
Wisconsin Legislative Council

AMENDMENT MEMO



Memo published: June 17, 2021

Contact: Peggy Hurley, Staff Attorney

2021 Assembly Bill 201

**Assembly Substitute
Amendment 1**

2021 ASSEMBLY BILL 201

Assembly Bill 201 makes various changes relating to requesting and receiving absentee ballots. The bill requires nearly all absentee voters to request an absentee ballot prior to each election, and eliminates the exemption to providing proof of identification for voting (“Voter ID”) for indefinitely confined voters, overseas voters, and absentee voters who previously provided a copy of Voter ID.

The bill also prohibits the Wisconsin Elections Commission (WEC) and municipal clerks from sending unsolicited absentee applications or ballots to voters, requires WEC to create a standardized absentee ballot application form separate and distinct from the absentee certificate, prohibits clerks from pre-printing initials on absentee ballots, and requires WEC to maintain an electronic version of a voter’s registration application in PDF that includes the voter’s electronic signature. Finally, Assembly Bill 201 requires clerks to post hourly updates after canvassing of absentee ballots begins showing the number of absentee ballots that were mailed to voters, the number that were returned, and the number remaining to be counted.

ASSEMBLY SUBSTITUTE AMENDMENT 1

Assembly Substitute Amendment 1 also makes changes relating to indefinitely confined voting status, receiving absentee ballots automatically for elections, the requirement to provide Voter ID before receiving a ballot, applications for absentee ballots, hourly absentee ballot updates on election night, pre-printing of a municipal clerk’s initials on an absentee ballot, and electronic signatures on electronic voter registration forms.

Indefinitely Confined Voting

Current law allows absentee voters who are indefinitely confined because of age, physical illness, or infirmity, or who are disabled for an indefinite period, to receive an absentee ballot automatically for every election, unlike other absentee voters who may only request absentee ballots for elections occurring during the calendar year in which the request was submitted. In addition, indefinitely confined voters are not required to provide Voter ID. Instead, an indefinitely confined voter may submit a statement from the absentee ballot witness verifying the voter’s name and address.

The substitute amendment makes the following changes relating to indefinitely confined voting status:

- **Automatic Absentee Ballots Only for Calendar Year.** Under the substitute amendment, an indefinitely confined voter may only request that absentee ballots be sent automatically for every election held within that same calendar year, rather than for an indefinite period.
- **Change to Voter ID Exemption for Indefinitely Confined Voters.** Under the substitute amendment, any indefinitely confined voter who possesses Voter ID and is applying to receive absentee ballots

must submit a copy of the Voter ID with the application. A voter submitting an electronic application may have his or her driver's license or State ID card verified using the Department of Motor Vehicles (DMV) system, rather than submitting a copy of his or her Voter ID. An indefinitely confined voter who does not possess Voter ID must submit a sworn written statement from a witness (who is 18 years of age and a U.S. citizen) affirming the voter's identity.

- Removal of Names Added March-November 2020. The substitute amendment requires the WEC to remove the names of every voter applying for indefinitely confined voting status between March 12, 2020 and November 3, 2020. A voter whose name is removed must reapply for automatic receipt of absentee ballots as an indefinitely confined voter before receiving an absentee ballot.
- New Elections Fraud Crimes. The substitute amendment makes it a Class I felony to engage in any of the following: (1) making false statements to qualify as an indefinitely confined voter; (2) intentionally providing a witness statement in lieu of Voter ID when applying for indefinitely confined voting status, if the voter possesses the ID; and (3) falsely affirming an indefinitely confined voter's identity on a statement submitted by the indefinitely confined voter in lieu of Voter ID.

Automatic Absentee Ballots Received During a Calendar Year

Current law allows an absentee voter who is not indefinitely confined to apply to receive absentee ballots sent automatically for every election occurring during that calendar year. The substitute amendment makes the following changes relating to automatic absentee ballots:

- Automatic Ballots Only for Primary and Associated Election. Under the substitute amendment, an absentee voter may only request that a clerk send absentee ballots automatically to the voter for a primary and its associated election, rather than for every election occurring during that calendar year. A voter must, for example, apply separately for ballots related to the Spring Election and those for the General Election.
- No General Election Ballot if Voter Fails to Return Primary Ballot. Under the substitute amendment, if a voter fails to return the primary ballot, then the clerk may not mail an absentee ballot to the voter for the associated election.

Requiring Voter ID With Each Absentee Ballot Request

Current law requires an absentee voter to provide Voter ID with the voter's absentee ballot application. However, current law includes an exemption for a voter who previously received an absentee ballot by mail and submitted a copy of Voter ID, if the voter has not changed his or her name or address since submitting that copy.

The substitute amendment repeals the exemption for absentee voters who previously provided a copy of Voter ID. Under the amendment, an absentee voter will need to provide a copy of Voter ID each time he or she applies for an absentee ballot, which under the substitute amendment, a voter must do for each primary and associated election.

Unsolicited Absentee Ballot Applications and Ballots

Current law prohibits a municipal clerk from issuing an absentee ballot to a voter unless the clerk receives a written application. However, current law does not prohibit or regulate the ability of a governmental or private entity to send applications for absentee ballots to voters. The substitute amendment makes the following changes:

- Prohibition on WEC or Clerks Sending Unsolicited Absentee Applications. The substitute amendment prohibits municipal clerks, county clerks, and the WEC from sending or transmitting an absentee ballot application to a voter unless the voter requests the application.
- Prohibition on Regulated Committees Using Non-Clerk Return Addresses. The substitute amendment prohibits any “committee” regulated under ch. 11, Stats., *Campaign Financing*, from sending an absentee ballot application to a voter that uses a return address other than the municipal clerk in the municipality where a voter is registered.
- New Felony Crime. The substitute amendment provides that a clerk commits a Class I felony if he or she issues an absentee ballot without receiving a completed WEC absentee application form.

Separate Absentee Ballot Application

Current law generally requires a voter to submit a written application for an absentee ballot before a clerk may issue an absentee ballot, but does not prescribe the form of the application.

The substitute amendment requires WEC to prescribe the absentee ballot application form and instructions, which must be separate and distinct from the absentee ballot certificate envelope. The bill also specifies that the application must include certain information, such as the voter’s name, date of birth, street address, municipality, county, and whether the voter is a military, overseas, or hospitalized voter. The absentee application must include the voter’s original written signature, or if voter applies electronically, must include an electronic signature or copy of the voter’s original written signature.

Hourly Absentee Ballot Updates on Election Night

Current law does not require clerks to post information regarding the canvassing of absentee ballots on election night, unless the municipality uses central count procedures for canvassing its absentee ballots. A municipality that adopts central count procedures must post a statement at the close of polls at 8:00 p.m., that includes the following information: (1) the number of absentee ballots the clerk mailed or transmitted to voters; and (2) the number of absentee ballots that have been returned by the close of polls. The information must be posted at the clerk’s office and on a website announced by the clerk prior to the opening of the polls.

The substitute amendment requires that, beginning at 9:00 p.m. on Election Day, the clerk must post a statement showing the following information about absentee ballots at least every hour while absentee ballots are being canvassed: (1) the number of absentee ballots the clerk mailed or transmitted to voters; (2) the number of absentee ballots that have been returned to the clerk; and (3) the number of absentee ballots that have been counted. This information must be posted at the clerk’s office and on a website announced by the clerk prior to canvassing.

No Preprinted Clerk Initials on Absentee Ballots

Current law requires a clerk to write his or her initials on each absentee ballot that is provided to a voter. The substitute amendment provides that the clerk’s initials cannot be preprinted or stamped on an absentee ballot.

Electronic Voter Registration

Current law allows an individual to register to vote electronically via a WEC online registration form, if the individual has a current and valid Wisconsin driver’s license or State ID card. To use the online registration system, an individual must authorize WEC to obtain an electronic copy of the individual’s

signature from the DMV to affirm the information the individual entered into the registration application.

The substitute amendment requires WEC to maintain a version of the completed registration application completed electronically that contains the individual's electronic signature.

BILL HISTORY

Assembly Substitute Amendment 1 was introduced on June 11, 2021, by Representatives Gundrum and Duchow. On June 16, 2021, the Assembly Committee on Campaigns and Elections recommended adoption of the substitute amendment on a vote of Ayes, 6; Noes, 3; and passage of the bill, as amended, on a vote of Ayes, 6; Noes, 3.

PJH:ksm