

2011 DRAFTING REQUEST

Senate Substitute Amendment (SSA-SB116)

Received: 06/05/2011

Received By: jkuesel

Wanted: As time permits

Companion to LRB:

For: Mary Lazich (608) 266-5400

By/Representing: Andrew Hanus

May Contact:

Drafter: jkuesel

Subject: Elections - miscellaneous

Addl. Drafters:

Extra Copies:

Submit via email: YES

Requester's email: Sen.Lazich@legis.wisconsin.gov

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Partisan primary date; absentee voting changes; polling place locations

Instructions:

Per attached E mail, 6/3/11.

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	jkuesel 06/05/2011	nmatzke 06/06/2011		_____			
/1			phenry 06/06/2011	_____	lparisi 06/06/2011	lparisi 06/06/2011	
/2	jkuesel 06/07/2011	nmatzke 06/07/2011	phenry 06/07/2011	_____	lparisi 06/07/2011	lparisi 06/07/2011	

FE Sent For:

<END>

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FE Sent For:

<END>

Kuesel, Jeffery

From: Hanus, Andrew
Sent: Friday, June 03, 2011 10:21 AM
To: Kuesel, Jeffery
Cc: Arrowood, Craig; Kennedy, Kevin - GAB; Robinson, Nathaniel E - GAB; Karls-Ruplinger, Jessica; Bender-Olson, Katherine
Subject: Amendments to SB 116/AB 161 (MOVE) and SB 115/AB 162
Attachments: KJK Partisan Primary Testimony 6.2.11.pdf



KJK Partisan
Primary Testimony.

Hi Jeff,

1542

Regarding SB 116/AB 161 (MOVE Act), please make all of the following changes in the GAB recommendations (attached PDF) other than those specifically noted as follows:

- ✓ 1. We agree to the change from the second Tuesday in June to June 1. However, we also want to extend the time for circulating to be April 15 to June 1.
- ✓ 2. Agree to this change
- ✓ 3. Agree to this change
- ✓ 4. Agree to this change
- ✓ 5. Agree to this change
- X 6. NO to permitting any overseas elector to use the FPCA and FWAB for electors temporarily overseas
- ✓ 7. We agree to this change but want the new deadline for late military ballots to be the Friday following the election to coincide with the treatment of provisional ballots under Act 23.
- ✓ 8. Agree to this change
- ✓ 9. Agree to this change
- ✓ 10. Agree to this change
- ✓ 11. Agree to this change
- ✓ 12. Agree to this change
- ✓ 13. Agree to this change
- X 14. NO to removing the requirement for a military or overseas elector to provide his or her date of birth on the absentee ballot envelope certification.
- X 15. NO to changing the standard definition of military electors.
- ✓ 16. Finally, please make any changes necessary to conform to 2011 Act 23

7048

Regarding SB 115/AB 162, please amend the bill to incorporate the following changes recommended by GAB:

Note for the Presidential Preference Vote change our recommendations are to modify the following deadlines in §8.12:

- §8.12 (1)(a) Certification by political parties to participate in the Presidential Preference Vote from the 1st Tuesday in January to the 2nd Tuesday in December.
- §8.12 (1)(b) Meeting of Presidential Preference Selection Committee from the last Tuesday in January to the 1st Tuesday in January.
- §8.12 (1)(c) First day for circulating petition to be placed on the Presidential Preference Vote from the last Tuesday in January to the 1st Tuesday in January.

§8.12 (1)(c) Deadline for filing petition to be placed on the Presidential Preference Vote from the 3rd Tuesday in February to the last Tuesday in January.

§8.12 (1)(d) Deadline for withdrawing name from ballot for the Presidential Preference Vote from the 3rd Tuesday in February to the last Tuesday in January.

Please feel free to talk with the GAB if you need clarification on any of their recommendations.

Thanks,

Andrew Hanus
Senator Lazich's Office
6-5400

State of Wisconsin\Government Accountability Board

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<http://gab.wi.gov>



JUDGE THOMAS H. BARLAND
Chair

KEVIN J. KENNEDY
Director and General Counsel

Remarks by
Kevin J. Kennedy
Director and General Counsel
Wisconsin Government Accountability Board

Presented to the

State Senate Committee on Transportation and Elections
The Honorable Mary Lazich, Chairperson

Assembly Committee on Elections and Campaign Reform
The Honorable Gary Tauchen, Chairperson

Room 411 South, State Capitol
Thursday, June 2, 2011
10:00 a.m.

Chairperson Lazich, Chairperson Tauchen and Committee Members:

Thank you for the opportunity to appear before this Joint Committee hearing to provide information on 2011 Senate Bill 116 and 2011 Assembly Bill 161 relating to changing the date of the September primary and implementing the federal Military and Overseas Voters Empowerment (MOVE) Act. In anticipation of this legislation, the Government Accountability Board staff researched the law in other states, talked with local election officials, legislators and other persons interested in the legislation and developed some informational materials.

These materials were delivered to all Committee Members in March of this year. A copy of our report can be found on our website at: <http://gab.wi.gov/publications/reports/moving-the-partisan-primary-options>.

On behalf of the Government Accountability Board, I would like to offer some proposed changes for your consideration to facilitate the implementation of this legislation. I am also available to answer your questions about implementation of the legislation. We have shared this information with staff of the Committee Chairs and I understand that much of what I am proposing will be incorporated in an amendment for the Committee's consideration at an executive session.

As you know the need to change our traditional September primary is rooted in recent federal legislation that was enacted to facilitate voting for our military and overseas electors. On Behalf of the Government Accountability Board (G.A.B.), I offer the following recommendations to enhance this legislation to better serve our military and overseas electors and facilitate implementation by our local election officials.

- ✓ 1. **Change the deadline for filing nomination papers from the second Tuesday in June to June 1st. §8.15 (1), 8.20 (8)(a).** In order to provide county clerks with sufficient time to print ballots and deliver the ballots to municipal clerks to meet the 47-day transit time, the period for circulating nomination papers needs to be shortened. This still provides 32 days to circulate and file nomination papers and includes the Memorial Day weekend.
- ✓ 2. **Change the deadline for certifying candidates for partisan primary from the 3rd Tuesday in June to June 10. §10.6 (1)(i).** this enables the G.A.B. To get certifications to county clerks to enable timely printing of ballots for absentee voting to meet the new 47-day transit time requirements.
- ✓ 3. **Permit designating a polling place 30 days before all elections rather than 60 days for the fall elections and 30 for all others. §§5.15 (6)(b); 5.25 (3).** This provides municipal clerks with additional flexibility in adapting to last minute changes in the availability of polling places.
- ✓ 4. **Eliminate state write-in absentee ballot. §6.25 (2), (3); 7.15 (1)(cs).** The Federal Voting Assistance Program (FVAP) has requested elimination of this option, so that military and overseas voters use the federal write-in absentee ballot (FWAB) for all elections. The State Write-In Absentee Ballot (SWAB) is sent to military electors 90 days before an election. This ballot does not have the name of any candidates on it, only contests. Municipal clerks must send the ballot out and pay postage when the ballots are rarely returned. Military electors find it confusing and unhelpful since there are no candidates on it. With the official ballots being available 47 days before federal elections, the SWAB is no longer necessary. This saves local election officials the cost of preparing a state write-in ballot along with the costs associated with tracking the state version. The elimination of the state write-in absentee ballot will also eliminate confusion among military and overseas voters.
- ✓ 5. **Permit the Federal Write-in Absentee Ballot (FWAB) to serve as an application as well as the ballot.** Many military voters make last minute decision to participate in the electoral process. The FWAB is a means to provide a one-stop voting option that ensures their vote will be counted. Otherwise, the voter must submit an application with or before submitting the

FWAB. This will reduce incidents of voter frustrating and enable local election officials to better serve their citizens.

6. **Permit any overseas elector to use the FPCA and FWAB for electors temporarily overseas.**

The Federal Post Card Application (FPCA) is the basic document available to military and overseas voters that enables them to request an absentee ballot and register to vote in the case of overseas electors. This adds flexibility for many Wisconsin voters who are temporarily out of the country on extended business assignments or are studying abroad.

7. **Eliminate late counting of military ballots. §6.221. Consider permitting the G.A.B. Legal Counsel authority to extend up to 10 days if circumstances warrant securing a 47 day transit time.**

Late counting of military ballots would no longer be needed since ballots will be prepared and sent at least 45 days before the election. The late counting of military ballots may allow some military electors more time but it also causes a delay in the canvass process and the certification process. Late counted ballots also alienate military electors since the election winners are often announced before their ballot is counted. They often feel like they were not a part of the electoral process and that their vote has no impact. The reason for permitting the G.A.B. the authority to permit post-election counting is to address situations where a recount or natural disaster interfered with making ballots available within the 47-day time period. This also makes it easier to negotiate with the Federal government if that situation arises in terms of offering solutions.

If the Committee wants to permit counting absentee ballots after Election Day, I recommend two considerations. The new deadline should be the Friday following the election. This coincides with the treatment of provisional ballots under 2011 Wisconsin Act 23, the photo identification legislation. The extension should apply to military and overseas electors. This disparate treatment under current law was the basis for the intervention by the U.S. Department of Justice last fall.

8. **Eliminate sending ballots for 2 consecutive elections. §6.22 (4)(f). Permit sending ballots to military and overseas voters for all elections in a calendar year even if a ballot is not returned in that year.**

This was a federal requirement before MOVE. One of the underlying policy goals of MOVE was to eliminate this requirement because the addresses for military and overseas voters are fluid. Local election officials, including those in Wisconsin were concerned that if ballots are automatically sent for 2 consecutive general elections, most would be returned as undeliverable. The Federal Voting Assistance Program (FVAP) now focuses on having military and overseas electors request an absentee ballot each year. Right now, once a military elector requests an absentee ballot; he or she must remain on the absentee list until: the

elector is no longer in the military, the elector no longer lives in the municipality, the elector registers in another jurisdiction or the elector does not return an absentee ballot for 2 consecutive general election cycles (essentially 4 years). This means that if an absentee ballot from a military elector is returned to the municipal clerk from the post office as undeliverable, the municipal clerk must continue to send absentee ballots to this elector for 4 years before he/she can be removed from the list. Or if a military elector does not return an absentee ballot for any election in 2 years, the municipal clerk must still send absentee ballots to the elector. Municipal clerks must follow up with FVAP when a ballot from a military elector is returned undeliverable to determine if there is another address or other contact information for the elector. If information is confidential or the same as the municipal clerk had, under current statutes, the clerk must continue to send an absentee ballot even though he/she knows that the ballot will be returned undeliverable.

Military personnel move often and are often not in the same location for long. The federal government recommends this timeline be only a year. The statistics the feds use to determine states' failure to assist military electors is often how many absentee ballots were not returned. Currently municipal clerks must keep military electors on their absentee lists and pay for the sending absentee ballots for years knowing that they are not likely to return a ballot or knowing the ballot will be returned undeliverable. The data on these electors is reported in the feds and it looks like Wisconsin is not servicing its military electors.

✓ 9. **Establish a 47-day transit time for absentee ballots in the statutes. §§7.10 (3)(a); 7.15 (1)(cm).** This is the key to MOVE Act compliance. The federal government uses this standard in evaluating MOVE Act compliance.

✓ 10. **Create a special ballot for the presidential preference vote that contains only the candidates for president and is available 47 days before the date of the presidential preference vote. §8.12.** This should also be a part of the proposed change of the presidential preference vote from February to April in 2011 Senate Bill 115/2011 Assembly Bill 162. Given the very tight time period between the February primary and the April election, this is the only way to ensure MOVE Act compliance without changing the February primary to much earlier.

✓ 11. **Create a special timeline for special elections for federal office to permit 47-day transit time for both the primary and the general. §8.50.** Given the very tight time period between the special election primary and the special election under current law, a separate special election schedule for federal offices is the only way to ensure MOVE Act compliance. U.S. DoJ has zeroed in on this disparity in looking at future MOVE Act compliance by Wisconsin.

✓ 12. The deadline for a special election for U.S. Senator concurrent with partisan primary and general election should be June 1 rather than the second Tuesday in July. §8.50 (4)(b). If new timeframe for special elections for federal office is created will need different deadlines.

✓ 13. Need to change the last day for a governing body to set a referendum question from 42 days before the election to 70 days before election. §§8.37; 8.55; 59.605 (3)(a)1.; 66.1113(20)(g) (h); 121.91 (3)(a); 229.824 (15). This is necessary to comply with the required 47-day transit time for absentee voting when the election is held concurrently with a federal election.

✗ 14. The requirement for a military or overseas elector to provide his or her date of birth on the absentee ballot envelope certification should be removed. §§6.22 (5), 6.24 (7). There does not appear to be a reason to continue this additional requirement for this class of voters. Any overseas elector registering or a changing their registration after January 1, 2004 would have provided this information as part of the registration statement. There is no federal law requirement. The date of birth is also a protected information field in the Statewide Voter Registration System. Once a voter completes a registration statement there is no additional need to provide this information.

✗ 15. There needs to be a standard definition of military electors. Note the difficulty of coordinating different requirements under §§6.22, 6.221, 6.34, 6.865. There are currently two separate definitions in Wisconsin law, plus a federal definition. One definition makes it easier for training local election officials and provides a uniform standard. I recommend the definition that has been in state law for several years. §6.22 (1).

Conclusion

The Government Accountability Board commends the Committee Chairs for moving forward on this vital initiative. The proposed legislation coupled with our recommendations will maintain Wisconsin's well deserved reputation for going the extra mile to serve military and overseas voters. We believe these changes will enhance implementation of the MOVE Act requirements in a more effective and efficient manner for voters and election officials while maintaining public confidence in a secure, accessible and transparent election process.

Thank you for your consideration of our recommendations.

Kuesel, Jeffery

From: Hanus, Andrew
Sent: Friday, June 03, 2011 6:28 PM
To: Kuesel, Jeffery
Subject: Absentee Ballot Change to SB 116

Jeff,

Regarding the change to the allowing all late absentee ballots to be counted - we want them counted only if they are received by 4pm on the Friday following the election AND if they are postmarked before or on election day.

Thank you,

Andrew Hanus
Senator Lazich's Office
6-5400