
Wednesday, July 21, 2010 – 9:30 A.M.
Joint Committee on Finance Hearing Room, 412 East
State Capitol
Madison, Wisconsin

Thursday, July 22, 2010 – 8:30 A.M.
G.A.B. Board Room
212 East Washington Avenue, Third Floor
Madison, Wisconsin

Wednesday, July 21, 2010 – 9:30 A.M.

***The Board may convene in closed session on July 21st and July 22nd and will return to open session to consider any remaining open session items. Some open session or closed session agenda items may be considered on either day of the Board meeting.**

- | | |
|---|----------------------|
| A. Call to Order | <u>Page #</u> |
| B. Director’s Report of Appropriate Meeting Notice | |
| C. Approval of Minutes of Previous Meeting | 4 |
| 1. May 10, 2010 Meeting – Open Session | |
| D. Personal Appearances on Ballot Access Issues
(Limit of 5 minutes per individual appearance) | |
| <i>Break</i> | |
| E. Staff Report on Ballot Access Issues* | |
| F. Board Review of Nomination Paper Challenges*
and Ballot Access Issues | |
| G. Public Comment
(Limit of 5 minutes per individual appearance) | |

***Materials to be distributed at meeting**

H.	Administrative Rules	
1.	Request to Extend Emergency Rule on GAB 1.91 - Relating to Organizations Making Independent Disbursements – and Approve Notice of Public Hearing	14
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	(This presentation is scheduled to take place at 2:00 pm on Wednesday, July 21, 2010.)	
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N. Closed Session

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

The Government Accountability Board has scheduled its next meeting for Monday, August 30, 2010 at the Government Accountability Board offices, 212 East Washington Avenue, Third Floor in Madison, Wisconsin, beginning at 9:30 am.

State of Wisconsin\Government Accountability Board

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JUDGE WILLIAM EICH
Chair

KEVIN J. KENNEDY
Director and General Counsel

DRAFT

Not yet
approved by
the Board

Wisconsin Government Accountability Board

212 East Washington Avenue, Third Floor

Madison, Wisconsin

May 10, 2010

9:30 a.m.

Open Session Minutes

<u>Summary of Significant Actions Taken</u>	<u>Page</u>
A. Adopted Staff Recommendation Against Voluntary Voter ID	3
B. Adopted Forfeiture Schedule for Illegal Corporate Contributions	4
C. Approved Administrative Rule Defining Scope of Regulated Activity, GAB 1.28 (Issue Ad Regulation) and Proposed GAB 1.91 - Disclosure of Independent Political Expenditures	5

Present: Judge William Eich, Judge Gordon Myse, Judge Thomas Barland, Judge Michael Brennan, Judge Thomas Cane, and Judge Gerald Nichol.

Staff present: Kevin Kennedy, Jonathan Becker, Nathaniel E. Robinson, Shane Falk, Michael Haas, Barbara Hansen, Sharrie Hauge, Tommy Winkler, David Buerger, and Reid Magney

A. Call to Order

Chairperson Eich called the meeting to order at 9:36 a.m.

B. Director's Report of Appropriate Meeting Notice

G.A.B. Director Kevin Kennedy informed the Board that proper notice was given for the meeting.

C. Signing of the Official Canvass of the April 6, 2010 Spring Election

Chairperson Eich signed the official canvasses for the Court of Appeals and Circuit Court elections.

D. Approval of Minutes of Previous Meetings

MOTION: Approve the minutes of the March 23-24, 2010 meeting of the Government Accountability Board. Moved by Judge Nichol, seconded by Judge Brennan. Motion carried unanimously.

E. Presentations and Comments

1. Presentation by Assembly and Senate Chief Clerks

Kevin Kennedy introduced Assembly Chief Clerk Patrick Fuller and Senate Chief Clerk Robert J. Marchant, who discussed communication between the Board and the Legislature, the opening of campaign season on June 1, and their efforts to provide training and guidance to legislators and their staffs. They discussed the large turnover in the Legislature next year, and the issues that presents for educating new members and staff. Mr. Fuller said information flow between the Chief Clerks and the Board has improved significantly in the last few months.

Discussion.

2. Public Comment

- A. Attorney Mike Wittenwyler** appeared on behalf of multiple organizations to comment on the Board's proposed rule in response to the *Citizens United* decision. He called the rule very workable and reasonable and said that while it will not please everyone, it is the best the Board could do in light of the Legislature not acting. He offered four minor suggestions, three to clarify portions of the rule and one to clarify the Statement of Scope. He supported the rule and recommended that the Board adopt it.
- B. Mike McCabe** appeared on behalf of the Wisconsin Democracy Campaign (WDC) to comment on the Board's proposed rule in response to the *Citizens United* decision. He said the rule provides less disclosure than the WDC would like, but does much that the State needs. He supported the rule and recommended that the Board adopt it. He stated that the Legislature needs to act in this area to provide more disclosure of the original sources of money spent on independent disbursements.
- C. Mary Ann Hanson** of Brookfield appeared on her own behalf to comment on the omnibus election bill. She expressed concern that she attended the March 23 meeting, but would have liked notice so she could have attended the March 24 meeting at which Representative Smith briefed the Board on the legislation. Kevin Kennedy said the appearance on March 24 was properly noticed on the agenda. Judge Eich said the Board will do a better job in the future of communicating when the Board may come out of closed session to take up a matter in open session.

D. Ardis Cerny of Pewaukee appeared on her own behalf to comment on her proposal for voluntary voter ID. She urged the Board to approve allowing voters to request from clerks that they be required to show an ID before voting. She said she wants to protect herself from having her vote stolen by someone who might attempt to impersonate her at the polling place. She asked the Board to institute voluntary voter ID and be the first state in the U.S. to do so; revise election manuals and change policy on voter ID; and retool SVRS to effectuate the policy change.

Discussion.

E. Deborah Ann Speckmann of Madison appeared on her own behalf to comment on the voluntary voter ID issue. She said that if people want voter ID, the right way to make that happen is on the state or federal level and legislatively.

F. Dianne Hermann-Brown of Sun Prairie appeared on behalf of the Wisconsin Municipal Clerks Association to comment on the omnibus election bill, G.A.B. initiatives to consult with clerks on the new web site, and absentee envelopes, extended hours, and training.

G. The League of Women Voters of Wisconsin submitted a letter supporting the G.A.B. staff's position on voluntary voter ID.

Chairperson Eich called a recess at 11 a.m.

F. Consideration of Proposal for Voters to Request to Voluntarily Provide Photo Identification

(Presented by Shane Falk)

Staff Counsel Shane Falk presented an oral and written report to the Board regarding Ms. Ardis Cerny's request for voters to be allowed to request that they be required to show a photo ID at the polling place. The staff position is that the Board has no legislative authority to implement voluntary photo ID for voters. The Board has rulemaking authority, but it is limited to interpreting existing law. Staff has received multiple calls from municipal clerks regarding representations made to clerks about voluntary photo ID. The Board has procedures in place to deal with situations in which someone goes to the polls and is told he or she has already voted. The procedures require the clerk to verify whether there has been a clerical error, to allow the use of a challenged ballot, and to notify law enforcement immediately.

Discussion.

Judge Barland asked about statistics on the number of complaints and actual cases of election fraud, and suggested getting Legislative authority to track such incidents. Kevin Kennedy said the staff knows that it does happen, but not that often. Judge Myse said the Board is under the impression that election fraud is not a widespread problem, but lacks

empirical data. Kevin Kennedy said staff has been discussing data collection, and noted that chief election inspectors are already required to note any unusual activity on the inspectors' statements. Shane Falk noted that based upon past experience, and particularly the November 2008 election, many of the reports of potential fraud end up being incorrect or misunderstandings. Judge Eich said it appears the consensus of the Board is to have staff report on what steps can be taken to increase information about voter fraud, including caveats.

MOTION: To approve the staff report finding that implementation of voluntary voter ID would require Legislative authority and approve staff's March 18, 2010 policy memorandum prohibiting voluntary photo identification. Moved by Judge Myse, seconded by Judge Brennan. Motion carried unanimously.

MOTION: To direct staff to investigate ways to collect data regarding allegations of voter fraud. Moved by Judge Myse, seconded by Judge Barland. Motion carried unanimously.

G. Implementation of the Impartial Justice Act

(Presented by Jonathan Becker and Michael Haas)

Staff Counsel Michael Haas made an oral and written presentation to the Board about implementation of the Impartial Justice Act, which provides public funding for Wisconsin Supreme Court elections. Ethics Division Administrator Jonathan Becker said the law requires significant new reporting by those who apply for grants, as well as those who do not apply for grants, including monthly and semi-monthly reports. Staff has made changes to the Campaign Finance Information System, and will need to audit reports to determine whether candidates are eligible to receive grants.

Discussion. Board members and staff discussed reporting, grant amounts, events that may trigger additional grants, and the administrative process for staff to work with the State Treasurer's office to release grants to the candidates.

H. Adopt forfeiture schedule for illegal corporate contributions

(Presented by Jonathan Becker)

Jonathan Becker presented an oral and written report recommending the Board adopt a uniform schedule of forfeitures for illegal corporate campaign contributions. The Campaign Finance Information System has made it easier for staff to audit for this kind of contribution. The Board has never had a standard forfeiture schedule for this violation. Staff recommends that the Board adopt the forfeiture schedule, found on page 63 of the Open Session Board materials and set out below.

Receiving Committee:

1. Forfeit the amount of the illegal contribution by returning the contribution to the contributor or by donating it to a charity or the common school fund. (*G.A.B. recommends donating to charity or the common school fund.*)
2. Pay a forfeiture equal to 150% of the amount of the illegal contribution, up to a maximum of \$500.

Corporation Making an Illegal Contribution:

1. Forfeit double the amount of illegal contribution if the contribution **has not** been returned to the contributor by the recipient (meaning, the recipient donated the contribution to a charity or the common school fund).
2. If the recipient chooses to return the contribution to the contributor, forfeit three times the amount of the illegal contribution.
3. If the original settlement offer under #1 or #2 has not been paid or payment plan arranged within 30 days, the amount of the initial settlement offer may be doubled.

Referral to Department of Justice

1. If a settlement offer has not been accepted and forfeitures paid within 45 days, refer the matter to DOJ to pursue via court action.

Discussion. Judge Barland suggested changing the wording in paragraph 1 of the Corporation section to say “Forfeit double the amount of illegal contribution if the contribution has been donated to a charity or the common school fund.” Staff agreed. He also suggested changing the wording in paragraph 2 of the Corporation section to say “triple forfeiture.” Staff agreed. Jonathan Becker said that in the event of extenuating or exacerbating circumstances, staff will come to the Board for direction.

MOTION: To adopt the staff recommendation for the forfeiture schedule as modified by Judge Barland’s suggestions. Moved by Judge Cane, seconded by Judge Barland. Motion carried unanimously.

I. Campaign Finance Overview booklet (for informational purposes only)

(Presented by Tommy Winkler)

Tommy Winkler made an oral presentation to the Board regarding staff’s recent activities revising and creating campaign finance overview manuals and filing handbooks to inform candidates about registration and reporting requirements under Chapter 11, stats. A copy of the overview manual starts on page 66 of the Open Session Board materials.

Presentation to Chairperson William Eich

Kevin Kennedy announced that this is Chairperson William Eich’s final meeting of the Government Accountability Board because his term is expiring. He said Judge Eich is the first of the original six Board members to have his term expire, and that staff wanted to recognize Judge Eich. Kennedy presented Judge Eich with a thank-you card signed by members of the staff, as well as a certificate to recognize and honor Judge Eich for his service in ensuring and promoting public confidence in Wisconsin government as a member of the Government Accountability Board from 2008 to 2010, and as its Chair in 2010. Kennedy also presented Judge Eich with a commendation signed by Governor Jim Doyle, noting his valuable contributions to the operations and oversight of the Board as a new state agency. Judge Eich thanked his fellow Board members and the staff, and stated that he enjoyed his service as a member of the Board.

Chairperson Eich called a recess at 12:15 p.m.

J. Administrative Rules

1. Status Report on Administrative Rule Defining Scope of Regulated Activity, GAB 1.28 (Issue Ad Regulation)

(Presented by Shane Falk)

Shane Falk reported that the Legislative Report for GAB 1.28 has been submitted to the Legislature with the changes discussed at the previous Board meeting. The proposed rule will go into effect unless one of the standing committees files an objection within 30 days of receiving the rule from their respective Chief Clerk.

2. Proposed GAB– Disclosure of Independent Political Expenditures

(Presented by Shane Falk)

Shane Falk made an oral and written presentation to the Board regarding the emergency rule on independent political expenditures. He discussed minor amendments to the rule and statement of scope, including changing “union” to “labor organization” and adding “tribes,” which would provide clarification in the statement of scope.

Discussion. Staff and Board members discussed how much disclosure could be required under the existing Chapter 11, as well as requirements for shareholder approval of communications. The Board also discussed the difference between disclosing contributions “made for” political purposes, and those which are “used for” political purposes. Wisconsin law only requires disclosure of contributions made for a political purpose, while Ohio recently changed its law to require disclosure of contributions used for a political purpose.

MOTION: To amend the proposed emergency rule GAB 1.91 in accordance with the following suggestions made by Attorney Wittenwyler: 1)analysis should include a clear statement that the G.A.B. is not regulating these organizations as PACs and also that the disclosure of contributions is limited to those earmarked for independent expenditures; 2)the definition of “independent” should include the phrase “and is not made in concert with;” 3)the responsibility for the filing fee should be specific to the depository account; and 4)the statement of scope should include “labor organization” instead of “union” and “tribe” as entities affected. Moved by Judge Myse, seconded by Judge Cane. Motion carried unanimously.

MOTION: Pursuant to §§5.05(1)(f), 227.11(2)(a) and 227.24, Wis. Stats., the Board approves the proposed Notice of Order of the Government Accountability Board (Emergency Rule Order Creating GAB 1.91, Wis. Adm. Code), as amended, and directs the staff to publish it. Moved by Judge Myse, seconded by Judge Cane. Motion carried unanimously.

MOTION: To direct staff to examine legislative changes to allow greater transparency in reporting of independent political expenditures and contributions used for that purpose, which the Board could propose to the Legislature. Moved by Judge Myse, seconded by Judge Nichol. Motion carried unanimously.

MOTION: Pursuant to §227.24(4), Stats., the staff shall schedule a public hearing to occur within 45 days of the anticipated publication date of the Notice of Order of the Government Accountability Board (Emergency Rule Order Creating GAB 1.91, Wis. Adm. Code). Moved by Judge Myse, seconded by Judge Cane. Motion carried unanimously.

MOTION: To amend the Statement of Scope for the creation of GAB §1.91, Wis. Adm. Code to reflect modifications made to the Emergency Rule. Moved by Judge Myse, seconded by Judge Cane. Motion carried unanimously.

MOTION: Pursuant to §§5.05(1)(f), 227.11(2)(a), and 227.135, Wis. Stats., the Board formally approves the proposed Statement of Scope for the creation of GAB §1.91, Wis. Adm. Code, as amended. Moved by Judge Myse, seconded by Judge Cane. Motion carried unanimously.

3. Status Report on Pending Administrative Rules

Shane Falk provided the Board with an oral and written report on the status of pending administrative rules. Staff has been very busy with the end of the legislative session, the Impartial Justice Act and the Citizens United decision. Staff hopes to catch up with administrative rules in the near future.

Discussion. Staff and the Board discussed issues related to creation of GAB 1.90 for MCFL corporations. The Board directed staff to postpone further work on the promulgation of GAB 1.90 until determining whether GAB 1.91 will go into effect. The

Board also discussed Board members' attendance at public hearings on proposed rules. Board members will be notified so they may attend if they desire.

K. Implementation of the federal Military and Overseas Voters Empowerment (MOVE) Act

(Presented by Staff Counsel Michael Haas and Election Specialist David Buerger)

Michael Haas made an oral and written presentation to the Board regarding staff's efforts to implement the MOVE Act, which takes effect for the fall election. Significant changes have been made to the Statewide Voter Registration System so military and overseas voters can track the status of their absentee ballots online. The Act contains a requirement that military and overseas voters have 45 days before an election to complete and transmit their ballots, something which is not possible because of the timing of Wisconsin's September Primary Election. Staff has been exchanging correspondence with the U.S. Department of Defense and the U.S. Department of Justice, and is in the process of applying for a waiver. Kevin Kennedy said that if necessary, we could extend the time period after the election in which military ballots are counted, from 10 to 15 days. Staff believes the Board can implement the MOVE Act administratively, in the absence of legislative action this session.

L. Legislation

1. Summary of Recent Legislative Activity

(Presented by Kevin Kennedy)

Kevin Kennedy presented an oral and written report to the Board regarding recent legislative activities, including the Impartial Justice Act Trailer Bill, 2009 AB 913. The omnibus election legislation, 2009 AB 895 and 2009 SB 640, passed the Assembly but did not come up for a vote in the Senate by the end of the session. He also discussed the reasons the omnibus bill did not pass, as well as planning for legislative initiatives for the upcoming session.

2. Legislative Status Report

The Legislative Status Report set out at page 105 of the Open Session Board materials was received for information only. No action was taken.

M. Director's Report

Elections Division Report – election administration

Written report from Nathaniel E. Robinson was included in the Board packet. Mr. Robinson gave an oral presentation, and discussed efforts to collaborate with neighboring states, including a new agreement with Minnesota to match voter data in an effort to identify voters who may have voted in both states in the November 2008 election. SVRS

Director Barbara Hansen reported that staff is now evaluating the potential matches, which will be turned over to prosecutors if any are found. Discussion.

Mr. Robinson also reported on efforts to modernize the antiquated canvass system for the September Primary Election, and ongoing work with the Department of Transportation on online voter registration. Discussion.

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

Written report from Jonathan Becker was included in the Board packet. Tommy Winkler made an oral presentation regarding the Campaign Finance Information System and its use for conducting audits, and the work on the new lobbying web site. Discussion regarding improvements to CFIS and the lack of complaints received from the January Continuing reporting period.

Office of General Counsel Report – general administration

Written report from Kevin J. Kennedy, Sharrie Hauge and Reid Magney was included in the Board packet. Ms. Hauge reported on the federal audit of Help America Vote Act funds, which identified five problems. Staff will get a draft audit report and work with the U.S. Election Administration Commission on the audit resolution process.

Ms. Hauge discussed improvements to the Contract Sunshine web site, as well as staff efforts to improve compliance by other agencies. Discussion. Kevin Kennedy noted that unlike Wisconsin, other states that have online reporting of contracts and expenditures also have an integrated business information system for all agencies. Judge Myse said he believes staff should be more aggressive about telling the public which agencies are not complying with the law and let them explain it.

N. Closed Session

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

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

Roll call vote:	Brennan:	Aye	Cane:	Aye
	Eich:	Aye	Barland:	Aye
	Myse:	Aye	Nichol:	Aye

Motion carried.

Hearing no objection, Chairperson Eich called a recess at 2:15 p.m. The Board reconvened in closed session beginning at 2:30 p.m.

Summary of Significant Actions Taken in Closed Session:

- A. Litigation: Three pending matters and two potential matters considered.
- B. Investigations: 62 pending matters considered; two investigations authorized.
- C. Enforcement Actions: Seven matters closed.

####

The next meeting of the Government Accountability Board is scheduled for Wednesday, July 21 and Thursday, July 22, in Madison, Wisconsin, beginning at 9:30 a.m. The location for the meeting has not been determined.

May 10, 2010 Government Accountability Board meeting minutes prepared by:

Reid Magney, Public Information Officer

May 21, 2010

May 10, 2010 Government Accountability Board meeting minutes certified by:

Judge Thomas Barland, Board Secretary

July 21, 2010

State of Wisconsin \ Government Accountability Board

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JUDGE GORDON MYSE
Chairperson

KEVIN J. KENNEDY
Director and General Counsel

MEMORANDUM

DATE: For the July 21-22, 2010 Meeting

TO: Members, Wisconsin Government Accountability Board

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

Prepared and Presented by:

Shane W. Falk, Staff Counsel

SUBJECT: Administrative Rules Status: Special Highlights

1. ch. GAB §1.28, relating to the definition of the term “political purpose”
2. ch. GAB §1.91, relating to organizations making independent disbursements
3. ch. GAB 26, relating to Contract Sunshine

1. Revised ch. GAB §1.28, relating to the definition of the term “political purpose”:

Recommendation: No action required.

This rule had previously been submitted to the Legislature for review in May 2009, but it was recalled by the Board in June 2009 while we all waited for the U.S. Supreme Court decision, *Citizens United v. FEC*. That decision was released on January 21, 2010 and reviewed by the Board at the March 23-24, 2010 Board meeting. The Board adopted staff’s recommendations for some slight revisions in the analysis section of the rule and retained the language of the rule itself.

On May 6, 2010, the revised rule was again submitted to the Legislature for review. The Senate was to have completed its review by June 9, 2010 and the Assembly by June 12, 2010. The committees assigned to review the rule in both houses requested a meeting with the Board, which automatically extended their jurisdiction another 30 days. Staff from the G.A.B. and the committee chairs, among others, met on one occasion during this extended review, but ultimately, the rule was reported out of the committees without any action.

The Legislature’s jurisdiction over the revised ch. GAB §1.28 expired, which permitted staff to submit the rule to the Legislative Reference Bureau for publication, making the rule effective. Due to timing and publication issues, it was initially feared that the rule would not be effective by August 16, 2010 (30 days preceding the Fall Primary.) However, the Legislative Reference Bureau was very accommodating and took steps to ensure that the rule was published at the end of July so that it is effective on August 1, 2010. These efforts will ensure that the rule is

effective before 30 days preceding the Fall Primary, which is the period that the rule's requirements first apply in the context of determining the political purpose of communications close in proximity to elections.

The promulgation of ch. GAB §1.28, Wis. Adm. Code, is complete; however, questions have arisen regarding the specifics of its application. Staff will continue to work on implementation guidelines to provide direction to those subject to the rule.

2. Creation of ch. GAB §1.91, relating to organizations making independent disbursements:

Recommendations: Direct staff to request an extension of the Emergency Rule ch. GAB §1.91 and hold a public hearing on both the Emergency and Permanent Rules.

Status:

At the May 10, 2010 meeting, the Board approved an Emergency Rule creating ch. GAB § 1.91, Wis. Adm. Code, which addressed most of the implications of the *Citizens United v. FEC* decision with respect to registration, reporting, and disclaimer requirements for organizations making independent disbursements. In addition, the Board approved a Statement of Scope and directed staff to begin permanent rule promulgation proceedings. The Statement of Scope was published and on July 7, 2010, the permanent rule was submitted to Legislative Council for review. Upon receipt of the Legislative Council Report, staff should schedule a public hearing on both the Emergency Rule and Permanent Rule.

Emergency Rule Extension:

Emergency Rule ch. GAB §1.91 was published on May 20, 2010 and is effective by statute for 150 days. Without an extension, the Emergency Rule will expire on October 16, 2010, which is prior to the Fall Election. As the Board is aware, leading up to the May 10, 2010 Board meeting, staff had received many inquiries from corporations and trade associations regarding their use of general treasury funds and registration, reporting and disclaimer requirements in the wake of the *Citizens United* decision. Despite the limited duration of an emergency rule, staff published the rule so as to provide authority for these matters. Staff continues to receive inquiries regarding the rule and anticipates some registrations in the near future.

Pursuant to §227.24(2), Wis. Stats., the Board may make an extension request to the Joint Committee for Review of Administrative Rules, which if granted will extend the emergency rule for a period of 60 days. Any number of extensions may be granted; however, the total period for all extensions may not exceed 120 days. The Board's extension request must be made in writing to the Joint Committee for Review of Administrative Rules no later than 30 days before the initial expiration date of the emergency rule. Since Emergency Rule ch. GAB §1.91 was effective on May 20, 2010 and expires on October 16, 2010, the Board should direct staff to request an extension of the Emergency Rule to ensure that it is authoritative throughout the Fall Election period.

Public Hearing:

Finally, pursuant to §227.24(4), Wis. Stats., a public hearing on an emergency rule should occur within 45 days following publication of it. However, if within that 45 day period a permanent proposed rule is submitted to the Legislative Council for review, a public hearing may be scheduled within 90 days of the publication of the emergency rule, or within 30 days after the agency receives the Legislative Council Report on the permanent rule, whichever

occurs later. Staff requests that the Board approve the Notice of Public Hearing following this Memorandum and direct staff to proceed with a public hearing on both Emergency and Permanent Rule ch. GAB §1.91 within 30 days of receipt of the Legislative Council Report.

Proposed Motions ch. GAB §1.91:

MOTION: Pursuant to §227.24(2), Wis. Stats., direct staff to request an extension of Emergency Rule ch. GAB §1.91.

MOTION: Pursuant to §§227.16 and 227.24(4), Stats., approve the Notice of Hearing and direct staff to hold a public hearing on both Emergency and Permanent Rule ch. GAB §1.91 within 30 days of receipt of the Legislative Council Report.

3. Creation of ch. GAB 26, relating to Contract Sunshine

Recommendations: *Approve Statement of Scope and direct staff to return to the Board at a later meeting with proposed administrative rules regarding the administration of Contract Sunshine.*

Pursuant to §16.753, Wis. Stats., the G.A.B. is charged with collecting and publicly providing information via the internet regarding major expenditures by state agencies. This statute prescribes some limited details on the manner and method for compliance; however, further clarification is necessary. Administrative efforts taken by staff to improve the Contract Sunshine web site and agency compliance with reporting requirements have been summarized elsewhere in these Board materials. Staff recommends development and adoption of administrative rules to provide further direction to agencies that are subject to the Act regarding the method and manner by which to comply with the Act. In addition, administrative rules could help clarify the responsibilities of the Government Accountability Board regarding monitoring agencies' compliance with the Act.

Staff requests that the Board approve the proposed Statement of Scope following this Memorandum and direct staff to return to a later meeting with proposed administrative rules regarding the administration of Contract Sunshine. Publication of a Statement of Scope will allow staff to proceed with researching and preparing proposed administrative rules that can be presented to the Board for consideration at a later meeting. These administrative rules could help provide needed direction and guidance to staff and agencies that are subject to the reporting requirements of Contract Sunshine.

Proposed Motions:

MOTION: Pursuant to §§5.05(1)(f), 227.11(2)(a), and 227.135, Wis. Stats., the Board formally approves the attached Statement of Scope for the creation of ch. GAB 26, Wis. Adm. Code, relating to Contract Sunshine.

MOTION: Direct staff to return to the Board at a later meeting with proposed administrative rules regarding the administration of Contract Sunshine.

NOTICE OF PROPOSED ORDER ADOPTING RULE
GOVERNMENT ACCOUNTABILITY BOARD
CR 10-
Organizations Making Independent Disbursements, GAB 1.91

NOTICE IS HEREBY GIVEN that pursuant to ss. 5.05(1)(f), 227.11(2)(a), 227.16, and 227.24(4) Stats., and interpreting generally Chapter 11, Stats., the Government Accountability Board will hold a public hearing to consider adoption of an emergency and permanent rule to create GAB §1.91, Wis. Adm. Code, relating to organizations making independent disbursements.

Hearing Information

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

Date and Time

_____ at _____

Location

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

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

ANALYSIS PREPARED BY GOVERNMENT ACCOUNTABILITY BOARD:

1. Statutes Interpreted: ss. 11.01(4) and (18m), 11.05, 11.055, 11.06, 11.09, 11.10, 11.12, 11.14, 11.16, 11.19, 11.20, 11.21(16), 11.30, 11.38, 11.513, Stats.
2. Statutory Authority: ss. 5.05(1)(f) and 227.11(2)(a), Stats.
3. Explanation of agency authority: Express rule-making authority to interpret the provisions of statutes the Board enforces or administers is conferred on it pursuant to s. 227.11(2)(a), Stats. In addition, s. 5.05(1)(f), Stats., provides that the Board may promulgate rules under ch. 227, Stats., for the purpose of interpreting or implementing the laws regulating the conduct of elections or election campaigns or ensuring their proper administration.

In *Citizens United v. FEC*, 558 U.S. ___, (No. 08-205)(January 21, 2010), the United States Supreme Court greatly expanded the rights of organizations to engage in independent expenditures and strengthened the ability of the government to require disclosure and disclaimer of the independent expenditures. Pursuant to s. 5.05(1), the Board has the responsibility for the administration of campaign finance statutes in ch. 11, Stats. Rules promulgated by the Board will ensure the proper administration of the campaign finance statutes and properly address the application of *Citizens United v. FEC*.

4. Related statute(s) or rule(s): ch. 11, Stats., and ch. GAB 1, Wis. Adm. Code.
5. Plain language analysis: Within the context of ch. 11, Stats, the proposed order will provide direction to organizations receiving contributions for independent disbursements or making independent disbursements following the U.S. Supreme Court decision in *Citizens United v. FEC*, 558 U.S. ____, (No. 08-205)(January 21, 2010). The proposed rule enumerates registration, reporting, and disclaimer requirements of provisions of ch. 11, Stats., which apply to organizations receiving contributions or making independent disbursements. Comporting with *Citizens United*, the proposed rule does not treat persons making independent disbursements as full political action committees or individuals under s. 11.05, Stats., for the purposes of registration and reporting. With respect to contributions or in-kind contributions received, this proposed rule requires organizations to disclose only donations “made for” political purposes, but not donations received for other purposes.
6. Summary of, and comparison with, existing or proposed federal regulations: At the federal level, the FEC provides rules at 11 CFR 109.10, which regulate persons who are not a committee and make independent expenditures. An independent expenditure statement and reports quarterly are required for any person making independent expenditures in excess of an aggregate \$250.00 in a calendar year. If a person makes an independent expenditure of \$10,000.00 or more, an independent expenditure statement and report must be filed within 48 hours of the expenditure. Any person making an independent expenditure of \$1,000.00 or more within 20 days of an election must file an independent statement and report within 24 hours of the expenditure. The independent expenditure statement must include the identity of the person making the expenditure, any contributions received in excess of \$200.00, and the candidate benefitted by the expenditure. In addition, a disclaimer is required for any communication resulting from an independent expenditure.
7. Comparison with rules in adjacent states:

Section 5/9-1.5, Ill. Adm. Code, defines “expenditure” generally and to include an electioneering communication regardless of whether the communication is made in concert or cooperation with, or at the request, suggestion or knowledge of a candidate, a candidate’s authorized local political committee, a State political committee, or any of their agents. Sections 5/9-1.7 and 1.8, Ill. Adm. Code, define local and State political committees to include a candidate, individual, trust, partnership, committee, association, corporation, or any other organization or group of persons which accept contributions or make expenditures on behalf of or in opposition to a candidate and exceeding an aggregate of \$3,000.00 in any 12 month period. Persons making independent expenditures in Illinois are by definition committees and subject to substantially similar registration, reporting, and disclaimer requirements as committees in Wisconsin.

Chapter 351—4.27 of the Iowa Administrative Code sets forth requirements for registration and reporting of independent expenditures and it applies to any person, other than a candidate or registered committee, that makes one or more independent expenditures in excess of \$100.00 in the aggregate. 351—4.27, Iowa Adm. Code. A person subject to filing an independent expenditure statement must identify the person making the expense and for whom it benefits. 351—4.27(2), Iowa Adm. Code. There is no requirement to file a statement of organization registering a committee or public disclosure reports. 351—4.27(7), Iowa Adm. Code. A disclaimer on communications is required. 351—4.27(6), Iowa Adm. Code.

Michigan statutes regulate independent expenditures, but the administrative rules do not specifically address them. Michigan Statutes s. 169.208 provides a definition for an “independent committee,” which upon exceeding \$500.00 in contributions or expenditures is subject to substantially similar registration, reporting, and disclaimer requirements as committees in Wisconsin.

Minnesota statutes regulate independent expenditures, but the administrative rules do not specifically address them.

8. Summary of factual data and analytical methodologies: Adoption of the rule was predicated on state statutes and federal case law.
9. Analysis and supporting documentation used to determine effect on small businesses: The rule may have a minimal effect on small businesses that will participate in receiving contributions or making independent disbursements. The economic impact of this effect is minor. Businesses may have a filing fee of \$100.00, if the amount of aggregate independent disbursements made in any year exceeds \$2,500.00.
10. Effect on small business: The creation of this rule may have a minimal effect on small businesses as explained above.
11. Agency contact person: Shane W. Falk, Staff Counsel, Government Accountability Board, 212 E. Washington Avenue, 3rd Floor, P.O. Box 7984, Madison, Wisconsin 53707-7984; Phone 266-2094; Shane.Falk@wisconsin.gov

FISCAL ESTIMATE: The creation of this rule has minimal fiscal effect. There may be additional registrants filing reports with the Board and potentially additional enforcement actions that may require staff action. The extent of this potential fiscal impact is undetermined.

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

TEXT OF PROPOSED RULE:

SECTION 1. GAB 1.91 is created to read:

1.91 Organizations Making Independent Disbursements

- (1) In this section:
 - (a) "Contribution" has the meaning given in s. 11.01(6), Stats.
 - (b) "Disbursement" has the meaning given in s. 11.01(7), Stats.
 - (c) "Filing officer" has the meaning given in s. 11.01(8), Stats.
 - (d) "Incurred obligation" has the meaning given in s. 11.01(11), Stats.
 - (e) "Person" includes the meaning given in s. 990.01(26), Stats.
 - (f) "Organization" means any person other than an individual, committee, or political group subject to registration under s. 11.23, Stats.
 - (g) "Independent" means the absence of acting in cooperation or consultation with any candidate or authorized committee of a candidate who is supported or opposed, and is not made in concert with, or at the request or suggestion of, any candidate or any agent or authorized committee of a candidate who is supported or opposed.
 - (h) "Designated depository account" means a depository account specifically established by an organization to receive contributions and from which to make independent disbursements.
- (2) A corporation, or association organized under ch. 185 or 193, Stats., is a person and qualifies as an organization that is not prohibited by s. 11.38(1)(a)1., Stats., from making independent disbursements until such time as a court having jurisdiction in the State of Wisconsin rules that a corporation, or association organized under ch. 185 or 193, Stats., may constitutionally be restricted from making an independent disbursement.
- (3) Upon accepting contributions made for, incurring obligations for, or making an independent disbursement exceeding \$25 in aggregate during a calendar year, an organization shall establish a designated depository account in the name of the organization. Any contributions to and all disbursements of the organization shall be deposited in and disbursed from this designated depository account. The organization shall select a treasurer for the designated depository account and no disbursement may be made or obligation incurred by or on behalf of an organization

without the authorization of the treasurer or designated agents. The organization shall register with the board and comply with s. 11.09, Stats., when applicable.

- (4) The organization shall file a registration statement with the appropriate filing officer and it shall include, where applicable:
 - (a) The name, street address, and mailing address of the organization.
 - (b) The name and mailing address of the treasurer for the designated depository account of the organization and any other custodian of books and accounts for the designated depository account.
 - (c) The name, mailing address, and position of other principal officers of the organization, including officers and members of the finance committee, if any.
 - (d) The name, street address, mailing address, and account number of the designated depository account.
 - (e) The registration statement shall be signed by the treasurer for the designated depository account of the organization and shall contain a certification that all information contained in the registration statement is true, correct and complete.
- (5) The designated depository account for an organization required to register with the Board shall annually pay a filing fee of \$100.00 to the Board as provided in s. 11.055, Stats.
- (6) The organization shall comply with s. 11.05(5), Stats., and notify the appropriate filing officer within 10 days of any change in information previously submitted in a statement of registration.
- (7) An organization making independent disbursements shall file the oath for independent disbursements required by s. 11.06(7), Stats.
- (8) An organization receiving contributions for independent disbursements or making independent disbursements shall file periodic reports as provided ss. 11.06, 11.12, 11.19, 11.20 and 11.21(16), Stats., and include all contributions received for independent disbursements, incurred obligations for independent disbursements, and independent disbursements made. When applicable, an organization shall also file periodic reports as provided in s. 11.513, Stats.
- (9) An organization making independent disbursements shall comply with the requirements of §11.30(1); (2)(a) and (d), Wis. Stats., and include an attribution identifying the organization paying for any communication, arising out of independent disbursements on behalf of or in opposition to candidates, with the

following words: “Paid for by” followed by the name of the organization and the name of the treasurer or other authorized agent of the organization followed by “Not authorized by any candidate or candidate’s agent or committee.”

SECTION 2. EFFECTIVE DATE. This rule shall take effect on the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.22(2) (intro.), Stats.

Statement of Scope
Government Accountability Board
Contract Sunshine ch GAB 26

Subject

Create ch. GAB 26 relating to Contract Sunshine.

Objective of the Rule

Rules promulgated by the Board will assist with the proper administration of 2005 Wisconsin Act 410 (“Contract Sunshine.”)

Policy Analysis

Pursuant to 2005 Wisconsin Act 410 (“Contract Sunshine”), state agencies are required to provide certain information to the Government Accountability Board regarding solicitations, contracts, or orders involving major expenditures. Furthermore, the Government Accountability Board is required to post the agencies’ information on an internet site. The proposed order will provide direction to agencies subject to the Act regarding the method and manner by which to comply with the Act. In addition, the proposed order will clarify responsibilities of the Government Accountability Board regarding monitoring agencies’ compliance with the Act.

Statutory Authority

Sections 5.05(1)(f) and 227.11(2)(a), Stats.

Comparison with Federal Regulations

At the federal level, the Federal Funding Accountability and Transparency Act of 2006 (Pub. L. 109-282) and the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5) codified requirements to report publicly via the internet certain assistance and procurement data for Federal agencies for all actions that obligate \$25,000 or more in Federal funds. The Office of Management and Budget established the www.USAspending.gov website to implement the statutory requirements. The Office of Management and Budget is promulgating rules to provide further guidance to agencies regarding assistance reporting, but has relied on guidance found in OMB Circulars to date. Rules for procurement reporting are generally found in Title 48 of the Code of Federal Regulations. (See 48 CFR ch. 1). Federal procurement data is first entered into the Federal Procurement Data System and then exported to www.USAspending.gov . The proposed rules and existing rules prescribe the manner and method for compliance with the two Acts.

Entities Affected by the Rules

The Government Accountability Board and any state agency making solicitations for bids or competitive sealed proposals, or proposed orders or contracts for which bids or competitive sealed proposals will not be solicited, that involve a major expenditure as defined in Sec. 16.753(1), Wis. Stats.

Estimate of Time Needed to Develop the Rules

30 hours.

State of Wisconsin \ Government Accountability Board

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JUDGE GORDON MYSE
Chairperson

KEVIN J. KENNEDY
Director and General Counsel

MEMORANDUM

DATE: For the July 21-22, 2010 Meeting

TO: Members, Wisconsin Government Accountability Board

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

Prepared and Presented by:

Shane W. Falk, Staff Counsel

SUBJECT: Status Report on Pending Administrative Rule-Making

This Status Report is for informational purposes only and no immediate action is requested. Following this cover page is a brief status of pending rule-making resulting from past actions of the Government Accountability Board. All administrative rules identified in this summary reference permanent rule-making. Please note that there are several additional rules not addressed in this status report that the Board has affirmed, but for which the staff has identified the need for additional review and revision. The staff will present recommendations at subsequent meetings regarding those involved rules.

STATUS REPORT ON PENDING ADMINISTRATIVE RULE-MAKING

Revise 1.10

Relating to: Registration by Nonresident Committees and Groups

Status: Board original action on May 5, 2008. Scope statement approved at August 10, 2009 meeting, which must be submitted to the Legislative Reference Bureau and then can begin rule-making process to revise title of 1.10. Likely will complete with 30 day notice rule-making, which will not require a public hearing before submittal to legislature (unless someone petitions for a hearing.)

Revise 1.15

Relating to: Filing Reports of Late Campaign Activity (Postmarked Reports)

Status: Board original action on March 30, 2009. Scope statement approved at August 10, 2009 meeting, which must be submitted to the Legislative Reference Bureau and then can begin rule-making process to remove two references to postmarked reports. Likely will complete with 30 day notice rule-making, which will not require a public hearing before submittal to legislature (unless someone petitions for a hearing.)

Revise 1.20

Relating to: Treatment and Reporting of In-Kind Contributions

Status: Board original action on May 5, 2008. Scope statement approved at August 10, 2009 meeting, which must be submitted to the Legislative Reference Bureau and then can begin rule-making process to remove a reference to an old form, Schedule 3-C, that is no longer necessary due to the implementation of CFIS. Likely will complete with 30 day notice rule-making, which will not require a public hearing before submittal to legislature (unless someone petitions for a hearing.)

Create 1.21

Relating to: Treatment of Joint Account Contributions

Status: Board original action on June 9, 2008. Scope statement approved at August 10, 2009 meeting, which must be submitted to the Legislative Reference Bureau and then can begin rule-making process to create a rule addressing treatment of contributions from joint accounts. Will return to Board with draft rule. Likely will complete with 30 day notice rule-making, which will not require a public hearing before submittal to legislature (unless someone petitions for a hearing.)

Revise 1.26

Relating to: Return of Contribution

Status: Board original action on May 5, 2008. Scope statement approved at August 10, 2009 meeting, which must be submitted to the Legislative Reference Bureau and then can begin rule-making process to correct grammatical error. Likely will complete

with 30 day notice rule-making, which will not require a public hearing before submittal to legislature (unless someone petitions for a hearing.)

Revise 1.43

Relating to: Referendum-related activities by committees; candidate-related activities by groups.

Status: Board original action on May 5, 2008. Scope statement drafted for August 10, 2009 meeting and then can begin rule-making process to remove 1.43(2)(a) as the law no longer requires listing all candidates supported and s. 11.05(4), Stats., allows one registration statement. Likely will complete with 30 day notice rule-making, which will not require a public hearing before submittal to legislature (unless someone petitions for a hearing.)

Revise 1.85 and 1.855

Relating to: Conduit Registration and Reporting Requirements; Contributions from Conduit Accounts

Status: Board original action on October 6, 2008. Scope statement approved at August 10, 2009 meeting, which must be submitted to the Legislative Reference Bureau and then can begin rule-making process to harmonize certain portions of these rules with current law and new CFIS system. Likely will complete with 30 day notice rule-making, which will not require a public hearing before submittal to legislature (unless someone petitions for a hearing.)

Create 1.90

Relating to: MCFL Corporation Registration and Reporting Requirements

Status: Board original action August 27, 2008. Scope statement approved by the Board at the December 17, 2009 meeting. Draft rule was approved by the Board at the March 23-24, 2010 meeting. The Statement of Scope must be submitted to the Legislative Reference Bureau for publication to begin the rule-making process. Will likely have to hold public hearing, so following submittal to Legislative Council will hold public hearing and then submittal to legislature before publication.

Create 1.91

Relating to: Organizations Making Independent Expenditures

Status: At the March 23-24, 2010 Board meeting, the Board considered the ramifications of the U.S. Supreme Court decision, *Citizens United v. FEC*. The Board adopted an interim policy regarding corporate independent expenditures. Staff was directed to draft an emergency rule which was adopted by the Board at the May 10, 2010 meeting. In addition, the Board directed staff to promulgate permanent rules to address independent expenditures in the context of Citizens United.

Emergency rule was published and effective May 20, 2010, but will expire on October 16, 2010. Staff has requested authority to request an extension so that the emergency rule is in effect throughout the Fall Election. Staff published the scope statement and on July 7, 2010 also submitted the proposed permanent rule to Legislative Council for

review. Within 30 days after receipt of the Legislative Council Report, a public hearing will be held on both the emergency and permanent rule. The proposed public hearing notice is before the Board at the July 21-22, 2010 meeting for consideration and approval.

Revise Chapter 3

Relating to: Voter Registration, HAVA Checks

Status: Board original action August 27, 2008. Must draft scope statement and then begin rule-making process to make further revisions to Chapter 3 regarding voter registration and HAVA checks. Likely will complete with 30 day notice rule-making, which will not require a public hearing before submittal to legislature (unless someone petitions for a hearing.)

Repeal and Recreate Chapter 4

Relating to: Election Observers

Status: Board original action on August 27, 2008. Final draft of Chapter 4 approved March 30, 2009 based upon comments from emergency rule proceedings, but must submit scope statement to the Legislative Reference Bureau before submitting final version to Legislative Council for review. Thereafter, will hold public hearing and then submittal to legislature before publication.

Repeal and Recreation of Chapter 5

Relating to: Security of Ballots and Electronic Voting Systems

Status: Board original action on May 5, 2008. Legislative Council review complete. Public Hearing held November 11, 2008 and some additions may be necessary. The Legislative Report for Chapter 5 will be submitted after the Board considers an additional provision to the chapter at the October 5, 2009 and now November 9, 2009 meetings. These additions resulted from public comments. Additions approved by the Board at the November 9, 2009 meeting. Legislative Report will be submitted and upon return, publication.

Revise 6.02

Relating to: Registration Statement Sufficiency.

Status: Board original action on March 30, 2009. Scope statement submitted for publication. Draft rule approved by the Board at the December 17, 2009 meeting and then can continue rule-making process to clarify sufficiency standards. Likely will complete with 30 day notice rule-making, which will not require a public hearing before submittal to legislature (unless someone petitions for a hearing.)

Revise 6.03

Relating to: Assistance by Government Accountability Board Staff

Status: Board original action on March 30, 2009. Scope statement and draft rule approved by the Board at the December 17, 2009 meeting. This will officially begin

the rule-making process to update statutory citations with new statutes post 2007 Act 1. Likely will complete with a statutory procedure that will not require a public hearing before submittal to legislature.

Revise 6.04

Relating to: Filing Documents by FAX or Electronic Means

Status: Board original action on March 30, 2009. Scope statement submitted for publication. Draft rule approved by the Board at the December 17, 2009. Must submit to the Legislative Council for review to continue rule-making process to clarify electronic filing requirements. Likely will complete with 30 day notice rule-making, which will not require a public hearing before submittal to legislature (unless someone petitions for a hearing.)

Revise 6.05

Relating to: Filing Campaign Finance Reports in Electronic Format

Status: Board original action on March 30, 2009. Scope statement published. Legislative Council Report back June 25, 2009. Need to make revisions suggested by Legislative Council and publish Notice of Hearing. Thereafter, submittal to legislature.

Revise Chapter 7

Relating to: Approval of Electronic Voting Equipment

Status: Board original action on May 5, 2008. Division Administrator Robinson establishing a committee to make recommendations. Must draft scope statement and then begin rule-making process. Will require public hearing, so following submittal to Legislative Council will have public hearing before submittal to legislature.

Revise 9.03

Relating to: Voting Procedures for Challenged Electors

Status: Board original action on May 5, 2008. Scope statement and draft rule approved by the Board at the December 17, 2009 meeting. Must draft Statement of Scope to begin the rule-making process to remove a reference to lever voting machines. Likely will complete with statutory procedure that will not require a public hearing before submittal to legislature.

Creation of Chapter 13

Relating to: Training Election Officials

Status: Board original action on January 28, 2008. Rule in draft form and ready for submittal to Legislative Council for review. Board approved draft rule at the August 10, 2009 meeting, so must now submit to Legislative Council for review. Thereafter, if not doing 30 day notice rule-making, will need public hearing and then submittal to legislature before publication.

Repeal 21.01, 21.04 and Revise 20.01

Relating to: 21.01—filing of all written communications and documents intended for former Ethics Board

21.04—transcripts of proceedings before former Ethics Board

20.01—procedures for complaints before former Elections Board

Status: Board original action on January 28, 2008. Legislative Council review complete. No public hearing necessary as processing as 30 day notice rule-making and no petition for public hearing was filed. These rules are ready for completion of legislative report and submittal to legislature. Thereafter, publication.

Creation of Chapter 22

Relating to: Settlement of Certain Campaign Finance, Ethics, and Lobbying Violations

Status: Board original action on June 9, 2008. Final draft of Chapter 22 approved March 30, 2009. Submitted to Legislative Council and report has been returned. Revisions made and Notice of Public Hearing published. Public Hearing held July 28, 2009 and reviewed by Board at the August 10, 2009 meeting. Legislative Report will be submitted and upon return, publication.

Creation of Chapter 26

Relating to: Contract Sunshine

Status: Scope statement will be before Board at the July 21-22, 2010 meeting. Thereafter, staff may begin researching and preparing rules to provide direction regarding the manner and method of agencies' compliance with Contract Sunshine. Staff will return to the Board at a later meeting with draft rules for consideration.

State of Wisconsin \ Government Accountability Board

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JUDGE GORDON MYSE
Chairperson

KEVIN J. KENNEDY
Director and General Counsel

MEMORANDUM

DATE: For the Board's meeting of July 21-22, 2010

TO: The Government Accountability Board

FROM: Jonathan Becker

SUBJECT: Guidelines

Attached are five draft Guidelines that we are asking the Board to adopt. Guidelines 249 and 256 are new. Guidelines 231, 250, and 255 are reiterations of existing Guidelines intended to provide clarification.

The purpose of the Board's Guidelines is to make available a ready reference of the laws administered by the Board as they apply to specific sets of circumstances. They are a restatement of Wisconsin statutes as interpreted by the Ethics and Elections Boards and the Government Accountability Board over the years. The Guidelines are not intended to, and do not, create new standards or rules. Rather, they provide safe harbors and address frequently asked questions about application of the law. The Guidelines are not, in themselves, legally enforceable. But they do provide guidance about how the Board may enforce the laws under its charge.

We circulated these draft Guidelines to the Chief Clerks, legislators, the legislative campaign committees, and the Association of Wisconsin Lobbyists ("AWL"). We incorporated all suggestions except for the AWL's suggestion that the Board change its interpretation of "furnish" in the lobbying law. Attached is the AWL's letter commenting on the draft Guidelines. Also attached two Ethics Board opinions (adopted by the Government Accountability Board) that address the meaning of the word "furnish." (96 Wis Eth Bd 05; 97 Wis Eth Bd 18).

HAND DELIVERED

ONE EAST MAIN STREET
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GOVERNMENT
ACCOUNTABILITY BOARD

July 6, 2010

VIA HAND DELIVERY

Jonathan Becker
Ethics and Accountability Division
Government Accountability Board
212 East Washington Ave., Third Floor
Madison, WI 53703

GAB Proposed Updated Guidelines

Dear Mr. Becker:

On behalf of the Association of Wisconsin Lobbyists (“AWL”), we write to the Government Accountability Board (the “Board”) in advance of the Board’s consideration of certain updated guidelines at its July 21-22, 2010 meeting. Specifically, we focus our comments on the Board’s proposed revised guideline entitled “Campaign Contributions and Activities by Lobbyists and Lobbying Principals,” GAB 250.

BROAD INTERPRETATION OF “FURNISH”

At the outset, we want to reiterate a point made during the Board’s affirmation process in 2008: AWL continues to disagree with the Board’s broad interpretation of “furnish” and believes that state law only restricts a lobbyist from personally making a campaign contribution outside of the contribution window. At all other times, a lobbyist is not restricted from discussing campaign contributions with candidates and their agents or from delivering contributions from other nonlobbyist individuals, PACs and conduits.

Under state law, a lobbyist may not “furnish” anything of pecuniary value to certain public officials and such items may not be “solicited” from these officials. *See* Wis. Stat. § 13.625(1), (3). A lobbyist, however, is allowed to make lawful campaign contributions, with limitations on the timing of contributions to certain candidates for partisan elective state office.

Under its broad interpretation of “furnish,” the Board has stated that the prohibition extends beyond the lobbyist making a campaign contribution to the point that:

- a lobbyist and a candidate may not even discuss any campaign contributions or fundraising events; and,

- a lobbyist may not even deliver contributions from other individuals, PACs or conduits

unless the contribution “window” is open during an election year.

The Board’s interpretation of “furnish” directly discriminates against small organizations that do not have the staff, members or resources to have multiple individuals interact with candidates for partisan elective state office. While the Board has suggested that a candidate may ask a lobbyist for a nonlobbyist contact, that person practically may not exist in a small organization. (*See* 2007 Wis Eth Bd 06, ¶ 7.)

In a large organization, a candidate can still communicate with nonlobbyist employees about campaign contributions. In a small organization, however, there often is one individual whose position as executive director also requires he or she to act as the organization’s lobbyist, political director and membership coordinator. In these situations, there is not a nonlobbyist employee for the candidate to contact and the organization depends on this single individual to coordinate and make recommendations on otherwise lawful campaign contributions.

In sum, AWL requests that the Board reconsider its earlier interpretation of “furnish” and end the discrimination against small organizations.

CAMPAIGN ACTIVITIES BY LOBBYING PRINCIPALS

AWL believes that this section should be clarified to make clear that what is being referenced is the campaign finance prohibition in Wis. Stat. § 11.38(1). Moreover, it also needs to be clear in this section on exactly what activities are permitted. Accordingly, we offer the following suggested edits:

CAMPAIGN CONTRIBUTIONS AND ACTIVITIES BY LOBBYING PRINCIPALS

Under Wis. Stat. § 11.38(1), an incorporated lobbying principal – an organization that employs a lobbyist – may not contribute to a candidate’s campaign committee at any time. (Lobbying principals not subject to Wis. Stat. § 11.38(1) are still subject to the limitations on timing discussed above and may only make a contribution after June 1 when the “window” has opened.) Instead, only an incorporated lobbying principal’s PAC may make such a contribution to a candidate’s campaign committee.

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

~~but only if~~That is, a PAC controlled by a lobbying principal may contribute to a candidate at any time. And, a PAC may make an in-kind contribution to a candidate's campaign committee in the event that the PAC reimburses the lobbying principal organization for the fair market value of such supplies and services.

Individuals who are not lobbyists – such as nonlobbyist employees of lobbying principals – may communicate at any time with candidates or their agents about fundraising for a candidate's campaign committee. Moreover, ~~A a lobbyist lobbying organization~~ may communicate with ~~its a~~ lobbying principal's own employees or members about a candidate fundraising event at any time provided, ~~as long it he or she~~ does not act in concert, consultation, or coordination with a candidate doing so.

With these changes, we believe it will be more clear on when and how a lobbying principal may be involved in campaign activities.

CAMPAIGN ACTIVITIES BY LOBBYISTS

AWL offers the following edits to the section on “Campaign Activities by Lobbyists”:

- To make clear that this section addresses activities occurring at any time, not just during the contribution window, we would suggest re-titling it to read: “Campaign Activities by Lobbyists – At Any Time”.
- In the first bullet on endorsements, we would suggest adding at the end the phrase “including a fundraising event.” Such a change will make clear that a lobbyist may endorse a candidate and may be listed as a name-only sponsor of a fundraising event at any time – a point made clear on the Board’s proposed guideline for candidates, GAB 255.
- A bullet should be added making it clear that a lobbyist may make contributions to a conduit account at any time provided that the funds are only deposited with the conduit and not released to a candidate’s campaign committee until the contribution window has opened.
- A bullet should be added making it clear that a lobbyist may attend a candidate fundraising event at any time.

PAC ACTIVITIES

For consistency, AWL suggests that this section of the proposed guideline be re-titled: “PAC Contributions and Activities – At Any Time”.

INVITATIONS SHOULD BE ALLOWED TO BE SENT TO LOBBYISTS

In the Board's proposed guideline for legislators and legislative candidates on "Campaign Fundraising", GAB 249, it states:

A disclaimer on a written invitation to a fundraiser to the effect that "If you are a lobbyist, please disregard or pass along" will not necessarily be taken to mean that the invitation is not a solicitation to a lobbyist – the Board may examine all circumstances to determine if an impermissible solicitation has occurred.

Such language continues the confusing advice that has been given to candidates over the years on such disclaimer language and whether invitations to fundraising events should be allowed to be sent to lobbyists. *See* 2004 Wis Eth Bd 03, ¶¶ 11-12 (sending an invitation is a prohibited solicitation even with disclaimer language); 2007 Wis Eth Bd 06, ¶¶ 10-11 (suggesting that such disclaimer language be used in the event that an invitation is "inadvertently" sent to a lobbyist). As a result, invitations are now frequently sent to lobbyists but include a disclaimer that the mailing "is not a solicitation of lobbyist campaign contributions."

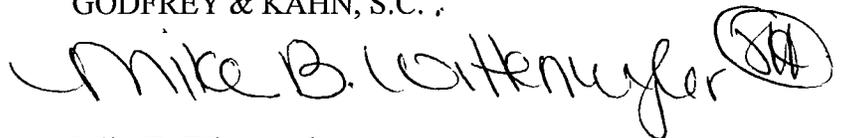
To end the confusion on what exactly is an acceptable practice, AWL recommends that the Board provide clear guidance on this issue. AWL would suggest that a candidate be allowed to send written invitations to lobbyists provided that the invitation includes a disclaimer making it clear that it is not a solicitation of lobbyist's personal campaign contribution.

CONCLUSION

AWL sincerely appreciates the opportunity that it has been provided to review and provide comments on the Board's proposed updated guidelines. We can assure you that these documents are frequently relied on by lobbyists and lobbying principals. To that end, the more clarity and consistency in these guidelines, the greater their value to the regulated community.

On behalf of AWL, I will be making a public appearance at the Board's July 21-22 meeting and can answer any questions that the Board may have at that time.

GODFREY & KAHN, S.C. .

A handwritten signature in black ink that reads "Mike B. Wittenwyler". To the right of the signature is a circular stamp containing the initials "G&K".

Mike B. Wittenwyler

cc: Association of Wisconsin Lobbyists

1996 Wis Eth Bd 5
LOBBYING

1. A lobbyist may, without restriction from the lobbying law, advise a lobbying organization's members, or their employees, about making campaign contributions as long as the lobbyist is acting independent of any candidate or candidate's campaign committee.
2. Campaign contributions collected from members of a lobbying organization, a circumstance popularly known as "bundling", are best delivered by one of the contributors on behalf of the contributors without reference to the organization. Neither a lobbyist (nor anyone acting at a lobbyist's behest) nor anyone representing himself or herself as acting on behalf of the lobbying organization should physically convey campaign contributions to partisan elected state officials, or candidates for partisan state elective office, except during the statutorily authorized period.

OEB 96-5 (April 12, 1996)

Facts

- [1] This opinion is based upon these understandings:
- a. You are a licensed lobbyist authorized to lobby on behalf of a lobbying principal that is a membership organization.
 - b. From time to time, members of your organization, and members' employees, make campaign contributions.

Questions

- [2] The Ethics Board understands your questions to be:
1. Does the lobbying law restrict your advising your organization's members, or their employees, about making campaign contributions?
 2. Does the lobbying law restrict your *delivery* of a campaign contribution made by one of your organization's members, or member's employees?

3. Does the lobbying law restrict the *delivery* by a non-lobbyist employee of your organization of a campaign contribution made by one of your organization's members, or member's employee?

Discussion

[3] Wisconsin's lobbying law generally prohibits a lobbyist or an organization that employs a lobbyist to furnish anything of pecuniary value to an elected state official or candidate for state elective office. An exception is that the law permits a lobbyist and an organization that employs a lobbyist to furnish campaign contributions during certain statutorily established periods. The only restriction on campaign contributions, found in §13.625, *Wisconsin Statutes*, reduced to its elements, provides that:

No lobbyist or lobbying principal
May furnish
A campaign contribution
To a candidate for partisan elective state office or to a partisan
elected state official running for any office
Except between June 1 and the general election in the year of the
candidate's election and only when the legislature is not in
session if the contribution is for a candidate to the
legislature.¹

¹ Section 13.625(1) and (2), *Wisconsin Statutes*, provides:

13.625 Prohibited practices. (1) No lobbyist may:

(b) Furnish to any agency official or legislative employe of the state or to any elective state official or candidate for an elective state office, or to the official's, employe's or candidate's personal campaign committee:

1. Lodging.
2. Transportation.
3. Food, meals, beverages, money or any other thing of pecuniary value, except that a lobbyist may make a campaign contribution to a partisan elective state official or candidate for national, state or local office or to the official's or candidate's personal campaign committee; but a lobbyist may make a contribution to which par. (c) applies only as authorized in par. (c).

(c) Except as permitted in this subsection, make a campaign contribution, as defined in s. 11.01 (6), to a partisan elective state official for the purpose of promoting the official's election to any national, state or local office, or to a candidate for a partisan elective state office to be filled at the general election or a special election, or the official's or candidate's personal campaign committee. A campaign contribution to a partisan elective state official or candidate for partisan elective state office or his or her personal campaign committee may be made in the year of a candidate's election between June 1 and the day of the general election, except that:

[4] The only issue your questions raise is what it means to furnish a campaign contribution.

[5] Words in a statute must be construed according to common and approved usage. §990.01(1), *Wisconsin Statutes*. Common and approved usage can be determined by consulting a recognized dictionary. *Ervin v. City of Kenosha*, 159 Wis. 2d 464 (1991). Webster's *Third New International Dictionary* 923 (1986) defines "furnish" as "to provide or supply with what is needed, useful, or desirable." *See also* 80 Op. Att'y Gen. 205 (1992). The Wisconsin courts have adopted that ordinary usage.

[6] With respect to your first question, the Ethics Board previously has said that a principal's communicating with its members about a campaign contribution, as long as it is done independently of a candidate, is neither the furnishing of a campaign contribution nor the furnishing of anything else of pecuniary value to a candidate. 1992 Wis Eth Bd 30[4]. Similarly, your providing advice to others is not a furnishing of a contribution to a candidate. In these cases, you and your principal are urging or advising others to furnish contributions; neither you nor your principal is furnishing a campaign contribution.

[7] With respect to your second question, your physically conveying a campaign contribution to a candidate, albeit someone else's money, falls within the accepted definition of furnishing. In *State ex rel. Milwaukee G.L. Co. v. Arnold*, 190 Wis. 602, 604 (1926), the Wisconsin Supreme Court held that the phrase "furnishing gas for lighting or fuel or both" included "the means by which the gas is supplied to the customer for use."² And in *State v. Graves*, 257 Wis. 31, 34 (1950), the court held that a bartender who had sold and delivered beer to an adult with the knowledge that the adult was going

1. A campaign contribution to a candidate for legislative office may be made during that period only if the legislature concluded its final floorperiod, and is not in special or extraordinary session.

2. A campaign contribution by a lobbyist to the lobbyist's campaign for partisan elective state office may be made at any time.

* * *

(2) No principal may engage in the practices prohibited under sub. (1) (b) and (c). This subsection does not apply to the furnishing of transportation, lodging, food, meals, beverages or any other thing of pecuniary value which is also made available to the general public.

² In the *Arnold* case the Court addressed whether household appliances kept for sale by a utility company could be taxed under a statute that permitted a city to assess property used for "generating and furnishing gas for lighting or fuel or both." The Court said that without appliances the gas could not be used by customers and were, therefore, for furnishing gas.

to give the beer to a minor had “furnished” the beverage to the minor and could be prosecuted for violating a statute that forbade furnishing alcohol to a minor. Similarly, a merchant may be said to furnish a wide array of goods even though they are supplied by a wholesaler or be on consignment. There is nothing in the language of the statute to support an interpretation that “furnishing” does not mean the conveying of campaign contributions from others.

[8] Finally, the Ethics Board has said that a principal may not furnish indirectly through an agent that which it is prohibited from furnishing directly. 1992 Wis Eth Bd 29 [4], 1992 Wis Eth Bd 27 [7]; 80 Op. Att’y Gen. 205 (1992). This is based on the common sense notion that corporations and associations can act only through individuals. Thus, the organization should not, through an agent, deliver a campaign contribution at a time not permitted by §13.625.³

Advice

[9] The Ethics Board advises:

1. You may, without restriction from the lobbying law, advise your organization’s members, or their employees, about making campaign contributions as long as you are acting independent of any candidate or candidate’s campaign committee.
2. Campaign contributions collected from members of the lobbying organization, a circumstance popularly known as “bundling,” are best delivered by one of the contributors on behalf of the contributors without reference to the organization.⁴ Neither you (or anyone acting at your behest) nor anyone representing himself or herself as acting on behalf of the lobbying organization should physically convey campaign contributions to partisan elected state officials, or candidates for parti-

³ This restriction does not apply to the furnishing of a contribution by a principal’s political committee. See *Plumbers and Gas Fitters Local 75 Political Action Fund v. Wisconsin Ethics Board*, Dane County Circuit Court, 93 -CV-3984 (February 23, 1994), *aff’d*, District IV Court of Appeals, 94-0826 (May 19, 1995), Supreme Court, 94-0826 (September 27, 1995). The Board has not been asked to address whether a conduit administered by a principal may furnish a campaign contribution at a time not permitted by the lobbying law.

⁴ The lobbying law does not prevent an officer or member or employee of the lobbying organization to convey a contribution as long as the delivery is not by a lobbyist (or anyone acting at the lobbyist’s behest) or with the representation that the contribution is made on the organization’s behalf.

san state elective office, except during the statutorily authorized period.⁵

⁵ A campaign contribution may be made between June 1 and the date of the general election in the year of a candidate's election, provided that if the contribution is to a candidate for the legislature, then only if the legislature has concluded its final floor period and is not in a special or extraordinary session.

1997 Wis Eth Bd 18
LOBBYING AND LOBBYISTS

The Ethics Board advises:

(1) that a lobbyist may administer a conduit and sign conduit checks and transmittal letters; and

(2) that a lobbyist may sign a conduit check and transmittal letter conveying a campaign contribution to a partisan elective state official or candidate for a partisan elective state office only between June 1 and the date of the general election in the year of a candidate's election and to a legislative candidate during that period only if the legislature has concluded its final floorperiod and is not in special or extraordinary session. (November 4, 1997)

Facts

- ¶ 1. This opinion is based upon these understandings:
- a. You are a lobbyist.
 - b. You administer a conduit that furnishes campaign contributions.

Question

- ¶ 2. The Ethics Board understands your question to be:
- May you, consistent with the lobbying law, sign contribution checks and transmittal letters on behalf of the conduit?

Discussion

- ¶ 3. The lobbying law, §13.625(1), *Wisconsin Statutes*, is pertinent to your question. That section, reduced to its elements, provides:

No lobbyist
May furnish
To an agency official, legislative employee, elected state official, or
candidate for elective state office
Anything of pecuniary value

Except a campaign contribution
But a lobbyist may furnish a campaign contribution
To a partisan elected state official or candidate for a partisan elective
state office
Only between June 1 and the date of the general election in the year of
the candidate's election
And to a legislative candidate during that period only if the legislature
has concluded its final floorperiod and is not in special or
extraordinary session.¹

¶ 4. You are a lobbyist. It is our understanding that a conduit does not
itself provide money for campaign contributions. Rather, the amount and
recipient of contributions are designated by the individual contributors.² In
1992, the Ethics Board considered whether a lobbying principal, subject to

¹ Section 13.625(1)(b) and (c), *Wisconsin Statutes*, provides:

13.625 Prohibited practices. (1) No lobbyist may:

(b) Furnish to any agency official or legislative employe of the state or to any
elective state official or candidate for an elective state office, or to the official's,
employe's or candidate's personal campaign committee:

1. Lodging.
2. Transportation.

3. Food, meals, beverages, money or any other thing of pecuniary value, except
that a lobbyist may make a campaign contribution to a partisan elective state offi-
cial or candidate for national, state or local office or to the official's or candidate's
personal campaign committee; but a lobbyist may make a contribution to which par.
(c) applies only as authorized in par. (c).

(c) Except as permitted in this subsection, make a campaign contribution, as
defined in s. 11.01(6), to a partisan elective state official for the purpose of promot-
ing the official's election to any national, state or local office, or to a candidate for a
partisan elective state office to be filled at the general election or a special election,
or the official's or candidate's personal campaign committee. A campaign contribu-
tion to a partisan elective state official or candidate for partisan elective state office
or his or her personal campaign committee may be made in the year of a candidate's
election between June 1 and the day of the general election, except that:

1. A campaign contribution to a candidate for legislative office may be made
during that period only if the legislature concluded its final floorperiod, and is not
in special or extraordinary session.
2. A campaign contribution by a lobbyist to the lobbyist's campaign for partisan
elective state office may be made at any time.

² State campaign finance law, at 11.01(5m), *Wisconsin Statutes*, defines a conduit. That sec-
tion provides:

11.01(5m) "Conduit" means an individual who or an organization which receives a
contribution of money and transfers the contribution to another individual or
organization without exercising discretion as to the amount which is transferred
and the individual to whom or organization to which the transfer is made.

the same restrictions as a lobbyist, may, without violating the lobbying law, operate a conduit. We said that it could:

Although a conduit facilitates the ability of like-minded individuals to combine and deliver their campaign contributions, and provides administrative and other services to that end, the services (arguably of pecuniary value) are furnished to the individuals who otherwise would not be able to pool their contributions and not to the candidate.

1992 Wis Eth Bd 13, ¶3.

¶ 5. Subsequently, in 1996, the Ethics Board said that a lobbyist, without restriction from the lobbying law, may advise a lobbying organization's members or the members' employees about making campaign contributions as long as the lobbyist acts independent of any candidate or candidate's campaign committee. 1996 Wis Eth Bd 5, ¶6. We reaffirm these opinions and advise that a lobbyist, acting independent of a candidate or candidate's campaign committee, may administer a conduit without restriction from the lobbying law.

¶ 6. In our 1992 opinion, we also recommended that someone other than a lobbyist sign and convey the check provided to the candidate. 1992 Wis Eth Bd 13, ¶¶4,5. In our 1996 opinion we squarely addressed the question whether the lobbying law applies to a lobbyist's physically conveying another's campaign contribution. We said that it did because physically conveying an item falls within the accepted definition of furnishing. 1996 Wis Eth Bd 5, ¶7.³ We draw no relevant distinction between physically conveying a contribution to a candidate and signing the financial instrument or letter conveying the contribution.

³ Words in a statute must be construed according to common and approved usage. 990.01(1), *Wisconsin Statutes*. Common and approved usage can be determined by consulting a recognized dictionary. *Ervin v. City of Kenosha*, 159 Wis. 2d 464 (1991). Webster's *Third New International Dictionary* 923 (1986) defines "furnish" as "to provide or supply with what is needed, useful, or desirable." See also 80 Op. Att'y Gen. 205 (1992).

In *State ex rel. Milwaukee G.L. Co. v. Arnold*, 190 Wis. 602, 604 (1926), the Wisconsin Supreme Court held that the phrase "furnishing gas for lighting or fuel or both" included "the means by which the gas is supplied to the customer for use." And in *State v. Graves*, 257 Wis. 31, 34 (1950), the court held that a bartender who had sold and delivered beer to an adult with the knowledge that the adult was going to give the beer to a minor had "furnished" the beverage to the minor and could be prosecuted for violating a statute that forbade furnishing alcohol to a minor. Similarly, a merchant may be said to furnish a wide array of goods even though they are supplied by a wholesaler or be on consignment. There is nothing in the language of the statute to support an interpretation that "furnishing" does not mean the conveying of campaign contributions from others.

¶ 7. Of course, this does not mean that a lobbyist may not sign conduit checks or transmittal letters. It means only that a lobbyist may sign a conduit check or transmittal letter conveying a campaign contribution to a partisan elective state official or candidate for a partisan elective state office only during the times permitted by the lobbying law.⁴

Advice

¶ 8. The Ethics Board advises:

(1) that a lobbyist may administer a conduit and sign conduit checks and transmittal letters; and

(2) that a lobbyist may sign a conduit check and transmittal letter conveying a campaign contribution to a partisan elective state official or candidate for a partisan elective state office only between June 1 and the date of the general election in the year of a candidate's election and to a legislative candidate during that period only if the legislature has concluded its final floor period and is not in special or extraordinary session.

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⁴ Neither statutes, rules, nor Elections Board instructions require that a conduit administrator sign the letter transmitting a conduit contribution to a candidate. See 11.06(11)(a), *Wisconsin Statutes*; Wis. Admin. Code 1.85; Elections Board forms EB-9 and EB-10 and Information on Conduits (rev. 9/95).

Charitable Solicitations

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

Limitations on solicitation

A state public official should not solicit a charitable or other contribution from anyone for an organization of which the official or the official's spouse or legal dependent is an officer, director, employee or authorized representative or agent.

A state public official should not solicit a charitable or other contribution for any organization from a lobbyist, from an organization that employs a lobbyist, or from any person regulated by or doing business with the official's agency.

A state public official should not solicit a contribution for a state agency or state program from a lobbyist, from an organization that employs a lobbyist, or from any person regulated by or doing business with the official's agency.

A state public official may solicit a contribution for a charitable organization with which neither the official nor a member of the official's immediate family is associated from non-lobbyists and from businesses and organizations that do not employ a lobbyist.

A solicitation includes both an oral, written, and electronic communication.

Solutions for instances when solicitation is not permitted

GOVERNMENT-RELATED EVENTS. A state agency seeking private support for a government-related activity may request assistance from a multi-state or national association with which the agency is affiliated. An agency may also request the Department of Commerce to solicit support for events promoting economic development or tourism and for conferences of multistate, national, or international associations of government officials. An agency may also request the Department of Tourism to solicit support for events promoting tourism.

LETTERHEAD AND LETTERS OF SUPPORT. An official affiliated with a private organization may permit the appearance of his or her name and public office on the organization's letterhead in the same style and prominence in which others similarly affiliated with the organization are identified. An official may also write a letter of endorsement for an organization that the organization may include in a fundraising solicitation, even if it is sent to a lobbyist or lobbying principal, as long as the endorsement letter does not solicit, urge, or endorse contributing to the organization.

Legal references: §13.625, §19.45 (2) and (3), and §19.56 (3), *Wisconsin Statutes*

Campaign Fundraising

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

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

Soliciting a lobbyist or lobbying principal. State statutes limit when a member of, or candidate for, the Legislature may solicit a contribution from a lobbyist. A legislator or candidate for the Legislature may solicit a lobbyist for a contribution, whether asking for a personal contribution from the lobbyist or asking the lobbyist to obtain a contribution from a PAC or other person, **only between June 1 of an even-numbered year and the date of the general election in the year of the candidate's election.** This solicitation "window" does not open until after the Legislature concludes its final floor period (if the final floor period is scheduled for a date after June 1). The "window" closes during any time that the Legislature is in a special or extraordinary session. The limitation applies to soliciting a lobbying principal as well. Outside the permitted "window," contact should be limited to a non-lobbyist employee or representative of a PAC.

The restriction on soliciting applies whether a legislator or legislative candidate is soliciting a contribution for the candidate's own campaign committee, for another candidate, or for a legislative campaign committee. The restriction also applies to soliciting through an agent.

Accepting a contribution from a lobbyist or principal. A legislator or legislative candidate may accept a contribution from a lobbyist or lobbying principal only during the time period permitted for soliciting a lobbyist or principal. This restriction applies both to monetary and in-kind contributions.

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

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

Continued on next page 

What is a solicitation? A solicitation can be either oral, written, or electronic. A disclaimer on a written invitation to a fundraiser to the effect that “If you are a lobbyist, please disregard or pass along” will not necessarily be taken to mean that the invitation is not a solicitation to a lobbyist – the Board may examine all circumstances to determine if an impermissible solicitation has occurred.

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

The aggregate that may be accepted from all PACs, candidate committees, and a WECF grant combined may not exceed \$7,763 for an Assembly candidate or \$15,525 for a Senate candidate. The maximum from all committees, including political parties, may not exceed \$11,213 for an Assembly candidate or \$22,425 for a Senate candidate. There is no limit on how much an individual may contribute to his or her own campaign committee unless the individual has applied for a WECF grant. (In that case, an Assembly candidate may contribute no more than \$1,000 to his or her own committee and a Senate candidate may contribute no more than \$2,000 to his or her own committee. These limits are lifted if a candidate’s opponent does not file for a grant and does not file an affidavit of voluntary compliance with spending limits.)

Exceptions to these contribution limits or time periods may apply when a candidate is subject to a recount or recall election, runs in a special election or election to a local office, or a candidate registers after January 1 of an odd-numbered year.

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

Campaign Contributions and Activities by Lobbyists and Lobbying Principals

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

CAMPAIGN CONTRIBUTIONS BY LOBBYISTS

A lobbyist may make a campaign contribution from personal funds, or may deliver or convey a campaign contribution on behalf of a PAC, conduit, or other person:

TO

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

ONLY

between June 1 of an even-numbered year and the date of the general election in the year of the candidate's election. For a candidate for the Legislature, this "window" does not open until after the Legislature concludes its final floor period (if the final floor period is scheduled for a date after June 1). The "window" closes for a legislative candidate during any time that the Legislature is in a special or extraordinary session.

Neither a partisan elected state official nor a candidate for partisan state office should solicit a lobbyist outside the "window" noted above. If a lobbyist receives such a solicitation, the lobbyist should refer the candidate to a non-lobbyist or report the matter to the Government Accountability Board.

A lobbyist may make, deliver, or convey a campaign contribution at any time to a candidate for a local, non-partisan state, or national office unless the candidate is currently a partisan elected state officeholder.

CAMPAIGN CONTRIBUTIONS AND ACTIVITIES BY LOBBYING PRINCIPALS

Under Wis. Stat. §11.38 (1) an incorporated lobbying principal – an organization that employs a lobbyist -- may not contribute to a candidate's campaign committee at any time. (Lobbying principals not subject to Wis. Stat. §11.38 (1) are still subject to the limitations on timing discussed above and may only make a contribution after June 1 when the "window" has opened.) Only an incorporated lobbying principal's PAC may make such a contribution to a candidate's campaign committee.

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

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

This prohibition on incorporated lobbying principal contributions is true not only for monetary contributions but also for in-kind contributions such as a lobbying principal directing its employees or using its supplies to organize or run a golf outing, dinner, or other fundraising event for a candidate's benefit. A lobbying principal may provide such assistance to a candidate's campaign committee only through its PAC. A PAC, even one controlled by a lobbying principal may contribute to a candidate at any time, including an in-kind contribution and may reimburse a principal for the fair market value of supplies and services the PAC furnishes to a campaign committee.

Individuals who are not lobbyists – such as non-lobbyist employees of principals – may communicate at any time with candidates or their agents about fundraising for a candidate's campaign committee. Moreover, a lobbyist may communicate with a lobbying principal's own employees or members about a candidate fundraising event at any time provided he or she does not act in concert, consultation, or coordination with a candidate in doing so.

CAMPAIGN ACTIVITIES BY LOBBYISTS – AT ANY TIME

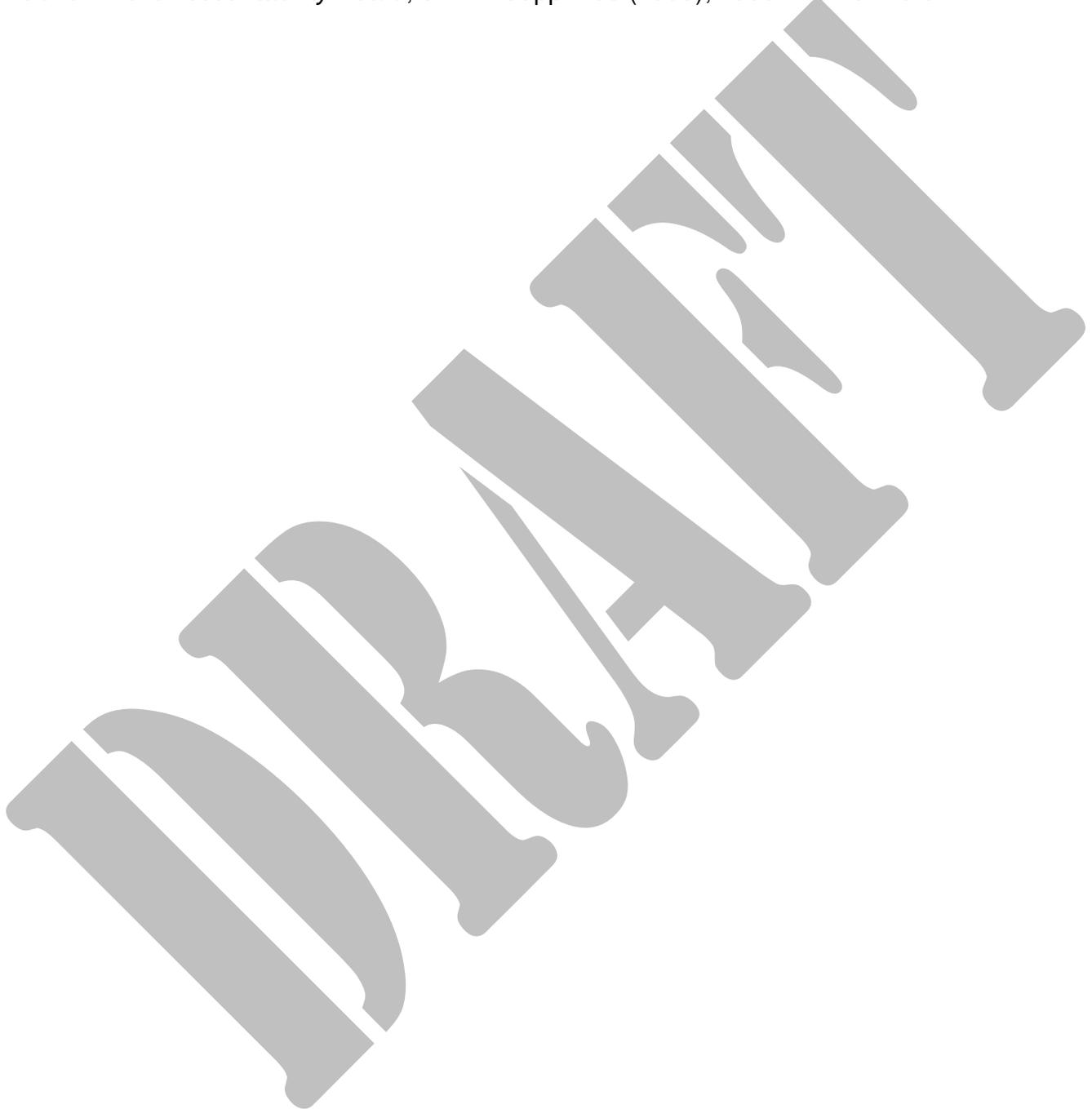
- **Endorsements.** A lobbyist may endorse a candidate or lend his or her name as a supporter or sponsor of a campaign event, including a fundraising event.
- **Advice to others.** A lobbyist, as a volunteer, may advise or urge others to contribute to a candidate, but may not act in concert with a candidate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

PAC CONTRIBUTIONS AND ACTIVITIES – AT ANY TIME

- **Contributions from Political Action Committees (PACs).** A PAC (even one controlled by an organization that employs a lobbyist), may contribute to a candidate's campaign as long as the committee is appropriately registered with the Government Accountability Board and the contribution does not exceed the limit imposed by campaign finance laws.

- **Sponsoring a fundraising event for a candidate.** Unless otherwise restricted by a rule or policy of the Senate or Assembly, a PAC (even one controlled by an organization that employs a lobbyist) may sponsor a fundraising event for a candidate at any time.

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



What candidates should know about Wisconsin's lobbying law

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

Wisconsin's lobbying law applies to all candidates for elective state office. The lobbying law permits candidates to receive contributions from lobbyists but places restrictions on when a *partisan* elected state official or candidate for *partisan* elected state office may solicit or accept such a campaign contribution. The lobbying law also restricts a candidate's acceptance of other items or services from a lobbyist or an organization that employs a lobbyist.

"Candidate" means a person for whom it is contemplated or desired that votes be cast at any election held in Wisconsin, other than an election to a federal office, whether or not the person is elected or nominated, and who either tacitly or expressly consents to be so considered. [§§11.01(1) and 13.62 (5g)].

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

CAMPAIGN CONTRIBUTIONS

CONTRIBUTIONS FROM A LOBBYIST. A partisan state elected official running for any office, or a candidate for a partisan elected state office, may solicit and accept a campaign contribution from a lobbyist or an organization that employs a lobbyist **ONLY WHEN**

the contribution is made between June 1 and the date of the November general election in the year of the candidate's election AND, in the case of a candidate for election to the Legislature, the Legislature has concluded its final floor period and is not in special or extraordinary session.

SERVICES FROM A LOBBYIST

A lobbyist may, at any time, furnish uncompensated personal services (*e.g.*, distributing yard signs, stuffing envelopes, going door-to-door and bookkeeping *provided the lobbyist does not charge a fee to others for similar work*) to any candidate. A lobbyist may not, at any time, provide a candidate for any state office with professional services for which the lobbyist would normally charge a fee, such as legal, accounting, consulting, or computer services.

A lobbyist may host a fundraiser for any candidate at a private residence but may not provide food or beverages at such a fundraiser for a partisan state elected official running for any office, or a candidate for a partisan elected state office, except during the time period permitted for contributions.

A lobbyist may endorse a candidate and may be listed as a sponsor of a fundraising event at any time.

Continued on next page 

CONTRIBUTIONS FROM A PAC. A candidate may accept a PAC contribution at any time, even from a PAC controlled by an organization that employs a lobbyist

CANDIDATE'S SOLICITATION OF CONTRIBUTIONS. A partisan state elected official running for any office, or a candidate for a partisan elected state office, may solicit a lobbyist or an organization that employs a lobbyist to furnish or arrange for another to furnish a campaign contribution only during the period during which the candidate may accept a contribution from a lobbyist.

CANDIDATE'S BUSINESS RELATIONSHIP WITH ORGANIZATION THAT LOBBIES

EMPLOYEE DURING THE CAMPAIGN. In spite of the general rule that an organization that employs a lobbyist may not furnish anything of pecuniary value to a candidate for state office, an organization may pay salary, wages and employee benefits to a candidate for an elective state office who does not yet hold the office if (1) the employee is neither an official of a state agency nor a legislative employee, and (2) the organization or employee can demonstrate by clear and convincing evidence that the employment, compensation, and employee benefits are unrelated to the candidacy.*

EMPLOYEE AFTER ELECTION. Having been elected to a state government position, a successful candidate may not, after assuming office, continue to receive compensation (including commissions or fees for sale of goods or services) or employee benefits from an employer that employs a lobbyist.

BUSINESS RELATIONSHIPS WITH LOBBYISTS AND THE ORGANIZATIONS THAT EMPLOY THEM.

LOBBYISTS: As a general rule, neither a candidate for election to a state public office nor an individual elected to state public office may purchase or otherwise accept from a lobbyist food, drink, transportation, lodging, compensation or other payment (even for goods or services purchased from the candidate or official), services of the type for which the lobbyist would normally charge (e.g., legal counsel or accounting), goods, or any other thing of pecuniary value.

LOBBYING PRINCIPAL. As a general rule, neither a candidate for election to a state public office nor an individual elected to state public office, may accept from an organization that employs a lobbyist food, drink, transportation, lodging, compensation or other payment (even for goods or services purchased from the candidate or official), goods, or any other thing of pecuniary value other than items or services which it makes available to the general public on the same terms and conditions.

Legal references: §13.625, *Wisconsin Statutes*; 1997 Wis Eth Bd 8; 2004 Wis Eth Bd 03; 2005 Wis Eth Bd 08

* If the organization employed the candidate prior to the first day of the 12th month commencing before the deadline for the filing of nomination papers for the office sought and the employment continues uninterrupted, without augmentation of compensation or employee benefits, except as provided by preexisting employment agreement, it is rebuttably presumed that the employment and compensation and benefits paid are unrelated to the candidacy.

What candidates should know about Wisconsin's campaign finance law

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

Wisconsin campaign finance law requires candidates for public office to register their intent to run for office, establish a campaign committee to raise and spend money, disclose their campaign receipts and disbursements, and to abide by certain contribution limits and prohibitions.

"Candidate" means a person for whom it is contemplated or desired that votes be cast at any election held in Wisconsin, other than an election to a federal office, whether or not the person is elected or nominated, and who either tacitly or expressly consents to be so considered. [§§11.01(1) and 13.62 (5g)].

State offices are those of governor, lieutenant governor, secretary of state, state treasurer, attorney general, superintendent of public instruction, circuit court judge, court of appeals judge, supreme court justice, state senator, state representative to the assembly, and district attorney [§5.02(23)].

CAMPAIGN COMMITTEE REGISTRATION

Every candidate for state office must register with the Government Accountability Board as soon as the individual decides to become a candidate. A candidate must file a campaign registration statement when s/he forms the intent to become a candidate and before circulating nomination papers, receiving contributions, or spending money on the campaign. A candidate must open a campaign depository account at a financial institution and choose a treasurer for the campaign.

Registration may be performed online at: <http://cfis.wi.gov/Public/Registration.aspx?page=Candidate>

COLLECTING CONTRIBUTIONS

All contributions exceeding \$50 must be by negotiable instrument or credit card. A candidate may not accept an anonymous contribution exceeding \$10. Contributions received in violation of these restrictions must be returned or given to the common school fund or a charitable organization. All contributions must be deposited in the candidate's campaign depository account no later than 5 business days after receipt.

LIMITATIONS ON CONTRIBUTIONS

A member of, or candidate for, the Assembly may accept up to \$500 from a single individual during any two-year period beginning January 1st of the year following the previous election. A member of, or candidate for, the Senate may accept up to \$1,000 from a single individual during any four-year period beginning January 1st of the year following the previous election. The maximum aggregate contribution from a single PAC or other candidate committee is also \$500 for Assembly candidates and \$1,000 for Senate candidates, respectively. Contribution limits include any in-kind contributions.

The aggregate that may be accepted from all PACs, candidate committees, and a WECF grant combined may not exceed \$7,763 for an Assembly candidate or \$15,525 for a Senate candidate. The maximum from all committees, including political parties, may not exceed \$11,213 for an Assembly candidate or \$22,425 for a Senate candidate. There is no limit on how much an individual may contribute to his or her own campaign committee unless the individual has applied for a WECF grant. In that case, an Assembly candidate may contribute no more than \$1,000 to his or her own committee and a Senate candidate may contribute no more than \$2,000 to his or her own committee. (These limits are lifted if a candidate's opponent does not file for a grant and does not file an affidavit of voluntary compliance with spending limits.)

Exceptions to these contribution limits or time periods may apply when a candidate is subject to a recount or recall election, runs in a special election or election to a local office, or a candidate registers after January 1 of an odd-numbered year.

A candidate may not accept a contribution from a corporation or cooperative association.

See Guideline 255, "What candidates should know about Wisconsin's lobbying law," for information about restrictions on soliciting and accepting contributions from lobbyists.

OBTAINING CONTRIBUTOR INFORMATION

A candidate must obtain, and report, the name and street address of every contributor who contributes more than \$20 in a calendar year. A candidate must obtain, and report, the occupation and employer name and address of every individual who contributes more than \$100 in a calendar year. A candidate must obtain, and report, the registered name and G.A.B. identification number of every PAC that contributes more than \$20 in a calendar year.

MAKING DISBURSEMENTS

Campaign funds may be used only for a campaign purpose. All expenditures for a campaign must be made from the campaign depository account. Expenditures may be made by check or debit card. A campaign may use a credit card, but when reporting a credit card payment, the campaign must include an itemization of the items and services purchased – including the date, amount, vendor, and specific nature of the item or service. Some candidates purchase goods and services from personal funds and obtain reimbursement from the campaign. *The Government Accountability Board discourages this practice and believes it contravenes the legislative intent of the statutes.* If a candidate does receive reimbursement, the campaign must still report the date, amount, vendor, and specific nature of the item or service for which reimbursement to the candidate is made. This also applies to reimbursement of a campaign worker.

DISCLAIMERS ON POLITICAL COMMUNICATIONS

When a communication, such as a radio or TV ad, brochure, letter, newspaper advertisement, or article of clothing is paid for by a candidate's campaign committee, it must contain the following disclaimer, in these exact words: "Paid for by [Committee Name], [Treasurer's Name], Treasurer." Communications paid for by others or that constitute an in-kind contribution must contain disclaimers as well. Please consult the Board for guidance on such disclaimers.

SOLICITING PUBLIC OFFICIALS AND EMPLOYEES

In general, a candidate may not solicit a state or local government official or employee for a campaign contribution at a government office, including a government e-mail address. A candidate may generally not solicit a state or local government employee for a political service, such as an endorsement, at a government office, including a government e-mail address, but may solicit an elected official for a political service anywhere.

PUBLIC FINANCING OPTION

Any candidate for state office other than supreme court justice may apply for public financing from the Wisconsin Election Campaign Fund. In exchange for receiving public financing, a candidate must abide by the expenditure limits contained in §11.31, Wis. Stats. To be eligible, a candidate must have an opponent, file a timely application, and raise a specified amount of money (depending on the office sought) from private contributions of \$100 or less. A candidate for partisan office at a general election must receive at least 6% of the total votes cast for the office in the partisan primary and must win the primary election.

REPORTING CONTRIBUTIONS AND DISBURSEMENTS

A candidate committee must file a campaign finance report each year on January 31 and July 20. In addition, in any year in which a candidate is up for election, the committee must file a pre-primary report 8 days before the primary (whether or not the candidate has primary opposition) and a pre-election report 8 days before the general election (whether or not the candidate has an opponent). A committee must file a pre-election report, even if the candidate lost in the primary.

If a single contributor contributes \$500 or more to a candidate within 15 days prior to a primary or general election, the candidate must report that contribution or contributions within 24 hours of receipt.

Any state candidate who accepts contributions of \$20,000 or more in any one election cycle must file electronically using the Board's Campaign Finance Information System. The electronic filing requirement continues thereafter. Others may file on paper using the form that may be found on the Board's website.

The reporting requirement continues to apply until such time as a candidate terminates his or her committee.

Legal references: §§11.06, 11.12, 11.14, 11.16.

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KEVIN J. KENNEDY
Director and General Counsel

MEMORANDUM

DATE: For the July 21-22, 2010 Meeting

TO: Members, Wisconsin Government Accountability Board

FROM: Kevin Kennedy
Director and General Counsel
Government Accountability Board

Prepared and Presented by:

Sharrie Hauge, Chief Administrative Officer
James Malone, Contract Sunshine Administrator

SUBJECT: Contract Sunshine Progress Report

In the past several months, Board staff has moved forward with improvements to Contract Sunshine to ensure the program's web site is fully functional, and that all state agencies are now able to post all of their purchasing information to the site. Further, we communicated with agency heads to inform them of the system improvements, to offer training to their purchasing staffs, and to remind them of their responsibility to comply with the law. Finally, we are prepared to assist the Legislative Audit Bureau with its review of the "Contract Sunshine Act," which we anticipate will be authorized by the Joint Legislative Audit Committee at its hearing on July 14, 2010. Going forward, we will be working with the Governor's office and the Legislature on legislation and funding for the coming biennium to ensure Contract Sunshine has the resources and support necessary to fulfill its mandate of giving the public ready access to information about the state's purchases and whether the state's procurement programs are operating fairly and efficiently.

This memorandum provides background on the past, present and future of Contract Sunshine.

Background—How We Got Here

1. The Legislature originally assigned Contract Sunshine to the State Ethics Board, as specified in Wisconsin State Statutes 19.48 (11). The Ethics Board contracted with Sundial Software as its vendor and began work on a reporting web site, which was launched in December 2007. When the Ethics Board merged with the State Elections Board in 2008, the Government Accountability Board took over responsibility for the program.
2. Contract Sunshine can currently be viewed by the public at <http://sunshine.sundialsc.com>. The web site is set up so that the public can search for entries by agency, vendor, items or services purchased, method of procurement and value. The entries can also be viewed by open solicitations, un-awarded solicitations and awarded contracts. Each table can be limited to activity within the last 30 days, the last 90 days, current fiscal year, current fiscal biennium, current calendar year, or prior calendar year. The option to show all entries in the system is available as well. The tables within the system are all sortable as well, making it easier for the public to find information.

3. Contract Sunshine was designed as a fully manual-entry database. The data entry for the database is accessed via the same web portal as the public view. The data entry portion of Contract Sunshine is log-in and password protected, and each person who enters data into the system has a specific log-in and password dedicated to them.
4. The Board hired a dedicated staff person for Contract Sunshine in October of 2009. This has allowed the staff to focus its efforts on full implementation of the Contract Sunshine program. This staff member acts as a day-to-day administrator of the program. His responsibilities include:
 - a. Approving entries into the system.
 - b. Establishing log-ins and passwords for reporting agencies.
 - c. Creating training and troubleshooting documentation for the Contract Sunshine web site.
 - d. Hosting training sessions for new users.
 - e. Being the first point of contact for users experiencing difficulties in using the system.
5. In November 2009, the staff began to examine Contract Sunshine by doing a survey of the program up to that point to identify missing functionality and weaknesses with the current program. This process also included discussions with purchasing agents from multiple state agencies represented on the State Agencies Purchasing Council, who would be the end users of the program.

The Present Situation

1. Based on this survey, the staff has made major improvements to the Contract Sunshine web site over the first half of this year. Here is a list of the improvements that have been made:
 - a. The staff has completed work on to provide Consolidated Agency Purchasing Services (CAPS) functionality. The CAPS program assigns Department of Administration State Bureau of Procurement employees to perform purchasing services for smaller state agencies, such as the Department of Public Instruction, Department of Veterans Affairs and the Department of Tourism among others. The web site was originally designed so that each user only represented one agency, but CAPS staff members represent multiple agencies. The staff worked with our vendor to create the necessary infrastructure to allow for CAPS agents to report their purchases for all the agencies that they represent.

The State Bureau of Procurement, including the CAPS staff members, took training in Contract Sunshine data entry on July 6. CAPS staff members are now reporting their purchases for other agencies, resolving an issue that was previously preventing some reporting. CAPS staff represents 20 state agencies, increasing the number of compliant agencies.

- b. Working with the State Bureau of Procurement, the staff identified four purchasing methods that were formerly not found in the reporting web site, which was preventing these purchasing types from being reported. These purchasing methods were purchases made by statutory authority, purchases made under a general waiver, contracts entered into by the Department of Administration involving a multi-state consortium, and simplified bids put out for purchases under \$25,000. These purchasing types have now been added into the system, allowing for more complete and accurate reporting.
- c. Functionality was added to the web site that allows for agencies to report a contract renewal as a separate entry, linked back to the original contract. Previously, this renewal would have to be reported as a “new” contract. By establishing contract renewal as a

separate reporting category, the staff believes that this will improve the public's understanding of the purchasing process and allow for better tracking of how contracts are being handled.

- d. Links to Department of Administration purchasing web sites have been added. These links do not relieve agencies of their Contract Sunshine reporting responsibilities, but they do give the public a better understanding of the state's purchasing process.
 - e. A suite of administrator tools have been developed that will allow the staff to better organize and track users and entries, helping to better ensure the accuracy of entries in the database.
2. The staff had been working on enhancements and improvements to the reporting web site before news articles published in mid-March by the Wisconsin Gannett newspapers. However, the staff has seen the additional media attention as a way of impressing upon state agencies the importance and value of Contract Sunshine reporting.
 3. Unfortunately, there are many agencies that are not compliant with Contract Sunshine reporting. Prior to the staff's recent outreach, 61 agencies did not have a registered user in the system, including all UW campuses.
 4. Currently, 22 state agencies have some data in the system. However, that does not necessarily mean that all of them are in compliance, or that all of the remaining agencies are not in compliance. Some smaller agencies may not have any contracts which need to be reported in the system. We are developing a system to require agencies to certify compliance with the Act.
 5. Staff realized that one of the factors in non-compliance is that many agencies do not understand what Contract Sunshine is and what the requirements for reporting are. On June 23, 2010, Kevin Kennedy sent a letter to all agency heads regarding Contract Sunshine. The letter informed the agency secretaries and directors of the need to comply with the law. It also asked them to identify the procurement manager in their agency who is responsible for compliance, and informed them of the availability of training on the system. The letter asked for all agencies to designate a contact person no later than July 16.

As of July 13, 64 agencies have responded with a contact person for their agency. In addition, more than 60 state agency staff members have registered for training. We view this as substantive progress toward the goal of total agency compliance.

6. As part of our survey of Contract Sunshine, the staff has noted several issues that make it difficult for the mission of Contract Sunshine to be fulfilled. The issues are:
 - a. The Contract Sunshine Act does not specify any way to compel agencies to follow the law in case of non-compliance. The best case scenario is that state agencies would not need any motivation other than the law, and the spirit of transparency behind the law. However, we have seen a lack of compliance from the majority of state agencies. Part of this lack of compliance is due to agencies not understanding the reporting requirements and procedures associated with Contract Sunshine, which the staff is taking steps to address. However, the lack of any non-compliance penalties means that agencies can choose to make Contract Sunshine a low priority, and thus ignore reporting requirements in favor of other projects. We believe that an addition to the law specifying some kind of monetary penalty may help ensure compliance.
 - b. Related to the above issue, the staff is developing a quarterly certification to be sent to all state agencies directing the purchasing staff to certify the agency has fulfilled all requirements of Contract Sunshine reporting. The letter to agency heads also informed

them of the new quarterly certification program. Internally, we are exploring what rulemaking may need to occur to make the quarterly certification a legal requirement. Certification would provide the ability to inform the public, on the Contract Sunshine web site, which agencies have, and have not, complied. Also, agencies which do not have any purchasing above the \$10,000 threshold would report this information in the certification. This will provide the public with information that is missing in the system. To do an audit of these certifications, the staff would require access to the financial records of state agencies, which could be literally thousands of records. As the Board only has one staff member assigned to all Contract Sunshine responsibilities, it would be difficult to conduct an effective audit of these certifications.

7. To fully summarize the efforts that the Government Accountability Board staff has taken toward achieving full agency compliance with Contract Sunshine law:
 - a. Created a web site, as specified in law, and has refined the web site to the point where all purchases and solicitations made by state agencies can be recorded in the system.
 - b. Assigned a staff person to administer Contract Sunshine on a day to day basis.
 - c. Met with state agencies, and continues to solicit feedback about how the website can be improved moving forward.
 - d. Sent a letter to the heads of all state agencies, making them aware of their reporting obligations and asking them to designate a contact person within that agency to ensure that we can communicate with all agencies about their reporting.
 - e. Implemented a training schedule open to all state agency staff to ensure that agencies are able to use the system effectively.
 - f. Initiated developing a certification process for state agencies to ensure that all reportable data is getting into the system.

The Future—Where We Are Heading

1. The overwhelming complaint from state agencies regarding Contract Sunshine is that the current system requires manual data entry. These complaints particularly come from larger state agencies that do a much higher volume of purchasing above \$10,000. Some agencies have claimed that they would need to hire additional staff to handle the demands of Contract Sunshine data entry. As many of these agencies have not entered data into the live system, it is impossible to know whether this claim is true. However, Contract Sunshine does place an additional burden on state agencies, and in many ways duplicates some information that is being entered into systems like VendorNet. The data being collected in these agency systems is not the same as the data specified by the Contract Sunshine Act, preventing the effective use of an interface between systems.
 - a. Many other states have different approaches to transparency in purchasing. They do not focus on the method of procurement as much as they focus on expenditures. These expenditures are captured through the use of statewide financial systems that are substantially similar to what the proposed Integrated Business Information System (IBIS) program would have done. That these states have an IBIS-like system means that their transparency web sites are able to export data directly from their accounting systems, eliminating the need for manual entry. This approach has allowed these other states to build their transparency web sites at a relatively small cost, as the underlying multi-million dollar back office system behind the web site already existed, and the web sites simply present that data in a meaningful way to the public.

- b. We believe that, for several reasons, responsibility for Contract Sunshine should be moved from the Board to the Department of Administration, specifically the State Bureau of Procurement (SBoP). The SBoP is regarded as the expert in the State of Wisconsin purchasing process and is responsible for interpreting state statutes about purchasing. As such, the SBoP has far more knowledge and understanding of the procurement process. As changes occur with procurement procedure, the SBoP would be able to anticipate those changes and appropriately modify Contract Sunshine to reflect them. Beyond that, the SBoP would be able to bring more resources to bear on Contract Sunshine. The Board receives an appropriation of \$11,000 a year to maintain and develop the Contract Sunshine web site, which is not enough to develop any major overhaul of the system. The Board has one staff person assigned to Contract Sunshine as a day-to-day administrator, though this person has been assigned other critical duties as well. With the superior resources of personnel and budget, as well as the ability to directly work with the Department of Enterprise Technology, Contract Sunshine would be a far better fit for the SBoP than the Government Accountability Board.

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KEVIN J. KENNEDY
Director and General Counsel

MEMORANDUM

DATE: For the Meeting of July 21-22, 2010

TO: Members, Wisconsin Government Accountability Board

FROM: Kevin J. Kennedy
Director and General Counsel

Prepared and Presented by:
Michael Haas, Staff Counsel

SUBJECT: Implementation of Impartial Justice Act

Introduction: Board staff has continued to address issues related to the initial implementation of the Impartial Justice Act (the Act) in light of the election for Supreme Court Justice in the 2011 Spring Election. Several provisions of the legislation require administrative interpretation and policy decisions to provide consistent guidance to candidates and committees as well as consistent enforcement of the campaign finance laws. This memorandum summarizes Board staff's interpretation regarding questions and issues which have arisen.

Summary of Recommended Motion: Adopt staff recommendations for implementation of the Impartial Justice Act and administration of the Democracy Trust Fund as outlined in this memorandum.

Background:

As a brief refresher of some key terms and provisions, the Act created the Democracy Trust Fund (DCF), from which public financing grants may be issued to candidates for Supreme Court Justice, in the form of a line of credit established by the State Treasurer, upon certification of the candidate's eligibility by the Board. For the 2011 Spring Election, the exploratory period began on May 1, 2010 and ended on July 1, 2010. The qualifying period began on July 1, 2010 and ends on the first Tuesday in January, 2011, which is the filing deadline for nomination papers and a key date for administration of the Act. The primary election period begins the day after the filing deadline and ends on the day of the Spring Primary. The election campaign period begins the day after the Spring Primary and ends on the day of the Spring Election.

During the exploratory and qualifying periods, a participating candidate may raise up to \$5,000 in private seed money contributions, which are contributions not exceeding \$100 and up to \$5,000 in the candidate's personal funds. To become eligible for the public financing benefit,

a candidate must receive qualifying contributions, ranging from \$5 to \$100, from at least 1,000 separate contributors, for a total of at least \$5,000 and no more than \$15,000, during the qualifying period. Therefore, the maximum amount of private funds that may be legally raised by a participating candidate is \$20,000 (up to \$5,000 in seed money and up to \$15,000 in qualifying contributions). Any private funds exceeding that aggregate total must be transferred to the Board and deposited into the DCF.

A participating candidate may not make or authorize total disbursements, from July 1, 2010 to the 2011 Spring Election, which exceed the maximum seed money and qualifying contributions raised, plus any applicable public financing benefit and matching funds. Seed money contributions and contributions from a participating candidate's personal funds may not be spent after the filing deadline in January.

The Impartial Justice Act reduced the limit for individual contributions to nonparticipating supreme court candidates from \$10,000 to \$1,000. Nonparticipating candidates are not limited in the total amount of contributions or expenditures that may be accepted or made, although they are limited in the amount of contributions that may be accepted from political committees, including party and legislative campaign committees. Except for personal funds, a participating candidate cannot accept contributions exceeding \$100, and may not accept PAC funds. In addition, seed money and qualifying contributions raised by a participating candidate must be made by Wisconsin electors.

A participating candidate must file an application for the primary election public grant (\$100,000) with the Board no later than the day after the deadline for nomination papers in January. The Board must verify that the candidate has raised sufficient qualifying contributions from at least 1,000 separate Wisconsin contributors and complied with other provisions, and may use verification and sampling techniques which the Board considers appropriate. The Board must certify candidates to the State Treasurer "promptly" after the candidate demonstrates eligibility, and no later than 5 days after the filing deadline. Regardless of how early a candidate applies and is certified, the candidate may not use the line of credit until the beginning of the primary election campaign period (the day after the filing deadline). If there is no primary opponent, a participating candidate does not receive the \$100,000 public grant for the primary.

A participating candidate must file a second application for the spring election public grant (\$300,000). The Act requires the second application to be filed no later than 7 days after the Spring Primary (§11.503(1), Stats.), but states that the Board must certify candidates no later than 48 hours after the Spring Primary (§11.51(3), Stats.). However, the State Treasurer is not to establish a line of credit for any candidate until all candidates who apply and qualify have been certified as eligible.

Two types of matching funds, which the Act describes as supplemental grants, are available for participating candidates. A supplemental grant is provided when a non-participating candidate's expenditures exceed \$105,000 during the primary election campaign period, or \$315,000 during the election campaign period. When a nonparticipating candidate reaches those thresholds, the participating candidate receives a supplemental grant equal to the excess disbursements made by the nonparticipating candidate over the applicable grant amounts, up to three times the amount of the base grant. Under §11.512, Stats., disbursements of a

nonparticipating candidate made or obligated prior to the filing deadline count towards the calculation of matching funds.

A separate supplemental grant is also available if aggregate independent expenditures against the participating candidate or in support of an opposing candidate exceed \$120,000 prior to the Spring Election, or \$360,000 in the election campaign period. Once either threshold is met, the amount of the matching funds granted to a participating candidate based on aggregate independent expenditures is equal to the total disbursements made or obligated to be made by independent disbursements, up to three times the amount of the respective base grant.

Implementation Decisions:

Board staff recommends that the Board adopt the following interpretations of provisions of the Impartial Justice Act to guide its administration and enforcement.

1. Availability and timing of public financing benefits.

While the Act establishes deadlines for the Board to certify the eligibility of participating candidates, it is necessary to clarify how early in the process the Board may certify that a candidate is eligible for either the base public grants or the matching funds, and how soon a candidate may receive a line of credit from the State Treasurer in specific circumstances.

A. Primary campaign base grant: Pursuant to §11.51(2), Stats., the Board shall certify the name of each eligible candidate to receive the primary election base grant (\$100,000), no later than 5 days after the filing deadline, and the Treasurer shall immediately credit the candidate's account with a line of credit. "Eligible candidate" is defined as a candidate who has an opponent who has qualified to have his or her name certified for placement on the ballot at the spring primary or election, and who has qualified for the public financing benefit by collecting the required qualifying contributions and making all required reports and disclosures (§11.501, Stats.).

Based upon these provisions, Board staff understands the legislation to allow certification of candidates to receive the primary base grant only after three candidates (or more) have filed sufficient nomination petitions and other documents to qualify for ballot access, resulting in a Spring Primary. Until that time, a candidate who applies for public financing cannot be an "eligible candidate", for purposes of the primary election grant. Sections 11.51(2) and 11.511(1), Stats., also provide that the base grants for the Spring Primary and Spring Election may not be utilized by a candidate until the beginning of the primary election campaign period (the day after the filing deadline).

B. Primary campaign matching funds: In addition, Board staff has concluded that supplemental grants based upon the disbursements of a nonparticipating candidate or upon independent disbursements may not be released to a candidate prior to the start of the primary election campaign period. Both types of matching funds are incorporated into the definition of the "public financing benefit" which may be used to finance lawful disbursements only during the primary and election campaign periods, pursuant to §§11.501(14) and 11.511(1), Stats.

The practical effect of the law, therefore, is that a participating candidate is limited to spending a maximum of \$20,000 in campaign funds from May 1, 2010 until the start of the primary campaign period, regardless of the amount of expenditures made by nonparticipating candidates or independent groups prior to the filing deadline.

Participating candidates are also prohibited from spending seed money contributions or qualifying contributions after the filing deadline (§11.508, Stats.) However, for purposes of calculating the amount of matching funds available to a participating candidate after the filing deadline, disbursements made by nonparticipating candidates and by independent groups at any time after May 1, 2010 are included. The descriptions of those matching funds in Sections 11.512 and 11.513, Stats., are not limited to a calculation of opposing expenditures made after the filing deadline.

C. Public financing grants in the absence of an opponent or a Primary Election: In the event that a candidate has no opposition at all, the definition of “eligible candidate” precludes the certification of that candidate for public financing and issuance of either the base grants or matching funds. If there are only two candidates that qualify for ballot access, Section 11.511(4), Stats., provides that no candidate may receive a public financing grant for the primary election campaign period.

However, the consensus of Board staff is that the Impartial Justice Act permits an eligible candidate with only one opponent to receive the base grant for the Spring Election as well as any applicable matching funds prior to the Spring Primary. Section 11.511(1), Stats., requires the State Treasurer to provide each eligible candidate separate lines of credit to be used for lawful disbursements during the primary and election campaign periods “to further the election of the candidate in that primary or election” (emphasis added). Although the public funds may not be used for a primary, if there is no primary opponent, there appears to be no prohibition on using those funds in the primary election period if they are used for the Spring Election. In the absence of a primary, therefore, the legislation does not appear to require delaying issuance of the \$300,000 Spring Election grant until after the date of the Spring Primary.

In essence, the primary election period is eliminated and the issuance of grants for the Spring Election is accelerated when only two candidates are certified for ballot access. Consistent with this interpretation, matching funds for the Spring Primary would be eliminated and would be calculated based only on the formulas for the Spring Election. Expenditures of nonparticipating candidates and other individuals, committees, and organizations would be measured against the \$300,000 threshold for the base grant.

A contrary interpretation would leave a participating candidate with minimal available funds during the period from the date of the filing deadline through the Spring Primary, as seed money contributions and personal funds of the candidate may not be spent during this period, pursuant to §§11.507(2) and 11.508(2), Stats. Such an interpretation would also discourage the Act’s goal of encouraging participation in the public financing system by eliminating the ability of a participating candidate to respond to disbursements of an opponent or independent committees until six weeks before the Spring Election.

2. Independent expenditures and interplay with GAB §1.28, Wis. Adm. Code.

One of the two possible supplemental grants available to a participating candidate is based upon aggregate independent disbursements made or obligated to be made by a person against an eligible candidate, or for the opponents of an eligible candidate, which exceed 120 percent of the base grant for the Spring Primary or for the Spring Election (§11.513(2), Stats.).

“Independent disbursement” is defined as a disbursement by a person “expressly advocating the election or defeat” of a clearly identified candidate which is made without the cooperation, consultation, request, or suggestion of a candidate (§11.501(10), Stats.). That definition incorporates the definition of a “disbursement” in 11.01(7)(a), Stats., specifically the requirement that the expenditure be made for a “political purpose,” as described in §11.01(16), Stats. GAB §1.28 further defines statements of political purpose to include those using words such as “vote for” or “vote against”, as well as those meeting the functional equivalent test for communications within 30 days of the Spring Primary or 60 days of the Spring Election. The question is whether the definition of disbursements triggering matching funds is intended to be more restrictive in the Impartial Justice Act than in the campaign finance law generally.

Board staff recommends that, in administering the Impartial Justice Act, the Board interpret the term “independent disbursement” broadly to be consistent with §11.01(7)(a) and GAB §1.28. The words “expressly advocating” are nowhere defined by statute, the Legislature was presumably aware of the proposed administrative rule when it enacted the Impartial Justice Act, and the communications covered by the new rule are those that are susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate. Such an interpretation would not only serve the principle of encouraging participation by allowing candidates to answer the full range of independent disbursements that criticize a participating candidate or support a privately-financed opponent, it would also reduce confusion by applying a consistent application of terms such as “political purpose” and “independent disbursement” in the Board’s administration and enforcement of Chapter 11.

3. Use of existing funds

The Impartial Justice Act trailer bill (2009 Act 216), clarified that the exploratory period for each election begins in the preceding year, rather than during any prior year of an incumbent’s term (§11.501(7), Stats). The question arises as to the treatment of campaign contributions and expenditures made prior to the beginning of the exploratory period for the 2011 Spring Election, which was May 1, 2010. Several current Supreme Court Justices, including Justice David Prosser, had existing campaign funds at the time the Impartial Justice Act became effective, and future candidates may seek to raise and spend funds prior to the exploratory period for each respective election.

Pursuant to §11.511(7)(a), no participating candidate may make total disbursement exceeding the maximum amounts of allowable seed money contributions and qualifying contributions and public financing grants, including matching funds, beginning with the first day of the exploratory period and ending on the date of the Spring Election. The Act establishes civil and criminal penalties for participating candidates who exceed the contribution limits or the expenditure limits (§§11.517 and 11.518, Stats.).

Based upon these provisions, Board staff believes that the legislation contemplated the start of a campaign, for the purpose of a participating candidate's eligibility, to be the beginning date of the exploratory period. In other words, contributions received by a candidate prior to the exploratory period do not count towards the limits for seed money or qualifying contributions, and may be used for political expenditures made prior to the start of the exploratory period (the day after the Spring Primary of the year preceding the election, except in relation to the 2011 election, for which the exploratory period began May 1, 2010). Permitting the use of such funds after the exploratory period begins would conflict with the Act's goal of promoting publicly-financed Supreme Court campaigns except where private funds are specifically allowed.

Board staff recognizes that current candidates have not yet received definitive guidance regarding the use of campaign funds that existed prior to the Act's effective date. Therefore, given the equitable considerations, the staff recommends that the Board not disqualify from public financing a candidate who has used funds raised prior to the exploratory period for expenditures made or obligated between May 1, 2010 and July 21, 2010. However, Board staff believes the Board should also deduct the total amount of any such expenditures from the base grants to be issued to a participating candidate. In that way a participating candidate utilizing existing funds after the exploratory period begins will not have an advantage in the amount of total private funds that can be spent, but will have fair notice of the deadline established by the Board for terminating use of previously-existing funds.

4. Reporting requirements.

The Act establishes reporting requirements for both participating and non-participating candidates in addition to the regular reporting requirements in Chapter 11, and requires prompt analysis by Board staff to determine candidate eligibility for public financing grants and the amount of matching funds. Beginning in September, participating and nonparticipating candidates are required to file reports of fundraising activity on the 15th and last day of each month, and beginning in January, 2011, nonparticipating candidates and independent committees are required to file reports within 24 hours of receiving certain contributions or making or obligating certain disbursements (§§11.506(2), 11.512(1), and 11.513(1), Stats.).

Board staff has initiated changes to the Campaign Finance Information System to accommodate the filing of these interim reports electronically, so that duplicate filing of transactions is minimized. The interim reports will be incorporated into the regular reports on an ongoing basis.

Finally, the Impartial Justice Act does not specifically state that the requirement of 24-hour reports of contributions and expenditures of nonparticipating candidates extends to the period between the Spring Primary and the Spring Election, when the impact of political communications is greatest. However, not enforcing the requirement for 24-hour reporting after the date of the Spring Primary in the same way as prior to that date would lead to an absurd result, as the Board would have no effective tool for monitoring compliance by nonparticipating candidates or for calculating the amount of matching funds to be issued to participating candidates. In addition, the 24-hour reporting requirement for independent disbursements clearly remains in effect during the spring election campaign period pursuant to

§11.513(1), Stats. Therefore, Board staff recommends that the Board adopt a similar and consistent interpretation of the reporting requirement for nonparticipating candidates so that the matching fund provisions may be effectively administered.

In summary, Board staff recommends that the Board ratify the above-described interpretations of provisions of the Impartial Justice Act and direct staff to administer and enforce the Act accordingly.

Recommended Motion

Direct staff to administer provisions of the Impartial Justice Act as follows:

1. The base grants and matching funds to be used by eligible candidates for the Spring Primary shall be issued no earlier than the beginning of the primary election campaign period (the day after the filing deadline), and only when three or more candidates submit necessary documents to qualify for certification of ballot access.
2. For purposes of calculating the amount of matching funds available to a participating candidate after the filing deadline, disbursements made by nonparticipating candidates and by independent individuals, committees and organizations at any time after May 1, 2010 are included.
3. An eligible candidate with only one opponent may receive the \$300,000 base grant for the Spring Election as well as any applicable matching funds prior to the Spring Primary. The matching funds shall be calculated based upon the formulas applicable to the Spring Election when there is no Spring Primary.
4. For the purpose of calculating matching funds based upon aggregate independent disbursements, the term “independent disbursements” shall be interpreted consistently with the term “political purpose” as described in §11.01(16), Stats. and GAB §1.28.
5. Contributions received by a candidate prior to the exploratory period do not count towards the limits for seed money or qualifying contributions, and may be used for political expenditures made prior to the exploratory period (the Spring Primary of the year preceding the election, except in relation to the 2011 election, for which the exploratory period began May 1, 2010). Such expenditures of candidates in the 2011 Spring Election shall be allowed until July 21, 2010, and the total amount of any such expenditures shall be deducted from the base grants to be issued to a participating candidate.
6. The bi-monthly and 24-hour campaign finance reports required by the Impartial Justice Act shall be filed as interim reports to minimize duplicate reporting of transactions, as directed by Board staff.
7. The requirement for nonparticipating candidates and independent committees to file 24-hour reports pursuant to §11.502 and 11.503 shall continue in effect from the date of the Spring Primary to the date of the Spring Election.

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JUDGE GORDON MYSE
Chair

KEVIN J. KENNEDY
Director and General Counsel

MEMORANDUM

DATE: For the July 21-22, 2010, Meeting

TO: Members, Wisconsin Government Accountability Board

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

Prepared and Presented by:
Nathaniel E. Robinson
Elections Division Administrator

SUBJECT: Elections Division Update

Election Administration Update

Introduction

Since the Government Accountability Board's May 10, 2010, meeting, the Elections Division has focused on the following tasks:

2010 Fall Election Ballot Access Report

Given the June 1 through July 13, 2010 period provided by statute for Candidates to circulate Nomination Papers, and for challenges to be made (by close of business on Friday, July 16), the 2010 Fall Election Ballot Access Report may not be completed in time to be included in the regular meeting materials. This report will be transmitted via email and posted on our website. Paper copies of the Report will be provided at the meeting.

Noteworthy Election Administration Activities

1. 2010 Spring Election Cycle: Extended Hours Interim Report

An interim report detailing the determination and implementation of extended operating hours for the 2010 Spring Primary and Election will be presented during the Elections Division Update Report to the Board.

2. 2010 Fall Election Cycle Preparation

On May 10, 2010, Board Chair Judge Eich signed the Canvass Statement which certified the results of the April 6, 2010 Spring Election. The following day, May 11, 2010, the Type A Notice of Election for the fall elections was sent to all county clerks.

There are 130 state offices up for election this fall. They are:

- Five (5) Statewide Constitutional offices (Governor, Lieutenant Governor, Attorney General, Secretary of State and State Treasurer)
- One (1) United States Senator
- Eight (8) Congressional offices
- Seventeen (17) State Senate offices (odd-numbered seats)
- Ninety-nine (99) State Assembly offices.

County offices to be elected include Sheriff, Coroner and Clerk of Circuit Court.

3. Candidate Registration and Ballot Access

The volume of candidates running for office this fall is high due to 24 open seats in legislative offices, and the offices of Governor and Lieutenant Governor. With the assistance of the Ethics and Accountability Division, Candidate Packets were made available for all persons interested in running for office this fall. The packets included all documents required for ballot access including: Statements of Economic Interests, campaign finance and ballot access checklists, and campaign finance reporting information.

Elections staff and Ethics and Accountability staff have been assisting candidates in using the Campaign Finance Information System (CFIS) for candidate registration, and encouraging candidates to utilize CFIS when amendments are necessary. Statewide Voter Registration System (SVRS) and Elections Administration staff entered the candidate registration information and Declaration of Candidacy information into the SVRS, which tracks candidate ballot access progress.

4. Nomination Papers

June 1, 2010 was the first day to circulate nomination papers. Many candidates ask that staff preview nomination paper forms for content and format prior to circulation, and staff welcomed the opportunity to address errors and make suggestions for improvement before circulation.

5. Notifications of Noncandidacy

Of the incumbent candidates who announced not to seek re-election, all have filed Notifications of Noncandidacy.

6. Canvass Process

The migration of the canvass process to a web-based, online platform is nearly complete and will be in place for the canvass of the September Partisan Primary. Training of county clerks on the canvass reporting system will occur in August. An electronic Canvass Reporting System will significantly improve staff's administrative efficiency and effectiveness. The Partisan Primary is the most complicated and cumbersome election to canvass, so we anticipate the canvass reporting system will measurably reduce the number of Board staff time to complete canvasses.

On Thursday, May 13, 2010, a Clerk Advisory Committee met at the G.A.B. offices to view the canvass reporting process. The clerks also had the opportunity for hands on testing and experimentation with the process. All of the clerks in attendance found the process easy to use and were receptive to utilizing it in the fall. The clerks also thought it would ease the administrative processes at county and municipal clerk offices.

On Tuesday, June 22, 2010, the electronic Canvass Reporting System prototype was presented to the Wisconsin County Clerks' Association during their 105th Annual Summer Symposium in

Shawano. 60 of the 72 County Clerks were in attendance. The prototype was enthusiastically received by all.

7. Forms Update

In the summer and fall of 2008, political parties and other interested groups were actively encouraging voters to “vote early, and avoid lines on election day,” As a result, municipal clerks experienced an extremely high volume of in-person absentee voting prior to the Presidential election. The high volume of in-person absentee voters combined with the cumbersome and time-consuming absentee voting process made for long lines of voters. In some large municipalities, voters waited in line for 2-1/2 hours or more. The process involves completing an absentee ballot application, receiving and voting the ballot, sealing the ballot in a certificate envelope and completing the certificate envelope which is witnessed by the clerk.

On Thursday, May 6, 2010, the ad hoc Absentee Ballot Redesign Committee, consisting of selected county and municipal clerks met to discuss ways to alleviate the burdensome absentee voting processes for in-person absentee voters. The result of the meeting was to eliminate a step in the process by creating an absentee certificate envelope that is also an application for absentee ballot. The in-person absentee voter no longer has to complete an absentee ballot application. Instead, the voter “applies” by completing the Absentee Certificate Envelope/Application for Absentee Ballot. The voter receives and votes their ballot, seals the ballot in the Envelope and gives it to the clerk to be witnessed. The municipal clerks are excited about this effort to streamline in-person absentee voting.

Elections Division staff has updated all Election Division forms to include the agency’s new address and website information. The Voter Registration Application (GAB-131) and Application for Absentee Ballot (GAB-121) were modified to include clearer explanations and better formatting.

8. Collaboration with Clerk Customers

- A. Tuesday, May 4, 2010: Staff met with Clerk Communications Advisory Committee members. At this meeting Clerks advised G.A.B. staff on the arrangement, content and appearance of the new website. Elections Division staff members made significant contributions to the new website which brings together information about the Board’s Elections and Ethics divisions in one convenient, easy-to-use place. The new website was launched on June 1, 2010.
- B. Tuesday, June 22, 2010: Elections Division staff attended the Wisconsin County Clerks Association 105th Annual Symposium. At this meeting staff presented several sessions on various topics, including:
 - An explanation of the differences between the September Partisan Primary and the November General Election, with respect to ballots, the voting process and results reporting;
 - Utilization of the SVRS absentee functionality to comply with the MOVE Act;
 - Voting equipment updates;
 - The 2010 Census and redistricting;
 - Navigation through the new G.A.B. website;
 - Procedures for County Boards of Canvassers

- Review of the purpose of and procedures for transmitting write-in absentee ballots to military and overseas electors;
- Explanation of the new combination Absentee Ballot Application/Certification and when it may be used;
- SVRS: Candidate Filing in version 7.0/G.A.B. Canvass Reporting System.

9. MOVE Act: Status of the Waiver Request

Staff drafted a MOVE waiver request in mid-May and by the time it was vetted, on May 25, staff received a detailed memorandum from the Federal Voting Assistance Program (FVAP) informing all State Election Directors in part that FVAP:

“..... is currently developing detailed guidance on the Military and Overseas Voter Empowerment (MOVE) Act’s undue hardship waiver request process for distribution to all Chief State Election Officials. It is anticipated that this further guidance will be available soon. In the interim, while we encourage you to await further detailed guidance, there is no prohibition against any State preparing or submitting an application for an undue hardship waiver, pursuant to the statutory language provided in the MOVE Act.

If such a waiver request is received prior to issuance of the requested detailed guidance, this office will respond to it in as timely a manner as possible. Please be advised that the FVAP Program Analysts will not be able to provide guidance for questions on this process until the detailed guidance is available.”

Based on this information, and in light of the fact that assisting candidates and the review of candidates’ nomination papers became priority, a decision was made to wait until the final waiver guidance is received from FVAP.

Measuring the Degree and Scope of Voter Fraud in Wisconsin

There seems to be a growing perception that voter fraud is rampant in Wisconsin. While this perception may be an increasingly popular belief, what is conspicuously missing from the rhetoric are the facts – facts that can be examined, tested and held up to scrutiny. Example constructs being considered for developing an assessment tool for assessing and measuring the degree to which voter fraud exists in Wisconsin will include but will not be limited to:

1. Survey District Attorneys about reports of voter fraud and follow-up
2. Collaborate with law enforcement and the Wisconsin Election Fraud Task Force consisting of the Milwaukee County District Attorney’s (DAs) Office, 10 other DA offices, and the Wisconsin Department of Justice
3. Conduct interviews via a questionnaire, in-person, via a focused group, etc.
4. Include a portal on G.A.B.’s new Website for the public to report information about voter fraud
5. Continue to conduct Felon Audits after each regular election
6. Partner with border states (Illinois, Iowa, Michigan and Minnesota) to share voter participation information to detect voter fraud. G.A.B. already has a Memorandum of Agreement (MOA) with the State of Minnesota, and plans to pursue MOAs with the three remaining border states within the coming months.

A more detailed listing of possible initiatives is included in Attachment 2, Ensuring Election Integrity in Wisconsin.

Discussion with Representatives from the UW-Madison, Department of Political Science

Staff has begun discussion with professors from the UW-Madison, Department of Political Science, and the La Follette School of Public Policy about collaborating on developing an assessment tool for measuring the degree to which voter fraud exists in Wisconsin. There is interest and the dialogue will continue.

10. Inter-State Voter Registration Data Sharing:
(A Collaborative Initiative to Detect Possible Border Election Fraud)

Board staff has continued working with local election officials and the Minnesota Secretary of State to compare and verify voter data in order to determine whether any individuals voted in both Wisconsin and Minnesota during the 2008 General Election. When staff finishes gathering and analyzing documentation from local officials, any confirmed cases of double voting will be forwarded to the appropriate district attorney for prosecution, in coordination with the county attorney in Minnesota.

11. Training

Please refer to the Attachment 1, Training Summary.

Other Noteworthy Initiatives:

1. Voter Data Interface

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

Clerks process HAVA Checks and confirm matches on a continuous basis during the course of their daily election administration tasks. This process has been followed since the Interfaces became functional in SVRS on August 6, 2008. Since the Board's last meeting on May 10, 2010, Clerks processed approximately 2,972 HAVA Checks with DOT/SSA on voter applications in SVRS.

2. Retroactive HAVA Checks Status

A Final Report on the Retroactive HAVA Check Project was presented to the Board at the March 23 meeting. Staff is currently evaluating effective strategies to proceed with the process of resolving the remaining non-matches in records of those voters who did not respond to the initial Retroactive HAVA Checks.

3. Voter Registration Statistics

As of Thursday, July 8, 2010, there were a total of 4,518,472 voter records stored in SVRS. Of this number, 3,423,093 were active voters; 870,709 were inactive; and 224,670 were cancelled voters.

Note: An active voter is one whose name will appear on the poll list. An inactive voter is one who may become active again, e.g. convicted felon or someone who has not voted in four years. A cancelled voter is one who will not become active again, e.g. deceased person. The number of records in SVRS has decreased slightly since the last report due to the work of clerk users and

Board staff in merging duplicate voter records as part of regular list maintenance. 4,711 merges have been completed in SVRS between May 10, 2010, and July 8, 2010.

4. Online Voter Registration Initiative

Board staff continues to collaborate with DOT/DMV staff to study online voter registration and automatic voter registration limited to partnering with the DOT/DMV. Staff expect to prepare reports to present to the Board and Legislature sometime during the first quarter in 2011.

5. G.A.B. Help Desk

The G.A.B. Help Desk is supporting over 1,700 active SVRS users. The Help Desk staff has been assisting with processing nomination papers, data requests and testing SVRS improvements. Help Desk staff is continuing to improve and maintain the two new training environments that are being utilized in the field.

The majority of calls were from SVRS users and clerks requesting assistance with closing out the Spring Election and preparing for the September Partisan Primary, candidates requesting registration, campaign finance and nomination paper information. Clerks requested support in running various reports from SVRS, assistance with bar code scanners, Wisconsin Election Data Collection System (WEDCS) setup and configuring new computers to run SVRS.

G.A.B. Help Desk Call Volume	
April 2010	804
May 2010	595
June 2010	642
Total Since last Board Meeting	2019

To alleviate distractions from the Reception Desk during the period of nomination paper processing, the main phone lines have been forwarded to the Help Desk until July 14, 2010.

6. Voter/Felon Comparison Audit

No new information since the May 10, 2010 Board meeting.

7. SVRS Core Activities

A. Software Upgrade(s)

The new version of SVRS, version 7.0 has been tested and installed to the SVRS production environment. This version includes a core software upgrade to keep current with Microsoft's .NET development platform, as well as fixes related to absentee, candidate ballot access tracking, reports and mailings, and improving the response time of the SVRS. The new version of SVRS also allows Board staff to retire the current antiquated and unsupported Elections Administration system, SWEBIS II after appropriate archiving of the data is completed.

The next version of SVRS, 7.1, is in the testing stages. This version includes simplifications to the Absentee process and updates required to implement the Federal MOVE Act. To meet MOVE Act requirements, the VPA website is concurrently being updated. These builds are targeted to be available to clerks in late July.

B. System Outages

SVRS users experienced a 4+ hour outage of the SVRS system on the morning of Wednesday, July 7, 2010. Due to a failure of contracted systems in the Department of Administration/Division of Enterprise Technology (DET) users were denied access to SVRS and most state services. Preliminary diagnosis is that contractor KDL (formerly Norlite) and circuit provider ATT had a failure to the statewide network and thus clerk's access to SVRS. VPA was also unavailable to the public during the outage. The network was restored and all systems brought back online at 12:30 pm. Multiple agencies and systems were impacted by this outage.

C. Data Requests

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

Due to the upcoming fall election events, the Board received many data requests during April, May, and June. The following statistics demonstrate the activity in this area:

- Fifty-five (55) inquiries were received requesting information on purchasing electronic voter lists from the SVRS system. This is compared to 122 for January, February and March 2010.
- Thirty (30) electronic voter lists were purchased.
- No paper voter lists were purchased.
- \$3,570 was received for the 30 paper and electronic voter lists requested.

30-Day Forecast

Election Readiness – Staff will continue to provide education, training and technical support to our 1,851 Municipal and 72 County Clerk partners for the 2010 September 14 Partisan Primary, and the 2010 November 2 General Election.

Action Items

None.

ATTACHMENT 1
 GAB Election Division's Training Initiatives
 5/11/2010 – 7/20/2010

Training Type	Description	Class Duration	Target Audience	Number of Classes	Number of Students
SVRS "Initial" Application and Election Management	Instruction in core SVRS functions – how to navigate the system, how to add voters, how to set up elections and print poll books.	16 hours	New users of the SVRS application software.	Internal staff training conducted in Madison.	6
SVRS "Advanced" Election Management	Instruction for those who have taken "initial" SVRS training and need refresher training or want to work with more advanced features of SVRS.	3 types of classes: Election Management; Absentee Process; HAVA Interfaces, Reports, Labels & Mailings; 4 hours each	Experienced users of the SVRS application software.	Internal staff training conducted in Madison.	10
Voter Registration	Basic training in adding voter registration applications, searching for voters, updated voters.	3 hours	Municipal and county clerks, staff and temp workers who provide election support only.	The WBETS site is available to train temporary workers.	Ongoing, self-directed training is available online.
Special Registration Deputy	2005 Wisconsin Act 451 allows a qualified elector of Wisconsin to be appointed as a Special Registration Deputy (SRD) for the purpose of registering electors of any municipality in Wisconsin during periods of open voter registration.	2 hours	Qualified electors in Wisconsin.	7 classes held in Waukesha, Stevens Point, Janesville, Milwaukee (2) and Madison (2).	80

ATTACHMENT 1
 GAB Election Division's Training Initiatives
 5/11/2010 – 7/20/2010

Training Type	Description	Class Duration	Target Audience	Number of Classes	Number of Students
WBETS	Web Based Election Training System. Still under development. Reference materials were made available to the clerks in February; voter registration training made available to clerks 3/24/2008.	Varies	County and municipal clerks and their staff.	Phase 1 of eLearning training plan close to completion; Phase 2 under discussion.	Site is available for clerks to train temp workers in data entry; relies are also able to access the site upon request.
HAVA Interfaces	Instruction in the user of the interface functionality in SVRS to check death records, felon records, DOT records and duplicate records against voter records as part of HAVA compliance requirements.	2 hours	All clerks (staff as determined by clerk).	Pilot of web-based training presented to the Standards Committee on May 14, 2008. Lessons available online June 2, 2008.	Eventually 2000+
Other initiatives:	<ul style="list-style-type: none"> Board staff developing clerk-trainer program. Training sessions for qualified clerk-trainers scheduled for July 20 and 28, 2010. Board staff working on migration of several training programs to online and DVD formats. Board staff updated 				
Other initiatives					

ATTACHMENT 1
 GAB Election Division's Training Initiatives
 5/11/2010 – 7/20/2010

Training Type	Description	Class Duration	Target Audience	Number of Classes	Number of Students
(con't)	Election Day Manual and SVRS Training Manual and class exercises. <ul style="list-style-type: none"> • Board training staff testing 7.0 and 7.1 builds in SVRS. • Board training staff presented updates to SVRS WCCA convention. 				

ATTACHMENT 2

ENSURING ELECTION INTEGRITY IN WISCONSIN

As part of its mission to ensure the integrity of individual ballots as well as election results in Wisconsin, the Government Accountability Board (Board) continues its commitment to working with municipal and county election officials and local and statewide law enforcement agencies to prevent errors and opportunities for voter fraud and to detect and prosecute cases of illegal voting which may occur.

While definitive evidence made available to the Board has not documented any widespread, organized, or systemic cases of voting by ineligible individuals or of double voting in Wisconsin, the Board has consistently maintained that evidence of any case will be thoroughly investigated and, if the evidence merits it, prosecuted to the full extent of the law. Board staff conducted a survey of the counties' prosecuting attorney offices four months after the 2008 General and Presidential Election. The survey results revealed that a total of six criminal complaints had been filed alleging voter fraud.

The Board recognizes the importance of implementing a comprehensive system that discourages individuals from voting illegally and assists in the detection and prosecution of illegal voting cases. To that end, the Board will continue to pursue and research the following election administration business practices regarding voter fraud in Wisconsin:

1. Educate and train local election officials, local and statewide law enforcement, and the public regarding voter qualifications including age, residency, and citizenship.
2. Educate and train local election officials, local and statewide law enforcement, and the public regarding methods of detecting ineligible voters; and the process of referring and monitoring the prosecution of voter fraud and other illegal voting cases.
3. Encourage and ensure the ability of the public to act as election observers and administer an orderly process for challenging the registration or vote of any elector.
4. Notify the former state when a new resident registers to vote in Wisconsin, and research the feasibility and effectiveness of comprehensive comparisons of Wisconsin's Statewide Voter Registration System (SVRS) database with statewide voter lists of neighboring states in detecting duplicate registrations.
5. Regularly audit records related to convicted felons, adjudicated incompetents, deceased persons, and voters who attempt to register or vote in multiple locations and match those records against the SVRS, as well as provide to local election officials, lists of convicted felons whose voting rights have not been restored.
6. Mail postcards to verify addresses of voters who register by mail, through a special registration deputy, or on Election Day at the polling place; and forward information to local prosecuting attorneys when fraud, or an error leading to illegal voting, is suspected.
7. Continue to proactively work with the Wisconsin Department of Justice, District Attorneys, and federal and local law enforcement to share information identified by the agency staff or received by the agency that implicates a violation of Chapter 12, Wis. Stats.

8. Assist law enforcement and prosecutors in specific election fraud and illegal voting cases by providing and interpreting information contained in the SVRS related to an individual's voting history and method of registration, as well as data related to special registration deputies and voters registered through that process.
9. Maintain the Voter Public Access website (<https://vpa.wi.gov>) which allows law enforcement and the public to obtain information regarding any registered voter for which a date of birth is known.

Through the Board's public education, information evaluation strategies, the Board will improve these ongoing outreach efforts to prevent errors, deter potential voter fraud and assure the State's residents that all reasonable and practical steps are being taken to maintain the high level of voter confidence and election integrity for which Wisconsin is known.

State of Wisconsin\Government Accountability Board

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KEVIN J. KENNEDY
Director & General Counsel

MEMORANDUM

DATE: July 21 and 22, 2010 Meeting

TO: Members, Wisconsin Government Accountability Board

FROM: Kevin J. Kennedy, Legal Counsel
Wisconsin Government Accountability Board

Prepared by: Jonathan Becker, Administrator
Ethics and Accountability Division

SUBJECT: Ethics and Accountability Division Program Activity

Campaign Finance Program

Richard Bohringer, Nathan Judnic, Tracey Porter and Dennis Morvak
Campaign Finance Auditors

Campaign Finance Training Sessions

Prior to the 2010 July reporting period, Lead Auditor Richard Bohringer and I conducted seven campaign finance training sessions throughout the State of Wisconsin the final two weeks in June. These 2.5 hour training sessions provided campaign finance filers information how to register and report campaign finance information using the Campaign Finance Information System (CFIS). Training sessions were held in Madison, Milwaukee, Green Bay, Wausau, Eau Claire and La Crosse. Approximately **200** candidates, treasurers and CFIS users took advantage of the training that was offered.

2010 July Continuing Campaign Finance Reports

Campaign finance filing notices for the 2010 July Continuing reports were sent out to all active committees required to file such a report during the week of June 28, 2010. The **1,376** candidates, political parties, legislative campaign committees, PACs, sponsoring organizations, and conduits required to file the July Continuing report must have their reports submitted to the GAB by July 20, 2010. As of 8:00 a.m. on July 13, 2010, **273** reports have been received.

Campaign Finance Information System Update

Staff continues to work with PCC Technology and the Department of Administration – Division of Enterprise Technology to improve the performance of the Campaign Finance Information System. A release was successfully implemented in June and another release is planned for the end of July that will implement system modifications to allow for corporations performing independent expenditures the ability to register and report the necessary campaign finance information using CFIS. Registration and reporting functionality will also be available for Supreme Court candidates seeking public financing through the Impartial Justice Act. Staff plans to survey system users after the July Continuing reporting period to gather information on how to further improve CFIS for campaign finance filers.

Lobbying Update

Tracey Porter, Ethics and Accountability Specialist
Tommy Winkler, Assistant Division Administrator

6 Month Statement of Lobbying Activities and Expenditures Report

Chapter 13.68, Wisconsin Statutes, requires all registered lobbying organizations to complete a 6 month Statement of Lobbying Activities and Expenditures (SLAE) report that contains information related to the organizations' lobbying effort between January 1 and June 30. The SLAE report is due on or before August 2nd, 2010. As a part of the SLAE report, those lobbyists who are authorized to lobby for the organization are required to complete a time report that identifies those hours spent communicating or working on other lobbying related matters for the organization. This report is also due on or before August 2nd, 2010. Both reports are filed electronically. Government Accountability Board staff contacted **770** registered organizations and **749** lobbyists completing **1,643** lobbyist time reports to inform them of this filing requirement. Included in the table below is performance information related to the third lobbying reporting period for the 2009-2010 legislative session.

TABLE

2009-2010 Legislative Session: January to June 2010 Lobbying Report Information (Data Current as of 12:00 p.m. on July 13, 2010)	
	Number
Principal Organizations Filed	70 = 9.1 % filed
Lobbyist Time Reports Filed	354 = 21.5 % filed

New Lobbying Website Project Update

G.A.B. staff is working with the Department of Administration IT personnel to develop a new lobbying website and online reporting application to be ready for the 2011-2012 legislative session. Much of the system analysis and design work is complete and the project has moved into the development phase per the project's plan and timeline. Staff will be working with members of the lobbying community by demonstrating portions of the website and application and then collecting comments on how to improve the application's functionality and user interface. This approach allows staff to utilize feedback from system users and incorporate it into the final product.

Financial Disclosure Update

Cindy Kreckow, Ethics and Lobbying Support Specialist
Tommy Winkler, Assistant Division Administrator

Fall Candidates Statements of Economic Interests

As of July 13, 2010, 381 candidates filed campaign finance registration statements registering for the Fall 2010 election. Any candidate running for state public office is required to complete and file a 2010 Statement of Economic Interests with the G.A.B. In order to obtain ballot status, the candidate must file this state with the Board by 4:30 p.m. on Friday, July 16, 2010. Staff has worked to communicate with every known candidate this filing requirement and provide assistance to candidates to help them satisfy this filing requirement. As of 12:00 p.m. on Tuesday, July 13, **259** candidates had filed Statements of Economic Interests.

6 Month Legislative Liaison Reports

Government Accountability Board staff mailed approximately **104** pre-printed Legislative Liaison reports to state agencies and boards required to file such a report with the G.A.B. under Chapter 13, *Wisconsin Statutes*. As of July 13, **30** statements have been filed. All state agencies are required to file a liaison report that indicates those agency officials who make lobbying communications with state officials, the percentage of their overall work time spent making such communications, and the official's annual salary. The report covers activity from January 1 to June 30, 2010. These reports are due on or before August 2, 2010.

State of Wisconsin Investment Board Quarterly Transaction Reports

Staff also sent out quarterly financial disclosure statements to **43** State Investment Board members on June 30, 2010. These statements are to be completed and returned to the G.A.B. no later than August 2, 2010. As of July 13, **9** Investment Board members had filed statements with the G.A.B.

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KEVIN J. KENNEDY
Director and General Counsel

MEMORANDUM

DATE: For the July 21 and 22, 2010, Meeting

TO: Members, Wisconsin Government Accountability Board

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

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

SUBJECT: Administrative Activities

Agency Operations

Introduction

The primary administrative focus for this reporting period has been working with outside auditors on the agency's federal compliance audit, developing the Contract Sunshine program, working with the Department of Administration/Division of Enterprise Technology to develop a new IT services support structure, recruiting staff, communicating with agency customers, and making presentations.

Noteworthy Activities

1. Federal Performance Audit

From March 22 to April 1, 2010, accountants from Clifton Gunderson, LLP contracted by the U.S. Election Assistance Commission (EAC) performed their audit field work at the G.A.B. office. The HAVA audit field work consisted of testing payroll expenditures, major procurement transactions, direct/indirect expenses, a fund reconciliation, and visiting municipalities to count and verify voting equipment purchases.

On April 19, 2010, an exit conference was held with the federal audit team, U.S. EAC-Office of Inspector General (OIG), and G.A.B. staff to discuss preliminary findings. These preliminary findings will be sent to the U.S. EAC-OIG. The audit team identified a handful of preliminary findings that still need to be addressed before a final audit report is prepared.

As a result of the exit conference, the U.S. EAC-OIG decided to send a staff member to the G.A.B. office to conduct an on-site review of the auditor's preliminary findings. Mr. Arnie Garza, Assistant Inspector General for Audits, is conducting the on-site review from July 7 to July 14, 2010. After the review is complete, the U.S. EAC-OIG will examine the proposed Notice of Findings and Recommendations submitted by the federal auditors after the exit conference. Shortly, thereafter, the U.S. EAC will provide the G.A.B. with a draft audit report.

The G.A.B. will work through the audit resolution process with the U.S. EAC. After the resolution process a final audit report will be issued.

2. Contract Sunshine Program Update

Since the last Board meeting, we have taken several concrete steps to facilitate better agency compliance with Contract Sunshine reporting requirements.

On June 29, a letter to the heads of all state agencies was sent, directing them to name a contact person within their agency no later than July 16. This contact person will be responsible for communicating with the Government Accountability Board's Contract Sunshine administrator when new users within their agency need to be registered and when registered users leave the agency. The Contract Sunshine administrator will also send technical updates about the system and future training to the contact person, who will disseminate this material to the rest of the agency. The contact person will also be responsible for signing a quarterly certification that Government Accountability Board staff is developing. This document asks the contact person, on behalf of the agency, to certify that the agency has been in compliance with Contract Sunshine law in the previous quarter. Agencies that fail to certify will be listed on the publicly-accessible Contract Sunshine web site as being out of compliance, and will remain on the list until they are able to certify. The letter also contained a training schedule for Contract Sunshine data entry. The training schedule contains six dates in July, open to all interested users.

As of July 7, there has been a substantial response from agencies. Fourteen agencies have sent responses, either naming a new contact person or confirming the information that was already on file for their agency. Eighteen users from 14 different agencies have registered for training sessions. Beyond the scheduled training, the Contract Sunshine administrator conducted a special training session for State Bureau of Procurement employees in the Department of Administration on July 6. Thirty-three members of the State Bureau of Procurement staff participated in the training, and have all been registered in the Contract Sunshine system. The State Bureau of Procurement manages purchasing for 21 different agencies. Having this group trained and registered for the system is a major step forward in Contract Sunshine compliance.

Director Kennedy, along with appropriate staff members, was asked to speak at a public hearing before a session of the Joint Legislative Audit Committee on Wednesday, July 14, 2010, about a proposed audit of the Contract Sunshine program. The Legislative Audit Bureau has prepared a memorandum outlining the scope of the proposed audit.

Upgrades continue to be made to the Contract Sunshine reporting web site. These upgrades are meant to address minor bugs that have been discovered as more users log onto the system, and to improve the user experience now that there is a larger cross-section of users. Many of these improvements are small in scope, but make a major improvement in the user's experience of Contract Sunshine. The Government Accountability Board staff will collect suggestions from end-users, and will continue to improve the web site. A full report on Contract Sunshine is set out earlier in the agenda.

3. A New Approach to Ensuring IT Support for the G.A.B.

The agency Management Team is continuing to work with Oskar Anderson, the state's chief information technology officer, and his staff to address technical service support issues and

explore means of managing our information technology (IT) application development and support. We are very close to completing the Memorandum of Agreement (MOA) to memorialize the terms of the new services. The Department of Administration has implemented new rates for IT services which increase agency IT costs by more than 50% this new fiscal year. The proposed approach may be a means to lower these increased costs if implemented.

4. FY-10 Budget Reconciliation

Since the close of FY-10 on June 30, it has been extremely busy for the agency's financial staff. We are in the process of reconciling the agency's FY-10 operating budget. This process includes reconciling the general program revenue (GPR), program revenue (PR) and federal program balances (expenses and revenue), liquidating purchase orders, and filing several year-end reports.

In preparation for FY-11, individual budget spreadsheets have been created to track the operating budget(s) per funding source. Staff is also working on budget projections for FY-11.

5. Staffing

We have hired several limited term employees to help prepare for the fall election.

6. Communications Report

Since the May 10, 2010, Board meeting, the Public Information Officer has responded to numerous media inquiries and planned communications strategy in furtherance of the Board's mission.

Much time and effort has been put into finishing and launching the Board's new web site, which consolidated the web sites of the former Elections and Ethics boards. On June 1, staff held a news conference to kick off the Fall Election season and launch the new web site, at <http://gab.wi.gov>. Feedback from the Board's customers – clerks, state and local officials, the public, and the media – has been overwhelmingly positive. Many site visitors have made helpful suggestions, and the flexibility of our software has allowed us to make changes quickly. While the PIO did much of the development and programming, this new site was a team effort, lead by Jonathan Becker. Tommy Winkler and Angela Steinhauer put in long hours developing and posting content to the site. Diane Lowe, Edward Edney, Kate Kruienga, Allison Coakley and Steven Rossman also made essential contributions. Many other staff members helped proofread and review the site prior to launch. On June 22, the PIO traveled to Shawano with staff from the Elections Division, to make a presentation about the new web site to the Wisconsin County Clerks Association.

The PIO also worked on a variety of other projects including: organizing a presentation to a group of visitors from West Africa, responding to numerous media requests for information regarding the upcoming Fall Election, serving on the Online Voter Registration Team, responding to concerns from Legislators on a variety of topics, and communicating with our clerk partners.

7. Meetings and Presentations

During the time since the last Board meeting, Director Kennedy has been participating in a series of meetings with staff on several projects. These include a status review of our on-line election training program for local election officials (WBETS), the development of a proposed Memorandum of Agreement for the acquisition of information technology services from the Department of Administration's Division of Enterprise Technology, the development of the new lobby administration application, changes to our Contract Sunshine program to make other agencies more accountable, and the development of our new election canvass program.

Director Kennedy participated in a series of meetings with legislative staff on our proposed administrative rules. He also participated in a series of meetings with representatives of the Wisconsin Department of Justice on election and campaign finance law compliance. Part of the focus was on working effectively with District Attorneys on referrals and enforcement issues.

Jon Becker and Director Kennedy made presentations at the 15th Annual Heartland Conference in Minneapolis on June 6, 7, and 8, 2010. Ethics and Accountability Division's campaign auditors along with staff counsel Mike Haas and Tommy Winkler also attended the conference. Campaign finance, ethics, and lobbying staff from Georgia, Illinois, Kentucky, Massachusetts, Minnesota, and Wisconsin participated in the conference, including the past presidents of the Council on Governmental Ethics Laws (COGEL), Sarah Jackson of the Kentucky Registry of Campaign Finance and Michael Sullivan of the Massachusetts Office of Political Finance.

The American Law Institute (ALI) asked Director Kennedy to participate in the consideration of an initiative to develop an ALI project on election law. ALI is responsible for the restatement of the law initiatives for judges, attorneys and legal scholars. It is currently conducting a similar study on ethics for public officials. Director Kennedy was the only election administrator invited to participate. The other attendees at the meeting on June 9, 2010, included several academics, the chief attorneys in the Minnesota recount for the U.S. Senate seat last year, and ALI leadership.

On June 2, 2010, the Governor appointed Judge David Deininger of Monroe to serve on the Government Accountability Board. Judge Deininger will serve a six-year term expiring May 1, 2016. He succeeds Judge William Eich of Madison. Judge Deininger was an original appointee to the Board in 2007. He resigned in 2008 after the Attorney General provided the Board with an opinion on the eligibility of members to serve before the expiration of the judicial term for which a member had been elected. On June 16, 2010, the staff conducted a briefing for Judge Deininger to provide him with an update on the agency since he last served, including areas of regulation and pending agency projects.

On June 24 2010, the agency hosted a delegation of public officials from Africa. Participants came from Ghana, Mali and Nigeria and were part of a West Africa program on Anti-Corruption and Good Governance. Jon Becker and Director Kennedy presented information on the role of the Government Accountability Board in administering elections, ethics and ensuring compliance through enforcement actions. The Democracy and Governance Training Program of the Les Aspin Institute at Marquette University coordinated the meeting with the agency.

The Pew Charitable Trusts Center on the States has included Director Kennedy along with several other state and local election officials on its Performance Index for Election Administration Working Group. The goal of the working group is to identify techniques to measure and evaluate the performance of election administrators. The working group consists of five state election officials; five local election officials; nine political scientists including Professor Barry Burden of the University of Wisconsin-Madison; and four PEW staff or consultants. The first meeting of the working group was held on July 17, 2010, in Providence, Rhode Island.

Looking Ahead

The staff will develop a response to findings identified in the federal audit of HAVA funds, implement legislative initiatives enacted into law affecting the agency, carry out a number of organization functions related to ongoing investigations, promulgate administrative rules, revise informational manuals, prepare for the September primary, and roll out the revised agency web site. Significant work will be done to prepare the 2011-2013 biennial budget request as well as to develop legislative initiatives for the 2011 session.

Action Items

None