

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

Assembly Committee on Campaigns and Elections

October 9, 2013

Room 328 Northwest, State Capitol

Public Hearing

2013 Assembly Bills 54, 91, 393 and 394

Chairperson Bernier and Committee Members:

Thank you for the opportunity to appear before the Committee today. Before I begin, I would like to draw your attention to an email sent to Committee Members today at my request about recent trends in voting equipment. As our current optical scan voting equipment rapidly approaches obsolescence, we believe it is imperative for Committee Members to understand the changing dynamics of vote tabulation. The email also contains correspondence originally sent to Committee members on May 31, 2013 describing election law changes that our local election officials have requested. I have attached a copy to my testimony.

Thank you for the opportunity to comment on the three 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 54

This legislation has been promoted as a means to ensure all voters in the state, no matter where they reside, have the same opportunity to cast an absentee ballot in-person. It does not address the disparate treatment and limited in-person absentee voting options provided in smaller municipalities. The bill merely creates a window in which Wisconsin's 1,852 municipalities may pick and choose what hours to be open.

While large municipalities with diverse populations such as Milwaukee and Madison will be constrained from serving voters who find it difficult to get to City Hall Monday through Friday between 7:30 am and 6:00 pm, small municipalities can continue to limit their hours to as little as an hour a day or close their offices for several days during the 10 days available for in-person absentee voting. While Milwaukee had expanded in-person absentee voting hours to serve the 36,349 voters who came to cast a vote in-person at City Hall, the City of Platteville clerk's office is closed on Fridays. It was open the Friday before the November 6, 2012 election. In many municipalities the only way to cast an absentee vote in-person is to track down the municipal clerk and make an appointment because there are no regular office hours.

The proposed legislation is trying to balance competing interests. While trying to bring a level of uniformity to the absentee voting process, it also seeks to preserve local control for municipalities to best serve its citizens. The purpose of in-person absentee voting is to provide a means for citizens who have difficulty getting to the polls on Election Day to cast their ballot in a secure and public manner.

I recommend that the Committee consider expanding the window to permit in-person absentee voting between 7:00 am and 8:00 pm, the same hours the polls are open on Election Day. This provides up to 13 hours of in-person absentee voting on 10 business days. In addition, municipalities should be able to provide in-person absentee voting on the weekend between the two weeks preceding the election. This provides all municipalities with the flexibility to serve the diverse range of voters with the opportunity to cast an in-person absentee ballot while providing a standard window for casting absentee ballots.

The proposed legislation also presents some local control issues by limiting appointments for absentee voting outside the proposed 10 and a half hour, 10 business day window created by the

bill. The bill provides that an appointment may only be made with the clerk, not a member of the clerk's staff. This limitation puts an undue burden on a single person and does not account for the scenarios where a clerk may be unavailable due to outside commitments, family matters or illness or a vacancy in the clerk's office. If the Committee adopts the proposed change I have suggested with up to 13 hours of voting over 12 days, the need for appointments outside this window is diminished.

The bill also removes the appointment process in Milwaukee from the Election Commission and places it with the city clerk who does not have any current statutory election-related responsibilities.

Assembly Bill 91

This proposed legislation adds another exception to the limit on using state resources to communicate to constituents during the campaign season. This exception permits using state resources to reach out to constituents during the campaign black-out period for the 45 days following a declaration of emergency by the Governor.

Assembly Bill 393

This bill would allow municipal clerks to appoint election inspectors who live within their county, instead of limiting them to municipal residents. This would be a departure from having purely local election workers at the municipal level, but it would also provide flexibility to clerks who may have difficulty finding sufficient numbers of local poll workers. However, some municipal clerks have expressed concern about losing the ability to appoint highly-qualified local residents as poll workers if one or both political parties submitted first-choice nominees from elsewhere in the county.

Assembly Bill 394

This bill would require uniform labeling of duplicate ballots in the upper right-hand corner of the ballot. We are concerned that writing in this area could interfere with the scanning of the codes for timing and security printed in that area on optical-scan ballots, which comprise 90 percent of the ballots cast in Wisconsin. We suggest duplicate ballots be labeled as such in the

endorsement area of the ballot, which will not interfere with ballot markings for security and timing. 2013 Senate Bill 262, which passed the Senate yesterday, contained this change.

Conclusion

Thank you for the opportunity to share my thoughts with you. I hope this testimony will help inform the Legislature'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

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JUDGE TIMOTHY L. VOCKE
Chair

KEVIN J. KENNEDY
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May 31, 2013

The Honorable Kathleen Bernier, Chair
Assembly Committee on Campaigns and Elections
Room 107 West, State Capitol
Madison, WI 53708

Subject: LRB-1763

Dear Representative Bernier and Committee Members:

The staff of the Government Accountability Board is currently reviewing the draft legislation circulated by Representative Stone as LRB-1763. Given that the proposed legislation would affect many statutes governing election administration, I would like to forward several legislative recommendations recently adopted by our Board and that we would request be considered for inclusion in any comprehensive revision of the election-related bill.

Beginning in the fall of 2012, the Board convened a Clerks Concerns Taskforce, at the request of county and municipal clerks. The purpose of the Taskforce was to review concerns raised by local election officials that the tasks required for administering elections has become too cumbersome and complicated, straining the resources of counties and municipalities as well as causing many local clerks and election inspectors to terminate their service. The Taskforce submitted various recommendations for administrative and legislative changes to our Board, which have been considered in two public meetings of the Board, and a number of those recommendations have been adopted by the Board.

The Board has directed its staff to communicate the recommendations it adopted and which require statutory revisions to the Legislature. The Government Accountability Board respectfully requests that the Legislature consider including the following legislative amendments as part of LRB-1763 or any other set of election-related bills in this session:

Absentee Voting Procedures

1. Permit electronic transmission of ballots to all absentee voters who are overseas, including voters who are overseas temporarily, if electronic transmission is requested by the voter.
2. 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, and by 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. Require all absentee ballots to be physically returned by 8:00 p.m. on Election Day, instead of by 4:00 p.m. on the Friday after the election.
4. Eliminate the requirement that the witness signature on absentee ballot certificate envelopes be executed by a U.S. citizen.
5. The Clerks Concerns Taskforce also recommended that, for as long as the voter photo ID requirement is not in effect, the deadline for voters to validate their provisional ballot should be moved from 4:00 p.m. on the Friday after the election to 4:00 p.m. on the Wednesday after the election. If the voter ID requirement is in effect, the Taskforce recommended that deadline for validating provisional ballots should remain as 4:00 p.m. on Friday after the election. The Board directed staff to refer this Taskforce recommendation to the Legislature for its consideration without taking a position on the merits of the proposal.

Four-Year Voter Record Maintenance

The Board directed staff to communicate to the Legislature that the Board does not object to completing the Four-Year Voter Record Maintenance on behalf of municipal clerks, but that the Board wishes to have clear express authority stated in the statutes, along with necessary funding.

Annexations

In order to facilitate accurate mapping of voting district boundaries and properly assign electors to voting wards, add the Government Accountability Board to the list of agencies that the Secretary of State is required to notify under Wis. Stat. § 66.0217(9)(b).

Public Records

The Clerks Concerns Taskforce also recommended that voted ballots should not be subject to public inspection under the Public Records Law, but that providing copies of ballots would remain permitted. The Board directed staff to refer this recommendation to the Legislature for its consideration without taking a position on the merits of the proposal.

The Board believes the recommendations described above are primarily administrative in nature, and they would result in simpler and more consistent procedures to be implemented by local election officials. Training of clerks and election inspectors would be simplified, and the proposed changes would address some of the workload concerns that have been expressed by local election officials. I would be glad to work with you and other legislators to develop these statutory changes, or to answer any questions regarding the background and reasoning related to these recommendations. Thank you for your consideration of this request.

Government Accountability Board



Kevin J. Kennedy
Director and General Counsel