

# 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) 266-8005  
Fax (608) 267-0500  
E-mail: [gab@wisconsin.gov](mailto:gab@wisconsin.gov)  
<http://gab.wi.gov>



JUDGE THOMAS H. BARLAND  
Chairperson

KEVIN J. KENNEDY  
Director and General Counsel

**DATE:** March 29, 2011

**TO:** The Honorable Scott Walker, Governor  
(Attention: Brian Hagedorn, Chief Legal Counsel and Ryan Murray)

The Honorable Michael Ellis, Senate President  
The Honorable Scott Fitzgerald, Senate Majority Leader  
The Honorable Mark Miller, Senate Minority Leader  
The Honorable Jeff Fitzgerald, Speaker of the Assembly  
The Honorable Scott Suder, Assembly Majority Leader  
The Honorable Peter Barca, Assembly Minority Leader  
The Honorable Mary Lazich, Chair, Senate Transportation and Elections Committee  
The Honorable Gary Tauchen, Chair, Assembly Election and Campaign Reform Committee

**FROM:** Kevin J. Kennedy  
Director and General Counsel  
Government Accountability Board

**SUBJECT:** Government Accountability Board's Recommendation  
on Changing Wisconsin's Partisan Primary Date

## INTRODUCTION

This information follows-up a report dated March 9, 2011, that I recently shared with you. In that communication, I discussed the need for Wisconsin to reschedule the September Partisan Primary due to the requirements of the 2009 Military and Overseas Voter Empowerment (MOVE) Act, and solicited your feedback regarding potential election dates. For your reference, I am again enclosing our staff report which outlined proposed changes to the election timeline and provided examples of potential Partisan Primary dates. The Government Accountability Board has approved the enclosed staff report and on behalf of the Board I am requesting that the Legislature act promptly to ensure Wisconsin's compliance with the MOVE Act in future elections.

As I explained in my previous correspondence, the MOVE Act requires all states to distribute an official ballot that contains federal offices, i.e., President, Vice-President, U. S. Senate and U.S. House of Representatives, to military and overseas voters no less than 45 calendar days prior to the election, if the voter has submitted an absentee ballot request. Wisconsin Statutes schedule the September Partisan Primary on the second Tuesday in September which, combined with current statutory ballot deadlines, makes it impossible to meet the MOVE Act's 45-day requirement. We have been advised by the U. S. Justice Department that a permanent structural change to Wisconsin's Election Calendar needs to be effectuated for the 2012 election cycle and beyond. In order to comply with the MOVE Act, a statutory change in the State's September Partisan Primary date, and possibly for other election dates as well, is required.

An Historic Relevant Fact: It may interest you to know that our September Partisan Primary has been changed before, from its September date. The motivation for this action was similar to the current reason that Wisconsin needs to move their Partisan Primary – the impetus was for the State to ensure the rights of military electors to fully participate in the electoral process.

The first date change, contained in 1943 Laws of Wisconsin Chapter 567, had the following relating clause: *“relating to adjustments in the election laws of this state to facilitate voting by Wisconsin electors serving in the armed forces of the United States at the primary and general elections of 1944, and making an appropriation.”*

The second date change, contained in 1945 Laws of Wisconsin Chapter 128, had the following relating clause: *“relating to adjustments in the election laws to facilitate voting by Wisconsin electors serving in the armed forces of the United States at special elections of 1945 and all elections in 1946 and 1947, and making an appropriation.”*

The September Partisan Primary was rescheduled to August in 1944 and 1946 to help accommodate electors serving in World War II. Special provisions were made in absentee voting to assist those overseas armed forces members. The changes in the September Partisan Primary date in 1944 and 1946 were only temporary, but are an example of Wisconsin’s longtime commitment to military and overseas electors.

The MOVE Act requires a more permanent solution than the temporary changes in 1944 and 1946. The MOVE Act requires military and overseas electors a minimum time of 45 days to receive, mark and return their absentee ballots. In addition, military and overseas voters must be able to track the status of their ballot from receipt by the municipal clerk through its tabulation and counting.

Action Endorsed by the Government Accountability Board: During its regular meeting on Tuesday, March 22, 2011, the Government Accountability Board endorsed and authorized the following action to be submitted to the Governor and members of the Wisconsin Legislature for consideration.

1. The new Partisan Primary date should be set far enough in advance of the November general election to comply with the MOVE Act’s 45-day absentee ballot requirement.
2. The date should accommodate the resolution of likely post-primary recounts.
3. The date should provide ample time for G.A.B. staff to review nomination papers, resolve ballot access challenges and for the Government Accountability Board to certify candidates for ballot preparation.
4. The new Partisan Primary date should allow ample time for ballot preparation (proofing, programming and printing) by 72 county clerks as well as delivery to the State’s 1,850 municipal clerks.

## **DISCUSSION**

The following are important factors and critical deadlines in the election calendar to consider in setting the new Partisan Primary date far enough in advance of the November General Election in order to ensure compliance with the MOVE Act’s 45-day absentee ballot requirement:

Nomination Paper Deadline: Staff needs additional time than currently permitted to review and resolve nomination paper challenges. Currently the Board certifies candidates’ nomination papers on the Tuesday following the Friday that nomination paper challenges are due. Any complications or problems experienced during the nomination paper challenge and review process could result in the postponement of the certification which would delay the ballot printing process. The current time frame does not give the agency enough time to appropriately review and resolve challenges.

Ballot Delivery: Current law requires ballots to be delivered to municipal clerks 30 days before the September Partisan Primary and the General Election. The MOVE Act requires that ballots be sent to military and overseas electors 45 days before any federal election. Staff and local election officials recommend a 47-day ballot delivery timeline for the new election cycle. The 45<sup>th</sup> day before any

General Election is a Saturday. In addition, some municipal clerks' offices are not open on Fridays. Making Wisconsin's ballot delivery requirement 47 days prior to the election allows municipal clerks the convenience of having official ballots delivered to their offices during established business hours. This allows clerks a more realistic time to comply with the MOVE Act.

Certification of Candidates and Referenda Filing Deadline: The certification of candidates by the Board is the trigger that allows county clerks to begin working with printers and programmers to create ballots. Local election officials, especially county clerks, have recommended to the Board that the certification of candidates be completed three weeks before ballots are delivered to municipal clerks to ensure sufficient time for ballot preparation. Currently, the Board certifies candidates approximately 35 days before the General Election and county clerks are required to have ballots delivered to municipal clerks 30 days before the election. County clerks have missed the current deadline of 30 days in the past due to this tight time constraint, given issues involving recounts, a late certification, ballot printers, ballot vendors, correcting mistakes, proofing, the number of ballots types that need to be prepared, and a number of other factors, County clerks stated that they need the Board to certify candidates 69 days before the election so that ballots can be prepared and delivered in time to comply with the MOVE Act. This proposed change gives county clerks 21 days to prepare, print, and deliver ballots. Also, the deadline to file referendum questions must be the same as the certification of candidates so that county clerks have all required items to be placed on the ballot at the same time. The current deadline for filing referenda is 42 days before an election, which makes meeting the 45-day MOVE deadline impossible.

Recount Timeline: Commonly, recounts are requested after Partisan Primaries. They are also requested after other elections but have the most effect on an election cycle when requested for a Partisan Primary. A recount process delays when the Board can certify candidates, further decreasing the short time county clerks have to prepare ballots. The current election timeline requires the Board to certify candidates before the recount period has concluded. The Board and local election officials recommend that the certification of candidates be completed after the recount period has concluded.

## **REQUEST FOR LEGISLATIVE ACTION**

The Government Accountability Board respectfully requests that the Legislature consider this matter and enact legislation to move Wisconsin's Partisan Primary date as soon as possible, keeping in mind the Board's recommendations. We also respectfully request feedback regarding when the appropriate committees and the Legislature intend to schedule this matter for consideration. In accordance with a federal court consent decree, the U.S. Department of Justice continues to inquire and request status reports from the Board on the progress being made to ensure Wisconsin's long-term compliance with the MOVE Act.

My staff and I are available to answer your questions and discuss the Board's actions and recommendation. I may be contacted at [Kevin.Kennedy@wi.gov](mailto:Kevin.Kennedy@wi.gov), or at (608) 261-8683. Thank you.

cc: Members, Government Accountability Board  
 Members, Senate Committee on Transportation and Elections  
 Members, Assembly Committee on Election and Campaign Reform

Nathaniel E. Robinson  
 Elections Division Administrator, Government Accountability Board.

Robert Marchant  
 Wisconsin Senate Chief Clerk

Patrick Fuller  
 Wisconsin Assembly Chief Clerk