



WISCONSIN LEGISLATIVE COUNCIL INFORMATION MEMORANDUM

2005 Wisconsin Act 451: Administration of Elections and Other Election Provisions

Act 451 substantially revises state election laws. The legislation was developed by the Joint Legislative Council's Special Committee on Election Law Review. The Joint Legislative Council introduced the Special Committee's recommendation as 2005 Senate Bill 621. The changes pertain to voter registration, absentee balloting, pre-election procedures, election day procedures, post-election procedures and other election law campaign-related items.

For information concerning the Special Committee on Election Law Review and Senate Bill 621, see RL 2005-15, *Special Committee on Election Law Review [2005 Senate Bill 621]*, available at: www.legis.state.wi.us/lc. For information concerning the amendments adopted by the Legislature to Senate Bill 621, see the Legislative Council amendment memo describing the amendments, also available at www.legis.state.wi.us/lc.

It should be noted that the prefatory note printed with session law does not reflect the amendments adopted by the Legislature. This document describes the law, as amended by the Legislature and signed by the Governor, as 2005 Act 451.

VOTER REGISTRATION

FORMS OF IDENTIFICATION REQUIRED TO REGISTER TO VOTE

Beginning in the Spring of 2006, all voters, with limited exceptions, will need to be registered before they are allowed to vote. Under current law, an elector may register in person or by mail. Generally, registration must be completed by a certain time before election day. However, a person may register in person on election day at the polls, or after the official close of registration in person in the office of the municipal clerk up until 5:00 p.m. or the close of business, whichever is later, on the day before the election.

A person who registers to vote at the polls on election day or in person in the municipal clerk's office after the official close of registration must show proof of residence. A document constitutes acceptable proof of residence if it includes the person's current and complete name and a current and complete residential address. The statutes provide a list of examples of documents that constitute acceptable proof of residence if they contain the person's name and address. The statutory list, which is not exhaustive, is set forth below:

1. An operator's license issued under ch. 343, Stats. (i.e., a Wisconsin driver's license).

2. An identification card issued under s. 343.50, Stats. (i.e., a Wisconsin identification card).
3. Any other official identification card or license issued by a Wisconsin governmental body or unit or by an employer in the normal course of business, but not including a business card.
4. A credit card or plate.
5. A library card.
6. A check-cashing or courtesy card issued by a merchant in the normal course of business.
7. A real estate tax bill or receipt for the current year or the year preceding the date of the election.
8. A residential lease which is effective for a period that includes election day.
9. A university, college, or technical institute fee card.
10. A university, college, or technical institute identification card.
11. An airplane pilot's license.
12. A gas, electric, or telephone service statement for the period commencing not earlier than 90 days before election day.

A person who is required to provide proof of residence under current law but who is unable to provide such proof may have his or her registration information corroborated by another elector who resides in the same municipality. The corroborating elector must then provide proof of his or her residence. In general, under current law, other persons who register to vote need not provide proof of residence.

Under current law, pursuant to requirements of the Federal Help America Vote Act of 2002 (HAVA), a person who registers to vote by mail and who has never voted in a federal election in his or her municipality (until December 31, 2005) or in the state (effective January 1, 2006) must present certain identification before being allowed to cast a ballot. A person who fails to do so may cast a provisional ballot and provide the identification later. The identification required under current law is: (1) a current and valid piece of identification containing a photograph of the person or, for an absentee voter, a copy of a current and valid piece of identification containing a photograph of the person; or (2) a copy of a utility bill, bank statement, paycheck, or a check or other document issued by a unit of government that shows the current name and address of the person.

The Act establishes one uniform list of documents, any one of which may be used as proof of residence for registration or voting purposes, so long as the document contains the full name and residential address of the individual. The list created by the Act is as follows:

1. A current and valid Wisconsin driver's license.
2. A current and valid Wisconsin identification card.
3. Any other official identification card or license issued by a Wisconsin governmental body or unit.
4. An identification card issued by an employer in the normal course of business and bearing a photograph of the card holder, but not including a business card.
5. A real estate tax bill or receipt for the current year or the year preceding the date of the election.
6. A residential lease, unless the person registered to vote by mail.
7. A university, college, or technical college fee or identification card bearing a photograph of the card holder.
8. A utility bill for the period commencing not earlier than 90 days before election day.
9. A bank statement.
10. A paycheck.
11. A check or other document issued by a unit of government.

The Act provides that a university, college, or technical college fee or identification card which does not contain the address of the student bearing the card may still be considered acceptable proof of residence if the university, college, or technical college that issued the card provides to the municipal clerk before the election a certified and current list of students who reside in housing sponsored by the university, college, or technical college showing the current address of the students and if the poll worker verifies that the student presenting the card is included on the list.

DEADLINE FOR REGISTRATION

Under current law, registration for any election must close at 5:00 p.m. on the second Wednesday preceding the election. Registration may be accepted after this deadline if the municipal clerk determines that the registration list can be revised to incorporate the registration in time for the election. A person may also register to vote after the official date for the close of registration. Generally, a person may register late by filing with the municipal clerk a registration form completed by the person and acceptable proof of residence or corroboration of residence by one other elector of the municipality. The registration form must be filed in person no later than 5:00 p.m. or the close of business, whichever is later, on the day before the election. Unless the clerk determines that the registration list can be updated in time for the election, the municipal clerk must issue to the late-registering person a certificate addressed to the inspectors of the proper ward directing that the elector be permitted to vote. The certificate must be presented by the person to the inspectors when he or she arrives at the polling place.

The Act changes the registration deadline from the second Wednesday preceding the election to the third Wednesday preceding the election. Under the Act, registration after this deadline is limited to persons registering in person in the office of the municipal clerk, persons registering at the polls on election day, and hospitalized persons registering via an agent.

Locations for Voter Registration; “Roving” Special Registration Deputies

Under current law, individuals may register to vote at the office of the municipal clerk, at other locations designated by the clerk, at high schools, and at the register of deeds office. In addition, current law authorizes the municipal clerk and the Elections Board to appoint special registration deputies for the purpose of registering electors of a municipality anywhere throughout the municipality--the so-called “roving registration deputies.” Current law also authorizes the appointment of special registration deputies to assist in registering voters at the polls on election day and requires the appointment of special registration deputies at other locations designated for registration by the municipal clerk.

The Act requires “roving” special registration deputies to be trained and to print and sign their names on all registration forms they accept. In addition, the Act subjects all registration forms accepted by such deputies to a letter or postcard audit by the municipal clerk. Under the Act, the municipal clerk and the Elections Board must maintain a record of the names and addresses of all individuals appointed by the clerk or board as “roving” special registration deputies.

The Act also creates an exemption from requiring the clerk to appoint special registration deputies for registration locations established by the municipal clerk when the clerk and deputy clerks can sufficiently staff the locations. In addition, the Act eliminates the statutory requirement that registration be available at the Office of the Register of Deeds and instead requires that registration be available at the Office of the County Clerk.

PROHIBITION ON CERTAIN PAYMENT FOR VOTER REGISTRATION

The Act prohibits any person from compensating any person who obtains voter registrations at a rate that varies in relation to the number of voter registrations obtained. Violators are guilty of a misdemeanor and are subject to a fine of not more than \$1,000 or imprisonment for not more than six months, or both, for each offense.

VERIFICATION OF PRE-ELECTION VOTER REGISTRATION

Under current law, when a municipal clerk receives a voter registration form by mail, the clerk must examine the form for sufficiency. If the form is insufficient to accomplish registration or if the clerk knows or has reliable information that the proposed elector is not qualified, the clerk must notify the proposed elector and request that the elector appear at the clerk’s office or other registration center to complete a proper registration or substantiate the information presented. Similarly, if the form is submitted after the close of registration, the clerk must attempt to notify the elector that registration may be completed in the clerk’s office or at the polls on election day.

Under current law, if the form is sufficient and the clerk has no reliable information to believe that the proposed elector is not qualified, the clerk must enter the person's name on the registration list and transmit a first class letter or postcard to the registrant identifying the registrant's proper ward or aldermanic district and polling place. If the letter or postcard is returned, the clerk must change the registrant's status to ineligible.

The Act specifies that the clerk must mail the letter or postcard within 10 days of receiving the registration.

FEE FOR COPY OF REGISTRATION LIST

Under current law, the fee for a copy of a public record may not exceed the actual, necessary, and direct cost of reproduction, unless a fee is otherwise specifically established or authorized to be established by law.

The Act directs the Elections Board to establish a fee for receiving a copy of the statewide voter registration list. The fee must be established by rule after consultation with county and municipal election officials. The amount of the fee must be set to cover the cost of reproduction and the cost of maintaining the list. The rules must also specify how revenues from the fees will be shared between the state and municipalities (or counties if they perform registration functions on behalf of municipalities). The Act also authorizes the board to promulgate emergency rules to be in effect until permanent rules are promulgated.

SAME-DAY VOTER REGISTRATION AND DOUBLE VOTING AUDITS BY ELECTIONS BOARD

Under current law, after each election the municipal clerk receives a list of all electors who registered to vote on election day. Upon receipt of the list, the clerk is required to make an audit of all such electors. The audit is to be made by first class postcard, which is to be marked in such a way so that it will be returned to the clerk if the elector named on the card does not reside at the address given on the postcard. If the postcard is returned undelivered, the clerk is required to change the status of the elector on the registration list from eligible to ineligible and mail the elector a notice of the change in status and provide the name to the district attorney for the county where the polling place is located. Also under current law, the municipal clerk must determine if any elector appears to have voted more than once and must attempt to contact each such elector.

The Act authorizes the state Elections Board to perform these audit functions in lieu of the municipal clerk.

OUT-OF-STATE DRIVER'S LICENSE HOLDERS

This Act provides that whenever an elector registers to vote in the general election after the close of registration, and the elector presents a valid driver's license issued by another state, the registering official must record the license number, issuing state, and expiration date of any license presented. The information would not be available for general public inspection. In addition, the Act requires the Elections Board, following each general election, to contact the chief election official in each other state that has issued a valid driver's license to an elector

presenting that license who voted in the election and to inquire whether the elector had voted in that election in that state.

Currently, there are no such requirements.

UNIFORM REGISTRATION FORMS

Currently, the Elections Board prescribes the content of registration forms in accordance with statutory requirements. This Act requires the board to create uniform registration forms that must be used throughout the state for purposes of registration.

ABSENTEE BALLOTS

REQUESTING AN ABSENTEE BALLOT BY FAX OR EMAIL

Under current law, any elector who is unable or unwilling to appear at the polling place in his or her ward on election day may vote by absentee ballot. An elector seeking to vote by absentee ballot must generally make a written application to the municipal clerk. An application may be made by one of the following methods: (1) by mail; (2) in person at the office of the municipal clerk; (3) by signing a statement indicating the elector is indefinitely confined or disabled; (4) by agent when the elector is hospitalized; or (5) by delivering an application to a special voting deputy when the elector is an occupant of a nursing home and similar facilities.

The Act authorizes a registered elector, including a registered “overseas elector,” or an elector who qualifies as a “military elector,” who is unable or unwilling to appear at the polling place in his or her ward on election day to apply for an absentee ballot by making a written application to the municipal clerk by facsimile transmission (fax) or electronic mail (email). The application must contain a copy of the applicant's original signature. When the absentee ballot is returned, the elector must enclose a copy of the absentee ballot request bearing an original signature of the elector along with the ballot. Ballots cast in contravention of this procedure are not to be counted.

DEADLINE FOR REQUESTING ABSENTEE BALLOT BY MAIL

Under current law, requests for absentee ballots made by an elector by mail must be received by the municipal clerk by 5:00 p.m. on the Friday preceding the election. The Act changes the deadline for such requests to no later than 5:00 p.m. on the fifth day immediately preceding the election, except for applications submitted by mail by military electors and indefinitely confined electors. Under the Act, applications by mail from these electors retain the current deadline of 5:00 p.m. on the Friday before the election.

ABSENTEE BALLOTS FOR MILITARY ELECTORS - PERMANENT BALLOTS

Currently, for the absentee ballot of any elector to be counted, the ballot must be received at the polling place serving the elector's residence no later than the closing hour of the polls. This Act provides that the absentee ballots of certain electors defined as “military electors” under the Act must be counted at the September primary and general (November)

election if the ballots are received by mail bearing a postmark dated on or before election day and the ballots are received by the municipal clerk or board of election commissioners of the municipality where the elector resides no later than seven days after the September primary or no later than 10 days after the general election. The Act provides that if a postmark is missing or illegible, and the ballot is received by mail, the ballot is presumed to be received by election day, unless established by a preponderance of the evidence to the contrary.

Under the Act, a “military elector” is defined as any individual who, as of election day, is:

1. A member of a uniform service on active duty and who, by reason of that duty, is absent from his or her residence;
2. A member of the merchant marine and who, by reason of service in the merchant marine is absent from his or her residence; or
3. The spouse or dependent of any such member and who, by reason of service of the member, is absent from his or her residence. The provision applies **only** to the September primary and general (November) election and not to the spring elections.

Since the pendency of late ballots may result in changes to original election returns, the Act directs each municipal clerk and board of election commissioners to post at the clerk’s or board’s office and on the Internet, and to make available to any person upon request, a statement of the number of ballots of military electors to whom absentee ballots have been sent but whose ballots have not been returned as of election night. Upon receiving a late absentee ballot that is eligible to be counted, a municipal clerk or a board of election commissioners is required to notify the board or boards of canvassers that canvassed the original returns, which must then reconvene, canvass the late ballots and issue amended returns. The Act makes minor adjustments to canvassing deadlines to accommodate the revised canvassing process, but does not adjust a deadline for mailing or transmittal of absentee ballots for the general election (which may be affected by any delay in finalizing the September primary canvass). The Act does not adjust a deadline for filing a petition for recount. However, the Act provides that a pending recount shall not proceed until immediately after the original canvass, reflecting any amended returns, is complete.

The current deadline for application for an absentee ballot to be received by mail is 5:00 p.m. on the Friday before election day. The Act advances the deadline at the September primary and general election, for military electors only, to 5:00 p.m. on election day.

Under current law, electors who wish to vote by absentee ballot must request a ballot for each election individually, except that a military elector or an overseas elector (U.S. citizen residing outside the United States) may request to receive an absentee ballot for the next two general elections at the same time. In addition, an elector who was indefinitely confined may request to receive absentee ballots automatically for every election and may continue to receive those ballots as long as they are cast or the elector renews his or her request. With certain exceptions, the Act directs each municipal clerk or board of election commissioner who receives an absentee ballot from a military elector to send the elector absentee ballots for the next three general elections and all other elections beginning with the date of the request and ending with the third successive general election following receipt of the request regardless of

whether the ballots are cast, unless the elector otherwise requests. With certain exceptions, if the elector casts an absentee ballot, that elector continues to receive absentee ballots for all elections until after the third successive general election following the last election at which the elector cast a ballot.

LATE-ARRIVING ABSENTEE BALLOTS FROM MILITARY ELECTORS

Under current law, absentee ballots must be returned to the municipal clerk in time for delivery to the polls before the polls close. Any ballot not delivered by this deadline may not be counted.

The Act provides that a vote cast on a ballot cast by a “military elector,” as defined above, that is received by the municipal clerk after the close of the polls may, in some situations, still be counted. Under the Act, a vote cast on a ballot that is received after the polls close is considered a valid ballot if it is received by the clerk by the deadline for requesting a recount for the office for which the vote is cast and if it contains a postal service cancellation mark dated on or before the election day for which the ballot was cast. However, under the Act these ballots will not be counted unless a recount occurs.

Under the Act, a certificate envelope sent to a military elector must be clearly labeled so that when it is returned the clerk will know that it is from a military elector. If a certificate envelope that is returned by a military elector after the polls close but before the deadline for the return of such ballots has an illegible postmark, or no postmark, it is presumed that the envelope was timely mailed, unless established otherwise.

The Act directs the municipal clerk to post in his or her office on election night and on an Internet site a statement announcing the number of absentee ballots that have not been returned by military electors by the closing of the polls. However, the posting may not include the names or addresses of any military electors.

Under the Act, if a recount petition is filed, the municipal clerk must immediately notify the appropriate board of canvassers as to the number of absentee ballots that were timely received after the polls closed and whether any absentee ballots that were sent to military electors have not been returned. If there are unreturned ballots at the time a recount petition has been filed, the Act provides that the recount may not proceed until all timely returned ballots are delivered by the clerk or 9:00 a.m. on the day following the last day for filing a recount petition, whichever occurs first.

As soon as practicable after receiving the last late-arriving ballot but in no case later than 9:00 a.m. on the day following the last day for filing a recount petition, the clerk must transmit to the appropriate board of canvassers all of the late-arriving ballots of military electors received by the clerk.

When the board of canvassers conducting a recount receives late-arriving absentee ballots cast by military electors, the board must first open and record the names of the military electors whose ballots have been received. If the late-arriving ballot cast by a military elector is otherwise valid, the board of canvassers must count the ballot and adjust the original

statements, certifications, and determinations. After doing so, the board of canvassers may begin the recount.

WITNESS FOR ABSENTEE BALLOTS

Under current law, military and overseas voters who cast absentee ballots must have a witness who is an adult U.S. citizen. All other absentee ballots must have a witness, but the age and nationality of the witness is not specified. The Act requires all absentee ballots to be witnessed by an adult U.S. citizen.

ELIMINATION OF PREPAID RETURN POSTAGE AND NOTICE OF HOURS

Generally, under current law, if the municipal clerk sends an absentee ballot to an elector, the ballot must include sufficient return postage to return the ballot from anywhere within the United States. The Act specifies that if the absentee ballot is mailed from outside the United States, the elector must affix sufficient postage for return of the ballot unless the ballot qualifies for mailing free of postage under federal law. The Act also modifies the notice that a clerk must post to include the hours that an elector can cast an absentee ballot in the clerk's office or an alternate site.

This Act provides that an eligible elector may, by written application filed with the municipal clerk in the municipality where the elector resides, require that an absentee ballot be sent to the elector automatically for every election that is held within the **same calendar year** in which the application is filed. The Act provides that the form and instructions shall be prescribed by the board, and furnished upon request to any elector by each municipal clerk. The Act directs the municipal clerk to mail an absentee ballot to the elector for all elections that are held in a municipality during the same calendar year that the application is filed, except that the clerk shall not send an absentee ballot for an election if the elector's name appeared on the registration list in eligible status for a previous election following the date of the application but no longer appears on the list in eligible status. The municipal clerk must also ensure that the envelope containing the absentee ballot is clearly marked as not forwardable and provides that if an elector who files an application under the subsection no longer resides at the same address that is indicated on the application form, the elector must so notify the municipal clerk.

In addition, the Act requires the municipal clerk to discontinue mailing absentee ballots to an elector under this subsection upon receipt of reliable information that the elector no longer qualifies for the service. The clerk must notify the elector of any such action not taken at the elector's request within five days, if possible. Further, if a municipal clerk is notified by an elector that the elector's residence is changed to another municipality within this state, the municipal clerk must forward the request to the municipal clerk of that municipality and that municipal clerk must honor the request, except as provided under the provisions of the amendment.

OPENING ABSENTEE BALLOTS IN PUBLIC

Under current law, absentee ballot envelopes must be opened at the polling place during poll hours and the ballots placed in the ballot box without disclosing how the voter voted.

When the envelopes are opened, the inspector is required to publicly announce the names or serial numbers of the absent electors casting the ballots.

The Act adds language to ensure that this opening process is done so that election observers may hear and see the process.

OBSERVATION OF ABSENTEE VOTING IN CERTAIN NURSING HOMES AND OTHER FACILITIES

Under current law, there is a separate procedure for absentee voting by residents of nursing homes, and certain community-based residential facilities and retirement homes. If a resident of such a facility requests an absentee ballot, the clerk will arrange a time to send two special deputies to the facility to facilitate absentee voting by the residents. The time that the deputies visit the home or facility is not announced prior to the visit.

The Act requires the municipal clerk to maintain a list, available to the public, of all of the facilities where an absentee ballot has been requested and when the special deputies will be visiting the facility. In addition, the clerk must post a notice at the facility indicating when the special deputies will be visiting. The Act also allows one observer from each of the recognized political parties whose candidate for Governor or President received the greatest numbers of votes in the municipality at the most recent general election to accompany the deputies to observe the distribution of absentee ballots in the common areas of the facility. The deputies are given the same authority as the chief election inspector to monitor this observer's conduct.

ALTERNATE ABSENTEE BALLOT SITE

Under current law, persons may apply for and vote an absentee ballot at the municipal clerk's office prior to election day. In addition, absentee ballots that are not voted at the clerk's office are to be returned to the clerk's office in time for delivery to the polls before the polls close on election day.

The Act authorizes the governing body of a municipality (city, village, or town) to establish an alternate absentee ballot voting site in lieu of the municipal clerk's office to facilitate absentee ballot applications, voting of absentee ballots, and the return of absentee ballots prior to the close of the polls. Generally, the decision to move the absentee ballot functions to this alternate site must be made and the location of the alternate location must be established no later than 14 days prior to the time when absentee ballots are available for voting at a primary, if a primary is required (generally 30 days before a September primary and 21 days before other primaries, including the Spring primary) and the site must be used until at least the day after the election following the primary. No absentee ballot functions that are to take place at this alternate site may be conducted at the municipal clerk's office so long as the alternate site is used. The Act requires notice of the alternate site to be prominently displayed in the office of the municipal clerk beginning on the date that the site is selected and continuing during the time that absentee ballots are available and requires a notice of the alternate site to be published in a newspaper along with other absentee ballot information required under current law and on an Internet site if one is maintained by the municipal clerk. The Act requires the alternate site to be staffed by the municipal clerk or by employees of the clerk. The alternate site must be accessible and located as near as practicable to the office of the clerk, but may not be located so as to afford an advantage to any political party.

Observation and electioneering laws would apply to alternate locations established under the Act.

OPTION TO COUNT ABSENTEE BALLOTS AT A CENTRAL LOCATION

Currently, each absentee ballot must be received at the polling place serving an elector's residence no later than 8:00 p.m. on election night for the ballot to be counted. The municipal clerk or board of election commissioners delivers all absentee ballots received by the clerk or board to the appropriate polling places. The inspectors (poll workers) canvass the absentee ballots, together with the other ballots, publicly on election day by marking the names of the absentee electors on the same poll list that is used to mark the names of the electors who vote in person. Any member of the public may observe the proceedings. Any elector may challenge for cause any absentee ballot that the elector knows or suspects is not cast by a qualified elector, whether the absentee ballot is cast in person at the office of a municipal clerk or board of election commissioners or the ballot is received in some other manner. Unless an absentee ballot is challenged or voted provisionally, it is not identifiable once it is counted, except that an absentee ballot may be distinguished from another ballot because it carries the initials of the municipal clerk or executive director of the board of election commissioners or a designated deputy. The inspectors at each polling place announce the results of each election when the canvass is completed on election night. Each municipal canvass must be completed by 2:00 p.m. on the day after each election, and each county canvass must begin no later than 9:00 a.m. on the Thursday following an election.

The Act permits the governing body of any municipality, by ordinance, to discontinue the canvassing of absentee ballots at polling places after consultation with the Elections Board. Before enacting such an ordinance, a municipality must notify and consult with the Elections Board concerning the alternative procedure for canvassing absentee ballots that will be used. Under the Act, if absentee ballots are not canvassed at polling places, a municipal board of absentee ballot canvassers, appointed by the municipal clerk, must publicly convene any time after the polls open and before 10:00 p.m. on election day for the purpose of counting absentee ballots. To assist the board of absentee ballot canvassers, a municipality that canvasses absentee ballots at a central location may appoint additional inspectors in accordance with the same procedure that is used to appoint inspectors at polling places. Any inspectors so appointed are under the direction and supervision of the board of absentee ballot canvassers. Under the Act, the board of absentee ballot canvassers does not announce the results of its count until the canvass of all absentee ballots is completed. The Act provides for the board of absentee ballot canvassers to conduct a cross-check of absentee ballots for any potential duplication by electors who also cast ballots in person. To accomplish the cross-check, the board of absentee ballot canvassers numbers each absentee ballot as it is counted, and if the elector who casts the ballot also casts a ballot in person, the absentee ballot is not counted. The Act permits any elector to challenge any absentee ballot for cause. The Act extends the time for completion of the municipal canvass by two hours but does not extend the time by which the county canvass must begin.

PRE-ELECTION PROCEDURES

QUALIFICATIONS OF CIRCULATORS OF NOMINATION PAPERS AND PETITIONS

Under current law, each nomination paper and petition for an election must be circulated by a qualified elector of the jurisdiction or district in which the paper or petition is circulated. However, in *Frami v. Ponto*, 255 F. Supp. 962 (W.D. Wis. 2003), a federal district court ruled that this residency requirement is unconstitutional and prevented the state from enforcing the statutory requirement.

The Act removes the residency requirement by providing that a circulator of a nomination paper or petition must be a qualified elector of this state or a U.S. citizen age 18 or over who, if he or she were a resident of the state, would not be disqualified from voting because he or she is incompetent, a felon whose right to vote has not been restored, or involved in a wager or bet depending upon the result of the election.

NOTICE OF SCHOOL DISTRICT REFERENDUM

Currently, proposed constitutional amendments and other measures or questions to be submitted to a vote of the people must be filed with the official or agency responsible for preparing the ballots for the election no later than 42 days prior to the election at which the amendment, measure, or question will appear on the ballot.

The Act requires, in addition, that a copy of a measure or question to be submitted to a vote of the people on behalf of a school district be provided to the clerk of each county having territory within the school district no later than the end of the next business day after the school district clerk receives the measure or question.

CONTINGENCY PLANNING REPORT

The Act requires the Elections Board to submit a report and recommendations to the legislature on state and local election-related contingency planning efforts and preparedness regarding natural disasters and terrorist activities that may occur at or near election time. The report is due on the first day of the seventh month beginning after publication of the Act as an act.

GUIDANCE TO LOCAL UNITS OF GOVERNMENT REGARDING ELECTION-RELATED PURCHASES

Under current law, the Election Administration Council consists of members of the public and local election officials appointed by the Executive Director of the Elections Board. The council is to assist the Elections Board to establish the state's election administration plan under HAVA.

The Act requires the Election Administration Council to also provide guidance to local units of government concerning the procurement of election apparatus, ballots, ballot forms, materials, and supplies for use in elections in this state to help ensure that competitive prices are obtained.

TERM OF APPOINTMENT FOR CERTAIN ELECTION OFFICIALS

Under current law, election officials are appointed for a two-year term. The appointments are made in December of each even-numbered year. The Act changes the date that election officials are appointed to December of each odd-numbered year.

ELECTION OFFICIAL TRAINING

Under current law, the Elections Board conducts training programs for chief inspectors (chief officials at polling places). No person may serve as a chief inspector if he or she has not been certified by the Elections Board as having met the requirements prescribed by the board for certification. The Elections Board must also prescribe requirements for maintaining certification. The Elections Board may also conduct training programs for other election officials. Municipal clerks and boards of election commissioners are required to train all election officials, and municipalities may require applicants for election official positions to take examinations. Currently, the Elections Board and municipal clerks and boards of election commissioners may appoint special registration deputies who obtain voter registrations from electors prior to the close of registration and municipal clerks may appoint special voting deputies to conduct voting at nursing homes and certain retirement homes and community-based residential facilities. Currently, the clerks and boards of election commissioners must train the deputies in accordance with rules prescribed by the Elections Board.

Beginning for elections held in 2008, the Act requires all municipal clerks to receive election training at least once every two years. The Act authorizes the Elections Board to produce and periodically update a video program and make the program available electronically through an Internet-based system for training purposes. Also, the Act requires municipal clerks to train all poll workers other than chief inspectors, who continue to be trained and certified under current law, as well as special registration deputies and special voting deputies pursuant to rules developed by the Elections Board. The Act provides that no person may serve as a poll worker, special registration deputy, or special voting deputy unless that person has received training required in the Act unless certain unforeseen circumstances occur. Under the Act, municipalities are required to compensate election officials other than special registration deputies and special voting deputies for attendance at training sessions as currently provided.

ELECTION DAY PROCEDURES

HIGH SCHOOL STUDENT POLL WORKERS

Under current law, a pupil who is 16 or 17 years of age, who is enrolled in grades 9 to 12 in a public or private school, and who has at least a 3.0 grade point average (GPA) may serve as an inspector (poll worker) at the polling place serving the pupil's residence. Approval of the pupil's parent or guardian and of the school principal is required.

Act 451 allows any pupil who has at least a 3.0 GPA or the equivalent to serve as a poll worker. In addition, a school board or governing body of a private school is authorized to establish criteria for service by a pupil who does not have at least a 3.0 GPA or the equivalent. The Act also provides that the municipal clerk is not required to obtain written authorization

from the principal of the school where the pupil is enrolled for the pupil to serve as a poll worker. However, if a pupil does not have at least a 3.0 GPA or the equivalent, the amendment requires a municipal clerk to obtain written certification from the principal of the school where the pupil is enrolled that the pupil meets any criteria established by the school board or governing body for service as a poll worker.

POLL CLOSING PROCEDURES WHEN VOTERS WAITING TO VOTE

Under current law, any elector waiting to vote, whether within the polling booth or in the line outside the booth at the time the polls officially close must be permitted to vote.

The Act requires each municipal clerk to designate an official of the municipality who must position himself or herself at the end of the line of individuals waiting to vote at the time the polls officially close as a way to mark the end of the line. The Act provides that the official may be a poll worker at the polling place, an employee of the municipal clerk, or a police officer.

CONDUCT OF ELECTION OBSERVERS

Under current law, any member of the public may be present at any polling place for the purpose of observing an election, except a candidate at that election. The chief inspector at the polling place is authorized to “reasonably limit” the number of persons representing the same organization who are permitted to observe an election at the same time. In addition, the chief inspector is authorized to restrict the location of observers to certain areas at a polling place. Such an area is to be clearly designated as an observation area. Observation areas must be positioned to allow observers to readily observe all public aspects of the voting process. The statutes authorize a chief inspector to order the removal from a polling place of any observer who commits an overt act which disrupts the operation of the polling place or who engages in electioneering.

Under the statutes, an observer may not view the confidential portion of a registration list relating to an individual who has obtained a confidential listing based on domestic abuse. However, the poll workers must disclose to an observer, upon request, the existence of such a list, the number of electors whose names appear on the list, and the number of those electors who have voted at any point during the election. In addition, an observer may not view the certificate of an absent elector who has obtained such a confidential listing.

Currently, any person who refuses to obey a lawful order of a poll worker made for the purpose of enforcing the election laws, who engages in disorderly behavior at or near a polling place, or who interrupts or disturbs the voting or canvassing proceedings may be fined not more than \$1,000, or imprisoned for not more than six months, or both.

The Act applies the above observation provisions to the municipal clerk’s office or an alternate absentee ballot site authorized by the governing body of a municipality on any day that absentee ballots may be cast in that office. However, the observation provisions created by the Act would only apply to offices of municipal clerks that are located in public buildings. Accordingly, these provisions would not apply to clerks whose offices are located in their primary residences. In addition, the prohibition on a “candidate at that election” being an

observer is clarified to apply to a candidate whose name appears on the ballot at the polling place or on an absentee ballot to be cast at the clerk's office or alternate site.

The Act authorizes the Elections Board to promulgate rules regarding the proper conduct of observers at polling places, municipal clerk's offices, or alternate absentee ballot sites, including the interaction of observers with election officials at polling places.

PROOF OF RESIDENCE REQUIRED OF CERTAIN VOTERS

Under current law, effective January 1, 2006, a person, other than a military elector or an overseas elector, who registers to vote by mail and who has not previously voted in an election for national office in Wisconsin must provide identification, as specified by law, before being allowed to vote at an election for national office. A person who is required to provide identification before voting but who fails to do so may cast a provisional ballot which may be counted if the person subsequently presents identification before 4:00 p.m. on the day after the election.

The Act creates a proof of residence requirement applicable to all persons other than military or overseas electors who register to vote by mail and have not voted in an election in this state.

ELECTION THREATS

Current law, in s. 12.09, Stats., prevents the making of various election threats. Violations of that section are punishable as a Class I felony (a fine not to exceed \$10,000 or imprisonment not to exceed three years and six months, or both).

Presently, s. 12.09, Stats., is drafted as one paragraph consisting of three distinct components, each of which prohibits different conduct. The provision reads as follows:

No person may personally or through an agent make use of or threaten to make use of force, violence or restraint in order to induce or compel any person to vote or refrain from voting at an election; or, by abduction, duress or any fraudulent device or contrivance, impede or prevent the free exercise of the franchise at an election; or by any act compel, induce or prevail upon an elector either to vote or refrain from voting at any election for or against a particular candidate or referendum.

The Act, in order to improve the readability of the provision, repeals the provision and recreates it with three distinct subsections. The Act makes no substantive changes to the law and violations would still be subject to the same penalties as provided under current law.

ELECTIONEERING

Current law defines "electioneering" as any activity which is intended to influence voting at an election. Under current law, "electioneering" is prohibited at or near the entrances to polling places on election day. Specifically, the law prohibits an election official from engaging

in “electioneering” on election day. In addition, the law prohibits any person from engaging in “electioneering” during polling hours on any public property on election day within 100 feet of an entrance to a building containing a polling place. This restriction, though, does not apply to the placement of any material on the bumper of a motor vehicle that is located on such property on election day. A municipal clerk, poll worker, or law enforcement officer is authorized to remove posters or other advertising that violates the prohibitions on “electioneering.”

Persons who violate the above prohibitions on electioneering may be fined not more than \$1,000, or imprisoned for not more than six months, or both. In addition, any election official who is convicted of violating the electioneering prohibitions is disqualified from acting as an election official for a term of five years from the time of the conviction.

The Act modifies the statutory language regarding “electioneering” to provide that the prohibition on electioneering also applies to electioneering at a polling place.

The Act extends the prohibitions on electioneering to the municipal clerk’s office or an alternate absentee ballot site authorized by the governing body of a municipality during times when absentee voting may be conducted in the office or at the alternate site. Specifically, the Act prohibits the clerk, or an employee of the clerk, from engaging in electioneering activities at those locations during the hours that absentee ballots may be cast. In addition, the Act prohibits any person from engaging in electioneering activities during the hours that absentee ballots may be cast in the municipal clerk’s office or at an alternate absentee ballot site on any public property within 100 feet of an entrance to a building that contains the clerk’s office or the alternate site. Violations of these provisions are subject to the same penalties as provided under current law for electioneering at a polling place.

In addition, the Act prohibits the posting or distribution of election-related material during polling hours on any public property on election day at a polling place or within 100 feet of an entrance to a building containing a polling place. Similarly, the Act prohibits such conduct in relation to the municipal clerk’s office or an alternate absentee ballot site during hours that absentee ballots may be cast therein. For purposes of the Act, “election-related material” means any written matter which describes, or purports to describe, the rights or responsibilities of individuals voting or registering to vote at a polling place or voting by absentee ballot. The prohibition would not apply to material posted or distributed by the municipal clerk or other election officials or to a bumper sticker on a motor vehicle. The Act authorizes a municipal clerk, election inspector, or law enforcement officer to remove or confiscate unauthorized election-related material. Finally, the Act provides that a violation of the election-related material prohibition is punishable by a forfeiture not to exceed \$100.

MAP OF AREA SERVED BY POLLING PLACE

The Act requires that the municipal clerk or board of election commissioners in municipalities with multiple polling places to prominently post at each polling place a map of the geographic area served by each polling place for that election. The map must display the boundaries of the ward or wards served by the polling place for that election.

LISTS OF FELONS INELIGIBLE TO VOTE

Under current law, any person who is convicted of a felony is not eligible to vote. However, if the person is pardoned or the person completes his or her sentence, the person's voting rights are restored. A person who is on probation, parole, or extended supervision has not completed his or her sentence. Under current law, there is no procedure that election officials must use to identify felons who are ineligible to vote and to prevent them from voting.

The Act directs the Department of Corrections (DOC) to transmit electronically to the Elections Board, on a continuous basis, a list containing the names of each person who has been convicted of a felony under the laws of this state and whose voting rights have not been restored, together with the date on which DOC expects his or her voting rights to be restored. The Act directs the board to enter the information received from DOC on the statewide voter registration list and to maintain the information on that list so that the information is kept current. Under the Act, the information is open to public inspection.

The Act also directs the Elections Board to enter on the poll list prepared for each election a notation after the name of any elector who is ineligible to vote on that date because the person's name appears on the current list that DOC provides. In addition, the Act directs the board to provide for each polling place at each election a list of persons whose names do not appear on the registration list but whose names appear on the current list that DOC provides and whose addresses are located within the area served by the polling place. These lists are open to public inspection.

The Act requires poll workers to check the lists and to inform any person whose name appears on the lists that they are ineligible to register to vote or to vote. A person whose name appears on a list and who claims to be eligible to vote may still be allowed to vote, but the person must vote by ballot. The ballot is marked for later examination and it may be reviewed and discounted during a canvass or recount if the appropriate board of canvassers determines that the person who cast the ballot is ineligible to vote.

The Act also requires every person who registers to vote to affirm specifically that he or she has not been convicted of a felony for which he or she has not been pardoned and, if so, whether the person is incarcerated or on probation, parole, or extended supervision resulting from that conviction. Currently, the law requires a person who registers at a polling place only to affirm that he or she is not disqualified on any ground from voting, and does not require any similar affirmation from other late registrants.

In addition, the Act directs the Elections Board to conduct a post-election audit after each election to determine whether any ineligible felons have been allowed to register and vote after the close of registration. If so, the board is directed to enter a notation reflecting this ineligibility on the registration list and to provide the names of these felons to the district attorney.

Finally, the Act requires DOC to create a form for notifying individuals of their ineligibility to vote. When an inmate who is disqualified from voting is released on parole or extended supervision, the DOC must use the form to notify the person that he or she may not vote until his or her civil rights are restored. The person and a witness must sign the form.

The same procedure must be followed for each probationer, and by the court every time it imposes a sentence or places a defendant on probation for a conviction that disqualifies him or her from voting.

ADDITIONAL POLL WORKER: GREETER

Under current law, there must be at least three inspectors (poll workers) at each polling place. Municipalities may increase that number and may appoint special registration deputies on a nonpartisan basis to register voters at polling places on election day. Inspectors must be appointed from lists containing the names of eligible electors submitted by party committeemen and committeewomen. If no names or insufficient names are submitted, inspectors are appointed on a nonpartisan basis. Certain high school pupils may also be appointed to serve as inspectors. The party whose candidate for president or governor received the most votes in the area served by the polling place at the most recent general election is entitled to one more appointment than the other party. Alternate officials must also be appointed in a sufficient number to maintain adequate staffing.

The Act provides that each municipality may appoint an additional inspector on a nonpartisan basis who serves as a greeter and substitutes for other inspectors who must leave the voting room temporarily. Under the Act, the additional inspector is not entitled to participate in the canvassing process.

POST-ELECTION PROCEDURES

TIME FOR DELIVERY OF ELECTION MATERIAL

Currently, by 2:00 p.m. on the day after an election, the municipal clerk must deliver the ballots, statements, tally sheets, lists, and envelopes for the clerk's municipality concerning any county, technical college district, state, or national election to the county clerk. In addition, current law requires the municipal clerk to arrange for delivery of these materials concerning a school district election to the school district clerk, but does not specify a time by which that delivery must take place. The Act sets the deadline for delivery of these materials at 4:00 p.m. on the day after an election.

POST-ELECTION INSPECTORS' STATEMENTS

Under current law, after ballots have been counted and votes recorded at the polling place on appropriate tally sheets, inspectors' statements must be completed in duplicate, and all materials secured and routed to the appropriate clerk. The Act deletes the requirement that inspectors' statements be completed in duplicate. Instead, under the Act, the municipal clerk must make copies of the inspectors' statement for delivery to the county or school district clerk, or both. The municipal clerk must retain the original statement.

COUNTY AND MUNICIPAL CLERK SERVING ON BOARD OF CANVASSERS

Generally, under current law, the municipal and county board of canvassers is composed of the municipal or county clerk and two appointed members. No person may serve on the board if he or she is a candidate at an election to be canvassed. The Act allows the

county and municipal clerk to continue to serve on the respective board of canvassers if the clerk is a candidate as long as he or she has no opponent on the ballot, or, in the event of a recount, the office the clerk is seeking is not a subject of the recount.

GROUNDS FOR RECALL OF CERTAIN LOCAL ELECTIVE OFFICES

Under current law, a petition for the recall of a city, village, town, or school district officer, in addition to other requirements, must state a reason for the recall that is related to the official responsibilities of the officer. Current law also provides for the removal of elective village, town, and school district officers and certain elective city officers, for cause, after notice and a hearing. Under current law, inefficiency, neglect of duty, official misconduct, or malfeasance in office constitute cause for removal from office.

The Act requires a petition for the recall of a city, village, town, or school district officer to contain a statement of the grounds that constitute each cause for the recall. Under the Act, "cause" means official misconduct or malfeasance in office.

RETENTION OF UNUSED BALLOTS AFTER AN ELECTION

The Act provides that unused ballots from an election may not be discarded or destroyed until at least the day after the latest day for the filing of a recount petition for any office on the ballots. In addition, the Act authorizes the county clerk to store any such unused ballots upon request of a municipal clerk of a municipality within the county and authorizes the county clerk to destroy the ballots pursuant to provisions of the Act.

RECOUNT PROCEDURES

Under current law, the state Elections Board is required to prescribe standard forms and procedures for the making of recounts. Additionally, when a recount is being conducted, if the ballots are in readable form such that automatic tabulating equipment may be used to count the ballots, the board of canvassers conducting the recount may choose to recount the ballots without the aid of automatic tabulating equipment. If automatic tabulating equipment is to be used, the equipment must be tested prior to the recount.

The Act requires the procedures developed by the Elections Board to require boards of canvassers in recounts involving more than one board of canvassers to consult with the Elections Board staff prior to beginning any recount to ensure that uniform procedures are used, to the extent practicable, in conducting such recounts.

In addition, the Act requires boards of canvassers to use automatic tabulating equipment to recount ballots that are in machine-readable form. The Act provides, however, that a candidate, or elector if the recount is for a referendum question, may petition the circuit court for an order requiring ballots in readable form to be counted by hand or by another method approved by the court. The petition must be filed by the close of business on the next business day after the last day for filing a petition for a recount. To prevail, the petitioner must establish by clear and convincing evidence that due to an irregularity, defect, or mistake committed during the voting or canvassing process the results of a recount using automatic tabulating equipment will produce incorrect recount results and that there is a substantial

probability that recounting the ballots by hand or another method will produce a more correct result and change the outcome of the election. The court with whom the petition is filed must hear the matter as expeditiously as possible, without a jury. Only if the court determines that the petitioner has made the required showing may the court order a recount of the ballots by hand or other method. The procedure created by the Act does not affect the ability of an aggrieved candidate or elector under current law to appeal the outcome of a recount to circuit court upon completion of the recount.

POST-ELECTION AUDITS

The Act requires the Elections Board, by no later than December 31, 2006, to prepare recommendations with regard to random post-election audits of local election practices to be conducted in the fall of odd-numbered years. The recommendations must include recommendations on how election practices in a given municipality may be reviewed by election officials of other, similar-sized municipalities and how such audits may be funded by the state. The recommendations must be submitted to the Legislature.

OTHER PROVISIONS

DONATIONS FROM CAMPAIGN FUNDS

Act 451 amends the campaign finance law to allow registrants under that law to make donations to charitable organizations or the common school fund. Currently, with certain exceptions, a registrant under the campaign finance law is generally prohibited from making a disbursement (expenditure) from moneys solicited for political purposes for a purpose that is other than political. However, a registrant that receives a contribution from an unregistered nonresident, an unlawful corporate contribution, an anonymous contribution exceeding \$10, or a cash contribution exceeding \$50 may donate the contribution to a charitable organization or to the state common school fund. In addition, residual moneys in a campaign treasury when a registrant ceases financial activity may be treated likewise.

The Act provides that a registrant may make a donation from a campaign treasury to a charitable organization or to the common school fund at any time for any reason.

The Act also provides that registrants who make a donation to a charitable organization or the common school fund from the registrant's campaign treasury must, no later than five days after the donation, notify the registrant's filing officer in writing of the name of the donee and the date of the donation and provide an explanation for not retaining the amount donated in the registrant's campaign treasury.

RECALL PETITIONS

Current law requires that a petition for recall of a state, congressional, legislative, judicial or county officer must be signed by electors equal to at least 25% of the vote cast for the **Governor** at the last election within the same district or territory as that of the officeholder being recalled. A petition for the recall of a city, village, town, or school district officer must be signed by electors equal to at least 25% of the vote cast for the **President** at the last election within the same district or territory as that of the officeholder being recalled.

Act 451 makes the recall voting thresholds the same regardless of whether the officer being recalled is a state or local official. Thus, the Act would require a petition for the recall of an officer to be signed by electors equal to at least 25% of the vote cast for the Office of Governor at the last election within the same district or territory as that of the officeholder being recalled.

Current law provides that the last day that a petition for the recall of a state, congressional, legislative, judicial, or county officer may be offered for filing is 5:00 p.m. on the **60th** day commencing after registration. The last date that a petition for the recall of a city, village, town, or school district officer may be offered for filing is 5:00 p.m. on the **30th** day commencing after registration. The Act provides that the last date that a petition for the recall of an officer may be filed is 5:00 p.m. on the **60th** day commencing after registration, thus extending by 30 days the date a petition for the recall of a city, village, town, or school district officer may be offered.

The Act provides that the standards would first apply with respect to petitions for a recall that are initially circulated on the effective date of the Act.

This memorandum is not a policy statement of the Joint Legislative Council or its staff. The memorandum was prepared by Russ Whitesel, Senior Staff Attorney, on September 11, 2006.

WISCONSIN LEGISLATIVE COUNCIL

One East Main Street, Suite 401 • P.O. Box 2536 • Madison, WI 53701-2536

Telephone: (608) 266-1304 • Fax: (608) 266-3830

Email: leg.council@legis.state.wi.us

<http://www.legis.state.wi.us/lc>