

ORDER
OF
GOVERNMENT ACCOUNTABILITY BOARD

Clearinghouse Rule 08-024
Rules Chapter GAB 12
Wisconsin Administrative Code

The State of Wisconsin Government Accountability Board proposes an order to create chapter GAB 12, pursuant to s.7.315(2), Stats., relating to the certification and training of municipal clerks.

ANALYSIS PREPARED BY GOVERNMENT ACCOUNTABILITY BOARD:

1. Statutory authority: ss.5.05(1)(f), 7.315(2), and 227.11(2)(a), Stats.:
2. Statutes interpreted: ss.7.15(1m) and 7.315(2), Stats.
3. Explanation of agency authority: Under s.7.15(1m), Stats., “Each municipal clerk shall, at least once every 2 years, attend a training program sponsored by the board under ss. 7.31 and 7.315” and under s.7.315(3), “The board shall, by rule, prescribe requirements for, and the content of, training required of municipal clerks under s. 7.15 (1m). The board may provide such training directly or arrange for such training to be provided by other organizations. The rules shall provide a method for notifying the relevant municipal governing body if a municipal clerk fails to attend required training.” To comply with these statutory requirements, the Board has adopted chapter GAB12, relating to the certification and training of municipal clerks.
4. Plain language analysis: The proposed rule provides the requirements that, and the method by which, municipal clerks receive elections training and certification.
5. Summary of, and comparison with, existing or proposed federal regulations: Federal law does not regulate the training of municipal clerks. Although federal law does not have a comparable provision for the training of municipal clerks, federal law - the Help America Vote Act of 2002 or “HAVA,” (Public Law 107-252, Oct. 29, 2002) – has mandated the training of election officials and poll workers in each of the 50 states. Under HAVA, each state receiving federal funds to improve the administration of elections in the state has to develop a plan that includes “programs for election official education and training, and poll worker training which will assist the state in meeting

the requirements of Title III” of HAVA. The State of Wisconsin has developed and is implementing such a plan for poll workers and now is implementing a plan for the training of municipal clerks because municipal clerks also act as election officials.

6. Comparison with rules in adjacent states: Illinois, Iowa, Michigan and Minnesota all statutorily require that persons who conduct elections shall receive election training.

Minnesota’s administrative rule, Chapter 8240, requires all persons conducting elections, including local election officials, to complete a training program and to maintain a current elections training certification.

Neither Illinois nor Michigan has an administrative rule governing the election training of clerks or election officials other than election judges (inspectors/poll workers).

Iowa’s Administrative Code, section 49.124, provides that “all precinct election officials and any other persons who will be employed in or around the polling places on election day” and “At least two precinct election officials who will serve on each precinct election board at the forthcoming election shall attend an election training course not later than the day before each primary and general election.” The training is conducted by the County Commissioner of Elections and applies to those persons who actually conduct elections and does not apply to municipal clerks who do not have an elections supervisory function.

7. Summary of factual data and analytical methodologies: Adoption of the rule was predicated on federal and state mandate rather than on any factual data or analytical methodology.
8. Analysis and supporting documents used to determine effect on small business or in preparation of economic impact report: The rule will have no effect on small business, nor any economic impact.

9. Effect on small business: The rule has no effect on small business.

11. Agency contact person (including e-mail and telephone): George A. Dunst
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12. Place where comments are to be submitted and deadline for submission: Government
Accountability Board, 17 West Main Street, P.O. Box 2973, Madison, WI 53701-2973;
(elections.state.wi.us)

SECTION 1. Chapter GAB 12 is created to read:

CHAPTER GAB 12 CERTIFICATION AND TRAINING OF MUNICIPAL CLERKS

GAB 12.01 Definitions. In this chapter:

- (1) “Board” means the government accountability board.
- (2) “Election cycle” begins on January 1 of an odd-numbered year and continues through December 31 of the following even-numbered year.
- (3) “Municipal clerk” includes the executive director and deputy director of the Milwaukee City Board of Election Commissioners.
- (4) “Municipal election official” means municipal clerk, deputy clerk or any municipal employee charged with duties related to the administration of elections.
- (5) “Statewide Voter Registration System” is the election administration software application provided by the board to enable local election officials to register voters, track absentee voting, and administer elections.

GAB 12.02 Certification.

- (1) Only municipal clerks who meet the training standards established in this chapter shall be certified by the board.
- (2) Any other municipal election official who meets the standards established in this chapter may be certified by the board.
- (3) The standards for the initial and the renewal certifications of municipal clerks are those set forth in this chapter.
- (4) The board shall maintain a record of the municipal clerks who meet the training standards established by this chapter.
- (5) To establish completion of certification requirements, a municipal clerk shall provide the board with documentation of attendance at any approved training that has not been conducted by board staff.
- (6) The records concerning the training qualifications of municipal clerks are public records and shall be provided by the board upon request.
- (7) The governing body of any municipality whose municipal clerk fails to meet the training standards set out in this chapter shall be notified of that fact by the board.

GAB 12.03 Initial certification and renewal of certification.

- (1) To qualify for initial certification, individuals shall attend or view a core curriculum training course conducted under the direction of the board staff. The expiration date for initial certification shall coincide with the end of the election cycle during which the initial certification was obtained.
- (2) After attending the initial training and obtaining certification, individuals seeking to maintain their training certification for the succeeding election cycle must attend, during the current election cycle, an additional 3 hours of training approved by the director and general counsel of the board. Attendance at the core curriculum class plus attendance at three additional hours of approved training (for a total of 6 hours of training during the initial term) will certify the attendee through the end of the succeeding election cycle. Any further renewal of certification will require attendance at 6 hours of additional approved training in the then-current cycle. Those 6 hours of training will apply to the following cycle.
- (3) The board shall conduct training opportunities in several locations throughout the state, and shall make training opportunities available on-line, and in video or audio format, to enable interested individuals to renew their certification.
- (4) Each municipal clerk who attends a training course conducted under the direction of the board's staff shall register with the board. Individuals may not carry over training hours to qualify for renewal of their certification in subsequent election cycles.
- (5) The approved training may consist of attendance at any combination of the following training opportunities if that training opportunity covers all or part of the training content described in this chapter:
 - (a) A certification-training course for municipal clerks or chief election inspectors conducted under the direction of the board staff.
 - (b) Training on the use of the Statewide Voter Registration System presented under the direction of the board staff, including on-line training developed for the board and made available to local election officials.
 - (c) A workshop conducted by the board staff at a state or district meeting of the Wisconsin County Clerks Association, Wisconsin Municipal Clerks Association, Wisconsin Towns Association or League of Wisconsin Municipalities.
 - (d) An information presentation conducted by the board staff and sponsored by the University of Wisconsin Extension Local Government Center.
 - (e) Training conducted by a municipal or county clerk for election inspectors, pursuant to ss. 7.10 (9), 7.15 (1) (e) and (11), Stats.

- (f) Attendance at a state, regional or national conference, or a seminar of a professional organization, that serves election officials.
- (6) The board shall maintain a record of the approved training event, including the date and location of the approved training.
- (7) When the individual has completed the renewal requirements, the individual's certification shall be extended for the duration of the next election cycle.

GAB 12.04 Training Content.

- (1) The content of the training curriculum shall be prescribed by the board.
- (2) The training curriculum shall include the following elements:
 - (a) A core curriculum session that provides an overview of the election-related duties of a municipal clerk.
 - (b) Instructions on the proper completion of election-related forms and notices, including a requirement that the information on election-related forms be legible.
 - (c) Review of the applicable statutory deadlines for publishing notices, submitting petitions and ballot access documents.
 - (d) Directions for the review and completion of election-related forms and petitions, including affixing the signature and certification required by law.
 - (e) Treatment of confidential voter information and proof of residence documents received from a voter.
 - (f) Review of the deadlines and procedures for delivering completed election-related documents to the board of canvassers.
 - (g) A description of the calendar of election events and critical election-related timelines.
 - (h) Duties of the municipal clerk with respect to candidates for municipal office.
 - (i) Requirements for ballot design and preparation, including write-in ballots for military and overseas electors.
 - (j) Duties of the municipal clerk with respect to voters, including absentee, military, overseas and confidential electors, and accessibility to the electoral process.
 - (k) Requirements for recruitment, appointment and training of election inspectors, special voting deputies, special registration deputies, and other election officials.

- (l) Requirements for acquisition, testing, security and audit of voting equipment.
- (m) Procedures for ensuring security of ballots and voting equipment, including chain of custody documentation, use of serialized, tamper-evident seals, and monitoring of security procedures.
- (n) Requirements for establishing, equipping, supplying, securing, and preparing polling places for elections, including emergency preparedness.
- (o) Election-day responsibilities of the municipal clerk.
- (p) Post-election responsibilities of the municipal clerk, including conducting the municipal canvass, issuing certificates of election and conducting a recount.
- (q) Requirements for recall and direct legislation.
- (r) The consequences for failing to follow prescribed procedures.
- (s) Any other information prescribed by the board.

GAB 12.05 Certification waiver.

- (1) In the event of an emergency, the municipal clerk may make a written request to the board for a waiver of the training requirement for a municipal clerk.
- (2) The request shall be communicated to the director and general counsel of the board in an expeditious manner.
- (3) The request shall describe the facts that establish the basis for the emergency request and the steps that have been taken by the municipal clerk to obtain the required training.
- (4) The director and general counsel of the board may grant a waiver of the required training for one election cycle.

FINAL REGULATORY FLEXIBILITY ANALYSIS:

The creation of this rule does not affect business.

FISCAL ESTIMATE:

The creation of this rule has no fiscal effect.

The creation of this rule will take effect on the first day of the month following its publication in the Wisconsin Administrative Register pursuant to s.227.22(2), Stats.

Dated September 24, 2008

KEVIN J. KENNEDY
Director and General Counsel