

State of Wisconsin \ Elections Board

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Sent by e-mail

The Honorable Joseph Leibham
Room 409 South, State Capitol
Madison, WI 53702

Subject: Proposed Changes in Election Law for Consideration by the Legislative Council Special Committee on Election Law Review

Dear Senator Leibham:

Thank you for the opportunity to serve on the Legislative Council Special Committee on Election Law Review. On September 2, 2004 you asked that committee members submit ideas about areas of concern and specific suggestions for addressing those concerns.

I know that several ideas will be presented for the Committee's consideration. I have several areas of concern where I think the Committee's expertise will help create a solution. The issues range from very broad based structural concerns to relatively minor administrative concerns. However, resolution of these concerns should improve voter confidence in the integrity of our electoral process.

Voter Registration

The recent experience of an unprecedented number of voter registration forms solicited, collected and submitted to municipal clerks for processing immediately before the fall elections identified glaring weaknesses in our voter registration system. Some of these will be addressed by the implementation of the statewide voter registration system (SVRS), but others require legislative changes to maintain voter confidence and reduce the opportunity for registration fraud.

I recommend that the Committee refrain from making significant changes to the provisions for late registration in the office of the municipal clerk and election day registration. The federal government has imposed some burdensome requirements for election officials in states without election day registration.

The National Voter Registration Act of 1993 (NVRA) requires states to provide voter registration at many government offices and institutions of higher education. The NVRA also requires detailed record keeping for local and state officials. Wisconsin is exempt from this law because we have election day registration.

The Help America Vote Act of 2002 (HAVA) requires states to provide provisional ballots for individuals whose name is not on the voter list on election day and whose qualifications to vote are questioned. Provisional ballots impose a significant administrative burden on poll workers and municipal clerks. They delay the certification of election results and provide fodder for questioning the outcome of an election. Some states even use them to permit electors who go to the wrong polling place to have their votes counted for federal offices, but not state or local offices. Wisconsin is exempt from this law because we have election day registration.

With that caveat stated, I have the following suggestions for addressing some voter registration concerns:

Move the deadline for registration from 13 days before the election to 15 days (3rd Monday), 18 days (3rd Friday), 20 days (3rd Wednesday), 22 days (4th Monday), or 25 days (4th Friday), or 29 days (5th Monday) before the election. This gives municipal clerks and the State Elections Board staff more time to make sure the poll list is correct. Current deadlines make it difficult to process registrations postmarked by the 13th day before the election, particularly if the forms are incomplete.

Limit access to Social Security number (SSN), date of birth (DOB) and driver's license (DL#) information and provide penalties for keeping this information by persons doing voter registration. Require that persons doing voter registration maintain the confidentiality of this information. Require a signed statement and special oath for special registration deputies.

Voter registration deputies must be required to see identification or voters who register through registration deputies should be required to provide identification before receiving a ballot.

Municipal clerks need more discretion in appointing registration deputies and more direction in regulating registration deputies. Appointed deputies should be monitored in the statewide voter list kept by the State Elections Board (SEB).

Student voters with out of state driver's licenses should be required to disclose the number as part of the registration process. There is no question that a student can acquire residence voting while attending school in Wisconsin. By having access to an out of state DL# we can better investigate allegations of fraud.

The acceptable documents for proving identification for first-time voters and demonstrating residence for late registrations in the municipal clerk's office and election day registrations should be harmonized. HAVA sets the criteria for identification for the first-time voter: a photo ID with the voter's name or a utility bill, pay check, government check, government document or bank statement with the voter's name and current address. Section 5.02 (6m), Wis. Stats.

The documents listed in S. 6.55 (7), Wis. Stats., as acceptable forms of proof of residence should include a utility bill, pay check, government check, government document or bank statement with the voter's name and current address. The references to library card, check cashing card and credit card or plate should be eliminated, since in most cases they no longer list an individual's address. Some election officials and voting activists believe that a piece of mail is sufficient proof of residence. The Elections Board staff has been trying to counter this view through our training programs.

Absentee Voting

Restrict where absentee ballots can be sent to a voter's permanent or temporary residence. See 2003 AB 175, 2003 SB 76.

Restrict who can provide assistance to absentee voters to keep political operatives from assisting absentee voters.

Restrict who can pick up and deliver absentee ballots that have been voted to keep political operatives from having access to absentee ballots.

Permit a municipal clerk to accept a request for an absentee ballot by e-mail or Fax without asking for an original signature. This facilitates the process for military and absentee voters.

Specifically prohibit an individual with power of attorney (POA) from casting a vote for an absentee elector or completing a voter registration application on behalf of a voter. Individuals with POA may still request an absentee ballot, assist in voting and completing a voter registration application.

Current law requires only one witness to the act of absentee voting except for nursing home voting which is conducted by two special voting deputies appointed by the municipal clerk. Adding a second witness or requiring that the voting be conducted before a person authorized to administer oaths significantly limits the opportunity for absentee voting by elderly, disabled, military and overseas electors. I recommend that no change be made to this requirement.

Write-in Votes

Limit write-in votes to registered candidates. See 2003 Assembly Bill 115

Nomination Papers

Circulator must be an adult, U.S. citizen. See 2003 Assembly Bill 810

Polling Place Activity

Current law requires the inspectors' statement to be prepared in duplicate. One (1) original inspectors' statement prepared on election day should be sufficient. The municipal clerk can make the appropriate duplicate copies for county and school district clerks.

Polling Place Consolidation

HAVA requires an accessible voting system at every polling place. This requirement needs to be carefully examined. I believe it is important to redefine polling places that use paper ballots to avoid this requirement. It seems that HAVA will require the acquisition of an expensive piece of voting equipment that will seldom be used and impose ongoing costs for smaller municipalities. If we can find a way to assign voters to regional polling places that have fully accessible voting equipment, we can save on state acquisition costs and local maintenance, programming, storage and replacement costs.

There are approximately 3,000 polling places in the state. More than 900 use paper ballots. Xx use lever voting machines. Many municipalities have more polling places than needed. In presidential elections there may be too few polling places – more likely there are polling places that are just too crowded for the number of voters.

Optical scan votes account for 87% of all votes cast in the state. 10% are on paper and 2% are on lever voting machines.

Accessible voting equipment will cost an estimated \$6,000 for acquisition paid for by the state with HAVA funds. Local government will be saddled with an estimated \$4,000 in annual or biennial programming, storage, maintenance and replacement costs.

There are also security and paper trail issues for electronic voting equipment. See 2003 Assembly Bill 849.

Enforcement of Election Law Violations

Currently violations of provisions of the election code carry criminal penalties. I believe that better enforcement may be achieved by adding civil forfeiture penalties for violations of chapters 5 through 10, similar to the campaign finance law. Prosecutors are often reluctant to bring felony cases for election law

violations. The State Elections Board could have concurrent jurisdiction over civil violations as it does with campaign finance violations.

Date of the Partisan Primary

The time period for preparing ballots following the partisan primary is too short to ensure that absentee ballots can be delivered to military and overseas electors. This is particularly true if there is a recount or a challenge to ballot access for presidential candidates. The 1997 Legislative Council Committee examined this issue. It is worth more attention.

County Partisan Offices Non-Partisan

Crossover voting at the partisan primary is a significant concern. An expensive solution is to provide separate optical scan ballots for each party. Voter education appears to be an unlikely solution because voters do not accept the concept of a partisan nomination process.

One option is make county courthouse offices nonpartisan. Another is to raise the threshold for a political party to have a partisan primary ballot. Currently, political parties with 1% of the vote for a statewide office, including president, are entitled to separate ballot. The current operation of the partisan primary is costly to election officials and confusing to voters.

Preferential Voting Option for Nonpartisan Offices – including judicial offices

This voting method eliminates the need for primaries and may be an efficient way of filling nonpartisan offices. It provides a quick way to reduce the number of candidates to one candidate who has broad based support. See 2003 Assembly Bill 911.

These comments reflect my personal views based on my experience as Wisconsin's chief election official. They have not been approved by the members of the State Elections Board and do not represent the official position of the State Elections Board or the views of any individual members of the State Elections Board

Respectfully submitted.

Wisconsin State Elections Board

Kevin J. Kennedy
Executive Director

C: Committee Members
Legislative council Staff