

Meeting of the Board
Tuesday, October 28, 2014

Amended Agenda
Open Session

9:00 A.M.

Board Room, Agency Offices
212 East Washington Avenue Third Floor
Madison, Wisconsin

Tuesday, October 28, 2014

9:00 A.M.

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A. Call to Order	
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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.

K. Director's Report

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L. Closed Session

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| 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)(c) | The Board may consider performance evaluation data of any public employee over which it has responsibility. |
| 19.85 (1)(f) | The Board may consider preliminary consideration of specific personal issues. |
| 19.85 (1) (g) | The Board may confer with legal counsel concerning litigation strategy. |
| 19.851 | The Board's deliberations concerning investigations of any violation of the ethics code, lobbying law, and campaign finance law shall be in closed session. |

The Government Accountability Board has scheduled its next meeting for Tuesday, December 16, 2014 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 THOMAS H. BARLAND
Chair

KEVIN J. KENNEDY
Director and General Counsel

Wisconsin Government Accountability Board

212 East Washington Avenue
Madison, Wisconsin
September 4, 2014
9:00 a.m.

Open Session Minutes

<u>Summary of Significant Actions Taken</u>	<u>Page</u>
A. Approved June, July and August 2014 Open Session Minutes	1
B. Approved Elections Systems & Software Request for Approval of EVA 5200 and 5300 Systems	3
C. Approved Decision Items for 2015-2017 Agency Budget	4
D. Deferred Action on Requests for Statement of Economic Interests Disclosure Waiver	6
E. Approved Per Diem Payments for August and September Meeting Preparations	8

Present: Judge Thomas Barland, Judge Harold Froehlich, Judge Elsa Lamelas,
Judge Gerald C. Nichol, Judge Timothy L. Vocke and Judge John Franke.

Staff Present: Kevin J. Kennedy, Jonathan Becker, Michael Haas, Ross Hein, Sharrie Hauge,
Nathan Judnic, and Reid Magney

A. Call to Order

Chairperson Barland called the meeting to order at 9:01 a.m.

B. Director's Report of Appropriate Meeting Notice

Director Kevin J. Kennedy informed the Board that proper notice was given for the meeting.

C. Approval of Minutes of Previous Meeting

MOTION: Approve the minutes of the June 10, 2014 meeting of the Government Accountability Board. Moved by Judge Nichol, seconded by Judge Vocke. Motion carried unanimously.

MOTION: Approve the minutes of the July 21, 2014 meeting of the Government Accountability Board. Moved by Judge Nichol, seconded by Judge Lamelas. Motion carried unanimously.

MOTION: Approve the minutes of the August 11, 2014 meeting of the Government Accountability Board. Moved by Judge Lamelas, seconded by Judge Vocke. Motion carried unanimously.

D. Personal Appearances

Barbara Goeckner of Cedarburg appeared on her own behalf to comment on Senate Bill 264, which requires two election inspectors from different parties to secure the ballot container. She said her poll workers are concerned about listing their political affiliations, even if they are appointed by the political parties because they believe their duties are nonpartisan. She also expressed concerns about new laws regarding voting in nursing homes and care facilities.

Judge Vocke suggested that the inspectors should share their concerns with their legislators.

Susan McGuire of Grafton appeared on her own behalf to say she has been an election observer and poll worker in Ozaukee County, and has concerns about G.A.B. election observer rules as they apply to special voting deputies in nursing homes. She said observers are not able to hear what is being said to residents in their rooms when the deputies are helping them vote.

Wendy Fjelstad of Cottage Grove appeared on behalf of the Dane County Republican Party to comment about her experiences as an election observer in nursing homes in Madison. She complained that special voting deputies were not following proper procedures and that observers are not able to hear everything they need to.

Discussion between Ms. Fjelstad and Board Members.

Barbara Struck of Mequon appeared on her own behalf to comment about absentee voting in residential care facilities and issues that observers face. She suggested that municipal clerks require better training on special voting deputy procedures.

Marguerite Ingold and Ray Ingold of Muskego appeared on their own behalf to express concerns about the ability of election observers in nursing homes to ensure transparency. Mrs. Ingold described a dispute with the City of Milwaukee Election Commission, and said she was banned from observing absentee voting in nursing homes without due process.

Extensive discussion with Director Kennedy and Board Members regarding Mrs. Ingold's situation. Judge Barland promised that G.A.B. staff will follow up.

Commissioner Bob Spindell of Milwaukee appeared on behalf of the City of Milwaukee Election Commission to comment on the situation with Mrs. Ingold. He said he will bring her case before all three commissioners and ask that the commission staff's decision to ban Mrs. Ingold be reconsidered.

Further discussion between Board Members and Commissioner Spindell regarding details of Mrs. Ingold's situation.

Patty Logsdon of Franklin appeared on her own behalf to comment about her experiences as an election observer in nursing homes. She said she is concerned about voter fraud and that it is

important to have observers present who are able to hear interactions between special voting deputies and voters.

Mary Ann Hanson of Brookfield appeared on her own behalf to comment about election observer rules in nursing homes and ask the Board to reconsider provisions in the special voting deputy manual which prevent observers from hearing and seeing important parts of the process. She said the manual has contradictory sections and needs clarification.

Clerk Julee Helt of Waunakee appeared to express concerns about recent changes to state law requiring proof of residence for all voter registrations, which could affect nursing home residents' ability to register and vote. She said many residents do not have proof of residence documents such as leases, utility bills or a current state-issued ID containing their address.

Discussion with Director Kennedy and Board Members regarding difficulties finding proper documentation to register older voters who have moved to nursing homes and other care facilities.

Clerk Diane Herman-Brown of Sun Prairie appeared to urge the Board to approve the staff budget request to make federally-funded positions permanent. She said clerks rely on G.A.B. staff for guidance, training and manual updates.

Clerk Lori Stottler of Rock County appeared to discuss Agenda Item E, Elections Systems & Software's (ES&S) request for voting system approval of the EVS 5200 and 5300 systems. She said Rock County is ready to order the equipment once it has been approved by the Board.

Clerk Scott McDonell of Dane County appeared to discuss Agenda Item E, ES&S's request for voting system approval of the EVS 5200 and 5300 systems. He said the 5300's wireless capabilities will make election night reporting much faster, and that he is looking forward to someday having electronic poll books.

Steve Pearson of Omaha, Nebraska appeared on behalf of ES&S to discuss his company's request for approval of the EVS 5200 and 5300 systems. He said this is an entirely new suite of software that is new to Wisconsin and is easy for clerks to use.

Discussion regarding accessibility of the touch-screen device for people using wheelchairs. Mr. Pearson said the current setup meets HAVA and VVSG requirements, but that a new booth is being designed based on the feedback they have received.

Further discussion of the system's features and capabilities.

Judge Barland called a recess at 10:44 a.m. so representatives from ES&S could conduct a demonstration of the EVS 5200 and 5300 systems in the lobby of the Board's offices. The demo began at 11:00 a.m., and the Board reconvened at 11:45 a.m.

E. Elections Systems & Software Request for Voting System Approval

Elections Specialist David Buerger made an oral presentation based on a written report starting on page 22 of the September 4, 2014 Open Meeting materials. ES&S has applied for approval of

its new EVS 5.2.0.0 and EVS 5.3.0.0 systems. The difference between them is that the 5.3.0.0 system has a capability to wirelessly transmit unofficial results on election night and the 5.2.0.0 system does not have that feature. Staff recommends approval of both systems.

The Board and staff discussed the condition of approval that ES&S cannot impose deadlines on customers regarding ballots that are different than state statutes. This condition applies to all voting equipment manufacturers.

The Board and staff discussed the condition of approval that all equipment be programmed to automatically reject over-voted ballots and return them to the voter so errors can be corrected or they can be remade by inspectors in the case of an absentee ballot where the voter’s intent can be determined. They also discussed the condition dealing with charges for the company to supply information to clerks who are responding to public records law requests.

MOTION: Adopt the staff’s recommendations for approval of the ES&S voting system’s Application for Approval of EVS 5.2.0.0 in compliance with US EAC certificate ESSEVS5200 including the conditions described in the memorandum beginning on page 22 of the September 4, 2014 Open Meeting materials. Adopt the staff’s recommendations for approval of the ES&S voting system’s Application for Approval of EVS 5.3.0.0 including the conditions described in the memorandum beginning on page 22 of the September 4, 2014 Open Meeting materials. Moved by Judge Nichol, seconded by Judge Vocke.

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

Motion carried unanimously.

Judge Barland called a recess for lunch at 12:19 p.m. The Board reconvened at 1:02 p.m.

F. Proposed Decision Items for 2015-2017 Agency Budget

Director Kennedy introduced Chief Administrative Officer Sharrie Hauge, who made an oral presentation based on a written report starting on page 70 of the September 4, 2014 Open Meeting materials. She said the agency starts with a base budget of \$6.6 million in FY16. The base for general purpose revenue (GPR) is \$2,503,600. Staff is presenting the Board with five decision items.

Decision Item 4001 – Create 22 Permanent Federal FTE Elections Positions

Staff recommends the Board authorize a budget request to create 22 Permanent Federally Funded FTE positions to replace most of the federally-funded project positions within the agency that will expire on June 30, 2015. The agency currently has 26 authorized federally funded positions, and the Legislature has approved position authority for those positions only through the 2015 fiscal year. The agency projects that it will have federal HAVA funds available for those positions through the 2017 fiscal year. Sixteen of those positions are filled with current employees. We are currently recruiting for six additional positions. Staff does not recommend filling the remaining four vacant positions.

Discussion.

MOTION: Direct staff to include the creation of 22 Permanent Federal FTE in its 2015-17 biennial budget request, and ask to convert the 22 Permanent Federal FTE to 22 Permanent GPR FTE effective July 1, 2017. Moved by Judge Vocke, seconded by Judge Nichol.

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

Motion carried unanimously.

Decision Item 4002 – Increased Costs for Board Member Per Diems and Meeting Expenses

Staff recommends the Board authorize a request for additional funding for Board Member per diems and Board meeting expenses to reflect the increased cost of conducting Board meetings.

MOTION: Direct staff to include an additional \$41,160 in its base budget request annually to cover increased costs for Board meeting expenses including per diem payments. Moved by Judge Vocke, seconded by Judge Nichol. Motion carried unanimously.

Decision Item 4003 – Increase Agency Webmaster Position to 100 percent

Staff recommends the Board authorize a request for additional funding for a .25 full time equivalent permanent position. The agency needs for website management and external communications are for a full time person. The agency website is at the heart of agency operations. It is also becoming increasingly more complex with the addition of more voter and agency client services. In order to ensure retention of the current individual or to facilitate recruitment if the incumbent leaves the agency, the position needs to be full time.

MOTION: Direct staff to request authorization for a .25 FTE funded with GPR in the amount of \$20,570 in FY16 and \$20,570 in FY17. Moved by Judge Lamelas, seconded by Judge Franke. Motion carried unanimously.

Decision Item 4004 – Funding for Biennial Updating of Voter Registration List

2013 Wisconsin Act 149 transferred responsibility for biennial updating of the voter registration list from municipal clerks to the Government Accountability Board. In the past, the G.A.B. has taken on this responsibility and paid for these mailings with federal HAVA funds. This saved costs for municipalities who were required to do the mailings and helped ensure the statutorily required mailings went out in a timely manner. Given the depletion of our HAVA funds in FY17, we anticipate the cost to administer this legislation will be approximately \$102,900, which includes printing and postage for 300,000 postcards.

MOTION: Direct staff to request \$102,900 in GPR funds for the printing and postage of 300,000 postcards in FY17. Moved by Judge Lamelas, seconded by Judge Froehlich. Motion carried unanimously.

Decision Item 4005 – Address Ethics Division/Lobbying Program IT Needs

Staff requests the Board authorize a request for additional GPR funding of \$176,800 annually for the ongoing Ethics Division/Lobbying Program IT needs. Since lobbying fees will be cut effective January 2015 and lobbying fee income has fallen, the agency does not receive enough revenue or have budget authority to continue funding a full-time IT contractor that supports the Ethics Division’s non-CFIS software applications and infrastructure. The Ethics Division currently receives its IT assistance from an in house contracted resource, but cannot continue to fund this position without additional funding.

The Ethics Division needs to modernize many of its applications to lower technology costs as well as improve internal processes to reduce administrative costs. The Eye on Lobbying website is almost complete, but needs continual care and maintenance. The Statement of Economic Interest (SEI) system uses outdated technology and is in need of modernization. The complaint tracking system and the advice database also need to be upgraded.

Discussion.

MOTION: Direct staff to request \$176,800 GPR in FY16 and \$176,800 GPR in FY17 in its supplies and services line to fund a full-time IT contractor to support the Ethics Division’s IT infrastructure. Moved by Judge Froehlich, seconded by Judge Franke. Motion carried unanimously.

Funding for Implementation of Voter Identification

Ms. Hauge advised the Board that the current agency budget contains authorization and funding for 5.0 FTE GPR project positions to implement voter identification requirements, subject to approval by the Joint Legislative Committee on Finance. Because staff is not recommending any proposal to implement voter ID requirements as part of the agency budget proposal, the positions will be removed from the agency base budget.

Judge Barland asked about whether it would be more efficient to conduct polling place accessibility audits with existing G.A.B. staff rather than hire temporary workers. Elections Division Administrator Michael Haas said the G.A.B. has limited staff to handle calls on Election Day, and it is more efficient to do the audits using trained temporary workers.

G. Requests for Statement of Economic Interests Disclosure Waiver

Judge Barland said the Board has received a couple of requests for waivers from disclosure requirements for the names of clients by attorneys who serve on state government boards and must file statements of economic interests. He suggested the issue be postponed until the next meeting until staff could suggest criteria for granting waivers.

Discussion. Judge Vocke said he believes that information about who an attorney’s clients are should be a secret. Ethics & Accountability Division Administrator Jonathan Becker said he believes it would be a mistake for the Board to adopt a policy that applies to attorneys across the board, and he urged reviewing requests on a case by case basis. Judge Franke said that he is one of the attorneys seeking a waiver.

Consensus of the Board to delay consideration until the October 2014 meeting.

Mr. Becker recognized Ethics & Accountability Specialist Colleen Adams, who is leaving employment with the Board.

Judge Barland called a brief recess at 2:42 p.m. The Board reconvened at 2:49 p.m.

H. Report on Elections Division Manual Updates

Elections Division Administrator Haas made an oral presentation based on a written report starting on page 88 of the September 4, 2014 G.A.B. Open Meeting materials. He said staff has extensively revised the Election Administration Manual and the Election Day Manual based on numerous changes to election law during the last legislative session. The Special Voting Deputy Manual approved last year had to be revised again due to legislative changes. He thanked Training Coordinator Allison Coakley for her role in communicating these changes to clerks through the manual revisions and training.

Mr. Haas also briefed the Board on the current state of the election observer administrative rule, Chapter GAB 4. A revised version will be sent to the Legislature, based on the Board's previous action agreeing to all changes except those dealing with cameras. Staff is waiting for the chairs of the Assembly and Senate oversight committees to tell us to formally send the revised rule to them because they would then have only 10 days to approve or reject them. He discussed the issue of election observers in nursing homes being able to hear discussions between voters and the person assisting, and the Board's position that voters have the constitutional right to cast their ballot privately.

Discussion between the Board and staff regarding Special Voting Deputies and observers in nursing homes.

F. Proposed Decision Items for 2015-2017 Agency Budget (continued)

Elections Supervisor Ross Hein raised an issue regarding a GPR budget request to cover the cost of the Board sending out voter registration verification postcards on behalf of municipal clerks. He said those postcards are now being paid for with federal funds under the Help America Vote Act. He asked the Board to direct staff to request \$375,000 to cover the cost.

Discussion regarding whether the funds should come from federal or state funds. The Board took no action.

I. Proposed Meeting Schedule for 2015

Director Kennedy asked the Board to approve the proposed meeting schedule for 2015, located on page 91 of the September 4, 2014 G.A.B. Open Meeting materials.

Discussion regarding which day of the week to hold Board meetings, and whether a day other than Tuesdays might facilitate better communication between Board members and legislators. Based on the discussion, Director Kennedy said he would send out a revised schedule without

the May 19 meeting, and changing the dates of the February, April and June meetings to Wednesdays.

J. Per Diem Payment

MOTION: Direct staff to submit additional half-day Board Member per diem payments for preparation for the August 11, 2014 and September 4, 2014 meetings. Moved by Judge Vocke, seconded by Judge Nichol. Motion carried.

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 97 of the September 4, 2014 G.A.B. Open Meeting materials.

Elections Division Report – election administration

Written report from Division Administrator Haas and Division staff was included beginning on Page 112 of the September 4, 2014 G.A.B. Open Meeting materials.

Office of General Counsel Report – general administration

Written report from Kevin J. Kennedy, Sharrie Hauge, and Reid Magney was included beginning on Page 130 of the September 4, 2014 G.A.B. Open Meeting materials.

L. Closed Session

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

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

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

Motion carried unanimously. The Board recessed at 3:50 p.m. and convened in closed session at 3:57 p.m. The Board adjourned in closed session at 5:33 p.m.

The next regular meeting of the Government Accountability Board is scheduled for Tuesday, October 28, 2014, at the Government Accountability Board offices, 212 East Washington Avenue, Third Floor, Madison, Wisconsin beginning at 9:00 a.m.

September 4, 2014 Government Accountability Board meeting minutes prepared by:

Reid Magney, Public Information Officer

October 13, 2014

September 4, 2014 Government Accountability Board meeting minutes certified by:

Judge Timothy Vocke, Board Secretary

October 28, 2014

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 THOMAS H. BARLAND
Chair

KEVIN J. KENNEDY
Director and General Counsel

Wisconsin Government Accountability Board

212 East Washington Avenue
Madison, Wisconsin
September 19, 2014
9:00 a.m.

Open Session Minutes

Present: Judge Gerald Nichol (in person) Judge Thomas H. Barland, Judge Harold Froehlich, Judge Timothy Vocke, Judge John Franke, and Judge Elsa Lamelas (by telephone)

Staff present: Kevin Kennedy, Michael Haas, Jonathan Becker, Nathan Judnic, Sharrie Hauge and Reid Magney

A. Call to Order

Judge Barland called the meeting to order at 9:03 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. Approve Per Diems

MOTON: Approve Board Member per diem for the September 19, 2014 teleconference meeting. Moved by Judge Vocke, seconded by Judge Nichol. Motion carried unanimously.

D. Closed Session

Adjourn to closed session to confer with counsel concerning pending litigation and to consider performance evaluation data of a public employee over which it exercises responsibility.

MOTION: Move to closed session pursuant to §§19.85(1)(g), and 19.85(1)(c), to confer with counsel concerning pending litigation, and to consider employment, promotion and performance evaluation data of a public employee of the Board. Moved by Judge Nichol, seconded by Judge Franke.

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

Motion carried unanimously. The Board convened in closed session at 9:05 a.m.

G. Adjourn

The Board adjourned in closed session at 11:31 a.m.

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The next regular meeting of the Government Accountability Board is scheduled for Tuesday, October 28, 2014, at the G.A.B. office, 212 E. Washington Ave., in Madison, Wisconsin beginning at 9 a.m.

September 19, 2014 Government Accountability Board meeting minutes prepared by:

Reid Magney, Public Information Officer

October 16, 2014

September 19, 2014 Government Accountability Board meeting minutes certified by:

Judge Timothy Vocke, Board Secretary

October 28, 2014

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
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JUDGE THOMAS H. BARLAND
Chairperson

KEVIN J. KENNEDY
Director and General Counsel

MEMORANDUM

DATE: For the October 28, 2014 Board meeting

TO: Members, Wisconsin Government Accountability Board

FROM: Kevin J. Kennedy
Director and General Counsel

SUBJECT: Employer Support for the Guard and Reserve Presentation

All Wisconsin state agencies make a commitment to support employees who serve in the Armed Forces. The Government Accountability Board and its predecessor agencies have established a record of ensuring employees who are members of the National Guard and Reserves are able to fulfill their duties to both the agency and the military. There have been a number of employees who have served in the Armed Forces, during their time with the agency or before joining the G.A.B. Staff.

In addition, the Elections Division works closely with staff in all branches of the military to facilitate their participation in elections when Service members are deployed. This includes assistance with voter registration and providing information about our electronic ballot delivery system, My Vote Wisconsin, for military and permanent overseas voters.

One of our current employees, Brian Bell, who is a Captain in the Army Reserve, has nominated the Director and the two agency Division Administrators for a Patriot Award. The awards program is run by the Employer Support for the Guard and Reserve (ESGR), under the Office of the United States Secretary of Defense, and recognizes supervisors who provide support to Citizen-Soldiers that encourages and enables continued service in the military. Those nominations were recently approved.

A representative of the ESGR program will present the recognition to the Director and two Division Administrators at the Board meeting. More information about the program is available on their website: <http://www.esgr.mil/Employer-Awards/Patriot-Award.aspx>.

In addition to the individual recognition I have taken steps to qualify the agency for recognition as well. Because at least one supervisor will have received a Patriot award, the agency is also eligible to receive recognition. We have to complete a brief form called a statement of support online (<http://www.esgr.mil/Employers/Statement-of-Support/Form.aspx>). I have done this on behalf of the agency. After completing the online form, ESGR will arrange for signing a paper version at the Board meeting and present a certificate that can be displayed in the office.

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 THOMAS H. BARLAND
Chairperson

KEVIN J. KENNEDY
Director and General Counsel

MEMORANDUM

DATE: For the October 28, 2014 Board Meeting

TO: Members, Wisconsin Government Accountability Board

FROM: Kevin J. Kennedy
Director and General Counsel

Prepared and Presented by:
Michael Haas
Elections Division Administrator

SUBJECT: Printed Name Requirement on Election Petitions

The new statutory requirement for signers of nomination papers and other election petitions to include their legibly printed name was first implemented during the G.A.B.'s review of nomination papers of candidates in the 2014 fall elections. Both G.A.B. staff and Board members expressed concerns about the difficulty in defining a consistent and objective standard for determining when a name was "legibly printed." Board members recommended that staff attempt to refine and clarify the standard for determining whether a name was legibly printed. With nomination papers being circulated as of December 1, 2014 for candidates in the 2015 Spring Election, it is important that G.A.B. staff is able to properly and efficiently process nomination papers of state candidates, and to also provide clear guidance to local election officials who will process nomination papers of local candidates.

Background

2013 Act 160 created a new requirement for individuals who sign nomination papers of a candidate or other election petition. In the various statutory sections related to nomination papers, Act 160 inserted language stating that ". . . in order for the signature to be valid, each signer of a nomination paper shall legibly print his or her name in a space provided next to his or her signature" Similar language was included in Wis. Stat. §8.40 which relates to other election petitions. A copy of Act 160 is attached.

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

1. If the filing officer can discern no part of the printed name, it should be deemed illegible and the signature should not be counted.

2. If the filing officer can discern a possible name, but may not be certain of the exact spelling of the name, the printed name is deemed legible and the signature may be counted if otherwise valid.
3. The filing officer is not required to consult extrinsic sources of information (voter registration records, telephone directories, etc.), but may do so if it assists the filing officer in discerning a possible name.

In implementing these standards, G.A.B. staff also required that, consistent with other rules for correcting an insufficiency on a nomination paper, the signer may correct a printed name error (such as failure to include a printed name) by filing a correcting affidavit, but that a circulator could not correct the signature or printed name of an elector.

The standards approved by the Board focused on legibility and not on the meaning of the term “printed.” When reviewing over 100,000 signatures on nomination papers for the fall elections, G.A.B. staff came to realize the complications of applying a requirement which may have appeared straightforward on its face. In an effort to establish an objective standard, staff relied on the dictionary definition of “print” which then required staff to strike signatures when they were accompanied by a name in the “Printed Name” column which was actually written in cursive, or which had individual letters connected to one another. While this was not a satisfactory common sense interpretation for either staff or the Board, it attempted to give meaning to the Legislature’s decision to require a legibly printed name, regardless of whether or not the signer’s signature was legible on its own or in conjunction with the printed name.

Analysis of Legislative History

Neither the bill file for Act 160 nor the comments and debate in the legislative committees or floor session contain conclusive evidence of whether the Legislature intended that a “legibly printed” name must literally be “printed” and must not include cursive handwriting or letters which are connected or overlap. Possible evidence of a legislative intent to require that the entire name be actually printed in addition to a signature, even if a signature was clearly legible, includes the following:

1. On the bill request form, the author, Representative Ott, listed as the topic, “Names on petitions must be printed,” and included instructions stating “Require each signer of a nomination paper, statutory petition for a referendum, direct legislation petition, or recall petition to print his or her name next to his or her signature and address.”
2. The first version of the bill required each signer to “legibly type or print his or her name beneath or opposite his or her signature and address.” Subsequently, the phrase “in order for the signature to be valid” was inserted and “beneath or opposite” was changed to “next.” As introduced, the bill did not include the option to type the name. The LRB Analysis of the introduced bill stated “This bill also requires that each individual who signs a nomination paper or petition legibly print his or her name in a space provided next to his or her signature.”

Attached is a copy of the testimony of Representative Jim Ott during the public hearing before the Assembly Committee on Campaigns and Elections regarding Assembly Bill 420 (which later became Act 160). During the Committee's executive session, the precise question of whether a legible name in cursive would qualify as a printed name was never pinpointed and discussed. Whenever the requirement was discussed it was as a "legible printed" name or "legibly printed." There was some discussion about how to determine whether a name was legible, but no mention of how to treat a name that is legible but is not printed in either column for the signature or the printed name. There seemed to be consensus that if the required information was included, the signature should count, but no discussion about whether the "required information" included that the name had to be in print format.

In response to a question, Legislative Council staff stated that the bill language suggests that the boxes for both the signature and the printed name need to be completed, regardless of whether the signature is legible. There was a lengthy discussion of whether signatures should be counted if the signature and printed name were switched in the two boxes, with both representatives of both political parties seeming to agree that switching the signature and printed name should not disqualify a signature. Following this discussion, Legislative Council staff stated that the bill only prohibits counting the signature "if there is no printed name next to the signature," and that "the bill requires an additional printed name."

In the Senate Committee public hearing, Representative Ott, stated that the current problem was that illegible signatures prevent valid challenges because the challenger cannot even read the name to be challenged. He stated that the bill would make it easier to challenge names and that it would not have much impact on candidates because many already collected printed names on nomination papers. Senator Vukmir, the Senate lead author, stated that the bill would promote uniformity and protect the ability to challenge signatures. In response to questions about the difficulty in defining what is legible, Representative Ott stated that either the name can be read or it is not legible. Again, there was no specific discussion about whether printed names could be written in cursive.

G.A.B. Director Kennedy testified that the term "legibly" should either stay in the bill or the Board would use that as the standard for evaluating printed names. He stated that the Board would use a common sense approach and read "legible" into the bill even if it was not included in order to have a uniform standard.

During the floor debate regarding AB 420, discussion also focused on the legibility part of the proposal rather than the printed name requirement. Representative Ott repeated that the goal of the bill was to allow candidates and potential challengers to at least know the name of the person who signed the nomination paper. In responding to criticisms of the bill, he noted several provisions of G.A.B. administrative rules and policies which were in place and which he presumed would continue and would be extended to the printed name requirement. Specifically, 1) there is a presumption of validity that attaches to information on nomination papers 2) substantial compliance with the signature requirements is acceptable, and 3) signers who cannot complete their signature because of a disability may authorize another person to sign for them. Representative Ott also stated that he had been advised by the G.A.B. that a circulator would be able to print the name of a signer with a disability upon their request, and his bill did not intend to change that policy.

In reviewing the language and legislative history of Act 160, it can be argued that, if legibility of a signer's name was the only concern, there would have been no reason to insert the term "printed" into the statutory provisions. However, there is no indication of any discussion or debate which made a distinction between a name that is literally printed with no letters connecting, and a name that is legible even though it is written in cursive or includes letters which connect or cross over each other. Legislative staff in Senator Lazich's and Representative Bernier's offices indicate that the term "printed" was used only as the most convenient way to describe a marking that was legible, not because it required any specific form of writing. Representative Ott's concern was clearly to preserve the ability to make challenges, and his reliance on existing G.A.B. rules to review nomination papers emphasize that readability of a signer's name was the primary focus.

Conclusion

Given this analysis and its experience of reviewing nomination papers for the 2014 fall elections, G.A.B. staff recommends interpreting and applying Act 160 in a manner that preserves the ability to challenge a signature, is consistent with existing administrative rules related to the sufficiency of signatures, and does not invalidate signatures which are clearly readable, by reference to either the signature or printed name, or by reviewing both forms of the name associated with the signer.

Staff recommends updating and clarifying the Board's policy determination of April 17, 2014 regarding the review of printed names on nomination papers and other election petitions, so that the focus is on readability of the signer's name rather than whether or not the signer has complied with any literal definition of "printing." Staff recommends that the Board adopt the following standards:

1. The filing officer shall confirm that the signer has completed information in both the "Signature" box and the "Printed Name" box of the nomination paper or other election petition. The signature may be marked as the signer customarily marks his or her signature, including by using an "X" or by using either traditional printed letters or a handwritten signature. Similarly, the signer's printed name is not required to include only letters that are separated from one another.
2. If the filing officer can discern no part of the signer's name, after reviewing both the signature and the printed name, it should be deemed illegible and the signature should not be counted.
3. After reviewing both the signature and printed name of a signer, if the filing officer can discern a possible name, but may not be certain of the exact spelling of the name, the printed name is deemed legible and the signature shall be counted if otherwise valid.
4. The filing officer is not required to consult extrinsic sources of information (voter registration records, telephone directories, etc.), but may do so if it assists the filing officer in discerning a possible name.

It is the consensus of staff that, while these standards will continue to require some subjective judgment by filing officers, the standards will accurately capture the intent of Act 160. G.A.B. staff and local filing officers will be able to apply a common sense approach which does not eliminate legible names simply because letters in a printed name are connected or cross over one another. In essence, the printed name requirement is used to clarify or complete a signature which

may not be legible or readable, not to invalidate signatures on the basis of a name failing to meet a literal definition of “printed.”

Recommended Motion:

In interpreting and administering 2013 Act 160, the Board directs its staff and local filing officers to apply the following standards to determine the sufficiency of signatures on nomination papers and other election petitions:

1. The filing officer shall confirm that the signer has completed information in both the “Signature” box and the “Printed Name” box of the nomination paper or other election petition. The signature may be marked as the signer customarily marks his or her signature, including by using an “X” or by using either traditional printed letters or a handwritten signature. Similarly, the signer’s printed name is not required to include only letters that are separated from one another.
2. If the filing officer can discern no part of the signer’s name, after reviewing both the signature and the printed name, it should be deemed illegible and the signature should not be counted.
3. After reviewing both the signature and printed name of a signer, if the filing officer can discern a possible name, but may not be certain of the exact spelling of the name, the printed name is deemed legible and the signature shall be counted if otherwise valid.
4. The filing officer is not required to consult extrinsic sources of information (voter registration records, telephone directories, etc.), but may do so if it assists the filing officer in discerning a possible name.
5. The signer must print his or her name, and the signer must execute a correcting affidavit if the printed name is missing or insufficient for the signature to be counted. However, a circulator may print the name of a signer with a disability who requests such assistance.



2013 Assembly Bill 420

Date of enactment: **March 27, 2014**

Date of publication*: **March 28, 2014**

2013 WISCONSIN ACT 160

AN ACT to amend 8.10 (4) (b), 8.15 (2), 8.20 (5) and 8.40 (1) of the statutes; relating to: providing a printed name for signers of nomination papers and petitions.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 8.10 (4) (b) of the statutes is amended to read:

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

SECTION 2. 8.15 (2) of the statutes is amended to read:

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

SECTION 3. 8.20 (5) of the statutes is amended to read:

8.20 (5) Only one signature per person for the same office is valid. In addition to his or her signature, in order for the signature to be valid, each signer shall legibly

print his or her name in a space provided next to his or her signature and shall list his or her municipality of residence for voting purposes, the street and number, if any, on which the signer resides, and the date of signing. Signers of each nomination paper shall reside in the same jurisdiction or district which the candidate named therein will represent, if elected.

SECTION 4. 8.40 (1) of the statutes is amended to read:

8.40 (1) In addition to any other requirements provided by law, each separate sheet of each petition for an election, including a referendum, shall have on the face at the top in boldface print the word "PETITION". Each signer of such a petition shall affix his or her signature to the petition, accompanied by his or her municipality of residence for voting purposes, the street and number, if any, on which the signer resides, and the date of signing. In addition, each signer shall legibly print his or her name in a space provided next to his or her signature. No signature is valid under this subsection unless the signer satisfies the requirements under this subsection.

SECTION 5. Initial applicability.

(1) This act first applies to nomination papers and petitions for which the initial circulation date is on or after the effective date of this subsection.

SECTION 5m. Effective date.

(1m) This act takes effect on January 8, 2014, or the day after publication, whichever is later.

* Section 991.11, WISCONSIN STATUTES: Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication."



JIM OTT

STATE REPRESENTATIVE • 23rd ASSEMBLY DISTRICT

(608) 266-0486
District: (262) 240-0808
Toll-Free: (888) 534-0023
Rep.Ottj@legis.wi.gov

P.O. Box 8953
Madison, WI 53708-8953

Attachment 2

Good Morning Madame Chairwoman and Committee Members. Thank you for hearing my testimony on Assembly Bill 420.

Most nomination papers, recall and referendum petitions have spaces for signers to include both their printed name and signature, along with their address and the date of signing. These papers are then submitted to the Government Accountability Board, which allows interested parties to challenge a signer for a variety of reasons, including cases in which the signer does not reside in the district for which the papers are being circulated or the signer is too young to vote.

It has come to my attention that current law does not require nomination papers, recall or referendum petitions to include the printed name of the signer, only the signature. In the event that a paper is circulated without spaces for names to be printed, the paper will only include a signature, which in many cases is unreadable. This makes challenging those signatures nearly impossible, since if the name is unreadable the challenger is left without any idea of who the signer actually is.

The Government Accountability Board's policy is to assume that a signature is valid unless proven otherwise. It is extremely difficult to prove a name is invalid if it cannot be read.

This bill requires that nomination papers, recall and referendum petitions include the legibly printed name as well as the signature of the signer, along with the address and date of signing as required by current law. This will ensure that those signing these papers are actually entitled to do so, and will make it easier to challenge those names that are not valid.

Thank you and I will be glad to answer any questions.

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 THOMAS H. BARLAND
Chairperson

KEVIN J. KENNEDY
Director and General Counsel

MEMORANDUM

DATE: For the October 28, 2014 Board meeting

TO: Members, Wisconsin Government Accountability Board

FROM: Kevin J. Kennedy
Director and General Counsel

Prepared and Presented by:
Jonathan Becker
Ethics and Accountability Division Administrator

SUBJECT: Standards for Waiver of Financial Disclosure Requirements

Introduction

Wisconsin's Code of Ethics for State Public Officials requires approximately 2,500 state officials to file a Statement of Economic Interests on an annual basis. Wis. Stats. §§19.43 and 19.44. In general, the requirement applies to all state elected officials, top agency management, legislative service agency employees, and all gubernatorial appointments requiring Senate confirmation, as well as to candidates for state elective office.

The purpose of financial disclosure is twofold: (1) To give the public confidence that a state official is not acting in matters in which the official has a personal financial interest; and (2) To annually make an official think about the official's economic ties so that the individual may avoid conflicts.

Nonetheless, Wis. Stat. § 19.43 (8) provides that the Government Accountability Board may waive any financial disclosure requirement:

19.43 (8) On its own motion or at the request of any individual who is required to file a statement of economic interests, the board may extend the time for filing or waive any filing requirement if the board determines that the literal application of the filing requirements of this subchapter would work an unreasonable hardship on that individual or that the extension of the time for filing or waiver is in the public interest. The board shall set forth in writing as a matter of public record its reason for the extension or waiver.

The statute does not provide any further interpretation of what constitutes an unreasonable hardship or what is in the public interest. In my memory, the former Ethics Board granted one

waiver to an employee of the Legislative Audit Bureau with respect to the employee's husband's start-up business customers as long as the employee disclosed the customer list to her employer.

We asked our legal intern to contact other states to learn if any that require financial disclosure have standards for waiving any disclosure requirement. We have not found any states that have waiver standards or that have granted a waiver more than once.

Considerations

In my view, there are no broad public policy values that dictate any firm and fast rule for granting any across-the-board waivers. Rather, waiver requests should be handled on a case-by-case basis. To do otherwise would, in essence, preempt the legislative prerogative in determining what financial information a state official or candidate should disclose. Here are my thoughts on considerations the Board should take into account in determining whether or not to grant a waiver in a specific case:

What position does the official hold?

- Elected officials – The Board should be hesitant in granting any waivers to state elected officials. Such individuals generally exercise broad powers and in choosing whether or not to run for office an individual can take financial disclosure requirements into consideration. To use a judicial analogy, strict scrutiny should be applied.
- Full-time appointed officials – Such top management individuals also exercise broad powers, albeit in narrower areas than elected officials. Nonetheless, they exercise much control over regulatory and financial matters in the areas in which their agencies operate.
- Part-time appointed officials – Part-time officials do not exercise the broad powers that elected and full-time officials do. They generally oversee Boards with limited jurisdiction and are more likely than full-time officials to have other jobs and active business interests. Such individuals' service on state boards is a public service for which they receive little remuneration and, if disclosure would interfere with an individual's perceived ability to carry on the individual's private economic endeavors, it could lead to an unwillingness to serve.
- Employees with limited decision making power – Some agencies, such as the G.A.B., the Wisconsin Economic Development Corporation, the Legislative Audit Bureau, and the Wisconsin Housing and Economic Development Authority, require all employees, or all non-clerical employees, to file a statement. These employees may have relatively little control over regulatory and financial matters, and waiver may present less of a threat to the public interest.
- An important question is: What is the relationship between the official's governmental duties and the economic interests that the official does not want to disclose? The answer to this question should weigh heavily in a waiver consideration.

How important is confidentiality of the economic interest sought to be protected?

- While many individuals would like to keep their financial interest information confidential, there seem to be two areas in which some sensitivity seems justified. The first is an attorney's clients. While staff believes that the Code of Professional Conduct does not

prohibit an attorney from disclosing clients on a Statement of Economic Interests (see previous attached memo on this), lawyers are justifiably sensitive to this. There are two statutory requirements that may require an attorney to disclose clients:

(1) Lawyers must disclose every organizational client (and lobbyist) from which a law firm in which they have a 10% or greater interest has received \$10,000 or more in the prior calendar year. A lawyer's partners may be sensitive to the disclosure of clients that may not be the reporting official's. Clients may also be sensitive about the disclosure that they have sought legal advice from a firm. This should be given consideration in determining whether to grant a waiver request. Countervailing arguments to granting a waiver are considerations of whether a client engages in activity related to the official's regulatory responsibilities.

(2) Lawyers must disclose every organizational client (and lobbyist) for which they are an authorized representative or agent on December 31 of each year. In this regard, we have said "An official need not identify clients of the official's firm for which the official did not act as an authorized representative or agent in dealings with third parties or act in a supervisory capacity with respect to other attorneys in the firm who did provide such services." The keys are that this disclosure requirement only requires a snapshot disclosure and applies only to clients represented in situations in which non-clients will know of the representation (and there is no longer an attorney-client privilege). In my view, a waiver is less justified with respect to such clients.

- For a start-up business or in a competitive business situation, the disclosure of customers may be detrimental. This may bolster a business owner's request for a waiver in some situations, but the harm should not be simply speculative.

How many interests does an official have?

- If an official has a great many interests to report, reporting may create a heavy administrative burden on the official. Moreover, it may be that no particular customer, client, or business interest is important if an official has very many such interests.

Conclusion

In staff's view, waivers should be granted cautiously and rarely. No one is compelled to be a state public official – it is always voluntary and the reporting requirements should be known up front. On the other hand, it would be unfortunate if the reporting requirements discouraged an individual from entering public service or had a detrimental effect on an official's economic standing.

The considerations listed should be viewed and used as part of a sliding scale of factors. Staff strongly believes that waiver determinations should continue to be made on a case-by-case basis and that the burden should be on the individual requesting a waiver to demonstrate the undue hardship that would be imposed by disclosure. A showing should be required that undue hardship is not simply speculative. And a requester should establish a showing of hardship by clear and convincing evidence.

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. 1944(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 THOMAS H. BARLAND
Chairperson

KEVIN J. KENNEDY
Director and General Counsel

MEMORANDUM

DATE: For the October 28, 2014 Board Meeting

TO: Members, Wisconsin Government Accountability Board

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

Prepared and Presented by:
Ross D. Hein
Elections Supervisor
Government Accountability Board

SUBJECT: 2014 Post-Election Audit of Electronic Voting Equipment

Government Accountability Board staff is preparing to conduct the mandatory post-election audit of electronic voting equipment following the November 4, 2014 General Election, as required by Wis. Stat. § 7.08 (6):

(6) Enforcement of federal voting system standards. Following each general election, audit the performance of each voting system used in this state to determine the error rate of the system in counting ballots that are validly cast by electors. If the error rate exceeds the rate permitted under standards of the federal election commission in effect on October 29, 2002, the board shall take remedial action and order remedial action to be taken by affected counties and municipalities to ensure compliance with the standards. Each county and municipality shall comply with any order received under this subsection.

Past Board Discussion on the Post-Election Audit of Electronic Voting Equipment

G.A.B. staff at the December 17, 2013 Board meeting presented a report on the post-election audits of voting equipment conducted following the 2008, 2010 and 2012 general elections. The Board unanimously approved the 2008-2012 Voting Equipment Audit Report but requested that at the January meeting staff present the Board with a list of issues identified by the Board which staff may be directed to examine and report on at subsequent meetings. At the January 14, 2014 Board meeting, G.A.B. staff presented on the following issues:

- Whether the scope of the audits ought to encompass the voting equipment's ability to read ballots cast by voters who did not follow the instructions for proper ballot marking.

Staff response: The Statutes do not require or contemplate voting equipment which can count ballots that it cannot read. For the purpose of the audit, a valid ballot is a ballot that can be read by the voting equipment. An audit can note why ballots may not have been tabulated. This could be a factor for consideration with respect to the status of the equipment certification.

Election inspectors and boards of canvassers are charged with addressing voter intent issues as part of the post-election canvass at the polling place or in a recount.

- Whether election inspectors have the option to, or should be required to, verify the accuracy of voting equipment on Election Night via hand-counts.

Staff response: Conducting a hand count of ballots on Election Night that had been tallied by voting equipment is neither required nor authorized by the Statutes. The Board also risks a mass exodus of election inspectors if such hand counts are required or authorized. Pre-certification hand counts have been advocated by individuals or groups, but as with other policy matters, the Board's position has been that such significant policy decisions should be taken up with, and decided by, the Legislature.

- Determining the number of people who voted but whose ballots were not counted.

Staff response: G.A.B. staff will provide Board members with numbers of ballots not counted by voting equipment. Director Kennedy provided the requested information on February 28, 2014 to the Board, indicating for the 2012 audit the total number of voters in each municipality, the total number of ballots cast on voting equipment, and the total number of ballots counted by hand in the audit. This information will also be included in the report prepared describing the 2014 post-election audit activities.

No formal motion was adopted by the Board. However, Director Kennedy committed to providing the Board the opportunity to review the audit procedures before the next audit following the November 2014 election.

Purpose of Post-Election Audit of Electronic Voting Equipment

G.A.B. staff (and formerly the Elections Board staff) has been auditing the performance of electronic voting equipment since the 2006 General Election. Although some of the voting equipment is nearly 20 years old, past voting equipment audits have demonstrated that the voting equipment continues to accurately record the choices of Wisconsin voters. The post-election audit is an important process that verifies the accuracy of tabulating systems and provides an essential benefit in maintaining public confidence in the integrity of our election process.

The post-election audit of electronic voting equipment is a manual verification process that requires local election officials to conduct two independent hand-counts of the ballots initially tabulated by the electronic voting equipment. Once the local election officials are able to verify that the two independent hand-counts are the same, the tabulation report produced by the electronic voting equipment is compared to the hand-count to verify the accuracy of the equipment. If any discrepancies are identified, local election officials are required to investigate to determine if there are reasonable explanations that explain the difference. In the event that a discrepancy between the machine tally and the paper record tally cannot be reasonably explained, the G.A.B. will request that the voting equipment manufacturer investigate and explain the reasons for any

differences between the machine tally and the paper record tally. Since the audits began in 2006, there have not been any situations that have required these additional steps with the voting equipment manufacturer.

The post-election audit purpose is simply to verify whether the electronic voting equipment accurately tabulates ballots that have been properly marked, within the margins of error established at the federal level.¹ Voting equipment cannot determine voter intent of ballots that have been marked improperly on purpose. Determining voter intent requires human intervention and analysis and because electronic voting equipment does not contain such capabilities, local election officials conducting the post-election audit are instructed to hand-count ballots just as the voting equipment would have tabulated on Election Night. Eliminating any potential non-tabulation related sources of error helps to resolve discrepancies between the audit hand count and voting equipment counts.

In close elections where recounts are necessary, which is a completely separate process from the post-election audit of electronic voting equipment, each ballot is reviewed by election officials before being fed through the voting equipment or being counted by hand. These recount officials are checking every ballot in an effort to determine whether the ballot may not be properly tabulated by the voting equipment, due to a marking error by the voter. If that is the case, the ballot will be set aside to be hand-counted by the election official to try to determine the voter's intent. The number of ballots that contain these marking errors are very small and rarely have an impact on an election. Nevertheless, that is why the recount procedures provide during close elections each ballot is individually reviewed to determine voter intent and is hand-counted if necessary. Voter intent, however, is outside the parameters of the post-election audit of electronic voting equipment.

Conducting the 2014 Post-Election Audit of Electronic Voting Equipment

G.A.B. staff recommends continuing the audit protocols it has used following recent general elections. The attached document titled "*Voting System Audit Requirements*" provides a detailed plan for the 2014 post-election audit of electronic voting equipment. On the Wednesday following the General Election, G.A.B. staff will randomly select 100 reporting units across Wisconsin which will be subject to municipal audit, including a minimum of five reporting units for each voting system used in Wisconsin. The G.A.B. will select four offices to be audited, including the top contest on the ballot (Governor). The other audited contests shall be selected randomly from the other contests that appear on the ballot. Municipalities are eligible to receive \$300 for each reporting unit audited, and the maximum amount the G.A.B. would reimburse in total is \$30,000. These funds will be reimbursed from Help America Vote Act (HAVA) appropriations.

Additionally, in response to a Board member's concern that the Board may need to conduct more voter education about the proper way to mark a ballot, Board staff created a document titled "*Making Your Vote Count- A Primer for Voters.*" The document is also attached and has been made available to election officials and the public in an attempt to educate voters on the different types of voting methods in Wisconsin.

¹ The current federal standard is an accuracy rate of errors of no more than 1 in 500,000 ballots. Accordingly, auditing teams must reconcile the Voter Verified Paper Record with ballots or records tabulated and recorded by equipment and eliminate any potential non-tabulation related sources of error including printer malfunctions, voter generated ballot marking errors, poll worker errors, or chief inspector errors.

Recommended Motion: The Board adopts the 2014 Post-Election Audit Plan as detailed in the document titled *Voting System Audit Requirements*.

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 THOMAS H. BARLAND
Chair

KEVIN J. KENNEDY
Director and General Counsel

Voting System Audit Requirements

Wis. Stat. § 7.08(6) is the state embodiment of § 301(a)(5) of the Help America Vote Act (HAVA). Wis. Stat. § 7.08(6), requires the Government Accountability Board (G.A.B.) to audit each voting system that is used in this state following each General Election:

(6) Enforcement of federal voting system standards. Following each general election, audit the performance of each voting system used in this state to determine the error rate of the system in counting ballots that are validly cast by electors. If the error rate exceeds the rate permitted under standards of the federal election commission in effect on October 29, 2002, the board shall take remedial action and order remedial action to be taken by affected counties and municipalities to ensure compliance with the standards. Each county and municipality shall comply with any order received under this subsection.

Required Audit Distinguished from Required Testing

The pre-election test of an electronic voting system per Wis. Stat. § 5.84 uses a pre-determined set of ballots to ensure that the voting system is properly programmed prior to Election Day. The post-election voting system audit per Wis. Stat. § 7.08(6), on the other hand, is designed to assess how the electronic voting system performed on Election Day by reviewing the actual ballots cast by electors.

Definitions

Blank Ballot – a ballot on which an elector does not vote for any contest.

Board – see Government Accountability Board

G.A.B. – see Government Accountability Board

General Election – the election held in even-numbered years on the Tuesday after the first Monday in November to elect United States senators, representatives in congress, presidential electors, state senators, representatives to the assembly, district attorneys, state officers other than the state superintendent and judicial officers, and county officers other than supervisors and county executives. Wis. Stat. § 5.02(5).

Government Accountability Board – the agency described in Wis. Stat. § 15.60.

Overvote – when an elector votes for more than the number of candidates to which he or she is entitled to vote in that contest. This may be read as an undervote by some optical scan voting systems as no vote will be counted.

Reporting Unit – the ward, combination of wards, or other districts by which votes are tallied.

Total Voters – the total number of voters who appeared to vote at the polling place or whose valid absentee ballots were cast at the polling place. This should correspond to the highest voter number/last voter number issued on the poll list.

Type of Voting System– a particular type of voting system. In Wisconsin there are two types of voting systems: (1) touch screen direct recording electronic (DRE) systems, and (2) optical scan tabulating systems.

Undervote – when an elector does not vote or votes for less than the number of candidates or offices to which he or she is entitled to vote in that contest. May also be how an overvote is recorded by the voting system.

Votes Cast – the number of actual votes cast for a contest. For any particular contest, this number may be less than the total number of voters.

Voting Device – an apparatus other than a voting machine which the elector uses to record his or her votes on a ballot. Wis. Stat. § 5.02(24g).

Voting Machine – a machine which serves in lieu of a voting booth and which mechanically or electronically records the votes cast by electors, who depress levers or buttons located next to the choices listed on the ballot to cast their votes. Wis. Stat. § 5.02(24r).

Voting System – the total combination of mechanical, electromechanical, or electronic equipment, including the software, hardware, and documentation required to program, control, and support the equipment that is used to define ballots, to cast and count votes, to report or display election results, and to maintain and produce any audit trail information. Wis. Stat. § 5.02(24w)(a).

Reporting Unit Selection

Government Accountability Board staff will randomly select one hundred (100) reporting units across Wisconsin which will be subject to municipal audit, including a minimum of five (5) reporting units for each voting system used in Wisconsin. The audits will be conducted in accordance with the procedures set forth below. Both the municipal and county clerk of reporting units selected for audit will be notified of the selection. If fewer than five (5) reporting units for any voting system are selected through the random selection process, then additional reporting units will be randomly selected by voting system until five reporting units per voting system have been selected. Any reporting unit selected for audit that is subject to a recount shall be replaced by another reporting unit selected at random by G.A.B. staff. For good cause, G.A.B. staff may identify other reporting units to be audited.

Pre-Audit Preparations

The audit shall be open to the public. Members of the public may not interfere with the conduct of the audit. The time and location of the audit must be posted at least 48 hours prior to the audit. No audit shall commence until after the period for filing a challenge to a recount of any contest on the ballot has expired. The audit must be conducted, however, no later than two (2) weeks after the Government Accountability Board certifies the election results.

Upon notification by G.A.B. staff that the municipality shall conduct an audit of a selected reporting unit, the municipal clerk shall make arrangements with the county clerk and the county board of canvassers to preserve and retain the election materials including voter lists, the Inspectors' Statement (GAB-104), Tally Sheets (GAB-105), reports printed or generated by the

voting system, ballots and any other required materials that will be used during the audit. All materials subject to audit must be retained in a secure location by either the municipal or county clerk.

Upon agreement of the municipality and county, the county clerk or county board of canvassers may perform the audit of the selected reporting unit(s) in lieu of the municipality. In this instance, the county would be entitled to any reimbursement provided by the Government Accountability Board.

General Procedures

1. The municipality shall acknowledge receipt of their selection for the post-election voting system audit and confirm with the G.A.B the following information for each reporting unit selected:
 - a. Voting System Type
 - b. Voting Equipment Model
 - c. Accessible Voting Equipment Model
2. Four (4) contests shall be audited, including the top contest on the ballot (either gubernatorial or presidential). The other audited contests shall be selected randomly by G.A.B. staff from the other state contests that appear on the ballot.
3. The clerk shall publicly post notice of the time and location for the voting system audit at least 48 hours prior to the scheduled audit.
4. A minimum of two individuals shall participate in the audit. Votes shall be tallied by hand for the contests included in the audit. For some voting systems, this will require counting the votes listed on the voter-verified paper audit trail generated by the voting system on Election Day. At least two auditors shall each determine an independent total for each contest. These totals shall then be compared to each other. If the auditors' totals agree, the totals are then compared to the results generated by the voting system and any discrepancies are recorded.
5. If any offices contain an overvote, no vote is counted for that office, and is considered an undervote.
6. Auditors should only count votes as the equipment would have counted them. Voter intent is not a factor. In some cases, it may not be clear exactly how the ballot would have been counted by the voting equipment. Auditors should document in the minutes any ballots where it is unclear how the voting system would count the ballot. The auditors should include in the minutes how they counted the ballot as well as all reasonable alternatives on how the machine may have counted the ballot.

Example: Ballot 93, voter marked both Jane Doe and John Smith and attempted to erase the mark for John Smith. We counted it as a vote for Jane Doe, but the machine may have read this as an overvote in this contest. This may result in our tally having one more vote for Jane Doe and one less undervote in this contest.

It may be possible that the auditors' totals do not match the voting equipment results report, but as long as you can reasonably explain any difference in the totals by reference to specific ballots, this is not considered to be an error with the voting system.

Recommended Audit Procedures

Set-Up

1. Count out ballots into sets of 100.
2. Label stacks—each ballot will have a unique number (1-100, 101-200, 201-300, etc.)

Note: Two people review each ballot. Auditors should rotate the stacks between them – i.e. Person A works on Stack 1-100 while Person B works on Stack 101-200, etc...then they switch. Person A and Person B will each individually go through all the ballots. Keeping the stacks in order allows the auditors to narrow down where there are discrepancies between them instead of needing to recount all the ballots over and over again.

Each Auditor Individually

1. Tally votes in groups of 20 – the goal is to be able to narrow discrepancies between individual tallies down to the smaller groups of 20.
2. Keep separated in subgroups of 20 while tallying – it is helpful to keep the group of 100 in one stack but to alternate the directions of the subgroups of 20.
3. Add subtotals after 100 ballots are complete.
4. Add subtotals together; confirm total is 100.
5. Repeat 1-4 in sets of 100 until all ballots are counted.

Auditors Jointly

1. Compare individual tallies for each contest audited.
 - a. Circle any discrepancies between the two tallies.
 - b. If tallies do not match, recount the sub-group of 20 to determine which tally is correct. You should use a new tally sheet labeled “Recount [insert Stack Number/Subgroup]”.
2. After any discrepancies are reconciled, add the stack totals together to determine the total vote in each contest audited.
3. Compare to electronic voting machine (EVM) total.
 - a. If the totals match, note that they match on the reporting form.
 - b. If the hand tally and voting equipment tally does not match for a contest, the auditors review the minutes for ballots that were ambiguously marked that could explain the discrepancy. If the discrepancy can be reasonably explained by specific reference to these ballots, record that explanation on the reporting form.
 - c. If the minutes do not provide a reasonable explanation for the discrepancy, calculate the error rate and note the actual difference in votes and the error rate on the reporting form.

Post-Audit Procedures

Each municipality conducting an audit must submit the designated reporting forms and supporting documents from the audit, including tally sheets, to G.A.B. staff to indicate the audit was completed and describe any discrepancies that were found.

G.A.B. staff may, at its sole discretion, request that the municipality submit all audit materials, including the source documents (ballots, poll lists, etc.) to the G.A.B. for further review. In such a case, the G.A.B. will reimburse the municipality for the associated postage/shipping costs.

In the event that a discrepancy between the machine tally and the paper record tally cannot be reasonably explained, G.A.B. staff will request that the voting equipment manufacturer investigate and explain the reasons for any differences between the machine tally and the paper record tally.

Should the vendor fail to provide a sufficient written explanation, including recommendations for preventing future occurrences, within 30 days of notification, G.A.B. staff will suspend approval of the affected voting system in Wisconsin. This suspension will be implemented immediately, pending an appeal by the vendor to the Board, which must be filed within 30 days.

Based upon the results of the audit, the Government Accountability Board may, at its sole discretion, choose to re-test the voting system per GAB Chapter 7. Such test would be a condition of continuing approval of said voting system.

Municipal Reimbursement

The Government Accountability Board will reimburse up to \$300 for the cost associated with conducting each audit to those municipalities with reporting units identified for audit.

Municipalities will be reimbursed (up to \$300) for actual costs incurred. The Government Accountability Board will not reimburse personnel costs at a rate exceeding \$10 per hour.

2014 Post-Election Electronic Voting Equipment Audit Reporting Form

1. MUNICIPALITY:
2. COUNTY:
3. CONTACT PERSON & PHONE:
4. DATE of AUDIT:
5. VOTING SYSTEM DESCRIPTION
(VENDOR, MODEL NAME/NUMBER):
6. VERSION NUMBER:
7. VOTING DEVICE SERIAL NUMBER:
8. MEMORY CARD SERIAL NUMBER:
9. PERSONS CONDUCTING AUDIT:
10. DATE OF ELECTION:
11. TOTAL NUMBER OF VOTERS:
12. NUMBER OF BALLOTS CAST BY
EQUIPMENT TYPE (HAND-COUNT/OS/DRE):

Office	Governor							
	Machine	Hand	Machine	Hand	Machine	Hand	Machine	Hand
# of Votes								
Undervotes								
Difference								
Error Rate	%		%		%		%	

ATTACH COPIES OF MACHINE TOTALS AND MANUAL TALLY SHEETS

Audit Recording Form

Page 2

LIST HAND-COUNT TALLY AND ERROR RATE (%) FOR EACH CONTEST AUDITED:

To calculate the error rate:

Note any differences between hand-count audit tally and machine-generated (Election Day) tally. Divide the total number of differences between the hand-count audit tally and machine-generated (Election Day) tally by the total number of votes cast for that contest. Multiply this number by 100. This is your percentage (%) error rate.

LIST AND DESCRIBE ANY DISCREPANCIES FOR EACH AUDITED CONTEST:

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 THOMAS H. BARLAND
Chairperson

KEVIN J. KENNEDY
Director and General Counsel

Making Your Vote Count – A Primer for Voters

In Wisconsin, there are three basic methods of voting. 1) Selecting your choices using Touch Screen Voting Equipment, 2) marking your choices on a paper ballot that is hand counted, and 3) marking your choices on a paper ballot that is read by an optical scanner. Depending on where you live, you will see one or more of these methods being used at your polling place. This voting guide focuses on marking optical scan or hand-count paper ballots.

An overview of your ballot

- The ballot will consist of three columns with offices in each column.
- *In most cases the ballot will be two sided.*
- The ballot is divided into five categories:

Statewide
Congressional
Legislative
County
Referendum

All ballots throughout Wisconsin will contain the following:

The statewide offices of

Governor and Lieutenant Governor
Attorney General
Secretary of State
State Treasurer

The county offices of

Sheriff
Clerk of Circuit Court

The office of Representative in Congress

Statewide Referendum Question

A Constitutional Amendment relating to:
Creation of a department of transportation,
creation of a transportation fund, and deposit
of funds into the transportation fund.

The legislative office of

Representative to the Assembly

In addition, some ballots may also contain:

The legislative office of

State Senator (Odd-numbered Senate Seats)

Local referenda questions

Various county, municipal or school district
referenda

The county offices of

The office of Coroner (in counties who elect
a Coroner, rather than hire a medical
examiner)

Tips for Marking Your Ballot

1) Read the ballot instructions

If you aren't sure what something means or you have other questions, be sure to ask an election inspector (poll worker) for assistance.

2) Use the pencil or marking pen provided.

Optical scanners have a sensor that reads your ballot and records your votes. The sensor is able to read your ballot by detecting a mineral, usually carbon, left by the writing instrument you used to mark your ballot. Using the pencil or marking pen provided will ensure the scanner will read your ballot correctly.

While you are free to mark your ballot with something other than what is provided, if the scanner cannot detect the marks it will reject the ballot as being blank. In order for the ballot to be read and accepted by the scanner, the election inspectors are required to copy your votes onto a new ballot using an acceptable marking device. The original ballot is preserved, and the remade ballot is put through the optical scanner

3) You may vote for only one candidate in each office.

With the exception of the office of Governor/Lieutenant Governor, you may choose only one candidate or write in one candidate for each office. Each office will also offer the opportunity to write in a candidate rather than voting for a ballot candidate.

4) For the office of Governor/Lieutenant Governor you may only vote for candidates on one ticket.

Generally a candidate for Governor runs in tandem with the candidate for Lieutenant Governor. However, a candidate for Governor is not required to have a running mate. When voting for the offices of Governor and Lieutenant Governor, you may choose the candidate or candidates on one ticket only, and cannot mix and match two candidates from different parties. Or, you may use the write-in lines to write in candidates for Governor and Lieutenant Governor whose names do not appear on the ballot.

5) Review your choices carefully.

Each candidate in each office will have an arrow, oval or square next to their name. Each office will also offer the opportunity to write in a candidate rather than voting for a ballot candidate. Properly indicating the candidate of your choice will ensure vote is counted as intended.

6) Mark your ballot so that there is no doubt about your choices.

Depending on where you live in Wisconsin, your ballot may instruct you to "make an X in the square," "fill in the oval" or "connect the arrow." Whichever the method, always make your selection obvious. When voter intent is not obvious, the election inspectors must make a determination of voter intent.

- Clearly mark an X in the box next to the candidate of your choice when voting a hand-count paper ballot.

- When marking an optical scan ballot, fill in the oval completely or carefully connect the head and tail of the arrow next to the candidate of your choice.
- Do not circle the arrow or oval, rather than filling in the oval or connecting the arrow.
- Do not make a checkmark or X on the oval or arrow, rather than filling in the oval or connecting the arrow.
- When writing in a candidate, write the name legibly.
- Avoid making extraneous marks on your ballot.
- If you make a mistake, do not try to erase the error. Ask the inspectors for a replacement ballot. (You may receive only receive 2 replacement ballots.)

7) Pay attention to the navigational cues at the bottom of each column (“Continue voting at top of next column”) and instructions to “Turn the ballot over to continue voting.”

8) Review your ballot before placing it in the optical scanner or ballot box.

Make sure you have voted in all offices and for all referenda you want to, and that your choices reflect your intent.

The Government Accountability Board and your local election officials want your ballot to count and your voting experience to be pleasant. If you have any questions or encounter any difficulties, please speak to an election inspector (poll worker) at your polling place.

State of Wisconsin \ Government Accountability Board

212 East Washington Avenue, 3rd Floor
Post Office Box 7984
Madison, WI 53707-7984
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JUDGE THOMAS H. BARLAND
Chair

KEVIN J. KENNEDY
Director and General Counsel

MEMORANDUM

DATE: For the October 28, 2014 Board Meeting

TO: Members, Wisconsin Government Accountability Board

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

Prepared by: Jonathan Becker, Brian Bell, Richard Bohringer, Adam Harvell, and
Molly Nagappala, Ethics and Accountability Division

SUBJECT: Ethics and Accountability Division Program Activity

Division Staffing

Jonathan Becker
Division Administrator

Since the last report, Colleen Adams has left the Division to accept a position with Wisconsin Voices, a social justice organization. We will miss her hard work and expertise. The division is currently recruiting a new campaign finance auditor.

Campaign Finance Update

Richard Bohringer and Adam Harvell
Campaign Finance Auditors

Legislative Changes and Court Decisions

On October 14th, Federal District Court Judge Rudolph Randa issued a preliminary injunction against enforcing restrictions on “coordination” between candidates and other organizations producing communications that do not expressly advocate the election or defeat of a candidate. Manuals and Guidelines which would cover the issue of coordination have already been removed from the website, anticipating a final order from Judge Clevert covering corporate contributions and other issues from *Wisconsin Right to Life v. Barland* (Barland II). Staff will continue to update manuals and guidelines as changes are necessary.

July Continuing 2014 Reports

All non-exempt registrants were required to file the July Continuing 2014 report by July 21, 2014. Late filers received reminders by mail, email and phone. 1509 committees have filed a report. Three committees paid a \$125 late fee, and 7 committees have been placed on administrative suspension for failure to file.

Fall Pre-Primary 2014 Campaign Finance Reports

All candidates on the ballot in August were required to file a pre-primary report by August 4, 2014. All candidates have filed the required report. One candidate committee paid a \$125 late fee.

Upcoming Campaign Finance Reports

The next report due for candidates on the ballot is the Fall Pre-Election 2014 report, due October 27, 2014. Notices for this filing were sent the first week in October. All registrants are required to file the January Continuing 2015 report, due February 2, 2015.

Campaign Finance Audits

In 2014, staff have run audits for late filing of reports, late filing fees, failure to provide employment information, corporate contributions, and illegal lobbyist contributions. The Fall 2013 special elections and Spring 2014 elections were audited for individual and committee contribution limits, and failure to provide late reports. New audits this year are addressing “pending” transactions that have been saved, but never filed, and cash balance discrepancies for reports filed in 2013.

Audits of aggregate committee limits, or the 45%/65% audits, will not be performed, in compliance with the Federal District Court decision in *CRG Network V. Barland et al.*

Other audits may be 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

Staff continues to add webinars and CFIS manuals to the training page of the G.A.B. website. The latest webinar covering sponsoring organizations was posted on September 25th.

Lobbying Update

Molly Nagappala and Brian Bell
Ethics and Accountability Specialists

Statement of Lobbying Activities and Expenditures Reports – January-June 2014

Staff recently completed an audit of the January-June 2014 15-day reports and has sent a forfeiture letter to one principal.

Preparations for 2015-2016 Legislative Session

Staff anticipates opening lobbyist licensing and principal registration on December 1, 2014. Four in-person training sessions have been scheduled during the month of December. Staff have also created five training webinars, which will be available online prior to new session registration.

Eye on Lobbying Website Project Update

Kavita Dornala has been working on creation of the new FOCUS subscription service and continues to make excellent progress. Kavita has been meeting regularly with G.A.B. staff to provide updates on the process; staff has also been providing suggestions and new ideas for the service, as well as testing several FOCUS functions to ensure a positive future user experience.

On October 16, 2014, G.A.B. staff held a “FOCUS focus group” attended by approximately 15 regular users of the website, who offered very valuable feedback and suggestions. Staff anticipates a December 1, 2014 FOCUS rollout date.

Staff continues to assist the public, lobbying principals and lobbyists regarding access to public information on the website as well as policy and reporting requirement questions from the lobbying community.

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, although new registrations are beginning to decrease. 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 October 17, 2014)			
	Number	Cost	Revenue Generated
Organizations Registered – Full Lobbying	726	\$375	\$271,950
Organization Registered – Limited Lobbying	13	\$20	\$260
Lobbyists Licenses Issued (Single)	559	\$350	\$195,650
Lobbyists Licenses Issued (Multiple)	113	\$650	\$73,450
Lobbyists Authorizations Issued	1567	\$125	\$195,875
Total Revenue:			\$737,185

Financial Disclosure Update

Adam Harvell

Campaign Finance Auditor and Ethics Specialist

Statements of Economic Interests

All annual statements for 2014 have been received, with a few outstanding questions on waiver. In November and December, staff will update the SEI database and forms for 2015 and print about 2,500 statements for distribution. All statements will be mailed by January 2015.

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.

State of Wisconsin Investment Board Quarterly Transaction Reports

Staff sent out 54 quarterly financial disclosure reports to State Investment Board members and employees at the end of September. The 2014 third quarter reports are due on or before October 31, 2014. Once received, copies of the reports will be delivered to the Legislative Audit Bureau for their review and analysis.

Ethics, Complaints and Investigations Update

Jonathan Becker

Division Administrator

Division staff continue to answer questions from legislators, legislative staff and the public on various provisions of the State Ethics Code. Division staff intake numerous complaints from various parties and deal with them appropriately according to the Division’s standard procedures. Division staff continue to devote time to assist on investigations and the resolution of complaints when called upon by the Division Administrator and/or the 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 THOMAS H. BARLAND
Chairperson

KEVIN J. KENNEDY
Director and General Counsel

MEMORANDUM

DATE: For the October 28, 2014 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 (September 4, 2014), the Elections Division staff has focused on the following tasks:

1. General Activities of Election Administration Staff

A. General Election Preparations – Voter Photo ID

On September 12, 2014, the 7th Circuit Court of Appeals reinstated the requirement that most Wisconsin voters present photo identification in order to cast a ballot for the November 4, 2014 General Election. The Court of Appeals lifted an injunction against the requirement that had previously been issued by Judge Lynn Adelman of the Eastern District of Wisconsin federal court.

The first priority was to address absentee voting procedures. The deadline for municipal clerks to send ballots to voters with an absentee ballot application on file was September 18th. On September 16th, a high-priority communication was posted with instructions to municipal clerks with respect to obtaining photo identification from voters who had already been sent ballots, and procedures for obtaining photo ID from voters who had requested a ballot, but had not yet been sent a ballot. A high-priority communication on September 25th focused on questions that arose following the September 16th communication. Forms associated with absentee voting, as well as the Type E Notice of Absentee Voting and Uniform Instructions for Absentee Voters were revised and posted as a high-priority communication on September 17th.

From the time of the decision, the majority of Election Administration staff time was devoted to the systematic revision of forms, notices, manuals and other information affected by the requirement for voter photo identification. The manuals affected include the two largest, most comprehensive manuals in the county and municipal clerk arsenal of election administration procedures: The Election Administration Manual and the Election Day Manual. Although previous revisions of these manuals contained information relative to photo ID, the manuals also needed to be updated due to recent legislative changes. This required extensive editing and review by EA staff, in conjunction with SVRS staff.

As the revision effort reached completion, the United States Supreme Court ordered that the photo ID requirement would not be in effect for the November 4, 2014 General Election. Staff immediately notified county and municipal clerks and began to reverse course by removing any references to photo ID from the website, posting previous versions of forms and manuals and providing resources to communicate the status of Voter Photo ID.

B. Curbside Voting Guidance

Prompted by a request for advice from the Milwaukee City Election Commission, staff developed guidance for “Curbside Voting,” particularly when conducted during in-person absentee voting at the municipal clerk’s office or alternate absentee voting site. In the past, multiple voters with disabilities have sometimes arrived at the in-person absentee voting location in one vehicle. Staff refined its guidance to ensure that curbside voting remained an option for these voters but that it was administered in a way that verified that the voters were eligible for the curbside service and that maintained proper security procedures.

The guidance expands on the procedures already in place for polling places and adapts those procedures for in-person voting. A notable additional step has been added to the procedure: The inspectors or clerk must ask each voter who desires to vote from their vehicle if they are unable to enter the polling place or clerk’s office. If the voter indicates they are able, the individual may not vote curbside.

C. General Election Ballot Review

County Clerks began sending ballot proofs for the General Election for staff review shortly after the certification on August 29, 2014.

As indicated in the September 4, 2014 Division Update, staff again utilized a two-person review of ballot proofs. Two of the four Elections Administration Specialist positions are currently vacant. Therefore, to avoid reviewing multiple submissions of the same ballot, staff noted any corrections necessary on the first submission and instructed clerks to ensure the corrections were made, but to refrain from multiple submissions in an attempt to get a “perfect score.”

Since early this year, staff has worked to design more usable ballots and gain some uniformity in ballot design. As expected, some municipal and county clerks have

expressed a reluctance to move from the format they are familiar with, regardless of past voter complaints that the ballot design used for years was confusing and not created with the voter in mind. For example, due to a number of complaints regarding too much shading on the Partisan Primary sample ballot, staff elected to minimize shading for the General Election ballot.

As the Board is aware, the staff-recommended ballot design was not preferred by many county clerks and they proceeded to print a variation on the G.A.B. ballot format. Ultimately, a lawsuit was filed objecting to the staff's recommended ballot format, alleging that it was confusing and favored Democratic candidates. The lawsuit was dismissed by the Waukesha County Circuit Court on procedural grounds. G.A.B. staff assisted the Department of Justice attorneys in understanding the agency's role and process related to ballot design and produced documentation regarding the General Election ballot.

Going forward, G.A.B. staff is reviewing its ballot design process and considering ways in which it may be further improved to incorporate best design practices as well as input from clerks and other interested parties.

D. Preparation for Spring Election

County Clerks must publish a Type A Notice of Spring Election on the fourth Tuesday in November. In order to submit the notice to their respective newspapers to ensure timely publication, county clerk have requested the Type A Notice be made available by November 1st. Staff is currently drafting the Type A Notice.

A list of offices up for election in the spring and the current incumbents has been prepared and vetted by State Courts.

In the coming weeks, letters will be sent to all incumbent officeholders encouraging them to file a Notification of Noncandidacy (GAB-163) if they do not intend to run for the office they currently hold. Notifications of Noncandidacy are due on December 26, 2014.

2. Clerks' Election Administration Workload Concerns Task Force

Board staff has continued to implement the Board directives resulting from recommendations of the Clerk Concerns Task Force. Staff continues to work toward developing model agreements between SVRS providers and reliers to outline alternate models of workload-sharing.

3. Voting Equipment Testing and Demonstration

There are no outstanding applications for approval of voting systems pending at this time. G.A.B. management met with representatives of Election Systems and Software on September 30th to discuss its preparations and assistance to clerks for the General Election, as well as it designated contacts with the G.A.B.

4. The AccessElections! Accessibility Compliance Program

A. Public Education and Outreach Materials

Board staff finalized a partnership agreement with the Wisconsin Disability Vote Coalition to produce public education materials for voters with disabilities in advance of the November General Election. The project consists of three main components; updating and printing *Voting in Wisconsin: A Guide for Citizens with Disabilities*, the creation and distribution of informational packets for voters and staff at community-based residential care facilities, and a local election official and poll worker training video.

The *Voting in Wisconsin* guide has been updated to reflect recent changes in state election law. It has also been reprinted and will be distributed in the packets that will be sent to community-based residential care facilities. It will also be used during voter outreach conducted by the Disability Vote Coalition and a digital version will be posted to the agency website.

The informational packets have been created and mailed to over 3,100 care facilities statewide. The packets consist of voting-related videos, voter registration and absentee ballot request forms and information sheets on the appropriate manner in which facility staff should talk to residents about voting issues. Facilities that are eligible to be served by Special Voting Deputies will also receive a copy of the updated *Absentee Voting in Residential Care Facilities and Retirement Homes* manual.

The local election and poll worker training video was shot on October 14th and is in the process of being edited and finalized. Board staff worked with the Disability Vote Coalition to identify subject matter for the video and develop scripts for shooting. The video will feature voters with disabilities and local election officials providing information on polling place accessibility and best practices for interacting with voters on Election Day. This resource will be incorporated into the agency training protocol and will be posted to the agency website.

All three of these projects have been completed or will be completed in advance of the November General Election. The process of creating or updating these materials was complicated by the uncertain status of the photo ID law. Both the voting guide and the materials for the care facility packets were created to incorporate information concerning photo ID requirements and were updated after the Supreme Court decision on short notice before distribution.

B. Analysis of Accessibility Audit Results

Since September 2014, staff has received and processed 64 plans of action for polling places audited during recent elections. Staff will continue to process plans of action received from municipalities audited during previous elections and for audits conducted during the 2014 spring election cycle.

C. Ongoing Accessibility Compliance Efforts

Staff continues to coordinate with municipal clerks to ensure that accessibility problems uncovered during previous audits are resolved as quickly and cost-effectively as possible. In addition, staff arranged for the distribution of 261 grant-funded accessibility supplies to 67 municipalities in response to documented needs. Several accessibility-related items, such as page magnifiers and signature guides, have been restocked due to continued demand, while the polling place signage inventory will continue to be liquidated.

Staff continues to work with the agency IT Development Team to automate multiple aspects of the AccessElections! Compliance Audit administrative process. This effort includes finalizing and implementing revisions to sections of the electronic version of the 2009 Polling Place Accessibility Survey in order to increase data quality and accuracy. An electronic reporting platform is also being developed that will allow local election officials to access and respond to their audit information electronically.

D. Accessibility Advisory Committee Meeting

Staff met with the Accessibility Advisory Committee on October 2nd at the agency offices. Representatives from several member organizations were represented at this meeting with Board staff and management also participating. The bulk of the focus of the meeting was to discuss public outreach plans for the November General Election. Board staff created several different public outreach resources for use by committee members, and their organizations, on social media, websites or email lists. The information contained in these resources is specialized to address concerns identified by voters with disabilities and elderly voters. Staff also provided updates on the polling place audit program, recent legislative changes, and accessible voting equipment approval.

5. Assistance to the Milwaukee Election Commission

Board staff continues to provide support to the Milwaukee Election Commission (M.E.C.) minority language program implementation. The City of Milwaukee is a covered jurisdiction under section 203 of the Voting Rights Acts and must provide language assistance and election materials in Spanish. The G.A.B. continues to provide the M.E.C. with the surname analysis report that allows them to determine their bilingual poll worker coverage for each election. Board staff also participated in a recent conference call with U.S. Department of Justice representatives and M.E.C. staff concerning the development of the minority language program in the City of Milwaukee.

6. Education/Training/Outreach/Technical Assistance

Following this memorandum as Attachment 1 is a summary of information on core and special election administration training recently conducted by G.A.B. staff. Following the reinstatement of the photo ID requirement on September 12th, clerk training and technical

assistance focused on revising processes to implement the requirement, which was then reversed following the ruling of the U.S. Supreme Court on October 9th.

7. GIS Update

The G.A.B. staff continues to work with local Land Information Departments in acquiring updated ward boundaries to account for any recent annexations. The G.A.B. staff is working with municipal and county clerks to improve receipt of annexation ordinances. The Department of Administration (DOA) is continuing to send a quarterly list of all annexation ordinances it receives from municipalities. G.A.B. staff is working with other Wisconsin State Agencies via SAGIC (State Agency Geospatial Information Committee) on facilitating State Agency roles regarding improved accuracy and communication of spatial information to improve overall spatial data related to the SVRS and overall improvements of the Modernization of SVRS Project.

8. IT Projects

Several IT projects are in progress for the Elections Division:

A. SVRS Updates

Several small updates were made to SVRS to correct functions related to tracking voters who provide a photo ID for mail-in absentee and voters who are exempt from having to provide photo ID for mail-in absentee. These changes were made when the court injunction barring implementation of Photo ID was lifted. The law has since been re-enjoined, however clerks may still track voters who have provided a photo ID so these features remain available in the system.

B. SVRS Modernization

Requirements gathering, design, and development continue on the SVRS Modernization project. Each of the staff teams continue to work on their functional areas (Voter, Elections, Absentee, Districts). Developments related to the voter photo ID requirement diverted the attention that program and IT staff could give to SVRS Modernization. Staff hopes to accomplish as much development in 2014 as possible to allow time in early 2015 for testing and deployment of the new system. The new modernized SVRS is scheduled to go live in the fall of 2015.

Representatives from Microsoft met with G.A.B. staff on September 18 for a demonstration of the Modernization features built in CRM so far. The Microsoft representatives were impressed with what had been developed so far and offered tips and recommendations for G.A.B. staff to consider. Future meetings will be scheduled as the development continues.

C. MyVote Wisconsin

Several changes were made to MyVote Wisconsin since the last Board report. On September 8, a fix was installed to make it easier for military and overseas voters to

interact with the partisan primary ballot by allowing them to pick the party for which they intend to vote. MyVote would then display only contests for that party.

The court decisions to reinstate and then stay implementation of the voter photo ID requirement necessitated development, testing, and installation of revisions to MyVote Wisconsin. MyVote version 1.9 was installed on October 7, 2014 and contained updated information regarding the Photo ID law, which had recently been put back into effect by the federal Appeals Court. These changes were then rolled back on October 15, 2014 when the Photo ID law was again enjoined by the U.S. Supreme Court. Staff then developed and installed MyVote release 1.8.1 which includes non-photo ID updates that had been included in the MyVote 1.9 build that was rolled back. These are mainly minor verbiage changes, as well as one change that resulted from the MyVote usability assessment performed in July.

D. Voter Felon Audit

On October 14, 2014 all municipalities completed entering new registrations and voter participation for the 2014 Fall Partisan Primary into SVRS. With the voter updates completed in SVRS, Board staff performed required post-election comparison of voters with the list of persons who were under Department of Corrections (DOC) supervision for a felony conviction.

All DOC records identified as potential matches will be reviewed by DOC staff for accuracy. After DOC review, Board staff will contact clerks to verify the voter information and obtain documentation. Clerks are asked to review the potential match and provide documentation within 10 days of being contacted by the G.A.B. G.A.B. staff will send the supporting documentation provided by the clerks to the District Attorney with the referral.

With the new automated tracking tool now in place, G.A.B. staff expects that the time it will take to complete the Voter Felon Audit for the 2014 Fall Partisan Primary will be significantly shorter than for previous elections.

E. Canvass Reporting System

An update to the Canvass Reporting System (CRS) is planned the week of October 19, 2014. The reporting software used by CRS is dated and upgrading to the latest version of the software will eliminate problems reported when exporting large reports from CRS.

G.A.B. staff conducted online training teleconferences with clerks in Milwaukee and Sheboygan Counties who will be using CRS to report unofficial election night results for the 2014 General Election. IT and Board staff will be available on Election Night to support the counties that will be using CRS for reporting unofficial results.

9. Voter Registration Statistics

The following statistics summarize statewide voter registration activity year-to-date as of October 13, 2014:

Active Voter Registrations	3,389,010
Inactive Voter Registrations	1,200,121
Cancelled Voter Registrations	421,823
HAVA Checks Processed In 2014	112,338
Merged Voter Registrations Processed In 2014	9,035

10. Voter Data Requests

The following statistics summarize voter data requests as of October 13, 2014:

Fiscal Year	Total Number of Requests	Requested Files Purchased	Percentage of Requests Purchased	Total Revenue
FY2015 to date	159	104	65.41%	\$74,086.25
FY2014	371	249	67.12%	\$125,921.25
FY2013	356	259	72.75%	\$254,840.00
FY2012	428	354	78.04%	\$127,835.00

As more fully described in the May 21, 2014 Division Update, G.A.B. staff launched **BADGER Voters** (<http://BADGERVoters.gab.wi.gov>), an online application for processing common requests for voter data, on April 25, 2014. This new website allows candidates, political parties, and the public to request SVRS voter data online, including voter participation based on jurisdiction or district, participation in a particular election or elections, or absentee voter information. Data request customers can submit their requests, make payments online, and download the completed file from this new website.

Staff has received positive feedback from individuals and organizations requesting voter data, as well as from local clerks who may direct requestors of localized data to the site. Since its launch, the site has managed about 270 requests and 160 purchased data files, generating more than \$100,000 of revenue and reducing agency costs by approximately \$30,000. Staff continues to study potential enhancements to the website that could result in improved customer service and greater efficiencies. Total site development costs were under \$50,000. As of October 6, 2014, the BADGER Voters site has resulted in a net savings of over \$80,000 for the G.A.B.

11. 2014 Partisan Primary Statistics

Municipal and county clerks completed the required statistics reporting for the 2014 Partisan Primary, using the newly standardized GAB-190F form. A statewide summary of the reports is provided below. The complete reports are available on the G.A.B. website: <http://gab.wi.gov/publications/statistics/gab-190/August-2014>. Reports from previous elections are available here: <http://gab.wi.gov/publications/statistics/gab-190>.

2014 Partisan Primary Summary Statistics

Registrants	3,453,356		
Late Registrants	44,322	6.94%	Of total voters
Election Day Registrants	72,848	11.41%	
Total Ballots	641,195		552,349 total votes cast for Governor
Total Voters	638,677		
Paper Ballots	100,327	15.65%	of total ballots cast
Optical Scan Ballots	455,643	71.06%	
DRE	81,250	12.67%	
Auto-Mark	2,900	0.45%	
Total Election Inspectors	24,637	3.86%	of total voters
16-17	117	0.47%	of total election inspectors
18-25	315	1.28%	
26-40	806	3.27%	
41-60	4,742	19.25%	
61-70	9,786	39.72%	
71+	8,951	36.33%	
Provisional - No DL	7	0.00%	of total ballots cast
Provisional - No POR	5	0.00%	
Counted	8	66.67%	of provisional ballots cast
Rejected	2	15.38%	
Absentee Issued	75,762	11.82%	of total ballots cast
Absentee In-Person	18,651	24.62%	of absentee ballots issued
Absentee Not Returned	10,237	13.51%	
Absentee Undeliverable	1,502	1.98%	
Received By Election Day	61,744	81.50%	
Received By Friday	962	1.27%	
Absentee Counted	58,585	77.33%	
Absentee Rejected	961	1.27%	
Absentee Late	96	0.13%	
FWAB Received	13	0.00%	of total ballots cast
FWAB Counted	10	76.92%	of FWABs received
FWAB Rejected	1	7.69%	
FWAB Late	2	15.38%	
Military Issued	426	0.07%	of total ballots cast
Military Unreturned	242	56.81%	of military ballots issued
Military Undeliverable	29	6.81%	
Military By Election Day	142	33.33%	
Military By Friday	11	2.58%	
Military Counted	126	29.58%	
Military Rejected	9	2.11%	

Military Late	6	1.41%	
Overseas Issued	196	0.03%	of total ballots cast
Overseas Unreturned	122	62.24%	of overseas ballots issued
Overseas Undeliverable	1	0.51%	
Overseas By Election Day	49	25.00%	
Overseas By Friday	2	1.02%	
Overseas Counted	51	26.02%	
Overseas Rejected	1	0.51%	
Overseas Late	0	0.00%	

12. 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 Service Center is continuing to upgrade and maintain the two training environments utilized in the field that are now utilizing a virtual training server located at the data center to facilitate remote SVRS training. Staff is monitoring state enterprise network and data center changes and status, assisting with processing data requests, and processing voter verification postcards.

Overall, the majority of inquiries the G.A.B. Help Desk received from clerks during this period related to assistance with preparing for the November General Election; voter photo ID and proof of residence; logging into the CRM system for ineligible lists and canvass; printing ineligible voter lists; tracking absentee and provisional ballots; printing poll books; absentee processing; producing SVRS reports; and related election processes. Municipal Clerks are gearing up for In-Person absentee voting and adding staff with SVRS access, resulting in an unusual number of new user accounts to be set-up. Help Desk staff assisted clerks with configuring and installing SVRS and WEDCS (GAB-190) on the new computers.

Public and elector inquiries were primarily from the Wisconsin electorate which had questions about absentee voting, “Where to vote” questions, Election Day Registration requirements, acceptable proof of residence documents, sample ballot, Voter ID 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. The Ethics Division’s CFIS and Lobbying systems also generated an amount of call traffic prior to the filing deadlines.

Help Desk staff have been serving on various project teams such as the Records Retention Taskforce and the SVRS Modernization and MyVote Wisconsin teams. Staff assisted with testing SVRS and system improvements. Staff has also been administering the SANS Security Awareness training program instituted by DOA for data security awareness.

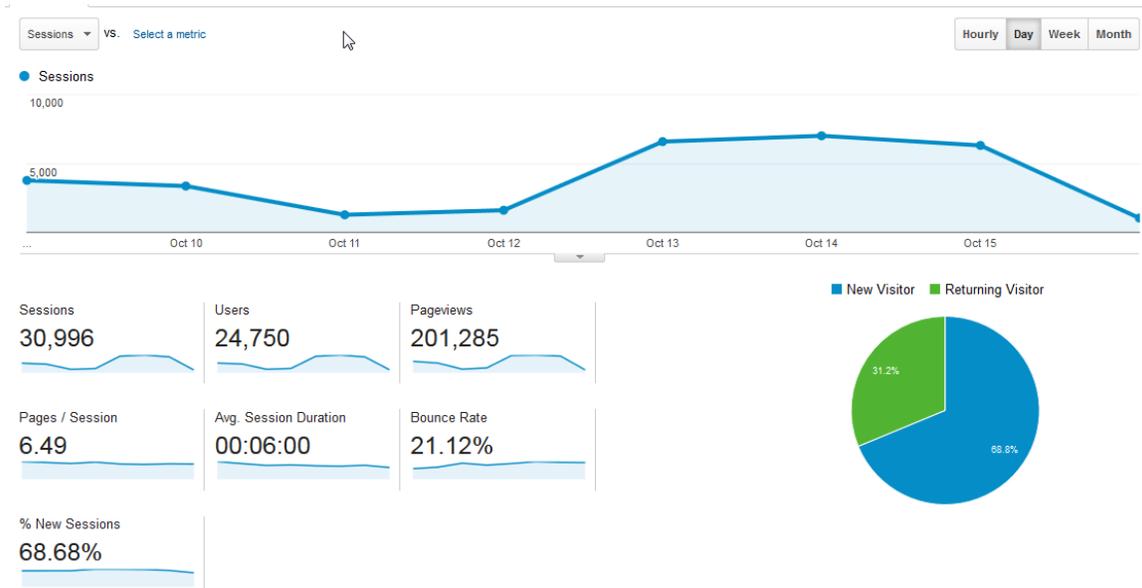
G.A.B. SVRS Help Desk Call Volume
 (608-261-2028)

August 2014	1,304
September 2014	1,604
Up To October 16, 2014	933
Total Calls for Reporting Period	2,537

G.A.B. Front Desk Call Volume
 (608-266-8005)

August 2014	820
September 2014	896
Up To October 16, 2014	701
Total Calls for Reporting Period	2,417

The graph below illustrates visitor traffic to the MyVote Wisconsin website for the week prior to “In-Person Absentee” Oct. 9 to Oct.16 at 10:00 am. The high point was 7,005 sessions on Tuesday Oct. 14th. During this same period 1,285 voter applications, absentee application and absentee ballots were created, updated or downloaded from the MyVote system. Just over 68% of sessions were new visitors to MyVote Wisconsin.



13. 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 1,000 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 1,350 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 the 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.

Following the September 12th decision of the Seventh Circuit Court of Appeals, Board staff updated and published voter outreach materials, revised documents and information on the agency website as well as the MyVote Wisconsin and Bring it to the Ballot websites, and created Powerpoint and in-person presentations. Following the October 9th decision of the U.S. Supreme Court, staff again reversed course and revised documents and resources to publicize to voters that the photo ID requirement would not be in effect for the General Election.

14. Voter ID Cases and Status

Oral argument in the two federal Voter Photo ID cases occurred on September 12, 2014 before the Seventh Circuit Court of Appeals. Later that day, the Court issued an order that the State could implement the photo ID requirement. By that time some municipal clerks had already begun to mail absentee ballots to voters who had requested them. As described in other sections of this Update, all Elections Divisions staff were involved in a focused and intense effort to implement the photo ID requirement by creating and revising clerk training resources and educating voters.

Four weeks later, on October 9, 2014, the U.S. Supreme Court issued an order halting implementation of the photo ID requirement for the General Election. Elections Division staff again reversed course to update all guidance and communications with clerks and voters, to revise procedures and clarify that a photo ID would not be required to obtain a ballot.

15. Staffing Change

Agency staff continued the recruitment process for four Elections Specialist positions and hope to fill those positions shortly. Unfortunately, the Elections Division will lose another valuable staff member due to the departure of SVRS Specialist Lila Walsh on November 5th, to take a position with the Madison Library District. Lila started with the G.A.B. in January 2013 and has been a great asset to the SVRS team. She was instrumental in ensuring that SVRS tasks were completed by both Division staff and clerks in preparation for and following elections. The G.A.B. and clerks will miss Lila’s conscientious and patient work ethic.

ATTACHMENT #1

**GAB Election Division's Training Initiatives
9/5/2014-10/27/2014**

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.	1	8
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.	1	6
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.	2	75
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.	17	450

ATTACHMENT #1

**GAB Election Division's Training Initiatives
9/5/2014-10/27/2014**

Training Type	Description	Class Duration	Target Audience	Number of Classes	Number of Students
Election Administration & SVRS 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 by and conducted by Elections Division staff.	County and municipal clerks, chief inspectors, poll workers, special registration deputies and school district clerks.	Special Voting Deputies and Absentee Voting, 9/10/2014; SVRS Data Quality and Reports, 9/17/2014, Election Duties and the Voter Photo ID Law, 9/24/2014; Preparing for the November Election, 10/8/2014	50 – 400 per webinar; posted to website for clerks to use on-demand.
Other	<ul style="list-style-type: none"> • Board staff gave an SVRS and election administration presentation to county clerks attending the WCCA Fall Conference on September 16, 2014 in the Wisconsin Dells. • Board staff trained 12 county and municipal clerks as certified clerk-trainers on September 11, 2014 to conduct Baseline Chief Inspector training at the local level. • Board staff participated in a round table discussion group with the Milwaukee Metro Clerks. Association on September 30, 2014 in 				

ATTACHMENT #1

**GAB Election Division's Training Initiatives
9/5/2014-10/27/2014**

Training Type	Description	Class Duration	Target Audience	Number of Classes	Number of Students
	<p>Franklin.</p> <ul style="list-style-type: none"> • Board staff provided election guidance to school administration assistants attending the 12 Annual Fall WASSA workshop on October 3, 2014 in the Wisconsin Dells. • Board staff provided SVRS and election administration updates to municipal clerks attending the following WMCA District Meetings in October 2014: District 5: Oconomowoc District 4: Waunakee District 7: Combined Locks District 3: Tomah District 2: St. Joseph • Board staff gave an election administration presentation to clerks attending the Wisconsin Towns Association meeting on October 26, 2014 in Stevens Point. • Board staff updated the Absentee Voting in Residential Care Facilities 				

ATTACHMENT #1

**GAB Election Division's Training Initiatives
9/5/2014-10/27/2014**

Training Type	Description	Class Duration	Target Audience	Number of Classes	Number of Students
	<p>and Retirement Homes to reflect 2014 legislative changes. Clerks, special voting deputies and election observers will be surveyed for feedback about the manual and a report will be made to the board.</p> <ul style="list-style-type: none"> Board staff updated the Election Day Manual to reflect the reinstatement of the Voter Photo ID Law. This version is not currently available due to action by the U.S. Supreme Court on October 9, 2014. 				

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 THOMAS H. BARLAND
Chairperson

KEVIN J. KENNEDY
Director and General Counsel

MEMORANDUM

DATE: For the October 28, 2014 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 preparing information for the Legislative Audit Bureau's Agency Audit, submitting the agency's 2015-17 biennial budget, STAR Project 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. Legislative Audit Bureau Agency Audit Status

In 2013 Wisconsin Act 20, Section 9115 (1d), the Joint Legislative Audit Committee (JLAC) was requested to direct the Legislative Audit Bureau (LAB) to perform a performance evaluation audit of the Government Accountability Board (G.A.B.). On September 10, 2013, the JLAC held a hearing to determine whether to authorize an audit. The LAB gathered background information for the JLAC to use in considering the audit. As a result of the hearing, the committee directed the LAB to conduct a comprehensive evaluation of the G.A.B., which includes:

- Its overall management of governance processes, including those used by the Board and its staff to administer its statutorily required functions;
- Its financial oversight, including fiscal controls and trends in expenditures by funding source and function;

- The training, education and consultation it provides to external parties, including that related to elections procedures and the Statewide Voter Registration System; and
- Its process for investigating and resolving complaints.

On September 26, 2013, an Entrance Conference was held with the LAB and G.A.B. staff to discuss the audit process, establish agency audit contacts and to determine the timeline for completion of the report. It was anticipated the release of the report would be spring of 2014.

In the beginning of the audit, staff met with the LAB on a frequent basis to discuss programs areas and to provide data requests. Over the last six-months, staff continues to respond to inquiries from the LAB analysts regarding the scope of the audit.

The audit began in September 2013. Originally, it was scheduled to be completed by the end of the summer of 2014. The new anticipated release date is Fall 2014. Director Kennedy and State Auditor Joe Chrisman will confer after the November 4, 2014 election about next steps in the audit.

2. 2015-2017 Biennial Budget Status

On September 15, 2014, the agency submitted its 2015-2017 biennial budget request. The agency had five decision items for inclusion in the budget.

1. Create 22.0 Permanent Federal Elections Division Positions. The agency requested that 22.0 Federal Permanent Positions be created to replace federal project positions that expire on June 30, 2015. The agency also requested the 22 permanent federal positions be approved to be converted to permanent GPR positions in the 2017-19 biennial budget. Funding for these positions will continue to come from the federal HAVA appropriation for the 2015-17 budget cycle.
2. Funding for Increased Costs for Board Member Per Diems and Meetings. The agency requested \$14,850 GPR in FY-16 and \$19,120 GPR in FY-17 to fund additional Board member per diem costs and meeting expenses in FY-16 and FY-17.
3. Create .25 GPR Position for Agency Webmaster/Public Information Officer. The agency requested funding and the creation of a .25 FTE GPR position to increase the existing agency's Webmaster/Public Information Officer position from .75 FTE to 1.0 FTE. \$20,700 GPR in FY-16 and \$20,700 GPR in FY-17.
4. Funding for Biennial Updating of Voter Registration List (Four Year Maintenance). The agency requested \$96,765 GPR annually starting in FY-17 to administer the Four-Year Maintenance Process per 2013 Wisconsin Act 149.
5. Address Ethics and Accountability Division Information Technology Needs. The agency requested \$176,800 GPR in FY-16 and \$176,800 GPR in FY-17 to fund a contracted Solution Architect to support the Division's software applications and IT infrastructure.

3. Financial Services Activity

- Staff calculated and booked the first fiscal quarter payroll adjusting entries, to properly allocate salaries and fringe benefits between federal and state programs. A newly-created cost schedule was also set up and compiled for purposes of filing a quarterly IT projects report with DOA. During the first fiscal quarter ended 9/30, the GAB has incurred \$370,451 of both employee labor and IT contractor costs for SVRS maintenance and modernization projects.
- All GAAP and CAFR fiscal year-end reporting schedules and disclosures were completed and timely submitted to the State Controller's Office.
- Staff claimed reimbursements of \$18,358 for August and September Federal Voting Assistance Program (FVAP) grant expenditures, then coordinated the accounting for incoming wire transfers with Department of Administration Treasury staff, and prepared journal entries to record revenues receivable. Financial staff timely filed the quarterly SF 425 Report with the U.S. Department of Defense, due Sept. 30 for this federal aid grant, reporting \$1,107,792 (58 percent) of the \$1,919,864 grant expended since its inception in March 2012.
- New fiscal year 2015 schedules were set up to calculate interest earnings by federal program and beginning balances were entered. Quarter-end journal entries were prepared and booked, to reclassify purchasing card expenditure object codes and to properly allocate federal monthly interest earnings and mixed usage server costs to their appropriate federal or state programs.
- Financial staff has been attending PeopleSoft conversion workshops on purchase orders, projects (grants), accounts payable interfaces, asset management, and contracts. Several business process workshops will begin in November, and most will require considerable financial staff time to participate.
- Account reconciliations for the new fiscal year 2015 were set up and beginning balances were entered. General ledger accounts for both federal and state payroll and travel balance sheet liabilities were then analyzed each month, to facilitate the reconciliation of these 50 ledger account balances. Journal entries were prepared and booked to correct any balance sheet account coding errors.
- Staff compiled and reconciled the federal grant schedule for the state fiscal year ended June 30, 2014. This annual schedule is requested by the Legislative Audit Bureau for their use in auditing the federal financial assistance received by the State of Wisconsin, which is then compiled with all other agencies into a statewide Schedule of Expenditures of Federal Awards. Reported on this schedule were federal revenues of \$508,228 and expenditures of \$2,773,785 which included \$86,783 voting equipment reimbursements provided to sub-recipients, for the state fiscal year ended June 30.

- Staff compiled and reconciled the HAVA Section 261 revenue and expenditure amounts for the three annual Federal Financial Reports, normally due by December 31 for the federal fiscal year ended September 30, 2014. These Section 261 reports will be filed by October 31 though, since one of the allotment years was fully expended by July 31, triggering an earlier 90-day reporting requirement. The accounting for Section 261 receipts and expenditures has now been fully transitioned to the federal fiscal year 2010 allotment of \$201,091. Thereafter, only one federal grant allotment year remains, specifically \$99,998 from the 2011 federal year. No further allotments are expected for this federal program. All Federal Cash Management system reports for accessibility expenditures and revenues were also reviewed and tied out each month.
- Staff updated the FY-15 operating budgets within the QuickBooks accounting software for unspent FY-14 funds carried over.
- Cumulative labor and ancillary costs of about \$9,937 are being billed to Elections System & Software for the most recent round of equipment testing on Unity versions 3401 ECO, 5110, 5200, and 5300. Both ES&S and Dominion have previously reimbursed the G.A.B. for all equipment testing costs, per the cost recovery agreement. The calculations were complicated by the 1 percent state employee rate increase, effective for this fiscal year beginning July 1, 2014. These cash receipts are then accounted for as refunds of expenditure and allocated amongst several ledger accounts.
- The program to reimburse municipalities for accessible voting equipment sunset August 31, and the financial services unit is processing final requests for reimbursement, as presented before that date. The remaining cash balance will be repurposed as HAVA 251 funding.
- Budget-to-actual operating results for the first fiscal quarter ended September 30 were summarized and communicated to management. All federal and state programs remain within budgeted projections for this fiscal quarter-end.
- Financial staff assisted with preparing and reconciling the agency biennial budget request, including FVAP cost estimates, calculating pay plan and health insurance premium increases, full funding of office space, updating the HAVA funds depletion schedule, calculating the lobbying program ending cash balance, projecting program revenues and board meeting per diem increases, and entering decision item details into SharePoint. The agency budget request was timely filed on September 15 with the State Budget Office, and follow-up questions are now being answered by financial staff.

4. Procurements

The procurement staff has been busy with preparation for upcoming events at the G.A.B. Translation services were procured for two forms that were updated for Voter ID from English to Spanish. Printed envelopes were purchased for sending out Election related

manuals, as well as the upcoming Statement of Economic Interest mailing in December/January. Procurement staff has also contacted two temporary services vendors to start sending eligible candidates for the upcoming Accessibility Audit for the November election.

A new purchase order was issued for Mahesh Valluri, whose original work order expired in September. He will continue his work for G.A.B. through June 30, 2015. A replacement laptop computer was purchased for Meagan Wolfe.

5. Contract Sunshine

Since the September Board meeting, the certification process for the July to September 2014 period was started. As of October 16, 2014, 27 of the required 37 agencies to report qualified purchases returned the certification. The Contract Sunshine administrator is also working with the STAR project program staff to begin integrating the process of uploading data to Contract Sunshine from PeopleSoft. Currently, select state agencies upload files generated with Purchase Plus, which is an application that will be eliminated with the implementation of the STAR project.

6. Staffing

Currently, we have four vacant Elections Specialist positions. Interviews have been scheduled for the week of October 20 for the Data Manager Elections Specialist position. Staff is working on scheduling interviews for the remaining three Elections Specialist positions. We have also posted the vacant attorney position. The deadline to apply for the attorney position is October 23.

7. Communications Report

Since the September 4, 2014, Board meeting, the Public Information Officer (PIO) has engaged in the following communications activities in furtherance of the G.A.B.'s mission:

Online: As the agency's webmaster, the PIO spent considerable time on website activities related to the reinstatement and subsequent halting of voter photo ID by the courts. After the 7th Circuit Court of Appeals Decision on September 12, the main agency website needed to be modified in many places to let voters know that a photo ID would be required at the November 4 General Election. The PIO worked with Elections Division staff to post new materials about the voter ID law, and guidance to clerks about implementation. In addition, the voter ID microsite, www.bringit.wisconsin.gov, had to be brought out of mothballs and updated. Staff spent several weeks working on the websites, only to have to un-publish most of the information back down immediately after the U.S. Supreme Court's order on October 8 blocking implementation of the law for this election. The information has been saved in the event voter photo ID is put back into effect for future elections due to a court order or legislative action.

Media: Voter photo ID decisions by the 7th Circuit Court of Appeals and the U.S. Supreme Court generated a large number of news media inquiries and interview requests. The agency has issued news releases about the decisions, and has provided clerks with

news release templates for local media. There has also been strong media interest in recent decisions by the 7th Circuit Court of Appeals and the U.S. District Court for the Eastern District of Wisconsin regarding the constitutionality of Wisconsin's campaign finance laws and issues related to a campaign finance investigation. Unsuccessful litigation against the Board initiated by the Assembly Speaker and Senate Majority Leader regarding ballot design issues also put the Board in the news. Finally, there have been many general media inquiries about the upcoming election. Between August 16 and October 19, the PIO has logged 115 media phone calls and 597 media email contacts.

Public Records: The G.A.B. received 12 public records requests between August 16 and October 20. Several of these are complex public records requests related to ballot design issues, the reinstatement of voter photo ID, investigations, litigation, and the upcoming elections. Staff has been working when possible to fulfill these requests, but unfortunately they have had to take a back seat to other pressing agency business related to the upcoming election. One of the agency's two staff counsel positions is currently vacant, and the staff counsels play a key role in fulfilling public records requests. With voter photo ID implementation blocked and preparations for this Board meeting completed, the PIO will concentrate on fulfilling these records requests as soon as possible.

Other: In addition to the online and media aspects of voter photo ID, the PIO spent a great deal of time working with the KW2 advertising agency and the Wisconsin Broadcasters Association (WBA) to relaunch the public information and education campaign required by 2011 Wisconsin Act 23 following the 7th Circuit Court of Appeals decision on September 12. Staff used an existing state contract for paid public service announcements with WBA to begin running the "Bring It to the Ballot" campaign PSAs on radio and television on October 2. The PIO was involved in negotiating an amended contract with KW2 for services related to re-launching the campaign, which included modifying two of the PSAs to reflect the new Wisconsin DMV procedure to help people without birth certificates get a free state ID card for voting purposes. The PIO also worked with KW2 on budget alternatives for an intensive pre-election campaign to air the "Bring It to the Ballot" PSAs through direct media buys. The PIO worked with agency management on a 13.10 request to the Joint Committee on Finance to release approximately \$460,000 for the campaign. After the committee chairs cancelled the meeting and told the Board to proceed with the campaign from existing agency resources to be reimbursed after the election based on actual costs, the PIO worked with KW2 and agency management to finalize the budget. With the campaign ready to go, the PIO issued a news release the afternoon of Wednesday, October 8, announcing that the campaign would begin airing the coming weekend. Just after 8 p.m. that night, the U.S. Supreme Court ordered a halt to the voter photo ID law for the November election because of concerns about voter confusion with implementation beginning so close to the election. As a result, the PIO worked with the WBA and KW2 to immediately pull the PSAs off the air and to cancel advertising buys ordered earlier that day. In the event voter photo ID is reinstated at a future election, the G.A.B. will be in a good position to implement a public education campaign.

8. Meetings and Presentations

During the time since the September 4, 2014, 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 preparations for the November 4, 2012 general election. The implementation of Voter ID following the 7th Circuit Court of Appeals decision on September 12, 2014 consumed a significant amount of agency staff attention. This included preparations for the start of a public information media campaign and developing the supporting documentation to secure the approval of Joint Legislative Committee on Finance to release funds set aside in the 2013-15 biennial budget for the agency to promote voter ID if restored by the courts.

The subsequent ruling by the U.S. Supreme Court on October 9, 2014 to again place the implementation of Voter ID on hold also consumed a significant amount of agency staff time to ensure that local election officials were apprised of proper procedures, voter information and election official training materials, and agency websites were updated to reflect the new reality. The public information campaign was immediately halted that day as well.

Elections Division staff was also active in a series of training meetings with municipal clerks along with preparations for the November 4, 2012 general election. Director Kennedy and staff counsel also consulted with the Department of Justice and outside counsel on several pending cases.

On September 5, 2014, Elections Division Administrator Mike Haas and Director Kennedy participated in a moot court at the Department of Justice to assist Assistant Attorney General Clay Kawski in his preparations for oral argument of the Voter ID case the following week. This was followed by a briefing from representatives from the Department of Transportation and the Department of Health Services on the proposed procedures being developed to enable voters without birth certificates or other required documentation to obtain a state issued identification card for voting.

On September 9, 2014, Director Kennedy and Board Member Judge Lamelas observed oral arguments in the 7th Circuit Court of Appeals related to a Section 1983 action directed at prosecutors in the John Doe proceedings. The agency had filed an amicus brief in the case.

On September 10, 2014 Elections Division staff met by teleconference with an attorney from the U.S Department of Justice to provide a status report on the distribution of absentee ballots to UOCAVA voters for the November 4, 2014 general election.

On September 16, 2014, Elections Supervisor Ross Hein led a delegation of Elections Division staff to the fall meeting of the Wisconsin County Clerks Association (WCCA) in Wisconsin Dells. This is one of three annual meetings agency staff participates in with the WCCA. The meetings are essential to keeping communication lines open between the Elections Division and our County Clerk partners.

Director Kennedy participated in a number of news events to promote the implementation of Voter ID following the September 12, 2014 ruling by the 7th Circuit court of Appeals. This began with a news conference in the agency offices on September 16, 2014. Wisconsin Eye coverage of the event can be viewed at this link: <http://www.wiseye.org/Programming/VideoArchive/EventDetail.aspx?evhdid=9208>

On September 19, 2014, Wisconsin Eye Senior Producer Steve Walters interviewed Director Kennedy on the implementation of the Voter ID law and its impact at the polls for the upcoming November 4 General Election. The program can be viewed at: <http://www.wiseye.org/Programming/VideoArchive/EventDetail.aspx?evhdid=9194>

Director Kennedy also appeared on the September 26, 2014 Wisconsin Public Television program *Here and Now* to discuss voter ID rules and preparation. On October 1, 2014, Director Kennedy was interviewed by a reporter for the National Journal on Voter ID implementation and its challenges. He participated in a Wisconsin Public Radio call-in program on the *Kathleen Dunn Show* about Voter ID on October 8, 2014.

The Wisconsin Attorney General's office issued a formal opinion to the Director and General Counsel concerning the application of the open meetings law to various post-election activities of local and state election officials on October 15, 2014. The Board had authorized the Director to request the opinion in 2013. The Attorney General Opinion generally supported the longstanding advice provided by G.A.B. staff to local election officials with one exception. After the polls close, the poll workers' actions to tabulate the election results, complete required forms and certifications and secure election materials are the act of a governmental body, the local board of canvassers. As such, the post-election activities must comply with the open meetings law. G.A.B. staff is providing local election officials with language to insert in the Type D Notice for this election along with some general advice about ensuring the public has the opportunity to observe the post-election activities of the local boards of canvassers.

On October 15, 2014 Director Kennedy appeared with counsel for the agency from Attorney General's office as Judge Clevert heard argument on the permanent injunction in *Wisconsin Right to Life v. Barland* (Barland II). Judge Clevert ordered the parties to submit a joint permanent injunction and joint judgment proposal by December 2, 2014. If a hearing is necessary, it will be after January 1, 2015.

Director Kennedy, Elections Division Administrator Mike Haas and staff counsel Nate Judnic joined representatives of the Milwaukee County District Attorney's Office and the Wisconsin Department of Justice in a meeting in Milwaukee on October 15, 2014 with representatives of observer groups. Both major political parties and Election Protection attended the meeting along with officials from the Milwaukee Police Department. The meeting focused on observer rules, contingency plans and provided an opportunity to discuss anticipated issues with November 4, 2014 election.

On October 16, 2014, Director Kennedy, Elections Division Administrator Mike Haas, staff counsel Nate Judnic and key Elections Division staff hosted separate meetings with representatives from the Republican Party of Wisconsin and the Democratic Party of

Wisconsin in the agency offices. The meeting covered our voter primer on marking ballots, curbside voting, election observer rules, court extensions of voting hours, G.A.B. Election Day operations and post-election activities including canvass and recount preparations.

On October 20, 2014, Director Kennedy participated in a Wisconsin Public Radio program, *Central Time*, to discuss rules, regulations and timelines concerning in-person absentee voting. Absentee voting in municipal clerks' offices, often referred to as "Early Voting" began on Monday, October 20, 2014 and will continue on weekdays through Friday, October 31, 2014.

The agency will bid adieu to another key staff member following the November 4, 2014 general election. Lila Walsh is leaving the agency for a permanent position with reduced hours in a local government agency. Lila exemplifies all that is great about the people who work at the Government Accountability Board. She is a dedicated public servant who always placed the public and the agency first in her professional life. Her contributions to the agency as one of a core group of Statewide Voter Registration System specialists have been invaluable in supporting our local election officials and ensuring the continued integrity of Wisconsin elections. Her passionate commitment to the core mission of the agency will be sorely missed.

Lila is a HAVA funded employee. As our other HAVA funded employees reach the end of their current appointment on June 30, 2015, the agency could lose more key staff. We have sufficient federal funding for the next two-year cycle (July 2015 - June 2017), but will need legislative authorization to keep the positions filled.

Delegated Authority

In January of each year the Board delegates specified authority to the Director and General Counsel. The basis for the delegation is both statutory and practical. Wis. Stat. s. 5.05(1)(e) specifically permits the Board to delegate certain decision making to its Director with respect to the administration of elections, carrying out investigations and litigation as well as resolving complaints. As a practical matter, the Board delegates responsibilities for administering agency operations consistent with the statutory duties of the Director and General Counsel to provide legal and administrative functions for the Board. Wis. Stat. s. 5.05 (1m). The delegation requires the Director to consult with the Board Chair and report any delegated action to the Board.

In preparation for requesting release of funds from the Joint Committee on Finance to conduct a voter information media campaign, I consulted with Judge Barland concerning the need to amend our current contract with KW2 to modify existing advertising, develop a media strategy and make arrangement for the placement of ads. With Judge Barland's agreement, an amended contract was put into place. Following the action of the U.S. Supreme Court, the agency exercised a provision in the contract to halt the media campaign.

On October 1, 2014, I consulted with Judge Froehlich about the city of Clintonville's refusal to order a recall election of an alderman despite the city clerk finding the recall petition sufficient. Judge Froehlich approved the proposed opinion and order directing the Clintonville city

council to order the recall election for November 18, 2014. Judge Froehlich was acting as Chair while Judge Barland was out of the country.

On October, 20, 2014, I consulted with Judge Barland about a complaint relating to a recall in the Town of Calumet. Petitioners had circulated a recall petition without a space for the printed name. When the petition was challenged, the municipal clerk permitted the circulators to have signers print their names next to, above, below or near their signature on a photocopy of the original recall petition. The opinion and order approved by Judge Barland directed the Town Clerk to find the corrected recall insufficient. Circulators could correct the original petition with affidavits from the signers of the petition as permitted by GAB 2.05 (4), 2.09 (1); Wis. Admin. Code or the petitioners could recirculate the petitions with the proper petition form.

Looking Ahead

The next Board meeting is scheduled for Tuesday, December 16, 2014. The meeting will be held in the agency offices, beginning at 9:00 a.m.

Action Items

Continue preparations for the November 4, 2014 general election. Complete the post-election activities following the November 4, 2014 general election and continue preparations for the 2015 spring nonpartisan elections for judicial, county, municipal and school district offices.