



WISCONSIN LEGISLATIVE COUNCIL AMENDMENT MEMO

2009 Senate Bill 640

**Senate Substitute Amendment
1, as Amended**

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2009 Senate Bill 640 makes various changes to election laws. This Amendment Memo only describes the differences between Senate Bill 640 (hereafter, the “bill”) and Senate Substitute Amendment 1 (hereafter, the “substitute amendment”), as amended by Senate Amendments 1, 2, 3, and 4 to Senate Substitute Amendment 1, and does not describe all of the provisions contained in the bill.

VOTER REGISTRATION

Local Election Officials

The *bill* and *substitute amendment* provide that the Government Accountability Board (GAB) must use all feasible means to facilitate the registration of all eligible electors of this state who are subject to a registration requirement and the maintenance of the registration of all eligible electors for so long as they remain eligible.

Senate Amendment 2 to Senate Substitute Amendment 1 provides the GAB must not delegate this responsibility to any local election official without his or her consent.

Name History

The *bill* provides that to carry out voter registration, GAB must obtain from the Department of Transportation (DOT), to the extent that DOT has the information, the full name of each individual who holds a current DOT operator’s license or DOT identification card, together with the individual’s current address and any address history maintained by DOT; the individual’s date of birth; the number of the license or identification card issued to the individual; and 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. For each of the above items, GAB must obtain the most recent date that the item of information was provided or obtained by DOT.

The *substitute amendment* provides that GAB must also obtain any name history maintained by DOT.

Notification

The *substitute amendment* provides that if an elector does not confirm a registration that has been entered by GAB, GAB may contact the elector in the manner determined by GAB to obtain confirmation of or any necessary correction to the elector's registration. If an elector does not confirm a registration that has been entered by GAB within 60 days after GAB enters the elector's registration, GAB must promptly contact the elector to obtain confirmation of or any necessary correction to the elector's registration.

Senate Amendment 2 to Senate Substitute Amendment 1 provides that GAB must not delegate this responsibility to any local election official without his or her consent.

The *bill* does not contain these provisions.

Opt-Out

The *bill* provides that any individual may file a request with GAB to exclude his or her name from the registration list. Any individual whose name is added to the registration list by GAB may file a request with GAB to have his or her name deleted from the list. A request for exclusion or deletion must be filed on a form prescribed by GAB.

The *substitute amendment* provides that an individual may also file a request with a municipal clerk to have his or her name deleted from the list and that a request for exclusion or deletion must be filed *in the manner prescribed by GAB*.

DOT Forms

The *substitute amendment* provides that the forms for application for a DOT license or identification card or for renewal thereof must inform the applicant of DOT's duty to make certain information available to GAB and must provide the applicant an opportunity to elect not to have the information made available. If the applicant elects not to have the information made available to GAB, DOT must not make the information available to GAB.

The *bill* does not contain this provision.

Proof of Residence

The *bill* provides that each elector who is required to register, who is not a military elector or an overseas elector, and who confirms his or her registration after the close of registration must provide proof of residence. The bill also provides that each elector who is required to register, who is not a military elector or an overseas elector, who confirms a registration entered by GAB *after the close of registration*, and who has not voted in an election in this state must provide proof of residence.

The *substitute amendment* removes "after the close of registration" in the bill for proof of residence for first-time voters who confirm a registration.

In addition, the *bill* provides that if an elector who confirms a registration that has been entered by GAB would otherwise be required to provide proof of residence but provides, in lieu of proof of

residence, 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 GAB is able to verify the information electronically at the time of confirmation, the elector is not required to provide proof of residence.

The *substitute amendment* provides that proof of residence is not required if GAB is able to verify the information electronically at the time of confirmation *or voting*.

Agreement With Nonprofit Organization

The *substitute amendment* provides that GAB may enter into an agreement with any nationally focused nonprofit organization to enable matching of information in the records of that organization with publicly available information in GAB records to facilitate administration of elector registration by GAB. The agreement may also enable matching of information in the GAB records that GAB obtained from DOT. However, the agreement must require nondisclosure of any information obtained by GAB from DOT.

The *bill* does not contain this provision.

Senate Amendment 4 to Senate Substitute Amendment 1 corrects a drafting error in this provision.

Report to Legislature

The *bill* requires that GAB, no later than July 1, 2011, 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 this state, 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 GAB's registration information to enhance the completeness and accuracy of the information. At a minimum, the report must contain an assessment of the feasibility and desirability of the integration of registration information with information maintained by the Department of Health Services, Department of Children and Families, Department of Workforce Development, Department of Revenue, Department of Regulation and Licensing, Department of Natural Resources, and the University of Wisconsin System.

The *substitute amendment* adds the technical college system board, as well as the technical colleges within each technical college district, to the list of state agencies in the report.

ELECTRONIC VOTER REGISTRATION

The *substitute amendment* provides that an eligible elector, including an overseas elector, who holds a current and valid DOT operator's license or DOT identification card may complete voter registration, or makes changes in his or her voter registration, electronically in a manner prescribed by GAB. The deadline for electronic voter registration for an election is midnight on the third Wednesday preceding the election.

Under the *substitute amendment*, to facilitate electronic voter registration, GAB must maintain a secure registration form on the Internet that enables an elector to enter all required information electronically. There is no requirement for a signature. An elector generally must provide the same information for electronic voter registration as he or she would provide for nonelectronic voter registration.

The *substitute amendment* provides that an elector who is required to register, who is not a military elector or an overseas elector, who registers by electronic application, and who has not voted in an election in this state must provide proof of residence. However, proof of residence is not required if the elector provides the number of a current and valid DOT operator's license together with the elector's name and date of birth and if GAB is able to verify that information electronically at the time of registration or voting. GAB must maintain a system that electronically verifies, on an instant basis, the validity of this information with the information maintained by DOT pursuant to an agreement between GAB and DOT.

Further, the *substitute amendment* requires that GAB prescribe, by rule, the manner and method of electronic application for registration, together with requirements for affirmation and verification of elector information and the method for receipt of electronic registration forms. GAB must also prescribe, by rule, the procedure and methods by which municipal clerks and boards of election commissioners maintain records of electronic registrations. Lastly, GAB must prescribe the form required for electronic voter registration, and the form must contain a statement of the penalty applicable to false or fraudulent registration or voting through use of the form.

The *substitute amendment* requires that GAB and DOT, no later than the 20th day following the end of each calendar quarter, each report to the appropriate standing committees of the Legislature concerning progress in implementing an electronic voter registration system. GAB and DOT must continue to file reports until GAB determines that implementation is complete and the performance of the system is satisfactory.

Lastly, the *substitute amendment* provides that the provisions relating to electronic voter registration first apply with respect to registration for voting at the 2012 spring primary election.

The *bill* does not contain provisions relating to electronic voter registration. However, 2009 Senate Bill 645 and 2009 Assembly Bill 892 provide for electronic voter registration.

ABSENTEE VOTING

Permanent Absentee Voting

The *bill* provides that any elector, other than a military or overseas elector, may by written application require that an absentee ballot be sent to the elector automatically for every succeeding election until the elector is no longer an elector of the municipality or the elector otherwise requests. However, the municipal clerk must discontinue mailing absentee ballots to an elector if the elector fails to return any absentee ballot mailed to the elector.

The *substitute amendment* provides that the municipal clerk must discontinue mailing absentee ballots to an elector if the elector fails to return the absentee ballots mailed to the elector *for two consecutive elections*.

Overseas Absentee Voting

Current law provides that an overseas elector may, by application, receive an absentee ballot for all subsequent elections for national office to be held during the year in which the ballot is requested.

The *substitute amendment* provides that an overseas elector may receive an absentee ballot for all subsequent elections for national office to be held during the year in which the ballot is requested *and the subsequent calendar year*.

Proof of Residence

The *substitute amendment* provides that each elector who is required to register, who is not a military elector or an overseas elector, and who registers at the office of the municipal clerk when voting an absentee ballot in person must provide proof of residence.

The *bill* does not contain this provision.

Absentee Ballot Envelopes

The *bill* provides that GAB must 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 alternate site. No certification and no witness is required on such envelopes. The form must include a space for the name and residence of the absentee elector and the ward and aldermanic district where the elector resides, if any.

The *substitute amendment*, instead, provides that no witness is required on such envelopes and that the form must include the words "Official Absentee Ballot," the name of the municipality, and a space for the issuing clerk or deputy clerk to initial the envelope. Upon receiving the envelope from the elector, the issuing clerk or deputy clerk must initial the envelope.

Senate Amendment 4 to Senate Substitute Amendment 1 also provides that no certification is required on such envelopes.

Reimbursement for Postage Costs

Under *current law*, any municipality that maintained polling hours beginning later than 7 a.m. prior to April 29, 2006, that incurs additional costs to adjust its polling hours to begin at 7 a.m. at any election held after April 29, 2006, may file a claim with GAB for reimbursement of those costs. GAB must audit the claims and, if GAB finds that the costs have been incurred by the municipality and the costs would not have been incurred but for the requirement to open the polling places at 7 a.m., GAB must reimburse the municipality for those costs. A general purpose revenue (GPR) biennial election-related cost reimbursement appropriation under GAB is provided \$36,200 GPR in 2009-10, and \$91,800 GPR in 2010-11, in funding for these reimbursement expenses.

The *substitute amendment* provides that any municipality that incurs postage costs for mailing and return of absentee ballots, for electors who request that absentee ballots be mailed to them for each election on an automatic basis, may file a claim with GAB for reimbursement of those costs. [These reimbursements are in addition to current law reimbursements to municipalities.] The claim must be accompanied by appropriate substantiation of all postage costs incurred. GAB must audit the claim and, if GAB finds that the costs have been incurred by the municipality and the costs would not have been incurred but for the provision of the bill and substitute amendment permitting electors to automatically request absentee ballots for all subsequent elections, GAB must reimburse the municipality for those postal costs. No claim is payable unless the claim is filed with GAB, together with appropriate substantiation, within 60 days following the date of the election at which the costs were incurred. The GPR-supported election-related cost reimbursement biennial appropriation is amended to authorize funding under that appropriation to be utilized for these reimbursement expenditures. The substitute amendment does not provide additional funding to the appropriation.

The *bill* does not contain provisions regarding reimbursement for postage costs.

Hardship Waiver Request

The *bill* requires that GAB legal counsel, prior to the 2010 September primary, apply on behalf of this state to the federal government for a determination that this state is unable to meet the requirement under the Military and Overseas Voter Empowerment Act (MOVE) with respect to transmittal of absentee ballots to military and overseas electors at the 2010 September primary and general election. The application must include a description of this state's efforts to enable delivery of absentee ballots to military and overseas electors as expeditiously as possible. If the waiver is not granted, GAB legal counsel must promptly report the response to the appropriate standing committees of the Legislature.

The *substitute amendment* does not contain this provision.

Report to Legislature on Implementation of MOVE

The *bill* requires that GAB, no later than January 1, 2011, report to the appropriate standing committees of the Legislature concerning the *timeline used by this state for the absentee voting process and the feasibility of making adjustments to enable compliance with the timelines* prescribed in MOVE.

The *substitute amendment* requires that GAB, no later than January 1, 2011, report to the appropriate standing committees of the Legislature concerning *GAB's recommended method for compliance by this state with the timeline for absentee voting* prescribed in MOVE.

CHALLENGING ELECTORS

The *bill* provides that 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. A challenging elector must provide proof of residence and swear or affirm that he or she is an elector of the same ward or election district as the challenged elector.

The *substitute amendment* provides that a challenging elector must be an elector of the same county as the challenged elector and, if the challenged elector is an elector of a 1st class city, the challenging elector must be an elector of the same aldermanic district as the challenged elector. If the challenging elector is a district attorney, the district attorney must be an elector of the prosecutorial district in which he or she serves. A challenging elector must provide proof of residence and swear or affirm that he or she is an elector of the same county, aldermanic district, or prosecutorial district, whichever is applicable.

Senate Amendment 1 to Senate Substitute Amendment 1 removes the provision in the substitute amendment affecting 1st class cities, thus requiring that a challenging elector in a 1st class city be an elector of the same county as the challenged elector.

PRIVATE CAUSE OF ACTION

The *bill* provides that any elector of this state may 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 certain provisions. This private cause of action applies to the voter's bill of rights created by the bill, which provides that every qualified elector has the right to:

1. Inspect a sample ballot before voting.
2. Cast a ballot if he or she is in line when his or her polling place closes.
3. Ask for and receive assistance in voting.
4. Receive a replacement ballot, up to three ballots in all, if he or she spoils a ballot before casting that ballot.
5. Cast a provisional ballot whenever permitted.
6. Vote free from coercion or intimidation by any election official or other person.
7. Cast a ballot using voting materials or equipment that enables the elector's ballots to be counted accurately.

The private cause of action must be filed in circuit court for the county where the violation occurs or is proposed to occur. In such actions, the court must award costs and reasonable attorney fees to the elector if the elector prevails in the action.

The *substitute amendment* provides that the private cause of action does not apply for purposes of the seventh item in the voter's bill of rights.

NOTICES IN NON-ENGLISH LANGUAGE

The *bill* and *substitute amendment* provide that in any jurisdiction that is subject to the federal law requirement to provide voting materials in a language other than English, GAB must, for each such language, ensure that certain notices are given in that language. If a *municipal clerk or executive*

director of a board of election commissioners fails to ensure compliance with this provision, the violator may be required to forfeit not more than \$500 for each violation.

Senate Amendment 3 to Senate Substitute Amendment 1 provides that if *GAB* or any *municipality* fails to ensure compliance with the notice provision at any election, the violator may be required to forfeit not more than \$500 for each violation.

RESIDENCY OF ELECTION OFFICIALS

Under *current law*, an election official serving at a polling place generally must be an elector of the ward or election district served by the polling place.

The *substitute amendment* requires that an election official be an elector of the county, or one of the counties, in which the municipality served by the polling place is located. A special voting deputy must be an elector of the county, or one of the counties, in which the municipality served by the deputy is located. A pupil who is 16 or 17 years of age and who is enrolled in grades 9 to 12 in a public or private school may serve as an election official at a polling place serving any municipality located wholly or partly within the county within which the pupil resides.

The *bill* does not contain provisions relating to residency of election officials.

REGISTRATION AND VOTING STATISTICS

Current law provides that the municipal clerk or board of election commissioners must report certain information to the county clerk or board of election commissioners of each county in which the municipality is located, including the total number of electors of the municipality residing in that county who were preregistered on the registration deadline.

The *substitute amendment* provides that the clerk or board must also report the total number of electors of the municipality residing in that county who confirmed their registrations on the registration deadline and must report valid electronic registrations.

REPORT ON POSTAL EXPENSES

The *substitute amendment* requires that GAB, no later than March 1, 2011, report to the appropriate standing committees of the Legislature concerning methods whereby this state may be able to meet requirements for mailing and return of absentee ballots in a manner that will most effectively take advantage of potential savings that may be available to this state under applicable postal regulations.

The *bill* does not contain this provision.

RELATING CLAUSE

The *bill* provides the following relating clause: various changes in election laws, granting rule-making authority, and providing penalties.

The *substitute amendment* provides the following relating clause: voter registration; transfer of voter registration information to certain state and private entities; absentee voting; residency of election officials; testing of automatic tabulating equipment; use of powers of attorney by electors; deceptive election practices; voter intimidation, suppression, and protection; election information provided to electors at polling places; prosecution of civil prohibited election practice offenses; challenging the ballots of electors at polling places; proof of residence for registration and voting purposes; public access to certain information voluntarily provided by electors; review of certain expenditures of GAB by the Joint Committee on Finance; granting rule-making authority; providing penalties; and making an appropriation.

ENCUMBRANCE OR EXPENDITURE OF FUNDING FOR BILL IMPLEMENTATION

The *substitute amendment* provides that GAB is prohibited from encumbering or expending any amount of money to implement or administer the bill's provisions unless GAB legal counsel first notifies the Co-Chairs of the Joint Committee on Finance in writing of the proposed encumbrance or expenditure. If the Co-Chairs do not notify GAB legal counsel that the Joint Committee has scheduled a meeting for the purpose of reviewing the proposed encumbrance or expenditure within 14 working days after the date of the legal counsel's notification, GAB may encumber or expend the money as proposed. If, within 14 working days after the date of the legal counsel's notification, the Co-Chairs notify GAB legal counsel that the Joint Committee has scheduled a meeting for the purpose of reviewing the proposed encumbrance or expenditure, GAB is prohibited from making the proposed encumbrance or expenditure unless the Joint Committee approves, or modifies and approves, the proposed encumbrance or expenditure. If the Joint Committee modifies and approves the proposed encumbrance and expenditure, GAB may make the proposed encumbrance or expenditure only as modified by the Joint Committee. This 14-day passive review process expires after June 30, 2011.

The *bill* does not include a 14-day passive review for GAB encumbrances or expenditures for bill implementation.

REQUIRED GENERAL FUND BALANCE

Under *current law*, no bill directly or indirectly affecting GPR may be enacted by the Legislature if the bill would cause the estimated general fund balance to be an amount equal to or less than the required closing balance for the fiscal year.

The *substitute amendment* exempts the bill from this statutory requirement.

The *bill* does not include a notwithstanding clause relative to this statutory requirement.

SUPPLEMENTAL FUNDING FOR GAB AND DOT

In order to implement the provisions of the bill, the *substitute amendment* provides that: (a) the GPR-funded general program operations biennial appropriation for GAB be increased by \$0 for each year of the 2009-11 biennium; and (b) the SEG-funded departmental management and operations, state funds annual appropriation for DOT be increased by \$0 for each year of the 2009-11 biennium. As drafted, this provision provides no additional funding to these agency appropriations.

The *bill* does not include these supplemental funding provisions. However, these provisions are included in 2009 Senate Bill 645 and 2009 Assembly Bill 892, which provide for electronic voter registration. The provisions of these latter bills have been included in the substitute amendment.

LEGISLATIVE HISTORY

Senate Substitute Amendment 1 was offered by Senator Coggs. Senate Amendments 1, 2, 3, and 4 to Senate Substitute Amendment 1 were offered by the Joint Committee on Finance. On April 7, 2010, the Joint Committee recommended adoption of the amendments and substitute amendment, as amended, and recommended passage of Senate Bill 640, as amended, on the following votes:

- Senate Amendment 1 to Senate Substitute Amendment 1: Ayes, 9; Noes, 5.
- Senate Amendment 2 to Senate Substitute Amendment 1: Ayes, 14; Noes, 0.
- Senate Amendment 3 to Senate Substitute Amendment 1: Ayes, 14; Noes, 0.
- Senate Amendment 4 to Senate Substitute Amendment 1: Ayes, 10; Noes, 4.
- Senate Substitute Amendment 1, as amended: Ayes, 10; Noes, 4.
- Senate Bill 640, as amended: Ayes, 10; Noes, 4.

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