

Assembly Committee on Campaigns and Elections
Testimony from the Government Accountability Board

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Room 417 North, State Capitol

Public Hearing

2013 Assembly Bill 225

Chairperson Bernier and Committee Members:

At the request of our Director and General Counsel, Kevin Kennedy, I'd like to thank you for the opportunity to appear today and comment briefly on 2013 Assembly Bill 225. Director Kennedy had a previous commitment to attend a meeting on governmental ethics in Kentucky. I am here today with my counterpart, Jonathan Becker, the Ethics & Accountability Division Administrator. This legislation would affect my area of elections, as well as his areas of campaign finance and lobbying law.

Our main message to the committee today is to please slow down.

This legislation addresses some significant policy areas of election and campaign finance administration that would benefit from a more thorough vetting, involving input and discussion from people across the state, including county and municipal clerks. The proposed changes in campaign finance regulation, recall standards, time period for absentee voting, electronic proof of residence and voter identification are just some examples of substantive policy changes.

Also, this bill contains some technical and drafting issues that need additional time to be ironed out prior to passage. Frankly, our staff has not had enough time to fully analyze the operational changes this legislation proposes, let alone develop a fiscal estimate of their impact on the budgets of the State and local governments.

We were able to begin a review of the “slash 2” version which was circulated for co-sponsorship on the Friday before Memorial Day. Late last Friday afternoon, we obtained the current version when the agency was requested to prepare a fiscal estimate for the bill. Given the short amount of time our staff has had to review the legislation, I will offer a few brief comments to illustrate why we believe it is important to take more time with this legislation.

Technical Issues

Our preliminary review indicates there are several areas in the bill where technical or drafting issues need to be addressed.

New language in Section 29 of the bill permitting the Board of Canvassers to review the validity of any ballot submitted with an affidavit in lieu of a voter ID is misplaced. Section 29 places this language under the duties of poll workers following the completion of voting. The language should be added to the statutory provisions related to the work of the municipal, school district and county boards of canvassers. In fact the title of Section 7.51 describing the post-election activities of poll workers should be changed from “Local Board of Canvassers” to “Post-Election Duties of Election Inspectors” or something similar.

Section 39 of the legislation deals with changes to conducting special elections to fill a vacancy in office. However, no provision has been made to ensure 47 days of absentee ballot transit time for a special primary or special election for congressional office. This is critical to ensure full compliance with the federal Military and Overseas Voter Empowerment Act. As you may recall, federal court consent decrees required that we complete comprehensive reports to the U.S. Department of Justice in 2010 and 2012 to ensure that Wisconsin’s municipal clerks were complying with that federal law.

In the section dealing with campaign finance changes to Chapter 11, there are inconsistencies in the attribution statements required of independent disbursement committees and political action

committees that make independent disbursements. There are also discrepancies in the timeframe for reporting of disbursements between independent committees and PACs. Finally, there is a discrepancy in the threshold for required record keeping as compared to the threshold for reporting of contributions and other information related to political activities. Addressing these discrepancies will provide clear and consistent guidance for people involved in the political process and who are subject to regulation by our agency.

These are several examples of drafting or technical issues that should be corrected as the legislation proceeds.

Additional Administrative Changes

The Government Accountability Board and its staff have also identified a number of administrative issues that we believe ought to be addressed in any comprehensive legislation related to campaign finance regulation and election administration. For example, the threshold for triggering campaign finance disclosure for referenda is too low to pass constitutional scrutiny.

In March of this year, the Board voted to seek introduction of legislation, LRB 1722/1, to raise the threshold for campaign finance disclosure of referendum-related activity from \$750 to \$2,500. There have been a number of court cases over the years challenging the thresholds for registration and reporting of political activity related to referendum elections. The threshold was once at \$25, but that was found unconstitutional, so the Legislature raised it to \$750 at the Board's request. But that, too, has been found by court decisions to be too low. We believe \$2,500 will pass muster with the courts.

Similarly, the threshold for political committees to register remains at the \$25 level established in 1974. This level should be raised. We believe that the proper threshold is a legislative determination that should be thoroughly deliberated with input from the public and the regulated parties.

At our most recent meeting in May, the Board voted unanimously to ask the Legislature to make changes in statutes governing absentee voting and other election laws, based on

recommendations from a task force consisting of county and municipal clerks. Specifically the Board recommended these changes:

1. Electronic Transmission of Ballots

Currently only military voters and permanent overseas voters (U.S. Citizen voters residing overseas with no present intent to return) are eligible to receive ballots by electronic transmission. Voters who are overseas temporarily may not receive ballots electronically.

The Board voted to accept the clerk task force's recommendation to permit electronic transmission of absentee ballots to all overseas voters who request it.

2. Absentee Ballot Request Deadlines

Deadlines for requesting absentee ballots by mail vary depending on the type of voter. Generally, voters have until 5 p.m. on the Thursday before the election to request an absentee ballot by mail. Military and indefinitely confined voters have until 5 p.m. on the Friday before the election to request a ballot by mail. At federal elections, active duty military voters may request a ballot up to 5 p.m. on Election Day.

The Board voted to accept the task force's recommendation to standardize the deadline for by-mail absentee ballot requests by moving the deadline for both military and indefinitely confined voters to request an absentee ballot by mail from the Friday before the election to the Thursday before the election. In addition, the Board supported moving the Election Day deadline for active military voters to request an absentee ballot for a federal election to the Thursday before the election.

3. Elimination of Requirement for Signature of Witness on Absentee Certificate Envelope

Wisconsin law requires the signature of a U.S. citizen witness on an absentee ballot certificate envelope. Obtaining the signature of a U.S. Citizen is frequently difficult for Wisconsin voters living in remote areas overseas. In addition, Wisconsin is one of only four states that require any witness signature on an absentee certificate envelope at all.

The Board endorsed the recommendation to eliminate the requirement that the witness to absentee voting be a U.S. citizen.

4. Annexation Notification

When municipalities annex property which affects voting district boundaries, the G.A.B. often does not receive timely notice of the changes to make adjustments in the Statewide Voter Registration System. This affects our ability to set up accurate voting wards and ensure that voters in annexed territories receive proper ballots. Because we have not received timely notice, we have spent considerable staff time close to elections working with clerks to fix these problems. The Board voted to accept the task force's recommendation that the G.A.B. should be added to the list of state agencies which the Secretary of State is statutorily required to notify of completed annexations

For each of these issues, our Board has directed staff to request that the Legislature act on the recommendations of the taskforce comprised of county and municipal clerks, and we have provided correspondence to the Committee regarding those issues.

Our preliminary review of the bill reveals some additional areas where positive changes could be made related to election administration. Some examples include:

1. Combining Wards

Removing the restriction proposed in Section 5.15 (6) (b) of the Statutes that, when municipalities combine wards by adding a small ward (20 voters or less) to another ward, the combined ward may not exceed the statutory maximum population size. The incremental change in these cases is so small that the impact on the maximum population size (4,000, 3,200, or 2,100 depending on the size of the municipality) is insignificant.

2. Financial Institutions

Changing the reference to "bank" in Section 6.34 (3)(a)9. to "financial institution" to make clear that a credit union or savings and loan institution statement may be used as proof of residence for Election Day registration. This makes sense and conforms the statute to common practice.

3. Poll Book Signature Format

Changing the requirement that the G.A.B. prescribe the poll book signature format by administrative rule in Section 6.36 (2)(a). This is a simple task that can be

accomplished in collaboration with local election officials without investing the significant agency resources and time required by administrative rulemaking.

4. Curbside Voting

Specifically exempt voters who cast a ballot curbside under Section 6.82 (1) because they are unable to enter the polling place from having to sign the poll list. Very few electors avail themselves of this option because polling places are required to be accessible to individuals with disabilities. Halting voting to take a poll list to a curbside voter is a cumbersome process. The curbside voting practice has a number of other safeguards attached to it that eliminate the need for a curbside voter's signature on the poll list.

5. Recording Confidential Information on Poll Lists

Eliminate the requirement in Section 6.79 (4) that poll workers record on the poll list the type and unique number of identifying documents provided along with Election Day registration. The legislation requires recording this information on the voter registration card, which is current practice. Because this information must be redacted in response to public record requests, the poll list is not the proper place to record the information. In addition, it is not practical because the names and addresses of voters registering at the polling place are not recorded on the poll list, but on a supplemental list prepared by the poll workers.

6. High School Poll Workers

This bill provides, with certain exceptions, that an individual who serves as an election official at a polling place on Election Day need be an elector only of a county in which the municipality where the official serves is located. This change should also include high school election inspectors authorized by Section 7.30(2)(am) among the poll workers to allowed to serve at any polling place within their municipality of residence.

7. Indefinitely Confined Voters

The Board has also requested that we seek legislative clarification of Section 6.86(2) of the Statutes. That provision directs clerks to remove the name of an indefinitely confined absentee voter from the list of voters who automatically receive absentee ballots if the voter does not return an absentee ballot for an election. The clarification that is required is whether this procedure applies when an indefinitely confined voter

does not return an absentee ballot for a primary election. There is a practical difficulty in sending the voter a 30-day notice that is required between the dates of a primary and the spring election, or the primary and a general election. The statutes also do not mandate a deadline for clerks to send such a notice. This is an administrative issue that would benefit from a legislative decision on which the G.A.B. could rely in giving guidance to clerks.

Conclusion

The Government Accountability Board respectfully requests that the Committee take its time in evaluating this legislation. To summarize, there are drafting and technical issues that need to be addressed. The policy initiatives are significant and the Legislature would benefit from a more extensive analysis of those policy issues. There are also a number of practical changes that the G.A.B., along with local election officials, have identified that ought to be included in any comprehensive campaign finance regulation and election administration legislation.

Thank you for your consideration of our views. I would be happy to try to answer any questions Committee Members may have at this time. The G.A.B. staff is also available to work with you to address the issues we have raised, and will provide you with more information as soon as we have had the time to fully analyze this bill.