



## WISCONSIN LEGISLATIVE COUNCIL INFORMATION MEMORANDUM

### **Voting at a Polling Place or by Absentee Ballot**

Under Wisconsin law, a voter may cast a ballot at a polling place on Election Day or by absentee ballot prior to Election Day. Any voter who, for any reason, is unable or unwilling to appear at a polling place may vote by absentee ballot. This Information Memorandum explains the procedures for voting: (1) at a polling place on Election Day, including requirements relating to polling places, recording voters, proof of identification, and the mechanics of voting at a polling place; and (2) by absentee ballot prior to Election Day, including requirements relating to requesting, issuing, and recording absentee ballots and the mechanics of voting by absentee ballot.

#### **VOTING AT A POLLING PLACE**

##### ***POLLING PLACE REQUIREMENTS***

Wisconsin law requires polling places to be public buildings, unless the use of a public building for this purpose is impractical or the use of a nonpublic building better serves the needs of the electorate. In the City of Milwaukee, the board of election commissioners establishes polling places. In all other cities, villages, and towns, the governing body establishes polling places. Polling places must be established at least 30 days before an election. [s. 5.25 (1) to (3), Stats.]

A polling place must be equipped with one voting booth for every 200 voters who voted at the last general election. All voting booths and machines must be placed apart from other activities in the polling place and their exteriors must be in full view of election officials. Other statutory requirements for polling places relate to the provision of voting materials in languages other than English; accessibility for voters with disabilities; number and condition of ballot boxes; display of the national flag; restrictions on activities at polling places; and posting requirements for voting instructions and information regarding election fraud. [ss. 5.25 (4) and 5.35, Stats.]

A voter may vote only at the polling place for the voter's residence designated by the municipal governing body or board of election commissioners. All voters within a ward generally must vote at the same polling place. The voters of more than one ward in the same municipality may vote at a single polling place. [ss. 5.25 (5) and 6.77 (1), Stats.]

The polls at every election are open from 7:00 a.m. until 8:00 p.m. Any voter waiting to vote, whether within the polling booth or in the line outside the booth at the time the polls officially close, must be allowed to vote. Any person entitled to vote at an election is entitled to be absent

from work while the polls are open for a period not to exceed three successive hours to vote. [ss. 6.76 and 6.78, Stats.]

### ***RECORDING VOTERS***

Under Wisconsin law, a municipal clerk may elect to maintain the information on the poll list manually or electronically. If the clerk maintains the list electronically, an election official at each election ward must be in charge of and maintain the poll list. If the clerk maintains the information manually, two election officials at each election ward must be in charge of and maintain two separate poll lists. [s. 6.79 (1m), Stats.]

Each voter, before receiving a serial number, must state his or her full name and address and present to the election officials proof of identification, as described below.<sup>1</sup> The official must verify that the name on the proof of identification conforms to the name on the poll list and that any photograph appearing on that document reasonably resembles the voter. The officials must then require the voter to enter his or her signature on the poll list unless the voter is exempt from the signature requirement because of the voter's physical disability. The officials must verify that the name and address stated by the voter conform to the voter's name and address on the poll list. [s. 6.79 (2) (a), Stats.]

On the poll list, after the name of each voter, the officials enter a serial number for the voter in the order that votes are cast, beginning with number one. The officials must then provide the voter with a slip containing that serial number. [s. 6.79 (2) (b) and (e), Stats.]

### ***PROOF OF IDENTIFICATION***

Wisconsin law generally requires a voter to present proof of identification, commonly referred to as "voter ID," when voting in an election.<sup>2</sup> The requirement applies to both voting at a polling place and voting by absentee ballot, as described below.

To satisfy the requirement to provide proof of identification, a voter must present one of the following documents: (1) Wisconsin driver's license; (2) Wisconsin identification card; (3) military identification card; (4) veterans identification card; (5) U.S. passport; (6) certificate of U.S. naturalization; (7) driving or identification card receipt; (8) tribal identification card; or (9) university or college identification card. Each type of document must satisfy certain requirements for that document to be used as proof of identification. For example, a Wisconsin driver's license or identification card must be unexpired or, if expired, must have expired after

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<sup>1</sup> A voter may also be required to provide proof of residence if the voter did not provide proof of residence when registering to vote. [s. 6.79 (2) (d), Stats.] For additional information about proof of residence, see Legislative Council Information Memorandum IM-2018-09, *Voter Registration* (July 27, 2018).

<sup>2</sup> State law provides exemptions from the requirement to provide proof of identification for certain voters, including military voters; overseas voters; absentee voters who provided a copy of proof of identification at a previous election; voters who have a confidential listing because of domestic abuse, sexual assault, or stalking; voters who are indefinitely confined because of age, physical illness, or infirmity or who are disabled for an indefinite period; voters in residential care facilities and certain retirement homes; and voters who surrendered a Wisconsin driver's license. [ss. 6.79, 6.87, and 6.875, Stats.]

the date of the most recent general election. In addition, each document generally must contain a photograph of the voter and a name that conforms to the name appearing on the voter's registration form. [s. 5.02 (6m) and (16c), Stats.]

If a voter fails to present proof of identification, the voter votes by provisional ballot. A provisional ballot is only counted if the voter provides proof of identification at the polling place before the polls close or to the municipal clerk or, in the City of Milwaukee, to the board of election commissioners by 4:00 p.m. on the Friday after the election. [s. 6.97, Stats.]

### ***MECHANICS OF VOTING***

Under Wisconsin law, upon receiving a ballot and without leaving the polling place, a voter must enter an unoccupied voting booth or machine alone to cast a vote. However, a voter who is a parent or guardian may be accompanied by the voter's minor child or ward and a voter who qualifies for assistance may be accompanied by an assistant.<sup>3</sup> A voter may use or copy an unofficial sample ballot that is marked in advance of entering the polling place, but a voter may not use or bring into the polling place any ballot printed on the type of paper used for official ballots. [s. 6.80 (1) and (2) (a), Stats.]

A voter who, by accident or mistake, spoils or erroneously marks a ballot may receive another ballot, by returning the defective ballot, but not to exceed three ballots in all. If a voter receives a ballot that is not initialed by two election officials, or is defective in any other way, the voter must return it to the officials. If the initials are missing, the officials must supply the missing initials. If the ballot is defective, they must destroy it and issue another ballot to the voter. [s. 6.80 (2) (c) and (d), Stats.]

Each voter is allowed a reasonable time to vote. After marking a ballot, a voter must publicly and in person deposit the ballot into the ballot box or deliver it to an election official, who deposits the ballot into the ballot box. [s. 6.80 (2) (e) and (3), Stats.]

### **ABSENTEE VOTING**

Under Wisconsin law, any voter who, for any reason, is unable or unwilling to appear at a polling place on Election Day may vote by absentee ballot. In addition, any otherwise qualified voter who changes residence within the state by moving to a different ward or municipality later than 10 days<sup>4</sup> prior to an election may vote by absentee ballot in the ward or municipality where he or she was qualified to vote before moving. [s. 6.85, Stats.]

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<sup>3</sup> If an election official is informed that a voter is unable to enter the polling place as a result of a disability or that a voter cannot read or write, or has difficulty in reading, writing, or understanding English, or that due to disability is unable to mark a ballot or depress a button or lever on a voting machine, the official must permit the voter to be assisted in casting the ballot by an individual selected by the voter. The assistant may not be the voter's employer or the employer's agent or an officer or agent of a labor organization that represents the voter. [s. 6.82, Stats.]

<sup>4</sup> As of the date of publication of this Information Memorandum, the residency requirement is 10 days prior to an election, pursuant to a 2016 decision of the U.S. District Court for the Western District of Wisconsin. For additional information, see Legislative Council Information Memorandum IM-2018-07, *Voter Qualifications and Residence* (July 27, 2018). See also footnotes 8 and 10.

### ***REQUESTING ABSENTEE BALLOTS***

Wisconsin law requires a voter who wishes to vote by absentee ballot to submit a request to the municipal clerk for an absentee ballot by one of the following methods:

- By mail.
- In person at the office of the municipal clerk or at an alternate absentee ballot site, if applicable.
- By signing a statement and filing a request to receive absentee ballots automatically for every election.<sup>5</sup>
- By agent if the voter is hospitalized.
- By delivering an application to a special voting deputy if the voter is a resident of a residential care facility or retirement home.<sup>6</sup>
- By electronic mail (email) or facsimile transmission (fax).<sup>7</sup>

[s. 6.86 (1), Stats.]

A voter must enclose a copy of his or her proof of identification, described above, with the request for an absentee ballot or, if the request is made in person, must present proof of identification to the municipal clerk, unless the voter is exempt from the requirement to provide proof of identification. [ss. 6.86 (1) (ar) and 6.87 (1), Stats.]

If a voter requests an absentee ballot by mail, the request must generally be received by the municipal clerk no later than 5 p.m. on the fifth day immediately preceding the election. If a voter requests an absentee ballot in person at the clerk's office, the request must be made prior to the Monday preceding the election.<sup>8</sup> In addition, state law contains specific deadlines for

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<sup>5</sup> A voter who is indefinitely confined because of age, physical illness, or infirmity or is disabled for an indefinite period may receive absentee ballots automatically for every election. Any voter, including a military or overseas voter, may receive absentee ballots automatically for every election held **in the same year** as the request is made. [ss. 6.22 (4), 6.24 (4), and 6.86 (2) and (2m) (a), Stats.]

<sup>6</sup> The procedure for absentee voting in residential care facilities and retirement homes is governed by s. 6.875, Stats.

<sup>7</sup> A voter who applies for an absentee ballot by email or fax must return with the voted ballot a copy of the request bearing an original signature of the voter. [s. 6.86 (1) (ac), Stats.]

<sup>8</sup> As of the date of publication of this Information Memorandum, in-person absentee voting is available prior to the Monday preceding an election. State statutes provide that in-person absentee voting is available no earlier than the third Monday preceding the election and no later than the Friday preceding the election (excluding legal holidays) and only on Monday to Friday between the hours of 8:00 a.m. and 7:00 p.m. each day. However, in 2016, the U.S. District Court for the Western District of Wisconsin held that the limitations on in-person absentee voting, other than a prohibition on voting on the Monday preceding an election, are unconstitutional under the First, Fourteenth, and Fifteenth Amendments to the U.S. Constitution and Section 2 of the federal Voting Rights Act. [*One Wisconsin Institute, Inc., v. Thomsen*, case 15-CV-324 (W.D. Wis. July 29, 2016).] The decision was appealed to the U.S. Court of Appeals for the Seventh Circuit, but the Seventh Circuit has not yet issued its decision.

military voters, sequestered jurors, hospitalized voters, and voters who apply for automatic absentee ballots. [s. 6.86 (1) (b) and (c) and (3) (c), Stats.]

***ISSUING ABSENTEE BALLOTS***

Under Wisconsin law, when a municipal clerk receives a request for an absentee ballot, the clerk or deputy clerk must write on the ballot, in the space for official endorsement, the clerk's initials and official title. In addition, the clerk must verify that the name on the proof of identification provided by the voter conforms to the name on the request for an absentee ballot and, if the request is made in person, that the photograph on the proof of identification reasonably resembles the voter. The clerk may not issue an absentee ballot until the voter provides proof of identification, unless exempted, and the clerk verifies that identification. [ss. 6.86 (1) (ar) and 6.87 (1), Stats.]

Next, the municipal clerk must place the ballot in an unsealed envelope, which has a printed certificate on it. The certificate must be in the following form:

[STATE OF ....

County of ....]

or

[(name of foreign country and city or other jurisdictional unit)]

I, ....., certify subject to the penalties of s. 12.60 (1) (b), Wis. Stats., for false statements, that I am a resident of the [... ward of the] (town) (village) of ....., or of the .... aldermanic district in the city of ....., residing at ....\* in said city, the county of ....., state of Wisconsin, and am entitled to vote in the (ward) (election district) at the election to be held on ....; that I am not voting at any other location in this election; that I am unable or unwilling to appear at the polling place in the (ward) (election district) on election day or have changed my residence within the state from one ward or election district to another later than 28 days<sup>9</sup> before the election. I certify that I exhibited the enclosed ballot unmarked to the witness, that I then in (his) (her) presence and in the presence of no other person marked the ballot and enclosed and sealed the same in this envelope in such a manner that no one but myself and any person rendering assistance under s. 6.87 (5), Wis. Stats., if I requested assistance, could know how I voted.

Signed ....

Identification serial number, if any: ....

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<sup>9</sup> See footnote 4.

The witness shall execute the following:

I, the undersigned witness, subject to the penalties of s. 12.60 (1) (b), Wis. Stats., for false statements, certify that I am an adult U.S. citizen and that the above statements are true and the voting procedure was executed as there stated. I am not a candidate for any office on the enclosed ballot (except in the case of an incumbent municipal clerk). I did not solicit or advise the elector to vote for or against any candidate or measure.

....(Name)

....(Address)\*\*

\* — An elector who provides an identification serial number issued under s. 6.47 (3), Wis. Stats., need not provide a street address.

\*\* — If this form is executed before 2 special voting deputies under s. 6.875 (6), Wis. Stats., both deputies shall witness and sign.

[s. 6.87 (2), Stats. (footnote added)]

In addition, the other side of the envelope must have a printed certificate that includes a space for the clerk or deputy clerk to enter his or her initials indicating that, if the voter requested an absentee ballot in person, the voter presented proof of identification and the clerk verified the identification. The certificate must also include a space for the clerk or deputy clerk to enter his or her initials to indicate if a voter is exempt from providing proof of identification. [s. 6.87 (2), Stats.]

A municipal clerk must mail the absentee ballot to the voter's residence, unless otherwise directed by the voter, or must deliver it to the voter personally at the clerk's office or at an alternate absentee ballot site. If the ballot is delivered to the voter at the clerk's office, or an alternate absentee ballot site, the voter must mark the ballot at the office or alternate site and may not remove the ballot from the office or site. Alternatively, a clerk may transmit an absentee ballot by email or fax to the voter in lieu of mailing it.<sup>10</sup> [s. 6.87 (3) (a) and (d), Stats.]

Generally, a municipal clerk must send or transmit an absentee ballot within one business day of the time the voter's request for such a ballot is received. [s. 7.15 (1) (cm), Stats.]

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<sup>10</sup> As of the date of publication of this Information Memorandum, a clerk may transmit an absentee ballot by email or fax to any absentee voter. State statutes provide that this option is only available for military and overseas voters. However, in its *One Wisconsin Institute* decision, described in earlier footnotes, the U.S. District Court for the Western District of Wisconsin held that the prohibition on transmitting absentee ballots by email or fax to voters who are not military or overseas voters is unconstitutional under the First and Fourteenth Amendments to the U.S. Constitution.

### ***MECHANICS OF ABSENTEE VOTING***

Wisconsin law requires voters who vote by absentee ballot to follow specific procedures in voting and submitting the ballot. In the presence of a witness who is an adult U.S. citizen, the voter must mark the ballot; fold the ballot and deposit it into the ballot envelope; and make and subscribe to the certificate, described above. If a voter receives assistance, the assistant must sign his or her name to a certification on the back of the ballot.<sup>11</sup> [s. 6.87 (4) (b) 1. and (5), Stats]

The voter must mail, or deliver in person, the envelope to the municipal clerk who issued the ballot. The ballot must be returned so it is delivered to the polling place no later than 8:00 p.m. on Election Day. A voter who mails or personally delivers an absentee ballot to the clerk at an election is not permitted to vote in person at the same election on Election Day. [ss. 6.86 (6) and 6.87 (4) (b) 1. and (6), Stats.]

### ***RECORDING ABSENTEE BALLOTS***

Under Wisconsin law, when an absentee ballot arrives at the office of the municipal clerk or alternate absentee ballot site, the clerk must enclose it, unopened, in a carrier envelope that is securely sealed and endorsed with the name and official title of the clerk. [s. 6.88 (1) and (2), Stats.]

If a voter mails or personally delivers an absentee ballot to the municipal clerk, the clerk generally may not return the ballot to the voter. However, if a voter returns a spoiled or damaged absentee ballot to the clerk and the clerk believes that the ballot was issued to the voter who is returning it, the clerk must issue a new ballot to the voter and destroy the spoiled or damaged ballot, if the request is made within a specified time period. In addition, if a clerk receives an absentee ballot with an improperly completed certificate or with no certificate, the clerk may return the ballot to the voter, inside the sealed envelope when an envelope is received, together with a new envelope if necessary, whenever time permits the voter to correct the defect and return the ballot no later than 8:00 p.m. on Election Day. [ss. 6.86 (5) and (6) and 6.87 (9), Stats.]

On Election Day, absentee ballots are delivered to polling places before the polls close or to the municipal board of absentee ballot canvassers, if a municipality has adopted this canvassing procedure by ordinance. [ss. 6.88 (1) and (2) and 7.52, Stats.]

At any time between the opening and closing of the polls on Election Day, election officials must, in the same room where votes are being cast, open the carrier envelope and announce the name of each absent elector in such a manner that members of the public can hear and see this procedure. If the officials find that the absentee ballot certificate has been properly executed, the voter is a qualified voter, and the voter has not previously voted in the election, they enter a notation on the poll list next to the voter's name indicating that the voter has cast an absentee

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<sup>11</sup> If a voter is unable to read, has difficulty in reading, writing, or understanding English, or due to disability is unable to mark a ballot, the voter may select an individual to assist in marking the ballot. The assistant may not be the voter's employer or the employer's agent or an officer or agent of a labor organization that represents the voter. [s. 6.87 (5), Stats.]

ballot. The officials then open the envelope containing the ballot; take out the ballot without unfolding or examining it; verify that the ballot has been endorsed by the issuing clerk; deposit the ballot into the proper ballot box; and enter the voter's name and voting number after his or her name on the poll list in the same manner as if the voter had been present and voted in person. [s. 6.88 (3) (a), Stats.]

If an absentee ballot is rejected for any of the statutorily prescribed reasons for rejection, election officials may not count the ballot and must endorse on the back of the ballot "rejected" and state the reason for rejection. The officials must reinsert each rejected ballot into the certificate envelope in which it was delivered and securely seal the ballots and envelopes in an envelope marked for rejected absentee ballots. Rejected absentee ballots are returned to the municipal clerk. [s. 6.88 (3) (b), Stats.]

This memorandum is not a policy statement of the Joint Legislative Council or its staff.

This memorandum was prepared by Jessica Karls-Ruplinger, Deputy Director, on July 27, 2018.

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**WISCONSIN LEGISLATIVE COUNCIL**  
One East Main Street, Suite 401 • Madison, WI 53703-3382  
Telephone: (608) 266-1304 • Fax: (608) 266-3830  
Email: [leg.council@legis.wisconsin.gov](mailto:leg.council@legis.wisconsin.gov)  
<http://www.legis.wisconsin.gov/lc>