

**Testimony of Michael Haas
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**Assembly Committee on Campaigns and Elections
Senate Committee on Elections and Local Government**

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**Room 412 East, State Capitol
Public Hearing**

Assembly Bill 389, Senate Bill 295

Chairperson LeMahieu, Chairperson Bernier and Committee Members:

Thank you for the opportunity to provide testimony on these bills. These bills make a number of significant changes to Wisconsin's election laws. The Government Accountability Board has specifically endorsed the implementation of online registration and joining the consortium of states which make up the Electronic Registration Information Center, or ERIC, and therefore I am offering testimony in support of those two provisions. As to the remaining provisions I am providing testimony for information only, although I will note a few instances in which the Board has taken steps or endorsed legislation consistent with provisions of the bill.

Online Voter Registration

The most significant proposal in the legislation would have Wisconsin join the approximately 30 states which have or are in the process of implementing online voter registration, or electronic registration. For those states, online registration is seen as a logical step forward to leverage technology in order to make voter registration easier for those with a driver's license or State identification card, to reduce the cost and inconvenience of paper-based registration, and to improve the accuracy of voter data in the statewide voter registration system. These improvements provide benefits to both voters and election officials at many points in the process of conducting elections and maintaining reliable voter records. At its meeting last April, the Government Accountability Board endorsed the concept of online voter registration as part of its 2015 legislative agenda.

The G.A.B. has a strong record of using innovative technology solutions to improve the efficiency of election administration at the state and local levels. On its own as well as in partnership with the Department of Administration's Division of Enterprise Technology, the Elections Division has developed and maintains seven main IT applications, in addition to its two informational websites to complete its tasks and to assist local election officials and voters. Currently individuals may initiate a voter registration online through

the MyVote Wisconsin website, which the G.A.B. developed in 2012 after winning a \$1.9 million competitive grant from the Department of Defense's Federal Voting Assistance Program. Using MyVote Wisconsin, an individual still must print out the voter registration application, sign it, and deliver it to their municipal clerks.

The legislation permits electronic registration as an option for those individuals who have a Wisconsin driver's license or State ID card, until 20 days before an election. The individual would enter into MyVote Wisconsin the same information that is required on the paper voter registration application. The name, date of birth, address and driver's license number or State ID card number would be instantly compared with that individual's information as it appears in the database of the Division of Motor Vehicles.

If the information matches, the individual is able to electronically submit the registration application, which is forwarded to the appropriate municipal clerk to process and activate. The individual's signature on file with the DMV would be equivalent to requiring an original signature.

Currently the interface between the G.A.B. and the DMV does not attempt to compare address information and it is not instantaneous. It is our understanding that the intent of the legislation is to permit electronic registration only when the address entered by the individual matches the address in the DMV database. Verification of the address substitutes for the requirement that the individual submit a valid proof of residence with the registration application. If the addresses do not match, the individual may access the DMV website to update their address information and then complete the online voter registration.

If that is the intent of the legislation, several provisions of the bill need to be corrected. Some of the language is unclear as to whether an individual may register electronically and then submit a proof of residence document, and other sections actually imply that is an option. The provisions which require clarification include Sections 19, 21, 22, 30, and 42. (Regarding electronic registration, the reference to the G.A.B. maintaining registration applications in Section 16 should be deleted, and the new references to the G.A.B. in Section 17 should be deleted as they refer to tasks which are the responsibility of municipal clerks.)

While we have not yet completed a formal fiscal estimate regarding the bill, we have tentatively determined that the cost of developing online registration can be absorbed in the agency's budget assuming that it is completed using federal funds which are scheduled to expire by the second half of 2017. This is due to our prudent management of the federal funds as well to our current effort to update the statewide voter registration system which will make it easier to accommodate online registration.

A cost-benefit analysis regarding online registration completed for the G.A.B. in 2013 concluded that the initiative would have significant overall financial benefits, with a large percentage of the benefits accruing to local election officials as well as a substantial benefit accruing to voters. The improved accuracy of voter registration data and the reduction of data entry errors that are common in paper-based systems also provide a benefit to voters and the election management system. Arizona, the first state to

implement online voter registration, reported that it cost \$0.83 to process a paper registration and only \$0.03 for each electronic registration.

The LRB analysis implies that all of the provisions related to voter registration become effective at the first spring election or partisan primary election which occurs six months after enactment, but the legislation does not currently establish that timeline for online registration. Given the other IT projects being completed by the G.A.B. as well as the demands of the upcoming presidential election year, the opinion of G.A.B. staff is that 2017 is the soonest that we could complete the implementation of online registration.

Electronic Registration Information Center (ERIC)

The legislation requires that Wisconsin enter into a membership agreement with ERIC and comply with the terms of the agreement. The Government Accountability Board also endorsed this initiative as part of its 2015 legislation agenda.

ERIC is a non-profit corporation governed by a board of directors made up of member states. The purpose of ERIC is to keep voter registration rolls updated ahead of election and to shift away from inefficient spikes in registration activity that could potentially result in data quality issues and increased costs to local jurisdictions. Each member state submits a copy of its voter registration and motor vehicle licensee data. ERIC compares this data with information from other member states and other data sources including the Social Security Administration death index and the US Postal Service's National Change of Address (NCOA) registry.

In return, member states receive reports that indicate voters who have moved within the state, moved out of state, voters who have died, and potentially eligible voters who have not yet registered. Member states are required to reach out to potential voters at least once every two years prior to federal general elections. ERIC utilizes advanced security measures to protect personally identifiable information. The process provides Wisconsin with access to death records from other states and change of address information which would not otherwise be feasible to obtain.

Each member state must pay a one-time fee of \$25,000 to join ERIC, and then pays annual dues based on a formula approved by ERIC's board of directors. Joining ERIC would require potential enhancements to state IT systems to transfer data and process matches, as well as biannual mailings to potentially eligible but not registered electors. The G.A.B. has been awarded a grant of up to \$150,000 from the Pew Center for the States to defray the cost of the initial mailing.

Member states report savings derived from more efficient and effective data matching and cleaner voter rolls. This savings come from less mail returned as undeliverable, streamlined voter list maintenance, and data that are more accurate. Online voter registration could also magnify the potential savings for the state and local jurisdictions. For example, the outreach mailings resulting from the ERIC process could encourage recipients to visit MyVote Wisconsin in order to register electronically.

Electronic Poll Books

Current statutes permit the use of electronic poll books, if the G.A.B. approves their use and a municipality chooses to check in voters electronically rather than with paper poll lists. The legislation requires the G.A.B. to facilitate the creation and maintenance of electronic poll lists, including entering into contracts with vendors, developing and testing the technology.

Our current Board has considered the implementation of e-poll book technology over the past two years. Most recently, the Board responded to significant clerk interest in e-poll books by directing staff to develop proposed technical and functional standards which could guide the Board's approval of specific electronic poll books. The proposed standards will be presented to the Board at its meeting next week, and at that time the Board may also consider further research into the options for developing e-poll books, and whether and when to conduct a pilot program at an actual election.

As with online registration, electronic poll books offer increased efficiency and greater accuracy of voter records which would not need to be hand-entered into the statewide voter registration system. A polling place could use one e-poll book rather than requiring two election inspectors to maintain and compare two paper poll lists. The municipal clerk's task of entering voter participation information into the statewide voter registration system would be greatly streamlined and accomplished in a matter of minutes or hours rather than weeks or months.

The legislation requires the development and implementation of e-poll book technology but still permits each municipal clerk to determine if it will be used in their local jurisdiction.

Elimination of SRD's

The legislation would also eliminate the ability of municipal clerks to appoint special registration deputies (SRD's) to assist with registering voters outside of the municipal clerk's office up to the 20th day before an election. The main benefits of registering with an SRD rather than at a voter registration drive that is not administered by SRD's are that 1) the SRD verifies that the elector has shown and acceptable proof of residence rather than requiring a copy of the document to be submitted to the clerk's office, and 2) the SRD may hand-deliver registration applications to the clerk rather than requiring electors to mail them in.

The legislation's applicability provisions do not specify the effective date for many sections, including the elimination of the option to appoint SRD's. We would expect that provision to reduce the opportunities for some electors to register to vote. The implementation of online registration could mitigate the effects of eliminating SRD's, but the legislation does not synchronize the elimination of SRD's with the launching of electronic registration, which also would not be available to those without a license or State-issued ID card.

Election Registration Officials

The legislation also eliminates the municipal clerk's option to appoint special registration deputies to serve at polling places and creates a new position of election registration official to register electors at polling places. The legislation raises some administrative issues regarding election registration officials because it does not specify whether they are considered election inspectors that may be nominated by political parties, whether they are subject to the party imbalance rule or minimum number of available positions, and whether they serve for a single election or a two-year term similar to election inspectors. The appointment process for election registration officials should be clarified in the legislation.

Election Official Assessment

The election statutes currently state that an election inspector may be required to pass an exam as part of their training, but that a chief election inspector may not be required to pass an exam. These provisions present an inconsistency between the levels of responsibility and the requirement to hold the position. The G.A.B. recommended, as part of its 2015 legislative agenda, that the Legislature consider striking the prohibition on exams for chief inspectors in order to achieve.

In practice, most municipal clerks do not administer exams or tests to their election inspectors. Many clerks express that a graded exam or test would hurt their efforts to recruit sufficient election inspectors, which is a significant challenge statewide. Some online and in-person training opportunities provided by G.A.B. staff include a series of brief "self-correcting" questions or tests. Instead of being graded as pass/fail or having any impact on the ability of clerks to conduct elections, the test is a tool which guides the participant to the correct answer as a means of educating election officials. This is an approach that Board staff would encourage the committees to consider if it seeks to establish a mandatory assessment of election inspectors or other election officials.

Override of Overvoted Ballots

When an elector marks a vote for two candidates for the same office, the ballot is considered an overvoted ballot. Typically this occurs when absentee ballots are being processed and the voter is not available to spoil their ballot and complete a new one. No votes for the overvoted office are counted, but valid votes for all other offices on the ballot are counted. Under current law election inspectors must create a duplicate ballot which reflects the valid votes cast by the elector so that the voting equipment can read and tally the ballot. That process takes time and involves careful documentation on both the original ballot and the duplicate ballot so that the voter's intent can be subsequently verified if necessary. Both ballots are marked with the same serial number.

The legislation would permit election inspectors to make use of an override function on some voting equipment which would ignore the overvoted office and count the remainder of the ballot, rather than creating a duplicate ballot. When using this option, the original ballot will not be matched with the duplicate ballot so a serial number is not necessary. G.A.B. staff recommends that the original overvoted ballot should be marked in some way other than a serial number for purposes of ballot reconciliation and identification in a recount. Sections 4 – 6 of the legislation should be revised to clarify the steps in the

process when overvoted ballots are processed using the equipment's override function rather than by creating a duplicate ballot.

Approval of Non-EAC Certified Voting Equipment

Current statutes do not specify that electronic voting equipment must meet certification standards of the U.S. Election Assistance Commission (EAC) before being approved for use in Wisconsin by the Government Accountability Board. The Board's administrative rules require federal certification as a default but also permit the Board to exempt any voting system from the requirement for good cause.

The Board has sparingly used the "good cause" exemption. Components of voting systems have been approved without federal certification only when it represents a modification to an underlying voting system which previously received federal certification. The Board engaged in an extensive discussion before adopting and refining its policy governing such exceptions in recent years. The proposed legislation would recognize and expand the G.A.B.'s existing policy and eliminate the need to find good cause, but the current Board has not demonstrated an interest in approving base voting systems without federal certification, which involves a thorough review and testing of the system's technology and coding.

The correct terminology for processing voting equipment applications is that the EAC *certifies* equipment and the G.A.B. assesses its functional capabilities and *approves* it for use in Wisconsin. Several provisions of Section 7 should be revised to reflect this terminology.

Elimination of Late-Arriving Absentee Ballots

The legislation requires all absentee ballots to be returned to the municipal clerk and delivered to the appropriate polling place or central count location by the time the polls close at 8 p.m. on Election Night. Currently, absentee ballots are counted if they are postmarked by Election Day and are received by the municipal clerk by 4 p.m. on the following Friday. That is also the deadline to submit required documentation for provisional ballots, which are expected to increase due to the implementation of the Photo ID law.

Current law permits military electors, hospitalized electors, and electors serving on a jury to request absentee ballots until 5 p.m. on Election Day. In some cases, the continuation of the absentee ballot request deadline may lead to an expectation that there will be sufficient time to return the ballot when that may be unrealistic to accomplish before the 8 p.m. deadline.

According to figures for the 2014 General Election, approximately 263,076 absentee ballots were returned to the clerk by mail, and 2,785, or 2.2%, of those ballots were returned after Election Day and by 4 p.m. on the following Friday. It is unknown whether a similar percentage of late-arriving ballots would be received and therefore not be counted if voters were aware that the deadline was changed to 8 p.m. on Election Day.

Absentee Witness Certification

Absentee ballots must be submitted in an envelope containing a certificate executed by a witness who is a U.S. citizen, and the certificate must include the witness name and address. Under current law, absentee ballots are counted if the address is missing but not if the certificate lacks the signature of the witness.

The legislation requires election inspectors to reject any absentee ballot which is not accompanied by a certificate envelope which includes the address of the witness. While the legislation creates a clear rule for counting such ballots, the administrative question which arises is what, if any, steps a municipal clerk must take upon receiving an absentee ballot when the witness address is not indicated on the certificate envelope. Is the clerk allowed to, or is the clerk required to, contact the voter or the witness and determine the address of the witness? May the clerk, or must the clerk, complete the address information for the witness or must the witness personally complete that information?

We recommend clarifying the rules in Section 45 of the legislation for processing absentee ballots which are not accompanied by the address of the witness.

Intake Documents as Proof of Residence for Residents of Residential Care Facilities

During the last session, legislation was enacted requiring that all voter registrations must include an acceptable proof of residence document. The most common concern raised by clerks and voters following passage of that requirement was that it was more difficult for residents of nursing homes and other residential care facilities to register to vote because they often did not possess a driver's license or other proof of residence documents. Residential leases are an acceptable form of proof of residence, but in many cases it was unclear whether the facility's document listing the individual's physical address constituted a legal lease.

The legislation resolves this issue by permitting residents of residential care facilities to use the contract or intake document prepared by the facility which specifies that the individual currently resides in the facility. This will be a welcome clarification for that population of voters and those who serve them. This is also the one provision that is specifically identified with an immediate applicability date. I would again note that Section 67 does not appear to adequately state the effective dates of all of the various provisions of the legislation.

Conclusion

Thank you for the opportunity to share my thoughts with you. I hope this testimony will help inform the Legislature's consideration of these bills. As always, we are available to answer questions and work with you in developing proposed legislation.

Respectfully submitted,



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