

ORDER OF THE GOVERNMENT ACCOUNTABILITY BOARD

CR 10-130

The Government Accountability Board proposes an order to repeal and recreate chapter GAB 4, relating to observers at a polling place or other location where votes are being cast, counted, canvassed, or recounted.

CHAPTER GAB 4

ELECTION OBSERVERS

SECTION 1. GAB 4 is repealed and recreated to read:

GAB 4.01 Definitions.

(1) In this chapter:

(a) “Board” means the Government Accountability Board.

(b) “Chief inspector” means the chief inspector at a polling place, under s.7.30(6)(b), Stats., or the election official that the chief inspector designates to carry out the responsibilities of the chief inspector under this chapter.

(c) “Clerk” means the municipal or county clerk, the executive director of the board of election commissioners, or the official designated by the clerk or director to carry out the election responsibilities under this chapter.

(d) “Communications media” has the meaning given in s. 11.01(5), Stats.

(e) “Electioneering” has the meaning given in s. 12.03(4), Stats.

(f) “Inspector” or “election inspector” means any individual appointed pursuant to s. 7.30, Stats., to conduct an election at a polling place.

(g) “Member of the public” means any individual, excluding a candidate appearing on the ballot at that polling place or a registered write-in candidate for an office voted on at that polling place or other location.

(gh) “Observer” means any member of the public who is present at any polling place, or in the office of any municipal clerk whose office is located in a public building on any day that absentee ballots may be cast in that office, or at an alternate site under s. 6.855, Stats., on any day that absentee ballots may be cast at that site, for the purpose of observation of an election or the absentee ballot voting process.

(hi)“Public aspects of the voting process” means the election activities that take place at a polling place, or other observation location, that include the opening of a polling place prior to the commencement of voting, waiting in line to vote by electors, the election day registration process, the recording of electors under s. 6.79, Stats., the elector’s receipt of a ballot, the deposit of the ballot into the ballot box, a challenge to an elector’s right to vote, the issuing of a provisional ballot, and the counting and reconciliation process.

GAB 4.02 Observers at the polling place.

(1) Violation of any provision of this section by an observer is subject to the provisions of sub. (20).

(2) Any member of the public intending to exercise the right to observe an election under s. 7.41, Stats., shall notify the chief inspector of that intent upon entering the voting area of a polling place. An observer shall sign the election observer log acknowledging the observer understands the applicable rules and will abide by them. An observer shall present photo identification to an election inspector and also legibly list the observer’s full name, street address and municipality, and the name of the organization or candidate the observer represents, if any, on the log. The chief inspector shall make available to each inspector a summary of the rules governing election observers. The inspector shall verify by marking on the log that the observer’s name listed on the log matches the photo identification, and~~The inspector shall attach the log to the Inspectors’ Statement, GAB 104. The observer log shall not be available for public inspection at the polling place but shall be made available after Election Day through a public records request of the clerk or board of election commissioners.~~ The chief inspector shall provide the observer with a ~~name tag or badge~~supplied by the board which reads “Election Observer.” An observer shall wear this ~~name tag or badge~~ at all times when inside the polling place.

(3) ~~To ensure the orderly conduct of the election, if necessary due to physical limitations,~~ the chief inspector may reasonably limit the number of observers representing a ~~particular~~the same organization or candidate.

(4) The chief inspector shall direct the observer to an area of the polling place designated by the chief inspector as an observation area.

(5) The observation area shall be situated to enable observers to observe all public aspects of the voting process during the election without disrupting the voting process. ~~When physically feasible within the polling place,~~ The observation area shall be not less than 3 feet nor more than 8 feet from the table at which electors are announcing their name and address and being to be issued a voter number, and not less than 3 feet nor more than 8 feet from the table at which a person may register to vote. If observers are unable to hear the electors stating their name and address, the poll workers shall repeat the name and address. If space constraints prevent the polling place from accommodating an observation area within the 3 – 8 feet distance, the municipal clerk and chief inspector shall record on the Inspectors’ Statement the actual location of the observation area and the reasons why it could not be located within the 3 – 8 feet distance. The municipal clerk shall, within seven days of the election, provide to the

~~board, the portion of the Inspectors' Statement which documents the reasons why the observation area could not be located within the 3 – 8 feet distance. If observers are unable to hear the electors stating their name and address, the poll workers shall repeat the name and address. If necessary to ensure all public aspects of the process are readily observable, the chief inspector shall set up additional observation areas near the election day registration table and area where elector challenges are handled.~~

(6) Before remaking any ballot, election inspectors shall announce to observers that the ballot is being remade and the reason for doing so. Election inspectors shall also inform observers at the time that absentee ballots are inserted into ballot boxes or tabulating equipment.

(76) Observers shall comply with the chief inspector's lawful commands or shall be subject to removal from the polling place.

(87) All observer questions and challenges shall be directed to the chief inspector or to the chief inspector's designee.

(89) Upon receiving a challenge to a voter's ballot at the polling place, the chief inspector shall follow the challenge procedure in ch. GAB 9. The challenge shall be recorded on the Challenge Documentation Form, GAB-104c.

(109) No observer may engage in any loud, boisterous, or otherwise disruptive behavior that, in the opinion of the chief inspector, threatens the orderly conduct of the election or interferes with voting.

(110) While in the polling place, observers shall keep conversation to a minimum and shall try to conduct whatever conversation is necessary at a low enough volume to minimize distraction to electors and to the election inspectors and any other election officials.

(124) Observers shall be permitted to view the poll lists, excluding the confidential portions of the lists maintained under ss. 6.36(4) and 6.79(6), Stats., as long as doing so does not interfere with or distract electors under s. 5.35(5), Stats. No observer may be permitted to make a photocopy or take photographs of the poll lists on election-day.

(132) No observer may be permitted to handle an original version of any official election document.

(143) No observer may engage in electioneering as defined in s.12.03, Stats.

(154) No observer may use a cellular telephone or other wireless communication device inside the voting area to make a voice call. Text messaging and other non-audible uses of such a device are permissible.

(165) No observer may engage in any conversation with election officials or other electors concerning a candidate, party, or question appearing on the ballot. The chief inspector may order that other conversation be minimized if it is disruptive or interferes with the orderly conduct of the election.

(176) The restrictions on voter contact under sub. (15) shall not be construed to prevent any observer from assisting an elector under s. 6.82, Stats., provided that the elector requests the observer's assistance, and the assistance meets the other requirements of s. 6.82, Stats., and the observer qualifies to provide assistance under that statute.

(187) No observer may wear any clothing or buttons having the name or likeness of, or text related to, a candidate, party, or referendum group appearing on the ballot, or that is intended to influence voting at an election, or having text which describes, states, or implies that the observer is a governmental official or has any authority related to the voting process.

(18) No observer may use any video or still camera inside the polling place while the polls are open for voting.

(19) After the polls close, candidates are allowed to be present and the prohibition of video and still cameras does not apply unless it is disruptive or interferes with the administration of the election.

(20) The chief inspector shall:

(a) Warn an observer to cease offending conduct when:

1. The observer violates a provision of this section which disrupts the operation of the polling place.

2. The observer violates s. 12.03(2) or 12.035, Stats.

(b) Order an observer to depart the polling place when an observer does not cease offending conduct following a warning under sub. (a). If the offending observer declines or otherwise fails to comply with the chief inspector's order to depart, the chief inspector shall summon local law enforcement to remove the offending observer. In the event that a chief inspector orders an observer to leave the polling place, the chief inspector shall provide a written order to the observer which includes the reason for the order and the signatures of the chief inspector as well as another inspector representing the opposite political party, if available. The chief inspector shall have sole authority to order the removal of an observer, but the other inspector may note his or her concurrence or disagreement with the decision on the Inspectors' Statement.

(21) If an observer is removed from a polling place pursuant to subsection (20) above, the municipal clerk shall, within seven days of the incident, provide to the government accountability board a copy of the portion of the Inspectors' Statement which documents the incident. Board staff shall submit a summary to the board of all reported incidents in which observers were removed from the polling place or other locations pursuant to this chapter.

GAB 4.03 Observers at the municipal clerk's office.

(1) Observers shall be permitted to be present at the municipal clerk's office, provided the clerk's office is located in a public building, or an alternate site for absentee voting designated under s. 6.855, Stats., on any day that absentee ballots may be cast in the office.

(2) Observers shall conform their conduct to the requirements of s. GAB 4.02. The municipal clerk shall exercise the authority of the chief inspector under s. GAB 4.02 to regulate observer conduct.

(3) The clerk shall establish observation areas to allow observers to view all public aspects of the absentee voting process without disrupting the voting process. The observation area shall be not less than 3 feet nor more than 8 feet from the table at which electors are announcing their name and address to be issued a voter number, and not less than 3 feet nor more than 8 feet from the table or counter at which a person may register to vote. If space constraints prevent the municipal clerk's office from accommodating an observation area within that distance, the municipal clerk shall document the actual location of the observation area and the reasons why it could not be located within the 3 – 8 feet distance. No observer is allowed behind the counter in the clerk's office. The municipal clerk shall, within seven days of the election, provide to the board, the portion of the Inspectors' Statement which documents the reasons why an observation area could not be located in compliance with the 3 – 8 feet distance requirement.

(4) All observer questions shall be directed to the clerk or to the clerk's designee.

(5) If any observer engages in any loud, boisterous, or otherwise disruptive behavior that, in the opinion of the clerk, threatens the orderly conduct of the election or interferes with voting, the clerk shall issue a warning under s. GAB 4.02(20)(a) and, if the observer does not cease the offending conduct, order the observer's removal under s. GAB 4.02(20)(b).

(6) No observer may use any video or still camera inside the clerk's office while voting is in progress.

GAB 4.04 Observers at the central counting location.

(1) In a municipality using a central counting location under s. 5.86, Stats., observers shall be permitted to be present at the central counting location.

(2) Observers shall conform their conduct to the requirements of s. GAB 4.02. The municipal clerk shall exercise the authority of the chief inspector under s. GAB 4.02 to regulate observer conduct.

(3) The clerk shall establish observation areas to allow observers to view all public aspects of the counting process. The observation area shall be not less than 3 feet nor more than 8 feet from the table at which the counting is taking place without disrupting that process. If space constraints prevent the location from accommodating an observation area within that distance, the municipal clerk shall document the actual location of the observation area and the reasons why it could not be located within the 3 – 8 feet distance. The municipal clerk shall, within seven days of the election, provide to the board, the portion of the Inspectors' Statement

which documents the reasons why the observation area could not be located within the 3 – 8 feet distance.

(4) Before remaking any ballot, election inspectors shall announce to observers that the ballot is being remade and the reason for doing so.

(54) If any observer engages in any loud, boisterous, or otherwise disruptive behavior that, in the opinion of the clerk, threatens the orderly conduct of the count, the clerk shall issue a warning under s. GAB 4.02(20)(a) and, if the observer does not cease the offending conduct, order the observer's removal under s. GAB 4.02(20)(b).

(56) Observers shall be permitted to use a video or still camera inside the central count location unless it is disruptive or interferes with the administration of the election.

(67) All observer questions and challenges shall be directed to the clerk or the clerk's designee.

GAB 4.05 Observers at absentee ballot canvass.

(1) In a municipality using a central absentee ballot canvass location under s. 7.52, Stats., observers shall be permitted to be present at the canvass location.

(2) Observers shall conform their conduct to the requirements of s. GAB 4.02. The board of absentee ballot canvassers shall exercise the authority of the chief inspector under s. GAB 4.02 to regulate observer conduct.

(3) The board of absentee ballot canvassers shall establish observation areas to allow observers to view all public aspects of the canvassing process without disrupting that process. The observation area shall be not less than 3 feet nor more than 8 feet from the table at which the canvassing is taking place. If space constraints prevent the location from accommodating an observation area within that distance, the municipal clerk shall document the actual location of the observation area and the reasons why it could not be located within the 3 – 8 feet distance. Before remaking any ballot, election inspectors shall announce to observers that the ballot is~~be~~The municipal clerk shall, within seven days of the election, provide to the board, the portion of the Inspectors' Statement which documents the reasons why the observation area could not be located within the 3 – 8 feet distance.

(4) Before remaking any ballot, election inspectors shall announce to observers that the ballot is being remade and the reason for doing so.

(54) If any observer engages in any loud, boisterous, or otherwise disruptive behavior that, in the opinion of the board of absentee ballot canvassers, threatens the orderly conduct of the count, the board of absentee ballot canvassers shall issue a warning under s. GAB 4.02(20)(a) and, if the observer does not cease the offending conduct, order the observer's removal under s. GAB 4.02(20)(b).

(56) Observers shall be permitted to use a video or still camera inside the absentee canvass location unless it is disruptive or interferes with the administration of the absentee ballot canvass.

(67) All observer questions and challenges shall be directed to the member of the board of absentee ballot canvassers designated to receive questions and challenges.

GAB 4.06 Observers at absentee voting in certain homes, facilities, and complexes.

(1) One observer from each of the 2 political parties whose candidate for governor or president received the greatest number of votes in the municipality, in the last general election, may accompany the special voting deputies to absentee voting locations described in s. 6.875, Stats. Each party wishing to have an observer present shall submit the name of the observer to the clerk or board of election commissioners no later than the close of business on the last business day prior to the visit to the facility.

(2) The conduct of any observer shall conform to the requirements of s. GAB 4.02. The special voting deputies shall exercise the authority of the chief inspector under s. GAB 4.02 to regulate observer conduct.

(3) The special voting deputies shall establish observation areas to allow observers to view all public aspects of the absentee voting process- without disrupting the voting process. The observation area shall be not less than 3 feet nor more than 8 feet from the location at which electors are marking their ballots. If space constraints prevent the facility from accommodating an observation area within that distance, the special voting deputies shall document the actual location of the observation area and the reasons why it could not be located within the 3 – 8 feet distance. Notwithstanding the 3 – 8 feet distance requirement, the observation area shall not be situated to permit observers to hear any conversation between the elector and an individual who is assisting the elector in marking the ballot.

(4) If any observer engages in any loud, boisterous, or otherwise disruptive behavior that, in the opinion of the special voting deputies, threatens the orderly conduct of the absentee voting process, the special voting deputies shall issue a warning under s. GAB 4.02(20)(a) and, if the observer does not cease the offending conduct, order the observer's removal under s. GAB 4.02(20)(b).

(5) No observer may be permitted to use a video or still camera inside the voting location.

(6) All observer questions shall be directed to the special voting deputies.

GAB 4.07 Observers at a recount.

(1) Pursuant to s. 9.01(1)(b)11., Stats., the recount of any election shall be open to any interested member of the public, including candidates and their counsel.

(2) Observers shall conform their conduct to the requirements of s. GAB 4.02. The board of canvassers shall exercise the authority of the chief inspector under s. GAB 4.02 to regulate observer conduct.

(3) The board of canvassers may limit observers to a designated area, but the observers shall be positioned so that they can see the poll lists and each individual ballot as it is counted. If there is not enough room for all observers to view the ballots as they are being counted, visual preference shall be given to the candidates or their representatives.

(4) If any observer engages in any loud, boisterous, or otherwise disruptive behavior that, in the opinion of the board of canvassers, threatens the orderly conduct of the count, the board of canvassers shall issue a warning under s. GAB 4.02(20)(a) and, if the observer does not cease the offending conduct, order the observer's removal under s. GAB 4.02(20)(b).

(5) Observers shall be permitted to use a video or still camera inside the recount location unless it is disruptive or interferes with the administration of the election.

(6) All observer questions and challenges shall be directed to the member of the board of canvassers designated to receive questions and challenges.

(7) The observation area and conduct of observers at a recount may be more specifically governed by a recount plan adopted by the board of canvassers or government accountability board, consistent with the public's right to observe the recount process and the ability of election officials to conduct the recount.

GAB 4.08 Communications media observers.

(1) Observers from communications media organizations shall identify themselves and the organization they represent to the chief inspector upon arriving at the polling place. The inspector shall record that information on the Inspectors' sStatement, GAB-104.

(2) Communications media observers shall be permitted to use video and still cameras provided the cameras are not used in a manner that allows the observer to see or record how an elector has voted and provided the cameras do not disrupt or interfere with voting or disrupt the orderly conduct of the election. The Board may also use video and still cameras at polling places, municipal clerks' offices, central counting locations, or absentee ballot canvass locations, or authorize others to do so for purposes authorized by the Board.

GAB 4.09 Polling place accessibility assessments.

(1) This section applies to disability advocates and other individuals authorized by the board to assess the compliance of a polling place with s. 5.25(4)(a), Stats.

(2) When practical, groups and individuals observing under this section shall notify the clerk at least 24 hours in advance of their intent to assess polling place accessibility.

(3) Disability advocate observers shall be allowed out of the designated observation area to take accessibility measurements to ensure compliance with polling place accessibility requirements unless it is disruptive or interferes with the administration of the election.

(4) Disability advocate observers shall be allowed to take photos and video to document compliance with the accessibility requirements unless it is disruptive or interferes with the administration of the election.

(5) Disability advocate observers shall be allowed to wear shirts or name tags identifying themselves as disability advocate observers.

(6) Election officials, including poll workers, shall facilitate the work of disability advocate observers in making accessibility assessments.

SECTION 2: Effective date. This rule shall take effect on the first day of the month following publication in the Wisconsin Administrative Register as provided in s. 227.22(2)(intro.), Stats.

Dated November 5, 2010

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Government Accountability Board
Director and General Counsel