

State of Wisconsin \ Government Accountability Board

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JUDGE GORDON MYSE
Chairperson

KEVIN J. KENNEDY
Director and General Counsel

MEMORANDUM

DATE: For the Meeting of December 13-14, 2010

TO: Members, Wisconsin Government Accountability Board

FROM: Kevin J. Kennedy
Director and General Counsel
Government Accountability Board

Prepared and Presented by:
Michael Haas, Staff Counsel

SUBJECT: GAB Chapter 4 – Election Observers

The Board will conduct a public hearing regarding administrative rule GAB Chapter 4 at its December 13, 2010 meeting. The hearing will fulfill the obligation to conduct a public hearing regarding the emergency rule which was in effect during the 2010 General Election, as well as the hearing required to promulgate the proposed permanent rule which will be forwarded to the Legislature upon approval by the Board. The notice for the hearing was published in the Wisconsin Administrative Register on November 30, 2010. The proposed rule was submitted to the Legislative Council on November 4, 2010. The Legislative Council report has not been received but will be provided to the Board if it arrives prior to the Board meeting.

Attached is a copy of the Notice of Proposed Order adopting the rule, which includes the text of the emergency rule, along with proposed revisions which are underlined in the text. Several of the proposed revisions are the result of suggestions made by Paul Malischke, and are included in sections 4.01(1)(g) and (5), 4.02(6), 4.03(3), and 4.04(3). Board staff has also recommended a revision to section 4.07(2) which would permit the Board to use video or still cameras in polling places and other election facilities, or to authorize others to do so. Specifically granting this authority may be useful for purposes such as training, accessibility auditing, and investigations.

The proposed rule takes into consideration the comments of local election officials, media representatives, and the public over several years. For this public hearing, two individuals submitted written comments. Mr. Malischke's written comments are attached, as is an email supporting the rule submitted by Noreen Johnson. A final email is also attached describing the experience of one election observer, which does not specifically address the rule but provides the perspective of one individual and illustrates the value of observers in ensuring the transparency of the election process.

Except for the revisions which are underlined and minor changes made after the 2008 General Election, the proposed rule is identical to the emergency rule which has been in place for the

last two general elections. The rule has been credited by both municipal clerks and observers with helping to maintain order and reduce confusion regarding the role of observers.

Recommended Motion: Approve the attached Proposed Order repealing and recreating ch. GAB 4, including the underlined revisions, and direct staff to take all additional steps necessary to complete promulgation of the rule.