

# State of Wisconsin \ Government Accountability Board

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**DATE:** November 19, 2012

**TO:** Members, Election Day Registration (EDR) Inter-Organizational Fact-Finding Taskforce  
(Please refer to **Attachment #1** for List of Taskforce Members)

**FROM:** Nathaniel E. Robinson  
Elections Division Administrator  
Government Accountability Board

**SUBJECT:** Election Day Registration (EDR) Inter-Organizational Fact-Finding Taskforce

An Inter-Organizational Fact-Finding Taskforce is appointed to gather the facts and analyze the impact of eliminating Election Day Registration (EDR) in Wisconsin and becoming subject to the requirements of the National Voter Registration Act (NVRA) and the provisional voting requirements of the Help America Vote Act of 2002 (HAVA).

## Election Day Registration in Wisconsin

In 1976, Wisconsin became the second state in the nation to allow Election Day Registration (which is also known as Same Day Voter Registration when the process refers to permitting voters to register at the same time they complete an absentee ballot at the municipal clerk's office). Minnesota was the first state to offer Election Day Voter Registration. Election Day Registration was enacted by Chapter 85, Wisconsin Laws, 1975, with an implementation date of July 1, 1976. The first election that was affected by Wisconsin's Election Day Registration was in the fall of 1976. The legislative intent of Chapter 85 reads:

- *The legislature finds that the vote is the single most critical act in our Democratic system of government; that voter registration was not intended to and should not prevent voting; that registration should simply be a remedy against fraud and its burden should be placed upon administrators, not the electorate.*
- *The legislature further finds that it is extremely difficult for workers to find time to visit a registration office that is open only during working hours; that transportation costs to remote locations impede registration; and that the act of personal registration is a major cause of limited electoral participation.*
- *Therefore, pursuant to the policy of this state and nation to ensure all people the right to vote, the legislature finds it imperative to expand voter registration procedures.*

Election Day registrants must provide a Proof of Residence document as specified by statute. Clerks audit Election Day registrants by sending a verification mailing. If the mailing is returned, the name of the voter is submitted to the District Attorney and the Government Accountability Board, the voter is inactivated in the Statewide Voter Registration System, and the elector is mailed a notice of change in their status. In addition, an elector who is registering to vote is required to provide a driver license

number or the last four digits of their Social Security Number. Voter registration information is subsequently compared to a database at the Wisconsin Department of Transportation.

New registrations completed on Election Day are compared by Poll Workers or a Special Registration Deputy to a list of felons who are incarcerated or under Department of Corrections' supervision. The voter is informed if they are determined to be ineligible. If the voter agrees that they are still serving the terms of their felony sentence, the election inspectors shall NOT give the elector a ballot. If the elector claims that they are not a felon or have completed the terms of their felony sentence, then the election inspectors follow the challenge process which allows the elector to vote after the inspectors complete documentation and mark the ballot as a challenged ballot. If determined to be ineligible, clerks mark the ineligible voter's record "Inactive" following the election. The District Attorney is notified if a vote is cast by an ineligible voter.

Studies have consistently shown that Election Day Registration is a factor in ensuring a high voter turnout, and based upon the use of Election Day Registration since it became available in 1976, it appears that voters overwhelmingly support the process. It removes a barrier to voting which was a stated goal in the legislative intent. It also ensures that elections are completed with virtually no provisional ballots, which require local election officials to complete additional administrative procedures. If EDR is eliminated, Wisconsin will become subject to additional provisions of the Help America Vote Act of 2002 (HAVA) which will likely result in an increase in provisional ballots and will require changes to the post-election and canvassing activities of Local Election Officials.

Other jurisdictions that allow Election Day Registration or Same Day Registration include:

- District of Columbia
- Connecticut (For Presidential Elections Only)
- Idaho
- Iowa
- Maine (In Municipal Clerk's Office)
- Minnesota
- Montana (In County Clerk's Office)
- New Hampshire
- North Carolina (At the Polls before but not on Election Day)
- Wyoming

#### Help America Vote Act (HAVA) and the National Voter Registration Act (NVRA)

Section 302 of the Help America Vote Act of 2002 (HAVA) contains provisions requiring states to allow voters to cast provisional ballots if they declare that they are registered voters but do not appear on the poll list. Their registration status is subsequently verified and if the local election official determines that the individual was registered, the ballot is counted. Wisconsin has been exempt from this provisional ballot requirement because it permits Election Day Registration. As a result, Wisconsin elections consistently involve a small number of provisional ballots compared to other states. If EDR is eliminated, Wisconsin will become subject to the HAVA provisional ballot requirement. Instead of having the option to register to vote on Election Day, voters claiming to be registered will be given a provisional ballot. The number of provisional ballots cast may increase significantly, requiring municipal clerks to investigate the registration status of those individuals after the election and possibly causing delays in canvassing ballots.

The National Voter Registration Act (NVRA), also known as the Motor Voter Act, was passed in 1993, but was not mandatory until 1995. The intent of the law was to encourage greater access to voter registration for citizens who need further assistance registering to vote. The NVRA requires states to provide an opportunity for voter registration whenever an individual applies for or renews a driver's license, changes the address for their driver's license, or applies for social services or services to persons with disabilities. In addition, all federal Armed Forces recruitment offices in states subject to the NVRA must provide voter registration services.

The NVRA also expanded the use of mail-in registration and voter registration drives by providing for a uniform voter registration form. States could be exempted from the requirements of NVRA by either not requiring voter registration or providing the opportunity to register to vote at the polling place. Wisconsin was one of six states which became exempt from NVRA because they either offer Election Day Registration or have no voter registration requirements, including Idaho, Minnesota, New Hampshire, North Dakota, and Wyoming. The NVRA applies to elections for federal office, but states have extended its procedures to all elections in order to implement consistent practices. The former State Elections Board initiated the request of Congress in 1993 which resulted in the EDR exemption, and that request was also supported by the Governor and Wisconsin's Congressional delegation,

Additional background information about the NVRA is found in **Attachment #2**; a memorandum dated November 18, 2010, and titled, "Summary of National Voter Registration Act Requirements."

### The Charge for the Election Day Registration Inter-Organizational Fact-Finding Taskforce

The Election Day Registration Inter-Organizational Fact-Finding Taskforce is charged with the task of conducting a thorough fact-finding review of the National Voter Registration Act (NVRA) which includes determining the impact, nature and scope of the effects of the NVRA requirements on Wisconsin's election administration process if the Legislature and Governor were to rescind Election Day Registration (EDR) in Wisconsin. The Taskforce will also assess the effects and any costs associated with elimination of EDR which are independent of the NVRA requirements, including the impact of complying with the provisional ballot provisions of HAVA.

This assignment should include the following actions:

1. Evaluate the anticipated changes in polling place procedures which would occur in the event that EDR is eliminated under Wisconsin law, including the effect on the number of provisional ballots, and any fiscal impact of those changes. Identify changes required by Section 302 of HAVA in the investigation and processing of provisional ballots and in canvass procedures.
2. Use the attached document ("Summary of National Voter Registration Act Requirements") as a starting point, but conduct more thorough and comprehensive research regarding all of the criteria, standards and requirements of the NVRA which would change election administration in Wisconsin.
3. Determine exactly what Wisconsin agencies would need to do to comply with each NVRA standard and requirement.
4. Estimate the costs of implementing NVRA and HAVA provisional ballot requirements at the State and Local levels.
5. In the event that the Wisconsin Legislature and Governor were to rescind Election Day Registration in Wisconsin, specifically evaluate and summarize the following:
  - A. Required Collaboration with Partner Agencies
    - Specify the Wisconsin agencies, including Department of Transportation, agencies providing social services and assistance to persons with disabilities, and Armed Forces branches described under the NVRA with which the G.A.B. would need to consult and collaborate.
    - Identify the kind, nature, frequency and scope of consultation and collaboration which would be needed with these agencies, including the duties of those agencies to offer voter registration and to transmit applications to appropriate election officials.

- Identify the nature and delivery mechanisms for the G.A.B. to train partner agencies and monitor compliance with the NVRA, including any staffing implications.

B. Required New Procedures for Maintenance of Voter Information in SVRS, Removal of Inactive Voter Names, and Reporting Requirements

- Outline the NVRA requirements for registration list maintenance, as compared to Wisconsin's current statutory procedures.
- Outline the NVRA requirements for retention of records related to the maintenance of the voter registration list.
- Identify NVRA reporting requirements and the steps required for complying with those requirements.

C. Impact on Local Election Officials

- Identify the impact of implementing NVRA/HAVA requirements on local government and Local Election Officials in terms of increased workload and time, including requirements for voter notification and record retention, and estimate the costs of implementing NVRA/HAVA at the municipal level.
- Evaluate the approach and timeframe for informing Local Election Partners about the NVRA/HAVA requirements and implementation procedures, and bringing these officials into the discussion regarding NVRA/HAVA and its impact on local election administration.
- Identify the kinds of education, training and technical assistance that would be required for Local Election Officials.

D. Required IT Technical Capacity/Capability

- Identify what changes would be needed in our election management tool (the Statewide Voter Registration System) – its current and future capability and capacity – in order to manage the coordination of voters' registration forms received under the provisions of the NVRA/HAVA. This includes consideration of the impact of NVRA/HAVA on the process of SVRS modernization as currently envisioned. This also includes additional requirements related to expanded use of provisional ballots.
- Identify the kinds of upgrades and retrofits that would be necessary, and the estimated amount of time it would take to engineer the upgrades/ retrofit, and to test and ready them for implementation.
- Determine the format of the NVRA voters' registration forms, i.e. paper, electronic, etc., and the responsibility (G.A.B. or Municipalities) for receipt, processing and maintenance of registration forms.
- Determine if the G.A.B.'s interfacing with DOT, DHS and DOC would continue in its present form in terms of voter information matching procedures.

E. Possible Assistance of the PEW Charitable Trust's Voter Registration Modernization Project in Implementing NVRA Requirements

- Research PEW's Voter Registration Modernization (VRM) Project and its Electronic Registration Information Center (ERIC) initiative. Assess ERIC's capabilities, capacity and functionalities, and determine its utility in playing an effective role with

coordinating, managing and processing Wisconsin's voter registrations that would be received under the NVRA.

- Note that the G.A.B. Staff Team appointed to conduct a Fact-Finding Study on the Federal Systematic Alien Verification for Entitlements (SAVE) Database, has already completed research on ERIC's capabilities, capacity and functionalities and will be able to share information with Taskforce members.

F. Required Public Information and Outreach Campaigns to Educate, Inform Wisconsin's Citizenry, and the Estimated Costs of this Public Education and Outreach Initiative.

6. Identify and contact representative states that are implementing NVRA/HAVA requirements and gather facts such as the following:

- How does the state handle provisional ballots under Section 302 of HAVA, including its investigation of voter eligibility and applicable timelines for that investigation and for canvassing of provisional ballots?
- How long has the state been implementing NVRA requirements?
- Which and how many agencies and organizations are involved with the NVRA implementation process?
- How many staff persons are assigned to administer and monitor compliance with the NVRA requirements?
- What are the major barriers and challenges involved in implementing NVRA requirements?
- What do they identify as their successes and best practices?
- How many NVRA voter registration forms are collected each year by the partner agencies?
- How does the collecting agency process the voter registration forms and which election official ultimately receives the forms to complete the registration process?
- What process is used to evaluate and assess compliance with NVRA by the partner agencies?
- Does the state election agency designate a dedicated staff person to oversee compliance with NVRA?
- Has the state been sued regarding NVRA requirements? If so, what were the issues and the outcome?
- What are the state's costs for implementing the NVRA requirements, broken down by:
  - ❖ Personnel.
  - ❖ Program operations/coordination with other required agencies.
  - ❖ Education/Training/Outreach/Technical Assistance.
  - ❖ Postage and processing of voter registration forms.
  - ❖ Any other fiscal information that will be helpful.

7. The intent is for this assignment to be as comprehensive as possible. As such, the Fact-Finding Taskforce is not limited to the "letter" of this Charge Statement. Please provide any other information that is germane to understanding the impacts and ramifications of rescinding Election Day Registration (EDR) in Wisconsin, for G.A.B. management, members of the G.A.B. and members of the Legislature.

The Taskforce is encouraged to go beyond the scope of the Statement as necessary in carrying out the intent of this Charge. As time permits, the Taskforce is encouraged and expected to explore related issues and make recommendations accordingly, that may go beyond the specifics of this Charge Statement. This Charge Statement may be amended as deemed necessary by the Elections Division Administrator.

Priorities

The Government Accountability Board's staff and the Taskforce will be operating under an expedited schedule. It is anticipated that due to the time limitation, most of the meetings involving any members

other than G.A.B. staff will need to be conducted via teleconferencing or webinars. Taskforce members are expected to be assigned tasks to research and report back to the membership. Taskforce members are expected to devote the necessary time to these tasks in order to be able to submit a Preliminary and a Final report as indicated in the Timelines below.

### Timelines

1. Regular Verbal Updates: The Taskforce Co-Leads should be prepared to provide verbal updates at the Weekly Elections Divisional Staff Meetings.
2. Preliminary Report Due Friday, November 30, 2012: The Fact-Finding Team is asked to present a preliminary report that should at least include a summary of the National Voter Registration Act, its requirements, impact, nature and scope and any other noteworthy findings that may affect election administration in Wisconsin if the Legislature and Governor were to rescind Election Day Registration (EDR) in Wisconsin. The Preliminary Report should also include any effects on the Elimination of EDR which may be independent of the NVRA requirements, such as the provisional ballot requirements of HAVA.

This Preliminary Report should also include the best available estimated fiscal impact information to date on how much it would cost the State to implement NVRA in Wisconsin, by at least identifying cost areas that will need further study.

3. Final Report Due Friday, December 28, 2012: The Final Report should build upon and expand the Preliminary Report. The Final Report should be more comprehensive and contain a detailed fiscal impact estimate including but not limited to the following:
  - Staffing, program operations and program administration costs.
  - The kinds of policies and procedures that will be needed for program implementation.
  - Program outreach, public education, training and technical assistance costs.
  - Identification of coordination and technical issues among the affected agencies.
  - Role of and costs for participation by local government and their election officials.
  - Challenges as well as options and recommendations for consideration.
  - Identify and specify the technical issues, including IT modifications that would have to be addressed.
  - Include any other information that will be helpful to fully understanding the ramifications and impact of eliminating Election Day Registration (EDR) in Wisconsin.

### Team's Leadership

There are many areas of the National Voter Registration Act to be researched and explored in order for the data-gathering and fact-finding process to be as thorough and complete as possible. Each appointed Taskforce member has an expertise that will bring value to the data-gathering, fact-finding, and analysis process. An organizational meeting was held on November 15, 2012, at which time the Director and General Counsel and the Elections Division Administrator formally charged the Taskforce. The Taskforce is encouraged to call upon its members and other Elections Division staff as necessary to assist with addressing and fulfilling the provisions of the Charge Statement.

### Policy Directions/Oversight Guidance/Legal Assistance

Kevin J. Kennedy, Director and General Counsel of the Wisconsin Government Accountability Board is the project sponsor, and will provide overall policy direction for this fact-finding task. Staff Counsel Haas and Elections Supervisor Hein will provide oversight responsibilities and guidance. Staff Counsel Falk will provide legal assistance as required.