

WISCONSIN ELECTIONS COMMISSION

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MEMORANDUM

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

FROM: Meagan Wolfe
Interim Administrator

DATE: December 14, 2018

SUBJECT: Election Related Legislation – 2017 Wisconsin Act 369

On December 14, 2018, Governor Walker signed 2017 Wisconsin Act 369 (Act 369) into law, which changes several election administration provisions, codifies some election administration practices previously governed by administrative rules or a consent decree with the United State Department of Justice, and creates new administrative requirements for guidance documents issued by state agencies which includes the Wisconsin Elections Commission (WEC).

In-Person Absentee Voting

Act 369 changes the allowable time period for in-person absentee voting. Prior to the federal *One Wisconsin Institute* decision, a qualified elector could apply for an absentee ballot in-person no earlier than the third Monday preceding the election and no later than the Friday preceding the election. The statutes required that in-person absentee voting could only take place on Monday to Friday between the hours of 8 a.m. and 7 p.m. The federal court struck down those restrictions in combination with other absentee voting restrictions, which has resulted in municipalities conducting in-person absentee voting at times of their choosing from the date that absentee ballots were available until the Sunday prior to an election. The *One Wisconsin Institute* case is still on appeal at the 7th Circuit Court of Appeals.

Act 369 changes the original statutes challenged in the *One Wisconsin Institute* case by limiting the period of in-person absentee voting to the period from 14 days preceding an election through the Sunday before the election. Act 369 permits in-person absentee voting on any days and during any hours during that period, as determined by the municipality. It also removes the current provision limiting the number of in-person absentee voting locations to one location per municipality. Absentee voting by mail would still be available any time after ballots have been prepared and delivered to municipal clerks.

Please note: Due to the pending appeal in the *One Wisconsin Institute* case and the interaction of these new provisions with the Court's decision, the Commission will be consulting with the Attorney

General's office to advise local clerks as to the allowable time period for in-person absentee voting for the 2019 Spring elections.

Codification of WEC and DOT Administrative Rules: Photo ID

Act 369 codifies the WEC's administrative rule clarifying that an unexpired technical college identification card constitutes a student ID and is an acceptable form of photo ID for voting. The original Photo ID Law did not specify whether technical college ID cards were included in the definition of a student ID. Act 369 also codifies the administrative rules of the Department of Transportation related to the ID Petition Process (IDPP), establishing a statutory process for individuals to obtain an acceptable document for Photo ID purposes even if they do not currently possess all the required documentation to acquire a regular photo identification card at the DMV.

Codification of Consent Decree with U.S. DOJ: Temporary Overseas Electors

Act 369 makes changes to the voting procedures for temporary overseas electors that were already in place since the WEC entered into a consent decree with the U.S. Department of Justice in June 2018. Individuals who are traveling or residing out of the country would be specifically permitted to receive absentee ballot by fax or email, and to use the Federal Write-In Absentee Ballot if they do not have time to receive and return an official ballot. In addition to codifying the provisions of the consent decree, Act 369 also eliminates the requirement that a witness for an absentee certificate envelope be a U.S. citizen for military and both permanent and temporary overseas electors.

Commission Guidance Documents

Act 369 implements new administrative requirements for guidance documents issued by state agencies, including the WEC. The new requirement could impact the WEC's manuals, training documents and other communications, but the WEC staff will need to consult with the Commission for additional guidance on how the new provisions will impact the guidance we currently provide to clerks and the general public. Additional details on the WEC's plans moving forward to implement these provisions will follow at a future date.

At this time, WEC manuals, documents and other guidance have not been updated to reflect these changes. Once WEC materials have been analyzed and updated to reflect these statutory changes, municipal and county clerks will be notified in a separate communication.

If you have questions, please contact the Help Desk at 608-261-2028 or elections@wi.gov.