



Legislative Fiscal Bureau

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April 7, 2010

TO: Members
Joint Committee on Finance

FROM: Bob Lang, Director

SUBJECT: 2009 Senate Bill 640/Assembly Bill 895: Administration of Elections

Senate Bill 640 (SB 640) was introduced on March 23, 2010, and referred to the Senate Committee on Labor, Elections, and Urban Affairs. Assembly Bill 895 (AB 895) was introduced on March 24, 2010, and referred to the Assembly Committee on Elections and Campaign Reform. The bills are identical.

On April 1, 2010, Senate Amendment 1 to SB 640 was adopted by the Senate Committee on Labor, Elections and Urban Affairs on a 4 to 1 vote. Senate Bill 640, as amended, was recommended for passage on a 3 to 2 vote.

On April 1, 2010, the Assembly Committee on Elections and Campaign Reform recommended passage of AB 895 on a 5 to 2 vote. Also on that date, Assembly Amendment 1 to AB 895 was offered, but not adopted by the Committee.

SUMMARY OF THE BILLS

Voter Registration

Current Law. An individual must generally register to vote if he or she desires to exercise the right to vote. As a part of its responsibilities to oversee the administration of elections in Wisconsin, the Government Accountability Board (GAB) maintains an official registration list of electors who have registered and are entitled to vote. An elector may generally register to vote either in person, or by mail on a form prescribed by GAB and provided by each municipality. In addition to electors registering to vote with local municipal election officials, a qualified elector of the state may apply to any municipal clerk, board of election commissioners, or GAB to be appointed a special registration deputy for the purpose of registering electors of the municipality

prior to the close of registration.

An elector's voter registration may be suspended for failure to vote within the previous four year period. Voters are required to be notified before their registration is suspended, and notified voters may opt to continue their voter registration if they certify that they continue to reside at the same address and wish to apply for continuation of registration.

SB 640/AB 895. The Board would generally be required to use all feasible means to: (a) facilitate the voter registration of all eligible electors; and (b) maintain the registration of all eligible electors for so long as they remain eligible. For purposes of carrying out this responsibility, the Board would be required to obtain the following information from the Department of Transportation (DOT) to the extent available: (a) the full name of each individual who holds a current DOT operator's license or identification card; (b) the current address of the individual together with any address history maintained by DOT; (c) the individual's birth date; (d) the number of the license or identification card issued to the individual; (e) the individual's citizenship and any information pertaining to that citizenship and whether the individual provided proof of citizenship or other attestation of citizenship to DOT; and (f) for each item of information in (a) through (e) above, the most recent date that the item of information was provided to or obtained by DOT. The Department of Transportation would be required to provide for the transfer of this electronic information to the Board on a continuous basis, no less often than monthly. The Department of Transportation would be required to enter into and begin transferring this information under a revised agreement with GAB no later than the first day of the fourth month beginning the day after the publication of the bill as an act.

The Board would be required to compare this DOT information with the information in the official state voter registration list, and would be required to update, correct inaccuracies, and eliminate duplications in the voter registration list with this DOT information. The Board would be required to maintain the confidentiality of this information and could only use this information to: (a) facilitate and maintain the voter registration of electors; and (b) verify information to be utilized in lieu of proof of residence.

If the Board concluded that an individual appeared eligible to vote but was not registered, and the Board had obtained from reliable sources all the information required to complete the individual's registration, the Board would generally be required to enter the individual's name on the registration list. If the Board had not obtained from reliable sources all the information pertaining to the individual required for voter registration, the Board would be required to attempt to obtain this necessary information from reliable sources. If necessary, the Board would be required to attempt to contact individuals to obtain all the required information to complete the individual's voter registration.

If a municipality changed an elector's status to ineligible based on a failure to vote within the previous four year period, and the elector's eligibility, name, or residence had not changed, the Board could not change the individual's name to eligible status unless the Board first verified that

the individual was both eligible and desired to change his or her status to eligible. If necessary, the Board would be required to attempt to contact individuals to obtain all the required information to complete the individual's voter registration.

If the Board was able to obtain all the information required to register an elector, the Board would be required to enter the name of the individual on the official state voter registration list. If an individual's name was entered on the registration list by initiative of the Board, the individual's registration would not be valid until the individual confirmed the registration on a form prescribed by GAB. If any information obtained by the Board was not correct or accurate as of the confirmation date, the individual would be required to correct the information before confirming his or her registration. The individual would be required to affirm that all information was correct and accurate as of the date of confirmation, subject to all penalties prescribed by law for falsifying information or registration. An individual could confirm his or her voter registration by any of the following means: (a) by electronic means on the Internet using a secure procedure prescribed by the Board; (b) by mail; and (c) by appearing in person either at the office of the municipal clerk or at the polling place serving his or her residence.

The Government Accountability Board would be permitted to enter into an agreement with any state agency to enable electronic matching of publicly available information in the records of the state agency with GAB records to facilitate voter registration by the Board. In order to facilitate voter registration, the Board would be further authorized to transfer restricted information in the statewide voter registration list (subject to confidentiality requirements associated with DOT data) to any state authority or to a subunit of the state government of another state. Restricted information would include the birthday, DOT operator's license number, social security account number, the address of an elector who is the victim of domestic abuse, sexual assault, or stalking, and disability accommodations for individual electors. However, no state authority, and no officer or employee of the state authority, could provide access to information that was obtained through this exchange of information with GAB.

No later than July 1, 2011, GAB would be required to report to the appropriate standing committees of the Legislature concerning its progress in initially implementing a system to ensure the complete and continuous registration of all eligible electors in Wisconsin, specifically including the operability and utility of information integration with DOT and the desirability and feasibility of integrating public information maintained by other state agencies with the Board's registration information to enhance the completeness and accuracy of the information. At a minimum, the report would be required to contain an assessment of the feasibility and desirability of the integration of registration information with information maintained by the Departments of Health Services, Children and Families, Workforce Development, Revenue, Regulation and Licensing, and Natural Resources, and the University of Wisconsin System. The Board would be required to attempt to facilitate the initial registration of all eligible electors no later than July 1, 2015.

An individual would be permitted to file a request with GAB to exclude his or her name from the voter registration list. Any individual whose name was added to the registration list by the

Board could file a request with the Board to have his or her name deleted from the list. A request for exclusion or deletion would have to be filed on a form prescribed by GAB and could be filed by electronic means, by mail, or by appearing in person. An individual seeking to revoke his or her exclusion or deletion request could do so by the same means. The Board would be required to ensure that the name of any individual who filed an exclusion or deletion request was excluded from the registration list, or if the individual's name already appeared on the voter registration list, that the individual's name was removed from the registration list and not added to the list at any subsequent time unless the individual filed a revocation of his or her request to be removed from the list.

The Board would be required to notify an elector by 1st class postcard sent to his or her last-known address, if the Board removed the individual from the registration list for reasons other than a duplicative entry, death, or elector request. The notice would be required to permit the individual to apply to have his or her status changed to eligible if he or she was a qualified elector.

Late Registration

Current Law. Voter registration in person generally closes at 5 p.m. on the third Wednesday preceding the election. Voter registrations made by mail must be delivered to the appropriate municipal clerk's office or postmarked no later than the third Wednesday preceding the election.

However, any qualified elector of a municipality who has not previously filed a registration form or whose name does not appear on the registration list of the municipality may register after the close of registration but not later than 5 p.m. or the close of business, whichever is later, on the day before an election at the office of the municipal clerk.

SB 640/AB 895. For electors registering or confirming their registration after the close of registration but not later than 5 p.m. or the close of business, whichever is later, on the day before an election, the municipal clerk or clerk's agent would now be required, upon the filing of the registration form or confirmation form, to offer to provide the elector with an absentee ballot to be immediately cast at the office of the municipal clerk or clerk's agent. The municipal clerk or clerk's agent would be required to promptly add the names of qualified electors who register and vote under this provision to the registration list.

If an elector did not cast an absentee ballot at the office of the municipal clerk or agent, the clerk or agent, as under current law, would be required to issue a certificate containing the name and address of the elector addressed to the inspectors of the proper ward or election district directing that the elector be permitted to cast his or her vote if the elector complies with all requirements for voting at the polling place. For such electors, the clerk or clerk's agent would be required to add the names of qualified electors to the registration list who vote at their polling places in the following manner. The municipal clerk would be permitted to update any entries that change on the date of an election, other than a general election, within 30 days after the date of that election. The municipal clerk would be required to update any entries that change on the date of a

general election within 45 days after the date of that election, except that the Board's Legal Counsel could, upon application of a municipal clerk, permit the clerk to update entries that change on the date of a general election within 60 days of that election.

Proof of Residence for Voter Registration by Mail, Late Registration in Person and Hospitalized Electors

Current Law. Electors (other than military or overseas electors), who have registered by mail but have not voted in an election in Wisconsin, must: (a) if voting in person, provide an identifying document that establishes proof of residence; or (b) if voting by absentee ballot, provide a copy of an identifying document that establishes proof of residence. For late registration in person, an individual must either provide proof of residence or have the information in the registration form corroborated by another elector of the municipality.

A hospitalized elector may complete voter registration by agent. The agent must provide proof of residence on behalf of the hospitalized elector or the hospitalized elector's registration form must be corroborated by another elector residing in the hospitalized elector's municipality.

A valid proof of residence must include: (a) a current and complete name, including both the given and family name; and (b) a current and complete residential address, including a numbered street address, if any, and the name of a municipality. Under current law, proof of residence is limited to: (a) a current and valid DOT operator's license; (b) a current and valid DOT identification card; (c) any other official identification card or license issued by a Wisconsin governmental body or unit; (d) an official identification card or license issued by an employer in the normal course of business that contains a photograph of the cardholder or license holder; (e) a real property tax bill or receipt for the current year or the year preceding the date of the election; (f) a residential lease, unless the elector registered by mail; (g) a university, college, or technical college fee or identification card that contains a photograph of the cardholder; (h) a utility bill for the period commencing not earlier than 90 days before the day registration is made; (i) a bank statement; (j) a paycheck; or (k) a check or other document issued by a unit of government.

SB 640/AB 895. An elector who would otherwise be required to provide proof of residence would be exempted from the current law requirement if: (a) the elector confirmed a registration entered by the Board; (b) in lieu of proof of residence, the elector provided the number of a current and valid DOT operator's license or the last four digits of the elector's social security number together with the elector's name and date of birth; and (c) the Board was able to verify this information electronically at the time of confirmation. The Board would be required to maintain a system that electronically verified this information, submitted by an elector, on an instant basis with information maintained by DOT.

Absentee Voting

Current Law. A registered voter may vote absentee who for any reason is unable or

unwilling to appear at the polling place in his or her ward. A registered voter may make written application to vote absentee with the municipal clerk by one of the following methods: (a) by mail; (b) in person, at the office of the municipal clerk or at an alternate absentee ballot site; (c) for individuals indefinitely confined because of age, physical illness or infirmity, or disability, by signing a statement identifying this condition; (d) by agent, for registered voters who are hospitalized; (e) by delivering an application to a special voting deputy; and (f) by electronic mail or facsimile transmission.

For a registered voter making written application to the municipal clerk for an absentee ballot by means of facsimile transmission or electronic mail, the application must contain a copy of the applicant's original signature. When returning the voted ballot, a registered voter who requested an absentee ballot by facsimile transmission or electronic mail, must include a copy of the original request for an absentee ballot with an original signature.

If an absentee ballot application is received by mail, the application, signed by the elector, must be received no later than 5 p.m. on the fifth day immediately preceding the election. If application is made in person, the application must be made no later than 5 p.m. on the day preceding the election. If a military elector is making written application for an absentee ballot at the September primary or general election, the application must be received no later than 5 p.m. on election day. If a military elector is applying by mail, the application must be received no later than 5 p.m. on the Friday immediately preceding the election.

For an absentee ballot to be counted by the municipal clerk, it must generally be returned no later than 8 p.m. on election day. At a general election, however, a ballot that is cast by a military elector, that is received by mail from the U.S. postal service, and that is postmarked no later than election day must generally be counted if it is received by a municipal clerk no later than 5 p.m. on the 10th day after the election.

Any individual who qualifies as a military or overseas elector, and who transmits an application for an official state absentee ballot for a general election no later than 30 days before election day may, in lieu of the official state ballot, cast a federal write-in absentee ballot for any candidate or for all of the candidates of any recognized political party for national office listed on the official state ballot at the general election if the federal write-in absentee ballot is received by the appropriate municipal clerk no later than 8 p.m. on election day. A federal write-in absentee ballot under these circumstances is valid if: (a) the ballot is submitted from a location outside the United States; and (b) the elector submitting the ballot does not submit an official state ballot by 8 p.m. on election day.

A registered voter may by written application filed with the municipal clerk require that an absentee ballot be sent to the elector automatically for every election held within the same calendar year in which the application is filed. A registered voter who is indefinitely confined because of age, physical illness or infirmity, or is disabled for an indefinite period may by signing a statement to that effect require that an absentee ballot be sent to the voter automatically for every election.

SB 640/AB 895. As under current law, an elector would generally be required to sign the absentee ballot application. If, however, an elector was unable to sign the application and had designated an agent with power of attorney and the agent had authority to act on the elector's behalf, the agent could sign and file the application form on behalf of the elector. An agent would also be permitted to sign a voter registration form on behalf of an elector.

A power of attorney agent would not be permitted to cast an absentee ballot on behalf of a hospitalized elector, but if a hospitalized elector had difficulty reading, writing, or understanding English or due to a disability was unable to mark a ballot, the elector could request assistance in marking his or her ballot from the power of attorney agent. Likewise for absentee voting in nursing and retirement homes and certain community-based residential facilities, special voting deputies would be required to sign the certification as witnesses and, if they provided assistance, sign the back of the absentee ballot indicating that they provided assistance.

For registered electors requesting an absentee ballot by facsimile transmission or electronic mail, such electors would no longer be required when returning the voted ballot to include a copy of the original request for an absentee ballot with an original signature. In addition, the initial absentee ballot application for such applicants would not need to contain a copy of the applicant's original signature.

Absentee ballot applications received by facsimile transmission or electronic mail would have to be received, like mail applications, no later than 5 p.m. on the fifth day immediately preceding the election. Absentee ballot applications by facsimile transmission or electronic mail from a military elector, like mail applications, would have to be received no later than 5 p.m. on the Friday immediately preceding the election. If a military elector would make written application for an absentee ballot at the presidential preference primary or a special election for national office, as with the September primary or general election, the application would have to be received no later than 5 p.m. on election day.

For military and overseas electors transmitting applications for absentee ballots for an election for national office including a primary election within the timeframes outlined above (instead of 30 days before a general election under current law), such electors could, in lieu of the official ballot, cast a federal write-in absentee ballot for any candidate or for all of the candidates of any recognized political party for national office listed on the official state ballot at that election if the federal write-in absentee ballot was received by the appropriate municipal clerk within the deadlines outlined below. Military electors could now make use of a federal write-in absentee ballot from locations within the United States. Under current law, military electors may only make use of these federal ballots from a location outside the United States.

As with general elections under current law, a ballot cast by a military elector in a presidential preference primary or in a special election for national office, that is received by mail from the U.S. postal service, and that is postmarked no later than election day would generally have to be counted if it was received by a municipal clerk no later than 5 p.m. on the 10th day after the

election. For other electors, the absentee ballot would have to be received by the municipal clerk no later than 8 p.m. on election day in order to be counted.

Any registered voter (not just those indefinitely confined as under current law) would be permitted, by written application filed with the municipal clerk, to require that an absentee ballot be sent to the elector automatically for every succeeding election until the elector was no longer an elector of the municipality or the elector otherwise requested. If an elector was unable to sign the application and had designated an agent with power of attorney and the agent had authority to act on the elector's behalf, the agent could file the application. (A separate procedure for military and overseas electors is detailed below.) The municipal clerk would be required to discontinue mailing absentee ballots to an elector if the elector failed to return any absentee ballot mailed to the elector. The municipal clerk would be required to notify the elector of this action. An elector who failed to cast an absentee ballot but who remained qualified to receive absentee ballots could receive absentee ballots for subsequent elections by notifying the municipal clerk that the elector wished to continue receiving absentee ballots for subsequent elections.

If the municipal clerk was notified by an elector that the elector's residence was changed to another municipality in Wisconsin, the clerk would be required to forward the absentee ballot request to the new municipality. The municipal clerk of the new municipality would be required to send an absentee ballot to the elector for each succeeding election held in the municipality until the elector was no longer an elector of the municipality or the elector otherwise requested.

The Board would be directed to prescribe the form of applications for absentee ballots by electors who vote in person at the office of the municipal clerk or at an alternate absentee ballot site. The Board would also be required to prescribe the form of an absentee ballot envelope for use by electors voting absentee ballots in person at the office of the municipal clerk or at an alternate absentee ballot site. The period for absentee voting in person at the office of the municipal clerk or an alternate absentee ballot site would begin on the 21st day before each election and end on the day before each election.

Current law would be amended to provide that if the clerk was reliably informed by an absent elector of a facsimile transmission number or electronic mail address where the elector could receive an absentee ballot, the municipal clerk would be required to transmit a facsimile or electronic copy of the absent elector's ballot to that elector in lieu of mailing. Under current law, the municipal clerk is permitted, but not required, to do this.

Municipal and county clerks and the Board would be required to withhold from public access the telephone number, facsimile transmission number, or electronic mail address of any elector who voluntarily provides that information to the Board or to a county or municipal clerk. Municipal and county clerks and the Board could transfer this information to any official or employee who has access to the information in the statewide official registration list to be used for the administration of elections.

Absentee Voting for Military and Overseas Electors

Current Law. If any elector who certifies that he or she will be a military elector on election day requests an absentee ballot, the municipal clerk must send or transmit to the elector an absentee ballot for all elections that occur in the municipality or portion thereof where the elector resides beginning on the date that the clerk receives the request and ending on the day after the third successive general election that follows receipt of the request, unless the elector otherwise requests. In addition, the municipal clerk must continue to send or transmit to the elector an absentee ballot for all elections ending on the day after the third successive general election that follows any election at which the elector returns an absentee ballot.

If there occur three successive general elections at which a military elector fails to return an absentee ballot sent or transmitted to the elector and the elector has not cast an absentee ballot at any intervening election, if the clerk is reliably informed that the elector is no longer a military elector or no longer resides in the municipality, or if the elector so requests, the clerk must discontinue sending or transmitting absentee ballots to the elector. If a military elector is subject to a registration requirement and the name of the military elector no longer appears on the registration list, the municipal clerk must discontinue sending or transmitting absentee ballots to the elector. If a military elector who has requested an absentee ballot changes his or her residence from the municipality where a request is filed to another municipality in Wisconsin, the municipal clerk of the municipality who received the request must notify the clerk of the municipality to which the elector's residence is changed, of the date of the request or latest renewal, and the date of the most recent absentee ballot returned by the elector, and the municipal clerk who is so notified must treat the request as having been made to him or her. Prior to any discontinuance of the service provided to a military elector solely for failure to return absentee ballots, the municipal clerk must mail the elector a 1st class letter or postcard notifying the elector that absentee ballots will no longer be sent to the elector unless the elector renews his or her request within 30 days of the date of the notification. The clerk must notify a military elector of any such action that is not taken at the elector's request within five days of taking that action, if possible.

Except as provided above, if the elector making a timely request for an absentee ballot is a military elector or an overseas elector and the elector requests that he or she be sent an absentee ballot for the next two general elections, the municipal clerk or board of election commissioners must comply with the request except that no ballot shall 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. 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, the clerk or board of election commissioners must forward the request to the clerk or board of election commissioners of the municipality where the elector resides.

SB 640/AB 895. The bills would delete current law. Instead, the bills would provide that a request for an absentee ballot by an individual who qualified as a military elector would have to be

treated as a request for an absentee ballot for all elections unless the individual otherwise requested.

A municipal clerk would be prohibited from sending an absentee ballot for an election to an overseas elector if his or her name no longer appeared on the voter registration list in eligible status. The municipal clerk would be required to ensure that the envelope containing the absentee ballot was clearly marked as not forwardable. If an overseas elector who filed an application for an absentee ballot no longer resided at the same address indicated on the application form, the elector would be required to notify the municipal clerk. The municipal clerk would be required to discontinue mailing absentee ballots to an overseas elector if the elector failed to return any absentee ballot mailed to the elector. The municipal clerk would be required to notify the elector of any such action not taken at the elector's request within five days if possible. An overseas elector who failed to cast an absentee ballot but who remained qualified to receive absentee ballots could then receive absentee ballots for subsequent elections by notifying the municipal clerk that the elector wished to continue receiving absentee ballots for subsequent elections.

A military or overseas elector could file an application for an absentee ballot by means of electronic mail or facsimile transmission. The application would not have to contain a copy of the applicant's original signature. Upon receipt of a valid application, the municipal clerk would be required to send the elector an absentee ballot or, if the elector so requested, transmit an absentee ballot to the elector by means of electronic mail or facsimile transmission.

The Board would be required to maintain a freely accessible system under which a military or overseas elector casting an absentee ballot could determine whether the ballot had been received by the appropriate municipal clerk. The Board would also be required to designate and maintain at least one freely accessible means of electronic communication to be used for the following purposes: (a) to permit a military or overseas elector to request a voter registration application or an application for an absentee ballot at any election at which the elector was qualified to vote in Wisconsin; (b) permit the military or overseas elector to designate whether the elector wished to receive the applications under (a) electronically or by mail; and (c) permit a municipal clerk to transmit to a military or overseas elector a registration application or absentee ballot application electronically or by mail, as directed by the elector under (b), together with related voting, balloting, and election information.

Alternate Absentee Ballot Sites

Current Law. A municipality may designate a site other than the office of the municipal clerk or board of election commissioners as the location from which voters may request and vote absentee ballots and to which voted absentee ballots must be returned. The site must be located as near as practicable to the office of the municipal clerk or board of election commissioners and no site may be designated that affords an advantage to any political party. If a municipality designates an alternate site, no function related to voting and return of absentee ballots that is to be conducted at the alternate site may be conducted in the office of the municipal clerk or board of election commissioners.

SB 640/AB 895. Municipalities could designate one or more alternate sites for the processing of absentee ballots. Under the bills, a municipality could approve one or more alternate sites for the processing of absentee ballots and still process absentee ballots at the office of the municipal clerk or board of election commissioners. The alternate sites would no longer have to be located as near as practicable to the office of the municipal clerk or board of election commissioners. A municipality designating an alternate site would have to provide written notice to GAB of the designation of the site, the address of the site, and the election at which it would be in operation. In posting notice of an alternate site(s) in the office of the municipal clerk or board of election commissioners, the notice would have to specify the days and hours of operation of each alternate site and the days and hours of operation of the office of the municipal clerk or board of election commissioners.

Challenging an Individual's Right to Vote

Current Law. Any elector may challenge for cause any person offering to vote in person whom the elector knows or suspects is not a qualified elector. Likewise, the vote of any absent elector may be challenged for cause.

SB 640/AB 895. If the challenged elector proposed to vote in a municipality having a population of 2,500 or more, the challenging elector would have to be an elector of the same ward or election district as the challenged elector and election officials would have to require the challenging elector to provide proof of residence under state election laws before accepting the challenge. For challenges to a vote in person, if the challenged elector resided in a municipality having a population of 2,500 or more, election officials would also have to require the challenging elector to swear or affirm that he or she was an elector of the same ward or election district as the challenged elector.

Rights of Voters

SB 640/AB 895. Under the bills, a qualified elector would have the following rights under state statute: (a) to inspect a sample ballot before voting; (b) to cast a ballot if he or she was in line when his or her polling place closed; (c) to ask for and receive assistance in voting, including assistance in a language other than English if the elector resided in a jurisdiction where voting materials must be provided in that language under federal law; (d) to receive a replacement ballot, up to three ballots in all, if he or she spoiled a ballot before casting that ballot; (e) to cast a provisional ballot for electors voting pursuant to federal court order or for individuals not providing required identification; (f) to vote free from coercion or intimidation by an election official or other person; and (g) to cast a ballot using voting materials or equipment that enables the elector's ballot to be counted accurately. The bills refers to these rights as the "voter's bill of rights." The municipal clerk or board of election commissioners would generally be required to post these rights at the polling place so that they could be readily observed by electors entering the polling place or waiting in line to vote. The Board would be further directed to promulgate rules to enforce these rights and the associated posting requirement.

In any jurisdiction required under federal law to provide voting materials in a language other than English, the municipal clerk or board of election commissioners would be required, for each such language, to contact and coordinate with organizations that advocate for the rights of individuals who speak that language to ensure that each polling place in the jurisdiction adequately served the needs of those individuals and would be required to endeavor to ensure that at least one of the election officials who served at each polling place in the jurisdiction spoke that language.

In any such jurisdiction, GAB would be required to ensure that, for each such language, the required election notices in polling places were provided in that language. The Board would be further directed to promulgate rules to enforce this posting requirement.

The Government Accountability Board is currently required to prepare and publish an election manual explaining the duties of election officials. In addition to existing requirements, under the bills the election manual would have to: (a) be written in clear, unambiguous language; (b) be indexed by subject; (c) contain specific examples of common problems encountered at polling places on election day and detailed, specific procedures for resolving those problems; and (d) include an explanation of all of the following: (1) laws and rules governing solicitation by individuals and groups at a polling place; (2) procedures to be followed with respect to electors whose names do not appear on the registration list; (3) proper operation of any electronic voting system used at a polling place; (4) procedures for handling of ballots; (5) procedures governing spoiled ballots; (6) procedures to be followed after a polling place closes; (7) rights of electors at the polls; (8) procedures for handling of emergency situations; (9) procedures for handling and processing of provisional ballots; and (10) security procedures.

A municipal clerk or executive director of a board of election commissioners could be required to forfeit not more than \$500 for each violation involving either failure to meet federal requirements to post election notices in languages other than English, or to satisfy certain election material posting requirements. In addition, the Executive Director of GAB could likewise be required to forfeit not more than \$500 for each failure to include required materials in the election manual required to be produced for local election officials. These civil forfeiture actions could be brought by the Board or by the district attorney for the county where the defendant resided.

For violations occurring or proposed to occur involving the "voter's bill of rights," GAB obligations to post notices in languages other than English, or the election manual, any elector of this state could sue for injunctive relief, a writ of mandamus or prohibition, or such other legal or equitable relief as may be appropriate to compel compliance with the law. The action would have to be filed in circuit court for the county where the violation occurred or was proposed to occur. In such actions, the court would be required to award costs and reasonable actual attorney fees to the elector if the elector prevailed in the action.

Polling Place Posting Requirements

SB 640/AB 895. As an alternative to polling place posting requirements, under the bills the

Board could authorize another means of providing notice to affected electors of the information required to be posted, if the Board determined that an alternative means of providing the information would provide notice to affected electors of that information that was at least as effective as posting. Any Board authorization under this provision would have to be in writing and would have to specify the particular alternative means of notification of electors that could be used by a municipality.

Absentee Voting Instructions

Current Law. The Board is required to prescribe uniform instructions for municipalities to provide to absentee voters.

SB 640/AB 895. The bills specify that these instructions would have to include the specific means of electronic communication that an absentee elector could use to file an application for an absentee ballot and, if the absentee elector was required to register, to request a registration form or change his or her registration.

Testing of Voting Equipment Prior to an Election

Current Law. Any municipality utilizing an electronic voting system which employs automatic tabulating equipment must, on any day not more than 10 days prior to the election day on which the equipment is to be utilized, have the equipment tested to ascertain that it will correctly count the votes cast for all offices and on all measures.

SB 640/AB 895. This equipment could be tested on any day after ballots become available prior to the date of the election.

Election-Related Threats

Current Law. No person may personally or through an agent: (a) 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 (b) 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. A violation of this provision is a Class I felony involving a fine not to exceed \$10,000, or imprisonment not to exceed three years and six months, or both. Of the maximum term of imprisonment under a Class I felony of three years and six months, the prison sentence may not exceed 18 months and the term of extended supervision may not exceed two years.

SB 640/AB 895. The bills provide that no person could personally or through an agent: (a) make use of or threaten to make use of force, violence, restraint, or any tactic of coercion or intimidation in order to induce or compel any person to vote or refrain from voting or to refrain from registering to vote at an election; or (b) use or threaten to use force or violence or by use or threat of any act of coercion or intimidation compel, induce, or prevail upon an elector either to vote

or refrain from voting at any election for or against a particular candidate or question at a referendum. A violation of this provision would now be a modified Class D felony with a fine not to exceed \$100,000 or imprisonment not to exceed three years, or both. For the term of imprisonment, the bills would not specify either the maximum prison sentence or the maximum term of extended supervision under this modified Class D felony. [Under current law, a Class D felony is punishable by a fine not to exceed \$100,000 or imprisonment not to exceed 25 years, or both. The term of confinement in prison may not exceed 15 years and the term of extended supervision may not exceed 10 years.]

The Board would be directed to promulgate rules to enforce these prohibitions. In addition, if any violation of this provision occurred or was proposed to occur, any elector of this state could sue for injunctive relief, a writ of mandamus or prohibition, or such other legal or equitable relief as could be appropriate to compel compliance with the law. The action would have to be filed in circuit court for the county where the violation occurred or was proposed to occur. In such actions, the court would be required to award costs and reasonable actual attorney fees to the elector if the elector prevailed in the action.

Election Fraud

Current Law. It is unlawful to intentionally: (a) falsely procure registration or make false statements to the municipal clerk, board of election commissioners or any other election official whether or not under oath; (b) register as an elector in more than one place for the same election; and (c) impersonate a registered elector or pose as another person for the purpose of voting at an election.

SB 640/AB 895. Under the bills, it would be unlawful to intentionally: (a) falsely procure registration, confirm inaccurate registration information, or make false statements to the municipal clerk, board of election commissioners or any other election official whether or not under oath; (b) register as an elector in more than one place for the same election or confirm two or more simultaneous registrations to vote in the same election; and (c) impersonate a registered elector or a person whose unconfirmed registration appears on the registration list or pose as another person for the purpose of voting at an election.

Deceptive Election Practices

SB 640/AB 895. Under the bills, no person, whether acting under color of law or otherwise, could intentionally induce another person to refrain from registering or voting at an election by knowingly providing that person with false election-related information. Election-related information would include: (a) the date, time, place, or manner of conducting an election; (b) the qualifications for or restrictions on the eligibility of electors voting at an election, including any criminal penalties associated with voting in an election or a voter's registration status or eligibility; and (c) the explicit endorsement by any person of a candidate at an election. Any individual violating this provision with the intent to prevent any person from exercising the right to vote in an

election would be guilty of a modified Class D felony involving a fine not to exceed \$100,000, or imprisonment not to exceed five years, or both. For the term of imprisonment, the bills would not specify either the maximum prison sentence or the maximum term of extended supervision under this modified Class D felony.

Any individual alleging that he or she was intentionally induced by another to refrain from registering or voting at an election with false election-related information could: (a) bring an action for injunctive relief in circuit court for the county where the violation was alleged to have occurred; or (b) file a verified complaint with GAB alleging facts that the person believed to constitute a violation of this provision. The Board would be required to promptly review each such complaint filed with it and if the Board found that the facts alleged in the complaint, if true, would constitute a violation, the Board would be required to promptly investigate the complaint. The Board would be required to disseminate through the Internet and radio, television, and newspaper advertisements information concerning complaint procedures and remedies for these violations.

If the Board found that a violation had occurred or was occurring, the Board would be required to take all measures necessary to provide correct information to electors who could have been deceived by the actions of the alleged violator, and would be required to refer the matter to the appropriate authority for prosecution. The Board would be directed to promulgate rules concerning the methods and means of providing corrective information to electors. The Board, in consultation with the Department of Justice and the Federal Election Assistance Commission, would be required to study the feasibility of providing corrective information that could be required under this provision through public service announcements, other uses of broadcast media, or an emergency alert system. No later than the first day of the seventh month beginning the day after publication of the bill as an act, the Board would be required to report its findings and recommendations to the Chief Clerk of each house of the Legislature for referral to the appropriate standing committee of each house.

No later than 90 days after each general election, GAB would be required to report to the chief clerk of each house of the Legislature for referral to the appropriate standing committees concerning any such complaints that were acted upon or referred by the Board during the period beginning with the date of the second preceding general election and ending with the preceding general election. The report would generally be required to include a description of the alleged deceptive election practices that were the subject of each complaint, any corrective measures taken by the Board with regard to the subject matter of the complaint, a compilation of the number and types of allegations made that were acted upon or referred by the Board, the locations and segments of the population that were affected by the alleged deceptive election practices, and the status of any investigations conducted by the Board. The Board could exclude from the report, however, any information that, if disclosed, would interfere with a pending investigation of a violation of the law. The Board would be required to post a copy of each such report on the Internet.

Voter Suppression

SB 640/AB 895. Under the bills, no person could knowingly attempt to prevent or deter another person from voting or registering to vote based upon fraudulent, deceptive, or spurious grounds or information. Violations of this prohibition would include: (a) challenging another person's right to register or vote at an election based upon information the person knows is false; and (b) attempting to induce another person to refrain from registering or voting by providing that person with information the person knows is false. Any individual violating this provision would be guilty of a modified Class E felony involving a fine not to exceed \$50,000 or imprisonment not to exceed two years, or both. For the term of imprisonment, the bills would not specify either the maximum prison sentence or the maximum term of extended supervision under this modified Class E felony. The Board would be directed to promulgate rules to enforce these prohibitions. [Under current law, a Class E felony is punishable by a fine not to exceed \$50,000 or imprisonment not to exceed 15 years, or both. The term of confinement in prison may not exceed 10 years and the term of extended supervision may not exceed five years.]

Whenever a violation of this provision occurred or was proposed to occur, any elector of this state could also sue for injunctive relief, a writ of mandamus or prohibition, or such other legal or equitable relief as could be appropriate to compel compliance with the law. The action would have to be filed in circuit court for the county where the violation occurred or was proposed to occur. In such actions, the court would be required to award costs and reasonable actual attorney fees to the elector if the elector prevailed in the action.

Federal Absentee Voting Deadline

SB 640/AB 895. Prior to the 2010 September primary, the Legal Counsel of GAB would be directed to apply on behalf of the state to the federal government for a determination that Wisconsin is unable to meet the federal requirement with respect to transmittal of absentee ballots to military and overseas electors at the 2010 September primary and subsequent general election. The application would be required to include a description of the state's efforts to enable delivery of absentee ballots to military and overseas electors as expeditiously as possible. If a federal waiver was not granted, GAB's Legal Counsel would be required to promptly report the federal response to the appropriate standing committees of the Legislature. No later than January 1, 2011, GAB would be required to report to the appropriate standing committees of the Legislature concerning the timeline used by Wisconsin for the absentee voting process and the feasibility of making adjustments to comply with federal timelines.

[As indicated by the Legislative Reference Bureau, "Under current federal law, states are required to transmit absentee ballots to military and overseas electors no later than 45 days before each federal election at which the electors are entitled to vote, if the electors have requested their ballots by that time. However, a state may request a hardship waiver from the federal government, for a single election only, if the state's primary election date does not permit compliance with this requirement and the state takes other actions to ensure expeditious delivery of absentee ballots to

military and overseas electors." This provision of the bills directs the Legal Counsel of GAB to request this hardship waiver on behalf of the state.]

Effective Dates

The bills' provisions would generally take effect on the day after publication of the bill as an act. Certain provisions of the bills with respect to requests for absentee ballots would take effect on the 90th day beginning after publication of the bill as an act. Finally, the provisions affecting the content of the required election manual for local election officials would first take effect on January 1, 2011.

Initial Applicability

The bills' provisions would generally first apply with respect to elections held on the effective date of the bill as an act. The provisions affecting the content of the required election manual for local election officials would first apply on January 1, 2011. Other provisions of the bills with respect to requests for absentee ballots for voting at elections would first apply to elections held on or after the effective date of the bill as an act.

AMENDMENT SUMMARIES

Senate Amendment 1 to SB 640

Under SB 640, for voting in municipalities with a population of 2,500 or more, a challenging elector must be an elector of the same ward or election district as the challenged elector. The bill also requires that the challenging elector provide proof of residence when making a challenge. Senate Amendment 1 provides, instead, that a challenging elector must be an elector of the same county as the challenged elector. Senate Amendment 1 was adopted by the Senate Committee on Labor, Elections and Urban Affairs on a 4 to 1 vote.

Assembly Amendment 1 to AB 895

Under current law, no polling place may be situated so as to interfere with or distract election officials from carrying out their duties. The municipal clerk and election inspectors are required to prevent interference with and distraction of electors at polling places. Further, current law specifies that election inspectors possess full authority to maintain order and to enforce obedience to their lawful commands during the election and the canvass of the votes. In addition, if any person refuses to obey the lawful commands of an inspector, or is disorderly in the presence or hearing of the inspector, interrupts or disturbs the proceedings, the inspector may order any law enforcement officer to remove the person from the voting area or to take the person into custody.

Assembly Amendment 1 to AB 895 specifies that the current law provisions related to restricted activities at polling places and the authority to preserve order also apply to "the area

within 100 feet of each entrance to each polling place." This amendment was not adopted by the Assembly Committee on Elections and Campaign Reform.

FISCAL EFFECT

Government Accountability Board

On October 13, 2009, the Joint Committee on Finance, under s. 5.05(10) of the statutes, approved the five-year state election administration plan that is required under section 254 of the federal Help America Vote Act (HAVA) to enable Wisconsin's continued participation in the federal financial assistance programs authorized by the federal act. The Government Accountability Board estimated that, based on the best available information and analyzed assumptions, the funding needed to implement the plan over five years would total between \$17 and \$20 million. The approved plan includes proposed goals over the next five years in the areas of: (a) election administration; (b) accessibility (ensuring voter accessibility in the polling place); (c) voting equipment/systems; (d) the statewide voter registration system (SVRS) database, which is utilized to maintain the official statewide voter registration list; and (e) voter education, election official education and training, and poll worker training.

In approving the five-year state election administration plan under HAVA, the Joint Committee on Finance specified that the approval of the plan did not constitute the commitment of any additional state funding to advance the plan. In addition, the Board indicated that if GAB did not receive \$17 to \$20 million in federal HAVA funding over the five years of the plan, then the budget for the plan would have to be scaled back to reflect available federal funding.

The current balance in the Election Administration Fund, which consists of federal HAVA and associated state match funding and interest earnings, is \$16.8 million. In addition, the Board is anticipating a federal fiscal year 2010 HAVA award of \$1,285,000. What is unknown is whether or not the federal government will continue to make additional HAVA awards to the states in future fiscal years.

A number of the bills provisions are a part of the five-year elections administration plan and GAB has indicated that these bills provisions, if adopted, would be funded as a part of the implementation of this plan. These provisions include: (a) amending the absentee ballot process; (b) creating the capacity in the Statewide Voter Registration System (SVRS), which is utilized to maintain the official statewide voter registration list, to permit military and overseas electors to track the status of their absentee ballots; (c) creating a voters' bill of rights; (d) publishing voter informational materials in languages other than English as required by federal law; and (e) certain posting requirements.

Under the bills, the Board would be required to use all feasible means to: (a) facilitate the voter registration of all eligible electors; and (b) maintain the registration of all eligible electors for so long as they remain eligible. If the Board was able to obtain all the information required to

register an elector, the Board would be required to enter the name of the individual on the official state voter registration list. If an individual's name was entered on the registration list by initiative of the Board, the individual's registration would not be valid until the individual confirmed the registration on a form prescribed by GAB. The Government Accountability Board would be directed in some circumstances and permitted in other circumstances to enter into agreements with DOT and other state agencies to enable electronic matching of records to facilitate voter registration by the Board.

Board staff have indicated that these new responsibilities would require substantial modification of the SVRS and that these costs were not budgeted as a part of the five-year election administration plan. The SVRS system would need to be modified to permit the electronic transfer of data from DOT and other state agencies as well as to develop and track files for "unconfirmed" voter registrants. Board staff estimates that these SVRS modifications could cost at least \$1 million to develop. Further, GAB indicates that assuming that up to one million potential voters would need to be contacted by mail, postage costs could be up to \$280,000. In addition, system changes would increase training responsibilities associated with local election officials.

Given that additional state funding is not provided under the bills, these SVRS modification costs would likely have to be covered with federal HAVA funding. Addressing these costs with federal HAVA funding could reduce the availability of these funds to address elements of the state's five-year election administration plan.

Under current law, a registered voter may by written application filed with the municipal clerk require that an absentee ballot be sent to the elector automatically for every election held within the same calendar year in which the application is filed. Under the bills, any registered voter would be permitted, by written application with the municipal clerk, to require that an absentee ballot be sent to the elector automatically for every succeeding election until the elector was no longer an elector of the municipality or the elector otherwise requested. According to the Board's fiscal note regarding modifications to absentee voting proposed under the bills:

"Although Board staff have not solicited formal information from vendors and experts, the Board's IT staff, working in consultation with the Board's IT partners (Department of Administration, Division of Enterprise Technology), estimate the cost to upgrade SVRS to allow for the planning and capacity building of infrastructure of a monitoring and tracking information functionality could range between \$500,000 and \$1 million dollars, and could take up to a year for the technical engineering and architectural changes to be designed, tested, and put into production."

Board staff has expressed the view that this provision could substantially increase local government costs to initially mail and provide return postage for electors to vote absentee on an ongoing basis by mail (as much as \$208,200 per statewide election).

No additional state funding is provided to address the possible costs under the bills. These costs would either be borne by local units of government or these costs could potentially be addressed with federal HAVA funding in the state's Election Administration Fund. Addressing these costs with federal HAVA funding could reduce the availability of these funds to address elements of the state's five-year election administration plan.

The Board indicates that it "will sustain and absorb additional staff costs for providing education, training and support provided to local election officials (LEOs) regarding standards for complying with both the permanent absentee provision of Absentee Voting called for in SB 640 and AB 895. The Board will also absorb the retooling costs required in the SVRS in order to provide capacity to track military and overseas' ballots..."

The bills would create new prohibitions for deceptive election practices by providing that no person could intentionally induce another person to refrain from registering or voting at an election by knowingly providing that person with false election-related information. Election-related information would include: (a) the date, time, place, or manner of conducting an election; (b) the qualifications for or restrictions on the eligibility of electors voting at an election, including any criminal penalties associated with voting in an election or a voter's registration status or eligibility; and (c) the explicit endorsement by any person of a candidate at an election. Any individual alleging a violation of this provision could file a verified complaint with GAB. The Board would be required to promptly review each such complaint and if the Board found that the facts alleged in the complaint, if true, would constitute a violation, the Board would be required to promptly investigate the complaint. The Board would also be required to disseminate through the Internet and radio, television, and newspaper advertisements information concerning complaint procedures and remedies for these violations. If the Board found that a violation of this provision had occurred or was occurring, the Board would be required to take all measures necessary to provide correct information to electors who could have been deceived by the actions of the alleged violator, and would be required to refer the matter to the appropriate authority for prosecution. The Board would be further directed to promulgate rules concerning the methods and means of providing corrective information to electors. The Board, in consultation with the Department of Justice and the Federal Election Assistance Commission, would be required to study the feasibility of providing corrective information that could be required under this provision through public service announcements, other uses of broadcast media, or an emergency alert system. Finally, GAB would be required to report to the Legislature after each general election as to complaints that were acted upon or referred by the Board during the period beginning with the date of the second preceding general election and ending with the preceding general election.

Board staff indicates that the additional workload associated with this deceptive election practices provision, as well as the provision amending the content of the election manual for local election officials, would require one additional attorney and one additional administrative support position at an annual cost of \$159,200. In order to maintain and update the election manual with the changes provided for in the bills, GAB also indicates that it would need an additional election specialist at an annual cost of \$65,700. Finally, in meeting its new investigative responsibilities,

GAB indicates that it could also incur substantial costs to retain contract investigators to assist with this workload. Contract investigators could be funded from the Board's GPR sum sufficient investigations appropriation. The Board estimates that these contract investigation costs could range from \$200,000 to \$400,000 in even-numbered years, and from \$100,000 to \$200,000 in odd-numbered years.

Although the amount of investigative expenditures are unknown, any amount would further reduce the state's general fund balance below the statutory requirement of s. 20.003(4). Therefore, the bill should be amended to include a notwithstanding clause relative to s. 20.003(4).

Given that additional state funding is not provided, the identified costs would likely have to be covered with federal HAVA funding. Addressing these costs with federal HAVA funding could reduce the availability of these funds to address elements of the state's five-year election administration plan.

Department of Transportation

The bill would require DOT to provide operator's license and identification card information to the Governmental Accountability Board on at least a monthly basis, beginning no later than the first day of the fourth month after the act's publication. In order to do this, the Department would have to modify its current informational systems to extract this information and transfer it to GAB. This would require DOT to make additional expenditures for programming and related information technology costs. As of the date of this memorandum, DOT had not submitted its fiscal note for the bill. Since the bill would not appropriate additional funds to the Department, DOT would have to absorb any additional costs within its current budget for departmental management and operations, unless federal HAVA funding is made available for this purpose.

District Attorneys

According to the State Prosecutors Office (SPO), the bills are estimated to "have a small to moderate effect" on workload. Further, SPO states that: "It is difficult to quantify how much of an addition to the workload this means per office, or how many additional prosecutors will be needed, but DAs indicated it would impact their office's workload."

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