



**WISCONSIN LEGISLATIVE COUNCIL
AMENDMENT MEMO**

2011 Senate Bill 116

**Assembly Substitute
Amendment 1**

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2011 Senate Bill 116 makes changes to current election laws largely relating to requirements of the federal Military and Overseas Voter Empowerment Act, typically referred to as the “MOVE Act.” Specifically, the bill relates to the date of the September Primary, absentee voting, and certain other election occurrences. The Senate adopted Senate Substitute Amendment 1 to Senate Bill 116 on June 8, 2011. The Senate passed the bill, as amended, on the same date. This memorandum summarizes the key provisions of Senate Bill 116, as amended by the substitute amendment, and passed by the Senate. In addition, where applicable, this memorandum describes the changes made to Senate Bill 116 by Assembly Substitute Amendment 1.

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.

Senate Bill 116 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 further changes the following dates that were modified by Senate Bill 116 to accommodate the change in the primary date:

- The substitute amendment provides that the deadline for an organization listed as “independent” at the last general election to petition the Government Accountability Board (GAB) for a separate ballot is April 1 in the year of the general election. [Senate Bill 116 provides a deadline of May 1 in the year of the general election. Under current law, the deadline is June 1 in the year of the general election.]

- The substitute amendment provides that the deadline by which a political organization may file a petition, signed by a specified number of electors, with GAB requesting separate ballot status is April 1 in the year of the partisan primary. [Senate Bill 116 provides a deadline of May 1 in the year of the partisan primary. Under current law, the deadline is June 1 in the year of the September primary.]
- The substitute amendment provides that the deadline for determining the election districts from which a political party elects a committeeman or committeewoman is April 15 of the year in which committeemen or committeewomen are elected. [Senate Bill 116 provides a deadline of May 1 of the year in which committeemen or committeewomen are elected. Under current law, the deadline is June 1 of the year in which committeemen or committeewomen are elected.]
- The substitute amendment provides that a vacancy in the office of municipal judge that occurs before April 15 in the year preceding expiration of the term of office may be filled by special election on the Tuesday after the first Monday in November following the date of the order of special election. [Senate Bill 116 applies this provision to a vacancy that occurs before May 1 in the year preceding expiration of the term of office. Current law applies this provision to a vacancy that occurs before June 1 in the year preceding expiration of the term of office.]

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 2nd Tuesday of July preceding the September primary.

Under *Senate Bill 116*, 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.

Senate Bill 116 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 30th day before each September primary and general election.

Senate Bill 116 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

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.

Senate Bill 116 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.

Senate Bill 116 applies this provision to the presidential preference primary and any special election for national office.

ELECTRONIC TRANSMISSION OF BALLOTS

Under *current law*, 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.

Senate Bill 116 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 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.

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.

Senate Bill 116 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.

Senate Bill 116 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.

Senate Bill 116 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, *Senate Bill 116* repeals the current law provision relating to absentee ballot requests for two general elections.

ELECTRONIC COMMUNICATION SYSTEM

Senate Bill 116 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 *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.

Senate Bill 116 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, *Senate Bill 116* 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.

Further, *Senate Bill 116* 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).

Senate Bill 116 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.

Senate Bill 116, 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 *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 7th 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 10th day after the election.

Senate Bill 116 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

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.

Senate Bill 116 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

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

Senate Bill 116 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

Current law requires 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.

Senate Bill 116 requires that GAB send a Type A notice to each county clerk on or before the 2nd Tuesday in April preceding a partisan primary and general election.

Assembly Substitute Amendment 1 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, *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 *3rd Tuesday in July*.

Senate Bill 116 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

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

Senate Bill 116 requires a county clerk to send notice of the coming partisan primary and general election to municipal clerks on the last Tuesday in *April*.

Assembly Substitute Amendment 1 requires a county clerk to send notice of the coming partisan primary and general election to municipal clerks on the *first Tuesday in April*.

Current law 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 last Tuesday in May preceding a September primary and general election.

Senate Bill 116 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 *last Tuesday in April* preceding a partisan primary and general election.

Assembly Substitute Amendment 1 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 *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.

Senate Bill 116 provides that polling places must be established for each election at least 30 days before the election. In addition, the bill 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.

Senate Bill 116 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 bill 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.

Senate Bill 116 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.

Senate Bill 116 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 2nd 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 2nd Tuesday in May and the 2nd Tuesday in July in the year of the general election must be filled at the September primary and general election.

Senate Bill 116 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 that office 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 *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.

Senate Bill 116 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 *current law*, as created by 2011 Wisconsin Act 39, if the Legislature, in an act redistricting legislative or congressional districts, establishes a district boundary within a municipality that does not coincide with the boundary of a ward established under the ordinance or resolution of the municipality, the municipal governing body must, 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.

Senate Bill 116 does not modify this provision relating to redistricting.

Assembly Substitute Amendment 1 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 *current law*, as created by 2011 Wisconsin Act 23, an elector may obtain a free state identification card, issued by the Department of Transportation, if the elector is eligible to obtain an identification card and if the elector is a U.S. citizen who will be at least 18 years of age on the date of the next election and the elector requests that the card be provided without charge for purposes of voting. This provision applies to the initial issuance, renewal, or reinstatement of an identification card.

Senate Bill 116 does not modify this provision relating to free state identification cards.

Assembly Substitute Amendment 1 provides that there is no fee for a *duplicate* state identification card if the requirements in current law, described above, are satisfied.

2011 WISCONSIN ACTS 32 AND 45

Assembly Substitute Amendment 1 also makes nonsubstantive changes to several provisions in Senate Bill 116 to reflect changes made to the text of those provisions by 2011 Wisconsin Acts 32 and 45.

LEGISLATIVE HISTORY

Assembly Substitute Amendment 1 was offered by Representative Tauchen. On October 25, 2011, the Assembly adopted the substitute amendment. On November 1, 2011, the Assembly concurred in Senate Bill 116, as amended, on a vote of Ayes, 67; Noes, 28; Paired, 2.

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