

# State of Wisconsin\Government Accountability Board

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JUDGE THOMAS H. BARLAND  
Chair

KEVIN J. KENNEDY  
Director and General Counsel

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## Wisconsin Government Accountability Board

212 East Washington Avenue  
Madison, Wisconsin  
December 13, 2011  
9:00 a.m.

### Open Session Minutes

<u>Summary of Significant Actions Taken</u>	<u>Page</u>
A. Approved Minutes of Previous Meetings	1
B. Approved Recall Petition Processing Procedures	2
C. Approved Procedures for Waukesha County Clerk	3
D. Approved Guidance on Central Count Absentee Locations	3
E. Approved Permanent Rule GAB 1.28 relating to the Scope of Regulation	4

Present: Judge Thomas H. Barland, Judge Gerald Nichol, Judge Michael Brennan, Judge Thomas Cane, Judge David Deininger, and Judge Timothy Vocke

Staff present: Kevin Kennedy, Nathaniel E. Robinson, Jonathan Becker, Shane Falk, Michael Haas, Sharrie Hauge, Ross Hein, Katie Mueller, David Buerger and Reid Magney

### **A. Call to Order**

Chairperson Barland called the meeting to order at 9:00 a.m.

### **B. Director's Report of Appropriate Meeting Notice**

Director and General Counsel Kevin Kennedy informed the Board that proper notice was given for the meeting.

### **C. Approval of Minutes of Previous Meetings**

**November 9, 2011 Meeting – Open Session**

**MOTION:** Approve the Open Session minutes of the meeting of November 9, 2011. Moved by Judge Deininger, seconded by Judge Cane. Motion carried unanimously.

#### **D. Public Comment**

**Orville Seymer of Milwaukee** appeared on behalf of CRG Network to ask about the status of public records requests he has made of the G.A.B.

Discussion.

**Fred Zaug of New London** appeared on his own behalf to ask questions about the Board's plans to review recall petition signatures and how it will eliminate duplicate signatures.

Discussion.

**Ron Reynolds** of Waupaca appeared on his own behalf to ask questions about the Board's plans to review recall petition signatures. He said he saw a "kid" signing a recall petition.

Discussion.

**Ardis Cerny of Pewaukee** appeared on her own behalf to ask questions about the Board's approach to promoting voting. She suggested the Board have two partisan co-counsels instead of nonpartisan counsels.

Discussion.

**Mary Ann Hanson of Brookfield** appeared on her own behalf to comment on Agenda Item H regarding Central Count Absentee Guidance. She said absentee voting is a privilege for those who are unwilling or unable to vote in person, and that the proposed guidance will undermine confidence in the system.

#### **E. Report on Recall Administrative Preparations**

Elections Division Administrator Nathaniel E. Robinson introduced Elections Specialists Katie Mueller and David Buerger, who provided an oral and written report about preparations for the Board's review of recall petitions for State Senators, the Governor and Lt. Governor.

Discussion.

**MOTION:** Approve the proposed administrative processes as outlined in Section II of the staff's memorandum for the review and processing of recall petitions offered for

filing in 2012. Moved by Judge Vocke, seconded by Judge Nichol. Motion carried unanimously.

Judge Barland called a recess from 10:45 a.m. to 11 a.m.

**F. Report on Voter Identification Public Information Campaign**

Chief Administrative Office Sharrie Hauge and Public Information Office Reid Magney presented an oral and written report regarding the public information and public outreach campaigns developed by the staff in response to 2011 Wisconsin Act 23, the Voter Photo ID Law.

Discussion.

**G. Review of Waukesha County Election Night and Canvass Reporting Practices**

Elections Supervisor Ross Hein presented an oral and written report regarding the G.A.B. review of Waukesha County Clerk Kathy Nickolaus' compliance with the Board's September 12, 2011, order to conform her conduct to law and to take steps to ensure that documented procedures for the collection, posting, compiling and canvassing of election results are in place for future elections. Clerk Nickolaus has cooperated with staff to develop comprehensive procedures that ensure transparency and provide security, documentations, checks and balances.

Clerk Nickolaus displayed and demonstrated new ballot bags.

Discussion.

**MOTION:** Accept and approve the proposed procedures for posting election night returns; receiving and securing election materials from municipalities; and preparing for and conducting the county canvass. Moved by Judge Deininger, seconded by Judge Cane. Motion carried unanimously.

**H. Proposed Guidance on Central Count Absentee Vote Locations**

Staff Counsel Shane Falk presented an oral and written report. He said the guidance was developed based on requests from Milwaukee city and county officials after issues arose related to prosecution of a Milwaukee couple for double voting. The law specifically permits a voter to appear at the polling place on Election Day and have his or her absentee ballot voided; however, the law also imposes upon municipal clerks the duty to conduct a reconciliation of absentee and in-person poll lists. Staff developed the guidance and gave local election officials the opportunity to comment.

Discussion.

**MOTION:** Approve the draft revised guideline for central count absentee and direct staff to incorporate more specific information on central count absentee processes in the Election Day Manual and G.A.B. training. Moved by Judge Vocke, seconded by Judge Cane.

Discussion. Judge Barland said he has concerns, and believes the Board needs to rethink the whole process of central count absentee voting.

Motion carried.

**MOTION:** Direct staff to notify all clerks, but specifically the clerks for municipalities with an existing central count absentee process or which are considering it, of the revised guidance and inform them that they must conform their conduct to the law. Moved by Judge Vocke, seconded by Judge Cane. Motion carried unanimously.

**MOTION:** Direct staff to investigate and recommend statutory changes to Central Count procedures. Moved by Judge Deininger, seconded by Judge Cane. Motion carried unanimously.

## **I. Legislative Status Report**

Michael Haas provided a written report.

## **J. Administrative Rules**

### **Approve Permanent Rule GAB 1.28 relating to the Scope of Regulation**

Staff Counsel Shane Falk provided an oral and written report.

**MOTION:** Approve the Notice of Proposed Order Adopting Rule Amending ch. GAB §1.28(3)(b) contained in the meeting materials starting on page 69. Moved by Judge Deininger, seconded by Judge Cane. Motion carried unanimously.

**MOTION:** Adopt a reasonable practice of soliciting information and advice from those that may be affected by a proposed rule-making - solicitations via an email notice directing the recipient to the G.A.B. website for detailed information, with a 14/30/60 calendar day deadline to respond to G.A.B. as applicable, and of only the following for the provided subjects:

1. All clerks for proposed election and campaign finance rules.
2. All campaign finance registrants for proposed campaign finance, ethics and lobbying rules.
3. Top state public officials who have filed a Statement of Economic Interests with the G.A.B. for proposed ethics rules.
4. Registered lobbyists and lobbying principals for proposed lobbying rules;

5. Wisconsin Manufacturers and Commerce for all campaign finance, ethics, and lobbying rules with a recommendation that it circulates the solicitation to all its members for comment directly to the G.A.B.
6. Wisconsin Democracy Campaign, League of Women Voters, Common Cause of Wisconsin, Disability Rights of Wisconsin, and the Wisconsin Board for Persons with Developmental Disabilities for proposed elections, campaign finance, ethics, and lobbying rules.
7. Any individual who has requested to receive information and other persons identified by the agency as potentially interested parties as to requested or identified subjects.

Pursuant to §5.05(1)(e), Wis. Stats., the Board delegates authority to the Director and General Counsel to make a finding under Executive Order #50, Sec. IV(8), that a proposed rule does not have an economic impact.

Moved by Judge Cane, seconded by Judge Nichol. Motion carried unanimously.

## **K. Director's Report**

### **Ethics and Accountability Division Report – campaign finance, ethics, and lobbying administration**

Written report from Division Administrator Jonathan Becker was included in the Board packet.

### **Elections Division Report – election administration**

Written report from Division Administrator Nathaniel E. Robinson was included in the Board packet.

### **Office of General Counsel Report – general administration**

Written report from Kevin J. Kennedy, Sharrie Hauge, and Reid Magney was included in the Board packet.

Director Kennedy asked the Board whether it wanted to waive its per diem for the teleconference meeting December 5, 2011.

**MOTION:** Waive the Board's per diem for the teleconference meeting December 5, 2011, except for Judge Vocke, who attended the meeting in person. Moved by Judge Brennan, seconded by Judge Cane. Motion carried unanimously.

Judge Barland asked about an item on page 94 of the Board materials. Ross Hein explained it relates to redistricting, and that staff is working first with local election officials who have primary elections on February 21.

**L. Closed Session**

Adjourn to closed session to consider written requests for advisory opinions and the investigation of possible violations of Wisconsin’s lobbying law, campaign finance law, and Code of Ethics for Public Officials and Employees; and confer with counsel concerning pending litigation.

**MOTION:** Move to closed session pursuant to §§5.05(6a), 19.85(1)(h), 19.851, 19.85(1)(g), and 19.85(1)(c), to consider written requests for advisory opinions and the investigation of possible violations of Wisconsin’s lobbying law, campaign finance law, and Code of Ethics for Public Officials and Employees; and confer with counsel concerning pending litigation and consider performance evaluation data of a public employee of the Board. Moved by Judge Deininger, seconded by Judge Nichol.

Roll call vote: Barland:	Aye	Brennan:	Aye
Cane:	Aye	Deininger:	Aye
Nichol:	Aye	Vocke:	Aye

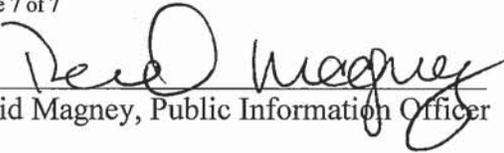
Motion carried. The Board convened in closed session at 1:40 p.m.

**L. Adjourn**

The Board adjourned in closed session at 2:50 p.m.

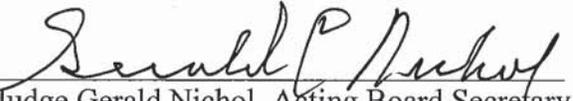
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The next regular meeting of the Government Accountability Board is scheduled for Thursday, January 12, 2012, at the G.A.B. office, 212 E. Washington Ave., in Madison, Wisconsin beginning at 9 a.m.

  
Reid Magney, Public Information Officer

March 7, 2012

December 13, 2011 Government Accountability Board meeting minutes certified by:

  
Judge Gerald Nichol, Acting Board Secretary

March 20, 2012