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wisconsin voter requirements

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Wisconsin Voter Requirements

Introduction

Article III of the Wisconsin Constitution creates a right for residents to vote, provided that certain eligibility requirements are satisfied. Under 2011 Act 23, changes were made to Wisconsin voter requirements related to voter identification and election administration.

This informational paper discusses the requirements to vote under Wisconsin law, in particular the photo identification requirement and residency requirements. This paper also provides information regarding funds provided to the state's election agency to implement the provisions of Act 23. In addition, this paper summarizes subsequent legislative changes, court decisions that have affected enforcement of voter identification requirements, and related court orders in effect (as of December 1, 2020).

Right to Vote Under the Wisconsin Constitution

Article III of the Wisconsin Constitution creates a right for residents to vote provided that the person: (a) is a U.S. citizen; (b) is age 18 or older; (c) is a resident of a Wisconsin election district as residency is defined under implementing legislation; and (d) is not denied the right to vote on the grounds of a felony conviction or incompetency or partial incompetency as determined by a court. It also specifies that all votes be by secret ballot.

Article III also authorizes the Legislature to adopt laws implementing the right to vote under

Article III by: (a) defining residency; (b) providing for registration of electors; (c) providing for absentee voting; (d) denying convicted felons the right to vote, unless restored to civil rights; (e) denying individuals adjudged to be incompetent or partially incompetent the right to vote unless the judgment specifies that the person is capable of understanding the objective of the elective process or the judgment is set aside; and (f) extending the right to vote to additional classes of individuals, subject to statewide ratification.

General Voter Eligibility Requirements

Under Wisconsin statute, an individual is generally eligible to vote in Wisconsin (is an "eligible elector") if he or she: (a) is a U.S. citizen; (b) is 18 years of age or older; and (c) has resided in the election district or ward in which he or she desires to vote for 28 consecutive days before the election.

An otherwise eligible elector who moves within or to Wisconsin less than 28 days before an election must generally vote in his or her previous election district or ward. If a person is otherwise qualified to vote in Wisconsin except for meeting the 28 day residency requirement prior to a presidential election, the individual may vote for the offices of President and Vice President, but no other office.

Under Wisconsin statute, an individual may not vote if the person: (a) is incapable of understanding the objectives of the election process; (b) is under guardianship pursuant to the order of a court (unless the court has determined that the individual is competent to exercise the right to vote); (c) was convicted of treason, felony or bribery and has not had his or her civil rights restored through

pardon or completion of his or her sentence; or (d) has made or become interested, directly or indirectly, in any bet or wager depending upon the result of the election. No person may be denied the right to vote on grounds that the individual is incapable of understanding the objectives of the election process unless the person has been adjudicated incompetent in Wisconsin.

Under Wisconsin law, "military elector" means any of the following (including spouses and dependents who reside with or accompany the following): (a) members of a uniformed service; (b) members of the U.S. merchant marine; (c) civilian employees of the U.S. and civilians officially attached to a uniformed service who are serving outside the U.S.; and (d) Peace Corps volunteers. A military elector generally retains the right to vote in the ward or election district in which he or she last resided before becoming a military elector.

Further, an "overseas elector" may vote in any election for national office, but may not vote in an election for state or local office unless the elector qualifies as a resident of Wisconsin under s. 6.10 of the statutes (as could be the case for electors overseas temporarily). An overseas elector must vote in the ward or election district in which the elector, or the elector's parent, was last domiciled prior to departure from the United States. An "overseas elector" is an individual who: (a) is a U.S. citizen who is not disqualified from voting under Wisconsin law; (b) is at least 18 years old; (c) was last domiciled in Wisconsin, or whose parent was last domiciled in Wisconsin immediately prior to the parent's departure from the United States; and (d) is not registered to vote or voting in any other state, territory, or possession.

General Voter Registration

An individual must register before being allowed to vote in any election (with limited exceptions for new residents voting in a

presidential election, military electors, and former residents). Municipal clerks must collect a registration form with the following information from each applicant: (a) name; (b) date; (c) current residence; (d) immediate prior residence; (e) citizenship; (f) date of birth; (g) age; (h) the number of a valid Department of Transportation (DOT) driver's license issued to the individual or the last four digits of the individual's Social Security number; (i) whether the individual has resided within the ward or election district for at least 28 days before the election; (j) whether the individual is disqualified from voting as a result of a felony conviction or for any other reason; and (k) whether the individual is currently registered to vote at any other location.

The registration form must also include: (a) the applicant's signature; (b) a space for the election official to sign; (c) any applicable ward and aldermanic district where the elector resides and any other information required to determine the offices and referenda for which the individual is certified to vote; (d) a space for the municipal clerk to record the type of document submitted as proof of residence, the name of the issuing entity or institution, and a specified number of digits of any individually identifying number associated with the document; (e) a space for the clerk to record whether the form was received by mail; and (f) a space for the clerk to record the identifying serial number on voting identification cards issued to victims of domestic abuse, sexual assault, or stalking to preserve their confidential voter listings.

Registration in person for any election closes at 5 p.m. on the third Wednesday preceding the election (with exceptions for late registrations in person, registrations at the polling place on election day, and registrations by hospitalized electors). Registrations made by mail must be delivered to the office of the municipal clerk or post-marked no later than the third Wednesday preceding the election. Electronic registration, discussed in a subsequent section, closes at 11:59 p.m. on the third Wednesday before the election.

Proof of Residence

Proof of residence is required when registering to vote. The election official must record the type of document submitted as proof of residence, the name of the entity or institution that issued the document, and a specified number of digits of any identifying number associated with the document for the individual.

Acceptable proof of residence includes: (a) a driver's license issued by DOT; (b) a DOT identification card; (c) any other official identification card or license issued by a Wisconsin governmental entity; (d) any other official identification card or license issued by an employer in the normal course of business (other than a business card) that contains a photograph of the cardholder or license holder; (e) a bank statement; (f) a paycheck; (g) a check or other document issued by a unit of government; (h) a real estate bill or receipt for the current or preceding year; (i) a current residential lease; (j) a utility bill covering service for not earlier than 90 days before registration; or (k) a contract or intake document prepared by a residential care facility that specifies that an occupant currently resides in the facility. Any such document must include a current and complete name and residential address.

Prior to 2011 Act 23, a university, college, or technical college fee payment receipt or identification card that contained a photograph of the cardholder was acceptable proof of residence if it included a current and complete name and residential address. Alternatively, if the fee receipt or card did not include both the current and complete name and residential address of the student, it would nonetheless be considered proof of residence if the institution that issued the card provided a certified and current list of students who resided in its housing to the municipal clerk prior to the election showing the current address of the students and if an election official verified

that the student presenting the card was on the list.

Under Act 23, a university, college, or technical college identification card represents acceptable proof of residence if it contains a photograph of the cardholder and is accompanied by a fee payment receipt issued to the cardholder by the university, college, or technical college dated no earlier than nine months before the election.

For students who live in university, college, or technical college housing, the requirement for a fee receipt can be avoided if the educational institution provides a certified and current list of students in its housing who are U.S. citizens to the municipal clerk prior to the election showing the current address of the students and the election official verifies that the student presenting the card is on the list. To satisfy the proof of residence requirement, the student would still need to present an identification card issued by the university, college, or technical college that contained a photograph. [Note that the state is permanently enjoined from enforcing the requirement that citizenship information be included with the list of students in accordance with a June, 2020, federal court decision, discussed in a subsequent section on recent court decisions.]

When an individual registers to vote, he or she must attest to U.S. citizenship. A false attestation of U.S. citizenship, or falsification of any other information, when registering to vote is punishable as a Class I felony (a fine not to exceed \$10,000; imprisonment not to exceed three years and six months; or both).

Prior to Act 23, if an individual could not provide acceptable proof of residence documentation, an individual could still satisfy the proof of residence requirement by having his or her residence corroborated in a certified statement signed by another elector of the municipality, which contained the current street address of the corroborating elector. The corroborating elector was required to provide acceptable proof of residence as

outlined above. Act 23 eliminated this alternative procedure for an individual to establish residency.

Proof of Identification

Generally. The provisions of 2011 Act 23 created a proof of identification requirement for electors voting at the polling place or by absentee ballot (subject to limited exceptions).

Under state statute, acceptable proof of identification includes: (a) a driver's license issued by DOT (unexpired or expired after the most recent general election); (b) an unexpired driving receipt issued by DOT; (c) an identification card issued by DOT (unexpired or expired after the most recent general election); (d) an unexpired identification card receipt issued by DOT; (e) an identification card issued by a U.S. uniformed service (unexpired or expired after the most recent general election); (f) a U.S. passport (unexpired or expired after the most recent general election); (g) a certificate of U.S. naturalization that was issued not earlier than two years before the election at which it is presented; (h) an identification card issued by a federally recognized Indian tribe in Wisconsin; (i) an identification card issued by an accredited university, college, or technical college in Wisconsin that contains the date of issuance and signature of the student, containing an expiration date no later than two years after issuance, if the student establishes that he or she is currently enrolled (although statute specifies the card must be unexpired, a June, 2020, federal court order invalidated this requirement, as discussed in the section on recent court decisions); and (j) an unexpired veterans identification card issued by the federal Department of Veterans Affairs.

"Proof of identification" must include the individual's name, which must conform to the name on the voter registration form, if the individual is required to register to vote, and a photograph

of the individual (unless a DOT driver's license or identification card is issued without a photograph due to a sincerely held religious belief against being photographed).

Exceptions. Under Act 23, the following exceptions to the requirement that electors present proof of identification to vote were created:

1. A military elector is not required to provide proof of identification when voting absentee.

2. An overseas elector is not required to provide proof of identification when voting absentee, if the elector does not qualify as a resident of Wisconsin.

3. A victim of domestic abuse, sexual assault, or stalking with a confidential listing may present his or her confidential identification card, or give his or her name and confidential identification serial number, in lieu of presenting proof of identification.

4. If an absentee elector has received an absentee ballot from the municipal clerk by mail for a previous election, provided proof of identification with that ballot, and since then has not changed his or her name or address, the elector is not required to again provide proof of identification for subsequent absentee ballots (unless his or her name or address changes).

5. In lieu of providing proof of identification, an elector who has applied to receive absentee ballots automatically and who is indefinitely confined because of age, physical illness, or infirmity, or is disabled for an indefinite period may submit a statement signed by the same individual who witnessed voting of the ballot which contains the name and address of the elector and verifies that the name and address are correct.

6. An absentee elector who resides in a nursing home, qualified retirement home, community-based residential facility, residential care

apartment complex, or adult family home to which special voting deputies are sent may, in lieu of providing proof of identification, submit a statement signed by both special voting deputies that contains the name and address of the elector and verifies that the name and address are correct.

7. An absentee elector who resides in a qualified retirement home, community-based residential facility, residential care apartment complex, or adult family home to which special voting deputies are not sent may, in lieu of providing proof of identification, submit a statement signed by the same individual who witnessed voting of the ballot (that also contains the required certification of an authorized representative of the residence) that contains the name and address of the elector and verifies that the name and address are correct.

8. An elector who receives a citation or notice of intent to revoke or suspend a DOT driver's license from a law enforcement officer in any jurisdiction that is dated within 60 days of the date of an election, and is required to surrender the driver's license or driving receipt at the time the citation or notice is issued, may enclose a copy of the citation or notice if voting by mail, or may present an original copy of the citation or notice in lieu of the driver's license or driving receipt if voting in person.

Department of Transportation Identification Cards

Identification Cards. The Department of Transportation generally charges \$28 for an identification card. An individual applying for an identification card must provide proof of identity, name, date of birth, Wisconsin residency, and U.S. citizenship or legal presence.

Acceptable proof of identity when applying for an identification card includes: (a) a previously-

issued driver's license with a photograph or photo identification card issued by Wisconsin or another state (either unexpired or expired for less than eight years); (b) military discharge papers; (c) U.S. Government and Military Dependent identification card; (d) certified copy of a marriage certificate or judgment of divorce; (e) a social security card; (f) photo identification issued by any U.S. university, college, or technical college; (g) any document permitted under proof of name and date of birth, if it bears a photograph; (h) an Internal Revenue Service (IRS) Wage and Tax Statement (Form W-2), if it includes the applicant's name, address, and social security number; (i) an IRS 1099 form (for social security benefits, dividends, interest, or other miscellaneous income); (j) a paystub with the applicant's name and social security number; (k) a U.S. passport or passport card (unexpired or expired for less than five years); or (l) a Transportation Worker Identification Credential card (issued by the U.S. Department of Homeland Security).

Acceptable proof of name and date of birth includes: (a) a certified birth certificate issued by Wisconsin or another state; (b) a current U.S. passport; (c) a U.S. certificate of naturalization or citizenship; (d) a U.S. Armed Forces identification card; (e) a copy of a court order with a court seal related to adoption or divorce or name or gender change that contains the person's full legal name, date of birth, and the person's prior name; (f) a driver's license or identification card issued by Wisconsin; or (g) an identification card issued by a federally recognized Native American tribe in Wisconsin. [Other documents, such as alien registration or refugee card, are also accepted, although these documents are not valid for persons who are eligible to vote.]

Acceptable proof of Wisconsin residency when applying for an identification card includes: (a) a pay check, stub, or earning statement with the employer's name and address issued within the past 90 days; (b) a utility bill for water, gas, electricity, or landline telephone service issued in the

past 90 days; (c) a cellular phone bill issued in the past 90 days; (d) an account statement from a bank or financial institution issued in the past 90 days; (e) a deed or title, mortgage, rental or lease agreement for a Wisconsin property; (f) a homeowner's, renter's, or vehicle insurance policy dated within one year of application; (g) any government-issued correspondence or product issued within the past year; (h) Department of Corrections documentation issued within the past 90 days; (i) certified school record or transcript issued within the past 90 days; (j) college enrollment documentation with a current Wisconsin address; (k) a photo identification card issued by a Wisconsin accredited university, college, or technical college that includes the person's address, date of issuance, and expiration date no later than two years after the date of issuance; (l) an employee photo identification card issued by a current employer, containing the employer's name and address; (m) a valid Wisconsin hunting or fishing license; or (n) homeless shelter documentation.

For proof of U.S. citizenship, the person must present a birth certificate issued by a U.S. state or local government, a valid U.S. passport, or a U.S. certification of citizenship or naturalization. [If an applicant for a state identification card is not a citizen, he or she must provide proof of legal presence. However, such an applicant would not be eligible to vote.]

An identification card may be issued to an applicant without a photograph being taken of the applicant if the individual provides an affidavit: (a) stating that the individual has a sincerely held religious belief against being photographed; (b) identifying the religion to which he or she belongs or the tenets of which he or she adheres to; and (c) stating that the tenets of the religion prohibit him or her from being photographed.

Identification Cards Provided Free of Charge. Under 2011 Act 23, DOT may not assess fees to an applicant for the initial issuance or reinstatement of an identification card if the applicant:

(a) is a U.S. citizen; (b) will be at least 18 years of age on the date of the next election; and (c) requests that the identification card be provided without charge for purposes of voting.

To receive an identification card free of charge for the purpose of voting, an applicant must meet the three requirements above and present the following: (a) proof of identity; (b) proof of name and date of birth; (c) proof of Wisconsin residency; and (d) proof of U.S. citizenship, legal permanent resident status, conditional resident status, or legal presence.

Identification Petition Process. Pursuant to a July, 2014, state Supreme Court decision, if an applicant does not have required documentation for which the applicant would be charged a fee by a governmental agency, DOT must allow the applicant to verify the required information without paying a fee. Additional information on the July, 2014, court decision is included in the section on recent court decisions.

To comply with the court decision, DOT established an identification card petition process by which means an applicant could verify information required for an identification card for the purpose of voting. The identification card petition process was codified in statute under 2017 Act 369. Under statute, if the petition process application is made between seven days prior to and two days after a statewide election, DOT will issue a receipt that can be used for voting within 24 hours of when the application is filed (or revived) and will send the receipt by overnight or next-day mail. Through the petition process, an applicant may request an exception to the identification requirement if they are unable to provide proof of name, date of birth, or citizenship (such as in the case of a missing birth record). The Department of Transportation then verifies the individual's birth record information with the Department of Health Services (DHS). If DHS does not verify the birth record information within 30 days, DOT may issue an identification card to the person only if

DOT receives acceptable secondary documentation.

Late Pre-Election Voter Registration in Person

Registration in person for any election closes at 5 p.m. on the third Wednesday preceding the election (with certain exceptions for late registrations in person, registrations at the polling place on election day, and registrations by hospitalized electors). Registrations made by mail must be delivered to the office of the municipal clerk or post-marked no later than the third Wednesday preceding the election.

Late registrations in person (after the third Wednesday preceding the election) are accepted at the office of the municipal clerk up to the later of 5 p.m. or the close of business on the Friday before an election. All registrants must provide acceptable proof of residence.

Electronic Voter Registration

Statewide Voter Registration System. Under the federal Help America Vote Act of 2002 (HAVA), each state must have in place a uniform, centralized, and interactive computerized statewide voter registration list system at the state level. The system must: (a) contain the name and registration information of every registered voter; (b) assign a unique identifier to each voter; (c) serve as the statewide single system for managing the official list of registered voters; (d) permit any election official to obtain immediate electronic access to the list; (e) permit voter registration data to be expeditiously entered into the system; (f) coordinate with other state agencies to verify data; and (g) provide adequate technological security measures to prevent unauthorized access.

Federal HAVA requirements specify that the list must be continuously maintained to ensure that: (a) the name of each registered voter appears on the computerized list; (b) only voters who are not registered or who are not eligible to vote are removed from the computerized list; and (c) duplicate names are eliminated from the list. The state is required to ensure that its voter registration records are accurate and updated regularly.

Electronic Voter Registration. Under 2015 Act 261, the Elections Commission was required to develop an electronic voter registration system. The Elections Commission made the state's online voter registration system publicly available in January, 2017. The electronic registration system may be used by an eligible voter who holds a current and valid Wisconsin driver's license or state identification card to register or make changes to his or her registration. Electronic registration closes at 11:59 p.m. on the third Wednesday before the election.

A voter who registers electronically is exempted from providing proof of residence if the voter provides a name, date of birth, and driver's license number or state ID card number, provided that the Elections Commission is able to verify the information with DOT.

Pursuant to 2003 Act 265, the Elections Commission and DOT maintain an agreement to match personally identifiable information submitted as part of electronic voter registration with information in the DOT record file database and vehicle registration records. Further, DOT is authorized to share information with the Commission's electronic voter registration system to verify, on an instant basis, a voter's information.

The electronic registration system requires a voter to authorize use of the voter's electronic signature from DOT's database to affirm that the registration information is correct. The electronic signature is integrated into the voter registration application and has the same effect as if the voter

signed the application personally.

Prior to enactment of 2015 Act 261, a municipal clerk or board of election commissioners had the authority to appoint special registration deputies to register voters more than 20 days prior to an election or at polling places. Act 261 eliminated special registration deputies effective January, 2017, when the Commission published the online voter registration system.

Act 261 also created "election registration officials," individuals assigned by a municipal clerk or board of election commissioners to register voters for in-person absentee voting, at polling places, or at residential care facilities.

Election Day Voter Registration

An individual may register to vote at the polling place on election day. In addition to the information normally required to be provided in any voter registration form, the individual registering on election day must certify that he or she: (a) is a qualified elector; (b) has resided in the ward or election district for at least 28 days immediately prior to the election; and (c) has not previously voted at the election. In addition, the individual must provide acceptable proof of residence, which must be documented by the election official with regard to the type of document, issuing entity or institution, and a specified number of digits of any identifying number associated with the document for the individual. Any falsification of information in the registration form is subject to punishment as a Class I felony.

Voting at the Polling Place

Generally, for all persons registered to vote in

Wisconsin, the individual must state his or her full name and address and present proof of identification before receiving a ballot. Election officials must verify that the stated name and address conform to those on the poll list. Election officials must also verify that the name on the proof of identification conforms to the name on the poll list and must verify that the photograph on the proof of identification reasonably resembles the elector. The elector is required to sign the poll list unless a physical disability precludes the elector from signing.

If a victim of domestic abuse, sexual assault, or stalking has a confidential listing, such an individual may present his or her voting identification card or give his or her name and voter identification serial number in lieu of stating his or her name and address and presenting proof of identification. A poll list that includes an individual with a confidential listing must be prepared so that the address of any such voter does not appear. If the individual's name and identification serial number appear on the confidential portion of the poll list, election officials must issue a ballot to the individual. Voters with confidential listings must sign the poll list.

Under 2011 Act 23, if proof of identification is not provided by the elector, the name appearing on the presented document does not conform to the name on the poll list, or any photograph appearing on the document does not reasonably resemble the elector, the elector may cast a provisional ballot. A provisional ballot will be counted if the elector provides the required proof of identification at the polling place before the closing hour, or at the office of the municipal clerk or board of election commissioners no later than 4 p.m. on the Friday after the election.

If the poll list indicates that proof of residence is required, election officials must require the individual to provide proof of residence and verify that the name and address on the proof of residence is the same as those shown on the

registration list. If proof of residence is required and not provided, the officials must offer the opportunity for the individual to vote provisionally. The provisional ballot will be counted if residence is established no later than 4 p.m. on the Friday after the election.

Voting by New Residents for the Offices of President and Vice President

If an individual is otherwise qualified to vote except that he or she has been a resident of the state for less than 28 days prior to the date of the presidential election, the person may still vote for the offices of President and Vice President. Such an individual may apply for a presidential ballot not sooner than nine days before, nor later than 5 p.m. on the day before the election, or may apply for a presidential ballot at the proper polling place on election day. An individual voting in this manner must complete an affidavit swearing that the person: (a) is a U.S. citizen; (b) is at least 18 years of age; (c) has resided in the state for less than 28 days; (d) is qualified to vote for the offices of President and Vice President; and (e) will not vote at any other place during the election. The affidavit must also indicate the person's prior and current residence.

The individual must also complete a cancellation card stating the intention to vote for the offices of President and Vice President in Wisconsin and canceling voting privileges at the previous residence. The municipal clerk must immediately forward the cancellation card to the proper election official at the applicant's prior residence.

General Absentee Voting Provisions

General Provisions. Any qualified elector who

registers to vote may request an absentee ballot. A municipal clerk generally may not issue an absentee ballot unless the clerk receives an application for the ballot. Any elector may apply for an absentee ballot by mail, fax, email, online, or in person. The elector must also generally include a copy of his or her proof of identification with the application for an absentee ballot.

An individual who changes residence within Wisconsin less than 28 days before an election may vote by absentee ballot in the ward or municipality where the person was qualified to vote before moving.

Subject to a possible \$1,000 fine and six months imprisonment for falsification of information, an individual voting absentee must certify the following: (a) the elector's current Wisconsin residence; (b) that the elector is entitled to vote in the ward or election district for the upcoming election; (c) that the elector will not vote at any other place during the election; (d) that the elector is unable or unwilling to appear at the polling place on election day or has changed residence within the state from one ward or election district to another less than 28 days before the election; (e) that the elector exhibited to a required witness that the ballot was received unmarked; and (f) that the elector marked the ballot in the presence only of the witness and sealed the ballot in the provided envelope such that no one but the elector (or authorized assistant) could know how the individual voted.

The elector voting absentee must generally make the above certification and sign it before one witness who is an adult U.S. citizen. [The witness need not be a U.S. citizen for military and overseas electors.] The elector must mark the ballot in the presence of the witness, in such a manner as to preserve the confidentiality of the voter's choice, and must fold the ballot without showing the ballot markings and place the ballot in the proper envelope. Where an elector is unable to read, has difficulty in reading, writing, or understanding English, or cannot mark the ballot due to a disability, the

person may select someone (other than the voter's employer, employer's agent, or an officer or agent of a labor organization that represents the voter) to assist in marking the ballot. The assistant must then sign a certification on the back of the ballot.

The absentee ballot envelope must be sealed and witnessed by a person other than a candidate. The envelope must be mailed by the elector, using the pre-paid envelope provided, or delivered in person to the municipal clerk issuing the ballot.

Generally, while the polls are open on election day, the election inspectors in the municipality where the elector has voted absentee must open the carrier envelope and announce the name or confidential domestic abuse identification serial number of the voter. The inspectors must note on the poll list that the person has cast an absentee ballot, provided the inspectors find that the: (a) absentee ballot certification has been properly executed; (b) individual is a qualified elector of the ward or election district; and (c) individual has not voted in the election. The inspectors must open the envelope containing the ballot without destroying the certification, remove the ballot, and verify that it has been endorsed by the issuing clerk. The inspectors must deposit the ballot into the ballot box and enter the absentee voter's name or voting number after his or her name on the poll list as if the individual had been present in person. Where the poll list indicates that proof of residence is required and none is enclosed, or the name or address on the provided proof of residence documents do not match those on the poll list, the absentee ballot must be treated as a provisional ballot. The provisional ballot will be counted if residence is established no later than 4 p.m. on the Friday after the election.

Residence Requirements. If the individual is required to provide proof of residence, and has not previously provided such proof, the elector voting absentee must enclose proof of residence. Proof of residence is not required if: (a) an individual is a military or overseas voter; or (b) an individual who submitted an electronic application provided the

number of a current and valid driver's license or current and valid state identification card with the elector's name and date of birth and the Elections Commission is able to verify the information.

Identification Requirements. The elector must include with the absentee ballot application a copy of the proof of identification, unless an exception applies. The clerk must verify that the name on the proof of identification conforms to the name on the application. The municipal clerk may not issue an absentee ballot to an elector who is required to enclose proof of identification or an authorized substitute document unless the copy is enclosed and the proof is verified by the clerk.

If a qualified elector applies for an absentee ballot in person at the clerk's office, the clerk may not issue the elector an absentee ballot unless the elector presents proof of identification. The clerk must verify that the name on the proof of identification conforms to the name on the elector's application and must verify that any photograph reasonably resembles the elector. The municipal clerk must then enter his or her initials on the certificate envelope indicating that the absentee elector presented proof of identification to the clerk.

In-Person Absentee Voting. Individuals wishing to vote absentee may do so in person at a location designated by the municipality. In-person absentee voting may be conducted no earlier than 14 days prior to each election and no later than the Sunday prior to election day. There is no minimum number of hours that must be offered for in-person absentee voting (although opportunities for in-person absentee voting must be offered). Municipalities are permitted to designate multiple sites for in-person absentee voting.

Absentee Voting by Those Indefinitely Confined

When an individual is indefinitely confined

due to age, physical illness or infirmity, or is disabled for an indefinite period, the person may sign a statement to that effect and require that an absentee ballot be sent automatically to the individual for every election. An indefinitely confined voter does not need to provide proof of identification when requesting an absentee ballot. A municipality must provide an application form and instructions upon the request of any indefinitely confined individual. An individual who ceases to be indefinitely confined must notify the municipal clerk to that effect.

Registration and Absentee Voting by Hospitalized Individuals

A registered voter who is hospitalized may apply for and obtain an official ballot through an agent (someone who can represent an individual's interests). The agent may apply for and obtain a ballot for the hospitalized individual by presenting a form containing the required information. The information must be supplied by the hospitalized individual and the individual must sign the form. If the individual is unable to sign due to a physical disability, the individual may authorize another elector to sign on his or her behalf, in which case the person signing must attest that the application is made on behalf of and authorized by the named hospitalized individual, who is unable to sign the form due to physical disability. The agent must present this statement along with all other required information. The agent must also present the elector's proof of identification.

A hospitalized individual who is not registered to vote may register through the agent when the individual applies for a ballot. To register the hospitalized individual, the agent must present a completed registration form with the required information supplied by the hospitalized individual and that person's signature. As with absentee ballot application provisions, if the individual is unable to

sign due to a physical disability, the individual may authorize another elector to sign on his or her behalf. The agent must present any statement made by an elector who signs on the individual's behalf, all other required information, and acceptable proof of the hospitalized individual's residence.

Absentee Voting by Individuals in Qualified Retirement Homes and Residential Care Facilities

For in-person absentee voting in qualified retirement homes, adult family homes, community-based residential facilities, nursing homes, and residential care apartment complexes, the municipal clerk or board of election commissioners of the municipality must appoint at least two special voting deputies for the municipality. Prior to 5 p.m. on the sixth working day before the election, the deputies must arrange one or more convenient times for absentee voting with the administrator of each home or facility from which one or more applications for absentee voting has been filed, and which has at least five registered voters of the municipality. The time arranged cannot be earlier than the fourth Monday before the election nor later than 5 p.m. on the Monday before the election. The clerk must give notice of each visit no less than five working days before the visit.

At the designated time, two special voting deputies must visit the home or facility with an adequate supply of absentee ballots. The municipal election official must account for all ballots issued and require the deputies to return every ballot issued to them. Upon request, the home or facility administrator may notify occupants' relatives of absentee voting times and permit relatives to be in the room where voting is conducted.

The special voting deputies must personally offer each individual who has applied to vote absentee the opportunity to cast an absentee ballot. The

deputies may not accept an absentee ballot that was not issued to the voter by the deputies. In lieu of providing proof of identification, the elector may submit a statement signed by both deputies that contains the name and address of the elector and verifies that the name and address are correct. The deputies must enclose this statement or a copy of any provided proof of identification in the certificate envelope. If an individual at the home or facility has not filed a proper application for voting absentee, the deputies may also accept an application from any such individual at the home or facility who wishes to vote, if the deputies determine that: (a) the individual is qualified to vote; (b) the application is proper; and (c) proof of identification is provided in the manner required for absentee voters generally, or through the alternative method identified above.

The special voting deputies must each witness the individual's completion of the certification and may, upon the request of the individual, assist in marking the ballot. An individual may request a relative in the room to assist in marking the ballot. All voting must be conducted in the presence of the deputies. No person other than a deputy may witness the certification, and no person other than a deputy or relative of an individual may render voting assistance to the individual.

Following voting at each visit, the deputies must seal the ballot envelopes and any absentee ballot applications inside a carrier envelope, seal the carrier envelope, and sign their names to the seal. The deputies must place the carrier envelope inside a ballot bag or container and as soon as possible after visiting each home or facility, but no later than 18 hours after the visit, deliver the bag or container to the municipal clerk or board of election commissioners.

If an individual is not able to cast a ballot during two visits of the deputies, the deputies must inform the municipal election official who may then send the ballot to the individual no later than 5 p.m. on the Friday preceding the election.

Residents of such homes or facilities who wish to instead vote in person or vote absentee from an address outside the home or facility may do so under procedures established for voters in general.

Elections Administration and Resources to Implement 2011 Act 23

Under 2011 Act 23, the state's elections agency was required, in conjunction with the first regularly scheduled primary and election at which the voter identification requirements applied, to conduct a public informational campaign to inform prospective voters of the voter identification requirements of the act. Further, Act 23 directed the agency, on an ongoing basis, to engage in outreach to: (a) identify and contact groups of electors who may need assistance in obtaining or renewing a document that constitutes proof of identification for voting; and (b) provide assistance to electors in obtaining or renewing a document that constitutes proof of identification for voting.

Funding to implement the requirements of Act 23 was provided primarily through the 2011-13 biennial budget act through one-time funding of \$1.8 million general purpose revenue (GPR) and ongoing funding of \$82,600 GPR annually to train county and municipal clerks regarding voter identification requirements. Due to pending legal challenges regarding voter identification, the allocation was not fully expended during the 2011-13 biennium. Additional funds were provided in the 2013-15 biennium and subsequent biennia. Detailed information relating to expenditures is included in the Legislative Fiscal Bureau's 2019 informational paper, "Wisconsin Voter Requirements." Expenditures to implement Act 23 are shown in the appendix of this paper.

Recent Court Decisions

State Court Decisions

Under two state Supreme Court decisions (*League of Women Voters of Wisconsin v. Walker* and *Milwaukee Branch of the NAACP v. Walker*) it was determined that the photo identification provisions of Act 23 may be enforced.

Beginning in 2012, two Dane County Circuit Courts granted permanent injunctions against the enforcement of the photo identification requirement of Act 23. The courts separately found the photo identification requirement violated Article III of the Wisconsin Constitution. Both decisions were appealed by the Attorney General to the Court of Appeals. Both cases subsequently went before the state Supreme Court.

In July, 2014, the state Supreme Court issued a decision in each case to uphold the photo identification provisions of Act 23, and vacated the remaining state circuit court injunction. The Court upheld the law by ordering changes to the interpretation and administration of DOT administrative rules.

The Court expressed concern regarding fees charged by governmental agencies for secondary documents, such as birth certificates, that are required to receive a state-issued identification card for the purpose of voting. Specifically, Act 23 prohibited DOT from charging a fee for the initial issuance or reinstatement of an identification card if an applicant requests the free card for the purpose of voting, but did not address fees charged for secondary documents needed to obtain an identification card. The Supreme Court decision addressed such secondary documents and required DOT to use its discretion in issuing identification cards for the purpose of voting to grant an exception to an individual who does not possess identifying documents that would require payment of a fee to

obtain, and who submits a petition requesting an exception. Therefore, the Court ruled that, with this change, the photo identification provisions of Act 23 may be enforced.

Federal Court Decisions

In addition to the litigation in state court, several legal challenges to the enforcement of provisions of Act 23 were filed in federal court.

Frank v. Walker and *LULAC v. Deininger*. In April, 2014, a federal judge considered these two cases jointly and issued a permanent injunction against the enforcement of the photo identification provisions of Act 23. In May, 2014, the state Attorney General appealed the decision to the U.S. 7th Circuit Court of Appeals. In September, 2014, the federal appeals court issued an order that stayed the injunction against enforcement of photo identification requirements. This decision would have allowed the photo identification requirements to become enforceable. However, the plaintiffs then requested relief from the U.S. Supreme Court.

In October, 2014, the U.S. Supreme Court issued a conditional order vacating the September, 2014, stay of the permanent federal injunction. The Court specified that the order would terminate automatically in the event that the plaintiffs' petition for a writ of certiorari were denied. [A writ of certiorari is a request for judicial review of a lower court decision.] In March, 2015, following the general election, the injunction against enforcement was lifted when the U.S. Supreme Court denied the plaintiffs' petition for a writ of certiorari. Therefore, the photo identification provisions of Act 23 may still be enforced.

One Wisconsin Institute v. Thomsen. In July, 2016, a judge for the U.S. District Court for the Western District of Wisconsin issued a judgment in a third case, ruling in favor of the plaintiffs on several counts, while ruling in favor of the defendants on other complaints. Of note, the

identification card petition process, as implemented by the state, for receiving a free identification card for voting was determined to be unconstitutional. The judge issued specific orders regarding the petition process, including a requirement that the state promptly provide an applicant with a credential, such as a receipt, that could be used for voting. The orders were subsequently implemented by DOT and codified under 2017 Act 369.

The July, 2016, District Court decision was modified by the 7th Circuit Court of Appeals in June, 2020. The 7th Circuit ruled in favor of the

plaintiffs on several complaints, while ruling in favor of the defendants on other counts. The Court upheld laws: (a) reducing the hours and days for in-person absentee voting; (b) increasing the durational residency requirement from 10 days to 28 days; and (c) prohibiting the distribution of absentee ballots by fax or email to voters (other than military or overseas voters). The Court of Appeals decision did, however, hold that the state could not enforce the requirements that: (a) student identification cards be unexpired to be used as proof of identification; and (b) citizenship information be included for dorm lists to be used as proof of residence.

APPENDIX

Expenditures to Implement 2011 Act 23

| | <u>2011-12</u> | <u>2012-13</u> | <u>2013-14</u> | <u>2014-15</u> | <u>2015-16</u> | <u>2016-17</u> | <u>2017-18</u> | <u>2018-19</u> | <u>2019-20</u> | <u>2020-21*</u> |
|--|-----------------|-----------------|----------------|-----------------|----------------|----------------|-----------------|----------------|----------------|-----------------|
| Public Information and Outreach | | | | | | | | | | |
| Public Information Multi-Media Campaign | \$181,000 | \$0 | \$0 | \$28,000 | \$37,800 | \$263,800 | \$5,400 | \$0 | \$0 | \$0 |
| Public Outreach Campaign | <u>121,300</u> | <u>0</u> | <u>0</u> | <u>0</u> | <u>0</u> | <u>0</u> | <u>0</u> | <u>0</u> | <u>0</u> | <u>0</u> |
| Subtotal | \$302,300 | \$0 | \$0 | \$28,000 | \$37,800 | \$263,800 | \$5,400 | \$0 | \$0 | \$0 |
| Program Support | | | | | | | | | | |
| Personnel (Salary and Fringe Benefits) | \$52,500 | \$65,500 | \$1,300 | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 |
| Staff Travel | 0 | 1,000 | 0 | 0 | 0 | 0 | 0 | 100 | 0 | 0 |
| Equipment | 9,000 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Administrative Expense | <u>46,900</u> | <u>3,600</u> | <u>0</u> | <u>0</u> | <u>0</u> | <u>700</u> | <u>800</u> | <u>400</u> | <u>600</u> | <u>0</u> |
| Subtotal | \$108,400 | \$70,100 | \$1,300 | \$0 | \$0 | \$700 | \$800 | \$500 | \$600 | \$0 |
| Statewide Voter Registration System | | | | | | | | | | |
| Modifications for Implementing Photo ID | \$138,700 | \$100 | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 |
| Training | | | | | | | | | | |
| Voter Identification Training for Clerks | <u>\$82,600</u> | <u>\$19,300</u> | <u>\$2,600</u> | <u>\$13,200</u> | <u>\$9,800</u> | <u>\$4,500</u> | <u>\$13,800</u> | <u>\$3,300</u> | <u>\$3,500</u> | <u>\$1,400</u> |
| Total | \$632,000 | \$89,500 | \$3,900 | \$41,200 | \$47,600 | \$269,000 | \$20,000 | \$3,800 | \$4,100 | \$1,400 |

*Through December 1, 2020