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## WISCONSIN LEGISLATIVE COUNCIL AMENDMENT MEMO

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**2011 Assembly Bill 161**

**Assembly Substitute  
Amendment 1, As Amended**

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*Contact:* Jessica Karls-Ruplinger, Senior Staff Attorney (266-2230)  
Katie Bender-Olson, Staff Attorney (266-2988)

This memorandum describes Assembly Substitute Amendment 1, as amended by Assembly Amendment 1 to Assembly Substitute Amendment 1, to 2011 Assembly Bill 161, relating to the dates of the September primary and certain other election occurrences and absentee voting.

### SEPTEMBER PRIMARY

#### Date of September Primary

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

*Assembly Bill 161* renames the “September primary” as the “partisan primary” and changes the date of the primary to the *second Tuesday in August*. Further, the bill modifies several dates in state election laws to accommodate the change in the primary date.

*Assembly Substitute Amendment 1* also renames the “September primary” as the “partisan primary” and changes the date of the primary to the *second Tuesday in August*. Further, the substitute amendment modifies several dates in state election laws to accommodate the change in the primary date.

#### Circulation of Nomination Papers

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

Under *Assembly Bill 161*, nomination papers may be circulated no sooner than *May 1* preceding the general election and may be filed no later than 5 p.m. on the 2<sup>nd</sup> Tuesday of June preceding the partisan primary.

Under *Assembly Substitute Amendment 1*, 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**

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

*Assembly Bill 161* retains current law relating to the deadline for distribution of ballots to municipal clerks.

*Assembly Substitute Amendment 1* requires that county clerks distribute ballots to municipal clerks no later than *48 days* before each partisan primary and general election.

### **DISTRIBUTION OF ABSENTEE BALLOTS TO ELECTORS**

*Current law* requires that municipal clerks send an official absentee ballot to each elector who has requested a ballot no later than the 30<sup>th</sup> day before each September primary and general election.

*Assembly Bill 161* retains current law relating to the timeline for the distribution of absentee ballots to electors.

*Assembly Substitute Amendment 1* requires that municipal clerks send an official absentee ballot to each elector who has requested a ballot no later than the *47<sup>th</sup> day* before each partisan primary and general election.

### **ABSENTEE BALLOT APPLICATION SIGNATURE**

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

*Assembly Bill 161* removes the requirement that the application contain a copy of the applicant's original signature.

*Assembly Substitute Amendment 1* also removes the requirement that the application contain a copy of the applicant's original signature.

### **DEADLINE FOR ABSENTEE BALLOT APPLICATIONS BY MILITARY ELECTORS**

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

*Assembly Bill 161* applies this provision to the presidential preference primary and any special election for national office.

*Assembly Substitute Amendment 1* also applies this provision to the presidential preference primary and any special election for national office.

### **ELECTRONIC TRANSMISSION OF BALLOTS**

Under *2011 Wisconsin Act 23*, which took effect on June 10, 2011, a municipal clerk must transmit a facsimile or electronic copy of the ballot to an absent elector in lieu of mailing the ballot, if the clerk is reliably informed by an absent elector of a facsimile transmission number or electronic mail address where the elector can receive an absentee ballot.

*Assembly Bill 161* retains the Act 23 provision relating to transmission of absentee ballots. Further, the bill provides that a military elector, as defined in s. 6.22 (1) (b), Stats., or an overseas elector, as defined in s. 6.24 (1), Stats., may file an application for an absentee ballot by means of electronic mail or facsimile transmission. Upon receipt of a valid application, the municipal clerk must send the elector an absentee ballot or, if the elector so requests, must transmit an absentee ballot to the elector by means of electronic mail or facsimile transmission.

*Assembly Substitute Amendment 1* limits the Act 23 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 will only be required to transmit an absentee ballot electronically to a military or overseas voter, rather than to any absent elector, and that the narrower definitions of “military elector” and “overseas elector” will apply.

*Assembly Amendment 1 to Assembly Substitute Amendment 1* provides that a municipal clerk *may*, if the clerk is reliably informed by an absent elector of a facsimile transmission number or electronic mail address where the elector can receive an absentee ballot, transmit a facsimile or electronic copy of the absent elector's ballot to that elector in lieu of mailing if, in the judgment of the clerk, the time required to send the ballot through the mail may not be sufficient to enable return of the ballot. [This provision existed prior to Act 23.] However, the amendment *requires* that a municipal clerk transmit a facsimile or electronic copy of an absentee ballot to a military elector, as defined in s. 6.34 (1) (a), Stats., or overseas elector, as defined in s. 6.34 (1) (b), Stats., if the clerk is reliably informed by the elector of a facsimile transmission number or electronic mail address where the elector can receive an absentee ballot.

### **AUTOMATIC ABSENTEE BALLOTS**

#### **Military Electors**

*Current law* allows a military elector, as defined in s. 6.22 (1) (b), Stats., to receive absentee ballots for all elections that occur in the municipality or portion thereof where the elector resides beginning on the date that the clerk receives an absentee ballot request.

*Assembly Bill 161* retains this current law provision relating to automatic absentee ballots for military electors.

*Assembly Substitute Amendment 1* 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, *current law* provides that, when making a request for an absentee ballot, a military elector, as defined in s. 6.34 (1) (a), Stats., may request that he or she be sent an absentee ballot for the next two general elections. Current law also provides that if a military elector, as defined in s. 6.34 (1) (a), Stats., certifies that he or she will be a military elector on election day and 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. The 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 or renews his or her request. If there occur three successive general elections at which a military elector, as defined in s. 6.34 (1) (a), Stats., fails to return an absentee ballot 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.

*Assembly Bill 161* repeals these current law provisions relating to automatic absentee ballots for military electors.

*Assembly Substitute Amendment 1* also repeals these current law provisions relating to automatic absentee ballots for military electors.

### *Overseas Electors*

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

*Assembly Bill 161* provides that the clerk may not send or transmit 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, *Assembly Bill 161* repeals the current law provision relating to absentee ballot requests for two general elections.

*Assembly Substitute Amendment 1* contains the same provisions relating to automatic absentee ballots for overseas electors as Assembly Bill 161.

### **ELECTRONIC COMMUNICATION SYSTEM**

*Assembly Bill 161* requires that the Government Accountability Board (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.

*Assembly Substitute Amendment 1* contains the same provisions relating to an electronic communication system as Assembly Bill 161.

### **WRITE-IN ABSENTEE BALLOTS**

#### **Federal Write-In Absentee Ballots**

Under *current 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 transmits an application for an official absentee ballot for a general election no later than 30 days before election day may, 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.

*Assembly Bill 161* expands the current 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, *Assembly Bill 161* modifies the current 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.

*Assembly Substitute Amendment 1* contains the same provisions relating to the FWAB as Assembly Bill 161. The substitute amendment also 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 *current law*, a military elector, as defined in s. 6.22 (1) (b), Stats., or overseas elector, as defined in s. 6.24 (1), Stats., may cast a state write-in absentee ballot (SWAB).

*Assembly Bill 161* retains current law relating to the use of the SWAB by military and overseas electors.

*Assembly Substitute Amendment 1* discontinues the use of the SWAB.

### **Validity**

*Current law* provides that a FWAB or SWAB is valid only if all of the following apply: (1) the ballot is submitted from a location outside the United States; and (2) the elector submitting the FWAB or SWAB does not submit an official ballot.

*Assembly Bill 161*, instead, provides that a FWAB or SWAB 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.

*Assembly Substitute Amendment 1* contains the same provision relating to the validity of a FWAB as Assembly Bill 161.

### **LATE COUNTING OF ABSENTEE BALLOTS**

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

*Assembly Bill 161* extends this 10-day late counting provision to the presidential preference primary and any special election for national office.

*Assembly Substitute Amendment 1* extends late counting to *any absentee elector*, 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**

Under *current law*, 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. Each clerk must distribute two copies of the list to the appropriate ward for use on election day.

*Assembly Bill 161* 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.

*Assembly Substitute Amendment 1* contains the same provision relating to the military elector list as Assembly Bill 161.

### **INSTRUCTIONS**

*Current law* requires GAB to prescribe uniform instructions for absentee voters.

*Assembly Bill 161* 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.

*Assembly Substitute Amendment 1* contains the same provision relating to uniform instructions as Assembly Bill 161.

### **ELECTION NOTICES**

*Current law* requires 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 3<sup>rd</sup> Tuesday in July.

*Assembly Bill 161* 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 the 3<sup>rd</sup> Tuesday in *June*.

*Assembly Substitute Amendment 1* 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*.

### **POLLING PLACES**

Under *current law*, polling places must 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 may by resolution combine two or more wards for voting purposes to facilitate using a common polling place.

*Assembly Bill 161* retains current law relating to polling places.

*Assembly Substitute Amendment 1* provides that polling places must be established for each election at least 30 days before the election. In addition, the substitute amendment 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**

*Current law* provides that when a special election concerns a national or state office, GAB must transmit to each county clerk at least 22 days before the special primary a certified list of all persons for whom nomination papers have been filed in its office. If no primary is required, the list must be transmitted at least 42 days prior to the day of the election.

*Assembly Bill 161* retains current law relating to the certified list of candidates in special elections.

*Assembly Substitute Amendment 1* 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 substitute amendment 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 *current law*, the date for a special election must be not less than 62 nor more than 77 days from the date of the order of special election except when the special election is held on the day of the general election or spring election. If a special election is held concurrently with the spring or general election, the special election may 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.

*Assembly Bill 161* retains current law relating to the date of special elections.

*Assembly Substitute Amendment 1* 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 *current law*, nomination papers for a special election must be filed no later than 35 days prior to the date of the spring primary or September primary when a special election is held concurrently with the spring election or general election.



*Assembly Bill 161* retains current law relating to nomination papers for special elections.

*Assembly Substitute Amendment 1* 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 *current law*, a vacancy in the Office of U.S. Senator or Representative occurring prior to the 2<sup>nd</sup> Tuesday in May in the year of the general election must be filled at a special primary and election. A vacancy in that office occurring between the 2<sup>nd</sup> Tuesday in May and the 2<sup>nd</sup> Tuesday in July in the year of the general election must be filled at the September primary and general election.

*Assembly Bill 161* provides that a vacancy in the Office of U.S. Senator or Representative occurring prior to the 2<sup>nd</sup> Tuesday in April in the year of the general election must be filled at a special primary and election. A vacancy in that office occurring between the 2<sup>nd</sup> Tuesday in April and the 2<sup>nd</sup> Tuesday in June in the year of the general election must be filled at the partisan primary and general election.

*Assembly Substitute Amendment 1* provides that a vacancy in the Office of U.S. Senator or Representative occurring prior to the 2<sup>nd</sup> Tuesday in April in the year of the general election must be filled at a special primary and election. A vacancy in that office occurring between the 2<sup>nd</sup> Tuesday in April and the 2<sup>nd</sup> Tuesday in May in the year of the general election must be filled at the partisan primary and general election.

### **REFERENDA**

Under *current law*, all proposed constitutional amendments and any other measure or question that is 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, shall 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 will appear on the ballot.

*Assembly Bill 161* retains current law relating to the filing of referenda.

*Assembly Substitute Amendment 1* 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.

### **LEGISLATIVE HISTORY**

Assembly Substitute Amendment 1 and Assembly Amendment 1 to Assembly Substitute Amendment 1 were offered by the Assembly Committee on Election and Campaign Reform. On June 10, 2011, the committee recommended adoption of the amendment and substitute amendment, as amended, on votes of Ayes, 8; Noes, 0, and recommended passage of Assembly Bill 161, as amended, on a vote of Ayes, 7; Noes, 1.