

**Report 14-14  
December 2014**

# **Government Accountability Board**

STATE OF WISCONSIN



Legislative Audit Bureau ■



# **Government Accountability Board**

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Joe Chrisman  
State Auditor

December 12, 2014

Senator Robert Cowles and  
Representative Samantha Kerkman, Co-chairpersons  
Joint Legislative Audit Committee  
State Capitol  
Madison, Wisconsin 53702

Dear Senator Cowles and Representative Kerkman:

As requested by the Joint Legislative Audit Committee, we have completed an evaluation of the Government Accountability Board (GAB), including its responsibilities related to elections, campaign finance, lobbying, and the code of ethics. The scope of our evaluation was limited because the Attorney General opined in July 2014 that statutes prohibit GAB from providing us access to certain records. If we had been able to access all records, our conclusions may have differed.

As of July 2014, GAB was authorized 48.75 full-time equivalent (FTE) staff positions, 63.6 percent of which were project positions. Authorization for all 31.00 FTE project positions will expire in June 2015, although the Legislature may choose to extend the authorization until June 2016.

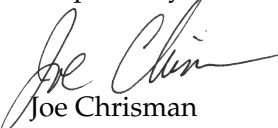
GAB's staff fulfilled many statutorily required duties, such as conducting training for municipal clerks and working to improve the accessibility of polling places. However, staff did not complete certain statutorily required duties in a timely manner. For example, staff are required after each election to determine if individuals with ongoing felony sentences may have voted. Not until summer 2014 did they indicate that they had completed reviews for 16 elections held from February 2010 through April 2014.

GAB's staff typically did not follow a GAB-approved schedule for determining the penalty amounts to assess for violations of campaign finance, lobbying, and code of ethics laws. Staff did not regularly provide GAB with complete information on their enforcement efforts. We provide recommendations to improve staff efforts to enforce these laws.

Staff did not always have written procedures for deciding when to assess or waive penalties and had no written procedures for considering complaints filed with GAB. We provide recommendations to GAB to promulgate all statutorily required rules, which the Legislature will review to determine how GAB fulfills certain responsibilities.

We appreciate the courtesy and cooperation extended to us by GAB's staff. A response from GAB's Director and General Counsel follows the Appendix.

Respectfully submitted,

  
Joe Chrisman  
State Auditor

JC/DS/ss





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## Report Highlights ■

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***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.

## Expenditures and Staffing

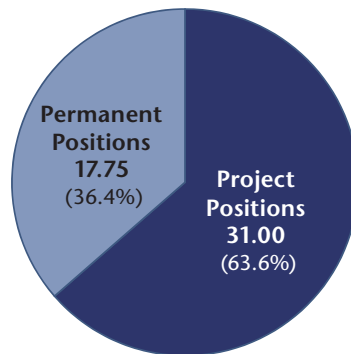
In recent years, GAB was responsible for completing a number of tasks that increased its workload. These tasks included helping to administer recall elections in 2011 and 2012, administering a statewide recount, implementing redistricting legislation, and working on photo identification issues.

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, as shown in Figure 1. Authorization for all 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.

Figure 1

**GAB’s Authorized FTE Staff**  
July 2014



## 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 (*pp. 55 and 65*).

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## Introduction ■

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***The Governor appoints  
GAB's members with the  
advice and consent of  
the Senate.***

Statutes require GAB's members to be nominated by a committee composed of one court of appeals judge from each of Wisconsin's four court of appeals districts. Committee members are chosen by lot by the Chief Justice of the Wisconsin Supreme Court and serve two-year terms. Statutes require the committee to submit to the Governor at least two nominations to fill one vacancy on GAB, three nominations to fill two vacancies, and five nominations to fill three vacancies. The Governor appoints GAB's members with the advice and consent of at least two-thirds of the Senate present and voting.

Statutes require a member of GAB to have formerly been elected and served as a judge of a court of record in Wisconsin. In addition, members are statutorily prohibited from holding another state or local public office or position, except that a member may serve as a reserve judge in a circuit court or a court of appeals; being a member of a political party or engaging in certain other partisan activities; becoming a candidate for state or local office; contributing to political campaigns; and being involved in lobbying activities. Statutes require GAB to annually select a board chairperson by lot and stipulate that any action of GAB requires an affirmative vote of at least four of the six members. Members are reimbursed for expenses incurred in the performance of their duties and are paid a per diem for each day they are engaged in their job duties. We note that in its 2015-17 Biennial Budget Request, GAB requested an additional \$14,850 in general purpose revenue (GPR) in FY 2015-16 and \$19,120 GPR in FY 2016-17 to fund per diem costs and expense reimbursements. The Appendix lists all members since June 2007, when members were first appointed. Through November 2014, one of the six current members had been confirmed by the Senate.

Statutes require GAB to meet quarterly and authorize it to meet at other times, as determined by the chairperson or a majority of members. GAB met 10 times in 2013 and 11 times from January 2014 through September 2014. Meetings are scheduled to address cyclical events, such as tasks associated with helping to administer elections and considering challenges to nomination papers, as well as ongoing issues, such as considering complaints filed with GAB and responding to requests from individuals for advice on how to comply with laws that GAB oversees. Although staff typically determine meeting agendas, members indicated that they supplement the agendas with topics they want to discuss. Members indicated that between meetings, staff provide them with regular updates about ongoing issues and staff activities.

Statutes require GAB to employ an individual to serve as its legal counsel, and GAB has designated its Director and General Counsel to serve in this capacity. At each January's meeting, GAB votes to delegate certain powers to the Director and General Counsel for that year. For example, in January 2014 GAB delegated 12 powers, including the power to sign most contracts on its behalf and the power to order an election official to conform to the law, refrain from acting inconsistently from the law, or correct actions inconsistent with the law. Before exercising a delegated power, GAB requires the Director and General Counsel to consult with GAB's chairperson to determine whether to poll members about the issue or hold a special meeting of GAB to discuss the issue. After exercising a delegated power, GAB requires the Director and General Counsel to report to it at its next meeting on the action taken, the basis for taking the action, and the action's outcome.

Statutes create two divisions within the agency and require GAB to appoint an administrator to oversee each division. The Elections Division helps to administer elections, including by providing training to municipal clerks and other local election officials, operating the Statewide Voter Registration System (SVRS), and working with municipal clerks to ensure that polling places are accessible to all individuals and that the electronic voting equipment used in Wisconsin complies with state and federal laws. Responsibility for administering elections in Wisconsin is shared with local election officials. Wisconsin's 1,852 municipal clerks register individuals to vote, maintain information in SVRS about the 3.4 million individuals who were registered to vote as of May 2014, and purchase and maintain voting equipment for polling places. In April 2014, there were 2,612 polling places statewide.

The Ethics and Accountability Division oversees campaign finance, lobbying, and code of ethics laws. It registers campaign finance entities, such as personal campaign committees, and oversees their



activities; licenses lobbyists, registers the principals that employ lobbyists, and oversees their activities; and oversees the code of ethics, including collecting statements of economic interests from statutorily designated state officials and employees. To promote compliance with campaign finance, lobbying, and code of ethics laws, GAB has issued advisory opinions to individuals who have questions about how to comply with these laws, and staff provide individuals with training on how to comply with these laws.

***GAB investigates violations of election, campaign finance, lobbying, and code of ethics laws.***

Among its statutorily designated duties, GAB investigates violations of election, campaign finance, lobbying, and code of ethics laws. In addition to bringing civil actions for violations of these laws, which may result in courts assessing forfeitures, statutes allow GAB to compromise and settle any civil action or potential action that it considers, for example, to be a minor violation or a violation caused by excusable neglect. When it does so, it may assess a financial penalty as part of a settlement agreement with an individual or entity. In settling civil actions or potential actions, statutes require GAB to treat comparable situations in a comparable manner.

Any individual may file a complaint alleging a violation of the laws GAB enforces, and GAB may by resolution authorize an investigation if it believes that there is reasonable suspicion a violation has occurred or is occurring. In certain instances, GAB may refer information related to an alleged criminal violation of election, campaign finance, lobbying, and code of ethics laws to a district attorney or the Attorney General.

In recent years, GAB was responsible for completing a number of tasks that increased its workload. For example, it reviewed recall petitions and helped to administer recall elections in 2011 and 2012, administered a statewide recount for a Supreme Court election in 2011, implemented redistricting legislation, and worked on issues related to the requirements pertaining to individuals presenting photo identification when voting. In addition, it developed the MyVoteWisconsin website that provides individuals with voting-related information and was involved with a number of lawsuits involving election, campaign finance, and other issues.

In the three years before GAB's creation, we conducted two audits of issues related to Wisconsin elections. In report 07-16, we evaluated the compliance of state and local governments with election laws and discussed issues related to the verification of individuals' eligibility to vote, the accessibility of polling places, and the statutorily required training provided to local election officials. In report 05-12, we evaluated the voter registration process.

To complete this audit, we interviewed all six GAB members as of March 2014 and two former members, the Director and General Counsel, and other agency staff, and we analyzed data and other information provided by GAB's staff. In addition, we interviewed 20 county and municipal clerks throughout the state and representatives of groups involved with election, campaign finance, lobbying, or code of ethics issues.

We did not visit polling places on Election Day or analyze the results of Wisconsin elections that were conducted in recent years. In addition, we did not evaluate GAB's implementation of the provisions in the Contract Sunshine Act, which requires state agencies to report certain purchasing activities for posting to a publicly accessible website operated by GAB. In report 11-11, we evaluated issues related to the Contract Sunshine Act.

### **Scope Limitation**

Section 13.94, Wis. Stats., provides that the State Auditor or designated employees have access to any information related to a state agency's expenditures, revenues, operations, and structure. However, except as specifically authorized by law, GAB and its staff are statutorily required to maintain the confidentiality of information related to its investigations of certain issues that GAB oversees. GAB's Director and General Counsel asked the Attorney General to provide a formal opinion on whether the Legislative Audit Bureau has access to information that statutes require GAB to keep confidential.

In July 2014, the Attorney General opined that statutes prohibit GAB from providing certain records to the Legislative Audit Bureau. Therefore, GAB's staff declined to provide us with complete information about all complaints the agency has received in recent years and its investigations of individuals who may have voted in the November 2012 General Election while serving felony sentences. The scope of our evaluation was limited because of the Attorney General's opinion. If we had been able to access all of GAB's records, our analytical conclusions may have differed. The Legislature could consider modifying statutes to affirm the Legislative Audit Bureau's broad access to records.

## Expenditures

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

As shown in Table 1, GAB's expenditures decreased from \$5.8 million in FY 2009-10 to \$5.6 million in FY 2013-14, or by 3.0 percent. Over this five-year period, information technology (IT) and data services expenditures, including payments to private contractors and the Department of Administration (DOA), increased 22.7 percent. In FY 2011-12, expenditures for mailing, advertising, and supplies increased, in part, because GAB began to inform the public about statutory changes related to voter identification and because GAB updated voter registration records on behalf of municipal clerks. In FY 2013-14, these expenditures decreased, in part, because the update of voter registration records does not occur annually. In FY 2011-12, expenditures for services increased, in part, because GAB hired temporary staff to review recall petitions. GAB's staff provided information indicating that its costs for helping to administer recall elections in FY 2010-11 and FY 2011-12 totaled approximately \$710,000.

Table 1

### Government Accountability Board Expenditures, by Type

|                                    | FY 2009-10         | FY 2010-11         | FY 2011-12         | FY 2012-13         | FY 2013-14         |
|------------------------------------|--------------------|--------------------|--------------------|--------------------|--------------------|
| Salaries and Fringe Benefits       | \$3,108,200        | \$2,773,300        | \$2,641,000        | \$2,607,600        | \$2,678,700        |
| IT and Data Services               | 1,665,400          | 2,039,300          | 2,032,900          | 2,581,800          | 2,043,000          |
| Facilities and Utilities           | 315,500            | 317,800            | 348,300            | 372,900            | 436,500            |
| Investigations                     | 16,800             | 42,900             | 45,900             | 42,700             | 174,700            |
| Mailing, Advertising, and Supplies | 340,600            | 329,600            | 550,700            | 511,100            | 131,100            |
| Aid to Local Governments           | 132,000            | 109,800            | 9,400              | 71,300             | 86,800             |
| Travel and Training Expenses       | 126,800            | 56,300             | 53,800             | 64,200             | 51,100             |
| Services                           | 108,000            | 4,700              | 700,300            | 154,100            | 34,100             |
| Election Campaign Fund             | 0                  | 325,100            | 0                  | 0                  | 0                  |
| <b>Total</b>                       | <b>\$5,813,300</b> | <b>\$5,998,800</b> | <b>\$6,382,300</b> | <b>\$6,405,700</b> | <b>\$5,636,000</b> |

In FY 2013-14, IT and data services expenditures included:

- \$989,700 for SVRS, the Canvass Reporting System that county clerks use to report voting results after each election, and the Wisconsin Election Data Collection System that municipal clerks use to report election statistics, such as the number of ballots cast;

- \$327,100 for the Campaign Finance Information System, which provides publicly accessible information on contributions made by individuals, personal campaign committees, political action committees, and other similar entities to candidates for public office;
- \$158,200 for the MyVoteWisconsin website, which provides individuals with the locations of polling places, sample ballots, and applications for absentee ballots; and
- \$147,800 for the Eye on Lobbying website, which provides publicly accessible information on the activities of principals and lobbyists.

As shown in Table 2, the Elections Division accounted for \$3.4 million of all expenditures in FY 2013-14, or 59.5 percent of the total, and the Ethics and Accountability Division accounted for 24.0 percent of total expenditures. The Administration Division, which provides legal and administrative support to the agency, accounted for 16.5 percent of expenditures.

Table 2  
**Government Accountability Board Expenditures, by Division**  
 FY 2013-14

| Type                               | Division           |                           |                  | Total              |
|------------------------------------|--------------------|---------------------------|------------------|--------------------|
|                                    | Elections          | Ethics and Accountability | Administration   |                    |
| Salaries and Fringe Benefits       | \$1,375,200        | \$ 586,800                | \$716,700        | \$2,678,700        |
| IT and Data Services               | 1,512,800          | 506,500                   | 23,700           | 2,043,000          |
| Facilities and Utilities           | 227,300            | 66,300                    | 142,900          | 436,500            |
| Investigations                     | 0                  | 174,700                   | 0                | 174,700            |
| Mailing, Advertising, and Supplies | 85,600             | 12,800                    | 32,700           | 131,100            |
| Aid to Local Governments           | 86,800             | 0                         | 0                | 86,800             |
| Travel and Training Expenses       | 33,000             | 4,700                     | 13,400           | 51,100             |
| Services                           | 34,100             | 0                         | 0                | 34,100             |
| <b>Total</b>                       | <b>\$3,354,800</b> | <b>\$1,351,800</b>        | <b>\$929,400</b> | <b>\$5,636,000</b> |

Because salaries and fringe benefits was the largest type of expenditure, we determined the salaries paid to selected GAB staff. As shown in Table 3, three staff were paid annual salaries of more than \$100,000 in FY 2013-14.

Table 3  
**Annual Salaries of Selected Government Accountability Board Staff**  
FY 2013-14

|   | Amount    |
|---|-----------|
| Director and General Counsel                      | \$131,400 |
| Administrator, Ethics and Accountability Division | 111,800   |
| Administrator, Elections Division                 | 105,600   |

GAB is funded by GPR, federal revenue to cover the costs of complying with federal laws, and program revenue from fees collected from campaign finance entities, principals, and lobbyists. Before FY 2011-12, GAB received segregated state revenue from the Election Campaign Fund to provide eligible candidates with public financing, which was eliminated by 2011 Wisconsin Act 32, the 2011-13 Biennial Budget Act. As shown in Table 4, federal revenue was the largest funding source for GAB expenditures in FY 2013-14.

Table 4  
**Government Accountability Board Expenditures, by Funding Source**

|                          | FY 2009-10         | FY 2010-11         | FY 2011-12         | FY 2012-13         | FY 2013-14         |
|--------------------------|--------------------|--------------------|--------------------|--------------------|--------------------|
| Federal Revenue          | \$3,001,200        | \$2,498,700        | \$2,579,300        | \$2,695,800        | \$2,773,800        |
| General Purpose Revenue  | 2,141,800          | 2,620,700          | 3,379,800          | 3,322,000          | 2,403,400          |
| Program Revenue          | 462,400            | 486,600            | 423,200            | 387,900            | 458,800            |
| Segregated State Revenue | 207,900            | 392,900            | 0                  | 0                  | 0                  |
| <b>Total</b>             | <b>\$5,813,300</b> | <b>\$5,998,800</b> | <b>\$6,382,300</b> | <b>\$6,405,700</b> | <b>\$5,636,000</b> |

## Staffing

***In July 2014, project positions were 63.6 percent of GAB’s 48.75 FTE authorized staff positions.***

GAB’s authorized staffing level increased from 43.75 FTE staff positions in July 2011 to 53.75 FTE staff positions in both July 2012 and July 2013, but it then declined to 48.75 FTE staff positions in July 2014. As shown in Table 5, the 48.75 FTE authorized staff positions in July 2014 included 31.00 FTE project positions (63.6 percent of the total), all of which were in the Elections Division. The Director and General Counsel and the administrators of the Elections Division and the Ethics and Accountability Division are unclassified staff. In July 2014, all other permanent positions were filled by classified staff.

Table 5

**Government Accountability Board Authorized Staffing Level  
Full-Time Equivalent Positions in July 2014**

| Division                    | Project Positions | Permanent Positions | Total        |
|-----------------------------|-------------------|---------------------|--------------|
| Elections                   | 31.00             | 4.00                | 35.00        |
| Ethics and Accountability   | 0.00              | 7.85                | 7.85         |
| Administration <sup>1</sup> | 0.00              | 5.90                | 5.90         |
| <b>Total</b>                | <b>31.00</b>      | <b>17.75</b>        | <b>48.75</b> |

<sup>1</sup> The agency’s Administration Division, which includes the Director and General Counsel, provides legal and administrative support to the agency.

GAB’s staff indicated that they periodically hired temporary staff in recent years to supplement the staff working in project and permanent positions. In addition to temporary staff hired to review recall petitions, GAB’s staff indicated that temporary staff were hired to help review nomination papers and to conduct accessibility audits of polling places on Election Day in order to identify issues that could hinder the ability of individuals with disabilities to vote.

As shown in Table 6, federal revenue funded 26.00 of GAB’s authorized project positions in July 2014. GAB’s staff estimate that in FY 2016-17 they will have spent all available federal revenue that supports these project positions.

Table 6

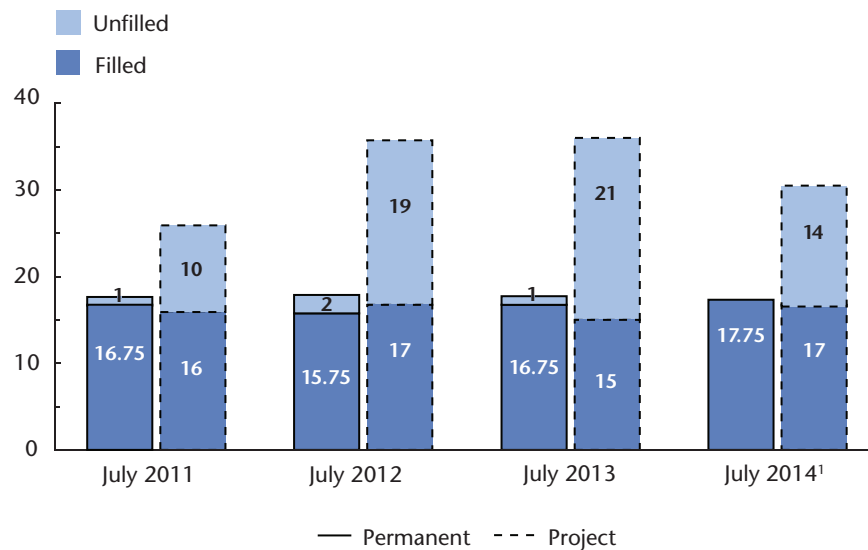
**Funding Sources for the Government Accountability Board’s Authorized Staff  
Full-Time Equivalent Positions in July 2014**

| Position Type | Federal Revenue | General Purpose Revenue | Program Revenue | Total        |
|---------------|-----------------|-------------------------|-----------------|--------------|
| Project       | 26.00           | 5.00                    | 0.00            | 31.00        |
| Permanent     | 0.00            | 14.30                   | 3.45            | 17.75        |
| <b>Total</b>  | <b>26.00</b>    | <b>19.30</b>            | <b>3.45</b>     | <b>48.75</b> |

In recent years, a number of GAB’s authorized staff positions have been unfilled, as shown in Figure 2. In July 2014, 14.00 of GAB’s 48.75 FTE authorized staff positions (28.7 percent) were unfilled. All unfilled positions were project positions. Staff indicated that they have intentionally not filled some of these positions in order to conserve the federal revenue that supports the positions.

Figure 2

**Filled and Unfilled Full-Time Equivalent Staff Positions  
at the Government Accountability Board**



<sup>1</sup> All permanent positions were filled in July 2014.

***Authorization for  
31.00 FTE project  
positions will expire in  
June 2015.***

Authorization for all 31.00 FTE project positions, which comprise 63.6 percent of GAB's positions, will expire in June 2015. Statutes limit the duration of project positions to no more than four years. As a result, authorization for the positions can be renewed by the Legislature only until June 2016.

GAB has included requests for additional staff in each of its last three biennial budget requests. In its 2011-13 Biennial Budget Request, it requested to convert 21.00 federally funded project positions into permanent GPR-funded positions, but this request was not included in the Governor's Biennial Budget Proposal. In its 2013-15 Biennial Budget Request, GAB requested six new GPR-funded positions for its Elections Division, but this request was not included in the Governor's Biennial Budget Proposal. In its 2015-17 Biennial Budget Request, GAB requested to convert 22.0 federally funded project positions into permanent federally funded positions, the costs of which GAB's staff indicated can be covered by existing federal revenue until FY 2016-17. Thereafter, another funding source would need to be identified to fund these positions. The Biennial Budget Request indicates that the loss of these 22.0 positions would impair the ability of GAB's staff to fulfill certain statutorily required duties, such as overseeing election administration. For example, all staff who train local election officials are currently in federally funded project positions.

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## Training Local Election Officials ■

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Statutes require GAB to conduct regular training throughout the state for municipal clerks and other local election officials. This training is intended to explain the state's election laws and promote uniform procedures. GAB's staff train municipal clerks, who are statutorily responsible for supervising elections and registering voters, and the chief inspectors in charge of individual polling places on Election Day. Municipal clerks are statutorily responsible for training other local election officials, such as election inspectors, who are commonly known as poll workers. GAB's staff provided a variety of opportunities for municipal clerks to fulfill the training requirements in recent years. However, we found that GAB did not promulgate all statutorily required rules prescribing the contents of training for certain other local election officials.

### Municipal Clerks

***Statutes require each municipal clerk to attend training at least once every two years.***

Statutes require each of the state's 1,852 municipal clerks to attend training at least once every two years and require GAB to promulgate rules specifying the training's contents. GAB's rules describe the training requirements for municipal clerks during each two-year period that begins on January 1 of an odd-numbered year and ends on December 31 of the following year. A municipal clerk must attend three hours of GAB-approved training in order to receive initial certification, which expires at the end of the two-year period in which it is received. After receiving initial certification, a municipal clerk must complete an additional three hours of GAB-approved training in the same two-year period in order to maintain

certification in the subsequent two-year period. Thereafter, a municipal clerk must attend six hours of GAB-approved training in each two-year period in order to maintain certification during the subsequent two-year period.

The training that a municipal clerk must attend in order to receive initial certification provides key information needed to administer elections effectively. GAB's staff conducted this training 15 times in FY 2010-11, 6 times in FY 2011-12, and 6 times in FY 2012-13. In total, 414 municipal clerks attended these 27 trainings. Since January 2012, most of this training has been conducted online through webinars, which GAB's staff indicated are cost-effective.

GAB's staff provided a variety of opportunities for municipal clerks to fulfill the ongoing training requirements, including webinars that can be viewed at any time and training conducted throughout the state. We reviewed the training materials and found that they address the topics specified by GAB's administrative rules, such as instructions on the proper completion of election forms and notices.

In 2012, GAB's staff updated training materials for municipal clerks in order to reflect modifications that had been made to election laws in recent years. For example, staff:

- recorded 16 webinars and videos and posted them on GAB's website;
- updated several election-related manuals used by municipal clerks; and
- conducted throughout the state 12 trainings that explained how municipal clerks should use SVRS to complete election-related duties.

To increase training opportunities for municipal clerks, GAB's staff train county and municipal clerks to be clerk-trainers. To become a clerk-trainer, an individual must meet certain requirements, including having at least four years of experience as a county or a municipal clerk and attending a day-long training conducted by GAB's staff. From FY 2010-11 through FY 2012-13, clerk-trainers conducted 17 three-hour trainings that fulfilled the requirement for municipal clerks to receive initial certification. As of November 2013, 16 clerk-trainers were located throughout the state.

All 20 municipal and county clerks that we contacted were satisfied with the training provided by GAB's staff, particularly with the webinars and manuals.

## Compliance with Training Requirements

***As of October 2013, 83.4 percent of municipal clerks reported to GAB that they had completed all required training for the current two-year period.***

GAB certifies municipal clerks who have completed the required training. GAB's staff rely on the clerks to voluntarily report the number of training hours that they have completed. We reviewed training information provided by staff in order to determine whether the state's 1,852 municipal clerks had reported completing the required training and are certified for the period from January 2013 through December 2014. We found that as of October 2013:

- 1,545 municipal clerks (83.4 percent) reported to GAB that they had completed all required training and are certified;
- 221 municipal clerks (11.9 percent) did not report to GAB that they had completed all required training and, therefore, are not certified;
- 85 new municipal clerks (4.6 percent) had not yet taken the training needed to receive initial certification; and
- information for 1 municipal clerk was unavailable.

When a municipal clerk does not report completing the training, GAB's staff indicated that they contact the clerk and attempt to elicit the clerk's cooperation. In addition, as required by statutes, staff indicated that they notify the relevant municipal governing body, which decides whether to direct a clerk to complete and report the training.

## Other Local Election Officials

***GAB has not promulgated statutorily required rules regarding the contents of training for election inspectors and special voting deputies.***

Statutes also require GAB to promulgate rules prescribing the contents of training for other types of local election officials. We found that GAB has promulgated rules regarding the contents of training for chief election inspectors and special registration deputies, who are appointed by municipal clerks to help register voters. However, GAB has not promulgated the statutorily required rules regarding the contents of training that clerks are to provide to election inspectors and special voting deputies, who are appointed by clerks to facilitate absentee voting by individuals in managed-care facilities.

In August 2009, GAB approved draft rules regarding the contents of training for election inspectors and special voting deputies and

directed its staff to complete the promulgation process. Staff did not do so through September 2014. They indicated that the training requirements were instead included in election manuals, which municipal clerks use as a resource to train election inspectors and special voting deputies. However, promulgating rules affords the Legislature an opportunity to help determine the proposed provisions and will enhance GAB's authority to stipulate the training's contents.

**Recommendation**

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*We recommend the Government Accountability Board:*

- *comply with statutes and promulgate administrative rules that prescribe the contents of training that municipal clerks must provide to election inspectors and special voting deputies; and*
- *report to the Joint Legislative Audit Committee by April 15, 2015, on the status of its efforts to implement this recommendation.*

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## Maintenance of Voter Registration Records ■

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***GAB and municipal clerks share responsibility for maintaining the accuracy of voter registration records.***

GAB and municipal clerks share responsibility for maintaining the accuracy of voter registration records. Statutes require GAB to operate the Statewide Voter Registration System (SVRS) and identify certain individuals who may have voted even though they were ineligible to do so, and they require municipal clerks to use SVRS to verify the accuracy of information provided by individuals registering to vote and inactivate the voter registration records of those who become ineligible to vote. We found that GAB's staff did not conduct in a timely manner statutorily required post-election reviews to determine if individuals with ongoing felony sentences may have voted.

### **Voter Registration**

Registering to vote is statutorily permitted any time except for the three days before an election. Individuals who register 20 days or more before an election may do so at a municipal or county clerk's office, by mail, or with a special registration deputy appointed by a municipal clerk to receive registrations. Individuals who register within 20 days before an election may do so only at a municipal clerk's office or on Election Day at the polls.

Any U.S. citizen age 18 or older is eligible to vote in an election district where he or she has resided for 28 consecutive days before an election, if he or she is not determined by a judge to be incompetent to vote, has not bet on an election, and is not serving a sentence for treason, felony, or bribery. Individuals registering to

vote must affirm their citizenship. 2013 Wisconsin Act 182, which was enacted in April 2014, requires all individuals except for those serving in the military or residing overseas permanently to provide proof of their residence when registering to vote. Before enactment of Act 182, statutes generally required individuals to provide proof of residence only if they registered within 20 days before an election or on Election Day.

**Approximately two-thirds of individuals who registered to vote in FY 2012-13 did so on Election Day.**

As shown in Table 7, approximately two-thirds of individuals who registered to vote in FY 2012-13 did so on Election Day. Almost all of them did so on the four statewide elections that occurred in that fiscal year.

Table 7

**Time Periods When Individuals Registered to Vote  
FY 2012-13**

|                                       | Number         | Percentage of Total |
|---------------------------------------|----------------|---------------------|
| Election Day                          | 363,260        | 68.4%               |
| 20 Days or More before Election Day   | 140,395        | 26.4                |
| 19 Days to 3 Days before Election Day | 24,864         | 4.7                 |
| Other <sup>1</sup>                    | 2,888          | 0.5                 |
| <b>Total</b>                          | <b>531,407</b> | <b>100.0%</b>       |

<sup>1</sup> Includes individuals serving in the military and certain U.S. citizens residing overseas.

Statutes require municipal clerks to enter information provided by individuals registering to vote into SVRS, which is Internet-accessible. Municipalities without the technology or staff to access SVRS instead contract with larger municipalities or counties for help in entering such information into SVRS. As of November 2013, 1,336 of Wisconsin’s 1,852 municipalities (72.1 percent) contracted with 14 municipalities and 67 counties for such assistance.

**Personally Identifiable Information**

If registrants, who are individuals registering to vote, have valid driver’s license numbers, state identification card numbers, or the last four digits of their Social Security numbers, statutes require them to provide this information when registering. However,

statutes permit an individual without these forms of identification to still register. Statutes require the administrator of the Elections Division to enter into an agreement with the Department of Transportation (DOT) to confirm the accuracy of personally identifiable information provided by registrants. DOT attempts to match the driver’s license numbers and state identification card numbers with its records and forwards the last four digits of the Social Security numbers to the Social Security Administration, which attempts to match this information with its records.

The accuracy of the personally identifiable information provided by 92.4 percent of new registrants was confirmed in FY 2012-13, as shown in Table 8. However, we found that no attempt was made to confirm the accuracy of personally identifiable information provided by 432 registrants.

Table 8

**Accuracy of Personally Identifiable Information  
Provided by Individuals Registering to Vote<sup>1</sup>  
FY 2012-13**

|  | Registrants    | Percentage<br>of Total |
|--|----------------|------------------------|
| <b>Accuracy of the Information Was:</b>                              |                |                        |
| Confirmed  | 490,910        | 92.4%                  |
| Not Confirmed  | 39,232         | 7.4                    |
| <b>No Attempt Was Made to Confirm<br/>the Information’s Accuracy</b> | 432            | 0.1                    |
| <b>No Information Was Provided</b>                                   | 833            | 0.2                    |
| <b>Total</b>   | <b>531,407</b> | <b>100.0%</b>          |

<sup>1</sup> Based on attempts to match information provided by registrants with records held by DOT and the Social Security Administration.

Statutes indicate that GAB must require all municipalities to use SVRS and may require any municipality to adhere to GAB’s procedures for proper administration of SVRS. GAB’s staff provide clerks with a manual that establishes such procedures. The manual, which has not been approved by GAB, instructs clerks to inform by mail each registrant whose personally identifiable information was not confirmed as accurate and request that the registrant contact the

clerk to resolve the discrepancy. However, those who do not contact their clerks remain eligible to vote.

The manual developed by GAB's staff instructs clerks to use SVRS to generate and mail letters informing registrants that the personally identifiable information they provided did not match information held by DOT or the Social Security Administration. We found that SVRS indicated letters were not mailed to 29,934 of the 39,232 registrants (76.3 percent) in FY 2012-13 who provided information that did not match. These registrants lived in 1,430 municipalities.

GAB's staff indicated that some clerks contacted registrants without using SVRS to generate the letters, which would cause SVRS to erroneously indicate that the letters were not mailed, unless the clerks indicated in SVRS that they did not use SVRS to generate the letters. However, the potential exists that clerks did not mail letters to all registrants. Therefore, staff should contact the relevant clerks to ascertain whether the letters were mailed, which helps to ensure that SVRS contains accurate information.

#### Recommendation

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*We recommend the Government Accountability Board's staff:*

- *regularly monitor Statewide Voter Registration System records to contact clerks who may not have mailed letters to registrants whose personally identifiable information did not match information held by other agencies; and*
- *report to the Joint Legislative Audit Committee by April 15, 2015, on the status of their efforts to implement this recommendation.*

## **Deceased Individuals**

***Statutes require municipal clerks to inactivate the voter registration records of deceased individuals.***

Statutes require municipal clerks to inactivate the voter registration records of deceased individuals. Each month, the Department of Health Services (DHS) electronically provides the names and dates of birth of individuals who died in Wisconsin in the current calendar year to SVRS, which automatically compares this information with the personally identifiable information in voter registration records. In addition, the personally identifiable information of all new registrants is automatically compared with the information provided by DHS. Clerks receive notification in SVRS whenever



the personally identifiable information provided by registrants potentially matches with the information provided by DHS.

The manual developed by GAB’s staff instructs them to determine whether to inactivate voter registration records based on these potential matches or any other available information. Eleven of the 20 county and municipal clerks we interviewed indicated that they use additional information such as obituaries and death certificates to determine whether to inactivate voter registration records, but 2 clerks indicated that they inactivate the records of all individuals identified by the information provided by DHS. Before each election, GAB’s staff indicated that they identify clerks who have five or more unresolved matches and advise them to resolve those potential matches.

We reviewed the extent to which clerks determined whether registered voters were deceased, based on the information electronically provided by DHS to SVRS in FY 2012-13. As shown in Table 9, clerks determined that 23,803 registered voters (93.6 percent) were either deceased or alive but did not make determinations regarding 1,624 registered voters (6.4 percent) as of November 2013. In that month, these potential matches had been unresolved for 213 days, on average, and the voter registration records of these individuals remained active. To the extent that the 1,624 registered voters were deceased and their registration records remained active, the potential existed for others to vote in their names.

Table 9

**Resolution of Information Indicating That  
Registered Voters Were Deceased<sup>1</sup>  
FY 2012-13**

|  | Number        | Percentage<br>of Total |
|--|---------------|------------------------|
| <b>Clerks Determined Registered Voters Were:</b> |               |                        |
| Deceased   | 22,630        | 89.0%                  |
| Alive  | 1,173         | 4.6                    |
| Subtotal   | 23,803        | 93.6                   |
| <b>Clerks Made No Determinations</b>             |               |                        |
|  | 1,624         | 6.4                    |
| <b>Total</b>                                     | <b>25,427</b> | <b>100.0%</b>          |

<sup>1</sup> Resolutions that were made as of November 2013, based on information that DHS had electronically provided to SVRS in FY 2012-13.

We reviewed the voting records of all 22,630 individuals confirmed by clerks to have died in order to determine if votes were cast in their names in FY 2012-13, either at the polls or through absentee ballots. The available information did not indicate that any votes were cast in the names of these individuals at the polls. However, we provided GAB's staff with the name of one individual for whom insufficient information was available. We note that although SVRS indicated that 12 individuals had voted at the polls after their deaths, the applicable poll book pages indicated that they did not actually vote. It is likely that local election officials erroneously recorded in SVRS that these individuals had voted.

***We identified  
88 deceased individuals  
whose names we  
provided to GAB's staff  
for further review.***

If an individual submits an absentee ballot but dies before Election Day, statutes require that the absentee ballot not be counted if local election officials are aware of the death. Identifying deceased individuals in time to ensure that their absentee ballots are not counted is sometimes challenging because of the amount of time required for local medical officials to notify DHS of the deaths, for DHS to prepare the applicable electronic data, and for the monthly data exchange with SVRS to occur. In FY 2012-13, it took an average of 54.9 days after individuals died for potential matches to be identified in SVRS.

In FY 2012-13, clerks received absentee ballots from 243 individuals who died on the same day the clerks received the completed absentee ballots or later, but before Election Day. All of these absentee ballots were counted, likely because the clerks were unaware that the individuals had died. However, we identified 88 deceased individuals, whose names we provided to GAB's staff for further review, including:

- 55 individuals for whom SVRS had insufficient information to determine when clerks issued and received the absentee ballots;
- 29 individuals who died after clerks issued them absentee ballots but before the clerks received the completed absentee ballots, indicating that the individuals may have completed the ballots before they died; and
- 4 individuals who may have died before the clerks issued them absentee ballots.

In September 2013, DHS implemented a new process for electronically providing SVRS with information about deceased individuals. Based on information provided by DHS, we estimate that it should take approximately 30 days, on average, for a potential match to be created in SVRS, which will help clerks to inactivate the registration records of deceased individuals before Election Day. Nevertheless, the names of individuals who die within 30 days of an

election may not be reported to clerks before Election Day. To deter others from voting in the names of deceased individuals, GAB’s staff should review SVRS records after each election to identify and investigate any instances in which votes were cast in the names of individuals who died before Election Day.

**☑ Recommendation**

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*We recommend the Government Accountability Board’s staff:*

- *review the records of the deceased individuals we identified and determine whether any of these individuals’ votes were inappropriately cast in FY 2012-13 elections;*
- *review Statewide Voter Registration System records after each election in order to identify and investigate instances in which votes were cast in the names of individuals who died before Election Day; and*
- *report to the Joint Legislative Audit Committee by April 15, 2015, on the status of their efforts to implement these recommendations.*

**Individuals Serving Felony Sentences**

***Statutes prohibit individuals convicted of felonies from voting until they have completed their sentences.***

Statutes prohibit individuals convicted of felonies from voting until they have completed their sentences, including parole or extended supervision, or completed probation. The Department of Corrections (DOC) is statutorily required to provide GAB with the name and address of each individual convicted of a felony in Wisconsin whose civil rights have not been restored. Statutes require SVRS to contain the information transmitted by DOC. Each month, DOC electronically provides the names and dates of birth of individuals with ongoing felony sentences to SVRS, which automatically compares this information with the personally identifiable information in voter registration records. In addition, the personally identifiable information of all new registrants is automatically compared with the information provided by DOC.

Clerks receive notification in SVRS whenever the personally identifiable information provided by registrants potentially matches with the information provided by DOC and have been instructed by GAB’s staff to determine whether to inactivate voter registration records based on these potential matches or any other available information, such as information from law enforcement agencies. However, 10 of the 20 clerks we interviewed indicated that they inactivate the records of all individuals identified by the information

provided by DOC. Before each election, GAB’s staff indicated that they identify clerks who have five or more unresolved matches and advise them to resolve those potential matches.

Matching personally identifiable information in voter registration records with the information provided by DOC can be challenging, and GAB’s staff have expressed concerns with the accuracy of the potential matches. Because DOC does not provide SVRS with Social Security numbers, potential matches are made based on name and date of birth, which creates the risk that the personally identifiable information of registered voters may be erroneously matched with the information of individuals with ongoing felony sentences who have similar names and dates of birth. The risk of error is increased because DOC provides for each individual up to nine different aliases, all of which are compared with the personally identifiable information in voter registration records.

We reviewed the extent to which clerks determined whether registered voters had ongoing felony sentences, based on information electronically provided by DOC to SVRS in FY 2012-13. As of November 2013, clerks determined that 3,376 registered voters (91.8 percent) either had or did not have ongoing felony sentences but had not made determinations regarding 303 registered voters (8.2 percent), as shown in Table 10. These potential matches had been unresolved for 226 days, on average, and the voter registration records of these individuals remained active. Therefore, even if the 303 registered voters had ongoing felony sentences, they could continue to vote.

Table 10

**Resolution of Information Indicating That  
Registered Voters Had Ongoing Felony Sentences<sup>1</sup>**  
FY 2012-13

|   | Number       | Percentage<br>of Total |
|---|--------------|------------------------|
| <b>Clerks Determined Registered Voters:</b> |              |                        |
| Had Ongoing Felony Sentences                | 3,211        | 87.3%                  |
| Did Not Have Ongoing Felony Sentences       | 165          | 4.5                    |
| Subtotal                                    | 3,376        | 91.8                   |
| <b>Clerks Made No Determinations</b>        | 303          | 8.2                    |
| <b>Total</b>                                | <b>3,679</b> | <b>100.0%</b>          |

<sup>1</sup> Resolutions that were made as of November 2013, based on information that DOC had electronically provided to SVRS in FY 2012-13.

GAB’s staff use a manual that instructs clerks to mail a letter to each individual whose voter registration record was inactivated as a result of information provided by DOC. Such letters help to ensure that individuals ineligible to vote do not attempt to reregister. SVRS is able to automatically generate letters that instruct individuals who believe that their voter registration records were erroneously inactivated to contact clerks and provide the documentation necessary to reactivate their records. SVRS indicated that letters were mailed to 1,636 of the 3,211 individuals (50.9 percent) whose records were inactivated, but that letters were not mailed to 1,575 individuals (49.1 percent) in 405 municipalities. However, four municipal clerks we interviewed indicated that they mail all required letters, but that this information is not reflected in SVRS because the clerks do not use SVRS to generate the letters. Instead, these clerks write their own letters, which allows them to control the content and format.

Mailing letters to individuals whose voter registration records have been inactivated is important because of the possibility of erroneous matches between the information provided by DOC and the personally identifiable information in voter registration records. If individuals are not notified that their voter registration records have been inactivated, they will face challenges if they attempt to vote. GAB’s staff indicated that some clerks contacted registrants without using SVRS to generate the letters, which would cause SVRS to erroneously indicate that the letters were not mailed, unless the clerks indicated in SVRS that they did not use SVRS to generate the letters. However, the potential exists that clerks did not mail letters to all registrants. Therefore, staff should contact the relevant clerks to ascertain whether the letters were mailed, which helps to ensure that SVRS contains accurate information.

***The voter registration records of 11 individuals may have been inactivated erroneously in FY 2012-13.***

We reviewed a sample of voter registration records inactivated in FY 2012-13 as a result of the information electronically provided by DOC and found that records may have been inactivated erroneously for 11 individuals, including:

- 9 individuals who had not been convicted of felonies but whose personally identifiable information was similar to that of individuals with ongoing felony sentences; and
- 2 individuals who had been convicted of misdemeanor offenses but whose names had been erroneously included in the information electronically provided by DOC.

SVRS indicated that 5 of the 11 individuals whose voter registration records may have been inactivated erroneously were mailed letters, and that 4 of these 5 individuals had their voter registration records reactivated. However, SVRS indicated that six individuals were not mailed letters. Unless clerks mailed these six individuals letters

without using SVRS to generate the letters, the individuals may not know that their voter registration records were inactivated. We provided GAB's staff with the names of these six individuals.

### Recommendation

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*We recommend the Government Accountability Board's staff:*

- *regularly monitor Statewide Voter Registration System records to contact clerks who may not have mailed letters to individuals whose voter registration records were inactivated because of ongoing felony sentences;*
- *review information for the individuals we identified whose voter registration records may have been erroneously inactivated and ensure that the relevant clerks have notified the individuals; and*
- *report to the Joint Legislative Audit Committee by April 15, 2015, on the status of their efforts to implement these recommendations.*

### **Identifying Individuals Who May Have Voted While Ineligible**

Statutes require GAB to compare the information provided by DOC with the names of individuals who registered on Election Day or within 20 days before an election. If GAB's review determines that an individual with an ongoing felony sentence may have voted, statutes require it to notify the district attorney in the county where the vote occurred. Statutes require these reviews to be completed as soon as possible after the required information becomes available after an election.

GAB's staff indicated that the information provided by DOC has not always been accurate. After the November 2008 General Election, they referred to district attorneys the names of 124 individuals whose voter registration records appeared to match the information provided by DOC, but only 6 of these individuals were subsequently convicted of voting while serving felony sentences. Staff indicated district attorneys determined that some of the 124 individuals did not have ongoing felony sentences on the day of the General Election.

***After the April 2009 spring election, GAB’s staff stopped completing the statutorily required reviews to identify individuals with ongoing felony sentences who may have voted.***

After completing the review for the April 2009 spring election, GAB’s staff stopped completing the statutorily required reviews to identify individuals with ongoing felony sentences who may have voted. Staff indicated that they did so, in part, because of concerns about the reliability of the DOC-provided information, which sometimes resulted in GAB inaccurately determining that individuals with ongoing felony sentences may have voted. Not until May 2014, when staff informed GAB that they had completed the review for the November 2012 General Election, did staff inform GAB in an open meeting that they had not conducted the reviews in recent years. In July 2014, GAB’s staff indicated to us that they had just completed the statutorily required reviews of 16 elections from February 2010 through April 2014 and had referred to district attorneys 33 individuals who may have voted while serving felony sentences, including 28 individuals who may have voted in the November 2012 General Election. Because the Attorney General opined in July 2014 that statutes prohibit GAB from providing us with certain records, GAB’s staff declined to provide us with the names of the 28 individuals. Therefore, we could not independently confirm the analysis conducted by the staff.

Completing the statutorily required reviews in a timely manner helps to ensure the integrity of elections and provide the public with assurances that ineligible individuals did not vote. In addition, timely completion of these reviews helps to ensure that ineligible individuals are identified and prevented from voting in subsequent elections until their civil rights are restored.

**☑ Recommendation**

*We recommend the Government Accountability Board’s staff:*

- *complete in a timely manner the statutorily required reviews to identify individuals with ongoing felony sentences who may have voted;*
- *report to the Government Accountability Board on any actions taken by district attorneys against the 33 individuals who may have voted while serving felony sentences;*
- *work with the Department of Corrections to improve the accuracy of information regarding individuals serving felony sentences, including by ensuring that individuals convicted of misdemeanors are not erroneously included in the information that is electronically provided to the Statewide Voter Registration System; and*
- *report to the Joint Legislative Audit Committee by April 15, 2015, on the status of their efforts to implement these recommendations.*

## Improving Voter Registration Records

In April 2014, GAB reported to DOA in its FY 2014-15 Information Technology Strategic Plan that it was implementing a \$1.5 million project to improve and modernize SVRS. The project, which is scheduled to be completed by June 2015, could improve compliance with statutory requirements related to voter registration records. Federal revenue is to be used to cover the costs of this “High-Profile IT Project,” which is defined as a project that costs more than \$1.0 million or is considered vital to a state agency’s operations. Such a project is subject to enhanced monitoring, including monthly reports from GAB to DOA regarding the project’s schedule, scope, budget, and other issues, as well as periodic reports to the Legislature’s Joint Committee on Information Policy and Technology.

***GAB has not promulgated rules to clarify the responsibilities of local election officials in registering individuals to vote.***

Statutes permit GAB to promulgate rules to ensure the proper administration of election laws. In report 07-16, we recommended that GAB promulgate rules to clarify the responsibilities of local election officials in registering individuals to vote. Although staff reported to the Joint Legislative Audit Committee in September 2008 that GAB had approved a proposed rule, the rule was never promulgated. Staff indicated that litigation and subsequent statutory modifications to voter registration requirements delayed the promulgation process.

GAB should promulgate rules that formalize the procedures clerks use to maintain voter registration records, including inactivating the records of individuals who become ineligible to vote and mailing letters to notify these individuals that their records have been inactivated. Promulgating such rules affords the Legislature an opportunity to help determine the proposed provisions and will enhance GAB’s authority to require clerks to fulfill voter registration requirements.

### Recommendation

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*We recommend the Government Accountability Board:*

- *promulgate administrative rules that specify the responsibilities of clerks for maintaining voter registration records in the Statewide Voter Registration System; and*
- *report to the Joint Legislative Audit Committee by April 15, 2015, on the status of its efforts to implement this recommendation.*



**Issues for Legislative Consideration**

***The Legislature could consider requiring GAB to determine after each election whether any votes were cast by individuals who died before Election Day.***

Although statutes require GAB to review the information provided by DOC to identify individuals who may have voted while serving felony sentences, they do not require GAB to make a similar post-election determination of whether those on DHS’s list of deceased individuals appear to have voted after they died. In some instances, such votes may have occurred because individuals submitted absentee ballots and then died only a short time before Election Day, which would be difficult for a municipal clerk to determine. In other instances, the potential exists that individuals could submit absentee ballots for individuals who had died or cast votes in the names of deceased individuals. The Legislature could consider modifying statutes to require GAB to determine whether any votes were cast in the names of individuals who died before Election Day and, if so, notify the relevant district attorneys.

***The Legislature could consider transferring responsibility for completing additional election-related tasks from municipal clerks to GAB.***

In March 2014, the Legislature transferred from municipal clerks to GAB the responsibility for biennially updating voter registration records. We note that in its 2015-17 Biennial Budget Request, GAB requested \$96,800 in FY 2016-17 to cover costs associated with updating the records. The Legislature could consider also transferring to GAB responsibility for completing additional election-related tasks, such as inactivating SVRS records for individuals who become ineligible to vote and mailing the letters that notify these individuals that their records have been inactivated. Clerks in some counties and larger municipalities that contract to provide SVRS-related services to smaller municipalities have indicated to GAB’s staff that the volume of work required to maintain voter registration records for their own jurisdictions is causing them to consider reducing the support they provide under contract to smaller municipalities.

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# Polling Place Accessibility and Voting Equipment ■

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***Responsibility for polling place accessibility and electronic voting equipment is shared between GAB and local governments.***

Responsibility for polling place accessibility and electronic voting equipment is shared between GAB and local governments. Municipalities select the locations of polling places, while municipal clerks supervise elections, purchase and maintain electronic voting equipment, and provide polling places with ballots and other materials. Statutes require GAB to ensure that polling places are accessible to all individuals and electronic voting equipment complies with federal and state laws. We found that GAB's staff worked to improve the accessibility of polling places.

## **Polling Place Accessibility**

Federal and state laws require polling places to be accessible to all individuals, including those with disabilities. GAB's staff train and assist local election officials to comply with these laws and improve accessibility. In 2002, the former State Elections Board developed an accessibility survey that included a checklist municipal clerks were to complete for each polling place in order to assess compliance with federal accessibility standards. In report 07-16, we recommended that GAB verify the accuracy of completed accessibility surveys, such as by visiting polling places on Election Day.

In April 2011, GAB's staff began conducting unannounced accessibility audits of polling places on Election Day. Issues identified by the accessibility audits are rated according to their severity. High-severity issues are likely to prevent an individual with a disability from entering a polling place and casting a ballot privately and independently, such as a lack of a polling place

entrance that is accessible to an individual with a disability. Medium-severity issues, such as a lack of accessible parking, make it significantly more difficult for an individual with a disability to vote and, in combination with other issues, would likely prevent such an individual from voting. Low-severity issues are unlikely to prevent an individual with a disability from voting but add burdens not faced by others, such as accessible voting equipment being placed in a location that allows others to see an individual’s ballot choices.

Although GAB’s staff initially completed the accessibility audits, temporary staff have completed all such audits since 2012. GAB’s staff provide these temporary staff with two days of training that includes a mock accessibility audit of a polling place.

During 16 elections from April 2011 through April 2013, 1,614 accessibility audits were completed at polling places in 921 municipalities in 66 counties, or approximately half of all municipalities statewide. The average number of polling places audited per election increased from 55 in 2011 to 131 in 2012 to 156 in the first two elections of 2013. GAB’s staff plan for every polling place statewide to be audited no later than 2016. As noted, there were 2,612 polling places statewide in April 2014.

**From April 2011 through April 2013, accessibility audits identified 10,488 issues at polling places, including 3,786 high-severity issues.**

As shown in Table 11, accessibility audits conducted from April 2011 through April 2013 identified 10,488 issues at polling places, including 3,786 high-severity issues. Most high-severity issues concerned accessible entrances and the voting area, such as a lack of large-print instructions and accessible voting booths. Three or more high-severity issues were identified at 603 polling places.

Table 11

**Issues Identified by Accessibility Audits of Polling Places, by Severity Level**  
April 2011 through April 2013

| Severity Level    | Parking      | Exterior Pathways | Accessible Entrance | Interior Routes | Voting Area  | Total         |
|-------------------|--------------|-------------------|---------------------|-----------------|--------------|---------------|
| High <sup>1</sup> | n/a          | n/a               | 1,705               | 310             | 1,771        | 3,786         |
| Medium            | 1,524        | 726               | 223                 | 274             | 108          | 2,855         |
| Low               | 779          | 181               | 82                  | 7               | 2,798        | 3,847         |
| <b>Totals</b>     | <b>2,303</b> | <b>907</b>        | <b>2,010</b>        | <b>591</b>      | <b>4,677</b> | <b>10,488</b> |

<sup>1</sup> The accessibility audit includes no high-severity issues related to parking or exterior pathways.

GAB's staff provide the results of each accessibility audit to the relevant municipal and county clerks and senior municipal officials. They request that a municipality submit within 60 days a post-audit plan detailing actions for remedying identified issues, such as removing obstacles along a polling place's interior routes, relocating a polling place to a more accessible facility, or making accessible parking available on Election Day.

GAB's staff help to improve the accessibility of polling places by training municipal clerks on accessibility standards and identifying accessibility issues that affect individuals with disabilities. In 2009, staff spent \$95,000 of federal revenue to purchase accessibility supplies that municipalities may request at no cost to remedy issues identified in accessibility audits or to remedy self-identified issues at polling places. These supplies include page magnifiers to help visually impaired individuals to sign the poll books and signs to designate accessible parking areas, pathways, and entrances. As of June 2013, staff indicated that 442 municipalities had been provided such supplies.

In January 2014, the accessibility audits were cited as a model for improving accessibility by the Presidential Commission on Election Administration, which was established by Executive Order in March 2013 in order to identify best practices for administering elections. Disability advocacy groups indicated that municipalities frequently improve the accessibility of polling places as a result of the accessibility audits but expressed concern that GAB's staff do not determine whether municipalities actually implement actions identified in the post-audit plans. Staff indicated that they could order local election officials to comply with accessibility laws but have not done so because they believe it is more effective to work cooperatively with local election officials to achieve compliance.

Statutes require GAB to submit to the appropriate standing committees of the Legislature by June 30 of each odd-numbered year a biennial report on impediments to voting faced by elderly and handicapped individuals. We found that GAB did not submit the reports in June 2009 or June 2011 but did submit a report in June 2013. In preparing these reports, GAB is statutorily required to consult with advocacy groups representing elderly and handicapped individuals. The former State Elections Board formed an advisory committee of advocacy groups representing such individuals, but GAB's staff did not meet with it from October 2011 through April 2013. Staff noted that the staff position primarily responsible for accessibility issues was not filled by a full-time employee from October 2011 through December 2012. Since then, however, staff have met with the advisory committee semiannually to solicit advice on improving the accessibility audits and the training provided to local election officials.

## Voting Equipment

***Statutes require municipalities with populations of 7,500 or more to use electronic voting equipment approved by GAB.***

Statutes require municipalities with populations of 7,500 or more to use electronic voting equipment, and they require all municipalities to equip each polling place with accessible voting equipment that permits individuals with disabilities to vote without assistance and with the same degree of privacy accorded to individuals without disabilities. Municipalities are statutorily responsible for selecting and purchasing electronic voting equipment but are allowed to purchase only types of equipment that GAB has approved for use.

### Approval

Before GAB approves a given type of electronic voting equipment, the equipment's vendor must submit specified information, including a list of the states and municipalities where the equipment is approved for use, technical manuals, and reports from an independent testing authority accredited by the National Association of State Election Directors that demonstrate the equipment conforms to standards of the Federal Election Commission, which Congress established in 1975 as an independent regulatory agency to administer and enforce certain federal election laws. GAB's staff conduct mock elections to ensure that the equipment meets various statutory requirements, including:

- enabling individuals to vote in secrecy, for candidates from different parties, and for write-in candidates;
- preventing individuals from voting in the primaries of multiple political parties, for multiple candidates for the same office, or multiple times for the same candidate;
- recording correctly and counting accurately every vote properly cast and maintaining a cumulative tally of votes that is retrievable if a power outage or malfunction occurs;
- minimizing the possibility of disenfranchising individuals as a result of their inability to understand how the equipment operates; and
- generating a paper record of all votes cast.

The administrator of the Elections Division appointed 19 local election officials and members of advocacy groups, including

11 municipal and county clerks, to an advisory panel to help test electronic voting equipment. GAB's staff solicit comments from the advisory panel, report test results to GAB, and recommend whether GAB should approve the equipment. Vendors must inform GAB of modifications made to approved equipment, and GAB may require equipment to be reapproved if significant modifications have been made.

***As of March 2014, 12 models of electronic voting equipment were approved for use.***

As of March 2014, 12 models of electronic voting equipment were approved for use. The equipment is either optical scan, which requires individuals to mark their choices on paper ballots that are counted by a computerized scanning device, or direct recording electronic, which presents individuals with an electronic version of the ballot and records their votes. GAB's staff ask municipalities to inform them when new equipment is purchased, but this does not always occur.

Figure 3 shows the extent to which municipalities used electronic voting equipment or hand-counted paper ballots in January 2014, according to information maintained by GAB's staff.

***Some municipal clerks have not replaced older electronic voting equipment because of cost considerations.***

In December 2013, GAB's staff surveyed county clerks and received responses pertaining to 1,231 municipalities, including 649 municipalities that reported using electronic voting equipment. County clerks reported that 325 of the 649 municipalities (50.1 percent) used equipment at least ten years old, and that 260 municipalities (40.1 percent) used equipment that had been approved by the former State Elections Board under 1990 federal standards that have since been superseded. GAB's staff indicated that although some municipal clerks are concerned that older equipment is more likely to cease operating, the cost to purchase new equipment and train local election officials to use it has meant that some older equipment has not been replaced. In addition, staff indicated that some clerks are concerned that new equipment may not integrate with existing equipment or provide the desired functionality.

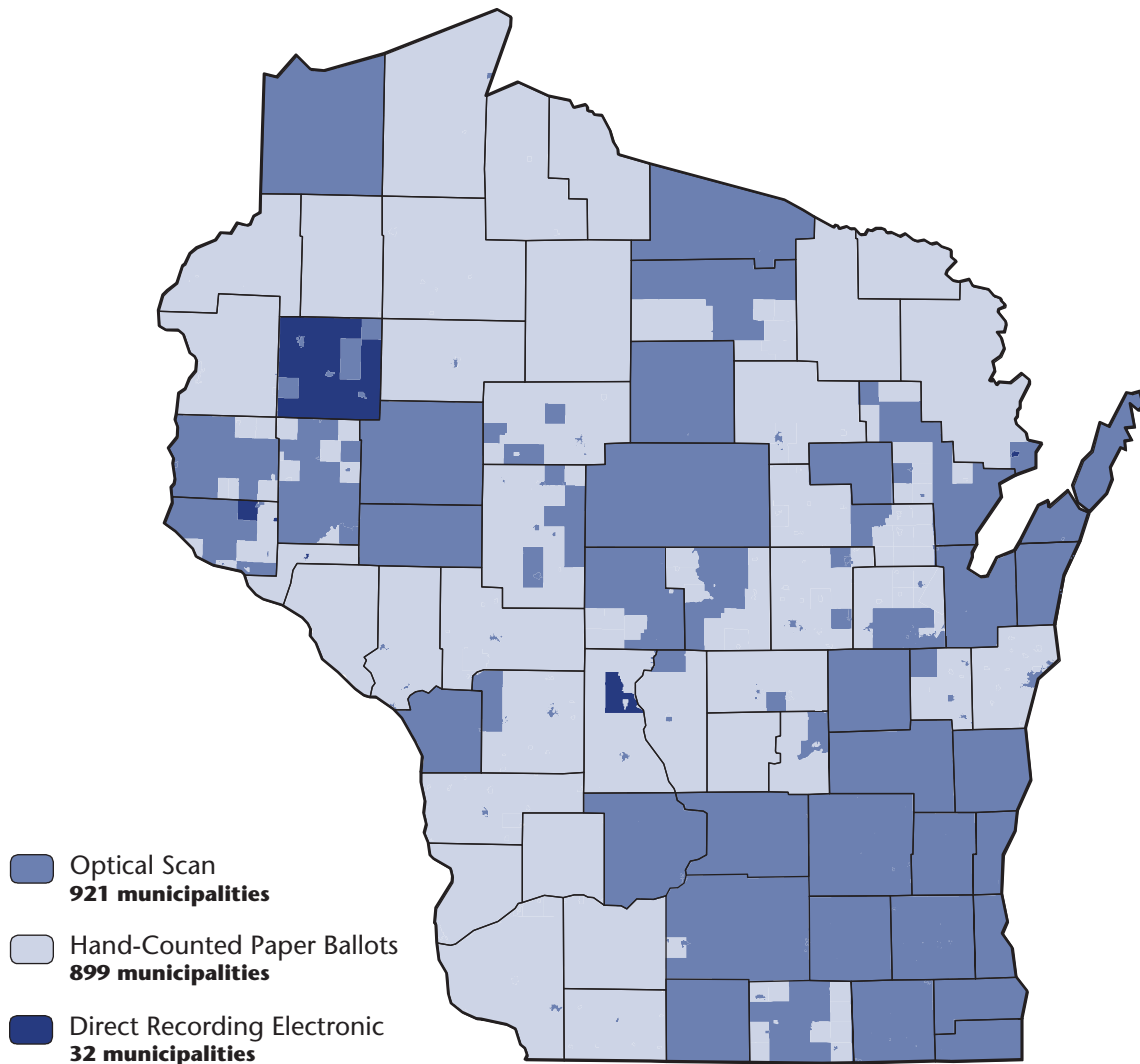
Although statutes allow GAB to revoke its approval of a given type of electronic voting equipment at any time for cause, its staff indicated that it does so only when equipment cannot count votes properly or has had its federal certification revoked, and not simply because the equipment is old or does not meet current federal standards. GAB revoked approval only once, in August 2012, because a vendor voluntarily withdrew its equipment from the federal program that establishes equipment standards.

In May 2008, GAB directed its staff to revise its administrative rules for approving electronic voting equipment, in part to include

procedures for considering whether to approve modifications to equipment already approved for use. Not until July 2013 did staff submit a scope statement for the updated rules to the Governor's Office for approval, which had not been provided as of September 2014.

Figure 3

Use of Electronic Voting Equipment and Hand-Counted Paper Ballots<sup>1</sup>  
January 2014



<sup>1</sup> According to information reported by municipalities to GAB's staff.



## Post-Election Audits

***After each General Election, GAB is statutorily required to audit the performance of each type of electronic voting equipment.***

After each General Election, which is held in November in even-numbered years, GAB is statutorily required to audit the performance of each type of electronic voting equipment and determine the equipment's error rate in counting valid ballots. If the error rate exceeds one vote per 500,000 ballots, which is the federal standard, statutes require GAB to take remedial action and order affected counties and municipalities to take remedial action to ensure compliance with the standard. Statutes do not stipulate a deadline for completing these audits.

To determine the particular pieces of electronic voting equipment to be audited after a General Election, staff indicated that during our audit period they relied on procedures approved by the former State Elections Board in 2006, but not by GAB. The procedures indicated an audit was to be completed within two weeks after the GAB chairperson or a designee certified the election results, which statutes require to occur no later than December 1. Timeliness is important because statutes allow ballots used in a federal election to be destroyed after 22 months and ballots used in all other elections to be destroyed after 30 days.

We found that GAB's staff required local election officials to conduct the electronic voting equipment audits associated with the November 2008, November 2010, and November 2012 General Elections and informed GAB that they had done so. They did so in order to reduce staff travel and other costs and to allow them to complete other duties. Staff selected the municipalities to be audited, provided local election officials with audit procedures, reviewed the audit results, and reimbursed municipalities up to \$300 for each audit. Local election officials provided the results of their work to GAB's staff, who analyzed the information and completed the audits.

***Not until October 2013 did GAB's staff complete the audits of electronic voting equipment used in the 2008, 2010, and 2012 General Elections.***

Not until October 2013 did GAB's staff complete the statutorily required audits of electronic voting equipment used in the November 2008, November 2010, and November 2012 General Elections. We note that from October 2009, when staff informed GAB that the audit for the November 2008 General Election was ongoing, until October 2013, staff did not update GAB in an open meeting on their progress in completing the audits. In December 2013, staff provided GAB with a combined report for the three audits. The combined audit report stated that none of the electronic voting equipment used in the three General Elections exceeded the maximum error rate specified by the federal standard, although error rates for specific types of equipment were not specified.

**Electronic voting equipment audits were not consistently conducted according to the staff's procedures.**

We reviewed the combined audit report and found that the electronic voting equipment audits were not consistently conducted according to the staff's procedures. As shown in Table 12, audits were conducted on fewer than the required number of reporting units after the November 2008 and November 2010 General Elections. We also found that although the procedures indicated that at least five reporting units for each model of equipment used in a given election were to be audited, this did not occur for eight equipment models used in the November 2008 and November 2010 General Elections. Although GAB is statutorily required to audit the performance of each equipment model used in a General Election, one equipment model used in the November 2008 General Election was not audited.

Table 12

**Post-Election Audits of Electronic Voting Equipment**

| General Election | Reporting Units <sup>1</sup>        |                  |
|------------------|-------------------------------------|------------------|
|                  | Required to be Audited <sup>2</sup> | Actually Audited |
| November 2008    | 50                                  | 42               |
| November 2010    | 50                                  | 46               |
| November 2012    | 100                                 | 109              |

<sup>1</sup> Wards and combinations of wards that report election results together.

<sup>2</sup> Required by procedures established by GAB's staff.

The procedures indicated that audits were to be conducted by at least two individuals, each of whom counted the votes indicated on the paper ballots used with optical scan equipment or the paper records created by direct recording electronic equipment. The two individuals' totals were compared, reconciled if they did not match, and then compared to the totals generated by the equipment. The work was complete when the individuals' totals matched the equipment's totals.

For optical scan equipment, the procedures instructed the individuals to count votes as the equipment should have counted them, rather than try to discern an elector's intent. The audit results indicate that the individuals frequently identified ballots that appear to have been incorrectly marked by electors, such as by circling a candidate's name instead of writing a line or filling a bubble next to

the preferred candidate's name. Because the equipment likely would have rejected such votes, the individuals were instructed to do the same. However, no definitive criteria exist to determine whether the equipment appropriately counted or rejected votes on imperfectly marked ballots. As a result, the individuals conducting the audits may have misidentified equipment errors as elector errors, and equipment error rates could have exceeded the maximum error rate specified by the federal standard.

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## Oversight of Campaign Finance Laws ■

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***GAB is statutorily responsible for overseeing campaign finance activities.***

To provide for an informed electorate and to protect the integrity of the election process, statutes stipulate that the State has a compelling interest in designing a system for disclosing contributions made on behalf of candidates for public office and in placing reasonable limitations on campaign finance activities. Campaign finance entities, such as personal campaign committees and political action committees, must file periodic reports with GAB. As noted, GAB can assess financial penalties as part of a settlement agreement, including when the reports are filed late or do not contain all statutorily required information. When assessing penalties for violations of campaign finance laws, we found that staff did not consistently follow a February 2008 penalty schedule approved by GAB. GAB's staff indicated that they focused their efforts on obtaining compliance with statutory requirements, rather than assessing penalties for statutory violations.

### **Registration**

Statutes require all personal campaign committees, which candidates for state public offices form in order to accept financial contributions and pay for activities in support of their candidacies, to register with GAB. Statutes also require certain other entities to register with GAB if they raise or disburse more than \$300 in campaign finance funds in a given calendar year, including:

- political party committees and legislative campaign committees, which accept contributions and disburse funds to personal campaign committees or for activities that support candidates;

- independent committees, which support or oppose candidates but are not allowed to coordinate their activities with candidates or personal campaign committees;
- political action committees, which can be formed to raise funds to support or oppose candidates; and
- conduits, which bundle contributions from individuals and organizations and provide the contributions to the campaign finance entities designated by the contributors.

***In FY 2012-13, 3,222 campaign finance entities were registered with GAB.***

As shown in Table 13, 3,222 campaign finance entities were registered with GAB in FY 2012-13.

Table 13

**Campaign Finance Entities Registered with the Government Accountability Board**

|  | FY 2010-11   | FY 2011-12   | FY 2012-13   |
|--|--------------|--------------|--------------|
| Personal Campaign Committees                                   | 1,481        | 1,738        | 1,759        |
| Political Action Committees and Sponsors                       | 801          | 873          | 893          |
| Political Party Committees and Legislative Campaign Committees | 257          | 257          | 259          |
| Conduits   | 191          | 198          | 203          |
| Independent Committees   | 30           | 54           | 63           |
| Other <sup>1</sup>   | 37           | 47           | 45           |
| <b>Total</b>   | <b>2,797</b> | <b>3,167</b> | <b>3,222</b> |

<sup>1</sup> Includes committees set up for recall elections and referenda.

Statutes require each registered campaign finance entity, other than a personal campaign committee, to pay a \$100 annual filing fee by January 31 if it disbursed more than \$2,500 in the prior calendar year. Statutes require an entity to forfeit \$800 if the annual fee is not paid on time. In February 2008, GAB approved a penalty schedule for assessing penalties when various statutory requirements are not met, but this schedule does not address amounts to be assessed when a filing fee is not paid on time. Procedures used by staff but not approved by GAB indicate that a \$300 penalty may be assessed if the filing fee is not paid within two weeks of the deadline, a \$500 penalty may be assessed if the filing fee is not paid within six weeks of the deadline, and an \$800 penalty may be assessed if the filing fee is not paid within eight weeks of the deadline.

**☑ Recommendation**

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*We recommend the Government Accountability Board's staff:*

- *present to the Government Accountability Board for its approval written procedures specifying penalty amounts to assess on campaign finance entities that do not pay their annual filing fees by January 31; and*
- *report to the Joint Legislative Audit Committee by April 15, 2015, on the status of their efforts to implement this recommendation.*

## **Oversight Activities**

Statutes limit the amounts that individuals and campaign finance entities can contribute to personal campaign committees. GAB oversees campaign finance activity related to state offices by gathering information from reports that campaign finance entities must file with it. Personal campaign committees for candidates running for federal office report their campaign finance activities to the Federal Election Commission.

### **Campaign Finance Reports**

Statutes generally require campaign finance entities that receive or disburse funds to file continuing reports with GAB each January and July. A continuing report must list all contributions received, disbursements made, and debts incurred since the period covered by the prior continuing report. Campaign finance entities must also report to GAB, no later than 8 days before a primary or an election, the funds they received and disbursed up to 15 days before the primary or the election. Until recently, any campaign finance entity that received more than \$500 in contributions from a single individual, or any independent committee that disbursed more than \$20, within 14 days before a primary or an election was statutorily required to report the contribution or disbursement to GAB within 24 hours. 2013 Wisconsin Act 153, which was enacted in March 2014, extended the reporting deadline to 48 hours. Until recently, statutes required campaign finance entities that electronically filed campaign finance reports to also submit to GAB signed copies of the reports, but Act 153 modified statutes to allow the reports to be filed electronically only.

Statutes require GAB to determine whether campaign finance reports have been filed on time and contain all statutorily required information, including:

- the names and addresses of individuals who contributed more than \$20;
- the names of the recipients, dates, and purposes of disbursements of more than \$20;
- the total amount of contributions and disbursements during the reporting period;
- the occupations and employer names for those who contributed more than \$100; and
- a campaign finance entity’s cash balance at the beginning and end of the reporting period.

***From FY 2010-11 through FY 2012-13, 85.6 percent of campaign finance reports were filed with GAB on time.***

As shown in Table 14, 16,309 campaign finance reports were filed with GAB from FY 2010-11 through FY 2012-13, including 85.6 percent that were filed on time. However, 3.2 percent of campaign finance reports were filed seven weeks or more late.

Table 14

**Timeliness of Campaign Finance Reports Filed with the Government Accountability Board  
FY 2010-11 through FY 2012-13**

| Timeliness        | Number        | Percentage of Total |
|-------------------|---------------|---------------------|
| <b>On Time</b>    | 13,957        | 85.6%               |
| <b>Weeks Late</b> |               |                     |
| Less than 1.0     | 937           | 5.7                 |
| 1.0 to 1.9        | 293           | 1.8                 |
| 2.0 to 2.9        | 138           | 0.8                 |
| 3.0 to 4.9        | 310           | 1.9                 |
| 5.0 to 6.9        | 150           | 0.9                 |
| 7.0 or More       | 524           | 3.2                 |
| <b>Total</b>      | <b>16,309</b> | <b>100.0%</b>       |

Statutes allow a forfeiture of up to \$500 for a late campaign finance report. In addition, for each day a report is late, the forfeiture amount may be increased by up to \$50 or 1.0 percent of the annual salary of the office for which a candidate is being supported or opposed, whichever is greater. GAB’s February 2008 schedule indicates that its staff should assess:



- a \$125 penalty for a continuing report that is 45 days to 60 days late, plus an additional \$25 for each additional month a report is late; and
- a \$150 penalty for a pre-primary or pre-election report that is 3 days to 30 days late, plus an additional \$25 for each additional month a report is late.

In February 2008, GAB directed its staff to promulgate administrative rules to establish an updated penalty schedule, which is not currently in rules. Although GAB directed its staff in June 2008, March 2009, and September 2011 to take the steps necessary for promulgation, the rule was not promulgated.

We found that the campaign finance audit manual that was used by staff, but was not approved by GAB, stipulates penalty amounts that differ from those in the penalty schedule approved by GAB. The manual indicates that a \$50 penalty should be assessed when a campaign finance report is filed 35 days or more late and that a \$125 penalty should be assessed when a campaign finance report is filed 49 days or more late.

We found that GAB's staff did not assess penalties for 655 of 674 campaign finance reports that were filed 35 days or more late from FY 2010-11 through FY 2012-13. However, the available information indicates that GAB's staff:

- assessed 8 penalties totaling \$2,000 in FY 2010-11, or an average of \$250 per penalty;
- did not assess any penalties in FY 2011-12, because staff indicated that they were busy with tasks related to the recall elections; and
- assessed 11 penalties totaling \$775 in FY 2012-13, or an average of \$70 per penalty.

***Staff assessed penalties for late campaign finance reports in amounts inconsistent with GAB's schedule and the staff's audit manual.***

We found that GAB's staff assessed all 8 penalties in FY 2010-11 and all 11 penalties in FY 2012-13 in amounts inconsistent with both GAB's penalty schedule and the campaign finance audit manual. None of the 19 assessed penalties exceeded \$500. Through FY 2012-13, campaign finance entities paid 4 of the 19 assessed penalties for late campaign finance reports. Staff indicated that most penalties were not paid because the campaign finance entities were no longer active, typically because the associated candidates were not elected to office and the entities no longer had any funds. We reviewed the available information for all 45 continuing reports that were filed 35 days or more after they were due in January 2013. The available information indicates that GAB's staff did not assess

penalties for any of the 30 continuing reports that were filed from 35 days to 70 days late. In contrast, staff assessed penalties for 11 of 15 continuing reports that were filed 71 days or more late.

We estimate that 119 campaign finance reports were not filed with GAB from FY 2010-11 through FY 2012-13 but should have been filed. GAB's staff indicated that they do not pursue the matter further when a campaign finance entity does not file a report and does not respond to several telephone calls, letters, and e-mail messages. Staff indicated that unelected candidates' personal campaign committees become inactive and sometimes do not file reports, and when this occurs staff have only a limited ability to compel the reports to be filed. However, if an unelected candidate runs for office again, staff indicated they require that candidate to file all of the late campaign finance reports and pay any previously assessed penalties.

**Staff did not regularly update GAB with complete information about late campaign finance reports, including assessed penalties.**

Staff did not regularly update GAB with complete information on the number of campaign finance entities that did not file campaign finance reports on time, whether these reports were subsequently filed, whether staff assessed penalties, the amounts of assessed penalties, and the amounts of unpaid penalties. It is possible that staff provided GAB with such information during the closed portions of meetings. Because the Attorney General opined in July 2014 that statutes prohibit GAB from providing us with certain records, staff provided us with only redacted minutes for the closed portions of the meetings.

#### Recommendation

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*We recommend the Government Accountability Board's staff:*

- *adhere to the Government Accountability Board's February 2008 penalty schedule for assessing penalties on campaign finance entities that do not file statutorily required campaign finance reports on time;*
- *report to the Government Accountability Board at least quarterly on all campaign finance reports that were not submitted on time, whether a penalty was assessed for each late report, the amount of each assessed penalty, and the amount of each penalty that was paid and unpaid; and*
- *report to the Joint Legislative Audit Committee by April 15, 2015, on the status of their efforts to implement these recommendations.*

## Contribution Limits

Statutes generally require that campaign finance contributions can be used only for political purposes, and they limit the contributions that can be made to support or oppose candidates. Statutes prohibit corporations and labor unions from donating any funds directly to personal campaign committees. An individual can contribute no more than \$10,000 to a candidate for Governor, \$1,000 to a candidate for the State Senate, and \$500 to a candidate for the State Assembly. Although statutes indicate that an individual may annually donate no more than \$10,000 to all state and local candidates or campaign finance entities registered with GAB, GAB's staff indicated that they will no longer enforce this provision because a recent court decision permanently enjoined GAB from enforcing it.

Statutes indicate that any individual or campaign finance entity that makes a contribution in excess of statutory limits may be required to forfeit three times the excessive amount. GAB's penalty schedule indicates that its staff should require anyone who made an excessive contribution of \$100 or less to provide that amount either to charity or the Common School Fund, and that its staff should require anyone who made an excessive contribution of more than \$100 to provide the excessive amount plus 10.0 percent of that amount to charity or the Common School Fund. We found that the staff's campaign finance audit manual, which GAB did not approve, specifies different penalty amounts. For example, the manual indicates that a penalty should be assessed at the amount of an excessive contribution made to individual candidates, and at 1.5 times the amount of an excessive contribution when an individual contributes more than \$10,000 in total in a calendar year.

***Staff did not assess penalties for violations of campaign finance contribution limits in the amounts specified by GAB's penalty schedule.***

GAB's staff were unable to provide us with complete information on the number of penalties they assessed for violations of campaign finance contribution limits. However, they did provide us with information on the number of penalties that were collected. The available information indicates that staff assessed penalties based on the amounts in the campaign finance audit manual, rather than the amounts specified by GAB's penalty schedule.

As shown in Table 15, GAB collected 107 penalties that had been assessed for statutory violations of campaign contribution limits from January 2010 through December 2013. The amount collected totaled \$276,300. The largest penalty of \$166,900 was collected in 2010 for the circumvention of campaign contribution limits.

Table 15

**Number of Penalties Collected by the Government Accountability Board  
for Violations of Campaign Contribution Limits**

| Violation  | 2010      | 2011      | 2012     | 2013      | Total      |
|--|-----------|-----------|----------|-----------|------------|
| Contributions Exceeded the \$10,000 Annual Limit                                 | 7         | 14        | 4        | 5         | 30         |
| Contributions Exceeded the per-Candidate Limit                                   | 0         | 0         | 0        | 30        | 30         |
| Contributions Exceeded the Percentage Limit from Other Campaign Finance Entities | 0         | 0         | 1        | 20        | 21         |
| Other <sup>1</sup>   | 24        | 0         | 0        | 2         | 26         |
| <b>Total</b>   | <b>31</b> | <b>14</b> | <b>5</b> | <b>57</b> | <b>107</b> |

<sup>1</sup> Includes circumventing campaign contribution limits and other types of violations.

In 2013, GAB's staff issued written warnings to eight individuals who had each donated less than \$50 in excess of statutory limits and to four corporations that had each donated less than \$25 in excess of statutory limits. In none of these instances did staff assess penalties. Staff indicated that although neither GAB's penalty schedule nor the campaign finance audit manual addresses issuing written warnings in lieu of penalties, they determine whether to issue written warnings on a case-by-case basis.

Staff did not regularly update GAB with complete information on the number of violations of campaign contribution limits, the number of assessed penalties, the amounts of assessed penalties, and the amounts of paid and unpaid penalties. It is possible that staff provided GAB with such information during the closed portions of meetings. Because the Attorney General opined in July 2014 that statutes prohibit GAB from providing us with certain records, staff provided us with only redacted minutes for the closed portions of the meetings.

#### Recommendation

*We recommend the Government Accountability Board's staff:*

- *adhere to the Government Accountability Board's February 2008 penalty schedule when assessing penalties for campaign contributions in violation of statutory limits;*
- *track centrally all penalties assessed for violations of campaign finance contribution limits and use the*

*information to report to the Government Accountability Board at least quarterly on all violations of campaign finance contribution limits, whether a penalty was assessed for each violation or a written warning was provided in lieu of a penalty, the amount of each assessed penalty, and the amount of each penalty that was paid and unpaid; and*

- *report to the Joint Legislative Audit Committee by April 15, 2015, on the status of their efforts to implement these recommendations.*

### **Issues for Legislative Consideration**

***The Legislature could consider modifying statutes that require GAB to audit campaign finance reports.***

The Legislature could consider modifying s. 5.05(2), Wis. Stats., which requires GAB to audit campaign finance reports to determine whether violations of campaign finance laws have occurred. Modifying this requirement would reflect that GAB does not have access to information that would allow it to verify the accuracy and completeness of campaign finance reports. For example, GAB's staff are unable to know whether a campaign finance entity reported all contributions it received, as well as whether contributions were used only for political purposes. Until recently, they typically relied on individuals to notify them about suspected noncompliance. However, since 2013 they have electronically reviewed the reports, including by determining if the reports indicate that an individual has donated more than the maximum amount permitted to an individual candidate.

The Legislature could also consider modifying statutes pertaining to campaign finance in Wisconsin to reflect recent court decisions that have found certain aspects of these statutes to be unconstitutional.

### **Training**

GAB is not statutorily required to provide campaign finance training to candidates and other individuals. Nevertheless, its staff conducted a total of 13 such trainings in eight cities throughout the state in 2012 and 2013. Attendance at this training was voluntary. In the future, staff may want to consider soliciting formal feedback from attendees, which may allow them to assess whether training could be modified in order to make it more useful.

### **Advisory Opinions**

Statutes allow any individual to request that GAB provide an advisory opinion about how to comply with campaign finance laws, and GAB must review the request and may issue a formal opinion.

Statutes generally require that GAB's deliberations in reviewing the requests are not open to the public, and the identities of individuals requesting opinions and identities of individuals and organizations mentioned in the opinions must generally be kept confidential. However, statutes require GAB to promptly publish a summary of the opinion that maintains this confidentiality. An individual acting in good faith upon an advisory opinion issued by GAB is not subject to civil or criminal prosecution if the material facts are as represented in the request for advice. Statutes also allow GAB to authorize the Director and General Counsel to issue informal opinions on its behalf. Informal opinions must be consistent with applicable formal opinions issued by GAB, which may withdraw an informal opinion with which it does not agree or issue a revised opinion.

We attempted to determine the number of requests for advisory opinions in recent years, but GAB's staff were unable to provide us with this information. Staff indicated that informal opinions are provided to many of the requests. Staff indicated that only a few requests are submitted to GAB, typically when a request concerns an issue that GAB has not previously addressed, is applicable to a number of individuals, is relatively complex, or is potentially controversial.

***GAB's staff should comply with statutes and publish online summaries of all confidential advisory opinions issued related to compliance with campaign finance laws.***

We found that no summaries of campaign finance opinions from FY 2010-11 through FY 2012-13 were published on GAB's website as of November 2014. However, GAB's staff provided us with three advisory opinions that had been issued during that three-year period, one of which staff indicated was disseminated to the Legislature and, therefore, did not need to be published on GAB's website. Staff indicated that they had limited time to complete the editing of opinions necessary for publication. Staff should comply with statutes and publish online summaries of all confidential advisory opinions that GAB has issued. Doing so will allow individuals to further their understanding of how to comply with campaign finance laws.

#### **Recommendation**

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*We recommend the Government Accountability Board's staff:*

- *comply with statutes and publish on the Government Accountability Board's website summaries of all confidential advisory opinions issued related to compliance with campaign finance laws; and*
- *report to the Joint Legislative Audit Committee by April 15, 2015, on the status of their efforts to implement this recommendation.*

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## Oversight of Lobbying Laws ■

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***GAB is statutorily responsible for overseeing lobbying activities.***

Statutes stipulate that in order to preserve the integrity of the governmental decision-making process, it is necessary to regulate and publicly disclose the identity, expenditures, and activities of entities that hire others or are hired to attempt to influence actions of the legislative and executive branches. A lobbyist attempts to influence legislative or administrative action by communicating with elected state officials, state agency officials, or employees of the Legislature and is compensated for these efforts beyond reimbursement of actual expenses. Principals are associations, partnerships, corporations, or limited liability companies that employ lobbyists. GAB is statutorily responsible for overseeing various lobbying activities. GAB's staff implemented a publicly accessible website that promotes transparency by displaying a variety of lobbying-related information. As noted, GAB can assess financial penalties as part of a settlement agreement. However, when assessing penalties for violations of lobbying laws, we found that staff did not consistently comply with statutes or consistently follow a February 2008 schedule approved by GAB. GAB's staff indicated that they focused their efforts on obtaining compliance with statutory requirements, rather than assessing penalties for statutory violations.

### **Licensing and Registration**

Statutes require lobbyists to apply to GAB for a license. Statutes require principals that spend more than \$500 in a calendar year on

lobbying activities to apply to GAB for registration. Applications for licensure and registration are submitted through GAB's Eye on Lobbying website, which also allows the public to access information on lobbying activities. All licenses and registrations expire on December 31 of each even-numbered year. A lobbyist or a principal employing the lobbyist is statutorily required to file with GAB a written authorization for the lobbyist to represent the principal.

As shown in Table 16, the number of licensed lobbyists and registered principals declined over the three-year period from FY 2010-11 through FY 2012-13.

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Table 16

**Licensed Lobbyists and Registered Principals**

| Fiscal Year | Licensed Lobbyists | Registered Principals |
|-------------|--------------------|-----------------------|
| 2010-11     | 949                | 896                   |
| 2011-12     | 782                | 751                   |
| 2012-13     | 863                | 826                   |

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Statutes require GAB to charge certain specified fees for various lobbying activities. From January 2011 through December 2014, a lobbyist's license costs \$350 if a lobbyist represents one principal or \$650 if a lobbyist represents multiple principals, a principal's registration costs \$375, and written authorization for a lobbyist to represent a principal costs \$125. In January 2011, the fee for a lobbyist's license was increased to help fund development of an upgrade to the Eye on Lobbying website, but in January 2015 the fee will return to its prior cost of \$250 to represent one principal and \$400 to represent multiple principals.

Statutes require GAB to refrain from issuing a lobbyist license and to revoke an existing license when an individual is delinquent in paying state taxes or court-ordered child or family support payments. GAB's Eye on Lobbying website transmits information provided by individuals applying for a lobbying license to the departments of Revenue (DOR) and Children and Families (DCF), which electronically notify GAB's staff if an applicant is delinquent in paying state taxes or court-ordered child or family support payments. Staff refrained from issuing lobbyist licenses to 5 of



the 470 individuals (1.1 percent) who applied for licenses from January 2013 through June 2013 until DOR confirmed that the 5 individuals were no longer delinquent in paying state taxes. However, staff did not arrange for the Eye on Lobbying website to transmit to DOR or DCF the information that would have allowed a determination to be made as to whether to revoke the existing licenses of lobbyists who become delinquent in paying state taxes or court-ordered child or family support payments.

2013 Wisconsin Act 36, which was enacted in July 2013, requires GAB to refrain from issuing a lobbyist license and to revoke an existing license when an individual is delinquent in paying unemployment insurance contributions. The Department of Workforce Development (DWD) is working to promulgate rules for determining whether individuals are delinquent in paying such contributions. Under Act 36, GAB is not required to begin determining whether to issue and revoke the licenses of lobbyists who are delinquent in paying such contributions until after DWD promulgates its rules. GAB's staff indicated that they have since November 2013 contacted DWD in order to determine whether to refrain from issuing lobbyist licenses because individuals are delinquent in paying unemployment insurance contributions.

#### Recommendation

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*We recommend the Government Accountability Board's staff:*

- *comply with statutes and determine whether to revoke the existing licenses of lobbyists who are delinquent in paying state taxes or court-ordered child or family support payments; and*
- *report to the Joint Legislative Audit Committee by April 15, 2015, on the status of their efforts to implement this recommendation.*

## **Oversight Activities**

We assessed the efforts of GAB's staff to oversee lobbying laws. Staff noted that it can be challenging for them to determine whether certain statutory violations have occurred, such as individuals lobbying without a license or written authorization from a principal.

Statutes require each registered principal to file with GAB semiannual expense statements that include lobbying-related expenditures incurred by the principal and all of its lobbyists and the amount of time spent influencing legislative or administrative action. The

expense statement due no later than July 31 must include information pertaining to the period from January 1 through June 30 of the same year, and the expense statement due no later than January 31 must include information pertaining to the period from July 1 through December 31 of the prior year. Expense statements are filed through the Eye on Lobbying website and are publicly accessible.

**From FY 2010-11 through FY 2012-13, principals filed 92.2 percent of semiannual expense statements with GAB on time.**

From FY 2010-11 through FY 2012-13, principals filed 92.2 percent of the 4,319 semiannual expense statements with GAB on time, as shown in Table 17. However, 337 statements (7.8 percent) were filed late. A total of \$92.1 million was spent on lobbying activities over the three-year period, according to expense statements filed with GAB.

Table 17

**Timeliness of Semiannual Expense Statements Filed by Principals with the Government Accountability Board  
FY 2010-11 through FY 2012-13**

|                           | Number       | Percentage of Total |
|---------------------------|--------------|---------------------|
| <b>On Time</b>            | 3,982        | 92.2%               |
| <b>Business Days Late</b> |              |                     |
| 1 to 2                    | 138          | 3.2                 |
| 3 to 6                    | 85           | 2.0                 |
| 7 to 14                   | 48           | 1.1                 |
| 15 to 21                  | 27           | 0.6                 |
| 22 or More                | 39           | 0.9                 |
| <b>Total</b>              | <b>4,319</b> | <b>100.0%</b>       |

Statutes also require each principal to report to GAB on each legislative proposal, budget bill subject, proposed administrative rule, and other topic that the principal communicated to an elected state official, state agency official, or legislative employee in order to attempt to influence an administrative or legislative action. Such communications reports must be filed through the Eye on Lobbying website no later than the end of the 15<sup>th</sup> day after a communication occurred. Statutes state that principals failing to comply with this reporting requirement are forbidden to authorize lobbyists to lobby on their behalf. However, GAB’s staff indicated that they are able to determine compliance with this reporting requirement only if a principal’s semiannual expense statement includes expenses associated with a previously unreported topic about which communication had occurred more than 15 days earlier.

Until recently, statutes allowed lobbyists to personally make, with some exceptions, campaign contributions to partisan elected state officials or candidates for partisan elective state office only between June 1 and the date of a General Election. 2013 Wisconsin Act 153, which was enacted in March 2014, allows lobbyists to personally make contributions between April 15 and the date of a General Election. In 2010 and 2013, GAB's staff compared information in their campaign finance and lobbying databases in order to identify lobbyists who made contributions during statutorily prohibited time periods, but they did not do so in 2011 or 2012 because they indicated that they were busy with tasks related to recall elections.

***Statutes allow forfeitures to be assessed when principals and lobbyists do not comply with lobbying laws.***

Statutes allow forfeitures to be assessed when principals and lobbyists do not comply with lobbying laws. For most violations, a principal may be assessed a forfeiture of no more than \$5,000 and a lobbyist a forfeiture of no more than \$1,000. However, a principal that does not file a communications report on time may be assessed a forfeiture of no more than \$25, provided that the principal has not committed the same offense within the prior three years. Not filing two such reports within a three-year period may result in a forfeiture of no more than \$100 for the second violation.

In February 2008, GAB approved a penalty schedule that:

- indicates a principal should be assessed a penalty of \$600 when a lobbyist has been lobbying on the principal's behalf without written authorization;
- indicates a penalty of \$25 should be assessed when a principal does not report three topics that were communicated to an elected state official, state agency official, or legislative employee in order to attempt to influence an administrative or legislative action, with an added \$25 penalty for the fourth and each additional unreported topic;
- indicates lobbyists' statutorily prohibited campaign contributions of more than \$100 should result in a penalty of \$100, plus 10.0 percent of the prohibited amount; and
- does not specify that penalties should be assessed when semiannual expense statements are not filed on time.

In February 2008, GAB directed its staff to promulgate administrative rules to establish an updated penalty schedule, which is not currently in rules. Although GAB directed its staff in June 2008, March 2009, and September 2011 to take the steps necessary for promulgation, the rule was not promulgated.

***GAB’s staff had no written policies for determining when to assess penalties or waive them.***

We found that GAB’s staff had no written procedures for determining when to assess penalties, when to waive them, or when to issue written warnings in lieu of assessing penalties. In addition, staff were unable to provide us with complete information on the number of penalties assessed in recent years, the amounts assessed, or why penalties were sometimes not assessed or were waived even though statutory violations had occurred. Available information indicates that staff issued an estimated 99 written warnings in lieu of assessing penalties from January 2010 through December 2013.

Staff indicated that they typically assessed penalties on principals only after multiple violations had occurred, and after staff had unsuccessfully attempted to obtain compliance without assessing penalties. Staff also indicated that they sometimes declined to assess penalties because of extenuating circumstances. For example, they typically did not assess penalties when principals filed late expense statements due no later than January 31, 2013, because the Eye on Lobbying website had recently been upgraded and staff allowed principals additional time to adjust to filing through the website.

***Staff did not typically follow GAB’s penalty schedule when assessing penalty amounts.***

The available information indicates that staff typically did not follow GAB’s penalty schedule when assessing penalty amounts. For example, staff indicated that they assessed penalties equal to the amount of statutorily prohibited campaign contributions made by lobbyists, up to the \$1,000 statutory limit. We note that in 2013, staff assessed a penalty of \$2,500 on a lobbyist who had made a statutorily prohibited contribution in that amount. This amount exceeded the \$1,000 statutory limit.

As shown in Table 18, the available information indicates that GAB’s staff assessed an estimated 168 penalties from January 2010 through December 2013 for violations of various lobbying laws.

Table 18

**Estimated Penalties Assessed by the Government Accountability Board’s Staff for Violations of Lobbying Laws**  
January 2010 through December 2013

| Violation   | Number     |
|---|------------|
| Late Communications Report                                | 81         |
| Statutorily Prohibited Lobbyist Contribution <sup>1</sup> | 68         |
| Late Semiannual Expense Statement                         | 18         |
| Late Lobbyist Authorization                               | 1          |
| <b>Total</b>  | <b>168</b> |

<sup>1</sup> Includes only personal contributions made by lobbyists.

GAB's staff waived 19 of the 168 penalties for various reasons, such as a principal being newly registered. As of January 2014, principals and lobbyists had paid 131 of the 149 penalties that were not waived. As shown in Table 19, the amount paid totaled \$19,118.

Table 19

**Penalties Paid by Principals and Lobbyists for Violations of Lobbying Laws<sup>1</sup>**

|   | Number     | Amount          |
|---|------------|-----------------|
| Statutorily Prohibited Lobbyist Contribution <sup>2</sup> | 63         | \$12,693        |
| Late Communications Report                                | 56         | 4,475           |
| Late Semiannual Expense Statement                         | 11         | 1,700           |
| Late Lobbyist Authorization                               | 1          | 250             |
| <b>Total</b>  | <b>131</b> | <b>\$19,118</b> |

<sup>1</sup> Penalties assessed from January 2010 through December 2013 and paid as of January 2014.

<sup>2</sup> Includes only personal contributions made by lobbyists.

GAB was regularly updated by its staff on some aspects of the enforcement of lobbying laws, including the number of penalties assessed since staff last updated GAB and the amounts of those particular penalties that had been paid. However, the available information indicates that GAB was not regularly updated on the number and amount of penalties that remained unpaid over longer periods of time. It is possible that staff provided GAB with such information during the closed portions of meetings. Because the Attorney General opined in July 2014 that statutes prohibit GAB from providing us with certain records, staff provided us with only redacted minutes for the closed portions of the meetings.

If a principal does not file a timely and complete semiannual expense statement, s. 13.68(6), Wis. Stats., requires GAB to mail the principal and all of its lobbyists a notice stating that unless the delinquent statement is filed within ten business days, no lobbyist may lobby on the principal's behalf until the statement is filed. GAB's staff indicated that they have never invoked this penalty, which they believe may infringe upon a principal's constitutional rights to petition the government, and have not asked the Legislature to consider modifying this provision.

### Recommendation

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*We recommend the Government Accountability Board's staff:*

- *adhere to the Government Accountability Board's February 2008 penalty schedule when assessing penalties;*
- *track centrally all penalties assessed for violations of lobbying laws, all penalties waived and the reasons for waiving them, and all written warnings provided in lieu of assessing penalties and the reason for each written warning and use the information to report to the Government Accountability Board at least quarterly on the number of violations of each lobbying law, whether a penalty was assessed for each violation, the amount of each assessed and waived penalty, and the amount of each penalty that was paid and unpaid;*
- *comply with s. 13.68(6), Wis. Stats., by prohibiting principals that have not filed timely semiannual expense statements from allowing lobbyists to lobby on their behalf or request that the Legislature modify this provision; and*
- *report to the Joint Legislative Audit Committee by April 15, 2015, on the status of their efforts to implement these recommendations.*

## **Reports to the Legislature**

Beginning on the third Tuesday after the beginning of a regular or special session of the Legislature and every Tuesday thereafter during a session, GAB is statutorily required to submit to the chief clerks of each house of the Legislature reports that include specified information, including the names of licensed lobbyists, the names of state agency employees whose regular duties include attempting to influence legislative action, the names of principals or agencies they represent, and the general areas of legislative and administrative action that are the object of lobbying activity. These reports were submitted from FY 2010-11 through FY 2012-13. The reports did not include the names of state agency employees or the general areas of legislative and administrative action, but this information is available on GAB's Eye on Lobbying website, which was noted in the reports submitted to the Legislature.

GAB is also statutorily required to include in its biennial report to the Legislature a summary of the semiannual expense statements that principals must file and a summary of the reports that state agencies must file with it semiannually on the identities of employees whose regular duties include attempting to influence legislative action. We found that neither of these summaries were included in the biennial reports submitted to the Legislature for the 2009-2010 and 2011-2012 legislative sessions.

### Recommendation

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*We recommend the Government Accountability Board's staff:*

- *include in the weekly reports to the Legislature while the Legislature is in session all statutorily required information about lobbying activities or request that the Legislature modify statutes to allow these reports to exclude information that is publicly available on the Eye on Lobbying website;*
- *include in the biennial reports to the Legislature all statutorily required information; and*
- *report to the Joint Legislative Audit Committee by April 15, 2015, on the status of their efforts to implement these recommendations.*

### Issues for Legislative Consideration

***The Legislature could consider modifying statutes that require GAB to examine semiannual expense statements submitted by principals.***

The Legislature could consider modifying s. 13.74(1), Wis. Stats., which requires GAB to examine all semiannual expense statements submitted by principals. Modifying this requirement would reflect that GAB does not have access to information that would allow it to verify the accuracy and completeness of the semiannual expense statements. For example, GAB's staff are unable to know whether a principal reported all lobbying-related expenditures.

***The Legislature could consider modifying how GAB provides it with certain lobbying-related information.***

If the Legislature believes that the weekly reports containing information about lobbying activities are no longer necessary because GAB's Eye on Lobbying website contains the statutorily required information, it could consider modifying s. 13.685(7), Wis. Stats., to require GAB to post the information on a publicly accessible website only. Alternatively, it could require GAB to post the statutorily required information on a publicly accessible website and require GAB to submit monthly reports with the statutorily required information.

## Training

Statutes require GAB to administer programs to interpret and explain state lobbying laws for state public officials, candidates for state public office, legislative officials, agency officials, lobbyists, and others. However, statutes do not require individuals to attend any of these trainings. In 2013, GAB's staff offered eight trainings, all of which were intended for newly licensed lobbyists. The available information indicates that 104 individuals attended the eight trainings. In the future, staff may want to consider soliciting formal feedback from attendees, which may allow them to assess whether training could be modified in order to make it more useful.

## Advisory Opinions

Statutes allow any individual to request that GAB provide an advisory opinion about how to comply with lobbying laws, and GAB must review the request and may issue a formal opinion. Statutes generally require that GAB's deliberations in reviewing the requests are not open to the public, and the identities of individuals requesting opinions and identities of individuals and organizations mentioned in the opinions must generally be kept confidential. However, statutes require GAB to promptly publish a summary of the opinion that maintains this confidentiality. An individual acting in good faith upon an advisory opinion issued by GAB is not subject to civil or criminal prosecution if the material facts are as represented in the request for advice. Statutes also allow GAB to authorize the Director and General Counsel to issue informal opinions on its behalf. Informal opinions must be consistent with applicable formal opinions issued by GAB, which may withdraw an informal opinion with which it does not agree or issue a revised opinion.

***GAB's staff should comply with statutes and publish online summaries of all confidential advisory opinions issued related to compliance with lobbying laws.***

We attempted to determine the number of requests for advisory opinions in recent years, but GAB's staff were unable to provide us with this information. Staff provided us with two advisory opinions issued from FY 2010-11 through FY 2012-13. As of November 2014, a summary of one of the advisory opinions, released in 2010, was published on GAB's website. GAB's staff should comply with statutes and publish online summaries of all confidential advisory opinions that GAB has issued. Doing so will allow individuals to further their understanding of how to comply with lobbying laws.



**Recommendation**

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*We recommend the Government Accountability Board's staff:*

- *comply with statutes and publish on the Government Accountability Board's website summaries of all confidential advisory opinions issued related to compliance with lobbying laws; and*
- *report to the Joint Legislative Audit Committee by April 15, 2015, on the status of their efforts to implement this recommendation.*

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## Oversight of Code of Ethics Laws ■

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***GAB oversees the code of ethics, in part, by collecting statements of economic interests from certain state officials and employees.***

Statutes include a code of ethics that helps state officials and employees to avoid conflicts between their personal interests and public responsibilities, thereby promoting and strengthening the faith and confidence of Wisconsin citizens in these officials and employees. GAB oversees the code of ethics, in part, by collecting statements of economic interests from certain state officials and employees and providing training and advisory opinions to individuals who have questions about complying with the code of ethics. In order to promote transparency, GAB's staff post to a publicly accessible website a portion of the information on the statements of economic interests. As noted, GAB can assess financial penalties as part of a settlement agreement. However, when assessing penalties on individuals who did not file statements of economic interests on time, we found that staff did not consistently follow a February 2008 penalty schedule approved by GAB. GAB's staff indicated that they focused their efforts on obtaining compliance with statutory requirements, rather than assessing penalties for statutory violations.

### **Statements of Economic Interests**

Statutes require annual statements of economic interests to be filed with GAB by certain state officials and employees, including candidates for state office; most individuals who are nominated by the Governor for appointment to state public office and whose nominations require the Senate's advice and consent; and most employees of legislative service agencies, including the Legislative Audit Bureau. The statements require individuals to disclose a variety of information, including investments and debts of

\$5,000 or more held or owed by the individuals and their immediate family members; certain other sources of income, such as from a business, of more than \$1,000 in the preceding tax year; ownership interests in real property other than a principal residence; and gifts worth more than \$50 that were not received from family members. An individual who in January of any year holds a position for which he or she is statutorily required to file a statement must do so by April 30 of that year, and the statement must contain information that is current as of December 31 of the prior year. An individual who has not previously filed a statement in a given year, as well as gubernatorial nominees requiring the advice and consent of the Senate, must file a statement within 21 days of assuming office or being nominated. Statutes also stipulate various filing deadlines for candidates for state office.

Statutes require GAB to make most statements of economic interests available for public inspection. From January 2010 through December 2013, GAB received 239 requests to examine statements. On average, each request asked for the statements of 24.7 individuals.

Although they are not statutorily required to do so, GAB's staff have posted to a publicly accessible website a portion of the information that individuals submitted in their statements of economic interests. Staff indicated that they posted the information online in order to promote transparency and allow the public to more easily access the information.

Table 20 shows the number of positions for which individuals were statutorily required to file statements of economic interests from 2010 through 2013. A total of 3,588 unique individuals were required to file at least one statement during this four-year period. Individuals who hold multiple positions requiring a statement to be filed need to file only one statement in a given year.

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Table 20  
Positions Requiring Individuals to File a Statement of Economic Interests,  
by Government Branch<sup>1</sup>

|              | 2010         | 2011         | 2012         | 2013         |
|--------------|--------------|--------------|--------------|--------------|
| Executive    | 1,476        | 1,578        | 1,370        | 1,552        |
| Judicial     | 684          | 675          | 614          | 631          |
| Legislative  | 549          | 422          | 458          | 506          |
| <b>Total</b> | <b>2,709</b> | <b>2,675</b> | <b>2,442</b> | <b>2,689</b> |

<sup>1</sup> A total of 3,588 unique individuals were required to file at least one statement of economic interests during this four-year period.

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***GAB's staff provided information on whether all individuals filed the required statements of economic interests in 2012 and 2013.***

Most individuals who are required to file statements of economic interests must do so by April 30 of a given year. GAB's staff were unable to provide information on whether all individuals filed the required statements in 2010 and 2011, but they did provide this information for the two subsequent years.

GAB's staff indicated that they review each filed statement of economic interests and assess whether it appears to be complete. However, they do not have access to information that would allow them to determine whether the statements are accurate and complete.

On its own motion, or at the request of an individual required to file a statement of economic interests, statutes allow GAB to extend the filing deadline or to waive the filing requirement if it determines that an extension is in the public's interest or that filing would cause an unreasonable hardship on an individual. Statutes require GAB to set forth in writing its reasons for granting a filing extension or a waiver. GAB's staff indicated that if an individual requests a filing extension, they typically allow the individual a few extra weeks to file. Staff did not have written policies for allowing extensions, did not track how often they allowed them in recent years, and did not set forth in writing the reasons for granting extensions. Meeting minutes indicate that GAB did not waive the filing requirement in recent years.

When an individual does not file a statement of economic interests on time, statutes require GAB to promptly notify DOA and the individual's employing agency, which must withhold all compensation until GAB notifies them that the individual has filed a statement. We found that GAB did not notify DOA or employing agencies when individuals did not file statements on time in recent years. GAB's staff indicated that they instead try to work with individuals to receive the statements.

Statutes allow a civil forfeiture of up to \$500 to be assessed when an individual does not file a statement on time. In February 2008, GAB approved a schedule for assessing penalties when statements of economic interests are filed late. Under this schedule, individuals who file statements up to 15 days late are to be assessed a \$10 penalty, and individuals who file statements 16 days or more late are to be assessed a \$50 penalty. In February 2008, GAB directed its staff to promulgate administrative rules to establish an updated penalty schedule, which is not currently in rules. The updated schedule would have required the following penalties to be assessed: \$10 for statements filed 6 to 10 days late, \$50 for statements filed 11 to 25 days late, \$100 for statements filed 26 to 30 days late, and \$250 for statements filed more than 30 days late. Although GAB directed its staff in June 2008, March 2009, and September 2011 to

take the steps necessary for promulgation, the rule was not promulgated.

Separate from GAB’s penalty schedule, staff have a manual indicating the penalty amounts to be assessed when individuals do not file statements of economic interests on time. Under this manual, which GAB has not approved, individuals who file statements 15 to 21 days late are to be assessed a \$10 penalty, and individuals who file more than 21 days late are to be assessed a \$50 penalty.

***GAB’s staff were unable to provide information on how often they assessed penalties for late statements of economic interests.***

We examined GAB’s records for all 9,753 statements of economic interests filed from January 2010 through December 2013 and found that 783 statements (8.0 percent) were filed late. If an individual files a statement late, GAB’s staff indicated that they mail the individual at least one letter that explains the statutory obligation to file a statement and the penalty amount that will be assessed if a statement is not filed promptly. We found that the amounts of penalties cited in these letters sometimes differed from both the amounts in GAB’s penalty schedule and the amounts in the manual used by GAB’s staff. We attempted to determine the number of penalties assessed, but GAB’s staff were unable to provide us with the information. However, they did track the number of penalties paid.

As shown in Table 21, 15 individuals paid a total of \$550 in penalties for filing statements of economic interests late from January 2010 through December 2013. GAB’s staff indicated that they typically do not attempt to collect assessed penalties if individuals subsequently file the statements because they believe their primary goal is to ensure that the statements are submitted, not to assess penalties.

Table 21

**Penalties Paid by Individuals Who Filed Statements of Economic Interests Late**

| Year         | Individuals | Amount       |
|--------------|-------------|--------------|
| 2010         | 9           | \$410        |
| 2011         | 1           | 10           |
| 2012         | 3           | 30           |
| 2013         | 2           | 100          |
| <b>Total</b> | <b>15</b>   | <b>\$550</b> |

Staff regularly updated GAB about some issues related to the statements of economic interests, including the extent to which statements were not filed on time. However, the available information indicates that staff did not regularly update GAB with complete information on the extent to which they assessed penalties for late statements, the amounts of assessed penalties, or the amounts of penalties paid by individuals. It is possible that staff provided GAB with such information during the closed portions of meetings. Because the Attorney General opined in July 2014 that statutes prohibit GAB from providing us with certain records, staff provided us with only redacted minutes for the closed portions of the meetings.

### Recommendation

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*We recommend the Government Accountability Board's staff:*

- *develop written policies for granting individuals extensions to the deadline for filing statements of economic interests and comply with statutes by setting forth in writing the reasons for granting each extension;*
- *comply with statutes and promptly notify the Department of Administration and the employing agency when an individual does not file a statement of economic interests on time;*
- *track centrally how often they assess penalties on individuals who have not filed statements of economic interests on time and the amounts of the assessed penalties and use this information to report to the Government Accountability Board at least quarterly on the extent to which statements were not filed on time, whether a penalty was assessed for each violation, the amount of each penalty assessed, and the amount of each penalty that was paid and unpaid;*
- *adhere to the Government Accountability Board's February 2008 penalty schedule when assessing penalties on individuals who do not file statements of economic interests on time;*
- *present to the Government Accountability Board for its approval policies indicating when staff should not attempt to collect penalties that have been assessed on individuals who do not file statements of economic interests on time; and*

- *report to the Joint Legislative Audit Committee by April 15, 2015, on the status of their efforts to implement these recommendations.*

## **Training**

Statutes do not require state officials or employees to complete training on the code of ethics. However, in October 2001, legislative leaders in the Senate and Assembly signed an agreement with the former State Ethics Board and the former State Elections Board. Under the agreement, which GAB follows, GAB's staff provide annual training on the code of ethics to legislative staff, with training in election years occurring before nomination papers begin to be circulated on April 15. GAB's staff also provide training to members of the Governor's cabinet, staff in the Governor's office, and staff of the State of Wisconsin Investment Board (SWIB) and the Wisconsin Economic Development Corporation (WEDC). GAB's staff indicated that, if requested, they provide training tailored to specific audiences, such as the employees of a state agency. Staff indicated that they provided 15 trainings in 2013, and that the Senate and Assembly chief clerks track the attendance of training provided to legislative staff.

## **Advisory Opinions**

Statutes allow any individual to request that GAB provide an advisory opinion about how to comply with ethics laws, and GAB must review the request and may issue a formal opinion. Statutes generally require that GAB's deliberations in reviewing the requests are not open to the public, and the identities of individuals requesting opinions and identities of individuals and organizations mentioned in the opinions must generally be kept confidential. However, statutes require GAB to promptly publish a summary of the opinion that maintains this confidentiality. An individual acting in good faith upon an advisory opinion issued by GAB is not subject to civil or criminal prosecution if the material facts are as represented in the request for advice. Statutes also allow GAB to authorize the Director and General Counsel to issue informal opinions on its behalf. Informal opinions must be consistent with applicable formal opinions issued by GAB, which may withdraw an informal opinion with which it does not agree or issue a revised opinion.

We attempted to determine the number of requests for advisory opinions in recent years, but GAB's staff were unable to provide us with this information. As of November 2014, GAB had published on its website summaries of 151 advisory opinions related to ethics



issues, including summaries of 141 advisory opinions provided by the former State Ethics Board from 1991 through 2007 and summaries of 10 advisory opinions provided by GAB from 2008 through 2013. Staff provided us with two advisory opinions related to ethics issues. Summaries of both are published on GAB's website.

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## Complaints ■

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Statutes allow any individual to file a complaint with GAB alleging a violation of any election, campaign finance, lobbying, or code of ethics law that GAB oversees. GAB is statutorily required to investigate violations of those laws and may prosecute alleged civil violations. In addition, after investigating complaints regarding the conduct of election officials, statutes allow GAB to issue orders requiring the officials to conform to the law. The Ethics and Accountability Division and the Elections Division used different procedures to consider complaints. We found that both divisions lacked written procedures, did not track all complaints received or how complaints were resolved, and did not report regularly to GAB with complete information on the status and resolution of all complaints.

Individuals can file complaints in a variety of ways, including through several forms on GAB's website, e-mail messages, and letters. GAB's staff determine whether they are able to consider a complaint informally without the involvement of GAB, or whether a complaint merits the involvement of GAB, which may decide to initiate an investigation. We received and analyzed both complaints that were considered informally by staff and those complaints that involved GAB.

We were unable to fully assess efforts to consider complaints, in part, because GAB's staff did not maintain complete information about all complaints filed, including how they considered complaints. In addition, as noted, in July 2014 the Attorney General opined that statutes prohibit GAB from providing certain records to

us. In response to our request for information on all complaints received, GAB's staff provided us with information about a selected 576 complaints filed with the Elections Division in recent years, including the names of the complainants and the individuals against whom complaints were filed, but they provided us with no information about what they indicated were 1,334 other election-related complaints. We were unable to independently confirm any information about these 1,334 complaints, including whether that is the actual number of complaints for which we were provided no information or the extent to which these complaints differed from the selected 576 complaints for which we were provided information.

The selected 576 complaints for which we were provided information may represent only a small portion of the overall number of elections-related complaints filed with GAB in recent years. In addition, the nature of these 576 complaints may differ considerably from that of the 1,334 complaints for which we were provided no information. If we had been allowed to examine all complaints filed with GAB in recent years, our analytical conclusions about GAB's efforts to consider complaints may have differed.

### **Complaints Filed with the Ethics and Accountability Division**

***GAB's staff did not have written policies or standardized procedures for considering complaints filed with the Ethics and Accountability Division.***

We found that GAB's staff did not have written policies or standardized procedures for considering complaints filed with the Ethics and Accountability Division. Administrative rules promulgated in 1994 describe procedures for considering complaints, but many of the provisions are no longer in effect because they describe procedures for considering complaints filed under a statutory section that was modified by 2007 Wisconsin Act 1. In July 2013, the Governor approved GAB's scope statement for revised rules, but GAB had not yet promulgated the revised rules as of September 2014.

GAB's staff indicated that each complaint involving a campaign finance, lobbying, or code of ethics issue is reviewed in order to determine whether it should be dismissed immediately, typically because the issue is unrelated to GAB's statutory authority. For example, inmates file complaints to GAB about the quality of their legal representation and their treatment in correctional facilities. GAB's staff did not track how many complaints they received and dismissed immediately from FY 2010-11 through FY 2012-13.

Complaints that the division's administrator determines warrant consideration are divided into two categories. First, some complaints can be resolved quickly. For example, if an individual alleges that a yard sign placed in support of a candidate for political office does not comply with statutes because the yard sign fails to indicate who paid for it, GAB's staff may instruct the candidate to alter the sign to include the required information. If the candidate agrees to do so, staff consider the complaint to be resolved without needing to involve GAB. We were unable to determine how many complaints were resolved quickly from FY 2010-11 through FY 2012-13 because GAB's staff did not track all such complaints.

Second, some complaints cannot be resolved quickly but instead warrant an inquiry by GAB's staff, who attempt to interview the relevant individuals and request the information necessary to assess the complaint's validity. These complaints involve instances in which a reasonable suspicion exists that a statutory violation may have occurred, such as the misuse of campaign finance funds, improper campaign contributions, or the misuse of public office for political purposes. In addition, when staff identify a potential concern while completing their job duties, the division's administrator may initiate an inquiry even if a complaint has not been filed. For example, an audit of a candidate's campaign finance report may suggest that some required information has been excluded.

GAB's staff provided us with information on 189 inquiries that the Ethics and Accountability Division initiated from FY 2010-11 through FY 2012-13. Because staff do not maintain complete information, additional inquiries may have been initiated during this three-year period.

***From FY 2010-11 through FY 2012-13, the Ethics and Accountability Division initiated an estimated 189 inquiries.***

As shown in Table 22, the estimated 189 inquiries initiated by the Ethics and Accountability Division from FY 2010-11 through FY 2012-13 included 109 inquiries initiated as a result of complaints and 80 inquiries initiated as a result of potential concerns identified by GAB's staff. A total of 155 of these 189 inquiries (82.0 percent) concerned campaign finance issues. In providing us with information about these 189 inquiries, GAB's staff cited confidentiality provisions in statutes and redacted the names of the complainants and the names of the individuals subject to the inquiries. As noted, in July 2014 the Attorney General opined that statutes prohibit GAB from providing us with certain records.

Table 22

**Estimated Number of Inquiries Initiated by the Ethics and Accountability Division<sup>1</sup>**  
 FY 2010-11 to FY 2012-13

| Type of Issue           | Inquiries Initiated as a Result of: |  | Total      |
|-------------------------|-------------------------------------|--|------------|
|                         | Complaints Filed by Individuals     | Potential Concerns Identified by GAB's Staff |            |
| Campaign Finance        | 93                                  | 62   | 155        |
| Ethics                  | 8                                   | 6  | 14         |
| Lobbying                | 2                                   | 11   | 13         |
| Ethics/Campaign Finance | 4                                   | 1  | 5          |
| Unknown                 | 2                                   | 0  | 2          |
| <b>Total</b>            | <b>109</b>                          | <b>80</b>                                    | <b>189</b> |

<sup>1</sup> Based on information provided by GAB's staff.

Based on the results of an inquiry, the division's administrator may:

- dismiss the issue and take no further action;
- assess a penalty as part of a settlement agreement that typically requires an individual or organization to pay the penalty and follow all relevant statutory requirements, or else an increased penalty amount will be assessed; or
- refer the issue to GAB for its consideration.

We attempted to determine the resolution of the 189 inquiries for which GAB's staff provided us information. As of December 2013, the status of 30 inquiries (15.9 percent) was unclear, although information provided by staff indicated that some inquiries were likely ongoing.

***As of December 2013, staff had resolved an estimated 149 of 189 inquiries without referring the issues to GAB.***

As of December 2013, staff had resolved an estimated 149 of these 189 inquiries (78.8 percent) without referring the issues to GAB. The available information indicates that it took an average of 84 days to complete 139 of these 149 inquiries, but the information did not indicate the amount of time to complete 10 inquiries. As shown in Table 23, information provided by GAB's staff indicated that 39.6 percent of these 149 inquiries took more than 90 days to complete, including one that took 686 days to complete.

Table 23

**Estimated Length of Time to Complete Ethics and Accountability Division Inquiries<sup>1</sup>**

| Days          | Inquiries  | Percentage of Total |
|---------------|------------|---------------------|
| 1 to 10       | 10         | 6.7%                |
| 11 through 30 | 24         | 16.1                |
| 31 through 60 | 32         | 21.5                |
| 61 through 90 | 14         | 9.4                 |
| More than 90  | 59         | 39.6                |
| Unknown       | 10         | 6.7                 |
| <b>Total</b>  | <b>149</b> | <b>100.0%</b>       |

<sup>1</sup> Based on information provided by GAB's staff. Includes inquiries initiated from FY 2010-11 through FY 2012-13 and resolved as of December 2013.

We reviewed information provided by GAB's staff to determine the resolution of these 149 inquiries. We found:

- 92 inquiries (61.7 percent) resulted in no further action taken.
- 54 inquiries (36.2 percent) resulted in 53 assessed penalties totaling \$65,300, or an average of \$1,232 per penalty. Through December 2013, all 53 penalties had been paid.
- 3 inquiries (2.0 percent) resulted in campaign finance committees being suspended from raising and disbursing funds until they complied with campaign finance laws.

The division's administrator indicated that if completing an inquiry would require a significant amount of staff time or the use of GAB's statutorily authorized subpoena powers in order to obtain needed information, the issue is referred to GAB, which may vote to initiate an investigation if reasonable suspicion exists that a statutory violation may have occurred. Information provided by staff indicated that 13 of the 189 inquiries (6.9 percent) for which staff provided us information resulted in GAB initiating investigations, including 7 investigations of campaign finance issues, 4 investigations of ethics issues, 1 investigation of a

lobbying issue, and 1 investigation of an ethics and campaign finance issue. This information indicated that 10 of these 13 investigations were completed as of December 2013, with no action taken after 9 investigations and a \$500 penalty assessed after 1 investigation. The status of 3 of these 13 investigations was unclear. Citing confidentiality provisions in statutes, GAB's staff declined to provide us with complete information about these 13 investigations. As noted, in July 2014 the Attorney General opined that statutes prohibit GAB from providing us with certain records.

Statutes allow GAB to retain special investigators to conduct investigations. Staff indicated that GAB may appoint a special investigator if an investigation is expected to be time-consuming. The administrator of the Ethics and Accountability Division is statutorily required to provide GAB with the names of three qualified individuals who could be retained as a special investigator. GAB's staff cited confidentiality provisions in statutes and declined to provide us with complete information related to special investigators, including the contracts to hire them. As noted, in July 2014 the Attorney General opined that statutes prohibit GAB from providing us with certain records. As a result, we are unable to assess GAB's use of special investigators, including how frequently and why they were retained.

## **Complaints Filed with the Elections Division**

In addition to GAB's general statutory authority under s. 5.05(2m), Wis. Stats., to investigate complaints alleging violations of election, campaign finance, lobbying, and code of ethics laws, s. 5.06, Wis. Stats., permits GAB to investigate written, sworn complaints filed by electors who believe that election officials have acted contrary to the law in administering elections. As permitted by statutes, GAB delegated to its Director and General Counsel the authority to intervene in any civil action to enforce election and election campaign laws.

***GAB's staff did not have written policies or standardized procedures for considering election-related complaints.***

We found that GAB's staff did not have written policies or standardized procedures for considering election-related complaints. GAB's staff indicated that they typically handled election-related complaints informally, such as by contacting the complainant and the subject of the complaint in order to obtain more information, and that they were often able to resolve complaints quickly and without taking any enforcement actions or involving GAB. For example, in response to a complaint alleging that a municipal clerk running for reelection was lingering at a polling place, staff contacted the clerk, who denied the allegation



and stated he was aware that he should not linger at the polling place. Staff have been instructed to refer complex issues to the division's administrator, legal staff, or the Director and General Counsel.

***GAB's staff did not track information regarding all complaints.***

We were unable to determine the precise number of election-related complaints submitted from FY 2010-11 through FY 2012-13, in part, because GAB's staff did not track information regarding all complaints. In addition, staff cited confidentiality provisions in statutes as the reason for not providing us with detailed information on certain election-related complaints. GAB's staff indicated, but we cannot independently confirm, that they received 1,334 such complaints during our three-year audit period. As noted, in July 2014 the Attorney General opined that statutes prohibit GAB from providing us with certain records.

As noted and in response to our request for all election-related complaints, GAB's staff provided us with information on 576 selected election-related complaints. As shown in Table 24, these complaints concerned:

- local election officials, including allegations of these officials not acting in an impartial manner and allegations of errors made at polling places, such as a registered voter being asked to provide identifying documents not required by statutes;
- voter intimidation, including allegations of activity intended to influence voting near a polling place and allegations of false statements regarding voter eligibility requirements;
- election fraud, including allegations of voters given ballots marked to indicate votes for candidates and allegations of recall petitions containing duplicate signatures; and
- candidacy issues, including allegations of nomination papers containing an insufficient number of valid signatures to permit candidates to appear on the ballot.

Table 24

**Selected Election-Related Complaints, by Category<sup>1</sup>**

| Category <sup>2</sup>    | FY 2010-11 | FY 2011-12 | FY 2012-13 | Total      | Percentage of Total |
|--------------------------|------------|------------|------------|------------|---------------------|
| Local Election Officials | 90         | 99         | 72         | 261        | 45.3%               |
| Voter Intimidation       | 37         | 99         | 32         | 168        | 29.2                |
| Election Fraud           | 30         | 54         | 12         | 96         | 16.7                |
| Candidacy Issues         | 14         | 33         | 4          | 51         | 8.9                 |
| <b>Total</b>             | <b>171</b> | <b>285</b> | <b>120</b> | <b>576</b> | <b>100.0%</b>       |

<sup>1</sup> Based on information provided by GAB's staff. Excludes 1,334 complaints for which staff declined to provide us information, based on a July 2014 Attorney General's Opinion, and other complaints that staff did not track.

<sup>2</sup> Complaints submitted through forms on GAB's website were categorized by the individuals who submitted them.

***As of November 2013, GAB's staff had resolved 56.4 percent of 576 selected election-related complaints filed from FY 2010-11 through FY 2012-13.***

As of November 2013, GAB's staff had resolved 56.4 percent of 576 selected election-related complaints filed from FY 2010-11 through FY 2012-13, as shown in Table 25. Staff indicated that they did not have the necessary staff and time to resolve complaints on a regular basis, in part, because they were busy helping to administer elections, training and assisting local election officials, and implementing changes to election laws. Staff did not report to GAB the extent to which election-related complaints were unresolved, in part, because they indicated that they considered many of these complaints informally.

Table 25

**Resolution Status of Selected Election-Related Complaints<sup>1</sup>**  
As of November 2013

| Fiscal Year<br>Complaints<br>Were Filed | Unresolved | Resolved   | Total      | Percentage<br>Resolved |
|---|------------|------------|------------|------------------------|
| 2010-11                                 | 0          | 171        | 171        | 100.0%                 |
| 2011-12                                 | 137        | 148        | 285        | 51.9                   |
| 2012-13                                 | 114        | 6          | 120        | 5.0                    |
| <b>Total</b>                            | <b>251</b> | <b>325</b> | <b>576</b> | <b>56.4</b>            |

<sup>1</sup> Based on information provided by GAB's staff. Excludes 1,334 complaints for which staff declined to provide us information, based on a July 2014 Attorney General's Opinion, and other complaints that staff did not track.

GAB’s staff provided us with information on 56 inquiries initiated as a result of the 576 selected election-related complaints. These inquiries were initiated under GAB’s authority in s. 5.06, Wis. Stats., to consider complaints against election officials. In June 2012, staff stopped tracking these inquiries centrally. Information provided by staff indicates that 46 of these 56 inquiries (82.1 percent) concerned allegations that candidates were not qualified to appear on ballots because of nomination paper deficiencies, such as an insufficient number of valid nomination signatures. Other inquiries concerned allegations that election officials acted contrary to election laws.

As shown in Table 26, 73.2 percent of 56 inquiries conducted under GAB’s statutory authority to consider complaints against election officials did not substantiate the complaints, according to information provided by GAB’s staff.

Table 26

**Results of the Elections Division’s Inquiries of Selected Complaints<sup>1</sup>**

|                             | Number    | Percentage of Total |
|-----------------------------|-----------|---------------------|
| Complaint Not Substantiated | 41        | 73.2%               |
| Complaint Substantiated     | 10        | 17.9                |
| Other <sup>2</sup>          | 5         | 8.9                 |
| <b>Total</b>                | <b>56</b> | <b>100.0%</b>       |

<sup>1</sup> Based on information provided by GAB’s staff. Includes inquiries conducted under GAB’s statutory authority to consider complaints against election officials.

<sup>2</sup> Includes three withdrawn complaints, one complaint dismissed because it was not filed in a timely manner, and one complaint not resolved in a timely manner.

After an inquiry’s completion, statutes allow GAB to issue an order to an election official to conform his or her conduct to the law, restrain an official from taking any action inconsistent with the law, or require an official to correct any action or decision inconsistent with the law. An order is also sometimes issued when a complaint is unsubstantiated. For example, after the dismissal of a complaint alleging that incorrect procedures were used to nominate two candidates for local public office, a municipal clerk was ordered to place the two candidates on the ballot. The resolution of the

56 inquiries for which GAB's staff provided us information resulted in 25 orders, according to information provided by GAB's staff.

***The available information indicates that staff did not always inform GAB about orders issued by the Director and General Counsel.***

As permitted by statutes, GAB has delegated to its Director and General Counsel the authority to issue orders. Before an order is issued, however, GAB requires the Director and General Counsel to consult with GAB's chairperson, who determines whether GAB should meet or be polled before an order is issued. If the chairperson chooses not to convene or poll GAB, the Director and General Counsel is authorized to issue the order. If the Director and General Counsel issues an order, GAB requires its staff to inform it about the order at its first meeting after the order's issuance. Through May 2014, we found that staff did not inform GAB about 19 of the 25 orders provided to us. It is possible that staff provided GAB with such information during the closed portions of meetings. Because the Attorney General opined in July 2014 that statutes prohibit GAB from providing us with certain records, staff provided us with only redacted minutes for the closed portions of the meetings. GAB was informed in open meeting about 2 of these 25 orders and was involved in issuing 4 other orders.

Because GAB does not require its staff to report on the status of all inquiries that are ongoing or do not result in the issuance of an order, it may not know if these inquiries are completed in a timely manner. For example, we found that one inquiry became irrelevant because it remained unresolved six months after a complaint had been filed against local election officials. Staff did not inform GAB in an open meeting that the inquiry was not completed.

## **Improving Complaint Procedures**

GAB's staff should improve the procedures used to consider complaints. First, they should present to GAB for its approval written policies for considering complaints, including conducting inquiries into potential concerns identified by staff of the Ethics and Accountability Division. Doing so will help to ensure that all complaints and potential concerns are considered in a consistent manner. We note that we recommended in report 07-16 that GAB establish written policies for resolving election-related complaints, but the policies were not established.

Second, GAB's staff should maintain complete information in a centralized location about all complaints. Information should include who filed each complaint, if known, and the date it was filed; the nature of the complaint; the resolution of the complaint; the date the complaint was resolved; and an explanation of the resolution. Similar information should be maintained for inquiries

conducted as a result of potential concerns identified by staff of the Ethics and Accountability Division. This information will help to ensure that complaints are considered in a consistent and timely manner. In addition, staff could use this information as a resource when considering other complaints. We note that in its 2015-17 Biennial Budget Request, GAB requested staffing and IT resources to improve its efforts to track complaints.

Third, staff should report to GAB regularly on the status and resolution of all complaints and inquiries. This information will allow GAB to know whether complaints and inquiries were considered in a consistent and timely manner. As part of the information to be reported, GAB should be informed whenever the Director and General Counsel issues an order to an election official.

### Recommendation

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*We recommend the Government Accountability Board's staff:*

- *present to the Government Accountability Board for its approval written policies for considering complaints filed with the Ethics and Accountability Division and the Elections Division;*
- *maintain complete, centralized information about all complaints received and inquiries undertaken, including the resolution of these issues;*
- *report regularly to the Government Accountability Board on the status and resolution of all complaints and inquiries; and*
- *report to the Joint Legislative Audit Committee by April 15, 2015, on the status of their efforts to implement these recommendations.*

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## Administrative Rules ■

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Administrative rules specify legal requirements pertaining to GAB, its staff, and others, including local election officials, campaign finance entities, and individuals who wish to file complaints alleging violations of the laws that GAB oversees. Because the process for rule promulgation includes legislative approval, rules afford the Legislature an opportunity to help determine how GAB fulfills certain responsibilities. In report 05-12 and report 07-16, we found that not all statutorily required rules pertaining to the administration of elections had been promulgated and recommended that the rules be promulgated. During our current audit, we found that GAB had not promulgated certain statutorily required rules. In addition, we found other rules that are no longer in effect but that GAB has allowed to remain in the Administrative Code.

***Through September 2014, GAB did not promulgate seven statutorily required rules.***

Through September 2014, GAB did not promulgate the seven statutorily required rules shown in Table 27. In some instances, staff instead incorporated the requirements into their procedures. GAB's staff indicated that the rules were not promulgated because they were busy with other tasks, such as helping to administer recall elections and revising procedures and training materials to implement changes to election laws. In addition, one of the agency's two attorney staff positions was vacant from January 2013 through October 2013, and one attorney staff position became vacant in August 2014. However, more than eight years have passed since statutes first required six of the seven rules to be promulgated. We note that in its 2015-17 Biennial Budget Request, GAB requested authorization for 1.0 FTE federally funded permanent position so

that it could hire a paralegal to help improve its efforts to promulgate rules in a timely manner.

Table 27

### Statutorily Required Rules That GAB Had Not Promulgated through September 2014

| Statute        | Description   | Status of Rule   |
|----------------|---|--|
| s. 5.87(2)     | Standards for determining the validity of votes cast with electronic voting equipment   | No action taken  |
| s. 5.905(3)    | Security, review, and verification of software used with electronic voting equipment  | GAB submitted a scope statement to the Governor in July 2013 |
| s. 6.36(2)(a)  | Space and location for a voter's signature on the poll list   | No action taken  |
| s. 7.08(1)(d)  | Administer statutory requirements for electronic voting systems   | GAB submitted a scope statement to the Governor in July 2013 |
| s. 7.315(1)(a) | Training that municipal clerks must provide to election inspectors and special voting deputies  | GAB approved a draft of a rule in August 2009                |
| s. 10.01(1)    | Election notices that clerks must use to inform the public about elections  | No action taken  |
| s. 11.21(17)   | Public access channel operators and licensees of public television stations to provide a minimum amount of free time to candidates for state office | No action taken  |

Statutes require GAB to promulgate certain rules. As noted, through September 2014 GAB had not yet promulgated a rule that specifies training requirements for election inspectors and special voting deputies. Instead, staff included the training requirements in election manuals that municipal clerks can use to provide the training. However, this approach is insufficient because manuals established by staff do not carry the force of law.

***GAB did not vote to adopt eight rules that nevertheless remain in the Administrative Code.***

We also found that GAB did not vote to adopt eight rules that nevertheless remained in the Administrative Code through September 2014 and that are shown in Table 28. GAB was required by 2007 Wisconsin Act 1 to review the rules of the former State Elections Board and the former State Ethics Board and determine which rules to adopt. Act 1 specified that rules promulgated by the former State Elections Board and the former State Ethics Board would remain in effect no later than July 2009, unless GAB voted to adopt the rules. In March 2009, GAB directed its staff to remove



the eight rules from the Administrative Code, but staff did not remove them.

Table 28

**Rules That GAB Did Not Adopt but That Remain in the Administrative Code through September 2014<sup>1</sup>**

| Rule         | Description  |
|--------------|--|
| s. GAB 1.29  | Referenda-related campaign finance activity                          |
| s. GAB 1.41  | Mailing campaign finance-related registration statements             |
| s. GAB 1.55  | Political campaign reimbursement for using government-owned vehicles |
| ch. GAB 4    | Election observers at polling places                                 |
| ch. GAB 5    | Ballot security  |
| s. GAB 20.01 | Procedures for considering complaints filed with GAB                 |
| s. GAB 21.01 | Communications and documents addressed to GAB                        |
| s. GAB 21.04 | Payment for transcripts of GAB proceedings                           |

<sup>1</sup> 2007 Wisconsin Act 1 required GAB to review the rules of the former State Elections Board and the former State Ethics Board and determine which rules to adopt.

Removing rules that remain in the Administrative Code but are no longer in effect can reduce confusion among clerks and other individuals to whom the rules apply, such as those who file complaints with GAB. We also note that after these eight rules were no longer in effect, GAB took action to begin modifying five of them.

Before September 2011, staff periodically reported to GAB on the status of all proposed rules being promulgated. Since then, however, staff reported to GAB only when GAB action was required. Staff indicated that they stopped providing the periodic reports, in part, because they were busy with tasks related to the recall elections. Without the periodic reports, some members of GAB may not know, for example, that two proposed rules that GAB had previously approved for promulgation have been delayed to such an extent that the promulgation process must start again from the beginning. The first of these two rules would have specified the electronic format in which campaign finance reports must be filed, while the second rule would have established a schedule for staff to use to assess penalties when various statutory requirements are not met.

**Recommendation**

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*We recommend the Government Accountability Board:*

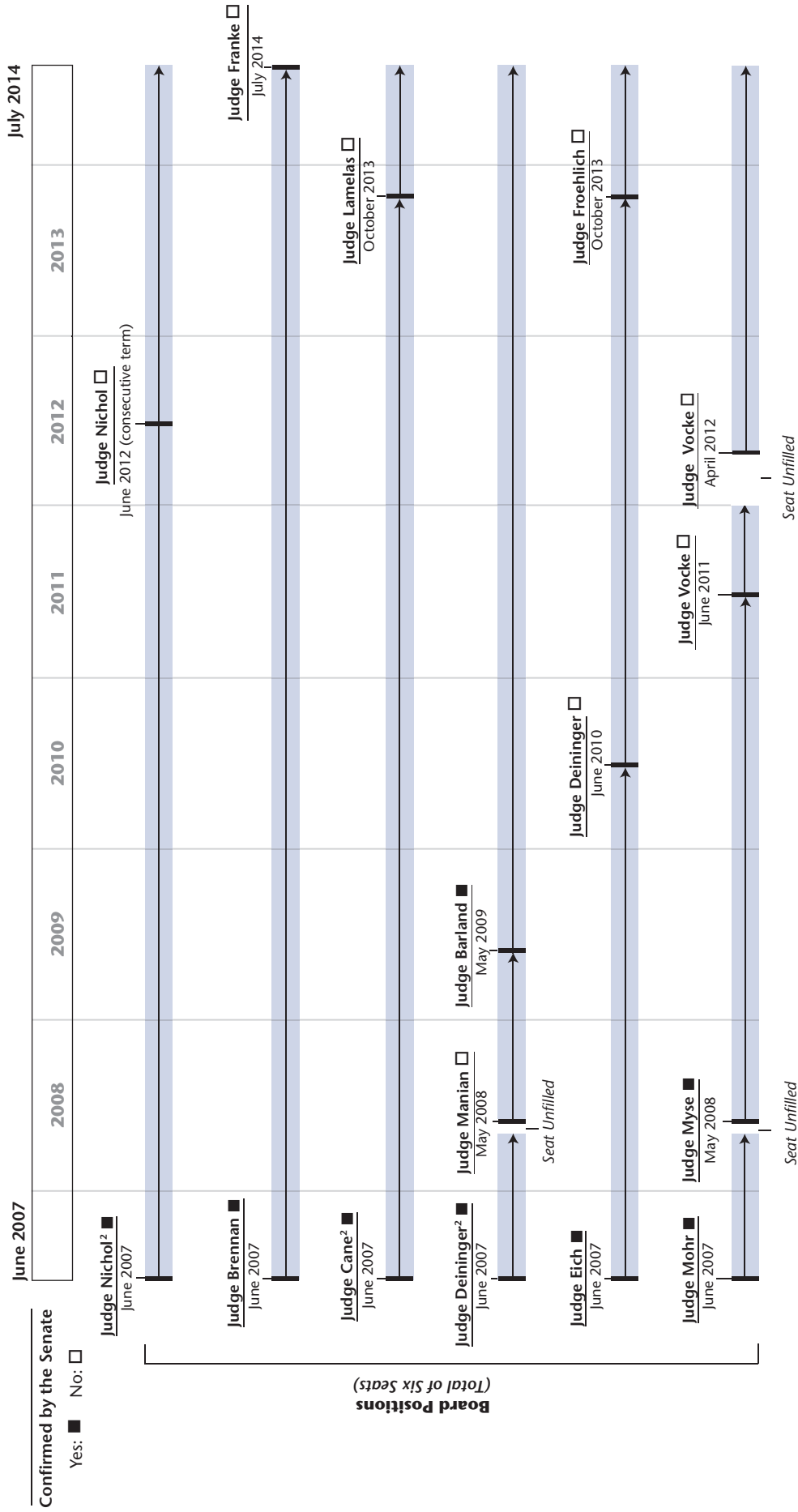
- *comply with statutes and promulgate all required administrative rules;*
- *remove from the Administrative Code the eight rules that are not in effect because it did not vote to adopt them;*
- *require its staff to report to it regularly on the status of efforts to promulgate administrative rules and remove from the Administrative Code rules that are not in effect; and*
- *report to the Joint Legislative Audit Committee by April 15, 2015, on the status of its efforts to implement these recommendations, including a schedule for promulgating each statutorily required administrative rule.*

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Appendix

**Government Accountability Board Members**

June 2007<sup>1</sup> through July 2014



<sup>1</sup> The original members were appointed in June 2007 and began meeting before GAB began operation in January 2008. Members are now appointed for six-year terms.

<sup>2</sup> Confirmed by the Assembly, as required by 2007 Wisconsin Act 1.



# State of Wisconsin\Government Accountability Board

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JUDGE THOMAS H. BARLAND  
Chair

KEVIN J. KENNEDY  
Director and General Counsel

December 10, 2014

Joe Chrisman, State Auditor  
Legislative Audit Bureau  
22 East Mifflin Street, Suite 500  
Madison, WI 53703

Subject: Government Accountability Board Audit

Dear Mr. Chrisman:

On behalf of the Government Accountability Board, I would like to thank you and your staff for the work invested in preparing the Legislative Audit Bureau's (LAB) performance audit of the Government Accountability Board (G.A.B.) for the period July 1, 2010 through June 30, 2014. We appreciate the courteous and professional approach your staff brought to the audit.

This response to the audit report was prepared by G.A.B. staff under the direction of Director and General Counsel Kevin J. Kennedy. The response does not represent a formal position taken by the Board or its members.

From the onset of the audit process, the agency has welcomed the opportunity for an outside evaluation of its performance in delivering services to Wisconsin residents, voters, candidates for public office, local election officials, state public officials and lobbyists. Since its inception, the G.A.B. has been nationally recognized as a leader and innovator in the administration of elections, campaign finance, ethics and lobbying disclosure. During the period covered by the audit the agency successfully carried out its responsibilities in an unusually volatile environment.

The audit report identifies a number of areas where the agency was unable to meet certain statutory requirements or could improve its operations. The G.A.B. is committed to addressing those recommendations to bring the agency into full compliance with statutory requirements and further improve its operations.

This response first addresses the general comments and recommendations set out in your transmittal letter to the Joint Legislative Audit Committee. We then address each of the specific recommendations in the order presented in the report. We conclude with a commitment to implementing the recommendations set out in the report.

## **General Comments and Recommendations**

You note the scope of the LAB evaluation was limited due to a 2014 opinion of the Attorney General concluding that statutes prohibit the G.A.B. from providing LAB access to confidential investigation records. <http://www.doj.state.wi.us/sites/default/files/OAG-03-14.pdf>. The Director and General Counsel expressed concerns about this statutory restriction at the audit entrance conference. Because of the criminal sanctions imposed by law for unauthorized access to confidential investigation records, the Board authorized its staff to seek guidance from the Attorney General. <http://www.doj.state.wi.us/sites/default/files/OAG-03-14-request.pdf>.

Agency staff believes it is important for LAB to have access to these records to fairly evaluate agency performance. We have recommended that the G.A.B. communicate its support to the Legislature to enable LAB to have access to confidential investigation records subject to the same confidentiality restrictions imposed on Board Members and agency staff.

The transmittal letter and audit report note the agency did not conduct post-election felon voting checks after each election between 2010 and 2013. While this is true, it is important to note that the post-election felon audits were suspended for very practical reasons. We found that the Department of Corrections' data was not conclusive and that our matching process needed to be improved to reduce false matches. District Attorneys became frustrated with bad referrals based primarily on the matching of data between DOC and G.A.B. databases. The agency needed to protect the credibility of referrals, especially following the erroneous charging of an individual by a District Attorney who relied solely upon the matching result and did not conduct any follow-up investigation. That incident not only involved criminal charges filed against an innocent individual, but also negative media coverage about the reliability of the felon audit process.

G.A.B. staff adopted measures to ensure accurate matches by creating a new felon audit dashboard in the Statewide Voter Registration System (SVRS). This online tool is part of the agency's ongoing efforts to use technology to improve processes and reduce costs. With the new dashboard in place, the agency completed audits of 16 elections in nine months and has closed all outstanding cases either by resolving the data matches or referring cases to District Attorneys. Our staff's focus on diagnosing the problem and developing, testing, and implementing a solution to improve the efficiency and accuracy of the process delayed the completion of the post-election felon audits which occurred in the interim.

During this period there were several procedures in place to limit the ability of convicted felons to vote and to identify those felons who managed to cast a ballot. While the G.A.B. had temporarily suspended post-election felon audits, SVRS still matched registered voters with the felon list and suspected felon voters were referred to District Attorneys during this time period. The G.A.B. provides to each municipal clerk a current Ineligible Voter List of ineligible felons residing in each municipality, which can be accessed online and printed on-demand.

The transmittal letter and audit report note several instances where administrative rules were not promulgated, amended or repealed as required by law or directed by the Board. Given the extraordinary demand on agency resources, administrative rulemaking was given a much lower priority in order to effectively respond to the immediate and pressing demands of litigation, the on-again off-again implementation of voter identification requirements, the unprecedented number of recalls in 2011 and 2012, a statewide recount, redistricting and the enactment of 31 separate pieces of legislation during the audit period. In 2011, the Governor and the Legislature also adopted a much more detailed administrative rule promulgation process with additional oversight by the executive and legislative branches, which requires significantly more time and resources for agencies to amend, promulgate or repeal an administrative rule. The agency management team expects to complete the recruitment for the vacant staff attorney position shortly after the first of the year. Addressing the backlog of administrative rulemaking will be one of the top priorities of the legal team in 2015.

The transmittal letter and audit report also note the lack of thorough documentation and reporting to the Board of investigation and enforcement activity by agency staff. It is important to note, however, that staff kept the Board informed of these activities in informal ways through oral and written Division reports at Board meetings. The agency management team is taking steps to

develop a more comprehensive tracking system for complaints and settlements along with a fuller, more transparent series of reports to apprise the Board of the status of this activity.

### **Response to Recommendations**

The recommendations and the agency response are grouped by category as set out in the LAB report. In each case where the LAB has recommended that the Board report to the Joint Committee on Legislative Audit regarding the status of complying with a recommendation, the Board will do so. The LAB's recommendations are set out in italics, followed by the agency's response.

### **Training**

*The Government Accountability Board comply with statutes and promulgate administrative rules that prescribe the contents of training that municipal clerks must provide to election inspectors and special voting deputies.*

The agency will make addressing the backlog of administrative rulemaking one of its top management priorities in 2015. One significant factor in the delay in promulgating these rules was the priority placed on developing comprehensive informational and training materials for local election officials for the 31 pieces of legislation enacted during the report period. This involved soliciting feedback from a number of sources as well as developing new material and revising existing documents for local election officials.

### **Maintenance of Voter Registration Records**

*The Government Accountability Board regularly monitor Statewide Voter Registration System records to contact clerks who have not mailed letters to registrants whose personally identifiable information did not match information held by other agencies.*

Federally-funded agency project staff members regularly review the status of matching personally identifiable information by local election officials in SVRS. Agency staff consistently follows up with local election officials who have not resolved these matches. However, many local election officials do not use SVRS to record their contacts with voters who have mismatched information. While SVRS provides clerks with a template and the ability to generate communications directly from the system, many clerks choose to contact voters with communications not generated from the system, which is an acceptable alternative. The agency will develop a procedure for directing local election officials to document their actions to correct mismatched information.

*The Government Accountability Board review the records of the deceased individuals we identified and determine whether any of these individuals' votes were inappropriately cast in FY 2012-13 elections.*

The agency will carry out this recommendation for the voter records provided to us on December 8, 2014.

*The Government Accountability Board review Statewide Voter Registration System records after each election in order to identify and investigate instances in which votes were cast in the names of individuals who died before Election Day.*

At a later point in the report, the LAB suggests the Legislature consider requiring G.A.B. to determine after each election whether any votes were cast by individuals who died before Election

Day. The agency believes the Legislature should carefully consider this recommendation before adopting it. There are significant administrative and personnel costs for the G.A.B. and local election officials to implement this process. It is essential the Legislature is fully apprised of the costs of conducting post-election death audits, similar to the post-election felon audits currently done by the G.A.B. The agency will work with the Legislature to analyze these costs.

*The Government Accountability Board regularly monitor Statewide Voter Registration System records to contact clerks who have not mailed letters to individuals whose voter registration records have been inactivated because of ongoing felony sentences.*

Federally funded agency project staff regularly reviews the status of matching felon data with existing voters by local election officials in SVRS. Agency staff consistently follows up with local election officials who have not resolved these matches. However, many local election officials do not use SVRS to record their contacts with voters who have matching felon information. While SVRS provides clerks with a template and the ability to generate communications directly from the system, many clerks choose to contact voters with communications not generated from the system which is an acceptable alternative. The agency will develop a procedure for directing local election officials to document their actions to resolve felon voting record matches.

*The Government Accountability Board review information for the individuals we identified whose voter registration records may have been erroneously inactivated and ensure that the relevant clerks have notified the individuals.*

Agency staff received this list of individuals on December 8, 2014, and will carry out this recommendation.

*The Government Accountability Board complete in a timely manner the statutorily required reviews to identify individuals with ongoing felony sentences who may have voted.*

As described earlier in this response, the agency has completed all post-election felon audits. This includes the post-election felon audit for the August 14, 2014 partisan primary. The agency has closed all outstanding cases either by resolving the data matches or referring cases to District Attorneys. We continue to receive updates from District Attorneys on the progress of each referral. The technological innovations developed by agency staff will enable us to timely complete the post-election felon audit for future elections.

*Agency staff report to the Government Accountability Board on any actions taken by district attorneys against the 33 individuals who may have voted while serving felony sentences.*

Agency staff will carry out this recommendation.

*The Government Accountability Board work with the Department of Corrections to improve the accuracy of information regarding individuals serving felony sentences, including by ensuring that individuals convicted of misdemeanors are not erroneously included in the information that is electronically provided to the Statewide Voter Registration System.*

The agency has already complied with this recommendation. This was a key element in the development of the new felon audit dashboard in SVRS. The agency's work with the Department of Corrections has improved the accuracy of information regarding individuals serving felony sentences provided to SVRS and created significant cost efficiencies for both agencies.



*The Government Accountability Board promulgate administrative rules that specify the responsibilities of clerks for maintaining voter registration records in the Statewide Voter Registration System.*

The agency will make addressing the backlog of administrative rulemaking one of its top management priorities in 2015. As noted in the LAB report, the agency has a comprehensive and detailed set of instructions for local election officials on the use of SVRS. The administrative rule will provide legal support for the detailed information currently posted on the agency website.

*The Legislature could consider requiring G.A.B. to determine after each election whether any votes were cast by individuals who died before Election Day.*

The agency believes the Legislature should carefully consider this recommendation before adopting it. There are significant administrative and personnel costs for the G.A.B. and local election officials to implement this process. It is essential the Legislature is fully apprised of the costs of conducting post-election death audits similar to the post-election felon audits currently done by the G.A.B.

*The Legislature could consider transferring responsibility for completing additional election-related tasks from municipal clerks to G.A.B.*

Wisconsin law specifically places the responsibility for numerous election administration tasks, including voter registration, with each of the state's 1,852 municipal clerks. The audit report does not delineate what current election-related tasks assigned by statute to municipal clerks could be transferred to the G.A.B.

The report provides one example: inactivating SVRS records for individuals who become ineligible to vote and mailing the letters that notify these individuals that their records have been inactivated. This is a function that would have to be performed by federally-funded agency project staff members who currently have extensive SVRS-related duties. There would be significant administrative and personnel costs for the G.A.B. associated with these additional duties.

### **Oversight of Campaign Finance Laws**

*The agency staff present to the Government Accountability Board for its approval written procedures specifying penalty amounts to assess on campaign finance entities that do not pay their annual filing fees by January 31.*

The agency staff has continually informed the Board of its enforcement efforts and practices. The staff will carry out this recommendation.

*The agency staff report to the Government Accountability Board at least quarterly on all campaign finance reports that were submitted on time, whether a penalty was assessed for each late report, the amount of each assessed penalty, and the amount of each penalty that was paid and unpaid.*

The agency staff will develop a more comprehensive tracking system for settlements along with a fuller, more transparent series of reports to apprise the Board of the status of this activity.

*The agency staff track centrally all penalties assessed for violations of campaign finance contribution limits and use the information to report to the Government Accountability Board at least quarterly on all violations of campaign finance contribution limits, whether a penalty was*

*assessed for each violation or a written warning letter was provided in lieu of a penalty, the amount of each penalty, and the amount of each penalty that was paid and unpaid.*

The agency staff will develop a more comprehensive tracking system for settlements along with a fuller, more transparent series of reports to apprise the Board of the status of this activity.

*The agency staff comply with statutes and publish on the Government Accountability Board's website summaries of all confidential advisory opinions issued related to compliance with campaign finance laws.*

G.A.B. staff summarized and posted all formal opinions of the Board before LAB's audit was completed. We acknowledge that this should be done more quickly. The Director and General Counsel will establish a performance standard for the Division Administrators to ensure this is done in a timely manner.

### **Oversight of Lobbying Laws**

*The agency staff comply with statutes and determine whether to revoke the existing licenses of lobbyists who are delinquent in paying state taxes or court-ordered child or family support payments.*

The agency staff follows this requirement before issuing a lobbying license. The agency will take steps to ensure the Departments of Revenue and Children and Families are informing the G.A.B. of any licensed lobbyists who later become delinquent in paying state taxes or court-ordered child or family support payments so the agency can act on this information.

*The agency staff track centrally all penalties assessed for violations of lobbying laws all penalties waived and the reasons for waiving them, and all written warnings provided in lieu of assessing penalties and the reason for each written warning and use the information to report to the Government Accountability Board at least quarterly on the number of violations of each lobbying law, whether a penalty was assessed for each violation, the amount of each assessed and waived penalty, and the amount of each penalty that was paid and unpaid.*

The agency staff will develop a more comprehensive tracking system for settlements along with a fuller, more transparent series of reports to apprise the Board of the status of this activity.

*The agency staff comply with s. 13.68(6), Wis. Stats., by prohibiting principals that have not filed timely semiannual expense statements from allowing lobbyists to lobby on their behalf or request that the Legislature modify this provision.*

Agency staff sends an email notice within one business day to any lobbying principal that has not timely filed a Statement of Lobbying Activities and Expenditures, informing the principal it may be subject to a civil forfeiture if they do not immediately comply. There are relatively few principals who fail to meet the filing deadline. Staff attempts to personally contact each principal who has failed to file within the next several business days following the filing deadline. After a week, staff sends a letter which contains the settlement schedule approved by the Board. Staff can easily incorporate the suspension provision into the notices.

*The agency staff include in the weekly reports to the Legislature while the Legislature is in session all statutorily required information about lobbying activities or request that the Legislature modify*

*statutes to allow these reports to exclude information that is publicly available on the Eye on Lobbying website.*

Reports to the Legislature have been submitted in the form agreed to by the Chief Clerks. The reports contain a link to all required information. The agency staff will confirm with the Legislature the format desired by the Legislature.

*The agency staff include in the biennial reports to the Legislature all statutorily required information.*

The agency staff will comply with this recommendation for the next biennial report. The information for the past two biennia will be compiled and made available to the Governor and the Chief Clerks for distribution consistent with Wis. Stat. § 13.172 (2).

*The agency staff comply with statutes and publish on the Government Accountability Board's website summaries of all confidential advisory opinions issued related to compliance with lobbying laws.*

G.A.B. staff summarized and posted all formal opinions of the Board before LAB's audit was completed. We acknowledge that this should be done more quickly. The Director and General Counsel will establish a performance standard for the Division Administrators to ensure this is done in a timely manner.

### **Oversight of Code of Ethics Laws**

*The agency staff develop written policies for granting individuals extensions to the deadline for filing statements of economic interests and comply with statutes by setting forth in writing the reasons for granting each extension.*

The agency staff will develop written policies for granting individuals extensions to the deadline for filing statements of economic interests which will include setting forth in writing the reasons for granting each extension along with a fuller, more transparent series of reports to apprise the Board of the status of this activity.

*The agency staff comply with statutes and promptly notify the Department of Administration and the employing agency when an individual does not file a statement of economic interests on time.*

The agency staff will carry out this recommendation.

*The agency staff track centrally how often they assess penalties on individuals who have not filed statements of economic interests on time and the amounts of the assessed penalties and use this information to report to the Government Accountability Board at least quarterly on the extent to which statements were not filed on time, whether a penalty was assessed (or each violation, the amount of each penalty assessed, and the amount of each penalty that was paid and unpaid.*

The agency staff will develop a more comprehensive tracking system for settlements along with a fuller, more transparent series of reports to apprise the Board of the status of this activity.

*The agency staff present to the Government Accountability Board for its approval policies indicating when staff should not attempt to collect penalties that have been assessed on individuals who do not file statements of economic interests on time.*

The agency staff will carry out this recommendation.

### **Agency Settlement Schedules**

The audit report makes several recommendations related to settlement schedules:

*The agency staff adhere to the Government Accountability Board's February 2008 penalty schedule for assessing penalties on campaign finance entities that do not file statutorily required campaign finance reports on time.*

*The agency staff adhere to the Government Accountability Board's February 2008 penalty schedule when assessing penalties for campaign contributions in violation of statutory limits.*

*The agency staff adhere to the Government Accountability Board's February 2008 penalty schedule when assessing lobbying penalties.*

*The agency staff adhere to the Government Accountability Board's February 2008 penalty schedule when assessing penalties on individuals who do not file statements of economic interests on time.*

The Board adopted the Ethics and Elections Boards' settlement offer schedules in 2008 on an interim basis. These schedules are in need of reexamination in light of the Board's ongoing experience. Agency staff engages in extensive, preemptive efforts to obtain timely filing and compliance. Our training efforts, along with electronic filing of campaign finance and lobbying reports, have positively affected adherence to statutory filing requirements. Staff has continually informed the Board of its enforcement efforts and practices. Nevertheless, the staff recognizes that settlement practices must become more systematized and better documented. Staff will submit new settlement guidelines to the Board for its adoption in 2015 and will comply with all settlement schedules established by the Board.

### **Complaints**

*The agency staff present to the Government Accountability Board for its approval written policies for considering complaints filed with the Ethics and Accountability Division and the Elections Division.*

The agency staff will develop a more comprehensive tracking system for complaints along with a fuller, more transparent series of reports to apprise the Board of the status of this activity.

*The agency staff maintain complete, centralized information about all complaints received and inquiries undertaken, including the resolution of these issues.*

*The agency staff report regularly to the Government Accountability Board on the status and resolution of all inquiries.*

The agency staff will develop a more comprehensive tracking system for complaints received and inquiries undertaken along with a fuller, more transparent series of reports to apprise the Board of the status of this activity.

## **Administrative Rules**

*The Government Accountability Board comply with statutes and promulgate all required administrative rules.*

*The Government Accountability Board remove from the Administrative Code the eight rules that are not in effect because it did not vote to adopt them.*

The agency will make addressing the backlog of administrative rulemaking one of its top management priorities in 2015.

*The Government Accountability Board require its staff to report to it regularly on the status of efforts to promulgate administrative rules and remove from the Administrative Code rules that are not in effect.*

The agency staff will develop a more comprehensive tracking system for the status of efforts to promulgate administrative rules along with a fuller, more transparent series of reports to apprise the Board of the status of this activity.

## **Conclusion**

The Wisconsin Statutes set out 154 separate responsibilities of the Government Accountability Board. Six are general grants of authority and 148 are specific directives. The agency is in compliance with all but a handful of these statutory responsibilities, which relate to promulgation of administrative rules.

We appreciate that the audit report recognizes some, if not all, of the extraordinary demands placed on the agency by events outside of its control during the audit period. These events have required management to prioritize staff resources and efforts, and in many ways the agency is still recovering from that period and catching up with statutory duties which needed to be deferred. A top agency priority is always preparing for and overseeing the next election, which often means relegating less immediate and longer term initiatives to the back burner.

The audit report confirms the conclusion in our budget request that it is impossible to fulfill the G.A.B.'s statutory duties without the extension of position authority related to those positions which are responsible for administering elections post-HAVA and implementing legislative mandates related to elections.

I would be remiss if I failed to note the excellent performance of our staff, which is small in terms of a state agency but also incredibly hardworking, efficient, and professional.

This is a timely point to make because many of the same individuals who have helped to navigate the complex responsibilities of the agency since its inception are facing the elimination of their jobs in six months. As the audit notes, position authority for 26 federally funded positions expires at the end of June 2015. We project that the federal funds for those positions will last through Fiscal Year 2017, and our budget request notes the need for a long-term solution to continue funding those positions.

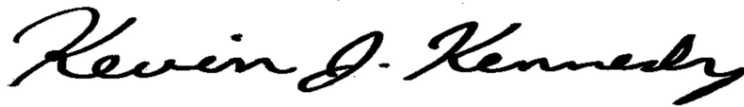
There is an immediate need for the Legislature to determine whether those positions will continue beyond June 2015 as the agency continues to lose talented and experienced staff to other agencies and more permanent employment opportunities. Left unresolved, the uncertainty regarding the

position status will undoubtedly lead to additional staff departures in the coming months and setbacks in agency progress. We cannot reasonably expect agency employees to wait until the last minute to make such critical decisions related to their continuing employment and professional prospects.

The audit report identifies a number of areas where the agency was unable to meet certain statutory requirements or could improve its operations. The Government Accountability Board is committed to addressing those recommendations to bring the agency into full compliance with statutory requirements and further improve its operations.

We appreciate the analysis of the LAB in identifying areas of improvement. Thank you again for your thorough review of the Government Accountability Board.

**Government Accountability Board**

A handwritten signature in black ink that reads "Kevin J. Kennedy". The signature is written in a cursive, flowing style.

Kevin J. Kennedy  
Director and General Counsel