

**ORDER OF THE GOVERNMENT ACCOUNTABILITY BOARD
WIS. ADMIN. CODE GAB Ch. 10 – VOTER IDENTIFICATION**

The Government Accountability Board proposes an order to create ch. GAB 10, relating to the use of Wisconsin technical college system identification cards for voting purposes.

ANALYSIS BY THE GOVERNMENT ACCOUNTABILITY BOARD

Statutes interpreted:

ss. 5.02(6m), 5.02(16c), 6.15(2)(bm), 6.15(3), 6.18, 6.79(2), 6.82, 6.86(1), 6.86(2), 6.87, 6.875(6), 6.97 and 39.30(1)(d), Stats.

Statutory authority:

ss. 5.05(1), 5.05(6a), 227.10(1), 227.11(2)(a), and 227.26(2), Stats.

Explanation of agency authority:

The Government Accountability Board (“G.A.B.” or “Board”) has “the responsibility for the administration of chs. 5 to 12, other laws relating to elections and election campaigns, subch. III of ch. 13, and subch. III of ch. 19.” s. 5.01(5), Stats. The G.A.B. may “[p]romulgate rules under ch. 227 applicable to all jurisdictions for the purpose of interpreting or implementing the laws regulating the conduct of elections . . . or ensuring their proper administration.” s. 5.05(1)(f), Stats. The G.A.B. “may promulgate rules interpreting the provisions of any statute enforced or administered by the agency, if the agency considers it necessary to effectuate the purpose of the statute[.]” s. 227.11(2)(a), Stats. Consistent with that authority, the proposed rules interpret ss. 5.02(6m), 5.02(16c), 6.15(2)(bm), and 6.79(2), Stats., clarifying the Board’s finding that a Wisconsin Technical College System is an accredited institution for the purposes of issuing a student identification card for voting.

The photo identification requirement is found in chapters 5 and 6 of the Wisconsin Statutes. *See* 2011 Wisconsin Act 23. The G.A.B. has the statutory authority to promulgate rules to ensure the proper administration of elections.

On November 15, 2011, the Joint Committee for Review of Administrative Rules (“JCRAR”) ordered the G.A.B., pursuant to ss. 227.10(1) and 227.26(2), Wis. Stats., to promulgate an emergency rule to allow for the use of technical college system student identification cards to meet the photo identification requirements of 2011 Wisconsin Act 23, which was enacted on May 25, 2011. The G.A.B. could not comply with JCRAR’s order until the U.S. Supreme Court denied certiorari on the judicial challenges to the photo identification requirements. The G.A.B. promulgated an emergency rule, EmR1515, effective on May 15, 2015, which was subsequently extended, and will expire on February 8, 2016. The G.A.B. now promulgates EmR1515’s permanent rule counterpart.

Related statute or rule:

ss. 5.02(6m), 5.02(16c), 6.15(2)(bm), 6.15(3), 6.18, 6.79(2), 6.82, 6.86(1), 6.86(2), 6.87, 6.875(6), 6.97 and 39.30(1)(d), Stats.

Plain language analysis:

2011 Wisconsin Act 23 created the requirement that electors present an acceptable form of photo identification as a condition of obtaining a ballot. 2011 Wisconsin Act 23 also created the list of documents that qualify as identification for purposes of voting, including a student identification card issued by an accredited educational institution which meets certain criteria. These rules clarify that an identification card issued by an institution in the Wisconsin Technical College System is an acceptable form of photo identification for voting if the card a) is unexpired; b) contains the date that the card was issued; c) contains the name of the student to whom the card was issued; d) contains the signature of the student to whom the card was issued; e) contains a photograph of the student to whom the card was issued; f) contains an expiration date indicating that the card will expire no later than two years after the card was issued; and g) is issued to a student who establishes that he or she is enrolled at the college that issued the card on the date that the student uses the card for voting purposes. These conditions are identical to the requirements for acceptable photo identification cards issued by other accredited educational institutions.

Summary of, and comparison with, existing or proposed federal regulation:

There is currently ongoing litigation involving 2011 Wisconsin Act 23, but such litigation does not impact the substance of the proposed rules. *See Frank v. Walker*, Civil Action No. 2:11-cv-01128 (LA) (E.D. Wis.).

Comparison with rules in adjacent states:

Illinois: Illinois does not require voters to present photo identification to receive a ballot if the voter is already registered to vote.

Iowa: Iowa does not require voters to present photo identification to receive a ballot if the voter is already registered to vote.

Michigan: Michigan requires voters to present photo identification to receive a ballot and vote, but voters may also sign an affidavit attesting that the voter is not in possession of photo identification. Michigan permits voters to use student identification from either a high school or an accredited institution of higher education to present at the polls to receive a ballot. Michigan's community college system is accredited, and students in those colleges may use their college photo identification cards for voting purposes.

Minnesota: Minnesota does not require voters to present photo identification to receive a ballot if the voter is already registered to vote.

Summary of factual data and analytical methodologies:

At its meeting on November 9, 2011, the Board determined that a Wisconsin Technical College System institution is accredited under s. 39.30 (1)(d), Stats., and therefore, an elector may use an identification card issued by such an institution for voting purposes if the card also meets the requirements of s. 5.02(6m), Stats. The Board made this determination with advice from G.A.B. staff regarding the accepted rules of statutory interpretation, starting with the plain language of the statute. An “accredited” institution” is define as an “institution accredited by a nationally recognized accrediting agency . . . or, if not so accredited, is a nonprofit institution of higher education whose credits are accepted on transfer by not less than 3 institutions which are so accredited, on the same basis as if transferred from an institution so accredited.” s. 39.30 (1)(d), Stats. The Board also considered information regarding the legislative history of 2011 Wisconsin Act 23. The Board did not consider potential public policy reasons when determining whether applicable statutes permitted the use of Wisconsin Technical College System student identification cards for voting purposes.

Analysis and support documents used to determine effect on small business or in preparation of economic impact analysis:

The Board anticipates that this rule will have minimal or no economic or fiscal impact on specific business, business sectors, public utility rate payers, or the State’s economy as a whole because the rule does not impose any requirements, fiscal or otherwise, on businesses or with regard to public utility rates.

Fiscal estimate:

The Board finds that this rule will have minimal or no fiscal impact. The rule does not impose any requirements on Wisconsin Technical College System institutions that may issue identification cards to students. The rule only clarifies that Wisconsin Technical College System students may use their identification cards for voting purposes if those cards meet the photo identification requirements in s. 5.02(6m), Stats.

Effect on small business:

The Board finds that the rule will have no economic impact on small businesses, as that term is defined in s. 227.114(1), Stats.

Agency contact person:

Nathan Judnic
Staff Counsel
212 East Washington Avenue, Third Floor
P.O. Box 7984
Madison, Wisconsin 53707-7984
(608) 267-0953

(608) 264-9319 (fax)
nathan.judnic@wisconsin.gov

Public comments:

Written comments on the rule were accepted until June 29, 2015 by mail, fax, email to the contact named above or through the Wisconsin Administrative Rules website at <http://adminrules.wisconsin.gov>. No written comments were received by the agency.

How to obtain a copy of the rules:

A copy of the full rule, including the analysis, fiscal estimate, and economic impact analysis, may be obtained from the G.A.B. at no charge. Requests for such copies may be made to the contact named above.

TEXT OF RULE

SECTION 1: Chapter GAB 10 is created to read:

CHAPTER GAB 10

VOTER IDENTIFICATION

GAB 10.01 **Definitions.** In this chapter:

- (1) "Student identification card" means a document or card that satisfies all of the following:
 - (a) Is unexpired.
 - (b) Contains the date of issuance.
 - (c) Contains the name of the student to whom it is issued.
 - (d) Contains the signature of the student to whom it is issued.
 - (e) Contains a photograph that reasonably resembles the student to whom it is issued.
 - (f) Contains an expiration date indicating that the card expires no later than 2 years after the date of issuance.
 - (g) Is issued to a student who establishes that the student is enrolled at the college that issued the card on the date that the card is presented.
- (2) "Technical college" means a college that is a member of and governed by the Wisconsin technical college system.

GAB 10.02. **Wisconsin technical college system student identification cards for voting.** A student identification card issued by a technical college is an acceptable form of identification under s. 5.02(6m)(f), Stats., and may be presented by an elector obtaining a ballot pursuant to ss. 6.15(2)(bm) and (3), 6.18, 6.79(2), 6.82, 6.86(1) and (2), 6.87, 6.875(6), and 6.97, Stats.

SECTION 2: Effective date.

This rule shall take effect on the first day of the month following publication in the Wisconsin Administrative Register as provided in s. 227.22 (2) (intro.), Stats.

Effective date:

This rule shall take effect on February 1, 2016 as provided in s. 227.22 (2) (intro.), Stats.