

WISCONSIN ELECTIONS COMMISSION

212 EAST WASHINGTON AVENUE, 3RD FLOOR
POST OFFICE BOX 7984
MADISON, WI 53707-7984
(608) 261-2028
ELECTIONS@WI.GOV
ELECTIONS.WI.GOV



COMMISSIONERS

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INTERIM ADMINISTRATOR MEAGAN WOLFE

MEMORANDUM

DATE: For the December 3, 2018 Commission Meeting

TO: Members, Wisconsin Elections Commission

FROM: Meagan Wolfe
Interim Administrator

Prepared and Presented By:
Michael Haas Nathan Judnic
Staff Counsel Senior Elections Specialist

SUBJECT: Commission's Legislative Agenda for 2019 - 2020

Background

This memorandum outlines Commission staff's recommendations for legislative changes to pursue in the 2019 – 2020 legislative session. The recommendations seek clarification of existing statutes, implement nationally recognized best practices, and communicate concerns of county and municipal clerks to the Legislature.

Commission staff maintains an ongoing list of recommended changes to current laws identified by legislators, municipal and county clerks, and the public. Staff also regularly reviews and analyzes current statutes, administrative code, and Commission policies in order to identify potential changes that may improve efficiency, cost-effectiveness, public comprehension, and general policy administration. The recommended changes below are those which staff believes would improve administrative processes, provide clarity or simplification to existing policies and procedures, or update policies to reflect modern practices.

Except for the few items noted above, the Commission has already reviewed and approved the items listed below, as they were part of the legislative agenda passed to the Legislature for 2017 – 2018 session. Commission staff has included these items to be reaffirmed and included with the upcoming session's legislative agenda, unless there are specific items the Commission would like to discuss further. Additional items may come up as the next legislative session progresses, and Commission staff will bring those items to the Commission's attention and approval as needed.

Attached to this memorandum is correspondence dated March 13, 2017 from the Federal Voting Assistance Program of the U.S. Department of Defense requesting changes to statutes related to the

treatment of temporarily overseas electors in order to bring Wisconsin law into conformity with federal law. Because the requested changes were not enacted in the previous legislative session, the U.S. Department of Justice initiated litigation and entered into a consent decree with the State of Wisconsin to implement two of the requested changes. The consent decree permits temporarily overseas electors to obtain ballots electronically and to use the Federal Write-In Absentee Ballot, treating those electors the same as permanently overseas electors in those two ways.

The consent decree also requires the WEC to propose state legislation to incorporate the consent decree changes into state law and to provide a report to the federal court by May 1, 2019. The relevant changes are incorporated into items 14 and 28 of the recommendations below. One item has been removed related to the assistance provided to individuals with disabilities and the use of electronic voting equipment as upon further review the staff believes the language of the statute provides sufficient support for allowing a person with disabilities to use electronic voting equipment with an assistor. One additional item has been inserted as item 42, which would ask the Legislature to clarify that the Elections Commission is the proper agency for making a finding of probable cause in a criminal matter under Chapter 12.

At its meeting of September 26, 2017, the Commission heard from several municipal and county clerks regarding a legislative proposal to implement an alternate method of casting and processing absentee ballots. The proposal was aimed at alleviating the burden of processing all absentee ballots on Election Day and would permit, as an optional method, the use of electronic voting equipment during in-person absentee voting. The Commission considered the clerks' request to support the proposed legislation but did not adopt a position given the policy issues involved. Commission staff recommends that it remain engaged with the supporters and legislative authors of the proposed legislation to review subsequent drafts and provide feedback regarding administrative and significant policy issues to be considered and addressed.

At its meeting of December 12, 2017, the Commission authorized staff to request a Legislative Council Study Committee to review the WEC's extensive legislative agenda and propose a comprehensive package of legislative changes. Staff submitted such a request which was not approved as one of the topics for a Study Committee for the 2018 – 2019 legislative session. However, staff has been working with the Office of State Representative Bernier to address several of the requested changes listed below. Representative Bernier is the outgoing Chair of the Assembly Committee on Campaigns and Elections and she has been elected to the State Senate. Staff anticipates that this effort will continue, and that legislation will be drafted related to some of the listed items.

Staff has organized the recommendations into five different categories:

- A. *Major Policy Initiatives* are those that staff suggests that the Commission highly recommend because they would likely significantly improve election administration and have a substantially positive impact on those affected by the policy.
- B. *Minor Policy Initiatives* include the changes that would improve election administration and represent minimal policy decisions, such as improving efficiency or providing clarity.

- C. *Technical Changes* are recommendations that address issues of inconsistency in the laws or drafting oversights.
- D. *Administrative Rule Provisions* are proposals to introduce legislation in lieu of promulgating administrative rules.
- E. *Chapters Not Administered by the WEC* are items contained in statutory chapters which are related to but outside the jurisdiction of the Commission.

A. MAJOR POLICY INITIATIVES

1. Provisions related to electronic poll lists. Agency staff has identified several provisions which could be created or amended to facilitate the implementation of electronic poll lists. These include the following:
 - A. § 5.02: Add definitions of “electronic poll book” and “electronic poll list” to the statutory definitions.
 - B. § 7.23(1)(e): Add language permitting electronic poll books to be cleared or erased after the deadline for filing a recount petition has passed but requiring the transfer of all data required to reproduce the voter list to a disk or other recording medium which may be destroyed 22 months after the election, consistent with other retention requirements.
2. Chapter 5 Subchapter III – Voting Equipment Statutes. This subchapter of the statutes refers to antiquated technologies such as voting equipment that utilizes levers or punch cards. These types of voting systems have been entirely replaced by electronic voting systems. The Legislature could revise this subchapter to remove references to antiquated technology. There are also references to such antiquated voting equipment elsewhere throughout the election laws. The Legislature could consider a broader review and revision of state law to reflect the electronic voting equipment currently in use throughout the State of Wisconsin, as well as the potential use of new technologies in the future.
3. § 6.86(1)(b). This provision sets forth the deadlines for requesting an absentee ballot. Under existing law there are three different deadlines (Thursday, Friday, or Election Day) for requesting an absentee ballot that depend on both the type of absent elector and the method by which the application is received. This multitude of deadlines has proven confusing for voters and election officials alike. The Election Day deadline for receipt of an absentee request also creates an unrealistic expectation that a ballot requested at such a late date and time could be successfully voted as the deadline for receiving the voted ballot is also Election Day and electronic return of the voted ballot is not permitted by state law. The Legislature could consider revising these deadlines by changing the deadline to 5:00 p.m. on the Thursday prior to Election Day for all

mailed, emailed, or faxed requests and 5:00 p.m. on the Sunday before Election Day for all in-person requests regardless of the type of absent elector.

4. §§ 8.15(1) and 10.06(1)(h). These provisions establish the window for circulation of nomination papers and the deadline for the Commission to certify the candidates to appear on the Partisan Primary ballot. Wisconsin Administrative Code EL 2.07 provides for challenges to nomination papers to be filed up to three calendar days following the nomination paper deadline. Depending on the year, this means the Commission has between 4-6 business days to review and decide challenges to ballot access. The Government Accountability Board previously directed staff at its June 2014 meeting to request the Legislature allow for more time between the candidate filing deadline and the deadline to certify ballot arrangement so as to allow for more thoughtful consideration of ballot access challenges. As there is not sufficient time in the calendar to move the candidate certification deadline later without changing the ultimate date of the election, the only practical option is to move the circulation period up. Commission staff recommends changing the first day to circulate nomination papers from April 15 to April 10, which would keep the first day to circulate nomination papers still after the spring election and moving the filing deadline from June 1 to the last Tuesday in May.

B. MINOR POLICY INITIATIVES

Chapter 5

5. §§ 5.06(5) and (6). These provisions allow the Commission to issue an order to ensure compliance with election laws. The Legislature could revise these provisions in order to authorize the Commission to issue a temporary order while a complaint investigation is ongoing. Occasionally Commission staff must direct a local election official to stay any action until the completion of a review investigation, such as when the question is whether to schedule a recall election or whether a candidate has qualified for ballot access. Current statutes allow the issuance of an order only after the filing of a complaint, upon a motion of the Commission, or after completion of an investigation.
6. § 5.06(10). This provision prohibits the Commission from reviewing matters arising in connection with recounts under § 9.01. This appears to be intended to avoid conflict with Wis. Stat. § 9.01(6) which directs appeals of recounts to circuit court. However, there are a variety of decisions made by election officials under § 9.01 that could benefit from commission review, e.g., estimates of recount filing fees. A better option may be to phrase this provision such that the Commission may not review the recount result or substantive decisions of the board of canvassers in a recount other than to enforce consistent application of those decisions when multiple boards of canvassers are involved. This authority would permit Commission staff to resolve procedural questions or conflicts more definitively and is supported by the charge of Wis. Stat. § 9.01(10) for the Commission to develop standard forms and procedures for use in recounts.

7. §§ 5.15 and 66 subchapter II. These provisions provide limitations to the construction of wards. Current statutes restrict a town from drawing ward lines that do not cross the boundaries of a state assembly district and requires towns to create a separate ward when a county does not adjust boundaries for county supervisory districts. However, statutes do not place similar restrictions on cities or villages annexing territory. This could be a problem if a city or village was to annex territory in different districts. The Legislature could revise these provisions to enact the same requirements for cities and villages that currently exist for towns and require specifying the identification of the created ward (e.g., ward 7).
8. § 5.84(1). This provision specifies that municipalities must conduct public tests of voting equipment in the 10 days prior to each election. The current requirement is problematic as larger municipalities may require several days to test all the equipment to be used at an election. Extending the testing window to the 15 calendar days prior to the election would grant municipal clerks more flexibility in the event any problems are identified during the public test. This provision also requires public notice of voting equipment testing via publication in a newspaper within the municipality or a newspaper of general circulation therein. Publishing in a general circulation newspaper, or even a municipal newspaper, may require significant costs to municipalities. The Legislature could revise this provision to require municipalities to provide the notice of the public test by the same means as other election notices under Wis. Stat. §§ 10.04 & 10.05, which would permit such notices to be posted in lieu of publication.
9. § 5.94. This provision requires the publication of a sample ballot. Wis. Stat. §10.02 (2)(c) allows the ballot size to be reduced when publishing the notice. The Legislature could consider removing the requirement for an “actual-size” copy of the ballot for publication in Wis. Stat. § 5.94 to reduce the costs that jurisdictions must incur and make these two provisions consistent.

Chapter 6

10. § 6.18. This provision provides a process for former Wisconsin residents to vote in a Presidential Election if they do not yet qualify to vote in their new state of residency, but does not provide a specific deadline for such a request. The Legislature could revise this provision by establishing a receipt deadline of 5:00 p.m. on the fifth day before the election to request an absentee ballot, consistent with most other absentee voters.
11. §§ 6.22(1)(b), 6.34(1)(a). These provisions define the term “military elector”. However, § 6.22(1)(b) includes additional categories of individuals not included under 6.34(1)(a). These two different definitions of the same term have caused considerable confusion with clerks and military voters as to what they can or cannot do. The G.A.B. previously recommended reconciling these two different definitions into a single broad definition of military elector. To avoid confusion and promote effective administration

of the laws, the Legislature could harmonize these two definitions as the G.A.B. has previously recommended throughout Chapter 6.

12. §§ 6.22(5), 6.24(7). These provisions provide that military and permanent overseas voters obtain the signature of a US citizen witness when voting their absentee ballot. This requirement commonly causes complaints from voters who do not have a US citizen easily available. The Government Accountability Board previously recommended retaining the witness signature, but removing the requirement that the witness be a US citizen. According to a 2012 study by the PEW Center for the States, only four states required any sort of witness signature for military and overseas absentee ballots (Alabama, Alaska, Virginia, and Wisconsin), and Wisconsin may be the only state which requires the witness to be a U.S. citizen. The Legislature could consider modifying or removing the witness requirement to ensure that military and permanent overseas absentee voters can vote their ballot without needing to find another US citizen.
13. § 6.22(6). This provision requires each municipal clerk to keep an updated list of eligible military electors that reside in the municipality in the format provided by the commission, and to distribute a copy the list to each polling place. The intent of this provision was to ensure compliance with absentee ballot procedures for military voters and the exemption from the voter registration requirement. In practice, all of the required information exists within WisVote and all known military voters automatically appear on the poll books. Clerks who rely on someone else for WisVote services communicate with their WisVote provider for lists prior to absentee voting. The Legislature could repeal this provision to reflect modern practices.
14. § 6.25(1)(b). This provision permits permanent overseas electors to use a Federal Write-In Absentee Ballot (FWAB) in lieu of an official ballot. To comply with the provisions of the federal court consent decree in *United States of America v. State of Wisconsin, et al.*, the Legislature could clarify that temporary overseas electors may also use a FWAB in lieu of an official ballot.
15. § 6.25(1)(c). This provision exempts military electors from the requirement to submit a separate absentee request before the Federal Write-In Absentee Ballot (FWAB) may be counted. Overseas electors are not similarly exempted from the requirement to submit a separate absentee request in addition to the FWAB before the ballot may be counted. The declaration/affirmation page of the FWAB contains all the necessary information to serve as an absentee request. Overseas voters face many of the same difficulties voting as overseas military voters. The Legislature could modify this provision to allow permanent and temporary overseas voters to submit a FWAB without a separate absentee ballot application no later than the applicable absentee request deadline in order to establish a more consistent process for all overseas voters.
16. §§ 6.275 and 6.33(5). These provisions provide deadlines for reporting certain statistics, and recording voter participation and registration following an election, respectively. In practice, and particularly in larger municipalities, clerks complete

entering voter registrations and recording voter participation in WisVote in order to provide accurate statistics. The 30-day deadline to report statistics and the 45-day deadline (60 days with an approved waiver) to enter voter registrations and record voter participation after general elections is inconsistent with current practices by many clerks. Clerks have 30 days to enter voter registrations and record participation after spring primaries, spring elections, partisan primaries, and special elections. Virtually all clerks are able to comply with both deadlines for elections other than general elections; however, many clerks struggle to meet the 60-day deadline after general elections. The Legislature could address this issue by clarifying that the deadline for reporting statistics coincides with the deadline to enter voter registrations and record voter participation in WisVote, as defined in Wis. Stat. § 6.33(5).

17. § 6.29(2)(b). This provision requires municipal clerks to prepare a certificate of registration in duplicate and provide one copy of the certificate to any person registering during the late registration period while keeping the other in their office. Commonly late registrations in-person are immediately followed by a request to vote an in-person absentee ballot. In this scenario, the preparation and issuance of the certificate of registration has no purpose. The Legislature could consider exempting clerks from the requirement to issue registration certificates if the voter chooses to vote absentee in the clerk's office in the same transaction as registering to vote.
18. § 6.29(2)(c). This provision requires any voter who registered to vote during the late registration period and receives a certificate of registration to provide that certificate to the inspectors at the polling place or to enclose that certificate with their voted absentee ballot. However, state law does not specify a consequence if the elector fails to provide their certificate of registration. It appears that the certificate is intended as a failsafe to prove registration has occurred in the event that the voter's name does not appear on the poll book despite their earlier registration. As such the Legislature could consider removing the requirement for the voter to provide their certificate of registration, but preserve the issuance of such certificates to maintain the failsafe.
19. § 6.30(4). This provision requires that municipalities make available a voter registration form and that "the form shall be pre-postpaid for return when mailed at any point within the United States." However, in practice, most municipalities simply make copies of the form available and do not offer pre-paid postage because of the cost. Additionally, the Commission has implemented online registration as directed by the Legislature, which may significantly reduce the demand for registration by mail. Due to the cost to municipalities and the online alternative the Legislature could consider elimination of the prepostpaid requirement for voter registration forms.
20. § 6.32(4). This provision requires a municipal clerk to send an address verification mailing to a voter who registers by mail or online. In practice, the Commission sends these mailings on behalf of municipalities. This facilitates consistent compliance and leveraging State purchasing power. During the 2013-2014 Legislative Session, the Wisconsin Legislature enacted 2013 Wisconsin Act 149, specifically authorizing the G.A.B. to send out the Election Day Registrant address verification mailings. The

Legislature could revise this provision to authorize the Commission to send out all other address verification mailings, including those related to the ERIC initiative, on behalf of municipalities.

21. § 6.34(3). This provision outlines the types of acceptable documents for proof of residence (POR) for the purpose of voter registration. In recognition of the broad move to replace paper documents with electronic documents, the Government Accountability Board previously authorized the acceptance of electronic versions of each acceptable proof of residence document. The Legislature could specifically authorize electronic proof of residence to be consistent with current practices and Board policy, as well as clarify the types of authorized POR to include other modern and common types of documents such as a cellphone bill, or internet service bill, or document from a financial institution.
22. § 6.34(3)(a)10. This provision allows for using a paycheck as proof of residence. As many voters do not receive a physical paycheck anymore, the G.A.B. previously interpreted this provision to include pay stubs, pay sheets, or other payroll documentation such as a direct deposit statement. The Legislature could revise this provision to also include these more modern alternatives to the paycheck and reinforce the agency's prior interpretation.
23. § 6.36(1)(b)1.a. This provision establishes information related to a voter record that must remain confidential. This list includes a voter's date of birth, operator license number, social security number, and any accommodation required for the individual to voter. If the voter is a confidential voter, their address is also confidential. The voter registration application also includes a place for a voter to list a phone number and email address. However, these are not required fields in order for a clerk to process a voter registration application. The Legislature could consider revising this provision in order to add phone number and email address to the list of confidential information that is not available for release through public record requests. The Legislature may also wish to clarify that a state-issued identification card number is also confidential by replacing *operator license number* with *driver license or state-issued identification card number*.
24. § 6.55(2)(d). This provision provides for a voter who has changed their name, but not their address to make such a change in their registration by notifying the election inspectors at the polling place instead of completing a new voter registration form. The Government Accountability Board and Wisconsin Elections Commission consistently required voters who wish to change their name to complete a new voter registration. When the Legislature repealed § 6.40, it removed a provision that permitted voters to make changes to their registration without submitting a new registration form. The Legislature could ensure that every change in a voter's registration is documented with a new voter registration form by modifying this provision to eliminate the ability of a voter to change their name without providing a new voter registration form.

25. § 6.82(1). This provision permits an elector who is unable to enter the polling place due to a disability to receive their ballot at the entrance to the polling place. While this provision does not directly speak to whether this elector must sign the poll book, agency staff has interpreted this provision to allow such electors to receive a ballot without signing the poll list because to qualify for the procedure a voter must be prevented from entering the polling place due to a disability and § 6.79(2)(am) specifically authorizes the election inspectors to waive the signature requirement if the elector is unable to sign due to disability. To clarify the procedure, the Legislature could specifically direct that an elector voting under this provision is exempt from signing the poll book.
26. § 6.86(2)(b). This provision requires a clerk to send a 30-day notice to indefinitely confined voters that do not return their absentee ballot in order to stay on the “permanent absentee” voter list. However, there is not sufficient time between primaries and the subsequent general elections to do so and staff has previously advised clerks that such notice is only required after a general election. The Legislature could consider revising this section to recognize this practical impossibility and only apply this requirement to non-primary elections.
27. § 6.87(3)(d). This provision allows military and permanent overseas voters to receive their absentee ballot electronically. Voters who are temporarily overseas do not receive this transmission option and therefore must request their ballot significantly earlier to account for the additional time it will take for the blank ballot to reach them. In order to comply with the federal court consent decree in *United States of America v. State of Wisconsin, et al*, and to make Wisconsin Statutes consistent with federal law, the Legislature could revise this provision to allow temporary overseas voters to receive their ballot electronically.
28. § 6.875. This provision covers absentee voting procedures involving special voting deputies (SVDs). This section does not specify whether a municipal clerk must issue a 30-day notice to renew their absentee ballot request as an indefinitely confined voter if the voter declines to vote via SVD. The Legislature could clarify this section by stating that the voter may decline to receive their ballot on a form prescribed by the Commission, as well as indicate if they wish to remain on the list of indefinitely confined voters (“permanent absentees”). This is current practice and is included in the Commission’s SVD manual.
29. §§ 6.875(4)(b), 7.30(4). Wis. Stat. § 6.875(4)(b) sets forth the process by which individuals are appointed as special voting deputies. The process is similar to the process for appointing election officials generally as set forth in Wis. Stat. § 7.30(4), but does not specifically state that the process of 7.30 applies to these appointments. Staff have interpreted § 7.30(4) to include special voting deputies, but the Legislature could modify § 6.875(4)(b) or 7.30(4) to make this more clear.

30. § 6.97. This provision provides the option for a voter to cast a provisional ballot whenever they are required to provide proof of residence and cannot provide such documentation. Agency staff has interpreted this provision to only apply to persons who registered to vote on or before April 4, 2014 to coincide with when the G.A.B. directed clerks to stop accepting voter registrations that were missing proof of residence. After the few remaining voters in the statewide voter registration system who are still missing proof of residence provide such documentation or are removed from the list, this provision will no longer be necessary, and the Legislature may wish to remove this language to avoid the impression that a provisional ballot would be an option for new registrants who do not have a proof of residence.

Chapter 7

31. § 7.25. This section enumerates the duties of election officials in using “voting machines”. Voting machines are defined in 5.02(24r) as “a machine which serves in lieu of a voting booth, and which mechanically or electronically records the votes cast by electors, who depress levers or buttons located next to the choices listed on a ballot to cast their votes.” Wisconsin no longer uses mechanical voting systems like lever voting machines and this section should be updated to reflect current practices and technology.
32. § 7.41. This section provides for the public’s right to be present at the clerk’s office, alternate absentee voting sites, and polling places in Wisconsin to observe all public aspects of the election process. A growing concern among voters and observers is the ability of observers to take photos or record video of what occurs at these sites. Agency policy and draft administrative rules currently prohibit observers from photographing or recording video at these locations. The Legislature could consider explicitly setting forth the Legislature’s position on photography and video recording in these places in this section.
33. § 7.50(2). The Legislature recently removed language in this section related to the counting of write-in votes cast by affixing a sticker to the ballot (see 2015 Act 37). However, the Legislature did not affirmatively prohibit the use of such stickers by write-in candidates. As Wis. Stat. § 7.50(2) still requires election officials to count an elector’s vote the person which the voter intended, agency staff has advised election officials to continue counting votes for candidates whose voters use stickers to write-in that candidate’s name. The Legislature may wish to revisit this section to more explicitly address this scenario.
34. § 7.50(2)(em). 2013 Wisconsin Act 178 amended this provision to state that all votes for write-in candidates shall be tallied if a candidate on the ballot dies or withdraws before the election. However, Wisconsin Statutes do not provide a procedure for candidates to withdraw. The Legislature could correct this issue by striking “*or withdraws*” from this provision or specifying what constitutes a candidate’s withdrawal.

35. § 7.60(5)(a). This provision requires county clerks to deliver or transmit to the Commission a certified copy of each county board of canvass statement. In current practice, county clerks use the Commission's Canvass Reporting System (CRS) to generate those statements using their secure login credentials, and then mail a signed copy of that report to the Commission. The Legislature could modernize this provision by adding the language *in the manner prescribed by the commission* after *the county clerk shall deliver or transmit*, or consider replacing the word *certified* with *electronically signed*. In 2014, the Legislature made a similar change, allowing political committees to sign their campaign finance reports electronically when certifying that information to the G.A.B.

Chapter 8

36. §§ 8.10(5), 8.15(4)(b), and 8.20(6). These provisions outline the filing requirements for candidates, including their declaration of candidacy, nomination papers, and statement of economic interest (SEI). Under current statutes, candidates are not required to file their SEI until 4:30 p.m. the third day after the deadline for the other documents. The Legislature could consider changing the deadline to file an SEI to match filing of declaration of candidacy and nomination papers. This would provide a consistent deadline that could improve administrative efficiency and public awareness of candidates that will appear on the ballot. Staff recommends moving the deadline to file the SEI to match the 5:00 p.m. deadline on the day that the declaration of candidacy and nomination papers is due. The counterpoint to this policy change is that the later deadline provides an "escape valve" where candidates no longer wishing to appear on the ballot could simply not file their SEI. The later deadline also allows the candidate additional time to gather the required financial information, though they have already had considerable time to gather nomination signatures. However, staff believes that a consistent deadline would improve administration and better inform the public of candidates who achieve ballot status.

Chapter 9

37. § 9.01(2). This provision establishes the candidate notification requirements prior to conducting a recount. Current statutes require personal delivery of the petition to the candidate or an approved agent, by either the clerk or the sheriff. Providing notice of the recount petition could potentially be delayed if the candidate and/or their agent is traveling outside of the municipality, county, or state after the election. The Legislature could revise this provision by allowing a three-step process. The first step a clerk would take is to attempt personal delivery of the petition to the candidate or approved agent. The second step would be to obtain documented confirmation of acknowledgement by the candidate or agent (e.g., through email or a documented phone call). The clerk could then issue a public notice and proceed with the recount process, if those two options are unsuccessful within a reasonable time period.
38. §§ 9.01(1)(ar)3. and (b). These sections establish deadlines for convening the board of canvassers for conducting a recount but provide conflicting deadlines. The Legislature

could revise this section by setting the deadline to provide clarity, consistency, and sufficient time for clerks to prepare for conducting a recount.

Chapter 10

39. § 10.02(3)(b). This provision includes requirements for the information that must be contained in the Type B election notice. This language still refers to antiquated voting equipment technology and depressing levers. The Legislature could revise this provision to reflect modern voting equipment technologies.
40. § 10.04. This section relates to the publication of election notices and the fees charged for publication by newspapers. The Legislature could clarify this section by allowing publishing all types of elections notices as an insert, consistent with commercial rates for newspaper inserts.

Chapter 12

41. § 12.13(1)(f). This provision prohibits an elector from showing any person his or her marked ballot. Recent court cases have called into question the constitutionality of such a prohibition, particularly in the context of publicly sharing photos of a voted ballot via social media. The Legislature could consider revising or repealing this provision to avoid unnecessary litigation.
42. 12.60(4). This section relates to the prosecution of violations of Chapter 12 in accordance with the procedure outlined in Wis. Stat. § 11.1401(2). The Legislature could consider clarifying this language so it is clear that the Elections Commission, and not the Ethics Commission is the state agency that may make a finding of probable cause prior to a District Attorney pressing charges in a Chapter 12 matter.

C. TECHNICAL CHANGES

Chapter 5

43. § 5.02(24r). This provision defines the term “voting machine” and includes mechanical voting equipment like lever voting machines. Mechanical voting systems have been entirely replaced by more modern electronic voting systems and the Legislature could consider revising this definition to remove the references to the antiquated technology.
44. § 5.51(2). This provision provides the requirements for the weight of paper used for hand-counted ballots using an arcane formula that is regularly misapplied by election officials. The Legislature could consider revising this requirement to specify a clearly understandable paper weight for ballots or direct the commission to specify the required paper weight for ballots.
45. § 5.60(3). This provision provides for a separate ballot for city offices, but unlike subsections for other levels of government this subsection does not require write-in

lines be provided. The Legislature could clarify that write-in lines must be provided for city ballots as well.

46. § 5.62(1)(a). This provision requires that independent candidates for state office appear on partisan primary ballots. This was previously necessary to determine the independent candidate's eligibility for public funding. As public funding for state candidates has been eliminated, this language should be removed.
47. § 5.72. This provision requires clerks to provide a ballot sample to Commission staff three weeks before any election for review. This conflicts with the 48-day deadline for ballots to be available for state and federal elections. The Legislature could address this by changing the deadline to "as soon as candidates are certified" instead. The Legislature could also consider making commission review of ballots voluntary, but still allow the commission to compel compliance with the prescribed ballot template, if necessary.

Chapter 6

48. § 6.02. This provision outlines the general qualifications to vote. The Legislature could clarify that for voter registration, a person turns 18 on the anniversary of their date of birth. This addresses the common sense versus common law issue previously addressed by the G.A.B., deciding that a person turns 18 on the anniversary of their date of birth.
49. § 6.03(3). This provision addresses the right to vote by persons under guardianship or adjudicated incompetent. State law currently reserves rights to the individual unless specifically determined by a court to be incompetent to exercise those rights. However, this provision contains old language requiring individuals subject to guardianship to have an affirmative finding that they are competent to vote. The Legislature could revise this provision to reverse the standard to assume competency as required by state law and cross-reference as necessary with other state laws on guardianship. This change would make this provision consistent with other state laws regarding guardianship and legal competency.
50. § 6.25(4). The last clause of this provision states, "*and, if the elector is an overseas elector, the elector resides outside of the United States.*" The Legislature could eliminate the redundant second half of this clause as an overseas elector is already defined in § 6.24(1) as someone who does not qualify as a resident of this state.
51. § 6.34. This section covers proof of residence (POR) requirements for voter registration. Throughout this section, there are several references to POR as an *identifying document*. The Legislature could replace those references with *proof of residence* to clarify the section and avoid any confusion with the proof of identification requirement.

52. §§ 6.34(3)(a)1 and 2. These provisions refer to using either a Wisconsin driver license or state-issued identification card as proof of residence. The Legislature could revise these sections to include a receipt for either Wisconsin Department of Motor Vehicles (DMV) product, consistent with DMV current practices of issuing a temporary receipt prior to the driver license or state-issued identification card.
53. § 6.34(3)(a)7. This provision allows for using a university, college, or technical college identification card as proof of residence for voter registration, with either a fee payment receipt or a list of students residing in school housing. The Legislature could clarify that the receipt or list of students must include the name and address of the registrant.
54. § 6.45(1). This provision requires the municipal clerk to make copies of the poll list for use in the election. It should be updated to clarify that paper copies of a poll list need not be produced when an electronic poll list is used.
55. § 6.46(2). This provision requires a municipal clerk to remove the poll lists from the office for the purpose of copying if a copying machine is not accessible in response to public records requests or in order to supply candidates with the poll list. The provision should be updated to replace “if a copying machine is not accessible” with “if producing copies of the lists at the clerk’s office is not possible.”
56. § 6.50(2r)(b). This provision lists the information the Commission must provide regarding the four-year voter list maintenance process. Specifically, this item is the number of postcards returned to the Commission as undeliverable. While the Commission would be sending out the postcards, the undeliverable mailings go to the municipal clerk. The Legislature could correct this issue by either striking the words *to the commission*, or replacing that phrase with *to the (municipal) clerk*.
57. § 6.96. This provision relates to the voting procedure for electors voting pursuant to a federal court order. The Legislature could revise this provision to require that the same notation shall appear resulting from an extension of voting hours by a circuit court as currently required after a federal court extension.

Chapter 7

58. § 7.08(10). This provision requires that the Commission provide to each municipal clerk, on a continuous basis, the names and addresses of organizations certified to provide services to victims of domestic abuse or sexual assault. As the addresses of these organizations may be sensitive information in that they provide temporary shelter to victims, this information cannot be placed on the Commission’s website. Additionally, sending this information unsolicited to over 1,800 municipal clerks could also compromise the security of victims. To better promote the security of victims of domestic abuse or sexual assault, the Legislature could consider modifying this provision to only provide this information to municipal clerks as needed to confirm the eligibility of confidential voters.

59. § 7.15(1)(j). This provision requires municipal clerks to send absentee ballots to electors who have filed a proper request. The provision appears to be redundant with subparagraph (cm) and could be removed or consolidated with (cm).
60. § 7.52(1)(b). This section provides a procedure by which a municipality may canvass absentee ballots on Election Day in a location other than the polling place and authorizes the municipality to appoint additional election inspectors to administer this absentee ballot canvass. However, when 2013 Act 147 expanded the residency of election officials to the county in which they serve, it did not similarly modify the residency requirement for election inspectors appointed to assist with this absentee ballot canvassing process. For consistency of administration, the Legislature could consider modifying § 7.52 to also permit the appointment of individuals who reside within the county of a municipality using this procedure.
61. § 7.52(3)(b). This section lists the reasons for which an absentee ballot may be rejected by the board of absentee ballot canvassers. 2015 Act 261 recently added the lack of the witness' address to the list of reasons an absentee ballot may be rejected at the polls, but did not make a similar adjustment to this section. For consistency of administration, the Legislature could consider modifying 7.52(3)(b) to include this additional reason for rejection of the absentee ballot.
62. § 7.53(2)(a). This provision states that in municipalities with multiple polling places, the municipal board of canvassers (MBOC) consists of the municipal clerk and two other qualified electors of the municipality. The word "other" implies that the municipal clerk is a qualified elector, which is not always true as many municipalities appoint their municipal clerk without regards to residency. Agency staff has interpreted 7.53(2)(a) to require that a municipal clerk must be a qualified elector of the municipality to serve on the MBOC, although the clerk should always be present to advise the members of the MBOC and handle the administrative processes associated with the canvass. To affirm the agency's interpretation the Legislature could consider revising this language to clarify that the municipal clerk may only serve as a member of the MBOC if they are a qualified elector and specifying who fills this position on the MBOC if the clerk is not a qualified elector.

Chapter 9

63. § 9.10(2)(e). This provision provides the reasons to not count recall petition signatures. In 2013 Wisconsin Act 160, the Legislature required that all petitions include the legibly printed name of the signer. While 2013 Act 160 required the printed name for nomination papers and petitions, it did not add the same requirement for recall petitions. The Legislature could correct this by adding to this section a reason not to count a recall petition signature if the printed name is not legible. The sections that cover the requirements for petitions are also inconsistent. Sections related to nomination papers and petitions affirm the requirements of what individuals must provide, whereas the section on recall petitions identifies when not to count signatures.

Alternatively, the Legislature could revise this provision to state the information a recall petition must contain in order to count a signature, similar to the other sections.

Chapter 10

64. § 10.06(2). This section enumerates the various election notices that county clerks are required to publish. While subparagraphs (f) and (L) require the publication of a Type A Notice of Referendum Election before the spring and general elections, there are no similar provisions for such a notice for referenda held in conjunction with the spring or partisan primaries. There is also no requirement in this section for the Type C Notice of Referendum before these elections, although it is addressed in the general description of the Type C notice at 10.01(2)(c). For consistency, the Legislature could revise 10.06(2) to include similar referendum notice requirements for state or county referenda held in conjunction with these elections as with any other election.
65. § 10.06(3). This section enumerates the various election notices that municipal clerks are required to publish. While subparagraph (as) requires the publication of a Type A Notice of Referendum Election before the spring primary if there is direct legislation to be voted on, there is no requirement for such a notice for other referenda held in conjunction with the spring primary. There is also no requirement for the Type C Notice of Referendum for non-direct legislation referenda voted on at the spring primary or for any referenda to be voted on at the partisan primary, except as part of the general definition of the notice in 10.01(2)(c). Finally, there is no Type D Notice of Polling Hours and Locations requirement in this section for either the spring or partisan primary although it is required as part of the general definition of the Type D notice at 10.01(2)(d). For consistency, the Legislature could revise this section to include similar notice requirements for all elections.

D. ADMINISTRATIVE RULE PROVISIONS

66. § 10.01(1) directs the Commission to prescribe the form of the various election notices contained in that chapter to ensure they are uniform and to promulgate any necessary rules. The Commission previously authorized to pause rulemaking on this topic until it is clear whether legislation will be introduced in lieu of rulemaking.
67. § 6.34 lists the acceptable forms of proof of residence that may be used as part of a voter registration application. The Commission previously reaffirmed that an elector may present an electronic version of a proof of residence document, and placed rulemaking on hold until it is clear whether legislation will be introduced in lieu of rulemaking.
68. Agency policy has permitted an overseas voter to have a U.S. citizen witness the absentee voting process via an internet video service such as Skype or Facetime if the voter is unable to locate a U.S. citizen to witness the process in person. The Commission previously authorized staff to pause rulemaking regarding this scenario until it is clear whether legislation will be introduced in lieu of rulemaking.

69. Current Wis. Adm. Code § 3.04(2) allows for a provisional ballot to be issued to a voter that is unable or unwilling to provide their DOT issued driver license or DOT issued state ID card number on the registration application. The rule allows the individual issued a provisional ballot under this category to provide the number to the clerk no later than 4:00pm on the day after the election. Individuals issued a provisional ballot in all other categories must provide the required piece of information to the clerk by 4:00pm by the Friday after the election. The Commission previously directed staff to halt rulemaking to standardize the date upon which a provisional voter must provide information to the clerk for their ballot to be counted until it is clear whether legislation will be introduced in lieu of rulemaking.
70. § 6.875(3)(b) uses the term “same grounds” in relation to voting via special voting deputies but no corresponding definition is provided to inform clerks as to what this phrase could encompass. The statute is also ambiguous as to whether individuals residing in a retirement home on the *same grounds* as a residential care facility served by special voting deputies may vote by that method. The Commission previously authorized staff to defer rulemaking regarding the “same grounds” definition until it is clear whether legislation will be introduced in lieu of rulemaking.

E. CHAPTERS NOT ADMINISTERED BY THE WISCONSIN ELECTIONS COMMISSION

71. § 59.23(2)(s). This provision requires county clerks to provide a list of local officials to the Secretary of State. This information would help the Commission maintain accurate information on current office holders and election administration. The Legislature could revise this provision by requiring county clerks to also provide this list to the Commission or require the Secretary of State to forward a compiled report to the Commission.
72. § 66.0217(9). This provision requires a municipality that annexes territory to file a copy of the related ordinance with the Secretary of State. The Secretary of State is required to forward copies of that ordinance within 10 days of receipt to the Departments of Administration, Revenue, Public Instruction, Natural Resources, Transportation, Agriculture, and Trade and Consumer Protection. The Legislature could add Commission to the list of agencies that receive a copy of the ordinance, certificate, and plat from the Secretary of State in order to ensure accurate and current district boundaries recorded in the statewide voter registration system. The G.A.B. previously approved this recommendation.
73. Chapter 66 – Subchapter II. This subchapter generally describes the processes by which a municipality may incorporate or adjust municipal boundaries. Staff has been involved in several incorporations and boundary agreements where the provisions of this subchapter appear inconsistent with the rules applied to other petitions and referenda in Chapters 5-12. The Legislature could consider revisiting this subchapter to harmonize its provisions with the rules governing other forms of petitions and referenda.

Recommended Motion:

The Commission adopts the items listed above as the Commission's 2019 – 2010 legislative agenda and directs staff to work with the Legislature to draft legislation consistent with this agenda and to continue to update the Commission as to significant policy and administrative issues raised by proposed legislation. The Commission also directs staff to continue working with clerks and legislative authors of the proposed legislation regarding alternate absentee voting procedures to review subsequent drafts and provide feedback regarding administrative and significant policy issues to be considered and addressed. In addition, the Commission specifically requests the Legislature to enact legislation to implement and make permanent the changes required by the federal court consent decree in *United States of America v. State of Wisconsin, et al*, related to temporary overseas electors.

WISCONSIN ELECTIONS COMMISSION

212 EAST WASHINGTON AVENUE, 3RD FLOOR
POST OFFICE BOX 7984
MADISON, WI 53707-7984
(608) 261-2028
ELECTIONS@WI.GOV
ELECTIONS.WI.GOV



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JODI JENSEN
MARK L. THOMSEN

INTERIM ADMINISTRATOR MEAGAN WOLFE

MEMORANDUM

DATE: For the March 11, 2019 Commission Meeting

TO: Members, Wisconsin Elections Commission

FROM: Meagan Wolfe
Interim Administrator

Prepared and Presented by:
Michael Haas

SUBJECT: Commission Legislative Agenda

At the meeting of December 3, 2018, the Commission adopted a legislative agenda for the 2019 - 20 legislative session which included recommendations related to over 70 items. Commission staff has met with legislative staff and Legislative Reference Bureau drafting attorneys and expects a significant share of those items to be addressed in legislative proposals.

Commission staff is requesting feedback regarding the following three additional items for the legislative agenda.

1. Voter Name and Address Requirement: Wis. Stat. § 6.79(2) states that before receiving a ballot at the polling place, each voter must state their name and address. Periodically we have heard from voters with disabilities who are unable to verbally state their name and address. Given that the Americans with Disabilities Act requires governmental services to be provided to all qualified voters, Commission staff has advised that a voter who is unable to speak their name and address due to a disability should still receive a ballot. In practice, this means that the name and address are verified and stated in another way, such as the election inspector reading the information from a photo ID card, other document, or poll list, or another individual assisting the voter by stating the name and address. These alternatives accomplish the statutory goals of the voter confirming their name and address and permitting election observers to hear that information for each voter.

Several statutes specify that voters may obtain assistance during various stages of the voting process, including completing a registration application, requesting an absentee ballot, and marking a ballot. Also, Wis. Stat. § 5.36 states that an individual with a disability may notify their municipal clerk to request a specific type of accommodation at the polling place. The statutes do not specifically address assistance with the requirement to state a voter's name and address, especially without notifying the municipal clerk in advance.

The Commission discussed this issue with its Accessibility Advisory Committee at its meeting on February 27, 2019. The Advisory Committee consists of representatives of organizations which work with and advocate on behalf of persons with disabilities. Committee members expressed concerns with the potential that an election inspector may strictly apply the requirement for a voter to state their name and address and deny a ballot to a voter who is unable to verbalize that information, or at least to discourage individuals from voting in the first place. Some members of the Committee advocated for completely removing the requirement for all voters. After discussion regarding the right of election observers to hear the voter's name and address and transparency in the voting process, the Committee adopted a motion requesting that the Elections Commission request a change in the statutes to specifically address the requirement. The Committee passed the following motion:

The Accessibility Advisory Committee requests that the WEC support legislative changes to allow voters with disabilities to receive assistance from an election inspector or another individual to satisfy the statutory requirement to state the voter's name and address before receiving a ballot, and work with the Accessibility Advisory Committee and the Legislature to enact such legislation.

2. Ballot Harvesting Statutes: Media attention on absentee voting improprieties in a North Carolina Congressional election has generated discussion regarding whether Wisconsin Statutes adequately address potential issues with "ballot harvesting." The practice of ballot harvesting involves an individual collecting marked absentee ballots from voters and returning them to the local clerk. In North Carolina a political operative allegedly did not return some absentee ballots collected from voters and also altered votes on some collected ballots.

Wisconsin Statutes do not prohibit the return of absentee ballots by individuals other than the voter. Commission staff is not aware of efforts of any political campaign or other organization systematically contacting absentee voters to collect marked ballots and offering to return them to the clerk. However, given that the Statutes require the Commission to offer a subscription service providing continually updated information about the issuance and return of individual absentee ballots, a greater potential may exist for absentee voters to be contacted and asked if they need assistance in returning their ballot.

Wis. Stat. § 12.13(3)(m) prohibits fraudulently changing a ballot of an elector so the elector is prevented from voting for whom the elector intended, and violations are punishable as a Class I felony. This addresses one of the risks of ballot harvesting. Several provisions of Section 12.13 may be interpreted to prohibit failing to return a marked absentee ballot collected from another voter but contain general language which may not be clearly on point. The Commission could request that the Legislature insert language into Section 12.13(3)(m) to clearly prohibit failing or refusing to deliver a marked ballot collected from another voter to the municipal clerk or polling place, and to classify violations as a Class I felony.

3. Certification Deadline in Absence of a Potential Recount: Following the completion of the official canvass at the local, county, and state levels, the appropriate filing officer issues a

certificate of election to the winning candidates. Whether at the level of a municipality (Wis. Stat. § 7.53(4)), school district (Wis. Stat. § 7.53(3)(a)), county (Wis. Stat. § 7.60(6)) or state (Wis. Stat. 7.70(5)), the filing officer may not issue the certificate of election until the expiration of the time for filing a recount, which is three days after the official canvass is completed. When a recount petition is filed, the certificate of election is not issued until the completion of the recount or any court action resulting from the recount.

Legislation was enacted in 2017 to limit the right to request a recount to an “aggrieved party,” which is defined as a candidate who lost by no more than 40 votes when the total votes cast for the office was 4,000 or fewer, or a candidate who lost by no more than one percent of the total votes cast for the office when that total exceeds 4,000. That legislation did not amend the timeline for issuing a certificate of election when the initial canvass results indicate there is no aggrieved party that may request a recount. In some cases, clerks and even the Commission would benefit from being able to issue certificates of election sooner when there is no candidate qualified to request a recount. The Commission could request that the Legislature update the relevant statutes to permit certificates of election after completion of the official canvass when there is no aggrieved party.

Recommended Motion:

The Commission adopts the additional items outlined above to be included in its legislative agenda and directs staff to work with the Legislature to enact appropriate statutory changes.

WISCONSIN ELECTIONS COMMISSION

212 EAST WASHINGTON AVENUE, 3RD FLOOR
POST OFFICE BOX 7984
MADISON, WI 53707-7984
(608) 261-2028
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ELECTIONS.WI.GOV



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BEVERLY R. GILL
JULIE M. GLANCEY
ANN S. JACOBS
JODI JENSEN
MARK L. THOMSEN

INTERIM ADMINISTRATOR MEAGAN WOLFE

MEMORANDUM

DATE: May 24, 2019

TO: Wisconsin Legislature

FROM: Meagan Wolfe
Administrator

SUBJECT: WEC Legislative Agenda Items Included in Senate Bill 241/Assembly Bill 246

This memorandum outlines items of the Wisconsin Elections Commission (WEC) legislative agenda which are incorporated into Senate Bill 241 and Assembly Bill 246. The WEC legislative agenda request is described for the changes proposed in each section of these bills, which focus on voter registration processes. This memorandum is identical to WEC's summary memorandum regarding **LRB-1456** dated May 1, 2019 except for one item which was removed from the bill and which would have deleted the requirement that municipal clerks include prepaid postage when they mail out voter registration applications.

1. Most of the changes proposed in SB 241/AB 246 relate to clarifying the distinction between a proof of residence document used for voter registration and a photo identification document used to obtain a ballot. Throughout the election statutes, there are numerous references to a proof of residence document as an "identifying document," a term borrowed from federal law prior to the enactment of Wisconsin's Photo ID Law. LRB-3379 eliminates the term "identifying" when referring to a proof of residence document, which will help reduce confusion for election officials and voters interpreting the statutes. This amendment is included in Sections 1, 2, 4, 5, 6, 7, 11, 12, 13, 14, 15, 16, 17, 19, 20, 21, and 22.
2. Section 3 permits the WEC to send address verification postcards to voters who register by mail or online. This is consistent with current practice in which the Commission sends these mailings on behalf of municipalities. This facilitates consistent compliance and leveraging State purchasing power for printing and mailing. This change would also be consistent with 2013 Wisconsin Act 149, which specifically authorized the agency to send out address verification postcards for voters who register on Election Day.

3. Section 6 permits an elector to provide their proof of residence document in electronic format when registering to vote. This is consistent with established WEC policy which recognizes that many documents such as bank statements, utility bills and paychecks may be generated only in an electronic format.
4. Sections 8 and 9 permit an unexpired driving receipt or an unexpired State identification card receipt issued by the Division of Motor Vehicles to be used as a proof of residence document when registering to vote. This is consistent with DMV's current practice of issuing a temporary receipt prior to issuing a driver license or state-issued identification card, which are valid proof of residence documents. This is also consistent with the Photo ID Law which recognizes those temporary receipts as being valid forms of identification.
5. Section 10 allows using a pay stub or pay statement as a proof of residence document when registering to vote, in addition to a paycheck which is currently permitted. As many voters no longer receive a physical paycheck, the WEC has previously interpreted the term "paycheck" to include pay stubs, pay sheets, or other payroll documentation such as a direct deposit statement. This provision would update and clarify the statutory language.
6. Section 18 requires an elector who has changed their name or address to complete a new voter registration application rather than simply notifying the election inspectors at the polling place of the change. The WEC has consistently required voters who wish to change their name to complete a new voter registration. This provision is consistent with current practice and previous legislation which removed this option for voters to make changes to their registration without submitting a new registration form, and would ensure that every change in a voter's registration is documented with a new voter registration.

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212 EAST WASHINGTON AVENUE, 3RD FLOOR
POST OFFICE BOX 7984
MADISON, WI 53707-7984
(608) 261-2028
ELECTIONS@WI.GOV
ELECTIONS.WI.GOV



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DEAN KNUDSON, CHAIR
BEVERLY R. GILL
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INTERIM ADMINISTRATOR MEAGAN WOLFE

MEMORANDUM

DATE: May 24, 2019

TO: Wisconsin Legislature

FROM: Meagan Wolfe
Administrator

SUBJECT: WEC Legislative Agenda Items Included in Senate Bill 242/Assembly Bill 247

This memorandum outlines items of the Wisconsin Elections Commission (WEC) legislative agenda which are incorporated into Senate Bill 242 and Assembly Bill 247. The WEC legislative agenda request is described for the changes proposed in each section of these bills, which focus on absentee voting and voting procedures. This memorandum is identical to WEC's summary memorandum dated May 1, 2019 regarding **LRB-2329**.

1. Sections 1, 2 and 15 of SB 242/AB 247 update language regarding determining whether an elector is competent to vote. The election statutes were not updated to reflect changes in the guardianship statutes or guardianship forms, which ensure the right to vote by persons who are under guardianship or adjudicated incompetent unless a court specifically determines that the individual is not competent to exercise the right to vote. This change would make the election laws consistent with current practice and with other state laws regarding guardianship and legal competency.
2. Section 3 clarifies a deadline for former Wisconsin residents to vote in a Presidential Election if they do not yet qualify to vote in their new state of residency. Current law allows former Wisconsin residents to cast a ballot in a Presidential Election if they do not yet qualify to vote in their new state but does not provide a specific deadline for requesting an absentee ballot. This provision clarifies such requests for absentee ballots by former Wisconsin residents must be submitted by 5:00 p.m. on the fifth day before the election, which is consistent with the deadline for most other absentee voters.
3. Section 4 repeals a provision requiring each municipal clerk to keep an updated list of eligible military electors that reside in the municipality in the format provided by

the Commission, and to distribute a copy of the list to each polling place. The intent of this provision was to ensure compliance with absentee ballot procedures for military voters and with the exemption from the voter registration requirement for military electors. In practice, all of the required information regarding military electors exists within the statewide voter registration system, and all known military voters automatically appear on the poll books. This change would reflect modernized procedures.

4. Section 5 exempts overseas electors from the requirement to submit a separate absentee ballot request before a Federal Write-In Absentee Ballot (FWAB) from that elector may be counted. The FWAB is a blank ballot that can be downloaded and marked with candidate names by a military or overseas elector if they do not receive an official absentee ballot in time to return it by Election Day. The declaration/affirmation page of the FWAB contains all the necessary information to serve as a request for an absentee ballot. Overseas voters face many of the same difficulties in voting as overseas military voters and this provision establishes a more consistent process for all overseas voters.
5. Section 6 clarifies that a FWAB is valid when submitted by an overseas elector, whether the elector is overseas permanently or temporarily. This is consistent with recent statutory changes regarding temporary overseas electors required by a federal court consent decree pertaining to the rights of temporary overseas electors under Wisconsin law.
6. Sections 7, 10 and 11 update information regarding options for provisional ballots by clarifying that provisional ballots cannot be cast by electors who did not provide a proof of residence document when registering to vote. Legislation enacted in 2014 eliminated this category of provisional ballots except for electors who were grandfathered in under prior law. Following the WEC's Four-Year Maintenance process in June 2019, there will no longer be electors remaining in this category because either they will have provided proof of residence to complete their registration or their voter registration will become inactive because they have not voted in four years and have not responded to a mailing.

Removing the remaining statutory language that mentions this category of provisional ballots will avoid the impression that a provisional ballot is an option for new registrants who do not have a proof of residence. These provisions would become effective on July 1, 2019 pursuant to Section 18 of the bill. Additional information regarding this item is outlined in a more detailed WEC memorandum.

7. Section 8 updates language regarding the process of curbside voting for electors who are unable to enter the polling place due to a disability. The provision outlines the curbside voting process more specifically than current law and more accurately reflects the actual practice. This provision preserves procedures for verifying the elector's identity, securing ballots marked outside the polling place, and announcing the elector's name and address similar to the process for other Election Day voters.

8. Section 9 clarifies a specific section of the statutes related to electors who may or may not vote with Special Voting Deputies that serve nursing homes and other adult-care facilities. Special Voting Deputies may serve electors in a multiple-use facility that includes nursing home, assisted living, and retirement home units or wings. This provision clarifies a statutory provision that is currently somewhat ambiguous by stating that residents of a retirement home portion of a multiple-use facility may not vote with Special Voting Deputies when a municipal clerk has not designated the retirement home unit as a “qualified retirement home” warranting service by Special Voting Deputies.
9. Sections 12 and 13 consolidate redundant language regarding the duty of municipal clerks to transmit ballots to absentee voters.
10. Section 14 eliminates the requirement to place the voter number on the back of ballots processed at central count locations. This provision protects the privacy of the ballot which could otherwise be traced back to identify the voter who cast it, unlike absentee ballots which are processed at polling places.
11. Sections 16 and 17 clarify that it is illegal to obtain a marked absentee ballot from another person and fail or refuse to deliver it to the municipal clerk or polling place, and define such violations as one of the prohibited election practices defined as a Class I felony.

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212 EAST WASHINGTON AVENUE, 3RD FLOOR
POST OFFICE BOX 7984
MADISON, WI 53707-7984
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ANN S. JACOBS
JODI JENSEN
MARK L. THOMSEN

INTERIM ADMINISTRATOR MEAGAN WOLFE

MEMORANDUM

DATE: May 24, 2019

TO: Wisconsin Legislature

FROM: Meagan Wolfe
Administrator

SUBJECT: WEC Legislative Agenda Items Included in Senate Bill 240/Assembly Bill 245

This memorandum outlines items of the Wisconsin Elections Commission (WEC) legislative agenda which are incorporated into Senate Bill 240 and Assembly Bill 245. The WEC legislative agenda request is described for the changes proposed in each section of these bills, which focuses on various election administration processes, recall petitions and recount procedures. This memorandum is identical to WEC's summary memorandum dated May 1, 2019 regarding **LRB-2186**.

1. Sections 1, 2, 3, and 5 of SB 240/AB 245 reorganize and clarify statutes related to the processing of complaints filed with the Commission. The net result of the changes would permit the WEC to receive complaints related to the conduct of a recount, such as calculating the proper recount fee or consistently applying recount standards when multiple boards of canvassers are involved. The provisions would not permit the Commission to review the result of a recount as court review is the sole remedy for challenging a recount result. The provisions would permit Commission staff to resolve procedural questions or conflicts more definitively and they are supported by the directive of Wis. Stat. § 9.01(10) that the Commission develop standard forms and procedures for use in recounts.
2. Section 4 authorizes the Commission to issue temporary orders when necessary to maintain the status quo while a complaint is being processed and investigated. Current statutes allow the WEC to issue an order to a local election official only after completion of an investigation. The provision would clarify the Commission's authority to direct a local election official to stay any action until the completion of a review or investigation, such as when the question is whether to schedule a recall election or whether a candidate has qualified for ballot access.

3. Section 6 clarifies that cities and villages may not draw ward lines that cross the boundaries of a congressional, state assembly or county supervisory district, as is the case for townships. This provision avoids problems with assigning electors to the proper voting ward if a city or village annexes territory in different districts.
4. Section 7 clarifies that a line for write-in votes must be provided on ballots for city offices, as is required for ballots pertaining to other levels of government.
5. Section 8 deletes a requirement that independent candidates for state office appear on partisan primary ballots. This requirement was previously necessary to determine an independent candidate's eligibility for public funding and it was not removed when public funding for state candidates was eliminated. Independent candidates who qualify for ballot access do not have opponents at a partisan primary and automatically appear on the general election ballot.
6. Section 9 permits local clerks to publish a sample ballot in a reduced size as part of the Type B Notice. Wis. Stat. §10.02 (2)(c) already allows the ballot size to be reduced when publishing the notice, and this provision makes the statutes consistent and reduces costs that jurisdictions must incur when publishing election notices.
7. Section 10 updates the statutes to accommodate electronic poll books by eliminating the requirement to make paper copies of the poll list if an electronic poll book is used.
8. Section 11 removes outdated language regarding the availability of a copying machine while retaining language requiring that municipal clerks secure poll lists after they have been copied.
9. Sections 12, 13 and 14 removes a requirement that the WEC provide to each municipal clerk, on a continuous basis, the names and addresses of organizations certified to provide services to victims of domestic abuse or sexual assault. The provision requires the WEC to provide this information to municipal clerks as needed to confirm the eligibility of confidential voters (voters who are victims of domestic abuse or sexual assault). The addresses of organizations serving such voters may be sensitive information in that they provide temporary shelter to victims, and sending this information unsolicited to over 1,800 municipal clerks could also compromise the security of victims. These provisions better promote the security of victims of domestic abuse or sexual assault by requiring the addresses of service providers to be shared only as needed.
10. Section 15 accommodates the use of electronic poll books and the ability to update them for subsequent elections. This provision allows electronic poll books to be erased after the last day for filing a recount petition, but only if the clerk first transfers the electronic poll book data to a disk or other recording medium which must be retained for 22 months after the election, which is the required retention period for paper poll lists under state and federal law.

11. Section 16 removes a reference to a candidate withdrawing before an election, in the context of tallying write-in votes. However, Wisconsin Statutes do not provide a procedure for candidates to withdraw. Once a candidate qualifies for ballot access, their name cannot be omitted or removed from the ballot unless they die. This provision would eliminate questions and uncertainty about whether and how a candidate can withdraw after qualifying for ballot access.
12. Section 17 permits central count municipalities to appoint qualified electors of their county to serve as absentee ballot canvasser if the municipality cannot identify a sufficient number of qualified electors who are residents of the municipality. When 2013 Act 147 expanded the residency of election officials to the county in which they serve, it did not similarly modify the residency requirement for election inspectors appointed to assist with the central count absentee ballot canvassing process. This provision establishes more consistent residency requirements for the two categories of election inspectors, although municipalities must first attempt to identify sufficient central count inspectors who are residents before enlisting countywide residents.
13. Section 18 modernizes language regarding the method of transmitting official election results from the county to the WEC. The current statute requires county clerks to deliver or transmit to the Commission a certified copy of each county board of canvass statement. In current practice, county clerks use the Commission's Canvass Reporting System (CRS) to generate those statements using their secure login credentials, and then mail a signed copy of that report to the Commission. In 2014, the Legislature made a similar change by allowing political committees to sign their campaign finance reports electronically when certifying that information to the Government Accountability Board. The provision allows the WEC to use current technologies to determine the most efficient and secure method of transmitting official election results.
14. Section 19 establishes alternative processes for notifying candidates that a recount petition has been filed so that a recount is not delayed by a candidate attempting to avoid service of the notification. It permits the a candidate to acknowledge voluntary receipt of the recount petition or by the municipal clerk notifying the candidate by email or telephone. If all of those methods are unsuccessful the clerk must forward the petition to the sheriff for personal service. If the sheriff is unable to serve the candidate after 24 hours, the recount may proceed after the clerk publishes or posts notice of the recount at least 24 hours in advance of the start of the recount.
15. Section 20 clarifies that a signature on a recall petition may not be counted if the signer has not legibly printed their name on the petition. While 2013 Act 160 required the signer's printed name for nomination papers and election petitions, it did not add the same requirement for recall petitions. This provision creates consistent requirements for election petitions.

16. Section 21 eliminates the requirement that the WEC promulgate administrative rules for the purpose of prescribing the form of various election notices. The Commission creates sample forms which contain all of the information prescribed by the statutes and publishes the sample forms on its website. County and municipal election officials use the sample forms to create and publish the required notices for their elections. Administrative rules would not add any substantive guidance or standards for the creation of sample forms.
17. Sections 22, 23, 24 and 25 clarify that notice of any referendum at a Spring Primary or Partisan Primary must be included in Type A and Type C notices for those elections, as is required for notices that pertain to the Spring Election and the General Election.
18. Sections 26, 27, 28 and 29 create consistent requirements for the publishing of election notices at various elections. Current statutes omit references to publishing a Type A Notice of Referendum Election before the Spring Primary if the referendum does not relate to direct legislation, or a Type C Notice of Referendum for non-direct legislation referenda voted on at the Spring Primary or for any referenda to be voted on at the Partisan Primary, Finally, the statues do not mention publication of a Type D Notice of Polling Hours and Locations requirement for either the Spring or Partisan Primary although it is required as part of the general definition of the Type D notice at 10.01(2)(d). These provisions clarify that all relevant election notices must be published for each type of election.