

Government Accountability Board

December 2014

Report Highlights ■

Authorization for 63.6 percent of GAB's staff positions will expire in June 2015.

GAB's staff did not fulfill certain statutorily required duties in a timely manner.

Staff did not consistently follow a GAB-approved penalty schedule for enforcing campaign finance, lobbying, and code of ethics laws.

GAB has not promulgated all statutorily required administrative rules.

The Government Accountability Board (GAB), which was created by 2007 Wisconsin Act 1 and began operation in January 2008, oversees and investigates alleged violations of Wisconsin's election, campaign finance, lobbying, and code of ethics laws. GAB is also statutorily responsible for helping local officials to administer elections and providing training to local election officials, lobbyists, and others. GAB's six members are each appointed for a six-year term and must have formerly been elected to and served as a judge of a court of record in Wisconsin. GAB appoints a Director and General Counsel, who serves as the agency's head, and two administrators. Statutes require GAB's staff to be nonpartisan.

As directed by the Joint Legislative Audit Committee, we analyzed GAB's:

- expenditures, funding sources, and staffing levels;
- management and governance processes;
- training provided to local election officials, lobbyists, and others; and
- processes for investigating and considering complaints.

In July 2014, the Attorney General opined that statutes prohibit GAB from providing certain records to us. If we had been able to access all records, our conclusions may have differed.

Key Facts and Findings

In July 2014, GAB was authorized 48.75 FTE staff positions, including 31.00 FTE project positions.

GAB's staff provided a variety of

Expenditures and Staffing

In recent years, GAB was responsible for completing a number of tasks that increased its workload. These tasks included helping to administer recall elections in 2011 and 2012, administering a statewide recount, implementing redistricting legislation, and working on photo identification issues.

GAB's expenditures decreased from \$5.8 million in fiscal year (FY) 2009-10 to \$5.6 million in FY 2013-14, or by 3.0 percent.

In July 2014, GAB was authorized 48.75 full-time equivalent (FTE) staff positions, 63.6 percent of which were project positions. Authorization for all

opportunities for municipal clerks to fulfill statutorily required training requirements.

From February 2010 through April 2014, GAB's staff did not conduct 16 statutorily required post-election reviews to identify individuals with ongoing felony sentences who may have voted.

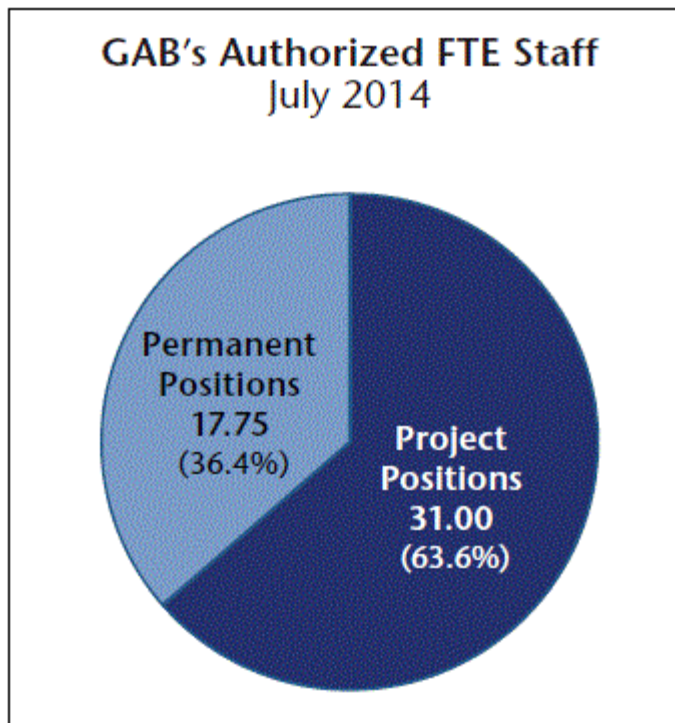
GAB has worked to improve the accessibility of polling places.

Staff did not regularly provide GAB with complete information on their enforcement efforts.

GAB's staff had no written procedures for considering complaints.

31.00 FTE project positions will expire in June 2015, although the Legislature may extend the authorization until June 2016.

GAB's 2015-17 Biennial Budget Request indicates that the loss of project positions would impair the ability of GAB's staff to fulfill certain statutorily required duties, such as overseeing election administration.



Election-Related Duties

In helping local election officials to administer elections, we found that staff fulfilled many statutorily required duties. For example, they provided a variety of opportunities for municipal clerks to fulfill statutorily required training requirements in recent years. In addition, they worked to improve the accessibility of polling places, in part by completing unannounced accessibility audits of polling places on Election Day and providing the results to the relevant clerks and municipal officials.

We also found that staff did not complete certain statutorily required duties in a timely manner. For example, statutes require GAB to conduct post-election reviews to determine if individuals with ongoing felony sentences may have voted and notify the relevant district attorneys if such individuals are identified.

Not until May 2014, when staff informed GAB that they had completed the review for the November 2012 election, did staff inform GAB in an open meeting that they had not conducted reviews for 16 elections held from February 2010 through April 2014. Staff indicated that they had not conducted the reviews, in part, because of concerns about the reliability of the information that identifies individuals with ongoing felony sentences. In July 2014, staff indicated that they had completed the 16 reviews.

After each General Election, GAB is statutorily required to audit the performance of each type of electronic voting equipment and determine its error rate in counting valid ballots. Not until October 2013 did staff complete the audits of electronic voting equipment used in the November 2008,

November 2010, and November 2012 General Elections. The audits were not consistently conducted according to the staff's procedures.

Enforcement Efforts

In overseeing campaign finance, lobbying, and code of ethics laws, statutes allow GAB to assess penalties for various violations. In February 2008, GAB approved a schedule indicating the penalties staff are to assess for various statutory violations, including campaign finance reports that were filed late. We found that staff developed a manual that specified penalty amounts that differed from those in GAB's schedule. GAB did not approve this manual.

From FY 2010-11 through FY 2012-13, staff did not assess penalties for 655 of 674 reports that were late and should have resulted in penalties under the staff's manual. All 19 penalties that staff did assess were for amounts inconsistent with GAB's penalty schedule and the staff's manual. Staff indicated that they focused on obtaining compliance with statutory requirements, rather than assessing penalties for statutory violations.

Staff were unable to provide us with complete information on penalties assessed for violations of campaign contribution limits, or on the number of penalties assessed for violations of lobbying laws, the amounts assessed, or why penalties were sometimes not assessed or were waived even though violations had occurred.

Staff did not regularly update GAB with complete information on efforts they took to enforce campaign finance, lobbying, and code of ethics laws. For example, staff did not regularly update GAB on the extent to which they assessed penalties for violations of these laws, the amounts assessed, and the amounts paid. However, staff did regularly update GAB on the extent to which state officials and employees did not file statements of economic interests on time.

Staff did not always have written procedures for deciding when to assess or waive penalties, and staff had no written procedures for considering complaints filed with GAB.

Administrative Rules

Because the process for rule promulgation includes legislative approval, rules afford the Legislature an opportunity to help determine how GAB fulfills certain responsibilities. Through September 2014, GAB did not promulgate seven statutorily required administrative rules. Staff indicated promulgation did not occur, in part, because they were busy with other tasks, such as helping to administer recall elections. However, more than eight years have passed since statutes first required six of the seven rules to be promulgated.

Recommendations

We include recommendations for GAB's staff to report to the Joint Legislative Audit Committee by April 15, 2015, on its efforts to:

- improve how voter registration records are maintained (pp. 26, 29, 32, and 33);

- improve their oversight of campaign finance laws (pp. 49, 52, 54, and 56);
- improve their oversight of lobbying laws (pp. 59, 64, 65, and 67);
- improve their oversight of code of ethics laws (p. 73); and
- improve their procedures for considering complaints (p. 87).

We include recommendations for GAB to promulgate rules, including those that are statutorily required (pp. 22, 34, and 92).

In addition to the recommendations, we identified several issues for legislative consideration. The Legislature could consider modifying statutes to:

- affirm the Legislative Audit Bureau's broad access to records (p. 12);
- require GAB to determine whether any votes were cast in the names of individuals who died before Election Day (p. 35);
- transfer to GAB the responsibility for completing additional election-related tasks (p. 35);
- reflect recent court decisions related to campaign finance (p. 55);
- require GAB to post information about lobbying activities on its Eye on Lobbying website only (p. 65); and
- reflect the limitations of GAB's access to information needed to verify the accuracy and completeness of campaign finance reports and lobbying expense statements 55 and 65).

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