

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
March 19, 2014
9:00 a.m.

Open Session Minutes

<u>Summary of Significant Actions Taken</u>	<u>Page</u>
A. Declined to Authorize Further Study of Electronic Poll Books	4
B. Discussed Alternative Campaign Fundraising Approaches	7
C. Adopted Board Per Diem Policy	9

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

Not Present: Judge Michael Brennan

Staff present: Kevin Kennedy, Jonathan Becker, Michael Haas, Shane Falk, Nathan Judnic, Sharrie Hauge, Ross Hein, David Buerger, Colleen Adams, Reid Magney, Pauline Shoemaker, and Ngozi Agbo

A. Call to Order

Judge Barland called the meeting to order at 9:04 a.m.

B. Director's Report of Appropriate Meeting Notice

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

C. Minutes of February 25, 2014 Meeting

MOTION: Approve the minutes of the February 25, 2014 Board Meeting. Moved by Judge Nichol, seconded by Judge Vocke. Motion carried 5-0.

D. Personal Appearance for Public Comment

Karen McKim of Waunakee appeared on behalf of the Wisconsin Grassroots Network Election Integrity Action Team to comment on Agenda Item F regarding post-election audits. In addition to providing written testimony, she told Board Members the group believes that nothing in statutes prevents clerks from conducting voting equipment audits after each election, and that G.A.B. staff's position is counterproductive.

Judge Froehlich entered the meeting at 9:09 a.m.

Judge Lamelas asked Ms. McKim what kinds of audits she had in mind. She replied that many things can be done absent a full hand-recount, but did not offer specifics.

MaryAnn Hanson of Brookfield appeared on her own behalf to discuss Agenda Item E regarding electronic poll books. In addition to providing written testimony, she urged Board Members not to approve e-poll books out of concern for data security and minimal clerk interest in changing. Having one person run the e-poll book at a polling place would take away the two-party check and balance system now in place with two workers using printed poll books.

Judge Froehlich asked Ms. Hanson about electronic signatures. He noted that the Iowa product permits printing and then signing. She said a wet signature should absolutely be required to receive a ballot. She also raised issues about the security of electronic data.

Ardis Cerny of Pewaukee appeared on her own behalf to discuss Agenda Item E regarding electronic poll books. In addition to providing written testimony, she told Board Members that e-poll books are likely in our future, but should be put on the back burner in favor of more pressing issues. She listed a number of other issues she believes need to be addressed before e-poll books. She stated that her vote in an election was nullified by people who should not have voted. She presented the Board with a list of eight names of students who voted in the November 2012 election who she believes are not citizens.

Walt Hadcock of Mequon appeared on his own behalf to discuss Agenda Item E regarding electronic poll books. In addition to providing written testimony, he told Board Members about his professional background in information technology (including building the Tyme software used by banks and service in the Pentagon for 22 years) and his recommendations regarding the process for planning and estimating the cost of a project if the state were to develop its own e-poll book system.

Susan Maguire of Grafton appeared on her own behalf to discuss Agenda Item E regarding electronic poll books. In addition to providing written testimony, she told Board Members she is concerned about the potential loss of bi-partisan checks and balances at the polling place if e-poll books are used which are operated by one

person. She also stated concerns regarding cyber threats and misuse of laptops or tablets, preferring that any equipment would have e-poll book as a dedicated use for security and transparency. She also raised concerns about costs, such as machines, software, maintenance, training, future software upgrades, tech support.

Carol Boettcher of Cedarburg appeared on her own behalf to discuss Agenda Item E regarding electronic poll books. In addition to providing written testimony, she told Board Members she is a Chief Election Inspector in Cedarburg in Ozaukee County, and has concerns about e-poll books having a negative effect on two-party checks and balances and polling place security if the system is set up the night before an election and is not secured.

John Orth of Grafton appeared on his own behalf to discuss Agenda Item E regarding electronic poll books. He told Board Members he has 40 years of experience in the information technology field, and advocated the use of a federal ID card with biometric ID which could be used for electronic voting. He also discussed the need for realistic cost estimates, testing and validation, and the need to use both paper and electronic poll books at the start of any testing.

Mary Jo Walters of Madison appeared on her own behalf to discuss Agenda Item G regarding campaign finance fund-raising methods. She said she is an independent candidate for lieutenant governor and needs to use alternative methods such as crowd-funding to raise money.

Patty Logsdon of Franklin appeared on her own behalf to urge the Board to direct its resources toward proper training of poll workers rather than electronic poll books (Agenda Item E). She urged the Board to avoid complicating the current system with e-poll books. In addition to providing written testimony, she told Board Members she was an election observer who became an election inspector. In the past, she observed that poll workers seemed poorly trained and did not know the rules. She said she was disappointed in the level of training she received from the municipal clerk.

Peter G. Gilbert of Glendale appeared on his own behalf to discuss Agenda Item E regarding electronic poll books and his own experiences as an election observer since 2004. He noted that he saw quite a few inconsistencies, but also some good things too – even in Milwaukee. He described what he believed was a questionable voter registration by a man with a South Carolina driver license, as well as other irregularities.

In addition to speakers who appeared in person, the Board also received written comments from **Luonne Dumak of New Berlin** and **Ginny Graham of Waukesha** in opposition to electronic poll books (Agenda Item E). All written comments received are attached to these minutes.

E. Report on Electronic Poll Books

Elections Division Administrator Michael Haas introduced Elections Specialist David Buerger, who led the team of staff members who produced the report. He thanked the members of the public who appeared to comment on the report, especially those who provided written copies of their remarks.

Mr. Buerger presented an oral and written report, beginning on Page 7 of the March 2014 Board Meeting Materials. He said the majority of the report had already been presented to the Board at its December 2013 meeting, but that today's report contains new recommendations. The use of a single electronic poll book at polling locations is already specifically authorized in statutes, and staff is asking the Board to authorize continued research because the statutes require the Board to approve any system and clerks have requested permission to implement them. Municipal clerks may opt to use them, but they are not required. The staff wants the Board to establish standards to evaluate their approval and for their use. He noted that the Presidential Commission on Election Administration has endorsed the use of electronic poll books because they can be helpful in dealing with long lines on Election Day.

Judge Barland asked about electronic poll book security in light of spectacular breaches of electronic security in the federal government. He asked whether the Board should consider putting them on hold until we can have confidence in their security.

Mr. Buerger said further research on security would be a one of the tasks staff would perform, but also noted that voting equipment is not connected to electronic poll books. Staff requested authorization to continue so it can research what systems are out there and what security they have. He said the Board would need to approve any electronic poll book system before it could be used by a municipality.

Judge Barland asked what would happen in the event of an equipment failure.

Mr. Buerger directed him to Page 26 of the report to the sections on data and power backups. He said staff has not seen a high failure rate in existing systems, but acknowledged that clerks need to be prepared for a failure.

MOTION: Direct staff to solicit and review feedback on the recommendations presented in the report and to further develop procedures, standards and proposed legislative changes related to electronic poll books, and to report to the Board at a future meeting. Moved by Judge Nichol.

MOTION: Direct staff to conduct an analysis of all the costs of developing a custom electronic poll book solution for use in Wisconsin and to not accept applications for approval of any electronic poll book system until the Board has had an opportunity to consider this analysis. The study will include a cost comparison between an agency-developed system versus private sector systems. Moved by Judge Nichol.

Judge Froehlich seconded both motions and asked whether the Board will have a report that details the cost savings for electronic signatures versus hard copies. Mr. Buerger stated that could be included in the analysis.

Judge Lamelas stated she believes things should be kept simple, the current system is not broken, and there are no significant complaints concerning paper poll books. She said she is concerned about electronic security, and noted that there is not buy-in from the Legislature. She acknowledged that the statutes already specifically permit the use of electronic poll books at polling locations. She said the Board has to prioritize what it focuses on in coming years as the agency's funding will be an issue. Judge Lamelas asked the staff for a summary of all statutory duties of the G.A.B., and said the Board has not focused on its required duties yet. She said she could support the second motion to study the costs of a system.

Judge Barland said that the staff cannot analyze the costs of a system until it has explored the other options.

Judge Lamelas said that then she would have to vote against both motions.

Mr. Haas discussed the statutory language in Section 6.79 authorizing the use of electronic poll books, subject to the approval of the Board. He said that means the Legislature has given that directive and requirement to the Board. He agreed with Judge Lamelas that the G.A.B. has competing priorities, but said that staff routinely juggles many assignments, and clerks who wanted the option approached the staff about electronic poll books. Staff has the expertise to research whether that is a good idea, and is asking the Board for further direction and recommendations.

Judge Vocke said he has two issues – cost and the lack of security.

Judge Nichol asked whether those concerns could be addressed with the study. “How can we know if we can get a secure system if we don't study it,” he asked. He compared electronic poll books to electronic voting equipment. He said the Board has an obligation to research the issue, and if it doesn't like what it sees, it can decide not to go further.

Judge Vocke said that while Judge Nichol's argument makes sense, he is still concerned about electronic security.

Director Kennedy said the Board has a responsibility to approve electronic poll book systems, but cannot do that without standards. Staff began the study because municipalities were specifically requesting permission to use them. He said the G.A.B. cannot allow a vendor to sell electronic poll books without establishing standards and requirements and obtaining Board approval of any system. He noted that the second motion regarding development of a Wisconsin system was included because other states have come to the conclusion it was more cost-effective to develop

their own systems. Staff recognizes that vendors have already been approaching clerks, and staff wants to give them information to effectively analyze options.

Judge Lamelas said she was not being critical of the staff, but believes the Board should hold off for a few years until more is known about electronic poll books and the agency's funding is secure. She said the Board has to make sure it is meeting its legislative charges, and noted issues with the felon audit due to staff resources.

Judge Froehlich said Judge Lamelas raises good questions, noting the agency is about to enter into the budgetary process over the next two years with questions about continued federal funding. He asked how much time and effort will go into the study.

Judge Barland observed that four votes are necessary to pass the motions, noting there does not seem to be enough support.

Director Kennedy restated the motions, noting the amendment to explore all costs, including life cycle (replacement), maintenance, and comparisons of the costs and benefits of collecting a wet signature on paper poll books versus collecting an electronic signature.

Roll call vote:	Barland:	Aye	Vocke:	No
	Froehlich:	No	Lamelas:	No
	Nichol:	Aye		

Motion fails, two yes and three no.

Director Kennedy clarified that based on the vote, staff will not be devoting any significant resources to electronic poll book research.

Judge Barland said staff is not to proceed with any intensive efforts.

Director Kennedy said that if any municipality says it wants to adopt electronic poll books, it will be told that the Board determined that they are not a priority and will not be approved for the time being.

F. Report on Recommendations of the Presidential Commission on Election Administration

Elections Division Administrator Haas made an oral presentation based on a staff report starting on Page 187 of the March Meeting Materials. President Obama appointed the Presidential Commission on Election Administration after the 2012 election brought to light problems with long lines at polling places and other issues. Director Kennedy met with the Commission's co-chairs and testified before the Commission, which singled out Wisconsin for kudos in its final report. The Commission made 19 recommendations, and the staff report details which seven of the recommendations have already been implemented in Wisconsin, which six would

require legislative changes, and which three could be done administratively. One of the three is electronic poll books, but that has been put on hold. Lead Elections Specialist Diane Lowe is looking at improving ballot usability. The third, which involves allocation of election resources, is something staff is looking at testing with a small group of clerks at the August Partisan Primary.

Judge Barland asked about the recommendation at the top of Page 195 regarding military voters. Mr. Haas said that refers to improving the usability of the MyVote Wisconsin website.

Judge Lamelas asked about a recommendation regarding audits of voting equipment on Page 195, and whether it would require a legislative change.

Director Kennedy discussed hand-count audits. There have been suggestions that before ballots are sealed at the end of the night they should be recounted by hand. The G.A.B. staff's position has been that since the machine has already tabulated the ballots, poll workers may not re-tabulate them. He said there are other ways to check the accuracy of voting equipment. He said there is authority to re-tabulate during the post-election canvass, if errors are discovered during the canvass. Mr. Haas said that in Section 7.08, the Legislature has directed the Board to conduct a voting equipment audit after each general election.

Judge Lamelas said the Commission is recommending an audit for every election, and we are doing it every few years. Director Kennedy said some states allow random audits before the canvass is certified. He noted that after the deadline for a recount, some groups have done their own "citizen audits" by hand-recounting ballots.

Elections Supervisor Ross Hein discussed the number of audits the Board does for each voting system. He said the presidential commission did not specify which data format should be used for audits. Mr. Hein said the G.A.B. does hand-count audits. There are other methods including scanning ballots and reading them using optical character recognition software, which is different than having the voting equipment read the ballots.

Director Kennedy said no Board action is required. The Legislative Reference Bureau is anticipating that legislators may want to draft legislation based on the presidential commission report, and has met with G.A.B. staff to review the report.

G. Report on Alternative Campaign Funding Sources

Campaign Finance Auditor / Ethics Specialist Colleen Adams made an oral presentation based on a written report beginning on Page 197 of the March Meeting Materials. She said the Ethics Division staff has been receiving requests from candidates and committees regarding use of alternative campaign funding sources such as text messaging, crowd-funding and Bitcoin currency. Staff has done research on these issues and believes these questions should be evaluated by the Board.

Judge Barland asked why the Board should be concerned. Ms. Adams said that if someone donates via text message, the donor may not be billed for 30 days and statutes require transfer of funds within 15 days.

Ethics Division Administrator Jonathan Becker said statutes allow donations by cash, check, credit card, or electronic funds transfer. Staff is concerned whether the Board considers text messaging part and parcel of credit card or electronic funds transfer. Ms. Adams said some committees considering using alternative sources did not realize the finer details of campaign finance law regarding agents or obtaining contributor information.

Judge Lamelas said it seems the staff is recommending electronic fundraising as long as there is compliance with existing statutes, and that they have not found any problems except with bitcoin.

Judge Barland asked what action the staff wants from the Board. Mr. Becker said staff is asking that the Board concur that statutes permit the use of campaign fundraising via text messaging and crowd-funding as long as the statutes are followed and required contributor information is obtained.

Judge Froehlich asked what could be done to prevent candidates from sending out mass text messages seeking contributions. Ms. Adams said the Federal Communications Commission prohibits text blasts without permission of the person receiving the message. She said most committees will not be using text message fundraising because of the high startup costs.

Judge Barland asked why the Board would get involved as long as committees are reporting the information that is required. Ms. Adams said a committee asked staff if a cell phone bill was a negotiable instrument under campaign finance law. Mr. Becker said staff wanted to defer to the Board.

Judge Lamelas said bitcoin is not worth spending any time on because people who are interested in it want to avoid regulation and taxation. She noted that bitcoins can change in value much like stock.

Mr. Becker said there is one legal twist with bitcoin: whether it is like an in-kind donation of a gift card, in that bitcoins are only accepted by some merchants. Judge Lamelas said the difference is that bitcoins change value, and are not like the set value of a gift card.

Judge Nichol said he has concerns with crowd-funding, based on reports he has heard about fraudulent crowd-funding. Ms. Adams said most crowd-funding companies prohibit political fund-raising, and the Federal Election Commission says it is up to the vendor to decide whether to allow it.

Judge Barland said he has not heard one of the Board members make a motion.

Mr. Becker said that absent a motion, if anyone asks about bitcoin the staff will say it is not permitted. If anyone wants to use text messaging, staff will say that is permitted, but the committee should make sure statutes are complied with and donor information is obtained that is required for reporting. Similarly, if anyone wants to use crowd-funding, staff will say that it is permitted, but the candidate or committee must be registered with the Board, comply with statutes, and obtain the required donor information.

H. Discussion of Board Member Per Diem Policy

Director Kennedy noted that a report from a Board subcommittee consisting of Judge Vocke and Judge Lamelas begins on Page 211 of the March Meeting Materials.

Judge Lamelas said she and Judge Vocke developed the policy for when Board Members qualify to receive a per diem payment based on a proposal from Judge Froehlich.

Judge Froehlich said the only concern he has with the proposed policy is the ability of a Board majority to waive a Board member's personal right to a per diem payment. Judge Lamelas said she has the right to waive her per diem, but the Board doesn't have the right to waive it for her.

Judge Nichol said that in the past when the Board has waived per diems, the members have been on the same page, but that doing it individually is OK.

Judge Lamelas suggested removing the last paragraph on Page 212, which states: "The Board may waive entirely or in part its statutory per diem payment, after considering such factors as the length of the meeting, preparation time required, and whether a per diem was approved for preparation time." She indicated that this then leaves the individual waiver as an option of each Board member.

Director Kennedy clarified that preparation for meetings could be a full or partial per diem.

Judge Lamelas said the amount of time spent in preparation for Board meetings is substantial. If there is a per diem for time preparing for a meeting, it should be a result of a motion adopted by the Board.

Judge Froehlich said there has to be some authority to approve this new concept of payment for preparation, and the Board has to be the final authority.

Director Kennedy said that if a Board Member thinks a per diem is necessary, he or she can make a motion at the meeting. He said staff has verified that Board Members can be paid a partial per diem.

MOTION: Accept the draft per diem policy with the last paragraph removed. Moved by Judge Froehlich, seconded by Judge Lamelas. Motion carried unanimously.

I. Legislative Status Report

Director Kennedy noted that of the 18 bills affecting the Board, 13 have passed and five are pending in the Assembly. Once all bills have passed, staff will develop a summary of the changes.

Discussion regarding when staff takes a position on legislation.

Judge Froehlich said the Legislative Status Report is great, but he would like to know who has authored the bills. Director Kennedy said that because some bills have many authors, staff will report on who is the main author of a bill. Judge Barland said the Board does not need a detailed legislative history.

J. Director's Report

Director Kennedy noted that the report on Page 270 of the March Meeting Materials discusses the deadline for applications for prospective Board Members, which is March 31. The Government Accountability Candidate Committee is scheduled to meet on April 8 to review applicants and make recommendations to the Governor. He said Judge Brennan has applied for another term, and that Judge Wright from Marquette County has also applied.

Judge Nichol asked whether there is any news about Senate confirmation hearings. Director Kennedy said he has heard nothing.

Judge Froehlich asked why the Board is involved in Twitter. Director Kennedy said there is a whole generation of voters and customers who look to social media services such as Twitter for news, and they prefer to get news from Twitter rather than visiting the Board's website. Mr. Haas said the Board has an elections specialist who focuses on voter outreach who manages the Twitter account as part of her duties. Staff Counsel Shane Falk noted that the voter outreach position is required by 2011 Wisconsin Act 23.

Judge Barland noted that the May Board Meeting mentioned on Page 271 of the March Meeting Materials is not a teleconference meeting. Director Kennedy said the Board may have a teleconference meeting in April to consider closed session matters.

Judge Lamelas thanked members of the public for their comments. Director Kennedy noted that MaryAnn Hanson had inquired prior to the meeting about how to send comments to Board Members. Staff advised her that the meeting materials packet

goes out the second Friday before the meeting, and if staff receives public comments after that we will forward them to the Board via email.

Judge Barland commented that it is a good practice for members of the public to submit written remarks in addition to their oral testimony, and that he absorbs more information that way.

K. 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 Nichol, seconded by Judge Lamelas.

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

Motion carried unanimously. The Board recessed for lunch at 11:54 a.m. and convened in closed session at 1:00 p.m.

L. Adjourn

The Board adjourned in closed session at 4:01 p.m.

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The next meeting of the Government Accountability Board is scheduled for Wednesday, May 21, 2014, at the G.A.B. office, 212 E. Washington Ave., in Madison, Wisconsin at 9:00 a.m.

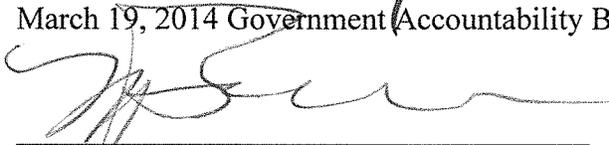
March 19, 2014 Government Accountability Board meeting minutes prepared by:



Reid Magney, Public Information Officer

March 24, 2014

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



Judge Michael Brennan, Board Secretary

May 21, 2014