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## WISCONSIN LEGISLATIVE COUNCIL STAFF MEMORANDUM

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Memo No. 4

TO: MEMBERS OF THE SPECIAL COMMITTEE ON ELECTION LAW REVIEW

FROM: Robert J. Conlin, Senior Staff Attorney and Nicholas Zavos, Staff Attorney

RE: Pre-Election Issues From November 17, 2004 Meeting

DATE: December 8, 2004

This Memo summarizes and gives background information regarding all of the pre-election issues that have been raised by the committee members and that were identified in Memo No. 3, dated December 7, 2004. Where appropriate, possible suggestions or alternatives are noted for committee discussion. This Memo is organized as follows:

Absentee Ballots .....	3
Background .....	3
In General.....	3
Military Electors .....	3
Overseas Electors.....	4
Nursing Home Voters .....	5
Preparing and Sending Absentee Ballots.....	5
Voting and Handling of Absentee Ballots .....	6
Suggestions for Modifications to the Law .....	6
Registration/Poll Lists.....	8
Background .....	8
Suggestions for Modifications to the Law .....	9

Election Officials .....	11
Background .....	11
Inspectors (Poll Workers) .....	11
Tabulators .....	13
Special Voting Deputies .....	13
Special Registration Deputies .....	13
Other Election Officials .....	13
Compensation of Election Officials.....	13
Training of Inspectors .....	14
Suggestions for Modifications to the Law .....	14
Voting Equipment.....	15
Background .....	15
Suggestions for Modifications to the Law .....	15
Miscellaneous Issues.....	16
Background .....	16
Qualifications of Circulators.....	16
Timing of Certification and Ballot Delivery.....	16
Publication of Election Notices .....	16
Notice of School District Referendum.....	17
Suggestions for Modifications to the Law .....	17

## **ABSENTEE BALLOTS**

### **Background**

#### ***In General***

An absent elector is any otherwise qualified elector who, for any reason, is unable or unwilling to appear at the polling place in his or her ward. In addition, a qualified elector who changes residence within the state by moving to a different ward or municipality later than 10 days prior to an election may vote an absentee ballot in the ward or municipality where he or she was qualified to vote before moving. [s. 6.85, Stats.] An elector who qualifies as an absent elector may make written application to the municipal clerk or municipal board of election commissioners for an official ballot by one of the following methods:

- By mail.
- In person at the office of the municipal clerk.
- By signing a statement that he or she is indefinitely confined because of age, physical illness, or infirmity or is disabled for an indefinite period (thereby qualifying to have an absentee ballot sent to the elector automatically for every election).
- By agent if the elector is hospitalized.
- By delivering an application to a special voting deputy if the election is a resident of a nursing home, retirement home, or certain community-based residential facilities. [s. 6.86, Stats.]

An elector who is unable to write his or her name due to physical disability may authorize an application to be made by another elector on his or her behalf. [s. 6.86 (1) (ag), Stats.]

With certain exceptions for particular absentee electors, a written application for an absentee ballot may be received no sooner than the first day of the sixth month commencing before the election nor later than 5 p.m. on the Friday immediately preceding the election. [s. 6.86 (1) (b), Stats.] Special procedures and time requirements apply to sequestered jurors, indefinitely confined electors, hospitalized electors, military electors, overseas electors and residents of nursing homes. [ss. 6.86 (1) (b), (2) and (3), 6.22, 6.24 and 6.875, Stats., respectively.] The procedures for military electors, overseas electors, and residents of nursing homes will be discussed below.

#### ***Military Electors***

“Military electors” are defined in current law to be any of the following:

- Members of a uniformed service (i.e., the U.S. Army, Navy, Air Force, Marine Corps, or Coast Guard, the commissioned corps of the Federal Public Health Service or the National Oceanic and Atmospheric Administration).
- Members of the U.S. Merchant Marine.

- Civilian employees of the U.S. and civilians officially attached to a uniformed service who are serving outside the U.S.
- Peace corps volunteers.
- Spouses and dependents of the above who reside with or accompany them.

[s. 6.22 (1) (b), Stats.]

In general, and with some exceptions, a military elector is to vote in the ward or election district for the address of his or her residence prior to becoming a military elector. [s. 6.22 (2) (a), Stats.] In general, military electors are not required to register as a prerequisite to voting in any election. [s. 6.22 (3), Stats.]

A military elector may request an absentee ballot for any election, or for all elections until the individual otherwise requests or until the person no longer qualifies as a military elector. An absentee ballot application from a military elector may be received at any time. A municipal clerk must send a ballot, as soon as available, to each military elector who requests a ballot. However, the clerk may not send a ballot for an election if the application is received later than 5:00 p.m. on the Friday preceding that election. [s. 6.22 (4), Stats.] Whenever absentee ballots are sent to military electors, they must be prepared and mailed to make use of the federal free postage laws. [s. 6.22 (4), Stats.]

With limited exceptions, absentee ballots cast by military electors are to be treated in the same manner as other absentee ballots. [s. 6.22 (5), Stats.]

### ***Overseas Electors***

An “overseas elector” is defined as a U.S. citizen who is not disqualified from voting, who has or will attain the age of 18 by the date of the election at which he or she proposes to vote, and who does not qualify as a resident of this state but who was last domiciled here or whose parent was last domiciled here immediately prior to departure from the U.S., and who is not registered to vote or voting in any other state, territory, or possession. [s. 6.24 (1), Stats.]

An overseas voter may only vote in elections for national office, including the presidential preference primary, and may not vote in an election for state or local office. An overseas elector’s vote is to be cast in the ward or election district in which the elector was last domiciled or in which his or her parent was last domiciled prior to departure from the U.S. [s. 6.24 (2), Stats.] An overseas elector must register in the appropriate municipality on a form designed to ascertain the elector’s qualifications. [s. 6.24 (3), Stats.]

The municipal clerk must send a ballot to each overseas elector who requests one as soon as the ballots are available. Generally, the ballot is to be mailed postage prepaid to any place in the world, but the overseas elector must provide the return postage. [s. 6.24 (6), Stats.] An absentee ballot cast by an overseas elector is, in general, to be treated the same as other absentee ballots upon receipt by the clerk. [s. 6.24 (7), Stats.]

### ***Nursing Home Voters***

To facilitate voting by residents of nursing homes, qualified retirement homes or qualified community-based residential facilities, the municipal clerk or board of election commissioners of each municipality in which one or more of these facilities are located must appoint at least two special voting deputies affiliated with different political parties, if available. Special voting deputies in each municipality are required, not later than 5 p.m. on the Friday preceding an election, to arrange one or more convenient times with the administrator of each facility to conduct absentee voting for the election. The timing may be no earlier than the fourth Monday preceding the election and no later than 5 p.m. on the Monday preceding the election. Upon visiting the facility at the designated time, the deputies are required to administer the oath and may, upon request of the elector who is requesting to vote absentee, assist the elector in marking or punching the elector's ballot. Upon request of the elector, a relative of the elector who is present in the room is also permitted to assist the elector in marking or punching the elector's ballot, but all voting must be conducted in the presence of the deputies. Upon completion of the voting, the deputies are required to promptly deliver, either personally or by first class mail, any absentee ballot applications and the sealed certificate-affidavit envelope containing each ballot to the clerk or board of election commissioners of the municipality in which the elector casting the ballot resides, within such time as will permit delivery to the polling place serving the elector's residence on election day. [s. 6.875, Stats.]

### ***Preparing and Sending Absentee Ballots***

Generally, except as discussed above, the municipal clerk is required to mail, return postage prepaid, an absentee ballot to an applicant, or deliver it personally to the applicant at the clerk's office. When mailed, the ballot must be sent to the applicant's residence, unless otherwise directed. An absentee ballot may also be faxed or emailed to an applicant. However, a ballot may not be transmitted to an address of a candidate, political party, or other campaign finance registrant unless such address is the permanent or temporary residence of the applicant. [s. 6.87 (3), Stats.]

Municipal clerks are required to prepare write-in absentee ballots for delivery to military electors at each election and prepare write-in absentee ballots for overseas electors at each election for national office, no later than the 90th day before the election, or as soon as possible after the offices to be contested at the election are known, whichever is later. Such ballots are to be distributed to each military or overseas elector after ballots are available or within one day after a request is received, whichever is later. However, on the day that official absentee ballots become available, the write-in absentee ballots are not to be mailed and, instead, the official absentee ballots are to be sent. [s. 7.15 (1) (cs), Stats.]

The Elections Board must notify county clerks of the names of candidates to be placed on the ballot after the primary. For the Spring election, the notice must be made as soon as possible after the canvass of the Spring primary but no later than the first Tuesday in March. For the General Election, the notice must be made as soon as possible after the canvass of the September primary but no later than the 4th Tuesday in September. [s. 10.06 (1) (e) and (i), Stats.] Upon receipt of the notice, the county clerk must add county offices and referenda, if any, and prepare the ballots. The county clerk must distribute the ballots to the municipal clerks no later than 31 days before the general election and no later than 22 days before the Spring election. [s. 7.10 (3) (a), Stats.]

Municipal clerks must prepare official absentee ballots and send one to each elector who has requested one no later than the 30th day before the general election (and September primary) and no later than the 21st day before the Spring election (and each other primary and election), if the request is made before that day. Otherwise, the municipal clerk must send an absentee ballot within one day of the date the elector's request is received. [s. 7.15 (1) (cm), Stats.]

### ***Voting and Handling of Absentee Ballots***

A person other than a military elector or overseas elector who registered by mail and who has not previously voted in an election for national office in the jurisdiction and who seeks to vote in a national election by absentee ballot must provide a copy of either of the following forms of identification with his or her ballot: (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. [ss. 6.87 (4) and 5.02 (6m), Stats.]

Generally, current law requires that an absentee ballot be marked in the presence of one witness. The witness must sign a statement on the outside of the ballot envelope. [s. 6.87, Stats.] The statutes preclude the witness from being a candidate at the election (except for a municipal clerk). [s. 6.87 (7) and (8), Stats.] In most cases, the election laws do not explicitly provide for a minimum age for a witness. However, for both military and overseas voters voting absentee, the statutes specifically provide that the witness must be an "adult U.S. citizen." [See ss. 6.22 (2) (b) and 6.24 (4) (d), Stats.]

When an absentee ballot arrives at the office of the municipal clerk or board of election commissioners, it must be placed, unopened in a carrier envelope that is securely sealed and endorsed with the name and official title of the clerk. On election day, absentee ballots are delivered to polling places in carrier envelopes or containers before the polls close. [s. 6.88 (1) and (2), Stats.]

Election inspectors may process absentee ballots anytime after the ballots are received at the polling place or immediately after the polls close. Upon opening the carrier envelope, the inspectors announce the name of the person voting absentee to provide an opportunity for challenge. If the absentee ballot certification has been properly completed, the elector is a qualified elector and the applicant has not previously voted in the election, the inspectors deposit the ballot in the proper ballot box and enter the absent elector's name or voting number after his or her name on the poll list the same as if the elector had been present and voted in person. [s. 6.88 (3) (a), Stats.]

If an absentee ballot is rejected for any of the statutorily prescribed reasons for rejection, election inspectors may not count the ballot and must endorse on the back of the ballot "rejected" and state the reason for rejection. Rejected absentee ballots are placed in a carrier envelope, for return to the municipal clerk or board of election commissioners after the polls close. [s. 6.88 (3) (b), Stats.]

### ***Suggestions for Modifications to the Law***

Committee members have made the following suggestions regarding absentee voting:

- **Early Voting.** In an effort to reduce the workload of poll workers who must count absentee ballots on election day and to reduce the opportunity for fraud occasioned by mailing absentee ballots, the committee should explore a period of early voting at the municipal clerk's office. [Presently, about 23 states offer some form of early voting at the clerk's office

or other satellite locations. Although the periods of early voting vary, early voting is most often available during a period 10-14 days before the election, usually ending on the Friday or Saturday before the election.]

- **Timing of Sending Ballots.** The committee should review the statutory timing associated with the sending of absentee ballots to facilitate efficient use of clerk's time and to ensure ballots are received and voted in a timely fashion.
- **Military Ballots.** The committee should explore ways to ensure that military personnel are afforded every reasonable opportunity to request, receive, and vote an absentee ballot and to have a voted ballot counted. [See *Report of the U.S. Election Assistance Commission on Best Practices for Facilitating Voting by U.S. Citizens Covered by the Uniformed and Overseas Citizens Absentee Voting Act*, September 2004 (included separately in mailing for December 15, 2004 meeting).]
- **Reason for Voting.** The committee should determine whether the public policy involved in being able to request an absentee ballot merely because an elector is unwilling to appear at the polls should be continued. [Presently, about half of the states, including Wisconsin, offer "no-excuse" absentee voting.]
- **Digital Signatures.** The committee should consider digital signatures and other technologies to facilitate faster and easier absentee voting without the need to rely on traditional mail delivery.
- **Where Ballots May be Sent.** The committee should consider restricting the locations to which absentee ballots may be sent to a voter's permanent or temporary address to limit the opportunity for fraud.
- **Who May Deliver Ballots and Provide Assistance With Voting.** In order to limit the opportunity for fraud, the committee should consider limits on who may provide assistance to absent voters and who may pick up and deliver voted absentee ballots to keep political operatives from having access to absentee ballots.
- **Requesting by Fax or Email.** In order to better facilitate military electors, the committee should consider allowing municipal clerks to accept requests for absentee ballots by fax or email.
- **Power of Attorney.** The committee should consider prohibiting a person who holds power of attorney from using that power to complete a voter registration form and vote an absentee ballot on behalf of another.
- **Date of Partisan Primary.** The committee should re-examine the date of the partisan primary because the period of time between the current primary and general election dates leaves too little time to effectively process absentee ballot requests from military and overseas electors.

- **Age of Witness.** The committee should clarify in the statutes the minimum age of a witness for all absentee ballots. [For example, the law could be modified to provide that any witness of an absentee ballot must be “an adult U.S. citizen.”]

## **REGISTRATION/POLL LISTS**

### **Background**

Presently, every municipality with a population of over 5,000 persons must keep a registration list consisting of all currently registered electors. Municipalities with a population of under 5,000 may, by ordinance or referendum, require registration. A municipality that does so may also abolish the registration requirement by referendum. [s. 6.27, Stats.]

Beginning with the Spring primary election in 2006, registration will be required in every municipality regardless of the municipality's size. [s. 6.27, Stats., as affected by 2003 Wisconsin Act 265.] The Help America Vote Act (HAVA) requires states to have a single, uniform, centralized, interactive, computerized, statewide voter registration list. Wisconsin must implement its list by January 1, 2006. 2003 Wisconsin Act 265 directed the Elections Board to develop, implement, and maintain the list. Generally, Act 265 imposed on municipal clerks the duty to update the list whenever the clerk receives information showing a change in elector data, such as a new address or a change in the eligibility status of an elector. However, Act 265 authorized municipal clerks to, by mutual consent, designate any other municipal clerk or county clerk as the clerk's agent to carry out the voter registration functions, including those relating to updating the statewide voter registration list.

Throughout the year, and before the close of registration, registrations may be made at the office of the municipal clerk or board of election commissioners, at the office of any register of deeds, or other locations. Registration deputies must be appointed for all locations. [s. 6.28 (1), Stats.] Registration forms may also be submitted by mail. [s. 6.30 (4), Stats.] State law requires that upon receipt of a registration form that has been submitted by mail, the municipal clerk receiving the form must examine the form for sufficiency. [s. 6.32 (1), Stats.] If the form is insufficient or if the clerk knows or has reliable information indicating that the elector is not qualified, state law requires the clerk to notify the proposed elector within five days, if possible, 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. [s. 6.32 (2), Stats.] If the registration form is submitted later than the close of registration (generally, the second Wednesday before the election), the clerk must make a good faith effort to notify the elector that he or she may register at the clerk's office or at the polls on election day. [s. 6.32 (3), Stats.] If, on the other hand, the registration is sufficient, the clerk is to enter the elector's name on the registration list and transmit a first class letter or postcard to the registrant, specifying the elector's ward or aldermanic district and polling place. [s. 6.32 (4), Stats.]

Generally, under current law, the municipal clerk or the board of election commissioners of a municipality are to administer elector registration within the municipality when registration is required. [s. 6.26 (1), Stats.] A qualified elector of the state may apply to any municipal clerk or board of election commissioners to be appointed as a special registration deputy for the purpose of registering electors of the municipality. Such person may serve as a special registration deputy of more than one municipality. [s. 6.26 (2) (a), Stats.] In addition, effective for the Spring primary of 2006, a qualified elector of the state may apply to the State Elections Board to be appointed as a special registration deputy of any



municipality in the state. [s. 6.26 (2) (am), Stats., as created by 2003 Wisconsin Act 265.] An appointment may be revoked for cause at any time. [s. 6.26 (2) (b), Stats.]

The statutes require the Elections Board, by rule, to prescribe procedures for appointment of special registration deputies, for revocation of special registration deputies, and for training of special registration deputies by municipal clerks and boards of election commissioners. The procedures must be formulated to promote increased registration of electors consistent with the needs of municipal clerks and boards of election commissioners to efficiently administer the registration process. [s. 6.26 (3), Stats.]

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. The statutes identify places of registration including the municipal clerk's office, the office of the city board of election commissioners, the office of the register of deeds, and high schools. Other locations may include firehouses, police stations, public libraries, supermarkets, and other sites. [s. 6.28, Stats.]

A person may 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. Once the registration form has been filed, the municipal clerk must issue to the person a certificate addressed to the inspectors of the proper ward directing that the elector be permitted to vote. The person must present the certificate to the inspectors when he or she arrives at the polling place. [s. 6.29, Stats.]

A person may also register at the polling place (or at another location in the same building as the polling place) on the day of the election. A person registering at the polling place is required to complete a registration form and provide acceptable proof of residence or corroboration of residence by one other elector of the municipality. The proof of residence must include a current and complete name and a current and complete residential address. Section 6.55 (7), Stats., provides a non-exhaustive list of acceptable proof of residence for polling place registration, as follows: (a) a Wisconsin driver's license; (b) a Wisconsin identification card; (c) 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 (except a business card); (d) a credit card; (e) a library card; (f) a check-cashing or courtesy card issued by a merchant in the normal course of business; (g) a recent real estate tax bill or receipt; (h) a current residential lease; (i) a university, college, or technical college fee or identification card; (j) an airplane pilot's license; and (k) a gas, electric, or telephone service statement for the period commencing not earlier than 90 days before election day. [s. 6.55, Stats.]

### **Suggestions for Modifications to the Law**

Committee members have made the following suggestions regarding voter registration:

- **Fee for Copy of Registration List.** The committee should consider the amount of the fee that would be charged for obtaining a copy of the statewide voter registration list. [The Open Records Law states that, unless another fee is specified by statute, the fee for providing a record may not exceed the "...actual, necessary, and direct cost of reproduction and transcription..." [s. 19.35 (3) (a), Stats.] Mr. Kennedy estimated that that might be \$50 for the registration list. Since the list would contain a huge amount of information, and the state

will have to provide the funds for the maintenance of the list, Mr. Kennedy suggested prescribing a fee closer to \$1,000.]

- **Registration Deadline.** The committee should examine whether moving the deadline for registration would ease the registration-related workload. [For example, the deadline could be moved from 13 days before the election to 15 days (third Monday), 18 days (third Friday), 20 days (third Wednesday), 22 days (fourth Monday), 25 days (fourth Friday), or 29 days (fifth Monday).]
- **Same-Day Registration.** The committee should discuss whether to continue allowing same-day registration, given the administrative difficulties it poses. [Approximately six states allow same-day registration.]
- **Vouching.** The committee should decide whether to continue to allow an elector to corroborate the residence of a voter who does not have proof of residence.
- **Validity of Registration List.** The committee should review the methods and systems that are or will be used to keep the registration list valid.
- **County Clerk Powers.** The committee should consider authorizing county clerks to both perform registration in their counties and deputize people for registration purposes.
- **Registration Deputy Training.** The committee should examine the sufficiency of the training given to registration deputies.
- **Oversight of Registration Deputies.** The committee should examine the oversight of registration deputies. [This may include deciding whether municipal clerks should be given more discretion in appointing and regulating registration deputies, including refusing to deputize registration deputies based on criteria set up by the municipal clerk, and whether deputies should be monitored in the statewide voter list kept by the Elections Board.]
- **Confidentiality of Registration.** The committee should consider increasing the privacy protections when registration is done through a registration deputy. [This may include limiting access to Social Security numbers, dates of birth, and driver's license numbers, requiring that people doing voter registration maintain the confidentiality of this information, providing penalties for retaining this information, and requiring a signed statement and special oath for special registration deputies.]
- **Identification Requirements for New Registrants.** The committee should explore whether there should be an identification requirement for voters who register through a registration deputy. [For example, the registration deputies could be required to see appropriate identification of the person they are registering, or all voters who register through registration deputies could be required to show identification before receiving a ballot at the polls.]
- **Student Voters.** The committee should determine whether student voters with out-of-state driver's licenses should be required to disclose the driver's license number as part of the registration process so that allegations of fraud can be better investigated.

- **Acceptable Identification.** The committee should consider amending s. 6.55 (7), Stats., which relates to the acceptable type of identification for same-day registration. [The statute could be amended to include a utility bill, paycheck, government check, government document, or bank statement with the voter's name and current address. The committee could also consider other acceptable forms of identification like tribal identification cards, student identification cards, and other forms. In addition, the references to library card, check cashing card, and credit card could be eliminated since those normally do not list the voter's address.]
- **County Fees.** The committee should consider whether there should be a limit on the fees that might be charged by counties when municipal clerks enter into agreements with county clerks to enter and update registration information for the municipality into the statewide voter registration system.

## **ELECTION OFFICIALS**

### **Background**

#### ***Inspectors (Poll Workers)***

Except where voting machines are used, seven inspectors (also known as election officials or poll workers) must be appointed for each polling place at each election. Where voting machines are used, only five inspectors are required. The governing body or board of election commissioners of any municipality may by resolution reduce the number of officials, but there may never be less than three. [s. 7.32, Stats.] A municipal governing body may provide by ordinance for the selection of alternate officials or the selection of two sets of officials to work at different times on election day. Additional officials must be appointed in such a manner that the total number of officials is an odd number and the predominant political party is represented by one more official than the other party. [s. 7.30 (1), Stats.]

Election inspectors must meet the following qualifications:

- Generally, election inspectors must be qualified electors of the municipality and the ward served by the polling place to which they are assigned, unless the clerk chooses to reassign them to work in another ward or polling place where they have been appointed to fill a vacancy.
- Inspectors must be able to read and write the English language, be capable and have a general knowledge of the election laws.
- An election inspector is precluded from being a candidate for any office on the ballot. In first class cities, an election inspector may hold no public office other than a notary public.
- Except when insufficient names have been nominated all inspectors must be affiliated with one of the two recognized political parties that received the largest number of votes in the previous presidential election, or governor in nonpresidential general election years, in the ward or combination of wards

served by the polling place at the last election. The party that received the largest number of votes is entitled to one more inspector at each polling place than the party receiving the next largest number of votes. [s. 7.30 (2) and (4) (c), Stats.]

- Generally, 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 may serve as an inspector at the polling place serving the pupil's residence. Approval of the pupil's parent or guardian and of the school principal is required. There must be at least one qualified elector of the state serving at the polling place for a pupil to be appointed and a pupil may not serve as chief inspector.
- Generally, a person may not serve as a chief inspector at a polling place unless the individual is certified by the Elections Board.

Except in cities where there is a board of election commissioners (Milwaukee), the mayor, president or chairperson of each municipality nominates to the governing body the necessary election officials for each ward. Appointments are made by the governing body (approval of the nominees) or by the board of election commissioners (direct appointment). [s. 7.30 (4), Stats.]

The two recognized political parties receiving the largest number of votes for president, or governor in nonpresidential general election years, in the ward, or the combination of wards served by the same polling place, at the last election are responsible for submitting a list of names from which the appointees must be chosen. In cities where there is a board of election commissioners (Milwaukee), aldermanic district committeemen or committeewomen from each of the two dominant parties are required to submit a certified list containing the names of at least as many electors as there are inspectors from that party for each of the voting wards in the aldermanic district. In municipalities other than cities and villages located in counties having a population of more than 500,000 (Milwaukee), the chairperson of the appropriate municipal, county or legislative district party committees under s. 8.17, Stats., are required to submit a list containing at least as many names as there are needed appointees from that party. [ss. 7.30 (4) (a) and (b) and 8.17, Stats.]

So long as nominees are made available by the political parties, appointments may be made only from the lists of submitted nominees. If the lists are not submitted by November 30 of the year in which appointments are to be made, or if an insufficient number of nominees appears on the lists as of November 30, the board of election commissioners must appoint, or the mayor, president or chairperson of a municipality must nominate qualified persons to fill the remaining vacancies.

Appointed election inspectors hold office for two years and until their successors are appointed and qualified. If an inspector lacks required qualifications, fails to attend training sessions, is guilty of neglecting his or her official duties or commits official misconduct, the municipal clerk or board of election commissioners is required to summarily remove the official from office and fill the vacancy from the lists of party nominees. [s. 7.30 (6), Stats.]

Election inspectors are responsible for the registration or poll lists, handling and endorsing of paper and electronic voting ballots, preserving order at the polling place, adjourning to another polling location if it is impossible or inconvenient to hold an election at the designated location, resolving challenges to voters, serving as the board of canvassers at their polling place and performing other functions necessary for the conduct of an election. A chief inspector, elected by other inspectors prior to

the first election following the appointment of the inspectors, is responsible for directing the conduct of activities assigned to the inspectors at the polling place. [ss. 7.30 (6) (b), 7.36 and 7.37, Stats.]

### ***Tabulators***

Not less than 30 days before any election, the governing body or board of election commissioners of any municipality, by resolution, may authorize the municipal clerk or executive director of the board of election commissioners to select and employ tabulators for an election. Tabulators are required to assist and be under the direction of the election inspectors. [s. 7.30 (3), Stats.]

### ***Special Voting Deputies***

For the purpose of absentee voting in nursing homes, qualified retirement homes and qualified community-based residential facilities, the municipal clerk or board of election commissioners of each municipality in which one or more facilities is located is required to appoint at least two special voting deputies for the municipality. [s. 6.875 (4), Stats.] The deputies are appointed from lists furnished by the appropriate political party committees. [s. 7.30 (4) (b) 1., Stats.] Upon application of one or more qualified electors who are occupants of a nursing home, qualified retirement home or qualified community-based residential facility, the clerk or board of election commissioners is required to dispatch two special voting deputies to visit the facility for the purpose of supervising absentee voting by the occupants. [s. 6.875 (4), Stats.]

### ***Special Registration Deputies***

The governing body or board of election commissioners of any municipality may provide by resolution that the registration duties normally assigned to election inspectors must be carried out in the municipality by special registration deputies appointed by the municipal clerk or board of election commissioners at any polling place or other registration location whenever the clerk or board of election commissioners determines that the polling place registration process would be facilitated by the appointment of such deputies. [s. 6.55 (6), Stats.] Special registration deputies may be appointed to serve more than one polling place; they need not be a resident of the ward in which they are serving, but they must be a resident of the municipality. [s. 7.30 (2) (a), Stats.]

A municipal clerk or board of election commissioners is also authorized to appoint a special registration deputy for the purpose of registering electors prior to the close of registration. Any qualified elector of the state is eligible for this position and may be appointed by more than one municipal clerk or board of election commissioners to serve in more than one community. [s. 6.26 (2), Stats.]

### ***Other Election Officials***

Municipal clerks are authorized to employ a voting machine custodian for the purpose of labeling, setting, adjusting and putting voting machines in order. They may also employ messengers and automatic tabulating equipment technicians.

### ***Compensation of Election Officials***

A reasonable daily compensation must be paid to each inspector, voting machine custodian, automatic tabulating equipment technician, member of a board of canvassers, messenger and tabulator.

Alternatively, such officials may be paid by the hour at a proportionate rate for each hour actually worked. [s. 7.03 (1) (a), Stats.] Generally, compensation must be paid by the municipality in which the election is held, except that any technician, messenger, tabulator or member of the board of canvassers who is employed to perform services for the county must be paid by the county and any messenger or tabulator who is employed to perform services for the state must be paid by the Elections Board. Also, whenever a special election is called by a county or by a special purpose district (i.e., school district, technical college district, sewerage district, a sanitary district or a public inland lake protection and rehabilitation district), the county or district is required to pay compensation of all election officials. [s. 7.03 (1) (bm), Stats.]

If a central counting location serving more than one municipality is utilized, the compensation of election officials at the location must be proportionately divided between the municipalities utilizing the location, except that if all municipalities within a county utilize the location, the compensation must be paid by the county. [s. 7.03 (1) (c), Stats.]

Special registration deputies, special voting deputies and officials and trainees who attend training sessions may be compensated at the option of the municipality. [s. 7.03 (1) (d), Stats.]

The amount of compensation of election officials is required to be fixed by the appropriate county board of supervisors, municipal governing body or municipal board of election commissioners. The Elections Board is required to fix the amount to be paid any person employed to perform duties for the state. If the Elections Board employs an individual to perform duties which are the responsibility of a county or municipality, the board is required to charge the expense to the county or municipality. [s. 7.03 (2), Stats.]

2003 Wisconsin Act 98 directed the Elections Board to prepare recommendations for the Legislature with regard to the compensation of election officials and the establishment of a program for the recruitment of such officials.

### ***Training of Inspectors***

The Elections Board is required to establish an administrative rule prescribing requirements for certification of individuals serving as chief inspectors. The requirements may not include taking an examination. In addition, the board must offer regular training programs to ensure that individuals who are certified are knowledgeable about their authority and responsibilities. [s. 7.31, Stats.] 2003 Wisconsin Act 98 directed the Elections Board to prepare recommendations for the Legislature concerning the establishment of a program for the training of election officials and the certification of other election officials not currently required to be certified.

### **Suggestions for Modifications to the Law**

Committee members have made the following suggestions regarding poll workers:

- **Political Party Representation.** The committee should consider allowing municipal clerks to reject the nomination of poll workers by political parties when those nominated are not competent or able to fulfill the duties of a poll worker.

- **Sufficient Numbers.** The committee should explore ways to recruit poll workers or to make it easier for persons to serve as poll workers so that each polling place has sufficient numbers of poll workers available at each election.

## **VOTING EQUIPMENT**

### **Background**

Title III of HAVA, among other things, establishes various voting system standards that states must meet. Generally, the standards must be met by January 1, 2006. Under HAVA, the voting system used in an election for federal office must, among other things, be accessible for individuals with disabilities, including nonvisual accessibility for the blind and visually impaired, in a manner that provides the same opportunity for access and participation, including privacy and independence as for other voters. This requirement can be satisfied through the use of at least one direct record electronic voting system or other voting system equipped for individuals with disabilities at each polling place.

HAVA provided federal funding to assist the state in meeting the federal requirements. It is estimated that the primary sources of funding for the accessible voting equipment requirement will come from HAVA SEC. 102 funds (to be used by states to replace lever and punch card voting systems), HAVA SEC. 251 funds (so-called requirement payments available to states to assist in meeting various HAVA election administration requirements including the statewide voter registration system and voting equipment that will comply with HAVA's voting system standards), and state matching funds (the appropriation of which was required to qualify for certain federal HAVA funds).

According to the state's initial HAVA plan, Wisconsin's present voting systems fall short of the federal standards in providing access to individuals with disabilities. The state plan indicates that the state will evaluate disability access compliance for new voting systems and will develop an implementation and acquisition plan for compliant voting systems. The state plan also indicates that accessible voting equipment will be one of the priority uses of federal HAVA funds.

The staff of the Elections Board has estimated that compliance with the voting system standards requirement will cost approximately \$12 to \$18 million. (The state plan estimates approximately \$16.4 million.)

To date, the state has received approximately \$1.3 million in SEC. 102 funds and approximately \$43.1 million in SEC. 251 funds (including the state match obligation). However, as final costs are not yet known, and because federal funds also need to be used to meet other federal mandates like statewide voter registration, it is unclear whether sufficient federal funds will be available to cover all of the costs of purchasing accessible voting equipment and ongoing programming and maintenance costs for such equipment.

### **Suggestions for Modifications to the Law**

Committee members have made the following suggestions regarding voting equipment:

- **Definition of Polling Place.** The committee should examine whether redefining polling places could minimize the amount of expensive equipment required to be purchased in order to comply with the HAVA requirement.
- **Paper Trail.** The committee should examine whether all electronic voting machines should be required to produce a paper trail.

## **MISCELLANEOUS ISSUES**

### **Background**

#### ***Qualifications of Circulators***

Under current statutes, 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 enjoined the state from enforcing the statutory requirement.

#### ***Timing of Certification and Ballot Delivery***

Generally, under current law, the State Elections Board must transmit to each county clerk a certified list of all candidates on file in its office for which electors in that county may vote. The certification must be sent as soon as possible after the closing date for filing nomination papers or after the canvass of the primary vote but not later than certain statutory deadlines. [s. 7.08 (2) (a), Stats.] For the spring primary, the latest date for sending notice of certification is the second Tuesday in January. For the spring election, the latest date is the first Tuesday in March (or the second Tuesday in January if no primary is required). For the September primary, the latest date is the third Tuesday in July. Finally, for the general election, the latest date is the fourth Tuesday in September. [s. 10.06 (1), Stats.] The certification must be sent by Type B notice, which also contains a facsimile ballot.

In addition, the county clerk is required to prepare a copy of the official ballots immediately upon receipt of the certified list from the Elections Board. [s. 7.10 (2), Stats.] The county clerk must distribute the ballots to municipal clerks no later than 31 days before each September primary and general election and no later than 22 days before each other primary and election. [s. 7.10 (3), Stats.]

#### ***Publication of Election Notices***

Generally, under current law, election notices that are required to be published may be published only in newspapers qualified under ch. 985, Stats. [s. 10.04 (1), Stats.] Such qualifications involve, among other things, the level of the newspaper's circulation. [See, generally, s. 985.03 (1) (a), Stats.] County clerks must publish election notices in all such newspapers published within the county, unless the county board provides otherwise by resolution. The Board of Election Commissioners or governing body of a municipality (city, town, or village) may authorize, by resolution, the publication of election notices in more than one newspaper. [s. 10.04 (2), Stats.]



### ***Notice of School District Referendum***

Current law generally requires all proposed constitutional amendments and any other measure or question that is to be submitted to a vote of the people to 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. [s. 8.37, Stats.]

### **Suggestions for Modifications to the Law**

Committee members made the following suggestions concerning modifications to the laws affecting the above issues:

- **Qualifications of Circulators.** In response to the above cited federal court decision, the committee should consider amending the law to require that a circulator of nomination papers or petitions be an adult U.S. citizen as opposed to a qualified elector of the jurisdiction or district.
- **Timing of Certification and Ballot Delivery.** To better coordinate the timing of certification and delivery of ballots, the committee should consider modifying current law so that all certifications for an election should be due on the same date. [For example, ballots should be delivered 25 days before the election, and ballot delivery should be a specific number of days after certification from the Elections Board. Finally, the Elections Board should send a draft of the ballot to county clerks along with a Type A (notice of election) notice to allow clerks to start their ballot setup.]
- **Publication of Election Notices.** In recognition of local budgetary concerns, the committee should consider modifying the law to allow clerks to satisfy election notice publication requirements by including election notices in municipal or county newsletters that are sent to all residents in lieu of publishing notices in newspapers.
- **Notice of School District Referenda.** The committee should consider modifying the law to require that all county clerks of counties with territory affected by a school district referendum should be provided notice of such referendum even if the county clerk is not responsible for preparing the ballots for the election.

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