



**WISCONSIN STATE LEGISLATURE ...
PUBLIC HEARING - COMMITTEE RECORDS**

2005-06

(session year)

Senate

(Assembly, Senate or Joint)

**Committee on Labor and Election Process
Reform...**

COMMITTEE NOTICES ...

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INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

- Appointments ... **Appt** (w/Record of Comm. Proceedings)
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Memo

**TO: Senate Labor and Election Process Reform Committee Members
Assembly Campaigns and Elections Committee Members**

**FROM: State Senator Joe Leibham
Chair – Special Committee on Election Law Review**

DATE: February 21, 2006

RE: Senate Bill 612 – Election Reform Package

In preparation for tomorrow's joint hearing on Senate Bill (SB) 612, I wanted to provide you with background information regarding the Wisconsin Legislative Council's Special Committee on Election Law Review and SB 612.

This special committee was created to examine the election process and the administration of elections in the state, other than campaign financing law. Specifically, this bipartisan grassroots committee comprised of clerks, legislators and members of the public, examined the implementation of the federal Help America Vote Act of 2002 (HAVA), the oversight of elections in Wisconsin, and the recount process.

In addition, this committee conducted a comprehensive examination of state laws as they relate to other election-related issues such as voter registration and identification, new technologies for voting, the adequacy of staffing at polling places, and the adequacy of training received by poll workers.

Based on this thorough examination, the proposals contained within Senate Bill 612, represent a comprehensive bipartisan package of election reform measures aimed at improving the administration of elections in our state, while working to restore integrity and confidence in our election results.

Based on the serious need for these improvements, I am asking each of you to vote in favor of Senate Bill 612.

As you review these materials and this legislation, please do not hesitate to contact me with any questions.

Leg. Council Election Law Package:

Voter Registration

Forms of ID Required to Vote

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

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

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

Deadline for Registration

The bill changes the mail-in registration deadline from the 2nd Wednesday preceding the election to the 3rd Wednesday preceding the election.

“Roving” Special-Registration Deputies

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

Prohibition on Certain Payment for Voter Registration

Prohibits any person from compensating any person who obtains voter registration based on a per-registration rate.

Verification of Pre-Election Voter Registration

Requires clerks to mail a letter or postcard within 10 days of receiving a mail-in registration. Current law dictates that they must do this, but puts no time limit on this process.

Fee for Copy of Registration List

Directs the State Elections Board to establish a fee for receiving a copy of the statewide voter registration list.

Same-Day Voter Registration and Double Voting Audits by Elections Board

Same-day audit is currently conducted by local clerks, this bill provides the Elections Board the legislative authority to conduct these audits for future elections. With the SVRS system, they will essentially have all the data and may be able to achieve efficiency by conducting these audits.

Out-Of-State Driver’s License Holders

If the elector as a part of the registration process presents and out-of-state license, the bill directs the registration official to capture the driver’s license number and state. This information will then be sent to those states following elections to ensure that the elector did not vote in both states.

Uniform Registration Forms

Directs State Elections Board to create uniform registration forms that must be used throughout the state for purposes of registration.

Absentee Ballots

Requesting an Absentee Ballot by Fax or E-mail

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

Deadline for Requesting Absentee Ballot by Mail

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

Absentee Ballots for Military Electors – Permanent Ballots

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. In general, military electors are not required to register as a prerequisite to voting in any election.

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. In general, as an alternative to a regular absentee ballot request form, a federal postcard registration and absentee ballot request form may be used to apply for an absentee ballot by a military elector if the municipal clerk can determine that the applicant is qualified to vote in the election district where he or she seeks to vote and that the applicant is qualified to receive an absentee ballot as a military elector.

For military electors who are in the uniformed service and on active duty, members of the merchant marine, and the spouse and dependents of such persons who are absent because of the duty or service of the member, current law also provides that such electors may request an absentee ballot for the next 2 general elections. A municipal clerk must comply with such a request except

that no absentee ballot may be sent for a succeeding general election if the elector's name appeared on the registration list for a previous general election and no longer appears on the registration list for the succeeding general election.

Further, if the elector's address for the succeeding general election is in a municipality that is different from the municipality in which the elector resided for the first general election, current law requires the clerk to forward the request to the clerk of the municipality where the elector resides.

Currently, 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 p.m. on the Friday preceding that election. Whenever absentee ballots are sent to military electors, they must be prepared and mailed to make use of the federal free postage laws.

The bill modifies current law to provide that every request by any military elector must be treated as a request for an absentee ballot for all subsequent elections. Under the bill, if a municipal clerk receives a request for an absentee ballot from a military elector, the municipal clerk must send an absentee ballot to the elector for all elections that occur after the request is received. The bill allows a military elector to provide an alternate address on the absentee ballot application and requires the municipal clerk to send an absentee ballot to that alternate address if a ballot sent to the elector's primary address is returned as undeliverable.

The bill authorizes a municipal clerk to stop sending a ballot to a military elector in the following situations: (1) if 2 successive general elections go by and a military elector fails to return an absentee ballot for any election during that time period; (2) if the clerk is reliably informed that the elector is no longer a military elector or no longer resides in the municipality; (3) if the elector is subject to a registration requirement and his or her name no longer appears on the registration list as an eligible elector; or (4) if the elector so requests. Prior to discontinuing sending ballots to a military elector solely for the failure to return absentee ballots, the municipal clerk must notify the elector by mail that no future ballots will be sent unless the elector renews his or her absentee ballot request within 30 days. The bill also requires the municipal clerk to notify a military elector of any action to discontinue sending ballots to the elector not taken at the elector's request within 5 days of taking that action, if possible.

Late-Arriving Absentee Ballots From Military Electors

Absentee Ballots received by the clerk from military electors prior to the deadline for requesting a recount that are postmarked by election-day may be counted during the recount.

Witness for Absentee Ballots

Witness must be an adult U.S. Citizen.

Elimination of Prepaid Return Postage and Notice of Hours

Electors casting an Absentee Ballots from outside U.S. must provide their own postage. Municipal clerks must post the hours that an elector may cast absentee ballot in person at clerk's office.

Opening Absentee Ballots in Public

Under current law, absentee ballot envelopes must be opened at the polling place during poll hours and the ballots placed in the ballot box without disclosing how the voter voted. When the envelopes are opened, the inspector is required to publicly announce the names or serial numbers of the absent electors casting the ballots.

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

Observation of Absentee Voting in Certain Nursing Homes and Other Facilities

The bill requires the municipal clerk to maintain a list, available to the public, of all of the facilities where an absentee ballot has been requested and when the special deputies will be visiting the facility.

In addition, the clerk must post a notice at the facility indicating when the special deputies will be visiting. The bill also allows one observer from each of the recognized political parties whose candidate for governor or president received the greatest numbers of votes in the municipality at the most recent general election to accompany the deputies to observe the distribution of absentee ballots in the common areas of the facility. The deputies are given the same authority as the chief election inspector to monitor this observer's conduct.

Alternate Absentee Ballot Site

The bill authorizes the governing body of a municipality (city, village, or town) to establish an alternate absentee ballot voting site in lieu of the municipal clerk's office to facilitate absentee ballot applications, voting of absentee ballots, and the return of absentee ballots prior to the close of the polls. Generally, the decision to move the absentee ballot functions to this alternate site must be made and the location of the alternate location must be established no later than 14 days prior to the time when absentee ballots are available for voting at a primary, if a primary is required (generally 30 days before a September primary and 21 days before other primaries, including the Spring primary) and the site must be used until at least the day after the election following the primary. No absentee ballot functions that are to take place at this alternate site may be conducted at the municipal clerk's office so long as the alternate site is used.

The bill requires notice of the alternate site to be prominently displayed in the office of the municipal clerk beginning on the date that the site is selected and continuing during the time that absentee ballots are available and requires a notice of the alternate site to be published in a newspaper along with other absentee ballot information required under current law and on an Internet site if one is maintained by the municipal clerk. The bill requires the alternate site to be staffed by the municipal clerk or by employees of the clerk. The alternate site must be accessible and located as near as practicable to the office of the clerk, but may not be located so as to afford an advantage to any political party. Observation and electioneering laws would apply to alternate locations established under the bill.

Election Observers

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

Electioneering

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

Option to Count Absentee Ballots at a Central Location

Currently, each absentee ballot must be received at the polling place serving an elector's residence no later than 8 p.m. on election night for the ballot to be counted. The municipal clerk or board of election commissioners delivers all absentee ballots received by the clerk or board to the appropriate polling places. The inspectors (poll workers) canvass the absentee ballots, together with the other ballots, publicly on election day by marking the names of the absentee electors on the same poll list that is used to mark the names of the electors who

vote in person. Any member of the public may observe the proceedings. Any elector may challenge for cause any absentee ballot that the elector knows or suspects is not cast by a qualified elector, whether the absentee ballot is cast in person at the office of a municipal clerk or board of election commissioners or the ballot is received in some other manner. Unless an absentee ballot is challenged or voted provisionally, it is not identifiable once it is counted, except that an absentee ballot may be distinguished from another ballot because it carries the initials of the municipal clerk or executive director of the board of election commissioners or a designated deputy. The inspectors at each polling place announce the results of each election when the canvass is completed on election night. Each municipal canvass must be completed by 2 p.m. on the day after each election, and each county canvass must begin no later than 9 a.m. on the Thursday following an election.

The bill permits the governing body of any municipality, by ordinance, to discontinue the canvassing of absentee ballots at polling places. Before enacting such an ordinance, a municipality must notify and consult with the Elections Board concerning the alternative procedure for canvassing absentee ballots that will be used. Under the bill, if absentee ballots are not canvassed at polling places, a municipal board of absentee ballot canvassers, appointed by the municipal clerk, must publicly convene any time after the polls open and before 10 p.m. on election day for the purpose of counting absentee ballots. To assist the board of absentee ballot canvassers, a municipality that canvasses absentee ballots at a central location may appoint additional inspectors in accordance with the same procedure that is used to appoint inspectors at polling places. Any inspectors so appointed are under the direction and supervision of the board of absentee ballot canvassers. Under the bill, the board of absentee ballot canvassers does not announce the results of its count until the canvass of all absentee ballots is completed.

The bill provides for the board of absentee ballot canvassers to conduct a cross-check of absentee ballots for any potential duplication by electors who also cast ballots in person. To accomplish the cross-check, the board of absentee ballot canvassers numbers each absentee ballot as it is counted, and if the elector who casts the ballot also casts a ballot in person, the absentee ballot is not counted. The bill permits any elector to challenge any absentee ballot for cause. The bill extends the time for completion of the municipal canvass by 2 hours but does not extend the time by which the county canvass must begin.

Pre-Election Procedures

Qualifications of Circulators of Nomination Papers and Petitions

Removes residency requirement from circulators – under the bill, circulators must be a qualified elector in Wisconsin or a U.S. citizen age 18 or over who, if he or she were a resident of the state.

Notice of School District Referendum

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

Contingency Planning Report

The bill requires the elections board to submit a report and recommendations to the legislature on state and local election-related contingency planning efforts and preparedness regarding natural disasters and terrorist activities that may occur at or near election time. The report is due on the first day of the 7th month beginning after publication of the bill as an act.

Guidance to Local Units of Government Regarding Election-Related Purchases

Under current law, the election administration council consists of members of the public and local election officials appointed by the executive director of the elections board. The council is to assist the elections board to establish the state's election administration plan under HAVA.

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

Term of Appointment for Certain Election Officials

Under current law, election officials are appointed for a 2-year term. The appointments are made in December of each even-numbered year. The bill changes the date that election officials are appointed to December of each odd-numbered year.

Election Official Training

Beginning for elections held in 2008, the bill requires all municipal clerks to receive election training at least once every 2 years. The bill authorizes the elections board to produce and periodically update a video program and make the program available electronically through an Internet-based system for training purposes. Also, the bill requires municipal clerks to train all poll workers other than chief inspectors, who continue to be trained and certified under current

law, as well as special registration deputies and special voting deputies pursuant to rules developed by the elections board.

The bill provides that no person may serve as a poll worker, special registration deputy, or special voting deputy unless that person has received training required in the bill unless certain unforeseen circumstances occur. Under the bill, municipalities are required to compensate election officials other than special registration deputies and special voting deputies for attendance at training sessions as currently provided.

Election Day Procedures

High School Student Poll Workers

The bill eliminates the minimum GPA requirement and instead authorizes school boards to develop criteria for approving students to serve as poll workers. The bill also modifies the term of service of a high school pupil appointed to serve as an inspector.

Under the bill, a high school pupil is appointed for one election only rather than for 2 years. The bill does not prohibit such a pupil from being appointed to serve at future elections.

Poll Closing Procedures When Voters Waiting to Vote

The bill requires each municipal clerk to designate an official of the municipality who must position himself or herself at the end of the line of individuals waiting to vote at the time the polls officially close as a way to mark the end of the line.

The bill provides that the official may be a poll worker at the polling place, an employee of the municipal clerk, or a police officer.

Conduct of Election Observers

The bill directs the elections board to promulgate rules regarding the proper conduct of observers at polling places, municipal clerk's offices, or alternate absentee ballot sites, including the interaction of observers with election officials at polling places.

The bill requires the rules to be submitted to the legislative council staff for review by the 60th day beginning after publication of the bill as an act.

Proof of Residence Required for Certain Voters

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

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

Election Threats

Current law, in s. 12.09 of the statutes, prevents the making of various election threats. Violations of that section are punishable as a Class I felony (a fine not to exceed \$10,000 or imprisonment not to exceed 3 years and 6 months, or both).

Presently, s. 12.09, stats., is drafted as one paragraph consisting of 3 distinct components, each of which prohibits different conduct. The provision reads as follows:

No person may personally or through an agent make use of or threaten to make use of force, violence or restraint in order to induce or compel any person to vote or refrain from voting at an election; or, by abduction, duress or any fraudulent device or contrivance, impede or prevent the free exercise of the franchise at an election; or by any act compel, induce or prevail upon an elector either to vote or refrain from voting at any election for or against a particular candidate or referendum. The bill, in order to improve the readability of the provision, repeals the provision and recreates it with 3 distinct subsections. The bill makes no substantive changes to the law and

Prohibition on Certain Election-Related Material

The bill modifies the statutory language regarding “electioneering” to provide that the prohibition on electioneering also applies to electioneering at a polling place. In addition, the bill prohibits the posting or distribution of election-related material during polling hours on any public property on election day at a polling place or within 100 feet of an entrance to a building containing a polling place. Similarly, the bill

prohibits such conduct in relation to the municipal clerk’s office or an alternate absentee ballot site during hours that absentee ballots may be cast therein. For purposes of the bill, “election-related material” means any written matter which describes, or purports to describe, the rights or responsibilities of individuals voting or registering to vote at a polling place or voting by absentee ballot. The prohibition would not apply to material posted or distributed by the municipal clerk or other election officials or to a bumper sticker on a motor vehicle. The bill authorizes a municipal clerk, election inspector, or law enforcement officer to remove or confiscate unauthorized election-related material.

Finally, the bill provides that a violation of the election-related material prohibition is punishable by a forfeiture not to exceed \$100.

Map of Area Served by Polling Place

The bill requires municipal clerk in municipalities with multiple polling places to prominently post at each polling place a map of the area served by each polling place for that election.

Lists of Felons Ineligible to Vote

Under current law, any person who is convicted of a felony is not eligible to vote.

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

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

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

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

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

In addition, the bill directs the elections board to conduct a postelection audit after each election to determine whether any ineligible felons have been allowed to register and vote after the close of registration. If so, the board is directed to

enter a notation reflecting this ineligibility on the registration list and to provide the names of these felons to the district attorney.

Finally, the bill requires DOC to create a form for notifying individuals of their ineligibility to vote. When an inmate who is disqualified from voting is released on parole or extended supervision, the DOC must use the form to notify the person that he or she may not vote until his or her civil rights are restored. The person and a witness must sign the form. The same procedure must be followed for each probationer, and by the court every time it imposes a sentence or places a defendant on probation for a conviction that disqualifies him or her from voting.

Additional Poll Worker – Greeter

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

Post-Election Procedures

Time for Delivery of Election Material

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

Post-Election Inspectors' Statements

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

County and Municipal Clerk Serving on Board of Canvassers

Generally, under current law, the municipal and county board of canvassers is composed of the municipal or county clerk and 2 appointed members. No person may serve on the board if he or she is a candidate at an election to be canvassed. The bill allows the county and municipal clerk to continue to serve on the respective board of canvassers if the clerk is a candidate as long as he or she has no opponent on the ballot, or, in the event of a recount, the office the clerk is seeking is not a subject of the recount.

Grounds for Recall of Certain Local Elective Offices

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

The bill requires a petition for the recall of a city, village, town, or school district officer to contain a statement of the grounds that constitute each cause for the recall.

Under the bill, "cause" means official misconduct or malfeasance in office.

Retention of Unused Ballots After an Election

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

Recount Procedures

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

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

In addition, the bill requires boards of canvassers to use automatic tabulating equipment to recount ballots that are in machine-readable form. The bill provides, however, that a candidate, or elector if the recount is for a referendum question, may petition the circuit court for an order requiring ballots in readable form to be counted by hand or by another method approved by the court. The petition must be filed by the close of business on the next business day after the last day for filing a petition for a recount.

To prevail, the petitioner must establish by clear and convincing evidence that due to an irregularity, defect, or mistake committed during the voting or canvassing process the results of a recount using automatic tabulating equipment will produce incorrect recount results and that there is a substantial probability that recounting the ballots by hand or another method will produce a more correct result and change the outcome of the election. The court with whom the petition is filed must hear the matter as expeditiously as possible, without a jury. Only if the court determines that the petitioner has made the required showing may the court order a recount of the ballots by hand or other method. The procedure created by the bill does not affect the ability of an aggrieved candidate or elector under current law to appeal the outcome of a recount to circuit court upon completion of the recount.

Post-Election Audits

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

Effective date

All changes to the law proposed by the bill take effect on July 1, 2006, or on the day after publication, whichever is later.



Jacque, Barton

From: Alicia Sidman [alicias@drwi.org]
Sent: Wednesday, February 22, 2006 12:24 PM
To: Sen.Reynolds; Rep.Freese
Cc: Plona, Katie - Office of Governor Jim Doyle; Sen.Carpenter; Sen.Hansen; Sen.Kanavas;
Sen.Lazich; Sen.Leibham; Rep.Gundrum; Rep.WoodJ; Rep.Vos; Rep.Travis; Rep.Kessler;
Lynn Breedlove
Subject: Written testimony for SB 612
Attachments: SB 612.pdf

Dear Senator Reynolds and Representative Freese,

Unfortunately, I will not be able to attend the joint public hearing held by the Senate Committee on Labor and Election Process Reform and the Assembly Committee on Campaigns and Elections later today. Please accept this written testimony from Disability Rights Wisconsin in regards to Senate Bill 612, and distribute it at the public hearing today.

Thank you for your time.

Best regards,

Alicia Sidman

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PLEASE NOTE NEW AGENCY NAME, E-MAIL ADDRESS, AND TTY NUMBER

February 22, 2006

To: Senator Reynolds, chairperson, and members of the Committee on Labor and Election Process Reform
Representative Freese, chairperson, and Representative Gundrum, vice chairperson, and members of the Committee on Campaigns and Elections

From: Alicia Sidman, Disability Rights Wisconsin

Subject: **Senate Bill 612**

Disability Rights Wisconsin (DRW), formally the Wisconsin Coalition for Advocacy, is the protection and advocacy agency in the state of Wisconsin. Our mandate is to protect the rights of people with disabilities in Wisconsin.

Disability Rights Wisconsin (DRW) supports Senate Bill 612. We believe several aspects of the bill will not only have a positive impact on the electoral process, but will also positively affect voters with disabilities.

First, however, we would like to recognize the efforts of the Legislative Council Special Committee on Election Law Review, headed by Senator Joe Leibham, and others who have worked so diligently to ensure that such a strong bill be introduced. Their hard work is clearly reflected in this bill.

As you may be aware, people with disabilities vote at a rate of 15 percent below the general population. We hope that a barrier-free, well-run and fair election process will increase the number of Wisconsin voters with disabilities while simultaneously increasing the confidence that all Wisconsin citizens have in the electoral process.

DRW received a number of calls from people with disabilities during the 2004 presidential primary and election who were confused by misinformation they received regarding the electoral process. We believe that mandating training for municipal clerks every two years starting in 2008 and also requiring that special deputies are formally trained will make the process more clear and usable for voters with disabilities. Election law and the voting process can be complex, and training is a critical component to ensuring that voters have a positive experience at the polls.

Because of the physical and other barriers at the polls, a large number of people with disabilities vote by absentee ballot. SB 612 increases the flexibility a voter has to request an absentee ballot by allowing for email and faxed requests. Most importantly, it reaffirms that a municipality is responsible for paying the return postage on all absentee ballots mailed within the United States. This will go a long way to ensure that home-

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Protection and advocacy for people with disabilities.

bound seniors and people with disabilities, who are often on fixed incomes and sometimes cannot secure accessible transportation, will not be prevented from returning their ballot because they do not have enough postage.

There are many aspects to this bill that we believe make the election process better without placing the burden of responsibility on the eligible voter and in effect disenfranchising those eligible voters with disabilities. Administrative changes, like requiring that the municipal clerk mail out notification of registration within ten days to those who register to vote by mail, and requiring that the State Elections Board audit same day registration data, just makes sense. SB 612 also very appropriately applies a penalty to those individuals who manipulate and abuse our voter registration process by paying people to register others to vote. These checks and balances help to prevent abuses to the electoral process and protect voters in our state.

Finally, on Election Day, polling sites will benefit from having a greeter available at the polling site. Among other things, polling site greeters can benefit voters by assisting with opening heavy front doors that do not have an automatic opener and pointing out the accessible route to the voting area. In addition, Senate Bill 612 requires that maps are posted with the area served by the polling site. **We recommend an amendment to SB 612 to require that these maps must be printed in large print (18 point font or larger) so that people with sight impairments, including the elderly, are more likely to be able to read information on the map.**





LEAGUE OF WOMEN VOTERS[®] OF WISCONSIN

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February 22, 2006

To: Senate Committee on Labor and Election Process Reform
Assembly Committee on Campaigns and Elections
Re: Statement on Senate Bill 612

The League of Women Voters of Wisconsin is pleased to support Senate Bill 612. We commend the framers of this legislation for their comprehensive, bipartisan effort which has resulted in a bill that improves the election process and protects every citizen's right to vote.

Some of the measures in SB 612 that will improve the administration and integrity of elections are:

1. The bill authorizes municipalities to establish alternate absentee ballot voting in lieu of the clerk's office – a good idea that will be more convenient to voters and easier to administer for election officials in some municipalities.
2. The bill extends prohibitions against electioneering to include the clerk's office and/or alternate absentee ballot voting sites, a measure that protects the voting process from partisan influence.
3. The bill requires, beginning for elections held in 2008, that all municipal clerks receive election training at least once every 2 years. The bill requires municipal clerks to train all poll workers other than chief inspectors, who continue to be trained and certified under current law, as well as special registration deputies and special voting deputies pursuant to rules developed by the elections board. This training requirement surely will improve the administration of elections.

We also have concerns with regard to some aspects of SB 612:

1. The bill requires the Department of Corrections to transmit to the elections board on a continuous basis a list containing the names of persons who have been convicted of a felony and whose voting rights have not been restored. The board is to enter the information on the statewide voter registration list. This measure would have stopped the few felons who were unaware that they could not legally vote and did so in their own names in the Fall 2004 election. We are concerned, however, that there is no provision in the bill for removing the felon designation from a person's name on the list when his/her voting rights are restored. Civic participation is an important way for a person to "re-enter" community life after incarceration and parole. It is important for the state to actively remove the felon status from the voter registration list after he/she has been re-franchised. Furthermore, we would like the state to notify felons when they are eligible to exercise their right to vote, which is perhaps most basic right of the democratic form of government.
2. The bill requires each person who registers to vote to affirm – publicly, if registering at the poll – whether he/she has been convicted of a felony for which he/she has not been pardoned and, if so, whether the person is incarcerated, on probation, parole or extended supervision. We prefer the

provision in the current law, which requires only that citizens registering to vote at the polling place affirm that they are not disqualified on any ground from voting. This protects citizens' privacy on matters they may not wish to announce in front of their neighbors.

3. The bill moves the deadline for registration for any election from the 2nd Wednesday preceding the election to the 3rd Wednesday preceding the election. We are aware that this represents a compromise by the members of the Special Committee who have attempted to balance the need of the clerks to verify registrations with the interests of voters, who may find it more difficult to register under this deadline. We would have preferred to give the voters as much opportunity as possible to register before the election. Also, we are concerned that the earlier deadline will result in even more election day registrations, which will increase the responsibilities of the poll workers.
4. The bill creates an exemption from requiring the clerk to appoint special registration deputies. This makes it more difficult to hold registration drives in nontraditional locations such as schools and malls. Also, it confuses the issue for registration of new voters and new citizens at the naturalization ceremony.
5. The bill provides that the board of absentee ballot canvassers does not announce its results until the canvass of all absentee ballots is completed. We believe no results should be announced until the canvass of absentee ballots is completed or the polls have closed, whichever is later.
6. While we appreciate the training requirements for all election officials, we also believe there should be money allocated to cover it or at least ease the initial burden on municipalities.
7. The bill provides that a student fee or identification card which does not contain the address of the student may still be considered acceptable proof of residence if the university, college, or technical college provides to the municipal clerk before the election a certified and current list of students who reside in housing sponsored by the university, college, or technical college. We are concerned that this does not cover students who live off-campus who may not be receiving official mail, such as a utility bill, addressed in their own names at their place of residence. Furthermore, we are concerned that students are at the mercy of their institutions, which may choose whether or not to include the student's address on the ID card and/or to provide the certified list to the clerk. Students at an institution that does neither are out of luck!

We have addressed some specific measures in SB 612 and heartily support those that require training for election workers and provide uniform standards for registration and election day administration. The concerns we have expressed reflect our continual efforts to promote and protect voter participation in Wisconsin elections. Senate Bill 612 accomplishes a great deal of that goal and we urge you to support it.



Reynolds

To: Senate Committee on Labor and Election Process Reform
Assembly Committee on Campaigns and Elections
Date: February 22, 2006

Please make these changes to SB-612, the Legislative Council bill on election law.

Central count of absentee ballots should be modified. The proposed procedure for counting absentee ballots at a central location violates ballot secrecy. It calls for marking each absentee ballot with an identifying serial number. In our current system, only a few ballots are given identifiable markings. Challenged ballots and provisional ballots by definition need to be marked, but these are few in number. Assisted ballots are marked, but the quantity of these will drop with the new voting machines. Here is an idea for a better procedure is crafted that meets the Wisconsin Constitution provision "All votes shall be by secret ballot." Change the bill so that central count of absentees is only those ballots that arrive on Saturday, Monday and Tuesday of election week. Absentees that arrive earlier would be delivered on election day to the polling places and counted as they are currently. See pages 10 to 11 of the bill.

Don't require absentee ballot witnesses to be a citizen. See page 8 and page 59 of the bill. This is unenforceable since there is no list of who is and who is not a citizen. This proposal will lead to uneven processing of ballots at the polling place; excess litigation during recounts; and will increase draw-downs during recounts due to ballots being rejected that were earlier approved.

Don't allow late ballots without a postmark from military electors. See page 8. This opens the door for ballots to be filled out after election day. The Department of Defense already has a successful program to assist military voting, the Federal Voting Assistance Program as per the Uniformed and Overseas Citizens Absentee Voting Act. They recently reported, "The total voting participation rate among the Uniformed Services members was 79% in 2004, as compared to the 64% rate of the general public."

<http://www.fvap.gov/services/17threport.html>

Note that ballots can be faxed or emailed to any electors per 1999 Wisconsin act 182.

Don't mandate uniform registration cards. Page 35 of the bill calls for the SEB to prescribe the format, size, and shape of registration forms, and that they be printed on cards. In 2004, the Ohio Secretary of State ordered the rejection of any registrations that were not on an exact type of paper. Under public pressure, eventually the order was rescinded, but not without confusion and bitterness. Wisconsin does not need this type of controversy. Instead, the staff of the SEB should continue to make **recommendations** for a standard form. This provision in the bill was not discussed by the study committee.

Delete the requirement that boards of canvassers use automatic tabulating equipment to recount ballots that are in machine-readable form (Page 17). We are a voter intent state. Manual recounts of the paper record is the only way that voter intent can truly be determined if the voter has strayed from standard instructions when the ballot is filled out. Statute 7.50 describes in detail our procedure to ascertain the voter's intent. Before we change the method of recounts let's study this issue in depth.

Paul Malischke
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To : Senate Committee on Labor and Election Process Reform
Assembly Committee on Campaigns and Elections
Date: February 22, 2006
From: *Fair Elections Wisconsin*
Re: SB-612, Election law changes

This bill includes a change to existing law to require that all recounts of machine-readable ballots be done by machine (page 25). **This change should be deleted.** The current local option for recount method should be retained until detailed study can be done. No evidence on accuracy, cost, or time involved was presented to the study committee.

The recent overwhelming passage of Act 92 mandating a paper trail for our ballots was a good indicator that across Wisconsin there is doubt about the accuracy and reliability of computerized voting. Here are reasons to change SB-612 and leave recounts the way they are now.

1) **The GAO report** -- In September, the non-partisan US Government Accountability Office issued a lengthy report #GAO-05-956 that summarized the flaws in the computerized voting machines that are now being sold. These machines have made some big errors that *have* been caught. There have probably been other major errors that have *not* been caught. The GAO report discusses the security flaws that have been exposed. This equipment in general is susceptible to malicious people who would disrupt our elections. The conclusion of the GAO is that "key activities need to be completed" before we have secure and reliable electronic voting systems.

2) **We are a voter intent state** -- Manual recounts of the paper record is the only way that voter intent can truly be determined if the voter has strayed from standard instructions when the ballot is filled out. Statute 7.50 describes in detail our procedure to ascertain the voter's intent.

3) **Count every ballot** -- A 20 page study published in May in the *Journal of Politics* found that manually counting the ballots resulted in the lowest rate of uncounted ballots, when compared to optical scan, lever machines, DRE's and punch cards.

4) **Audits** -- Manual recounts can serve as an audit of machine results. Audits are essential to make sure that the machines are counting correctly. This could be a partial fulfillment of 7.08 (6), which calls for audits to determine the error rate of each voting system.

A manual recount is the only way to ensure that a major electronic snafu (intentional or unintentional) does not disrupt the accuracy of the count of votes. Manual recounts of the paper ballots will maintain voter confidence in our election results.

On behalf of *Fair Elections Wisconsin*
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Fair Elections Wisconsin is an independent all-volunteer organization working for elections that are accurate, well administered, and transparent.

Audit Wisconsin's Election Results - a Call for a Study Committee

To: Joint Legislative Council

From: Paul Malischke

February 22, 2006

Please establish a study committee to investigate the optimum methods for

- auditing our election results
- conducting recounts

In January 2006, a new bill was signed into law requiring a paper audit trail of ballots. This passed overwhelmingly with bipartisan support and is a good indicator that across Wisconsin there is considerable concern over the reliability of the computerized voting machines. Now let's take advantage of this paper audit trail and actually do the audits. Currently, ballots in Wisconsin are hardly ever manually counted.

The study committee should develop methods of assuring accurate and transparent tallying of ballots for all elections and recounts. This same committee could study redistricting, as proposed by AJR-22.

- **Why?** Important features of American life are subject to audits, such as financial audits of all public companies and banks, and independent inspection of accredited hospitals. Vote counts determine who controls budgets and issues worth trillions of dollars.
- California by statute has required a 1% random manual count of all elections for over 40 years. This law was recently updated to deal with new equipment.
- The Federal Election Commission publishes a "Best Practices Toolkit" that states on page 32 "Consider conducting a manual recount of one percent of the ballots cast or of a randomly selected precinct. It uses New Mexico's three-stage audit as an example.
- In Medford Wisconsin, in November 2004, 27% of the votes were not counted by the tabulating machine. Shockingly, this was not discovered by the municipal clerk, county clerk, or State Elections Board. Months later, it was brought to light by a private company.
- In September, the non-partisan US Government Accountability Office issued a lengthy report #GAO-05-956 that summarized the flaws in the computerized voting machines that are now being sold. These machines have made some big errors that *have* been caught. There have probably been other major errors that have *not* been caught. The GAO report discusses the security flaws that have been exposed. This equipment in general is susceptible to malicious people who would disrupt our elections. The conclusion of the GAO is that "key activities need to be completed" before we have secure and reliable electronic voting systems.
- Wisconsin Statute 7.08 (6) goes into effect this year, but the State Elections Board has not determined how to implement it. "Following each general election, audit the performance of each voting system used in this state to determine the error rate of the system in counting ballots that are validly cast by electors."
- What are other states doing? Colorado Secretary of State mandated manual counts as audits in November 2005. Pennsylvania, Utah, and Arizona are considering random manual counts as audits. Kentucky has an existing program for audits.

Following is an outline of a proposal.

Counting the Ballots Promoting Accuracy and Transparency

In order to have a healthy democracy, we must not only have accurate counts of the ballots, but also citizens must have confidence in election results. Below is draft plan to promote accuracy and transparency in counting the ballots.

1) Seal the voting machines after the public test.

By statute, voting machines are publicly tested within 10 days of each election. Members of the public may insert test ballots to check accuracy. Many clerks are following the good practice of placing a numbered seal on the equipment, but currently there is no requirement for this. State standards for voting equipment should be improved to require all new equipment to have the capability to completely seal all communication ports (modem, network, or memory cards) and to ban wireless communication capability. The law should be changed to require application of a seal. Without this, the value of the public test is diminished, and transparency is lost.

2) Hand count of 2% of the ballots randomly chosen, for all elections.

Large municipalities would randomly pick a ward the day after the election; manually count the ballots; and compare the result to the election night results. Additional wards would be randomly picked until the 1% threshold is reached. In other areas of the state, the county would administer a similar process on a countywide basis. This would include only areas that use machine tabulators, which includes about 88% of Wisconsin voters. Methods need to be developed for uniformly picking the random wards; and for subsequent checking if the hand count does not agree with the machine count as reported on election night.

3) Recounts – if done by machine, then 10% of all the ballots must be checked by hand.

Currently the local board of canvassers has the option for recounting either by machine or manually. (This option would be eliminated by SB-612. It will require all machine-readable ballots to be recounted by machine.) **Wisconsin is a voter intent state.** A manual recount of the paper record is the only way that voter intent can truly be determined if the voter has strayed from standard instructions when the ballot is filled out. Statute 7.50 describes in detail our procedure to ascertain the voter's intent.

The local option for machine or manual recounts should be retained, but if a machine is chosen, then wards are picked at random for manual counts until 10% of the total are manually counted. A uniform algorithm needs to be developed to compare the manual count to the result reported on election night, and then to pursue further careful counting if needed.

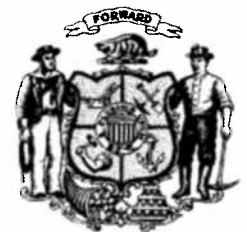
A 20 page study published in May in the Journal of Politics found that manually counting the ballots resulted in the lowest rate of uncounted ballots, when compared to optical scan, lever machines, DRE's and punch cards.

4) Follow-up and comprehensive reporting and analysis of any problems uncovered.

State Elections Board would issue reports each summer on accuracy and transparency of ballot counting for the previous 12 months. Focus would be on the hand count of a 2% sample, and recounts. Municipalities and counties will send reports on these activities to the SEB, who will summarize and make recommendations for the future.



WISCONSIN STATE LEGISLATURE



no date

Testimony of Susan Edman
Executive Director
City of Milwaukee Election Commission

As the executive director of the City of Milwaukee's Election Commission, I want to begin by publicly thanking Governor Doyle, his staff, Senator Liebham and those members of the Legislative Council Special Committee on Election Law Review and all of you who have worked so diligently on election reform. I also want to again thank the Leg. Council Special Committee for meeting in Milwaukee to specifically hear our concerns. There is no doubt in my mind that we all share a common goal – and that is to ensure clean, fair elections in our great State.

I have reviewed Senate Bill 612 in its entirety. It is truly a comprehensive package that will allow those of us involved in the business of running elections the opportunity to institute practices that will undoubtedly result in efficiently run elections with significantly less human error. I say significantly less because when you have 1500 poll workers working an election, you are bound to experience some human error although I can assure you, we are striving for perfection.

Senate Bill 612 addresses every concern expressed by the City of Milwaukee

Election Task Force;

- Changing the deadline for registration
- Prohibiting the payment of deputy registrars based on the number of registration cards submitted
- Changing the deadline for requesting absentee ballots by mail
- Allowing an alternate site for voting absentee
- Allowing the option to Count Absentee Ballots at a Central Location

I would like to take a moment to express a concern that I have relative to one issue - that is the List of Felons Ineligible to Vote.

There are 9,000 felons on probation or parole in the City of Milwaukee on any given day. Department of Corrections personnel advise me that the status of these individuals can change on a daily basis. During the three week period before an election as electors appear at our office or alternate site to register and vote and for those residents who register on Election Day, my staff and our poll workers will have to check the status of every one of these voters on the lists provided. This could be a very long and tedious process and cause delays at our busiest elections. We will however do our best to expeditiously process all electors.

One other issue is that of funding. Counting absentee ballots at a central location will allow poll workers to concentrate on assisting electors at the

polls. They won't be burdened with the cumbersome process of absentee ballots. Instituting the central count of absentee ballots however does require the purchase of a tabulator that will accept ballots from 300 wards. I am asking you to consider appropriating \$50,000 for the purchase of the technology necessary to institute central count of absentee ballots.

I encourage you to support this bill however ask that you continue to support those of us who run elections. We need more poll workers. We need corporations and businesses to allow their employees to work the polls during their work day with pay. Our seniors have carried our elections for years. It is now time for the rest of us to step forward and help out.

Thank you.