

State of Wisconsin \ Government Accountability Board

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JUDGE THOMAS H. BARLAND
Chair

KEVIN J. KENNEDY
Director and General Counsel

MEMORANDUM

DATE: December 4, 2014

TO: The Honorable Mary Lazich, State Senator
The Honorable Kathleen Bernier, State Representative
Jeff Renk, Senate Chief Clerk
Patrick Fuller, Assembly Chief Clerk

FROM: Michael Haas
Elections Division Administrator

SUBJECT: Chapter GAB 4, Election Observer Rules
Clearinghouse Rule 10-130

Enclosed please find two copies of a revised version of proposed permanent rule Chapter GAB 4, Wis. Adm. Code. To facilitate legislative review, one copy notes changes to the proposed rule that have been requested by Senator Lazich and Representative Bernier on behalf of their respective committees and that have been accepted by the Government Accountability Board, and the other copy is a clean version that does not show the tracked changes.

At its meeting of July 21, 2014, the Board accepted the following changes to the proposed permanent administrative rule which had been requested by the Legislature.

- 1) Section 4.01(1)(f) includes a definition regarding election inspectors other than the chief inspector.
- 2) Section 4.02(2) requires observers to present photo identification at the time of signing the observer log, and that the chief inspector verifies that the observer's signed name on the Observer Log matches the photo identification. That section also requires observers to legibly list their name on the Observer Log, and the G.A.B. has modified the Election Observer Log ([GAB-109](#)) for this purpose, which is attached. Finally, Section 4.02(2) states that the Election Observer Log is not available for inspection by observers or the public until after the election, a change made in response to concerns expressed by some observers about their addresses being made available to other observers.
- 3) Section 4.02(3) clarifies that any limitation imposed on the number of observers must be based on physical space limitations.

- 4) Section 4.02(5) and other comparable sections reflect recent legislative changes by requiring the observation area to be located 3 – 8 feet from the table where voters obtain a ballot and from the registration table at various voting or counting locations. Those sections also require that the municipal clerk and chief inspector must note any deviation from this standard on the Inspectors' Statement (GAB-104), and the clerk must notify the Board of any such deviation within seven days following an election.
- 5) Section 4.02(8) and several other sections permit the chief inspector to designate another inspector to handle questions and inquiries.
- 6) Section 4.02(18) specifies that any clothing or buttons worn by observers may not be intended to influence the election, regardless of whether a candidate is mentioned or portrayed on the clothing or button.
- 7) Section 4.02(20) requires that, when an observer is ordered to leave a voting location, the chief inspector is to provide the observer with a written document summarizing the reason for the order, signed by the chief inspector and an inspector of the opposite political party. The section clarifies the chief inspector's sole authority to decide to remove an observer and the other inspector's option to note concurrence or disagreement.
- 8) Section 4.02(21) requires municipal clerks to provide the Board with documentation regarding the removal of any election observer within seven days of an election, and requires Board staff to present a report to the Board regarding such incidents.
- 9) Section 4.06(1) requires any individual wishing to observe voting at a location served by special voting deputies to notify the municipal clerk at least 24 hours in advance of the voting.
- 10) Section 4.06(3) clarifies that the observation area at a nursing home or adult-care facility must not be located to permit an observer to hear conversations between a voter and an individual providing assistance to the voter.
- 11) Section 4.07(6) specifies that any detailed plan governing a recount at the state or local level may supplement the rules regarding election observers, provided that it balances the public's right to observe the recount process with the responsibility of local election officials to conduct the recount.

The Board did not approve a request to remove the prohibition on observers using cameras at polling places or other locations where voting takes place, although this was not a unanimous position of Board members. The proposed rule continues to prohibit the use of cameras by observers at those locations, except for the media and the Board's accessibility auditors or other accessibility advocates. In the version of the proposed rule indicating the tracked changes, the provisions related to the use of cameras are shaded for ease of reference.

During the public hearings regarding the proposed rule earlier this year, Committee members discussed the use of cameras by the Board's accessibility auditors and whether those auditors took photos or video footage of voters at polling places. I am also enclosing a memorandum which outlines our polling place accessibility audit program and the use of cameras by auditors. The auditors are trained to avoid capturing voters in photos or video.

The Board advised local election officials and observers that the enclosed version of the proposed rule was to be administered and enforced during the 2014 Partisan Primary in August and the General Election in November. We have received feedback indicating that the rules in place again served as an excellent tool to promote order at polling places and to balance the rights and responsibilities of observers, voters, and election officials.

The Board requests that the Legislature take final action to approve Clearinghouse Rule 10-130 so that it may be in effect as a permanent administrative rule for future elections. We have been in contact with the staffs of Senator Lazich and Representative Bernier since the summer regarding this revised version of the observer rules, and we agreed to delay its formal resubmission at their request so that the respective committees would be prepared to consider the proposed rule within their ten-day window to do so. We are resubmitting the rule at this time because our opportunity to promulgate it will expire at the end of this year. It is our understanding that we will be required to start the administrative rule process over if the revised rule is not approved by the elections committees and the Joint Committee for the Review of Administrative Rules prior to December 31, 2014. Given the extensive work, fine tuning, and training that has been completed with regard to this rule since 2007, we ask that the Legislature promptly consider this revised rule.

We appreciate your attention to this matter. Please contact me at 608-266-0136 or michael.haas@wi.gov if you have any questions or need additional information.

Copy to: Clearing.House@legis.wisconsin.gov (via email)
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