

# State of Wisconsin\Government Accountability Board

212 East Washington Avenue, 3<sup>rd</sup> Floor  
Post Office Box 7984  
Madison, WI 53707-7984  
Voice (608) 261-2028  
Fax (608) 267-0500  
E-mail: [gab@wisconsin.gov](mailto:gab@wisconsin.gov)  
<http://gab.wi.gov>



JUDGE THOMAS H. BARLAND  
Chair

KEVIN J. KENNEDY  
Director and General Counsel

December 10, 2014

Joe Chrisman, State Auditor  
Legislative Audit Bureau  
22 East Mifflin Street, Suite 500  
Madison, WI 53703

Subject: Government Accountability Board Audit

Dear Mr. Chrisman:

On behalf of the Government Accountability Board, I would like to thank you and your staff for the work invested in preparing the Legislative Audit Bureau's (LAB) performance audit of the Government Accountability Board (G.A.B.) for the period July 1, 2010 through June 30, 2014. We appreciate the courteous and professional approach your staff brought to the audit.

This response to the audit report was prepared by G.A.B. staff under the direction of Director and General Counsel Kevin J. Kennedy. The response does not represent a formal position taken by the Board or its members.

From the onset of the audit process, the agency has welcomed the opportunity for an outside evaluation of its performance in delivering services to Wisconsin residents, voters, candidates for public office, local election officials, state public officials and lobbyists. Since its inception, the G.A.B. has been nationally recognized as a leader and innovator in the administration of elections, campaign finance, ethics and lobbying disclosure. During the period covered by the audit the agency successfully carried out its responsibilities in an unusually volatile environment.

The audit report identifies a number of areas where the agency was unable to meet certain statutory requirements or could improve its operations. The G.A.B. is committed to addressing those recommendations to bring the agency into full compliance with statutory requirements and further improve its operations.

This response first addresses the general comments and recommendations set out in your transmittal letter to the Joint Legislative Audit Committee. We then address each of the specific recommendations in the order presented in the report. We conclude with a commitment to implementing the recommendations set out in the report.

## **General Comments and Recommendations**

You note the scope of the LAB evaluation was limited due to a 2014 opinion of the Attorney General concluding that statutes prohibit the G.A.B. from providing LAB access to confidential investigation records. <http://www.doj.state.wi.us/sites/default/files/OAG-03-14.pdf>. The Director and General Counsel expressed concerns about this statutory restriction at the audit entrance conference. Because of the criminal sanctions imposed by law for unauthorized access to confidential investigation records, the Board authorized its staff to seek guidance from the Attorney General. <http://www.doj.state.wi.us/sites/default/files/OAG-03-14-request.pdf>.

Agency staff believes it is important for LAB to have access to these records to fairly evaluate agency performance. We have recommended that the G.A.B. communicate its support to the Legislature to enable LAB to have access to confidential investigation records subject to the same confidentiality restrictions imposed on Board Members and agency staff.

The transmittal letter and audit report note the agency did not conduct post-election felon voting checks after each election between 2010 and 2013. While this is true, it is important to note that the post-election felon audits were suspended for very practical reasons. We found that the Department of Corrections' data was not conclusive and that our matching process needed to be improved to reduce false matches. District Attorneys became frustrated with bad referrals based primarily on the matching of data between DOC and G.A.B. databases. The agency needed to protect the credibility of referrals, especially following the erroneous charging of an individual by a District Attorney who relied solely upon the matching result and did not conduct any follow-up investigation. That incident not only involved criminal charges filed against an innocent individual, but also negative media coverage about the reliability of the felon audit process.

G.A.B. staff adopted measures to ensure accurate matches by creating a new felon audit dashboard in the Statewide Voter Registration System (SVRS). This online tool is part of the agency's ongoing efforts to use technology to improve processes and reduce costs. With the new dashboard in place, the agency completed audits of 16 elections in nine months and has closed all outstanding cases either by resolving the data matches or referring cases to District Attorneys. Our staff's focus on diagnosing the problem and developing, testing, and implementing a solution to improve the efficiency and accuracy of the process delayed the completion of the post-election felon audits which occurred in the interim.

During this period there were several procedures in place to limit the ability of convicted felons to vote and to identify those felons who managed to cast a ballot. While the G.A.B. had temporarily suspended post-election felon audits, SVRS still matched registered voters with the felon list and suspected felon voters were referred to District Attorneys during this time period. The G.A.B. provides to each municipal clerk a current Ineligible Voter List of ineligible felons residing in each municipality, which can be accessed online and printed on-demand.

The transmittal letter and audit report note several instances where administrative rules were not promulgated, amended or repealed as required by law or directed by the Board. Given the extraordinary demand on agency resources, administrative rulemaking was given a much lower priority in order to effectively respond to the immediate and pressing demands of litigation, the on-again off-again implementation of voter identification requirements, the unprecedented number of recalls in 2011 and 2012, a statewide recount, redistricting and the enactment of 31 separate pieces of legislation during the audit period. In 2011, the Governor and the Legislature also adopted a much more detailed administrative rule promulgation process with additional oversight by the executive and legislative branches, which requires significantly more time and resources for agencies to amend, promulgate or repeal an administrative rule. The agency management team expects to complete the recruitment for the vacant staff attorney position shortly after the first of the year. Addressing the backlog of administrative rulemaking will be one of the top priorities of the legal team in 2015.

The transmittal letter and audit report also note the lack of thorough documentation and reporting to the Board of investigation and enforcement activity by agency staff. It is important to note, however, that staff kept the Board informed of these activities in informal ways through oral and written Division reports at Board meetings. The agency management team is taking steps to

develop a more comprehensive tracking system for complaints and settlements along with a fuller, more transparent series of reports to apprise the Board of the status of this activity.

### **Response to Recommendations**

The recommendations and the agency response are grouped by category as set out in the LAB report. In each case where the LAB has recommended that the Board report to the Joint Committee on Legislative Audit regarding the status of complying with a recommendation, the Board will do so. The LAB's recommendations are set out in italics, followed by the agency's response.

### **Training**

*The Government Accountability Board comply with statutes and promulgate administrative rules that prescribe the contents of training that municipal clerks must provide to election inspectors and special voting deputies.*

The agency will make addressing the backlog of administrative rulemaking one of its top management priorities in 2015. One significant factor in the delay in promulgating these rules was the priority placed on developing comprehensive informational and training materials for local election officials for the 31 pieces of legislation enacted during the report period. This involved soliciting feedback from a number of sources as well as developing new material and revising existing documents for local election officials.

### **Maintenance of Voter Registration Records**

*The Government Accountability Board regularly monitor Statewide Voter Registration System records to contact clerks who have not mailed letters to registrants whose personally identifiable information did not match information held by other agencies.*

Federally-funded agency project staff members regularly review the status of matching personally identifiable information by local election officials in SVRS. Agency staff consistently follows up with local election officials who have not resolved these matches. However, many local election officials do not use SVRS to record their contacts with voters who have mismatched information. While SVRS provides clerks with a template and the ability to generate communications directly from the system, many clerks choose to contact voters with communications not generated from the system, which is an acceptable alternative. The agency will develop a procedure for directing local election officials to document their actions to correct mismatched information.

*The Government Accountability Board review the records of the deceased individuals we identified and determine whether any of these individuals' votes were inappropriately cast in FY 2012-13 elections.*

The agency will carry out this recommendation for the voter records provided to us on December 8, 2014.

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

At a later point in the report, the LAB suggests the Legislature consider requiring G.A.B. to determine after each election whether any votes were cast by individuals who died before Election

Day. The agency believes the Legislature should carefully consider this recommendation before adopting it. There are significant administrative and personnel costs for the G.A.B. and local election officials to implement this process. It is essential the Legislature is fully apprised of the costs of conducting post-election death audits, similar to the post-election felon audits currently done by the G.A.B. The agency will work with the Legislature to analyze these costs.

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

Federally funded agency project staff regularly reviews the status of matching felon data with existing voters by local election officials in SVRS. Agency staff consistently follows up with local election officials who have not resolved these matches. However, many local election officials do not use SVRS to record their contacts with voters who have matching felon information. While SVRS provides clerks with a template and the ability to generate communications directly from the system, many clerks choose to contact voters with communications not generated from the system which is an acceptable alternative. The agency will develop a procedure for directing local election officials to document their actions to resolve felon voting record matches.

*The Government Accountability Board review information for the individuals we identified whose voter registration records may have been erroneously inactivated and ensure that the relevant clerks have notified the individuals.*

Agency staff received this list of individuals on December 8, 2014, and will carry out this recommendation.

*The Government Accountability Board complete in a timely manner the statutorily required reviews to identify individuals with ongoing felony sentences who may have voted.*

As described earlier in this response, the agency has completed all post-election felon audits. This includes the post-election felon audit for the August 14, 2014 partisan primary. The agency has closed all outstanding cases either by resolving the data matches or referring cases to District Attorneys. We continue to receive updates from District Attorneys on the progress of each referral. The technological innovations developed by agency staff will enable us to timely complete the post-election felon audit for future elections.

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

Agency staff will carry out this recommendation.

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

The agency has already complied with this recommendation. This was a key element in the development of the new felon audit dashboard in SVRS. The agency's work with the Department of Corrections has improved the accuracy of information regarding individuals serving felony sentences provided to SVRS and created significant cost efficiencies for both agencies.

*The Government Accountability Board promulgate administrative rules that specify the responsibilities of clerks for maintaining voter registration records in the Statewide Voter Registration System.*

The agency will make addressing the backlog of administrative rulemaking one of its top management priorities in 2015. As noted in the LAB report, the agency has a comprehensive and detailed set of instructions for local election officials on the use of SVRS. The administrative rule will provide legal support for the detailed information currently posted on the agency website.

*The Legislature could consider requiring G.A.B. to determine after each election whether any votes were cast by individuals who died before Election Day.*

The agency believes the Legislature should carefully consider this recommendation before adopting it. There are significant administrative and personnel costs for the G.A.B. and local election officials to implement this process. It is essential the Legislature is fully apprised of the costs of conducting post-election death audits similar to the post-election felon audits currently done by the G.A.B.

*The Legislature could consider transferring responsibility for completing additional election-related tasks from municipal clerks to G.A.B.*

Wisconsin law specifically places the responsibility for numerous election administration tasks, including voter registration, with each of the state's 1,852 municipal clerks. The audit report does not delineate what current election-related tasks assigned by statute to municipal clerks could be transferred to the G.A.B.

The report provides one example: inactivating SVRS records for individuals who become ineligible to vote and mailing the letters that notify these individuals that their records have been inactivated. This is a function that would have to be performed by federally-funded agency project staff members who currently have extensive SVRS-related duties. There would be significant administrative and personnel costs for the G.A.B. associated with these additional duties.

### **Oversight of Campaign Finance Laws**

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

The agency staff has continually informed the Board of its enforcement efforts and practices. The staff will carry out this recommendation.

*The agency staff report to the Government Accountability Board at least quarterly on all campaign finance reports that were submitted on time, whether a penalty was assessed for each late report, the amount of each assessed penalty, and the amount of each penalty that was paid and unpaid.*

The agency staff will develop a more comprehensive tracking system for settlements along with a fuller, more transparent series of reports to apprise the Board of the status of this activity.

*The agency staff track centrally all penalties assessed for violations of campaign finance contribution limits and use the information to report to the Government Accountability Board at least quarterly on all violations of campaign finance contribution limits, whether a penalty was*

*assessed for each violation or a written warning letter was provided in lieu of a penalty, the amount of each penalty, and the amount of each penalty that was paid and unpaid.*

The agency staff will develop a more comprehensive tracking system for settlements along with a fuller, more transparent series of reports to apprise the Board of the status of this activity.

*The agency staff comply with statutes and publish on the Government Accountability Board's website summaries of all confidential advisory opinions issued related to compliance with campaign finance laws.*

G.A.B. staff summarized and posted all formal opinions of the Board before LAB's audit was completed. We acknowledge that this should be done more quickly. The Director and General Counsel will establish a performance standard for the Division Administrators to ensure this is done in a timely manner.

### **Oversight of Lobbying Laws**

*The agency staff comply with statutes and determine whether to revoke the existing licenses of lobbyists who are delinquent in paying state taxes or court-ordered child or family support payments.*

The agency staff follows this requirement before issuing a lobbying license. The agency will take steps to ensure the Departments of Revenue and Children and Families are informing the G.A.B. of any licensed lobbyists who later become delinquent in paying state taxes or court-ordered child or family support payments so the agency can act on this information.

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

The agency staff will develop a more comprehensive tracking system for settlements along with a fuller, more transparent series of reports to apprise the Board of the status of this activity.

*The agency staff comply with s. 13.68(6), Wis. Stats., by prohibiting principals that have not filed timely semiannual expense statements from allowing lobbyists to lobby on their behalf or request that the Legislature modify this provision.*

Agency staff sends an email notice within one business day to any lobbying principal that has not timely filed a Statement of Lobbying Activities and Expenditures, informing the principal it may be subject to a civil forfeiture if they do not immediately comply. There are relatively few principals who fail to meet the filing deadline. Staff attempts to personally contact each principal who has failed to file within the next several business days following the filing deadline. After a week, staff sends a letter which contains the settlement schedule approved by the Board. Staff can easily incorporate the suspension provision into the notices.

*The agency staff include in the weekly reports to the Legislature while the Legislature is in session all statutorily required information about lobbying activities or request that the Legislature modify*

*statutes to allow these reports to exclude information that is publicly available on the Eye on Lobbying website.*

Reports to the Legislature have been submitted in the form agreed to by the Chief Clerks. The reports contain a link to all required information. The agency staff will confirm with the Legislature the format desired by the Legislature.

*The agency staff include in the biennial reports to the Legislature all statutorily required information.*

The agency staff will comply with this recommendation for the next biennial report. The information for the past two biennia will be compiled and made available to the Governor and the Chief Clerks for distribution consistent with Wis. Stat. § 13.172 (2).

*The agency staff comply with statutes and publish on the Government Accountability Board's website summaries of all confidential advisory opinions issued related to compliance with lobbying laws.*

G.A.B. staff summarized and posted all formal opinions of the Board before LAB's audit was completed. We acknowledge that this should be done more quickly. The Director and General Counsel will establish a performance standard for the Division Administrators to ensure this is done in a timely manner.

### **Oversight of Code of Ethics Laws**

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

The agency staff will develop written policies for granting individuals extensions to the deadline for filing statements of economic interests which will include setting forth in writing the reasons for granting each extension along with a fuller, more transparent series of reports to apprise the Board of the status of this activity.

*The agency staff comply with statutes and promptly notify the Department of Administration and the employing agency when an individual does not file a statement of economic interests on time.*

The agency staff will carry out this recommendation.

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

The agency staff will develop a more comprehensive tracking system for settlements along with a fuller, more transparent series of reports to apprise the Board of the status of this activity.

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

The agency staff will carry out this recommendation.

### **Agency Settlement Schedules**

The audit report makes several recommendations related to settlement schedules:

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

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

*The agency staff adhere to the Government Accountability Board's February 2008 penalty schedule when assessing lobbying penalties.*

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

The Board adopted the Ethics and Elections Boards' settlement offer schedules in 2008 on an interim basis. These schedules are in need of reexamination in light of the Board's ongoing experience. Agency staff engages in extensive, preemptive efforts to obtain timely filing and compliance. Our training efforts, along with electronic filing of campaign finance and lobbying reports, have positively affected adherence to statutory filing requirements. Staff has continually informed the Board of its enforcement efforts and practices. Nevertheless, the staff recognizes that settlement practices must become more systematized and better documented. Staff will submit new settlement guidelines to the Board for its adoption in 2015 and will comply with all settlement schedules established by the Board.

### **Complaints**

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

The agency staff will develop a more comprehensive tracking system for complaints along with a fuller, more transparent series of reports to apprise the Board of the status of this activity.

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

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

The agency staff will develop a more comprehensive tracking system for complaints received and inquiries undertaken along with a fuller, more transparent series of reports to apprise the Board of the status of this activity.

## **Administrative Rules**

*The Government Accountability Board comply with statutes and promulgate all required administrative rules.*

*The Government Accountability Board remove from the Administrative Code the eight rules that are not in effect because it did not vote to adopt them.*

The agency will make addressing the backlog of administrative rulemaking one of its top management priorities in 2015.

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

The agency staff will develop a more comprehensive tracking system for the status of efforts to promulgate administrative rules along with a fuller, more transparent series of reports to apprise the Board of the status of this activity.

## **Conclusion**

The Wisconsin Statutes set out 154 separate responsibilities of the Government Accountability Board. Six are general grants of authority and 148 are specific directives. The agency is in compliance with all but a handful of these statutory responsibilities, which relate to promulgation of administrative rules.

We appreciate that the audit report recognizes some, if not all, of the extraordinary demands placed on the agency by events outside of its control during the audit period. These events have required management to prioritize staff resources and efforts, and in many ways the agency is still recovering from that period and catching up with statutory duties which needed to be deferred. A top agency priority is always preparing for and overseeing the next election, which often means relegating less immediate and longer term initiatives to the back burner.

The audit report confirms the conclusion in our budget request that it is impossible to fulfill the G.A.B.'s statutory duties without the extension of position authority related to those positions which are responsible for administering elections post-HAVA and implementing legislative mandates related to elections.

I would be remiss if I failed to note the excellent performance of our staff, which is small in terms of a state agency but also incredibly hardworking, efficient, and professional.

This is a timely point to make because many of the same individuals who have helped to navigate the complex responsibilities of the agency since its inception are facing the elimination of their jobs in six months. As the audit notes, position authority for 26 federally funded positions expires at the end of June 2015. We project that the federal funds for those positions will last through Fiscal Year 2017, and our budget request notes the need for a long-term solution to continue funding those positions.

There is an immediate need for the Legislature to determine whether those positions will continue beyond June 2015 as the agency continues to lose talented and experienced staff to other agencies and more permanent employment opportunities. Left unresolved, the uncertainty regarding the

position status will undoubtedly lead to additional staff departures in the coming months and setbacks in agency progress. We cannot reasonably expect agency employees to wait until the last minute to make such critical decisions related to their continuing employment and professional prospects.

The audit report identifies a number of areas where the agency was unable to meet certain statutory requirements or could improve its operations. The Government Accountability Board is committed to addressing those recommendations to bring the agency into full compliance with statutory requirements and further improve its operations.

We appreciate the analysis of the LAB in identifying areas of improvement. Thank you again for your thorough review of the Government Accountability Board.

**Government Accountability Board**

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

Kevin J. Kennedy  
Director and General Counsel