

**Testimony of Kevin J. Kennedy
Director and General Counsel
Wisconsin Government Accountability Board**

Assembly Committee on Campaigns and Elections

October 29, 2013

Room 328 Northwest, State Capitol

Public Hearing

Assembly Bills 378 and 396

Chairperson Bernier and Committee Members:

Thank you for the opportunity to comment on the two bills before you today. I am appearing here for information purposes and to answer any questions you or Committee members may have. The Government Accountability Board is not taking a position for or against any of these bills.

Assembly Bill 378

As I told the Senate Committee on Elections earlier this month about their version of this bill, Assembly Bill 378 is fundamentally flawed. It eviscerates the basic principle of disclosure on which campaign finance law is based. That principle was articulated by the Legislature as a Declaration of Policy when the campaign finance law was enacted in 1973 following the Watergate campaign funding abuses. A copy of that declaration of policy is attached for your consideration. The policy begins with this statement: “The legislature finds and declares that our democratic system of government can be maintained only if the electorate is informed.”

The Legislature’s Declaration of Policy goes on to say: “One of the most important sources of information to the voters is available through the campaign finance reporting system. Campaign reports provide information which aids the public in fully understanding the public

positions taken by a candidate or political organization. When the true source of support or extent of support is not fully disclosed, or when a candidate becomes overly dependent upon large private contributors, the democratic process is subjected to a potential corrupting influence.”

After the Senate committee’s hearing on its companion bill, there was some confusion in the news media about the impact. Let me be clear, AB 378 would eliminate the requirement for candidates and political committees to disclose the names and addresses of employers of people who contribute more than \$100 per year. Campaigns would never have to report who a contributor works for, or where their principal place of employment is. It would also raise the threshold for reporting of contributors’ occupations so that significantly less information would be available to the public. As a result, if a campaign contributor gave enough money, we might find out that she is a teacher, but not which school district she works for, or which school she teaches in.

This new standard for campaign finance reporting would greatly diminish the information available to members of the public about the sources of financial support for candidates for public office, and would undermine the right of the public to have a full, complete and readily understandable accounting of those financial activities intended to influence elections.

Because this bill raises the threshold for disclosing a contributor’s occupation, this information would never be available for most local races or Assembly contests because the individual contribution limit for those offices is \$500 or less.

My mother always told me you are judged by the company you keep. The fundamental purpose for campaign finance disclosure is to enable citizens to know who supports candidates for public office. Campaign contributors are more than just a name on a piece of paper. Knowing a contributor’s occupation, employer and place of employment provides vital information for evaluating the source of a candidate’s support.

Political campaigns are often defined not only by a candidate's position on the issues, but who supports the candidates. Campaigns proudly proclaim a list of their supporters as a measure for the voters weigh favorably. The proposed legislation hides the occupation and principle place of employment of modest contributors under a rock.

Such information is also important to avoid confusion between people with the same or similar names. Recently the Government Accountability Board completed its annual audit of prohibited campaign contributions by registered lobbyists. Our staff found 11 registered lobbyists with the same names as people who made legal campaign contributions. Having employer information about contributors allowed our staff to quickly exonerate those lobbyists with the same names.

Employer and occupation information also helps distinguish between contributors with similar names. Since 2008, there have been 537 campaign contributions to candidates and committees from people with some variation of the name David or Dave Johnson. Even middle initials are not always helpful, as there are multiple David E. Johnsons, David L. Johnsons, David M. Johnsons and David R. Johnsons. In many cases, employer information, when provided, helps distinguish one from another.

Employer information is also a critical enforcement tool. Just two years ago, the G.A.B. levied a record forfeiture of \$166,900 against Wisconsin Southern Railroad, and its CEO William Gardner pleaded guilty to two felonies for laundering illegal campaign contributions through several of his employees. We learned about the scheme through a tip from Mr. Gardner's former girlfriend, to whom he had given \$10,000 to make an illegal campaign contribution. But it was employer information in the campaign finance system that helped the G.A.B. investigate the case and identify the railroad employees who had also received payments from Mr. Gardner. We believe that disclosure of employer information from large donors serves as an effective deterrent to similar money laundering schemes.

Assembly Bill 396

Assembly Bill 396 would require local election officials to dispatch special voting deputies (SVDs) to certain adult-care facilities to conduct absentee voting instead of allowing discretion in determining whether to dispatch special voting deputies to those facilities. The facilities where such absentee voting would be required, upon the request of an absentee voter, include adult family homes, community-based residential facilities, and residential care apartment complexes. The requirement would not apply, however, to such facilities in which less than five registered electors are occupants.

The State currently licenses 1,568 adult family homes, 1,514 community-based residential facilities, and 309 residential care apartment complexes. Because the bill makes it mandatory to conduct absentee voting via special voting deputies at some of these facilities where it is currently optional, we anticipate some increase in local costs in the form of wages for local clerks and special voting deputies to correctly administer the new provisions. However, several factors make it difficult to estimate the local fiscal impact.

First, there is no statewide data reflecting the number of such adult-care facilities which are currently served by special voting deputies despite the fact that less than five registered voters are occupants, and therefore the increase in the number of facilities that would be served cannot be calculated. Second, the number of registered voters in individual facilities constantly fluctuates, making it impossible to calculate the effect of the exception based on the existence of five registered voters at specific facilities. Under both existing law and the proposed bill, we believe that local election officials may simply choose to dispatch special voting deputies to conduct absentee voting at the facilities upon receiving one request for an absentee ballot, regardless of the total number of registered voters who are occupants of the facility. Finally, wages for local election officials and special voting deputies are established at the local level and vary widely across municipalities.

The Government Accountability Board has received estimates of the anticipated local fiscal impact of the bill from two municipalities. The City of Sun Prairie anticipates that the bill would require its SVDs to serve an additional four facilities at a cost of \$380 per election, or

\$1,520 during a calendar year consisting of four regular elections.

The City of Appleton advised that the bill would require that SVDs conduct absentee voting at up to 22 additional facilities where it is currently optional and which SVDs currently do not serve, assuming that a request is received from at least one resident and the threshold of five registered voters is met. The City pays each SVD \$50 per visit, and SVDs typically must make two or three visits per facility to reach all electors who have requested an absentee ballot. The City of Appleton would expect an increase of between \$1,100 and \$3,300 per election, depending upon the number of requests received from residents of the additional facilities and the number of SVD visits required to complete absentee voting. The annual increase during a calendar year consisting of four regular elections would range between \$4,400 and \$12,200.

In addition to an expected increase in local costs, we have heard concerns from local clerks regarding the requirement to post a public notice at least five days prior to absentee voting at adult-care facilities, rather than the 24-hour notice required under current law. We understand the purpose of the five-day notice is to give family members adequate time to prepare their loved one to participate in voting

The five-day notice may cause administrative challenges because there is a limited time window for absentee voting to take place. Oftentimes a clerk needs to send special voting deputies to a facility a second time because a resident may not be available to vote during the initial visit. Requiring that a notice be posted five days before the second and any subsequent visits will make it difficult and sometimes impossible to accommodate voters in those facilities. This can be alleviated by setting the time and date of the return visit and including it in the initial posting.

We suggest modifying the notice requirement to provide more flexibility for clerks, by shortening it or possibly requiring the five-day notice only for the initial visit and a shorter notice for subsequent visits.

We also suggest clarifying whether the bill prohibits electors who reside in a facility served by special voting deputies are prohibited from casting an absentee ballot by mail or in the clerk's office. Section 10 of the bill repeals specific language stating that voting by special voting deputy is the exclusive means of voting for residents of facilities served by SVDs. The bill would also amend Section 6.875(4)(a) to require a municipal clerk to dispatch special voting deputies for the purpose of supervising absentee voting by occupants of a facility, upon receiving a request from an absentee elector in a qualified retirement home or residential care facility who desires to receive an absentee ballot.

The bill, however, does not either specifically permit or prohibit absentee voting by mail or in the clerk's office for residents of those facilities. If it is prohibited, indefinitely confined voters in a facility served by special voting deputies would be treated differently than indefinitely confined electors who reside at home and are permitted to cast an absentee ballot by mail or in the clerk's office. Whatever the policy decision on this point, we prefer to have it spelled out in the Statutes rather than leave it to the interpretation of our agency. Often when the Board attempts to apply statutory provisions that leave gray areas, it tends to attract criticism from one side or the other that disagrees with the policy interpretation.

Conclusion

Thank you for the opportunity to share my thoughts with you. I hope this testimony will help inform the Committee's consideration of these bills. As always, we are available to answer questions and work with you in developing proposed legislation.

Respectfully submitted,

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
Wisconsin Government Accountability Board

608-266-8005
608-267-0500 (Fax)

Kevin.Kennedy@wi.gov

11.001 Declaration of policy. (1) The legislature finds and declares that our democratic system of government can be maintained only if the electorate is informed. It further finds that excessive spending on campaigns for public office jeopardizes the integrity of elections. It is desirable to encourage the broadest possible participation in financing campaigns by all citizens of the state, and to enable candidates to have an equal opportunity to present their programs to the voters. One of the most important sources of information to the voters is available through the campaign finance reporting system. Campaign reports provide information which aids the public in fully understanding the public positions taken by a candidate or political organization. When the true source of support or extent of support is not fully disclosed, or when a candidate becomes overly dependent upon large private contributors, the democratic process is subjected to a potential corrupting influence. The legislature therefore finds that the state has a compelling interest in designing a system for fully disclosing contributions and disbursements made on behalf of every candidate for public office, and in placing reasonable limitations on such activities. Such a system must make readily available to the voters complete information as to who is supporting or opposing which candidate or cause and to what extent, whether directly or indirectly. This chapter is intended to serve the public purpose of stimulating vigorous campaigns on a fair and equal basis and to provide for a better informed electorate.

(2) This chapter is also intended to ensure fair and impartial elections by precluding officeholders from utilizing the perquisites of office at public expense in order to gain an advantage over nonincumbent candidates who have no perquisites available to them.

(3) This chapter is declared to be enacted pursuant to the power of the state to protect the integrity of the elective process and to assure the maintenance of free government.

History: 1973 c. 334; 1979 c. 328; 1985 a. 303; 2001 a. 109; 2005 a. 177.
Campaign finance in Wisconsin after *Buckley*. 1976 WLR 816.

State of Wisconsin\Government Accountability Board

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



JUDGE TIMOTHY L. VOCKE
Chair

KEVIN J. KENNEDY
Director and General Counsel

October 3, 2013

The Honorable Mary Lazich, Chair
Senate Committee on Elections and Urban Affairs
Room 8 South, State Capitol
Madison, WI 53708

Dear Senator Lazich:

At today's hearing on Senate Bill 282, Senator Leibham asked the Government Accountability Board to provide information to the Committee regarding the average amounts of campaign finance contributions in recent Assembly and Senate elections.

My staff has analyzed campaign contributions for calendar year 2012 from the Campaign Finance Information System, which contains every reported transaction. In contrast, the Wisconsin Democracy Campaign's database contains only donations in excess of \$100.

Assembly

There were a total of 53,461 contributions from all sources totaling \$6,653,925, with an average transaction amount of \$124. Of that total, 48,563 contributions came from individuals, with an average amount of \$96. Included in the 48,563 were 10,821 individual contributions through conduits averaging \$118 each. There were 9,003 contributions from individuals of more than \$100, and they averaged \$298.

Senate

There were a total of 71,538 contributions from all sources totaling \$5,334,647, with an average transaction amount of \$74. Of that total, 69,881 contributions came from individuals, with an average amount of \$64. Included in the 69,881 were 37,157 individual contributions through conduits averaging \$38 each. There were 6,845 contributions from individuals of more than \$100, and they averaged \$368. The campaign donation averages in the Senate elections were impacted by a large number of conduit contributions (30,741) through Act Blue, which averaged \$18 each. The 32,724 non-conduit contributions averaged \$94.

Thank you once again for the opportunity to testify about SB 282.

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

cc: The Honorable Glenn Grothman
Members, Senate Committee on Elections and Urban Affairs
The Honorable Kathy Bernier