



WISCONSIN LEGISLATIVE COUNCIL ACT MEMO

2011 Wisconsin Act 75
[2011 Senate Bill 116]

**September Primary, Absentee
Voting, and Other Election
Occurrences (MOVE Act Changes)**

SEPTEMBER PRIMARY

Date of September Primary

Under *prior law*, the September primary was held on the second Tuesday in September to nominate candidates to be voted for at the general election.

2011 Wisconsin Act 75 renames the “September primary” as the “partisan primary” and changes the date of the primary to the *second Tuesday in August*. Further, the Act modifies several dates in state election laws to accommodate the change in the primary date.

Circulation of Nomination Papers

Under *prior law*, nomination papers could be circulated no sooner than June 1 preceding the general election and could be filed no later than 5 p.m. on the 2nd Tuesday of July preceding the September primary.

Under **Act 75**, nomination papers may be circulated no sooner than *April 15* preceding the general election and may be filed no later than 5 p.m. on *June 1* preceding the partisan primary.

DISTRIBUTION OF BALLOTS TO MUNICIPAL CLERKS

Prior law required that county clerks distribute ballots to municipal clerks no later than 31 days before each September primary and general election.

Act 75 requires that county clerks distribute ballots to municipal clerks no later than *48 days* before each partisan primary and general election.

This memo provides a brief description of the Act. For more detailed information, consult the text of the law and related legislative documents at the Legislature’s Web site at: <http://www.legis.state.wi.us/>.

DISTRIBUTION OF ABSENTEE BALLOTS TO ELECTORS

Prior law required that municipal clerks send an official absentee ballot to each elector who requested a ballot no later than the 30th day before each September primary and general election.

Act 75 requires that municipal clerks send an official absentee ballot to each elector who has requested a ballot no later than the 47th day before each partisan primary and general election.

ABSENTEE BALLOT APPLICATION SIGNATURE

An absent elector may make written application to the municipal clerk for an official ballot by means of facsimile transmission or electronic mail. Under *prior law*, the application had to contain a copy of the applicant's original signature. An elector requesting a ballot had to return with the voted ballot a copy of the request bearing an original signature of the elector.

Act 75 removes the requirement that the application contain a copy of the applicant's original signature.

DEADLINE FOR ABSENTEE BALLOT APPLICATIONS BY MILITARY ELECTORS

Under *prior law*, if a military elector, as defined in s. 6.34 (1) (a), Stats., made a written application for an absentee ballot at the September primary or general election, the application had to be received by the municipal clerk no later than 5 p.m. on election day.

Act 75 applies this provision to the presidential preference primary and any special election for national office as well as the September primary and general election.

ELECTRONIC TRANSMISSION OF BALLOTS

Under *prior law*, a municipal clerk had to transmit a facsimile or electronic copy of the ballot to an absent elector in lieu of mailing the ballot, 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.

Act 75 limits the provision to military electors, as defined in s. 6.34 (1) (a), Stats., and overseas electors, as defined in s. 6.34 (1) (b), Stats. This means that a municipal clerk is only required to transmit an absentee ballot electronically to a military or overseas voter, rather than to any absent elector.

AUTOMATIC ABSENTEE BALLOTS

Military Electors

Prior law allowed a military elector, as defined in s. 6.22 (1) (b), Stats., to receive absentee ballots for all elections that occurred in the municipality or portion thereof where the elector resided beginning on the date that the clerk received an absentee ballot request.

Act 75 allows a military elector to receive absentee ballots for all elections that occur in the municipality or portion thereof where the elector resides in the *same calendar year* in which the request is received, unless the elector otherwise requests.

In addition, *prior law* provided that, when making a request for an absentee ballot, a military elector, as defined in s. 6.34 (1) (a), Stats., could request that he or she be sent an absentee ballot for the next two general elections. Prior law also provided that if a military elector, as defined in s. 6.34 (1) (a), Stats., certified that he or she would be a military elector on election day and requested an absentee ballot, the municipal clerk had to send or transmit to the elector an absentee ballot for all elections that occurred in the municipality or portion thereof where the elector resided beginning on the date that the clerk received the request and ending on the day after the third successive general election that followed receipt of the request, unless the elector otherwise requested. The clerk had to 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 followed any election at which the elector returned an absentee ballot or renewed his or her request. If three successive general elections occurred at which a military elector, as defined in s. 6.34 (1) (a), Stats., failed to return an absentee ballot and the elector had not cast an absentee ballot at any intervening election, if the clerk was reliably informed that the elector was no longer a military elector or no longer resided in the municipality, or if the elector so requested, the clerk had to discontinue sending or transmitting absentee ballots to the elector.

Act 75 repeals these provisions relating to automatic absentee ballots for military electors.

Overseas Electors

Under *prior law*, upon receipt of a timely application from an overseas elector, as defined in s. 6.24 (1), Stats., who registered to vote in a municipality, the municipal clerk of the municipality had to send an absentee ballot to the elector for all subsequent elections for national office to be held during the year in which the ballot was requested, unless the elector otherwise requested or until the individual no longer qualified as an overseas elector. In addition, prior law provided that, when making a request for an absentee ballot, an overseas elector, as defined in s. 6.34 (1) (b), Stats., could request that he or she be sent an absentee ballot for the next two general elections.

Act 75 provides that the clerk may not send an absentee ballot for an election if the name of the overseas elector, as defined in s. 6.24 (1), Stats., appeared on the registration list in eligible status for a previous election following the date of the application but no longer appears on the list in eligible status. The clerk must ensure that any envelope containing the absentee ballot is clearly marked as not forwardable. If an overseas elector, as defined in s. 6.24 (1), Stats., who files an application no longer resides at the same address that is indicated on the application form, the elector must so notify the clerk.

In addition, *Act 75* repeals the current law provision relating to absentee ballot requests for two general elections.

ELECTRONIC COMMUNICATION SYSTEM

Act 75 requires that GAB maintain a freely accessible system under which a military elector, as defined in s. 6.34 (1) (a), Stats., or an overseas elector, as defined in s. 6.34 (1) (b), Stats., who casts an absentee ballot may ascertain whether the ballot has been received by the appropriate municipal clerk. In addition, GAB must designate and maintain at least one freely accessible means of electronic communication to be used for the following purposes:

- To permit a military elector, as defined in s. 6.34 (1) (a), Stats., or an overseas elector, as defined in s. 6.34 (1) (b), Stats., to request a voter registration application or an application for an absentee ballot at any election at which the elector is qualified to vote in this state.

- To permit a military elector, as defined in s. 6.34 (1) (a), Stats., or an overseas elector, as defined in s. 6.34 (1) (b), Stats., to designate whether the elector wishes to receive the applications, described above, electronically or by mail.
- To permit a municipal clerk to transmit to a military elector, as defined in s. 6.34 (1) (a), Stats., or an overseas elector, as defined in s. 6.34 (1) (b), Stats., a registration application or absentee ballot application electronically or by mail, as directed by the elector, together with related voting, balloting, and election information.

WRITE-IN ABSENTEE BALLOTS

Federal Write-In Absentee Ballots

Under *prior law*, a military elector, as defined in s. 6.22 (1) (b), Stats., or an overseas elector, as defined in s. 6.24 (1), Stats., who transmitted an application for an official absentee ballot for a general election no later than 30 days before election day could, in lieu of the official ballot, cast a federal write-in absentee ballot (FWAB) for any candidate or for all candidates of any recognized political party for national office listed on the official ballot at the general election.

Act 75 expands the prior law provision, as it applies to military electors, as defined in s. 6.22 (1) (b), Stats., to an application for an official absentee ballot for any election, including a primary election, and requires that an application be received by the municipal clerk by the deadline for absentee ballot applications for military electors.

In addition, *Act 75* modifies the prior law provision, as it applies to overseas electors, as defined in s. 6.24 (1), Stats., so that it only applies to an application for an official absentee ballot for an election for national office, including a primary election, and requires that an application be received by the municipal clerk by the deadline for absentee ballot applications for overseas electors.

Further, *Act 75* provides that a completed and signed FWAB serves as an application for an absentee ballot and need not be accompanied by a separate application.

State Write-In Absentee Ballots

Under *prior law*, a military elector, as defined in s. 6.22 (1) (b), Stats., or overseas elector, as defined in s. 6.24 (1), Stats., could cast a state write-in absentee ballot (SWAB).

Act 75 discontinues the use of the SWAB.

Validity

Prior law provided that a FWAB or SWAB was valid only if all of the following apply: (1) the ballot was submitted from a location outside the United States; and (2) the elector submitting the FWAB or SWAB did not submit an official ballot.

Act 75, instead, provides that a FWAB is valid only if the elector submitting the ballot does not submit an official ballot and, if the elector is an overseas elector, the elector resides outside the United States.

LATE COUNTING OF ABSENTEE BALLOTS

Under *prior law*, an absentee ballot that was cast at the September primary by a military elector, as defined in s. 6.34 (1) (a), Stats., that was received by mail from the U.S. Postal Service and postmarked no later than election day had to be counted if it was received by a municipal clerk no later than 5 p.m. on the 7th day after the election. Further, an absentee ballot that was cast at the general election by a military elector that was received by mail from the U.S. Postal Service and postmarked no later than election day had to be counted if it was received by the clerk no later than 5 p.m. on the 10th day after the election.

Act 75 extends late counting to *any absentee elector* at any election and provides that an absentee ballot that is received by mail from the U.S. Postal Service and is postmarked no later than election day must be counted if it is received by the clerk no later than 4 p.m. on the *Friday after the election*.

MILITARY ELECTOR LIST

A municipal clerk must keep a list, by wards, of all eligible military electors, as defined in s. 6.22 (1) (b), Stats., who reside in the municipality. Under *prior law*, each clerk had to distribute two copies of the list to the appropriate ward for use on election day.

Act 75 requires that a municipal clerk keep the military elector list in the format prescribed by GAB and that the clerk distribute one copy of the list to each polling place for use on election day.

INSTRUCTIONS

Prior law required GAB to prescribe uniform instructions for absentee voters.

Act 75 requires that the uniform instructions for absentee voters include the specific means of electronic communication that an absentee elector may use to file an application for an absentee ballot and, if the absentee elector is required to register, to request a registration form or change his or her registration.

ELECTION NOTICES

GAB Notices

Prior law required that GAB send a Type A notice to each county clerk on or before the 2nd Tuesday in May preceding a September primary and general election.

Act 75 requires that GAB send a Type A notice to each county clerk on or before the 3rd Tuesday in March preceding a partisan primary and general election.

In addition, *prior law* required that GAB send a Type B notice to each county clerk certifying the list of candidates for the September primary as soon as possible after the deadline for determining ballot arrangement for the September primary on the 3rd Tuesday in July.

Act 75 requires that GAB send a Type B notice to each county clerk certifying the list of candidates for the partisan primary as soon as possible after the deadline for determining ballot arrangement for the partisan primary on *June 10*.

County Clerk Notices

Prior law required a county clerk to send notice of the coming September primary and general election to municipal clerks on the last Tuesday in May.

Act 75 requires a county clerk to send notice of the coming partisan primary and general election to municipal clerks on the *first Tuesday in April*.

Prior law required that a county clerk publish a Type A notice based on the notice received from GAB for all national and state offices to be filled at the election by any electors voting in the county and incorporating county offices on the last Tuesday in May preceding a September primary and general election.

Act 75 requires that a county clerk publish a Type A notice based on the notice received from GAB for all national and state offices to be filled at the election by any electors voting in the county and incorporating county offices on the *second Tuesday in April* preceding a partisan primary and general election.

POLLING PLACES

Under *prior law*, polling places had to be established for each September primary and general election at least 60 days before the election, and at least 30 days before each other election. In addition, no later than 60 days before each September primary and general election, and no later than 30 days before each other election, the governing body of any municipality could by resolution combine two or more wards for voting purposes to facilitate using a common polling place.

Act 75 provides that polling places must be established for each election at least 30 days before the election. In addition, the Act provides that no later than 30 days before each election, the governing body of any municipality may by resolution combine two or more wards for voting purposes to facilitate using a common polling place.

SPECIAL ELECTIONS

Certified List of Candidates

Prior law provided that when a special election concerned a national or state office, GAB had to transmit to each county clerk at least 22 days before the special primary a certified list of all persons for whom nomination papers were filed in its office. If no primary was required, the list had to be transmitted at least 42 days prior to the day of the election.

Act 75 provides that when a special election concerns a national office, or a special election for state office is held concurrently with the general election, GAB must transmit to each county clerk a certified list of all persons for whom nomination papers have been filed in its office at least 62 days before the special primary. In other cases, GAB must transmit the list to each county clerk at least 22 days before the special primary. Further, the Act provides that if no primary is required, the list must be transmitted at least 42 days prior to the day of the special election, unless the special election concerns a national office, or is held concurrently with the general election, in which case the list must be transmitted at least 62 days prior to the day of the special election.

Date of Special Elections

Under *prior law*, the date for a special election had to be not less than 62 nor more than 77 days from the date of the order of special election except when the special election was held on the day of the general election or spring election. If a special election was held concurrently with the spring or general election, the special election could be ordered not earlier than 92 days prior to the spring primary or September primary and not later than 49 days prior to that primary.

Act 75 provides that if a special election is held concurrently with the general election or a special election is held to fill a national office, the special election may be ordered not earlier than 122 days prior to the partisan primary or special primary and not later than 92 days prior to that primary.

Nomination Papers

Under *prior law*, nomination papers for a special election had to be filed no later than 35 days prior to the date of the spring primary or September primary when a special election was held concurrently with the spring election or general election.

Act 75 provides that nomination papers for a special election must be filed no later than *June 1* preceding the partisan primary when a special election is held concurrently with a general election.

Special Elections for U.S. Senator or Representative

Under *prior law*, a vacancy in the Office of U.S. Senator or Representative occurring prior to the 2nd Tuesday in May in the year of the general election had to be filled at a special primary and election. A vacancy in those offices occurring between the 2nd Tuesday in May and the 2nd Tuesday in July in the year of the general election had to be filled at the September primary and general election.

Act 75 provides that a vacancy in the Office of U.S. Senator or Representative occurring prior to the 2nd Tuesday in April in the year of the general election must be filled at a special primary and election. A vacancy in those offices occurring between the 2nd Tuesday in April and the 2nd Tuesday in May in the year of the general election must be filled at the partisan primary and general election.

REFERENDA

Under *prior law*, all proposed constitutional amendments and any other measure or question that were to be submitted to a vote of the people, or any petitions requesting that a measure or question be submitted to a vote of the people, if applicable, had to be filed with the official or agency responsible for preparing the ballots for the election no later than 42 days prior to the election at which the amendment, measure, or question appeared on the ballot.

Act 75 requires that the amendment, measure, or question be filed with the official or agency responsible for preparing the ballots for the election no later than *70 days* prior to the election.

REDISTRICTING

Under *prior law*, as created by 2011 Wisconsin Act 39, if the Legislature, in an act redistricting legislative or congressional districts, established a district boundary within a municipality that did not coincide with the boundary of a ward established under the ordinance or resolution of the municipality, the municipal governing body had to, no later than May 15 of the 2nd year following the year of the

federal census on which the act is based, amend the ordinance or resolution to the extent required to effect the act.

Act 75 changes the deadline of May 15 of the 2nd year following the year of the federal census to *April 10* of the 2nd year following the year of the federal census.

DUPLICATE IDENTIFICATION CARDS

Under *prior law*, as created by 2011 Wisconsin Act 23, an elector could obtain a free state identification card, issued by the Department of Transportation, if the elector was eligible to obtain an identification card and if the elector was a U.S. citizen who would be at least 18 years of age on the date of the next election and the elector requested that the card be provided without charge for purposes of voting. This provision applied to the initial issuance, renewal, or reinstatement of an identification card.

Act 75 provides that there is no fee for a *duplicate* state identification card if the requirements in prior law, described above, are satisfied.

Effective date: Act 75 generally takes effect on December 2, 2011, but the Act contains specific effective dates for some provisions.

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