

State of Wisconsin\Government Accountability Board

212 East Washington Avenue, 3rd Floor
Post Office Box 7984
Madison, WI 53707-7984
Voice (608) 266-8005
Fax (608) 267-0500
E-mail: gab@wisconsin.gov
<http://gab.wi.gov>



JUDGE THOMAS H. BARLAND
Chair

KEVIN J. KENNEDY
Director and General Counsel

Remarks by
Kevin J. Kennedy
Director and General Counsel
Wisconsin Government Accountability Board

Presented to the

Wisconsin Senate Committee on Transportation and Elections

The Honorable Mary Lazich, Chairperson

Room 411 South, State Capitol
Wednesday, January 26, 2011
10:00 a.m.

Chairperson Lazich and Committee Members:

Thank you for the opportunity to appear before the Committee to provide information on 2011 Senate Bill 6 relating to requiring certain identification in order to vote. Versions of this legislation have been deliberated in the Legislature over the course of several sessions. In anticipation of this legislation the Government Accountability Board staff researched the law in other states, talked with local election officials, legislators and other persons interested in the legislation and developed some informational materials.

These materials included a list of photo identification legislation introduced in past sessions, a summary of voter identification requirements in other states and a list of issues the Government Accountability Board staff believed voter identification legislation should address. This informational material was distributed to Committee members and all legislators. It is also posted on our website.

On behalf of the Government Accountability Board, I would like to offer some proposed changes for your consideration to facilitate the implementation of this legislation. I am also available to answer your questions about implementation of the legislation.

Currently 27 states require voters to provide some form of identification before they are issued a ballot. Only three states, Georgia, Indiana and Oklahoma, require the identification to contain a picture of the voter. Many of the other states require the same identification Wisconsin currently requires for voters who must provide current proof of residence to register to vote after the close of registration and at the polling place on Election Day. Based on our research, it appears that no state requires an absentee voter who casts a ballot by mail to provide a copy of any required photo identification.

Senate Bill 6 shares similarities with the Indiana photo identification statute which has been upheld in two separate lawsuits. But Senate Bill 6 also varies from that law in several significant ways, which makes the legislation stricter as well as more cumbersome and costly to administer at both the State and local levels. I will identify some of the differences and similarities with the Indiana law in this testimony. I will also discuss areas of the proposed legislation where our staff believes changes should be considered to improve implementation.

Types of permissible identification

The Government Accountability Board recommends the Committee consider expanding the types of picture identification permitted to be shown to receive a ballot. The additional forms of identification we recommend are a U.S. passport; student identification card issued by an accredited institution of higher education, including a university, college or technical school; or other identification card issued by Wisconsin government, a Wisconsin governmental subunit or the United States government. The key components of the identification would be that it contains the full name and a picture of the voter and has not expired.

Under current provisions of the legislation, a voter is required to present a valid Wisconsin driver license, valid Department of Transportation-issued identification card or current and valid military identification card to a poll worker before being given a ballot. The purpose of the legislation is to require the voter to establish identity in order to receive a ballot. There are additional types of picture identification other than the three forms delineated in the bill that provide reliable and accessible identification, and that would relieve some of the burden on the Department of Transportation to provide acceptable forms of identification.

A U.S. passport is a common form of acceptable identification for voting in several of the other states requiring identification to vote. Other voter identification states also permit picture identification issued by the federal, state and local government. After passage of its law, Indiana election officials realized that it should have accommodated another specific form of identification which is a benefits card issued to armed services veterans by the U.S. Department of Veteran Affairs. The card contains the individual's photo and name but has no expiration date. Indiana interprets those cards to be valid as a lifetime card.

College students should be permitted to use a picture identification card issued by the college or university. These cards are used to access many benefits limited to students associated with the college or university. The college or university has a vested interest in issuing secure forms of

identification. Many students do not carry a driver license because they live on campus, use public transportation or do not drive.

Wisconsin law permits out-of-state students to vote in Wisconsin elections if they have established a 10-day physical presence and intend the presence to be their residence for voting purposes. This means they cannot vote in another state. In order to obtain a Wisconsin driver license or identification card from the Department of Transportation the out-of-state driver license has to be surrendered. These students may want to keep their out-of-state license because they may return to their home state for vacations or summer employment.

Allowing the use of other secure governmental and educational photo identification would significantly reduce the fiscal impact on the Wisconsin Department of Transportation, which will be required to issue state identification cards at no cost to anyone without a driver license who requests it.

Absentee Voting

The Government Accountability Board recommends that the Committee eliminate the requirement that absentee voters who cast a ballot by mail or with the assistance of special voting deputies appointed by the municipal clerk provide a copy of the required identification or a statement signed by the absentee voter's witness or special voting deputies. There is minimal purpose in requiring photo identification of such voters, and the current proposal contains so many exceptions and variations it will be extremely difficult for poll workers to sort out at the polling place or absentee ballot counting location. From an administrative and practical perspective, eliminating the photo identification requirement for absentee voters who vote by mail, or in front of special voting deputies, is easily the single biggest improvement that could be made to Senate Bill 6.

Existing law for absentee voting provides sufficient indicia of reliability that the absentee voter is the person casting the absentee ballot. These voters are required to submit a written request. In many cases the voter is receiving the ballot for more than one election in a calendar year or is on the permanent absentee list. The absentee voting process is completed in the presence of a witness who signs the certificate envelope attesting the voter marked the ballot in the presence of the witness. Two special voting deputies witness the ballot marking and certify the voter cast the ballot in their presence for absentee voters at nursing homes, qualified retirement homes, qualified community-based residential facilities, certified residential care apartment complexes, and certified or licensed adult family homes.

In the proposed legislation, the signed statement placed in the certificate envelope offered in lieu of a copy of the required identification is essentially the same information the witness or special voting deputies are already required to certify on the outside of the certificate envelope. In the case of absentee voters at qualified retirement homes, qualified community-based residential facilities, certified residential care apartment complexes, and certified or licensed adult family homes where the municipal clerk does not send special voting deputies, the signed

statement alternative also requires a certification of the manager of the facility, home or complex that the voter lives there and that the establishment is licensed or certified. This is yet another cumbersome process and potential participation barrier to these voters.

This hodgepodge of alternatives coupled with exemptions for confidential, military and overseas electors creates a recordkeeping nightmare for the municipal clerk. Poll workers will have to evaluate the following options when opening an absentee ballot:

- Is the absentee voter exempt from enclosing a copy of the required identification because the voter is a confidential, military or overseas elector?
- Is the absentee voter exempt from enclosing a copy of the required identification because the voter provided the municipal clerk with a copy of the required identification in a previous election and the voter has not moved or changed his or her name?
- Is the signed statement of the person or special voting deputies who witnessed the absentee voter mark the ballot sufficient in lieu of a copy of required identification?
- Is the copy of a citation or notice regarding a surrendered driver license sufficient in lieu of a copy of required identification?
- May observers and challengers view the enclosed identification documents?

These new administrative provisions would require much training of election inspectors and education of the public, and would complicate procedures at the polling place. Imposing these requirements on our election partners at the local level might be easier to justify if they added a significant measure of necessary security to the process. The consensus of professionals in election administration is that it does not. A copy of a photo identification included with an absentee ballot sent by mail obviously cannot be compared to the absentee voter. It is also highly improbable that an elector in a nursing home or other care facility completing a ballot in front of two special voting deputies would submit a copy of an invalid identification, and convince the voting deputies to nevertheless certify that the proper individual voted.

The Board's concern about the identification requirement for mail-in absentee voters is also supported by the court decision in one of the cases which upheld the Indiana photo identification law. On June 30, 2010, the Indiana Supreme Court issued a decision regarding the constitutionality of that state's photo identification law, which does not require photo identification from mail-in absentee voters. While upholding the photo ID law, the Court commented on the ineffectiveness of requiring it for mail-in absentee voters. The Court noted: "The plaintiffs do not propose any method by which a photo identification requirement could be effectively utilized to verify the identity of a mail-in absentee voter. Legislation is not constitutionally deficient for failing to impose an unenforceable, useless requirement."

A separate and significant issue for local election officials is what happens to the copies of photo identification that are mailed in by absentee voters. Are they available for public inspection during or after the election? Current law requires that the date of birth and driver license number is redacted from voter records that are requested. Under the public records law it would appear that the copies of licenses and identification are subject to disclosure, but that birthdates and license numbers may have to be redacted, although this legislation does not address that issue. Redaction of these records by local officials could add a significant workload and costs unfunded by local election budgets.

Again, eliminating the requirement for voters who cast an absentee ballot by mail or with the assistance of special voting deputies to provide a copy of the required identification or a statement signed by the individuals witnessing the marking of the absentee ballot is the single most important change that can be made to make this legislation work effectively.

Standard of Review by Election Officials

The Government Accountability Board recommends the Committee clarify the standard of review for local election officials with respect to the photo identification requirement. The legislation requires the poll worker or municipal clerk to verify the name and picture on required identification. In one section dealing with the small category of new residents voting only in a presidential election, the legislation uses the standard that the photograph “reasonably resembles the voter.” This standard should be incorporated in the sections related to voting at the polling place and in the office of the municipal clerk.

Absent more specific language, our administrative interpretation and direction to local election officials will be that the photograph should be given a cursory look, and that they should not scrutinize the photo to verify characteristics such as hair or eye color, or facial hair. A stricter interpretation would tend to place volunteer election inspectors in the uncomfortable position of acting as a bouncer at a bar or as sworn law enforcement without that kind of identification training. This interpretation is similar to the approach taken under the Indiana law, which also does not include specific instructions or a standard for evaluating the photo.

In addition the legislation should provide the name on the required identification “conform” to the name on poll list, rather than be “the same as.” This is a more realistic standard than verifying the name is identical. It permits election officials to exercise common sense in permitting a voter with a derivative of a common name or a middle name to vote without having an identical match of the name on the required identification with the name on the poll list. “Conform” is the term used in the Indiana statute and poll workers are specifically instructed to recognize common variations in names between the photo identification and the poll list, which has been a successful approach there.

Provisional ballots

The Government Accountability Board recommends the Committee consider alternatives to issuing a provisional ballot to voters who do not have the required identification. Provisional voting is a time consuming process that requires additional documentation and record keeping for poll workers and the municipal clerk. This will require municipalities to add additional workers on Election Day and following Election Day to process the provisional ballots.

Most municipal clerks (62%) are part-time and are not in the office on the day following Election Day to process provisional ballots. Currently Wisconsin only permits the use of a provisional ballot for the first-time voter who registered by mail, but was unable to provide the required proof of residence and for voters registering at the polling place on Election Day who are unable to provide their driver license number. There are very few provisional ballots issued in Wisconsin.

Voters may not be able to get to a DMV office on Election Day or the day following Election Day because there are very few DMV offices open full-time outside large population centers. It will also be very difficult for the municipal clerk to inform an absentee voter in a timely manner their ballot is being treated as a provisional ballot so the absentee voter has the opportunity to correct it.

In November 2006 there were 271 provisional ballots cast, 211 in November 2008 and 64 in November 2010. These numbers will increase significantly and poll workers will need additional training to ensure the process works smoothly. There are more efficient ways to provide a failsafe voting option for voters without the required identification.

Many states permit a voter without the required identification to swear or attest to an affidavit of identity in lieu of returning with the required identification. This documentation provides additional evidence for prosecution if it is suspected the voter is not who they claim to be.

If the Committee believes provisional voting is the preferred failsafe for a voter without the required identification, we suggest adding a second day for provisional voting. This would require a change to the meeting of school district and municipal boards of canvassers to accommodate the extra time for a provisional voter to provide the required identification.

DOT-related Issues and Accessibility of Photo Identification

Our staff has had several of discussions with representatives of the Department of Transportation. There are a number of administrative issues with respect to the Department's role in issuing driver licenses and identification cards that need to be considered as the legislation moves forward.

The Department of Transportation has a working definition of a "valid" driver license, but it is not tied to a statutory definition or administrative rule. We are advised a "valid" driver license

is one that is not revoked, suspended or cancelled. This is different from the definition proffered by the drafter, which is a license that is authentic and not expired. Especially because the Department of Transportation would be the sole source of photo identification for most voters under this legislation, what constitutes a “valid” driver license is information that needs to be clearly conveyed to voters. Given the provisions in the legislation related to a surrendered driver license, this needs to be clarified. We have also been advised that there are hundreds of thousands of revoked driver licenses in Wisconsin. If the license contains a proper photo and name and expiration date, it seems that whether or not it is suspended or revoked or cancelled should not impact an individual’s right to vote, or require a different form of identification.

We have also been advised a change in the law no longer requires a driver to surrender his or her driver license when it is revoked or suspended. This makes the proposed language permitting the use of a copy of the notice or citation after a license is surrendered superfluous.

We have also been advised that the Department of Transportation plans to begin issuing driver licenses by mail from a centralized location rather than over the counter as soon as this May. This will severely limit citizens’ ability to obtain the required identification in a timely manner for voting. Given the already limited Department of Transportation services available outside major population centers, voters will have a very difficult time obtaining the required identification if it is necessary to do so close to Election Day.

As already noted, the requirement that DMV provide photo identification within one day to remedy any provisional ballots with limited resources may also be a concern. We are advised that approximately 30 DMV branches are open five days a week throughout the State, and that the remainder of the State is served by travel teams that serve counties or regions on a regular schedule, such as once a week or once a month. Permitting additional forms of photo identification would alleviate some of the cost and burden on DMV of supplying new identification, especially immediately before and after an election.

Voter Information Program and Continuous Outreach and Assistance Requirements

The legislation requires the Government Accountability Board to conduct a public information campaign for the purpose of informing prospective voters of the photo identification requirement and exceptions for the primary and election when the requirement goes into effect. However, the legislation provides no funding to carry out this task. Depending on the scope of the outreach and education program, the cost of a mixed-media campaign alerting voters to the photo identification requirement could be expected to cost at least \$500,000.

In Indiana, the Secretary of State’s office spent approximately \$500,000 on a public education and outreach campaign prior to the 2006 election, and approximately \$260,000 leading up to the primary and general elections in 2008 and 2010. In comparison, the Department of Health Services spent approximately \$500,000 on a statewide public education campaign on the H1N1 virus in from November 2009 through January 2010.

If the requirement goes into effect for the 2012 spring primary and election, the Government Accountability Board believes the public information campaign needs to be carried out for the fall elections as well. The expected voter turnout for the 2012 November election will more than double the turnout for the spring elections. This will require additional funding beyond the initial public information campaign for the spring election cycle.

The legislation also requires the Government Accountability Board to engage in outreach to identify and contact groups of electors who may need assistance in obtaining or renewing statutory ID and provide assistance in obtaining and renewing statutory ID. It is not clear what level of assistance is expected of the Government Accountability Board. Realistically, it cannot involve working with individual voters other than to respond to inquiries. The agency can reach out to organizations that work with targeted groups likely to need assistance. Providing outreach and assistance to those in need of identification or renewal of identification and including a similar mixed-media campaign is anticipated to cost approximately \$150,000.

We believe it would be a good idea to require local election officials to partner with the Government Accountability Board in this endeavor since they are more likely to know what local groups would best be able pass on information related to obtaining or renewing the required identification.

Corroboration

The legislation eliminates the opportunity for voters registering to vote at the polling place on Election Day or in the office of the municipal clerk after the close of registration from using a corroborator to vouch for the voter's residence. It appears this proposal is driven by the perception the voter who needs a corroborator is more likely to commit fraud. Based on statistics collected by our staff from municipal clerks, it appears most of these voters have the required photo identification. It is not current, so it cannot be used to establish proof of current residence.

Municipal clerks have informed our staff that this could work a real hardship on the elderly and women. In many cases current identifying documents such as bank statements and utility bills are in the name of the husband or an adult child. Current law effectively limits corroboration to verifying the voter's address since it is only used as proof of residence. From an election administration perspective, there is no reason why corroboration for proof of residency cannot be maintained along with the photo identification requirement.

Conclusion

In summary the Government Accountability Board recommends the Committee make the following changes to improve the legislation and its impact on administering elections in Wisconsin:

- Expand the types of acceptable photo identification;

- Eliminate the requirement for providing a copy of photo identification or a signed statement for absentee voting by mail or through special voting deputies;
- Clarify the standard of review of required identification by election officials;
- Use an affidavit of identity for voters without the required identification instead of provisional ballots;
- Address the issues related to the Department of Transportation;
- Fund the required public information campaign and ongoing voter outreach and assistance mandate for the Government Accountability Board, as well as staffing and training requirements;
- Permit the use of corroboration for voters registering to vote at the polling place without current proof residence.

We believe these changes will enhance implementation of a photo identification requirement for voting in a more effective and efficient manner for voters and election officials while maintaining public confidence in a secure, accessible and transparent election process.

Thank you for your consideration of our concerns. We are willing to work with you to develop photo identification legislation that can be implemented in a manner that effectively and efficiently serves the voters and local election officials.