or more received between the closing date of the Pre-Primary or Pre-Election report and the day of the Primary or Election. Any such contributions must be reported to the G.A.B. within 48 hours. Conduits forwarding \$500 or more to a single committee during that period must also file 48-hour reports. Those committees required to report independent disbursements must report disbursements of \$20 or more during the same time frame.

Maximum penalty is \$500 for each reporting violation.

**5. Incomplete Contribution Information:**

**(Calendar) Days Late:**

Up to 30 days from staff contact  
31 or more days from staff contact

**Penalty:**

No penalty  
\$100 plus 10% of contributions with incomplete information

When a registrant fails to disclose required contributor information such as address, occupation, or name and address of principal place of employment, Board staff will request the information from the registrant and make a record of the request. If a registrant does not respond to a staff request for the required information within 30 days, the Board may initiate enforcement action. Staff will have discretion to extend the 30 day deadline based on a registrant's level of activity, number of violations, and partial communication of the required information.

Maximum penalty is \$500 per reporting violation.

Wis. Stat. §11.06(5) requires a committee to "make a good faith effort to acquire all required information." If a registrant demonstrates a concerted effort to obtain required information and provides all required information for at least 90% of its contributions where the information is required, no forfeiture will be sought.

**6. Cash Balance Discrepancies:**

**(Calendar) Days Late:**

Up to 30 days from staff contact  
31 or more days from staff contact

**Penalty:**

No penalty  
\$100 plus 10% of discrepancy

A cash balance discrepancy occurs when a registrant submits a campaign finance report with a beginning cash balance which differs \$100 or more from the ending cash balance on the prior campaign finance report. A cash balance discrepancy can also occur if the report's beginning cash balance, plus all receipts, minus all expenditures differs by \$100 or more from the reported ending cash balance.

The registrant who filed the report will be contacted and informed that the report is inaccurate and given 30 days to file a corrected campaign finance report.

Maximum penalty is \$500 per unreported transaction that led to the discrepancy.

Staff will have discretion to extend the deadlines based on a registrant's level of activity, number of violations, and partial communication of the required information.

## 7. Exceeding Contributions Limits

**Violation Type:**

Receiving Excess Contribution  
Furnishing Excess Contribution

**Penalty:**

Amount of excess contribution  
If receiving committee forfeits  
full amount of excess contribution, \$0.  
Otherwise, case-by-case basis

There shall be no penalty for excess or improper contributions returned within 15 days as provided by Wis. Stat. §11.06(4)(b).

If any registrant pays the amount of the excess contributions to the common school fund (through the Board) or to charity, no additional penalty will be required from the contributor. If a registrant contributes funds to charity, staff will request documentation of that payment.

Wis. Stat. §11.26(11) provides that a receiving committee has the option to return excess contributions to the donor. However, if this occurs more than 15 days from the receipt of the contribution, the Board may seek a forfeiture from the committee and contributor of the amount of the illegal contributions. This will be presented to the Board on a case-by-case basis.

Maximum penalties for the receiving committee are \$500, plus payment of the amount of the excess contribution to the donor, the common school fund, or charity. Maximum penalties for the contributor are \$500 plus treble the amount of the portion of the contribution that exceeds the maximum.

## 8. Prohibited Corporate Contributions

**Violation Type:**

Corporate Contribution – Committee Penalty  
  
Corporate Contribution – Corporate Penalty

**Penalty:**

Amount of contribution  
plus the lesser of \$500 or 50% of the  
contribution  
3 times amount of contribution

There shall be no penalty for excess or improper contributions returned within 15 days as provided by Wis. Stat. §11.06(4)(b).

Maximum penalty for the receiving committee is \$500 but a committee that refuses to pay the amount of the excess contribution to the donor, the common school fund, or charity may be subject to a criminal referral. Maximum penalty for the corporate contributor is six times the amount of the contribution.

## 9. Prohibited Lobbyist Contributions

**Violation Type:**

Lobbyist Contribution – Committee Penalty  
  
Lobbyist Contribution – Lobbyist Penalty

**Penalty:**

Return of the contribution  
to the lobbyist  
  
1.5 times amount of contribution,  
up to maximum of \$1,000

There shall be no penalty for excess or improper contributions returned within 15 days as provided by Wis. Stat. §11.06(4)(b).

Limitation on lobbyist contributions are set out in Chapter 13 but the settlement offer schedule is set out here. Maximum penalty for the receiving committee is \$1,000. Maximum penalty for the lobbyist is \$1,000.

#### **10. Board procedures for implementing settlement offers and resolving violations**

- a. Staff may issue warnings for minor violations.
- b. Staff will consider registrants' explanations, and mitigating or exacerbating circumstances, when assessing penalties or recommending action to the Board.
- c. Penalties may be reduced or waived at the staff's discretion if the committee has terminated or is terminating and has insufficient funds to pay a penalty.
- d. Board staff will inform the Board as soon as practicable of any deviations from the standard settlement offer schedule and the reasons therefore.
- e. Once board staff has notified a registrant or individual of the violation and settlement offer, the registrant or individual shall have 30 days to pay the settlement offer or submit a written request to the Board to present their case.
- f. The Board may, on its own motion or at the request of its staff, reconsider any settlement offer. Material mistakes and new evidence are among factors the Board may consider.
- g. If the registrant or individual refuses to accept the Board's settlement offer or does not respond, staff counsel may commence a civil action to collect a forfeiture of at least the amount of the settlement offer. After litigation begins, any settlement of the case shall include all costs of litigation.
- h. Staff may place some registrants on administrative suspension rather than pursue civil action. This will generally apply to registrants with little activity that cannot be contacted. When staff believes a registrant should be placed on administrative suspension, staff will present the situation for the Board's approval. If a registrant on administrative suspension wishes to become active again, staff will actively seek all incurred penalties and all reports, including asking the Board to initiate a civil action.
- i. Board staff will inform the Board of all late reports, settlement offers, paid settlements and administrative suspensions, and will compile a yearly summary for each calendar year.

Adopted by unanimous vote of the Government Accountability Board, March 25, 2015.



# State of Wisconsin\Government Accountability Board



## **Settlement Offer Schedule for Lobbying Law Violations**

This document sets out authorized settlement offers for lobbying law violations, in lieu of pursuing court action. It includes recommended settlement amounts for specific situations. The Board's authority to make settlement offers is set out in Wis. Stat. §5.05(1)(c). The Board may specify penalties for certain offenses and may compromise and settle those matters without formal investigation per Wis. Stat. § 5.05(2m)(c) 12. If a lobbying principal or lobbyist chooses not to accept a settlement offer, the Board may bring a civil action and seek the maximum forfeitures provided by law, including costs and attorneys' fees. If there appears to be an intentional violation of law, the matter may be brought to the Board for further action.

The Board's primary interest is providing timely and accurate lobbying information to the public, and collection of civil penalties is secondary. When addressing violations, Board staff will consider mitigating or exacerbating circumstances, and may adjust penalties accordingly.

Late filing of semi-annual lobbying report (§13.68) – maximum penalty \$5,000

<b>Days Late</b>	<b>First Offense</b>	<b>Second or Greater Offense</b>
2 business days	No penalty	Warning
3-5 days	Warning	\$50
6-15 days	Warning	\$100
16-29 days	\$50	\$250
30+ days	\$100	\$500

Adopted by unanimous vote of the Government Accountability Board, March 4, 2015.





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## **Settlement Offer Schedule for Statement of Economic Interests Violations**

This document sets out procedures for enforcing the requirement for state public officials to file Statement of Economic Interests by the statutory deadlines set out in §19.43, Wis. Stats. The Board's authority for initiating settlement offers is set out in §5.05(1)(c), Wis. Stats.

The primary interest of the Board is providing timely and accurate economic information to the public, and collection of penalties is secondary to that goal. In assessing penalties and offering settlements for violations, Board staff will consider mitigating or exacerbating circumstances like the number of previous offenses and the nature of the official's position, and may modify procedures and penalties accordingly. If there appears to be an intentional violation of law, the matter may be brought to the Board for further action.

This schedule is created pending promulgation of administrative rules under § 5.05(1)(f).

### **Filing of Statements of Economic Interests, §19.43, Wis. Stats.**

a. Requests for Extensions of time under §19.43(8)

By statute, officials may request an extension of the deadline to file a Statement of Economic Interests. When an official requests an extension, staff will ask for the request in writing. For reasons of administrative efficiency, staff will grant requests for extensions for 15 days or less. If the official's request is for more than a 15 day extension, staff will grant an extension of 15 days, and inform the official that their request for further extension will be presented at the next Board meeting, along with information on when the official's Statement was filed. If the Board grants the request for further extension, no penalty will be assessed. If the Board denies the request for further extension, and the official filed a Statement more than 15 days after the original deadline, the official will be assessed a penalty for late filing under section (d). Staff will not grant extensions to candidates for office required to file a Statement under §19.43(4).

b. Requests for Waivers under §19.43(8)

When an official requests a waiver from filing all or part of their Statement, staff will ask for the request in writing. Staff will inform the official that their request for waiver will be presented at the next Board meeting, along with information on whether part or all of the official's Statement has been filed. If the Board grants the request for waiver, the official will not be required to file the portion of the Statement that was waived. If the Board denies the request for waiver, the official will be notified of that denial. If the official fails to file all required information within 15 days of that notification, penalties will be assessed under section (d).

c. Failure to Timely File by Candidates for State Public Office under §19.43(4)

A Candidate required to file a Statement that fails to meet the deadline set out in §19.43(4) will be denied ballot placement, and no financial penalty will be assessed.

d. Failure to Timely File by Officials and Nominees under §19.43(1), (2) and (3)

If an official or nominee is required to file a Statement by Wis. Stats. §19.43(1), (2), or (3) and fails to file a Statement within 15 days after written notice from staff, staff will offer a settlement agreement of \$50. This penalty will increase by \$50 every two weeks, up to a maximum of \$500. If an official or nominee fails to file a statement within 30 days, staff will notify the officials identified in §19.43(7), and instruct the employer to withhold compensation to the individual until the Statement has been filed.

Staff may use its own discretion to waive filing requirements or penalties in the case of an official or nominee who has already terminated their nomination, employment, or service.

Approved by unanimous vote of the Government Accountability Board, March 4, 2015.

# Appendix G

## Government Accountability Board Complaint Procedures



# State of Wisconsin\Government Accountability Board

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JUDGE GERALD C. NICHOL  
Chair

KEVIN J. KENNEDY  
Director and General Counsel

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## Government Accountability Board Complaint Procedures

Approved March 4, 2015

The procedures outlined below are developed to comply with and implement the statutes and administrative rules governing the processing of and resolution of complaints filed with the Government Accountability Board (G.A.B. or Board). These procedures make use of the Complaint Tracking Database created in SharePoint, which contains separate tracking mechanisms for complaints handled by the Elections Division and the Ethics and Accountability Division.

### A. Complaint Intake

1. A complaint may be received as a paper complaint or by fax, email, or through the agency website. When received as a paper or fax complaint, Front Desk staff shall forward the complaint to the Elections Division Administrator if it relates to election laws and to the Ethics and Accountability Division Administrator if it relates to laws governing campaign finance, lobbying, or the code of ethics for public officials. The Public Information Officer shall forward any complaints received through the agency website to the appropriate Division Administrator. Email complaints received by other staff shall be forwarded to the appropriate Division Administrator.
2. The agency website shall be modified to permit electronic filing of complaints and other communications, but to remove the categorization of the complaint or communication by the individual submitting it.
3. Regardless of the form of the submission, the appropriate Division Administrator shall determine whether it constitutes a complaint which is entered into the Complaint Tracking Database. The Elections Division portal of the Database is intended to track complaints regarding an action or decision of a local election official. The Ethics Division portal of the Database is intended to track complaints under that Division's jurisdiction as well as submissions relating to matters outside of its jurisdiction. The Database is not intended to track campaign finance audits or requests for advice.
4. If the submission constitutes a complaint to be included in the Database, the appropriate Division Administrator shall open a record in the database using the proper naming convention, or shall designate a staff member to do so. Paper complaints shall be scanned and attached to the complaint record, and complaints submitted through the website or by email shall be saved and attached to the complaint file in the Database.
5. When the record is created in the Database, the Database will automatically generate a complaint identification number and the date on which the record was created. The

ID number will include a designation for the year in which the complaint was opened. The ID numbers will be sequential across the two Divisions, but reports can be generated to include only those assigned to either of the Divisions to facilitate management oversight of complaints handled by each Division as well as reporting to the Board. The Database will also create a folder to store documents related to the complaint which will be linked to the complaint record.

#### B. Complaint Processing – Elections Division

1. Within two days of receiving a complaint, the Elections Division Administrator shall determine whether the complaint will be processed using informal fact finding and resolution or the formal procedures outlined in Wis. Stat. §5.06 and Ch. GAB 20, Wis. Adm. Code. The decision to utilize the formal Section 5.06 procedures to resolve a complaint shall be made in consultation with Staff Counsel and the Director and General Counsel. To invoke the formal Section 5.06 procedures, the G.A.B. must receive an original sworn complaint.
2. When a complaint is designated for informal fact finding and resolution, the Division Administrator shall assign it to a staff member for processing and resolution. Factors favoring the use of the informal resolution process include a complaint which raises a minor issue of fact or law, involves a straightforward application of the law, is not an appeal of a ballot access decision or decision regarding the sufficiency of an election petition, and is not a matter for which the complainant or local election official appears likely to request a court determination.
3. The staff member assigned to undertake informal fact finding and resolution of a complaint shall, within five days of being assigned the complaint, make initial contact with the complainant by telephone or email to obtain any necessary additional facts. If the staff member will be unable to seek additional information within five days, the staff member shall send an email to the complainant acknowledging receipt of the complaint and advising that additional contact will be made shortly. If necessary, the staff member shall also contact the local election official involved to obtain additional facts or opposing arguments.
4. The assigned staff member shall analyze the facts and relevant law, and determine the proper outcome or resolution, consulting with Staff Counsel and the Division Administrator as necessary. The assigned staff member shall convey the agency's determination to the complainant and the local election official, either by email or via a telephone call and confirmation email. The assigned staff member shall notify the Division Administrator of the resolution of the complaint.
5. When a complaint is designated for the formal Section 5.06 process, the Division Administrator shall assign it to Staff Counsel, after consultation with the Director and General Counsel. Factors to be considered in invoking the Section 5.06 procedures include that the complaint involves a decision regarding ballot access or the sufficiency of an election petition, a significant factual dispute or legal issue, or a matter for which the complainant or local election official is likely to seek court review.

6. Within 10 days of receipt of the complaint, the assigned Staff Counsel shall determine if the complaint is not timely, is not in proper form, or does not establish probable cause that the local election official has failed to comply with the election laws. If Staff Counsel recommends dismissing the complaint on that basis, Staff Counsel shall draft correspondence outlining such determination for the review and signature of the Director and General Counsel. Upon approval of such letter and within 10 days of receipt of the complaint, the assigned Staff Counsel shall convey the correspondence to the complainant and the local election official.
7. If Staff Counsel determines that the complaint establishes probable cause, or that the complaint otherwise merits issuance of formal findings and order, Staff Counsel shall implement the procedures outlined in Ch. GAB 20, soliciting the local election official's answer within 10 business days of the election official receiving the complaint, and any reply from the complainant within 10 days of the complainant receiving the election official's answer. Staff Counsel may seek assistance from another staff member to obtain and analyze the submissions of the parties. In the event that the filing schedule cannot accommodate the timing necessary for a Board decision (e.g., complaint affects printing of ballots), the timeline for submissions by the parties may be shortened as approved by the Director and General Counsel.
8. After review of all submissions, the assigned Staff Counsel shall draft a formal Findings and Order document for the review and approval of the Director and General Counsel, who shall consult with the Board Chair prior to executing the Findings and Order. The Board Chair may approve or reject the decision, require modifications, or determine that the matter should be set for a hearing before the Board as provided for in Chapter GAB 20, Wis. Adm. Code. Upon approval and execution of the Findings and Order, Staff Counsel shall transmit the decision to the complainant and local election official.
9. Throughout the processing of resolving the complaint, either informally or using the Section 5.06 procedures, the assigned staff member or Staff Counsel shall document the status and significant information regarding the complaint in the Complaint Tracking Database. This shall include completing the data fields indicating the status of the complaint, the source of the complaint, deadlines for party filings, resolution information, and any additional comments. An example of a completed Elections Division complaint record is attached. The Order or other communication resolving the matter shall be attached to the complaint record in the Database. The assigned staff or Staff Counsel shall also be responsible for maintaining the electronic and paper files for said complaints.
10. The Elections Division Administrator shall review the status of open complaints on a weekly basis to monitor the progress of complaint resolution. The Division Administrator shall also prepare a summary report for each Board meeting regarding the status of complaint files that are open or that have been closed since the previous Board meeting.

C. Complaint Processing – Ethics and Accountability Division

1. Within two days of receiving a complaint, the Ethics Division Administrator shall determine whether the complaint involves a matter outside of the agency's jurisdiction or pertains to a local matter. In either case, the Division Administrator will assign a staff member to generate an email or letter advising the complainant: (1) that the agency does not have jurisdiction regarding the matter, and informing the complainant of any other governmental agency that may be able to assist with the matter, if that information is known; or (2) that the matter should be addressed to a District Attorney. Standardized communications shall be utilized to resolve matters outside of the Board's jurisdiction. Staff assigned to the matter shall attach the complaint and the closing correspondence to the complaint record in the database.
2. Within five days of receipt of a complaint that is within the jurisdiction of the Ethics Division, staff will verify the receipt of the complaint to the complainant and the Division Administrator shall determine whether it may be possible to resolve the complaint through informal fact finding and communication, or if staff should seek the Board's input regarding, or approval of, a resolution authorizing an investigation pursuant to Wis. Stat. §5.05. The decision to utilize the formal Section 5.05 procedures to resolve a complaint shall be made in consultation with Staff Counsel and the Director and General Counsel.
3. Factors favoring the use of the informal resolution process include a complaint which raises a minor issue of fact or law, involves a straightforward application of settled law, and for which staff does not intend to seek a monetary penalty. When a complaint is designated for informal fact finding and resolution, the Division Administrator shall assign it to a staff member and/or Staff Counsel for processing and resolution.
4. The staff member or Staff Counsel assigned to undertake informal fact finding and resolution of a complaint shall, within five days of being assigned the complaint, make initial contact with the complainant by telephone or email to obtain any necessary additional facts. If the staff member will be unable to seek additional information within five days, the staff member shall send an email to the complainant acknowledging receipt of the complaint and advising that additional contact will be made shortly. If necessary, the staff member shall also contact other parties involved to obtain additional facts or opposing arguments.
5. The assigned staff member or Staff Counsel shall analyze the facts and relevant law, and determine the proper outcome or resolution, consulting with the Division Administrator and Director and General Counsel as necessary. The assigned staff member or Staff Counsel shall convey the agency's determination to the complainant and other involved parties, either by email or via a telephone call and confirmation email if permitted by law. The assigned staff member or Staff Counsel shall notify the Division Administrator of the resolution of the complaint.
6. When a complaint is designated for the formal Section 5.05 process, the Division Administrator shall assign it to himself or herself or to Staff Counsel, after

consultation with the Director and General Counsel. Factors to be considered in invoking the Section 5.05 procedures include that the complaint involves the potential for the Board to seek a monetary penalty or prosecution, or involves a significant question of law.

7. After being assigned a complaint to be handled under the formal Section 5.05 process, the assigned staff or Staff Counsel shall complete any necessary preliminary inquiry and research, and, if appropriate, prepare a memorandum and proposed resolution authorizing an investigation for the Board's review and consideration. Assigned staff shall subsequently proceed as directed by the Board. If the Board authorizes an investigation or further inquiry or research, or approves a settlement agreement, assigned staff and Staff Counsel shall continue to resolve the complaint and report its status at subsequent Board meetings until the resolution of the matter.
8. After completion of all Board action and investigation regarding the complaint, the assigned staff or Staff Counsel shall draft the appropriate closing documents, if any, for transmission to the parties.
9. Throughout the processing of the complaint, the assigned staff member or Staff Counsel shall document the status and significant information regarding the complaint in the Complaint Tracking Database. This shall include completing the data fields indicating the status of the complaint, the source of the complaint, whether it is confidential, the subject category and subcategory of the complaint, forfeiture and resolution information, and any additional comments. The dismissal letter, settlement agreement, or other communication resolving the matter shall be attached to the complaint record in the Database. Attached is an example of a blank Ethics Division complaint record. Assigned staff or Staff Counsel shall also be responsible for maintaining the electronic and paper files for said complaints.
10. The Ethics Division Administrator shall review the status of open complaints on a weekly basis to monitor the progress of complaint resolution. The Division Administrator shall also prepare a summary report for each Board meeting regarding the status of complaint files that are open or that have been closed since the previous Board meeting.

Adopted by unanimous vote of the Government Accountability Board on March 4, 2015.



# Appendix H

## Complaint Processing and Tracking Procedures Memo



# State of Wisconsin\Government Accountability Board

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JUDGE GERALD C. NICHOL  
Chair

KEVIN J. KENNEDY  
Director and General Counsel

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## MEMORANDUM

**DATE:** For the Meeting of March 4-5, 2015

**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  
Jonathan Becker, Ethics and Accountability Division Administrator

**SUBJECT:** Complaint Processing and Tracking Procedures

### A. Introduction

This memorandum provides background information related to the efforts of Board staff to improve the processing and tracking of complaints and inquiries received by the agency, as recommended by the Legislative Audit Bureau (LAB). The LAB made the following specific recommendations:

The agency staff present to the Government Accountability Board for its approval written policies for considering complaints filed with the Ethics and Accountability Division and the Elections Division.

The agency staff maintain complete, centralized information about all complaints received and inquiries undertaken, including the resolution of these issues.

The agency staff report regularly to the Government Accountability Board on the status and resolution of all inquiries.

To implement these recommendations, Board staff has developed a new electronic database designed to more efficiently complete the intake of complaints, document the staff assigned to handle complaints, and track the status and resolution of complaints and agency inquiries and investigations. The attached draft procedures are presented for the Board's consideration, as recommended by the Legislative Audit Bureau.

## B. Legal Framework for Complaint Jurisdiction

### 1. Section 5.05 Complaints

The agency's authority to receive and resolve complaints is established by §§5.05 and 5.06, Wis. Stats. Section 5.05(2m)(c)2.a. authorizes any person to file a complaint with the G.A.B. alleging a violation of chapters 5 to 12 (election and campaign finance laws), subchapter III of Chapter 13 (lobbying laws) or subchapter III of chapter 19 (code of ethics for public officials). For example, a Section 5.05 complaint may allege election fraud, violation of campaign finance contribution requirements, or an improper action or conflict of interest under the Code of Ethics for State Public Officials. The Board may also initiate an investigation or inquiry on its own initiative without receiving a complaint.

The ultimate resolution of an investigation initiated under Section 5.05 may be dismissal of the complaint, termination of the matter, filing of a civil complaint seeking a forfeiture penalty, or a referral of the matter to the appropriate district attorney to pursue criminal prosecution. With certain exceptions, records related to investigations conducted pursuant to Section 5.05 are confidential, and G.A.B. staff is prohibited from releasing such records. In most cases, matters pursued under Section 5.05 are processed and investigated by the Ethics and Accountability Division and Staff Counsel.

### 2. Section 5.06 Complaints

Section 5.06, Wis. Stats. permits a qualified elector of a jurisdiction to file a complaint with the Board alleging that a local election official has failed to comply with the election laws, or has abused his or her discretion in administering the election laws. An appeal of a ballot access decision made by a local filing officer, or of a decision whether to certify an election petition as sufficient, are examples of complaints filed pursuant to §5.06, Wis. Stats. The Board may also initiate, without a complaint, an investigation to determine whether a local election official has failed to comply with the law or abused the discretion vested in the election official to administer the law.

Complaints filed pursuant to §5.06, Wis. Stats. are not considered confidential and are processed and resolved by the Elections Division and Staff Counsel. While the Board may conduct an administrative hearing regarding a complaint, the Board has historically delegated to the Director and General Counsel the authority to issue an order under §5.06, after consultation with the Board Chair, as permitted by Wis. Stat. §5.05(1)(e). The Director and General Counsel may issue findings that a local election official did or did not comply with the election laws or abused the official's discretion in administering the law, and may require the election official to conform his or her conduct to the law or correct any action or decision that is inconsistent with the law. If necessary, the Board may also seek to enforce its order by commencing a civil action under §5.05, Wis. Stats.

Chapter GAB 20, Wis. Adm. Code, outlines specific steps governing the filing, processing, and resolution of complaints filed with the Board. While GAB §20.01, Wis. Adm. Code, states that Chapter 20 applies to complaints filed pursuant to §§5.05, 11.60(5), and 11.66, that language is an erroneous remnant of the merger of the State Elections Board and State Ethics Board which created the G.A.B. In reality, Chapter 20 applies only to complaints filed pursuant to §5.06, Wis. Stats., which challenge a decision of a local election official.

The significance of a complaint appealing a decision or action of a local election official is that a complainant may not commence a court action to contest the validity of the decision or action without first filing a complaint with the Board pursuant to Section 5.06 and completing that administrative process. The complainant or election official involved may appeal the Board's findings and order to circuit court within 30 days of the Board's decision.

In handling complaints challenging the actions of local election official, Board staff has reserved the formal process of responsive filings and due process steps outlined in the Statutes and Administrative Code for more significant matters. These might involve decisions regarding ballot access or the sufficiency of an election petition, or a clerk's noncompliance with substantive requirements which jeopardize the fairness of the election process. Board staff has attempted to resolve most complaints regarding local election officials in a less formal manner for several reasons.

Often, the matter may involve a straightforward application of election law and, pursuant to GAB 20.04, Wis. Adm. Code, it may be dismissed for failing to establish probable cause that the law has been violated. Or the timeliness necessary to resolve a matter does not accommodate a schedule of responsive pleadings from the parties involved. Finally, resolving whether the action of the local election official was proper under the law is often the sole outcome requested by the complainant, rather than preserving their ability to pursue the matter in court, which is the focus of Wis. Stat. §5.06. In such cases, staff has simply resolved the issue in a telephone conversation or email exchange by providing relevant information about the law and guidance to the parties.

### C. Improvements to Complaint Procedures

While Wis. Stats. §5.05 and 5.06, and Chapter GAB 20, Wis. Adm. Code, establish some procedures for complainants, as well as for Board staff to interact with the involved parties to a complaint or an agency investigation, the LAB recommended that the Board approve more specific written policies for the staff's internal processing and tracking of complaints as well as the agency's investigations and preliminary inquiries. Board staff has previously utilized several versions of tracking databases, including an antiquated system inherited from the former Ethics Board, as well as a database created to electronically transfer election-related complaints received through the G.A.B. website's complaint page.

Experience has shown that these systems can be improved by using updated technology solutions and by revising the method of receiving complaints through the agency website. For example, one obstacle to accurate and efficient complaint processing and tracking has resulted from the option for the public to submit complaints or comments through the G.A.B. website. Submissions are self-categorized as a complaint involving election fraud, election official action, or voter intimidation, or simply as a comment regarding election administration. Inquiries are routinely identified incorrectly when submitted through the website, and often a submission categorized as a complaint is simply an observation or question that is not actionable as a complaint under Section 5.05 or 5.06 of the Statutes.

While the complaint page of the website was intended to provide a convenient means for the public to initiate the complaint process, staff believes modifications are required to more accurately distinguish between actual complaints and other inquiries or comments. Staff intends to continue permitting complaints and other correspondence to be submitted

through the website, but to remove the option for an individual to categorize the submission. Instead, each submission will be reviewed by staff and identified as a complaint requiring formal or informal resolution, or as another type of communication.

Using Microsoft SharePoint, Board staff has developed a new database to process, assign, track, and resolve complaints submitted to both the Elections Division and the Ethics and Accountability Division. The attached draft procedures are proposed to be implemented in conjunction with the new database to track the intake, review, and resolution of complaints.

The database includes some features common to both Divisions in processing complaints, such as automatically assigning a file number to a complaint, permitting the complaint to be categorized by subject matter; tracking the assigned staff, case status, and resolution information; including fields for additional comments; and allowing key documents to be attached to each complaint record and saved in the database. Each complaint record will link to an electronic folder for each complaint for easier navigation between the complaint record and relevant documents and for convenient retrieval of complaint records. The database will also contain links to the complaint procedures and template letters to be used in processing complaints.

The database also includes features unique to complaints received by each of the Divisions, such as designating whether Ethics Division complaints should be treated as confidential, documenting financial penalties which are imposed and collected, and indicating whether a complaint is not within the agency's jurisdiction. The database will restrict access to confidential complaint records to agency management, staff counsels, and Ethics and Accountability Division staff. It will also indicate whether Elections Division complaints are resolved informally or with the formal Section 5.06 procedures which result in the issuance of an order.

Board staff expects that use of the database and the attached procedures will improve the timely processing and tracking of complaints, and will also allow staff to produce more useful and consistent reports to the Board, as recommended by the Legislative Audit Bureau. Additional enhancements or modifications to the database may be implemented based upon experience using the system and procedures. Screen shots illustrating the use of the new database are included with the draft complaint procedures. Unless the Board wishes to establish a different reporting schedule, staff recommends that the Board receive reports summarizing the status of complaints and agency investigations and inquiries at its regular Board meetings.

**Recommended Motion:**

The Board approves the attached Complaint Procedures, and directs Board staff to implement the described procedures and provide reports to the Board at each regular meeting which summarize the status of complaints received by the agency and of its investigations and inquiries.

# State of Wisconsin\Government Accountability Board

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JUDGE GERALD C. NICHOL  
Chair

KEVIN J. KENNEDY  
Director and General Counsel

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## MEMORANDUM

**DATE:** For the April 10, 2015 Meeting

**TO:** Members, Wisconsin Government Accountability Board

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

Prepared by:  
  
Matthew W. Giesfeldt, Staff Counsel

**SUBJECT:** Promulgation of Emergency Rule Regarding Technical College IDs for Voting Purposes

### **Introduction:**

On November 15, 2011, the Joint Committee for Review of Administrative Rules (“JCRAR”) ordered the Government Accountability Board (“G.A.B.”) to promulgate an administrative rule to allow for voters to use unexpired Wisconsin Technical College System (“WTCS”) identification cards to meet the requirements of 2011 Wisconsin Act 23 (the “Photo ID Law”). The G.A.B. suspended the promulgation process of that rule when state and federal courts stayed the implementation of the Photo ID Law. On March 23, 2015, the United States Supreme Court denied certiorari on the federal challenge to the Photo ID Law, which constituted the last judicial barrier to its implementation. At the advice of the Attorney General, the G.A.B. took the position that the Photo ID Law should be implemented for all elections occurring after April 7, 2015. The G.A.B. anticipates that there will be at least two special elections on May 19, 2015. The Attorney General’s office also advised G.A.B. staff to promulgate this proposed administrative rule to mitigate challenges that the Photo ID Law may face now that the injunctions have been lifted.

JCRAR’s directive remains unfulfilled, and the Photo ID Law will be in effect for the May 19, 2015, special elections.

### **Promulgation Procedure for Emergency Rules:**

Wis. STAT. §§227.135(2), 227.24(1)(3)1d. and Executive Order #50 require that an agency must submit a Statement of Scope of any proposed rule, including an

emergency rule, to the Governor for approval prior to submitting that Statement to the body with policy-making powers over the subject matter of the proposed rule. In the case of the G.A.B., the Board is the body with policy-making powers. Once the Governor approves, in writing, a Statement of Scope, the agency may publish that Statement in the Administrative Register. WIS. STAT. §227.135(2); Executive Order #50, II.5. The agency must publish the Statement within 30 calendar days of the Governor's written approval. Executive Order #50, II.9. The Board may not approve a Statement of Scope until such Statement has been published for at least ten (10) calendar days in the Administrative Register. WIS. STAT. §227.135(2); Executive Order #50, II.5. No state employee may official may perform any action in connection with the drafting of an emergency rule until after the governor and the body with policy-making powers approves the Statement of Scope. WIS. STAT. §227.24(1)(d).

An agency may promulgate an emergency rule without complying with the notice, hearing, and publication requirements of promulgation of a permanent rule. WIS. STAT. §227.24(1)(a). After receiving approval of the Statement of Scope, as described above, the agency must submit the actual proposed rule, in final draft form, to the Governor for approval. WIS. STAT. §227.24(1)(e)1g. If the Governor approves the rule, the agency may proceed to promulgating the rule by 1) preparing a plain language analysis of the rule; 2) preparing a fiscal estimate of the rule for submission to each member of the Legislature; 3) submitting the rule to the Legislative Reference Bureau ("LRB"); and 4) publishing the rule in the official state newspaper. WIS. STAT. §§227.24(1)(c), (e). Finally, the rule takes effect upon publication in the official state newspaper and remains in effect for 150 days. WIS. STAT. §227.24(1)(c).

Neither the relevant statutes nor Executive Order #50 describe what, if anything, the Board must do regarding approval of the actual language of the proposed emergency rule. The law only requires that the Board approve the Statement of Scope. *See* WIS. STAT. §§227.135(2), 227.24(1)(3)1d. Executive Order #50 states that a "final draft rule shall be submitted electronically . . . to the Governor's Office of Regulatory Compliance for approval by the head of the agency proposed a permanent or emergency rule[.]" Executive Order #50, V.1. This provision only requires the "head of the agency" to approve the final draft rule, not the "body with policy-making powers over the subject matter of the proposed rule" as required by WIS. STAT. §227.135(2). To date, it has been the G.A.B.'s practice for its Director to certify the final draft rule, as required by WIS. STAT. §227.20(1).

**Current Status:**

On or about March 30, 2015, G.A.B. staff prepared a Statement of Scope for this proposed rule (attached hereto as "Exhibit A"). Director Kennedy submitted a Statement of Scope to the Governor's office on March 31, 2015. The Governor approved the Statement of Scope in a letter dated April 3, 2015. G.A.B. staff electronically submitted the Statement of Scope to the LRB for publication on that same date. The Statement of Scope and the Governor's approval letter are currently published on the Wisconsin Administrative Rules website under "Rulemaking Order." *Available at:* <https://health.wisconsin.gov/admrules/public/Rmo?nRmoId=18804>. LRB staff attorney Bruce Hoesly confirmed receipt of the Statement of Scope and Governor approval letter on April 6, 2015. G.A.B. staff spoke with Mr. Hoesly on April 6, 2015,

and Mr. Hoesly confirmed verbally that the Statement of Scope would be published in the Administrative Register for ten (10) days beginning on April 13, 2015, which is the earliest that the Statement could have been published given the Governor's April 3, 2015 approval.

On April 23, 2015, the Statement of Scope will have been published in the Administrative Register for ten days. As early as April 24, 2015, the Board may approve the Statement of Scope. Upon approval, the G.A.B. staff may work to draft the proposed rule. G.A.B. staff had prepared a memorandum for the Board describing the substance of this rule for the February 7, 2012, Board meeting before this promulgation process was discontinued (memorandum attached hereto as "Exhibit B"). Pursuant to WIS. STAT. §227.24(1)(d), G.A.B. staff has not and may not done any work to prepare the new rule until the Board approves the new Statement of Scope, but the Board may review Exhibit B to see what the staff proposed in 2012.

***Recommendations and Proposed Motions:***

G.A.B. staff recommends that, on April 10, 2015, the Board decide how to proceed to promulgate this proposed emergency rule *should* the Board later approve the Statement of Scope. Assuming the Board intends to promulgate this emergency rule and that it will approve the Statement of Scope after it is published for ten days in the Administrative Register, the Board must decide 1) when it wishes to review the Statement of Scope for approval, and 2) how it wishes to review and potentially approve the final draft language of the rule for submission to the Governor for final approval.

1. Review and Approval of Statement of Scope:

The Board may hold a special meeting as early as April 24, 2015, to review and potentially approve the Statement of Scope. Alternatively, the Board may review and potentially approve the Statement of Scope at the April 29, 2015, Board meeting, already scheduled.

2. Review and Approval of Language of Rule:

The Board may only review the language of the proposed rule *after* it approves the Statement of Scope, because G.A.B. staff may not work to prepare the language until after the Board approves the Statement of Scope. The Board may either meet to approve the language itself, or it may delegate the authority to Director Kennedy and/or Board Chair, Judge Nichol.

If the Board decides to review and potentially approve the language of the proposed rule itself, it must do so after it approves the Statement of Scope. If the Board schedules a special meeting to approve the Statement of Scope before April 29, the Board may direct staff to prepare the proposed language for the April 29 meeting; alternatively, the Board may review and potentially approve the Statement of Scope at the April 29 meeting and then schedule a special meeting to approve the language of that rule after that date but no later than May 8 to give staff the opportunity to publish the rule to be in effect on May 19.

If the Board decides to delegate the authority to review and potentially approve the language of the proposed rule to Director Kennedy and/or Board Chair, Judge Nichol, then the Board need not schedule a special meeting and may simply review the Statement of Scope at its April 29 meeting.

**STATEMENT OF SCOPE  
PURSUANT TO WIS. STAT. § 227.135  
GOVERNMENT ACCOUNTABILITY BOARD**

**Rule No.:** GAB Ch. 10

**Relating to:** Use of Technical College System Student Identification Cards for Voting

**Rule Type:** Emergency and Permanent

**1. Finding/nature of emergency (Emergency Rule only):**

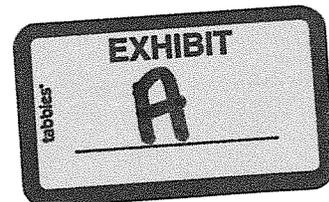
On November 15, 2011, the Joint Committee for Review of Administrative Rules (“JCRAR”) ordered the Government Accountability Board (“Board” or “G.A.B.”) to promulgate an emergency rule, pursuant to WIS. STAT. §227.26(2)(b), to allow for the use of technical college system student identification cards to meet the photo identification requirements of 2011 Wisconsin Act 23 (“Photo ID Law”), which was enacted on May 25, 2011. The Photo ID Law requires that electors present a photo identification to vote.

The G.A.B. suspended the promulgation process when state and federal courts stayed the implementation of the Photo ID Law pending further judicial review as to its state and federal constitutionality. On March 23, 2015, the United States Supreme Court denied certiorari on the federal challenge to the Photo ID Law. *See* U.S. Supreme Court Order List, No. 14-803, p. 3 (“*Ruthelle Frank, et al v. Walker, Gov. of WI, et al*”), available at [http://www.supremecourt.gov/orders/courtorders/032315zor\\_b97d.pdf](http://www.supremecourt.gov/orders/courtorders/032315zor_b97d.pdf). According to Wisconsin Attorney General, the Honorable Brad Schimel, such denial constituted the last judicial barrier to implementation of the Photo ID Law. *See* GAB, *No Photo ID Required at April Election* (Mar. 23, 2015), available at <http://gab.wi.gov/node/3580>. Plaintiffs in the federal Photo ID Law case filed additional motions that are currently pending, but the G.A.B., at the advice of the Attorney General, takes the position that the Photo ID Law stands and should be implemented for elections occurring after April 7, 2015.

The Board anticipates that at least two school districts will hold special elections on May 19, 2015. The Board anticipates that other special elections are likely this spring, including a potential special election for a state senatorial district. Board staff believes that the Board must promulgate an emergency rule to take effect before the May 19, 2015 special elections, so that the Photo ID Law may be fully and properly implemented for those elections and any other elections soon thereafter.

**2. Detailed description of the objective of the proposed rule:**

The proposed rule implements a November 2011 directive from the Joint Committee for the Review of Administrative Rules (JCRAR). That directive requires the G.A.B. to promulgate an emergency rule specifying that a Wisconsin Technical College System



("WTCS") student identification card may be used as acceptable identification for voting.<sup>1</sup>

**3. Description of the existing policies relevant to the rule, new policies proposed to be included in the rule, and an analysis of policy alternatives:**

**Existing Policy:**

In the Photo ID Law, the Legislature established a voter identification requirement for electors to receive a ballot. The legislation delineates the types of identification that may be used to meet the requirement. WIS. STAT. §5.02 (6m). These types of identification are:

1. An operator's license issued under ch. 343;
2. An identification card issued under s. 343.50;
3. An identification card issued by a U.S. uniformed service;
4. A U.S. passport;
5. A certificate of U.S. naturalization;
6. An unexpired driving receipt under s. 343.11;
7. An unexpired identification card receipt under s. 343.50;
8. An identification card issued by a federally recognized Indian tribe in this state;
9. An unexpired identification card issued by a university or college in this state that is accredited as defined in s. 39.30 (1)(d).

The Photo ID Law will be implemented for the May 19, 2015 special elections and every election thereafter (pending any potential future legislative or judicial activity). Thus, there is no existing guidance or clarification that a WTCS student identification card is an "unexpired identification card issued by a university or college in this state that is accredited, as defined in s. 39.90(1)[.]" WIS. STAT. §5.02(6m)(f).

**Proposed Policy:**

The proposed rule clarifies that a WTCS student identification card is included in the description of student identification cards that may be used as acceptable identification in order to receive a ballot.

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<sup>1</sup> WIS. STAT. §6.15(2)(bm) provides that electors must provide "proof of identification" to apply to vote. "Identification" is defined to include "[a]n identification card issued by a university or college in this state that is accredited, as defined in s. 39.30(1)(d)[.]" WIS. STAT. §5.02(6m)(f). An accredited college is an "institution accredited by a nationally recognized accrediting agency . . . or, if not so accredited, is a nonprofit institution of higher education whose credits are accepted on transfer by not less than 3 institutions which are so accredited, on the same basis as if transferred from an institution so accredited." WIS. STAT. §39.30(1)(d); *see also* Paragraph 3 of this Statement of Scope.

On November 9, 2011, the Board made a determination that a Wisconsin Technical College System institution is accredited under WIS. STAT. §39.30 (1)(d).<sup>2</sup> Based on that determination, the Board directed G.A.B. staff to include WTCS student identification cards as an acceptable form of identification for voting in its training and educational materials as part of the agency’s responsibility to administer the voter identification law pursuant to WIS. STAT. §5.05 (1); *see also* Section 144(1) of 2011 Wisconsin Act 23 (“[T]he government accountability board shall conduct a public informational campaign for the purpose of informing prospective voters of the voter identification requirements of this act.”).

**Alternatives:**

The alternative to promulgating this rule is to significantly restrict the number of electors who may use a student identification card in order to receive a ballot and to create potential confusion for clerks and voters regarding acceptable forms of voter identification on Election Day. The Board originally addressed this issue because G.A.B. staff raised a question about legislative intent as it was developing its implementation approach to training local election officials and educating the public on the voter identification requirement. The issue will again be raised and need to be clarified as the May 19, 2015 special elections approach.

**4. Detailed explanation of statutory authority for the rule (including the statutory citation and language):**

**General Authority**

WIS. STAT. §5.05(1) provides that the G.A.B. has “the responsibility for the administration of chs. 5 to 12, other laws relating to elections and election campaigns, subch. III of ch. 13, and subch. III of ch. 19.” The G.A.B. may “[p]romulgate rules under ch. 227 applicable to all jurisdictions for the purpose of interpreting or implementing the laws regulating the conduct of elections . . . or ensuring their proper administration.” WIS. STAT. §5.05(1)(f).

The Photo ID Law enacted and amended statutes in chs. 5 and 6. *See* 2011 Wisconsin Act 23. Thus, the G.A.B. has the statutory authority to promulgate the proposed rule to ensure the proper administration of elections.

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<sup>2</sup>In 2011, the Board analyzed the Photo ID Law to determine that an unexpired WTCS student identification card met the statutory definition found in WIS. STAT. §5.02(6m)(f). The Board determined that WTCS institutions are accredited under WIS. STAT. §39.30(1)(d). In making this determination, the Board considered advice from G.A.B. staff regarding the accepted rules of statutory interpretation, starting with the plain language. The Board also considered G.A.B. staff information regarding the legislative history of the applicable statutes. In making its determination, the Board did *not* consider whether permitting the use of WTCS student identification cards was good public policy.

## **Emergency Rule Authority**

The agency is authorized to promulgate the rule as an emergency rule because it was previously directed to do so by the JCRAR pursuant to WIS. STAT. §§227.10 (1), 227.26 (2).

Further, Board staff believes that an emergency rule is necessary to preserve the public peace and welfare<sup>3</sup> by 1) properly implementing the Legislature's enacted policy, and 2) remedying potential public confusion about the status of the Photo ID Law and how voters comply with it. Therefore, an emergency rule is necessary to preserving the public peace and welfare before the May 19, 2015 special elections.

Finally, on November 22, 2011, the G.A.B. submitted a Statement of Scope, substantially similar to this Statement, to the Governor. On December 2, 2011, the Governor approved that Statement. *See* Letter from Gov. Scott Walker to Director Kevin Kennedy (Dec. 2, 2011) (attached hereto as "Exhibit A"). Pursuant to Executive Order #50, Sec. II, Para. 9, an agency must file an approved statement of scope to the "Legislative Reference Bureau within "thirty calendar days of approval if the agency intends to proceed with rulemaking[.]" Given that the G.A.B. did not implement the emergency rule in 2011 due to the court-ordered stays, the Board now must submit a new Statement of Scope to the Governor for approval. This Statement of Scope describes the same objective as did the 2011 Statement, and the Board staff requests the Governor to make a similar approval now.

## **Permanent Rule**

The agency plans to promulgate this rule as both an emergency rule and a permanent rule. This scope statement is submitted in support of both the emergency rule and the permanent rule.

**5. Estimate of the amount of time that state employees will spend developing the rule and of other resources necessary to develop the rule:**

10 hours.

**6. List with description of all entities that may be affected by the proposed rule:**

WTCS institutions desiring to issue student identification cards acceptable for voting purposes will be affected by this rule. All students at a WTCS institution also will be affected by this rule as well as Wisconsin's 1,852 municipal clerks responsible for

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<sup>3</sup> WIS. STAT. §227.24(1)(a) provides that "[a]n agency may promulgate a rule as an emergency rule without complying with the notice, hearing and publication requirements under this chapter if preservation of the public peace, health, safety or welfare necessitates putting the rule into effect prior to the time it would take effect if the agency complied with the procedures."

administering elections and approximately 25,000 poll workers who staff voting locations on Election Day. The impact of the rule will be on town, village and city government. The rule does not impact businesses, private economic sectors or public utility ratepayers.

**7. Summary and preliminary comparison with any existing or proposed federal regulation that is intended to address the activities to be regulated by the proposed rule:**

The 2002 federal Help America Vote Act (HAVA), 42 USC §15301 et seq., contains a provision requiring states to receive identification from individuals who register to vote for the first time, by mail. HAVA §303 (b)(2)(A)(i)(I). That requirement is a voter registration requirement and is a more general requirement than the state identification requirement for receiving a ballot. The federal requirement simply refers to “current and valid photo identification.” The federal requirement does not delineate specific types of photo identification as does the Wisconsin statute.

**8. Anticipated economic impact of implementing the rule (note if the rule is likely to have a significant economic impact on small businesses):**

The rule will have minimal or no impact on the governmental entities impacted by the rule. Municipal clerks and poll workers will be provided with informational and training materials on the acceptable forms of identification for voting. This rule merely clarifies that WTCS student identification cards are an “unexpired identification card issued by a university or college in this state that is accredited, as defined in s. 39.90(1)[.]” Wis. STAT. §5.02(6m)(f). The rule will eliminate possible confusion if a voter offers a technical college student identification card when appearing at the polling place to vote. This rule will not have an impact on small businesses.

**Contact person:** Matthew W. Giesfeldt  
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Kevin J. Kennedy  
Director and General Counsel  
Government Accountability Board

March 31, 2015  
Date Submitted



# State of Wisconsin\Government Accountability Board

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JUDGE DAVID G. DEININGER  
Chair

KEVIN J. KENNEDY  
Director and General Counsel

Date: For the February 7, 2012 Meeting

To: Government Accountability Board Members

From: Kevin J. Kennedy, Director and General Counsel

Subject: Approve Proposed Rule Permitting Use of  
Technical College Student Identification Cards for Voting



At the November 9, 2011 meeting, the Government Accountability Board specifically approved the use of technical college identification cards to meet the photo identification requirements of Act 23, reversing a previous Board action. Following the Board's actions on November 9, 2011, the Joint Committee for Review of Administrative Rules immediately scheduled a public hearing and an executive session for November 15, 2011 to discuss the Board's actions. In executive session, JCRAR adopted a motion requiring the G.A.B. to promulgate an emergency rule on the use of technical college student identification cards to meet the voter identification requirements of 2011 Wisconsin Act 23.

On November 22, 2011 the G.A.B. staff submitted a proposed scope statement for the proposed rule to the Governor for approval. The Governor approved the scope statement on December 2, 2011 and it was published in the December 30, 2011 edition of the Administrative Register. The statement of scope must appear in the Administrative Register for 10 days before the Board can affirmatively approve it. On January 12, 2012 the Board approved the statement of scope. Following approval of the statement of scope by the Board, staff began drafting the emergency rule and permanent rule.

The proposed rule is set out below. Once the Board approves the proposed emergency rule, we will have to submit it to the Governor for approval and conduct a public hearing.

Assuming the Governor approves the emergency rule, we can then publish the rule in the newspaper and file it with the Legislative Reference Bureau. Usually, it takes a minimum of a couple of weeks to accomplish publication of a rule and the emergency rule would not take effect until it is published (and on file with the LRB.) On this schedule, the earliest this emergency rule could be effective is likely the end of February. Both the Governor and the Legislature have an opportunity to block the emergency rule and this schedule presumes that neither will do so.

As this schedule shows, even with the approval of the statement of scope regarding the technical college identification card emergency rule, it is unlikely that an emergency rule would be effective prior to the February 2012 primary, even if the Governor and the Legislature do not object to the rule. However, the Board staff has instructed local election

officials to accept Technical College student identification cards for voter identification based on the Board's action in November, 2011.

Proposed Rule

GAB 10.05 Wisconsin Technical College Student Identification Cards

1. A student identification card issued by a Wisconsin Technical College System institution is an acceptable form of identification for voting pursuant to s. 5.02 (6m)(f).
2. The Wisconsin Technical College System student identification card may be presented to an election official to receive a ballot if it meets the following criteria:
  - a. Is unexpired;
  - b. Contains the date of issuance;
  - c. Contains a photograph that reasonably resembles the individual to whom it is issued;
  - d. Contains the signature of the individual to whom it is issued;
  - e. Contains an expiration date indicating that the card expires no later than 2 years after the date of issuance;
  - f. The voter establishes that he or she is enrolled as a student at the technical college on the date that the card is presented.
3. A student identification card issued by a private trade, correspondence, business or technical school doing business in this state is not an acceptable form of identification for voting.

**Proposed Motion:**

The Government Accountability Board approves the attached proposed emergency and permanent rule permitting the use of Technical College student identification cards for voting and directs staff to submit the proposed rule for approval by the Governor. The Board further directs staff to set a time for a public hearing on the proposed emergency rule once approval is received from the Governor.