MEMORANDUM

DATE: October 31, 2011

TO: Nathanial E. Robinson  Ross Hein
Elections Division Administrator  Elections Supervisor
Government Accountability Board  Government Accountability Board

FROM: Sarah Whitt  Shane Falk
SVRS Functional Lead  Staff Counsel
Government Accountability Board  Government Accountability Board

SUBJECT: Outstanding Questions for the Legislative Reference Bureau

The G.A.B. Redistricting Team and Staff Counsel have several outstanding questions regarding various effective dates for redistricting and the impacts of Acts 39, 43, and 44 on election business processes. Generally, an act is effective the day after publication pursuant to §991.11, Wis. Stats., unless the act expressly prescribes the time when it takes effect. Acts 43 and 44 contain identical “initial applicability” clauses first applying these Acts to regular, special, or recall elections to offices filled at the 2012 general election (November 6, 2012); however, the “initial applicability” clause in Act 39 is wholly different and restricted to the retroactive application of certain requirements in §5.15(1)(b), Wis. Stats.

This memo provides a high-level list of the outstanding questions we hope to resolve with the Legislative Reference Bureau (LRB), or at the very least receive additional input from LRB for G.A.B. consideration.

1. An immediate concern for election business processes is the Spring Primary and Spring Election, which will also include the Presidential Preference vote. What is the effective date of the new ward and supervisory districts created under 2011 Act 39, which was effective on August 9, 2011? We have heard from clerks that the effective date for new ward and supervisory districts is January 1, 2012, but do not see a clear statutory support for this date in Act 39. Also, circulation of nomination papers for the Spring Election begins on December 1, 2011. If the new districts are not effective until January 1, 2012, there will be confusion on circulation of nomination papers and who is qualified to sign.

2. It would appear that the new ward and supervisory districts for local regular, special and recall elections (i.e. aldermanic, county supervisor) apply as early as August 9, 2011 (assuming the city, village, town or county had adopted new ward or district plans) and will be in place for the Spring Primary and Spring Election; however, the “initial applicability” clauses in Acts 43 and 44 appear to apply the new legislative and congressional districts only to regular, special, or recall elections held on or after November 6, 2012. Even though the new legislative or congressional districts do not apply until elections held on or after November 6, 2012, do the new ward and supervisory districts at the local level nonetheless apply for legislative or congressional recall elections that occur prior to November 6, 2012? In other words, the previous legislative or congressional districts apply for special or recall elections held prior to November 6, 2012, but do the new local wards and districts apply within the old legislative or congressional districts? (Note: The
Governor’s Order for a Special Election for the 95th AD, dated September 2, 2011, is to occur in the previous legislative district and likely with the previous ward and districts at the local level. Currently, many local referenda and other special elections are occurring and it appears they too are occurring in the previous ward and districts at the local level.

3. Act 39 also amends §5.15(4)(a), Wis. Stats., and requires municipalities with ward plans that do not coincide with a legislative or congressional district boundary to amend their district plans no later than May 15, 2012 to the extent required to effect the legislative or congressional districts. When will LTSB have this information available for the G.A.B. to update SVRS? How many municipalities are likely to be subject to this requirement? In addition, is it possible that a special or recall primary at a local level could occur in an un-amended ward plan, but then have a special or recall election in the amended ward plan?

4. The effective date of Acts 43 and 44 for purposes of representation (communication and travel for legislative purposes) is August 24, 2011. Legislators may request voter lists and other data well prior to the November 6, 2012 election (immediately), so as to communicate with the new legislative districts. How can the G.A.B. provide this information, if the legislative districts are not finalized until after May 15, 2012?

The impact of the effective date of Acts 43 and 44 for purposes of general, recall and special elections occurring on or after November 6, 2012, reaches back to the primary election and even further back to the circulation of nomination papers for offices elected on November 6, 2012. Currently, the partisan primary occurs in September 2012 and nomination paper circulation begins June 1, 2012; however, if SB 116 is adopted in its current form, the partisan primary will occur in August 2012 and the circulation of nomination papers will begin on April 15, 2012. Will the new districts be complete at LTSB and in SVRS by April 15, 2012 for purposes of poll list and voter data requests? Will the new districts be complete and in SVRS sufficiently in advance of an August 2012 partisan primary, such that clerks and electors will have correct information as to polling places, etc. (for example, polling places must be established no later than 30 days prior to an August 2012 primary and mailing of absentee ballots occurs 30 days prior to an August 2012 partisan primary for regular electors and 45 days prior to an August 2012 partisan primary for military electors)?

5. Specific local scenarios: Several clerks have contacted us with unique scenarios regarding their districts and have asked us for guidance. We are concerned that G.A.B. guidance may conflict with LRB direction and we wish to ensure that any guidance we provide to local clerks is in concert with guidance given by LRB.

* Two supervisory districts in one ward.
* Splitting wards (A and B) and whether this is permanent.

6. Election administration issues:

* Multiple district definitions for one office that is accessible for specific elections.
* Printing voter data and poll lists for office holders and campaigns.
* Polling place changes following 5/12/12 adjustments.

These questions, as well as any new issues that arise, will be discussed with LRB at the meeting being scheduled between G.A.B. and LRB staff.

Thank you.

cc: Kevin Kennedy
Director and General Counsel
Government Accountability Board

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