



WISCONSIN LEGISLATIVE COUNCIL INFORMATION MEMORANDUM

2003 Wisconsin Act 265 New Law Relating to Election Administration

INTRODUCTION

In 2002, Congress passed and President Bush signed into law the Help America Vote Act of 2002 (HAVA). HAVA's goal is to improve the administration of federal elections in the United States. HAVA seeks to do so through three primary methods:

1. Creating minimum standards that states must meet to improve the conduct of federal elections.
2. Providing funds to states to implement the required reforms.
3. Creating a new federal agency to assist states in the reforms.

2003 Wisconsin Act 265 was initiated by the state Elections Board in response to the standards imposed on the state by HAVA. This Information Memorandum describes the changes required by the Act.

Unless otherwise noted, all changes made by the Act are effective April 30, 2004.

STATEWIDE VOTER REGISTRATION

Generally, in Wisconsin, voter registration is required in municipalities with a population greater than 5,000. Other municipalities may require registration.

The Act requires voter registration in every municipality regardless of the size of the municipality. [Mandatory statewide registration first applies to the spring primary in 2006.]

STATEWIDE VOTER REGISTRATION LIST

The state does not currently maintain a statewide voter registration list.

The Act establishes a centralized, statewide voter registration list. The list is to be designed and maintained by the state Elections Board. The board is directed to require all municipalities to use the list in every election and may require any municipality to adhere to procedures established by the board for proper maintenance of the list. The list must contain the following:

1. The name and address of each registered elector in the state.
2. The date of birth of the elector.
3. The ward and aldermanic district of the elector, if any.
4. A unique registration identification number assigned to the elector by the Elections Board.
5. Either a valid operator's (driver's) license number, if any, or the last four digits of the

elector's Social Security account number, if any.

6. A confidential identification number issued to a victim of domestic abuse.
7. The date of any election in which the elector votes.
8. An indication of whether the elector is an overseas elector.
9. An indication of any necessary accommodation to permit a disabled elector to vote.
10. An indication of the method by which the elector's registration was received.
11. Such other information as may be determined by the Elections Board to facilitate administration of elector registration.

The Act provides that the list must be open to public inspection under Wisconsin's Open Records Law and must be electronically accessible to any person. However, no person other than an employee of the Elections Board, a municipal clerk, a deputy clerk, or an executive director or deputy of a city board of election commissioners may view any of the following information from the list:

1. The date of birth of an elector.
2. The elector's registration identification number.
3. The elector's operator's license number or portion of his or her Social Security account number.
4. The address of an elector to whom an identification serial number has been issued because the elector is a victim of domestic abuse.
5. An indication of an accommodation required to enable a disabled elector to vote.

In addition, no person other than an employee of the Elections Board, a municipal clerk, or an election official who is authorized by a municipal clerk, may make a change in the list.

The list must be electronically accessible by name and must also be accessible in alphabetical order of the electors' names for the entire state and for each county, municipality, and ward. The list must also be designed in such a way that the municipal clerk or board of election commissioners of any municipality and any authorized election official may electronically add entries to or change entries on the list for any elector who resides in, or who the list identifies as residing in, only that municipality.

Electors will be identified on the list as either "eligible" or "ineligible" to vote. If the Elections Board adds the name of any elector to the list, the board must promptly notify the municipal clerk of the municipality where the elector resides. If the board changes the registration of any elector from eligible to ineligible status, the board must promptly notify the municipal clerk of the municipality where the elector resides or, if the elector has changed his or her residence from one municipality to another municipality in the state, the board must promptly notify the municipal clerk of the municipality where the elector resided prior to the change. Such notifications must be made in writing or by electronic transmission. If the board changes the registration of any elector from eligible to ineligible status, it must make an entry on the list giving the date of, and the reason for, the change. If municipal clerks add names to the list or change an elector's status to ineligible, they must generally update the list promptly.

The Act also directs the Elections Board to make all reasonable efforts to ensure that the list is maintained in a manner that precludes unauthorized persons from making alterations to the list. [The use of the statewide voter

registration list first applies to the spring primary in 2006.]

REGISTRATION PROCEDURE

Generally, each applicant registering to vote must provide the following information on registration forms prescribed by the board: (1) the applicant's name; (2) the date; (3) the applicant's residence location; (4) the applicant's citizenship; (5) the applicant's age; (6) whether the applicant has resided within the ward or election district for at least 10 days; (7) whether the applicant has lost his or her right to vote; and (8) whether the applicant is currently registered to vote at any other location.

The Act requires an applicant to also provide the number of a valid operator's license issued to the applicant or the last four digits of the elector's Social Security account number and the applicant's date of birth.

VOTER IDENTIFICATION

Generally, before being permitted to vote, an elector must provide his or her name and address to the poll workers.

Under the Act, if an elector who seeks to vote in an election for national office, other than a military or overseas elector, registers to vote by mail and has never voted in an election for national office in the municipality, the elector must provide either: (1) a current and valid piece of identification containing a photograph of the elector; 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 elector. If the elector votes by absentee ballot, the elector must provide a copy of one of the above forms of identification. If the identification provided by an elector is acceptable and contains the name and address of the elector as shown in the poll lists, the inspector is required to accept the identification

unless they challenge the ballot of the elector under current elector challenge provisions.

Under the Act, if an elector who votes at a polling place is required to provide identification and fails to do so, the elector may vote provisionally. A provisional ballot is marked by the poll workers, who immediately contact the municipal clerk or executive director of the board of election commissioners who then must determine whether the individual submitting the ballot is a qualified elector where he or she is attempting to vote. If the clerk or executive director, by 4:00 p.m. on the day after the election, notifies the board of canvassers that is responsible for canvassing the election that the elector is qualified to vote where the individual's ballot was cast, the board of canvassers must reopen the canvass and count the elector's ballot.

HAVA COMPLIANCE MECHANISMS

Currently, an elector who believes that the action or inaction of an election official concerning nominations, qualification of candidates, voting qualifications, or certain other matters is contrary to law or that the actions or inactions of an election official with respect to any such matters constitute an abuse of discretion, the elector may file a complaint with the Elections Board and the board may order appropriate relief. The decision of the board is appealable to the courts. If an elector believes that an election official is acting in violation of the law, he or she may request the appropriate district attorney to petition a court for appropriate relief. Generally, however, the recount procedure is the exclusive judicial remedy for addressing any alleged irregularity, defect, or mistake committed during the voting or canvassing process.

The Act establishes an additional procedure for addressing alleged noncompliance with any provision of Title III of HAVA (relating to voting system standards, provisional voting,

voting information, registration procedure and administration, and voter identification). Under the Act, whenever any person believes that such a violation has occurred, is occurring, or is proposed to occur with respect to an election for national office in Wisconsin, the person may file a written, sworn complaint with the Elections Board. The board must grant the complainant a formal hearing upon request and must issue a decision on the complaint, together with an order for appropriate relief, within 89 days. Under the Act, the relief may not include an order affecting the right of any person to hold an elective office or affecting the canvass of an election on or after the date of that election.

OTHER CHANGES

The Act makes a number of additional modifications to the law. Those modifications are described below.

- **Voters With Disabilities**

The Act requires the Elections Board to ensure that the voting system used at each polling place will permit all individuals with disabilities to vote without the need for assistance and with the same degree of privacy that is awarded to nondisabled electors at the same polling place. This requirement does not apply to electors disqualified under current law because they are incapable of understanding the objectives of the elective process or to electors under guardianship. [This requirement is effective January 1, 2006.]

- **Uniform Standards**

The Act directs the Elections Board to prescribe, by rule, uniform standards for determining the validity of votes cast or attempted to be cast with each electronic voting system that the board approves for use in this state. Such rules may only apply in situations in which the validity of a vote cannot be determined using current law. [This provision is effective January 1, 2006.]

- **Uniformed Service and Overseas Absentee Ballots**

The Act provides that a uniformed service or overseas voter may request and receive an absentee ballot for the next two general federal elections at the same time, unless the voter is subject to a registration requirement and the voter is no longer registered to vote in the state at the time that the absentee ballot would otherwise be transmitted. Additionally, if the municipal clerk or board of election commissioners rejects an absentee ballot request from a uniformed service or overseas voter, the clerk or board must promptly inform the voter of the reason for the rejection.

- **Federal Court Action**

The Act provides that if a federal court orders that a polling place remain open after the official closing hour of 8:00 p.m., any electors who vote after hours must vote by ballot and have their ballots marked to indicate that they voted after the official closing hour pursuant to a federal court order. The late ballots are then counted unless the court order is overturned. If the court order is overturned after the canvass of the election, the Act directs that the canvass be reopened.

- **Voting for President by New Residents**

The Act provides that an individual who has resided in this state for less than 10 days at the time of a presidential election may vote for president and vice president only at the office of the municipal clerk or board of election commissioners or at a polling place on election day. [Prior to Act 265, such voters could also vote by absentee ballot by mail.]

- **Purging Voter Registration Lists**

Currently, municipalities must periodically purge their voter registration lists of inactive voters. There are basically two ways for doing this. Under one method, an elector who has not

voted for a four-year period and who does not respond to a notice sent to him or her by the municipality by requesting continuation of his or her registration is deleted from the list. Under the other procedure, the municipality sends a registration verification notice to each elector who has not voted for a four-year period and each elector whose notice is returned as undeliverable is deleted from the list. The Act deletes this second procedure. [This change first applies to the spring primary of 2006.]

- **Election Administration Council and State HAVA Plan**

The Act creates an Election Administration Council. The council is created in the Elections Board and consists of members appointed by the executive director of the Elections Board. The membership of the council must include: (1) the clerk or executive director of the board of election commissioners of the two counties or municipalities in the state having the largest population; (2) one or more election officials of other counties or municipalities; (3) representatives of organizations that advocate for the interests of individuals with disabilities; (4) representatives of organizations that advocate for the interests of the voting public; and (5) other electors of the state. The council is to assist the Elections Board in adopting and modifying, as necessary, a state plan that meets HAVA requirements to enable the state to participate in federal financial assistance programs authorized under HAVA. The board must adopt the state plan and any modifications only after publishing notice in the newspaper or posting on the Internet a statement describing the proposed plan or modification and receiving public comment thereon. However, the board may only adopt the proposed plan or modifications if the Legislature's Joint Committee on Finance approves the plan or modifications.

- **Federal Election Standards Board**

The Act directs the executive director of the Elections Board to appoint, in consultation with the Elections Board, an individual to represent this state as a member of the Federal Election Assistance Commission Standards Board established under HAVA. The executive director is also directed to conduct and supervise the process for the selection of an election official by county and municipal clerks and boards of election commissioners to represent Wisconsin's local election officials as a member of the Federal Election Assistance Commission Standards Board. The executive director must ensure that the members of the federal board representing Wisconsin may at no time be members of the same political party.

- **Educational Programs**

The Act requires the Elections Board to conduct an educational program for the purpose of educating electors who cast paper ballots, ballots that are counted at a central counting location, and absentee ballots of the effect of casting excess votes for a single office. In addition, the Act authorizes the board to conduct or prescribe requirements for educational programs to inform electors about voting procedures, voting rights, and voting technology. [These provisions are effective January 1, 2006.]

- **Telephonic and Other Electronic Informational Services**

The Act directs the Elections Board to maintain one or more toll-free telephone lines for electors to report possible voting fraud and voting rights violations, to obtain general election information, and to access information concerning the registration status, current polling place locations, and other information relevant to voting in elections. Additionally, the board is authorized to maintain a free access system under which an elector who votes after not providing required identification or who

votes after the polls close due to a federal court order to ascertain whether the elector's vote has been counted and, if not, the reason that it will not be counted.

- **Information Gathering by the Elections Board**

The Act provides that the Elections Board is authorized to request information from county and municipal clerks relating to election administration, performance of electronic voting systems and voting machines, and use of paper ballots in elections. Local election officials are directed to respond to such requests.

- **Information Sharing--Department of Transportation and Social Security Administration**

The Act directs the executive director of the Elections Board to enter into an agreement with the State Secretary of Transportation to match personally identifiable information on the official registration list maintained by the board with personally identifiable information maintained by the Department of Transportation. The agreement would apply to personally identifiable information in the driver's license database and the vehicle registration records. In addition, the Act requires the Secretary of Transportation to enter into an agreement with the Commissioner of the Federal Social Security Administration for the purpose of verifying whether the name, date of birth, and Social Security number of an individual in the driver's license database or vehicle registration records match the information contained in the records of the Social Security Administration. The agreement must include safeguards to ensure the confidentiality of any personally identifiable information disclosed and procedures to permit the Secretary of Transportation to use any applicable personally identifiable information disclosed for purposes related to maintenance of departmental records.

- **Poll Site Posters**

The Act directs that additional information be included in postings required at each polling site. The new information to be included in such postings includes:

1. General information prescribed by the Elections Board on federal laws relating to election fraud and misrepresentation in federal elections.
2. The date of the election and the hours during which the polling place is open.
3. Instructions prescribed by the Elections Board for electors for whom identification is required.
4. General information prescribed by the Elections Board concerning voting rights under applicable state and federal laws, including the method of redress for any alleged violations of those rights.

- **Approval of Voting Devices**

The Act adds additional requirements for approval of voting devices by the Elections Board. Under the Act, no device may be approved unless:

1. It permits an elector to privately verify the votes selected by the elector before casting his or her ballot.
2. It provides an elector with the opportunity to change his or her votes and to correct any error or to obtain a replacement for a spoiled ballot prior to casting his or her ballot.
3. Unless the ballot is counted at a central counting location, it includes a mechanism for notifying an elector who attempts to cast an excess number of votes for a single office that his or her votes for that office will not be counted, and provides the elector with an opportunity to correct his or her ballot or to receive and cast a replacement ballot.

4. It produces a permanent paper record of the vote cast by each elector at the time that it is cast that enables a manual count or recount of the elector's vote.

[These new requirements are effective January 1, 2006.]

- **Federal Absentee Voting Statistics**

The Act requires that, within 30 days after the general election, each municipal clerk must transmit to the Elections Board a report of the number of absentee ballots transmitted by the clerk to absent military electors and overseas electors for that election and the combined number of those ballots that were cast by those electors in that election. In addition, within 90 days after each general election, the board must compile the information contained in the reports received from municipal clerks and transmit the information to the Federal Election Assistance Commission.

- **Absentee Voting Instructions**

The Act directs the Elections Board to prescribe uniform instructions for absentee voters. The instructions must include information concerning the procedure for correcting errors and marking a ballot and obtaining a replacement for a spoiled ballot. The procedure must, to the extent possible, respect the privacy of each elector and preserve the confidentiality of each elector's vote. [This provision takes effect on January 1, 2006.]

- **Voting System Audit**

The Act requires the Elections Board, following the general election, to audit the performance of each voting system used in the state to determine the error rate of the system in counting ballots that are validly cast by electors. If the error rate exceeds the rate permitted under standards of the Federal Election Commission on October 29, 2002, the board must take remedial action and order remedial action to be

taken by affected counties and municipalities to ensure compliance with the standards. Each county and municipality must comply with any order received under this provision. [This requirement is effective January 1, 2006.]

- **Information to Certain Voters**

The Act directs the Elections Board to prescribe written notice to be distributed to electors who vote without identification or who vote after the polls close pursuant to a federal court order. The notice must inform the elector how to obtain information regarding whether his or her vote has been counted, and if the vote will not be counted, the reason that the vote will not be counted.

- **Educational and Training Duties of County Clerks**

The Act requires each county clerk to assist the Elections Board in conducting educational programs to inform electors about the voting process. [This provision takes effect on January 1, 2006.] The Act directs each clerk to assist the board and municipal clerks in maintaining toll-free telephone lines and other free access systems for exchange of voting information. The Act also directs each county clerk to assist the Elections Board in the training of election officials and to provide to the board any information that the board requests.

- **Duties of Municipal Clerks**

The Act directs that, within 30 days after each election, municipal clerks must enter on the registration list under the name of each elector of the municipality who has voted at the election an indication of the date of the election in which the elector voted. [This requirement first applies to the spring primary in 2006.] The Act also imposes upon municipal clerks the same duties imposed on county clerks for voter education, free election information exchange, training of election officials, and providing information to the Elections Board. [The same

effective dates apply.] Additionally, the Act directs each municipal clerk to maintain a free vote counting system under which an elector who votes without proper identification or who votes after the polls close pursuant to federal court order may ascertain current information concerning whether the elector's vote has been counted and if the vote will not be counted, the reason that it will not be counted. Finally, the Act directs each municipal clerk to make reasonable efforts to comply with requests for voting accommodations made by individuals with disabilities whenever feasible.

- **Election System Audit**

The Act directs the Legislative Audit Bureau (LAB) to perform a program evaluation audit relating to compliance by the state and local governments with election laws and the appropriateness of procedures used to implement those laws. In its audit, the LAB must address compliance by the state and local governments with the requirements of the Act, including the polling place accessibility requirements. The LAB must also address the treatment of any complaints of electors concerning alleged violations of the law, specifically including complaints relating to the denial of the right to vote and denial of the right to corroborate registration information on behalf of electors, any attempts to require electors to provide identification that is not authorized by law, any incidents of inadequate availability of ballots for all electors who wish to vote, any allegations of elector fraud and the treatment of those allegations, and the appropriateness and legality of procedures used to identify ineligible electors whose names may appear on the registration list. The findings must be filed within an appropriate time period as determined

by the LAB upon consultation with the Elections Board.

- **Information for Uniformed Service Members**

The Elections Board is designated by the Act to provide information regarding voter registration and absentee balloting procedures to absent members of the uniformed services and to overseas voters with respect to elections for national office.

- **Special Registration Deputies**

The Act authorizes the Elections Board to appoint any qualified elector as a special registration deputy for the purpose of registering electors in any municipality prior to the close of registration. [This provision first applies to the spring primary in 2006.]

- **Voting Materials in Non-English Languages**

The Act directs the Elections Board to ensure that voting systems used at each place in a jurisdiction subject to a requirement to use bilingual voting materials under the Federal Voting Rights Act complies with such requirements.

This memorandum was prepared on April 27, 2004. The Information Memorandum is not a policy statement of the Joint Legislative Council or its staff.

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