

# State of Wisconsin \ Government Accountability Board

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Director and General Counsel

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## MEMORANDUM

**DATE:** February 25, 2011

**TO:** Government Accountability Board Members  
Government Accountability Board Staff  
Local Election Officials

**FROM:** Kevin J. Kennedy  
Director and General Counsel

**SUBJECT:** Senate Action Regarding Photo ID Legislation

This memorandum summarizes the status of Voter Photo Identification legislation which was acted upon by the State Senate yesterday, and the Senate's consideration of issues raised by G.A.B. staff and local election officials.

Senate Bill 6 was introduced on January 14, 2011 and a day-long public hearing was held by the Senate Committee on Transportation and Elections on January 26<sup>th</sup>. Based on input from G.A.B. staff and county and municipal clerks, I presented testimony to the Committee suggesting a number of changes to the bill. A copy the testimony is posted on our website. In response to comments from the public, clerks, and the G.A.B., Senate Substitute Amendment 1 was offered this past Tuesday, February 22<sup>nd</sup>, and recommended for passage by the Committee the same day.

Upon reviewing the Substitute Amendment, the G.A.B. provided additional input to the Senate, highlighting several technical and administrative issues. A copy of the G.A.B. memorandum can be found on our website at: <http://gab.wi.gov/node/1616>

Yesterday, February 24<sup>th</sup>, the State Senate approved the Substitute Amendment, incorporating changes included in another amendment. Some, but not all, of the recommendations made by the G.A.B. have been included in the Substitute Amendment. While I believe further changes to the bill are warranted, the input of G.A.B. staff and local election officials to date have definitely improved the legislation, and we will continue to work with the Legislature throughout the process. Several of the major changes to the bill resulting from our input are described below.

As approved by the Committee, beginning with the February 2012 Spring Primary, voters will be required to present an acceptable photo ID prior to being issued a ballot. The acceptable forms of ID include a Wisconsin driver license, a Wisconsin DoT-issued identification card, a military identification card, a Wisconsin tribal identification card, a U.S. passport or a DoT-issued temporary receipt for the driver license or ID card. The ID must not have expired or if expired, it is only acceptable if it expired since the last general election. The Committee accepted some recommendations by the G.A.B. and others to expand the types of acceptable ID, but did not include other government-issued ID or student ID as we suggested. At any election following

passage and before February 2012, poll workers will be required to ask voters to show an acceptable photo ID. However, electors may vote without showing ID, and poll workers must give those voters a written handout prepared by the G.A.B. explaining the photo ID requirements that will be in effect in the future. This “soft implementation” is intended to familiarize both election officials and the voters with the photo ID requirement, without imposing a consequence for failure to present an ID.

The amended legislation requires voters at the polling place to sign a poll list after showing the required ID and before receiving a ballot. This provision may be waived for persons with disabilities. In the original draft of the Substitute Amendment, this requirement was effective for the first election after publication in 2011, and also applied to in-person absentee voters. The G.A.B. recommended that the signature requirement be delayed until 2012 and that it not apply to in-person absentee voters, and the Senate agreed. The Committee also accepted our recommendation to remove the requirement that clerks make a copy of a photo ID presented by an in-person absentee voter.

The amended legislation also changes the 10-day residency requirement for voting to 28 consecutive days, but this provision would not be effective for any election prior to the 2012 Spring Primary. The Substitute Amendment originally made this change effective immediately upon publication, but postponed the effective date after the G.A.B. explained that it would not be possible to implement it prior to the April 2011 election.

If the bill is enacted, beginning with the 2012 Spring Primary, if a voter is unable to provide acceptable ID, or if the name on the voter’s ID does not conform to the name on the poll list, or if the picture on the ID does not reasonably resemble the voter, the voter may cast a provisional ballot. The voter will have until 4 p.m. on the Friday following the election to provide the required ID or clear up the issue in order to have the provisional ballot counted. The Committee accepted the G.A.B.’s recommendation to extend the deadline for correcting a provisional ballot, but the legislation does not address the impact of this extension on the canvassing process. The Committee also incorporated our recommendations to use the term “conform” in comparing the voter’s name, to recognize common variations of a name, and to specify the “reasonably resemble” standard for the photo, so that poll workers are not required to inspect facial features, hair color, etc.

The provisions in the original bill remain which require mail-in absentee voters to provide an ID, or a witnessed statement in certain cases of indefinitely confined voters or voters in nursing homes or other regulated facilities. In response to a suggestion initially made by clerks, the bill was amended to require mail-in absentee voters to include a copy of the photo ID with the ballot application rather than with the returned ballot.

The Senate is not scheduled to be in next week, but given the anticipated release of the Governor’s budget that could change. The legislation must still pass the Senate and the Assembly and be signed by the Governor before it is published and becomes law.

The bill is at the final stage before passage in the Senate. It cannot be amended without unanimous consent of the body. At least one more Senator needs to be present (19 Republican Senators and no Democratic Senators were present) for the bill to receive final passage because it contains a fiscal element – fees for certain DoT issued IDs. We have also been advised that no

fiscal appropriation is expected to be included in the bill itself, and that any appropriation would be considered as part of the budget process.

The G.A.B. will need to provide local election officials with guidance on some of the unresolved issues identified in our staff memo. The Elections Division will be planning implementation strategies for the 2011 April election and special elections if necessary, as well as the 2012 elections.

I want to thank G.A.B. staff and local officials who have assisted in evaluating the proposed legislation and making valuable recommendations for improvement. We will continue to need your assistance in advocating for additional improvements and informing legislators about the practical implications of specific provisions, and therefore we continue to welcome your input. Comments can be provided through the public comment link on our website. If you have any questions please feel free to also contact Staff Counsel Mike Haas at 608-266-0136 or michael.haas@wi.gov, or contact me at 608-266-8005 or Kevin.Kennedy@wi.gov.