

Meeting of the Board

Tuesday, February 25, 2014 – 1:00 p.m.

Agenda
Open Session

Teleconference Meeting

G.A.B. Board Room

212 East Washington Avenue, Third Floor

Madison, Wisconsin

Tuesday, February 25, 2014

Page #

1:00 p.m.

A. Call to Order

B. Director’s Report of Appropriate Meeting Notice

C. Minutes of Previous G.A.B. Meetings

- 1. January 6, 2014 G.A.B. Meeting** **2**
- 2. January 14, 2014 G.A.B. Meeting** **4**

D. Approval of Prime III Voting Pilot Program **13**

E. Closed Session

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

The Board does not anticipate taking any action in Open Session following the Closed Session.

F. Adjourn

The Government Accountability Board has scheduled its next meeting for Wednesday, March 19, 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

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JUDGE TIMOTHY L. VOCKE
Chair

KEVIN J. KENNEDY
Director and General Counsel

Wisconsin Government Accountability Board

212 E. Washington Ave., 3rd Floor
Madison, Wisconsin
January 6, 2014
10:00 a.m.

Open Session Minutes

Present by Telephone: Judge Gerald C. Nichol, Judge Michael Brennan, Judge Thomas Barland
Judge Elsa Lamelas, Judge Harold Froehlich

Not Present: Judge Timothy L. Vocke

Staff Present: Kevin Kennedy, Jonathan Becker, Michael Haas, Shane Falk, Nathan Judnic,
Sharrie Hauge

1. Call to order

Vice Chairperson Nichol convened the meeting at 10:07 a.m. in open session.

2. Director's Report of Appropriate Meeting Notice

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

3. Closed Session

Adjourn to closed session to discuss pending investigation matters.

MOTION: Move to closed session pursuant to §§19.85(1)(g), and 19.85(1)(c), to discuss pending investigation matters. Moved by Judge Barland, seconded by Judge Brennan.

| | | | | |
|-----------------|----------|-----|------------|-----|
| Roll call vote: | Barland: | Aye | Brennan: | Aye |
| | Lamelas: | Aye | Froehlich: | Aye |
| | Nichol: | Aye | | |

Motion carried unanimously (5-0). The Board convened in closed session at 10:10 a.m.

The next meeting of the Government Accountability Board is scheduled for Tuesday, January 14, 2014 at the Government Accountability Board office in Madison, Wisconsin beginning at 9:00 a.m.

January 6, 2014 Government Accountability Board open session minutes prepared by:

Nathan Judnic, Staff Counsel

February 10, 2014

January 6, 2014 Government Accountability Board open session minutes certified by:

Judge Michael Brennan, Board Secretary

February 25, 2014

State of Wisconsin\Government Accountability Board

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JUDGE THOMAS H. BARLAND
Chair

KEVIN J. KENNEDY
Director and General Counsel

Wisconsin Government Accountability Board

212 East Washington Avenue
Madison, Wisconsin
January 14, 2014
9:00 a.m.

Open Session Minutes

| <u>Summary of Significant Actions Taken</u> | <u>Page</u> |
|--|-------------|
| A. Selection of Board Officers | 2 |
| B. Delegated Certain Authority to the Director and General Counsel | 2 |
| C. Approved Ballot Access Report | 5 |

Present: Judge Michael Brennan in person. By telephone, Judge Thomas H. Barland, Judge Harold Froehlich, Judge Elsa Lamelas, Judge Gerald Nichol and Judge Timothy Vocke.

Staff Present: Kevin Kennedy, Jonathan Becker, Michael Haas, Shane Falk, Sharrie Hauge, Diane Lowe, David Buerger and Reid Magney

A. Call to Order

Judge Brennan called the meeting to order at 9:01 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. One member of the public was present at the meeting.

C. Minutes of December 17, 2013 Meeting

MOTION: Approve the minutes of the December 17, 2013 Board Meeting.

Judge Vocke noted a typographical error at the bottom of Page 3. Moved with correction by Judge Barland, seconded by Judge Nichol. Motion carried unanimously.

D. Selection of Board Officers

The selection of Board Officers was done by lot. Judge Brennan drew Judge Barland's name to be G.A.B. Chair for 2014. Judge Barland asked Judge Brennan to continue chairing the meeting. Judge Brennan then drew the name of Judge Froehlich to be G.A.B. Vice-Chair and his own name to be G.A.B. Secretary for 2014.

E. Delegation of Certain Authority to the Director and General Counsel

Director Kennedy introduced the annual memorandum regarding the Board delegating certain authority to the Director and General Counsel.

MOTION: Adopt the proposed motion on Pages 13 and 14 of the Board materials. Moved by Judge Vocke, seconded by Judge Nichol.

Discussion.

Judge Barland raised the issue of whether the Board should delegate to general counsel the power to intervene in civil lawsuits, which is item 1) in the motion.

Judge Lamelas asked about item 6) delegating the authority to sign or enter contracts on behalf of the Board, and suggested limiting it to a certain dollar amount.

Director Kennedy said the main reason intervention in civil lawsuits under item 1) has not been in the hands of the Board is because of the practice of the Board Chair and the Director discussing intervention first. There can be a timeliness issue when the Board must intervene if a circuit court judge gets a local decision wrong, or if the Attorney General asks the Board to intervene. He said it is not something that happens often.

Director Kennedy said that under item 6) the contracts that staff enter into can involve hiring investigators or special prosecutors and running day-to-day agency business, such as agreements for information technology development which can often exceed \$100,000. He said the Board is involved in decisions about large projects.

Judge Lamelas asked about hiring investigators and special prosecutors.

Ethics Division Administrator Jonathan Becker said that the Board must decide to hire specific investigators, and any time the amount paid to an investigator exceeds \$10,000 it must be authorized by the Board.

Judge Lamelas said none of that information is reflected in the delegation of powers. Judge Brennan noted that it is in the statutes.

Director Kennedy said the biggest contract expenses are for information technology support staff, and those contracts are executed according to state procurement rules and procedures,

which he reviewed. He said that having the Board Chair weigh in on several different IT contractors each year is problematic.

Mr. Becker said vendors need proof that Director Kennedy has the authority to sign contracts, and it makes some sense to indicate who has that authority.

Director Kennedy said the Board could establish an upper limit for contract authority, which needs to be seven figures.

Judge Lamelas said she was thinking about a lower limit of \$50,000. Contracts between \$50,000 and \$100,000 could be signed by the Director after consultation with the Board Chair. Board approval would be required for contracts of more than \$100,000. She said that while Director Kennedy needs the ability to move the agency forward, she would hate to wake up and find out we've entered into an open ended contract to pay someone a huge amount of money.

Judge Nichol said that in his six years on the Board that has never been a problem.

Director Kennedy said that a year's employment contract for an information technology contractor can be \$170,000, and these workers transition on a yearly basis.

Judge Froehlich expressed concern that contracts with investigators need to go to the Board for approval.

Judge Brennan asked Judge Froehlich whether he would be happy with inserting a reference into item 6) to the statutory provision in Section 5.05(2m) Wis. Stats., and Judge Froehlich said he was satisfied.

Judge Barland said he believed that would be appropriate. He expressed concern that the Board not require the Board Chair's physical signature on contracts over \$100,000, and Judge Lamelas said she agreed. Judge Barland called Judge Brennan's suggestion to add the Section 5.05(2m) language a sound compromise.

Mr. Becker summed up the discussion so far, to amend item 6) of the motion to state that the Director has authority to enter into and physically sign contracts on behalf of the Board, except those under Section 5.05(2m), and except those over \$100,000 when the Director shall consult with the Board Chair and receive approval.

Director Kennedy noted that IT contracts are actually purchase orders, not contracts, but they are binding.

Judge Lamelas said Mr. Becker's summation of an amendment sounds like an appropriate resolution.

Judge Vocke said he was withdrawing his motion to approve, and will let someone else make a motion.

Judge Lamelas said she has two other questions, first about the delegation of authority in item 8) regarding voting system modifications. She said the Board has the power to approve voting systems and she does not wish to give away that power. Second, she asked about authority under item 10) to communicate with litigation counsel and whether that included the authority to settle.

Director Kennedy explained that the voting system modifications deal with routine technology changes such as when new parts as simple as labels on cases are added to a voting system, known as engineering change orders (ECO). He said that at the October 2013 meeting the Board was presented with a report on ECOs approved during the year.

Staff Counsel Shane Falk said such changes are de minimis.

Director Kennedy said that regarding settlement of litigation, the Board is always consulted; however, when the Board is represented by the Attorney General, the Board has no final approval in settlement decisions. If the Board is represented by outside counsel, there would be no settlement without the Board being involved.

Judge Lamelas said she understands the reasons for those delegations of authority.

Judge Barland asked about item 5) regarding the non-appointment of an election official.

Director Kennedy explained that item has to do with situations in which a political party has nominated a poll worker who a municipality does not want to appoint for cause. State law allows the G.A.B. to override the party's nomination. He said these situations arise very rarely, tend to be personality driven issues, and have never resulted in the Board or the Director taking official action. He suggested it is not the kind of issue the Board wants to become involved with.

Judge Barland asked whether the language in the motion might be amended to better describe the situation.

Mr. Falk said that the language comes from statute, and Judge Barland said he had no other issues.

MOTION: Adopt the proposed motion on Pages 13 and 14 of the Board materials with amendments. Moved by Judge Nichol, seconded by Judge Froehlich.

Further discussion regarding language of the amendment.

Judge Lamelas restated the amendment to item 6): “To sign contracts on behalf of the Board, except as provided in Section 5.05(2m), and for any contract involving a sum over \$100,000 the Director must first consult with the Board Chair. In accordance with the foregoing, the Director has the authority to execute and sign contracts.”

Judge Brennan called the question. Motion carried unanimously.

F. Personal Appearances on Ballot Access

There were no personal appearances.

G. Election Administration – Ballot Access Report

Division Administrator Michael Haas introduced Lead Elections Specialist Diane Lowe who presented an oral and written report regarding ballot status issues. Staff received 52 sets of nomination papers. Ms. Lowe reviewed a few minor irregularities in nomination papers, none of which affected ballot status. No challenges were filed, and all Statements of Economic Interests were timely filed. Dunn and Waupaca counties are the only counties where circuit court judge primaries will be held.

Judge Barland asked why the Waupaca County judgeship is vacant. It is a new seat.

MOTION: Certify ballot status for all the candidates listed on the Candidates on Ballot reports, starting on Pages 19 through 30 of the G.A.B. meeting materials of January 14, 2014. Moved by Judge Vocke, seconded by Judge Barland. Motion carried unanimously.

H. Report on Voting Equipment Audit and Ballot Review Issues

Division Administrator Haas provided an oral and written report, starting on page 31 of the G.A.B. meeting materials of January 14, 2014. At the December 17, 2013 meeting, the Board received a report on results of the voting equipment audits completed after the 2008, 2010 and 2012 general elections. At that meeting, some Board members had further questions about the scope of the voting equipment audits and whether they ought to encompass the equipment's ability to read ballots cast by voters who did not follow the instructions for proper ballot marking. Additionally, the Board heard public comments from individuals who want election inspectors to have the option to verify the accuracy of voting equipment on Election Night. At the December meeting, the Board directed staff to prepare a summary of issues raised for possible further discussion at the January meeting.

Mr. Haas said the summary identifies a number of issues discussed at the December meeting. He said staff recommends that the Board not pursue or direct staff to spend significant time or efforts to change Election Night procedures, and that the Board not tinker with voting equipment audit procedures. He said that what has been requested for Election Night is not required or authorized by statutes, and that the Board risks a mass exodus of election inspectors if hand counts on Election Night to verify voting equipment are required or authorized. He noted that individuals or groups sometimes come to the Board to lobby for election procedures which are a matter of policy, such as voter photo ID, and that the Board's position has been that policy matters should be taken up with the Legislature.

Regarding the voting equipment audits, Mr. Haas said that the number of improperly marked ballots is small, and that if the election results are close, the losing candidate has a right to a recount, when all the ballots will be examined to determine voter intent.

Judge Froehlich asked why the staff cannot make a simple calculation to find out how many people are not marking ballots correctly by reporting the total number of ballots cast and the total number of ballots counted by machine.

Mr. Haas said that information is already reported by clerks on the Election Voting and Registration Statistics Report, also known as the GAB-190 form. Director Kennedy said the numbers are reconciled as part of the audit process.

Judge Froehlich said he wants to know how many people voted and their ballots were not counted.

Judge Lamelas said Election Night verification of voting equipment was impractical and impossible, but with respect to the audit, Section 7.08(6) Wis. Stats. states that following each election the Board is to audit the performance of each system and to determine the error rate of all ballots cast. She said her sense is that in a recount situation, a ballot from which the voter's intent can be determined is a validly-cast ballot. Therefore, the statute is telling us to audit whether the voting system is counting validly cast ballots. She said that to ignore validly cast ballots is not something she can sign onto.

Mr. Haas said it is impossible to read statutes to require voting equipment to count ballots that it cannot read. For the purpose of the audit, a valid ballot is a ballot that can be read by the equipment. If we are finding that equipment has an unusually large number of unread ballots, the Board needs to look at the certification of that equipment. He said the purpose of the recount is to examine every ballot, but that's different than the purpose of the audit.

Mr. Falk said not a single piece of voting equipment would pass the error rate if the statutes required us to see if the machine is counting every ballot.

Electronic Voting Systems Elections Specialist Sherri Ann Charleston said the G.A.B. asks municipalities to provide the Board with the total number of ballots cast and the number of electors in order to determine if there are any missing ballots, so that information is in-house. She said municipal panels conducting the audits look at the total number of voters registered and compare that to the votes, and then go through the ballots looking for explainable errors. They look to see if the equipment is performing to standards. If a vendor says a machine will not count red marks on a ballot, that is an explainable error. If, after finding explainable errors, there is more than one error in 500,000 ballots, staff would reach out to the vendor.

Judge Froehlich said he wants to look at how many votes were cast – the raw figures – and the number of votes counted.

Ms. Charleston said it is possible to get the Board those figures, which are part of the data review process, but staff does not include them in the report.

Judge Lamelas said staff's interpretation of Section 7.08(6) is not consistent with the statutes. If a ballot is validly cast by electors, that's what we should be looking at.

Mr. Haas said that whether or not that interpretation is legally correct, that has never been the interpretation of the staff before. He said a ballot that has not been properly marked cannot be counted by voting equipment that has been certified and approved by the Board.

Judge Lamelas said she understands Mr. Haas' point, but that she does not believe the G.A.B is complying with the statute if we ignore ballots that are legally cast. She said a post-election audit should include an examination of physical ballots cast. She said that if one system does a better job of counting ballots than another, the G.A.B. ought to know that.

Ms. Charleston said that federal requirements are configured to differentiate between the ballot and voting equipment. A ballot may be validly cast because the elector is qualified to vote, but the ballot is not filled out correctly. Federal guidance on best practices directs election officials to look at the specifications from the vendor and determine whether the machine is configured correctly.

MOTION: That the Government Accountability Board staff as a part of its post-election audit procedure examine ballots to determine how accurately a voting system is counting validly cast ballots, including ballots not cast but reflecting voter intent. Moved by Judge Lamelas. No second to the motion.

Judge Barland said the staff's report is missing what Judges Lamelas and Froehlich want, which is a determination of whether the machines are accurately processing the votes cast.

Judge Vocke said he believes Judge Lamelas' request goes beyond the ability of the staff to perform because of the amount of work that would be involved. .

Ms. Charleston provided further explanation of the staff's audit procedures.

Judge Froehlich said he is interested in determining whether the Board needs to do more voter education about the proper way to cast a ballot.

Director Kennedy said the staff will provide Board members with numbers of ballots not counted by voting equipment, and will set up a review of audit procedures before the next audit following the November 2014 election.

I. 2013 Annual Reports Regarding Use of HAVA Funds

Mr. Haas introduced Elections Specialist David Buerger, who prepared written reports found beginning on page 34 of the January 2014 Board meeting materials. Board members had no questions.

J. Discussion of Per Diem Policy

Director Kennedy made a brief oral presentation based on a memorandum beginning on page 60 of the January 2014 Board meeting materials regarding the policy for when Board members will be paid a per diem for attending meetings.

Judge Vocke suggested that he and Judge Lamelas be appointed by Judge Barland to a subcommittee to study the policy and report back to the Board at the regular March Board meeting.

Judge Barland noted that Judge Vocke had made many trips to Madison as Board chair outside of attending regular meetings, for which he did not receive a per diem.

Judge Lamelas said the staff memo on per diem policy is inconsistent with statutes.

Discussion regarding how many members would serve on the subcommittee. Director Kennedy said that any Board member not on the subcommittee who would like input should provide it to him, and he will forward it to the subcommittee.

K. Director's Report

Director Kennedy asked whether the Board would entertain a motion to waive per diems for the teleconference meetings of that day and of January 6, 2013. There was no motion.

Director Kennedy said the staff is working on one ballot access issue involving an appeal of a local clerk's decision to keep a county board candidate off the ballot. He said he will make the decision in consultation with the Board Chair.

L. Closed Session

Adjourn to closed session as required by statutes to deliberate on requests for advice under the Code of Ethics for Public Officials and Employees, lobbying law, and campaign finance law; to consider the investigation of possible violations of Wisconsin's lobbying law, campaign finance law, and Code of Ethics for Public Officials and Employees; 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 §§5.05(6a), 19.85(1)(h), 19.851, 19.85(1)(g), and 19.85(1)(c), to deliberate on requests for advice under the Code of Ethics for Public Officials and Employees, lobbying law, and campaign finance law; to consider the investigation of possible violations of Wisconsin's lobbying law, campaign finance law, and Code of Ethics for Public Officials and Employees; and confer with counsel concerning pending litigation, and to consider employment, promotion and performance evaluation data of a public employee of the Board. Moved by Judge Lamelas, seconded by Judge Nichol.

| | | | | |
|-----------------|------------|-----|----------|-----|
| Roll call vote: | Barland: | Aye | Brennan: | Aye |
| | Froehlich: | Aye | Lamelas: | Aye |
| | Nichol: | Aye | Vocke: | Aye |

Motion carried unanimously. The Board took a brief recess and convened in closed session at 10:48 a.m.

M. Adjourn

The Board adjourned in closed session at 12:11 p.m.

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The next regular meeting of the Government Accountability Board is scheduled for Wednesday, March 19, 2014, at the G.A.B. office, 212 E. Washington Ave., in Madison, Wisconsin beginning at 9 a.m. A teleconference meeting will be scheduled the week of February 25, 2014.

January 14, 2013 Government Accountability Board meeting minutes prepared by:

Reid Magney, Public Information Officer

January 23, 2014

January 14, 2013 Government Accountability Board meeting minutes certified by:

Judge Michael Brennan, Board Secretary

February 25, 2014

State of Wisconsin\Government Accountability Board

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JUDGE THOMAS H. BARLAND
Chair

KEVIN J. KENNEDY
Director and General Counsel

MEMORANDUM

DATE: For the February 25, 2014 Special Teleconference Board Meeting

TO: Members, Wisconsin Government Accountability Board

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

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

SUBJECT: Prime III Voting System

I. Introduction and Summary of Recommendations

This memorandum is intended to keep the Board apprised of the G.A.B. staff's efforts to explore new and accessible voting technology for potential use in the State of Wisconsin. This includes staff's current exploration of the Prime III voting system for use in a pilot program during the April 1, 2014 election. The G.A.B. has a unique opportunity to work with Dr. Juan Gilbert¹ and his team at Clemson University, who will continue to be funded through a \$4.5 million grant from the U.S. Election Assistance Commission (U.S. EAC) to customize the Prime III voting system for potential use in Wisconsin. Over the past six months, the G.A.B. staff has collaborated with Dr. Gilbert and his team to explore how the Prime III software might be able to interface with current G.A.B. applications, including MyVote Wisconsin and the Canvass Reporting System. Staff also designed a pilot program with cooperating counties or municipalities to potentially use the Prime III during the April 1, 2014 Spring Election.

At the August 13, 2013 meeting, the Board witnessed a demonstration of the Prime III voting system by Dr. Gilbert. The Board then directed staff to continue researching the potential use of the Prime III voting system in Wisconsin, including collaborating with Dr. Gilbert to explore how the Prime III software might be able to interface with current G.A.B. applications, including

¹ Dr. Juan E. Gilbert is the Presidential Endowed Chair in Computing, an IDEaS Professor and Chair of the Human-Centered Computing (HCC) Division in the School of Computing at Clemson University where he leads the HCC Lab. He is also a Professor in the Automotive Engineering Department at Clemson University. He is a PI (Principal Investigator) on the U.S. Election Assistance Commission Accessible Voting Technology Initiative. Dr. Gilbert is a Fellow of the American Association for the Advancement of Science (AAAS), an ACM Distinguished Scientist, National Associate of the National Research Council of the National Academies, an Association for Computing Machinery (ACM) Distinguished Speaker and a Senior Member of the IEEE Computer Society. In 2011, Dr. Gilbert was given a Presidential Award for Excellence in Science, Engineering and Mathematics Mentoring by President Barack Obama.

MyVote Wisconsin and the Canvass Reporting System. The Board also directed staff to design a pilot program with cooperating counties or municipalities to potentially use the Prime III during the April 1, 2014 Spring Election, and to report its progress and recommendations at future Board meetings.

In accordance with the Board directive from the August 13, 2013 meeting, G.A.B. staff designed a pilot program to use the Prime III in the April 1, 2014 election. G.A.B. obtained an agreement from Manitowoc County Clerk Jamie Aulik to serve as the pilot location. Additionally, through the work of County Clerk Aulik, G.A.B. staff secured municipal participants for the pilot. County Clerk Aulik as well as municipal clerks Barbara Pankratz (Town of Newton) and Jolyn Schuh (Town of Kossuth) have agreed to collaborate with the G.A.B. in piloting the Prime III in the April 1, 2014 Spring Election. County Clerk Aulik has petitioned the respective town boards and received approval from them to pilot the Prime III in the April election.

Town of Newton and Town of Kossuth have similar demographic profiles from an election administration perspective in that they are small in size and have one polling place respectively. Both traditionally hand count all ballots. These locations were selected by County Clerk Aulik based on the interest of the municipal clerks and their assessment of their municipality's suitability to serve as a pilot location. Staff obtained election data for the most recent high turnout April election, which was the 2012 Spring Election, to assess expected turnout in 2014. In the April 2012 election, the Town of Kossuth had 398 total electors, with 12 ballots submitted as absentee. The Town of Newton had 514 electors in April of 2012, with 21 ballots submitted as absentee. The turnout in 2014 is expected to be lower than it was in the Spring of 2012.

Staff has been working with the Clemson team and our county and municipal partners to make the following preparations for the April pilot:

- Develop a method to transfer candidates and contests between SVRS and the Prime III system in a way that preserves the confidentiality of voter information.
- Program the Prime III system for each of the six available ballot styles that will be used in the April election. The remaining style will be added following the February primary.
- Configure the voter interface in a way that is consistent with Wisconsin statutory requirements.
- Create a ballot design that will ensure the most consistency between existing Wisconsin ballot styles and the Prime III's OCR ballot.
- Implemented preferences of Manitowoc County and municipal clerk participants for election night management processes.
- Conducted demonstrations and training for Manitowoc County and municipal clerks, chief inspectors, poll workers, members of the town boards, and interested citizens.
- Conducted functionality and usability testing on the Prime III.

Recommendation:

Based on the result of Board staff's functional testing, staff is continuing to test the functionality of the tabulation component of Prime III and therefore cannot provide a recommendation at the time this memo was sent to the Board. Staff will provide an updated review and recommendation at the February 25th Board meeting.

II. Background

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

The U.S. EAC has sought to address this issue, at least in part, by supporting research that will increase the accessibility of new, existing and emerging technological solutions in the design of voting systems that utilize open source technology. Its grant program was specifically targeted towards making such technology available to state election officials and voting equipment vendors. Using this grant funding, Dr. Gilbert and the Research Alliance for Accessible Voting (RAAV) developed the Prime III Voting System. The RAAV was established to advance the state of elections and voting through research, development, evaluation, dissemination and implementation of concepts and technologies that increase access to and participation in democracy.²

Prime III is the result of a three-year, \$4.5 million project funded by the U.S. Election Assistance Commission (U.S. EAC) to increase the accessibility of new, existing and emerging technological solutions in the design of voting systems. This grant was aimed at supporting the development of a system that utilizes open source technology and would ultimately be made available to state election officials and voting equipment vendors. Though the system is designed as an accessible voting solution, it has an interface that can be used by all voters.

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

- *Ongoing accessibility of up to date technology.* Because the system utilizes open source rather than proprietary software, it can be easily updated without requiring extensive upgrades.
- *Accessibility.* Prime III offers the G.A.B. the ability to explore and clerks to acquire innovative technology that could improve the voting experience of Wisconsin voters. The current generation of voting equipment has increased voter accessibility, but many

² The RAAV consists of 10 organizational partners. One of the partners, Clemson University, serves as the manager of the project and liaison with the funder and two designated collaborators: NIST (National Institute of Standards and Technology), and ITIF (Information Technology and Innovation Foundation). The Alliance aims to engage the disability community, people with limited literacy and/or limited English proficiency, legislators, election administrators, and vendors to advance the project mission.

voters continue to report difficulties with casting a private and independent ballot utilizing these machines.

- *Transparency.* Because the system has been developed using open source software it will provide a level of increased transparency in the voting process.
- *Increased Efficiency.* A system that has been configured specifically to interface with existing G.A.B. applications could reduce the amount of time clerks and G.A.B. staff must dedicate to ballot design, data input, etc., since this information could potentially be transferred via system interchanges.
- *Reduced Costs to Clerks.* Open source technology has many benefits including the potential to reduce costs which clerks incur for purchase, maintenance, programming, and replacement.

III. System Description

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

Prime III was first tested in controlled laboratory settings and later in national, academic and trade association elections. Prime III was used in an official capacity during the 2012 presidential primary election in Oregon, the 2013 Meeting of the National Society of Black Engineers, and the 2013 Self-Advocates Becoming Empowered (SABE) National Conference. The Oregon Secretary of State initially tested Prime III in Washington County. The State of Oregon has decided to move forward with using Prime III on an ongoing basis. Oregon election officials are now working with Dr. Gilbert and intend to have Prime III operate on a statewide basis. A voting equipment manufacturer has also acquired the technology and will develop a system based on the model.

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

- *Accessibility* — Voters can choose to follow written or spoken instructions. Likewise, they can record their votes by either touching the screen or speaking into a microphone. The system can also be configured to allow for ballots with images of candidates, a feature that would benefit voters with cognitive disabilities.
- *Security* — The self-contained software for Prime III is run from bootable DVDs. It does not necessarily have to be connected online; though running it from a closed server will improve the accessibility components. Voters confirm printed ballots before they complete them with the electronic data so election officials can easily audit results from each ward.

- Usability — The Prime III software was developed after years of usability testing, using focus groups that included individuals with a variety of physical disabilities. That research is ongoing and continues in larger public tests.
- Privacy — Printed ballots contain no identifying information. Additionally, stickers with authenticated serial numbers can be affixed to each ballot to ensure that only properly cast ballots are retained. Moreover, given the system's multimodal interface, voters with a wide range of ability or disability have greater opportunities to vote privately and independently without the assistance of a poll worker. Even when using the voice-activated ballot, voters do not have to divulge the names of the candidates they support. A series of voice prompts leads voters to say words such as "next" or "vote."

The Prime III is both software independent and hardware agnostic, hence, it operates using standard computers, iPad, or Microsoft-based tablets running Windows 8. The Prime III software runs on a bootable DVD, thus the software cannot be changed once it has been burned to a disc. Alternatively, Prime III can also run while directly connected to the internet, providing enhanced audio quality for the system's voice component, versus running off of a bootable DVD. Prime III implements security using a voter-verified and generated ballot (VVGB) and provides support for a manual audit of the system's procedure.

The Prime III is designed to allow voters to cast their ballot using touch, voice or both by utilizing a speech interface that allows hands-free, eyes-free interaction. Hence, individuals who cannot see, hear, or read, or do not have use of their hands, can all vote privately and independently using the same equipment as those that do not have any disabilities. All voters verify their ballot the same way, regardless of ability.

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

A voter using the headset to vote would receive prompts that speak the ballot options currently displayed. The voter waits until their candidate's name or option is spoken and says "Vote" after the prompt, or blows into the microphone. Prime III also allows for the voter to simply blow into the microphone after the prompt during the 1.5 second pause to make selections as well. As such, eavesdroppers will hear a voter saying "Vote" or nothing at all, without any indication of the voter's choices. During voting, the voter will be required to confirm their ballot twice. After the second confirmation, the voter's ballot is printed displaying only the options the voter selected. This eliminates ambiguity about a voter's intent due to stray marks or incorrect marking of the ballot.

In Prime III, each contest is listed on separate screens. The system then lists the candidates in a single row, unless the number of candidates for any office requires the use of more than one row. This ballot design attempts to remove ambiguity and confusion by only showing the candidates for one contest at a time where other systems show multiple contests per screen, which in most cases is simply copying the paper ballot to the screen.

Prime III does not store any votes while the voter is inputting their selections. Rather, the ballot marking end of the system only assists the voter with making their selections then prints a completed ballot, which the voter can then verify before placing it in the ballot box. After the ballot is created, it is scanned by the Tally Machine, which is a second independent machine, using optical character recognition (OCR) technology. Dr. Gilbert compares this method of reading the ballot content via OCR to how people count ballots. In modern optical scan (OS) machines, the tally machines read ovals or arrows; however, when people audit standard OS ballots, they may come to a very different interpretation of the voter's intent because they count by reading the name, not the oval or arrows.

IV. Pilot Summary and Plan

a. Pilot Planning Overview

Should the Board approve the pilot plan as detailed in this memorandum, G.A.B. staff will continue to collaborate with Manitowoc County, Town of Newton, and Town of Kossuth to pilot the Prime III in two polling locations during the April 1, 2014 election. Manitowoc County and both the Town Boards in Newton and Kossuth have approved the use of the Prime III for the April pilot.

In preparation for the pilot, staff held an all-day working meeting on January 24, 2014 with six members of the Prime III team from Clemson University, along with Manitowoc County Clerk Jamie Aulik, and Municipal Clerk Barbara Pankratz. The joint Prime III team discussed ballot design specifications, polling place set-up, tabulation, and infrastructural requirements. The Clemson team also confirmed for staff and clerks that there will be little or no cost to the clerks for participating in the pilot.

G.A.B. staff and Dr. Wanda Eugene from the Clemson Prime III team traveled to Manitowoc County February 12-13 to meet with municipal officials and demonstrate the system for the clerks, chief inspectors, and poll workers. G.A.B. staff carried three systems to Manitowoc and demonstrated the voter interface. G.A.B. staff then discussed election administration procedures with the county and local election officials in attendance. County Clerk Aulik and Municipal Clerks Pankratz and Schuh approved the system design and the election administration procedures outlined by G.A.B. staff.

b. System Development and Testing Update

i. Ballot Style Creation and Election Management

The Clemson team demonstrated within Prime III how to create the election/ballots for each given election. The Prime III was used successfully to program each of the six available ballot styles for the April 1 elections in the Town of Kossuth and the Town of Newton.

ii. User Interface

Staff designed a test deck of approximately 600 test ballots based on the actual ballots that will be used in the April elections. Since staff had the benefit of knowing which contests would be on the April 1, 2014 ballot, staff chose to

replicate a real world election scenario by using existing contests rather than fictional contests as have been used in past testing campaigns. Staff then used various configurations of candidate selections to verify the accuracy and functional capabilities of the system.

Because the Prime III is configured to be hardware agnostic and may run from any computer, staff cast votes using two types of equipment: HP All in One touch screen computer systems and Samsung tablets. Staff members were able to successfully perform the following tasks:

- Input desired selections using the touch screen function
- Input desired selections using the text to voice function
- Use the text to voice function to assist with the user interface on the screen
- Change votes cast in error prior to submitting ballot
- Verify votes from a paper ballot

G.A.B staff will continue to perform testing on the following user interface components:

- Continue testing of the text to voice accessibility function
- Continue testing of the various accessible inputs

G.A.B. staff initially asked Dr. Gilbert to develop a ballot that could be used for absentee voting. This functionality was not initially a part of either the pilot program design or the Prime III software design. However, the Clemson team was able to develop a ballot that works successfully with OCR technology. G.A.B. staff then designed an absentee ballot based on our standard ballot templates. The joint Prime III team has been working to identify a ballot format which will meet both the needs of the clerks and voters, but can also be read by the OCR technology. To date, the joint team has not identified a successful configuration to satisfy both of these goals. Due to time constraints associated with meeting statutorily imposed deadlines for ballot delivery, G.A.B. staff is unsure whether a solution will be found and tested in time. G.A.B. staff is therefore recommending that the municipalities hand count absentee votes for the April election rather than continuing to pursue creation of an absentee ballot that can be tabulated by the Prime III. Given the small number of absentee ballots, and the tradition of hand counting ballots in these relatively smaller municipalities, G.A.B. staff would recommend this approach at this time.

iii. Vote tabulation

G.A.B. staff has begun conducting testing of the OCR scanner and tabulation function. Staff was able to accurately tabulate votes in three of the four testing scenarios, but was unable to complete testing thereafter. After capturing votes accurately, in three tests, G.A.B. staff attempted to simulate an election night scenario by scanning ballots from more than one ballot style into the system simultaneously. The system was able to identify that multiple ballot styles were present, but was not ultimately able to determine where to allocate the votes. The

Clemson team has identified possible solutions and has been working to repair the problem. Possible solutions have included:

- Reformatting the titles of the ballot styles to provide greater differentiation between the styles
- Removing formatting functions within the source code that will likely alleviate the problem

Staff will continue testing once the fixes have been implemented and will provide more information to the Board at the February 25th teleconference on the status of the testing.

c. Pilot Plan

i. Timeline

Feb 21-24 Complete testing of the following components:

- Continue testing of the text to voice accessibility function
- Continue testing of the various accessible inputs
- Finalize testing of the tabulation function
- Complete analysis of the tabulation function according to Wisconsin statutory guidelines as outlined in § 5.91

March 4- GAB to deliver absentee ballot instructions to the County (if applicable)

March 11 – Deadline for absentee ballots to be delivered to the municipalities

March 27-28 – Demonstration Days in Manitowoc County municipalities

Municipal clerks will conduct public testing of the equipment in compliance with Wis. Stat. §5.84 during an all-day event that will allow the public an opportunity to become familiar with the equipment

March 31- G.A.B. staff and Clemson team to arrive in Manitowoc to set-up polling place for the April 1 election.

April 1 – Election Day

ii. Pilot Procedures Overview

The pilot will not interfere in any substantial way with standard polling place operating procedures. Clemson University will provide seven large touch screen monitors, seven printers, and one tabulation machine per polling place. The respective municipal clerks have decided that they will encourage all voters to use the Prime III system, but will have a paper option on hand for those who might choose not to do so. Cast ballots will be placed into the secure ballot box until after the polls have closed. Votes will then be tabulated using the Prime III tabulation software. G.A.B. staff in conjunction with the municipal and county clerks' election staff will conduct a manual hand recount of all ballots cast in the election to verify the accuracy of the vote totals.

V. Board Staff’s Preliminary Feedback

A. General Feedback

- The Prime III arguably does not provide absolute privacy and independence for voters with disabilities, especially voters with dexterity or motor disabilities, as voters may need assistance inserting the ballot, removing the ballot and placing the ballot in the ballot box. However, it does provide substantial compliance with these objectives and is an improvement over similar existing technology.
- There were several problems with the system connecting with the printer to print the ballots at the end of the voter’s session. On several occasions, this required that the Prime III interface be restarted and the voter had to re-enter their selections. Since votes are not cast until the ballot is placed in the ballot box, no votes were “lost.” Staff will continue to work with the Clemson team to find a solution.

A. Statutory Compliance

Based on the testing that has been completed to date, the system has been found to be in compliance with the following requirements as provided in Wis. Stat. §5.91. Wis. Stat. §5.91 provides the following requirements that voting systems must meet to be approved for use in Wisconsin. G.A.B. staff analyzed these requirements only as they pertain to the use of the system in the Spring Election as it will not be utilized in a partisan primary or November General elections. Please see the below text of each requirement and staff’s compliance analysis.

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| § 5.91 (1) |
| The voting system enables an elector to vote in secret. |
| Staff Analysis |
| The Prime III voting system meets this requirement by allowing a voter to vote in the privacy of a voting booth without assistance. |

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| § 5.91 (3) |
| The voting system enables the elector, for all elections, except primary elections, to vote for a ticket selected in part from the nominees of one party, and in part from nominees from other parties and write-in candidates |
| Staff Analysis |
| The Prime III voting system allows voter to split their ballot among as many parties as they wish. |

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| § 5.91 (4) |
| The voting system enables an elector to vote for a ticket of his or her own selection for any person for any office for whom he or she may desire to vote whenever write-in votes are permitted. |
| Staff Analysis |
| The Prime III voting system allows write-ins where permitted. |

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| § 5.91 (5) |
| The voting systems accommodate all referenda to be submitted to electors in the form provided by law. |
| Staff Analysis |
| N/A. There were no available referenda to test and no referendum question will be included in the pilot. |

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| § 5.91 (6) |
| The voting system permits an elector in a primary election to vote for the candidates of the recognized political party of his or her choice, and the system rejects any ballot on which votes are cast in the primary of more than one recognized political party, except where a party designation is made or where an elector casts write-in votes for candidates of more than one party on a ballot that is distributed to the elector. |
| Staff Analysis |
| N/A. |

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| § 5.91 (7) |
| The voting system enables the elector to vote at an election for all persons and offices for whom and for which the elector is lawfully entitled to vote; to vote for as many persons for an office as the elector is entitled to vote for; to vote for or against any question upon which the elector is entitled to vote; and it rejects all choices recorded on a ballot for an office or a measure if the number of choices exceeds the number which an elector is entitled to vote for on such office or on such measure, except where an elector casts excess write-in votes upon a ballot that is distributed to the elector. |
| Staff Analysis |
| The Prime III voting system meets these requirements. |

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| § 5.91 (8) |
| The voting system permits an elector at a General Election by one action to vote for the candidates of a party for President and Vice President or for Governor and Lieutenant Governor. |
| Staff Analysis |
| N/A |

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| § 5.91 (9) |
| The voting system prevents an elector from voting for the same person more than once, except for excess write-in votes upon a ballot that is distributed to the elector. |
| Staff Analysis |
| The Prime III voting system meets this requirement. |

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| § 5.91 (10) |
| The voting system is suitably designed for the purpose used, of durable construction, and is usable safely, securely, efficiently and accurately in the conduct of elections and counting of ballots. |
| Staff Analysis |
| <i>The Prime III voting system meets this requirement in part. The tabulation function will be verified by staff during the final stage of testing.</i> |

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| § 5.91 (11) |
| The voting system records and counts accurately every vote and maintains a cumulative tally of the total votes cast that is retrievable in the event of a power outage, evacuation or malfunction so that the records of votes cast prior to the time that the problem occurs is preserved. |
| Staff Analysis |
| N/A, The user interface of the Prime III voting system does not record votes nor count them. It is a marking device that creates a physical ballot. Votes are not cast until the paper ballot is inserted into the ballot box. |

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| § 5.91 (12) |
| The voting system minimizes the possibility of disenfranchisement of electors as the result of failure to understand the method of operation or utilization or malfunction of the ballot, voting system, or other related equipment or materials. |
| Staff Analysis |
| The Prime III voting system meets this requirement. |
| § 5.91 (13) |
| The automatic tabulating equipment authorized for use in connection with the system includes a mechanism which makes the operator aware of whether the equipment is malfunctioning in such a way that an inaccurate tabulation of the votes could be obtained. |
| Staff Analysis |
| <i>The Prime III voting system has not been verified to have met this requirement.</i> |

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| § 5.91 (14) |
| The voting system does not use any mechanism by which a ballot is punched or punctured to record the votes cast by an elector. |
| Staff Analysis |
| The Prime III voting system does not use any such mechanism to record votes. |

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| § 5.91 (15) |
| The voting system permits an elector to privately verify the votes selected by the elector before casting his or her ballot. |
| Staff Analysis |
| The Prime III voting system meets this requirement. |

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| § 5.91 (16) |
| The voting system provides an elector the opportunity to change his or her votes and to correct any error or to obtain a replacement for a spoiled ballot prior to casting his or her ballot. |
| Staff Analysis |
| The Prime III voting system meets this requirement. |
| § 5.91 (17) |
| Unless the ballot is counted at a central counting location, the voting system includes a mechanism for notifying an elector who attempts to cast an excess number of votes for a single office the ballot will not be counted, and provides the elector with an opportunity to correct his or her ballot or to receive a replacement ballot. |
| Staff Analysis |
| The Prime III voting system meets this requirement. |

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| § 5.91 (18) |
| If the voting system consists of an electronic voting machine, the voting system generates a complete, permanent paper record showing all votes cast by the elector, that is verifiable by the elector, by either visual or nonvisual means as appropriate, before the elector leaves the voting area, and that enables a manual count or recount of each vote cast by the elector. |
| Staff Analysis |
| The Prime III voting system meets this requirement. |

The Help America Vote Act of 2002 (HAVA) also provides the following applicable requirements that voting systems must meet:

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| HAVA § 301(a)(1)(A) |
| The voting system shall: (i) permit the voter to verify (in a private and independent manner) the votes selected by the voter on the ballot before the ballot is cast and counted; (ii) provide the voter with the opportunity (in a private and independent manner) to change the ballot or correct any error before the ballot is cast and counted (including the opportunity to correct the error through the issuance of a replacement ballot if the voter was otherwise unable to change the ballot or correct any error); and (iii) if the voter selects votes for more than one candidate for a single office – (I) notify the voter that the voter has selected more than one candidate for a single office on the ballot; (II) notify the voter before the ballot is cast and counted of the effect of casting multiple votes for the office; and, (III) provide the voter with the opportunity to correct the ballot before the ballot is cast and counted |

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| HAVA § 301(a)(1)(C) |
| The voting system shall ensure that any notification required under this paragraph preserves the privacy of the voter and the confidentiality of the ballot. |
| HAVA § 301(a)(3)(A) |
| The voting system shall— (A) be accessible for individuals with disabilities, including nonvisual accessibility for the blind and visually impaired, in a manner that provides the same opportunity for access and participation (including privacy and independence) as other voters |
| Staff Analysis |
| The Prime III voting system meets these requirements. Accessibility was determined by the former Elections Board to apply to the act of voting, not the insertion or removal of the ballot into the marking device and placing the ballot into the ballot box or optical scan voting system. |

Recommended Motion:

Staff will provide an updated review and recommendation at the February 25th Board meeting. In the event staff is satisfied with the results of the remaining testing, staff will seek the Board's approval of the pilot plan as outlined in this memorandum for use at the April 1, 2014 election in the Town of Kossuth and the Town of Newton in Manitowoc County.

Attachments

- ✓ Appendix: Accessibility Advisory Committee Review

APPENDIX: Accessibility Advisory Committee Analysis

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

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

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

| Very Poor | Poor | Fair | Good | Excellent |
|-----------|------|------|------|-----------|
| | | | 1 | 4 |

2. How would you rate the accessible features?

| Very Poor | Poor | Fair | Good | Excellent |
|-----------|------|------|------|-----------|
| | | 1 | 2 | 2 |

3. Rate your overall impression of the system.

| Very Poor | Poor | Fair | Good | Excellent |
|-----------|------|------|------|-----------|
| | | | 1 | 4 |

Additional comments:

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

- Screen tabs appeared to be too close together and [...] touch errors.

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