

State of Wisconsin\Government Accountability Board

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MEMORANDUM

TO: Wisconsin County Clerks
Milwaukee County Election Commission
Wisconsin Municipal Clerks
Milwaukee City Election Commission

FROM: Michael Haas
Elections Division Administrator

DATE: March 10, 2016

SUBJECT: Enactment of Senate Bill 295
Various Election Law Changes Will Be in Effect for 2016 Spring Election

The Government Accountability Board (G.A.B.) has been advised that the State Senate is expected to give final passage to Senate Bill 295 on March 15, 2016, and that the Governor intends to sign the legislation on March 16, 2016. As a result, several changes to election administration and to WisVote processes will take effect immediately and need to be incorporated into election preparations for the April 5, 2016 Spring Election. Other provisions of the legislation will not go into effect until after the Partisan Primary in August. This memorandum outlines the provisions of SB 295 and also includes guidance for implementing those provisions. Attached is a copy of the bill as it will be considered by the State Senate on March 15, 2016. After the bill is signed by the Governor, the new Act will be posted at this location rather than the bill.

A. Changes Effective Immediately

1. A veteran's photo identification card issued by the Veterans Health Administration of the federal Department of Veterans Affairs may be used as an acceptable form of proof of identification for obtaining a ballot. The ID card must be unexpired or have no expiration date. Attached is an updated picture guide of acceptable photo ID's which includes the two versions of the Veterans Affairs ID card (or "VA Card") that are currently in use. Due to the assurances that SB 295 will be in effect for the April election, the G.A.B. is advising clerks, effective immediately, to honor requests for absentee ballots which are accompanied by a VA Card that is unexpired or has no expiration date.
2. An occupant of a residential care facility may use a contract or intake document prepared by the facility that specifies that the occupant currently resides in the facility as proof of residence for the purpose of registering to vote from the facility's address. The document may, but is not required to, identify the room or unit in which the occupant resides.

3. An election inspector may use the override function of voting equipment when processing an overvoted ballot rather than remaking the ballot. The use of the override function is an option and is not mandatory. Because this change is occurring so close to the 2016 Spring Election, if voting equipment has already been programmed without the option to override overvoted ballots (as required by previous Board conditions of equipment approvals), the equipment does not need to be re-programmed.

The steps outlined below apply when the override function is being used. If that function is not being used then the inspectors complete the usual process of remaking an overvoted ballot.

All overvoted ballots must be treated uniformly, either by using the override function or by remaking the ballot. However, before the override function is used for an overvoted absentee ballot, the election inspectors shall review the ballot to determine whether elector intent can be determined in the overvoted contest. If the overvote notification is triggered but the elector's intent can be determined, the ballot must be remade consistent with that intent. If elector intent cannot be determined and the override function is being used, the election inspector selects the override function to process the ballot.

When the voter is present at the time the ballot is cast and the equipment provides an overvote message, the election inspector assigned to monitor the tabulation equipment should intervene and explain the notification to the voter and the voter's options. If the voter wishes to spoil the overvoted ballot and mark another ballot, the inspector selects the return ballot option, allowing the voter to retrieve the ballot, return it to the issuing table and obtain a replacement ballot. If the voter wishes to cast the overvoted ballot as is, either after the ballot is retrieved from the tabulator or without inspecting it further, the election inspector may cast the ballot using the override function.

When the override function is used for any overvoted ballot, the use of the override function must be noted on the inspectors' statement, but no markings are made on the ballot. Separate step-by-step guidance for using the override function is attached for use at the polling place or central count location.

4. While special registration deputies are not eliminated until the implementation of online registration (see C.3 below), the legislation immediately repeals the ability of SRD's to conduct voter registration at polling places. Municipal clerks may appoint "election registration officials" immediately to conduct voter registration, but only at polling places, at residential care facilities during the open registration period, and in the clerk's office during in-person absentee voting. If clerks wish to use an existing SRD to register electors at polling places for the 2016 Spring Election, the clerk must also appoint the SRD as an election registration official. Election registration officials must receive the same training as regular election inspectors, and are appointed for two-year terms.
5. Whenever a municipal clerk 1) receives an in-person absentee ballot application, 2) mails an absentee ballot, or 3) receives a completed absentee ballot, the clerk must, within 48 hours, indicate the status of the absentee ballot in WisVote, or provide the updated information to their WisVote provider who must then enter the data into WisVote within 24 hours. Do not

include any hours on a Sunday or legal holiday when determining the deadline. If the deadline for recording the absentee ballot information falls on a Saturday when the clerk does not normally have office hours, a Sunday, or a legal holiday, the deadline is extended to the following business day.

For clerks who are not currently tracking absentee ballots in WisVote, instructions for doing so can be found at <http://www.gab.wi.gov/node/3893> and are also located in WisVote's FAQ/Current Issues tile. The G.A.B. is required to establish a subscription service to allow interested parties access to the absentee ballot data provided by clerks on at least a semiweekly basis, once a pricing structure is established by the Board.

Making absentee ballot data available more promptly will be more consistent with the practice in some other states. Because the prompt tracking of absentee ballots for military and permanent overseas voters is already required, there should already be a mechanism for WisVote reliers to communicate this information to their providers. However, there will be a significant increase in the volume of absentee ballots for which the status at various stages needs to be tracked within a short period of time, and this task may be impossible to implement for some reliers and providers prior to the 2016 Spring Election.

The Legislature inserted this provision with a focus on making timely data available during the upcoming fall election cycle. Clerks are asked to make their best efforts to satisfy the reporting requirement for absentee ballot activity after the law becomes effective and prior to the Spring Election and Presidential Primary, so that any necessary adjustments may be made in anticipation of full compliance starting with the 2016 Partisan Primary in August.

6. On Election Night, municipal clerks must report returns, by ward or reporting unit, to the county clerk no later than two hours after the votes are tabulated, and county clerks must post all returns on a county website within two hours of receiving the returns. The G.A.B. must provide a link to those returns on its website. The G.A.B. will contact county clerks to obtain current website links for Election Night returns.

The legislation does not specify whether or not the results must include local contests. Board staff will give that question further consideration and possibly consult with the Board. For the April 2016 election, that decision is left to the judgment of municipal and county clerks, but the results must include at least state judicial contests and the Presidential Primary.

B. Changes Affecting Voters and Election Officials for 2016 General Election

The following changes will first be in effect for the November 8, 2016 Presidential and General Election, and therefore do not require new instructions for voters at the Spring Election:

1. All absentee ballots must be delivered to the polling place by 8 p.m. on Election Day, removing the option for an absentee ballot to be received by the Friday after the election if it is postmarked by Election Day. The Friday deadline for curing provisional ballots will remain in effect. The G.A.B. will issue new certificate envelope language and uniform instructions for absentee ballots to comply with this provision to be used starting with the 2016 General Election.

2. An absentee ballot may not be counted if the certificate envelope is missing the address of the witness. The G.A.B. will issue further guidance regarding the processing of absentee ballots with a missing or incomplete witness address prior to the 2016 General Election.

C. Other Changes

The following changes have a longer-term implementation period and/or will not have an immediate impact on voters.

1. The G.A.B. may facilitate the creation and maintenance of electronic poll books, including entering into contracts with vendors and establishing programs for development and testing. The G.A.B. has decided to defer any applications for approval of a commercial electronic poll book system until the agency can conduct a cost-benefit analysis of creating an electronic poll book system in-house compared to allowing vendors to sell their own poll book systems. If electronic poll books are used, only one inspector is required to maintain the poll book.
2. Online voter registration will be developed and implemented by the G.A.B. and the future Elections Commission no later than the 2017 Spring Primary, but earlier if the system can be developed in time for elections in the fall of 2016. Electors will be able to register online during the open registration period (up to 20 days before an election) if they possess a current and valid Wisconsin driver's license or DMV-issued identification card, and if the name and address used for voter registration matches the individual's name and address in the Department of Motor Vehicles database.
3. Special registration deputies will be eliminated effective upon the implementation of online voter registration. Upon the elimination of special registration deputies, all voter registration efforts and drives outside of locations served by election registration officials will require that a copy of the elector's proof of residence document is submitted with the voter registration application.
4. The State will join the Electronic Registration Information Center (ERIC), a consortium of states which compare voter registration and participation data and use other sources to improve the accuracy of their voter registration systems and to identify individuals who may be eligible to vote but are not currently registered. States which are members of ERIC are required to contact individuals identified as being eligible to vote but who are not registered voters at least every two years. Additional funding will be required to implement this directive. If this initiative is funded and the matching process is completed early enough in 2016, municipal clerks may receive a significant increase in the number of voter records to be updated and new registrations to be processed.
5. The legislation removes the current prohibition on the use of an examination for chief inspectors. The G.A.B. intends to develop a self-evaluation mechanism as part of its chief inspector training, and municipalities may develop their own evaluation tools. The results of any such examination will not affect an individual's qualifications to serve as a chief inspector.

6. The G.A.B. may approve electronic voting equipment which has not been certified by the U.S. Election Assistance Commission (EAC). The G.A.B. has adopted a policy to allow such approval in limited circumstances involving modifications to voting equipment which have not been certified by the EAC, provided that the underlying voting system has received EAC certification. The G.A.B. may revisit its current policy to determine whether such approvals should be expanded in light of this provision.

Local election officials should take steps to immediately implement the changes identified above as affecting the 2016 Spring Election. The G.A.B. is in the process of revising its manuals and other guidance on these topics, and will provide additional information as necessary and as new initiatives progress, such as online registration, electronic poll lists, and participation in ERIC.

A webinar regarding the implementation of SB 295 took place on Wednesday, March 9th, and will be posted on the G.A.B.'s webinar webpage at <http://www.gab.wi.gov/clerks/education-training/webinars>.

If you have questions with respect to this memorandum, please contact the G.A.B. Help Desk at 608-261-2028 or gabhhelpdesk@wi.gov.