

Written Remarks by
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Submitted to the
Joint Committee on Review of Administrative Rules
The Honorable Leah Vukmir
The Honorable Jim Ott
Co-Chairs

Room 412 East, State Capitol
Tuesday, November 15, 2011
9:00 a.m.

Co-Chairpersons Vukmir and Ott and Committee Members:

Thank you for the opportunity to update the Committee on the actions of the Government Accountability Board at its November 9, 2011 meeting on recall petitions and the use of stickers on student IDs to make them eligible to meet the guidelines of the new Voter ID law as well as the change in the Board's position on the use of Technical College IDs to meet the Voter ID requirement. The Board's decisions are rooted in its statutory charge to administer the laws related to elections. §5.05 (1).

As a citizen Board, members serve part-time. As their chief of staff, the Board has authorized me to appear before the Legislature on its behalf and, as authorized by law, has delegated certain specific responsibilities to me. §5.05 (1)(e). All but one Board Member, including the current Chair and Vice-Chair, were unavailable to attend this meeting. After consultation with the Chair, I am here to represent the Board, update the Committee on the Board's actions and respond to questions from Committee Members.

The G.A.B. is an independent agency of the executive branch consisting of 6 former judges appointed by the Governor. Board Members are required by law to be non-partisan and are supported by a non-partisan staff including its Director and General Counsel who serves as Wisconsin's chief election official. Board Members and staff take their roles as administrators of Wisconsin elections seriously. The G.A.B.'s responsibility is to apply the

law as enacted. Board Members and staff understand the doctrine of separation of powers and we focus our energies on administering the law in a fair, impartial and transparent manner.

At its November 9, 2011 meeting the G.A.B. addressed three issues in which this Committee has expressed an interest in its oversight role with respect to administrative rules. On behalf of the Board, I will address each of those actions as well as respond to questions from the Committee.

Use of Wisconsin Technical College System Student Identification Cards for Voting

The G.A.B. staff is in the midst of an extensive effort to implement the new voter ID law. This is the single biggest change in the administration of elections for voters and election officials since the expansion of the franchise to women and 18-year old citizens. It is also one of the most controversial election law changes enacted into law. Providing guidance and direction to voters and election officials has been our number one priority since the enactment of 2011 Wisconsin Act 23.

The G.A.B. staff believed the statute was ambiguous on whether WTCS student identification cards were included in the statutory definition of student ID and requested guidance from the Board at a public meeting in September because the staff knew this was a volatile issue.

The Board accepted the initial staff analysis, but did not receive any input from the WTCS, the Department of Justice or the Legislature at the time of its initial decision.

The conclusion caught representatives of the WTCS and some Legislators by surprise. In fact many technical colleges were investing significant resources to ensure their student ID cards met statutory criteria. Immediately following the Board's action, representatives of the WTCS met with staff to express their views on the application of the law.

Given their concerns, along with the possibility of a legal challenge to the Board's decision, the staff refined its analysis and sought additional input. The Board Chair and I also agreed to provide the opportunity for the G.A.B. to review its decision and listen to input from representatives of the WTCS and other interested citizens.

An informal consultation with the Department of Justice indicated that while the staff analysis which was presented to the Board in November was defensible, the statute could be also be read to permit the use of student identification cards issued by a Wisconsin Technical college for voting.

The Board carefully reviewed the language of the statute and determined it covered student identification cards issued by a Wisconsin Technical college.

The statutory language covers colleges accredited under §39.30 (1)(d) and Wisconsin Technical colleges meet this criteria.

There is no statutory language excluding Wisconsin Technical colleges.

The Board applied commonly accepted practices of statutory interpretation, which does not permit soliciting the views of individual legislators on their intent when the language was drafted.

The Board did not make a policy determination that permitting the use of WTCS student ID cards for voting was a good idea. It acted to resolve a dispute relating to the administration of the law.

Given the judicial background of Board Members, the Board's action provides a good indication of how a court would apply the law with respect to the use of student identification cards issued by a Wisconsin Technical college for voting.

The Board has applied the statute as written to determine that a student identification card issued by a Wisconsin Technical college meets the definition of an identification card issued by a university or college in this state that is accredited, as defined in [§39.30 \(1\) \(d\)](#).

This is not the first time a statute may not mean what the author intended.

If the Committee directs the Board to prepare an emergency rule to describe this action, we are prepared to do so. However, the Board does not believe its action requires rulemaking because the Board is applying the language of the statute. It is not making a regulation, standard, statement of policy or general order of general application which has the effect of law and which is

issued by an agency to implement, interpret or make specific legislation enforced or administered by the agency.

Use of Stickers on Student Identification Cards

The Board has directed its staff to work with universities and colleges to ensure student ID cards meet the statutory standards to be used for voting.

The Board staff will review proposed student ID cards to ensure they have a picture of the student, the full name of the student, a date of issuance, an expiration date within two years of the date of issuance and a signature of the student. All approved student ID cards will be shared with local election officials so poll workers and municipal clerks are prepared to determine if a particular student ID card is an acceptable proof of identification.

The statutory definition [§5.02 (6m)(f)] of a student identification card for voting is:

An unexpired identification card issued by a university or college in this state that is accredited, as defined in s. [39.30 \(1\) \(d\)](#), that contains the date of issuance and signature of the individual to whom it is issued and that contains an expiration date indicating that the card expires no later than 2 years after the date of issuance if the individual establishes that he or she is enrolled as a student at the university or college on the date that the card is presented.

The law does not address how student identification cards meet these standards. The statute does not dictate the format of the student ID card, only that the ID card meets certain standards. The statute does require that a student ID card be accompanied by current proof of enrollment in order to receive a ballot.

What the Committee communicated to G.A.B. staff was a concern about security issues related to the use of a sticker to meet the statutory standards for a student identification card to be used for voting.

At the October 6, 2011 Committee meeting I advised the Committee that the Board may not need to address the issue of applying stickers to student ID cards because the UW System was moving to developing a separate ID card that met the statutory standards. Representatives of private colleges indicated they would not focus on developing student ID cards that met the statutory standards. However, prior to the meeting two private colleges,

Beloit and Viterbo, communicated their interest in using stickers to adapt their student ID cards to meet statutory standards.

In the absence of a statutory provision on how student ID cards meet the standards established by the Legislature, a majority of the Board declined to revisit its prior advice to staff. The Board has directed its staff to work with universities and colleges to ensure student ID cards meet the statutory standards to be used for voting.

In working with universities and colleges, the staff will permit the use of stickers on student ID cards to meet the statutory standards if the sticker is issued and affixed by a representative of the university or college, the sticker is tamper resistant and contains an emblem or other identifying mark linking the sticker to the institution.

The staff will also review proposed “proof of enrollment” which is required to accompany the use of a student ID card when used for voting.

If the Committee directs the Board to prepare an emergency rule to describe these policies, we are prepared to do so.

Recall Petitions

The Board’s actions are consistent with current law.

A signer/circulator must affix his or her signature once as a signer and once as a circulator.

Only the signer may add his or her residential address information, but may do so online and print the petition.

The Board has not authorized the use of personal residential data to be pre-printed on an election-related petition.

If the Committee directs the Board to prepare an emergency rule to describe these policies, we are prepared to do so but we believe it is unnecessary.

Board Policy Guidance vs. Administrative Rulemaking

Members of the public, local election officials, legislators, and other policymakers routinely ask the Board to provide guidance on the practical effect of Statutes governing the administration of elections. In the Board's opinion it is both impractical and unwise to invoke the rulemaking process in each case where the Board is asked for guidance to ensure uniform application of the law. We also believe that it is not required pursuant to the Statutes governing rulemaking. To do so would hinder the State's ability to ensure timely guidance and uniform administration of elections throughout Wisconsin.

Consider, for example, if the Board declined to issue its guidance until the issues arose in the midst of a campaign cycle or on Election Day. Recall petitioners have only 60 days to gather signatures from the date the petitioner registers. Local election officials would be confronted with making decisions about the validity of student ID cards during absentee voting or at the polling place. It is not possible in either case to promulgate an administrative rule to address the issue so that the public or election officials could receive timely guidance. More to the point, in both cases the Statutes do not prohibit the administrative actions which have been approved by the Board.

While the Board issues its guidance and interpretations as a way of establishing and promoting uniform election procedures statewide, those decisions may ultimately be affirmed or rejected by a court of law in actions challenging the Board's interpretation or the application of the law in specific cases. Of course, the Board also modifies its decisions and guidance to conform to any subsequent laws enacted by the Legislature and signed by the Governor.

Board's Nonpartisan Structure

The Government Accountability Board is the state agency charged by the Legislature with administering and enforcing laws related to elections, campaign finance, lobbying, and the code of ethics for public officials. The Legislature granted the Board broad general authority to carry out this responsibility as reflected in Section 5.05(1) of the Statutes. The nonpartisan staff works under the supervision of a nonpartisan, six-member Board of former Wisconsin judges.

As you are aware, the members of the Government Accountability Board and its staff are required to serve on a nonpartisan basis, similar to the staff of the legislative service agencies. We take that responsibility and obligation very seriously, and we recognize that it provides a foundation of credibility for all that we do.

The Board's focus and commitment is to ensure fair, transparent, and impartial administration of elections. Given that legislative language necessarily cannot address every particular detail of matters under the Board's jurisdiction, the Board is often called upon to make administrative decisions and interpretations which do not invoke the formality of administrative rulemaking, involving election laws as well as campaign finance, ethics and lobbying regulations. The Board's actions directing staff how to administer provisions of the election laws and implement the voter identification law were done in an impartial and transparent manner applying the law to the situations presented for its review.