

Meeting of the Board

Tuesday, August 13, 2013

Agenda
Open Session

9:00 A.M.

Government Accountability Board Offices

212 East Washington, Third Floor

Madison, Wisconsin

Tuesday, August 13, 2013

9:00 A.M.

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- A. Call to Order**
- B. Director’s Report of Appropriate Meeting Notice**
- C. Minutes of Previous Meetings**
 - 1. May 21, 2013 Meeting** **3**
- D. Personal Appearances**
- E. Voting Equipment Certification Issues**
 - 1. Elections Systems & Software application for approval of the ES&S Unity 3.4.0.1 (modem component)** **14**
 - 2. Prime III Voting System Presentation by Dr. Juan Gilbert of Clemson University/Research Alliance for Accessible Voting** **42**
- F. Elections Division Report on Voting Accessibility for Persons with Disabilities and Elderly Voters** **61**
- G. Administrative Rules**
 - 1. Review Drafting Changes to GAB Chapter 4 Election Observers** **67**

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

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

The Government Accountability Board has scheduled its next meeting for Tuesday, October 22, 2013 at the Government Accountability Board offices, 212 East Washington Avenue, Third Floor in Madison, Wisconsin beginning at 9:00 a.m.

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

State of Wisconsin\Government Accountability Board

212 East Washington Avenue, 3rd Floor
Post Office Box 7984
Madison, WI 53707-7984
Voice (608) 266-8005
Fax (608) 267-0500
E-mail: gab@wisconsin.gov
http://gab.wi.gov



JUDGE TIMOTHY L. VOCKE
Chair

KEVIN J. KENNEDY
Director and General Counsel

Wisconsin Government Accountability Board

212 East Washington Ave.
Madison, Wisconsin
May 21, 2013
9:00 a.m.

Open Session Minutes

<u>Summary of Significant Actions Taken</u>	<u>Page</u>
A. Approved Testing Protocols for Voting Equipment	3
B. Requested Attorney General's Opinion on Elections and Open Meetings	4
C. Addressed Clerks' Concerns Task Force Recommendations	5
D. Approved Changes to Manual for Absentee Voting in Nursing Homes, Retirement Homes and Adult Care Facilities	8

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

Staff present: Kevin Kennedy, Jonathan Becker, Michael Haas, Shane Falk, Ross Hein, Sharrie Hauge, Steve Pickett, Brian Bell, David Buerger, Sherri Ann Charleston, Diane Lowe, Sarah Whitt, Zach Robinson, and Reid Magney

A. Call to Order

Judge Vocke called the meeting to order at 9:00 a.m.

B. Director's Report of Appropriate Meeting Notice

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

C. Minutes of Previous Meeting

March 20, 2013 Meeting

MOTION: Approve the Open Session minutes of the meeting of March 20, 2013. Moved by Judge Nichol, seconded by Judge Barland. Motion carried unanimously.

Board and Staff Recognitions

Director Kennedy recognized Elections Specialist Steve Pickett, who will be retiring in July after 10 years as an employee of the State Elections Board and Government Accountability Board, and 22 years as Lafayette County Clerk.

Director Kennedy recognized Judge Thomas Cane, whose six-year term on the Government Accountability Board expired May 1, 2013. Judge Cane was the Board's first chair in 2007, and served as chair in 2008 and 2009. Judge Cane was also presented with a plaque.

D. Personal Appearances from Members of the Public

Mary Ann Hanson of Brookfield appeared on her own behalf to discuss Agenda Item I, the Special Voting Deputy (SVD) Manual revisions since the Board's meeting in March. While she thanked the Board and staff for the revisions, she said she disagreed with sections of the manual instructing clerks not to remove voters from the permanent absentee list if they miss a primary election. She also took issue with the definition of a "facility" in the manual, saying everyone should receive ballots from SVDs. She also said the manual does not improve guidance on who can assist a voter, and she urged the Board to include guidance regarding giving residents and family members more notice about when SVDs will visit.

Carol Boettcher of Cedarburg appeared on her own behalf to discuss Agenda Item I, the SVD Manual revisions since the Board's meeting in March. She said there are problems with facility directors telling SVDs who can and cannot vote, rather than having SVDs speak directly to residents to find out if they wish to vote. She also expressed concerns about ballot security.

Discussion between Judge Vocke and Ms. Boettcher regarding facility directors' reactions to being told the SVDs need to speak with residents whose names are on the list. She said they became upset, and that the directors just wanted to save the SVDs time.

Paul Malischke of Madison appeared on his own behalf to discuss agenda Items G (ES&S voting equipment testing protocol) and H (Clerk Concerns Task Force report). He urged the Board not to include wireless communications in the testing protocol because of concerns it could compromise security. He said he agrees with all of the task force recommendations except #4 regarding the deadline to return absentee ballots by Election Day because it would lead to more ballots being rejected. He urged the Board to evaluate methods to simplify the post-election process for handling absentee ballots.

Rock County Clerk Lori Stottler of Janesville appeared on behalf of Rock County to discuss Agenda Item G, testing protocols for ES&S Unity 3.4.0.1. She said modems

matter and timing is everything because her capital budget is due July 15. She urged the Board to consider both analog and digital modems for voting equipment.

Steve Pearson of Omaha, Nebraska, submitted an appearance on behalf of Elections Systems & Software to answer any questions about Agenda Item G, testing protocols for ES&S Unity 3.4.0.1.

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

(This item was taken out of order.)

Elections Supervisor Ross Hein and Elections Specialist Sherri Ann Charleston presented a verbal and written report located on page 29 of the Board meeting materials regarding the staff proposal for testing protocols for ES&S Unity 3.4.0.1, which has not been certified by the U.S. Election Assistance Commission. The underlying system, 3.4.0.0, was approved by the Board in March 2013, and staff has been developing testing protocols for the analog modem in 3.4.0.1, which Ms. Charleston presented to the Board for approval.

Discussion. Judge Brennan inquired about whether election workers can see the results before they are transmitted by modem, noting that many clerks can tell when numbers for a particular polling place are off. He was advised that there is a written print out of the vote totals that is reviewed by poll workers before transmittal.

Judge Cane inquired about the timing of the testing, which Ms. Charleston said would be before August.

Judge Deininger inquired about wireless modems and whether they would provide greater opportunities for tampering. Mr. Hein said wireless is the way technology will be moving in the future, and including it in the protocol would provide opportunities for innovation by equipment manufacturers. Any wireless testing would have to be pre-approved by the Board. Ms. Charleston said that if there were tampering, it would only be with unofficial results.

Judge Barland inquired about the wording of the first and second proposed motions, expressing concern that some language was superfluous. The Board and staff discussed alternate wording and arrived at minor changes that satisfied Judge Barland.

MOTION: Pursuant to authority granted in Wis. Stat. §5.91 and Wis. Adm. Code Ch. 7, and based upon the analysis and findings outlined in the May 21, 2013 staff memorandum, the Board adopts the testing procedures and standards pertaining to Modeming and Communication as detailed in the *Voting System Standards, Testing Protocols and Procedures Pertaining to the Use of Communication Devices in Wisconsin*. These testing protocols apply to non-U.S. EAC certified voting systems,

where the underlying voting system received U.S. EAC certification to either the 2002 or 2005 VVSG and any additional modeming component does not meet the 2005 VVSG.

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

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

All three motions moved by Judge Cane, seconded by Judge Barland. Motions carried unanimously.

Division Administrator Michael Haas thanked the team that worked on the protocol, which also included Elections Specialists David Buerger and Jason Fischer, and Staff Counsel Shane Falk.

F. Elections Division Report on Delivery of Ballots to Military and Overseas Voters

(This agenda item was taken out of order.)

Division Administrator Haas introduced the item dealing with the final report submitted to the United States Department of Justice regarding delivery of absentee ballots to military and permanent overseas voters.

MOTION: Dispense with the oral presentation. Moved by Judge Barland, seconded by Judge Nichol. Motion carried unanimously.

E. Formal Opinion Request on Open Meetings Requirements for Election Day Post-Election and Canvassing Procedures

Director Kennedy made a verbal and written report. The Wisconsin Department of Justice has received requests for opinions about whether post-election procedures by election inspectors and boards of canvassers are subject to the Open Meetings Law. The DOJ has asked the Board to make the opinion request to ensure the question is correctly framed.

Discussion.

MOTION: Direct the Director and General Counsel to request a formal opinion of the Attorney General on the application of the state’s open meetings law to the post-election activity of election inspectors, employees and local election officials and boards of canvassers including the actions of the Government Accountability Board. Moved by Judge Cane, seconded by Judge Nichol. Motion carried unanimously.

H. Report on Clerks’ Concerns Task Force

Division Administrator Haas introduced Elections Specialist David Buerger, who made a verbal and written presentation based on the work of the Clerks’ Election Workload Concerns Task Force, which was created in 2012 and has met three times. The staff is coming to the Board with several recommendations that came from the task force’s April 30 meeting.

Absentee Voting Procedures, Deadlines and Post-Election Day Acceptance

Lead Elections Specialist Diane Lowe made a verbal and written presentation, stating that clerks have found that recent changes to election laws have made election administration more complex, labor intensive and costly. The task force made six recommendations:

1. Electronic Transmission of Ballots

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

MOTION: Accept the task force’s recommendation to permit electronic transmission of absentee ballots to all overseas voters who request it, and direct staff to request that the Legislature act on the recommendation. Moved by Judge Deininger, seconded by Judge Cane. Motion carried unanimously.

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

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

MOTION: Not adopt the task force’s recommendation to require voters to pay for return postage for their absentee ballots. Moved by Judge Cane, seconded by Judge Brennan. Motion carried unanimously.

3. Absentee Ballot Request Deadlines

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

MOTION: Accept the task force’s recommendation to standardize the deadline for by-mail absentee ballot requests by moving the deadline for both military and indefinitely confined voters to request an absentee ballot by mail from the Friday before the election to the Thursday before the election, and by moving the Election Day deadline for active military voters to request an absentee ballot for a federal election to the Thursday before the election, and direct staff to request that the Legislature act on the recommendation. Moved by Judge Brennan, seconded by Judge Cane. Motion carried unanimously.

4. Absentee Ballots Returned After Election Day

Absentee ballots may be processed if postmarked no later than Election Day and received by the municipal clerk no later than 4 p.m. on the Friday after the election. This provision requires the Municipal Board of Canvassers to convene after the Friday deadline to process any late-arriving absentee ballots or to certify that no outstanding ballots were received timely. The task force recommended requiring all absentee ballots to be physically returned by 8 p.m. on Election Day.

Discussion. Judge Cane said he believes the Board should remain neutral on this subject.

MOTION: Direct staff to refer this task force recommendation to the Legislature for its consideration without taking a position on the merits of the proposal. Moved by Judge Cane, seconded by Judge Barland. Motion carried unanimously.

Judge Vocke called a brief recess at 10:50 a.m. The Board reconvened at 11:02 a.m.

5. Validation of Provisional Ballots

A provisional voter has until 4 p.m. on the Friday after the election to provide the missing information that caused him or her to vote provisionally in order for the ballot to be counted. The elements of 2011 Wisconsin Act 23 relating to the requirement to provide identification before receiving a ballot has been enjoined by two separate court orders. The task force recommended that for as long as the voter ID requirement is not in effect, the deadline for a voter to validate a provisional ballot shall be moved from 4 p.m. on the Friday after the election to 4 p.m. on the

Wednesday after the election. If the voter ID requirement is in effect, the deadline for validating provisional ballots shall remain 4 p.m. on Friday after the election.

MOTION: Direct staff to refer this task force recommendation to the Legislature for its consideration without taking a position on the merits of the proposal. Moved by Judge Cane, seconded by Judge Barland. Motion carried unanimously.

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

Wisconsin law requires the signature of a U.S. citizen witness on an absentee certificate envelope. Obtaining the signature of a U.S. citizen is frequently difficult for Wisconsin voters living in remote areas overseas. In addition, Wisconsin is one of only four states that require a witness signature on an absentee certificate envelope at all.

Discussion.

MOTION: Accept the staff recommendation to eliminate the requirement that the witness to absentee voting be a U.S. citizen, and direct staff to request that the Legislature act on the recommendation. Moved by Judge Deininger, seconded by Judge Cane. Motion carried unanimously.

Tracking Absentee Information in SVRS

Mr. Buerger introduced SVRS Functional Team Lead Sarah Whitt, who made a verbal and written presentation regarding the task force's recommendations regarding tracking absentee voters in the Statewide Voter Registration System. SVRS allows clerks to track absentee voters, but many clerks use their own systems because they do not have many absentee voters, or have usability issues with SVRS.

Staff developed seven recommendations, which the task force approved by a two-thirds vote, with one modification to the seventh. They are: 1) making improvements to absentee ballot tracking as part of SVRS modernization, 2) getting clerk input on changes, 3) customizing SVRS for absentee deadlines and mandates, 4) improving usability, 5) measuring success, 6) customizing functions for clerks, and 7) evaluating the changes and providing for adequate training before mandating absentee ballot tracking in SVRS. The full recommendations are listed on pages 72 and 73 of the Board Agenda Packet.

Director Kennedy said the staff would want separate Board approval before requiring clerks to track all absentee ballots using SVRS.

MOTION: Accept the task force recommendations on page 72 and 73 of the Board Agenda Packet, including the revisions to Recommendation 7, and direct Board staff to

implement the recommendations. Moved by Judge Barland, seconded by Judge Nichol. Motion carried unanimously.

Public Records Requests for Ballots

Mr. Buerger discussed the task force’s recommendation regarding the large number of public records requests clerks have been receiving in recent years to inspect voted ballots as part of citizen recounts. This has created a hardship on clerks, who must have staff present to protect the records being inspected. The task force recommended legislative change so that “Voted ballots should not be subject to inspection under the Public Records Law, but copying of ballots would remain permitted.” Board staff recommends that the Board not take a position on this issue, but instead refer this recommendation to the Legislature, as it is the proper body to determine the balance of costs and burdens between a requestor and custodians of records.

MOTION: Accept the staff recommendation to refer this task force recommendation to the Legislature for its consideration without taking a position on the merits of the proposal. Moved by Judge Barland, seconded by Judge Cane. Motion carried unanimously.

Annexation Notification

Mr. Buerger introduced SVRS/GIS Analyst Zach Robinson, who prepared a written report. SVRS uses geographic information systems (GIS) technology to maintain voting district boundaries. When municipalities annex property which affects voting district boundaries, the G.A.B. does not always receive timely notice of the changes. The task force recommended that the G.A.B. be added to the list of state agencies required to be notified of annexations.

MOTION: Accept the task force’s recommendation that the G.A.B. should be added to the list of state agencies which the Secretary of State is statutorily required to notify of completed annexations, and direct staff to request that the Legislature to act on the recommendation. Also, direct staff to continue to work with clerks to develop notification policies for annexations (municipal lines as they occur), amended ward plans, and a deadline for receipt of any shape files for updating SVRS prior to an election. Moved by Judge Barland, seconded by Judge Nichol. Motion carried unanimously.

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

(This agenda item was taken out of order.)

Mr. Buerger presented a verbal and written report regarding revisions to the manual on Absentee Voting in Nursing Homes, Retirement Homes and Adult Care Facilities that have been made since the March 2013 Board Meeting, when Board members and the

public commented on a draft changes to the manual proposed by staff. The revised manual begins on page 85 of the Board Agenda Packet.

Mr. Buerger said staff made further revisions, including enhanced definitions of the term “facility,” which refers to specific licensed areas offering different levels of care within a building or complex. Not all residents of a large building or complex need Special Voting Deputies to bring absentee ballots, as some residents live independently and can receive absentee ballots directly in the mail.

Discussion regarding concerns about whether a clerk should remove a voter from the permanent absentee list if he or she does not vote in a primary. The manual states that clerks should not remove a voter for failure to return a primary absentee ballot, while statutes specify a process of notification and removal if an elector fails to cast and return an absentee ballot. Judge Deininger noted that statutes do not specify a deadline by which the clerk must send out notifications, so a clerk could wait until the general election to see if the voter returned that absentee ballot. He also noted that the statutes should be cleaned up.

Discussion regarding concerns about multiple facilities in a building, providing assistance to voters, and providing notice to indefinitely confined voters and their families of SVD visits to care facilities.

MOTION: Approve the revised manual titled Absentee Voting in Nursing Homes, Retirement Homes and Adult Care Facilities. Moved by Judge Cane, seconded by Judge Deininger. Motion carried unanimously.

Director Kennedy asked whether the Board should consider asking the Legislature to require more than 24 hours’ notice of SVD visits. Judge Vocke said that by consensus, the Board directs staff to ask the Legislature to change the notice requirement to seven days.

J. Legislative Status Report

Elections Data Manager Brian Bell presented the report found on Page 110 of the Board’s meeting materials.

Discussion of bills regarding how closely election observers may stand to election inspectors conducting voter registration and poll books and local recall elections.

K. Director’s Report

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

Written report from Division Administrator Becker and Division staff was included beginning on Page 117 of the Board meeting packet.

Elections Division Report – election administration

Written report from Division Administrator Haas and Division staff was included beginning on Page 121 of the Board packet.

Office of General Counsel Report – general administration

Written report from Kevin J. Kennedy, Sharrie Hauge, and Reid Magney was included beginning on Page 136 in the Board packet.

Discussion regarding possible dates for teleconference meetings prior to August 2013.

MOTION: Accept the Director’s Report. Moved by Judge Cane, seconded by Judge Barland. Motion carried unanimously.

M. Closed Session

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

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

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

Motion carried unanimously. The Board recessed at 12:05 p.m. for lunch and convened in closed session at 12:59 p.m.

H. Adjourn

The Board adjourned in closed session at 2:58 p.m.

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The next regular meeting of the Government Accountability Board is scheduled for Tuesday, August 13, 2013. The meeting will be held the Government Accountability Board office in Madison, Wisconsin beginning at 9 a.m.

May 21, 2013 Government Accountability Board meeting minutes prepared by:

Reid Magney, Public Information Officer

May 24, 2013

May 21, 2013 Government Accountability Board meeting minutes certified by:

Judge Michael Brennan, Board Secretary

August 13, 2013

State of Wisconsin\Government Accountability Board

212 East Washington Avenue, 3rd Floor
Post Office Box 7984
Madison, WI 53707-7984
Voice (608) 266-8005
Fax (608) 267-0500
E-mail: gab@wisconsin.gov
<http://gab.wi.gov>



JUDGE TIMOTHY L. VOCKE
Chair

KEVIN J. KENNEDY
Director and General Counsel

MEMORANDUM

DATE: For the August 13, 2013 Board Meeting

TO: Members, Wisconsin Government Accountability Board

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

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

SUBJECT: Election Systems and Software (ES&S)
Petition for Approval of Election System and Software (ES&S) Unity
3.4.0.1

I. Introduction and Summary of Recommendations

Election Systems & Software (ES&S) is requesting that the Board approve ES&S Unity 3.4.0.1 for sale and use in the State of Wisconsin. Unity 3.4.0.1 is a modification to the Unity 3.4.0.0 (EAC#ESSUnity3400). The modification provides support for landline modeming of unofficial results from the DS200 tabulator to a Secure File Transfer Protocol (SFTP) server. This function enables jurisdictions to modem unofficial results from a polling place to a central location, where the unofficial results are aggregated by use of election management software on election night. The modem function does not affect tabulation or reporting of official election results. In addition to the modeming capability, ES&S modified the Hardware Programming Manager (HPM) and Election Reporting Manager (ERM) applications to support the addition of modem functionality. All modifications of the system were tested to the 2005 Voluntary Voting System Guidelines (VVSG) by Wyle Laboratories; however the system as a whole is only compliant to the 2002 Voting System Standards (VSS).¹

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

The components of Unity 3.4.0.1 and how they compare to Unity 3.4.0.0 are summarized in the following tables.

ES&S UNITY 3.4.0.1 HARDWARE COMPONENTS			
3401 Equipment	Hardware Version(s)	Firmware Version	Type
DS200	1.2	1.6.0.0	Precinct Tabulator
AutoMark Voter Assist Terminal (VAT)	1.0 1.1 1.3	1.3.2907	Ballot Marking Device

COMPARISON OF ES&S UNITY 3.4.0.0 VS. 3.4.0.1		
Software	Unity 3.4.0.1	Unity 3.4.0.0
Audit Manager	7.5.2.0	7.5.2.0
Election Data Manager	7.8.1.0	7.8.1.0
ESS Image Manager	7.7.1.0	7.7.1.0
Hardware Programming Manager	5.8.0.0V AT	5.8.0.0
Election Reporting Manager	7.8.0.0	7.8.0.0
AutoMark Information Management System (AIMS)	1.3.257	1.3.257
VAT Previewer	1.3.2907	1.32907
Log Monitor	1.0.0.0	1.0.0.0

Unity 3.4.0.1 currently lacks federal certification and is not expected to receive it because ES&S has withdrawn the system from the United States Election Assistance Commission (U.S. EAC) certification program. Though ES&S initially informed Board staff on October 3, 2012 that it would not re-submit Unity 3.4.0.1 for review by the U.S. EAC, ES&S stated at the Board's March 20, 2013 meeting that it was considering resubmitting the Unity 3.4.0.1 to the U.S. EAC for certification. At present, ES&S has not resubmitted the Unity 3.4.0.1 for review and has indicated that it is not likely to do so.²

At the Board's March 20, 2013 meeting, despite the fact that the Unity 3.4.0.1 had not received federal certification, ES&S requested that the Board consider conducting functional testing and certification of the Unity 3.4.0.1. The Board exercised authority per Wis. Adm. Code 7.03(5), according to which, for good cause shown, the Board may exempt any electronic voting system from strict compliance with Wis. Adm. Code Ch. 7. The Board subsequently directed staff to establish protocols that will be used as guidelines for evaluating future (and concurrent) applications for approval of non-U.S. EAC certified voting systems, where the underlying voting system received U.S. EAC certification to either the 2002 VVS or 2005 VVSG, but any additional modeming component does not meet the 2005 VVSG.

At the May 21, 2013 Board meeting, staff presented proposed *Voting System Standards, Testing Protocols and Procedures Pertaining to the Use of Communication Devices in Wisconsin*, which the Board approved and which are attached. The Board approved the following three motions:

1. Pursuant to authority granted in Wis. Stat. § 5.91 and Wis. Adm. Code Ch. 7, and based upon the analysis and findings outlined in the May 21, 2013 staff memorandum, the Board adopted the testing procedures and standards pertaining to Modeming and Communication as detailed in the *Voting System Standards, Testing Protocols and Procedures Pertaining to the Use of Communication Devices in Wisconsin*. These testing protocols apply to non-U.S. EAC certified voting systems, where the underlying voting system received U.S. EAC certification to either the 2002 VVS or 2005 VVSG, but any additional modeming component does not meet the 2005 VVSG.
2. The Board directed staff (pursuant to a properly submitted Wisconsin application for approval) to test non-U.S. EAC certified voting systems, where the underlying voting system received U.S. EAC certification to either the 2002 or 2005 VVSG, but any additional modeming component does not meet the 2005 VVSG, to the testing standards contained in the approved *Voting System Standards, Testing Protocols and Procedures Pertaining to the Use of Communication Devices in Wisconsin*.

² ES&S has indicated that if Wisconsin certifies the ES&S Unity 3.4.0.1 there will no longer be a need for them to seek U.S. EAC certification.

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

In accordance with the Board directive from the May 21, 2013 meeting, G.A.B. staff conducted testing of the 3.4.0.1. modem in four counties: Brown, Marathon, Dane, and Rock, from July 9 to July 18, 2013. Staff decided to select four municipalities in each of the four counties as test locations.³

Based on the Voting System Testing Laboratory (VSTL) report provided by Wyle Laboratories and on Board staff's own functional testing of this equipment, Board staff is recommending that the Board grant *conditional* approval of ES&S Unity 3.4.0.1 for sale and use in Wisconsin. More detailed recommendations are listed on pages 19-21, following the analysis of the functional testing.

Staff recommends that Board grant final approval after the Board has determined that 1) the purchasing locality has (with guidance from G.A.B. staff) conducted acceptance testing to assure the system meets their needs and is identical to the certified system; 2) the purchasing locality has performed a functional test as part of the procurement process for the voting system; and 3) the system has successfully been used in test elections during both the 2014 Spring Primary and Spring Election. Based on the results of the acceptance test, the functional test, the test election, and any other credible information regarding the system's performance in their possession, the Board could then determine whether the proposed voting system will be approved for use in the State of Wisconsin and so notify the vendor. Board staff also recommends continuing conditions of use for municipalities that would purchase the Unity 3.4.0.1 after its final approval.

G.A.B. staff will provide an interim report at the March 2014 Board meeting and a full report for the Board's consideration at the May 2014 Board meeting. If the Board does not grant final approval, ES&S shall remove all modems and associated firmware from the DS200's, rendering the modem functionality inoperable and effectively reverting the ES&S Unity 3.4.0.1 to the previously approved Unity 3.4.0.0.

II. Background

- A. ES&S has sought Board approval for the Unity 3.4.0.1, even though it currently lacks federal certification and will likely never receive it because ES&S has

³ Brown County: City of Green Bay, City of De Pere, Village of Ashwaubenon, Town of Morrison
Marathon County: Town of Edgar, Village of Stratford, City of Mosinee, Town of Bevent
Dane County: City of Sun Prairie, Town of Blooming Grove, Town of Middleton, Town of Verona
Rock County: City of Milton, Town of Turtle, Town of Avon, City of Beloit

withdrawn it from certification with the United States Election Assistance Commission (U.S. EAC).

On November 19, 2012, the G.A.B. received an Application for Approval of Unity 3.4.0.1. The Application for Approval of 3.4.0.1 was filed without the U.S. EAC's certification.⁴ ES&S withdrew the Unity 3.4.0.1 from the U.S. EAC certification program after failing to resolve two Notices of Anomalies issued by Wyle Laboratories during the test campaign. On November 2, 2012, Wyle Laboratories issued its test report for the ES&S Unity 3.4.0.1. During the testing campaign, Wyle issued three Notices of Anomalies to ES&S, two of which were not resolved.⁵ Wyle concluded that the Unity 3.4.0.1 Technical Data Package (TDP) documentation conflicted with the requirements of the 2005 VVSG and the actual operation of the voting system. ES&S corrected this anomaly and resubmitted the TDP documentation for review.

Regarding the two remaining anomalies, Wyle concluded: 1) that the Unity 3.4.0.1 failed to meet the 2005 VVSG standards pertaining to Data Transmission (2005 VVSG Volume 1, Section 7.6.1) and 2) that the Unity 3.4.0.1 failed to meet the 2005 VVSG standards pertaining to Maintaining Data Integrity (2005 VVSG Volume 1, Section 7.5.1.b).⁶ ES&S refused to submit a resolution of these anomalies to Wyle for review and subsequently withdrew the Unity 3.4.0.1 from the U.S. EAC certification process. As a result, Unity 3.4.0.1 has not received federal certification.

- B. At the May 21, 2013 Board meeting and at the request of several County Clerks, the Board exercised its authority as granted in Wis. Adm. Code §7.03(5), according to which, for good cause shown, the Board exempted Unity 3.4.0.1 from strict compliance with Wis. Adm. Code Ch. 7.

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

⁴ On November 6, 2012, Wyle Laboratories issued two Notices of Anomaly, indicating that the Unity 3.4.0.1 did not meet the requirement in 2005 VVSG Volume 1, Section 7.6.1, because it did not require at least two authorized election officials to activate critical operations. Additionally, Unity 3.4.0.1 did not meet Section 7.5.1.b as it did not use the specifically required encryption standard. ES&S chose not to resolve the anomalies and refused to resubmit Unity 3.4.0.1 for federal certification.

⁵ A Notice of Anomaly is generated upon occurrence of a verified failure, an unexpected test result, or any significant unsatisfactory condition.

⁶ In October of 2012, the U.S. EAC issued two Requests for Interpretations addressing both of these standards. Both have been included with this report as attachments.

shown, the Board may exempt any electronic voting system from strict compliance with Wis. Adm. Code Ch. 7. Wis. Adm. Code §7.03(5).

The U.S. EAC currently requires that voting systems seeking federal certification must be in compliance with federal voting system standards as outlined in the 2005 Voluntary Voting System Guidelines. Currently, vendors seeking U.S. EAC certification of equipment with a telecommunications component must demonstrate that their equipment is compliant with the 2005 VVSG requirements governing the use of public telecommunications in voting systems. To do so, vendors seeking federal certification must first submit their voting systems to a U.S. EAC accredited test laboratory that will test the equipment against the 2005 VVSG requirements.⁷

Several county clerks have requested that the G.A.B. disregard the prerequisite for U.S. EAC certification of Unity 3.4.0.1. In December 2012, G.A.B. staff received a letter from Brown County Clerk Darlene Marcelle expressing her support for ES&S's proposal for the G.A.B. to approve Unity 3.4.0.1 without first requiring federal certification. Additionally, at the February 14, 2013 meeting of the Wisconsin Election Administration Council (WI-EAC), several county clerks expressed a desire to acquire new equipment with the capability to transmit unofficial results from polling place tabulators to their offices. Many other clerks subsequently reiterated their support for equipment with modem capability at the March 4, 2013 meeting of the Wisconsin County Clerks Association. Finally, at the Board's March 20, 2013 meeting, several county clerks addressed the Board, expressing their desire to purchase equipment capable of modeming unofficial results from the polling place to a central processing location on election night. Several jurisdictions in Wisconsin have benefited from the use of landline modems to transmit unofficial results using the Optech Eagle, namely Brown, Dane, Jefferson, Marathon, and Rock counties.

- C. The Board has adopted *Testing Protocols and Procedures Pertaining to the Use of Communication Devices* in Wisconsin to govern the testing of non-U.S. EAC approved modeming components in Wisconsin.

As directed by the Board, staff limited the scope of the *Testing Protocols and Procedures Pertaining to the Use of Communication Devices* to the modeming component for non-U.S. EAC certified voting systems, where the underlying voting system received U.S. EAC certification to either the 2002 VSS or 2005 VVSG, but any additional modeming component does not meet the 2005 VVSG.

This approach was based on a number of specific factors. First, the Unity 3.4.0.1 is based on a presently U.S. EAC approved system, Unity 3.4.0.0. Wyle Laboratories has indicated that the Unity 3.4.0.1 is a slight modification of the Unity 3.4.0.0. However,

⁷ The U.S. EAC accredits test laboratories (voting system test laboratories or VSTLs) that evaluate voting systems, voting devices, and software against the voluntary voting system guidelines to determine if they provide all of the basic functionality, accessibility, and security capabilities required of these systems. The test laboratory provides a recommendation to the U.S. EAC, and the Commission's executive director makes the determination whether to issue a certification.

because Unity 3.4.0.1 has a separate telecommunications module that will have to be added into the machine, this is a more extensive modification than what might be covered under an Application for Approval of an Engineering Change Order that is *de minimis* to the functioning of a voting system. Secondly, given the current state of the U.S. EAC and the ongoing stagnation in the availability of innovative equipment, staff recommended considering protocols that might allow for new equipment to be sold and used in Wisconsin. Lastly, the recommendation to move forward with testing systems that have not obtained U.S. EAC certification on the modeming component would allow municipalities the opportunity to replace aging equipment (should the Board ultimately approve the Application for Approval of Unity 3.4.0.1.), while not sacrificing the modeming capability on which many have relied for decades.

The Unity 3.4.0.1 is currently certified in Minnesota (certified April 11, 2013) and Iowa (certified January 18, 2013). Testing has been completed in North Carolina and Virginia, with certification decisions pending in both states. Illinois' testing is currently in process. To date, no state has denied certification of the Unity 3.4.0.1. Of the states where the Unity 3.4.0.1 has been tested, only one, Virginia, attempted to transmit results between actual locations during testing. For Unity 3.4.0.1, the Iowa, Minnesota, and North Carolina boards accepted the Independent Testing Authority report from Wyle Laboratories indicating the modem components met the 2002 VSS or 2005 VVSG standards as sufficient evidence for approval. These three states conducted functionality and integrity testing of the system as a whole, but did not independently test the modeming component.

The Unity 3.4.0.1 was evaluated by Virginia's designated testing agent, Pro V&V testing laboratory on March 18, 2013. When using analog telephone lines, the examiners were only able to achieve a fifty percent (50%) connection rate. The system was able to connect from one test location into the Election Management System (EMS) server and successfully transmit results packets. However, the test team was initially unable to achieve this same result from the second test site into the server. Testing was completed repeating the transmission 20 times. The test team was able to isolate the issue to the phone lines at the second test site. Pro V&V conducted a subsequent test and was able to achieve a successful transmission at the second location. Because of the expertise required to configure the modem and the transmission lines, the Pro V&V testing report for the 3.4.0.1 included a suggestion that any jurisdiction purchasing this system with the intent to utilize the modem feature work with both their selected telecommunication provider and ES&S to ensure the highest success rate for transfers.

Given the results of the testing conducted on the Unity 3.4.0.1 in other states where it has been certified, it is imperative that the Board assess the ability of a modem to achieve a successful connectivity rate over Wisconsin's current telecommunication infrastructure. Hence, at the May 21, 2013 Board meeting, G.A.B staff recommended and the Board adopted *Testing Protocols and Procedures Pertaining to the Use of Communication Devices* (hereinafter *Testing Protocols*), which require a vendor to demonstrate a system's ability to transmit results in real world conditions.

Following the May 21, 2013 Board meeting, staff began preparing to execute the Board approved test plan. Staff conducted research into the telecommunications infrastructure within the state. G.A.B. staff consulted with staff from the Public Service Commission, Department of Administration, and the State's major telecommunications providers to assess whether Wisconsin's telecommunications infrastructure could support the modeming of unofficial results via the modem component of the DS200 tabulator.

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

III. Testing Set-Up

At the May 21, 2013 Board Meeting, the Board directed staff to conduct testing on the modeming component of the ES&S Unity 3.4.0.1 according to the testing plan detailed in the approved *Testing Protocols*. Staff identified four counties in which to conduct testing: Brown, Marathon, Dane, and Rock counties. In selecting the counties for testing, staff considered a number of factors including the clerks' interests in purchasing the Unity 3.4.0.1, or, in the alternative, their willingness to serve as a test site; the local telephone service competitors providing service; and the presence of established analog lines currently used for transmitting unofficial election night results using Optech Eagle or M100 tabulators.

On May 23, 2013, ES&S asked G.A.B. staff whether it would be permissible to ship DS200s with modems installed to Wisconsin customers. ES&S informed staff that the firmware shipped would be the certified 3.4.0.0 version, which does not support modeming, making the modem inactive. Moreover, ES&S clarified that the units would not be used in any election, and if ES&S were subsequently unable to obtain certification for Unity 3.4.0.1, ES&S would (at no cost to the customer) remove the modem prior to the next scheduled election.

G.A.B. staff responded on May 29, 2013 and informed ES&S that the Board does not permit any voting equipment that has not received Board approval to be offered for use, sale, or lease in Wisconsin. Given that the Unity 3.4.0.0 does not include a modeming component, staff determined that selling and shipping the 3.4.0.0 with modems installed would constitute selling and shipping a modified version of the approved equipment, in effect the Unity 3.4.0.1. Staff reached this conclusion based on ES&S's previous statements that the Unity 3.4.0.1 is a modification to the Unity 3.4.0.0 (EAC#ESSUnity3400). Therefore, if the 3.4.0.0 were to be shipped with the modeming component inserted (whether or not it is functional or has the requisite firmware to become so) that would fall directly within the purview of prohibited actions as

enumerated in Wis. Adm. Code GAB 7.01(1)(f) and which are part of the contractual agreement ES&S entered into when it submitted an Application for Approval of Unity 3.4.0.0.

On May 22, 2013, G.A.B. staff received correspondence from Brown County Clerk Sandy Juno, requesting that the Board expedite testing and schedule a special Board meeting prior to the August meeting to consider ES&S's Unity 3.4.0.1 application. On June 5, 2013, Director and General Counsel Kennedy informed Clerk Juno that, due to multiple considerations including staff availability, logistical, travel and infrastructural requirements, clerk availability, and vendor compliance, the G.A.B. would not be able to accommodate her request. Subsequent consultations with the county and municipal clerks as well as representatives from ES&S revealed that testing could not begin prior to July 9, 2013.

In conjunction with the vendor and the county and municipal clerks, G.A.B. staff coordinated the logistics associated with testing. G.A.B. staff conducted a conference call with ES&S staff June 14, 2013 to discuss the testing requirements and needs associated with executing the testing plan. G.A.B. staff explained the testing requirements and gave ES&S an opportunity to ask any questions regarding the testing protocol. G.A.B. staff then coordinated a subsequent conference call on June 17, 2013 with representatives from ES&S, and the county and municipal clerks. G.A.B. staff requested that ES&S provide information to the clerks regarding the telecommunications infrastructure that would need to be in place in order for the test to be successful. ES&S requested only that the clerks provide conditioned analog lines and test the lines for use.

G.A.B. staff worked with the county and municipal clerks in each test site to identify municipalities that would be willing to serve as test locations. The county clerks were asked to recommend municipal polling locations where modeming is used to transmit election night results, or where the polling place was far enough from the central location to adequately test the machine's ability to transmit from the outermost part of the county. Staff also obtained detailed research on the telecommunications infrastructure in each county from the Public Service Commission of Wisconsin.

IV. Functional Testing Results

G.A.B. staff conducted testing in four counties, Brown, Marathon, Dane, and Rock counties July 9 - 18, 2013. The G.A.B. sent four to five staff members to each county for the testing campaign. ES&S provided a three-member field team, six (6) DS200 tabulators equipped with modems, and a portable Election Management environment, which included a SFTP (Secure File Transfer Protocol) client, firewall, and Election Reporting Manager software. In each location, ES&S set up a portable environment in the county clerk's office to receive test election results from each of the four selected municipalities.

A. Brown County Testing

On July 9 - 10, 2013, staff conducted tests on the Unity 3.4.0.1 modem in four municipalities: City of Green Bay, City of De Pere, Village of Ashwaubenon, and the Town of Morrison. ES&S tested each of the DS200 tabulators at the central location to make sure they were functional prior to deploying them into the field. Additionally, the vendor's field team successfully transmitted results using the modem simulator from the DS200 into the server at this location.

The G.A.B. testing team was ultimately able to transmit results from each of the four selected municipalities into the central polling location. Staff encountered noteworthy anomalies during testing:

- One modem tested in the Town of Morrison was unable to transmit results and was declared inoperable by ES&S for the remainder of the testing campaign.
- In the Village of Ashwaubenon, staff was unable to connect on the dedicated analog line used for transmitting election night results. The Village's telecommunications expert verified that the lines were operable and analog. Staff was ultimately able to successfully transmit results using a second analog line located in the clerk's office. In identifying possible sources for this anomaly, ES&S indicated that each machine has a slightly different configuration, meaning that while one DS200 modem may work well on a given line, that same DS200 may not be suited for another line, even within the same building.

Given the amount of time needed to establish viable connections in the four test sites, staff was unable to complete the final phase of the testing, which included a load test. During the load test, staff would have been able to assess the server's ability to receive results while there was a high volume of attempted transmissions.

MUNICIPALITY	ABLE TO CONNECT	ABLE TO TRANSMIT	(LOAD) SUCCESS RATE CONNECTS/ATTEMPTS	AVG # OF TRIES
Green Bay	Yes	Yes	N/A	N/A
Village of Ashwaubenon	Line 1-No ⁸ ; Line 2-Yes ⁹	Yes	N/A	N/A
City of DePere	Yes ¹⁰	Yes	N/A	N/A
Town of Morrison	Machine 1-No ¹¹	No	N/A	N/A
	Machine 2- Yes ¹²	Yes	N/A	N/A

B. Marathon County

On July 11, 2013, testing staff performed functionality and integrity testing on the Unity 3.4.0.1 modem in four Marathon County municipalities: Town of Edgar, Village of Stratford, City of Mosinee, and the Town of Bevent. ES&S tested each of the DS200 tabulators at the central location to make sure they were functional prior to deploying them into the field. Additionally, the vendor’s field team was able to transmit results successfully using the modem simulator from the DS200 into the server at this location.

The G.A.B. testing team was able to consistently transmit results from only three of the four selected municipalities into the central polling location. However, testing staff was able to complete the load test component of the testing protocol in Marathon County. Staff encountered several anomalies during testing:

⁸Village of Ashwaubenon: Line 1 is located in the Village Board meeting room at the Village Hall. The municipal clerk recommended this location for this test since she regularly transmits election night results on this line using an Optech Eagle. There were no successful transmissions on day one of testing in Brown County. The county clerk initially provided staff with a number that did not work. Upon consultation with the county clerk and ES&S technical staff, testing staff learned the correct sequence was the dial out code (9), a comma for a five-second pause, then the full seven-digit number (9,448-4291). On day two of testing, testing staff attempted to use on this line the DS200 that earlier in the day successfully transmitted a results packet on line 2. This attempt failed. There were no successful transmissions from line 1 on either day of testing.

⁹ Village of Ashwaubenon: Line 2 is located in the Village Clerk’s office at the Village Hall. On day 2 of testing in Brown County, testing staff used the DS200 from day one to attempt to transmit from this line. It was not able to connect using line 2. There were no successful transmissions. ES&S swapped this DS200 for another one in the test machine pool. Testing staff successfully transmitted results using the second DS200.

¹⁰ City of De Pere: Successful transmissions were made from the City of De Pere municipal clerk’s office once the correct transmission phone number combination was identified. Six different unsuccessful combinations were used until ES&S staff discovered and informed testing staff that analog lines using a dial out code (e.g., 9+608-555-5555) may require the use of a comma in the number sequence to create a pause to facilitate connection to the outside line.

¹¹ Town of Morrison: The Town of Morrison town clerk asked a retired telephone line worker to test the line. He determined the line was functioning properly; however, the modem was grounding out the line, meaning that the modem was creating so much noise on the line that no data could travel.

¹²Town of Morrison: On day 2, testing staff used a new DS200 to transmit results successfully.

- One DS200 tested in the City of Mosinee was able to successfully transmit a test report (a report registering a zero count in each contest), but was unable to transmit election results during the test. G.A.B. staff and ES&S representatives determined that there would be no further attempts to transmit from this location and ended the test at the site. ES&S was unable to explain this anomaly.
- During load testing, two machines in two separate locations (Town of Bevent and Village of Stratford) “crashed” while attempting to transmit results. Additionally, despite initially successful transmissions in the Village of Stratford, testing staff was only able to connect one out of ten times during the load test.

MUNICIPALITY	ABLE TO CONNECT	ABLE TO TRANSMIT	(LOAD) SUCCESS RATE CONNECTS/ATTEMPTS	AVG # OF TRIES
Town of Edgar	Yes	Yes	10/10	8
Village of Stratford ¹³	Yes	Yes	10/11	4
City of Mosinee	Machine 1- No ¹⁴	No	N/A	N/A
	Machine 2- Yes	No ¹⁵	N/A	N/A
Town of Bevent	Yes	Yes ¹⁶	10/10	7

¹³ Village of Stratford: The first phase of the load test (repeatedly sending previously created results) was completed with only one issue. On the third attempt during the load test, the DS200 started to send the results packet on the fourth try. However, this packet failed to transmit successfully, according to an error message on the DS200’s screen. Once the message was cleared, the user had to start the transmission process again. To further test the system, testing staff at this location cleared the first results packets, re-opened the polls, and used the test deck of ballots to create a new results packet. Nine of the ten attempts to send this new results packet failed. Only one attempt was successful, the first attempt. The second attempt ended with the DS200 shutting down and re-booting on its own. Attempts three through ten ended after one try with a “modem hang up” message on the DS200 screen. During this phase of test, the DS200 had run out of paper that it uses to print the transmission log and that might have caused the system failure. It is unknown if this error was due to the lack of paper in the DS200 or due to a flaw in the system design.

¹⁴City of Mosinee: Testing staff was unable to make a connection with this DS200. After three (3) attempts to send the “zero” report, the memory device reached its maximum number of allowable phone numbers. This unit was then shut down and attempts were made to use a second DS200. Testing staff and ES&S representatives made numerous attempts with this DS200 throughout the morning but were never able to make a successful connection.

¹⁵ City of Mosinee: The second DS200 was rebooted three (3) times throughout the course of the test in Mosinee. The first and second attempts were unsuccessful in connecting. The third attempt to use the second DS200 was successful. The second DS200 was able to connect to number “17152611515” on the first attempt sending the “zero count” report. However, after test staff fed through the ballots from the test deck, staff were not able to transmit a results file to “17152611515.” More than 60 attempts were made to transmit a ballot report to “17152611515,” and all attempts were unsuccessful. An additional attempt was made to send a “zero” report, which had previously be successful. There were 27 attempts made to send the “zero count” report. These attempts were also unsuccessful.

¹⁶ Town of Bevent: Seven initial transmissions of the test packet were successful. However, the DS200 shut down during an attempted transmission when testing staff called the sending line at the testing site using a cell phone. The DS200 needed to be rebooted, but all election results were present after reboot. Staff was able to make two successful transmissions after the reboot. The DS200 had run out of paper that it uses to print the transmission log and that might have caused the system failure. It is unknown if this error was due to the lack of paper in the DS200 or due to a flaw in the system design.

C. Dane County

On July 15, 2013, testing staff performed functionality and integrity testing on the Unity 3.4.0.1 modem in four Dane County municipalities: City of Sun Prairie, Town of Middleton, Town of Blooming Grove, and Town of Verona. ES&S tested each of the DS200 tabulators at the central location to make sure they were functional prior to deploying them into the field. Additionally, the vendor’s field team was able to transmit results successfully using the modem simulator from the DS200 into the server at this location.

The G.A.B. testing team was able to consistently transmit results from all four selected municipalities into the central polling location. Testing staff was also able to complete the load test component of the testing protocol in Dane County. However, staff encountered one notable anomaly during testing:

- In the Town of Verona, one machine failed to transmit on either of the two lines available for testing. A second machine was able to successfully transmit using a fax line, but was never able to transmit on the dedicated line used for election night reporting.

MUNICIPALITY	ABLE TO CONNECT	ABLE TO TRANSMIT	(LOAD) SUCCESS RATE CONNECTS/ATTEMPTS	AVG # OF TRIES
City of Sun Prairie	Yes	Yes	4/7	15
Town of Blooming Grove	Yes	Yes	12/12	6
Town of Verona	Machine 1: No ¹⁷	No	0	n/a
	Machine 2: Yes	Yes	8/9	6
Town of Middleton	Yes	Yes	10/10	8

D. Rock County

On July 17, 2013, testing staff performed functionality and integrity testing on the Unity 3.4.0.1 modem in four Rock County municipalities: Town of Avon, Town of Turtle, City of Beloit, and City of Milton. ES&S tested each of the DS200 tabulators at the central location to make sure they were functional prior to deploying them into the field. Additionally, the vendor’s field team was able to transmit results successfully using the modem simulator from the DS200 into the server at this location.

The G.A.B. testing team was able to consistently transmit results from only three of the four selected municipalities into the central polling location. Testing staff was also able to complete the load and stress test component of the testing protocol in Rock County. However, staff encountered one notable anomaly during testing:

¹⁷ Town of Verona: The first DS200 failed on both the line in the Town Hall meeting room and a fax line inside the building. A second DS200 succeeded on the fax line. Testing staff used an analog phone to make telephone calls from both lines.

- In the Town of Turtle, testing staff was unable to connect on the dedicated election night reporting line or on the alternative fax line using either one of the two provided DS200's. Testing staff was able to test both phone lines using a standard analog phone and dial out, but the DS200 was ultimately unable to transmit on this line. There was considerable noise on the dedicated line. ES&S indicated that humidity might have been the cause for the poor transmission on the dedicated line. There was no explanation provided for the failed transmission on the clear line.

Municipality	Able to connect	Able to transmit	(Load) Success rate Connects/attempts	Avg # of tries
Town of Avon	Yes	Yes	0/3 ¹⁸	14
Town of Turtle	Machine 1-Yes	No ¹⁹	0	0
	Machine 2- Yes	No ²⁰	0	0
City of Beloit	Yes	Yes	10/10	11
City of Milton	Yes	Yes	4/6	5

After concluding testing, G.A.B. staff received notice from ES&S on July 24, 2013 that they were interested in developing additional information regarding the anomalies discovered during the testing campaign. ES&S expressed its intention to send a team of engineers equipped with tools to measure the phone line characteristics such as line voltage, ground, and AC induction with the goal of developing a clear picture of the root cause in each of the four locations where the initial tests were less than optimal.

G.A.B. staff informed ES&S that as the staff had followed the Board-approved testing process outlined in the May 21, 2013 Board materials and completed testing in accordance with the Board's directives, the G.A.B. would, therefore, not sanction, conduct, or participate in any additional testing. Moreover, staff clarified its intention to continue finalizing the recommendations for presentation at the August 13, 2013 Board meeting. On Friday, August 2, 2013, staff received an email from Steve Pearson, which is attached to this memorandum, explaining the additional information that ES&S obtained.

¹⁸ Town of Avon: No connections were made during the load test because of operator error. Testing staff disconnected the DS200 from the phone line in order to make a phone call from the testing site. Testing staff failed to reconnect the DS200 to the phone line after the phone call. Testing staff noticed the DS200 was not connected to a phone line after the time for the load test had elapsed. There was no message on the DS200 screen indicating the system was not connected to a phone line. Immediately upon this discovery, testing staff re-connected the DS200 to the phone line and attempted to transmit a results packet. The DS200 successfully transmitted a results packet on the first try.

¹⁹ Town of Turtle: Both available analog lines were tested with an analog phone and testing staff was able to dial out with the analog phone. Testing staff noted that the first line, the dedicated election night reporting line, had noise on the line. The initial DS200 failed on both available analog lines.

²⁰ Town of Turtle: A second DS200 was tested on the dedicated election night reporting line. Testing staff was not able to make a connection.

V. Analysis of Testing Results

- a. *Compliance with the Testing Protocols and Procedures Pertaining to the Use of Communication Devices in Wisconsin*

The Board-approved *Testing Protocols and Procedures Pertaining to the Use of Communication Devices in Wisconsin* provide the following requirements modeming components must meet to be approved for use in Wisconsin. Please see the below text of each requirement and staff's compliance analysis.

APPLICABLE VVSG STANDARD
The modem component of the voting system or equipment must be tested to the requirements contained in the most recent version or versions of the Voluntary Voting System Guidelines (VVSG) currently accepted for testing and certification by the U.S. Election Assistance Commission (EAC). Compliance with the applicable VVSG may be substantiated through federal certification by the EAC, through certification by another state that requires compliance with the applicable VVSG, or through testing conducted by a federally certified voting system test laboratory (VSTL) to the standards contained in the applicable VVSG. Meeting the requirements contained in the VVSG may substantiate compliance with the voting system requirements contained in Section 301 of the Help America Vote Act of 2002 (HAVA).
Staff Analysis
The ES&S Unity 3.4.0.1 modem meets this requirement.

ACCESS TO ELECTION DATA
Provisions shall be made for authorized access to election results after closing of the polls and prior to the publication of the official canvass of the vote. Therefore, all systems must be capable of generating an export file to communicate results from the election jurisdiction to the central processing location on election night after all results have been accumulated. The system may be designed so that results may be transferred to an alternate database or device. Access to the alternate file shall in no way affect the control, processing, and integrity of the primary file or allow the primary file to be affected in any way.
Staff Analysis
The ES&S Unity 3.4.0.1 meets this requirement.

SECURITY
All voting system functions shall prevent unauthorized access to them and preclude the execution of authorized functions in an improper sequence. System functions shall be executable only in the intended manner and order of events and under the intended conditions. Preconditions to a system function shall be logically related to the function so as to preclude its execution if the preconditions have not been met.
Staff Analysis
The ES&S Unity 3.4.0.1 meets this requirement.

ACCURACY
A voting system must be capable of accurately recording and reporting votes cast. Accuracy provisions shall be evidenced by the inclusion of control logic and data processing methods, which incorporate parity, and checksums, or other equivalent error detection and correction methods.
Staff Analysis
The ES&S Unity 3.4.0.1 meets this requirement.

DATA INTEGRITY
A voting system shall contain provisions for maintaining the integrity of voting and audit data during an election and for a period of at least 22 months thereafter. These provisions shall include protection against: <ul style="list-style-type: none">• the interruption of electrical power, generated or induced electromagnetic radiation• ambient temperature and humidity• the failure of any data input or storage device• any attempt at an improper data entry or retrieval procedure
Staff Analysis
The ES&S Unity 3.4.0.1 meets this requirement.

RELIABILITY
Successful Completion of the Logic and Accuracy test shall be determined by two criteria <ul style="list-style-type: none">• The number of failures in transmission• and the accuracy of vote counting The failure or connectivity rate will be determined by observing the number of relevant failures that occur during equipment operation. The accuracy is to be measured by verifying the completeness of the totals received.
Staff Analysis
The ES&S Unity 3.4.0.1 had a significant number of failed transmissions during both the initial transmission test as well as during the load testing.
The accuracy of the vote counting is satisfactory and the system has met the second criterion of this requirement.

OPEN POLL TRANSMISSION TEST
Testing staff shall attempt to transmit results prior to the closing of the polls and printing of a results tape.
Staff Analysis
The ES&S Unity 3.4.0.1 does not allow the user to transmit results prior to the closing of the polls and meets this requirement.

UPLOAD RESULTS TEST
Testing staff shall create test results using a test deck and attempt to upload the results.
Staff Analysis
The ES&S Unity 3.4.0.1 performed this function and met this requirement.

SECURITY TEST
Attempt to upload results from a tabulating device to a computer which is not part of the voting system.
Staff Analysis
The ES&S Unity 3.4.0.1 meets this requirement. Staff attempted to send results to several numbers (including the G.A.B. office fax machine). The system would initiate contact, but results were not able to be received.

SECURITY TEST
Attempt to upload results from a non-tabulating device to the central site connected to the modem bank.
Staff Analysis
The ES&S Unity 3.4.0.1 meets this requirement.

LOAD STRESS TEST
Attempt to load stress by simulating a denial of service (DOS) attack or attempt to upload more than one polling location results (e.g., ten or more polling locations).
Staff Analysis
G.A.B. staff noted considerable delay in transmission or outright failures when three (or a maximum of four) polling locations attempting to submit simultaneously. In numerous instances, staff testers were not able to make contact during the load test. This could be due, at least in part, to the county's telecommunications infrastructure, indicating that clerks may have ongoing difficulties submitting results on a busy election night.

b. Additional Staff Compliance Analysis

Please see G.A.B. staff's compliance analysis pertaining to additional aspects of the equipment functionality.

EASE OF USE
The ease of use for the election inspectors for redialing, busy connections, etc.
Staff Analysis
The ES&S Unity 3.4.0.1 meets this requirement.

MACHINE FAILURE
The system prevents the loss of results in the event of machine failure or crash during an election.
Staff Analysis
The ES&S Unity 3.4.0.1 failed numerous times during load testing, or when subjected to stresses (e.g. lack of paper or incoming calls on the sending line). Results were retained and unaffected by the failure.

UPLOADING DUPLICATE RESULTS
The system's ability to prevent the uploading of duplicate results.
Staff Analysis
The ES&S Unity 3.4.0.1 meets this requirement.

NOTIFICATIONS TO ELECTION INSPECTORS
System notifies election inspectors when a failure or incomplete connection occurs at the client.
Staff Analysis
The ES&S Unity 3.4.0.1 meets this requirement. However, the system does not provide an explanation of the source of the modem failure (e.g. modem not connecting, server not available, or line not available). This could severely hinder a clerk's ability to troubleshoot problems on election night.

NOTIFICATION OF SUCCESSFUL TRANSMISSIONS
Notification for a successful transmission at both the client and the host.
Staff Analysis
The ES&S Unity 3.4.0.1 meets this requirement.

DENIAL OF SERVICE ATTACK USING REPEAT DIAL
Notification of repeated attempts to transmit duplicate results from polling place.
Staff Analysis
The ES&S Unity 3.4.0.1 meets these requirement.

VI. Conclusions

Based on the Voting System Testing Laboratory (VSTL) report provided by Wyle Laboratories and on Board staff's own functional testing of this equipment, Board staff is recommending that the Board grant *conditional* approval of ES&S Unity 3.4.0.1 for sale and use in Wisconsin. Given the inconsistent performance of the DS200 modem component during the test campaign, G.A.B. staff has concluded that there is not adequate basis for final approval at this point.

Pursuant to Wis. Adm. Code 7.02(3), the Board may require that a voting system be used in an actual election as a condition of approval. Given the performance of the Unity 3.4.0.1 (as detailed in Board staff's analysis of the functional testing, found on pages 15-18 of the memo), G.A.B. staff recommends that the Board exercise its authority to make a test election a condition of approval. Further evaluation during the acceptance testing and during a test election could demonstrate that the ES&S Unity 3.4.0.1 meets the statutory and Board-approved requirements.

G.A.B. staff is recommending that functionality and integrity testing not be deemed complete until after there is a successful test use of the equipment in an actual election in one or more local jurisdictions. Successful completion of a test election includes a post-election audit as detailed in the *Testing Protocols*. Furthermore, staff is recommending that use of the Unity 3.4.0.1 at such election shall be valid for all purposes as if it had received final approval by the Board.

Municipalities acquiring the ES&S Unity 3.4.0.1 should also be required to submit verification that they have met the Board-approved stipulations (included herein on pg. 19-21). The Board has previously approved a number of security and procedural recommendations that will be required for any municipality purchasing or acquiring this equipment, provided on page 24 of this memorandum. The Election Day security protocols contained in the *Testing Protocols* clarify that the modeming component shall only be used for the transmission of unofficial results.

The Board has also adopted a requirement for post-election equipment audits during the system's initial period of use. As explained in the protocols and procedural requirements, there will be specified time periods for modeming unofficial results after election inspectors have already "closed the polls" on each piece of voting equipment as well as enhanced post-election auditing procedures. Staff has determined that many of the security concerns associated with modeming unofficial results can be alleviated through auditing, canvassing, and additional procedural safeguards in place on Election Day, rather than solely through pre-approval testing.

VII. Itemized Recommendations

Based on the Voting System Testing Laboratory (VSTL) report provided by Wyle Laboratories and on Board staff's own functional testing of this equipment, Board staff is recommending that the Board grant *conditional* approval of ES&S Unity 3.4.0.1 for sale

and use in Wisconsin for the 2014 Spring Primary and Spring Election.²¹ Final approval would then be granted after the Board has determined that the system has met the following conditions:

1. *Acceptance Testing.* The purchasing locality (a) has conducted acceptance testing to assure that the system meets their needs and is identical to the certified system; (b) has conducted acceptance tests with the guidance of G.A.B. staff and c) has forwarded certification documentation to the G.A.B., signed by both the county and municipal clerks, confirming that the system has successfully met the acceptance testing requirements provided by the G.A.B.
2. *Functional Testing.* The purchasing locality has performed functional testing as part of the procurement process for the voting system. The vendor will work with municipalities to resolve any anomalies identified during the functional testing. G.A.B. will require that upon acquiring the equipment, the locality forward certification documentation to the G.A.B. confirming that the system has successfully met the functional testing requirements provided by the G.A.B. The functional test will demonstrate the system's ability to execute its designed functionality as advertised and tested, including but not limited to:
 - a. Successful transmission of results via simulator
 - b. Successful transmissions of results using analog telephone line on site
 - c. Successful receipt of all results from mock election
 - d. Generates system status and error messages
 - e. Produce or generate an interim report, or final report of the election as required
 - f. Produce an audit log
3. *Test Election.* The system has been successfully used in the 2014 Spring Primary and 2014 Spring Election prior to final approval. Successful completion of a test election includes a post-election audit. The audit will be conducted in accordance with existing G.A.B. processes for conducting voting equipment audits and will be subject to G.A.B. guidelines.

Based on the results of the acceptance test, the functional test, the test election, and any other credible information regarding the system's performance in their possession, the Board will determine whether the proposed voting system will be approved for use in the State of Wisconsin and so notify the vendor. G.A.B. Staff will provide an interim report at the March 2014 Board meeting and a full report for the Board's consideration at the May 2014 Board meeting. If the Board does not grant final approval, ES&S shall remove all modems and associated firmware from the DS200's, rendering the modem

²¹ G.A.B. staff selected the Spring Primary and the Spring Election because they are low turnout elections. There are also no statewide elections scheduled absent the Legislature placing a referendum on the ballot. Some county board seats and court of appeals elections may be contested, but otherwise all elections will be for local offices.

functionality inoperable and effectively reverting the ES&S Unity 3.4.0.1 to the previously approved Unity 3.4.0.0.

Board staff also recommends the following continuing conditions shall remain ongoing should the Board ultimately decide to grant final approval of Unity 3.4.0.1.

1. *Acceptance Testing.* Any locality purchasing the Unity 3.4.0.1 shall conduct acceptance testing according to the specifications outlined above in the recommendations for conditional approval.
2. *Functional Testing.* Any locality that is using the Unity 3.4.0.1 in any election shall conduct functional testing according to the specifications outlined above in the recommendations for conditional approval for every election in which the 3.4.0.1 shall be used.
3. Board staff recommends that as a continuing condition of the Board's approval, that ES&S may not impose customer deadlines contrary to requirements provided in Wisconsin Statutes, as determined by the Board. In order to enforce this provision, local jurisdictions purchasing ES&S equipment shall also include such a provision in their respective purchase contract or amend their contract if such a provision does not currently exist.
4. Only systems tested during this certification are allowed to be used together to conduct an election in Wisconsin. Previous versions that were approved for use by the former Elections Board are not compatible with the new ES&S voting system, and are not to be used together with the equipment versions seeking approval by the Board. If a jurisdiction upgrades to Unity 3.4.0.1, it needs to upgrade each and every component of the system to the requirements of what is approved herein.
5. Unity EMS 3.4.0.1. may only program the AutoMARK Voter Assist Terminal (VAT), versions 1.0, 1.1, 1.3.1 (Print Engineering Board (PEB)1.65), and 1.3.1 (PEB 1.70).
6. Board staff recommends that as a condition of approval, ES&S shall abide by applicable Wisconsin public records laws. If, pursuant to a proper public records request, the customer receives a request for matters that might be proprietary or confidential, customer will notify ES&S, providing the same with the opportunity to either provide customer with the record that is requested for release to the requestor, or shall advise Customer that ES&S objects to the release of the information, and provide the legal and factual basis of the objection. If for any reason, the Customer concludes that Customer is obligated to provide such records, ES&S shall provide such records immediately upon Customer's request. ES&S shall negotiate and specify retention and public records production costs in writing with customers prior to charging said fees. In absence of meeting such conditions of approval, ES&S shall not charge customer for work performed

pursuant to a proper public records request, except for the “actual, necessary, and direct” charge of responding to the records request, as that is defined and interpreted in Wisconsin law, plus shipping, handling, and chain of custody costs.

Proposed Motion:

MOTION: The Government Accountability Board adopts the staff’s recommendation for conditional approval of the ES&S voting system’s Application for Approval of Unity 3.4.0.1 to be sold or used in Wisconsin, including the conditions described above. Furthermore, its use at a test election during the completion of the functionality and integrity testing shall be valid for all purposes as if the Board had given final approval to the voting system.

Attachments

- ✓ Appendix I: *Voting System Standards, Testing Protocols and Procedures Pertaining to the Use of Communication Devices*
- ✓ EAC, RFI 2012-06, EAC Decision on Use of Public Telecommunications Networks and Data Transmission
- ✓ EAC, RFI 2012-05, EAC Decision on Public Telecommunications and Cryptography
- ✓ EAC, RFI 2012-02, EAC Decision on Transmission of Results (Official and Unofficial)
- ✓ Wisconsin Statutes §5.91
- ✓ Wisconsin Administrative Code, GAB 7
- ✓ August 2, 2013 email from Steve Pearson, ES&S Vice President for Voting Systems

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

PART I: PROPOSED TESTING STANDARDS

Applicable VVSG Standard

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

Access to Election Data

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

Security

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

Accuracy

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

Data Integrity

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

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

Reliability

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

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

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

PART II: TEST PROCEDURES AND PROTOCOLS

Overview of Telecommunication Test

The telecommunication test focuses on system hardware and software function and performance for the transmission of data that is used to operate the system and report election results. This test applies to the requirements for Volume I, Section 6 of the EAC 2005 VVSG. This testing is intended to complement the network security requirements found in Volume I, Section 7 of the EAC 2005 VVSG, which include requirements for voter and administrator access, availability of network service, data confidentiality, and data integrity. Most importantly, security services must restrict access to local election system components from public resources, and these services must also restrict access to voting system data while it is in transit through public networks. Compliance with Section 7, EAC 2005 VVSG shall be evidenced by a VSTL report submitted with the vendor's application for approval of a voting system.

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

Wired Modem Capability Test Plan

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

Test Plan:

1. Attempt to transmit results prior to the closing of the polls and printing of results tape
2. Set up a telephone line simulator that contains as many as eight phone lines
3. Perform communication suite for election night reporting using a bank with as many as seven analog modems:
 - a. Connect the central site election management system to the telephone line simulator and connect the modems to the remaining telephone line ports
 - b. Setup the phone line numbers in the telephone line simulator
 - c. Use the simulated election to upload the election results
 - i. Use at least eight tabulators in different reporting units

- ii. Use as many as two tabulators within the same reporting units
- d. Simulate the following transmission anomalies
 - i. Attempt to upload results from a tabulating device to a computer which is not part of the voting system
 - ii. Attempt to upload results from a non-tabulating device to the central site connected to the modem bank
 - iii. Attempt to load stress by simulating a denial of service (DOS) attack or attempt to upload more than one polling location results (e.g., ten or more polling locations)

Wireless Capability Test Plan

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

Test Plan:

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

Test Conclusions for Wired and Wireless Transmission

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

PART III: PROPOSED SECURITY PROCEDURES

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

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

PART IV: CONDITIONS FOR APPROVAL (VENDOR)

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

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



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

2005 VVSG Volume I, Section 7.6.1

Date:

October 1, 2012

Question:

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

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

Section of Guidelines:

2005 VVSG Volume 1, Section 7.6.1 - Data Transmission

All systems that transmit data over public telecommunications networks shall:

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

Discussion:

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

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

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

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

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

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

Additionally, Section 6.1 of the 2005 VVSG states:

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

Finally, Section 6.1.2 of the VVSG States:

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

Conclusion:

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

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

Effective Date:

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



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

2005 VVSG Volume I, Section 7.5.1.b

Date:

October 1, 2012

Question:

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

Section of Guidelines:

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

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

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

Discussion:

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

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

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

2005 VVSG Section 6

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

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

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

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

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

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

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

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

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

Conclusion:

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

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

Effective Date:

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



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

Date:

May 30, 2012

Question:

What is the distinction between official and unofficial results?

Section of Guidelines:

2005 VVSG Volume 1 Sections 2, 6, and 7

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

Discussion:

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

Conclusion:

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

Effective Date:

Effective immediately for all systems without an approved Test Report.

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

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

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

History: 1979 c. 311; 1987 a. 391; 2005 a. 92, 451; 2007 a. 96.

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

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

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

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

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

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

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

History: 2005 a. 92.

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

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

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

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

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

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

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

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

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

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

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

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

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

**5.91 ELECTIONS — GENERAL PROVISIONS; BALLOTS & Updated 09–10 Wis. Stats. Database 22
VOTING**

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

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

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

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

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

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

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

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

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

History: 1979 c. 311.

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

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

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

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

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

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

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

History: 1979 c. 311.

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

Chapter GAB 7

APPROVAL OF ELECTRONIC VOTING EQUIPMENT

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

GAB 7.03 Continuing approval of electronic voting system.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Charleston, Sherri A - GAB

From: Pearson, Steve <smpearson@essvote.com>
Sent: Friday, August 02, 2013 3:19 PM
To: Charleston, Sherri A - GAB
Cc: Rogers, Kathy; Kevin.Kennedy@wi.gov.; Manganaro, Mark; Hoversten, Mike
Subject: Unity 3.4.0.1 Modem Tests

Sherri

To confirm our conversation from earlier this afternoon, the ES&S test team concluded the three days of retesting of the four sites in the four counties this morning without incident. It is my understanding that the testing went extremely well with 100% connectivity and delivery of results in multiple tests at each location. We will have a comprehensive report of the results and any findings for you by Wednesday as you've asked. Following are sites that exhibited challenges in the first test that were revisited in this week's testing:

- Village of Ashwaubenon (Brown)
- City of Mosinee (Marathon)
- Town of Verona (Dane)
- Town of Turtle (Rock)

The counties were all very cooperative and supportive of the retesting. With these results, we are not aware of any of the 16 locations where results have now not been successfully transmitted. We hope these will also help alleviate any concerns or trepidation you may have had from the first round of testing.

Thanks,
Steve

From: Charleston, Sherri A - GAB [<mailto:Sherri.Charleston@wisconsin.gov>]
Sent: Tuesday, July 30, 2013 4:27 PM
To: Pearson, Steve; Kevin.Kennedy@wi.gov.
Cc: Rogers, Kathy
Subject: RE: Call

Steve,

As we mentioned on the call, we will continue moving forward with the recommendations we are making to the Board based on the results of the testing we conducted July 9-18, 2013. We are planning on having our recommendations finalized this week and should be able to release them to you by Monday. We understand that your team will be developing more information about the performance of the modems. Please kindly have any additional information that you would like to have shared with the Board to us by Wednesday, August 7, 2013.

Sincerely,

Sherri Ann Charleston

From: Pearson, Steve [<mailto:smpearson@essvote.com>]
Sent: Tuesday, July 30, 2013 10:45 AM
To: Charleston, Sherri A - GAB; Kevin.Kennedy@wi.gov.
Cc: Rogers, Kathy
Subject: RE: Call

State of Wisconsin\Government Accountability Board

212 East Washington Avenue, 3rd Floor
Post Office Box 7984
Madison, WI 53707-7984
Voice (608) 266-8005
Fax (608) 267-0500
E-mail: gab@wisconsin.gov
<http://gab.wi.gov>



JUDGE TIMOTHY L. VOCKE
Chair

KEVIN J. KENNEDY
Director and General Counsel

MEMORANDUM

DATE: For the August 13, 2013 Board Meeting

TO: Members, Wisconsin Government Accountability Board

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

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

SUBJECT: Prime III Voting System

I. Introduction

This memorandum is intended to keep the Board apprised of the G.A.B. staff's efforts to explore new and accessible voting technology for potential use in the State of Wisconsin. This includes staff's current exploration of the Prime III voting system. Prime III is the result of a three-year, \$4.5 million project funded by the U.S. Election Assistance Commission (U.S. EAC) to increase the accessibility of new, existing and emerging technological solutions in the design of voting systems. This grant was aimed at supporting the development of a system that utilizes open source technology and would ultimately be made available to state election officials and voting equipment vendors. Though the system is designed as an accessible voting solution, it has an interface that can be used by all voters. This memorandum will serve as an introduction to the Presentation by Dr. Juan Gilbert of Clemson University at the August 13, 2013 Board meeting. It will also highlight some of the potential benefits of the proposed exploration of the Prime III voting system.

Dr. Juan E. Gilbert is the Presidential Endowed Chair in Computing, an IDEaS Professor and Chair of the Human-Centered Computing (HCC) Division in the School of Computing at Clemson University where he leads the HCC Lab. He is also a Professor in the Automotive Engineering Department at Clemson University. He is a PI (Principal Investigator) on the U.S. Election Assistance Commission Accessible Voting Technology Initiative. Dr. Gilbert is a Fellow of the American Association for the Advancement of Science (AAAS), an ACM Distinguished Scientist, National Associate of the National Research Council of the National Academies, an Association for Computing Machinery (ACM) Distinguished Speaker and a Senior Member of the IEEE Computer Society. In 2011, Dr. Gilbert was given a Presidential Award for Excellence in Science, Engineering and Mathematics Mentoring by President Barack Obama.

The G.A.B. has a unique opportunity to work with Dr. Gilbert and his team at Clemson University, who will continue to be funded through the aforementioned U.S. EAC grant, to create a customized voting system for potential use in Wisconsin. In the coming months, the G.A.B. IT staff can begin to collaborate with Dr. Gilbert and his team to explore how the Prime III software might be able to interface with current G.A.B. applications, including MyVote Wisconsin and the Canvass Reporting System.

If directed to do so by the Board, G.A.B. staff will collaborate with a county and/or municipality to pilot the Prime III in 15-20 polling locations during the April 1, 2014 election. Staff has contacted Dane County Clerk Scott McDonnell and Neil Albrecht, Executive Director of the Milwaukee Election Commission, and both are considering hosting the pilot. Given Dane County and the City of Milwaukee's respectively large populations of voters with disabilities, G.A.B. staff has determined that either Dane County or Milwaukee would make particularly effective locations to pilot and test the system. The potential costs of conducting the pilot depend primarily on the scale. If the pilot is relatively small, there may be little or no cost.

G.A.B. staff has developed a timeline for continuing to explore the potential for Prime III to be utilized by municipal clerks within the State of Wisconsin. At the October Board meeting, staff intends to present a detailed report of research and potential implementation plans for the Prime III. At that time, staff will also apprise the Board as to whether staff intends to petition the Board at the December meeting to pilot the Prime III in select polling places during the April 2014 election.

II. Background

The Help America Vote Act of 2002 (HAVA) requires that the voting system used at each polling place permits all individuals to vote privately and independently. 42 U.S.C. § 15481. With HAVA's enactment, the responsibility for developing voting system standards and certifying voting systems was transferred from the FEC to the U.S. Election Assistance Commission (U.S. EAC). Given the current lack of U.S. EAC commissioners, the U.S. EAC has not been able to promulgate up-to-date technology standards, a contributory factor in the current stagnation in election technology innovation.

The U.S. EAC has sought to address this issue, at least in part, by supporting research that will increase the accessibility of new, existing and emerging technological solutions in the design of voting systems that would utilize open source technology. Its grant program was specifically targeted towards making such technology available to state election officials and voting equipment vendors. Because of this grant, the Prime III Voting System was developed by Dr. Gilbert and the Research Alliance for Accessible Voting (RAAV). The Research Alliance for Accessible Voting (RAAV) was established to advance the state of elections and voting through research, development, evaluation, dissemination and implementation of concepts and technologies that increase access to and participation in democracy.¹

¹ The RAAV consists of 10 organizational partners. One of the partners, Clemson University, serves as the manager of the project and liaison with the funder and two designated collaborators: NIST (National Institute of Standards and Technology), and ITIF (Information Technology and Innovation Foundation). The Alliance aims to engage the disability community, people with limited literacy and/or limited English proficiency, legislators, election administrators, and vendors to advance the project mission.

Prime III is so named because it is a third generation voting system. First generation voting was done with mechanical equipment and paper using lever machines or punch cards. Second generation voting systems are computer-based systems such as optical scans or direct recording equipment, which are used in the majority of Wisconsin's municipalities. Third generation devices are multimodal. Multimodal machines, such as the Prime III, accommodate voters with varying abilities on one machine using multimodality.

Prime III was first tested in controlled laboratory settings and later in national, academic and trade association elections. Prime III was used in an official capacity during the 2012 presidential primary election in Oregon, the 2013 Meeting of the National Society of Black Engineers, and the 2013 Self-Advocates Becoming Empowered (SABE) National Conference. The State of Oregon has decided to move forward with using Prime III for its 2014 elections. The Oregon Secretary of State initially tested Prime III in Washington County. Oregon election officials are now working with Dr. Gilbert and intend to have Prime III implemented in time to test it statewide in the 2013 fall elections.

In assessing whether there was adequate justification to explore the use of the Prime III, G.A.B. staff identified a number of potential benefits to the implementation of a Prime III voting system in the State of Wisconsin, should it ultimately receive approval from the Board. Most significantly, given the current state of the U.S. EAC, exploring the Prime III system could potentially allow municipalities the opportunity to replace aging equipment (should the Board ultimately approve an Application for Approval) with up to date technology. Additional potential benefits of the Prime III voting system include:

- *Ongoing accessibility of up to date technology.* Because the system utilizes open source rather than proprietary software, it can be easily updated without requiring extensive upgrades.
- *Accessibility.* Prime III offers the G.A.B. the ability to explore and clerks to acquire innovative technology that could improve the voting experience of Wisconsin voters. The current generation of voting equipment has increased voter accessibility, but many voters continue to report difficulties with casting a private and independent ballot utilizing these machines.
- *Transparency.* Because the system has been developed using open source software it will provide a level of increased transparency in the voting process.
- *Increased Efficiency.* A system that has been configured specifically to interface with existing G.A.B. applications could reduce the amount of time clerks and G.A.B. staff must dedicate to ballot design, data input, etc., since this information could potentially be transferred via system interchanges.
- *Reduced Costs to Clerks.* Open source technology has many benefits including the potential to reduce costs, which clerks incur for purchase, maintenance, programming, and replacement.

III. System Description

The Prime III system purports to make technological advances in four areas:

- Accessibility — Voters can choose to follow written or spoken instructions. Likewise, they can record their votes by either touching the screen or speaking into a microphone. The system can also be configured to allow for ballots with images of candidates, a feature that would benefit voters with cognitive disabilities.
- Security — The self-contained software for Prime III is run from bootable DVDs. It never is connected online or downloaded to a local computer. Voters confirm printed ballots before they complete them with the electronic data so election officials can easily audit results from each ward.
- Usability — The Prime III software was developed after years of usability testing, using focus groups that included individuals with a variety of physical disabilities. That research is ongoing and continues in larger public tests.
- Privacy — Printed ballots contain no identifying information. Additionally, stickers with authenticated serial numbers can be affixed to each ballot to ensure that only properly cast ballots are retained. Moreover, given the systems multimodal interface, voters with a wide range of ability or disability have greater opportunities to vote privately and independently without the assistance of a poll worker. Even when using the voice-activated ballot, voters do not have to divulge the names of the candidates they support. A series of voice prompts leads voters to say words such as "next" or "vote."

The Prime III is both software independent and hardware agnostic, hence, it operates using standard computers, iPad, or Microsoft-based tablets running Windows 8. The Prime III software runs on a bootable DVD, thus the software cannot be changed once it has been burned to a disc. Prime III implements security using a voter-verified and generated ballot (VVGB) and provides for a mandatory statistical manual audit.

The Prime III allows voters to cast their ballot using touch, voice or both. Prime III employs a multimodal user interface that gives voters from all segments of the population equal, private and independent access to participate in the electoral process. Prime III takes full advantage of a speech interface allowing hands-free, eyes-free interaction. Hence, individuals who cannot see, hear, or read, or do not have use of their hands, can all vote privately and independently using the same equipment as those that do not have any disabilities. All voters verify their ballot the same way, regardless of ability.

Inside the voting booth, the voter would use the touch screen and/or the headset, to cast their votes. The multimodal interface enables the voter to choose to use either the touch screen and/or the voice-enabled headset and/or an A/B switch with the headset at any point during the voting process. The voter is not required to select voice or touch, and can simply use any of the functionalities throughout the process interchangeably as desired.

A voter using the headset to vote would receive prompts that speak the ballot options currently displayed. The voter waits until their candidate's name or option is spoken and says "Vote" after

the prompt, or blows into the microphone. Prime III also allows for the voter to simply blow into the microphone after the prompt during the 1.5 second pause to make selections as well. As such, eavesdroppers will hear a voter saying "Vote" or nothing at all, without any indication of the voter's choices. During voting, the voter will be required to confirm their ballot twice. After the second confirmation, the voter's ballot is printed with the options the voter selected.

In Prime III, each contest lists the candidates in a single column. This ballot design attempts to remove ambiguity and confusion by only showing the candidates for one contest at a time where other systems show multiple candidates per screen, which in most cases is simply copying the paper ballot to the screen.

After the VVGB is created, it is scanned by the Tally Machine, which is a second independent machine, using optical character recognition (OCR). Dr. Gilbert compares this method of reading the ballot content via OCR to how people count ballots. In modern optical scan machines, the tally machines read ovals or arrows; however, when people audit those ballots, they may come to a very different interpretation of the voter's intent because they count by reading the name, not the oval or arrows. This is especially true for write-in candidates.

IV. Accessibility

G.A.B. staff held a demonstration of the Prime III voting system at the June 13, 2013 meeting of the G.A.B. Accessibility Advisory Committee. Dr. Gilbert and his team presented the results of his research and met with G.A.B. staff to discuss possible strategies for implementation.

G.A.B. staff asked the members of the Accessibility Advisory Committee to provide initial impressions of the system via a structured feedback form. Due to time constraints, members of the Committee did not have time to test the machine physically.

1. How would you rate the functionality of the equipment?

Very Poor	Poor	Fair	Good	Excellent
			1	4

2. How would you rate the accessible features?

Very Poor	Poor	Fair	Good	Excellent
		1	2	2

3. Rate your overall impression of the system.

Very Poor	Poor	Fair	Good	Excellent
			1	4

Additional comments:

- Really like the idea of picture ballots. Helps make it more accessible for individuals with intellectual disabilities
- Like the fact that it is open source and can be constantly improved
- Love the ease of use
- [Reviewer has] concerns about the sensitivity [of the accessible features]
- It looks to be good, but again it is hard to tell without using it. I'd like to point out that because the equipment is not standardized, the user experience might be different based on equipment.
- This is quite an impressive system that is ground-breaking. I am very excited about the potential for its use in Wisconsin.
- It looks to be simple, easy to use, but it's hard to tell for sure without actually using the equipment.
- Very intriguing technology advancements
- Screen tabs appeared to be too close together and [...] touch errors.

An informational video and testimonial from Nancy Ward, a member of Self Advocates Becoming Empowered (SABE), after voting on the Prime III at the 2013 SABE National Election in Minneapolis, MN, can be found at <http://youtu.be/G9NYbntJflw> . Also attached to this memorandum is an official press release following a recent demonstration of the Prime III on Capitol Hill.

Recommended Motion:

The Board directs staff to continue researching the potential use of the Prime III voting system in Wisconsin, including collaborating with Dr. Gilbert to explore how the Prime III software might be able to interface with current G.A.B. applications, including MyVote Wisconsin and the Canvass Reporting System. The Board also directs staff to seek to design a pilot program with cooperating counties or municipalities for potentially using the Prime III during the April 1, 2014 Spring Election, and to report its progress and recommendations at future Board meetings.

Attachments

- ✓ Article: Researcher demonstrates accessible voting technology on Capitol Hill | Clemson University, South Carolina.



Researcher demonstrates accessible voting technology on Capitol Hill

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Published: June 18, 2013

WASHINGTON, D.C. — Clemson University researchers today showed lawmakers on Capitol Hill an electronic voting system they say will help resolve current technological challenges at the polls and restore voter confidence.

Researchers took Prime III to the Rayburn House Office Building to demonstrate use of the technology to U.S. Representative James Clyburn and other congressional leaders.

"Too many Americans face barriers to voting that simply should not be there," Congressman Clyburn said. "Whether it's a disability, a language preference or the color of their skin, every eligible American should have unfettered access to the ballot box."

Professor Juan Gilbert, Presidential Endowed Chair in Computing, leads the human-centered computing division in the School of Computing at Clemson. He developed Prime III to ensure voting accessibility for all people, including individuals with disabilities. The voting technology also produces old-fashioned simplicity with paper ballots for backup verification.

"It's a universal design that makes it usable by as many people as possible, regardless of their age, ability or situation," Gilbert said. "You don't have a disability machine, but one single voting machine."

Current law requires voting precincts to maintain voting machines that are accessible for the disabled, but Gilbert notes some states experienced problems maintaining multiple systems and training poll workers.

"Consolidating a system into one technology makes the training process easier and more conducive for everyone," he said.

Prime III allows voters to cast ballots by touch and/or by voice. (See related video .)

"If you can't see, can't hear, can't read or don't have arms, you can vote privately and independently on the same machine as anyone else," Gilbert said. "There's no ambiguity. The ballot is easy to count, easy to verify and can be read by optical character recognition."

Prime III includes advances in four areas:

- Accessibility — Voters can choose to follow written or spoken instructions. Likewise, they can record their votes either by touching a screen or speaking into a microphone.
- Security — The self-contained software for Prime III is run from bootable DVDs. It never is reached online or downloaded to a local computer. Voters confirm printed ballots before they are filed with the electronic data so election officials can audit overall results from a precinct.
- Usability — The software was developed through years of usability testing, using focus groups that included people with a variety of physical disabilities. That research will continue in larger public tests.
- Privacy — Even using the voice-activated ballot, voters don't have to divulge the names of the candidates they support. A series of voice prompts leads voters to say words such as



Juan Gilbert shows U.S. Rep. James Clyburn the Prime III accessible voting technology.
image by: Katy Bayless Gibson
Clemson University

Contacts

[clemson.edu](#) [people](#) [places](#)
Juan Gilbert
juan@clemson.edu
864-656-4846

Brian M. Mullen
Media Relations
mullen2@clemson.edu
864-656-2063

Related Links

VIDEO: Prime III

Associated Images



Juan Gilbert shows U.S. Rep. James Clyburn the Prime III accessible voting technology.



Cora Marrett, acting director of the National Science Foundation, talks to attendees about the importance of the Prime III technology and innovation.

"next" or "vote." Printed ballots contain no identifying information; stickers with authenticated serial numbers are applied to each ballot to ensure that only properly cast ballots are retained.

Gilbert's research team examined all aspects of the voting experience.

"Our research team is interdisciplinary, with individuals from the social sciences, engineering and computing. We have experts in accessibility. We also have experts who deal with administration — training election officials and poll workers," Gilbert said.

Prime III was first tested in controlled laboratory settings and later in national academic and trade association elections. It was used in an official capacity during the 2012 presidential primary election in Oregon, and voters who attend the 2013 NAACP conference in Orlando will use Prime III to elect new officers.

END

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State of Wisconsin \ Government Accountability Board

212 East Washington Avenue, 3rd Floor
Post Office Box 7984
Madison, WI 53707-7984
Voice (608) 266-8005
Fax (608) 267-0500
E-mail: gab@wisconsin.gov
<http://gab.wi.gov>



JUDGE TIMOTHY L. VOCKE
Chairperson

KEVIN J. KENNEDY
Director and General Counsel

MEMORANDUM

DATE: For the August 13, 2013 Meeting

TO: Members, Wisconsin Government Accountability Board

FROM: Kevin J. Kennedy
Director and General Counsel

Prepared and Presented by:
Michael Haas, Elections Division Administrator
Richard Rydecki, Accessibility Coordinator

SUBJECT: Accessibility Program Update

Section 5.25(4), Wis. Stats., requires the Board to submit a report to the Legislature on impediments to voting faced by individuals who are elderly or disabled in each odd-numbered year and, in preparing the report, to consult with appropriate advocacy groups representing those voting populations. On June 13, 2013, Board staff met with representatives of the Wisconsin disability community as part of the agency's ongoing efforts to improve accessibility of polling places and to meet this statutory requirement. The Board has expanded the membership of this Accessibility Advisory Committee and it is now comprised of members from ten different organizations that work directly with or represent the elderly or disability community. These organizations provide support and advocate for the aging community and people with mental, physical, and developmental disabilities. They also assist Board staff with better understanding how their specific constituents interact with the voting process and identify existing barriers to voting.

The Accessibility Advisory Committee meeting began with a demonstration of the Prime III voting system by Dr. Juan E. Gilbert from Clemson University. Prime III is a voting system developed through funding provided by the U.S. Election Assistance Commission that was designed to improve voter accessibility. The system consists of a flexible software program that runs from a bootable DVD that can be used with a tablet computer. Prime III is a multi-modal system that allows voters with disabilities to interact with the voting process in a variety of different ways and is designed to enable all voters to use one voting system. In addition to the audio ballot component, the system is designed to assist voters with cognitive disabilities by allowing for the incorporation of images on the ballot. Prime III also allows the voter to control the navigation and prints a ballot that can be used with a tabulator but the system does not actually tally votes. Board staff and the Committee were interested in learning about Prime III as an example of possible future voting technology.

Board staff then provided an overview of the agency's polling place audit program and detailed efforts to improve access for voters with disabilities. Committee members provided Board staff with feedback on the program and offered suggestions on how to publicize the audit findings and facilitate improved compliance. Board staff also presented the accessible voting resources that have recently been made available on the agency website and committee members were

encouraged to review those materials and provide suggestions and comments on how to best present and promote this information.

Accessibility Advisory Committee members engaged in a roundtable discussion where they described the organizations they represent and detailed their initiatives that intersect with the electoral process. This discussion allowed Board staff to learn more about the disability and elderly community in Wisconsin and identify the potential for collaboration between those organizations and agency programs. This discussion evolved into a larger conversation concerning the purpose and goals of the committee with committee members offering suggestions as to potential topics for discussion, future projects and possible legislative recommendations. In addition, Board staff outlined a potential meeting schedule for the remainder of 2013 and the 2014 election cycle.

On July 3, 2013, the Board transmitted its report entitled Impediments Faced by Elderly Voters and Voters with Disabilities to the Legislature. The Board has received the report, and its Executive Summary and Conclusion are attached. Board staff will summarize the report's findings as well as other steps that are being implemented to continue to improve access to polling places at the Board meeting. No action is required.

Executive Summary

Wisconsin's state and local election officials are entrusted with the important responsibility of ensuring elections are conducted in a fair and impartial manner that engenders confidence in the integrity of the process. A key element in developing and maintaining that public trust is to make the election process accessible to all participants. This requires working with the entities that provide polling places to eliminate physical barriers to voting. It also means acquiring voting equipment that enables all citizens to cast an independent and secret ballot in a dignified manner, and providing information that enables all citizens to fully participate in the election process.

The purpose of this report by the Government Accountability Board ("Board" or "G.A.B.") is to describe impediments to voting encountered by elderly voters and voters with disabilities who seek to participate in elections conducted in the State of Wisconsin. This biennial report to the Legislature is required by §5.25(4)(d), Wisconsin Statutes. The concept for this report originated as one of several recommendations made by the Legislative Council's Special Committee to Review the Election Process. The Special Committee was established in 1998. This recommendation, along with several other election initiatives recommended by the Special Committee and the former State Elections Board, was enacted into law by 1999 Wisconsin Act 182.

The Government Accountability Board is required to consult with appropriate advocacy groups representing the elderly and disabled populations in the preparation of this report. Board staff met regularly with the Accessibility Advisory Committee in 2011 to identify issues of concern with the disability community and to assist in evaluating polling place accessibility. The Committee did not meet in 2012 due to staff turnover and other Board priorities, but has recently been reconvened with membership expanded to representatives from 10 advocacy groups.

During this reporting period, 2011-2013, Board staff focused on conducting on-site compliance reviews of polling places and updating municipal clerk training resources to incorporate accessibility-related materials. The number of on-site reviews was increased in response to a 2007 report from the Legislative Audit Bureau that recommended the Government Accountability Board "take steps to verify the accuracy of completed surveys" conducted and submitted to the Board by municipal clerks. Over the course of 16 elections, 1,614 on-site reviews were conducted by Board staff or representatives of the agency. Board staff reported results from these on-site reviews to each municipality and provided guidance and resources to facilitate compliance with the Americans with Disabilities Act (ADA) and the Help America Vote Act of 2002 (HAVA).

To accurately assess polling place accessibility in Wisconsin, Board staff implemented a program of on-site visits that utilized the Polling Place Accessibility Survey (Rev. 2009) as the foundation for an aggressive schedule of site audits. This survey was updated in coordination with representatives of disability advocacy groups and was previously distributed to all municipal clerks in February 2009 for use in mandatory self-reporting of accessibility compliance for each polling place in every Wisconsin municipality. The survey documents the degree of access to a polling place, including conditions related to the site's parking area, the actual voting area, and the exit. In response to inconsistencies in self-reported conditions and

accessibility concerns identified by the Legislative Audit Bureau in 2007, Board staff

implemented a program to independently assess polling place accessibility. The Board's initiative is consistent with its responsibility, pursuant to §5.25(4)(a), Wis. Stats., to "ensure that the voting system used at each polling place will permit all individuals with disabilities to vote without the need for assistance and with the same degree of privacy that is accorded to nondisabled electors voting at the same polling place."

At the time of preparation of this report, polling place accessibility audits have been conducted in 921 of Wisconsin's 1,852 municipalities, in 66 of the 72 counties in the state. The results of those audits have identified 3,786 findings that are considered high severity, meaning that these problems represent a barrier that, in and of itself, would be likely to prevent a voter with a disability from entering a polling place and casting a ballot privately and independently. In addition to those high severity findings, auditors have also reported 2,855 medium severity issues and 3,847 low severity issues, or conditions that add extra burdens to voting that are not faced by voters without disabilities.

In an effort to facilitate compliance with polling place accessibility standards, Board staff has implemented a grant program that provides accessibility-related materials and tools to municipalities. These supplies were purchased with federal funds provided through HAVA and are sent to requesting municipalities at no cost. To date, the G.A.B. has sent out 2,442 polling place accessibility supplies to 442 municipalities.

The Government Accountability Board will continue to work with the State's policymakers and local election officials to assure Wisconsin's voters that all polling places will be physically accessible. These improvements, promoted by changes in law, federal funding, and increased education, will move the State of Wisconsin toward eliminating all impediments faced by elderly and disabled voters.

Impediments to Voting Report Conclusion

Polling place accessibility in Wisconsin remains a moving target. Municipal clerks can, as part of their pre-election preparation, designate new locations as polling places that may increase, decrease or create lateral accessibility concerns. The Government Accountability Board is committed to visiting every polling place in the state to assess compliance with laws designed to ensure that all voters can enter their voting location on Election Day and cast a private and independent ballot. The agency's polling place accessibility audit program has been successful in identifying common accessibility problems and spotting trends in knowledge gaps that increased training efforts have sought to remedy.

The results of the 1,614 audits that have been conducted during this reporting period indicate that a polling place in Wisconsin averages 6.5 accessibility problems. This rate places Wisconsin polling places below the standard set by national survey programs, but the comprehensive nature of the survey tool and the Board's policy of requiring strict minimum compliance with ADA standards impacts the Wisconsin data. Many of the problems identified during audits are classified as low-severity problems, meaning these deficiencies would make it more difficult for an elderly voter or a voter with a disability to cast a ballot but would not prevent them from doing so.

Current Wisconsin law requires up to 10 different notices, instructions and reference materials, including ward maps, to be posted in each polling place. Depending on the election, the number of required notices varies, with additional notices required for the Partisan Primary and for any election with a referendum on the ballot. In addition, two copies of the sample ballot are required to be prominently posted on Election Day in the voting area. The absence of these materials is considered a low-severity finding by the standards of the Polling Place Accessibility Survey (Rev. 2009), and missing required notices, instructions, ward maps and sample ballots accounted for 2,798 (27 percent) of all accessibility problems identified during this reporting period. If all of these required materials were present at the time of these audits, the average number of accessibility-related problems identified at each polling place decreases to 4.8. Board staff does not discount the importance of the missing notices, but consider them to be easily remedied problems with solutions that would come at little to no cost to municipalities not in compliance.

An additional 353 polling places (22 percent) did not have the required postings printed in the 18-point font required by ADA. This requirement is a high-severity problem that could serve to create a significant barrier for participation for voters at these locations. The remedy for this problem is to reformat the noncompliant notices or download and print properly formatted notices from the G.A.B. website. This simple solution would result in the elimination of 9 percent of the total high severity problems found during this reporting period and lower the average number of findings per polling place to 4.5.

Accessible entrances that were not clearly marked with the universal symbol of accessibility account for 24 percent of all high-severity problems identified during this reporting period. At these 910 polling places, this issue could be resolved by adding a decal or sign to the door that indicates it as the accessible entrance. Compliant decals are currently available through the Board's polling place accessibility supply program and are provided to municipalities upon request at no cost.

Missing election materials, materials not posted in the required font and unmarked accessible entrances represent a significant portion of the total problems found during audits. These issues are easily correctable and do not require significant resources to achieve compliance. If these basic issues were corrected, the average surveyed polling place in Wisconsin would then have an average of four (3.98) accessibility problems and 40 percent of the total problems would be eliminated. This analysis is not to suggest that the significance of any identified problems should be minimized, but an in-depth review of the data reveals that the level of polling place accessibility in Wisconsin is not as dire as a facial review of the statistics might suggest, and that meaningful progress can be made with little expense.

Board staff has already adjusted the focus of the accessibility training protocol for local election officials to address commonly identified problems. Polling place audit data will continue to be used to identify areas for improvement and polling place set-up and recommended practices will be refined. Board staff will also continue to develop the audit program to incorporate a method for verifying that Plans of Action submitted to the agency are being carried out. Currently, the program is focused on conducting initial audits at every polling place in the state, but polling place visits designed to assess accessibility improvements will allow Board staff to ensure that polling places are becoming more accessible. This additional process will also provide a method for measuring the effectiveness of the audit program and potentially identify additional aspects that need adjustment. National survey data and available research will be used to provide an additional standard for comparison and to incorporate best practices from other states. The program must continue to evolve in this manner if barriers to voting for elderly voters and voters with disabilities are to be eliminated.

State of Wisconsin \ Government Accountability Board

212 East Washington Avenue, 3rd Floor
Post Office Box 7984
Madison, WI 53707-7984
Voice (608) 266-8005
Fax (608) 267-0500
E-mail: gab@wisconsin.gov
<http://gab.wi.gov>



JUDGE TIMOTHY VOCKE
Chairperson

KEVIN J. KENNEDY
Director and General Counsel

MEMORANDUM

DATE: For the August 13, 2013 Board Meeting

TO: Members, Government Accountability Board

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

Prepared and Presented by:
Jonathan Paliwal, Assistant Staff Counsel
Michael Haas, Elections Division Administrator

SUBJECT: Promulgation of Revisions to Chapter GAB 4, Wis. Adm. Code – Election Observers

In December 2010, the Board approved an order to repeal and recreate Chapter GAB 4, relating to election observers at polling places and other locations where votes are cast, counted, canvassed, or recounted. The approved version of the rule was submitted to the Legislative Council Rules Clearinghouse which recommended several minor editing changes. Board staff also made other changes to the proposed rule which were not substantive but improved its structure and readability.

The final stage of the administrative rule promulgation involves submitting the proposed rule to the Legislature. While the Board is not required to review changes made as a result of the Clearinghouse's review, Board staff would like to provide the Board with that opportunity given the significance of this rule to the operation of polling places as well as previous public interest in the rule. While the proposed rule previously approved by the Board has not been fully implemented, staff has used its provisions as the basis for advice and guidance related to the conduct of election observers over the past two years. The proposed rule was a valuable tool for local election officials to maintain order at polling places in a consistent manner.

Apart from the minor grammatical edits recommended by the Rules Clearinghouse, the most significant changes made to the proposed Chapter GAB 4 are the following:

1. Section GAB 4.01 now contains only definitions for the Chapter and provisions regulating conduct of observers has been moved to Section 4.02.

2. The former definition of “member of the public” has been simplified and a new definition of “observer” has been added in Section 4.01, which makes the rule more readable.
3. Language in Section GAB 4.01(1)(h) was corrected to state that public aspects of the voting process includes waiting in line by electors, not election inspectors.
4. Rather than repeating the consequence of failure to abide by the election observer rules in many places, reference to the warning process and removal of noncompliant observers has been consolidated into Sections 4.02(1) and 4.02(20).

Board staff requests the Board’s review of the attached final version of proposed Chapter GAB 4, and the Board’s approval to submit this version to the Legislature.

Recommended Motion:

1. **MOTION:** The Board formally approves the attached final version of proposed Chapter GAB 4 and directs staff to submit it to the Legislature.

The Government Accountability Board proposes an order to repeal and recreate chapter GAB 4, relating to observers at a polling place or other location where votes are being cast, counted, canvassed, or recounted.

CHAPTER GAB 4

ELECTION OBSERVERS

SECTION 1. GAB 4 is repealed and recreated to read:

GAB 4.01 Definitions.

(1) In this chapter:

(a) “Board” means the Government Accountability Board.

(b) “Chief inspector” means the chief inspector at a polling place, under s.7.30(6)(b), Stats., or the election official that the chief inspector designates to carry out the responsibilities of the chief inspector under this chapter.

(c) “Clerk” means the municipal or county clerk, the executive director of the board of election commissioners, or the official designated by the clerk or director to carry out the election responsibilities under this chapter.

(d) “Communications media” has the meaning given in s. 11.01(5), Stats.

(e) “Electioneering” has the meaning given in s. 12.03(4), Stats.

(f) “Member of the public” means any individual, excluding a candidate appearing on the ballot at that polling place or a registered write-in candidate for an office voted on at that polling place or other location.

(g) “Observer” means any member of the public who is present at any polling place, or in the office of any municipal clerk whose office is located in a public building on any day that absentee ballots may be cast in that office, or at an alternate site under s. 6.855, Stats., on any day that absentee ballots may be cast at that site, for the purpose of observation of an election or the absentee ballot voting process.

(h) “Public aspects of the voting process” means the election activities that take place at a polling place, or other observation location, that include the opening of a polling place prior to the commencement of voting, waiting in line to vote by electors, the election day registration process, the recording of electors under s. 6.79, Stats., the elector’s receipt of a ballot, the deposit of the ballot into the ballot box, a challenge to an elector’s right to vote, the issuing of a provisional ballot, and the counting and reconciliation process.

GAB 4.02 Observers at the polling place.

(1) Violation of any provision of this section by an observer is subject to the provisions of sub. (20).

(2) Any member of the public intending to exercise the right to observe an election under s. 7.41, Stats., shall notify the chief inspector of that intent upon entering the voting area of a polling place. An observer shall sign the election observer log acknowledging the observer understands the applicable rules and will abide by them. An observer shall also list the observer's full name, street address and municipality, and the name of the organization or candidate the observer represents, if any, on the log. The inspector shall attach the log to the Inspectors' Statement, GAB 104. The chief inspector shall provide the observer with a name tag supplied by the board which reads "Election Observer." An observer shall wear this name tag at all times when inside the polling place.

(3) To ensure the orderly conduct of the election, the chief inspector may reasonably limit the number of observers representing a particular organization or candidate.

(4) The chief inspector shall direct the observer to an area of the polling place designated by the chief inspector as an observation area.

(5) The observation area shall be situated to enable observers to observe all public aspects of the voting process during the election. When physically feasible within the polling place, the observation area shall be not less than 6 feet nor more than 12 feet from the table at which electors are announcing their name and address and being issued a voter number. If observers are unable to hear the electors stating their name and address, the poll workers shall repeat the name and address. If necessary to ensure all public aspects of the process are readily observable, the chief inspector shall set up additional observation areas near the election-day registration table and area where elector challenges are handled. Before remaking any ballot, election inspectors shall announce to observers that the ballot is being remade and the reason for doing so. Election inspectors shall also inform observers at the time that absentee ballots are inserted into ballot boxes or tabulating equipment.

(6) Observers shall comply with the chief inspector's lawful commands or shall be subject to removal from the polling place.

(7) All observer questions and challenges shall be directed to the chief inspector.

(8) Upon receiving a challenge to a voter's ballot at the polling place, the chief inspector shall follow the challenge procedure in ch. GAB 9. The challenge shall be recorded on the Challenge Documentation Form, GAB-104c.

(9) No observer may engage in any loud, boisterous, or otherwise disruptive behavior that, in the opinion of the chief inspector, threatens the orderly conduct of the election or interferes with voting.

(10) While in the polling place, observers shall keep conversation to a minimum and shall try to conduct whatever conversation is necessary at a low enough volume to minimize distraction to electors and to the election inspectors and any other election officials.

(11) Observers shall be permitted to view the poll lists, excluding the confidential portions of the lists maintained under ss. 6.36(4) and 6.79(6), Stats., as long as doing so does not interfere with or distract electors under s. 5.35(5), Stats. No observer may be permitted to make a photocopy or take photographs of the poll lists on election-day.

(12) No observer may be permitted to handle an original version of any official election document.

(13) No observer may engage in electioneering as defined in s.12.03, Stats.

(14) No observer may use a cellular telephone or other wireless communication device inside the voting area to make a voice call. Text messaging and other non-audible uses of such a device are permissible.

(15) No observer may engage in any conversation with election officials or other electors concerning a candidate, party, or question appearing on the ballot. The chief inspector may order that other conversation be minimized if it is disruptive or interferes with the orderly conduct of the election.

(16) The restrictions on voter contact under sub. (15) shall not be construed to prevent any observer from assisting an elector under s. 6.82, Stats., provided that the elector requests the observer's assistance, and the assistance meets the other requirements of s. 6.82, Stats., and the observer qualifies to provide assistance under that statute.

(17) No observer may wear any clothing or buttons having the name or likeness of, or text related to, a candidate, party, or referendum group appearing on the ballot or having text which describes, states, or implies that the observer is a governmental official or has any authority related to the voting process.

(18) No observer may use any video or still camera inside the polling place while the polls are open for voting.

(19) After the polls close, candidates are allowed to be present and the prohibition of video and still cameras does not apply unless it is disruptive or interferes with the administration of the election.

(20) The chief inspector shall:

(a) Warn an observer to cease offending conduct when:

1. The observer violates a provision of this section which disrupts the operation of the polling place.

2. The observer violates s. 12.03(2) or 12.035, Stats.

(b) Order an observer to depart the polling place when an observer does not cease offending conduct following a warning under sub. (a). If the offending observer declines or otherwise fails to comply with the chief inspector's order to depart, the chief inspector shall summon local law enforcement to remove the offending observer.

GAB 4.03 Observers at the municipal clerk's office.

(1) Observers shall be permitted to be present at the municipal clerk's office, provided the clerk's office is located in a public building, or an alternate site for absentee voting designated under s. 6.855, Stats., on any day that absentee ballots may be cast in the office.

(2) Observers shall conform their conduct to the requirements of s. GAB 4.02. The municipal clerk shall exercise the authority of the chief inspector under s. GAB 4.02 to regulate observer conduct.

(3) The clerk shall establish observation areas to allow observers to view all public aspects of the absentee voting process. No observer is allowed behind the counter in the clerk's office.

(4) All observer questions shall be directed to the clerk.

(5) If any observer engages in any loud, boisterous, or otherwise disruptive behavior that, in the opinion of the clerk, threatens the orderly conduct of the election or interferes with voting, the clerk shall issue a warning under s. GAB 4.02(20)(a) and, if the observer does not cease the offending conduct, order the observer's removal under s. GAB 4.02(20)(b).

(6) No observer may use any video or still camera inside the clerk's office while voting is in progress.

GAB 4.04 Observers at the central counting location.

(1) In a municipality using a central counting location under s. 5.86, Stats., observers shall be permitted to be present at the central counting location.

(2) Observers shall conform their conduct to the requirements of s. GAB 4.02. The municipal clerk shall exercise the authority of the chief inspector under s. GAB 4.02 to regulate observer conduct.

(3) The clerk shall establish observation areas to allow observers to view all public aspects of the counting process. Before remaking any ballot, election inspectors shall announce to observers that the ballot is being remade and the reason for doing so.

(4) If any observer engages in any loud, boisterous, or otherwise disruptive behavior that, in the opinion of the clerk, threatens the orderly conduct of the count, the clerk shall issue a warning under s. GAB 4.02(20)(a) and, if the observer does not cease the offending conduct, order the observer's removal under s. GAB 4.02(20)(b).

(5) Observers shall be permitted to use a video or still camera inside the central count location unless it is disruptive or interferes with the administration of the election.

(6) All observer questions and challenges shall be directed to the clerk.

GAB 4.05 Observers at absentee ballot canvass.

(1) In a municipality using a central absentee ballot canvass location under s. 7.52, Stats., observers shall be permitted to be present at the canvass location.

(2) Observers shall conform their conduct to the requirements of s. GAB 4.02. The board of absentee ballot canvassers shall exercise the authority of the chief inspector under s. GAB 4.02 to regulate observer conduct.

(3) The board of absentee ballot canvassers shall establish observation areas to allow observers to view all public aspects of the canvassing process. Before remaking any ballot, election inspectors shall announce to observers that the ballot is being remade and the reason for doing so.

(4) If any observer engages in any loud, boisterous, or otherwise disruptive behavior that, in the opinion of the board of absentee ballot canvassers, threatens the orderly conduct of the count, the board of absentee ballot canvassers shall issue a warning under s. GAB 4.02(20)(a) and, if the observer does not cease the offending conduct, order the observer's removal under s. GAB 4.02(20)(b).

(5) Observers shall be permitted to use a video or still camera inside the absentee canvass location unless it is disruptive or interferes with the administration of the absentee ballot canvass.

(6) All observer questions and challenges shall be directed to the member of the board of absentee ballot canvassers designated to receive questions and challenges.

GAB 4.06 Observers at absentee voting in certain homes, facilities, and complexes.

(1) One observer from each of the 2 political parties whose candidate for governor or president received the greatest number of votes in the municipality, in the last general election, may accompany the special voting deputies to absentee voting locations described in s. 6.875, Stats.

(2) The conduct of any observer shall conform to the requirements of s. GAB 4.02. The special voting deputies shall exercise the authority of the chief inspector under s. GAB 4.02 to regulate observer conduct.

(3) The special voting deputies shall establish observation areas to allow observers to view all public aspects of the absentee voting process.

(4) If any observer engages in any loud, boisterous, or otherwise disruptive behavior that, in the opinion of the special voting deputies, threatens the orderly conduct of the absentee voting process, the special voting deputies shall issue a warning under s. GAB 4.02(20)(a) and, if the

observer does not cease the offending conduct, order the observer's removal under s. GAB 4.02(20)(b).

(5) No observer may be permitted to use a video or still camera inside the voting location.

(6) All observer questions shall be directed to the special voting deputies.

GAB 4.07 Observers at a recount.

(1) Pursuant to s. 9.01(1)(b)11., Stats., the recount of any election shall be open to any interested member of the public, including candidates and their counsel.

(2) Observers shall conform their conduct to the requirements of s. GAB 4.02. The board of canvassers shall exercise the authority of the chief inspector under s. GAB 4.02 to regulate observer conduct.

(3) The board of canvassers may limit observers to a designated area, but the observers shall be positioned so that they can see the poll lists and each individual ballot as it is counted. If there is not enough room for all observers to view the ballots as they are being counted, visual preference shall be given to the candidates or their representatives.

(4) If any observer engages in any loud, boisterous, or otherwise disruptive behavior that, in the opinion of the board of canvassers, threatens the orderly conduct of the count, the board of canvassers shall issue a warning under s. GAB 4.02(20)(a) and, if the observer does not cease the offending conduct, order the observer's removal under s. GAB 4.02(20)(b).

(5) Observers shall be permitted to use a video or still camera inside the recount location unless it is disruptive or interferes with the administration of the election.

(6) All observer questions and challenges shall be directed to the member of the board of canvassers designated to receive questions and challenges.

GAB 4.08 Communications media observers.

(1) Observers from communications media organizations shall identify themselves and the organization they represent to the chief inspector upon arriving at the polling place. The inspector shall record that information on the inspectors' statement, GAB-104.

(2) Communications media observers shall be permitted to use video and still cameras provided the cameras are not used in a manner that allows the observer to see or record how an elector has voted and provided the cameras do not disrupt or interfere with voting or disrupt the orderly conduct of the election. The Board may also use video and still cameras at polling places, municipal clerks' offices, central counting locations, or absentee ballot canvass locations, or authorize others to do so for purposes authorized by the Board.

GAB 4.09 Polling place accessibility assessments.

(1) This section applies to disability advocates and other individuals authorized by the board to assess the compliance of a polling place with s. 5.25(4)(a), Stats.

(2) When practical, groups and individuals observing under this section shall notify the clerk at least 24 hours in advance of their intent to assess polling place accessibility.

(3) Disability advocate observers shall be allowed out of the designated observation area to take accessibility measurements to ensure compliance with polling place accessibility requirements unless it is disruptive or interferes with the administration of the election.

(4) Disability advocate observers shall be allowed to take photos and video to document compliance with the accessibility requirements unless it is disruptive or interferes with the administration of the election.

(5) Disability advocate observers shall be allowed to wear shirts or name tags identifying themselves as disability advocate observers.

(6) Election officials, including poll workers, shall facilitate the work of disability advocate observers in making accessibility assessments.

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.

Dated 2013

KEVIN J. KENNEDY
Government Accountability Board
Director and General Counsel

State of Wisconsin \ Government Accountability Board

212 East Washington Avenue, 3rd Floor
Post Office Box 7984
Madison, WI 53707-7984
Voice (608) 266-8005
Fax (608) 267-0500
E-mail: gab@wisconsin.gov
<http://gab.wi.gov>



JUDGE TIMOTHY VOCKE
Chairperson

KEVIN J. KENNEDY
Director and General Counsel

MEMORANDUM

DATE: For the August 13, 2013 Board Meeting

TO: Members, Government Accountability Board

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

Prepared and Presented by:
Jonathan Paliwal, Assistant Staff Counsel
Michael Haas, Elections Division Administrator

SUBJECT: Promulgation of Permanent Rule Amending GAB 3.01 and GAB 12.01

In accordance with §5.05(1)(f), Stats., the Government Accountability Board is authorized by the Legislature to promulgate rules under Chapter 227 of the Statutes for the purpose of interpreting or implementing the laws regulating the conduct of elections or election campaigns or ensuring their proper administration. To this end, the Legislature has also given agencies, like the Government Accountability Board, the general authority to promulgate rules interpreting the provisions of any statute enforced or administered by the agency, if the agency considers it necessary to effectuate the purpose of the statute. §227.11(2)(a), Stats.

Current rules require the two-year certification terms for municipal clerks and special registration deputies to end in even-numbered years, whereas the two-year certification term for election inspectors (poll workers) is statutorily required to end in odd-numbered years. This disharmony in certification periods is an ongoing source of confusion for county and municipal clerks who are responsible for certification and training for local election officials.

The proposed changes to Sections GAB 3.01 and GAB 12.01 would resolve the current situation of staggered certification terms by making the training cycles of municipal clerks and special registration deputies consistent with those of election inspectors. The attached Statement of Scope would permit Board staff to begin work on amending the sections of the administrative rules necessary to effect this change. Section GAB 3.01(6) defines the election cycle for special registration deputies as beginning on January 1 of an odd-numbered year and continuing through December 31 of the following odd-numbered year. The same definition is used to establish the election cycle for municipal clerks in Section GAB 12.01(2).

Recommended Motion:

1. **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 revisions to Chapters GAB 3 and GAB 12, Wis. Adm. Code, and directs staff to proceed with promulgation of the rules.

Statement of Scope
Government Accountability Board
Voter Registration, s. GAB 3.01,
and Certification and Training of Municipal Clerks, s. GAB 12.01

Subject

Amend ss. GAB 3.01(6) and 12.01(2)

Objectives of the Rules

Amend s. GAB 3.01(6) to change the election cycle for special registration deputies so that the cycle begins on January 1 of an even-numbered year and continues through December 31 of the following odd-numbered year. Amend s. GAB 12.01(2) to change the election cycle for municipal clerk training so that the cycle begins on January 1 of an even-numbered year and continues through December 31 of the following odd-numbered year.

Policy Analysis

The amendments to ss. GAB 3.01(6) and 12.01(2) will have the effect of modifying the election cycles governing training of municipal clerks and special registration deputies. Under the current administrative rules, those respective elections cycles begin on January 1 of an odd-numbered year and continue through December 31 of the following even-numbered year. This two-year term runs counter to the election and training cycle for election inspectors, which runs from January 1 of an even-numbered year through December 31 of the following odd-numbered year, pursuant to §7.30(4), Stats. Reconciling the election cycles and making them uniform for all election officials would eliminate significant confusion and administrative difficulties for local election officials.

Statutory Authority

Sections 5.05(1)(f), 7.315(1), and 227.11(2)(a), Stats.

Comparison with Federal Regulations

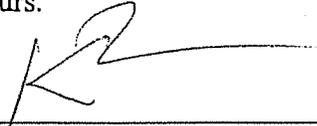
The training and certification of local election officials is not regulated by federal statutes or regulations.

Entities Affected by the Rules

All individuals serving as special registration deputies pursuant to certification by local election officials or the Government Accountability Board, and all municipal clerks seeking certification to conduct elections by the Board.

Estimate of Time Needed to Develop the Rules

10-15 hours.



Kevin J. Kennedy
Director and General Counsel
Government Accountability Board

State of Wisconsin \ Government Accountability Board

212 East Washington Avenue, 3rd Floor
Post Office Box 7984
Madison, WI 53707-7984
Voice (608) 266-8005
Fax (608) 267-0500
E-mail: gab@wisconsin.gov
<http://gab.wi.gov>



JUDGE TIMOTHY VOCKE
Chairperson

KEVIN J. KENNEDY
Director and General Counsel

MEMORANDUM

DATE: For the August 13, 2013 Board Meeting

TO: Members, Government Accountability Board

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

Prepared and Presented by:
Jonathan Paliwal, Assistant Staff Counsel
Michael Haas, Elections Division Administrator

SUBJECT: Promulgation of Revisions to Section GAB 5, Wis. Adm. Code – Ballot Security

In accordance with §5.05(1)(f), Stats., the Government Accountability Board is authorized by the Legislature to promulgate rules under Chapter 227 of the Statutes for the purpose of interpreting or implementing the laws regulating the conduct of elections or election campaigns or ensuring their proper administration. To this end, the Legislature has also given agencies, like the Government Accountability Board, the general authority to promulgate rules interpreting the provisions of any statute enforced or administered by the agency, if the agency considers it necessary to effectuate the purpose of the statute. §227.11(2)(a), Stats.

Chapter GAB 5, Wis. Adm. Code, provides standards and procedures related to security of ballots and electronic voting systems. In 2009, the Board considered and approved a comprehensive revision of Chapter GAB 5, after extensive discussion and receiving input from members of the public and local election officials. However, the final rule was not submitted to the Legislature and, in accordance with §227.14(6)(c), Stats., was effectively withdrawn. Therefore, the Board is required to reinitiate the rulemaking process.

Current Chapter GAB 5, Wis. Adm. Code is outdated. It provides only brief definitions and guidance regarding securing ballots and voting equipment. With advancing technology and increased focus on the security of ballots and voting equipment during each stage of an election, it is necessary to provide more specific and expanded standards and procedures for clerks to implement prior to, during, and after an election. Amending Chapter GAB 5 will ensure that electronic voting systems remain secure, as well as ballots, whether in paper, optical scan, or electronic format, from their delivery to a municipal clerk until their destruction under §7.23, Stats.

Pursuant to §§5.91 and 5.93, Stats., staff proposes to update Chapter GAB 5 to provide clearer guidance to election officials, and to use the version of the chapter previously approved by the Board as the basis for the new proposed rule. Attached to this Memorandum is the proposed Statement of Scope. Approval of the Statement of Scope will allow staff to proceed with the work necessary to promulgate an updated version of chapter GAB 5.

Recommended Motion:

1. **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 repeal and recreation of chapter GAB 5 regarding Ballot and Electronic Voting System Security.

STATEMENT OF SCOPE

Government Accountability Board

Rule No.: GAB 5

Relating to: Ballot security and interpreting ss. 5.84, 5.86, 5.87, 5.90, 5.905, 5.91, 7.23, 7.51, and 9.01, Stats.

Rule Type: Permanent

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

N/A

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

The Government Accountability Board's rule on ballot security, under ss. 7.23 and 7.51, Stats., has become outdated because of advances in technology and because of heightened administrative and public concerns about ballot security in light of recent security and chain-of-custody problems in elections both in Wisconsin and in other states. To address those concerns and to update ballot security procedures in Wisconsin, the Board proposes to repeal and re-create chapter GAB 5, the ballot security rule.

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

Existing policy: Chapter GAB 5 was originally published in 1992 and has not been amended except for renumbering and a correction in 2008. (Registers April 2008 No. 628 and June 2008 No. 630) Numerous statutory amendments have been made since 1992 for which GAB 5 applies. For example, current GAB 5 is silent as to the security of present-day electronic voting systems.

Proposed policy: Recreated Chapter GAB 5 will address the statutory changes that have occurred since 1992 and create security instructions for the safeguarding of electronic tabulating voting equipment memory devices for periods before, during, and after elections. The rule also provides flexibility for counties to request approval to implement alternative security procedures.

Alternatives:

A) Do Nothing – leave chapter 5 as it is.

- 1) Pros: This alternative means that no rule revision is necessary and staff resources will not be diverted from other tasks and duties needing the attention of the GAB.
- 2) Cons: The absence of rule revision in this instance will perpetuate the already out of date security measures and instructions provided in ch. 5 which are largely due to technological innovations. As the pace of technology ever quickens and ch. 5 lags behind even further the actual and perceived problems of ballot security will only become more egregious.

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

Section 7.23, Stats., establishes timelines for the destruction of election materials. Section 7.51, Stats., establishes requirements for securing ballots and electronic voting equipment and documenting their chain of custody.

Section 5.05(1)(f), Stats., expressly authorizes the Board to 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.

Section 227.11(2)(a), Stats., expressly authorizes the Board to promulgate rules to interpret the provisions of statutes the Board enforces or administers.

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

20 hours

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

This rule will affect county and municipal election officials.

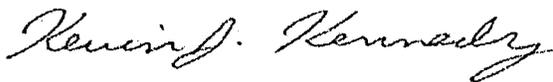
7. Summary and preliminary comparison with any existing or proposed federal regulation that is intended to address the activities to be regulated by the proposed rule:

Federal law does not apply to the preparation, printing, or security of ballots. Federal law does require that materials, including ballots, relating to any election in which a federal office is on the ballot, must be preserved for not fewer than 22 months.

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

The anticipated economic impact from the implementation of the proposed order is minimal to none. There may be some minimal economic impact on local officials but will not affect small businesses.

Contact Person: Michael Haas, 608-266-0136, michael.haas@wi.gov.



Kevin J. Kennedy
Director and General Counsel
Government Accountability Board

May 23, 2013
Date Submitted

State of Wisconsin \ Government Accountability Board

212 East Washington Avenue, 3rd Floor
Post Office Box 7984
Madison, WI 53707-7984
Voice (608) 266-8005
Fax (608) 267-0500
E-mail: gab@wisconsin.gov
<http://gab.wi.gov>



JUDGE TIMOTHY VOCKE
Chairperson

KEVIN J. KENNEDY
Director and General Counsel

MEMORANDUM

DATE: For the August 13, 2013 Board Meeting

TO: Members, Government Accountability Board

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

Prepared and Presented by:
Jonathan Paliwal, Assistant Staff Counsel
Michael Haas, Elections Division Administrator

SUBJECT: Promulgation of Revisions to Sections GAB 6.03 & 9.03, Wis. Adm. Code – Assistance by Government Accountability Board staff and voting procedures for challenged electors

In accordance with §5.05(1)(f), Stats., the Government Accountability Board is authorized by the Legislature to promulgate rules under Chapter 227 of the Statutes for the purpose of interpreting or implementing the laws regulating the conduct of elections or election campaigns or ensuring their proper administration. To this end, the Legislature has also given agencies, like the Government Accountability Board, the general authority to promulgate rules interpreting the provisions of any statute enforced or administered by the agency, if the agency considers it necessary to effectuate the purpose of the statute. §227.11(2)(a), Stats.

In accord with the review process mandated by 2007 Wisconsin Act 1, the Government Accountability Board has determined that for the sake of accuracy and contemporary practices that amendments to Chapters GAB 6 and 9 are required. The proposed change to Section GAB 6.03, Wis. Adm. Code, is simply to amend statutory references that occurred with the adoption of 2007 Wisconsin Act 1. The proposed change to Section GAB 9.03, Wis. Adm. Code, removes a single reference to “lever” voting machines which are no longer permitted in Wisconsin. None of the suggested revisions have any policy effect. They simply bring the rules into conformity with current Wisconsin statutes.

Attached to this Memorandum is the proposed Statement of Scope. Approval of the Statement of Scope will allow staff to proceed with the work necessary to promulgate an updated version of chapters GAB 6 & 9.

Recommended Motion:

1. **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 revisions to Chapters GAB 6 and 9, Wis. Adm. Code, and directs staff to proceed with promulgation of the rules.

STATEMENT OF SCOPE

Government Accountability Board

Rule No.: Ch. GAB §6.03 and §9.03

Relating to: Assistance by government accountability board staff and voting procedures for challenged electors

Rule Type: Permanent

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

N/A

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

The proposed change to ch. GAB §6.03, Wis. Adm. Code, is simply to amend statutory references that occurred with the adoption of 2007 Wisconsin Act 1. The proposed change to ch. GAB §9.03, Wis. Adm. Code, removes a single reference to “lever” voting machines which are no longer permitted in Wisconsin.

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

The proposed revisions do not result in any policy changes. The changes bring the rules into conformity with current Wisconsin statutes.

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

Section 5.05(1)(f), Stats., expressly authorizes the Board to 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.

Section 5.05(6a), Stats., permits the Board to authorize staff to provide informal opinions to individuals requesting advice. In ch. GAB §6.03 the Board has authorized the staff to provide these informal opinions.

Section 6.95, Stats., provides procedures for challenged electors to cast a ballot. In ch. GAB §9.03, additional detail is provided on the voting procedures for challenged electors.

Section 227.11(2)(a), Stats., expressly authorizes the Board to promulgate rules to interpret the provisions of statutes the Board enforces or administers.

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

10-15 hours.

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

This will affect individuals requesting advice from the Government Accountability Board staff and challenged electors.

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

Requests for assistance from the Government Accountability Board staff and voting procedures for challenged electors are state and local functions, not functions of the federal government. Federal regulations do not govern on these matters.

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

There is no economic impact anticipated to implement the rule changes.

Contact Person: Michael Haas, 608-266-0136, michael.haas@wi.gov.



Kevin J. Kennedy
Director and General Counsel
Government Accountability Board

July 8, 2013
Date Submitted

State of Wisconsin \ Government Accountability Board

212 East Washington Avenue, 3rd Floor
Post Office Box 7984
Madison, WI 53707-7984
Voice (608) 266-8005
Fax (608) 267-0500
E-mail: gab@wisconsin.gov
<http://gab.wi.gov>



JUDGE TIMOTHY VOCKE
Chairperson

KEVIN J. KENNEDY
Director and General Counsel

MEMORANDUM

DATE: For the August 13, 2013 Board Meeting

TO: Members, Government Accountability Board

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

Prepared and Presented by:
Jonathan Paliwal, Assistant Staff Counsel
Michael Haas, Elections Division Administrator

SUBJECT: Promulgation of Revisions to Chapters GAB 20.01, 21.01, and 21.04 – Complaint procedures and enforcement of campaign finance, lobbying and ethics laws

In accordance with §5.05(1)(f), Stats., the Government Accountability Board is authorized by the legislature to promulgate administrative rules under Chapter 227 of the Statutes for the purpose of interpreting or implementing the laws regulating the conduct of elections or election campaigns or ensuring their proper administration. To this end, the legislature has also given agencies, like the Government Accountability Board, the general authority to promulgate rules interpreting the provisions of any statute enforced or administered by the agency, if the agency considers it necessary to effectuate the purpose of the statute. §227.11(2)(a), Stats.

In accord with the review process mandated by 2007 Wisconsin Act 1, the Board has determined that amendments to Chapters GAB 20 and 21 of the Administrative Code are required. Under 2007 Wisconsin Act 1, the former State Ethics Board merged with the State Elections Board creating the Government Accountability Board. This merger created some discrepancies in the administrative rules because they delineate complaint procedures relating to agencies that no longer exist. Provisions governing the processing of complaints by the Board and Board investigations are contained in Sections 5.05 and 5.06, Stats., and therefore the existing rules are in need of repeal or repair.

Board staff proposes that Sections GAB 21.01 and 21.04 be repealed as the complaint procedures specified in those sections were superseded by 2007 Act 1. Staff also proposes that Section GAB 20.01 be amended to make the section inapplicable to campaign finance complaints and applicable to complaints alleging noncompliance with the federal Help America Vote Act of 2002, 42 USC § 15301.

Attached to this Memorandum is the proposed Statement of Scope. Approval of the Statement of Scope will allow staff to proceed with the work necessary to promulgate an updated version of chapters GAB 20 & 21.

Recommendations and Proposed Motions:

1. **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 revisions to Chapters GAB 20 & 21, Wis. Adm. Code, and directs staff to proceed with promulgation of the proposed rules.

STATEMENT OF SCOPE

Government Accountability Board

Rule No.: Amend GAB 20.01 and repeal of GAB 21.01 and 21.04

Relating to: Complaint Procedure and enforcement of campaign finance, lobbying and ethics laws relating to ss.5.05(1)(f), 5.05(2)(m), 5.93, 11.60, 13.69, 19.55, 227.11(2)(a) and interpreting Subchapter I of Chapter 5 of the Wisconsin Statutes.

Rule Type: Permanent

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

N/A

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

This rule repeals rules sections GAB 21.01 and 21.04 and amends GAB 20.01 as they are no longer operable subsequent to the merger of the State Ethics Board with the State Elections Board under 2007 Wisconsin Act 1. These rules prescribe procedures relating to processing complaints that were propagated under those particular state agencies. Because those agencies merged into the Government Accountability Board under 2007 Wisconsin Act 1, the associated complaint procedure of the former Ethics Board and the campaign finance complaint procedure of the former Elections Board are no longer consistent with current practices. The Government Accountability Board complaint procedures are provided by statute and not by administrative rule; therefore, the existing rules need to be repaired and repealed.

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

Existing policy: The existing policy prescribes rules that were intended for agencies that no longer exist and delineate complaint procedures that are inaccurate (e.g., the GAB address that is given in GAB 21.01 is not the address of the GAB's current location) or are superfluous to procedures that are prescribed in state statutes.

Proposed policy: Repealed GAB 21.01 and 21.04 will reconcile the administrative code with the statutory changes that have occurred since 2007 and the amended GAB 20.01 will accurately describe the provisions in the state statutes consistent with the complaint procedures currently in effect at the Government Accountability Board.

Alternatives:

A) Do Nothing – leave chapters 20 and 21 as they are.

- 1) Pros: This alternative means that no rule revision is necessary and staff resources will not be diverted from other tasks and duties needing the attention of the GAB.

- 2) Cons: The absence of rule revision and repeal in this instance will perpetuate out of date procedures and leave intact inaccurate rules in the administrative code.

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

Section 5.05(1)(f), Stats., expressly authorizes the Board to 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.

Section 5.93, Stats., establishes that the board may promulgate “reasonable rules” for its administration.

Section 227.11(2)(a), Stats., expressly authorizes the Board to promulgate rules to interpret the provisions of statutes the Board enforces or administers.

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

10-15 hours

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

This rule will affect those wishing to file complaints with the Board pursuant to enforcement of the election laws and in compliance with the Help America Vote Act.

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

Because this proposal repeals two existing former Ethics Boards rules and effectively repeals a portion of a former Elections Board rule, there is no congruent federal regulation for comparison.

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

The anticipated economic impact from the implementation of the proposed order is minimal to none.

Contact Person: Shane Falk, 608-266-2094, shane.falk@wisconsin.gov.



Kevin J. Kennedy
Director and General Counsel
Government Accountability Board

July 8, 2013
Date Submitted

State of Wisconsin \ Government Accountability Board

212 East Washington Avenue, 3rd Floor
Post Office Box 7984
Madison, WI 53707-7984
Voice (608) 266-8005
Fax (608) 267-0500
E-mail: gab@wisconsin.gov
<http://gab.wi.gov>



JUDGE TIMOTHY L. VOCKE
Chairperson

KEVIN J. KENNEDY
Director and General Counsel

MEMORANDUM

DATE: For the August 13, 2013 Board meeting

TO: Members, Government Accountability Board

FROM: Jonathan Becker, Division Administrator

SUBJECT: Reconciling Ethics Code disclosure requirements with attorneys' Code of Professional Responsibilities

The Code of Ethics for State Public Officials requires the disclosure of all organizations of which an official or a member of the official's immediate family is an authorized representative or agent. In addition, an official must disclose all sources of income of \$1,000 or more and, if the official or the official's family has a 10% or greater ownership interest in a business, all sources of the business's income of \$10,000 or more. §§19.43 and 19.44, Wis. Stats. Many state public officials are attorneys. Over the years, the issue has arisen whether attorneys would violate the Code of Professional Responsibilities by disclosing the identity of clients pursuant to these requirements.

Client confidentiality is a product of Supreme Court Rule 20:1.6(c) (5). That Rule provides:

- (a) A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, except for disclosures that are impliedly authorized in order to carry out the representation, and except as stated in pars. (b) and (c).

But, importantly, S.C.R. § 20:1.6(c) (5) also provides:

- (c) A lawyer may reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary:

* * *

- (5) to comply with other law or a court order.

The question is whether this language encompasses complying with the Code of Ethics for State Public Officials.

Until the Rules were amended in 1988, the Supreme Court had made clear that its Rule did not bar an attorney from providing the information called for by the Ethics Code. That is because the Rule specifically stated:

- (d) This rule does not prohibit a lawyer from revealing the name or identity of a client to comply with the ss. 19.43 and 19.44, Stats. 1985-86, the code of ethics for public officials and employees.

This exception was created in 1983, almost certainly in response to a Court of Appeals case which held that the Rules of Professional Responsibility did bar an attorney from providing client information on a Statement of Economic Interests. *Debardeleben v. Ethics Board*, 112 Wis.2d 324 (Wis. Ct. App. 3rd Dist. 1983).

Now, however, the Supreme Court Rule has reverted to the same language that existed at the time of the *Debardeleben* decision.

Although the 1988 revision again creates an ambiguity, the history of that revision, as described in the attached memorandum, strongly supports the view that the Supreme Court did not intend to change the substantive meaning of the exception as it related to the Code of Ethics for State Public Officials. Staff has consistently interpreted the Supreme Court Rule to permit disclosure.

Recommendation

That the Government Accountability Board endorse staff's interpretation of SCR 20:1.6(c) (5) as it applies to Ethics code disclosure requirements.

State of Wisconsin \ Government Accountability Board

Post Office Box 2973
212 East Washington Avenue, 3rd Floor
Madison, WI 53701-2973
Voice (608) 266-8005
Fax (608) 267-0500
E-mail: gab@wisconsin.gov
<http://gab.wi.gov>



JUDGE TIMOTHY VOCKE
Chairperson

KEVIN J. KENNEDY
Director and General Counsel

MEMORANDUM

DATE: For the August 13, 2013 Board meeting

TO: Members, Government Accountability Board

FROM: Jonathan Becker, Administrator
Prepared by: Assistant Staff Counsel Jonathan Paliwal

SUBJECT: Possible Conflict Between the Requirements of Financial Disclosure Contained within the Code of Ethics for Public Officials and the Confidentiality Requirements Set Forth in the *Rules of Professional Conduct for Attorneys*

QUESTION PRESENTED: Does Supreme Court Rule 20:1.6(c)(5) prohibit a lawyer who is also a state official to disclose the name of a client from which the official derived substantial income in order to comply with §§19.43 and 19.44, Wis. Stats.?

ANSWER: Complying with Ethics Code disclosure requirements is not in conflict with a lawyer's obligations of confidentiality under the Code of Professional Conduct.

ANALYSIS:

Introduction

In Wisconsin, under the "Code of Ethics for Public Officials and Employees" public officials are required to submit financial disclosures that name businesses and other organizations from which the official has received substantial income. §§ 19.43, 19.44, Wis. Stats. This has been the law of the state since 1978.

Quite commonly, state officials come from the ranks of the legal profession. Wisconsin, like all states, administers a professional code of responsibility. Since 1988, the Wisconsin Supreme Court has regulated the state bar according to the *Rules of Professional Conduct for Attorneys* which are themselves based on the American Bar Association's *Model Rules of Professional Conduct*. Contained within the Wisconsin *Rules* is Supreme Court Rule 20:1.6. S.C.R. ch. 20:1.6 governs the cornerstone of the attorney-client relationship: confidentiality.

Over the course of the last 30 years, these two ethical considerations, financial revelations of public officials versus potential disclosure of client confidences, have at times butted up against one another. S.C.R. § 20:1.6(a) provides:

- (a) A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, except for disclosures that are impliedly authorized in order to carry out the representation, and except as stated in pars. (b) and (c).

But, importantly, S.C.R. § 20:1.6(c)(5) provides:

(c) A lawyer may reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary:

* * *

(5) to comply with other law or a court order.

The question is whether this language encompasses complying with the Code of Ethics for State Public Officials.

History

The Wisconsin Court of Appeals first addressed the apparent conflict between the Ethics Code and the Code of Professional Responsibility in 1983. In *Debardeleben v. Ethics Board*, the court reversed an ethics board order imposing a forfeiture on Arthur Debardeleben for violating the disclosure requirement for public officials and employees. 112 Wis.2d 324 (Wis. Ct. App. 3rd Dist. 1983). Debardeleben was an attorney who was also a former appointee to the Board of Regents of the University of Wisconsin system who had asked that the Ethics Board waive the requirement that he disclose any clients who had paid his law partnership \$1000 or more during 1978. *Id.* 325-26. The Board refused to grant the waiver based on the conclusion that a client's identification was not within the scope of attorney-client privilege. *Id.* at 326. Finding this conclusion in error, the Court decided for Debardeleben noting that the Ethics Board abused its discretion under the disclosure statutes. *Id.* In particular, the court noted

The board's implementation of sec. 19.44(1)(f) must also fail because it conflicts with the Wisconsin Supreme Court's regulation of the practice of law. *State ex rel. Reynolds v. Dinger*, 14 Wis.2d 193, 206, 109 N.W.2d 685, 692 (1961). The power to regulate the practice of law is constitutionally vested in the judicial branch of government. Wis. Const. art. VII, § 2; see also *State ex rel. State Bar of Wisconsin v. Keller*, 16 Wis.2d 377, 381, 114 N.W.2d 796, 798, reh'g denied, 16 Wis.2d 390, 116 N.W.2d 141 (1962). In the exercise of this power, the supreme court has required attorneys to keep their clients' identities confidential. There is good reason for the requirement. Legal advice can be prophylactic as well as remedial. As any experienced attorney in private practice knows, many clients would not seek legal advice in advance of a problem or effect changes that require legal assistance without the confidentiality requirement.

Id. at 327-28.

For good measure, the court added that it doubted the intent of the legislature was to compel attorneys to disclose client identities at the discretion of the ethics board since no clear indication of legislative intent was apparent in regards to enforcement of sec. 19.44(1)(f), Stats. *Id.* at 328.

The Rules after *Debardeleben*

In 1983, the ABA replaced its *Code of Professional Responsibility* with a new set of ethical standards, the *Model Rules of Professional Conduct*. The Wisconsin Supreme Court, in February of 1984, appointed a committee, chaired by Madison attorney Daniel Hildebrand, to review the ABA *Model Rules* and make recommendations concerning the adoption, in whole or

in part, of the *Model Rules* as it might deem advisable. After numerous meetings the committee filed its report with the court on January 2, 1985 with a supplemental filed on January 24th, 1985. These recommendations were published in the November issue of the *Wisconsin Bar Bulletin* along with a request for written comments from interested persons. See 57 WIS.BAR.BULL. 11, at 60 (1984). The court adopted *The Rules of Professional Conduct*, made effective on January 1, 1988 after publication in the August 1987 *Wisconsin Bar Bulletin*, but not before having considered further comments and recommendations subsequent to public hearing. In the Matter of the Amendment of Supreme Court Rules: SCR Chapter 20; Code of Professional Responsibility; SCR 11.01, 11.05, 11.08, 13.03, 13.04, 21.02, and 21.05; Modification of SCR Chapter 31: Continuing Legal Education, 139 Wis.2d xiii (1988).

Because the court's deliberations on a rule change are held in private there is no record of official reasons for a rule change. Documents that were created by justices or court personnel in the course of the court's decision-making processes, such as personal notes, drafts or internal court memoranda/communications are not accessible to the public. This type of communication falls within the category of internal, deliberative communications. To the extent that such documents even exist, the public interest in disclosure of such items is outweighed by the damage to the public arising from the disclosure of documents generated by an appellate court as part of its decision-making process. Any request for disclosure of this type of material cannot be granted, so besides the resulting rule itself, there is only the committee's report and the comments that were offered to the court to offer any insight into the changes that were made. As for what became of the confidentiality rules for Wisconsin's attorneys in 1988, this presented little problem since the result was clear, but for subsequent changes that occurred during the next round of rule changes in 2007, the situation becomes murkier.

The New 1988 Rules

Rule 1.6 concerning Confidentiality of Information was by far the most controversial provision in the drafting and debate stages and, as a result, the rule that was most likely to be amended as each state put its own gloss on its version of the *Model Rules*. See 2 Geoffrey C. Hazard Jr. & W. William Hodes, *THE LAW OF LAWYERING*, §AP4:103 at 1259-60 (Aspen Law & Business, 2d ed. 1996 Supp. 1998). In contrast to the ABA's earlier *Code of Professional Responsibility*, the text of the rule makes no allowance for disclosures "required by law".³ Only in the comments did the new *Rules* admit for the possibility, averring that "a lawyer may be obligated or permitted by other provisions of law to give information about a client. Whether another provision of law supersedes Rule 1.6 is a matter of interpretation beyond the scope of these Rules, but a presumption should exist against such a supersession." MODEL RULES OF PROFESSIONAL CONDUCT Rule 1.6 cmt. Disclosures Otherwise Required or Authorized (1983).

The Code of Professional Responsibility Review Committee sought to rectify this omission by proposing the addition of 1.6(b)(4) to the Wisconsin version of the *Model Rules* which would have read "A lawyer may reveal such information to the extent that the lawyer reasonably believes necessary to comply with other law." 57 WIS.BAR.BULL. 11, at 64 (1984). No additional comments were suggested in the original proposal.

Without mentioning *Debardeleben*, but almost certainly aware of that case's outcome, the State of Wisconsin Ethics Board wrote to the Supreme Court "concerned that your rules pertaining to lawyers' confidences harmonize with that statute administered by the

Wisconsin's Ethics Board that calls upon [various state officials] to identify businesses and other organizations from which they have derived substantial income." Letter from Thomas S. Smith, Chairman, State of Wisconsin Ethics Board, to the Justices of the Wisconsin Supreme Court (Sept. 12, 1985) in Rule G-84-06, Petition to Amend S.C.R. Ch.20 (on file with clerk's office). And to remove all doubt that the statutes the Legislature had directed the Board to administer applied to Wisconsin attorneys, the Board recommended that the court "modify" proposed Rule 1.6 by adding to that rule a new paragraph (c):

(c) This rule does not excuse a public official or employee from the requirement of sec. 19.44(1)(e) and (f), Stats., to identify a body politic organization or lobbyist from which the public official or employee received \$1,000 or of income.

The Board then cited the identical persuasive authority that the *Debardeleben* court declined to follow when the court noted that "conclusions of courts in other jurisdictions concerning their financial disclosure laws or the attorney-client privilege do not determine what a Wisconsin attorney may do." *Id.* at 326-327. And, "above all else" the Board requested "a definitive answer to the question of whether proposed Rule 1.6, of necessity, conflicts with sec. 19.44(1)(e) and (f), Stats." Letter from Thomas S. Smith, Chairman, State of Wisconsin Ethics Board, to the Justices of the Wisconsin Supreme Court (Sept. 12, 1985) in Rule G-84-06, Petition to Amend S.C.R. Ch.20 (on file with clerk's office).

This recommendation prompted a letter from the Chairmen of the Code of Professional Responsibility Review Committee, Mr. Hildebrand, in which he declared that the Board's modifications were "unnecessary" and "inappropriate." (Sept. 19, 1985) in Rule G-84-06, Petition to Amend S.C.R. Ch.20 (on file with clerk's office). Mr. Hildebrand's concerns were several. Namely:

- 1) Rule 1.6(b)(4) as proposed already stated that a lawyer may reveal such information as a lawyer reasonably believes is necessary to comply with other law. *Id.* If "§19.44 is singled out, the status of Rule 1.6 with regard to other laws would be somewhat difficult to determine." *Id.*
- 2) That the present confidentiality rule, Sup.Ct.R. 20.22(2)(b) permits a lawyer to reveal confidences or secrets when "required by law." *Id.* Thus the committee sought to maintain continuity; and, it "appeared" that there had been no problem obtaining §19.44 compliance in this regard. *Id.*
- 3) And, because the legislature changes its statutes at times, there would be the added complication of the rules governing attorneys having to be kept current with the statutes. *Id.*

In 1987, the Wisconsin Supreme Court issued orders for the repeal of the Supreme Court Rules Chapter 20 – *Code of Professional Responsibility* and for its recreation as the amended *Rules of Professional Conduct for Attorneys*. 139 Wis.2d xiii, xv. The court also ordered that "the Comments to the American Bar Association Model Rules of Professional Conduct and the Committee Comments of the Code of Professional Responsibility Review Committee are not adopted but shall be printed for information purposes." *Id.* When the newly recreated Chapter 20 was published, there was no "required by law" provision as had been recommended by the committee (the comments did contain the ABA's "comply with other law" language);

however, the Ethics Board's request was definitively answered. *See* 60 WIS. BAR. BULL 8, at 19 (1987). The court added S.C.R. ch. 20:1.6(d) which read:

(d) This rule does not prohibit a lawyer from revealing the name or identity of a client to comply with the ss. 19.43 and 19.44, Stats. 1985-86, the code of ethics for public officials and employees.

S.C.R. (1988).

Thus, it became clear that one could no longer say that the Supreme Court required attorneys to keep their clients' identities confidential in regards to sections 19.43 and 19.44. *Id.* at 328.

The Current 2007 Rules

Chapter 20 was once again repealed and recreated following nearly the exact same set of circumstances as in 1988. The ABA adopted changes to its code which trickled down to the states who in turn adopted in part or whole the changes the ABA had suggested. Once again, the Wisconsin Supreme Court appointed a committee (The Wisconsin Ethics 2000 Committee) chaired by attorney Daniel Hildebrand to propose amendments to the Supreme Court Rules. The court adopted the new and current chapter 20 and it went into effect July 1, 2007. Sup. Ct. Order. No. 04-07, 293 Wis.2d xv. The committee proposed this change to 1.6:

The proposal contains the distinctive exception to the duty of confidentiality that is in the current rule, arising in certain cases involving client crimes and frauds. The proposal adopts the model rule exceptions for compliance with a court order to testify and also for disclosures that "comply with other law." Because of the later exception, the committee proposes deletion of the current reference to §§ 19.43 and 19.44, Stats.

Rule Petition 04-07, *In the Matter of the Amendment of Supreme Court Rules Chapter 20 Rules of Professional Conduct for Attorneys*, filed July 29, 2004 by the Wisconsin Ethics Committee, at 7, on file with the clerk's office, <http://wicourts.gov/scrules/0407.htm>.

The Court adopted this proposal. Sup. Ct. Order. No. 04-07, 293 Wis.2d xv. Sup.Ct.R. 20:1.6(d) was excised and S.C.R. 20:1.6(c)(5) was added thus incorporating the language from the comments that a lawyer may reveal information relating to the representation of a client "to comply with other law or a court order."

CONCLUSION:

Because S.C.R. 20:1.6 no longer specifically cites §§19.43 or 19.44, the Supreme Court has created some ambiguity. However, the history of changes to the Code of Professional Responsibility, leaves little room for doubt that it cannot be read to provide shelter for attorneys who do not wish to disclose significant sources of income should they seek to become public officials. For 19 years, the *Rules of Professional Conduct* made explicit reference to only two statutes and those were, in fact, the ethics statutes requiring disclosure. Although they have been removed from the *Rules*, all indications are that this was because the Court viewed the previous *Rules* as being too narrow in only accounting for §§19.43 and 19.44 as opposed to

now embracing “other law or court order”. On both occasions of amending chapter 20 in Wisconsin, the Chairmen of the Code of Professional Responsibility Review Committee admitted as much. Hildebrand, *supra*.

In summary, lawyers are not excused from the reporting requirements of the Ethics Code simply because they are lawyers. There may be anomalous circumstances where the disclosure of a client’s identity might prove an embarrassment to the client or would otherwise not be in the public interest; but, even here the statutes allow for the Government Accountability Board to waive that aspect of the filing requirement. *See* §19.43(8), Wis. Stats. In the absence of these exceptional circumstances, attorney-client confidentiality is no impediment to full compliance with the state of Wisconsin’s financial disclosure laws.

Footnotes

- 1) Supreme Court Rule 20.21(4): Ethical Consideration. The attorney-client privilege is more limited than the ethical obligation of a lawyer to guard the confidences and secrets of the client. This ethical precept, unlike the evidentiary privilege, exists without regard to the nature or source of information or the fact that others share that knowledge. A lawyer should endeavor to act in a manner which preserves the evidentiary privilege; for example, he or she should avoid professional discussions in the presence of persons to whom the privilege does not extend. A lawyer owes an obligation to advise the client of the attorney-client privilege and timely to assert the privilege unless it is waived by the client.
- 2) Supreme Court Rule 20.22(2)(b): A lawyer may reveal confidences or secrets when permitted under disciplinary rules or required by law or court order.
- 3) MODEL RULES OF PROFESSIONAL CONDUCT Rule 1.6 (1983): Confidentiality of Information
 - a. A lawyer shall not reveal information relating to representation of a client unless the client consents after consultation, except for disclosures that are impliedly authorized in order to carry out the representation, and except as stated in paragraph (b).
 - b. A lawyer may reveal such information to the extent the lawyer reasonably believes necessary:
 1. to prevent the client from committing a criminal act that the lawyer believes is likely to result in imminent death or substantial bodily harm; or
 2. to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, to establish a defense to a criminal charge or civil claim against the lawyer based upon the conduct in which the client was involved, or to respond to allegations in any proceeding concerning the lawyer’s representation of the client.

State of Wisconsin \ Government Accountability Board

212 East Washington Avenue, 3rd Floor
Post Office Box 7984
Madison, WI 53707-7984
Voice (608) 266-8005
Fax (608) 267-0500
E-mail: gab@wisconsin.gov
<http://gab.wi.gov>



JUDGE TIMOTHY L. VOCKE
Chairperson

KEVIN J. KENNEDY
Director and General Counsel

MEMORANDUM

DATE: For the August 13, 2013 Board Meeting

TO: Members, Government Accountability Board

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

Prepared and Presented by:

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

SUBJECT: Legislative Status Report

The following is a summary of legislative proposals and legal actions relevant to the agency that staff is monitoring. The title of new proposals and status of any bill that is new or updated since the previous Board meeting is in bold font.

NEW LEGISLATION

1. ***Senate Joint Resolution 35: requiring the legislature to enact laws requiring reasonable notice of and public access to meetings of governmental bodies including the legislature (first consideration).***

This constitutional amendment, proposed to the 2013 legislature on first consideration, requires the legislature to enact laws requiring reasonable notice of and public access to meetings of governmental bodies including the legislature.

Referred to the Committee on Government Operations, Public Works, and Telecommunications.

2. ***Assembly Bill 202: certification of election observers***

This bill requires the chief inspector and the municipal clerk to designate an observation area for election observers that is within three feet of the table at which electors announce their name and address to be issued a voter number and within three feet of the table at which a person may register to vote. Under the bill, the chief inspector or municipal clerk may permit an election observer to sit at either table, provided the observer is not permitted to observe confidential information. The bill also requires each election observer to print his or her name and sign and date a log maintained for the polling place.

Referred to the Committee on Campaigns and Elections. Public hearing held on May 21, 2013. Incorporated with amendment into Assembly Bill-225 (original draft only).

3. *Assembly Bill 225: various changes to campaign finance, lobbying, ethics, and elections laws.*

This bill makes several changes related to campaign finance, lobbying, ethics, and elections. There are some provisions in the original draft of the bill, the substitute amendment, or both. Additional information on Assembly Bill 225 and the related substitute amendment is included in the supplemental materials.

Referred to the Committee on Campaigns and Elections. Public hearing held on June 4, 2013. Assembly substitute amendment 1 introduced. Assembly Substitute Amendment 1 passed by the Committee on Campaigns and Elections with one amendment 8-1. Passed by the Assembly by voice vote with two amendments and messaged to the Senate.

4. *Assembly Bill 235 and Senate Bill 198: appointment and training of special registration deputies by county clerks and boards of election commissioners.*

This bill permits a county clerk or board of election commissioners to appoint one or more individuals to serve as a special registration deputy. The bill also permits an individual to be appointed to serve more than one county by more than one county clerk or board of election commissioners. Under the bill, a deputy who is appointed by the clerk or board may register any qualified elector of the county for which he or she is appointed. The bill makes a county clerk or board of election commissioners responsible for the training of any special registration deputies appointed by that clerk or board and permits that clerk or board to delegate responsibility for providing training to certain other county or municipal officials or employees. Under the bill, a municipal clerk retains the ability to appoint special registration deputies for the municipality. This bill provides, in addition, that no person who employs an individual to serve as a special registration deputy may require the individual, as a condition of employment, to obtain an express or implied quota of new registrants within a given period.

**Assembly: Referred to the Committee on Campaigns and Elections.
Senate: Referred to the Committee on Elections and Urban Affairs.**

5. *Assembly Bill 268: legislative vacancies.*

This bill changes the statutes to specify that the special election to fill a vacancy that occurs before the specified second Tuesday in May must be ordered within 60 days after the vacancy occurs, subject to the current exception related to legislative session scheduling. Current statutes require the vacancy to be filled "as promptly as possible."

Assembly: Referred to the Committee on Government Operations and State Licensing.

PREVIOUS LEGISLATION - UPDATED STATUS

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

These bills provide that an individual who serves as an election official at a polling place on election day need be an elector only of a county in which the municipality where the official serves is located, except as the law currently permits the individual to reside elsewhere. Assembly Bill 18 and Senate

Bill 20 make no change, however, to the residency requirement applicable to a high school pupil who serves as an inspector.

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

Assembly: Referred to the committee on Campaigns and Elections. **Incorporated into AB225 (original and substitute amendment).**

Senate: Referred to the Committee on Elections and Urban Affairs.

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

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

Assembly: Passed by the Committee on Campaign and Elections. Referred to the Committee on Rules. Incorporated into AB225 (original and substitute amendment).

Senate: Bill referred to the Committee on Elections and Urban Affairs.

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

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

Referred to the Committee on Campaigns and Elections. Substitute amendment offered by Rep. Stroebel to extend end time to 6pm and to allow individuals to make appointments with local clerks to arrange for absentee voting after the prescribed days and times, but not the Saturday and Sunday preceding the election. **Incorporated into AB225 (original draft only).**

9. *Assembly Bill 89 and Senate Bill 94: the method of reporting election returns by municipalities.*

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

Assembly: Referred to the Committee on Campaigns and Elections. **Incorporated into Assembly Bill-225 (original and substitute amendment).**

Senate: Referred to the Committee on Elections and Urban Affairs.

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

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

Referred to the Committee on Elections and Urban Affairs. **Incorporated into Assembly Bill-225 (original and substitute amendment).**

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

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

Assembly: Referred to the Committee on Campaigns and Elections. **Incorporated into Assembly Bill-225 (original draft only).**

Senate: Referred to the Committee on Elections and Urban Affairs.

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

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

Assembly: Referred to the Committee on Campaigns and Elections. **Public hearing held on June 4, 2013.**

Senate: Referred to the Committee on Elections and Urban Affairs.

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

Under this bill, if the territory to be incorporated includes portions of more than one town, the electors of each town must approve the referendum for the incorporation to take effect. In addition, the majority that is required to approve the referendum in the territory with the smallest population, that is located solely in one of the towns, is 75 percent.

Referred to the Committee on Elections and Urban Affairs. **Public hearing held on May 21, 2013. Passed as amended by the Committee on elections and Urban Affairs 8-0. Referred to the Committee on Rules.**

PREVIOUS LEGISLATION – NO STATUS CHANGE

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

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

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

Referred to the Committee on Government Operations, Public Works and Telecommunications.

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

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

Public hearing held 2/27/13.

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

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

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

Assembly: Referred to the Committee on Government Operations and State Licensing.

Senate: Referred to the Committee on Government Operations, Public Works and Telecommunications.

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

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

Agency specific hearings in front of Joint Finance Committee.

Assembly: Bill passed 55-42, messaged to the Senate.

18. Assembly Bill 85: changing the compensation structure by which a Milwaukee County supervisor may be paid, changing the term length of a Milwaukee County supervisor, affecting the right of an annuitant under the Milwaukee County Employee's Retirement System to be rehired by Milwaukee County, limiting the authority of Milwaukee County to enter into certain intergovernmental agreements, removing and clarifying some authority of the Milwaukee County board, increasing and clarifying the authority of the Milwaukee County executive, deleting obsolete statutory references, and requiring a referendum.

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

The text of Engrossed 2013 Assembly Bill 85 consists of the bill, as passed by the assembly on May 8, 2013, as affected by the following Assembly Amendments adopted in the assembly on April 17, 2013: Assembly Amendments 1, 2, and 3. Enacted as 2013 Wisconsin Act 14.

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

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

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

Referred to the Committee on Elections and Urban Affairs.

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

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

Referred to the Committee on Elections and Urban Affairs.

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

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

to the action or proceeding, in writing, of the fact that the contribution has been made and the date and amount of the contribution. The bill also provides a definition for an "interested contributor."

Referred to the Committee on Campaigns and Elections.

22. *Assembly Joint Resolution 23: establishing competitive election criteria for redistricting the legislature (first consideration).*

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

Referred to the Committee on Campaigns and Elections.

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

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

Referred to Committee on Elections and Urban Affairs.

24. *Assembly Bill 185 and Senate Bill 163: legislative and congressional redistricting.*

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

Assembly: Referred to the Committee on Government Operations and State Licensing.

Senate: Referred to the Committee on Elections and Urban Affairs.

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

This bill imposes additional registration and reporting requirements on any person who within 60 days of an elections, makes any mass communications, including an electronic communications, a mass distribution, or a mass telephoning, that includes a reference to a clearly identified candidate at that elections. In addition, it requires the person who becomes subject to the registration requirements because of making the mass communications to report, upon registration, the information that would have been required to be reported has they been registered. The bill does not apply to

communications made by a corporation, cooperative, or nonpolitical voluntary association and is limited to the corporation's, cooperative's, or association of members, shareholders, or subscribers. Reportable activity under this bill also applies to contribution and disbursement limitations and restrictions by causing reportable "contributions," "obligations," and "disbursements" to include the cost of all reportable communications. This bill extends 24-hour reporting of mass communication expenditures of \$500 cumulatively since the date of the registrant's last report.

Referred to the Committee on Elections and Urban Affairs.

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

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

Referred to the Committee on Elections and Urban Affairs.

DRAFT LEGISLATION

27. LRB 1722/1: to raise the threshold for campaign finance disclosure of referendum-related activity from \$750 to \$2500.
28. LRB 0058/1: to allow online voter registration up to 20 days prior to an election for any eligible voter who has a driver license or DOT ID.
29. LRB 1731/1: to require that a special election for certain vacant legislative seats be ordered within 60 days.
30. LRB 0046/1: to double the number of nominees submitted to the governor by the GAB candidate committee.
31. LRB 0115/1: to restrict securing ballot containers to the chief inspector and one other inspector whose party affiliation differs from the chief inspector's party affiliation.
32. LRB 0116/1: to require the address of a witness for an absentee ballot in order to be counted.
33. LRB 121/1: to require the board of canvassers to hear and decide any objection to the validity of any Election Day registration.
34. LRB 122/1: to only count as voting electors those who signed the poll list, for the purposes of a recount and draw-down procedures.
35. LRB 0123/1: to require chief inspectors to assign an equal number of pollworkers from party nominations.
36. LRB 0471/1: to require election officials to record the type of proof of residence presented by a voter; and to require the GAB to include on the official registration list (SVRS) an indication of whether an elector was required to provide proof and residence, and if so, type of identifying document submitted by the elector.

37. LRB 0472/1: to require election officials to uniformly write the identity of remade/duplicate ballots on the upper right-hand corner of the ballot.
38. LRB 1527/2: to clarify standards for election observers.

State of Wisconsin\Government Accountability Board

Post Office Box 7984
212 East Washington Avenue, Third Floor
Madison, WI 53707-7984
Voice (608) 266-8005
Fax (608) 267-0500
E-mail: gab@wisconsin.gov
<http://gab.wi.gov>



KEVIN J. KENNEDY
Director and General Counsel

DATE: For the August 13, 2013 Meeting

TO: Government Accountability Board Members

FROM: Kevin J. Kennedy, Director and General Counsel

SUBJECT: Proposed 2014 Government Accountability Board Meeting Dates

The attached schedule lists, in bold, underscored type, proposed meeting dates for the Government Accountability Board in 2014. The proposed meeting dates are presented to enable Board Members to coordinate the Board meetings with Members' 2014 travel and work plans.

I have set out a list of proposed meeting dates beginning in January, 2014. There are seven suggested meeting events including one teleconference meeting in January. I have placed them in the context of other events on the agency calendar.

I generally defaulted to Tuesdays because of our past experiences. Monday meetings presented preparation challenges for staff and Board Members expressed a satisfaction with Tuesday meetings. The January 10th and the June 10th meetings are important for resolving ballot access challenges and meeting certification deadlines for primary elections. In addition, the Board is required to select new officers and review its delegation of authority to the Director and General Counsel at the January meeting.

The proposed meeting schedule is designed to fit in with other agency tasks, including election events and filing deadlines. There is flexibility to schedule special meetings if required. I have not proposed meeting for two days in March. In the past based on the anticipated workload with no meetings other than a short teleconference meeting between mid- December and mid-March this made sense. In general Board Members are also more likely to have travel plans during that time. However, the past agendas have not justified two days for meetings.

In some cases, depending on the number and/or complexity of the issues, the Board may consider holding short teleconference calls between in-person meetings. Also, the Board may wish to consider holding some of its 2014 meetings in venues other than Madison.

Proposed Motion: The Government Accountability Board adopts the proposed 2014 meeting schedule presented by the Director as modified by Board discussion.

Government Accountability Board Proposed 2014 Meeting Dates

Seven (7) Proposed Meeting Dates
including 1 Teleconference Meeting

Tuesday, January 14, 2014 (Teleconference)

Tuesday, March 18, 2014

Tuesday, May 20, 2014

Tuesday, June 10, 2014

Tuesday, August 26, 2014

Tuesday, October 28, 2014

Tuesday, December 16, 2014

January 2014

Tuesday, January 7, 2014 – Nomination Paper Filing Deadline for Spring Election

Friday, January 10, 2014 – Deadline for Filing Statements of Economic Interests and Ballot Access Challenges for Spring Elections

Tuesday, January 14, 2014 - Proposed Government Accountability Board Teleconference Meeting

Tuesday, January 14, 2014 – Deadline for certifying candidates for spring primary election ballot

Friday, January 31, 2014 - Deadline for Filing Semi-Annual Continuing Campaign Finance Reports

Friday, January 31, 2014 - Deadline for Filing Semi-Annual Lobby Reports

February 2014

No Meeting Proposed

Monday, February 10, 2014 - Deadline for Filing Spring Pre-Primary Campaign Finance Reports

***Tuesday, February 18, 2014* – Spring Primary Election**

March 2014

Tuesday, March 4, 2014 – Deadline for Certifying Spring Primary Election Results

Tuesday, March 18, 2014 - Proposed Government Accountability Board Meeting

Monday, March 24, 2014 - Deadline for Filing Spring Pre-Election Campaign Finance Reports

April 2014

No Meeting Proposed

Tuesday, April 1, 2014 – Spring Election

Tuesday, April 15, 2014 – First Day to Circulate Nomination Papers for Fall Elections

Wednesday, April 30, 2014 – Deadline for Filing Statements of Economic Interests – Annual Filers

May 2014

Thursday, May 15, 2014 – Deadline for Certifying Spring Election Results

Tuesday, May 20, 2014 - Proposed Government Accountability Board Meeting

June 2014

Monday, June 2, 2014 - Nomination Paper Filing Deadline for Partisan Primary Election

Thursday, June 5, 2014 - Deadline for Filing Statements of Economic Interests and Ballot Access Challenges for Fall Elections

Tuesday, June 10, 2014 - Proposed Government Accountability Board Meeting

Tuesday, June 10, 2014 – Deadline for certifying candidates for partisan primary election ballot

July 2014

No Meeting Proposed

Monday, July 21, 2014 - Deadline for Filing Semi-Annual Continuing Campaign Finance Reports

Thursday, July 31, 2014 - Deadline for Filing Semi-Annual Lobby Reports

August 2014

Monday, August 4, 2014 - Deadline for Filing Fall Pre-Primary Campaign Finance Reports

Tuesday, August 12, 2014 – Partisan Primary Election

Tuesday, August 26, 2014 – Deadline for Certifying Partisan Primary Election Results

Tuesday, August 26, 2014 - Proposed Government Accountability Board Meeting

September 2014

No Meeting Proposed

October

Monday, October 27, 2014 - Deadline for Filing Fall Pre-Election Campaign Finance Reports

Tuesday, October 28, 2014 - Proposed Government Accountability Board Meeting

November 2014

No Meeting Proposed

Tuesday, November 4, 2014 – General Election

December 2014

Monday, December 1, 2014 – First Day to Circulate Nomination Papers for Spring Elections

Monday, December 1, 2014 – Deadline for Certifying General Election Results

Tuesday, December 16, 2013 Proposed Government Accountability Board Meeting

State of Wisconsin \ Government Accountability Board

212 East Washington Avenue, 3rd Floor
Post Office Box 7984
Madison, WI 53707-7984
Voice (608) 266-8005
Fax (608) 267-0500
E-mail: gab@wisconsin.gov
<http://gab.wi.gov>



JUDGE TIMOTHY VOCKE
Chair

KEVIN J. KENNEDY
Director and General Counsel

MEMORANDUM

DATE: For the August 13, 2013 Board Meeting

TO: Members, Wisconsin Government Accountability Board

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

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

SUBJECT: Ethics and Accountability Division Program Activity

Division Staffing
Jonathan Becker
Division Administrator

Since the last report, Amy Cokel has left the Division. Amy was an LTE that assisted the division on a multitude of administrative tasks including filing, data entry and records retention. Her positive attitude, attention to detail and dedication will be missed. We wish her the best in her future endeavors.

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

July Continuing 2013 Reports

Materials for the July Continuing 2013 filing were sent to all registrants. As of August 1, 2013, 1364 reports have been filed. 98 committees did not file their required reports. Non - filers have been contacted by G.A.B. staff by email on July 30, 2013, and staff continues to follow-up by phone with the committees without a valid email address.

Upcoming Campaign Finance Reports

There are no regularly scheduled elections in Fall 2013. Therefore, the next report due for all registrants is the January Continuing 2014 report and is due January 31, 2014.

Campaign Finance Audits

Staff conducts various audits on campaign finance data received through the many reports filed with our office. An audit is one tool used to ensure compliance with campaign finance laws enforced by the G.A.B. An update on the status of ongoing audits is provided below:

- \$10,000 annual individual limit: 24 individuals were initially contacted. 19 cases were closed with no violation being found. 3 individuals have paid penalties for exceeding the limit, totaling \$3,037.50. 2 cases are still outstanding.
- Campaign period limit for individual office holders (where applicable): 77 committees were initially contacted. 14 committees were cleared of any violations. 6 committees received formal warnings and no forfeiture was sought. 13 committees have admitted to a violation and \$4,920.01 in forfeitures has been collected to date. 44 committees are still outstanding.
- Employer and occupation information provided for contributions from an individual exceeding \$100: 17 committees with substantial compliance issues were initially contacted. 10 of these committees have amended past reports to include this information and have been closed. No financial penalties have been assessed to date. 7 committees are still outstanding.
- Corporate contributions: 21 committees were initially identified as accepting contributions from businesses. 14 committees have amended their reports and were closed with no violation. 2 committees have paid forfeitures totaling \$300. 5 committees are still outstanding.
- Registered lobbyist contributions outside the allowable window: 98 lobbyists were originally identified as contributing to state-level partisan candidates outside of the allowable window. 53 lobbyists were cleared based on a variety of factors and no violation occurred. 32 lobbyists have admitted to contributing outside the allowable window and a total of \$9,105 has been forfeited to date. 11 cases are still outstanding.
- 45%/65% audits are underway and committees identified as being in violation of these limits will be contacted in August.

This is not an exhaustive list as other audits are triggered by complaints or from issues discovered by staff review of reports on their face. G.A.B. staff continues to work with our software vendor and our in-house IT staff to automate the audits we conduct.

Campaign Finance Training

G.A.B. campaign finance staff conducted 11 formal training sessions on campaign finance across the state in the months of May and June. The training sessions were intended for committee treasurers, political parties, candidates and county/local clerks and covered the basics of campaign finance and the Campaign Finance Information System (CFIS). The training sessions were very well attended and we received positive feedback from those in attendance. G.A.B. campaign finance staff intends to conduct additional training sessions in the Fall.

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

Lobbying Update

Molly Sessler and Nate Judnic
Campaign Finance Auditors

Statement of Lobbying Activities and Expenditures Reports – July-December 2012

All registered lobbying principals were required to file a 6-Month Statement of Lobbying Activities and Expenditures (SLAE) report covering lobbying activities from July 1 through December 31, 2012. The report was due January 31, 2013. All lobbying principals required to file this report have filed. 23 lobbying principals were sent letters notifying them that their report was filed late. Of the 23 principals, 17 received a warning while the remaining 6 were required to pay a forfeiture. As of August 1, 4 forfeitures totaling \$600 has been collected. 1 forfeiture was waived upon research and further re-consideration and 1 forfeiture is still outstanding. G.A.B. staff will follow-up with the remaining principal with an outstanding forfeiture.

Statement of Lobbying Activities and Expenditures Reports – January-June 2013

All registered lobbying principals were required to file a 6-Month Statement of Lobbying Activities and Expenditures (SLAE) report covering lobbying activities from January 1 through June 30, 2013. The report was due July 31, 2013. As of August 5, 13 reports are still outstanding. G.A.B. staff will follow-up with the remaining principals with an outstanding report and will report back to the Board with a recommendation for potential late penalties at the Board's next meeting.

Eye on Lobbying Website Project Update

David Grassl and Kavita Dornala continue general technical support and system enhancements for the Eye on Lobbying website. Based on valuable feedback we have received from legislative staff, the lobbying community and the general public, G.A.B. staff is committed to making the site as user friendly as possible and intend to incorporate as much feedback as we can.

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

Lobbying Registration and Reporting Information

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

2013-2014 Legislative Session: Lobbying Registration by the Numbers (Data Current as of August 5, 2013)			
	Number	Cost	Revenue Generated
Organizations Registered – Full Lobbying	655	\$375	\$245,625
Organization Registered – Limited Lobbying	11	\$20	\$220
Lobbyists Licenses Issued (Single)	482	\$350	\$168,700
Lobbyists Licenses Issued (Multiple)	110	\$650	\$71,500
Lobbyists Authorizations Issued	1242	\$125	\$155,250

Financial Disclosure Update

Cindy Kreckow, Ethics and Financial Disclosure Specialist

Statements of Economic Interests

A new group of state public officials were identified in the Budget Bill as officials required to file statements of economic interests with the GAB. Employees of the Wisconsin Economic Development Corporation became officials required to file effective July 2, 2013. Forms were provided to about 100 employees of the WEDC and as of August 2nd all but 5 have been completed and returned. GAB staff continues to work with WEDC officials to secure the outstanding statements.

Governor Appointments

New appointments continue to be processed on an ongoing basis, to include securing statements of economic interests from all appointees and referring copies of their statements to the Senate for future confirmation hearings.

6 Month Legislative Liaison Reports

Government Accountability Board staff work to follow up and process legislative liaison reports that were sent to 101 state agencies and boards required to file such a report with the G.A.B. under Chapter 13, *Wisconsin Statutes*. As of August 5th, all but a handful of reports have been filed and processed by staff. These reports cover activity from January 1 through June 30, 2013 and were due on or before July 31, 2013. All state agencies are required to file a liaison report that identifies 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.

State of Wisconsin Investment Board Quarterly Transaction Reports

Staff also received and processed 52 quarterly financial disclosure reports from State Investment Board members and employees that were due on or before July 31, 2013. Copies of the reports are delivered to the Legislative Audit Bureau for their review and analysis.

State of Wisconsin\Government Accountability Board

212 East Washington Avenue, 3rd Floor
Post Office Box 7984
Madison, WI 53707-7984
Voice (608) 266-8005
Fax (608) 267-0500
E-mail: gab@wisconsin.gov
<http://gab.wi.gov>



JUDGE TIMOTHY L. VOCKE
Chairperson

KEVIN J. KENNEDY
Director and General Counsel

MEMORANDUM

DATE: For the August 13, 2013 Meeting

TO: Members, Wisconsin Government Accountability Board

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

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

SUBJECT: Elections Division Update

Since its last Update (May 21, 2013) the Elections Division staff has focused on the following tasks:

1. General Activities of Election Administration Staff

This is the first Elections Division Update since October 2009 that does not contain a report on elections conducted since the last meeting. The hiatus from special and recall elections and with no state elections on the horizon until next spring, has allowed staff to focus on other goals and tasks.

Staff has used the time since the Spring Election to lay the technological groundwork for the 2014 elections. This includes creating the four regularly-scheduled elections in the Statewide Voter Registration System (SVRS), creating contests and updating incumbents. Candidates have already begun to register for 2014 elections. Their information has been entered, and reports have been generated and posted to the G.A.B. website. The 2014 Election Dates are:

Spring Primary – February 18, 2014
Spring Election – April 2, 2014
Partisan Primary – August 12, 2014
General Election – November 4, 2014

A number of local special elections and special referenda have been scheduled for this year. Staff has assisted clerks with the format of notices and ballots as well as providing guidance on specific procedures such as the closing of a polling place for a special school district election.

Election Administration staff have been active participants on a number of in-house committees. These include the SVRS Modernization Project, the Clerks Concerns Taskforce and a committee to develop a fiscal estimate for Assembly Bill 225, an omnibus election reform bill.

G.A.B. staff continued to serve as a resource to the City of Milwaukee Election Commission (M.E.C.) staff as the Commission developed a compliance plan to meet the minority language requirements of their designation under Section 203 of the 1965 Voting Rights Act, as required by the U.S. Department of Justice. Agency staff attended a meeting of the M.E.C. Advisory Task Force on May 22, 2013. The Advisory Task Force is comprised of representatives of Milwaukee’s Spanish-speaking community and was formed by the M.E.C. to assist them with the development of their minority language program. At this meeting, a report from the 2013 election cycle was presented by M.E.C. staff and Task Force members who conducted polling place visits on Election Day described their experiences. In addition, plans to expand voter outreach and education efforts were discussed.

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

Statistics for the 2013 Spring Election were due on May 2, 2013. Election cost reports for both the 2013 Spring Primary and the 2013 Spring Election were due by June 1, 2013. As of July 29th, most municipalities and counties have submitted the required reports. The following table summarizes the number of reports that are still incomplete.

	2013 Spring Primary	2013 Spring Election
Statistics Report (Municipalities)	0	1
Municipal Cost Report	27	9
County Cost Report	4	1

The following table provides a statewide summary of the statistics reported by clerks in WEDCS for the 2013 Spring Election:

Total Ballots	900,226	854,715 votes in Canvass	
Total Electors	887,804	(Wisconsin Supreme Court Justice)	
Absentee Issued	112,199	12.46%	of ballots cast
Absentee Issued In Person	37,324	33.27%	of absentee ballots issued
Absentee Not Returned	15,563	13.87%	
Absentee Undeliverable	1,314	1.17%	
Absentee Returned By Election Day	92,549	82.49%	
Absentee Returned By Friday	1,601	1.43%	
Absentee Counted	89,878	80.11%	
Absentee Rejected	1,130	1.01%	
Absentee Late	361	0.32%	
Military Issued	490	0.05%	of ballots cast
Military Not Returned	333	67.96%	of military absentee ballots issued
Military Undeliverable	22	4.49%	
Military Returned By Election Day	123	25.10%	
Military Returned By Friday	17	3.47%	
Military Counted	227	46.33%	
Military Rejected	8	1.63%	
Military Late	15	3.06%	
FWAB Received	9	0.00%	of ballots cast
FWAB Counted	1	0.00%	of FWAB received
FWAB Rejected	0	0.00%	
FWAB Late	4	0.00%	
Registrants	3,699,552		
Late Registrants	6,540	0.74%	of electors
EDRs	71,866	8.09%	
Provisional Cast	21	0.00%	of ballots cast
Provisional No DL#	7	33.33%	of provisional ballots cast
Provisional No POR	0	0.00%	
Provisional Counted	10	47.62%	
Provisional Rejected	3	14.29%	
Paper Ballots	65,971	7.33%	of ballots cast
Optical Scan	703,947	78.20%	
DRE	115,831	12.87%	
Auto MARK	3,075	0.34%	
Total Election Inspectors	26,148	2.95%	of electors
16-17	201	0.77%	of election inspectors
18-25	227	0.87%	
26-40	741	2.83%	
41-60	5,273	20.17%	
61-70	10,329	39.50%	
71+	8,929	34.15%	

3. Clerks' Election Administration Workload Concerns Task Force

Since the last Board meeting, staff has worked to implement the recommendations of the Task Force which were approved by the Board. Staff referred the recommendations requiring legislative changes to the appropriate election committees in the Legislature on May 31. The remaining recommendations for administrative changes are in the process of implementation.

On June 20th, staff distributed a survey to SVRS providers asking for copies of their current Memorandum of Understanding documents and pricing structures. Analysis of these MOUs is ongoing and will help staff produce sample MOUs for municipal and county clerks to use in the future. Analysis of these MOUs will also better inform our implementation of hybrid roles in SVRS to better balance the election workload between provider and relier clerks.

Staff has implemented new policies per the Board's direction at the March 20th meeting surrounding the Wisconsin Election Data Collection System and GAB-190 data reporting. Staff has also drafted an informational memo to clerks regarding the importance of the data gathered via the Election Voting and Registration Statistics Report (GAB-190), which was posted to the G.A.B. website on July 15th. Staff continues to revise the GAB-190 Form to make it easier for clerks to capture the data required by state and federal laws and also continues to work with Taskforce members to improve our data collection efforts.

4. Voting Equipment Testing and Demonstration

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

5. The AccessElections! Accessibility Compliance Program

A. Impediments to Voting Report

A biennial report to the Wisconsin Legislature required by Wisconsin Statutes §5.25(4)(d) that details the impediments to voting faced by elderly voters and voters with disabilities was filed on July 3, 2013. A link to an electronic version of this report was provided to Board members on the same day and the report was posted to the agency website on July 11, 2013. A hard copy of the report is included in the Board's meeting materials.

B. Accessibility Advisory Committee

Board staff reconvened the Accessibility Advisory Committee on June 13, 2013. A detailed report of the meeting can be found in the Board's meeting materials.

C. Analysis of Accessibility Audit Results

Board staff has analyzed audit results from the February and April 2013 elections and is in the process of reporting audit findings to the municipalities' clerks and executive officers. To date, staff has received and is processing plans of actions for polling places audited during the November 6, 2012 Presidential and General Election, and the December 4, 2012 Special Election for State Senate District 33. Staff will continue to process plans of action received from municipalities audited during these elections.

D. Ongoing Accessibility Compliance Efforts

Staff continues to coordinate with municipal clerks to ensure that accessibility problems uncovered during previous Onsite AccessElections! Accessibility Compliance Audits are resolved as quickly and cost-effectively as possible. In addition, staff arranged for the distribution of grant-funded accessibility supplies to 15 municipalities in response to documented needs. Staff is monitoring the use and effectiveness of previous accessibility grant funding by municipalities. Staff is also working with the agency IT Development Team to automate multiple aspects of the AccessElections! Compliance Audit administrative process.

6. Education/Training/Outreach/Technical Assistance

Following this memorandum as Attachment 1 is a summary of information on core and special election administration training conducted by G.A.B. staff.

7. IT Projects

Several IT projects are in progress for the Elections Division:

A. SVRS Version 8.5

The G.A.B. IT team is finishing work on the new version of SVRS, version 8.5. This SVRS update includes some enhancements to the mapping features in SVRS to make it easier for clerks to assign voters to the correct districts. User Acceptance Testing of SVRS 8.5 began on Monday, August 5 and it will be deployed to clerks in early September. Municipal and county clerks have been invited to participate in the testing to gather direct clerk feedback on these updates.

B. SVRS Modernization

G.A.B. staff continues to work on gathering the preliminary business requirements for a new, modernized SVRS system. Staff teams are reviewing various areas of election administration (such as voters, ballots, polling places, districts, results, etc.). The teams created conceptual diagrams that break each area into its core components and show how these components are inter-related. Teams are now working on documenting each of the business processes that take place within that area. This documentation will help the IT team develop the core components of the new system, as well as the features that users will need in order to perform the necessary tasks in the new system. A clerk advisory team has been established to help guide G.A.B.'s efforts to modernize SVRS.

C. MyVote Wisconsin

G.A.B. staff is finishing up the business requirements for the next version of the MyVote Wisconsin website, version 1.7. MyVote 1.7 includes some miscellaneous improvements suggested by clerks and voters. Once the requirements are finalized, the IT team will begin work on MyVote 1.7. Testing and deployment have not yet been scheduled.

Staff is also planning for a MyVote 2.0 update which will include more significant changes. Staff plans to conduct a usability assessment of the MyVote Wisconsin website to gather information on how we can streamline the website and make it easier for voters to use. Staff hopes to begin this project in early Fall of 2013.

D. Voter Felon Audit

Wis. Stat. § 6.56(3m) requires the Board to compare the list of voters in an election with the list of names transmitted to the Board by the Department of Corrections (DOC). The existing workflow for comparing names and making referrals to the District Attorneys is time consuming and requires many hours of staff time to track and maintain the disposition of referrals. G.A.B. staff has been working on a project to improve the efficiency of the Post-Election Felon Audit process through automation of the process workflow. The G.A.B. staff has completed the project requirements and has begun the design phase of the automation project. The project will include an online case management dashboard that can easily produce status reports and statistics.

E. Data Request Automation

G.A.B. staff is working on developing an online application for processing common requests for voter data. This new website will allow candidates, political parties, and the general public to request SVRS voter data including voter participation based on jurisdiction or district, participation in a particular election or elections, or absentee voters. Data request customers will be able submit their requests and download the completed file from this new website. This phase of the project is expected to be completed in early September, 2013. The second phase of this project will add the ability to accept electronic payment for SVRS data, either by credit card or electronic funds transfer (EFT), and completely automating the entire process.

8. **Voter Registration Statistics**

The following statistics summarize the statewide voter registration activity since the previous Elections Division Update (May 21, 2013) as of July 29, 2013:

- 3,399,766 active voter registrations.
- 1,212,445 inactive voter registrations.
- 368,845 cancelled voter registrations.
- 2,017 HAVA checks.
- 2,630 merged voter registrations

9. **Voter Data Requests**

Staff regularly receives requests from customers interested in purchasing electronic voter lists. SVRS has the capability and capacity to generate electronic voter lists statewide, for any county or municipality in the state, or by any election district, from congressional districts to school districts. The voter lists also include all elections that a voter has participated in, going back to 2006 when the system was first deployed. The following statistics demonstrate the activity in this area since the previous Elections Division Update (May 21, 2013) as of July 29, 2013:

- 21 SVRS data requests were received.
- 12 electronic voter lists were purchased.
- \$32,436.25.00 was collected for SVRS voter data requests which were fulfilled.

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

The G.A.B. SVRS Help Desk is supporting over 2,000 active SVRS users, the public and election officials. The Customer Service Center staff assisted with processing the Spring Election canvass and the GAB-190 Form data reporting, and with testing SVRS improvements. The Customer

Service Center is continuing to upgrade and maintain the two training environments that are being utilized in the field. Staff is monitoring state enterprise network changes and status, assisting with processing data requests, and processing voter verification postcards. Help Desk staff assisted clerks with configuring and installing SVRS and WEDCS (GAB-190) on new computers.

Overall, the majority of inquiries the G.A.B. Customer Service Center received from clerks during this period related to assistance with closing the April 2 Spring Election in SVRS; logging into the CRM system; printing ineligible voter lists; tracking absentee and provisional ballots; printing poll books; absentee processing; producing SVRS reports; and related election processes. Help Desk staff assisted in contacting clerks to correct verification postcard addresses that had failed Zip4 processing.

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

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

Staff assisted a number of electors with navigating the MyVoteWisconsin website. Call volume has been unusually quiet, compared to the consistently high volume experienced over the past two years.

Help Desk staff have been serving on various project teams such as the Staff computer replacement project; the Records Retention Taskforce; the Clerks Concerns Committee; the SVRS Modernization and MyVote Wisconsin teams.

Effective July 1, 2013 incoming calls to the main G.A.B. number (266-8005) were transferred back to the Front Desk staff. For the previous two years all calls have been coming in to the Help Desk staff.

G.A.B. SVRS Help Desk Call Volume
 (608-261-2028)

May 2013	551
June 2013	364
July 2013	510
Total Calls for Reporting Period	1,425

G.A.B. Front Desk Call Volume
 (608-266-8005)

May 2013	0
June 2013	0
July 2013	487
Total Calls for Reporting Period	487

11. Voter Outreach Services

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

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

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

12. Staff Changes and Recruitment

Elections Specialist Steve Pickett is retiring from service with the Board. Steve started in his position in 2003 and his last day in the office was July 26, 2013. Steve was a valuable member of our election administration team. His 22 years of experience as a former Lafayette County Clerk and his personality allowed him to develop positive relationships with local election officials and to present information in training sessions in a way that was understandable. Steve provided a valuable service to clerks, voters, and Wisconsin taxpayers. G.A.B. staff celebrated Steve's career and retirement at a luncheon on July 25th.

The Elections Division has been conducting recruitment for several positions. Appointments have been made to the position of Training Coordinator and three Trainer positions. Recruitment is being completed for the position of Elections Specialist – GIS Mapping with the goal of filling that position by the end of August. The next priorities will be to recruit applicants for two vacant SVRS Elections Specialist positions and the Elections Specialist position which was held by Steve Pickett.

ATTACHMENT #1

GAB Election Division's Training Initiatives
5/21/2013 – 8/12/2013

Training Type	Description	Class Duration	Target Audience	Number of Classes	Number of Students
SVRS "Initial" Application and Election Management/HAVA Interfaces	Instruction in core SVRS functions – how to navigate the system, how to add voters, how to set up elections and print poll books.	16 hours	New users of the SVRS application software.	0	0
SVRS "Advanced" Election Management	Instruction for those who have taken "initial" SVRS training and need refresher training or want to work with more advanced features of SVRS.	2 types of classes: Absentee Process; Reports, Labels & Mailings; 4 hours each	Experienced users of the SVRS application software.	0	0
Municipal Clerk	2005 Wisconsin Act 451 requires that all municipal clerks attend a state-sponsored training program at least once every 2 years.	3 hours	All Municipal clerks are required to take the training; other staff may attend.	0	0
Chief Inspector	Instruction for new Chief Inspectors before they can serve as an election official for a municipality during an election.	3 hours	Election workers for a municipality.	0	0

ATTACHMENT #1

GAB Election Division's Training Initiatives
5/21/2013 – 8/12/2013

Training Type	Description	Class Duration	Target Audience	Number of Classes	Number of Students
Election Administration Training Webinar Series	Series of 8 - 12 programs designed to keep local government officers up to date on the administration of elections in Wisconsin.	45 – 120 minute webinar conference hosted and conducted by Elections Division staff.	Clerks and chief inspectors; campaign treasurers and candidates.	0	0
WBETS	Web Based Election Training System. Still under development. Reference materials were made available to the clerks in February; voter registration training made available to clerks 3/24/2008.	Varies	County and municipal clerks and their staff.	Phase 1 of eLearning training plan completed; Phase 2 under discussion.	Site is available for clerks to train temp workers in data entry; relies are also able to access the site upon request.
Other	<ul style="list-style-type: none"> • Board staff gave SVRS and election admin presentations to county clerks attending the Wisconsin County Clerks Association conference in Egg Harbor on June 25, 2013. • Board staff updated members of the League of WI Municipalities on legislative activities and 				

ATTACHMENT #1

GAB Election Division's Training Initiatives
5/21/2013 – 8/12/2013

Training Type	Description	Class Duration	Target Audience	Number of Classes	Number of Students
	<p>demonstrated the MyVote Wisconsin website in Wausau on June 27, 2013.</p> <ul style="list-style-type: none"> Board staff trained municipal clerks on SVRS Report features and election data information at the Clerks Institute in Green Bay on July 16 & 30, 2013 				

State of Wisconsin\Government Accountability Board

212 East Washington Avenue, 3rd Floor
 Post Office Box 7984
 Madison, WI 53707-7984
 Voice (608) 266-8005
 Fax (608) 267-0500
 E-mail: gab@wisconsin.gov
 http://gab.wi.gov



KEVIN J. KENNEDY
 Director and General Counsel

MEMORANDUM

DATE: For the August 13, 2013 Meeting

TO: Members, Wisconsin Government Accountability Board

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

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

SUBJECT: Administrative Activities

Agency Operations

Introduction

The primary administrative focus for this reporting period has been on Fiscal Year 13 close-out activities and FY-14 operating budget preparations, financial services activity, procuring goods and services, contract sunshine administration, recruiting staff, communicating with agency customers, and developing legislative and media presentations.

Noteworthy Activities

1. Fiscal Year 13 Close-Out Activities and FY-14 Operating Budget Preparations

The financial services section has been extremely busy the last six weeks preparing numerous financial transactions in preparation for the end of the state fiscal year (June 30, 2013) and setting up our FY-14 operating budget. See charts below for FY-13 expenditures, revenues and agency lapses.

FY-13 Expenditures	GPR	PR (Lobby)	PR (CF & M/S)	SEG-F (HAVA)	PR-Fed (FVAP)	TOTAL
Salaries	1,021,938	149,208	-	636,145	24,579	1,831,870
LTE/Misc. Salaries	43,933	-	-	13,669	-	57,602
Fringe Benefits	375,195	60,145	-	275,442	7,315	718,097
Supplies and	1,777,823	120,941	50,711	1,656,816	703,780	4,310,071
Aids to municipalities	-	-	-	70,315	-	70,315
Investigations	47,672	-	-	-	-	47,672
Clerk Training	19,349	-	-	-	-	19,349
Total Costs	3,285,910	330,294	50,711	2,652,387	735,674	7,054,976

FY-13 Revenues	GPR	PR (Lobby)	PR (CF & M/S)	SEG-F (HAVA)	PR-Fed (FVAP)	TOTAL
	-	660,235	65,125	261,035	-	885,082

FY-13 Agency Lapses	GPR	PR (Lobby)	PR (CF & M/S)	SEG-F (HAVA)	PR-Fed (FVAP)	TOTAL
	70,438	-	38,600	-	-	109,038

- Staff has reviewed preliminary Form 78s each week for accuracy and completeness, then reconciled back to internal accounting files. Other fiscal year-end work completed includes: final payments of FY-13 purchase orders and other expenditures posted during month 13, booking audit interest expense entries from available FY-13 GPR funds, processing the lapse plan ledger transaction documents, manually approving fringe benefit journal vouchers, along with preliminary GAAP and CAFR fiscal year-end reporting work.
- Staff calculated and booked the third and fourth fiscal quarter payroll adjusting entries to properly allocate salaries and fringe benefits between federal and state programs; calculated and booked the I.T. service time adjusting entries, to properly allocate outside professional service costs between federal and state programs; and effected several payroll funding changes in the payroll system, to account for federal employee assignment changes, for new LTE hires, and for staffing transfers between programs.
- Staff summarized and communicated the federal program preliminary budget-to-actual operating results for the fiscal year ending June 30. All federal programs remain within budgeted projections for this year. Staff also prepared a current fiscal year transfer appropriation entry, to cover a slightly negative fringe allotment line balance which was caused by the final quarterly payroll adjusting entry. A one-time journal entry was booked to compensate federal HAVA funds for \$692,000 of SVRS modernization & support charges, from available GPR funds during the current biennium budget years.
- Staff wrote new FY-14 purchase orders and prepared FY-14 operating budget in Quick Books to reconcile against WiSMART.

2. Other Financial Services Activity

- Validated our agency data within the State's expenditure disclosure website called *OpenBook Wisconsin*, which will provide checkbook-level state spending information to the public once it is launched. We do not know yet when *OpenBook* will launch, or how it will impact the future of Contract Sunshine, but it should improve the state's ranking in national surveys of state spending transparency. The agency is required to redact certain private payment information to vendors working on confidential investigations within this online database. We also anticipate that *OpenBook* will generate a significant increase in public requests for additional information about specific expenditures.
- Labor costs of \$4,946 incurred by G.A.B. staff while working on the Unity 3.4.0.0. voting equipment testing project was invoiced to and received from ES&S, the voting equipment and software vendor, per the cost recovery agreement. The cash receipt was accounted for as a refund of expenditure, allocated amongst three separate appropriations. Staff logged employee time worked on the next version Unity 3.4.0.1. voting equipment testing project, for purposes of later billing these labor costs to ES&S.
- Staff claimed reimbursements of \$99,586 for the May and June Federal Voting Assistance Program (FVAP) federal aid expenditures, coordinated accounting for incoming wire transfers with DOA-Treasury staff, prepared journal entries to record revenues received, and followed up with federal personnel on why one receipt was not timely approved. Timely filed the quarterly FVAP report by June 30. Approximately \$868,846 (45.3%) of

the \$1,919,864 grant has been expended since its inception in March, 2012, and our agency has applied for approval to re-allocate budgeted personnel and fringe funds to contractual I.T. services.

- Journal entries were prepared and booked to reclass purchasing card expenditure object codes and to properly allocate both monthly interest earnings and mixed server usage charges to their appropriate federal or state programs. Monthly DOA General Service Billing charges were audited prior to payments being processed.
- Analyzed ledger accounts for both federal and state payroll and travel balance sheet liabilities, to facilitate the monthly reconciliation of these 50 ledger account balances. Prepared and booked journal entries to correct any balance sheet account coding errors.
- Monitored the final expenditures of Federal Section 261 voting accessibility funds allotment of \$201,733 and processed change orders and liquidated encumbrances to officially close out this L261 ledger year, three months before the federal fiscal year ending September 30, 2013 expiration date. The accounting has now been fully transitioned to the next federal fiscal year allotment of \$201,645. Thereafter, only two federal grant allotment years remain, specifically \$201,091 from the 2010 federal year and \$199,998 from the 2011 federal year. No further allotments are expected for this federal program. All Federal Cash Management (FCM) system reports for accessibility expenditures & revenues were reviewed and tied out each month. Also researched and determined that accessibility advisory council and committee costs are allowable per the Office of Management & Budget Circular A-87.
- Researched the recount fees appropriation cash balance and requested FY-13 budget authority to remit these fees to Racine County, whose wards were involved in the Van Wanggaard recount.
- Ran queries from the Financial Information Reporting System (FIRSt) and either printed as summary reports or saved as detail electronic reports, in anticipation of DOA's purging of pre-2007 financial information from this database.
- Initiated the DOA-Treasury application forms to provide for electronic receipt of voter data list fee revenues. Met with federal program staff and then applied for both electronic check and credit card options as payment for SVRS voter data lists. Also researched the statutory public records exemption from sales taxability for these voter data list revenues.

3. Procurements

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

- Purchased new desktop and laptop PCs for agency staff, as well as peripheral equipment for all staff.
- Purchased new microphone and mixer used for Board meetings and other meetings requiring audio assistance.

- Gathered background information regarding the process and requirements associated with potential sole source procurement for SVRS.
- Purchased new chairs for the Large Conference Room.

4. Contract Sunshine

The certification period for Contract Sunshine from April 1, 2013 to June 30, 2013 was completed. All of the 33 agencies required to report returned the certification forms on time.

5. Staffing

- We have made significant progress in our recruitment efforts since the last Board meeting to fill our position vacancies. On June 30 and July 29, Tony Bridges, Allison Coakley and Christopher Doffing began their new appointments as permanent G.A.B. staff.
- We have also completed first and second round interviews for two Training Officer vacancies and expect to make position offers soon.
- We posted the vacant Attorney position and have put together a rating panel to evaluate the 65 applicants' exams. After the exams have been graded we will begin the interview process.
- Sonia Kubica, Financial Specialist, resigned from her Financial Specialist position effective July 26, 2013. She has moved to New York and will be sorely missed.

6. Communications Report

Since the May 21, 2013, Board meeting, the Public Information Officer has engaged in the following communications activities in furtherance of the G.A.B.'s mission:

Media: The Board has been in the news recently on two major stories: the omnibus election reform bill that passed the Assembly but has not been taken up by the Senate, and the release of the Board's 2011-2013 report on Polling Place Accessibility Audits. Other recent news stories involving the Board include: filing of July 2013 Continuing Reports for campaign finance, filing of lobbying activity reports for the first half of 2013, preparations for 2014 elections, local recall efforts, and complaints. The PIO coordinated several interviews with journalists for Director Kennedy and Division Administrator Haas, and also gave multiple interviews when they were not available. Between May 6, 2013 and July 31, the agency responded to more than 173 contacts from news media and the public for information and interviews – 67 by telephone and 106 by email.

Online: As the agency's webmaster, the PIO is working on plans to upgrade to the main website (gab.wi.gov) in the coming months. The G.A.B. was the first state agency to adopt the free, open-source Drupal content management system in 2010, and several others have followed or are currently developing Drupal websites, including the Department of Justice, the Department of Veterans Affairs, and the Department of Public Instruction. The Board's 2010 website has won wide praise and raised Wisconsin's national rankings from the 10 worst to the 10 best state election agency websites. However, it is now time to upgrade to the latest version

of Drupal, which will provide new features and greater mobile/smartphone usability. Also, old election results dating back to the year 2000 have been moved from the former Elections Division website (elections.state.wi.us), which will allow for the decommissioning of that website. In preparation for the upgrade, the PIO attended meetings July 26 and 27 at UW-Madison of Wisconsin Drupal users to learn from and network with other state agency website developers. The PIO is also assisting the Elections Division with its redevelopment of the MyVote Wisconsin website, which will likely involve procurement of outside contractor services for design and usability testing. We want to ensure the website allows Wisconsin voters to easily check their registration status and find information about where and when to vote, and allows military and permanent overseas voters to efficiently receive their absentee ballots online so they can be marked and return by mail before the deadline.

Public Records: In addition to responding to routine public records requests, the PIO has been coordinating the agency's response to a few very comprehensive public records requests which involve substantial staff time in locating large numbers of documents. Because of one of the two staff counsel positions has been vacant for at least six months and the remaining staff counsel has been extremely busy responding to other agency priorities, the extensive legal review required prior to release of some records has also been delayed.

Other: In addition, the PIO has worked on a variety of other projects including responding to concerns from Legislators on a variety of topics, and communicating with our clerk partners.

7. Meetings and Presentations

During the time since the May 21, 2013, Board meeting, Director Kennedy has been participating in a series of meetings and working with agency staff on several projects. The primary focus of the staff meetings has been on agency internal administration, management and IT issues as well as preparing for the 2013-14 legislative session. There have been several management team meetings on IT procurement and resource issues. In addition the Director has met with several legislators and legislative aides concerning budget and legislative issues. The Director has also met with representatives of the Governor and the Wisconsin Department of Justice on administrative and legislative issues.

The Government Accountability Candidate Committee submitted four names to the Governor for consideration for appointment to serve on the Government Accountability Board to fill the vacancy created by the expiration of Judge Thomas Cane's term on May 1, 2013: Judge Gary Carlson of Medford, Judge Harold Froehlich of Appleton, Judge William Jennaro of Milwaukee and Judge Elsa Lamelas of Milwaukee. The Governor's office advised the Director that an appointment before the August 13, 2103 Board meeting was not likely, so Judge Cane will continue to serve until the Governor makes an appointment.

On May 22, 2013, Ethics and Accountability Division Administrator Jonathan Becker and Director Kennedy presented a series of training sessions for Legislative staff on compliance with the State Code of Ethics for Public Officials and campaign finance provisions affecting Legislators and staff.

On June 4, 2013, Elections Division Administrator Mike Haas testified before the Assembly Committee on Campaigns and Elections about a series of significant election administration and campaign finance proposals in 2013 Assembly Bill 225. Staff intervention was critical in

identifying a number of administrative and timing issues with the proposed legislation. The bill was significantly overhauled and passed the Assembly on a voice vote on June 12, 2013. The revised proposal establishes online voter registration for Wisconsin voters. This is one of three significant election administration issues that has been the subject of staff evaluation. The legislation will be the subject of Senate review this fall.

On June 7, 2013, Director Kennedy, along with several other State election officials, participated in a teleconference meeting organized by the Pew Center on the States on *Improving the Election Experience*. Pew organized the meeting and has established a task force to explore election administration issues related to the voting experience that arose in the 2013 Presidential Election.

On June 13, 2013, the Elections Division hosted a meeting of its Elections Accessibility Advisory Group. The group consists of representatives of disability advocacy organizations and local election officials. The group provides valuable advice on the implementation of voting accessibility initiatives by the agency. On July 3, 2013, the agency transmitted its biennial report on impediments to voting faced by the elderly and individuals with disabilities to the Legislature. Director Kennedy and Elections Division Administrator Haas participated in a series of media briefings following the release of the report. More information about the agency's initiatives to address voting accessibility will be presented at the August 13, 2013 Board Meeting.

On June 17, 18, 2013, Director Kennedy along with SVRS IT-Lead Sarah Whitt and election officials from several states attended a meeting in San Francisco on the Pew Center on the States' *Voting Information Project* (VIP). The VIP project partners with Google, Microsoft and others to provide state election officials with information technology tools that enable voters to access information about voter registration, polling place location and sample ballots. The project enables the G.A.B. to leverage its existing voter lookup tools by making them available to a wider public audience. Sarah Whitt has been actively involved in the technical design aspects of the project for Pew. Director Kennedy has been involved in the policy aspects of the project for Pew.

Following the meeting, Director Kennedy along with several other State Election Directors and Secretaries of State were invited to meet with the Co-Chairs and other Members of the Presidential Commission on Election Administration to discuss concerns about the administration of elections from a federal perspective. The Commission is chaired by Attorneys Bob Bauer and Ben Ginsberg. Information about the Commission can be found at <https://www.supportthevoter.gov>.

On June 24, 2013, Director Kennedy led a teleconference meeting with the Honorable Marc Mayrand, the Chief Electoral Officer for Canada, and the Honorable Greg Essensa, the Chief Electoral Officer for the Province of Ontario. The meeting was part of preparations for a presentation for the summer meeting of the National Association of State Election Directors (NASSED).

Director Kennedy and Lead Elections Specialist Diane Lowe participated in a teleconference meeting of the National Association of Secretaries of State (NASS) Emergency Preparedness Task Force on June 25, 2013. The task force met in person on July 20, 2013 as part of the NASS/NASED summer meetings in Anchorage.

Director Kennedy is one of several chief election officials invited to participate on the preparedness task force, which was developed in response to issues identified in the wake of Super Storm Sandy which pummeled the East Coast one week before the November 4, 2012 election and Hurricane Katrina. Members are working with a wide array of stakeholders, including federal and state emergency management officials, as the task force develops a white paper with guidance for states. Information on the task force can be found at: http://www.nass.org/index.php?option=com_content&view=article&id=362&Itemid=515

On June 26, 2013, the agency hosted a group of U.S. Department of State librarians from U.S. embassies around the world as part of a program to educate them about life and government in America. The International Institute of Wisconsin facilitated this meeting. Visitors were from Bangladesh, Brazil, Cuba, Fiji, India, Japan, Laos, Liberia, Malawi, Moldova, Saudi Arabia, South Korea, Sri Lanka, Swaziland, and Vietnam. Division Administrator Jonathan Becker, Elections Supervisor Ross Hein and Public Information Officer Reid Magney discussed the practice of transparency in Wisconsin government in the context of the 2011 and 2012 recall initiatives. At the request of the State Department, journalist Bill Lueders of the Wisconsin Freedom of Information Council also attended, and discussed the role of the news media in covering the capitol protests and the recall elections.

On July 16, 17, 2013, Director Kennedy along with Sarah Whitt attended a meeting in Seattle organized by the Pew Center on the States on *New Trends and Technologies in Voter Registration*. State policy and technology election officials from several states along with academics and private sector IT representatives participated in the meeting. University of Wisconsin–Madison professor Barry Burden presented an evaluation of the Electronic Registration Information Center (ERIC) voter registration data exchange program. ERIC is a consortium of seven states (not including Wisconsin) that have agreed to exchange voter registration data to improve the quality of their voter registration lists.

On July 18-21, 2013, Director Kennedy attended the summer meeting of the National Association of State Election Directors (NASED) in Anchorage. Director Kennedy moderated presentations by the Honorable Marc Mayrand, the Chief Electoral Officer for Canada, and the Honorable Greg Essensa, the Chief Electoral Officer for the Province of Ontario, as well as a separate presentation by representatives of the Office of Democratic Institutions and Human Rights (ODIHR). ODIHR is a part of the Organization for Security and Cooperation in Europe (OSCE). The ODIHR representatives presented a summary of their observations of the 2012 U.S. Elections. The United States is a member of the OSCE. Wisconsin hosted two ODIHR observers in 2012. A copy of the ODIHR observation report can be found at: <http://www.osce.org/odihr/elections/99573>.

Director Kennedy presented a litigation report to NASED Members as part of its closed session meeting on July 21, 2013. NASED Members also participated in two separate meetings with the Presidential Commission on Election Administration. The first was a joint meeting with NASS members on July 20, 2013. The second, more extensive meeting was limited to NASED Members on July 21, 2013.

The agency bade adieu to three key staff members since the last meeting. Sonham Lhanze left the agency in June when her contract ended. Sonham provided valuable Help Desk support for agency clientele during the past 12 months. On July 26, 2013 Sonia Kubica left the agency.

She and her husband relocated to New York City. She will be working as a campaign finance auditor with the New York City Campaign Finance Board. Sonia was an invaluable member of our administrative services team for more than three years. Veteran Elections Specialist Steve Pickett, former Lafayette County Clerk, who has been a part of the G.A.B. and State Elections Board staff since 2003, retired from public service. All three former employees received an emotional and heartfelt send off from their colleagues. Steve Pickett's contributions to public service were recognized in a Legislative Citation provided by Senator Dale Schultz and Representative Howard Marklein. The agency and the citizens of Wisconsin have been well served by these dedicated election professionals.

Looking Ahead

The next Board meeting is scheduled for Tuesday, October 22, 2013 at the Board's offices.

The next regularly scheduled election is the Spring primary on February 18, 2014. That is 199 days from the current Board meeting.

Action Items

Review personal calendars for conflicts with proposed 2014 meeting dates.