



Wisconsin Elections Commission

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DATE: For the **September 11, 2024**, Commission Meeting

TO: Members, Wisconsin Elections Commission

FROM: Prepared and Presented by:
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Staff Attorney

SUBJECT: Additional Manuals Supplement – Topics Not Yet Addressed by Commission
Election Day Manual (August 2024)
Election Administration Manual (August 2024)

Purpose & Orientation

At the December 19, 2023, meeting, Commission staff outlined five general categories of proposed revisions to the Election Administration and Election Day manuals ahead of the start of the 2024 election cycle. Categories one through four were addressed and resolved by the Commission during public meetings on December 19, 2023, January 24, 2024, and February 8, 2024. New editions of the manuals were released with categories one through four implemented. Additional litigation update revisions were approved by the Commission during a public meeting on July 30, 2024. The current versions of both manuals are the August 2024 editions.

The fifth category of proposed revisions from December 19, 2023, has not yet been addressed by the Commission because staff explained at the December 19 meeting that this category consisted of legal and policy questions that warranted additional analysis before the Commission approves them.

Revisions Intended to Supplement Existing Manuals

The revisions contained in this memorandum are intended to supplement the existing Election Day and Election Administration manuals. Accordingly, no redlines are included, and the text of both manuals will be updated after the November General Election. Clerks should familiarize themselves with the contents of this supplementary memo ahead of November 5, 2024, as this memo is intended to have the same effect as the guidance in each manual.

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Military Electors are Absent Electors

The fifth category largely consists of revisions relating to a topic that the Commission did not consider during previous rounds of manual revisions: Whether military voters must be voting absentee to be properly exempt from voter registration and proof of residence requirements.

Multiple statutory provisions support the conclusion that military electors can only ever be absentee voters. Military electors have their own specific section in Chapter 6, which is titled “Absentee voting for military electors.” Wis. Stat. § 6.22. In the sub-section titled “Voting Procedure,” the statute confirms that the ballots of military electors “...shall be marked and returned, deposited and recorded *in the same manner as other absentee ballots.*” Wis. Stat. § 6.22(5) (Emphasis added). Similarly, military voters “...may file an application *for an absentee ballot.*...” Wis. Stat. § 6.22(2)(e) (Emphasis added). Within the proof of residence provision, military elector is more specifically defined, in part, as “a member of a uniformed service on active duty who, by reason of that duty, *is absent* from the residence where the member is otherwise qualified to vote...” Wis. Stat. § 6.34(1) (Emphasis added). In summary, no provision of Wisconsin law appears to contemplate a scenario where a military elector is not an absentee elector.

Clarifying that military electors must always be absentee electors is important to eliminate confusion at the polls on Election Day. Simply put, if an elector is registering to vote in-person on election day at their polling place, they do not meet the definition of a military elector because they are not voting via absentee ballot. While they may meet the service definition of a military elector in § 6.22(1), Wisconsin law is clear that military voters must be voting absentee in order to be exempt from voter registration and proof of residence requirements. This distinction is only important for in-person voting on election day at the polls. If military voters are voting via in-person absentee ballot (IPAV), they exemptions for registration and proof of residence do apply as IPAV is a form of absentee voting.

The recommended edits to the Election Day and Election Administration manuals are consistent with that analysis and conclusion.

Election Day Manual – Affected Pages:

- Page 45
- Page 49
- Page 149

Election Administration Manual – Affected Pages:

- Page 56
- Page 60
- Page 64
- Page 96
- Pages 235–236

By-Mail Absentee Request Deadlines

An elector may only apply for an absentee ballot in person not earlier than 14 days preceding the election and not later than the Sunday preceding the election. Wis. Stat. § 6.86(1)(b). Existing Commission guidance has clarified that this statutory time frame also applies to the in-person return of absentee ballot applications. If an elector makes an in-person request, or attempts the in-person delivery of a request, more than 14 days prior to an election, the clerk should direct that the application be mailed, emailed, faxed, or requested by email using the MyVote Wisconsin website.

Staff recommend that page 71 of the Election Administration manual be revised to include this guidance.

Appendix B – Election Administration Manual – Affected Pages:

- Page 71

Federal Destruction Date of Election Notices

As part of the manuals revision process, staff identified a question of whether election notices and proofs of publication of notices and correspondence relative to publications are subject to the 22 month federal election retention schedule. Under federal law, “all records and papers...relating to any...application, registration, payment of poll tax, or other act requisite to voting...” in a federal election must be retained for a period of 22 months. 52 U.S.C. § 20701. The penalty for willful noncompliance with § 20701 is \$1,000 and/or up to one year of imprisonment.

Staff recommend that the Election Administration manual continue to advise that election notices and proofs of publication of notices and correspondence relative to publications be retained for 22 months for federal elections. Election notices provide critical information to voters, and thus very likely relate to “an act requisite to voting.” Furthermore, the steep penalties for noncompliance with § 20701 warrant a conservative read of its terms, which would also support a directive to err on the side of caution and retain these records for 22 months for federal elections.

Recommended Motion: The Wisconsin Elections Commission approves the changes to the Election Day and Election Administration manuals that are described by this memo as a supplement to those manuals and directs staff to communicate the changes with all clerks. After the November 2024 election, staff are directed to implement these updates, which can include formatting, numbering, and other scrivener’s edits, and to revise the edition dates on each manual.